

Tennessee Board of Optometry



Newsletter



2010

A Regulatory Agency of the state of Tennessee

Vol. 7, No. 2

227 French Landing, Suite 300, Heritage Place Metro Center, Nashville, TN 37243 <http://tennessee.gov/health> (615) 532-5157 or 1-800-778-4123 extension 25157 • Office Hours: Monday – Friday 8:00 a.m. to 4:30 p.m. Central Time (except state and federal holidays) Fax: (615) 532-5369

In conjunction with the purpose and goals of the Department of Health, the Mission of the Bureau of Health Licensure and Regulation is to: Monitor, access, and enforce health care laws and regulations; Protect, promote and enhance quality health care for all citizens; Continuously strive to meet the needs of our customers in a respectful and caring manner; Provide quality work-life necessary to attract and retain competent, caring employees; Empower our employees to become entrepreneurs in their jobs; Increase awareness and public confidence in our services; and, Utilize our resources efficiently and cost effectively.

Current Composition of the Board

The Board of Optometry is composed of the following members: Richard Orgain, OD, chair; Linda Tharp, OD, vice chair; David Talley, OD, secretary; Scott Spivey, OD; Jeff Foster, OD and Kimberly Button, citizen member.

2011 Board Meeting Dates

February 9, 2011
9 a.m., Poplar Room

May 11, 2011
9 a.m., Iris Room

August 10, 2011
9 a.m., Poplar Room

All board meetings will be held at 227 French Landing, Suite 150, Heritage Place, MetroCenter, Nashville, TN, unless otherwise noted.

Optometry Website

You may download a copy of the rules, applications and forms, board member list, board meeting schedule, policy statements, and other pertinent information at the board's website:

health.state.tn.us/boards/optometry/index.htm

Practitioners Currently Under Monitoring

The board's disciplinary coordinator is currently "monitoring" 3 practitioners:

- 1 suspended
- 2 probation

Change of Address

Must be reported (in writing or by e-mail) to the board's office within 30 days! Please include the following:

- your name and license number;
- your profession;
- your old address and phone number;
- your new address and phone number, e-mail address, and/or your fax number; and
- your signature!

Keeping the board's administrative staff up to date on your location facilitates the timely notification to you of important information such as your application for licensure renewal and important statutory and rule changes.

You may fax your change to the board's administrative office at (615) 532-5369 or by mail at: 227 French Landing, Heritage Place MetroCenter, Suite 300, Nashville, TN 37243.

You may e-mail the board at: TN.Health@tn.gov, call the Board at 615/532-5157, or visit the web site at: www.health.state.tn.us/boards/optometry/index.htm

Continuing Education Requirements

The board's rule regarding continuing education requires all optometry to complete thirty (30) hours of continuing education courses during the two (2) calendar years (January 1 – December 31) that precede the licensure renewal year.

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.

**To contact this board call
(615) 532-5157 local or (800) 778-4123
extension 25157 nationwide
or
write to:**

**Tennessee Board of Optometry
227 French Landing, Suite 300
Heritage Place – MetroCenter
Nashville, TN 37243**

Reminder about Practitioner Profiles

The Health Care Consumer Right-to-Know Act of 1998, Tenn Code Ann. § 63-51-101 et seq., requires designated licensed health professionals to furnish certain information to the Tennessee Department of Health. The information for public dissemination includes: (1) A description of any criminal convictions for felonies within the most recent ten (10) years. (2) A description of any final disciplinary actions of licensing boards in other states within the most recent ten (10) years. (3) A description of any final disciplinary actions of licensing boards in other states within the most recent ten (10) years. Only cases which have occurred within the most recent ten (10) years shall be disclosed by the department to the public. (5) All malpractice court judgments in which a payment is awarded to a complaining party and all settlements of malpractice claims in which a payment is made to a complaining party beginning with reports for 1998 and each subsequent year; provided, such reports shall not be disseminated beyond the most recent ten-year period, but shall include the most recent ten-year period for which reports have been filed. From the information submitted, the Department will compile a practitioner profile which is required to be made available to the public via the World Wide Web and toll-free telephone line after May 1, 1999. **Each practitioner who has submitted information must update that information in writing by notifying the Department of Health, Healthcare Provider Information Unit, within 30 days after the occurrence of an event or an attainment of a status that is required to be reported by the law.** A copy of your initial or updated profile will be furnished to you for your review prior to publication. That opportunity will allow you to make corrections, additions and helpful explanatory comments. **Failure to comply with the requirement to submit and update profiling**

information constitutes a ground for disciplinary action against your license.

A blank copy of the profile may be obtained at: <http://health.state.tn.us/Downloads/g6019027.pdf>

Professional Occupations Tax

Tenn Code Ann. §67-4-1701, et seq., requires the payment of an annual professional privilege (occupation) tax. Failure to pay your professional privilege tax constitutes grounds for suspension of your license to practice in Tennessee. If you fail to pay your professional privilege tax, the Department of Health will file formal charges against you seeking the suspension of your license pursuant to Tenn Code Ann. §67-4-1704 and Tenn Code Ann. §63-9-101, et seq. Avoid the possible suspension of your privilege to practice in Tennessee by remitting your tax to the Department of Revenue in a timely fashion. For more information please go to:

<http://tennessee.gov/revenue/tntaxes/proftax.htm>

Note: The Board of Optometry does not assess this tax; however, the Board's Administrative Office has recently mailed letters to licensees who have failed to pay their professional occupations tax. Practitioners who remain delinquent are being processed for suspension of their license.

