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312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: sos.information@state.tn.us

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Sequence Number: 02-27-09
Rule ID(s): 4130
File Date: 02/26/2009
Effective Date: 05/12/2009

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission: Tennessee State Board of Optometry
Division: Health Related Boards
Contact Person: Lucille F. Bond
Address: Office of General Counsel
220 Athens Way, Suite 210
Nashville, Tennessee
Zip: 37243
Phone: 615-741-1611
Email: lucille.f.bond@state.tn.us

Revision Type (check all that apply):

- Amendment
- New
- Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables.)

Chapter Number	Chapter Title
1045-02	Rules Governing the Practice of Optometry
Rule Number	Rule Title
1045-02-.05	Continuing Education
1045-02-.06	Board Meetings, Members' Authority and Records

Chapter 1045-02
Rules Governing the Practice of Optometry

Amendments

Rule 1045-02-05 Continuing Education, is amended by deleting subparagraph (1)(a) in its entirety and substituting the following language, and is further amended by deleting paragraph (2) but not its subparagraphs, and substituting the following language, and is further amended by deleting subparagraphs (2)(a) and (2)(c) in their entirety and substituting the following language, and is further amended by deleting part (2)(d)3 in its entirety:

- (1)(a) For those who are therapeutically certified, a minimum of twenty (20) of the thirty (30) hours of continuing education is required in courses pertaining to ocular disease and related systemic disease, as described in subparagraph (2)(c).
- (2) Approval of Continuing Education
- (2)(a) Except for grand clinical rounds and courses provided by the Tennessee Academy of Optometry, all continuing education courses shall be approved by the Association of Regulatory Boards of Optometry's Council on Optometric Practitioner Education (COPE).
1. Providers of grand clinical rounds and the Tennessee Academy of Optometry shall submit the information required by subparagraph (2)(b) at least thirty (30) days prior to the actual date of the grand clinical rounds or course.
 2. Licensees who attend grand clinical rounds performed in clinical treatment facilities and/or courses provided by the Tennessee Academy of Optometry that are not approved by COPE shall receive one (1) hour of continuing education credit for each two (2) hours of attendance.
 3. No more than six (6) hours of continuing education credit during the two (2) year period described in paragraph (1) shall be granted to a licensee for attending grand clinical rounds.
- (2)(c) Courses will be classified by the Board as one (1) of the following categories:
1. Clinical Optometry – These courses shall pertain to general optometry, functional vision/pediatrics, and contact lenses.
 2. Ocular Disease – These courses shall pertain to the treatment and management of ocular disease (anterior and posterior), refractive surgery management, peri-operative management of ophthalmic surgery, and glaucoma.
 3. Related Systemic Disease – These courses shall pertain to systemic/ocular disease, principles of diagnosis, pharmacology, and neuro-optometry.
 4. (Optometric) Business Management – These courses shall pertain to practice management and/or ethics/jurisprudence. The total number of (Optometric) Business Management hours that will be accepted is six (6) hours of the thirty (30) hour requirement.

Authority: T.C.A. § 4-5-202, 4-5-204, 63-8-112, and 63-8-119.

Rule 1045-02-.06 Board Meetings, Members' Authority and Records, is amended by inserting the following language as new paragraph (6) and renumbering the remaining paragraphs accordingly:

- (6) Reconsiderations and Stays – The Board authorizes the member who chaired the Board

for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-8-112, 63-8-120, and 63-8-121.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Linda L. Tharp	X				
Scott L. Spivey	X				
Richard C. Orgain	X				
Jerry Richt	X				
Eddie Abernathy	X				
Pier S. Briley				X	

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Optometry (board/commission/ other authority) on 09/29/06, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/28/06

Notice published in the Tennessee Administrative Register on: 07/14/06

Rulemaking Hearing(s) Conducted on: (add more dates). 08/25/06

Date: February 13 2009

Signature: Lucille F. Bond

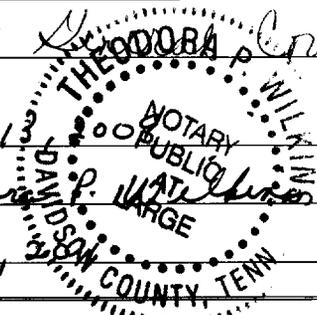
Name of Officer: Lucille F. Bond

Title of Officer: Assistant Secretary

Subscribed and sworn to before me on: Feb. 13 2009

Notary Public Signature: Theodore P. WATKINS

My commission expires on: Nov. 7, 2009



All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
 Robert E. Cooper, Jr.
 Attorney General and Reporter
2-23-09
 Date

Department of State Use Only

Filed with the Department of State on: 2/20/09

Effective on: 5/12/09

SECRETARY OF STATE PUBLICATIONS

2009 FEB 26 PM 3:41

Tre Hargett
 Tre Hargett
 Secretary of State

RECEIVED

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which shall be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Please see attached Memorandum regarding rule-making hearing. Public comments were received regarding Rule 1045-02-.16. However, those proposed rules have been deleted from this rulemaking package.

MINUTES

RULEMAKING HEARING

TENNESSEE BOARD OF OPTOMETRY

AUGUST 25, 2006

The rulemaking hearing for the Tennessee Board of Optometry was called to order at 3:30 p.m., Central Daylight Time, on August 25, 2006 in the Division of Health Related Board's Conference Room on the Third Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Jerry Kosten was the presiding officer.

