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Sequence Number: 08-18-10  
Rule ID(s): 4816  
File Date: 08/18/2010  
Effective Date: 11/17/2010

# 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*

<b>Agency/Board/Commission:</b>	Board of Dispensing Opticians
<b>Division:</b>	
<b>Contact Person:</b>	Diona E. Layden
<b>Address:</b>	Office of General Counsel 220 Athens Way, Suite 210 Nashville, Tennessee
<b>Zip:</b>	37243
<b>Phone:</b>	615-741-1611
<b>Email:</b>	<a href="mailto:Diona.Layden@tn.gov">Diona.Layden@tn.gov</a>

**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
0480-01	General Rules Governing Dispensing Opticians
Rule Number	Rule Title
0480-01-.06	Fees

(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  
General Rules Governing Dispensing Opticians

Amendments

Rule 0480-01-.06 Fees is amended by deleting paragraph (1) in its entirety and substituting instead the following language, so that as amended, the new paragraph (1) shall read:

(1) Fee Schedule:

	Type	Amount
(a)	Apprenticeship Application	\$100.00
(b)	Dispensing Optician Application	\$150.00
(c)	Duplicate License/Duplicate Identification Badge	\$ 25.00
(d)	License	\$110.00
(e)	State Regulatory (Biennial)	\$ 10.00
(f)	Dispensing Optician Renewal (Biennial)	\$300.00
(g)	Renewal Late Fee	\$100.00
(h)	Endorsement/Verification	\$ 30.00

Authority: T.C.A. §§ 4-3-1011, 63-14-101, 63-14-103, 63-14-106, and 63-14-107.

\* 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)
Kathy Hawkins, DPO	X				
Larry W. Christopher, DPO	X				
Donald L. Wells, DPO	X				
Kimberly A. Jackson, DPO	X				
LeRhonda Walton-Hill	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 on 04/21/2010, 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: 01/20/10

Rulemaking Hearing(s) Conducted on: (add more dates). 04/21/10

Date: May 11, 2010

Signature: [Signature]

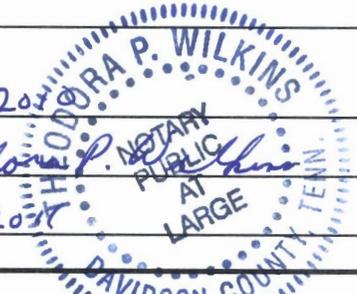
Name of Officer: Diona E. Layden

Title of Officer: Assistant General Counsel  
Department of Health

Subscribed and sworn to before me on: 5/11/2010

Notary Public Signature: Theodore 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.

[Signature]  
Robert E. Cooper, Jr.  
Attorney General and Reporter  
8-16-10  
Date

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Effective on: 11/17/10

[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.

**PUBLIC HEARING COMMENTS**  
**RULEMAKING HEARING**  
**TENNESSEE BOARD OF DISPENSING OPTICIANS**  
**APRIL 21, 2010**

The rulemaking hearing for the Tennessee Board of Dispensing Opticians was called to order on April 21, 2010 in the Department of Health Conference Center's Poplar Room on the First Floor of the Heritage Place Building in MetroCenter, Nashville, Tennessee. Diona E. Layden, Assistant General Counsel, Tennessee Department of Health conducted the meeting.

There were no written comments received prior to the rulemaking hearing or at the rulemaking hearing. Audrey Perry, Licensed Optician asked whether the yearly apprenticeship renewal fee would apply to those persons currently in the apprenticeship program. The board answered that the renewal fee would apply.

### **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)

### **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 proposed rule amendments affect licensed dispensing opticians and their apprentices. Therefore, the amendments do not provide for flexible compliance and/or reporting requirements for small businesses.
- (4) The proposed rule amendments affect licensed dispensing opticians and their apprentices. Therefore, the amendments do not establish friendly schedules or deadlines for compliance and/or reporting requirements for small businesses.
- (5) The proposed rule amendments affect licensed dispensing opticians and their apprentices. Therefore, the amendments do not consolidate or simplify compliance and/or reporting requirements for small businesses.
- (6) The proposed rule amendments affect licensed dispensing opticians and their apprentices. Therefore, the amendments do not establish performance standards for small businesses and do not establish design or operational standards.
- (7) The proposed rule amendments do not create unnecessary entry barriers or other effects that stifle entrepreneurial activity.

## Statement of Economic Impact

Name of Board: **Tennessee Board of Dispensing Opticians**

Rulemaking hearing date: **April 21, 2010.**

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

**These rule changes affect licensed dispensing opticians and their apprentices.**

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

**The rule changes impact licensed dispensing opticians and their apprentices.**

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

**The rule changes impact licensed dispensing opticians and their apprentices.**

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

**The rule changes impact licensed dispensing opticians and their apprentices.**

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 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: **The Tennessee Board of Dispensing Opticians is not aware of any federal counterparts.**

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

### **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)

This rule is not expected to impact local governments.

## 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;

The rules promulgate amendments to the General Rules Governing Dispensing Opticians. The rules increase fees collected by the Board as follows: (1) fee for an apprenticeship application is increased from \$50.00 to \$100.00; (2) apprenticeship renewal fee is set at \$100.00 yearly (new fee); (3) fee for a dispensing optician application is increased from \$110 to \$150; and (4) dispensing optician renewal fee is increased from \$200 to \$300.

