

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Examiners in Optometry

RULE CITATION: Both Rules

DEADLINE FOR RECEIPT: Friday, April 11, 2014

NOTE WELL: *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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On your Submission for Permanent Rule forms, you state that the Notice of Text was published December 6, 2013. That is incorrect; the rules were published January 2, 2013.

Also on the Form, you state that the agency adopted these rules in November 2014. You cannot place rules in the Code that were not adopted by the agency. I assume this is a typographical error. Please give the actual date of the adoption by the Board on the forms.

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: March 28, 2014

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42B .0107

DEADLINE FOR RECEIPT: Friday, April 11, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

On the Form, use the new name for the Rule, not the existing name.

Your introductory statement needs to include the publication information. See Rule 26 NCAC 02C .0404(b).

On the Rule itself, just use the name you want. Do not show deletion or addition of the new name. Thus, "National Board Examinations"

Throughout this Rule, where you have simply inserted or deleted a comma or period or other punctuation, this is not the proper way to do so. Please see Rule 26 NCAC 02C .0108(7) to make changes throughout the language.

The first sentence in Paragraph (a) is too long and reads confusingly. Why not end the sentence after "Board" on line 7 and begin the next sentence, "The applicant shall authorize..."

In (a), lines 6 and 8 (both places on that line) state "his or her"

I note that G.S. 90-118(a) and (c) speak to the Board conducting the examinations. The Rule states that the Board will not conduct an examination itself, but will instead rely upon the National Board examination. Is your interpretation of the statute that "conducting" does not require the Board to administer it?

§ 90-118. Examination and licensing of applicants; qualifications; causes for refusal to grant license; void licenses; educational requirements for prescription and use of pharmaceutical agents.

(a) The North Carolina State Board of Examiners in Optometry shall grant licenses to practice optometry to such applicants who are graduates of an accredited optometric institution, who, in the opinion of a majority of the Board, shall undergo a satisfactory examination of proficiency in the knowledge and practice of optometry, subject, however, to the further provisions of this section and to the provisions of this Article.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 28, 2014

(b) The applicant shall be of good moral character and at least 18 years of age at the time the application for examination is filed. The application shall be made to the said Board in writing and shall be accompanied by evidence satisfactory to said Board that the applicant is a person of good moral character; has an academic education, the standard of which shall be determined by the said Board; and that he is a graduate of and has a diploma from an accredited optometric college or the optometric department of an accredited university or college recognized and approved as such by the said Board.

(c) The North Carolina State Board of Examiners in Optometry is authorized to conduct both written or oral and clinical examinations of such character as to thoroughly test the qualifications of the applicant, and may refuse to grant a license to any person who, in its discretion, is found deficient in said examination, or to any person guilty of cheating, deception, or fraud during such examination, or whose examination discloses, to the satisfaction of the Board, a deficiency in academic education. The Board may employ such optometrists found qualified therefor by the Board in examining applicants for licenses as it deems appropriate.

Further, who determines the passing score that is referenced throughout the Rule? The National Board? How do applicants know what is passing?

Why are you retaining the language of Subparagraphs (a)(1) through (7)? Do you have individuals still relying upon passing national boards between 1978 and 1986 for initial licensure?

In (a)(1), line 13, you state “(TMOD)”. In (a)(2), line 18, you state “(TMOD)” There is no need to give the abbreviation twice in the Rule. Further, since the way you give other abbreviations is without quotation marks, I recommend you change line 13 thusly: ~~“(TMOD)”~~ (TMOD) and just use the reference on lines 17 and 18.

On line 16, why is “PART” in all caps?

On lines 19 and 21, this is not the correct way to “move” the colon that was formerly after the date. See Rule 26 NCAC 02C .0108 to properly format the changes.

In Subparagraph (a)(4), lines 24-25, what is the equivalent stand-alone TMOD examination? Who administers it? Who determined it was equivalent?

What is the point of Subparagraphs (a)(5) through (9) when you state “[Date] and thereafter”? Are these really applicable to “thereafter” or just until the next date in the rule? For instance, if I take the clinical examination in March 2015, I will have to pass Part III of the clinical skills, the Part III injection skills, the Part III clinical skills (generally), the Part II Patient Assessment and the Part I Applied Basic Science examination? However, I note that assumption cannot be correct, as (a)(9) repeats the requirement of (a)(8). So, what is the intent of “thereafter”?

