

Notice of Rulemaking Hearing

Board of Dispensing Opticians

There will be a hearing before the Tennessee Board of Dispensing Opticians to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-14-101. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Department of Health Conference Center's Mockingbird Room on the First Floor of the Heritage Place Building located at 227 French Landing, Nashville, TN at 2:30 p.m. (CDT) on the 18th day of June, 2007.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, 227 French Landing, Suite 300, Heritage Place, MetroCenter, Nashville, TN 37243, (615) 532-4397.

Substance of Proposed Rules

Amendments

Rule 0480-01-.01, Definitions, is amended by inserting the following language as new paragraph (8) and renumbering the remaining paragraphs accordingly:

- (8) Direct Supervision - The requirement that the 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.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-14-101, 63-14-102, and 63-14-103.

Rule 0460-1-.03, Necessity of Licensure, is amended by deleting paragraph (4) in its entirety and substituting instead the following language, so that as amended, the new paragraph (4) shall read:

- (4) Use of Titles - Any person who possesses a valid, current and active license issued by the Board that has not been suspended or revoked has the right to use the title "Licensed Dispensing Optician" and to engage in the practice of dispensing opticians, as defined in T.C.A. §§ 63-14-102. Any person licensed by the Board to whom this rule applies must use the title authorized by this rule in every "advertisement" [as that term is defined in rule 0480-01-.20 (2) (a)] he or she publishes or the failure to do so will constitute an omission of a material fact which makes the advertisement misleading and deceptive and subjects the dispensing optician to disciplinary action pursuant to T.C.A. § 63-14-104 (2).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-14-101, 63-14-102, 63-14-103, and 63-14-104.

Rule 0480-01-.07, Application Review, Approval, Denial, Interviews, is amended by deleting part (9) (a) 2. in its entirety and substituting instead the following language, so that as amended, the new part (9) (a) 2. shall read:

- (9) (a) 2. The applicant fails to apply and/or register for applicable examinations within six (6) months after being notified of eligibility.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-14-101, 63-14-103, and 63-14-107.

Rule 0480-01-.08, Examinations, is amended by deleting part (1) (c) 9. in its entirety, and is further amended by adding the following language as new subparagraph (1) (d), and is further amended by deleting paragraph (2) but not its subparagraphs and substituting instead the following language, so that as amended, the new subparagraph (1) (d) and the new paragraph (2) but not its subparagraphs shall read:

- (1) (d) The Tennessee Jurisprudence Examination, which is graded on a scale of 0-100 with a minimum passing score of ninety (90).
 - 1. The following subjects may be included on the Tennessee Jurisprudence Examination:
 - (i) Tennessee Code Annotated, Title 63, Chapters 2 and 14; and
 - (ii) Official Compilation, Rules and Regulations of the State of Tennessee, Chapter 0480-01.
 - 2. The applicable statutes and regulations can be accessed at the Board's Internet web page or are available upon request from the Board's administrative office.
 - 3. The format of the examination shall be "open-book."
 - 4. The Board shall include the Tennessee jurisprudence examination with its application materials.
 - 5. The applicant shall complete the Tennessee jurisprudence examination and return it to the Board's administrative office.
 - 6. If the Board determines that the applicant has failed to successfully complete the Tennessee 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.
- (2) Except for the Tennessee Jurisprudence Examination, admission to, application for, and the fee required to sit for the examinations are governed by and must be submitted directly to the testing agencies.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-14-101, and 63-14-103.

Rule 0480-01-.14, Apprenticeship Training Program, is amended by deleting subparagraphs (1) (a) and (1) (c), paragraph (2) and subparagraph (5) (a) in their entirety and substituting instead the following

language, and is further amended by adding the following language as new parts (5) (c) 1. and (5) (c) 2., and is further amended by deleting subparts (6) (c) 1. (xv) and (6) (c) 1. (xvi) in their entirety and renumbering the remaining subparts accordingly, so that as amended, the new subparagraphs (1) (a) and (1) (c), the new paragraph (2), the new subparagraph (5) (a), and the new parts (5) (c) 1. and (5) (c) 2. shall read:

- (1) (a) The apprentice shall designate, in the application, a supervising dispensing optician, optometrist or ophthalmologist, and an alternate supervisor. The Board administrator shall notify the apprentice when the supervisor, alternate supervisor, training program, and training setting have been approved.
- (1) (c) Except as provided in Rule 0480-01-.04 (3) of this rule, only training that occurs on or after the training program start date shall be counted towards meeting the three (3) year minimum requirement.
- (2) Apprenticeship training must be supervised by a dispensing optician, optometrist, or ophthalmologist who has been licensed in Tennessee or another state for at least three (3) years and whose license to practice in Tennessee is current, undisciplined, unrestricted and unencumbered.
 - (a) The supervisor shall work at the premises where the apprenticeship training is conducted
 - (b) The supervisor shall provide supervision at all times in accordance with T.C.A. § 63-14-103 (a) and (f).
- (5) (a) Limitations
 - 1. A licensed dispensing optician may supervise no more than two (2) apprentices concurrently.
 - 2. A licensed dispensing optician may provide supervision in the temporary and impermanent absence (a.k.a. alternate supervision) of the supervising licensee to one (1) of the two (2) apprentices being supervised concurrently.
 - 3. The Board will disallow the apprenticeship training of an apprentice whose supervisor is supervising more than two (2) apprentices concurrently. Such training shall not be considered as time toward fulfilling the five thousand, two hundred and fifty (5,250) hour requirement.
- (5) (c) 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
- (5) (c) 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.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-14-101, and 63-14-103.

Rule 0480-01-.19 Board Meetings, Officers, Consultants, Declaratory Orders, and Screening Panels, is amended by adding the following language as new paragraph (9):

- (9) 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.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-14-101, 63-14-104, and 63-14-111.

The notice of rulemaking set out herein was properly filed in the Department of State on the 26th day of March, 2007. (FS 03-37-07, DBID 603)