

# Tennessee Board of Optometry



## Newsletter



Spring 2008

A Regulatory Agency of the State of Tennessee

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227 French Landing, Suite 300, Heritage Place Metro Center, Nashville, TN 37243 • <http://health.state.tn.us> (615) 532-5157 or 1-800-778-4123  
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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.



**Susan R. Cooper, M.S.N., R.N.**  
**Commissioner**  
**Tennessee**  
**Department of Health**

Susan R. Cooper, M.S.N., R.N. made Tennessee history on January 20, 2007 when she became the first nurse to serve as Commissioner of the Tennessee Department of Health.

Commissioner Cooper is a master's prepared registered nurse. She earned both her bachelor and master of nursing degrees from Vanderbilt University School of Nursing.

Cooper was raised in Tennessee, and considers it a great honor to have been asked by Governor Phil Bredesen to serve as Commissioner of Health. Her priorities are to protect, promote and improve the health of all Tennesseans. She considers this the most important work she will face in her career.

"Now is the time that I can perhaps influence the citizens of this state in a positive manner," said Cooper. "I hope to leave a footprint on the health status of this state."

Cooper first came to the state level in 2005, as a special policy and health advisor to the Governor. She was charged with developing Tennessee's Health Care Safety Net program for citizens facing dis-enrollment from TennCare.

Cooper later assumed leadership of Project Diabetes, a program the Governor created to address the threat of Type 2 diabetes facing young people in Tennessee. In

addition, she helped facilitate the creation of the Governor's GetFitTN initiative. The statewide public awareness program is aimed at addressing the rising epidemic of Type 2 diabetes and risk factors that lead to diabetes, like obesity. The program involves educating adults and children how they can make modest lifestyle changes to delay or prevent the onset of Type 2 diabetes.

Before joining state government, Cooper was a faculty member and Assistant Dean of Practice at Vanderbilt University's School of Nursing, overseeing the nurse-managed clinics and operations led by the School. She also served as co-director of the Health Systems Management program at Vanderbilt University School of Nursing.

Cooper has an extensive background in health policy, health care regulation, and evidence-based practice. She helped create the Center for Advanced Practice Nursing and Allied Health at Vanderbilt University Medical Center, covering the regulatory needs and credentialing for the hundreds of non-physician providers at Vanderbilt.

Cooper was born and raised in West Tennessee. Her father was an ophthalmologist and her mother was a nurse. One of the Commissioner's first jobs as a teenager was in her father's office in West Tennessee, checking in patients, and later performing routine vision checks.

The Commissioner currently resides in Franklin, Tennessee. She enjoys spending time with her three grown children and three grandchildren.

**Christy A. Allen**  
**Assistant Commissioner**  
**Bureau of Health Licensure and Regulation**

On April 10, 2007, Commissioner Cooper appointed Christy A. Allen as the new assistant commissioner for the Tennessee Department of Health's Bureau of Health Licensure and Regulation. In this role, Allen will oversee a staff of approximately 500 people in the Divisions of Health Related Board, Health Care Facilities and Emergency Medical Services.

Prior to joining the Department of Health, Allen served as a legal services director and Deputy General Counsel with the Department of Commerce and Insurance, where she advised senior department officials on legal, policy and legislative matters. She was supervising attorney for the Division of Regulatory Boards and the Division of Fire Prevention legal section.

Allen received a Doctor of Jurisprudence degree from the George C. Taylor School of Law at the University of Tennessee and a Bachelor of Arts degree from Bryn Mawr College. She has been licensed to practice law in Tennessee since 1993.

**Cover Tennessee: Health Care for Tennessee's Uninsured**

Governor Phil Bredesen's multi-pronged effort, **Cover Tennessee**, extends health insurance to uninsured individuals in Tennessee through three insurance programs and a pharmacy assistance program.

**CoverTN** is an affordable and portable health insurance initiative for working Tennesseans who are uninsured. Comprehensive coverage for children is provided through **CoverKids**, and chronically ill adults are eligible for **AccessTN**. **CoverRx** is a statewide pharmacy assistance program designed to assist those who have no pharmacy coverage, but have a critical need for medication.

**Cover Tennessee** provides health insurance coverage that is affordable to participants and affordable to the state.

More information on all **Cover Tennessee** programs is available at [www.CoverTN.gov](http://www.CoverTN.gov) or by calling 1-866-COVERTN.

