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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

| | |
|---------------------------------|--|
| Agency/Board/Commission: | Board of Dispensing Opticians |
| Division: | |
| Contact Person: | Eric Winters, Associate General Counsel |
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

| | |
|---------------------|--|
| ADA Contact: | ADA Coordinator |
| Address: | 710 James Robertson Parkway, Andrew Johnson Building, 5th Floor, Nashville, Tennessee 37243 |
| Phone: | (615) 741-6350 |
| Email: | Tina.M.Harris2@tn.gov |

Hearing Location(s) (for additional locations, copy and paste table)

| | |
|---------------|---|
| Address 1: | Metro Center |
| Address 2: | 665 Mainstream Drive, Poplar Conference Room |
| City: | Nashville |
| Zip: | 37228 |
| Hearing Date: | 10/20/21 |
| Hearing Time: | 9:00 A.M. <input checked="" type="checkbox"/> _X_ CST/CDT <input type="checkbox"/> __ EST/EDT |

Additional Hearing Information:

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|--|

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

| Chapter Number | Chapter Title |
|----------------|--|
| 0480-01 | General Rules Governing Dispensing Opticians |
| Rule Number | Rule Title |
| 0480-01-.01 | Definitions |
| 0480-01-.03 | Necessity of Licensure |

| | |
|-------------|--|
| 0480-01-.04 | Qualifications for Licensure |
| 0480-01-.05 | Procedures for Licensure |
| 0480-01-.06 | Fees |
| 0480-01-.07 | Application Review, Approval, Denial, Interviews |
| 0480-01-.08 | Examinations |
| 0480-01-.09 | Renewal of License |
| 0480-01-.10 | Supervision |
| 0480-01-.11 | Retirement and Reactivation of License |
| 0480-01-.12 | Continuing Education |
| 0480-01-.14 | Apprenticeship Training Program |
| 0480-01-.16 | License |
| 0480-01-.17 | Change of Address and/or Name |
| 0480-01-.21 | Branch Offices |

Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <https://sos.tn.gov/products/division-publications/rulemaking-guidelines>.

Rule Chapter 0480-01
General Rules Governing Dispensing Opticians

Amendments

Rule 0480-01-.01 Definitions is amended by adding new paragraphs (3), (9), (19), (21), (25), (26), and (27) and renumbering the remaining paragraphs accordingly, so that as amended, the new paragraphs shall read:

- (3) Apprentice - An individual who is registered with the Board, engaged in an approved licensing program, practicing opticianry under the supervision of a licensed dispensing optician and whose application has been ratified by the Board.
- (9) Direct Supervision – The requirement that a supervising licensed dispensing optician, optometrist, or ophthalmologist direct, coordinate, review, inspect, and approve acts or services performed by an apprentice who is training to prepare, fit and dispense ophthalmic materials.
- (19) Ophthalmologist – An ophthalmologist is a physician who has undergone training to specialize in eye care. To become an ophthalmologist, one must graduate from a four-year college, attend four years of medical training to earn a Medical or Osteopathic doctorate (M.D. or D.O.), then undergo an additional four years of medical and ophthalmologic residency training.
- (21) Optometrist – A person who is licensed to engage in the practice of optometry as defined in Tenn. Code. Ann. § 63-8-102.
- (25) Sponsoring Supervisor – A dispensing optician holding an active Tennessee license who has been in practice for at least 2 years, an optometrist licensed by the State of Tennessee, or an ophthalmologist licensed by the State of Tennessee, who is responsible for the direct management supervision of no more than two (2) apprentices.
- (26) Sponsoring Supervision - The direct management of an apprentice in practice, including the assignment of tasks, and the review, inspection, and approval of acts and services performed by an apprentice who is training to prepare, fit and dispense ophthalmic materials. The sponsoring supervisor has the ultimate responsibility for ensuring the apprentice has met all the requirements of the apprenticeship program.
- (27) Supervisor – A dispensing optician, optometrist or ophthalmologist holding an active Tennessee license who is actively engaged in the supervision of apprentices who may provide temporary oversight of an apprentice who is temporarily assigned to a workplace location which is not their regular place of employment. A supervisor shall not oversee more than four (4) apprentices concurrently

Authority: T.C.A. §§ 63-1-118, 63-14-101, 63-14-102, 63-14-103, 63-14-106, and 63-14-107.

