



Date of Notice: July 2, 2018

**STATE OF RHODE ISLAND
DEPARTMENT OF HEALTH
PUBLIC NOTICE OF PROPOSED RULE MAKING**

In accordance with Rhode Island General Laws (RIGL) 42-35-2.7, notice is hereby given that the Rhode Island Department of Health (RIDOH) proposes to amend the rules and regulations for Opticians (216-RICR-40-05-19).

REGULATION TITLE:

**RICR Title 216 – Rhode Island Department of Health
Chapter 40 – Professional Licensing and Facility Regulation
Subchapter 05 – Professional Licensing
Part 19 – Opticians**

TYPE OF FILING: Amendment.

RULEMAKING ACTION: Public Notice of Proposed Rule Making.

TIMETABLE FOR ACTION ON THE PROPOSED RULE: The public comment period ends on Wednesday, August 1, 2018.

SUMMARY OF PROPOSED RULE: The RIDOH is proposing rulemaking to create an Authority section, implement Secretary of State definitional requirements, remove superfluous language, remove statutory reiteration, and revise citations to remove references to repealed statutes.

COMMENTS INVITED: All interested parties are invited to submit written comments concerning the proposed regulations. Written comments can be submitted by mail to Paula Pullano, Rhode Island Department of Health, 3 Capitol Hill, Providence, RI 02908-5097 or by email at paula.pullano@health.ri.gov by the close of **Wednesday, August 1, 2018**. Please note that comments submitted to RIDOH by other means than the prescribed mailing and email address may not be received and addressed in RIDOH's concise explanatory statement. To ensure that your comments are received, please send them to the prescribed mailing and email address.

PUBLIC HEARING: In accordance with R.I. Gen. Laws § 42-35-2.8(c), an oral hearing will be granted if requested by twenty-five (25) persons, by a governmental agency, or by an association having at least twenty-five (25) members. A request for an oral hearing must be made within ten (10) calendar days of this notice, and must clearly state the name of the regulation for which the hearing is being requested.

WHERE COMMENTS MAY BE INSPECTED: Rhode Island Department of Health, 3 Capitol Hill, Providence, Rhode Island 02908-5097.

FOR FURTHER INFORMATION CONTACT: Paula Pullano, Rhode Island Department of Health, Division of Policy, Information, and Communications, 3 Capitol Hill, Providence, Rhode Island 02908-5097, 401-222-1042, paula.pullano@health.ri.gov.

AUTHORITY FOR THE RULEMAKING: R.I. Gen. Laws § 5-35.2-14.

REGULATORY FINDINGS: In the development of the proposed amendment, consideration was given to: 1) alternative approaches; 2) overlap or duplication with other statutory and regulatory provisions; and 3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based on available information. RIDOH has determined that the benefits of the proposed rule justify the costs of the proposed rule.

THE PROPOSED AMENDMENT: RIDOH proposes to amend the rules and regulations for Opticians (216-RICR-40-05-19) as follows in the concise explanatory statement of proposed non-technical amendments.

**STATE OF RHODE ISLAND
RHODE ISLAND DEPARTMENT OF HEALTH
CONCISE STATEMENT OF PROPOSED NON-TECHNICAL AMENDMENTS
(AMENDMENTS TO AN EXISTING REGULATION)**

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-3(a)(1), the following is a concise statement of proposed non-technical amendments to the rules and regulations for Opticians (216-RICR-40-05-19).

Amendment Coordinates	Rationale/Summary of Change
§ 19.1: Creates Authority section.	
§ 19.2: Implements Secretary of State definitional requirements and removes superfluous language.	
§§ 19.3.1 and 19.4.1: Removes citations to repealed statute.	
§ 19.3.2: Removes statutory reiteration and outdated effective date, and revises citation to repealed statute.	
§§ 19.3.7 and 19.4.2: Revises citations to repealed statute.	
§ 19.4.3: Removes superfluous language.	
Severability: Removed as superfluous.	

216-RICR-40-05-19

TITLE 216 - DEPARTMENT OF HEALTH

CHAPTER 40 – PROFESSIONAL LICENSING AND FACILITY REGULATION

SUBCHAPTER 05 – PROFESSIONAL LICENSING

PART 19 - Opticians

19.1 Authority

These regulations are promulgated pursuant to the authority conferred by R.I. Gen. Laws § 5-35.2-14, and are established for the purpose of establishing administrative procedures and prevailing standards for the licensure (registration) of opticians in this state.