[www.covertn.gov](http://www.covertn.gov)

1-866-COVERTN

**Overview of Programs**

**CoverTN**

CoverTN is a partnership between the state, small businesses and self-employed individuals to provide coverage for the most needed medical services. CoverTN is a voluntary initiative for uninsured Tennesseans to obtain private insurance. The individual owns the plan, not the state or the company. To promote personal responsibility, premiums are based on weight, tobacco use and age – with an average monthly premium of \$50 for each payer.

CoverTN is affordable. The program features no deductibles and pricing is simple and straight-forward: \$20 co-payment for a doctor's office visit and \$10 for most prescription drugs. There is also coverage for hospitalization and other medical needs.

Enrollment is a two-step process. Once a business is confirmed as eligible, BlueCross BlueShield of Tennessee, the program's insurer, sends out enrollment materials, and individuals have 90 days to make a decision.

**CoverKids**

CoverKids offers comprehensive health insurance coverage to uninsured children 18 years-old and younger, and maternity coverage for pregnant women with household incomes below 250 percent of the federal poverty level. Families above the income limit, who wish to purchase coverage for their child, can "buy in" to the program by paying monthly premiums. The coverage is similar to the benefits offered to dependents of state employees. BlueCross BlueShield of Tennessee administers the program.

**AccessTN**

AccessTN provides comprehensive health insurance options to uninsurable Tennesseans. AccessTN, a high-risk pool, was created for persons with one of 55 specified medical conditions, or those who are unable to get insurance in the commercial market because of their health status. BlueCross BlueShield of Tennessee administers the program.

**CoverRx**

CoverRx is a statewide pharmacy assistance program designed to assist those who have no pharmacy coverage, but have a critical need for medication. CoverRx is not health insurance. It provides up to five prescriptions per month. (Insulin and diabetic supplies will not count against the monthly limit.) Express Scripts administers the program.

## Rule Amendments

There are three (3) rule amendments and one (1) new rule in the Attorney General's Office pertaining to the Tennessee Board of Optometry. Upon approval by the Attorney General the rule amendments will be posted at the Board's web site.

**Rule amendment 1045-2-02(3)**, adds the Accreditation Council on Optometric Education (ACOE) to the list of accreditation organizations recognized/approved by the school or college of optometry. Effective June 9, 2007.

**Rule amendment 1045-2-09(2)**, states that a contact lens prescription shall expire one (1) year after the date on which the prescription is issued, unless the optometrist who issued the prescription specifies an earlier date. Effective September 23, 2006.

**Rule amendment 1045-2-10(6)** allows the Board to adopt **Rule 1200-10-1-.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. Effective September 23, 2006.

**Rule amendment 1045-2-11(6)** gives practitioners the right to use the titles "Optometrist," "Doctor of Optometry," "Optometric Physician." or "O.D." Effective September 23, 2006.

You may download a copy of the rules at <http://Tennessee.gov/health>, click "Licensing" at the top of the page, click "Health Professional Boards", cursor down to "Boards, Councils, Committees and Registry", click "Board of Optometry" and "Rules and Regulations." Other pertinent information can be downloaded at the Board's site such as applications and forms, Board members list, Board meeting schedule, policy statements, Board meeting minutes and information on filing complaints.



**To contact this board call  
(615) 532-5088 local or (800) 778-4123  
nationwide  
or write to:**

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

## 2008 Board Meeting Schedule

**May 7, 2008** 9:00 a.m.  
Iris Room

**November 5, 2008** 9:00 a.m.  
Iris Room

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



### **Optometrists Practicing in Conjunction with a Retail Store or Other Commercial Establishment Where Merchandise is Displayed or Offered For Sale**

A lease of office space between an optometrist and a retail store or commercial establishment must not contain any provisions that "directly or indirectly, control or attempt to control, the professional judgment or practice of an optometrist." (Tenn. Code Ann. §63-6-125(a)). The lease may not:

1. Set or attempt to set the professional fee charged by the optometrist, the hours worked by the optometrist, or the number of patients seen by the optometrist;
2. Restrict the optometrist's scheduling of patient appointments;
3. Provide for the termination or the threat of termination of the lease in order to control or attempt to control the professional judgment or practice of the optometrist;
4. Provide for the sharing of telephone lines or other telecommunication services with the optometrist (however, the optometrist may enter into an arrangement to delegate clerical tasks to persons who are not employees of the optometrist but are under the optometrist's general supervision);

