

**RULES  
OF  
TENNESSEE BOARD OF OPTOMETRY**

**CHAPTER 1045-02  
GENERAL RULES GOVERNING THE PRACTICE OF OPTOMETRY**

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**1045-02-.01 FEES.**

- (1) The fees authorized by the Optometry Practice Act (T.C.A. §63-8-101, et seq.) and other applicable statutes to be established in amount by the Board are established as follows:
- (a) Application Fee - A non-refundable fee to be paid each time an application for initial licensure is filed. \$300.00
  - (b) Reinstatement Fee - A non-refundable fee to be paid each time an application for reinstating an expired license is filed. \$200.00
  - (c) Duplicate Licensure \$25.00
  - (d) Licensure Renewal Fee – A non-refundable fee to be paid biennially by all licensees except Inactive Volunteers. This fee also applies to licensees who reactivate a retired license or who reactivate an inactive license. \$330.00
  - (e) Biennial State Regulatory Fee \$10.00
  - (f) Inactive Volunteer Licensure Renewal Fee \$0.00
- (2) All fees may be paid in person, by mail or electronically by cash, check, money order, or by credit and/or debit cards accepted by the Division. If the fees are paid by certified, personal or corporate check they must be drawn against an account in a United States Bank, and made payable to the Tennessee Board of Optometry.

**Authority:** T.C.A. §§4-3-1011(b), 4-5-202, 4-5-204, 63-8-111, 63-8-112, 63-8-112(1), 63-8-115, 63-8-119, and 63-8-133. **Administrative History:** Original rule filed May 15, 1981; effective July 22, 1981. Amendment filed October 13, 1983; effective November 14, 1983. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed August 2, 1995; effective October 16, 1995. Amendment filed December 11, 1998; effective February 23, 1999. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed June 10, 2004; effective August 24, 2004. Amendment filed October 18, 2004; effective January 1, 2005.

**1045-02-.02 LICENSURE PROCESS.** It is the intent of the Optometry Practice Act and the Board to require the highest level of education from all persons who apply for licensure in Tennessee. To become licensed to practice Optometry in Tennessee a person must comply with the following procedures and requirements:

- (1) An applicant must obtain from the Board administrative office an application form that must be completed and submitted along with all required documentation and fees to the Board administrative office.
- (2) An applicant shall pay the application fee as provided in Rule 1045-02-.01(1).
- (3) An applicant shall cause to be submitted directly to the Board administrative office a certified transcript mailed by an accredited college or school of optometry which clearly shows the degree and the date received. The college or school of optometry must be accredited by one (1) of the following:
  - (a) Accreditation Council on Optometric Education (ACOE)
  - (b) National Commission on Accrediting
  - (c) United States secretary of education
- (4) An applicant shall submit to the Board administrative office a recent "passport style" photograph of himself/herself.
- (5) An applicant shall submit to and successfully complete the Board's licensure examination pursuant to rule 1045-02-.03.
- (6) If an applicant is or has been licensed to practice optometry in any other state, the documentation required by T.C.A. §63-8-115(b) shall be submitted along with the application.
- (7) An applicant shall submit to the Board administrative office satisfactory evidence of good moral character. Satisfactory evidence of good moral character requires at a minimum two letters of reference from optometric practitioners on the signators' letterhead.
- (8) 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.
- (9) Inactive Volunteer Licensure - Applicants who intend to exclusively practice Optometry without compensation on patients who receive Optometric services from organizations granted a determination of exemption pursuant to Section 501 (c)(3) of the Internal Revenue Code may obtain an inactive volunteer license to do so as follows:
  - (a) Applicants who currently hold a valid Tennessee license to practice Optometry issued by the Board pursuant to this rule which is in good standing must:
    1. Retire their active licenses pursuant to the provisions of rule 1045-02-.04(7)(a) and:
    2. Have submitted to the Board Administrative Office directly from the qualified organization proof of the determination of exemption issued pursuant to Section 501 (c)(3) of the Internal Revenue Code; and
    3. Certify that they are practicing Optometry exclusively on the patients of the qualified entity and that such practice is without compensation.

(Rule 1045-02-.02, continued)

- (b) Applicants who do not currently hold a valid Tennessee license to practice Optometry must comply with all provisions of paragraphs (1) through (8) of this rule.
  - (c) Inactive volunteer licenses are subject to all rules governing renewal, retirement, reinstatement and reactivation as provided by rules 1045-02-.04. These licenses are also subject to disciplinary action for the same causes and pursuant to the same procedures as active licenses.
- (10) Application Review, Approval, and Denial
- (a) Initial review of all applications to determine whether or not the application file is complete may be delegated to the Board's administrator or designee, provided that final approval of all applications is made and ratified by the Board.
  - (b) If an application is incomplete when received by the Board's Administrative Office, or if the reviewing Board member or the Board's designee determine additional information is required from an applicant before an initial determination can be made, the Board administrator shall notify the applicant of the information required. The applicant shall cause the requested information to be received in the Administrative Office on or before the sixtieth (60th) day after receipt of the notification.
    - 1. Such notifications shall be sent certified mail, return receipt requested, from the Administrative Office.
    - 2. If requested information is not timely received, the application file will be considered abandoned and will be closed by the administrator. If that occurs, the applicant shall be notified that the Board will not consider issuance of a license until a new completed application and fees are submitted. The Board may, in its discretion, keep a file open past this deadline if special circumstances warrant.
  - (c) A Board member or Board designee who has reviewed the completed application and determined that the applicant has met all the requirements for licensure, renewal or reinstatement may issue an applicant a temporary authorization to practice, as described in T.C.A. § 63-1-142, subject to ratification by the full Board at its next regularly scheduled meeting. If the Board member or designee cannot make such a determination, the applicant shall be advised that the Board will consider the application at its next regularly scheduled meeting.
  - (d) The Board or its designee may delay a decision on an application for any applicant from whom the Board wishes additional information.
  - (e) If after reviewing the completed application the Board denies, limits, conditions or restricts the issuance of a license, the action shall become final and the following shall occur:
    - 1. A notification of the denial, limitation, condition or restriction shall be sent by the Administrative Office by certified mail, return receipt requested, that contains the specific reasons for denial, limitation, condition or restriction, and such notification shall contain all the specific statutory or rule authority for the denial, limitation, condition or restriction.
    - 2. The notification, when appropriate, shall also contain a statement of the applicant's right to request a contested case hearing under the Tennessee Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.) to contest the denial,

(Rule 1045-02-.02, continued)

limitation, condition or restriction and the procedure necessary to accomplish that action.

- (i) An applicant has a right to a contested case hearing only if the licensure denial, limitation, condition or restriction is based on subjective or discretionary criteria.
  - (ii) An applicant may be granted a contested case hearing if the licensure denial, limitation, condition or restriction is based on an objective, clearly defined criteria only if after review and attempted resolution by the Board's Administrative Staff, the application can not be approved and the reasons for continued denial, limitation, condition or restriction present genuine issues of fact and/or law which are appropriate for appeal. Requests for a hearing must be made in writing to the Administrative Office within thirty (30) days of the receipt of the notice of denial, limitation, condition or restriction from the Board.
- (f) The initial determination procedures of this rule will not apply if the Board makes a final determination on any application during its meetings.
- (g) If the Board finds it has erred in the issuance of a license, it will give written notice by certified mail of its intent to revoke or cancel the license. The notice will allow the applicant the opportunity to meet the requirements for licensure within thirty (30) days from the date of receipt of the notification. If the applicant does not concur with the stated reason and the intent to revoke or cancel the license, the applicant shall have the right to proceed according to subparagraph (e) of this rule.

**Authority:** T.C.A. § 4-5-202, 4-5-204, 63-8-112, and 63-8-115. **Administrative History:** Original rule filed May 15, 1981; effective July 22, 1981. Amendment filed October 13, 1983; effective November 14, 1983. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed October 29, 1991; effective December 13, 1991. Amendment filed August 26, 1998; effective November 9, 1998. Amendment filed July 22, 2002; effective October 5, 2002. Amendment filed September 7, 2004; effective November 21, 2004. Amendments filed March 17, 2006; effective May 31, 2006. Amendment filed March 22, 2007; effective June 9, 2007.

### 1045-02-.03 EXAMINATIONS.

- (1) Applicants graduating prior to January 1, 1992 - Unless applicants choose to qualify pursuant to paragraph (2), all such applicants must, in addition to having successfully completed all parts of the pre-1992 National Board of Examiners in Optometry (NBEO)'s examinations, unless waived, and the Association of Regulatory Boards of Optometry or its predecessor organization's examination, successfully complete the Board's clinical examination which is Part III of the NBEO's examination
- (a) The Board adopts as its written licensure examinations those administered by the National Board of Examiners in Optometry and the Association of Regulatory Boards of Optometry or its predecessor organization as they existed through December 31, 1991 for all applicants graduating prior to January 1, 1992.
  - (b) The fees to take the examinations administered by the National Board of Examiners in Optometry are set out and collected by that organization.
  - (c) The Board adopts the determination of the National Board of Examiners in Optometry and the Association of Regulatory Boards of Optometry as to the passing scores for their respective examinations and certification directly from the organizations of such

(Rule 1045-02-.03, continued)

applicant scores to the Board shall constitute successful completion of those examinations.

