

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Opticians

RULE CITATION: 21 NCAC 40 .0202

**DEADLINE FOR RECEIPT: Friday, October 9, 2020**

***NOTE: This request when viewed on computer extends 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 call our office to inquire concerning the staff recommendation.

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

*In (a), line 5, insert a comma after "office"*

*On lines 5 -6, replace "such a" with "the"*

*In Subparagraph (a)(3), line 12, replace "which" with "that"*

*In (a)(3), given the citation to G.S. 90-254 on line 14, do you need to retain the sentence on lines 14-15?*

### **§ 90-254. General penalty for violation.**

Any person, firm or corporation who shall violate any provision of this Article for which no other penalty has been provided shall, upon conviction, be fined not more than two hundred dollars (\$200.00) or imprisoned for a period of not more than 12 months, or both, in the discretion of the court.

Whenever it appears to the Board that any person, firm or corporation is violating any of the provisions of this Article or of the rules and regulations of the Board promulgated under this Article, the Board may apply to the superior court for a restraining order and injunction to restrain the violation; and the superior courts have jurisdiction to grant the requested relief, irrespective of whether or not criminal prosecution has been instituted or administrative sanctions imposed by reasons of the violation. The venue for actions brought under this subsection shall be the superior court of any county in which such acts are alleged to have been committed or in the county where the defendants in such action reside. (1951, c. 1089, s. 21; 1981, c. 600, s. 19.)

*In (a)(4), line 16, replace "is" with "shall be"*

*On line 19, do you mean "licensee" instead of "license"? If not, then what is a "license in charge"?*

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: September 25, 2020

*It appears that (b)(1) through (3) are meant to parallel (a)(1) through (3), but there are differences in language. Is there a specific reason for that? (For example, (a)(1) says "within 10 days following its opening for business" and (b)(1) states, "within 10 days of a business opening")*

*In (b)(1), please insert a cross-reference to the fee. I suggest citing to G.S. 90-246.*

*In (b)(3), line 26, replace "which" with "that"*

*On line 28, did you intentionally leave out G.S. 90-254?*

*In the History Note, Page 2, line 4, why are you citing to G.S. 90-253?*

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

Amanda J. Reeder  
Commission Counsel  
Date submitted to agency: September 25, 2020

21 NCAC 40 .0202 is amended as published in 35:02 NCR 116-119 as follows:

**21 NCAC 40 .0202        REGISTRATION OF OPTICAL PLACE OF BUSINESS AND OPTICIAN IN CHARGE**

(a) As used in this Rule, "optical place of business" means the principal office as well as each branch office of such a business.

(1) Every optical place of business shall be registered with the Board within 10 days following its opening for business and thereafter annually and in the event of relocation or change of ownership. The registration fee shall be paid for each registration.

(2) Registration of an optical place of business automatically expires on the last day of June of each year, and it shall not engage in business until it is registered for the next annual period.

(3) An optical place of business registration is the responsibility of the owner. Any business which violates the registration requirements of this Rule shall be subject to the Board's disciplinary authority under G.S. 90-249.1, G.S. 90-252, and G.S. 90-254. An injunction closing an unregistered optical place of business may also be obtained.

(4) An optical place of business registered in compliance with this Rule is eligible to be a training establishment when the requirements of Rules .0314 and .0321 of this Chapter are met.

(b) Every optical place of business shall ~~have~~ register a licensed optician in charge, who shall serve as the ~~registered~~ license in charge of only one optical place of business.

(1) Every optician in charge shall be registered with the Board within 10 days of a business opening, or change of optician in charge. The registration fee shall be paid for each registration.

(2) Registration of an optician in charge automatically expires on the last day of June of each year, and the optical business shall not engage in dispensing activities under G.S. 90-236 until it has a registered optician in charge for the next annual period.

(3) An optician in charge registration is the responsibility of both the licensed optician in charge and the owner. Any optician in charge of an optical place of business which violates the registration requirements of this Rule shall be subject to the Board's disciplinary authority under G.S. 90-249.1 and G.S. 90-252.

~~(c) Every optical place of business shall be registered with the Board within 10 days following its opening for business and thereafter annually and in the event of relocation, change of ownership or change of licensed optician in charge. The registration fee shall be paid for each registration.~~

~~(d) Registration of an optical place of business automatically expires on the first day of July of each year, and it shall not engage in business until it is registered for the next annual period.~~

~~(e) Registration is the responsibility of both the licensed optician in charge and the owner. Any licensed optician in charge of an optical place of business which violates the registration requirements of this Rule shall be subject to the Board's disciplinary authority under G.S. 90-249.1. An injunction closing an unregistered optical place of business may also be obtained.~~

1 ~~(f) An optical place of business registered in compliance with this Rule is eligible to be a training establishment when~~  
2 ~~the requirements of Rules .0314 and .0321 of this Chapter are met.~~