5. Provide for the employment of the optometrist to practice optometry for the retail store or commercial establishment (however, the optometrist may enter into a contract to provide optometric services to the employees of the retail store or commercial establishment);
6. Provide for payment to the optometrist for a service the optometrist has not provided;
7. Restrict the optometrist's access to the office space when the optometrist needs such access to provide emergency care to a patient;
8. Restrict or attempt to restrict the scope of practice of the optometrist so that the optometrist is prevented from providing complete patient care (however, a retail store or other commercial establishment who leases office space to the optometrist may restrict that optometrist from offering merchandise for sale in direct competition with the retail store or commercial establishment);
9. Limit or attempt to limit the services and materials that the optometrist may prescribe to patients or the information that may be provided to patients or the public by the optometrist;
10. Limit or attempt to limit the optometrist's exercise of independent professional judgment or responsibility in any way; and
11. Exclude the storage of confidential patient records from the office space. (Representatives of the retail store or commercial establishment may only enter the office space on reasonable notice and at times that are not disruptive to the practice of the optometrist. The retail store or commercial establishment may not have access to confidential patient information except as permitted by state and federal law.)

A lawsuit filed against the Board challenging Tenn. Code Ann. §63-8-113(c) (6) concluded in February 2006. The court found that the law does not violate the U. S. Constitution and that the law's purpose is to protect the practice of optometry from commercial interference.

The Board voted on September 29, 2006, to promulgate rules that will supplement Tenn. Code Ann. §§63-8-113(c)(6) and 63-8-125 by providing further guidance to optometrists and retail store or commercial establishments about the laws' requirements. The rule is expected to become effective in late 2007.

An optometrist (or any member of the public) who believes that a violation of the Board's law or rules has occurred may file a complaint with the Department of Health.

The Office of Investigations in the Division of Health Related Boards investigates complaints filed against practitioners licensed by the Department of

Health. Complaints are investigated and reviewed to determine whether the practitioner's alleged conduct constitutes a violation of the licensing board's practice act (Tennessee law) or rules for which disciplinary action may result. Information is available through the Department of Health's website ([www.state.tn.us/health](http://www.state.tn.us/health)) or the Office of Investigations (800) 852-2187.



## Public Chapters - Enacted 2007

### Public Chapter 529

If the Commissioner of Labor and Workforce Development receives a complaint that a person, licensed by a state regulatory board, knowingly employs, recruits or refers for a fee for employment an illegal alien, that person is subject to an investigation and contested case hearing.

If there is proof a person knowingly employed, recruited or referred for a fee for employment, an illegal alien, which occurred while acting within the scope of practice of his/her license, the regulatory board will be required to revoke, suspend, or deny the person's license.

For the first violation, the regulatory board will be required to suspend the person's license until they show they no longer employ, recruit or refer for a fee for employment, an illegal alien. This can be made by the person filing a sworn statement that they no longer employ illegal aliens.

If a second violation occurs within three (3) years from the first order, the regulatory agency will be required to suspend the person's license for one (1) year.

### Public Chapter 83

The General Assembly passed a new law this legislative session that mandates health care practitioners shall report cases of suspected or confirmed domestic violence to the Tennessee Department of Health.

The mandatory monthly reporting will be by a web-based system the Department's Division of Health Statistics is developing. The system should be operational in October 2007 and the Department will mail you the details of the required data to be reported and the instruction on how to use the reporting tool.



The Board will also keep you informed as more information is available.

### Public Chapter 487

Public Chapter 487 restricts the right of an employed or contracted health care provider to practice his/her profession upon termination or conclusion of the employment or contractual relationship shall be deemed reasonable if:

The restriction is set forth in an employment agreement or other written document signed by the health care provider and the employing or contracting entity; and

The duration of the restriction is two (2) years or less and either:

The geographical restriction is the greater of a ten (10) mile radius from the primary practice site of the health care provider while employed or contracted, or the county in which the primary practice of the health care provider while employed or contracted is located; or

There is no geographic restriction but the health care provider is restricted from practicing his or her profession at any facility at which the employing or contracting entity provided services while the health care provider was employed or contracted with the employing or contracting entity. Any restriction under this subsection shall not be binding on a health care provider who has been employed by, or under contract with, the employing or contracting entity for at least six (6) years.

