

21 NCAC 42B .0107 is amended with changes as published in 28:13 NCR 1503-04 as follows:

**21 NCAC 42B .0107 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, April 1978 administration in one of the following formats and under the following conditions prior to Board approval of his or her application to take the clinical practicum examination administered by the Board and shall authorize Board. The applicant shall authorize the release of his or her official score report by the National Board to the Board prior to the approval by the Board of his or her application to take the clinical practicum examination.

(1) April, April 1978 through August, 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)” (TMOD) examination.

(2) April, April 1987 through August, 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 Part II Clinical Science (CS) CS examination, and a score of not less than 75 on the National Board's Treatment and Management of Ocular Disease (TMOD)- TMOD examination.

(3) April, April 1993 through December, December 2008; 2008 administrations: passing score on the Part I Basic Science BS Examination of the National Board.

(4) April, April 1993 through April, April 2009; 2009 administrations: passing score on the Part II Clinical Science CS Examination of the National Board, with a score of not less than 75 on the Ocular Disease/Trauma component within the Clinical Science CS examination, and a score of not less than 75 on either the TMOD component within the Clinical Science CS examination, or on the equivalent stand-alone TMOD examination.

(5) March, March 2009 administrations and thereafter; through November 2009 administrations: passing score on Part I Applied Basic Science (ABS) examination of the National Board.

(6) December, December 2009 administrations and thereafter; through February 2010 administrations: 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) PAM examination, and a score of not less than 75 on the TMOD component within the Patient Assessment and Management (PAM)- PAM.

1 (7) ~~March, March~~ 2010 administrations ~~and thereafter;~~ through February 2014  
2 ~~administrations;~~ passing score on the Part III Clinical Skills Examination (CSE) of the  
3 National Board.

4 (8) ~~[March 1, 2014]~~ June 1, 2014 administrations through March 2015 administrations:  
5 passing score on Part III Injection Skills Examination (ISE) of the National Board.

6 (9) Beginning with March 2015 administrations: all applicants ~~must have passed~~ must have a  
7 passing score on Part III ~~Clinical Skills Examination (CSE)- CSE~~ with a score of not less  
8 than 75 % ~~on the Skills of gonioscopy, binocular indirect ophthalmoscopy and slit lamp~~  
9 biomicroscopy, and a passing score on Part III ~~Injection Skills Examination (ISE)~~ ISE of  
10 the National Board.

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

14 (1) Part I and IIA is the equivalent of ~~Basic Science- BS;~~

15 (2) Part IIB is the equivalent of ~~Clinical Science CS~~ without the inclusion of ~~TMOD.~~  
16 ~~TMOD;~~

17 (3) Part I ~~Applied Basic Science (ABS)~~ ~~ABS~~ is the equivalent of Part I ~~Basic Science. BS;~~  
18 ~~and~~

19 (4) Part II ~~Patient Assessment and Management (PAM)~~ ~~PAM~~ is the equivalent of Part II  
20 ~~Clinical Science- CS.~~

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

23 *History Note:*

*Authority G.S. 90-117.5; 90-118;*

*Eff. February 1, 1976;*

*Readopted Eff. May 30, 1978;*

*Amended Eff. May 1, 2014; April 1, 2011; July 1, 1998; May 1, 1995; April 1,*

*1993; June 1, 1989; September 30, 1981. ~~;~~ May 1, 2014;*

1 21 NCAC 42B .0114 as published in 28:13 NCR 1504-05 with changes is proposed for adoption as follows:

2  
3 **21 NCAC 42B .0114 MILITARY LICENSE**

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

7 (1) ~~Has been awarded~~Awarded a military occupational specialty in optometry and has done all of the  
8 following at a level that the Board, ~~in its discretion and through such inquiries or methods as it deems~~  
9 ~~to be appropriate through an oral interview or administration of a clinical practicum examination,~~  
10 determines to be substantially equivalent to or exceeds the requirements for licensure in this State:

11 (i)(A) ~~completed~~ a military program of optometry training that includes additional clinical  
12 ~~experience; experience in the diagnosis, treatment, and management of diseases of the~~  
13 ~~eye and its adnexa;~~