3  
4 *History Note: Authority G.S. 90-239; 90-243; 90-249(5); 90-252; 90-253;*  
5 *Eff. February 1, 1976;*  
6 *Amended Eff. November 1, 1978; June 21, 1978; September 6, 1977;*  
7 *Readopted Eff. May 23, 1979;*  
8 *Amended Eff. August 1, 1998; January 1, 1994; August 1, 1991; February 1, 1989; August 1, 1985;*  
9 *Temporary Amendment Eff. November 1, 2016;*  
10 *Temporary Amendment Expired Eff. August 12, 2017;*  
11 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*  
12 *22, ~~2018~~; 2018;*  
13 *Amended Eff. November 1, 2020.*

## REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Opticians

RULE CITATION: 21 NCAC 40 .0206

### **DEADLINE FOR RECEIPT: Friday, October 9, 2020**

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 call our office to inquire concerning the staff recommendation.

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

*In (a), the language on lines 4-6, ending with "profession," do not regulate anything and are ambiguous. I suggest you delete them and just begin, "A licensed optician shall:"*

*If you want to retain the language, define "uppermost at all time," "optimal public health," "striving to continuously develop educational and technical proficiency," and "new developments"*

*In (a)(2), line 11 do you mean "another" rather than "other"?*

*In (a)(3), insert an "and" at the end of the line after "client,"*

*In (a)(4), line 16, define or delete "essential"*

*On lines 17-18, what do you mean by "gaining the benefits of new techniques"? Wouldn't "learning new techniques" suffice?*

*In (b)(1), line 23, end the sentence after "dispensing." Then state "Alternatively, the licensee may take two hours..." Then on line 24, delete "may be"*

*To be clear – the entire three hours of contact lens fittings and dispensing can be replaced, or is it just two?*

*End (b)(1), line 26, with a semicolon, not a colon.*

*In (c), Page 2, does your regulated public know who the "American Board of Opticianry" and "National Contact Lens Examiners" are?*

*In (d), line 4, what do you mean by "meant to be taken"? If you are stating that self-study courses shall be taken using journal articles or online courses, say that. But do you mean that someone can get self-study credit for writing a journal article? What is the use of "journal articles" here meant to refer to?*

*On line 5, replace "are" with "shall be"*

*On line 5, insert a comma after "credit"*

Amanda J. Reeder  
Commission Counsel

Date submitted to agency: September 25, 2020

*On line 6, relace “has submitted” with “submits”*

*On line 7, why not clarify the language and state, “of this Rule prior to offering it to the licensed opticians.”?*

*On line 8, delete “this” and “means”*

*In (e), line 9, since by “state” I believe you mean NC, please capitalize the term.*

*And I take it that Paragraph (e) is to refer to inactive opticians in the State?*

*On line 11, replace “In lieu thereof,” with “Alternatively,”*

*In (f), so that I’m clear – the licensee can receive credit for a course taken in the prior year and again in the current year?*

*In (g), line 18, I suggest inserting “acquired” between “hours” and “in excess”*

*In (i), who will waive this - the Board?*

*In (i)(2), line 26, I suggest replacing “rendering” with “that makes”*

*In (j)(1), line 31, what is “directly” here?*

*On line 32, define “primary and customary”*

*In (j)(3), why do you need the sentence on lines 36-37? What does it say that the prior sentence does not? I suggest deleting it and ending the sentence on line 36 with a colon. Thus, “... available for presentation.”*

*On Page 3, consider beginning (j)(3)(A) through (H) with articles, such as “the” and “a”*

*In (j)(3)(A) and elsewhere the term is used, what do you mean by “on-site presentation”? Is this an in-person training?*

*In (j)(3)(C), line 4, insert a comma after “address” and what address do you want – home or business?*

*Who will determine whether the instructor meets the requirements of lines 4-5? The Board?*

*In (j)(3)(D), line 6, do you mean “and” instead of “or”?*

*In (j)(3)(E), line 7, what do you mean by “Indication”?*

*In (j)(3)(F), line 9, what is “primary” contact information?*

*In (j)(6), why not make this into two sentences?*

*In (k), line 20, what do you mean by “completely”?*

Amanda J. Reeder  
Commission Counsel

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*In (l), line 22, what do you mean here? If you are saying the Board shall not grant retroactive approval of courses, state that clearly.*

*In (m), are you saying that the course provider must allow the Board staff to attend the class without charge?*

*In (n)(2), lines 28-29, what do you mean by “compatibility to its data management system”? Why do you need this language within the Rule? I suggest deleting it and saying “by the Board that includes.”*

*Begin (n)(2)(A) through (D) with articles.*

*In (n)(2)(B), what is this? Who assigns it?*

*In (n)(2)(C), should this say “the name of and license number of each North Carolina licensee;”?*

