

Department Of Health  
Before The Board Of Dispensing Opticians

Petition For Declaratory Order  
Notice Of Hearing  
And  
Notice To Potentially Interested Persons

Mark Shane Partain has filed a Petition for a Declaratory Order pursuant to Tenn. Code Ann. § 4-5-224 and the Uniform Rules for Hearing Contested Cases Before State Administrative Agencies, Tenn. Comp. R. & Regs. 1360-4-1-.07.

1. Petitioner's Name: Mark Shane Partain  
496 County Road 442  
Athens, Tennessee 37303  
  
Telephone Number: (423) 745-9895  
  
Docket Number: 17.13-096601A.
2. Petitioner's Attorney: Chris Trew  
  
Address: 20 Washington Avenue N.W.  
P.O. Box 10  
Athens, Tennessee 37371-0010  
  
Telephone Number: (423) 745-3573
3. Organization, if any, that the Petitioner represents:  
  
None.
4. Provide a statement of the facts that led to the filing of this petition.

The Petitioner asserts that large retail optical chains within Tennessee are placing untrained, non-licensed employees into optical sales, supervisory and management positions that are required by Tennessee state law to be filled by licensed opticians. The Petitioner asserts that non-licensed managers have no accountability to the state licensing board and that non-licensed managers are unfamiliar with state optician and licensing laws.

5. Provide a summary of the relief the Petitioner is requesting, including the specific nature of the requested order and the conclusions the Petitioner would like the agency to reach at the conclusion of the declaratory process.

The Petitioner is asking the Board to answer the following questions:

- (1) Can a person who is not a licensed optician or an apprentice optician in Tennessee sell or take orders for prescription contact lenses, or perform any of the duties related to dispensing opticians, which include but are not limited to frame and lens selection for glasses, prescription interpretation and entry, pupillary distance and segment measurements, rx neutralization, fitting and adjusting prescription eyewear, and dispensing prescription eyewear, including plano contact lenses?

- (2) Can an apprentice optician perform optician duties described in Question 1 above without the direct supervision of the sponsoring optician?
- (3) Must store managers, district managers, regional managers, territorial managers, and other supervisors, officers, and managers of optical chains and dispensaries within Tennessee be licensed opticians?
- (4) Can optical employees go into the public sector and solicit business for optometrists by means of verbal communication, business cards, and/or vision screenings?

The Petitioner is asking the Board to conclude that the answer to Questions 1, 2 and 4 are "no," and that the answer to Question 3 is "yes."

- 6. Citation to the statute, rule or order which is the subject of the petition.

Tenn. Code Ann. §§ 63-14-102, 63-14-103, 63-14-104 and 63-14-111

- 7. State how the statute, rule and/or order cited above specifically and directly produces and effect or result upon the Petitioner:

The Petitioner asserts that the cited Board rules have a direct on his profession, expertise, ethics, job security, financial stability, and ability to correctly and efficiently provide optical services to the citizens of Tennessee.

A hearing has been scheduled for Monday, October 29, 2007, at 9 a.m. before the Tennessee Board of Dispensing Opticians in the Iris Board Room, 227 French Landing, Nashville, Tennessee 37243.

If you have questions, you may contact the Petitioner's attorney, Chris Trew, at the address and phone number listed at the beginning of this notice.

The Notice of Hearing of Petition for Declaratory Order set out herein was properly filed in the office of the Secretary of State, Publications Division, on this the 30<sup>th</sup> day of August, 2007.

Submitted for publication by:

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