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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.

<b>Agency/Board/Commission:</b>	Board of Optometry
<b>Division:</b>	
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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:

<b>ADA Contact:</b>	ADA Coordinator
<b>Address:</b>	710 James Robertson Parkway, Andrew Johnson Building, 5 <sup>th</sup> Floor, Nashville, Tennessee 37243
<b>Phone:</b>	(615) 741-6354
<b>Email:</b>	<a href="mailto:Marci.Martinez@tn.gov">Marci.Martinez@tn.gov</a>

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

Address 1:	Metro Center
Address 2:	665 Mainstream Drive, Iris Conference Room
City:	Nashville, Tennessee
Zip:	37243
Hearing Date:	10/09/2024
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

SS-7037 (March 2020)

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row)

<b>Chapter Number</b>	<b>Chapter Title</b>
1045-02	General Rules Governing the Practice of Optometry
<b>Rule Number</b>	<b>Rule Title</b>
1045-02-.08	Corporate or Business Names and Advertising
1045-02-.09	Ocular and Contact Lens Prescriptions and Office Equipment
1045-02-.18	Telehealth in the Practice of Optometry
1045-02-.19	Change of Address and/or Name

Chapter 1045-02  
General Rules Governing the Practice of Optometry  
Amendments

Rule 1045-02-.08 Corporate or Business Names and Advertising 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:

- (1) Policy Statement. The lack of sophistication on the part of many members of the public concerning eye health and vision 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. "Advertisement" and "advertising" shall mean any form of public communication with the intent of furthering the purpose, either directly or indirectly, or of selling professional services or ophthalmic goods, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services.
  - (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 that an ordinary, reasonable, and prudent person would need to know or rely upon when making an informed decision concerning the choice of practitioners to serve their particular eye health and vision care 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. A fee offered or charged by a person or organization for any eye health and vision care 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."
  - (f) Patient Encounter. The rendering of a documented Optometrist's opinion concerning evaluation, diagnosis, and/or treatment of a patient whether the Optometrist is physically present in the same room, in a remote location within the state, or across state lines, pursuant to Rule 1045-02-.18.
    1. Vision Care Encounter. Patient presents with a chief complaint for the measurement of the vision system, by which the Optometrist employs any means approved by the United States Food and Drug Administration or related agency, including the use or furnishing of any self-testing device, the use of any computerized or automatic refracting device, including applications designed to be used on a computer or video conferencing via an internet device either in-person or in remote locations. The encounter results in the determination if prescribing ophthalmic correction is needed to remedy or relieve defects of vision performance by means including but not limited to spectacle eyeglasses, contact lenses for orthotic, prosthetic, therapeutic, or cosmetic purposes, prisms, devices, and the employment of vision therapy or orthoptics for the aid thereof, and low vision rehabilitation.
    2. Eye Health Care Encounter. Patient presents with a chief complaint related to eye health issue(s) that affect the ocular or systemic health and require an encounter for testing, diagnosing, treating,

and managing conditions rational to the health and preservation of the human eye and related structures by employment of any means approved by the United States Food and Drug Administration or related agency, including the use or prescription of any self-testing, self-administered treatment or drug delivery devices, the use of any computerized or automatic devices, including applications designed to be used on a computer or video conferencing via an internet device either in-person or in remote locations.

(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) Patient's case history;
- (II) Visual acuity including best corrected acuity and unaided;
- (III) Pupillary examinations;
- (IV) Extra ocular muscle assessment;
- (V) Visual field assessment;
- (VI) Tonometry;
- (VII) Examinations of external ocular structures and adjacent structures;
- (VIII) Examination of internal ocular structures;
- (IX) Objective and subjective refractions-The professionally recognized minimum components as recognized by the Tennessee Board of Optometry, does not permit issuing a spectacle or contact lens prescription based solely on objective refractive data or information generated by an automated testing device such as an autorefractor or digital application, to establish a diagnosis or to establish refractive error. Likewise, issuing a prescription based solely on a patient's responses to a written, online questionnaire, or digital application does not meet the minimal competency and practice components;
- (X) Other tests and procedures that may be indicated by case history or objective signs and symptoms discovered during the vision examination;
- (XI) Diagnosis, treatment plan and patient education;
- (XII) These rules shall not be construed as prohibiting an Optometrist from deferring non-emergency ocular medical testing at a Vision Care Encounter until a timely Eye Health Care Encounter can be scheduled with the Optometrist or other

qualified Optometrist, Ophthalmologist, or health care professional for such eye health testing to be performed.

- (ii) Contact Lenses:
  - (I) All of the components required for spectacles prescriptions; and
  - (II) Measurement of cornea curvatures; and
  - (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 ; and
  - (V) Adequate patient training in lens care, solutions, application and removal along with proper wearing schedule, warning signs, and recall intervals; and
  - (VI) Follow-up visits as determined necessary in the judgment of the Optometrist to evaluate the health of the anterior segment, acuity, and lenses.
- (b) If because of the patient's age or physical limitations, one or more of the procedures specified herein, or any part thereof, cannot be performed, or if the procedures, or any part thereof, are to be performed by reason of exemption from this rule, the reason or exemption shall be noted on the patient's record.
- (c) When a patient presents to an Optometrist with the chief complaint consistent with Eye Health Care Encounter the performance of the minimum procedures set forth in (3)(a)2. above, shall only include Patient's case history; Visual acuity; Examinations of external ocular structures and adjacent structures; Examination of internal ocular structures and other tests and procedures that may be indicated by case history or objective signs and symptoms discovered during the examination and diagnosis treatment plan and patient education.
- (d) The minimum procedures set forth in (3)(a)2. above, shall not be required when an Optometrist performs public service visual screenings or visual screenings for governmental agencies and each recipient of such screening is clearly informed in writing of the following:
  - 1. The limitations of the screening,
  - 2. The screening is not representative of or a substitute for a comprehensive eye health and vision examination, and
  - 3. The screening will not result in a prescription for visual correction.
- (e) Range of Fees. A range of fees may be advertised for all services except Vision Care Encounters and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public. Fees may vary dependent upon the nature of the services provided, vision benefit plan and/or insurance coverage as held by the consumer.
- (f) 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 non-discounted fee for that service.