*In (o), what are you saying here? Is the intent is to allow a licensee to report his or her CE directly to the Board using a form provided by the vendor or sponsor, and to include verification of attendance by the provider, I think that can be stated much more clearly here.*

*In (p), Page 4, line 1, replace “those attendants” with “attendees”*

*In (q)(1), line 4, state “two-year” [See Rule 26 NCAC 02C .0108(9)(a)]*

*Also on line 4, insert a comma after “period”*

*In (q)(2), lines 6-7, under what circumstances will the Board determine this is necessary? Will it be during a complaint investigation? Some guidance of when this will occur needs to be contained within the Rule.*

*In the History Note, line 9, why are you citing to G.S. 90-235 and 90-236?*

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

21 NCAC 40 .0206 is amended with changes as published in 35:02 NCR 116-119 as follows:

**21 NCAC 40 .0206            PROFESSIONAL RESPONSIBILITY; CONTINUING EDUCATION**

(a) With the goal of keeping the vision health and welfare of the client uppermost at all times, promoting optimal public health for North Carolina's citizens, striving to continuously develop educational and technical proficiency, and informing himself or herself as to new developments within the profession, a licensed optician shall:

(1) maintain ~~adequate~~ equipment and instruments in his or her office at all times to assure professional service to the ~~public~~; public, and for use in training apprentices and interns as set forth in 21 NCAC 40 .0321;

(2) ~~assist his or her clients in whatever manner possible in obtaining further care when, in his or her opinion, additional care is needed;~~ make a referral to other healthcare provider when, in the licensee's professional opinion, such referral would benefit the client;

(3) ~~maintain records;~~

~~(4)(3)~~ treat all information concerning his or her clients as privileged and not to be communicated to others except when authorized or required by a law or rule, or with express consent of the client;

~~(5)(4)~~ take annual courses of study in subjects related and essential to the practice of opticianry for the purpose of enhancing his or her scientific knowledge and professional skills, gaining the benefits of new techniques, and acquiring increased knowledge of laws and rules governing the practice of ~~opticianry~~; opticianry, as set forth in Paragraph (b) of this Rule.

(b) Licenses issued after July 1 shall be exempt from the continuing education requirement for renewal by December 31 of the same year. Otherwise, each ~~Each~~ North Carolina-licensed optician shall take a total of at least eight hours of continuing education each calendar year as follows:

(1) three hours of study on the practice of contact lens ~~fitting~~; fitting and dispensing; in lieu thereof, two hours of study on contact lens ~~fitting~~ fitting and dispensing, and one hour of study may be on ~~either~~; optical business ~~management or management~~, consumer ~~protection~~; and ~~either~~; protection, or ethics;

(A) ~~When there have been no amendments or changes to the North Carolina opticianry laws or rules during the previous year, five hours of study on eyeglass fitting and dispensing; in lieu thereof, four hours of a study on eyeglass fitting and dispensing and one hour of study may be on laws and rules affecting North Carolina opticians, or ethics; or~~

(B) ~~When there has been an amendment or change to North Carolina opticianry laws or rules during the previous year, all licensed opticians practicing opticianry in the state shall take one hour of continuing education on the laws and rules relating to such amendment or change and four hours of study as described in Part (A) of this Subparagraph. The Board shall notify licensees when amendments or changes are made that would require each licensee's attendance at law/rule continuing education.~~

(2) four hours of study on eyeglass fitting and dispensing;



1           (3)       one hour of education on the laws and rules affecting North Carolina opticians.

2       (c) All hours shall be currently-approved by the American Board of Opticianry or the National Contact Lens  
3       Examiners.

4       (d) Courses of self-study, meant to be taken by individuals through journal articles or online, where organized material  
5       is presented and written evaluations are made prior to or after completing the course(s), are eligible for credit provided  
6       the vendor or sponsor has submitted the course or courses for approval to the Board as described in Paragraph ~~(4)~~  
7       (i) of this Rule prior to its being offered to licensed opticians. However, no licensee shall receive credit for more than  
8       four hours of continuing education credit by this self-study means in any calendar year.

9       ~~(2)(c)~~ Any licensed optician who is not practicing opticianry in the state shall annually obtain a total of at least eight  
10       hours of courses of study: three hours shall be ~~essential to~~ on the practice of contact lens fitting, fitting and dispensing,  
11       and five hours shall be ~~essential to~~ on eyeglass fitting and dispensing. ~~One~~ In lieu thereof, one of the eight hours may  
12       be on optical business management or management, consumer protection, protection, or ethics. No other state's hours  
13       pertaining to its laws or rules shall be allowed as credit. All hours shall be currently approved by the American Board  
14       of Opticianry or the National Contact Lens Examiners.