- (2) Applicants Graduating On or After January 1, 1992.
  - (a) All such applicants must successfully complete all parts of the revised format National Board of Examiners in Optometry's examination which includes clinical skills assessment.
  - (b) The Board adopts as its written licensure examinations those administered by the National Board of Examiners in Optometry and the Association of Regulatory Boards of Optometry or its predecessor organization as they exist after January 1, 1992 for all applicants graduating on or after January 1, 1992.
  - (c) The fees to take the examinations administered by the National Board of Examiners in Optometry are set out and collected by that organization.
  - (d) The Board adopts the determination of the National Board of Examiners in Optometry as to the passing scores for their examination and certification sent directly from them to the Board of such applicant scores shall constitute successful completion of those examinations.
- (3) Jurisprudence Examination. All applicants for licensure must successfully complete the Board's jurisprudence examination as a prerequisite to licensure.
  - (a) The Board shall mail a jurisprudence examination to all applicants for licensure.
  - (b) The applicant shall include a completed jurisprudence examination when his/her completed application for licensure is sent to the Board's administrative office located at 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243.
  - (c) There is no fee for the jurisprudence examination.
  - (d) The scope and content of the examination shall be determined by the Board but limited to statutes and regulations governing the practice of optometry (Tennessee Code Annotated §§ 63-8-101, et seq., and Chapter 1045-02 of the Official Compilation, Rules and Regulations of the State of Tennessee). Copies of the applicable statutes and regulations can be obtained at the Board's Internet web page, and are also available upon request from the Board's administrative office.
  - (e) The format of the examination shall be "open-book."
  - (f) Correctly answering ninety percent (90%) of the examination questions shall constitute successful completion of the jurisprudence exam.
  - (g) If the Board determines that the applicant has failed to successfully complete the 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.
- (4) The Board may, by majority vote, waive the passage of Parts 1 and 2 of the National Board's Examinations for applicants graduating prior to 1984 (the year in which Tennessee required passage of the National Boards), provided the applicants meet each of the following requirements:

(Rule 1045-02-.03, continued)

- (a) are duly licensed to practice optometry in at least one other state;
  - (b) meet all other requirements for full licensure under the Tennessee Optometry law; and
  - (c) provide the Board with letters of recommendation from the Boards of Optometry where the applicants are licensed and from federal service (military, veterans administration, public health, etc.), if applicable and from accredited institutions of higher learning where applicants have been optometric educators if applicable.
- (5) Notwithstanding the above, the Board may, by majority vote, waive the passage of all parts of the National Board's Examination and may accept proof of clinical competency in lieu of submission to clinical examination by the Board where the applicant is in good standing and practicing in another state with clinical competency examinations comparable to that of the State of Tennessee.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-8-112, 63-8-112(1) & (3), 63-8-115, and 63-8-107(c).  
**Administrative History:** Original rule filed May 15, 1981; effective July 22, 1981. Amended by Public Chapter 969; effective July 1, 1984. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed October 29, 1991; effective December 13, 1991. Amendment filed August 2, 1995; effective October 16, 1995. Amendment filed October 11, 1999; effective December 25, 1999. Amendment filed September 13, 2002; effective November 27, 2002. Amendment filed March 2, 2009; effective May 16, 2009; however, stay of the effective date filed May 14, 2009 by the Tennessee Board of Optometry; new effective date July 13, 2009.

**1045-02-.04 LICENSE RENEWAL.** All optometrists licensed by the Board must renew those licenses to be able to legally continue in practice. Licensure renewal is governed by the following:

- (1) The due date for renewal is the last day of the month in which a licensee's birthdate falls pursuant to the Division of Health Related Boards' biennial birthdate renewal system.
  - (a) Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:  

[www.tennesseeanytime.org](http://www.tennesseeanytime.org)
  - (b) Paper Renewals - For individuals who have not renewed their license online via the Internet, a renewal application form will be mailed to each individual licensed by the Board to the last address provided to the Board. Failure to receive such notification does not relieve the licensee from the responsibility of meeting all requirements for renewal.
- (2) To be eligible for licensure renewal, an optometrist must submit to the Board administrative office on or before the due date for renewal all the following:
  - (a) A completed Board approved application form.
  - (b) The biennial renewal fee as provided in Rule 1045-02-.01(1)(d).
  - (c) The biennial state regulatory fee as provided in Rule 1045-02-.01(5).
- (3) The Board, in cases of documented illness, disability, other undue hardship or retirement, may
  - (a) waive the continuing education requirements; and/or

(Rule 1045-02-.04, continued)

- (b) waive the renewal fee (but not the state regulatory fee); or
  - (c) extend the deadline to complete continuing education requirements.
  - (d) To be considered for a waiver of continuing education requirements, or for an extension of the deadline to complete the continuing education requirements, an optometrist must request such in writing with supporting documentation before the end of the calendar year in which the continuing education requirements were not met.
  - (e) To be considered for a waiver of the renewal fee, an optometrist must request such in writing with supporting documentation on or before the renewal due date.
- (4) Licensees who fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-01-.10, unless a waiver or deadline extension is granted pursuant to paragraph (3) of this rule.
- (5) Reinstatement of an Expired License - Reinstatement of a license that has expired may be accomplished upon meeting the following conditions:
- (a) Payment of all past due renewal fees and state regulatory fees, pursuant to Rule 1045-02-.01; and
  - (b) Payment of the Reinstatement fee, pursuant to Rule 1045-02-.01; and
  - (c) Provide documentation of successfully completing continuing education requirements for every year the license was expired, pursuant to Rule 1045-02-.05.
- (6) License renewal and reinstatement applications hereunder shall be treated as license applications, and review and decisions shall be governed by Rule 1045-02-.02.
- (7) Retirement of Licenses.
- (a) Licensees who wish to retain their licenses but not actively practice may avoid compliance with the licensure renewal process by:
    1. Submitting a Board approved affidavit of retirement form to the Board Administrative Office; and
    2. Submitting any documentation which may be required by the form to the Board Administrative Office.
  - (b) Licensees whose licenses have been retired may reenter active practice by:
    1. Submitting a written request for licensure reactivation to the Board Administrative Office; and
    2. Paying the biennial renewal fee as provided in Rule 1045-02-.01(1)(d).
    3. Appearing before the Board, a Board member or Board designee for interviews regarding continued competence, if requested after review.
    4. The Board, a Board member, or designee after the interview may require remedial education and/or examination passage prior to licensure reinstatement.

(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.

(b) 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.

(c) 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.
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.

(d) 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

(Rule 1045-02-.05, continued)

- (vii) DVD
  - (viii) Teleconferencing
  - (ix) Videoconferencing
  - (x) Distance learning
- (e) 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) 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.
- (4) Continuing education course approval decisions pursuant to this rule may be preliminarily made upon review by any Board member or a Board designee.
- (5) 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.

(Rule 1045-02-.05, continued)

**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.
- (2) Minutes of the Board meetings and all records, documents, applications, and correspondence will be maintained in the administrative offices of the Board.
- (3) All requests, applications, notices, complaints, other communications and correspondence shall be directed to the administrative office of the Board. Any requests or inquiries requiring a Board decision or official Board action except documents relating to disciplinary actions, declaratory orders or hearing requests must be received fourteen (14) days prior to a scheduled board meeting and will be retained in the administrative office and presented to the Board at the next scheduled Board meeting.
- (4) Any member of the Board or a Board designee is vested with the authority to review and preliminarily approve licensure applications and continuing education courses. All such approvals shall be subsequently submitted to the full Board for its consideration for ratification.
- (5) The Board shall elect one member to serve as consultant to the Division of Health Related Boards to make determinations for the board in the following areas:
  - (a) Whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.
  - (b) Whether and under what terms a disciplinary action might be informally settled. Any matter proposed for informal settlement must be subsequently considered by the full Board and either adopted or rejected.
  - (c) Whether sufficient cause exists for the execution of waivers pursuant to Rule 1045-02-.04(3). Any such decision must be subsequently considered by the full Board and either adopted or rejected.
  - (d) Whether and under what conditions a licensee who has failed to timely renew pursuant to Rule 1045-02-.04(4) may be allowed to renew. All such actions must be subsequently considered by the full Board and either adopted, rejected or modified.
  - (e) Whether and under what circumstances a retired license may be reinstated. All such decisions must be subsequently considered by the full Board and either, approved, rejected or modified.
- (6) Reconsiderations and Stays – 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 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

(Rule 1045-02-.06, continued)

- (7) Requests for written verification of a licensee's current status or a Certificate of Identification (Certificate of Fitness in Division Law) must be made in writing to the Board administrative office.
- (8) Requests for duplicate or replacement licenses must be made in writing to the Board administrative office and contain the information required by T.C.A. §63-8-112(9) and be accompanied by the fee provided in Rule 1045-02-.01(1)(c).