Does your Rule mean that if I applied between March and December 2009, I needed to only pass the Part I ABS exam?

In Subparagraph (a)(6), why are you saying (PAM) three times? Can you just the full name and acronym once and from then on, state “PAM”?

Throughout the Rule, why do you use the full name of something and then the acronym after it? (For examples, lines 15 and 17, or lines 36 and 40 of Page 1) Are these terms of art?

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 28, 2014

In Subparagraph (a)(8), you are requiring individuals taking the March 1, 2014 administration to have passed a specific exam. However, your Rule cannot take effect until May 1, 2014. Therefore, you must change the date to May 1, 2014. Otherwise, I do not see that you have the authority for this Subparagraph.

In Subparagraph (a)(9), line 37, to be consistent, why aren't you saying "passing score on Part III Clinical Skills..."?

Also in (a)(9), on line 38, why do you have the "%" sign? This is the only place you use this in reference to scores in the Rule.

End the sentence on line 39 after "biomicroscopy." Begin the next sentence, "A passing score..."

I take it your regulated public knows the terms "gonioscopy," "binocular indirect ophthalmoscopy" and "slit lamp biomicroscopy"?

On Page 2, line numbers must begin at 1 for each page – see Rule 26 NCAC 02C .0108(1)(f).

On Page 2, line 42, do you mean to not include (a)(6) through (a)(7)? Also on line 42, there is an extra space between (a) and (4) and (a) and (5). Please remove it.

On Page 2, Paragraph (b), end lines 44 and 45 with semicolons. End line 46 with "; and" Follow the formatting rules to do this properly.

Amend the History Note to make "May 1, 2014" the first date after "Amended Eff."

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

21 NCAC 42B .0107 is proposed for amendment as follows:

21 NCAC 42B .0107 ~~WRITTEN~~ NATIONAL BOARD EXAMINATIONS

(a) Each applicant must submit evidence of having reached the recommended levels of acceptable performance on the National Board examinations given by the National Board of Examiners in Optometry on or after the April, 1978 administration in one of the following formats and under the following conditions prior to Board approval of his application to take the clinical practicum examination administered by the Board, and shall authorize the release of his official score report by the National Board to the Board prior to the approval by the Board of his application to take the clinical practicum examination.

- (1) April, 1978 through August, 1986 administrations: passing scores on Parts I, IIA, and IIB, with scores of not less than 75 in Section 7 (Pathology) and Section 9 (Pharmacology) on the Part IIB examination, and a score of not less than 75 on the National Board's Treatment and Management of Ocular Disease ("TMOD") examination.
- (2) April, 1987 through August, 1992 administrations: passing scores on the Part I Basic Science (BS) examination and Part II Clinical Science (CS) examination of the National Board, with scores of not less than 75 on the Ocular Disease/Trauma and Clinical Pharmacology sections of the PART II Clinical Science (CS) examination, and a score of not less than 75 on the National Board's Treatment and Management of Ocular Disease (TMOD) examination.
- (3) April, 1993 through December, 2008 administrations: passing score on the Part I Basic Science Examination of the National Board.
- (4) April, 1993 through April, 2009 administrations: passing score on the Part II Clinical Science Examination of the National Board, with a score of not less than 75 on the Ocular Disease/Trauma component within the Clinical Science examination, and a score of not less than 75 on either the TMOD component within the Clinical Science examination, or on the equivalent stand-alone TMOD examination.
- (5) March, 2009 administrations and thereafter: passing score on Part I Applied Basic Science (ABS) examination of the National Board.
- (6) December, 2009 administrations and thereafter: passing score on Part II Patient Assessment and Management (PAM) examination of the National Board, with a score of not less than 75 on the Disease/Trauma component within the Patient Assessment and Management (PAM) examination, and a score of not less than 75 on the TMOD component within the Patient Assessment and Management (PAM).
- (7) March, 2010 administrations and thereafter: passing score on the Part III Clinical Skills Examination (CSE) of the National Board.
- (8) March 1, 2014 administrations and thereafter: passing score on Part III Injection Skills Examination (ISE) of the National Board.
- (9) March 2015 administrations and thereafter: all applicants must have passed Part III Clinical Skills Examination (CSE) with a score of not less than 75% on the Skills of gonioscopy, binocular indirect ophthalmoscopy and slit lamp biomicroscopy; and a passing score on Part III Injection Skills Examination (ISE) of the National Board.