14 (ii)(B) ~~completed~~ testing or equivalent training and experience; and

15 (iii)(C) ~~is performing at a satisfactory level of competency;~~performed in the occupational  
16 specialty;

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

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

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

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

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

29 (2) Can demonstrate competency in optometry through methods determined by the Board, such as passing  
30 the Board's clinical practicum examination, completing continuing education units, or having had  
31 recent clinical experience in the diagnosis, treatment, and management of diseases of the eye and its  
32 adnexa for at least two of the five years preceding the date of the application under this  
33 Paragraph;~~passing the Board's clinical practicum examination or through such other inquiries or~~  
34 ~~methods as determined to be appropriate by the Board in its discretion;~~

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

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

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

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

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

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

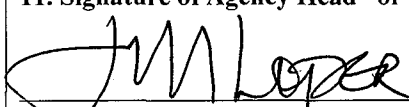
12

13 *History Note:* Authority *G.S. § 93B-15.1; ~~GS 90-118~~.G.S. § 90-123.*

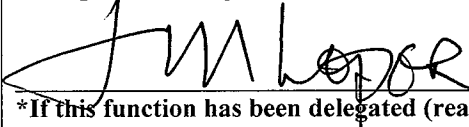
14 *Eff. ~~May~~ July 1, 2014.*

15

## SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: North Carolina Board of Examiners in Optometry			
2. Rule citation & name (name not required for repeal): 21 NCAC 42B .0107, National Board Examinations			
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL	4. Exemption. Rule exempt from RRC review according to (cite session law or general statute):		
5. Agency obtained G.S. 150B-19.1 certification: <input type="checkbox"/> OSBM certified on: <input type="checkbox"/> RRC certified on: <input checked="" type="checkbox"/> Not Required			
6. Notice for Proposed Rule: <ul style="list-style-type: none"> <li><input checked="" type="checkbox"/> Notice Required            Notice of Text published on: 12/6/13 on Optometry Board Website; 1/2 /14 in NC Register.            Link to Agency notice:  <a href="http://web1.ncoptometry.org/documents/notices/21%20NCAC%2042B%20%200107%20Proposed%20Rule%20Amendment.pdf">http://web1.ncoptometry.org/documents/notices/21%20NCAC%2042B%20%200107%20Proposed%20Rule%20Amendment.pdf</a>            Hearing on: N/A            Adoption by agency on: 3/22/14; 5/7/14</li> <li><input type="checkbox"/> Notice not required under G.S.:            Adoption by agency on:</li> </ul>			
7. Fee. 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): <ul style="list-style-type: none"> <li><input type="checkbox"/> State funds affected</li> <li><input type="checkbox"/> Environmental permitting of DOT affected and analysis submitted to Board of Transportation</li> <li><input type="checkbox"/> Local funds affected</li> <li><input type="checkbox"/> Substantial economic impact (≥\$1,000,000)</li> <li><input type="checkbox"/> Approved by OSBM</li> <li><input checked="" type="checkbox"/> No fiscal note required</li> </ul>		
<b>9. REASON FOR ACTION</b>			
9A. What prompted this action? Check all that apply: <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <input checked="" type="checkbox"/> Agency  <input type="checkbox"/> Court order / cite:  <input type="checkbox"/> Federal statute / cite:  <input type="checkbox"/> Federal regulation / cite:         </td> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Legislation enacted in last General Assembly session            Cite Session Law:  <input type="checkbox"/> Petition for rule-making  <input type="checkbox"/> Other:         </td> </tr> </table>		<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 in last General Assembly session Cite Session Law: <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:
<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 in last General Assembly session Cite Session Law: <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:		
9B. Explain:  21 NCAC 42B .0107 is being amended to ensure that the North Carolina examination requirements encompass the standards in the National Board of Optometry's examination.			
10. Rule-making Coordinator: Johnny M. Loper Address: Womble Carlyle Sandridge & Rice, LLP 150 Fayetteville Street, Suite 2100 Raleigh, NC 27601 Phone: (919) 755-2116 E-Mail: jloper@wcsr.com  Agency Contact, if any: John D. Robinson Phone: (910) 285-3160 E-Mail: exdir@ncoptometry.org	11. Signature of Agency Head* or Rule-making Coordinator:   <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: Johnny M. Loper Title: Rulemaking Coordinator		
<b>RRC AND OAH USE ONLY</b>			

# SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: North Carolina Board of Examiners in Optometry			
2. Rule citation & name (name not required for repeal): 21 NCAC 42B .0114, Military License			
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL	4. Exemption. Rule exempt from RRC review according to (cite session law or general statute):		
5. Agency obtained G.S. 150B-19.1 certification: <input type="checkbox"/> OSBM certified on: <input type="checkbox"/> RRC certified on: <input checked="" type="checkbox"/> Not Required			
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: 12/6/13 on Optometry Board Website; 1/2 /14 in NC Register. Link to Agency notice: <a href="http://web1.ncoptometry.org/documents/notices/21%20NCAC%2042B%20%200114%20Proposed%20Rule.pdf">http://web1.ncoptometry.org/documents/notices/21%20NCAC%2042B%20%200114%20Proposed%20Rule.pdf</a> Hearing on: N/A Adoption by agency on: 3/22/14; 5/7/14 <input type="checkbox"/> Notice not required under G.S.: Adoption by agency on:			
7. Fee. 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"/> State funds affected <input type="checkbox"/> Environmental permitting of DOT affected and analysis submitted to Board of Transportation <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		
<b>9. REASON FOR ACTION</b>			
9A. What prompted this action? Check all that apply:  <table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <input type="checkbox"/> Agency  <input type="checkbox"/> Court order / cite:  <input type="checkbox"/> Federal statute / cite:  <input type="checkbox"/> Federal regulation / cite:           </td> <td style="width: 50%; vertical-align: top;"> <input checked="" type="checkbox"/> Legislation enacted in last General Assembly session                Cite Session Law: N.C. Gen. Stat. § 93B-15.1  <input type="checkbox"/> Petition for rule-making  <input type="checkbox"/> Other:           </td> </tr> </table>		<input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite:	<input checked="" type="checkbox"/> Legislation enacted in last General Assembly session Cite Session Law: N.C. Gen. Stat. § 93B-15.1 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:
<input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite:	<input checked="" type="checkbox"/> Legislation enacted in last General Assembly session Cite Session Law: N.C. Gen. Stat. § 93B-15.1 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:		
9B. Explain:  This rule is being enacted pursuant to N.C. Gen. Stat. § 93B-15.1's requirement that occupational licensing boards "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 the applicant meets certain requirements.			
10. Rule-making Coordinator: Johnny M. Loper Address: Womble Carlyle Sandridge & Rice, LLP 150 Fayetteville Street, Suite 2100 Raleigh, NC 27601 Phone: (919) 755-2116 E-Mail: <a href="mailto:jloper@wcsr.com">jloper@wcsr.com</a>  Agency Contact, if any: John D. Robinson Phone: (910) 285-3160 E-Mail: <a href="mailto:exdir@ncoptometry.org">exdir@ncoptometry.org</a>	11. Signature of Agency Head* or Rule-making Coordinator:   *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: Johnny M. Loper Title: Rulemaking Coordinator		
<b>RRC AND OAH USE ONLY</b>			

Minutes of the North Carolina State Board of Optometry  
May 7, 2014 Special Telephonic Meeting

The North Carolina State Board of Examiners in Optometry conducted a special meeting via telephone at 5:15 pm on Wednesday May 7, 2014 to adopt revised language of 21 NCAC 42B .0107 and 21 NCAC 42B .0114. Present were Drs. Andrew Cook, President and Harold Herring, Secretary/Treasurer and Drs. Michael Clark, H. Mike Johnson, William Rafferty and Mr. Roger Mitchell and Ms. Mary Richardson, Members of the Board. Also present were the following Members of the Board's Staff: John D. Robinson, O.D., Executive Director and Ms. Samantha Hardison, Administrative Assistant. Mr. Johnny Loper and Ms. Amanda Ray, attorneys for the Board, also participated in the meeting by telephone.