An agreement entered into in conjunction with the purchase or sale of a health care provider's practice, or all or substantially all of the assets of the health care provider's practice, may restrict such health care provider's right to practice his or her profession, provided that the duration of the restriction and the allowable area of the restriction are reasonable under the circumstances. There shall be a rebuttable presumption that the duration and area of restriction agreed upon by the parties in such an agreement are reasonable.

### Public Chapter 298

Public Chapter 198 primarily corrects some discrepancies between Tennessee law listing Schedules for controlled substances compared to the DEA Schedules for the same drugs or chemicals. Some of the listed drugs have had their Schedule changed in recent years by the DEA, however they had not been reclassified in Tennessee law. Although individual states may place a drug into a more restrictive Schedule than DEA, states do not have the authority to be less restrictive than DEA. The language of this Act brings

Tennessee in line with DEA classifications. Some of the more frequently encountered drugs affected are listed below along with their common trade names.

Gamma hydroxybutyric acid (GHB) is classified by DEA as a Schedule I, however in Tennessee law it was still listed as a Schedule IV. PC 298 brought TN in line with DEA.

Glutethimide (Doriden) is classified by DEA as a Schedule II however TN still listed as Schedule III. PC 298 now matches DEA and Glutethimide (Doriden) is Schedule II.

Buprenorphine (Suboxone or Subutex) is a DEA Schedule III, however TN had it listed as Schedule V. PC 298 changed it to a Schedule III in TN.

Some other changes for consistency include Dichloralphenazone (Midrin), Zaleplon (Sonata), Zopiclone (Lunesta), Butorphanol (Stadol), Fencamfamin (Reactivan), Fenproporex (Gacilin or Solvolip), Mefenorex (Pondonil), Modafinil (Provigil), and Sibutramine (Meridia) being listed as Schedule IV in TN to match DEA.

Of interest in veterinary medicine, Carfentanil (Wildnil) is now classified as Schedule II which is consistent with DEA classification. The combination drug tiletamine-zolazepam (Telazol) is now listed as Schedule III in both TN and DEA.

### Public Chapter 410

Public Chapter 410 creates the Non-Smoker Protection Act which **prohibits** smoking in all enclosed public places within the State of Tennessee including, but not limited to, the following places:

**“Areas available to and customarily used by the general public** in businesses and non-profit entities patronized by the public including, but not limited to, banks, laundromats, factories, **professional offices**, and retail service establishments; and, “Health care facilities”. (Nursing homes and long-term care facilities are exempt.)

The legislation requires offices and health care facilities to do the following:

- Inform all existing employees and any prospective employees upon their application for employment of the prohibition on smoking; and
- “No Smoking” signs or the international “No Smoking” symbol, shall be clearly and conspicuously posted at every entrance to every public place and place of employment where smoking is prohibited.

The Department of Health shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Act. Information about these inspections will be

communicated with the appropriate offices and/or health care facilities in the future.

## **Public Chapter 365**

### **Contracts Between Healthcare Providers and Health Insurance Entities**

Public Chapter 365 requires newly licensed health care providers (provider(s)) who move into a new community or change practices to submit a credentialing application for approval by a health insurance entity (insurance entity). Upon approval, a contract must be made between the provider and insurance entity in order for the provider to be an in-network provider.

The insurance entity must obtain from the Council on Affordable Quality Health (CAQH) a clean CAQH credentialing application for the provider. The insurance entity must then notify the provider within ninety (90) days if they are willing to contract with the provider.

A clean CAQH means an application has no defect, misstatement of facts, improprieties, including a lack of required substantiating documentation or circumstance requiring special treatment that delays prompt credentialing.

Unless required otherwise by a national accrediting body, the insurance entity must accept and begin processing a completed credentialing application. The insurance entity shall not require the provider to have an active malpractice insurance policy in order to process the application before the provider's employment start date.

The insurance entity shall notify its members in writing or on a website that the provider is an in-network provider or that his application is pending approval.

This section does not require an insurance entity to contract with a provider if the entity and the provider do not agree on the terms and conditions of the contract.