- (g) 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.
  - (h) 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.
- (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 technology 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.
  - (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) The communication of personally identifiable facts, data, or information about a patient without first obtaining patient consent.
  - (f) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
  - (g) 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.
  - (h) 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.
  - (i) Failure to include the corporation, partnership, or individual Licensee's name and contact information 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 upon request, provide a list of all Licensees practicing at that location.
  - (j) Failure to disclose any compensated endorsement or promotion event.
  - (k) 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.
  - (l) An ophthalmic lens, or contact lens may be guaranteed against defects but advertisements must state

results of individual applications and outcomes may vary.

- (m) Defaming other Optometrists.
- (5) Routine Optometric Service. Any eye health or vision care service may be considered routine if it has the following:
- (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 Responsibility.
- (a) Each Licensee 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) A recording of every advertisement communicating fees for services or products shall be retained by the Licensee for a period of two (2) years from the last date of publication and shall be made available for review upon request by the Board or its designee.
- (7) Corporate or Business Names.
- (a) Requests for approval of corporate or business names must be submitted to the Board's administrative office. Prior to using a corporate name in advertising, the name must be 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 Board's designee. .

Authority: T.C.A. §§ 63-1-145, 63-8-112, 63-8-113, and 63-8-120.

Rule 1045-02-.09 Ocular and Contact Lens Prescriptions and Office Equipment is amended by deleting the rule in its entirety, including the rule title, and substituting instead the following language, so that as amended, the new rule shall read:

#### 1045-02-.09 SPECTACLES, CONTACT LENS PRESCRIPTIONS, AND OFFICE TECHNOLOGY

- (1) A prescription for spectacles or ophthalmic devices is defined as a written order signed by the examining Optometrist at the conclusion of a Vision Care Encounter as set forth in Rule 1045-02-.08. No Optometrist shall write a spectacle prescription until the below steps have been performed.
- (2) An Optometrist shall comply with and abide by all federal statutes and regulations pertaining to spectacle lens prescriptions and eye examinations adopted by the Federal Trade Commission.
- (3) Contents of Spectacle Lens Prescription. No prescription for spectacle lenses shall include instructions to obtain the specifications from existing lenses. A fully written spectacle lens prescription must contain all information required to accurately manufacture and dispense the spectacle lens, including:

- (a) Patient's name, address, and date of birth;
  - (b) Prescribing Optometrist's name and contact information;
  - (c) Date the prescription is issued; the date of issuance is the date the patient receives a copy of the prescription;
  - (d) Sphere power;
  - (e) Cylinder power;
  - (f) Axis location;
  - (g) Prism power and base direction;
  - (h) Type, size, and power of multifocal;
  - (i) Interpupillary distance;
  - (j) Ophthalmic tint;
  - (k) A specific date of expiration, not to exceed twelve (12) months unless the Optometrist who issued the prescription, documents an earlier expiration date based on the Optometrist's professional judgment regarding the ocular health of the patient;
  - (l) Examining Optometrist's Tennessee license number, signature, or authorized signature.
- (4) A prescription for contact lenses is defined as a written order signed by the examining Optometrist at the conclusion of a contact lenses fitting and evaluation as set forth in Rule 1045-02-.08.
- (5) An Optometrist shall comply with all federal statutes and regulations pertaining to contact lens prescriptions and eye examinations adopted by the Federal Trade Commission.
- (a) Contact Lens fitting and evaluation means the process that begins after the Vision Care Encounter and ends upon completion of the requirements as set forth in Rule 1045-02-.08.
  - (b) Words or phrases such as "OK for contact lenses," "fit with contact lenses," "contact lenses may be worn," or similar wording do not constitute a contact lens prescription.
  - (c) No prescription for contact lenses shall include instructions to obtain the specifications from existing lenses nor to convert from spectacle lenses.
  - (d) In the case of a renewal prescription, the fitting and evaluation ends when the prescriber determines that no change in the existing material, base curve or diameter is required, or a new fitting and evaluation is completed with necessary follow-up examinations.
  - (e) Contents of Contact Lens Prescription. A fully written contact lens prescription must contain all information required to accurately dispense the contact lens, including:
    - 1. Patient's name, address, and date of birth;
    - 2. Prescribing Optometrist's name and contact information;
    - 3. Explicit statement that it is a contact lens prescription;