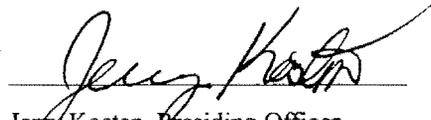
Prior to the rulemaking hearing, written comments were received from Christina Pish, O.D. and from the Tennessee Optometric Association. The Tennessee Optometric Association also submitted a written request to personally address the Board prior to its final vote.

Two (2) members of the public attended the rulemaking hearing, that being Martha Gentry, Attorney for the National Association of Optometrists and Opticians (NAOO) and John Williams, Attorney for the Tennessee Optometric Association. Ms. Gentry and Mr. Williams submitted written comment at the rulemaking hearing.

No oral comments were received at the rulemaking hearing.

Before the conclusion of the rulemaking hearing, Ms. Gentry submitted a written request asking that her client be allowed to personally address the Board prior to its final vote.

The rulemaking hearing concluded at 4:05 p.m., Central Daylight Time.


Jerry Kosten, Presiding Officer
Division of Health Related Boards


Date

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Regulatory Flexibility Analysis

- (1) The proposed rules do not overlap, duplicate, or conflict with other federal, state, or local government rules.
- (2) The proposed rules exhibit clarity, conciseness, and lack of ambiguity.
- (3) The proposed rules are not written with special consideration for the flexible compliance and/or requirements because the licensing boards have, as their primary mission, the protection of the health, safety and welfare of Tennesseans. However, the proposed rules are written with a goal of avoiding unduly onerous regulations.
- (4) The compliance requirements throughout the proposed rules are as "user-friendly" as possible while still allowing the Board to achieve its mandated mission in regulating optometrists. There is sufficient notice between the rulemaking hearing and the final promulgation of rules to allow services and providers to come into compliance with the proposed rules.
- (5) Compliance requirements are not consolidated or simplified for small businesses in the proposed rules for the protection of the health, safety and welfare of Tennesseans.
- (6) The standards required in the proposed rules are very basic and do not necessitate the establishment of performance standards for small businesses.
- (7) There are no unnecessary entry barriers or other effects in the proposed rules that would stifle entrepreneurial activity or curb innovation.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Tennessee Department of Health, Board of Optometry

Rulemaking hearing date: August 25, 2006.

Types of small businesses that will be directly affected by the proposed rules:

These rule changes only affect licensed optometrists. Their impact on small businesses is expected to be negligible.

Types of small businesses that will bear the cost of the proposed rules:

The rule changes impact licensed optometrists and would have minimal affect on any small businesses.

Types of small businesses that will directly benefit from the proposed rules:

None known.

Description of how small business will be adversely impacted by the proposed rules:

The rule changes should have little adverse impact on small business as they primarily affect licensed optometrists.

Alternatives to the proposed rule that will accomplish the same objectives but are less burdensome, and why they are not being proposed:

The Department of Health, Board of Optometry does not believe there are less burdensome alternatives to the proposed rule amendments.

Comparison of the proposed rule with federal or state counterparts:

Federal: Board of Optometry is not aware of any federal counterparts.

State: The proposed rule amendments will have no state counterpart because the Department of Health, Board of Optometry is the only agency charged with regulating licensed optometrists.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to TCA 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

1045-020.05 Continuing Education – The current rule describes the continuing education specifically required of therapeutically certified optometrists as "diagnosis, treatment, and/or use of pharmaceutical agents in the practice of optometry." The new rule describes "ocular disease and related systemic disease." Also, the current rule lists several pre-approved continuing education course providers. The new rule deletes all the providers except for the Association of Regulatory Boards of Optometry's Council on Optometric Practitioner Education (COPE), and adds the Tennessee Academy of Optometry as a pre-approved provider. Also, the new rule awards credit for continuing education provided by the Tennessee Academy of Optometry in a manner similar to that which is awarded for participation in clinical grand rounds. Finally, the current rule has three (3) continuing education categories, those being general optometric education (diagnostic), diagnosis – treatment-management- pharmaceutical agents (therapeutic), and practice management. The new rule has four (4) continuing education categories, those being clinical optometry, ocular disease, related systemic disease, and optometric business management.

1045-02-.06 Board Meetings, Members' Authority and Records – The current rule does not contemplate a process for a disciplined licensee to petition the Board for a reconsideration or stay of his/her disciplinary order. The new rule names the board member who chaired the meeting when the disciplinary matter was originally heard to make the decision for the full Board to hear or not hear the petition.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Authority for these amendments comes from state statutes regarding the practice of optometry, Tenn. Code Ann. §§ 63-8-101, et seq.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Individuals most directly affected by these rules are providers of continuing education and all current and future licensees who practice optometry.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no known opinions of the attorney general that relate to these rules.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

There is estimated to be no increase or decrease in revenues or expenditures because of these rule amendments.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Lucy Bond, Assistant General Counsel, Tennessee Department of Health, Office of General Counsel, 220 Athens Way, Suite 210, Nashville, Tennessee 37243, (615) 741-1611

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Alison Cleaves, Chief Deputy General Counsel, Tennessee Department of Health, Office of General Counsel, 220 Athens Way, Suite 210, Nashville, Tennessee 37243 (615) 741-1611.

(H) Office address and telephone number of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Alison Cleaves, Chief Deputy General Counsel, Tennessee Department of Health, Office of General Counsel, 220 Athens Way, Suite 210, Nashville, Tennessee 37243 (615) 741-1611.

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.