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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 Dispensing Opticians
Division:	Health Related Boards
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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
0480-01	Rules Governing Dispensing Opticians
Rule Number	Rule Title
0480-01-.01	Definitions
0480-01-.03	Necessity of Licensure or Registration
0480-01-.07	Application Review, Approval, Denial, Interviews
0480-01-.08	Examinations
0480-01-.14	Apprenticeship Training Program
0480-01-.19	Board Meetings, Officers, Consultants, Declaratory Orders, and Screening Panels

(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 0480-01
Rules Governing Dispensing Opticians

Amendments

Rule 0480-01-01 Definitions, is amended by inserting the following language as new paragraph (8) and renumbering the remaining paragraphs accordingly:

- (8) Direct Supervision – The requirement that the supervising licensed dispensing optician, optometrist, or ophthalmologist direct, coordinate, review, inspect, and approve acts or services performed by an apprentice who is training to prepare, fit and dispense ophthalmic materials.

Authority: T.C.A. § 63-14-101, 63-14-102, and 63-14-103.

Rule 0480-01-.03 Necessity of Licensure, is amended by deleting paragraph (4) in its entirety and substituting the following language:

- (4) Use of Titles – Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the title “Licensed Dispensing Optician” and to engage in the practice of dispensing opticians, as defined in T.C.A. § 63-14-102. Any person licensed by the Board to whom this rule applies must use the title authorized by this rule in every “advertisement” [as that term is defined in rule 0480-1-.20(2)(a)] he or she publishes or the failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the dispensing optician to disciplinary action pursuant to T.C.A. § 63-14-104(2).

Authority: T.C.A. §§ 63-1-145, 63-1-146, 63-14-101, 63-14-102, 63-14-103, and 63-14-104.

Rule 0480-01-.07 Application Review, Approval, Denial, Interviews, is amended by deleting part (9)(a)2 in its entirety and substituting the following language:

- (9) (a) 2. The applicant fails to apply and/or register for applicable examinations within six (6) months after being notified of eligibility.

Authority: T.C.A. §§ 63-14-101, 63-14-103, and 63-14-107.

Rule 0480-01-.08 Examinations, is amended by deleting part (1)(c)9 in its entirety, and is further amended by adding the following language as new subparagraph (1)(d), and is further amended by deleting paragraph (2) but not its subparagraphs and substituting the following language:

- (1) (d) The Tennessee Jurisprudence Examination, which is graded on a scale of 0-100 with a minimum passing score of ninety (90).
 - 1. The following subjects may be included on the Tennessee Jurisprudence Examination:
 - (i) Tennessee Code Annotated, Title 63, Chapters 2 and 14; and
 - (ii) Official Compilation, Rules and Regulations of the State of Tennessee, Chapter 0480-01.
 - 2. The applicable statutes and regulations can be accessed at the Board’s Internet web page or are available upon request from

the Board's administrative office.

3. The format of the examination shall be "open-book."
 4. The Board shall include the Tennessee jurisprudence examination with its application materials.
 5. The applicant shall complete the Tennessee jurisprudence examination and return it to the Board's administrative office.
 6. If the Board determines that the applicant has failed to successfully complete the Tennessee 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.
- (2) Except for the Tennessee Jurisprudence Examination, admission to, application for, and the fee required to sit for the examinations are governed by and must be submitted directly to the testing agencies.

Authority: T.C.A. §§ 63-14-101 and 63-14-103.

Rule 0480-01-.14 Apprenticeship Training Program, is amended by deleting subparagraphs (1)(a) and (1)(c), paragraph (2) and subparagraph (5)(a) in their entirety and substituting the following language, and is further amended by adding the following language as new parts (5)(c)1. and (5)(c)2., and is further amended by deleting subparts (6)(c)1.(xiv) and 6(c)1.(xv) in their entirety and renumbering the remaining subparts accordingly, so that as amended, the new subparagraphs (1)(a) and (1)(c), the new paragraph (2), the new subparagraph (5)(a), and the new parts (5)(c)1. and (5)(c)2. shall read:

- (1)
 - (a) The apprentice shall designate, in the application, a supervising dispensing optician, optometrist or ophthalmologist, and an alternate supervisor. The Board administrator shall notify the apprentice when the supervisor, alternate supervisor, training program, and training setting have been approved.
 - (c) Except as provided in Rule 0480-01-.04(3), only training that occurs on or after the training program start date shall be counted towards meeting the three (3) year minimum requirement.
- (2) Apprenticeship training must be supervised by a dispensing optician, optometrist, or ophthalmologist who has been licensed in Tennessee or another state for at least three (3) years and whose license to practice in Tennessee is current, undisciplined, unrestricted and unencumbered.
 - (a) The supervisor shall work at the premises where the apprenticeship training is conducted.
 - (b) The supervisor shall provide direct supervision at all times in accordance with T.C.A. § 63-14-103(a) and (f) and rule 0480-01-.01(8).
- (5)
 - (a) Limitations
 1. A licensed dispensing optician may supervise no more than two (2) apprentices concurrently.

2. A licensed dispensing optician may provide supervision in the temporary and impermanent absence (a.k.a. alternate supervision) of the supervising licensee to one (1) of the two (2) apprentices being supervised concurrently.
 3. The Board will disallow the apprenticeship training of an apprentice whose supervisor is supervising more than two (2) apprentices concurrently. Such training shall not be considered as time toward fulfilling the five thousand, two hundred and fifty (5,250) hour requirement.
- (c)
1. The semi-annual evaluation report must be received in the Board's administrative office no later than thirty (30) days after the six (6) month training period has ended or the training period shall be disallowed and not considered as time toward fulfilling the five thousand, two hundred and fifty (5,250) hour requirement.
 2. If two (2) semi-annual evaluation reports are not received by the Board's administrative office within thirty (30) days after the applicable training periods have ended, the Board will rescind its approval of the apprenticeship training program. The apprentice will not receive credit for the two (2) training periods for which the semi-annual evaluation reports were not submitted or were received by the Board's administrative office later than thirty (30) days after the applicable training period. In order to continue the apprenticeship training program, a new application for an apprenticeship training program must be submitted.