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-142, 63-8-111, 63-8-112, 63-8-112(1), 63-8-112(8), 63-8-112(9), 63-8-107(a), 63-8-107(b), 63-8-115, 63-8-119, 63-8-120, 63-8-120(b), 63-8-120(d), 63-8-121, and Public Chapter 295, Acts of 1993. **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 July 22, 2002; effective October 5, 2002. Amendment filed February 26, 2009; effective May 12, 2009.

### 1045-02-.07 DIAGNOSTIC AND THERAPEUTIC CERTIFICATION.

- (1) It is the intent of the Board that all applicants for licensure as optometrists attain the highest level of licensure available under the law including diagnostic and therapeutic certification as provided in T.C.A. §§63-8-102(12)(E) and 63-8-112(4). Attaining therapeutic certification must include attaining certification to use pharmaceutical agents by injection.
- (2) Diagnosis Certification. Any applicant who submits or has submitted a transcript which contains at least six (6) quarter hours in the courses provided in T.C.A. §63-8-102(12)(E) and becomes or became licensed to practice Optometry in Tennessee shall be diagnostically certified.
- (3) Therapeutic Certification:
  - (a) To certify optometrists to administer and prescribe pharmaceutical agents for treatment, perform primary eye care procedures, the performance or ordering of procedures and laboratory tests rational to the diagnosis of conditions or diseases of the eye or eyelid. No optometrist shall be certified to prescribe or use pharmaceutical agents for treatment purposes in the practice of optometry unless and until he meets all of the following:
    1. Show evidence to the Board by providing a certified transcript of ninety (90) classroom hours in pharmacology and sixty (60) classroom hours in ocular disease from a college or university which is accredited by an agency approved by the Council on Post Secondary Education of the U.S. Department of Education.
    2. Show evidence to the Board by providing a certified transcript from a college or university which is accredited by an agency approved by the Council on Post Secondary Education of the U.S. Department of Education, of forty (40) hours of clinical experience acquired on or after April 22, 1987. The clinical experience is to include diagnosis and treatment of ocular disease including the use of pharmaceutical agents.
    3. Be diagnostically certified, as provided in T.C.A. §63-8-102(12)(E) and paragraph (2) of this rule.
    4. Has taken and successfully passed the examination administered or approved by the board.

(Rule 1045-02-.07, continued)

- (b) All optometrists licensed to practice in Tennessee who are therapeutically certified by the board must show the board by proof of completion of the following clinical review courses by 7/1/94, or their equivalent obtained from the experience of current practice and licensure in a state with a similar scope of practice act. The clinical review courses are:
  - 1. A 24 hour board approved transcript quality credit clinical course as it relates to the diagnosis, treatment, and management of glaucoma.
  - 2. A 6 hour board approved transcript quality credit course as it related to the clinical application of oral medication necessary for the treatment of diseases of the eye/eyelid including the use of controlled substances.
- (c) These courses may count toward meeting the annual continuing education requirements as determined by the Board. Any optometrist not completing these requirements will be subject to therapeutic privilege suspension until such time as the clinical review is complete. Any optometrist aggrieved by the Board's written decision suspending his or her therapeutic certification privileges shall have 30 days from the date such decision is received to request a contested case hearing under the provisions of the Uniform Administrative Procedures Act. The board will extend the July 1, 1994 deadline date only in cases of hardship as determined by the board. Graduates of accredited schools of optometry after May 5, 1993 are excluded from these requirements. In order to obtain therapeutic certification, any optometrist graduating before May 5, 1993 must meet the requirements of Rule 1045-02-.03 and must complete the clinical review courses prior to licensure.
- (d) No therapeutically certified optometrist shall use pharmaceutical agents by injection except to counter anaphylaxis until they have received approval from the board. The board will not approve the use of injections until the optometrist demonstrates to the board's satisfaction sufficient educational training and/or clinical training, and submits proof of current certification in cardiopulmonary resuscitation (CPR). The education must be obtained from board approved courses.

**Authority:** T.C.A. § 4-5-202, 4-5-204, 63-8-102, 63-8-112, and 63-8-115. **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 February 14, 1994; effective April 30, 1994. Amendment filed January 4, 2002; effective March 20, 2002. Amendment filed March 22, 2007; effective June 9, 2007.

#### **1045-02-.08 CORPORATE OR BUSINESS NAMES AND ADVERTISING.**

- (1) Policy Statement. The lack of sophistication on the part of many members of the public concerning optometric services, the importance of the interests affected by the choice of an optometrist and the foreseeable consequences of unrestricted advertising by optometrists, require that special care be taken by optometrists to avoid misleading the public. The optometrist must be mindful that the benefits of advertising depend upon its reliability and accuracy. Since advertising by optometrists is calculated and not spontaneous, reasonable regulation designed to foster compliance with appropriate standards serves the public interest without impeding the flow of useful, meaningful, and relevant information to the public.
- (2) Definitions.
  - (a) Advertisement. Informational communication to the public in any manner designed to attract public attention to the practice of an optometrist who is licensed to practice in Tennessee.

(Rule 1045-02-.08, continued)

- (b) Licensee. Any person holding a license to practice optometry in the State of Tennessee. Where applicable this shall include partnerships and/or corporations.
  - (c) Material Fact. Any fact which an ordinary reasonable and prudent person would need to know or rely upon making an informed decision concerning the choice of practitioners to serve his or particular optometric needs.
  - (d) Bait and Switch Advertising. An alluring but insincere offer to sell a product or service which the advertiser in truth does not intend or want to sell. Its purpose is to switch consumers from buying the advertised merchandise, in order to sell something usually at a higher fee or on a basis more advantageous to the advertiser.
  - (e) Discounted Fee. Shall mean a fee offered or charged by a person or organization for any optometric product or service that is less than the fee the person or organization usually offers or charges for the product or service. Products or services expressly offered free of charge shall not be deemed to be offered at a "discounted fee."
- (3) Advertising Fees and Services.
- (a) Fixed Fees. Fixed fees may be advertised for any service.
    - 1. It is presumed unless otherwise stated in the advertisement that a fixed fee for a service shall include the cost of all professionally recognized components within generally accepted standards that are required to complete the service.
    - 2. If an optometrist advertises an examination fee or includes an examination as a service provided in an advertised fixed fee the examination findings shall include all pertinent tests and observations necessary to satisfy the standard of care. The following shall constitute the professionally recognized components to be included in the examination provided for the advertised fee and before the prescription requested is issued:
      - (i) Spectacles
        - (I) Visual acuity testing of each eye far and near point; and
        - (II) External examination including extra ocular motility and confrontation fields, and
        - (III) Refraction (objective and subjective); and
        - (IV) Co-ordination testing; and
        - (V) Ophthalmoscopy; and
        - (VI) Biomicroscopy; and
        - (VII) Tonometry.
      - (ii) Contact Lenses:
        - (I) All of the components required for spectacles prescriptions; and
        - (II) Keratometer reading of cornea curves; and

(Rule 1045-02-.08, continued)

- (III) Biomicroscopic evaluation of lid health, tear film integrity and corneal integrity; and
  - (IV) Application of known diagnostic lenses to each eye to include evaluation of acuity, over refraction and biomicroscopic evaluation of lens fit with use of chemical dyes as indicated; and
  - (V) Adequate patient training in lens care, solutions, application and removal along with proper wearing schedule, warning signs, and recall intervals; and
  - (VI) A minimum of two follow up visits over a minimum period of 2 months which shall occur prior to determining the contact lens prescription. At each visit visual acuity and biomicroscopic evaluation of the eyes with and without lenses will be performed.
- (b) Range of Fees. A range of fees may be advertised for all services except routine optometric services and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public.
- (c) Discount Fees. Discount fees may be advertised if:
- 1. The discount fee is in fact lower than the licensee's customary or usual fee charged for the service; and
  - 2. The licensee provides the same quality and components of service and material at the discounted fee that are normally provided at the regular nondiscounted fee for that service.
- (d) Related Services and Additional Fees. Related services which may be required in conjunction with the advertised services for which additional fees will be charged must be identified as such in any advertisement. If they are not the service shall be provided at the fee quoted in the advertisement.
- (e) Time Period of Advertised Fees. Advertised fees shall be honored for those seeking the advertised services during the entire time period stated in the advertisement whether or not the services are actually rendered or completed within that time.
- If no time period is stated in the advertisement of fees, the advertised fee shall be honored for thirty (30) days from the last date of publication or until the next scheduled publication whichever is later whether or not the services are actually rendered or completed within that time.
- (4) Advertising Content. The following acts or omissions in the context of advertisement by any licensee shall subject the license to disciplinary action pursuant to T.C.A. §§63-8-120(5), 63-8-120(12), 63-8-120(17) and 63-8-113(d).
- (a) Claims that the services performed, personnel employed, materials or office equipment used are professionally superior to that which is ordinarily performed, employed, or used, or that convey the message that one licensee is better than another when superiority of services, personnel, materials or equipment cannot be substantiated.
  - (b) The misleading use of an unearned or non-health degree in any advertisement.