4. Date the prescription is issued.
5. All parameters required to properly supply soft contact lenses, to include:
  - (i) Name of manufacturer, trade name of private label brand, and if applicable, trade name of equivalent brand name when the prescribed brand name is not available to the optical industry as a whole, unless it is documented the prescribing of a proprietary lens brand is necessary for eye health;
  - (ii) The base curve;
  - (iii) The lens power;
  - (iv) The diameter;
  - (v) The replacement interval;
  - (vi) The suggested sterilization method, when indicated; and
  - (vii) Any other information necessary to accomplish the objective of the prescription.
6. Any prescription issued by a Licensee for rigid contact lenses shall include:
  - (i) The lens material;
  - (ii) The base curve;
  - (iii) The prism power;
  - (iv) The overall diameter;
  - (v) The replacement interval;
  - (vi) The suggested sterilization method, when indicated; and
  - (vii) Any other information necessary to accomplish the objective of the prescription.
7. A specific date of expiration, not to exceed twelve (12) months unless the Optometrist who issued the prescription, documents an earlier expiration date based upon the Optometrist's professional judgment regarding the ocular health.
8. Prescriber's signature or authorized signature, professional degree, and Tennessee license number.
9. The prescribing Optometrist has the authority to specify any and all parameters of a contact prescription for the compensatory, therapeutic, and/or visual health of a patient. The prescription shall not contain restrictions limiting the parameters to a private label or product not available to the optical industry as a whole. The prescribing of a private label or product brand is acceptable if indicated and documented as necessary for eye health.
10. Notice that the contact lens dispenser shall not adapt, substitute, or change the contact lens prescription without prior authorization from the prescribing Optometrist, to include specific material types and design types, to do so constitutes the practice of Optometry.
11. An Optometrist shall not charge the patient any fee as a condition for releasing any prescription to

the patient. An Optometrist may charge a service fee for verifying ophthalmic goods dispensed by another seller if the service fee is imposed at the time the verification is performed.

- (6) Ophthalmic prescription orders as defined by T.C.A. § 63-10-204 (42) and written by an Optometrist certified to practice therapeutics shall conform to state and federal statutes governing such forms and Rule 1045-02-.16 and as amended. Therapeutic prescription orders shall include:
- (a) Patient's name, address, and date of birth;
  - (b) Prescribing Optometrist's name and contact information;
  - (c) Date the prescription is issued;
  - (d) Name of the prescription drug prescribed, strength, quantity, and directions for use thereof;
  - (e) Refill instructions;
  - (f) Prescriber's Drug Enforcement Administration number, if applicable;
  - (g) Prescriber's signature and professional degree;
  - (h) Pursuant to Rule 1045-02-.09(3), all therapeutic prescriptions written by a Tennessee Optometrist certified to practice therapeutics shall include:
    - 1. Tennessee license number, and
    - 2. "T" designation preceding license number, i.e. "OD-T000."

Authority: T.C.A. §§ 63-8-102, 63-8-112, 63-8-113, and 63-8-120.

Rule 1045-02-.18 Telehealth in the Practice of Optometry 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:

- (1) Definitions
- (a) Healthcare Provider includes an optometrist acting within the scope of a valid license and a graduate, or a student as defined in T.C.A. § 63-1-155.
  - (b) Emergency as referenced in T.C.A. § 63-1-155 - A situation or condition where failure to provide immediate treatment poses a threat of loss of sight to a person. For the purposes hereof, routine visual care shall not be an emergency.
  - (c) In-person Patient Encounter - A patient encounter conducted by a Healthcare Provider who is at the same physical location as the location of the patient.
  - (d) Patient Encounter - The rendering of a documented Healthcare Provider opinion concerning evaluation, diagnosis, and/or treatment of a patient whether the Healthcare Provider is physically present in the same room, in a remote location within the state, or across state lines.
  - (e) Telehealth - Shall be defined as provided in T.C.A. § 63-1-155.
- (2) Establishment of a Healthcare Provider-Patient Relationship. A Healthcare Provider shall not render Telehealth services, ophthalmic prescribing and eye health services, advice and/or care without:

- (a) Fully verifying, to the extent possible, the requesting patient's identity;
  - (b) Disclosing the Healthcare Provider's identity and applicable credential(s) to the patient; and
  - (c) Obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding Telehealth.
- (3) The Appropriate Use of Telehealth in Optometric Practice
- (a) Policy Statement - The Tennessee Board of Optometry has developed these rules to educate Healthcare Providers as to the appropriate use of Telehealth in the practice of optometry. The Tennessee Board of Optometry is committed to ensuring patient access to the convenience and benefits afforded by Telehealth, while promoting the responsible practice of optometry by Healthcare Providers. These rules shall not be construed to alter the scope of practice of any Healthcare Provider or authorize the delivery of eye health and vision services in a setting, or in a manner, not otherwise authorized by Tennessee law.
  - (b) Authority to practice Telehealth is outlined in T.C.A. § 63-1-155. The patient shall be physically located in Tennessee.
  - (c) Informed Consent
    - 1. Evidence documenting appropriate patient informed consent for the use of Telehealth shall be obtained and maintained. Documentation of informed consent that is signed and dated, including electronic acknowledgement or signature of the patient, establishes a presumption of informed consent. Appropriate informed consent should include the following terms:
      - (i) Identification of the patient, the Healthcare Provider and the Healthcare Provider's credentials;
      - (ii) Types of transmissions permitted using Telehealth;
      - (iii) Necessity of In-person Patient Encounter. When, for whatever reason, the Telehealth modality in use for a particular Patient Encounter is unable to provide all pertinent clinical information that a Healthcare Provider exercising ordinary skill and care would deem reasonably necessary for the practice of optometry at an acceptable level of safety and quality in the context of that particular encounter, then the distant site Healthcare Provider shall make this known to the patient and advise and counsel the patient regarding the need for the patient to obtain an additional In-person Patient Encounter reasonably able to meet the patient's needs;
      - (iv) Limitations of Telehealth. A provider who uses Telehealth, before providing services, shall give each patient notice regarding Telehealth services, including the risks and benefits of being treated via Telehealth, and how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure; and
      - (v) Details on security measures taken with the use of Telehealth, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures.
  - (d) Continuity of Care. Patients should be able to seek, with relative ease, follow-up care or information from the Healthcare Provider who conducts a Telehealth encounter. Healthcare Providers solely providing services using Telehealth with no existing Healthcare Provider-patient relationship prior to the encounter, shall make documentation of the encounter available. Subject to the patient's request and consent, documentation of the Telehealth encounter shall be made available to any identified care provider, within a reasonable time after the Telehealth encounter.