- (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, 63-14-107.

- (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;

This rule affects licensed dispensing opticians and their apprentices. The Board did not receive any comments in opposition to this rule.

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

None known.

- (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 fee increases will have neither a negative nor a positive fiscal impact because they are implemented to maintain the self-sufficiency of the program.

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

Diona E. Layden, Assistant General Counsel, Department of Health possesses substantial knowledge and understanding of the rule.

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

Diona E. Layden, Assistant General Counsel, Department of Health will explain the rule at a scheduled meeting of the committees.

- (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

Diona E. Layden, Assistant General Counsel, Office of General Counsel, 220 Athens Way, Suite 210, Nashville, TN 37243, (615) 741-1611, [Diona.Layden@tn.gov](mailto:Diona.Layden@tn.gov)



(Rule 0480-01-.05, continued)

- Internet, an applicant may obtain the application from the Board's administrative office. It is the intent of this rule that all steps necessary to accomplish the filing of the required documentation be completed prior to filing an application and that all materials and fees be filed simultaneously.
- (2) It is the applicant's responsibility to provide evidence that he has fulfilled the educational requirements by providing proof of graduation from high school or by providing proof of possession of a general equivalency diploma (g.e.d).
  - (3) All applicants shall pay the appropriate non-refundable fees as provided in Rule 0480-01-.06.
  - (4) Every person desiring to engage in the practice of dispensing opticianry shall be required to pass the examinations pursuant to Rule 0480-01-.08.
  - (5) An applicant shall submit with his application a "passport" size photograph taken within the preceding twelve (12) months.
  - (6) An applicant shall submit with his application a notarized photocopy of his birth certificate.
  - (7) An applicant shall submit with his application two (2) letters of recommendation. At least one (1) of these letters shall be from a current or former employer, and neither letter shall be from a spouse or relative.
  - (8) A license will be mailed by the administrative office after all requirements of the board have been met including payment of all fees. The fee must be received in the board office on or before the 30<sup>th</sup> day from receipt of notification that the fee is due. Failure to comply will result in the application file being closed.
  - (9) The burden is on the applicant to prove by a preponderance of the evidence that he meets the qualifications.
  - (10) An applicant shall disclose the circumstances surrounding any of the following:
    - (a) Conviction of any crime in any country, state, or municipality, except minor traffic violations.
    - (b) The denial of a licensure application by any other state or the discipline of the license in any state.
  - (11) An applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's licensure application materials, the result of a criminal background check.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-14-101, 63-14-103, 63-14-104, 63-14-107, and 63-14-111.  
**Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995. Amendment filed July 16, 1997; effective September 29, 1997. Amendment filed November 30, 1998; effective February 13, 1999. Amendment filed October 18, 2005; effective January 1, 2006. Amendment filed March 17, 2006; effective May 31, 2006.

**0480-01-.06 — FEES.**

(1) **Fee Schedule:**

Type	Amount
(a) Apprenticeship Application	\$ 50.00

(Rule 0480-01-.07, continued)

(b) — Dispensing Optician Application	\$110.00
(c) — Duplicate License/Duplicate Identification Badge	\$ 25.00
(d) — License	\$110.00
(e) — State Regulatory (Biennial)	\$ 10.00
(f) — Renewal (Biennial)	\$200.00
(g) — Renewal Late Fee	\$100.00
(h) — Endorsement/Verification	\$ 30.00

(1) Fee Schedule:

Type	Amount
(a) Apprenticeship Application	\$100.00
(b) Dispensing Optician Application	\$150.00
(c) Duplicate License/Duplicate Identification Badge	\$ 25.00
(d) License	\$110.00
(e) State Regulatory (Biennial)	\$ 10.00
(f) Dispensing Optician Renewal (Biennial)	\$300.00
(g) Renewal Late Fee	\$100.00
(h) Endorsement/Verification	\$ 30.00

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**Authority:** T.C.A. §§4-5-202, 4-5-204, 4-3-1011, 63-1-106, 63-1-118, 63-14-101, 63-14-103, 63-14-106, and 63-14-107. **Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995. (See page 1 for history prior to October, 1995) Suspended by G.O.C. filed March 20, 1996. New rule filed August 7, 1997; effective October 27, 1997. Amendment filed February 6, 1998; effective April 22, 1998. Amendment filed October 18, 2005; effective January 1, 2006.

**0480-01-.07 APPLICATION REVIEW, APPROVAL, DENIAL, INTERVIEWS.**

- (1) An application shall be accompanied by a check or money order for the application fee, as provided in Rule 0480-01-.06. This fee is non-refundable and subject to the application completion time frame pursuant to this rule.
- (2) Applications for licensure will be accepted throughout the year and files which are completed on or before the 30th day prior to the meeting will ordinarily be processed at the next Board meeting scheduled for the purpose of reviewing files.
- (3) Initial review of all applicants to make a preliminary licensure decision may be delegated to any Board Member, the Board's Consultant, or the Board's Administrator. In no event may a final licensure decision be made without prior review by the Board.