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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:	Board of Optometry
Division:	
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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. Please enter only ONE Rule Number/RuleTitle per row)

Chapter Number	Chapter Title
1045-02	General Rules and Regulations Governing the Practice of Optometry
Rule Number	Rule Title
1045-02-.16	Tamper-Resistant Prescriptions

(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>)

Rulemaking Hearing Rules
Department of Health
Board of Optometry
Division of Health Related Boards

New Rules

Chapter 1045-02
General Rules and Regulations Governing the Practice of Optometry

1045-02-.16 Tamper-Resistant Prescriptions.

(1) Purpose.

This rule is designed to implement the law requiring that licensed optometrists have all written, typed, or computer-generated prescriptions issued on tamper-resistant prescription paper.

(2) Definitions.

The following definitions are applicable to this rule:

- (a) "Drug" shall have the same meaning as set forth in T.C.A. §63-10-204(16).
- (b) "Prescriber" means an individual licensed in Tennessee as a medical doctor, podiatrist, advanced practice nurse with a certificate of fitness to prescribe, dentist, optometrist, osteopathic physician, or physician's assistant.
- (c) "Prescription order" shall have the same meaning as set forth in T.C.A. §63-10-204(34).
- (d) "Tamper-resistant prescription" means a written prescription order with features that are designed to prevent unauthorized copying, erasure, modification, and use of counterfeit prescription forms.

(3) Tamper-Resistant Prescription Requirements.

- (a) A prescriber shall ensure that all handwritten, typed, or computer-generated prescription orders are issued on tamper-resistant prescriptions. Tamper-resistant prescriptions shall contain the following features:
 - 1. Either a void or illegal pantograph or a watermark designed to prevent copying;
 - 2. Either quantity check-off boxes with refill indicators or a uniform, non-white background color designed to prevent erasure or modification; and
 - 3. Security features and descriptions listed on the prescriptions designed to prevent use of counterfeit forms.

(4) Security Measures and Recordkeeping.

- (a) Each prescriber shall undertake adequate safeguards and security measures to ensure against loss, improper destruction, theft, or unauthorized use of the tamper-resistant prescriptions in the prescriber's possession.
- (5) Use of Tamper-Resistant Prescriptions.
- (a) Facsimile Prescription Transmission.
 - 1. Prescriptions sent by facsimile transmission are not required to be placed on tamper-resistant prescription paper.
 - 2. If a prescriber transmits a prescription order to a pharmacy by facsimile transmission, the prescriber or someone designated by the prescriber shall document in the patient's medical record the name of the drug, strength, and quantity prescribed. The prescriber may, but is not required to, document the means by which the prescription was transmitted.
 - (b) Electronic Prescription Transmission.
 - 1. Prescriptions sent by electronic transmission are not required to be placed on tamper-resistant prescription paper.
 - 2. If a prescriber transmits a prescription order to a pharmacy by electronic transmission, the prescriber shall document the prescription in the patient's file and in accordance with the applicable laws and rules for each of the prescribers' respective professions as well as applicable federal laws and rules. The prescriber may, but is not required to, document the means by which the prescription was transmitted.

Authority: Chapter 1035 of the Public Acts of 2008 and T.C.A. §§53-10-401, 63-8-112, and 63-8-126. [effective October 1, 2008 for TennCare prescriptions and July 1, 2009 for non-TennCare prescriptions].

* 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)
Richard Orgain, O.D.	X				
Linda Tharp, O.D.	X				
David Talley, O.D.	X				
Kimberly Button	X				
Jeff Foster, O.D.	X				
Scott Spivey, O.D.	X				

Additional roll-call vote was taken on September 25, 2009 to have the Board address and consider a comment made by the Tennessee Medical Association in its July 15, 2009 correspondence suggesting that the definition of a prescriber relative to Board of Nursing licensees should be defined as a nurse practitioner and not an advanced practice nurse with a certificate of fitness to prescribe. The board voted to maintain the definition contained in the Notice of Rulemaking.

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Richard Orgain, O.D.	X				
Linda Tharp, O.D.	X				
David Talley, O.D.	X				
Kimberly Button	X				
Jeff Foster, O.D.	X				
Scott Spivey, O.D.	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Board of Optometry on August 12, 2009, and is in compliance with the provisions of TCA §4-5-222.