- (e) Optometric Records. The patient's optometric record should include, if applicable, copies of all patient-related electronic communications, including Healthcare Provider-patient communication(s), prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of Telehealth. Informed consents obtained in connection with an encounter involving Telehealth should also be filed in the patient's examination record. The patient record established during the use of Telehealth shall be accessible and documented for both the Healthcare Provider and the patient, consistent with T.C.A. §§ 63-8-101, et seq.
- (f) Privacy and Security of Patient Records and Exchange of Information
  - 1. Healthcare Providers shall meet or exceed applicable federal and state legal requirements of optometric patient encounters/health information privacy, including compliance with the Health Insurance Portability and Accountability Act and State of Tennessee privacy, confidentiality, security, and optometric record retention rules.
  - 2. Healthcare Providers shall ensure that sufficient privacy and security measures shall be in place and documented to assure confidentiality and integrity of patient-identifiable information.
- (g) Prescribing
  - 1. Telehealth, where prescribing medications and ophthalmic materials may be contemplated, shall require a Healthcare Provider to implement measures to uphold patient safety in the absence of a traditional In-person Patient Encounter. Such measures shall guarantee that the identity of the patient and provider is clearly established and that detailed documentation for the clinical patient encounter and resulting prescription is both enforced and independently kept.
  - 2. Prescribing medications, in-person or via Telehealth, is at the professional discretion of the Healthcare Provider based on licensure. The indication, appropriateness, and safety considerations for each Telehealth visit prescription shall be evaluated by the Healthcare Provider in accordance with current standards of practice and consequently carry the same professional accountability as prescriptions delivered during an In-person Patient Encounter. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, Healthcare Providers may exercise their judgment and prescribe medications as part of Telehealth encounters.
  - 3. For Telehealth ophthalmic prescriptions, the same requirements exist as for fixed fee in-person services as outlined in Tenn. Comp. R. & Regs. 1045-02-.08.

Authority: T.C.A. §§ 63-1-122, 63-8-112, and 63-1-155.

#### New

Rule 1045-02-.19 Change of Address and/or Name is a new rule.

- (1) Change of Address - Each person registered with the Division and licensed by the Board who has had a change of address shall file, in writing, the individual's new home address and/or mailing address with the Board, within thirty (30) days after such change has occurred and must reference the individual's name, profession, and license number.
- (2) Change of Name - Individuals registered with the Board shall notify the Board, in writing, within thirty (30) days of a name change. A request for name change must reference the individual's profession, license number, and previous name with supporting legal documentation of the name change.

Authority: T.C.A. §§ 63-1-106, 63-1-108, and 63-8-108.

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: May 20, 2024

Signature: *Katherine Trawick*

Name of Officer: Katherine Trawick

Title of Officer: Associate Counsel, Department of Health

**Department of State Use Only**

Filed with the Department of State on: 5/20/2024

*Tre Hargett*

Tre Hargett  
Secretary of State

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Secretary of State  
Division of Publications

**RULES  
OF  
THE TENNESSEE BOARD OF OPTOMETRY**

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

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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 eye health and vision 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. “Advertisement” and “advertising” shall mean any form of public communication with the intent of furthering the purpose, either directly or indirectly, or of selling professional services or ophthalmic goods, or offering to perform professional services, or inducing members of the public to enter into any obligation relating to such professional services. ~~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.~~
- (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~~that an ordinary, reasonable, and prudent person would need to know or rely upon when making an informed decision concerning the choice of practitioners to serve their ~~his or~~ particular eye health and vision care 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. ~~A~~ Shall mean a fee offered or charged by a person or organization for any eye health and vision care 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."
- (f) Patient Encounter. The rendering of a documented optometrist’s opinion concerning evaluation, diagnosis, and/or treatment of a patient whether the optometrist is physically present in the same room, in a remote location within the state, or across state lines, pursuant to Rule 1045-02-.18.
1. Vision Care Encounter. Patient presents with a chief complaint for the measurement of the vision system, by which the optometrist employs any means approved by the United States Food and Drug Administration or related agency, including the use or furnishing of any self-testing device, the use of any computerized or automatic refracting device, including applications designed to be used on a computer or video conferencing via an internet device either in-person or in remote locations. The encounter results in the determination if prescribing ophthalmic correction is needed to remedy or relieve defects of vision performance by means including but not limited to spectacle eyeglasses, contact lenses for

orthotic, prosthetic, therapeutic, or cosmetic purposes, prisms, devices, and the employment of vision therapy or orthoptics for the aid thereof, and low vision rehabilitation.