19.2 Definitions

A. Wherever used in this Part, the following terms shall be construed to mean:

1. "Act" ~~refers to~~ means R.I. Gen. Laws Chapter 5-35.2 entitled, "Opticians."
2. "Advisory Committee" ~~refers to~~ means the Advisory Committee of Opticianry established pursuant to R.I. Gen. Laws § 5-35.2-82.1 of the Act.
3. "Director" ~~refers to~~ means the Director of the Rhode Island Department of Health.
4. "Intern" means a graduate of a school of opticianry who is enrolled in a full-time internship under the supervision of a duly licensed optician or optometrist.
5. "License" is synonymous with "registration."
6. "Optician" means a person who neither practices nor professes to practice optometry but who may grind ophthalmic lenses, fit spectacles and eyeglasses and may sell spectacles and eyeglasses or lenses on prescription from either a licensed physician or licensed optometrist, nor shall an optician fit, sell, replace or dispense contact lenses pursuant to R.I. Gen. Laws Chapter 5-35.2-4.

~~7. "RIGL" means the General Laws of Rhode Island, as amended.~~

19.3 Licensure Requirements

19.3.1 Licensure Requirements

No person shall conduct the business of optician in this state until he or she has passed an examination approved by the Department, and shall have registered and

received a certificate of licensure pursuant to the provisions of ~~§ 5-35-23~~ of the Act and this Part.

19.3.2 Qualifications for Licensure

- A. In addition to the qualifications for licensure stated in R.I. Gen. Laws § 5-35.2-2(a), An applicant seeking licensure to practice as an "optician" in this state must:
- ~~1. Be of good moral character;~~
 1. Be not less than eighteen (18) years of age;
 2. Have successfully graduated from a high school of a standard approved by the department of education in the state in which the applicant graduated, or hold a statement of high school equivalency certified and issued by the department of education in the state in which the applicant obtained the equivalency certificate;
 3. ~~On or after January 1, 1995~~ Have graduated from a two (2) year school of opticianry approved by the Department and successfully completed one (1) year of postgraduate internship under the supervision of a duly licensed optometrist or optician.
 4. Have successfully passed a written examination, such as the National Opticianry Competency Examination or such other written examination as approved by the Department and the Advisory Committee; and
 5. Have successfully passed a practical examination approved by the Department with consultation from the Advisory Committee for Opticianry.
- B. Notwithstanding any other provisions of R.I. Gen. Laws §Chapter 5-35.2-24(8), any individual who, at the time of his or her application for licensure, is a citizen or legal resident of the United States; submits satisfactory evidence to the Department and Advisory Committee of successful completion of a two (2) year apprenticeship program; that he or she has previously held a valid license to practice opticianry in another state for at least one year; has practiced opticianry in this or any other state for a period of not less than one (1) year; is in good standing in that state; has previously taken and successfully passed as a prerequisite for licensure in the other state a written examination such as the National Opticianry Competency Examination or such other written examination approved by the Department and the Advisory Committee and otherwise meets the requirements for licensure with the exception of § 19.3.2(A)(4) of this Part; pays to the Department the appropriate fee which shall accompany his or her application; is eligible to apply for licensure on condition that he or she first completes the requirements of § 19.3.2(A)(6) of this Part.

19.3.3 Application and Fee

- A. Application for licensure shall be made on forms provided by the Department. Said forms shall be completed, notarized and submitted to the Department at least thirty (30) days before the scheduled date of the Advisory Committee meeting. Such

application shall be accompanied by the original document, certified copies or notarized photo copies of the following documents:

1. A certified copy of birth certificate;
2. A recent identification photograph of the applicant, head and shoulders, front view, approximately 2x3 inches in size;
3. A statement from the Board of Examiners in Opticianry in each state in which the applicant has held or holds licensure, to be submitted to the Department of this state attesting to the licensure status of the applicant during the time period the applicant held licensure in said state(s);
4. Documented evidence of high school education; supporting certified transcripts of education signed by the dean or registrar of the school of opticianry; and a statement certifying successful completion of an internship, with the exception of those applicants seeking licensure in accordance with § 19.3.2(B) of this Part who must produce evidence of their valid licensure and practice in such other state. Such statements and/or documentation must consist of original transcripts, statements and/or photocopies acceptable to the Advisory Committee.
5. The results of the written national examination as approved by the Department and submitted directly to the Department by the American Board of Opticianry;
6. The initial application fee as set forth in the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title);
7. Such other information as may be deemed necessary by the Department and/or the Advisory Committee.