(Rule 1045-02-.08, continued)

- (c) Promotion of a professional service which the licensee knows or should know is beyond the licensee's ability to perform.
- (d) Techniques of communication which intimidate, exert undue pressure or undue influence over a prospective patient.
- (e) Any appeals to an individual's anxiety in an excessive or unfair manner.
- (f) The use of any personal testimonial attesting to a quality of competence of a service or treatment offered by a licensee that is not reasonably verifiable.
- (g) Utilization of any statistical data or other information based on performance or prediction of future services, which creates an unjustified expectation about results that the licensee can achieve.
- (h) The communication of personally identifiable facts, data, or information about a patient without first obtaining patient consent.
- (i) Any misrepresentation of a material fact.
- (j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
- (k) Statements concerning the benefits or other attributes of procedures or products that involve significant risks without including:
  - 1. A realistic assessment of the safety and efficiency of those procedures or products; and
  - 2. The availability of alternatives; and
  - 3. Where necessary to avoid deception, descriptions or assessment of the benefits or other attributes of those alternatives.
- (l) Any communication which creates an unjustified expectation concerning the potential results of any treatment.
- (m) Failure to comply with the rules governing advertisement of fees and services, corporate or business name and advertising records.
- (n) The use of "bait and switch" advertisements. Where the circumstances indicate "bait and switch" advertising, the Board may require the licensee to furnish to the Board or its designee data or other evidence pertaining to those sales at the advertised fee as well as other sales.
- (o) Misrepresentation of a licensee's credentials, training, experience or ability.
- (p) Failure to include the corporation, partnership or individual licensee's name and address and telephone number in any advertisement. Any corporation, partnership or association which advertises by use of a trade name or otherwise fails to list all licensees practicing at a particular location shall:
  - 1. Upon request provide a list of all licensees practicing at that location; and

(Rule 1045-02-.08, continued)

2. Maintain and conspicuously display at the licensee's office, a directory listing all licensees practicing at that location.
  - (q) Failure to disclose the fact of giving compensation or anything of value to representatives of the press, radio, television or other communicative medium in anticipation of or in return for any advertisement (for example, newspaper article) unless the nature, format or medium of such advertisement make the fact of compensation apparent.
  - (r) Unless otherwise provided by purchase contract after thirty (30) days, the use of the name of any licensee formerly practicing at or associated with any advertised location or on office signs or buildings. This rule shall not apply in the case of a retired or deceased former associate who practiced optometry in association with one or more of the present occupants if the status of the former associate is disclosed in any advertisement or sign.
  - (s) Stating or implying that a certain licensee provides all services when any such services are performed by another licensee.
  - (t) Directly or indirectly offering, giving, receiving, or agreeing to receive any fee or other consideration to or from a third party for the referral of a patient in connection with the performance of professional services.
  - (u) An ophthalmic lens, or contact lens may be guaranteed against defects but since the degree of help from the use of or from the results obtained in the use of the same, is dependent on some uncontrollable factors, any guarantee, warranty or representation expressed or implied as to the degree or amount of help or improvement which can be expected is prohibited.
  - (v) Defaming competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing or other false representations or falsely disparaging products, selling prices, values, credit terms, policies or services of competitors.
- (5) Routine Optometric Service. An optometric service may be considered routine for and if it has the following characteristics:
  - (a) It is performed frequently in the optometrist's practice.
  - (b) It is usually provided at a set fee to substantially all patients receiving the service.
  - (c) It is provided with little or no variance in technique or materials.
  - (d) It includes all professionally recognized components within generally accepted standards.
- (6) Advertising Records and Responsibility.
  - (a) Each licensee who is a principal partner, or officer of a firm or entity identified in any advertisement, is jointly and severally responsible for the form and content of any advertisement. This provision shall also include any licensed professional employees acting as an agent of such firm or entity.
  - (b) Any and all advertisements are presumed to have been approved by the licensee named therein.

(Rule 1045-02-.08, continued)

- (c) A recording of every advertisement communicated by print media, and a copy of any other form of advertisement shall be retained by the licensee for a period of two (2) years from the last date of broadcast or publication and be made available for review upon request by the board or its designee.
  - (d) At the time any type of advertisement is placed the licensee must possess and rely upon information which, when produced, would substantiate the truthfulness or any assertion, omission or representation of material fact set forth in the advertisement or public communication.
- (7) Required Disclosures. The advertising of prices or discounts from such prices of eyeglasses, spectacles, lenses, contact lenses, frames, mountings and prosthetic devices is permitted under the condition that such advertising includes and specifies the kind, type and quality of the advertised item and is not in violation of any other advertising rules of the Optometry Board.
- (8) Corporate or Business Names.
- (a) Requests for approval of corporate or business names must be submitted on an official form at the Board administrative office. Prior use of a corporate name in advertising the name must be submitted to and approved by the Board.
  - (b) Such requests will be maintained in the administrative office until the next scheduled Board meeting at which time that will be presented to and reviewed by the Board. If the Board, in its discretion, decides that the corporate name is appropriate and in compliance with all statutes and rules, the corporate name may be approved.
  - (c) Applicants will be notified of approval or denial by letter signed by the secretary of the Board as directed by the Board. A record of such corporate names will be kept in the administrative office.
- (9) Severability. It is hereby declared that the section, clauses, sentences and parts of these rules are severable, are not matters of mutual essential inducement, and any of them shall be excised if these rules would otherwise be unconstitutional or ineffective. If any one or more sections, clauses, sentences or parts shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof, but shall be confined in its operation to the specific provision or provisions so held unconstitutional or invalid, and the inapplicability or invalidity of any section, clause, sentence or part in any one or more instances shall not be taken to affect or prejudice in any way its applicability or validity in any other instance.

**Authority:** T.C.A. §§4-5-204, 63-8-112(1) through 63-8-112(3), 63-8-115, and 63-8-107(c).

**Administrative History:** Original rule filed May 15, 1981; effective July 22, 1981. Amended by Public Chapter 969; effective July 1, 1984. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed October 29, 1991; effective December 13, 1991.

#### **1045-02-.09 OCULAR AND CONTACT LENS PRESCRIPTIONS AND OFFICE EQUIPMENT.**

- (1) Optometrists shall comply with all federal statutes and regulations regarding release of verified contact lens prescriptions. The Board of Optometry shall consider the failure to comply as constituting unprofessional conduct and shall subject the licensee to disciplinary action pursuant to T.C.A. § 63-8-120.

(Rule 1045-02-.09, continued)

- (2) A contact lens prescription shall expire one (1) year after the date on which the prescription was issued, unless the optometrist who issued the prescription specifies an earlier expiration date based solely on the optometrist's professional judgment regarding the ocular health of the patient.
- (3) All therapeutic prescriptions written by a Tennessee optometrist certified to practice therapeutics must include:
  - (a) Tennessee license number;
  - (b) "T" designation preceding license number, i.e. OD-T000;
- (4) Each optometrist shall utilize the necessary instrumentation to practice optometry within the scope of licensure in order that they may properly diagnose and/or treat conditions of the human eye and adnexa.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-8-112, 63-8-112(1), 63-8-113(c), 63-8-113(d), 63-8-120, 63-8-120(2), and 63-8-120(12). **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 October 29, 1991; effective December 13, 1991. Amendment filed October 18, 2004; effective January 1, 2005. Amendment filed July 10, 2006; effective September 23, 2006.

#### **1045-02-10 DISCIPLINARY ACTIONS, CIVIL PENALTIES, DECLARATORY ORDERS, SCREENING PANELS, ASSESSMENT OF COSTS, AND SUBPOENAS.**

- (1) Upon a finding by the Board that a licensee has violated any provision of the Tennessee Optometric Act (T.C.A. §63-8-101, et seq.) or the rules promulgated pursuant thereto, the Board may impose any of the following actions separately or in any combination which is deemed appropriate to the offense:
  - (a) Private Censor - This is a written action issued to a licensee for minor or near infractions. It is informal and advisory in nature and does not constitute a formal disciplinary action.
  - (b) Public Censure or Reprimand - This is written action issued to a licensee for one time and less severe violations. It is a formal disciplinary action.
  - (c) Probation - This is a formal disciplinary action which places a licensee on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the licensee's activities during the probationary period.
  - (d) Licensure Suspension - This is a formal disciplinary action which suspends a licensee's right to practice optometry for a fixed period of time. It contemplates the reentry of the licensee into practice under the originally issued license.
  - (e) Licensure Revocation - This is the most severe form of disciplinary action which removes a licensee from the practice of optometry. If revoked, it relegates the violator to the status he or she possessed prior to application for licensure. However, the Board may in its discretion allow the reinstatement of a revoked license upon conditions and after a period of time it deems appropriate. No petition for reinstatement and no new application for licensure from a person whose license was revoked shall be considered prior to the expiration of at least one (1) year unless otherwise stated in the Board's revocation Order.

