

RRC STAFF OPINION

Please Note: This communication is either 1) only the recommendation of an RRC staff attorney as to action that the attorney believes the Commission should take on the cited rule at its next meeting, or 2) an opinion of that attorney as to some matter concerning that rule. The agency and members of the public are invited to submit their own comments and recommendations (according to RRC rules) to the Commission.

AGENCY: North Carolina State Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42D .0102

RECOMMENDATION DATE: June 22, 2024

RECOMMENDED ACTION:

Approve, but note staff's comment

Object, based on:

Lack of statutory authority

Unclear or ambiguous

Unnecessary

Failure to comply with the APA

Extend the period of review

X Send to OSBM pursuant to G.S. 150B-21.4(b1)

COMMENT:

Posture

This rule was originally on the Rules Review Commission's (RRC) agenda in October 2023. It was subject to a staff opinion for lack of clarity and ambiguity. The Board of Examiners in Optometry (the Board) requested an extension which was granted by the RRC.

The Board submitted a revision to the Rule prior to the RRC considering the original submission. Like its predecessor, the revised Rule was subject to a staff opinion lack of clarity and ambiguity. Additionally, the staff opinion recommended objection for lack of authority, and failure to comply with the Administrative Procedures Act. At its November meeting, the RRC objected to the revised version consistent with staff's opinion of November 1, 2023.

The Board revised the Rule to satisfy the RRC's objections. This was the fourth revision filed with the RRC but the second to be considered by the RRC. This revised Rule was considered by the RRC in January 2024.

Consistent with staff's opinion, the RRC found that the RRC's objections had been met but also found that the changes made to the Rule were substantial pursuant to G.S. 150B-21.2(g)(1) and (3). Accordingly, the Rule, as revised, needed to be published and reviewed in accordance with the procedure set forth in G.S. 150B-21.2, pursuant to G.S. 150B-21.12(c) as amended by Section 21.2(h) of Session Law 2023-134.

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Commission Counsel*

The Board published the rule. In response to comments received, the Board made further changes to the rule prior to submitting the Rule to the RRC for review.

On June 3, 2024, staff issued a request for changes in which staff inquired, inter alia, why the changes made post publication were not substantial changes pursuant to G.S. 150B-21.2(g) which would require another publication. The Board did not substantively respond to the issue.

On June 13, 2024, the Board filed the same language to which the RRC approved in January, 2024 and abandoned the changes made post-publication. Accordingly, the Rule before the RRC in June 2024 is the same language which it approved in January 2024.

The RRC has received two public comments urging objection to the Rule as it currently reads.

Opinion

I.

The first comment is from the North Carolina Retail Merchants Association (NCRMA) which avers that the RRC should object to the rule pursuant to G.S. 150B-21.9(a)(4) for failure to adopt the rule in accordance with Part 2, Article 2A of the Administrative Procedure Act (Part 2). The NCRMA avers that the Board has failed to conduct the analysis required by G.S.150B-21.4(b1) as to whether the rule has a substantial economic impact and thus requires a fiscal note which it does not have. In support of its averment the NCRMA offers that “it is highly likely that the proposed rule will easily exceed the \$1,000,000 threshold...” In support of this statement, the NCRMA offers the examination fees for types of certifications made necessary by the Rule. The NCRMA fails to show the number of certifications which are likely to occur.

Staff finds the NCRMA’s comment, while evidence, is not compelling evidence that the Board failed to conduct the analysis required by G.S.150B-21.4(b1). However, staff reached out to the Board on June 19, 2024 to confirm that it had done the analysis. At the time of this opinion, the Board has failed to respond to the two simple questions of whether an analysis has been completed and if so when.

At this time, staff does not recommend objection pursuant to G.S. 150B-21.9(a)(4).

However, pursuant to G.S. 150B-21.9, the Commission may ask the Office of State Budget and Management (OSBM) to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. Further, the Commission must ask OSBM for this determination if it receives a written request for the determination also pursuant to G.S. 150B-21.9. The NCRMA has made this request.

Accordingly, staff recommends the Rule be sent to OSBM to determine whether the Rule has a substantial economic impact, and the Rule remain subject to RRC review pending this determination.

II.

The second comment is from the National Association of Retail Optical Companies (NAROC) and mostly contains arguments concerning the quality and efficacy of the Rule which exceeds the scope of review by the RRC. However, NAROC also makes averments that the Rule should be objected to on all four bases of G.S. 150B-21.9(a).

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Commission Counsel*

NAROC avers that the Rule is not “reasonably necessary” pursuant to G.S. 150B-21.9(a)(3); however, it does so employing a broad interpretation of “reasonably necessary” which wanders into policy considerations better addressed to the Board and not within the RRC’s traditionally more restricted view of its scope regarding “necessity.”

NAROC, like the NCRMA, avers that the Board has failed to have a required fiscal note and accordingly did not adopt the Rule in accordance with (Part 2), which, if true, would be the basis for objection pursuant to 150B-21.9(a)(4). However, like NCRMA, NAROC only offers the costs of individual certifications and training without quantifying them other than by assumption¹. Accordingly, staff recommends the Rule be sent to OSBM to determine whether the Rule has a substantial economic impact, and the Rule remain subject to RRC review pending this determination.

Lastly, NAROC raises the issue of whether the Board has exceeded its authority pursuant to G.S. 150B-21.9(a)(1) in that it regulates the duties of assistants and technicians, duties which fall outside “the definition of the practice of optometry in [G.S. 90-114].” Further, it was unclear whether the duties that exceed the definition of optometry described in the rule require certification as an assistant or technician to be performed in an optometrist’s office.