Rule 0480-01-.03 Necessity of Licensure is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph shall read:

- (2) The practice of a Dispensing Optician is one of the healing arts, and as such the practice is restricted to those persons credentialed by the Board. Persons engaging in the practice of dispensing opticianry without being licensed or expressly exempted by the laws are in violation of division law, T.C.A. § 63-1-123.

Authority: T.C.A. §§ 63-1-145, 63-1-146, 63-14-101, 63-14-102, 63-14-103, and 63-14-104.

Rule 0480-01-.04 Qualifications for Licensure is amended by deleting paragraphs (1), (2), and (3) in their entirety and substituting instead the following language, and is further amended by adding new paragraph (4), so that as amended, the new paragraphs shall read:

- (1) Be a United States citizen.

- (2) Be at least 18 years of age.
- (3) Provide evidence that he is well regarded in moral character and professional ethics (Rule 0480-01-.05).
- (4) Meet the following educational requirements:
 - (a) Be a graduate of an accredited high school or possess an equivalency of a high school education. The education requirements must be completed prior to the date of application;
 - (b) Have satisfactorily completed a two-year course of study in opticianry in a college level program recognized and approved by the Board; or
 - (c) Have had practical experience and training (apprenticeship) of a grade and character satisfactory to the Board for not less than three (3) years or more than six (6) years under the sponsoring supervision of a licensed dispensing optician, a licensed optometrist, or a licensed ophthalmologist. Practical training prior to age 15 (see T.C.A. § 63-14-103 (a)) will not be considered in determining the time spent in apprenticeship. Attendance in an accredited school or an approved college level program that shall specifically include study in the following will be considered as time toward fulfilling the three (3) years requirement. Time will be computed hour for hour exactly as hours spent in on-the-job training (apprenticeship):

Authority: T.C.A. §§ 63-14-101, and 63-14-103.

Rule 0480-01-.05 Procedures for Licensure is amended by deleting paragraphs (2), (6) and (7) in their entirety and substituting instead the following language, and is further amended by deleting paragraph (8) in its entirety and renumbering the remaining paragraphs, so that as amended, the new paragraphs shall read:

- (2) It is the applicant's responsibility to provide evidence that he has fulfilled the educational requirements by providing proof of graduation from high school or by providing proof of possession of a general equivalency diploma (G.E.D).
- (6) An applicant shall submit with his application an original or a notarized photocopy of his birth certificate.
- (7) An applicant shall submit with his application two (2) letters of recommendation. At least one (1) of these letters shall be from a current or former employer, and neither letter shall be from a spouse or relative. Both letters must be on letterhead and signed by the writer of the letter.

Authority: T.C.A. §§ 63-14-101, 63-14-103, 63-14-104, 63-14-107, and 63-14-111.

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

- (1) Fee Schedule:

| Type | Amount |
|--|----------|
| (a) Apprenticeship Application | \$100.00 |
| (b) Dispensing Optician Application | \$ 37.50 |
| (c) Duplicate Wall License | \$ 25.00 |
| (d) License Fee | \$ 27.50 |
| (e) State Regulatory (Biennial) | \$ 10.00 |
| (f) Dispensing Optician Renewal (Biennial) | \$ 75.00 |
| (g) Late Renewal Fee | \$100.00 |

Authority: T.C.A. §§ 63-1-106, 63-1-118, 63-14-101, 63-14-103, 63-14-106, and 63-14-107.

Rule 0480-01-.07 Application Review, Approval, Denial, Interviews is amended by deleting paragraph (3) and subparagraph (9)(b) in their entirety and substituting instead the following language, so that as amended, the new paragraph and subparagraph shall read:

- (3) Initial review of all applications to make a licensure decision may be delegated to any Board member, the Board's consultant, or the Board's administrator or unit director. In no event may a final licensure decision be made without prior review by the Board.
- (9) (b) The Board's unit director may close an application that has been deemed abandoned. Written notification will be mailed to the applicant notifying him that the file has been closed.

Authority: T.C.A. §§ 63-14-101, 63-14-103, and 63-14-107.

Rule 0480-01-.08 Examinations is amended by deleting subparagraph (1)(b) and part (1)(d)4 in their entirety, and substituting instead the following language, so that as amended, the new subparagraph and part shall read:

- (1) (b) The National Contact Lens Registry Examination or its successor, which is graded on a scale of 0-100 with a minimum passing score of seventy (70).
- (d) 4. The jurisprudence examination shall be mailed or emailed to the applicant when the application has been received by the Board's administrative office.

