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Sequence Number: 09-18-15
Rule ID(s): 6024
File Date: 9/11/15
Effective Date: 12/10/15

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).

Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).

Agency/Board/Commission:	Department of Health
Division:	Board of Dispensing Opticians
Contact Person:	Matt Gibbs
Address:	665 Mainstream Drive, Nashville, Tennessee
Zip:	37243
Phone:	(615) 741-1611
Email:	Matthew.Gibbs@tn.gov

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-.12	Continuing Education (CE)

(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 Amendment

Rule 0480-01-.12 Continuing Education (CE) is amended by deleting subparagraph (1)(a) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (1)(a) shall read:

- (a) Each person licensed by the Board is required to complete nine (9) hours of continuing education during each calendar year which shall include: four (4) hours in spectacles, two (2) hours in contact lenses, one (1) hour in jurisprudence and two (2) hours in optional courses.
 - 1. The one (1) hour jurisprudence credit may be obtained by either:
 - (i) Successfully completing the Board's Continuing Education Jurisprudence Credit examination; or
 - (ii) Attending one (1) morning session of a regularly scheduled meeting of the Board.
 - 2. Licensees who attend one (1) morning session of a regularly scheduled meeting of the Board must sign the sign-in sheet, maintained by the Board's administrator. The licensee must record their name, license number, the time the licensee arrived at the Board meeting, and the time the licensee departed the Board meeting to receive one (1) hour of jurisprudence continuing education credit. The morning session shall be not less than 50 minutes.

Authority: T.C.A. §§ 63-14-101, 63-14-106, 63-14-107, 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 L. Wells	X				
LeRhonda Walton-Hill	X				
William G. DeCrow	X				
Kimberly A. Jackson	X				
Felda Stacey	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 01/28/2015, 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: 10/31/14

Rulemaking Hearing(s) Conducted on: (add more dates). 01/28/15

Date: 02/02/2015

Signature: [Handwritten Signature]

Name of Officer: Matt Gibbs

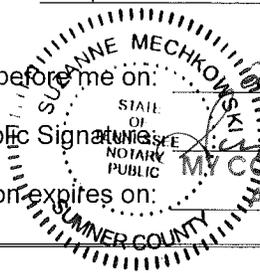
Assistant General Counsel

Title of Officer: Department of Health

Subscribed and sworn to before me on: 01-2-15

Notary Public Signature: [Handwritten Signature]

My commission expires on: APRIL 19, 2017



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.

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[Handwritten Signature]

Herbert H. Slatery III
 Attorney General and Reporter

9/3/2015 Date

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Filed with the Department of State on: 9/17/15

Effective on: 12/10/15

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Secretary of State

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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 public comments, either written or oral.

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.

(1) The extent to which the rule may overlap, duplicate, or conflict with other federal, state, and local governmental rules:

The rule amendments do not overlap, duplicate, or conflict with other federal, state, and local governmental rules.

(2) Clarity, conciseness, and lack of ambiguity in the rule:

The rule amendments exhibit clarity, conciseness, and lack of ambiguity.

(3) The establishment of flexible compliance and reporting requirements for small businesses:

The rule amendments do not establish any reporting requirements for small businesses.

(4) The establishment of friendly schedules or deadlines for compliance and reporting requirements for small businesses:

There are no such requirements contained in the rule amendments.

(5) The consolidation or simplification of compliance or reporting requirements for small businesses:

There are no such requirements contained in the rule amendments.

(6) The establishment of performance standards for small businesses as opposed to design or operational standards required in the proposed rule:

The rule amendments do not establish any standards that apply to small businesses.

(7) The unnecessary creation of entry barriers or other effects that stifle entrepreneurial activity, curb innovation, or increase costs:

The rule amendments create no entry barriers or other effects that would stifle legitimate entrepreneurial activity, curb innovation, or increase costs for legitimate businesses.

STATEMENT OF ECONOMIC IMPACT TO SMALL BUSINESSES

Name of Board, Committee or Council: Board of Dispensing Opticians

Rulemaking hearing date: 01/28/2015

- 1. Type or types of small business and an identification and estimate of the number of small businesses subject to the proposed rule that would bear the cost of, and/or directly benefit from the proposed rule:**

The proposed rules are not likely to produce any direct benefits or impose any costs on small business. Any costs would be minimal as the required hours of continuing education are only being increased by one hour.

- 2. Projected reporting, recordkeeping and other administrative costs required for compliance with the proposed rule, including the type of professional skills necessary for preparation of the report or record:**

The proposed rule should not create any additional reporting, recordkeeping, or other administrative costs.

