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Sequence Number: 08-12-12
 Rule ID(s): 5281
 File Date: 8/9/12
 Effective Date: 11/7/12

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Board of Optometry
Division:	
Contact Person:	John R. Smith
Address:	Office of General Counsel 220 Athens Way, Suite 210 Nashville, Tennessee
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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 to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1045-02	General Rules Governing the Practice of Optometry
Rule Number	Rule Title
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>)

Rule 1045-02-.05 Continuing Education is amended by deleting subparagraph (2)(a) in its entirety and substituting instead the following as new subparagraphs (a), (b) and (c) and renumbering the remaining subparagraphs accordingly, so that as amended, the new subparagraphs (a), (b) and (c) shall read:

- (2) Approval of Continuing Education:
 - (a) For those courses requiring Board approval, the information required by subparagraph (2)(d) must be submitted to the Board at least thirty (30) days prior to the actual date of the course. However, no prior approval is required for the following:
 - 1. Educational courses approved by the Association of Regulatory Boards of Optometry's Council on Optometric Practitioner Education.
 - 2. Educational courses sponsored by an organization listed on the Board's website with the Tennessee Department of Health.
 - (b) Grand rounds of clinical optometric education (grand clinical rounds) performed in clinical treatment facilities shall be credited as follows:
 - 1. One (1) hour of credit is received for two (2) hours of attendance.
 - 2. 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.
 - 3. Grand clinical rounds must be submitted to the Board for pre-approval.
 - (c) The one (1) hour course designed specifically to address prescribing practices must be pre-approved by the Board.

Authority: T.C.A. §§ 63-8-112 and 63-8-119.

Rule 1045-02-.05 Continuing Education is amended by inserting the following language as new paragraph three (3) and renumbering the remaining paragraphs accordingly, so that, as amended the new paragraph (3) shall read:

- (3) Continuing Education Tracking System
 - (a) Each licensee shall submit to the Selected Contractor proof of completion for each continuing education course taken. The proof of completion shall be submitted to the Selected Contractor within thirty (30) days of receipt.
 - (b) Each licensee is responsible for reviewing the information contained in the system to ensure its accuracy.
 - (c) Continuing education providers will submit to the Selected Contractor a roster of those Tennessee licensed optometrists who attended the continuing education course. The roster shall be submitted to the Selected Contractor within thirty (30) days after the course date.

Authority: T.C.A. §§ 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)
David Talley, OD	X				
Linda Tharp, OD	X				
Jeff Foster, OD	X				
Richard Orgain, OD	X				
Kimberly Button				X	
John Gentry, OD	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 05/02/2012, 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: 03/09/12

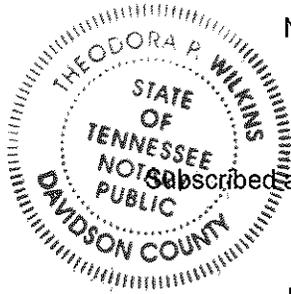
Rulemaking Hearing(s) Conducted on: (add more dates). 05/02/12

Date: 7/25/12

Signature: [Handwritten Signature]

Name of Officer: John R. Smith

Title of Officer: Chief Deputy General Counsel
Department of Health



Subscribed and sworn to before me on: 7/25/12

Notary Public Signature: Theodora P. Wilkins

My commission expires on: 11/3/15

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
8-6-12
Date

RECEIVED
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 SECRETARY OF STATE
 DEPARTMENT OF STATE
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Filed with the Department of State on: 8/9/12

Effective on: 11/7/12

[Handwritten Signature]
Tre Hargett
Secretary of State

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.

There were no written or verbal comments received.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 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)

**Board of Optometry
Rule 1045-02-.05(2) and Rule 1045-02-.05(3)
Regulatory Flexibility Analysis**

- (1) The proposed rule amendments do not overlap, duplicate, or conflict with other federal, state, or local government rules.
- (2) The proposed rule amendments are clear, concise, and lack ambiguity.
- (3) The amendments are not written with special consideration for the flexible compliance and/or reporting by small businesses because the Optometry Board has as its primary mission the protection of the health, safety, and welfare of the citizens of Tennessee.
- (4) The compliance and/or reporting requirements of the amendments are as “user-friendly” as possible while still allowing the Optometry Board to achieve its mandated mission. There is sufficient notice between the rulemaking hearing and the final promulgation of the proposed rule amendments to allow individuals, continuing education providers, commercial entities, and small businesses in general to come into compliance with the rules.
- (5) The amendments are not written with special consideration for the consolidation or simplification of compliance and/or reporting requirements for small businesses because the Optometry Board has as its primary mission the protection of the health, safety, and welfare of the citizens of Tennessee.
- (6) The standards required in the amendments do not necessitate the establishment of performance, design, or operational standards for small businesses.
- (7) The proposed rule amendments do not create unnecessary entry barriers or other effects that stifle entrepreneurial activity.