Prior to receiving the NAROC comment, staff raised these points with the Board in its Request for Changes on June 3, 2024, Part II (attached hereto and the reading of which is commended). The Board offered no substantive reply addressing these issues.

The Board has broad rulemaking authority in G.S. 90-117.5.

§ 90-117.5. Bylaws and regulations.

The North Carolina State Board of Examiners in Optometry shall have the power to make necessary bylaws and regulations, not inconsistent with the provisions of this Article, regarding any matter referred to in this Article and for the purpose of facilitating the transaction of business by the said Board. (1973, c. 800, s. 6.)

Article 6 of Chapter 90 of the North Carolina General Statutes does refer to optometry assistants and technicians albeit not extensively. It appears to staff that the Board can regulate acts which technicians and assistants can and cannot do without regard to whether those acts fall under the definition of optometry.

It further appears to staff that the Board cannot regulate acts which fall outside of the definition of optometry when not performed by individuals not certified as either a technician or an assistant.

The Rule regulates those acts and duties that the optometrist may delegate to certified assistants and technicians. Some of those acts and duties fall under the definition of optometry and others do not. By including acts which fall outside the definition of optometry, it is unclear whether an optometrist is able to delegate to certified assistants and technicians other non-optometry acts which are not addressed in the Rule.

It is also unclear whether an optometrist can delegate to individuals who are not certified as technicians or assistants enumerated acts which fall outside the definition of optometry.

¹ NAROC assumes “500 to 1000 technicians will need to be certified...”

It appears to staff that these issues can be easily resolved.

Accordingly, as currently written, staff recommends objection pursuant to G.S. 150B-21.9(a)(2) for ambiguity notwithstanding the RRC's determination in January 2024. While the Board may aver that the Commission's failure to object in January 2024 precludes it from objecting at this juncture, such an averment would fly in the face of the statutory requirement that the agency publish the revised rule and accept comments thereon. Should the RRC ignore comments raising issues pursuant to G.S. 150B-21.9? Why then accept comments at all?

However, given the current posture of this Rule should the RRC send this Rule to OSMB, staff recommends deferring the issue of objection on this basis until OSBM makes its determination. In that way, all of the objections will be considered by the RRC at the same hearing.

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Commission Counsel*

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) **It is clear and unambiguous.**
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

In the event that a proposed temporary or permanent rule fails to comply with any of the standards set forth in this section, the Commission shall object to the temporary or permanent rule.

(a1) Repealed by Session Laws 2023-134, s. 21.2(g), effective October 3, 2023.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9; 2023-134, s. 21.2(g).)

§ 150B-21.2. Procedure for adopting a permanent rule.

(a) Steps. - Before an agency adopts a permanent rule, the agency must comply with the requirements of G.S. 150B-19.1, and it must take the following actions:

- (1) Publish a notice of text in the North Carolina Register.
- (2) When required by G.S. 150B-21.4, prepare or obtain a fiscal note for the proposed rule.
- (3) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.
- (4) When required by subsection (e) of this section, hold a public hearing on the proposed rule after publication of the proposed text of the rule.
- (5) Accept oral or written comments on the proposed rule as required by subsection (f) of this section.

(b) Repealed by Session Laws 2003-229, s. 4, effective July 1, 2003.

(c) Notice of Text. - A notice of the proposed text of a rule must include all of the following:

- (1) The text of the proposed rule, unless the rule is a readoption without substantive changes to the existing rule proposed in accordance with G.S. 150B-21.3A.
- (2) A short explanation of the reason for the proposed rule.
- (2a) A link to the agency's website containing the information required by G.S. 150B-19.1(c).
- (3) A citation to the law that gives the agency the authority to adopt the rule.
- (4) The proposed effective date of the rule.
- (5) The date, time, and place of any public hearing scheduled on the rule.
- (6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (e) of this section requires the agency to hold a public hearing on the proposed rule when requested to do so.
- (7) The (i) period of time during which and (ii) person within the agency to whom written comments may be submitted on the proposed rule.
- (8) If a fiscal note has been prepared for the rule, a statement that a copy of the fiscal note can be obtained from the agency.
- (9) Repealed by Session Laws 2013-143, s. 1, effective June 19, 2013.

(d) Mailing List. - An agency must maintain a mailing list of persons that have requested notice of rulemaking. When an agency publishes in the North Carolina Register a notice of text of a proposed rule, it must mail a copy of the notice of text to each person on the mailing list that has requested notice on the subject matter described in the notice or the rule affected. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(e) Hearing. - An agency must hold a public hearing on a rule it proposes to adopt if the agency publishes the text of the proposed rule in the North Carolina Register and the agency receives a written request for a public hearing on the proposed rule within 15 days after the notice of text is published. The agency must accept comments at the public hearing on both the proposed rule and any fiscal note that has been prepared in connection with the proposed rule.

An agency may hold a public hearing on a proposed rule and fiscal note in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 but not later than 60 days after the date the notice is published. If notice of a

public hearing has been published in the North Carolina Register and that public hearing has been cancelled, the agency must publish notice in the North Carolina Register at least 15 days prior to the date of any rescheduled hearing.

(f) Comments. - An agency must accept comments on the text of a proposed rule that is published in the North Carolina Register and any fiscal note that has been prepared in connection with the proposed rule for at least 60 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must consider fully all written and oral comments received.

(g) Adoption. - An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and shall not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. Prior to adoption, an agency must review any fiscal note that has been prepared for the proposed rule and consider any public comments received in connection with the proposed rule or the fiscal note. An agency shall not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (f) of this section.

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

- (1) Affects the interests of persons that, based on the proposed text of the rule published in the North Carolina Register, could not reasonably have determined that the rule would affect their interests.
- (2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.
- (3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it shall not take subsequent action on the rule without following the procedures in this Part. An agency must submit an adopted rule to the Rules Review Commission within 30 days of the agency's adoption of the rule.