- 3. Statement of the probable effect on impacted small businesses and consumers:**

The proposed rules are unlikely to have a significant effect on impacted small businesses and consumers. Any impact should be minimal because the Board is only seeking to add a requirement for one hour of jurisprudence to be obtained by licensees. If anything, the modified continuing education requirements will be beneficial to businesses and consumers as dispensing opticians will be better trained.

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

N/A

- 5. Comparison of the proposed rule with any federal or state counterparts:**

Federal: N/A

State: All health regulatory boards have the authority to set continuing education criteria.

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

These rules amendments do not provide for any exemptions for small businesses.

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)

The proposed rule amendments should not have a financial impact 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;

Rule 0480-01-.12(1)(a) is being further amended to add a requirement that each licensee obtain one (1) hour of continuing education in jurisprudence each calendar year. On February 4, 2014 the Board promulgated an amendment to Rule 0480-01-.12(1)(a) which required every licensee to complete eight (8) hours of continuing education each calendar year. The current amendment adds a jurisprudence credit hour to the requirements.

- (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;

Under Tennessee Code Annotated 63-14-106(a)(1), the Board is required to prescribe a minimum of three (3) and a maximum of twelve (12) clock hours of continuing education by February 1 of each year.

- (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 amendment will affect Dispensing Opticians.

- (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;

This rule amendment should not result in any increase or decrease in state and local government revenues or expenditures.

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

Matt Gibbs, Assistant General Counsel, Department of Health.

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

Matt Gibbs, Assistant General Counsel, Department of Health.

- (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

Department of Health, Office of General Counsel, 665 Mainstream Drive, Nashville, Tennessee 37243, (615) 741-1611, Matthew.Gibbs@tn.gov.

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

None.

(Rule 0480-01-.11, continued)

- (3) A person who holds a retired license may apply to reactivate his license in the following manner:
 - (a) Submit a written request to the board's administrative office for licensure reactivation;
 - (b) Pay the current licensure renewal fee and state regulatory fee as provided in Rule 0480-01-.06. If retirement was pursuant to Rule 0480-01-.09, and reactivation was requested prior to the expiration of one year from the date of retirement, the Board may require payment of the late renewal fee, past due renewal fees, and state regulatory fees as provided in Rule 0480-01-.06; and (c) Submit evidence of compliance with the continuing education provisions of Rule 0480-01-.12. Each individual is responsible for maintaining continuing education documentation until such time as he applies for reinstatement.
- (4) Upon receipt of the reinstatement application, fees, and continuing education documentation, the Board shall consider the reinstatement application.
- (5) The Board shall require an applicant whose license has been revoked, suspended, or retired for a period of three (3) or more years to apply, take and pass the examinations, pursuant to Rule 0480-01-.08, prior to being considered for reinstatement.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 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. Amendment filed October 18, 2005; effective January 1, 2006.

0480-01-.12 CONTINUING EDUCATION (CE).

- (1) Basic Requirements
 - (a) ~~Each person licensed by the Board is required to complete eight (8) clock hours of continuing education during each calendar year which shall include: four (4) hours in spectacles, two (2) hours in contact lenses, and two (2) hours in optional courses.~~
 - (a) Each person licensed by the Board is required to complete nine (9) hours of continuing education during each calendar year which shall include: four (4) hours in spectacles, two (2) hours in contact lenses, one (1) hour in jurisprudence and two (2) hours in optional courses.
 - 1. The one (1) hour jurisprudence credit may be obtained by either:
 - (i) Successfully completing the Board's Continuing Education Jurisprudence Credit examination; or Formatted: Indent: Left: 0.75", Hanging: 1.13"
 - (ii) Attending one (1) morning session of a regularly scheduled meeting of the Board. Formatted: Indent: Left: 0.75", Hanging: 1.13"
 - 2. Licensees who attend one (1) morning session of a regularly scheduled meeting of the Board must sign the sign-in sheet, maintained by the Board's administrator. The licensee must record their name, license number, the time the licensee arrived at the Board meeting, and the time the licensee departed the Board meeting to receive one (1) hour of jurisprudence continuing education credit. The morning session shall be not less than 50 minutes. Formatted: Indent: Left: 0.75", Hanging: 0.75"
 - (b) 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

(Rule 0480-01-.12, continued)

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.