**Board of Optometry
Rule 1045-02-.05(2) and Rule 1045-02-.05(3)
Statement of Economic Impact**

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

The proposed rule amendments will directly affect licensed optometrists, providers of continuing education for optometrists, and the selected contractor.

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

Licensed optometrists, providers of continuing education for optometrists, and the selected contractor.

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

Licensed optometrists and providers of continuing education for optometrists will benefit from the proposed rule amendments.

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

There is no foreseeable adverse impact from these rules.

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, Division of Health Related Boards, 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: The Board of Optometry is not aware of any federal counterparts.

State: The proposed rule amendments do not conflict with any state counterpart.

Effect of possible exemption of small businesses from all or any part of the requirements contained in the proposed rule:

If an exemption were provided to the small businesses affected by these rule amendments those small businesses would be deprived of all the benefits resulting from the amendments.

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 “any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments.” (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rule amendments will have no effect on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 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;

The amended rule makes the following changes to Rule 1045-02-.05 Continuing Education:

Rule 1045-02-.05(2)(a) makes continuing education courses sponsored by an organization listed on the Optometry Board's website with the Tennessee Department of Health preapproved. The old rule did not include the same.

Rule 1045-02-.05(2)(b)3 requires that grand clinical rounds be submitted to the Optometry Board for preapproval. The old rule did not include the same.

Rule 1045-02-.05(2)(c) requires that the one (1) hour continuing education course for prescribing practices must be pre-approved by the Optometry Board. The old rule did not include the same.

Rule 1045-02-.05(3) is amended to make participation in the Board's continuing education tracking system through a Board selected contractor mandatory for all licensees. The old rule did not include the same.

- (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;

T.C.A. §§ 63-8-112 and 63-8-119.

- (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;

All licensed optometrists in the State of Tennessee who wish to renew licenses are affected.

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

None.

- (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;

None.

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

Stacy Tarr, Administrator, Tennessee Board of Optometry

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

Stacy Tarr, Administrator, Tennessee Board of Optometry

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

Stacy Tarr
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Office of General Counsel
Tennessee Department of Health
220 Athens Way, Suite 210
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(l) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

(Rule 1045-02-.04, continued)

5. If reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board may require payment of the reinstatement fee, past due renewal fees, and state regulatory fees as provided in Rule 1045-02-.01; and
- (c) Retirees may be allowed to practice temporarily pursuant to T.C.A. §63-8-119(h) upon a written request showing a satisfactory need for re-entry into practice. Board approval must be received and may be granted for only a limited period of time.

Authority: T.C.A. §§4-3-1011, 4-5-202, 4-5-204, 63-1-107, 63-8-112, 63-8-119, and 63-8-120.
Administrative History: Original rule filed May 15, 1981; effective July 22, 1981. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed August 2, 1995; effective October 16, 1995. Amendment filed July 22, 2002; effective October 5, 2002. Amendment filed April 4, 2003; effective June 18, 2003.

1045-02-.05 CONTINUING EDUCATION.

- (1) As a prerequisite to maintaining licensure, an Optometrist must complete thirty (30) hours of Board approved continuing education during the two (2) calendar years (January 1 - December 31) that precede the licensure renewal year.
 - (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.
 - (b) For those therapeutically certified optometrists who have received approval to use pharmaceutical agents by injection pursuant to subparagraph 1045-02-.07 (3)(d), current certification in cardiopulmonary resuscitation (CPR) is required.
 - (c) Each licensee must retain proof of attendance and completion of all continuing education requirements. This documentation must be retained for a period of four (4) years from the end of the calendar year in which the continuing education was required. This documentation must be produced for inspection and verification, if requested in writing by the board during its verification process. The board will not maintain continuing education files.
 - (d) The individual must, within thirty (30) days of a request from the board, provide evidence of continuing education activities. Certificates verifying the individual's attendance or original letters from course providers are such evidence.

~~(2) Approval of Continuing Education~~

- ~~(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.~~
 - ~~2. Licensees who attend grand clinical rounds performed in clinical treatment facilities and/or courses provided by the Tennessee Academy of Optometry that~~~~

(Rule 1045-02-.05, continued)

~~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) Approval of Continuing Education:

(a) For those courses requiring Board approval, the information required by subparagraph (2)(d) must be submitted to the Board at least thirty (30) days prior to the actual date of the course. However, no prior approval is required for the following:

1. Educational courses approved by the Association of Regulatory Boards of Optometry's Council on Optometric Practitioner Education.
2. Educational courses sponsored by an organization listed on the Board's website with the Tennessee Department of Health.

