

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42B .0101

DEADLINE FOR RECEIPT: Monday, February 13, 2023

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

On the "Submission for Permanent Rule" Form, box 9B, what is stated does not appear to apply to the submitted rule. An explanation is necessary and must be related to this Rule.

The format of the Rule submission is not correct. There are templates, instructions, and examples to be found at <https://www.oah.nc.gov/rules-division/information-rulemaking-coordinators>.

As the "Rule" text does not directly or substantially affect procedural or substantive rights or duties of a person not on the Board or employed by the Board, how is this a Rule? Paragraph (a) is questionable, so please explain how this is a Rule. Paragraph (b) does not appear to be a Rule. N.C. Gen. Stat. § 150B-2(8a) has the definition of Rule.

Please retype the rule accordingly and resubmit it to our office electronically.

21 NCAC 42B .0101 is amended as published in 37:09 NCR 656-752 as follows:

21 NCAC 42B .0101 ~~GRADUATE OF APPROVED SCHOOLS OF OPTOMETRY~~

(a) The Board may grant recognition and approval ~~to a school or college of optometry~~, deny or rescind recognition and approval, or make any recognition and approval granted by the Board conditional or probational, to any school accredited by the Accreditation Council on Optometric Education. The Board, in its discretion, may base such determination based on the Board's determination on its assessment of the quality of the educational programs and offerings of each the school or college of optometry. ~~Their optometric educational programs having been accredited by the Accreditation Council on Optometric Education and recommended to the Board by the Association of Regulatory Boards in Optometry as worthy of approval, the following accredited schools and colleges of optometry are recognized and approved in accordance with the provisions of this Rule:~~

- (1) ~~University of Alabama at Birmingham
School of Optometry
1716 University Boulevard
Birmingham, AL 35294-0010~~
- (2) ~~University of California, Berkeley
School of Optometry
350 Minor Hall MC 2020
Berkeley, CA 94720-2020~~
- (3) ~~Southern California College of Optometry
2575 Yorba Linda Blvd.
Fullerton, CA 92631~~
- (4) ~~Ferris State University
Michigan College of Optometry
1310 Cramer Circle
Big Rapids, MI 49307-2738~~
- (5) ~~University of Houston
College of Optometry
505 J. Davis Armistead Bldg.
Houston, TX 77004-2020~~
- (6) ~~Illinois College of Optometry
3241 South Michigan Avenue
Chicago, IL 60616~~
- (7) ~~Indiana University
School of Optometry
800 East Atwater
Bloomington, IN 47405-3680~~

- ~~(8) New England College of Optometry
424 Beacon Street
Boston, MA 02115~~
- ~~(9) State University of New York
State College of Optometry
33 West 42nd Street
New York, NY 10036-8003~~
- ~~(10) The Ohio State University
College of Optometry
338 West Tenth Avenue
Columbus, OH 43210-1280~~
- ~~(11) Pacific University
College of Optometry
2043 College Way
Forest Grove, OR 97116~~
- ~~(12) Pennsylvania College of Optometry
at Salus University
Elkins Park Campus
8360 Old York Road
Elkins Park, PA 19027~~
- ~~(13) Southern College of Optometry
1245 Madison Avenue
Memphis, TN 38104~~
- ~~(14) University of Waterloo
School of Optometry
200 University Avenue West
Waterloo, ON N2L 3G1 CANADA~~
- ~~(15) Inter American University of Puerto Rico
School of Optometry
500 Carretera Dr John Will Harris
Bayamon, PR 00957~~
- ~~(16) University of Missouri, St. Louis
College of Optometry
One University Blvd.
331 Marillac Hall
St. Louis, MO 63121-4400~~
- ~~(17) University of Montreal~~

Ecole d'Optometrie
3744 Jean-Brillant, Suite 260-7
Montreal, QC H3T 1P1 CANADA

~~(18) Northeastern State University
Oklahoma College of Optometry
1001 N. Grand Avenue
Tahlequah, OK 74464~~

~~(19) Nova Southeastern University
College of Optometry
3200 S. University Drive
Ft. Lauderdale, FL 33328~~

~~(20) Midwestern University
Arizona College of Optometry
19555 N 59th Ave
Glendale, AZ 85308~~

~~(21) University of the Incarnate Word
School of Optometry
4301 Broadway, Box 373
San Antonio, TX 78209-6397~~

~~(22) Western University of Health Sciences
College of Optometry
309 E Second St.
Pomona, CA 91766-1854~~

(b) The Board may request a copy of the Accreditation Council of on Optometric Education's accreditation report on each school or college recognized and approved by the Board and for each school or college which has requested recognition and approval or for which the Board is considering recognition and approval.