(h) Explanation. - An agency must issue a concise written statement explaining why the agency adopted a rule if, within 15 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule. The agency must issue the explanation within 15 days after receipt of the request for an explanation.

(i) Record. - An agency must keep a record of a rulemaking proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, any fiscal note that has been prepared for the rule, and any written explanation made by the agency for adopting the rule. (1973, c. 1331, s. 1; 1975, 2nd Sess., c. 983, s. 63; 1977, c. 915, s. 2; 1983, c. 927, ss. 3, 7; 1985, c. 746, s. 1; 1985 (Reg. Sess., 1986), c. 1022, s. 1(1), (7); 1987, c. 285, ss. 7-9; 1989, c. 5, s. 1; 1991, c. 418, s. 1; 1995, c. 507, s. 27.8(d); 1996, 2nd Ex. Sess., c. 18, s. 7.10(e); 2003-229, s. 4; 2011-398, s. 5; 2013-143, s. 1; 2013-413, s. 3(a); 2021-88, s. 17; 2023-134, s. 21.2(b).)

§ 150B-21.4. Fiscal and regulatory impact analysis on rules.

(a) State Funds. - Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the State Budget Act, Chapter 143C of the General Statutes, it must submit the text of the proposed rule change, an analysis of the proposed rule change, and a fiscal note on the proposed rule change to the Office of State Budget and Management and obtain certification from the Office of State Budget and Management that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Office of State Budget and Management must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(a1) DOT Analyses. - In addition to the requirements of subsection (a) of this section, any agency that adopts a rule affecting environmental permitting of Department of Transportation projects shall conduct an analysis to determine if the rule will result in an increased cost to the Department of Transportation. The analysis shall be conducted and submitted to the Board of Transportation when the agency submits the notice of text for publication. The agency shall consider any recommendations offered by the Board of Transportation prior to adopting the rule. Once a rule subject to this subsection is adopted, the Board of Transportation may submit any objection to the rule it may have to the Rules Review Commission. If the Rules Review Commission receives an objection to a rule from the Board of Transportation no later than 5:00 P.M. of the day following the day the Commission approves the rule, then the rule shall only become effective as provided in G.S. 150B-21.3(b1).

(b) Local Funds. - Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Office of State Budget and Management as provided by G.S. 150B-21.26, the Fiscal Research Division of the General Assembly, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease the direct or indirect expenditures or revenues of a unit of local government and must explain how the amount was computed.

(b1) Substantial Economic Impact. - Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would have a substantial economic impact and that is not identical to a federal regulation that the agency is required to adopt, the agency shall prepare a fiscal note for the proposed rule change and have the note approved by the Office of State Budget and Management. The agency must also obtain from the Office a certification that the agency adhered to the regulatory principles set forth in G.S. 150B-19.1(a)(2), (5), and (6). The agency may request the Office of State Budget and Management to prepare the fiscal note only after, working with the Office, it has exhausted all resources, internal and external, to otherwise prepare the required fiscal note. If an agency requests the Office of State Budget and Management to prepare a fiscal note for a proposed rule change, that Office must prepare the note within 90 days after receiving a written request for the note. If the Office of State Budget and Management fails to prepare a fiscal note within this time period, the agency proposing the rule change shall prepare a fiscal note. A fiscal note prepared in this circumstance does not require approval of the Office of State Budget and Management.

If an agency prepares the required fiscal note, the agency must submit the note to the Office of State Budget and Management for review. The Office of State Budget and Management shall review

the fiscal note within 14 days after it is submitted and either approve the note or inform the agency in writing of the reasons why it does not approve the fiscal note. After addressing these reasons, the agency may submit the revised fiscal note to that Office for its review. If an agency is not sure whether a proposed rule change would have a substantial economic impact, the agency shall ask the Office of State Budget and Management to determine whether the proposed rule change has a substantial economic impact. Failure to prepare or obtain approval of the fiscal note as required by this subsection shall be a basis for objection to the rule under G.S. 150B-21.9(a)(4).

As used in this subsection, the term "substantial economic impact" means an aggregate financial impact on all persons affected of at least one million dollars (\$1,000,000) in a 12-month period. In analyzing substantial economic impact, an agency shall do the following:

- (1) Determine and identify the appropriate time frame of the analysis.
- (2) Assess the baseline conditions against which the proposed rule is to be measured.
- (3) Describe the persons who would be subject to the proposed rule and the type of expenditures these persons would be required to make.
- (4) Estimate any additional costs that would be created by implementation of the proposed rule by measuring the incremental difference between the baseline and the future condition expected after implementation of the rule. The analysis should include direct costs as well as opportunity costs. Cost estimates must be monetized to the greatest extent possible. Where costs are not monetized, they must be listed and described.
- (5) For costs that occur in the future, the agency shall determine the net present value of the costs by using a discount factor of seven percent (7%).

(b2) Content. - A fiscal note required by subsection (b1) of this section must contain the following:

- (1) A description of the persons who would be affected by the proposed rule change.
- (2) A description of the types of expenditures that persons affected by the proposed rule change would have to make to comply with the rule and an estimate of these expenditures.
- (3) A description of the purpose and benefits of the proposed rule change.
- (4) An explanation of how the estimate of expenditures was computed.
- (5) A description of at least two alternatives to the proposed rule that were considered by the agency and the reason the alternatives were rejected. The alternatives may have been identified by the agency or by members of the public.

(c) Errors. - An erroneous fiscal note prepared in good faith does not affect the validity of a rule.