(b) For candidates with passing scores on at least one National Board examination part under different formats and time periods described in (a)(1), (a)(2), (a)(3), (a) (4), and (a) (5) of this Rule, the following equivalences shall apply:

(1) Part I and IIA is the equivalent of Basic Science.

(2) Part IIB is the equivalent of Clinical Science without the inclusion of TMOD.

(3) Part I Applied Basic Science (ABS) is the equivalent of Part I Basic Science.

(4) Part II Patient Assessment and Management (PAM) is the equivalent of Part II Clinical Science.

~~(c) For those candidates taking the National Board examinations under any of the examination formats dating back to April 1978 and prior to March 2009, old Part III (Patient Care) will not be required.~~

History Note: Authority G.S. 90-117.5; 90-118;

Eff. February 1, 1976;

Readopted Eff. May 30, 1978;

Amended Eff. April 1, 2011; July 1, 1998; May 1, 1995; April 1, 1993; June 1, 1989; September 30, 1981; May 1, 2014.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42B .0114

DEADLINE FOR RECEIPT: Friday, April 11, 2014

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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

Your introductory statement needs to include the publication information. See Rule 26 NCAC 02C .0404(b).

I realize that this Rule essentially repeats the content of the statute word for word. Given the content of the statute, I do not have a problem with this. However, I note that Paragraph (a) is written in passive voice and Paragraph (b) is in active voice. Why not at least remove "Has been" or "has" in (a)(1) through (3)?

So that I understand, you are creating two new licensure categories in this Rule? "Permanent Unrestricted License Military Optometrist" and "Permanent Unrestricted License-Optometrist Spouse of Military Personnel"?

In Subparagraph (a)(2), replace the parenthesis with commas.

In (a)(4) and (b)(6), do you have a Rule that sets those fees? Do you want to reference that here? Or do you want to cite to G.S. 90-123?

On line 22, Paragraph (b), "board" should be capitalized.

Do you feel you need Paragraphs (c) and (d)? Those are restatements of the law without any changes at all.

If you need (c), then on line 40 , delete "as". On line 41, insert a space between "and" and "(c)." Delete or define "relevant" on lines 38 and 39.

On Page 2, line numbers must begin at 1 for each page – see Rule 26 NCAC 02C .0108(1)(f).

In the History Note, I don't think you need G.S. 90-118.5, as G.S. 93B-15.1 is the specific authority for this Rule. However, if you feel you need it, then put the statutes in correct numerical order. And if you are relying upon G.S. 90-123 for the fees, please add that the History Note.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: March 28, 2014

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: March 28, 2014

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: NC Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42B .0114

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

COMMENT:

This Rule purports to establish the procedure for licensure by endorsement for individuals for a license to practice optometry, based upon military status, in order to comply with G.S. 93B-15.1. That statute states that individuals who have been trained by the military and received a military occupational specialty (MOS) or who are military spouses must be awarded a license if the individual meets the requirements in the statute. This statute is the controlling statute for issuing licenses to these individuals, and is presumably intended to ensure that the military training and credentials or prior experience of these applicants are given due consideration to show their fitness to practice the occupation in this state. [See G.S. 93B-15.1(a)]

In Subparagraphs (a)(1) and (b)(2) of this Rule, the Board proposes to determine "other methods as appropriate to the Board" and this gives no guidance on how this will be determined. I do not see that the Board can reserve the right to make these decisions without giving some guidance in the Rule.

In addition, in Subparagraph (a)(1)(iii), the Board requires performance at a satisfactory level of competency in the occupational specialty. G.S. 93B-15.1 does require performance in the specialty, but it does not require the individual to be actively performing it to seek licensure under the statute. This statute does not confine itself to active duty military members, and staff does not read it to do so. Rather, the statute specifically speaks to those who have received military training and been awarded an MOS, so it could extend to retired or discharged military applicants seeking licensure.