15       (f) All hours must be taken within the prior or current calendar year for which credit is sought, and a licensee shall  
16       not receive continuing education credit for any course that the licensee already has completed during the same calendar  
17       year.

18       (g) Continuing education hours in excess of the number required at the time of renewal shall not be applied to future  
19       requirements.

20       (h) Submission of fraudulent statements or certificates concerning continuing education shall subject the licensee to  
21       disciplinary action.

22       (i) The hours of study set forth in this Rule may not be waived, except by: ~~upon presentation of evidence of illness~~  
23       ~~rendering the licensee's attendance impossible, or by presentation of active duty orders for the licensee serving in a~~  
24       ~~branch of the US armed forces.~~

25               (1)       declared Board waiver as defined in 21 NCAC 40 .0113;

26               (2)       presentation of evidence of illness, or residency outside the United States, rendering the licensee's  
27               attendance impossible; or

28               (3)       presentation of active-duty orders for the licensee serving in a branch of the US armed forces.

29       ~~(e)(j)~~ Courses of study for which a licensee desires continuing education credit must be approved by the Board,  
30       meeting the following criteria:

31               (1)       Courses must be directly related to the practice of a dispensing optician as defined in G.S. 90-235  
32               and G.S. 90-236. The education of opticians must be the primary and customary objective of the  
33               education provider.

34               (2)       Each course must be made available to all NC licensed opticians.

35               (3)       The following information shall be submitted to the Board office no later than 45 days prior to the  
36               date the course ~~to be presented.~~ is to be made available for presentation. The following information  
37               is required for course submission and consideration:

- (A) ~~Location and scheduled time for~~ Method of course presentation; if on-site presentation, the location and scheduled time;
- (B) Title of course;
- (C) Instructor's name, address and qualifications. Instructors must be qualified by education and experience to provide instruction in the course subject;
- (D) Course description, including course length, instructional objectives, or course outline;
- (E) Indication of course's approval status with the American Board of Opticianry or National Contact Lens Examiners;
- (F) Name and address of provider agency, and primary contact information;
- (G) Description of the provider's attendance certification process; and
- (H) Agreement to provide electronic attendance roster to Board, and certified attendance documentation to attendees.
- (4) Course content shall be presented in ~~an objective~~ a manner that does not promote the sale or marketing of one company's products or services over another. Presentations on new optical technology shall not include a specific brand/manufacturer of the technology in the title or content. Product-specific "info-mercials" and sales pitches shall not be approved.
- (5) Courses shall consist of a minimum 50 minutes' education for each hour credit.
- (6) Online courses may not exceed two hours in length, and on-site instructors ~~Instructors~~ may not present more than ~~four~~ two consecutive hours of continuing education.
- ~~(d)(k)~~ Each course to be presented on-site shall be submitted for approval separately and completely each time credit is sought.
- (l) Post-presentation approval of continuing education courses will not be granted.
- ~~(e)(m)~~ All approved courses for on-site presentation shall allow complimentary on-site review by representatives from the Board.
- ~~(f)(n)~~ Course sponsors ~~shall~~ shall, no later than 30 days following the presentation of on-site courses:
- (1) Certify opticians' attendance for the requisite period;
- (2) Submit to the Board ~~an electronic attendance roster, including names and credit hours received; and~~ documentation of attendance in a format provided by the Board for compatibility to its data management system to include:
- (A) Course title and classification verification;
- (B) Vendor or sponsor identification;
- (C) Name of and license number of North Carolina licensee;
- (D) Sponsor's attestation or verification of attendance.
- ~~(3) — Certify attendance documentation by the provider agency.~~
- (o) Any licensee may submit completed online hours directly to the Board, provided that the attendance is documented by the vendor or sponsor of the education, on a form given the licensee attending the course(s) attesting to their attendance, and the original form, not a photocopy or facsimile, is submitted to the Board.

1 (p) Course sponsors shall maintain for three years records of the names of those attendants who complete continuing  
2 education hours.

3 ~~(g)~~(q) Opticians and course attendees shall:

4 (1) Retain documentation for a minimum 2-year period beginning with the next renewal year  
5 immediately following the date the courses were taken; and

6 (2) Present the documentation to Board as required during the license renewal ~~process.~~ process, or at  
7 any time if in the Board's opinion such documentation is necessary.

8  
9 *History Note: Authority G.S. 90-235; 90-236; 90-249; 90-249.1;*

10 *Eff. February 1, 1976;*

11 *Amended Eff. September 6, 1977;*

12 *Readopted Eff. September 29, 1977;*

13 *Amended Eff. January 1, 2013; July 1, 1991; February 1, 1989; February 1, 1988; January 1, 1986;*

14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December*  
15 *22, ~~2018.~~ 2018.*

16 *Amendment Eff. November 1, 2020.*