(d) If an agency proposes the repeal of an existing rule, the agency is not required to prepare a fiscal note on the proposed rule change as provided by this section. (1973, c. 1331, s. 1; 1979, 2nd Sess., c. 1137, s. 41.1; 1983, c. 761, s. 185; 1985, c. 746, s. 1; 1987, c. 827, s. 54; 1991, c. 418, s. 1; 1995, c. 415, s. 2; c. 507, s. 27.8(b); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 6; 2005-276, s. 28.8(a); 2006-203, s. 124; 2011-398, s. 6; 2012-187, s. 4; 2013-149, s. 1; 2013-413, s. 2; 2014-115, s. 17; 2014-120, s. 6(b); 2023-134, s. 21.2(d).)

§ 150B-21.12. Procedure when Commission objects to a permanent rule.

(a) Action. - When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

- (1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.
- (2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

(b) Time Limit. - An agency that is not a board or commission must take one of the actions listed in subsection (a) of this section within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

(c) Changes. - When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection. The Commission must also determine whether the change is substantial. In making this determination, the Commission must use the standards set forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule must be published and reviewed in accordance with the procedure set forth in G.S. 150B-21.2(g). If the change is substantial, the revised rule shall be published and reviewed in accordance with the procedure set forth in G.S. 150B-21.2.

(d) Return of Rule. - A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule satisfies the Commission's objection or submits a written response to the Commission indicating that the agency has decided not to change the rule. If the agency does not submit a revised rule to satisfy the Commission's objection within the time limit established in subsection (b) of this section, or submits a written response indicating that the agency has decided not to change the rule within the time limit established by subsection (b) of this section, the Commission shall return the rule to the agency and notify the Codifier of Rules of its action. If the rule that is returned would have increased or decreased expenditures or revenues of a unit of local government, the Commission must also notify the Governor of its action and must send a copy of the record of the Commission's review of the rule to the Governor. The record of review consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule. (1991, c. 418, s. 1; 1995, c. 415, s. 5; c. 507, s. 27.8(h), (y); 2003-229, s. 10; 2011-291, s. 2.60; 2011-398, s. 8; 2023-134, s. 21.2(h).)

§ 90-115.1. Acts not constituting the unlawful practice of optometry.

In addition to the exemptions from this Article otherwise existing the following acts or practices shall not constitute the unlawful practice of optometry:

- (1) The practice of optometry, in the discharge of their official duties, by optometrists in any branch of the Armed Forces of the United States or in the full employ of any agency of the United States.
- (2) The teaching of optometry, in optometry schools or colleges operated and conducted in this State and approved by the North Carolina State Board of Examiners in Optometry, by any person or persons licensed to practice optometry anywhere in the United States or in any country, territory or other recognized jurisdiction; provided, however, that such teaching of optometry by any person or persons licensed in any jurisdiction other than a place in the United States must first be approved by the North Carolina State Board of Examiners in Optometry.
- (3) The practice of optometry by students enrolled in optometry schools or colleges approved by the North Carolina State Board of Examiners in Optometry when such practice is performed as a part of the student's course of instruction, is under the direct supervision of an optometrist who is either duly licensed in North Carolina or qualified under subdivision (2) above as a teacher, and is conducted in accordance with such rules as may be established for such practice by the North Carolina State Board of Examiners in Optometry. Additionally, the practice of optometry by such students at any location upon patients or inmates of institutions wholly owned or operated by the State of North Carolina or any political subdivision or subdivisions thereof when, in the opinion of the dean of such optometry school or college or his designee, the student's optometric education and experience is adequate therefor, subject to review and approval by the said Board of Examiners in Optometry, and such practice is a part of the course of instruction of such students, is performed under the supervision of a duly licensed optometrist acting as a teacher or instructor and is without remuneration except for expenses and subsistence as defined and permitted by the rules and regulations of said Board of Examiners in Optometry.
- (4) The temporary practice of optometry by licensed optometrists of another state or of any territory or country when the same is performed, as clinicians, at meetings or organized optometric societies, associations, colleges or similar optometric organizations, or when such optometrists appear in emergency cases upon the specific call of and in consultation with an optometrist duly licensed to practice in this State.
- (5) The practice of optometry by a person who is a graduate of an optometric school or college approved by the North Carolina State Board of Examiners in Optometry and who is not licensed to practice optometry in this State, when such person is the holder of a valid intern permit, or provisional license, issued to him by the North Carolina State Board of Examiners in Optometry pursuant to the terms and provisions of this Article, and when such practice of optometry complies with the conditions of said intern permit, or provisional license.
- (6) Any act or acts performed by an optometric assistant or technician to an optometrist licensed to practice in this State when said act or acts are authorized and

permitted by and performed in accordance with rules and regulations promulgated by the Board.

- (7) Optometric assisting and related functions as a part of their instructions by optometric assistant students enrolled in a course conducted in this State and approved by the Board, when such functions are performed under the supervision of an optometrist acting as a teacher or instructor who is either duly licensed in North Carolina or qualified for the teaching of optometry pursuant to the provisions of subdivision (2) above. (1975, c. 733; 1989, c. 321; 2011-183, s. 61.)

§ 90-117.5. Bylaws and regulations.

The North Carolina State Board of Examiners in Optometry shall have the power to make necessary bylaws and regulations, not inconsistent with the provisions of this Article, regarding any matter referred to in this Article and for the purpose of facilitating the transaction of business by the said Board. (1973, c. 800, s. 6.)

§ 90-121.2. Rules and regulations; discipline, suspension, revocation and regrant of certificate.