*History Note: Authority G.S. 90-117.5; 90-118(a),(b);
Eff. February 1, 1976;
Readopted Eff. May 30, 1978;
Amended Eff. April 1, 2011; April 1, 1993; June 1, 1989; September 30, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,
2015;
Amended Eff. March 1, 2023*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42B .0303

DEADLINE FOR RECEIPT: Monday, February 13, 2023

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If N.C. Gen. Stat. § 90-123.1 states that "The length of study shall be prescribed by the Board but shall not exceed 25 hours in any calendar year." and 21 NCAC 42B .0302(f) requires 25 hours of continuing education annually, how is the Board within its statutory authority when it requires additional continuing education for whatever reason. It seems that this Rule is in violation of statute.

Regardless of the above comments:

Under what procedures, criteria, or standards will the Board exercise the discretionary "may" found in the first and last sentences of this Rule? The Rule must be clear and unambiguous in what it requires and what will subject those to whom it applies to "disciplinary action."

Please remove the "(i)", "(ii)", and "(iii)" from the text of the Rule.

In the History Note, Authority, please put the statutes in numerical order.

Please retype the rule accordingly and resubmit it to our office electronically.

21 NCAC 42B .0303 is amended as published in 37:09 NCR 656-752 as follows:

21 NCAC 42B .0303 FAILURE TO MEET CONTINUE CONTINUING EDUCATION REQUIREMENT

For a first failure to comply with 21 NCAC 42B .0302 ~~the optometrist is subject to disciplinary action by the Board pursuant to G.S. 90-121.2; provided, however, for a first offense the Board may require that the optometrist complete an additional five ~~three~~ hours and for the second offense six additional hours of attendance at approved continuing education programs. In the calendar year following such failure to comply, the optometrist must complete a sufficient number of hours at approved continuing education programs to (i) cure the prior year's shortfall; (ii) meet the current year's continuing education obligation, and (iii) meet any penalty imposed as a result of the prior year's shortfall. Any penalty imposed will require that the additional hours be fulfilled in addition to the required hours for the ensuing year. Any subsequent failure to comply with 21 NCAC 42B .0302 may subject the optometrist to disciplinary action under G.S. 90-121.2.~~

*History Note: Authority G.S. 90-117.5; 90-123.1; 90-121.2
Eff. February 1, 1976;
Readopted Eff. May 30, 1978;
Amended Eff. June 1, 1989; September 30, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,
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REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42D .0101

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When a defined word is only used in one rule, it should be defined in that rule, not in a separate "Definitions" Rule. The definition of "paraoptometric personnel" should be in 42D .0102, not its own Rule. Furthermore, when defining a term, please use the form: "For the purposes of this Rule, "paraoptometric personnel" means an optometric assistant, optometric technician, or similarly titled position who qualifies by training and experience to perform duties of an administrative, technical, or clinical nature and is directed and supervised by a licensed optometrist." This Rule should be repealed and the text should be moved to 42D .0102.

Please retype the rule accordingly and resubmit it to our office electronically.

21 NCAC 42D .0101 is amended as published in 37:09 NCR 656-752 as follows:

21 NCAC 42D .0101 DEFINITIONS

~~(a) Optometric assistants are those paraoptometric~~ Paraoptometric personnel, whether designated as optometric assistants, optometric technicians, or otherwise, are who qualify qualified by training and experience to perform duties of an administrative, technical, or clinical nature when directed and supervised by ~~relating to the assisting of a licensed practitioner in a dependent relationship.~~

~~(b) The optometric laboratory assistant is an individual with control of ophthalmic materials used in the optometric practice for lens and frame fabrication, selection and dispensing.~~

~~(c) Optometric technicians are those paraoptometric personnel who have satisfactorily completed programs in optometric technicianry approved by the Board. Technicians are trained in patient handling, ophthalmic laboratory preparation, administration of visual training, contact lens procedures and ophthalmic frame styling.~~

History Note: Authority G.S. 90-115.1(6); 90-117.5;

Eff. February 1, 1976;

Readopted Eff. May 30, 1978;

Amended Eff. June 1, 1989; September 30, 1981;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;

Amended Eff. March 1, 2023.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42D .0102

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This Rule effectively repeats the definition from 42D .0101. Is this necessary?

Using "whether..." is ambiguous and unclear. Please delete this phrase or rephrase.

The use of "their" is incorrect. Please change to "his or her".

Delete "by" in "as directed by".

The "so long as" and "include but are not limited to" phrases are unclear and ambiguous. Delete or rephrase. Can this be stated more clearly using an active verb? Do these "requirements" directly or substantially affect the procedural or substantive rights or duties of those whom you are attempting to regulate? It does not seem so.

Please retype the rule accordingly and resubmit it to our office electronically.

21 NCAC 42D .0102 is amended as published in 37:09 NCR 656-752 as follows:

21 NCAC 42D .0102 FUNCTION

~~(a) Paraoptometric personnel, whether designated as optometric assistants, optometric technicians, or otherwise, perform~~ The optometric technician performs those administrative, technical, and clinical functions within the scope of their ~~his~~ training, as directed by and assigned to ~~him~~ by an optometrist, so long as those functions are at the specific direction and under the ~~personal~~ supervision of the licensee. Such functions include but are not limited to dispensary activities, testing, and optometric procedures.