Authority: T.C.A. §§ 63-14-101, 63-14-103, and 63-14-107.

Rule 0480-01-.09 Renewal of License is amended by deleting part (1)(b)1, subparagraph (1)(d), and part (2)(a)1 in their entirety and substituting instead the following language, so that as amended, the new subparagraph and parts shall read:

- (1) (b) 1. Internet Renewals - Individuals may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

<https://apps.tn.gov/hlrs/>
- (d) Renewals may be issued administratively or by the Board.
- (2) (a) 1. Payment of past due renewal and state regulatory fees;

Authority: T.C.A. §§ 63-1-107, 63-14-101, 63-14-103, 63-14-104, 63-14-106, and 63-14-107.

Rule 0480-01-.10 Supervision is amended by deleting the rule in its entirety, but not the rule title, and substituting instead the following language, so that as amended, the new rule shall read:

Full-time Supervision - Any office of a licensed dispensing optician, partnership or corporation which engages in optical dispensing must have a duly licensed dispensing optician on duty in each and every establishment; no office of a licensed dispensing optician, partnership or corporation shall offer technical optical dispensing services to the public unless a duly licensed dispensing optician is physically present.

Authority: T.C.A. §§ 63-14-101, 63-14-102, and 63-14-103.

Rule 0480-01-.11 Retirement and Reactivation of License is amended by deleting subparagraph (3)(b) in its entirety, and substituting the following language, and is further amended by adding new subparagraph (3)(c), so that as amended, the new subparagraphs shall read:

- (3) (b) Pay the current licensure renewal fee and state regulatory fee as provided in Rule 0480-01-.06. If retirement was pursuant to Rule 0480-01-.09, and reactivation was requested prior to the expiration of one (1) year from the date of retirement, the Board shall require payment of the current renewal fee and state regulatory fee as provided in Rule 0480-01-.06; and
- (c) Submit evidence of compliance with the continuing education provisions of Rule 0480-01-.12. Each individual is responsible for maintaining continuing education documentation until such time

as he applies for reinstatement.

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

Rule 0480-01-.12 Continuing Education is amended by deleting paragraph (2), including its subparagraphs, parts, and subparts in their entirety and substituting instead the following language, and is further amended by deleting subparagraphs (3)(b) and (3)(c) in their entirety, including its parts and re-lettering the remaining subparagraphs, and is further amended by deleting subparagraph (4)(d) in its entirety and substituting instead the following language, so that as amended, the new paragraph, subparagraphs, parts, and subparts shall read:

(2) Acceptable Continuing Education - Traditional Formats

(a) The following organizations and entities are authorized to present, sponsor, or approve continuing education courses, events, and activities related to the practice of Opticianry and need no prior authorization or approval from the Board.

1. American Board of Opticianry (ABO)
2. National Contact Lens Examiners (NCLE)
3. Tennessee Dispensing Opticians Association (TDOA).

(b) The Board will accept any other dispensing optician clinic, workshop, seminar or lecture attended in Tennessee or attended at any national or regional meeting not in Tennessee for continuing education (CE) credit if it is in accordance with the following guidelines:

1. The subject matter must fall within the limit of subjects approved by the Board.
2. Registrants, instructors and panelists will be eligible for credit.
3. CE will be awarded on the following basis:
 - (i) Any single session covering not less than 2-1/2 hours will be assigned 3 hours of CE.
 - (ii) Any single session covering not less than 1 hour, 40 minutes will be assigned 2 hours of CE.
 - (iii) Any single session covering not less than 50 minutes will be assigned 1 hour of CE.
 - (iv) The hours shall be based on actual instruction or program time, excluding registration time and coffee breaks, but including question and answer periods.
 - (v) The total credits to be earned in any single 24- hour period cannot exceed 12.
4. Course approval procedure for course providers - The subject matter, instructor and course provider shall have prior approval from the Board. To obtain prior approval, the course provider must have delivered to the Board administrative office at least thirty (30) days prior to a regularly scheduled meeting of the Board that precedes the course, documentation which includes all of the following items which must be resubmitted if changes are made after receipt of approval from the Board:
 - (i) a course content description or outline;
 - (ii) names of all lecturers;
 - (iii) brief resume of all lecturers;
 - (iv) number of hours of educational credit requested;