1. Documentation must include the date, location, and total time transpired if the continuing education was presented in a traditional format
 2. Documentation must include proof of successful completion of a written post-course examination to evaluate material retention if the course was presented in a multi-media format.
- (c) The licensee must, within thirty (30) days of a request from the board, provide evidence of continuing education activities. Certificates verifying the licensee's attendance or original letters from course providers are such evidence.
- (d) For new licensees, submitting proof of successful completion of a two (2) year course of study in opticianry in a college level program recognized and approved by the Board, pursuant to rule 0480-01-.04 (3) (b), or submitting proof of successful completion of a three (3) year training program, pursuant to rule 0480-01-.04 (3) (c), shall be considered proof of sufficient preparatory education to constitute continuing education clock hour credit for the calendar year in which the applicant is approved.
- (2) Acceptable Continuing Education - Traditional Formats
- (a) The Board will accept any dispensing optician clinic, workshop, seminar or lecture attended in Tennessee or attended at any national or regional meeting not in Tennessee for continuing education (CE) credit if it is in accordance with the following guidelines:
 - (b) The subject matter must fall within the limit of subjects approved by the Board.
 - (c) Registrants, instructors and panelists will be eligible for credit.
 - (d) CE will be awarded on the following basis:
 1. Any single session covering not less than 2-1/2 hours will be assigned 3 hours of CE.
 2. Any single session covering not less than 1 hour, 40 minutes will be assigned 2 hours of CE.
 3. Any single session covering not less than 50 minutes will be assigned 1 hour of CE.
 4. The hours shall be based on actual instruction or program time, excluding registration time and coffee breaks, but including question and answer periods;
 5. The total credits to be earned in any single 24 hour period cannot exceed 12;
 6. Course approval procedure for course providers - The subject matter, instructor and course provider shall have prior approval from the Board. To obtain prior approval the course provider must have delivered to the Board Administrative Office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the course, documentation which includes all of the following items which must be resubmitted if changes are made after receipt of approval from the Board:

(Rule 0480-01-.12, continued)

- (i) a course content description or outline.
 - (ii) names of all lecturers.
 - (iii) brief resume of all lecturers.
 - (iv) number of hours of educational credit requested.
 - (v) dates, locations and hours of course.
 - (vi) copies of materials to be utilized in the course.
 - (vii) how verification of continuous attendance is to be documented.
 - (viii) how notification to every Tennessee licensed dispensing optician is to be accomplished.
 - (ix) documentation to the Board's satisfaction that the course content has applied for approval in the last twelve (12) months or has received approval from either the American Board of Opticianry or the National Contact Lens Examiners. In the event that the American Board of Opticianry or the National Contact Lens Examiners fails to give approval to the course content the Board may review the course content and at its discretion, approve or deny the course. Approval or denial from the American Board of Opticianry or the National Contact Lens Examiners does not mean that the course content has automatically been approved or denied by the Board.
- (e) Under no circumstances shall continuing education courses be approved if the materials required by subparts (2) (d) 6. (i) - (ix) are not received at least thirty (30) days prior to a regularly scheduled meeting of the Board at which approval is sought that precedes the course.
- (f) Notwithstanding the provisions of subparagraph (a), out-of-state continuing education providers may seek course approval if they are a dispensing optician regulatory agency or association from a state that borders Tennessee.
- (g) Course approval procedure for individual licensees
1. Notwithstanding the provisions of subparagraph (a), any licensee may seek approval to receive credit for successfully completing continuing education courses by complying with the provisions of part (2) (d) 6., subparts (2) (d) 6. (i) through (vii) and subpart (2) (d) 6. (ix).
 2. To retain course approval, the licensee must submit a course evaluation form, supplied by the Board, to the Board's administrative office within thirty (30) days after successfully completing the course.
- (3) Acceptable Continuing Education - Multi-Media Formats
- (a) The Board will accept no more than two (2) hours of the annual requirement as provided in subparagraph (1) (a) in Multi-Media formats for continuing education (CE) credit if it is in accordance with the following guidelines:

(Rule 0480-01-.12, continued)

1. Under no circumstances shall Multi-Media format continuing education courses be approved for course providers or awarded CE credit for individual licensees if the materials required by subparagraphs (3) (b) or (3) (c) are not received at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes any licensee's successful completion of the course.
 2. The number of CE hours awarded for any course shall be determined by the Board during the course approval procedure as provided in subparagraphs (3) (b) or (3) (c).
 3. The licensee must successfully complete a written post-course examination to evaluate material retention.
- (b) Course approval procedure for course providers - The subject matter, instructor/author and course provider shall have prior approval from the Board. To obtain prior approval the course provider must have delivered to the Board Administrative Office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes any licensee's successful completion of the course, documentation which includes all of the following items which must be resubmitted if changes are made after receipt of approval from the Board:
1. a course content description or outline.
 2. names of all lecturers/authors.
 3. brief resume of all lecturers/authors.
 4. number of hours of educational credit requested.
 5. copies of materials to be utilized in the course.
 6. how verification of successful course completion is to be documented.
 7. how notification to every Tennessee licensed dispensing optician is to be accomplished.
 8. documentation to the Board's satisfaction that the course content has applied for approval in the last twelve (12) months or has received approval from either the American Board of Opticianry or the National Contact Lens Examiners. In the event that the American Board of Opticianry or the National Contact Lens Examiners fails to give approval to the course content the Board may review the course content and at its discretion, approve or deny the course. Approval or denial from the American Board of Opticianry or the National Contact Lens Examiners does not mean that the course content has automatically been approved or denied by the Board.
- (c) Course approval procedure for individual licensees - Any licensee may seek approval to receive credit for successfully completing Multi-media format continuing education courses by submitting the documentation required in parts (3) (b) 1. through 5. and part (3) (b) 8.
- (d) Multi-Media courses may include courses utilizing:
1. The Internet
 2. Interactive Teleconferencing