New Rule

Rule 1045-02-.16 pertaining to tamper-resistant prescriptions 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 Tenn Code Ann. § 63-10-204(16).

(b) "Prescriber" means an individual licensed in Tennessee as an optometrist.

(c) "Prescription order" shall have the same meaning as set forth in Tenn Code Ann. § 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.

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. The rule became effective June 20, 2010.

Statutory Changes of Interest

The 2010 Legislative Session has ended, and the administrative staff of the Board of Optometry has monitored several bills that are of interest to optometrists in the state of Tennessee. Below is a brief summary of those bills.

The complete text of Public Acts is available at:
<http://www.tennessee.gov/sos/acts/index.htm>

Public Chapter 663

This Public Chapter requires all optometrists to report a person to local law enforcement within five (5) business days if the health care provider has good reason to believe that the person has obtained controlled substances unlawfully. The Public Chapter also changes current law by providing that the health care provider must have actual knowledge that the person has obtained the controlled substances unlawfully. Further, the controlled substance database advisory committee has the authority to develop a form that health care providers may choose to use to make reports; this provision is not contained in current law. Further, the Public Chapter provides that a health care provider may, but is not required to, report this information who is providing treatment to a person with a mental illness. This Public Chapter further provides that

a health care provider is not prohibited from conveying information to local law enforcement if the information was obtained from the controlled substance monitoring database as long as the information is pertinent and is for the period of time thirty (30) days prior to the date of treatment leading to the alleged offense. This thirty (30) day report is grounds to obtain more detailed controlled substance database information. Current law provides that the health care provider would be immune from liability for notifying local law enforcement of the controlled substance information. This Public Chapter expands this by providing immunity from liability to persons working under the direction of a health care provider. The Public Chapter also amends current law by adding language to the current law providing that the penalty against a health care provider for violating the provisions of this law would be a civil penalty assessed by the licensing board that regulates the health care provider and shall be limited to cases involving a pattern of willful failure to make a report. This Public Chapter became effective on March 30, 2010.

Public Chapter 767

This Public Chapter allows for a prescription order from a prescriber who has died being dispensed during a limited period of time after the prescriber's death in certain situations. The Public Chapter became effective March 31, 2010.

Public Chapter 795

This Public Chapter requires all written, printed, or computer-generated orders for a Schedule II controlled substance prepared by an optometrist be written legibly, printed, or computer-generated as a separate prescription order; requires on handwritten prescriptions that quantity be written in letters or numbers instead of both letters and numbers. The Public Chapter became effective April 5, 2010.

Public Chapter 862

This Public Chapter amends Tenn Code Ann. Title 63 (Professions of the Healing Arts), Chapter 2 (Medical Records), Part 1 (Release of Medical Records) and Title 68 (Health, Safety and Environmental Protection), Chapter 11 (Health Facilities and Resources), Part 15 (Protection of Patient's Privacy), to enact the "Colby Stansberry Act" relative to the authorized release of medical records. This Public Chapter allows a patient's authorized representative or next of kin (in the event that there is no authorized representative) to obtain the patient's medical records after the patient is incapacitated or deceased. Current law (Tenn Code Ann. §63-2-101, Release of medical records) already provides that a health care provider shall provide a patient or the patient's authorized representative with a copy or summary of the patient's medical records upon the patient's or authorized representative's written request. Current law does not require that the informed consent must be presented to the health care provider

when the patient is alive or is competent. The Public Chapter, which adds a new section to current law, does not change an authorized representative's ability to obtain the patient's medical records; it clarifies that the authorized representative's informed consent survives the patient's death and incapacity and that a health care provider shall provide the medical records to the representative even if the representative provides the informed consent after the patient's death or incapacity. The Public Chapter also provides that should the patient not have an authorized representative, upon the patient's death or incapacity, the patient's next of kin could obtain the patient's medical records. Current law does not contain a provision authorizing the patient's next of kin to obtain the patient's medical records. The Public Chapter also adds a new subsection to the law to specify what the patient's informed consent must contain. The form must include the name of the patient; type of information; name of facility; permitted purpose, individuals, agencies, or organization to whom disclosure may be made; signature of patient or representative; date signed; and effective time period of consent. Current law does not contain a provision about what must be contained in an informed consent. The Public Chapter also amends current law (Tenn Code Ann. §68-11-1503(a)(1) Confidentiality) relative to the obligations of a licensed health care facility in releasing a patient's medical records. The Public Chapter contains the same language about the release of medical records after the patient's death or incapacity that was placed in Title 63 as stated above. The Public Chapter also adds a new subsection to the law relative to licensed health care facilities to specify what the patient's informed consent must contain; the Public Chapter contains the same language as provided in Title 63 as stated above. The Public Chapter became effective April 30, 2010.