2. Eye Health Care Encounter. Patient presents with a chief complaint related to eye health issue(s) that affect the ocular or systemic health and require an encounter for testing, diagnosing, treating, and managing conditions rational to the health and preservation of the human eye and related structures by employment of any means approved by the United States Food and Drug Administration or related agency, including the use or prescription of any self-testing, self-administered treatment or drug delivery devices, the use of any computerized or automatic devices, including applications designed to be used on a computer or video conferencing via an internet device either in-person or in remote locations.

(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) Patient's case history;~~Visual acuity testing of each eye far and near point; and~~
- (II) Visual acuity including best corrected acuity and unaided;~~External examination including extra ocular motility and confrontation fields; and~~
- (III) Pupillary examinations;~~Refraction (objective and subjective); and~~
- (IV) Extra ocular muscle assessment;~~Co-ordination testing; and~~
- (V) Visual field assessment;~~Ophthalmoscopy; and~~
- (VI) Tonometry;~~Biomicroscopy; and~~
- (VII) Examinations of external ocular structures and adjacent structures;~~Tonometry.~~
- (VIII) Examination of internal ocular structures;



- (IX) Objective and subjective refractions — The professionally recognized minimum components as recognized by the Tennessee Board of Optometry, does not permit issuing a spectacle or contact lens prescription based solely on objective refractive data or information generated by an automated testing device such as an autorefractor or digital application, to establish a diagnosis or to establish refractive error. Likewise, issuing a prescription based solely on a patient's responses to a written, online questionnaire, or digital application does not meet the minimal competency and practice components;
- (X) Other tests and procedures that may be indicated by case history or objective signs and symptoms discovered during the vision examination;
- (XI) Diagnosis, treatment plan and patient education;
- (XII) These rules shall not be construed as prohibiting an optometrist from deferring non-emergency ocular medical testing at a vision care encounter until a timely eye health care encounter can be scheduled with the optometrist or other qualified optometrist, ophthalmologist, or health care professional for such eye health testing to be performed.

(ii) Contact Lenses:

- (I) All of the components required for spectacles prescriptions; and
- (II) Measurement of cornea curvatures~~Keratometer reading of cornea curves~~; and
- (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) Follow-up visits as determined necessary in the judgment of the optometrist to evaluate the health of the anterior segment, acuity, and lenses.~~Medically necessary follow-up examinations.~~

(b) If because of the patient's age or physical limitations, one or more of the procedures specified herein, or any part thereof, cannot be performed, or if the procedures, or any part thereof, are to be performed by reason of exemption from this rule, the reason or exemption shall be noted on the patient's record.

- (c) When a patient presents to an optometrist with a chief complaint consistent with eye health care encounter the performance of the minimum procedures set forth in (3)(a)2. above, shall only include patient's case history; visual acuity; examinations of external ocular structures and adjacent structures; examination of internal ocular structures and other tests and procedures that may be indicated by case history or objective signs and symptoms discovered during the examination and diagnosis, treatment plan and patient education.
- (d) The minimum procedures set forth in (2)(f)2. above, shall not be required when an optometrist performs public service visual screenings or visual screenings for governmental agencies and each recipient of such screening is clearly informed in writing of the following:
1. The limitations of the screening.
  2. The screening is not representative of or a substitute for a comprehensive eye health and vision examination, and
  3. The screening will not result in a prescription for visual correction.
- (e)(b) Range of Fees. A range of fees may be advertised for all services except vision care encounters ~~routine optometric services~~ and the advertisement must disclose the factors used in determining the actual fee, necessary to prevent deception of the public. Fees may vary dependent upon the nature of the services provided, vision benefit plan and/or insurance coverage as held by the consumer.
- (f)(e) 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 non-discounted fee for that service.
- (g)(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.
- (h)(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 technology 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.
- (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.~~
- (e)(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.~~
- (f)(j) The knowing suppression, omission or concealment of any material fact or law without which the advertisement would be deceptive or misleading.
- (g)(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.~~
- (h)(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.~~

- (i)(p) Failure to include the corporation, partnership or individual licensee's name and [contact information](#)~~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 [upon request, provide a list of all licensees practicing at that location](#) .:
1. ~~Upon request provide a list of all licensees practicing at that location; and~~
  2. ~~Maintain and conspicuously display at the licensee's office, a directory listing all licensees practicing at that location.~~
- (i)(q) [Failure to disclose any compensated endorsement or promotion event](#).~~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.~~
- (k)(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.
- (l)(u) [An ophthalmic lens, or contact lens may be guaranteed against defects but advertisements must state results of individual applications and outcomes may vary](#).~~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.~~
- (m)(v) Defaming [other optometrists](#).~~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. [Any eye health or vision care service may be considered routine if it has the following](#).~~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 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. ~~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.~~
- (b)(c) A recording of every advertisement communicating fees for services or products shall be retained by the licensee for a period of two (2) years from the last date of publication and shall be made available for review upon request by the Board or its designee. ~~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.~~
- (7)(8) Corporate or Business Names.
- (a) Requests for approval of corporate or business names must be submitted to the Board's administrative office. Prior to using a corporate name in advertising, the name must be approved by the Board on an official form at the Board administrative office. ~~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's~~ Board designee. ~~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, 63-8-107, 63-8-107(c), 63-1-145,~~ 63-8-112, ~~63-8-112(1)-(3), 63-8-113,~~ and ~~63-8-115~~63-8-120.