(Rule 1045-02-.10, continued)

- (f) Conditions - Any action deemed appropriate by the Board required of a disciplined licensee during any period of probation or suspension or the reinstatement of a revoked license.
  - (g) Civil penalty - A monetary disciplinary action assessed by the Board pursuant to paragraph (4) of this rule.
  - (h) Once ordered, probation, suspension, revocation, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee petitions, pursuant to paragraph (2) of this rule, and appears before the Board after the period of initial probation, suspension, revocation, or other conditioning has run and all conditions placed on the probation, suspension, revocation, have been met, and after any civil penalties assessed have been paid.
- (2) Order of Compliance - This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
- (a) The Board will entertain petitions for an Order of Compliance as a supplement to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following three (3) circumstances:
    - 1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or
    - 2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation; or
    - 3. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reinstating a license previously revoked.
  - (b) Procedures
    - 1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Board's Administrative Office that shall contain all of the following:
      - (i) A copy of the previously issued order; and
      - (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
      - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.

(Rule 1045-02-.10, continued)

2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:
  - (i) Certify compliance and have the matter scheduled for presentation to the Board as an uncontested matter; or
  - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the Board finds that the petitioner has complied with all the terms of the previous order an Order of Compliance shall be issued.
5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order of Compliance  
Board of Optometry

Petitioner's Name: \_\_\_\_\_  
 Petitioner's Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Petitioner's E-Mail Address: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_

Attorney for Petitioner: \_\_\_\_\_  
 Attorney's Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attorney's E-Mail Address: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_

The petitioner respectfully represents, as substantiated by the attached documentation, that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or
3. An order issued reflecting that compliance and reinstating a license previously revoked.

(Rule 1045-02-.10, continued)

Note - You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Board's consultant and administrative staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Petitioner's Signature

- (3) Order Modifications - This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, et seq.). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.
- (a) The Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.
- (b) Procedures
1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Board's Administrative Office that shall contain all of the following:
    - (i) A copy of the previously issued order; and
    - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and
    - (iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, the petition.
  2. The Board authorizes its consultant and administrative staff to make an initial determination on the petition and take one of the following actions:

(Rule 1045-02-.10, continued)

- (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Board as an uncontested matter; or
  - (ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Board the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
  4. If the petition is granted a new order shall be issued reflecting the modifications authorized by the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.
  5. If the petition is denied either initially by staff or after presentation to the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-01-.11.

(c) Form Petition

Petition for Order Modification  
Board of Optometry

Petitioner's Name: \_\_\_\_\_  
 Petitioner's Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Petitioner's E-Mail Address: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_  
 \_\_\_\_\_  
 Attorney for Petitioner: \_\_\_\_\_  
 Attorney's Mailing Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Attorney's E-Mail Address: \_\_\_\_\_  
 Telephone Number: \_\_\_\_\_  
 \_\_\_\_\_

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Note - You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and

(Rule 1045-02-.10, continued)

notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the \_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Petitioner's Signature

(4) Civil Penalties.

(a) Purpose - The purpose of this rule is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to Public Chapter 389, Acts of 1989.

(b) Schedule of Civil Penalties

1. A Type A Civil Penalty may be imposed whenever the Board finds a person who is required to be licensed, certified, permitted, or authorized by the Board, guilty of a willful and knowing violation of the Practice Act, or regulations pursuant thereto, to such an extent that there is, or is likely to be, and imminent, substantial threat to the health, safety and welfare of an individual patient or the public. For purposes of this section, willfully and knowingly practicing as an optometrist without a permit, license, certification, or other authorization from the Board is one of the violations of the Optometry Practice Act for which a Type A Civil Penalty is assessable.
2. A Type B Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or authorized by the Board is guilty of a violation of the Optometry Practice Act or regulations pursuant thereto in such manner as to impact directly on the care of patients or the public.
3. A Type C Civil Penalty may be imposed whenever the Board finds the person required to be licensed, certified, permitted, or authorized by the Board is guilty of a violation of the Optometry Practice Act or regulations promulgated thereto, which are neither directly detrimental to the patients or public, nor directly impact their care, but have only an indirect relationship to patient care or the public.

(c) Amount of Civil Penalties

1. Type A Civil Penalties shall be assessed in the amount of not less than \$500 nor more than \$1000.
2. Type B Civil Penalties may be assessed in the amount of not less than \$100 and not more than \$500.
3. Type C Civil Penalties may be assessed in the amount of not less than \$50 and not more than \$100.

(d) Procedures for Assessing Civil Penalties

1. The Division of Health Related Boards may initiate a civil penalty assessment by filing a Memorandum of Assessment of Civil Penalty. The Division shall state in the memorandum the facts and law upon which it relies in alleging a violation, the proposed amount of the civil penalty and the basis for such penalty. The Division

(Rule 1045-02-.10, continued)

may incorporate the Memorandum of Assessment of Civil Penalty with a Notice of Charges which may be issued attendant thereto.

2. Civil Penalties may also be initiated and assessed by the Board during consideration of any Notice of Charges. In addition, the Board may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.
3. In assessing the civil penalties pursuant to these rules the Board may consider the following factors:
  - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
  - (ii) The circumstances leading to the violation;
  - (iii) The severity of the violation and the risk of harm to the public;
  - (iv) The economic benefits gained by the violator as a result of non-compliance; and,
  - (v) The interest of the public.
4. All proceedings for the assessment of civil penalties shall be governed by the contested case provisions of Title 4, Chapter 5, Tennessee Code Annotated.
- (5) Declaratory Orders - The Board adopts, as if fully set out herein, rule 1200-10-01-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Board shall be addressed by the Board pursuant to that rule and not by the Division. Declaratory Order Petition forms can be obtained from the Board's administrative office.
- (6) Screening Panels - The Board adopts, as if fully set out herein, rule 1200-10-01-.13, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.
- (7) Assessment of costs in disciplinary proceedings shall be as set forth in T.C.A. §§ 63-1-144 and 63-8-120.
- (8) Subpoenas
  - (a) Purpose - Although this rule applies to persons and entities other than optometrists, it is the Board's intent as to optometrists that they be free to comprehensively treat and document treatment of their patients without fear that the treatment or its documentation will be unduly subjected to scrutiny outside the profession. Consequently, balancing that intent against the interest of the public and patients to be protected against substandard care and activities requires that persons seeking to subpoena such information and/or materials must comply with the substance and procedures of these rules.

It is the intent of the Board that the subpoena power outlined herein shall be strictly proscribed. Such power shall not be used by the division or board investigators to seek other incriminating evidence against optometrists when the division or board does not have a complaint or basis to pursue such an investigation. Thus, unless the division or its investigators have previously considered, discovered, or otherwise received a

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complaint from either the public or a governmental entity, then no subpoena as contemplated herein shall issue.

- (b) Definitions - As used in this chapter of rules the following words shall have the meanings ascribed to them:

1. Probable Cause

- (i) For Investigative Subpoenas - shall mean that probable cause, as defined by case law at the time of request for subpoena issuance is made, exists that a violation of the Optometry Practice Act or rules promulgated pursuant thereto has occurred or is occurring and that it is more probable than not that the person(s), or items to be subpoenaed possess or contain evidence which is more probable than not relevant to the conduct constituting the violation.
- (ii) The utilization of the probable cause evidentiary burden in proceedings pursuant to this rule shall not in any way, nor should it be construed in any way to establish a more restrictive burden of proof than the existing preponderance of the evidence in any civil disciplinary action which may involve the person(s) or items that are the subject of the subpoena.

2. Presiding Officer - For investigative subpoenas shall mean any elected officer of the board, or any duly appointed or elected chairperson of any panel of the board.