(a) The Board shall have the power to make, adopt, and promulgate such rules and regulations, including rules of ethics, as may be necessary and proper for the regulation of the practice of the profession of optometry and for the performance of its duties. The Board shall have jurisdiction and power to hear and determine all complaints, allegations, charges of malpractice, corrupt or unprofessional conduct, and of the violation of the rules and regulations, including rules of ethics, made against any optometrist licensed to practice in North Carolina. The Board shall also have the power and authority to: (i) refuse to issue a license to practice optometry; (ii) refuse to issue a certificate of renewal of a license to practice optometry; (iii) revoke or suspend a license to practice optometry; and (iv) invoke such other disciplinary measures, censure, or probative terms against a licensee as it deems fit and proper; in any instance or instances in which the Board is satisfied that such applicant or licensee meets any of the following criteria:

- (1) Has engaged in any act or acts of fraud, deceit or misrepresentation in obtaining or attempting to obtain a license or the renewal thereof;
- (2) Is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs his ability to practice optometry;
- (3) Has been convicted of any of the criminal provisions of this Article or has entered a plea of guilty or nolo contendere to any charge or charges arising therefrom;
- (4) Has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude;
- (5) Has been convicted of or entered a plea of guilty or nolo contendere to any charge of violation of any State or federal narcotic or barbiturate law;
- (6) Has engaged in any act or practice violative of any of the provisions of this Article or violative of any of the rules and regulations promulgated and adopted by the Board, or has aided, abetted or assisted any other person or entity in the violation of the same;
- (7) Repealed by Session Laws 2023-129, s. 5.1(c), effective October 1, 2023.
- (7a) Is unable to practice optometry with reasonable skill and safety by reason of abuse of alcohol, drugs, chemicals, or any other type of substance, or by reason of any physical or mental illness, abnormality, or other limiting condition;
- (8) Repealed by Session Laws 1981, c. 496, s. 12.
- (9) Has permitted the use of his name, diploma or license by another person either in the illegal practice of optometry or in attempting to fraudulently obtain a license to practice optometry;
- (10) Has engaged in such immoral conduct as to discredit the optometry profession;
- (11) Has obtained or collected or attempted to obtain or collect any fee through fraud, misrepresentation, or deceit;
- (12) Has been negligent in the practice of optometry;
- (13) Has employed a person not licensed in this State to do or perform any act of service, or has aided, abetted or assisted any such unlicensed person to do or perform any act or service which under this Article can lawfully be done or performed only by an optometrist licensed in this State;
- (14) Is incompetent in the practice of optometry;
- (15) Has practiced any fraud, deceit or misrepresentation upon the public or upon any individual in an effort to acquire or retain any patient or patients, including false or misleading advertising;

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Commission Counsel

- (16) Has made fraudulent or misleading statements pertaining to his skill, knowledge, or method of treatment or practice;
- (17) Has committed any fraudulent or misleading acts in the practice of optometry;
- (18) Repealed by Session Laws 1981, c. 496, s. 12.
- (19) Has, in the practice of optometry, committed an act or acts constituting malpractice;
- (20) Repealed by Session Laws 1981, c. 496, s. 12.
- (21) Has permitted an optometric assistant in his employ or under his supervision to do or perform any act or acts violative to this Article or of the rules and regulations promulgated by the Board;
- (22) Has wrongfully or fraudulently or falsely held himself out to be or represented himself to be qualified as a specialist in any branch of optometry;
- (23) Has persistently maintained, in the practice of optometry, unsanitary offices, practices, or techniques;
- (24) Is a menace to the public health by reason of having a serious communicable disease;
- (25) Has engaged in any unprofessional conduct as the same may be from time to time defined by the rules and regulations of the Board.

(a1) The Board may, in its discretion, order an applicant or licensee to submit to a mental or physical examination by physicians or physician assistants, or other appropriate licensed health care providers, designated by the Board during the pendency of the licensing application, or before or after charges may be presented against the applicant or licensee. The results of the examination shall be admissible in evidence in a hearing before the Board in accordance with the provisions of this Article. An adjudication of mental incompetency in any court of competent jurisdiction or a determination of mental incompetency by other lawful means shall be conclusive proof of unfitness to practice optometry, unless or until that applicant or licensee is subsequently lawfully declared mentally competent. An adjudication or determination of mental incompetency shall constitute good cause for the issuance of an order by the Board that the licensee immediately cease practice and surrender their license to the Board. Failure to comply with an order under this subsection may be considered unprofessional conduct.

(a2) In addition to and in conjunction with the actions described in subsections (a) and (a1) of this section, the Board may make a finding adverse to a licensee or applicant but withhold imposition of judgment and penalty or it may impose judgment and penalty but suspend enforcement thereof and place the licensee on probation, which probation may be vacated upon noncompliance with such reasonable terms as the Board may impose. The Board may administer a public or private reprimand or a private letter of concern, and the private reprimand and private letter of concern shall not require a hearing in accordance with G.S. 90-121.3 and shall not be disclosed to any person except the licensee. The Board may require a licensee to: (i) make specific redress or monetary redress; (ii) provide free public or charity service; (iii) complete educational, remedial training, or treatment programs; (iv) pay a fine; and (v) reimburse the Board for disciplinary costs.

(b) If any person engages in or attempts to engage in the practice of optometry while his license is suspended, his license to practice optometry in the State of North Carolina may be permanently revoked.

(c) The Board may, on its own motion, initiate the appropriate legal proceedings against any person, firm or corporation when it is made to appear to the Board that such person, firm or corporation has violated any of the provisions of this Article.

(d) The Board may appoint, employ or retain an investigator or investigators for the purpose of examining or inquiring into any practices committed in this State that might violate any of the provisions of this Article or any of the rules and regulations promulgated by the Board.