19.3.4 Examinations for Licensure

A. Examinations

1. Applicants seeking licensure to practice opticianry in this state shall be required to successfully pass:
 - a. A written examination as determined by the Department, such as that of the National Opticianry Competency Examination, or such other as determined by the Department and the Advisory Committee. The date, time and place of such examination may be obtained from the American Board of Opticianry or from the Department.
 - b. A practical examination, approved by the Department with consultation from the Advisory Committee which covers subjects in fields which will test the applicant's knowledge of professional standards of practice.

B. Re-examination

1. In case of failure of any applicant to satisfactorily pass an examination, said applicant shall be entitled to re-examination. In the event of a third failure or any subsequent failure, opportunity for re-examination(s) may be subject to the applicant's completion of additional requirements as recommended by the Advisory Committee on an individual basis.

19.3.5 Continuing Education

- A. Every person licensed to practice opticianry within this state shall on or before the thirty-first (31st) day of January of each year in which his or her license is due for renewal, present to the Advisory Committee satisfactory evidence of completion of not less than twelve (12) hours of continuing education within the preceding two (2) calendar years.
 1. Any course intended to fulfill the requirement of continuing education shall be submitted to the committee for review and approval, provided however, that continuing education derived from attendance at or participation in any of the following shall be deemed approved by the Advisory Committee:
 - a. Any course and/or courses offered by a provider meeting the guidelines of continuing opticianry education of the American Board of Opticianry;
 - b. A maximum of one (1) hour per two (2) year period in approved management and marketing course(s); and
 - c. Any other course approved by the Advisory Committee.
 2. The Advisory Committee, in its discretion, may exempt a person from the requirements for continuing opticianry education for hardship or other extenuating circumstances as the Advisory Committee deems appropriate.

19.3.6 Issuance and Renewal of License and Fee

- A. Upon completion of the aforementioned requirements, the Department may issue a license to those applicants found to have satisfactorily met all the requirements of this Part. Said license shall expire biennially (every two [2] years on the 31st of January), unless sooner suspended or revoked.
- B. On or before the 1st of January of every other year, the Department shall mail an application for renewal of license to each person to whom a license has been issued or renewed during the past two (2) years. Every person licensed who intends to practice opticianry during the ensuing two years shall file a renewal application duly executed together with a renewal fee as set forth in the Fee Structure for Licensing, Laboratory and Administrative Services Provided by the Department of Health (Part 10-05-2 of this Title).
- C. Upon receipt of a renewal application accompanied by evidence of completion of prescribed continuing education requirements as set forth in § 19.3.5 of this Part, and including payment of renewal fee, the accuracy of the application shall be verified and

license shall be granted effective for a two (2) year period unless sooner suspended or revoked.

19.3.7 Denial, Suspension or Revocation of License

In addition to any other sanctions provided in the statutory and regulatory provisions of this Part, the Director may, pursuant to R.I. Gen. Laws § 5-35.2-10-19, and after due notice and hearing as provided in § 19.4.3 of this Part, refuse to grant, refuse to renew, suspend or revoke any license to any person who is not of good moral character, or has been guilty of gross unprofessional conduct, or conduct of a character likely to deceive or defraud the public, or for any fraud or deception committed in obtaining such license, and of gross unprofessional conduct as defined in the aforementioned section of the Act.

19.4 Advertising, Violations, Practices and Procedures and Severability

19.4.1 Advertising

- A. ~~Pursuant to § 5-35-20(b) of the Act,~~ No optician licensed and practicing in this state shall advertise by written or spoken word of a character tending to deceive or mislead the public.
- B. In addition to § 19.4.1(A) of this Part, any and all advertising conducted by any optician shall conform to the provisions of R.I. Gen. Laws Chapter 6-13.1, entitled, "Deceptive Trade Practices Act."
- C. Any person practicing pursuant to the provisions of the Act, shall be required to post his or her name and license number on the premises where the services are being offered.

19.4.2 Violations

Any violations of the statutory and regulatory requirements of this Part shall be subject to the statutory sanctions as set forth in § 5-35.2-12-19 of the Act.

19.4.3 Rules Governing Practices and Procedures

All hearings and reviews required under the provisions of the Act shall be held in accordance with the provisions of the rules and regulations ~~promulgated by the Rhode Island Department of Health entitled,~~ regarding Practices and Procedures Before the Department of Health (Part 10-05-4 of this Title) and Access to Public Records (Part 10-05-1 of this Title).

Severability

~~If any provision of these rules and regulations or the application thereof to any individual or circumstances shall be held invalid, such invalidity shall not affect the provisions or the application of the regulations which can be given effect, and to this end the provisions of the regulations are declared to be severable.~~