- (c) Procedures

1. Investigative Subpoenas

- (i) Investigative Subpoenas are available only for issuance to the authorized representatives of the Tennessee Department of Health, its investigators and its legal staff.
- (ii) An applicant for such a subpoena must either orally or in writing notify the Board's Unit Director of the intention to seek issuance of a subpoena. That notification must include the following:
  - (I) The time frame in which issuance is required so the matter can be timely scheduled; and
  - (II) A particular description of the material or documents sought, which must relate directly to an ongoing investigation or contested case, and shall, in the instance of documentary materials, be limited to the records of the patient or patients whose complaint, complaints, or records are being considered by the division or board.
    - I. In no event shall such subpoena be broadly drafted to provide investigative access to optometry records of other patients who are not referenced in a complaint received from an individual or governmental entity, or who have not otherwise sought relief, review, or board consideration of any optometrist's conduct, act, or omission; and
    - II. If the subpoena relates to the prescribing practices of a licensee, then it shall be directed solely to the records of the

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patient(s) who received the pharmaceutical agents and whom the board of pharmacy or issuing pharmacy(ies) has so identified as recipients; and

- (III) Whether the proceedings for the issuance is to be conducted by physical appearance or electronic means; and
  - (IV) The name and address of the person for whom the subpoena is being sought, or who has possession of the items being subpoenaed.
- (iii) The Board's Unit Director shall cause to have the following done:
- (I) In as timely a manner as possible arrange for either an elected officer of the board, or any duly appointed or elected chairperson of any panel of the board, to preside and determine if issuing the subpoena should be recommended to the full Board; and
  - (II) Establish a date, time and place for the proceedings to be conducted and notify the presiding officer, the applicant and the court reporter; and
  - (III) Maintain a complete record of the proceedings including an audio tape in such a manner as to:
    - I. Preserve a verbatim record of the proceeding; and
    - II. Prevent the person presiding over the proceedings and/or signing the subpoena from being allowed to participate in any manner in any disciplinary action of any kind formal or informal which may result which involves either the person or the documents or records for which the subpoena was issued.
- (iv) The Proceedings
- (I) The applicant shall do the following:
    - I. Provide for the attendance of all persons whose testimony is to be relied upon to establish probable cause; and
    - II. Produce and make part of the record copies of all documents to be utilized to establish probable cause; and
    - III. Obtain, complete and provide to the presiding officer a subpoena which specifies the following:
      - A. The name and address of the person for whom the subpoena is being sought or who has possession of the items being subpoenaed; and
      - B. The location of the materials, documents or reports for which production pursuant to the subpoena is sought if that location is known; and
      - C. A brief, general description of any items to be produced pursuant to the subpoena; and

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- D. The date, time and place for compliance with the subpoena.
  - IV. Provide the presiding officer testimony and/or documentary evidence, which in good faith, the applicant believes is sufficient to establish that probable cause exists for issuance of the subpoena as well as sufficient proof that all other reasonably available alternative means of securing the materials, documents or items have been unsuccessful.
- (v) The Presiding Officer shall do the following:
- (I) Be selected only after assuring the Board's Unit Director that he or she has no prior knowledge of or any direct or indirect interest in or relationship with the person(s) being subpoenaed and/or the licensee who is the subject of the investigation; and
  - (II) Commence the proceedings and swear all necessary witnesses; and
  - (III) Hear and maintain the confidentiality, if any, of the evidence presented at the proceedings and present to the full board only that evidence necessary for an informed decision; and
  - (IV) Control the manner and extent of inquiry during the proceedings and be allowed to question any witness who testifies; and
  - (V) Determine based solely on the evidence presented in the proceedings whether probable cause exists and if so, make such recommendation to the full board; and
  - (VI) Not participate in any way in any other proceeding whether formal or informal, which involves the matters, items or person(s) which are the subject of the subpoena. This does not preclude the presiding officer from presiding at further proceedings for issuance of subpoenas in the matter.
- (vi) The Board shall do the following:
- I. By a vote of two thirds (2/3) of the board members issue the subpoena for the person(s) or items specifically found to be relevant to the inquiry, or quash or modify an existing subpoena by a majority vote; and
  - II. Sign the subpoena as ordered to be issued, quashed or modified.
2. Post-Notice of Charges Subpoenas - If the subpoena is sought for a contested case being heard with an Administrative Law Judge from the Secretary of State's office presiding, this definition shall not apply and all such post-notice of charges subpoenas should be obtained from the office of the Administrative Procedures Division of the Office of the Secretary of State pursuant to the Uniform Administrative Procedures Act and rules promulgated pursuant thereto.
- (d) Subpoena Forms
- 1. All subpoenas shall be issued on forms approved by the Board.

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2. The subpoena forms may be obtained by contacting the Board's Administrative Office.
- (e) Subpoena Service - Any method of service of subpoenas authorized by the Tennessee Rules of Civil Procedure or the rules of the Tennessee Department of State, Administrative Procedures Division may be utilized to serve subpoenas pursuant to this rule.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 4-5-217, 4-5-223, 4-5-224, 4-5-225, 63-1-122, 63-1-134, 63-1-138, 63-8-112, 63-8-120, 63-8-121, and 63-8-123. **Administrative History:** Original rule filed January 29, 1990; effective March 15, 1990. Repeal and new rule filed November 30, 1990; effective January 14, 1991. Amendment filed October 11, 1999; effective December 25, 1999. Amendment filed February 10, 2000; effective April 25, 2000. Amendment filed December 18, 2000; effective March 3, 2001. Amendment filed August 13, 2004; effective October 27, 2004. Amendment filed July 10, 2006; effective September 23, 2006.

**1045-02-.11 SCOPE OF PRACTICE.** The scope of the practice of optometry in Tennessee is specifically defined but includes many aspects which if not particularly regulated could lead to serious ramifications for the consuming public. This rule is to designate specific areas in the practice of optometry for regulation, the violation of which may result in disciplinary action pursuant to T.C.A. §§63-8-120(a)(2), 63-8-120(9) and 63-8-120(10).

- (1) Co-Management.
  - (a) Definitions
    1. Co-Management - The cooperative and active participation in the delivery of services and treatment to patients between optometrists and other health care providers.
    2. Consultation - The deliberations between optometrists and other health care providers with respect to the diagnosis or treatment of any particular patient.
  - (b) Intent - It is the intent of this rule to promote the cooperation of optometrists and other health care providers, when appropriate for total patient care, and cooperation in the delivery of that care within the scope of their respective professional practices. This rule provides the framework within which optometrists may work when co-managing a patient's care.
  - (c) Practice of Co-Management - The provision of eye care services or treatment which may include both consultation and active participation.
    1. The decision to receive co-managed health care rests solely with the patient. However, the decision should be made during consultation between the patient and all appropriate health care providers who may be involved in the co-management of care for that patient.
    2. An optometrist may provide follow-up care within the scope of optometric practice for a patient's medical or surgical eye problem.
    3. If post-operative care of a patient is requested, the optometrist should provide a report to the surgeon of all treatment and services rendered.
  - (d) Records

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1. Optometrist's Office - Any consultation, treatment, services or care provided for a co-managed patient in an optometrist's private office not shared by the co-managing health care provider, must be fully and completely documented in the optometrist's records for that patient.
  2. In the case of a patient who is receiving services and/or treatment from more than one (1) health care provider in a health care facility where only one (1) comprehensive set of records is kept, an optometrist, if called upon to provide services or treatment, must sign that record and include the treatment or service provided each time the patient receives such services or treatment. The optometrist must also request the other health care providers to sign the record and include the treatment or services provided each time the patient receives such services or treatment.
- (2) Universal Precautions for the Prevention of HIV Transmission - The Board adopts, as if fully set out herein, rules 1200-14-03-.01 through 1200-14-03-.03 inclusive, of the Department of Health and as they may from time to time be amended, as its rule governing the process for implementing universal precautions for the prevention of HIV transmission for health care workers under its jurisdiction.
- (3) Administration, Sale, Dispensing and Prescribing of Drugs, Including Controlled Substances.
- (a) Optometrists licensed within this State shall be subject to discipline for administering, dispensing, selling, prescribing, or otherwise distributing any drug or controlled substance to any person which is:
    1. Not in the course of professional practice, or not in good faith to relieve pain and suffering, or not in good faith to diagnose and treat conditions or diseases of the eye or eyelid; or
    2. In violation of any law of this state or of the United States.
- (4) Orthoptics and Vision Therapy - Any person other than a doctor of medicine or an osteopathic physician who examines, diagnoses, manages and treats conditions or diseases of the eye or eyelid is considered to be practicing optometry in accordance with T.C.A. § 63-8-102(12). This includes managing a patient through vision therapy, visual training, visual rehabilitation, orthoptics or eye exercises. "Orthoptic training" means any ocular exercise for the correction or relief of abnormal muscles or functions of the eyes in accordance with T.C.A. § 63-8-102(11). A person who hold him/herself out as being able to remedy or relieve defects of vision or muscular anomalies or other abnormal conditions of the eyes by engaging in orthoptic training or by adjusting, fitting or adapting lenses or prisms to remedy or relieve defects of vision or muscular anomalies is engaged in the practice of optometry, as defined in Tennessee Code Annotated 63-8-102(12).
- (5) Eye Examination Requirements - All eye examinations performed by licensees shall include the professionally recognized components listed in subpart (3) (a) 2. (i) of rule 1045-02-.08 for spectacles and in subpart (3) (a) 2. (ii) of rule 1045-02-.08 for contact lenses.
- (6) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked license issued by the Board has the right to use the titles "Optometrist," "Doctor of Optometry," "Optometric Physician," or "O.D." and to practice optometry, as defined in T.C.A. §§ 63-8-102. Violation of this rule or T.C.A. §§ 63-8-113 and 63-8-120 regarding use of titles shall constitute unprofessional conduct and subject the licensee to disciplinary action.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-1-146, 63-8-102, 63-8-102(12)(E), 63-8-112, 63-8-112(1) & (4), 63-8-113, and 63-8-120. **Administrative History:** Original rule filed September 18, 1991; effective

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*November 2, 1991. Amendment filed October 29, 1991; effective December 13, 1991. Amendment filed June 9, 1994; effective August 23, 1994. Amendment filed August 2, 1995; effective October 16, 1995. Amendment to rule filed December 11, 1998; effective February 23, 1999. Amendment filed January 4, 2002; effective March 20, 2002. Amendment filed October 18, 2004; effective January 1, 2005. Amendment filed July 10, 2006; effective September 23, 2006.*

**1045-02-12 PRIMARY EYE CARE PROCEDURES.** For the purpose of 1993 Public Acts Chapter 295, the performance of primary eye care procedures rational to the treatment of conditions or diseases of the eye or eyelid is determined by the board to be those procedures that could be performed in the optometrist's office or other health care facilities that would require no more than a topical anesthetic. Laser surgery and radial keratotomy are excluded.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-8-12, and Public Chapter 295, Acts of 1993. **Administrative History:** Original rule filed February 14, 1993; effective April 30, 1994.