(b) Grand rounds of clinical optometric education (grand clinical rounds) performed in clinical treatment facilities shall be credited as follows:

1. One (1) hour of credit is received for two (2) hours of attendance.
2. 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.
3. Grand clinical rounds must be submitted to the Board for pre-approval.

(c) The one (1) hour course designed specifically to address prescribing practices must be pre-approved by the Board.

(d) All courses submitted for approval must contain the following information:

1. a course description or outline;
2. names of all lecturers;
3. brief resume of all lecturers;
4. number of hours of educational credit requested;
5. category of approval requested; and
6. date of course.

(e) 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.

(Rule 1045-02-.05, continued)

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.

(df) Continuing education courses may include:

1. Lecture type courses;
2. Twelve (12) hours of the thirty (30) hour requirement may be completed in any of the following multi-media formats:
 - (i) The Internet
 - (ii) Closed circuit television
 - (iii) Satellite broadcasts
 - (iv) Correspondence courses
 - (v) Videotapes
 - (vi) CD-ROM
 - (vii) DVD
 - (viii) Teleconferencing
 - (ix) Videoconferencing
 - (x) Distance learning

(eg) Proof of attendance -

1. Proof of attendance must be given to each optometrist attending an approved course by the providers of the course;
2. It is the responsibility of the optometrist attending the continuing education program to ascertain whether the program is approved by the Board and the category of approval.
3. The Board shall notify all providers requiring course approval of its denial or approval. If a course is denied credit for continuing education, the provider of the course may petition the board for a hearing on the merits of the matter. The appeal may be heard by the Board at a regularly scheduled meeting.
4. Waiver of continuing education requirements or extension of the deadline to complete such requirements may be made by the Board on an individual basis as provided in Rule 1045-02-.04 (3).

(3) Continuing Education Tracking System

(Rule 1045-02-.05, continued)

- (a) Each licensee shall submit to the Selected Contractor proof of completion for each continuing education course taken. The proof of completion shall be submitted to the Selected Contractor within thirty (30) days of receipt.
 - (b) Each licensee is responsible for reviewing the information contained in the system to ensure its accuracy.
 - (c) Continuing education providers will submit to the Selected Contractor a roster of those Tennessee licensed optometrists who attended the continuing education course. The roster shall be submitted to the Selected Contractor within thirty (30) days after the course date.
- (34) A licensee is exempt from the Continuing Education requirements for the calendar year that he/she graduated from an accredited college or school of optometry.
- (45) Continuing education course approval decisions pursuant to this rule may be preliminarily made upon review by any Board member or a Board designee.
- (56) Violations
- (a) Any licensee who falsely certifies attendance and completion of the required hours of continuing education requirements, or who does not or can not adequately substantiate completed continuing education hours with the required documentation, may be subject to disciplinary action.
 - (b) Prior to the institution of any disciplinary proceedings, a letter shall be issued to the last known address of the individual stating the facts or conduct which warrant the intended action.
 - (c) The licensee has thirty (30) days from the date of notification to show compliance with all lawful requirements for the retention of the license.
 - (d) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (5)(b) above may be subject to disciplinary action.
 - (e) Continuing education hours obtained as a result of compliance with the terms of a Board Order in any disciplinary action shall not be credited toward the continuing education hours required to be obtained in any renewal period.

Authority: T.C.A. §§4-5-202, 4-5-204, 63-1-107, 63-8-112, 63-8-119, and 63-8-120. **Administrative History:** Original rule filed May 15, 1981; effective July 22, 1981. Amendment filed November 12, 1982; effective December 13, 1982. Amendment by Public Chapter 969; effective July 1, 1984. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed February 14, 1994; effective April 30, 1994. Amendment filed December 11, 1998; effective February 23, 1999. Amendment filed January 4, 2002; effective March 20, 2002. Amendment filed July 22, 2002; effective October 5, 2002. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed April 4, 2003; effective June 18, 2003. Amendment filed June 10, 2004; effective August 24, 2004. Amendments filed February 26, 2009; effective May 12, 2009. Amendment filed March 2, 2009; effective May 16, 2009; however, stay of the effective date filed by the Tennessee Board of Optometry; new effective date July 13, 2009.

1045-02-.06 BOARD MEETINGS, MEMBERS' AUTHORITY AND RECORDS.

- (1) The board shall meet annually and elect officers.