1045-02-09 ~~OCULAR AND CONTACT LENS PRESCRIPTIONS AND OFFICE EQUIPMENT~~SPECTACLES, CONTACT LENS PRESCRIPTIONS, AND OFFICE TECHNOLOGY

- (1) A prescription for spectacles or ophthalmic devices is defined as a written order signed by the examining optometrist at the conclusion of a vision care encounter as set forth in Rule 1045-02-.08. No optometrist shall write a spectacle prescription until the below steps have been performed.~~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.~~
- (2) An optometrist shall comply with and abide by all federal statutes and regulations pertaining to spectacle lens prescriptions and eye examinations adopted by the Federal Trade Commission.~~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) Contents of Spectacle Lens Prescription. No prescription for spectacle lenses shall include instructions to obtain the specifications from existing lenses. A fully written spectacle lens prescription must contain all information required to accurately manufacture and dispense the spectacle lens, including:~~All therapeutic prescriptions written by a Tennessee optometrist certified to practice therapeutics must include:~~
  - (a) Patient's name, address, and date of birth;~~Tennessee license number;~~
  - (b) Prescribing optometrist's name and contact information;~~"T" designation preceding license number, i.e. OD-T000;~~
  - (c) Date the prescription is issued; the date of issuance is the date the patient receives a copy of the prescription;
  - (d) Sphere power;
  - (e) Cylinder power;
  - (f) Axis location;
  - (g) Prism power and base direction;
  - (h) Type, size, and power of multifocal;
  - (i) Interpupillary distance;
  - (j) Ophthalmic tint;

- (k) A specific date of expiration, not to exceed twelve (12) months unless the prescribing optometrist documents an earlier expiration date based on the optometrist's professional judgment regarding the ocular health of the patient;
  - (l) Prescribing optometrist's professional degree, Tennessee license number, and signature. An individual employed by the prescribing optometrist may act as an authorized designee and sign the prescribing optometrist's name with permission. ~~Examining Optometrist's Tennessee license number, signature, or authorized signature.~~
- (4) A prescription for contact lenses is defined as a written order signed by the examining optometrist at the conclusion of a contact lenses fitting and evaluation as set forth in Rule 1045-02-.08. ~~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.~~
- (5) An optometrist shall comply with all federal statutes and regulations pertaining to contact lens prescriptions and eye examinations adopted by the Federal Trade Commission.
- (a) Contact lens fitting and evaluation means the process that begins after the vision care encounter and ends upon completion of the requirements as set forth in Rule 1045-02-.08.
  - (b) Words or phrases such as "OK for contact lenses," "fit with contact lenses," "contact lenses may be worn," or similar wording do not constitute a contact lens prescription.
  - (c) No prescription for contact lenses shall include instructions to obtain the specifications from existing lenses nor to convert from spectacle lenses.
  - (d) In the case of a renewal prescription, the fitting and evaluation ends when the prescribing optometrist determines that no change in the existing material, base curve or diameter is required, or a new fitting and evaluation is completed with necessary follow-up examinations.
  - (e) Contents of Contact Lens Prescription. A fully written contact lens prescription must contain all information required to accurately dispense the contact lens, including:
    - 1. Patient's name, address, and date of birth;
    - 2. Prescribing optometrist's name and contact information;
    - 3. Explicit statement that it is a contact lens prescription;
    - 4. Date the prescription is issued.
    - 5. All parameters required to properly supply soft contact lenses, to include:
      - (i) Name of manufacturer, trade name of private label brand, and if applicable, trade name of equivalent brand name when the prescribed brand name is not available to the optical industry as a whole, unless it is documented the prescribing of a proprietary lens brand is necessary for eye health;

- (ii) The base curve;
- (iii) The lens power;
- (iv) The diameter;
- (v) The replacement interval;
- (vi) The suggested sterilization method, when indicated; and
- (vii) Any other information necessary to accomplish the objective of the prescription.

6. Any prescription issued by a Licensee for rigid contact lenses shall include:

- (i) The lens material;
- (ii) The base curve;
- (iii) The prism power;
- (iv) The overall diameter;
- (v) The replacement interval;
- (vi) The suggested sterilization method, when indicated; and
- (vii) Any other information necessary to accomplish the objective of the prescription.

7. A specific date of expiration, not to exceed twelve (12) months unless the prescribing optometrist documents an earlier expiration date based upon the optometrist's professional judgment regarding the ocular health.

8. Prescribing optometrist's professional degree, Tennessee license number, and signature. An individual employed by the prescribing optometrist may act as an authorized designee and sign the prescribing optometrist's name with permission. ~~signature or authorized signature, professional degree, and Tennessee license number.~~

9. The prescribing optometrist has the authority to specify any and all parameters of a contact prescription for the compensatory, therapeutic, and/or visual health of a patient. The prescription shall not contain restrictions limiting the parameters to a private label or product not available to the optical industry as a whole. The prescribing of a private label or product brand is acceptable if indicated and documented as necessary for eye health.

10. Notice that the contact lens dispenser shall not adapt, substitute, or change the contact lens prescription without prior authorization from the prescribing optometrist, to include specific material types and design types, to do so constitutes the practice of optometry.



11. An optometrist shall not charge the patient any fee as a condition for releasing any prescription to the patient. An optometrist may charge a service fee for verifying ophthalmic goods dispensed by another seller if the service fee is imposed at the time the verification is performed.