(e) The Board may employ or retain legal counsel for such matters and purposes as may seem fit and proper to said Board.

(f) As used in this section the term "licensee" includes licensees, provisional licensees and holders of intern permits, and the term "license" includes license, provisional license and intern permit.

(g) A person, partnership, firm, corporation, association, authority, or other entity acting in good faith without fraud or malice shall be immune from civil liability for (i) reporting or investigating the acts or omissions of a licensee or applicant that violate the provisions of subsection (a) of this section or any other provision of law relating to the fitness of a licensee or applicant to practice optometry and (ii) initiating or conducting proceedings against a licensee or applicant if a complaint is made or action is taken in good faith without fraud or malice. A person shall not be held liable in any civil proceeding for testifying before the Board in good faith and without fraud or malice in any proceeding involving a violation of subsection (a) of this section or any other law relating to the fitness of an applicant or licensee to practice optometry, or for making a recommendation to the Board in the nature of peer review, in good faith and without fraud and malice. (1973, c. 800, s. 20; 1981, c. 496, ss. 12, 13; 2000-184, s. 6; 2023-129, s. 5.1(c).)

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42D .0102

DEADLINE FOR RECEIPT: June 17, 2024

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:

I.

On page 1, Lines 6-10, the Board defines an "optometric assistant" as someone who "assists the optometrist in the evaluation and treatment of a patient." On Page 2, line 24- 27, the Board defines an "optometric technician" using the same definition. Accordingly, anyone who "assists the optometrist in the evaluation and treatment of a patient" is both an optometric assistant and an optometric technician. There appears to be no distinction between the two titles. There also do not appear to be any pre-requisites, training or certifications for anyone to be either an assistant or technician, or both as defined. Is there some process by which someone is recognized by the Board as one or the other?

However, on page 4, lines 5-6, the Board describes "certified" optometric assistants and "certified" optometric technicians as those "who have been through the American Optometric Association's (AOA) certification process." It is unclear how someone documents having gone through the process. Further, this rule is the only time in all of Chapter 42, Subchapter 42A that the Board uses the terms "certified" assistant and "certified" technician.

While the Board requires a "certified technician" be in the presence of a patient during a virtual examination by an optometrist, there does appear to any special privileges, duties or requirements of a "certified assistant" in the regulatory scheme. This is odd. Why does the Board establish a process to become a "certified assistant" and then not mention certified assistants again in the regulatory scheme?

Is it the Board's intention to require all technicians and assistants to be "certified?" If so, the Board may want to consider simple definitions. For example, "An optometric assistant is someone who is currently a Certified Paraoptometric Assistant by the American Optometric Association." As written, it is unclear and ambiguous.

*William W. Peaslee
Commission Counsel*

II.

The regulatory scheme describes that which optometric assistants and optometric technicians “may” do without any clear distinction between two titles.

“Optometry” is defined in G.S. 90-114.

§ 90-114. Optometry defined.

Any one or any combination of the following practices shall constitute the practice of optometry:

- (1) The examination of the human eye by any method, other than surgery, to diagnose, to treat, or to refer for consultation or treatment any abnormal condition of the human eye and its adnexa; or
- (2) The employment of instruments, devices, pharmaceutical agents and procedures, other than surgery, intended for the purposes of investigating, examining, treating, diagnosing or correcting visual defects or abnormal conditions of the human eye or its adnexa; or
- (3) The prescribing and application of lenses, devices containing lenses, prisms, contact lenses, orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye or its adnexa.

G.S. 90-115 makes the practice of optometry unlawful without a certification of registration unless the practitioner falls within certain exemptions. Among those exemptions are those listed in G.S. 90-115.1(6) wherein an optometric assistant or technician may perform optometry where authorized by and permitted by the Board.

Here, the Board sets forth the acts and activities which fall within the scope of “optometry” which assistants and technicians can perform. However, many of the permitted items fall outside of the definition of optometry. Indeed, the rule is riddled with them. Accordingly, the rule is overly broad and falls outside the Board’s regulatory authority. For example, Part (a)(1)(A), Part (a)(2)(A) and all of Subparagraph (a)(4). How does “[assisting] in the use of social media” as permitted by Part (b)(4)(B) fall within the definition of optometry in G.S. 90-114 and within the regulatory powers of the Board to permit or deny?

Further, by the Board permitting by rule those activities that fall outside the definition of optometry, it is unclear to the regulated public whether other non-optometry activities are permissible absent their enumeration in the rule. For example, if the optometrist asks the technician to plan the office holiday party, is it permissible for the technician to do so? It isn’t stated in the rule.

In short, it appears that the Board is exceeding its authority by regulating the managerial prerogatives of the optometrist’s business which only tangentially unrelated to “optometry.”

III.

Page 1, Line 31: Define or delete “appropriate.”

Page 1, Line 35: It is unclear what the Board is attempting to do. In the absence of this Part, is the optometrist prohibited from sharing understanding of fabrication requirements?

Page 2, Line 2: Define or delete “basic.”

Page 2, Line 3: What defines the “proper” care system?

Page 2, Lines 4: What is a preliminary fitting? Is this an industry term?

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Commission Counsel

Page 3, Line 5: Does the optometrist need to be present?

Page 3, Line 11: It is unclear what the Board is attempting to do. Is the Board saying that the optometrist can require his/her technician to understand the use of YAG lasers? In the absence of this part would an optometrist be prohibited from having such a requirement.

Page 3, Line 17: What does the Board mean by “troubleshoot?” At what point is the technician’s optometric activities prohibited? Put another way, when would the Board say the technician has left the realm of “troubleshooting” and entered into non-delegable optometric services?

Page 3, Lines 19 and 23: Define “specialized” contact lenses. How is this different than regular contact lenses?