- (v) dates, locations and hours of course;
 - (vi) copies of materials to be utilized in the course;
 - (vii) how verification of continuous attendance is to be documented; and
 - (viii) how notification to every Tennessee licensed dispensing optician is to be accomplished.
5. Under no circumstances shall continuing education courses be approved if the materials required by part 5 of this subparagraph are not received at least thirty (30) days prior to a regularly scheduled meeting of the Board at which approval is sought that precedes the course.
 6. Notwithstanding the provisions of subparagraph (a), out-of-state continuing education providers may seek course approval if they are a dispensing optician regulatory agency or association from a state that borders Tennessee.
 7. Course approval procedure for individual licensees.
 - (i) Notwithstanding the provisions of subparagraph (a), any licensee may seek approval to receive credit for successfully completing continuing education courses by complying with the provisions of this subparagraph.
 - (ii) To retain course approval, the licensee must submit a course evaluation form, supplied by the Board, to the Board's administrative office within thirty (30) days after successfully completing the course.
- (3) (b) Course approval procedure for individual licensees - Any licensee may seek approval to receive credit for successfully completing Multi-media format continuing education courses by submitting the documentation required in part (2)(b)5.
 - (3) (c) Multi-Media courses may include courses utilizing:
 1. The Internet
 2. Interactive Teleconferencing
 3. Interactive Videoconferencing
 - (4) (d) Any licensee who fails to show compliance with the required continuing education hours in response to the notice contemplated by subparagraph (b) of this paragraph may be subject to disciplinary action.

Authority: T.C.A. §§ 63-1-107, 63-14-101, 63-14-103, 63-14-104, 63-14-106, 63-14-107, and 63-14-111.

Rule 0480-01-.14 Apprenticeship Training Program is amended by deleting subparagraphs (1)(a) and (1)(b), paragraph (2), including its subparagraphs, paragraph (3), part (4)(d)2 and paragraph (5), including its parts and subparts, and subpart (6)(c)1(i) in their entirety and substituting instead the following language, so that as amended, the new paragraphs, subparagraphs, parts and subparts shall read:

- (1) (a) The apprentice shall designate, in the application, a sponsoring supervisor. The Board administrator shall notify the apprentice when the sponsoring supervisor, training program, and training setting have been approved.
- (b) The Board administrator shall notify the apprentice of the training program start date. Apprenticeship hours cannot begin and will not be counted until notification from the Board's administrator.
- (d) The apprenticeship applicant shall cause to be submitted to the Board's administrative office directly from the vendor identified in the Board's application materials, the result of a criminal background check.

1. Pursuant to T.C.A. 63-1-130, a person who applies for the apprenticeship training program who has a criminal conviction that directly relates to the occupation of an apprentice may be denied. An applicant may be required to appear before the Board to provide details of the conviction prior to the Board granting approval into the apprenticeship program.
- (2) Apprenticeship training must be conducted under the sponsoring supervision of a dispensing optician, optometrist, or ophthalmologist who has been licensed in Tennessee or another state and whose license to practice in Tennessee or another state is current and unencumbered.
 - (a) The supervisor shall work on the premises where the apprentice is assigned.
 - (b) The supervisor shall provide supervision at all times in accordance with T.C.A. § 63-14-103(a) and (f) and rule 0480-01-.01(25).
 - (3) Changes in any of the information provided in the original apprentice application, including the sponsor of an apprentice, shall be reported to the Board in writing within 30 days of such change.
 - (4) (d) 2. The Board may rescind its approval of any apprenticeship training program if it determines that the apprentice is not actively pursuing licensure including, but not limited to, working less than five hundred (500) hours per year as provided in subparagraph (4) (b), and failing to file semi-annual evaluation reports in a timely manner as provided in subparagraph (5)(c).
- (5) Sponsoring Supervisors, Supervisors, and Supervision
 - (a) Limitations
 1. A sponsoring supervisor may be responsible for the training of no more than two (2) apprentices concurrently.
 2. A supervisor may manage no more than four (4) apprentices concurrently.
 3. If a supervisor is supervising more than four (4) apprentices concurrently, no more than four (4) of the apprentices working under that supervisor shall receive credit for those hours.
 - (b) The apprentice shall function under the supervision of a licensed supervisor who must be working in the same premises where the apprenticeship training is conducted and must be present at all times (T.C.A. § 63-14-103).
 - (c) The filing of semi-annual evaluation reports for each apprentice under the sponsoring supervision of a licensed eye care professional is mandatory. Such reports shall be completed by an apprentice's sponsoring supervisor, based on that sponsoring supervisor's review and approval of all work performed by the apprentice while practicing under the supervision of licensed eye care professionals. The apprentice is responsible for filing the semi-annual reports to the Board's administrative office. The appropriate form will be supplied by the Board and shall be notarized before filing. Semi-annual evaluation periods begin six (6) months from initial registration and each six (6) months thereafter until licensure as a dispensing optician has been achieved.
 1. The semi-annual evaluation report must be received in the Board's administrative office no later than thirty (30) days after the six (6) month training period has ended or the training period shall be disallowed and not considered as time toward fulfilling the five thousand, two hundred and fifty (5,250) hour requirement.
 2. If two (2) semi-annual evaluation reports are not received by the Board's administrative office within thirty (30) days after the applicable training periods have ended, the Board will rescind its approval of the apprenticeship training program. The apprentice will not receive credit for the two (2) training periods for which the semi-annual evaluation reports were not submitted or were received by the Board's administrative office later than thirty (30) days after the applicable training period. In order to continue the apprenticeship