(6) Ophthalmic prescription orders as defined by T.C.A. § 63-10-204 (42) and written by an optometrist certified to practice therapeutics shall conform to state and federal statutes governing such forms and Rule 1045-02-.16 and as amended. Therapeutic prescription orders shall include:

(a) Patient's name, address, and date of birth;

(b) Prescribing optometrist's name and contact information;

(c) Date the prescription is issued;

(d) Name of the prescription drug prescribed, strength, quantity, and directions for use thereof;

(e) Refill instructions;

(f) Prescribing optometrist's Drug Enforcement Administration number, if applicable;

(g) Prescribing optometrist's signature and professional degree;

(h) Pursuant to Rule 1045-02-.09(3), all therapeutic prescriptions written by a Tennessee optometrist certified to practice therapeutics shall include:

1. Tennessee license number, and

2. "T" designation preceding license number, i.e. "OD-T000."

Authority: T.C.A. §§ ~~4-5-202, 4-5-204, 63-8-102,~~ 63-8-112, ~~63-8-112(1),~~ 63-8-113(c), ~~63-8-113(d),~~ and 63-8-120, ~~63-8-120(2), and 63-8-120(12).~~

#### 1045-02-.18 TELEHEALTH IN THE PRACTICE OF OPTOMETRY

(1) Definitions

(a) Healthcare Provider, as used in this rule, means ~~includes~~ an optometrist acting within the scope of a valid license and a graduate, or a student as defined in T.C.A. § 63-1-155.

~~(b)~~(a) Emergency as referenced in T.C.A. § 63-1-155 - A situation or condition where failure to provide immediate treatment poses a threat of loss of sight to a person. For the purposes hereof, routine visual care shall not be an emergency.

~~(c)~~(b) In-person ~~patient encounter~~ - A patient encounter conducted by a healthcare provider ~~provider~~ who is at the same physical location as the location of the patient.

~~(d)~~(c) Patient Encounter ~~encounter~~ - The rendering of a documented healthcare provider optometrist ~~optometrist~~ opinion concerning evaluation, diagnosis, and/or treatment of a patient whether the healthcare provider optometrist ~~optometrist~~ is physically present in the same room, in a remote location within the state, or across state lines.

~~(e)(d)~~ Telehealth - ~~The definition of telehealth~~ S shall be defined as provided in T.C.A. § 63-1-155(a)(2).

(2) Establishment of a Healthcare Provider ~~n-Optometrist~~-Patient Relationship. A healthcare provider shall not render telehealth services, ophthalmic prescribing and eye health services, advice and/or care without:

~~(a) Optometrist-patient relationship. Pursuant to T.C.A. § 63-1-155(b), an optometrist-patient relationship with respect to telemedicine or telehealth is created by mutual consent and mutual communication, except in an emergency, between the patient and the optometrist. The consent by the patient may be expressed or implied consent; however, the optometrist-patient relationship is not created simply by the receipt of patient health information by an optometrist unless a prior optometrist-patient relationship exists. The duties and obligations created by the relationship do not arise until the optometrist:~~

~~1. Affirmatively undertakes to diagnose or treat the patient; or~~

~~2. Affirmatively participates in the diagnosis or treatment.~~

~~(b) The optometrist-patient relationship established via telehealth, shall at a minimum, meet the requirements of T.C.A. § 63-1-155(b).~~

~~(c) An optometrist shall not render telehealth services, ophthalmic prescribing and eye health services, advice and/or care using telehealth technologies without:~~

~~1. Fully verifying, to the extent possible, the requesting patient's identity;~~

~~2. Disclosing the optometrist's identity and applicable credential(s) to the patient; and~~

~~3. Obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of telehealth technologies.~~

~~(d) An appropriate optometrist-patient relationship has not been established when the identity of the optometrist is unknown to the patient.~~

(a) Fully verifying, to the extent possible, the requesting patient's identity;

(b) Disclosing the healthcare provider's identity and applicable credential(s) to the patient; and

(c) Obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding telehealth.

(3) The Appropriate Use of Telehealth ~~Technologies~~ in Optometric Practice

(a) Policy Statement - The Tennessee Board of Optometry has developed these rules to educate healthcare providers licensees as to the appropriate use of telehealth telehealth technologies in the practice of optometry. The Tennessee Board of Optometry is committed to ensuring patient access to the convenience and benefits afforded by telehealth telehealth technologies, while promoting the responsible practice of optometry by a healthcare provider licensees. These rules shall not be construed to alter the scope of practice of any

healthcare provider ~~optometrist~~ or authorize the delivery of eye health and vision ~~optometric~~ services in a setting, or in a manner, not otherwise authorized by Tennessee law.

(b) Authority to practice telehealth is outlined in T.C.A. § 63-1-155. The patient shall be physically located in Tennessee, or a resident of Tennessee. ~~Licensure~~

~~1. An optometrist is a "healthcare services provider" under Tennessee law and shall be licensed and under the jurisdiction of the Tennessee Board of Optometry when utilizing telehealth technology to provide services to a patient located in the State of Tennessee.~~

~~2. Optometrists who treat or prescribe through online services sites are practicing optometry and are under the jurisdiction of the Tennessee Board of Optometry. Optometrists shall possess appropriate licensure through the Tennessee Board of Optometry. The optometrists shall abide by the established requirements for spectacle and contact lens prescription release pursuant to T.C.A. §§ 63-8-101, et seq.~~

~~(c) Treatment of the Patient~~

~~1. An optometrist who delivers services through the use of telehealth shall be held to the same standard of professional practice as a similar optometrist of the same practice area or specialty that is providing the same healthcare services through in-person encounters, and nothing in this rule is intended to create any new standards of care.~~