Page 3, Line 36: What are MACRA/MIPS and PQRS? Please refer to the RRC style guide regarding the use of anacronyms.

Page 4, Line 4: What is BLS? Please refer to the RRC style guide regarding the use of anacronyms.

IV.

Explain why the following changes are not substantial changes pursuant to G.S. 150B-21.2(g):

Page 1, Lines 6-14.

Page 2, Lines 24-32


Page 4, Lines 5-7

Page 4, Lines 11-4

Page 4, Line 15.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: North Carolina State Board of Examiners in Optometry	
2. Rule citation & name (name not required for repeal): 21 NCAC 42D .0102 OPTOMETRIC ASSISTANT; OPTOMETRIC TECHNICIAN	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: February 22, 2024 Link to Agency notice: https://docs.google.com/document/d/1tWNc4FH6oyMPM0OMQYOO1XXXtxTJvVCK/edit Hearing on: none Adoption by Agency on: June 6, 2024 <input type="checkbox"/> Notice not required under: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: To set standards for staff providing direct patient care when the doctor is off site, thus assuring quality and safety of patient care.	
10. Rulemaking Coordinator: Johnny M. Loper Phone: 919-390-7749 E-Mail: jloper@loper-law.com Additional agency contact, if any: Janice K. Peterson Phone: 910-285-3160 E-Mail: janice@ncoptometry.org	11. Signature of Agency Head* or Rule-making Coordinator: <div style="text-align: center; font-size: 2em; color: blue;">  </div> <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Title:
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

1 21 NCAC 42D .0102 is adopted as published in 38:17 NCR 1068-1070 as follows:

2
3 **21 NCAC 42D .0102 ~~FUNCTION~~ OPTOMETRIC ASSISTANT; OPTOMETRIC TECHNICIAN**

4 (a) ~~For the purposes of this Rule, "paraoptometric personnel" means an optometric assistant, optometric technician,~~
5 ~~or similarly titled position who qualifies by training and experience to perform duties of an administrative, technical,~~
6 ~~or clinical nature and is directed and supervised by a licensed optometrist. An optometric assistant is an individual~~
7 ~~who is certified through the American Optometric Association's certification process. The Board recognizes the~~
8 ~~American Optometric Association's certification process as its only approved certification process for certified~~
9 ~~optometric assistants. The certified optometric assistant assists the optometrist in the evaluation and treatment of a~~
10 ~~patient. The optometrist may delegate acts and duties within the scope of the American Optometric Association~~
11 ~~training and certification process to the certified optometric assistant; however, the optometrist remains responsible~~
12 ~~for the acts and duties he or she assigns to that individual. The following are those acts and duties which may be~~
13 ~~assigned to the certified optometric assistant:~~

14 (1) Testing and Procedures

15 (A) Take case histories (including chief complaint, patient and family medical and ocular
16 history, current medications, and allergies.)

17 (B) Perform testing procedures

18 (i) Visual acuity testing and assess visual acuity

19 (ii) Stereo acuity testing

20 (iii) Blood pressure measurement (manual, automated)

21 (iv) Keratometry

22 (v) Color vision assessment

23 (vi) Chair-side scribing

24 (vii) Tonometry

25 (viii) Screening for Binocular abnormalities, including cover test screening

26 (ix) Dry eye testing

27 (x) Meibography

28 (xi) Corneal topography

29 (xii) Scanning computerized ophthalmic testing

30 (xiii) Visual field testing

31 (xiv) Glaucoma ancillary testing

32 (xv) Near points of accommodation and convergence testing

33 (xvi) Macular Pigment Optical Density (MPOD)

34 (xvii) Pupil evaluation screening

35 (xviii) Amsler grid

36 (xix) Frequency doubling technology (FDT) fields

37 (xx) Aberrometry

- 1 (xxi) Automated refractometry
- 2 (xxii) Contrast sensitivity tests
- 3 (xxiii) Anterior segment photography
- 4 (xxiv) Fundus photography
- 5 (xxv) Low vision testing
- 6 (xxvi) Pachymetry
- 7 (xxvii) Traumatic brain injury testing
- 8 (xxviii) Vision therapy testing
- 9 (xxix) Administer diagnostic/therapeutic medications
- 10 (2) Ophthalmic Optics and Dispensing
- 11 (A) Order and maintain eyewear inventory and frame display
- 12 (B) Educate and assist patient in selecting eyewear
- 13 (C) Take appropriate frame and eye measurements on patient
- 14 (D) Use digital dispensing technology
- 15 (E) Lensometry
- 16 (F) Dispense/adjust/repair eyewear
- 17 (G) Understand fabrication requirements with various frames and prescriptions
- 18
- 19 (3) Contact Lenses
- 20 (A) Maintain/order/inventory contact lenses
- 21 (B) Educate patients concerning contact lens options and fees
- 22 (C) Basic Insertion and removal of contact lenses
- 23 (D) Select proper care system for contact lenses
- 24 (E) Perform and evaluate contact lens preliminary fitting
- 25 (F) Educate patients on contact lens care and handling
- 26 (G) Measure base curves using radiuscope
- 27 (H) Verify contact lens diameter, thickness, and power
- 28 (I) Clean and polish gas permeable lenses or prosthetic eyes
- 29 (J) Use slit lamp to evaluate contact lens fit
- 30 (4) Other Duties
- 31 (A) Office Operations
- 32 (i) Prepare patient charts for optometrist to review
- 33 (ii) Patient education and communications
- 34 (iii) Direct patient flow
- 35 (iv) Provide patient education
- 36 (v) Perform telephone triage
- 37 (vi) Computer skills and documentation in the electronic health record
- 38 (vii) Relay communication between doctor, patient, specialists, and pharmacy