~~(b) The optometric assistant performs as an assistant to an optometrist and carries out verbal or written instructions in assisting in patient care.~~

~~(c) The optometric laboratory assistant performs at the direction of an optometrist those functions directly related to the fabrication of lenses and frames, frame selection, and the dispensing thereof.~~

History Note: Authority G.S. 90-115.1(6); 90-117.5;

Eff. February 1, 1976;

Readopted Eff. May 30, 1978;

Amended Eff. June 1, 1989; September 30, 1981;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;

Amended Eff. March 1, 2023.

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42M .0101

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Please put quotation marks around the defined word in each item. The list should be alphabetized by defined words.

Several times throughout this Rule "he" is used. Please change to "he or she".

Please retype the rule accordingly and resubmit it to our office electronically.

21 NCAC 42M .0101 is amended as published in 37:09 NCR 656-752 as follows:

21 NCAC 42M .0101 DEFINITIONS

As used in this Subchapter:

- (1) A preceptorship is a course of study in which students enrolled in a school approved pursuant to Rule 21 NCAC 42B .0101 receive part of their clinical training in a private practice setting outside the direct confines of the educational institution and whose training is continuing under the auspices and overall responsibility of the institution in which he is enrolled and under the supervision of a preceptor credentialed by the institution for which he is acting as a preceptor and whose credentials have been approved by the board.
- (2) A preceptor is an optometrist, duly licensed in the State of North Carolina, credentialed by the institution(s) for which he is serving as preceptor and who has been approved by the Board to act as such and under whose supervision a preceptee serves.
- (3) A preceptee is an individual who is still enrolled as a student in a school or college of optometry approved by the Board and whose clinical training is continuing under the auspices and control of the institution in which he is enrolled and under the ~~personal~~ supervision of the preceptor to which he has been assigned by his institution.
- (4) An institution is a school or college of optometry approved by the Board in accordance with Rule 21 NCAC 42B .0101.

*History Note: Authority G.S. 90-115.1(3); 90-117.5;
Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;
Amended Eff. March 1, 2023.*

REQUEST FOR § 150B-21.10 CHANGES

AGENCY: NC Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42M .0106

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Several times throughout this Rule "he", "his", "him", or "himself" is used. Please change to "he or she", "his or her", "him or her", or "himself or herself".

Please add an oxford comma after "preceptor" in the second line of Paragraph (a).

Delete "due" from each instance of "after due notice and hearing".

Change "the Board shall find:" to "the Board finds:" at the end of Paragraph (b) before the beginning of the list.

In Subparagraph (b)(2) and (6), delete "otherwise" and reword.

Define or delete "habitual" in Subparagraph (b)(3).

"Offenses" should be singular in Subparagraph (b)(4).

Subparagraph (b)(6) should have parallel construction to the previous subparagraphs. "that the preceptee has committed any act or omission..." would be better.

Insert "the" before "Board" in Paragraph (c).

Please retype the rule accordingly and resubmit it to our office electronically.

Lawrence R. Duke
Commission Counsel
Date submitted to agency: February 6, 2023

21 NCAC 42M .0106 is amended as published in 37:09 NCR 656-752 as follows:

21 NCAC 42M .0106 TERMINATION

(a) Approval and registration of a preceptor shall continue in effect until terminated by the Board, by the institution from whom he received his credentials as a preceptor or until 30 days after written notification of termination is submitted by the preceptor to the Board. The approval and registration of a preceptor may be terminated, after due notice and hearing, for any violation of these Rules.

(b) The approval of a preceptee shall be terminated by the Board no later than 30 days following the date of graduation or when, after due notice and hearing, the Board shall find:

- (1) that the preceptee has held himself out or permitted another to represent him as a licensed optometrist;
- (2) that the preceptee has in fact performed otherwise than at the direction or under the ~~personal~~ supervision of an optometrist licensed by the Board or has been delegated and preformed a task or tasks beyond his competence;
- (3) that the preceptee is a habitual user of intoxicants or drugs to such an extent that he is unable to perform as a preceptee to an optometrist;
- (4) that the preceptee has been convicted in any court, state or federal, of any felony or other criminal offenses involving moral turpitude;
- (5) that the preceptee has been adjudicated a mental incompetent or whose mental condition renders him unable to safely perform as a preceptee to an optometrist; or
- (6) the preceptee otherwise commits any act or omission which would subject him to discipline under G.S. 90-121.2 or under these Rules.

(c) Approval of a preceptorship shall continue in effect until terminated by Board or until 30 days after written notification of termination is submitted by the institution to the Board. A preceptorship may be terminated, after due notice and hearing, for any violation of the rules of this Chapter.

*History Note: Authority G. S. 90-115.1(3); 90-117.5; 90-121.2;
Eff. April 1, 1993;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23, 2015;
Amended Eff. March 1, 2023.*