In addition, there is no guidance in the Rule as to what will constitute the “satisfactory level” of competency.

Staff notes that Subparagraph (b)(4) requires the spouse of a military trained applicant to be married to an active duty member of the US military. Staff has expressed in the past a belief that the law can be interpreted to apply to spouses of active duty military. I continue to believe this is a fair interpretation of the law, which was intended to give deference to military training for those applicants and assist spouses who are moved when their active duty spouses are transferred to the state.

§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.

(a) **Notwithstanding any other provision of law**, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

- (1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: completed a military program of training, **completed testing or equivalent training and experience as determined by the board**, and **performed in the occupational specialty**.
- (2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(b) **Notwithstanding any other provision of law**, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

- (1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.
- (2) **Can demonstrate competency in the occupation through methods as determined by the Board**, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.
- (5) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(c) All relevant experience of a military service member in the discharge of official duties or, for a military spouse, all relevant experience, including full-time and part-time experience, regardless

of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (a) or (b) of this section.

(d) A nonresident licensed, certified, or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by an occupational licensing board in this State.

(e) Nothing in this section shall be construed to apply to the practice of law as regulated under Chapter 84 of the General Statutes.

(f) An occupational licensing board may issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under subsection (a) or (b) of this section if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of an occupational licensing board in this State. The military-trained applicant or military spouse may practice under the temporary permit until a license, certification, or registration is granted or until a notice to deny a license, certification, or registration is issued in accordance with rules adopted by the occupational licensing board.

(g) An occupational licensing board may adopt rules necessary to implement this section.

(h) Nothing in this section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification, or registration requirements established by an occupational licensing board in this State.

(i) For the purposes of this section, the State Board of Education shall be considered an occupational licensing board when issuing teacher licenses under G.S. 115C-296.

(j) For the purposes of this section, the North Carolina Medical Board shall not be considered an occupational licensing board. (2012-196, s. 1.)

21 NCAC 42B .0114 is proposed for adoption as follows:

21 NCAC 42B .0114 MILITARY LICENSE

(a) Permanent Unrestricted License Military Optometrist: The Board shall issue a permanent license to a military-trained applicant to allow the applicant to lawfully practice optometry in North Carolina if, upon application to the Board, the applicant satisfies the following conditions:

(1) Has been awarded a military occupational specialty in optometry and has done all of the following at a level that the Board, in its discretion and through such inquiries or methods as it deems to be appropriate, determines to be substantially equivalent to or exceeds the requirements for licensure in this State:

(i) completed a military program of optometry training that includes additional clinical experience;

(ii) completed testing or equivalent training and experience; and

(iii) is performing at a satisfactory level of competency in the occupational specialty;

(2) Has engaged in the practice of optometry for at least two of the five years (which may include clinical residency) preceding the date of the application under this Paragraph;

(3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice optometry in this State at the time the act was committed; and

(4) Pays the application, examination, and licensing fees required by the Board.

(b) Permanent Unrestricted License-Optometrist Spouse of Military Personnel: The Board shall issue to a military spouse a license to practice optometry in this State if, upon application to the board, the military spouse satisfies the following conditions:

(1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure in this State;

(2) Can demonstrate competency in optometry through passing the Board's clinical practicum examination or through such other inquiries or methods as determined to be appropriate by the Board in its discretion;

(3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice optometry in this State at the time the act was committed;

(4) Submits written evidence demonstrating that the applicant is married to an active member of the U.S. military;

(5) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit; and

(6) Pays the application, examination, and licensing fees required by the Board.

(c) All relevant optometric medical experience of a military service member in the discharge of official duties or, for a military spouse, all relevant optometric medical experience, including full-time and part-time experience, regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice as required under Paragraphs (b) and(c) of this Rule.

(d) A nonresident licensed under this Rule shall be entitled to the same rights and subject to the same obligations as required of a resident licensed by the Board in this State.

History Note: Authority G.S. § 93B-15.1; GS 90-118.5.

Eff. May 1, 2014