(Rule 0480-01-.12, continued)

3. Interactive Videoconferencing

(4) 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 (3) (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.

(5) Continuing Education for Reactivation of License

(a) For Reactivation of retired licensure

- 1. An individual whose license has been retired for three (3) years or less will be required to fulfill continuing education requirements as outlined in this rule as a prerequisite to reinstatement. Those hours will be considered replacement hours and cannot be counted during the next licensure renewal period. An individual whose license has been retired for more than three (3) years shall apply, take and pass the examinations as required by the Board, pursuant to Rule 0480-01-.08, prior to being considered for reinstatement.
- 2. Any individual requesting reactivation of a license which has been retired must submit along with the reactivation request, verification which indicates the attendance and completion of hours of continuing education which must have been begun and successfully completed within 6 months immediately preceding the date of requested reinstatement. The continuing education hours completed to reinstate a retired license shall not be credited toward the continuing education hours required to be completed by the end of the calendar year following reinstatement.
- 3. The Board, upon receipt of a written request and explanation, may waive or condition any or all of the continuing education required for reactivation of a retired certificate or license in emergency situations.

- (b) For reactivation of revoked licensure - No person whose license has been revoked for failure to comply with continuing education may be reinstated without complying with the requirements. Continuing education will accumulate at the same rate as for those licenses which are active. The required clock hours of continuing education must have been begun and successfully completed within six (6) months immediately following the date of revocation or suspension. A license which has been revoked for noncompliance

(Rule 0480-01-.12, continued)

with the CE requirements shall also be subject to the renewal late fee pursuant to rule 0480-01-.06.

- (c) For reactivation of expired licensure - No person whose license has expired may be reinstated without submitting evidence of continuing education. The continuing education hours documented at the time of reinstatement must equal the hours required, had the license remained in an active status, and must have been successfully completed within six (6) months immediately preceding the date of reinstatement.
 - (d) Continuing education hours obtained as a prerequisite for reactivating a license may not be counted toward the calendar year requirement.
- (6) Waiver of Continuing Education
- (a) The Board may grant a waiver to certify attendance and completion of the required hours of continuing education, if it can be shown to the Board that the failure to comply was not attributable to or was beyond the physical capabilities of the individual, i.e., disability, residence abroad, military service, or other instances of undue hardship. Such requests for waiver must be accompanied by written documentation acceptable to the Board.
 - (b) Waivers will be considered only on an individual basis and may be requested by submitting the following items to the Board administrative office.
 - 1. A written request for a waiver which specifies what requirement is sought to be waived and a written and signed explanation of the reasons for the request.
 - 2. Any documentation which supports the reason for the waiver requested or which may be subsequently requested by the board.
 - (c) A waiver approved by the Board is effective for only the calendar year for which the waiver of the requirement is sought, unless otherwise specified in writing by the Board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-107, 63-14-101, 63-14-103, 63-14-104, 63-14-106, 63-14-107, and 63-14-111. **Administrative History:** Original rule filed August 2, 1995; effective October 16, 1995. Amendment filed August 7, 1997; effective October 27, 1997. Amendment filed February 10, 2000; effective April 25, 2000. Amendment filed April 26, 2002; effective July 10, 2002. Amendment filed May 6, 2002; effective July 20, 2002. Amendment filed May 12, 2003; effective July 26, 2003. Amendment filed October 12, 2004; effective December 26, 2004. Amendment filed October 18, 2005; effective January 1, 2006. Amendment filed April 1, 2015; effective June 30, 2015.

0480-01-.13 CODE OF ETHICS.

- (1) The following code of ethics shall govern the conduct of licensed dispensing opticians in the practice of opticianry.
 - (a) Keep the visual welfare of the consumer upper-most at all times.
 - (b) Promote in every possible way the better care of the visual needs of the citizens of this state.
 - (c) Continuously enhance their educational and technical proficiency so that their customers shall receive the benefits of all knowledge and improvements in visual care.