**1045-02-13 OPTOMETRIC PROFESSIONAL CORPORATIONS AND OPTOMETRIC PROFESSIONAL LIMITED LIABILITY COMPANIES.**

- (1) Optometric Professional Corporations (OPC) - Except as provided in this rule Optometric Professional Corporations shall be governed by the provisions of Tennessee Code Annotated, Title 48, Chapter 101, Part 6.
  - (a) Filings – An OPC need not file its Charter or its Annual Statement of Qualifications with the Board.
  - (b) Ownership of Stock - With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Section 48-101-610 only the following may form and own shares of stock in a foreign or domestic OPC doing business in Tennessee:
    1. Optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8 or licensed in another state; and/or
    2. A foreign or domestic general partnership, OPC or OPLLC in which all partners, shareholders, members or holders of financial rights are either:
      - (i) Optometrists licensed pursuant to Tennessee Code Annotated, Title 63, Chapter 8 to practice optometry in Tennessee or optometrists licensed by other states, or composed of entities which are directly or indirectly owned by such licensed optometrists; and/or
      - (ii) Professionals authorized by Tennessee Code Annotated §§ 48-101-610, 48-248-401, or 48-249-1109 to either own shares of stock in an OPC or be a member or holder of financial rights in an OPLLC; and/or
      - (iii) A combination of professionals authorized by subparts (i) and (ii).
  - (c) Officers and Directors of Optometric Professional Corporations -
    1. All, except the following officers, must be persons who are eligible to form or own shares of stock in an optometric professional corporation as limited by T.C.A. § 48-101-610 (d) and subparagraph (1)(b) of this rule:
      - (i) Secretary;
      - (ii) Assistant Secretary;

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- (iii) Treasurer; and
    - (iv) Assistant Treasurer.
  - 2. With respect to members of the Board of Directors, only persons who are eligible to form or own shares of stock in an optometric professional corporation as limited by T.C.A. Section 48-101-610 (d) and subparagraph (1) (b) of this rule shall be directors of an OPC.
- (d) Practice Limitations
  - 1. Engaging in, or allowing another optometrist incorporator, shareholder, officer, or director, while acting on behalf of the OPC, to engage in, optometric practice in any area of practice or specialty beyond that which is specifically set forth in the charter may be a violation of Tennessee Code Annotated, Section 63-8-120 (2).
  - 2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to an OPC.
  - 3. Nothing in these rules shall be construed as prohibiting an OPC from electing to incorporate for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Business Corporations Act so long as those purposes do not interfere with the exercise of independent optometric judgment by the optometrist incorporators, directors, officers, shareholders, employees or contractors of the OPC who are practicing optometry as defined by Tennessee Code Annotated, Section 63-8-102 (12).
  - 4. Nothing in these rules shall be construed as prohibiting an optometrist from owning shares of stock in any type of professional corporation other than an OPC so long as such ownership interests do not interfere with the exercise of independent optometric judgment by the optometrist while practicing optometry as defined by Tennessee Code Annotated, Section 63-8-102 (12).
- (2) Optometric Professional Limited Liability Companies (OPLLC) - Except as provided in this rule Optometric Professional Limited Liability Companies shall be governed by either the provisions of Tennessee Code Annotated, Title 48, Chapters 248 or 249.
  - (a) Filings - Articles filed with the Secretary of State shall be deemed to be filed with the Board and no Annual Statement of Qualifications need be filed with the Board.
  - (b) Membership - With the exception of the health care professional combinations specifically enumerated in Tennessee Code Annotated, Sections 48-248-401 or 48-249-1109 only the following may be members or holders of financial rights of a foreign or domestic OPLLC doing business in Tennessee:
    - 1. Optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8 or licensed in other states; and/or
    - 2. A foreign or domestic general partnership, OPC or OPLLC in which all partners, shareholders, members or holders of financial rights are either:
      - (i) Optometrists licensed pursuant to Tennessee Code Annotated Title 63, Chapter 8 to practice optometry in Tennessee or optometrists licensed by

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other states or composed of entities which are directly or indirectly owned by such licensed optometrists; and/or

- (ii) Professionals authorized by Tennessee Code Annotated, Sections 48-101-610, 48-248-401, or 48-249-1109 to either own shares of stock in an OPC or be a member or holder of financial rights in an OPLLC; and/or
- (iii) A combination of professionals authorized by subparts (i) and (ii).

(c) Managers, Directors or Governors of an OPLLC

1. All, except the following managers, must be persons who are eligible to form or become members or holders of financial rights of an optometric professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule:
  - (i) Secretary
  - (ii) Treasurer
2. Only persons who are eligible to form or become members or holders of financial rights of an optometric professional limited liability company as limited by T.C.A. § 48-248-401 and subparagraph (2) (b) of this rule shall be allowed to serve as a director, or serve on the Board of Governors of an OPLLC.

(d) Practice Limitations

1. Engaging in, or allowing another optometrist member, officer, manager, director, or governor, while acting on behalf of the OPLLC, to engage in, optometric practice in any area of practice or specialty beyond that which is specifically set forth in the articles of organization may be a violation of Tennessee Code Annotated, Sections 63-8-120 (2).
2. Nothing in these rules shall be construed as prohibiting any health care professional licensed pursuant to Tennessee Code Annotated, Title 63 from being an employee of or a contractor to an OPLLC.
3. Nothing in these rules shall be construed as prohibiting an OPLLC from electing to form for the purposes of rendering professional services within two (2) or more professions or for any lawful business authorized by the Tennessee Limited Liability Company Act or the Tennessee Revised Limited Liability Company Act so long as those purposes do not interfere with the exercise of independent optometric judgment by the optometrist members or holders of financial rights, governors, officers, managers, employees or contractors of the OPLLC who are practicing optometry as defined by Tennessee Code Annotated, Section 63-8-102 (12).
4. Nothing in these rules shall be construed as prohibiting an optometrist from being a member of any type of professional limited liability company other than an OPLLC so long as such membership interests do not interfere with the exercise of independent optometric judgment by the optometrist while practicing optometry as defined by Tennessee Code Annotated, Section § 63-8-102 (12).
5. All OPLLCs formed in Tennessee pursuant to Tennessee Code Annotated, Sections 48-248-104 or 48-249-1104, to provide services only in states other

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than Tennessee shall annually file with the Board a notarized statement that they are not providing services in Tennessee.

- (3) Dissolution - The procedure that the Board shall follow to notify the attorney general that an OPC or a OPLLC has violated or is violating any provision of Title 48, Chapters 101, 248 or 249, shall be as follows but shall not terminate or interfere with the secretary of state's authority regarding dissolution pursuant to Tennessee Code Annotated, Sections 48-101-624, 48-248-409, or 48-249-1122.
  - (a) Service of a written notice of violation by the Board on the registered agent of the OPC and/or OPLLC or the secretary of state if a violation of the provisions of Tennessee Code Annotated, Title 48, Chapters 101, 248 or 249 occurs.
  - (b) The notice of violation shall state with reasonable specificity the nature of the alleged violation(s).
  - (c) The notice of violation shall state that the OPC and/or OPLLC must, within sixty (60) days after service of the notice of violation, correct each alleged violation or show to the Board's satisfaction that the alleged violation(s) did not occur.
  - (d) The notice of violation shall state that, if the Board finds that the OPC and/or OPLLC is in violation, the attorney general will be notified and judicial dissolution proceedings may be instituted pursuant to Tennessee Code Annotated, Title 48.
  - (e) The notice of violation shall state that proceedings pursuant to this section shall not be conducted in accordance with the contested case provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5 but that the OPC and/or OPLLC, through its agent(s), shall appear before the Board at the time, date, and place as set by the Board and show cause why the Board should not notify the attorney general and reporter that the organization is in violation of the Act or these rules. The Board shall enter an order that states with reasonable particularity the facts describing each violation and the statutory or rule reference of each violation. These proceedings shall constitute the conduct of administrative rather than disciplinary business.
  - (f) If, after the proceeding the Board finds that an OPC and/or OPLLC did violate any provision of Title 48, Chapters 101, 248, and/or 249 or these rules, and failed to correct said violation or demonstrate to the Board's satisfaction that the violation did not occur, the Board shall certify to the attorney general and reporter that it has met all requirements of either Tennessee Code Annotated, Sections 48-101-624 (1) - (3) and/or 48-248-409 (1) - (3) and/or 48-249-1122 (1) - (3).
- (4) Violation of this rule by any optometrist individually or collectively while acting as an OPC or as an OPLLC may subject the optometrist(s) to disciplinary action pursuant to Tennessee Code Annotated, Sections 63-8-120 (a) (2).
- (5) The authority to own shares of stock or be members or holders of financial rights in an OPC or an OPLLC granted by statute or these rules to professionals not licensed in this state shall in no way be construed as authorizing the practice of any profession in this state by such unlicensed professionals.