I further certify the following:

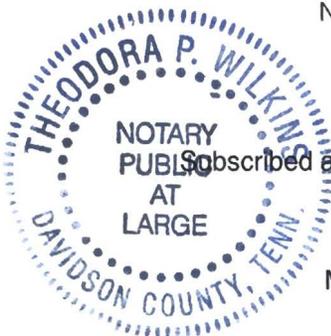
Notice of Rulemaking Hearing filed with the Department of State
on: May 29, 2009
Notice published in the Tennessee Administrative Register
on: June 15, 2009
Rulemaking Hearing(s) Conducted on: (add more
dates). August 12, 2009

Date: 10/27/09

Signature: Alison G. Cleaves

Name of Officer: Alison G. Cleaves

Title of Officer: Chief Deputy General Counsel



Subscribed and sworn to before me on: 10/27/09

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/7/2011

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.

RE Cooper, Jr.

Robert E. Cooper, Jr.
Attorney General and Reporter

3-19-10

Date

Department of State Use Only

Filed with the Department of State on: _____

3/22/10

Effective on: _____

6/29/10

Tre Hargett

Tre Hargett
Secretary of State

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PUBLICATIONS

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 can 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.

(See attached)

PUBLIC HEARING COMMENTS
RULEMAKING HEARING
TENNESSEE BOARD OF OPTOMETRY
AUGUST 24, 2009

The rulemaking hearing for the Tennessee Board of Optometry was called to order on August 12, 2009 in the Department of Health Conference Center's Poplar Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Benjamin Mezer, Assistant General Counsel, Tennessee Department of Health conducted the meeting.

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

Prior to the rulemaking hearing, Mr. Yarnell Beatty, Esq. submitted a written comment dated July 15, 2009 relative to the rulemaking before the Board of Medical Examiners about tamper-resistant prescriptions. In that letter, Mr. Beatty requested that this comment be submitted to all of the Boards and Committees promulgating tamper resistant prescription rules. In his letter, Mr. Beatty indicated that he had two (2) concerns outlined as follows: (1). The definition of "prescriber" which includes a reference to an "advanced practice nurse with a certificate of fitness to prescribe" when it should reference a "nurse practitioner with a certificate of fitness to prescribe". In response to his comments, the Board voted that it would keep the language contained in the rules, that is, the reference to an advanced practice nurse with a certificate of fitness to prescribe contained in its definition of prescriber; and (2). The language contained in Rule 0880-03-.14(5)(a) and (b) relative to the documentation of the method by which a prescription (facsimile or electronic) is transmitted in the patient's medical record should be removed from the subparagraphs of the rule. Mr. Beatty indicated in his letter and at the rulemaking hearing before the Board of Medical Examiners that often, at the time a prescription is written, the physician may not have any indication how the prescription was transmitted to the pharmacy, making it difficult to enter this method of transmission in the patient's medical record; this statement made before the Board of Medical Examiners was conveyed to the Board of Optometry during the rulemaking hearing. In Mr. Beatty's correspondence, he also recommended that the language "and the method by which the prescription has been transmitted" be removed from Rule 0880-03-.14 (5)(a)(2) and that the language "was transmitted electronically" be removed from Rule 0880-03-.14 (5)(b)(2). In his correspondence, Mr. Beatty also recommended that in both subparagraphs, language should be inserted indicating that the prescriber may, but is not required to document the means by which the prescription was transmitted. In response to this comment, the Board voted to accept Mr. Beatty's recommendations and change the language contained in the notice of rulemaking to reflect the same and to adopt the amendments to the rules consistent with the prior action of the Board of Medical Examiners.

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.

(If applicable, insert Regulatory Flexibility Addendum here)

Economic Impact Statement

Board of Optometry, Tamper-Resistant Prescriptions. Chapters 1045-02

- (1) **The type or types of small businesses and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, or directly benefit from the proposed rule.**

Public Chapter 1035 of the 2008 Public Acts (codified in Tenn. Code Ann. §§53-10-401 and 63-8-126) provides that certain authorized prescribers, including optometrists, shall ensure that written or printed prescriptions shall be on tamper-resistant paper. To the extent that the individual health care practitioners identified in this bill may operate a small business in the course of practicing their profession, the small businesses that would be affected by this bill are medical offices or clinics; an estimate of the number of small businesses that would be affected is unknown.

