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For Department of State Use Only

Sequence Number: 03-02-09
 Rule ID(s): 4136
 File Date: 03/02/2009
 Effective Date: 05/16/2009
07/13/09

A Notice of Stay of Effective Date (05-13-09) was filed on 05/14/09. [To view notice click here.](#)

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
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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-.03	Examinations
1045-02-.05	Continuing Education

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Chapter 1045-02
Rules Governing the Practice of Optometry

Amendments

Rule 1045-02-.03 Examinations, is amended by inserting the following language as new paragraph (3) and renumbering the current paragraphs (3) and (4) as paragraphs (4) and (5):

- (3) Jurisprudence Examination. All applicants for licensure must successfully complete the Board's jurisprudence examination as a prerequisite to licensure.
 - (a) The Board shall mail a jurisprudence examination to all applicants for licensure.
 - (b) The applicant shall include a completed jurisprudence examination when his/her completed application for licensure is sent to the Board's administrative office located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.
 - (c) There is no fee for the jurisprudence examination.
 - (d) The scope and content of the examination shall be determined by the Board but limited to statutes and regulations governing the practice of optometry (Tennessee Code Annotated §§ 63-8-101, et seq., and Chapter 1045-2 of the Official Compilation, Rules and Regulations of the State of Tennessee). Copies of the applicable statutes and regulations can be obtained at the Board's Internet web page, and are also available upon request from the Board's administrative office.
 - (e) The format of the examination shall be "open-book."
 - (f) Correctly answering ninety percent (90%) of the examination questions shall constitute successful completion of the jurisprudence exam.
 - (g) If the Board determines that the applicant has failed to successfully complete the jurisprudence examination, the applicant will be mailed another examination and he/she must continue to retake the examination until it has been successfully completed before the application will be deemed complete and presented to the Board for consideration.

Authority: T.C.A. § 4-5-202, 4-5-204, 63-8-112, and 63-8-115.

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)(a) but not its parts and substituting the following language, and is further amended by deleting part (2)(a)1 in its entirety and substituting the following language:

- (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). At least one (1) of these twenty (20) hours shall be a course designed specifically to address prescribing practices.
- (2)(a) Except for grand clinical rounds and courses provided by the Tennessee Academy of Optometry, and except for the one (1) hour course designed specifically to address prescribing practices, 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, providers of the one (1) hour course designed specifically to address prescribing practices 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.

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

* 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 02/28/07, 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: 11/29/06

Notice published in the Tennessee Administrative Register on: 12/15/06

Rulemaking Hearing(s) Conducted on: (add more dates). 01/18/07

Date: February 13, 2009

Signature: Lucille F. Bond

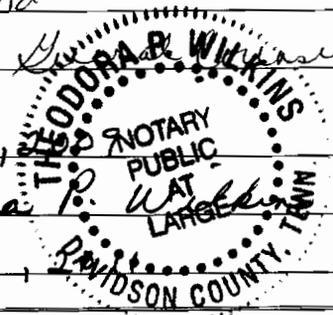
Name of Officer: Lucille F. Bond

Title of Officer: Assistant Secretary

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

Notary Public Signature: Theodora 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
2-26-09
 Date

Department of State Use Only

Filed with the Department of State on: 3/2/09

Effective on: 07/13/2009

Tre Hargett
 Tre Hargett
 Secretary of State

SECRETARY OF STATE
 PUBLICATIONS
 2009 MAR -2 PM 4: 23

RECEIVED
 SS-7039 (October, 2008)

* A Notice of Stay of Effective Date (05-13-09) was filed on 05/14/09. To view notice click here.

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.

MINUTES

RULEMAKING HEARING

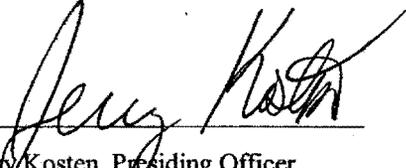
TENNESSEE BOARD OF OPTOMETRY

JANUARY 18, 2007

The rulemaking hearing for the Tennessee Board of Optometry was called to order at 2:30 p.m., Central Standard Time, on January 18, 2007 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.

No members of the public attended the rulemaking hearing. No written or oral comments were received at the rulemaking hearing.

The rulemaking hearing concluded at 2:50 p.m., Central Standard Time.



Jerry Kosten, Presiding Officer
Division of Health Related Boards

01/18/07
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: January 18, 2007.

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;

1045-02-.03 Examinations – The current rule does not require applicants for licensure to complete a jurisprudence exam. The new rule requires all applicants for licensure to successfully complete an “open-book” jurisprudence exam.

1045-02-.05 Continuing Education – The current rule has no requirement for licensed optometrists who are therapeutically certified to take a course designed specifically to address prescribing practices. As part of the total (30) hour biennial continuing education requirement, the new rule compels therapeutically certified optometrists to complete at least one (1) of the biennially required twenty (20) hours pertaining to ocular disease and related systemic disease as a course designed specifically to address prescribing practices. Also, the current rule requires grand clinical rounds and courses provided by the Tennessee Academy of Optometry to be individually approved by the Board rather than the Association of Regulatory Boards of Optometry’s Council on Optometric Practitioner Education (COPE). The new rule also requires the one (1) hour course designed specifically to address prescribing practices to be approved by the Board rather than COPE.

- (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 applicants for licensure and all therapeutically certified optometrists.

- (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.