training program, a new application for an apprenticeship training program must be submitted.

(d) Hardship Waiver

1. The Board may in its discretion grant a waiver for the filing of semi-annual evaluation reports if it can be shown to the Board that the failure to comply was not attributable to or was beyond the physical capabilities of the individual, i.e.: disability, residence abroad, military service, or other instances of undue hardship. Such requests for waiver must be accompanied by written documentation acceptable to the Board.
2. Waivers will be considered only on an individual basis and may be requested by submitting the following items to the Board administrative office.
 - (i) A written request for a waiver which specifies what is sought to be waived and a written and signed explanation of the reasons for the request.
 - (ii) Any documentation which supports the reason for the waiver requested or which may be subsequently requested by the Board.
 - (iii) A waiver may be granted for no longer than twelve (12) months (two (2) semi-annual reports.)
3. A waiver approved by the Board is effective for only the semi-annual evaluation reports requested in writing pursuant to subparagraphs (5) (a) and (b), unless otherwise specified in writing by the Board.

- (6) (c) 1. (i) One (1) fitting table with two (2) chairs or two (2) stools

Authority: T.C.A. §§ 63-14-101, and 63-14-103.

Rule 0480-01-.16 License is amended by deleting paragraph (3) and subparagraph (4)(d) in their entirety, and substituting instead the following language, so that as amended, the new paragraph and subparagraph shall read:

- (3) Duplicate License - A license holder whose “artistically designed” document has been lost or destroyed may be issued a new document upon receipt of a written request in the Board’s administrative office and payment of the required fee pursuant to Rule 0480-01-.06.
- (4) (d) If the identification badge is lost, a statement requesting a duplicate must be submitted to the Board’s administrative office.

Authority: T.C.A. §§ 63-1-101, 63-1-106, 63-14-101, and 63-14-103.

Rule 0480-01-.17 Change of Address And/Or Name is amended by deleting paragraph (2) in its entirety and substituting instead the following language, so that as amended, the new paragraph shall read:

- (2) Change of Name - Individuals registered with the Board shall notify the Board in writing within thirty (30) days of a name change. The official document showing the name change must accompany the request. A request for name change must reference the individual’s profession and license number and previous name.

Authority: T.C.A. §§ 63-1-101, 63-1-106, 63-14-101, and 63-14-109.

Rule 0480-01-.21 Branch Offices is amended by deleting paragraphs (2) and (3) in their entirety and substituting instead the following language, so that as amended, the new paragraphs shall read:

- (2) A dispensing optician opening a branch office must notify the Board administrator at least thirty (30) days prior to the opening. This notice must be in writing and sent by registered mail. The notice must contain opening date, the location and the name(s) of licensed optician(s) operating such branch. The administrator for the Board will then cause such branch to be registered with the Board.

- (3) Notice of Change of Employment. Any dispensing optician working for, with, or under any licensed dispensing optician, optometrist, or physician must notify the Board's administrator of any change of employment or location where he is acting as a dispensing optician, whether it be permanent or temporary.

Authority: T.C.A. §§ 63-14-101, 63-14-102, and 63-14-103.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: August 11, 2021

Signature: _____

Eric Winters

Name of Officer: Eric Winters

Title of Officer: Associate General Counsel

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Filed with the Department of State on: 8/12/2021

Tre Hargett

Tre Hargett
Secretary of State

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