- (2) **The projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule that would bear the cost of, or indirectly benefit from the proposed rule.**

The new rules do not contain any reporting, recordkeeping or other administrative costs required for compliance.

- (3) **A statement of the probable effect on impacted small businesses and consumers.**

The new rules will impact all affected health care practitioners, some of which may own small businesses in the course of practicing their respective professions.

- (4) **A description or any less burdensome, less intrusive or less costly alternative methods of achieving the purpose and objectives of the proposed rule that may exist, and to what extent the alternative means might be less burdensome to small business.**

There is no less burdensome, less intrusive or less costly alternative methods of implementing the law.

- (5) **A comparison of the proposed rule with any federal or state counterparts.**

The new rules are comparable, yet less stringent than other states' rules relative to tamper-resistant prescriptions while complying with the Centers for Medicare and Medicaid Services's ("CMS") guidelines.

- (6) **Analysis of the effect of the possible exemption of small businesses from all of any part of the requirements contained in the proposed rule.**

Regardless of whether the health care practitioner operates a small or a large business, in order to comply with the mandates in the law, all health care practitioners affected by the law (medical doctors, podiatrists, dentists, advance practice nurses, optometrists, osteopathic physicians, and physician's assistants) must ensure that all written or printed prescriptions are on tamper-resistant paper.

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;

Rule 1045-02-.16(1) Purpose- establishes that the purpose of the new rule is to implement the law contained in Tenn. Code Ann. §53-10-401 and 63-8-126 requiring individuals licensed to engage in the practice of optometry to have all written, typed, or computer-generated prescriptions issued on tamper-resistant prescription paper.

Paragraph (2) Definition – establishes definitions that are necessary for the implementation and enforcement of the substantive portion of the rule. Through the definition of “prescriber”, the rule identifies those health care providers who are identified in the law as being required to have all written, typed or computer-generated prescriptions on tamper-resistant prescription paper. The rule also establishes a definition of “tamper-resistant prescription” to mean a prescription order that is placed on tamper-resistant paper that is designed to ensure that the prescription order is not copied, modified, erased or used in producing counterfeit forms.

Paragraph (3) Tamper-Resistant Prescription Requirements – provides that tamper-resistant prescriptions shall contain features that have been recommended as guidance from the Centers for Medicare and Medicaid Services (“CMS”). The tamper-resistant prescription shall have either a void or illegal pantograph or a watermark designed to prevent copying; either quantity check-off boxes with refill indicators or a uniform, non-white background designed to prevent erasure or modification; and a list of security features and descriptions.

Paragraph (4) Security Measures and Recordkeeping – provides that the health care providers affected by the law shall ensure that adequate safeguards and security measures are taken to prevent against loss, improper destruction, theft, and unauthorized use of the tamper-resistant prescriptions.

Paragraph (5) Use of Tamper-Resistant Prescriptions- provides that prescriptions that are received by a licensed pharmacy by facsimile or by electronic transmission do not have to be placed on tamper-resistant prescription paper. The prescriber may, but is not required to, document the method of transmission as well as the details of the prescription in the patient record.

- (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;

The new rule was promulgated to implement Public Chapter 1035 of the 2008 Public Acts codified in Tenn. Code Ann. §§53-10-401 and 63-8-126.

- (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;

Relative to the Board of Optometry, the persons affected by the rule are those individuals licensed to engage in the practice of optometry.

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

I am unaware of any opinion of the Attorney General or any judicial ruling which directly relates to this rule.

- (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;

The new rule will have neither a positive nor a negative fiscal impact.

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

Barbara Maxwell, Administrative Director and I possess substantial knowledge and understanding of the new rule.

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

Barbara Maxwell, Administrative Director and Alison Cleaves will explain the new rule at a scheduled meeting of the Committee.

- (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 may be reached at the Department of Health, Office of General Counsel, Plaza One, Suite 210, 220 Athens Way, Nashville, Tennessee 37243, (615) 741-1611. Barbara Maxwell may be reached at the Department of Health, Health Related Boards, 227 French Landing, Suite 300, Nashville, Tennessee 37243, (615) 532-7695.

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

Alison Cleaves as well as the Administrative Director, Barbara Maxwell will provide any additional information requested by the Committee relative to the new rule.