(c)(d) Informed Consent

1. Evidence documenting appropriate patient informed consent for the use of telehealth ~~telehealth technologies~~ shall be obtained and maintained. Documentation of informed consent that is signed and dated, including electronic acknowledgement or signature of the patient, establishes a presumption of informed consent. Appropriate informed consent should include the following terms:

(i) Identification of the patient, the healthcare provider ~~optometrist~~ and the healthcare provider's ~~optometrist's~~ credentials;

(ii) Types of transmissions permitted using telehealth ~~telehealth technologies~~;

(iii) Necessity of in-person patient encounter. When, for whatever reason, the telehealth ~~telemedicine~~ modality in use for a particular patient encounter is unable to provide all pertinent clinical information that a healthcare provider ~~an optometrist~~ exercising ordinary skill and care would deem reasonably necessary for the practice of optometry at an acceptable level of safety and quality in the context of that particular encounter, then the distant site healthcare provider ~~optometrist~~ shall make this known to the patient and advise and counsel the patient regarding the need for the patient to obtain an additional in-person patient encounter reasonably able to meet the patient's needs;

- (iv) Limitations of telehealth. A provider who uses ~~telehealth~~ telehealth technology, before providing services, shall give each patient notice regarding telehealth services, including the risks and benefits of being treated via telehealth, and how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure; and
- (v) Details on security measures taken with the use of ~~telehealth~~ telehealth technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures.;

~~(d)~~(e) Continuity of Care. ~~Patients should be able to seek, with relative ease, follow-up care or information from the optometrist who conducts an encounter using telemedicine technologies. Optometrists solely providing services using telehealth technologies with no existing optometrist-patient relationship prior to the encounter shall make documentation of the encounter available using telehealth technologies easily available to the patient, and subject to the patient's consent and request, any identified care provider of the patient within a reasonable time frame after the encounter.~~ Patients should be able to seek, with relative ease, follow-up care or information from the healthcare provider who conducts a telehealth encounter. Healthcare providers solely providing services using telehealth with no existing healthcare provider-patient relationship prior to the encounter, shall make documentation of the encounter available. Subject to the patient's request and consent, documentation of the telehealth encounter shall be made available to any identified care provider, within a reasonable time after the telehealth encounter.

~~(e)~~(f) Optometric Records. The patient's optometric record should include, if applicable, copies of all patient-related electronic communications, including ~~healthcare provider~~ optometrist-patient communication(s), prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of ~~telehealth~~ telehealth technologies. Informed consents obtained in connection with an encounter involving ~~telehealth~~ telehealth technologies should also be filed in the patient's examination record. The patient record established during the use of ~~telehealth~~ telehealth technologies shall be accessible and documented for both the ~~healthcare provider~~ optometrist and the patient, consistent with T.C.A. §§ 63-8-101, et seq.

~~(f)~~(g) Privacy and Security of Patient Records and Exchange of Information

1. ~~Healthcare providers~~ Optometrists shall meet or exceed applicable federal and state legal requirements of optometric patient encounters/health information privacy, including compliance with the Health Insurance Portability and Accountability Act (~~HIPAA~~) and State of Tennessee privacy, confidentiality, security, and optometric record retention rules.
2. ~~Healthcare providers~~ Optometrists shall ensure that sufficient privacy and security measures shall be in place and documented to assure confidentiality and integrity of patient-identifiable information.

~~(g)~~(h) Prescribing

1. Telehealth ~~technologies~~, when where prescribing medications and ophthalmic materials may be contemplated, shall require a healthcare provider ~~an optometrist~~ to implement measures to uphold patient safety in the absence of a traditional in-person patient encounter. Such measures shall guarantee that the identity of the patient and provider is clearly established and that detailed documentation for the clinical patient encounter and resulting prescription is both enforced and independently kept.
2. Prescribing medications, in-person or via telehealth, is at the professional discretion of the healthcare pProvider ~~optometrist~~ based on licensure. The indication, appropriateness, and safety considerations for each telehealth visit prescription shall be evaluated by the healthcare provider ~~optometrist~~ in accordance with current standards of practice and consequently carry the same professional accountability as prescriptions delivered during an in-person patient encounter. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, healthcare providers ~~optometrists~~ may exercise their judgment and prescribe medications as part of telehealth encounters.
- ~~3. Pursuant to Tenn. Comp. R. & Regs. 1045-02-.09(3), all therapeutic prescriptions written by a Tennessee optometrist certified to practice therapeutics shall include:~~
  - ~~(i) Tennessee license number; and~~
  - ~~(ii) "T" designation preceding license number, i.e. OD-T000.~~
34. For telehealth ophthalmic prescriptions, the same requirements exist as for fixed fee in-person services as outlined in Tenn. Comp. R. & Regs. 1045-02-.08~~(3)~~.

Authority: T.C.A. §§ 63-1-122, 63-8-112~~(1)~~ and 63-1-155.

#### 1045-02-.19 CHANGE OF ADDRESS AND/OR NAME

- (1) Change of Address - Each person registered with the Division and licensed by the Board who has had a change of address shall file, in writing, the individual's new home address and/or mailing address with the Board, within thirty (30) days after such change has occurred and must reference the individual's name, profession, and license number.
- (2) Change of Name - Individuals registered with the Board shall notify the Board, in writing, within thirty (30) days of a name change. A request for name change must reference the individual's profession, license number, and previous name with supporting legal documentation of the name change.

Authority: T.C.A. §§ 63-1-106, 63-1-108, and 63-8-108.