Authority: T.C.A. §§ 63-14-101 and 63-14-103.

Rule 0480-01-.19 Board Meetings, Officers, Consultants, Declaratory Orders, and Screening Panels, is amended by adding the following language as new paragraph (9):

- (9) 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 1360-04-01-.18 regarding petitions for reconsiderations and stays in that case.

Authority: T.C.A. §§ 63-14-101, 63-14-104, and 63-14-111.

* 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)
Donald Wells	X				
Stacey S. Chitwood	X				
Kelly Godsey	X				
Kathy L. Hawkins	X				
Kimberly Ann Jackson	X				
Edward Risby	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Dispensing Opticians (board/commission/ other authority) on 06/20/07, 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: 03/26/07

Notice published in the Tennessee Administrative Register on: 04/15/07

Rulemaking Hearing(s) Conducted on: (add more dates). 06/18/07

Date: February 24, 2009

Signature: Lucille F. Bond

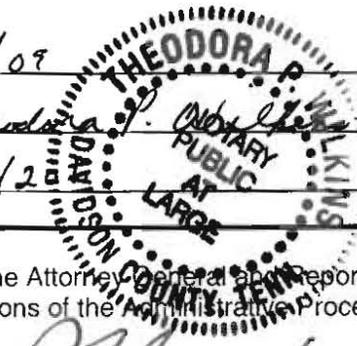
Name of Officer: Lucille F. Bond

Title of Officer: Assistant General Counsel, Department of Health

Subscribed and sworn to before me on: 2/24/09

Notary Public Signature: Theodora P. Bond

My commission expires on: 11/7/12



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
3-25-09
 Date

Department of State Use Only

Filed with the Department of State on: 3/27/09

Effective on: 6/10/09

Tre Hargett
 Tre Hargett
 Secretary of State

Public Hearing Comments

Franklin D. Rozak, Secretary-Treasurer, of the National Association of Optometrists and Opticians submitted written comments for the rulemaking hearing held by the Tennessee Board of Dispensing Opticians on June 18, 2007.

At its meeting held on June 20, 2007, the Board spent considerable time reviewing his letter and listened to an association representative. The Board ultimately decided that no changes to the proposed rule language were necessary for the following reasons:

- 1) The Board did not agree with Mr. Rozak's objection that there is insufficient statutory authority for the proposed imposition of a three (3) year licensure requirement before a licensee is allowed to serve as a supervisor to an apprentice.
- 2) Mr. Rozak requested a language change in the proposed amendment. He requested wording that the supervisor's license should never have been "expired, suspended or revoked" instead of the proposed requirement that the license must be "current, undisciplined, unrestricted and unencumbered." The Board did not consider the impact of Mr. Rozak's wording to be substantially different from the impact of the proposed rule language.
- 3) Mr. Rozak objected to the proposed disallowance of apprenticeship hours and/or the entire program. The Board's concerns are to have only applicants that are serious about licensure and to discourage individuals who register as apprentices only to avoid having to complete the licensure requirements. The Board repeatedly sees inappropriate apprentice programs and supervisor/apprentice arrangements and feels compelled to act.

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 dispensing opticians. 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 Dispensing Opticians

Rulemaking hearing date: June 18, 2007

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

These rule changes only affect licensed dispensing opticians. 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 dispensing opticians 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 dispensing opticians.

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 Dispensing Opticians 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 Dispensing Opticians is not aware of any federal counterparts.

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

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;

0480-01-.01 Definitions – The new rule creates a definition of direct supervision applying to apprentice dispensing opticians. The old rule did not include the above.
0480-01-.03 Necessity of Licensure or Registration – The old rule did not specifically require that one must use the title “Licensed Dispensing Optician” in every “advertisement” or make the failure to do so an omission of material fact which makes the advertisement misleading and deceptive subjecting a dispensing optician to disciplinary action. The new rule includes the above.
0480-01-.07 Application Review, Approval, Denial, Interviews – The new rule closes the application files of applicants who fail to register for the jurisprudence examination within six (6) months of the Board’s review of the application. The old rule did not include the above.
0480-01-.08 Examinations – The new rule creates a written jurisprudence examination to be included as part of the licensure application. The old rule did not include the above.
0480-01-.14 Apprenticeship Training Program – The new rule requires supervisors of apprentice dispensing opticians to have been licensed in Tennessee in good standing for at least three (3) years. It will allow the supervisor to supervise no more than two (2) apprentice dispensing opticians concurrently. Approval for an apprentice training program will be rescinded if the apprentice fails twice to submit the required semi-annual evaluation reports within thirty (30) days of the due date. The old rule did not include the above.
0480-01-.19 Board Meetings, Officers, Consultants, Declaratory Orders, and Screening Panels – 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 dispensing opticians, Tenn. Code Ann. §§ 63-14-101, 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 current and future licensees who are practicing dispensing opticians.

- (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;

Lucille F. Bond, Assistant General Counsel, Office of General Counsel, Tennessee Department of Health, 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, Office of General Counsel, Tennessee Department of Health

- (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, Office of General Counsel, Tennessee Department of Health, 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.