**The complete text of Public Acts, including provisions for any areas of exemption; enforcement of the Acts; and action to be taken for violation of the Acts, is available on the following website:**

[tennessee.gov/sos/acts/index.htm](http://tennessee.gov/sos/acts/index.htm)

### **Non-Compliance with Continuing Education Requirements**

The Tennessee Board of Optometry adopted the following amended policy statement on November 18, 2004:

An Optometrist licensed in Tennessee is required to 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. For those who are therapeutically certified, a minimum of twenty (20) of the thirty (30) hours of continuing education is required in the category of diagnosis, treatment, and/or use of pharmaceutical agents in the practice of optometry. The total number of practice management hours that will be accepted is six (6) hours of the thirty (30) hour requirement. Twelve (12) hours of the thirty (30) hour requirement may be completed in any of the following multi-media formats: the Internet, closed circuit television, satellite broadcasts, correspondence courses, videotapes, CDROM, DVD, teleconferencing, videoconferencing and distance learning. A maximum of six (6) hours may be granted for grand rounds and the grand rounds must be submitted to the Board for prior approval. (See Tenn. Comp. R. & Regs. 1045-2-.05 regarding continuing education requirements.)

Should the Tennessee licensed optometrist fail to obtain the required amount of continuing education hours, the following shall occur:

1. The licensee must pay a civil penalty in the amount of three hundred dollars (\$300.00) and payment must be rendered within thirty (30) days of notification from the Board.
2. The licensee must make up the amount of continuing education hours that he/she is lacking, in addition to completing the current biennial continuing education requirement. The deficient hours must be made up by the end of the next calendar year. Documented proof of the deficient hours obtained must be submitted to the Board upon completion.
3. The licensee must complete an additional five (5) continuing education hours in the category of diagnosis, treatment, and management in the practice of optometry. These hours are to be completed in addition to the deficient hours and the current biennial continuing education requirement. The five (5) hours must be made up by the end of the next calendar year. Documented proof of completion of the five (5) hours must be submitted to the Board upon completion.

**Failure to comply with this policy may result in disciplinary action. Failure to respond to the Board request for documentation or to make up deficient continuing education hours after notification by the Board may also result in disciplinary action.**

\*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. A licensee may request a waiver of the continuing education requirements for instances of documented illness, disability, or other undue hardship or retirement.

### **Policy Statement Licensees Working on a Lapsed License**

The Board of Optometry realizes that an individual may unintentionally allow his/her license to expire. However, statute prohibits an individual from working as an Optometrist unless he/she has an active license.

1. Upon recognition that his/her license has expired, the optometrist must stop practicing immediately and contact the Board's administrative office and request a reinstatement application.
2. The optometrist must complete the reinstatement application along with a detailed work history from the date the license expired. The application must be signed, notarized and return to the Board's administrative office along with proof of continuing education requirements taken within the previous twelve (12) months, as well as all applicable fees.
3. Once the completed reinstatement application and required documentation is received, the Board administrator may reinstate the license **only** if the license has been in an expired status for a period of three (3) months or less.
4. If the reinstatement application indicates in the work history that the optometrist has worked more than three (3) months on an expired license, the licensee will be assessed a penalty in the amount of \$100 for each month worked in excess of the three (3) months from the expiration date of the license.

### **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.
3. Notwithstanding the foregoing, no optometric record involving services which are currently

under dispute shall be destroyed until the dispute is resolved.

### **Destruction of Optometric Records**

No record shall be singled out for destruction other than in accordance with established office procedures.

Records shall be destroyed **only** in the ordinary course of business according to established office operating procedures that are consistent with these rules.

Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.

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.

### **Controlled Substance Database Program**

**Note:** If you are a physician and do not dispense, you are not required to register with the Board of Pharmacy or Optimum Technology.

On December 1, 2006, the Tennessee Board of Pharmacy began accepting prescription information into the Controlled Substance Database Program. The Program collects prescription data for Schedules II-V drugs into a central database, which can then be used by limited authorized users. The information collected in this program is maintained by the Department of Commerce and Insurance and strict security and confidentiality measures are enforced. Only those persons authorized by law can be provided information from the database to assist in determining treatment history and to rule out the possibility that a patient may be "*doctor shopping*" or "*scamming*" in order to obtain controlled substances. Prescribers, dispensers, and other authorized users may soon make requests for data from the Controlled Substance Program via the secure website. This website will assist authorized users in organizing their requests and the reports that are generated by the program.

**Attention:** For questions about the Controlled Substance Program, please call 615-253-8542.

Please visit: [Controlled.substancedatabase@state.tn.us](mailto:Controlled.substancedatabase@state.tn.us)

Tennessee Board of Optometry  
227 French Landing, Suite 300  
Heritage Place, Metro Center  
Nashville, TN 37243



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**TENNESSEE BOARD OF OPTOMETRY  
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AARB1**



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