1 (viii) Maintain and Clean examination rooms and testing equipment

2 (B) Administrative Duties

3 (i) Understand and perform medical billing and coding

4 (ii) Maintain diagnostic listings and fee schedule

5 (iii) Handle insurance issues

6 (iv) Perform staff training

7 (v) Purchase ophthalmic examination equipment and supplies

8 (vi) Maintain inventory of diagnostic/therapeutic medications

9 (vii) Take inventory and reorder office supplies

10 (viii) Comply with federal regulations

11 (ix) E-prescribe and managing medication refills

12 (x) Coordinate referrals to other offices for surgeries or other specialty

13 (xi) Administer, record, and transmit prescribed medications

14 (b) Paraoptometric personnel shall perform his or her functions within the scope of his or her training, as directed by
15 and assigned by an optometrist, so long as those functions are at the specific direction and under the supervision of
16 the licensee. An optometric technician is an individual who is certified through the American Optometric Association's
17 certification process. The Board recognizes the American Optometric Association's certification process as its only
18 approved certification process for certified optometric technicians. The certified optometric technician assists the
19 optometrist in the evaluation and treatment of a patient. The optometrist may delegate acts and duties within the scope
20 of the American Optometric Association training and certification process to the certified optometric technician;
21 however, the optometrist remains responsible for the acts and duties he or she assigns to that individual. The following
22 are those acts and duties which may be assigned to the certified optometric technician (in addition to those acts and
23 duties which may be assigned to a certified optometric assistant):

24 (1) Testing and Procedures

25 (A) Slit Lamp Examination

26 (B) Ocular surface disease (e.g., SPEED questionnaire, Schirmer's test, TBUT, TearLab tests)

27 (C) Aseptic or Infection Control techniques

28 (D) Instrument and equipment sterilizing

29 (E) Automated and manual refractometry

30 (F) Ocular motility testing (pursuits and saccades)

31 (G) Binocularity testing including cover testing

32 (H) Goldmann tonometry - serial testing

33 (I) Assist with performing surgical tasks

34 (J) Low vision testing and training

35 (K) Specular microscopy

36 (L) Electrodiagnostic Testing and training

37 (M) Sports vision testing

- 1 (N) Vision therapy testing
- 2 (O) Understand use of YAG lasers
- 3 (2) Ophthalmic Optics and Dispensing
- 4 (A) Fabricate eyewear
- 5 (B) Measure parameters of special lenses including prism and slab off prescriptions
- 6 (C) Calculate Spherical Equivalent and Transpose lens prescriptions
- 7 (D) Write/copy prescriptions
- 8 (E) Troubleshoot problems with eyewear
- 9 (3) Contact Lenses
- 10 (A) Advanced handling - Insertion and removal of specialized and various types of contact
- 11 lenses (e.g., soft, gas permeable, hybrid, scleral)
- 12 (B) Using slit lamp perform contact lens fitting and assessments (e.g., soft, gas permeable,
- 13 hybrid, scleral, etc.)
- 14 (C) Educate patients on contact lens care and handling of specialized contact lenses
- 15 (D) Trouble shoot contact lens problems
- 16 (E) Perform progress checks on contact lens patients
- 17 (F) Clean and polish gas permeable lenses
- 18 (4) Other Duties
- 19 (A) Office Operations
- 20 (i) Overseeing management of daily patient flow
- 21 (ii) Management of patient clinical issues between patient and doctor
- 22 (B) Administrative Duties
- 23 (i) Coordinate patient correspondence
- 24 (ii) Assist in publication of office newsletter
- 25 (iii) Assist in use of social media
- 26 (iv) Assist in website development and maintenance
- 27 (v) Maintain and update policy and procedure manuals
- 28 (vi) Implement new software
- 29 (vii) Prepare internal reports
- 30 (viii) Use computer for billing/accounting
- 31 (ix) Maintain diagnostic listings and fee schedule
- 32 (x) Perform medical coding
- 33 (xi) Verify accuracy of procedure and medical coding
- 34 (xii) Provide patient education regarding diagnoses and ophthalmic surgery
- 35 (xiii) Help to resolve patient complaints and concerns
- 36 (xiv) Implement and maintain Meaningful Use (MACRA/MIPS) and PQRS
- 37 (xv) Assist in hiring and termination of employees

- 1 (xvi) Supervise personnel
- 2 (xvii) Plan and lead staff meetings
- 3 (xviii) Organize in-house educational offerings
- 4 (xiv) Train personnel
- 5 (xx) Take office supply inventory
- 6 (xxi) Coordinate purchase of ophthalmic examination equipment and supplies
- 7 (xxii) Coordinate/maintain credentialing within the office
- 8 (xxiii) Maintain inventory of diagnostic/therapeutic medications
- 9 (xiv) Comply with federal regulations (e.g., HIPAA, OSHA, etc.)
- 10 (xv) Perform CPR certification in BLS in case of emergency

11 ~~(b) (c) The Board may require that paraoptometric personnel~~ An optometric technician be currently certified by the
12 American Optometric Association and maintain this certification shall be in the physical presence of the patient during
13 any patient examination in environments where there is no onsite optometrist physically present during such
14 examination. and supervision is limited.

15
16
17
18 *History Note: Authority G.S. 90-115.1(6); 90-117.5;*
19 *Eff. February 1, 1976;*
20 *Readopted Eff. May 30, 1978;*
21 *Amended Eff. June 1, 1989; September 30, 1981;*
22 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,*
23 *2015;*
24 *Amended Eff. March 1, 2023.*
25 *Amended Eff. July 1, 2024*