**Authority:** T.C.A. §§4-5-202, 4-5-204, 48-101-605, 48-101-608, 48-101-610, 48-101-618, 48-101-624, 48-101-628, 48-101-629, 48-101-630, 48-248-104, 48-248-202, 48-248-401, 48-248-404, 48-248-409, 48-248-501, 48-248-601, 48-248-602, 48-248-603, 48-249-101, *et seq.*, 63-8-102, 63-8-112, 63-8-115, and 63-8-120. **Administrative History:** Original rule filed June 10, 2004; effective August 24, 2004. Amendment filed March 22, 2007; effective June 9, 2007.

**1045-02-.14 OPTOMETRIC RECORDS.**

- (1) Purposes – The purposes of these rules are:
  - (a) To recognize that optometric records are an integral part of the practice of optometry as defined in T.C.A. § 63-8-102.
  - (b) To give optometrists, their professional and non-professional staff, and the public direction about the content, transfer, retention, and destruction of those records.
- (2) Conflicts – As to optometric records, these rules should be read in conjunction with the provisions of T.C.A. § 63-2-101, T.C.A. § 63-2-102 and Rule 1045-02-.11 (1) (d), and are not intended to conflict with those statutes or rules in any way. Those statutes and rules, along with these rules, govern the subjects that they cover in the absence of other controlling state or federal statutes or rules to the contrary.
- (3) Applicability – These rules regarding optometric records shall apply only to those records, the information for which was obtained by optometrists or their employees, or those over whom they exercise supervision, for purposes of services provided in any clinical setting other than those provided in a hospital as defined by T.C.A. § 68-11-302 (4), a hospital emergency room or hospital outpatient facility.
- (4) Optometric Records
  - (a) Duty to Create and Maintain Optometric Records – As a component of the standard of care and of minimal competency an optometrist must cause to be created and maintained an optometric record for every patient for whom he or she, and/or any of his or her supervisees, performs services or provides professional consultation
  - (b) Notice – Anywhere in these rules where notice is required to be given to patients of any optometrist that notice shall be required to be issued within thirty (30) days of the date of the event that triggers the notice requirement, and may be accomplished by public notice or by any other means reasonably designed to inform the patients.
  - (c) Content – All optometric records, or summaries thereof, produced in the course of the practice of optometry for all patients shall include all information and documentation listed in T.C.A. § 63-2-101 (c) (2) and such additional information that is necessary to insure that a subsequent reviewing or treating optometrist can both ascertain the basis for the diagnosis, treatment plan and outcomes, and provide continuity of care for the patient.
  - (d) Transfer
    1. Records of Optometrists upon Death or Retirement - When an optometrist retires or dies while in practice, patients seen by the optometrist in his/her office during the immediately preceding thirty-six (36) months shall be notified by the optometrist, or his/her authorized representative and urged to find a new optometrist and be informed that upon authorization, copies of the records will be sent to the new optometrist.
    2. Records of Optometrists upon Departure from a Group - The responsibility for notifying patients of an optometrist who leaves a group practice whether by death, retirement, or departure shall be governed by the optometrist's employment contract.

(Rule 1045-02-.14, continued)

- (i) Whomever is responsible for that notification must notify patients seen by the optometrist in his/her office during the immediately preceding thirty-six (36) months of his/her departure.
  - (ii) Except where otherwise governed by provisions of the optometrist's contract, those patients shall also be notified of the optometrist's new address and offered the opportunity to have copies of their medical records forwarded to the departing optometrist at his or her new practice. Provided however, a group shall not withhold the records of any patient who has authorized their transfer to the departing optometrist or any other optometrist.
  - (iii) The choice of optometrist in every case should be left to the patient, and the patient should be informed that upon authorization his/her records will be sent to the optometrist of the patient's choice.
3. Sale of an Optometric Practice - An optometrist or the estate of a deceased optometrist may sell the elements that comprise his/her practice, one of which is its goodwill, i.e., the opportunity to take over the patients of the seller by purchasing the optometrist's records. Therefore, the transfer of records of patients is subject to the following:
  - (i) The optometrist (or the estate) must ensure that all optometric records are transferred to another optometrist or entity that is held to the same standards of confidentiality as provided in these rules.
  - (ii) Patients seen by the optometrist in his/her office during the immediately preceding thirty-six (36) months shall be notified that the optometrist (or the estate) is transferring the practice to another optometrist or entity who will retain custody of their records and that at their written request the copies of their records will be sent to another optometrist or entity of their choice.
- (e) Abandonment of Optometric Records – For purposes of this section of the rules death of an optometrist shall not be considered as abandonment.
  1. It shall be a prima facie violation of T.C.A. § 63-8-120(a)2 for an optometrist to abandon his practice without making provision for the security, or transfer, or otherwise establish a secure method of patient access to their records.
  2. Upon notification that an optometrist in a practice has abandoned his practice and not made provision for the security, or transfer, or otherwise established a secure method of patient access to their records, patients should take all reasonable steps to obtain their optometric records by whatever lawful means available and should immediately seek the services of another optometrist.
- (f) Retention of Optometric Records – Optometric records shall be retained for a period of not less than ten (10) years from the optometrist's or his supervisees' last professional contact with the patient except for the following:
  1. Optometric records for incompetent patients shall be retained indefinitely.
  2. Optometric records of minors shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or ten (10) years from the date of the optometrist's or his supervisees' last professional contact with the patient, whichever is longer.

(Rule 1045-02-.14, continued)

3. Notwithstanding the foregoing, no optometric record involving services which are currently under dispute shall be destroyed until the dispute is resolved.

(g) Destruction of Optometric Records

1. No record shall be singled out for destruction other than in accordance with established office procedures.
2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.
3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.
4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference. The record of destruction need not list the individual patient optometric records that were destroyed but shall be sufficient to identify which group of destroyed records contained a particular patient's optometric records.

- (5) Violations – Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. § 63-8-120(a)(2).

**Authority:** T.C.A. §4-5-202, 4-5-204, 63-2-101, 63-2-102, 63-8-112, and 63-8-120. **Administrative**

**History:** Original rule filed January 29, 1990; effective March 15, 1990. Repeal filed November 30, 1990; effective January 14, 1991. Repeal and new rule filed October 18, 2004; effective January 1, 2005.

**1045-02-.15 CONSUMER RIGHT-TO-KNOW REQUIREMENTS.**

- (1) Malpractice Reporting Requirements - The threshold amount below which medical malpractice judgments, awards or settlements in which payments are awarded to complaining parties need not be reported pursuant to the "Health Care Consumer Right-To-Know Act of 1998" shall be ten thousand dollars (\$10,000).
- (2) Criminal Conviction Reporting Requirements - For purposes of the "Health Care Consumer Right-To-Know Act of 1998, the following criminal convictions must be reported:
  - (a) Conviction of any felony; and
  - (b) Conviction or adjudication of guilt of any misdemeanor, regardless of its classification, in which any element of the misdemeanor involves any one or more of the following:
    1. Sex.
    2. Alcohol or drugs.
    3. Physical injury or threat of injury to any person.
    4. Abuse or neglect of any minor, spouse or the elderly.
    5. Fraud or theft.
  - (c) If any misdemeanor conviction reported under this rule is ordered expunged, a copy of the order of expungement signed by the judge must be submitted to the Department before the conviction will be expunged from any profile.

(Rule 1045-02-.15, continued)

**Authority:** T.C.A. §§4-5-202, 4-5-204, 63-8-115, 63-51-101, et seq., and Public Chapter 373 of the Public Acts of 1999. **Administrative History:** Original rule filed November 18, 1999; effective January 31, 2000.

#### 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(38).
- (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.

(Rule 1045-02-.16, continued)

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, quantity prescribed, and the method by which the prescription has been 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 that the prescription was transmitted electronically 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.

**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].

**Administrative History:** Public necessity rule filed June 25, 2009; effective through December 7, 2009. Public necessity rule filed June 25, 2009 expired; on December 8, 2009, the rule reverted to its prior status. Emergency rule filed December 21, 2009; effective through June 19, 2010.