Public Chapter 865

This Public Chapter amends Tenn Code Ann. Title 63 (healing Arts), Chapter 2 (Medical Records), Part 1, relative to charges for copying and certifying medical records. The Public Chapter increases the costs of obtaining medical records from health care providers by lowering the threshold amount of pages that can be provided to a requestor for twenty dollars (\$20.00). Current law (Tenn Code Ann. §63-2-102, Costs of reproduction, copying or mailing of records) provides that the cost for obtaining medical records shall not exceed twenty dollars (\$20.00). Current law (Tenn Code Ann. §63—2-102, Costs of reproduction, copying or mailing of records) provides that the cost for obtaining medical records shall not exceed twenty dollars (\$20.00) for medical records that do not exceed forty (40) pages; the bill changes the forty (40) page limit to five (5) pages. Current law provides that the cost for those records exceeding forty (40) pages is twenty-five cents (\$.25) for each page. The Public Chapter changes the per page cost from twenty-five cents (\$.25) to fifty cents (\$.50) for those pages of the medical record that exceed the five (5) page limit. The Public Chapter also adds a provision that is not contained in current law providing that if the

requested records are delivered by email, then the processing fee may not exceed fifty dollars (\$50.00). Mailing or shipping costs may be added on to this processing fee should the digital or electronic records be shipped to the requestor. The Public Chapter adds another provision indicating that the health care provider may charge a fee not to exceed twenty dollars (\$20.00) for certifying medical records that require notarization. The Public Chapter removes provisions contained in current law that provide that payment of the costs may be required by the provider prior to the records being furnished and that upon payment, the records shall be provided without delay. Also removed is a provision providing that in workers' compensation cases, a request for medical records shall include a medical or anatomical impairment rating. The Public Chapter also removes a provision providing that the payment requirements contained in current law will not supersede any other provision of the law that establishes costs for reproduction and copying. The Public Chapter became effective July 1, 2010.

Public Chapter 1043

This Public Chapter provides that a licensee may renew a license within sixty (60) days following the license expiration date upon payment of the renewal fee in addition to a late penalty established by the board for each month or fraction of a month that payment for renewal is late; provided that the late penalty shall not exceed twice the renewal fee. When any licensee fails to renew a license and pay the biennial renewal fee within sixty (60) days after renewal becomes due, as provided in this section, the license shall be automatically revoked at the expiration of sixty (60) days after the renewal was required without further notice or hearing.

Further, any licensee whose license is automatically revoked as provided in subsection (b), may apply in writing to the board for reinstatement of such license, which may be granted by the board upon the payment of all past due fees and reinstatement fees established by the board, and upon further conditions as the board may require. The Public Chapter became effective May 27, 2010.

Public Chapter 1084

This Public Chapter amends Tenn Code Ann. §63-1-149 and requires that on and after October 1, 2010, before employing or contracting with any person who would be providing direct patient care, for whom a background check has not been completed, a health care professional licensed under any chapter of title 63 or title 68, chapters 24 and 140, shall initiate and perform a "registry check" which for the purposes of this section is defined as:

- (1) A state-by-state look in any state in which the person has lived in the previous seven (7) years of the national sex offender public

- registry website coordinated by the United States Department of Justice, including but not limited to the sexual offender registry
- (2) maintained by the Tennessee Bureau of Investigation pursuant to Title 40, Chapter 39, Part 2; and
 - (3) Any adult abuse registry maintained for any state in which the person has lived in the previous seven (7) years; and
 - (3) The Department of Health's Elder Abuse Registry established pursuant to Title 68, Chapter 11, Part 10.

Additionally, should an applicant be listed on any of the registries listed above in subdivisions (a)(1)-(3), the health care professional shall not employ or contract with the person if the person would be providing direct patient care.

A health care professional who complies with the requirements to perform registry checks under subsection (a), or relies on a documented representation provided by an entity with which the health care professional contracts that the person who will work in the office is not on any of these registries, shall not be subject to civil or criminal liability solely based upon the information provided through a registry check under this section. This immunity shall extend to a claim related to the professional's refusal to employ or contract with a person based on information obtained from a registry check.

This section is not intended to apply to contracted, external staff who provide such services as cleaning services, maintenance of office or medical equipment or other services where direct patient contact is not intended.

This section shall not apply to health care professionals licensed under Title 63, Chapter 12.

The Department of Health posted on its website, as well as the website of each applicable licensing board, a link to all potential databases the health care professional would be required to check pursuant to subsection (a) above. In addition, each applicable licensing board shall notify all of its licensees at least annually through board newsletters of their obligations under this statute. The Public Chapter became effective June 3, 2010.

Audit Results

38 optometrists audited

28 compliant

10 non-compliant

Non-compliant practitioners are subject to Board discipline which includes a fine of \$100 and make up the

delinquent hours. The action taken against the practitioners is reportable on the Department of Health web site on the monthly Disciplinary Action Report.

Number of Licensed Optometrists

Optometrists - 1161

TENNESSEE BOARD OF OPTOMETRY

BOARD MEMBERS

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David Talley, O.D.
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