The meeting was called to order at 5:15 pm by Dr. Cook after which he read the "Ethics Awareness and Conflict of Interest Reminder" in accordance with the State Government Ethics Act. He then informed the Board that the purpose of this meeting was to act upon changes to the proposed amendment to 21 NCAC 42B. 0107 (to conform to changes made in written examinations by the National Board of Examiners in Optometry) and 21 NCAC 42B.0107 (governing licensing of military optometrists and spouses of military optometrists). Both the amendment to 21 NCAC 42B .0107 and the proposed 21 NCAC 42B .0107 were posted on the Board's web site for public comment for the required 60 day period and did not receive any comment(s) from the public. The Board must now vote to approve the changes in the language of these rules that have been made pursuant to the request of counsel for the Rules Review Commission ("RRC") so that the rules may be resubmitted to the RRC for approval. The action required is the Board's adoption of 21 NCAC 42B.0107 and 21 NCAC 42B.0114. Copies of both rules to be resubmitted to the RRC were sent to each Member of the Board prior to this meeting in order that they have ample opportunity to review the changes.

The President then asked if there were any questions or comments before asking for a motion to formally adopt these rules prior to their being resubmitted to the RRC for approval.

**Adoption of 21 NCAC 42B .0107 and 21 NCAC 42B .0114.** On motion by Dr. Michael Clark seconded by Dr. William Rafferty and carried unanimously, the Board adopted 21 NCAC 42B.0107, WRITTEN EXAMINATION, and 21 NCAC 42B.0114, MILITARY LICENSE, as posted on the Board's web site for public comment for the required 60 day period and with the changes requested by counsel for the RRC included.

There being no further business, at 5:23 p.m. Dr. Michael Clark moved and Dr. Mike Johnson seconded a motion that the meeting be adjourned. The motion carried unanimously.

**DRAFT 04/15/14**

Minutes of the  
North Carolina State Board of Optometry  
March 21-22, 2014  
Wallace, North Carolina

The North Carolina State Board of Examiners in Optometry met in the offices of the Board in Wallace, North Carolina on Friday and Saturday, March 21-22, 2014, to determine the results of the Winter 2014 Clinical/Practicum Examinations and for other purposes. Present were Dr. Andrew Cook, President, Dr. Harold Herring, Secretary/Treasurer, Drs. Mike Johnson, William Rafferty and Mr. Roger Mitchell and Ms. Mary Richardson, Members of the Board. Also present were the following Members of the Board's Staff: John D. Robinson, O.D., Executive Director, Janice Peterson, R.N., Administrative Secretary, and Ms. Samantha Hardison, Administrative Assistant. Mr. Johnny Loper, attorney for the Board, joined the meeting on Saturday morning, March 22<sup>nd</sup> by way of conference telephone.

The meeting was called to order at 5:00 p.m. on Friday by Dr. Cook, President of the Board, after which he read the "*ETHICS AWARENESS & CONFLICTS OF INTEREST REMINDER*" as required by the North Carolina State Ethics Commission. A copy of the "*Reminder*" was in each Member's meeting notebook.

**Approval of Minutes.** On a motion by Mr. Mitchell seconded by Dr. Rafferty, the minutes of the February 14-16, 2014 meeting were unanimously approved.

**Report of the President.** Given the short period of time since the Board last met Dr. Cook did not have a 'formal report'; however, he stated that he would be offering comments on certain agenda items at the appropriate time. On a motion by Dr. Herring and seconded by Mr. Mitchell, the remarks of the President were unanimously accepted.

**Report of the Secretary-Treasurer.** Dr. Herring presented the Budget Report for the period covering July 1, 2013 through March 19, 2014. He called the Board's attention to the fact that with less than three months left in the fiscal year, expenses appear to be reasonably in line with the amounts budgeted for the fiscal year. Further, that while income projections have not yet been met there will be an undetermined amount of income from late license renewal fees, examination application fees and interest/investment income that, when based on past experience, is likely to reach a figure at or close to the amount budgeted. On a motion by Dr. Johnson seconded by Ms. Richardson and carried unanimously the report of the Secretary-Treasurer was accepted.

**Budget for fiscal year 2014-2015.** Board Members will be furnished with a draft of the proposed budget for fiscal year 2014-2015 for their information and review at least 3 weeks prior to the meeting in June when the budget for 2014-2015 will be on the agenda for adoption. A report addressing the performance of the Board's Staff prepared by the Executive Director was distributed as an aid to the Board Members in evaluating of the performance of the Board Staff over the past year. This report will accompany the draft of the proposed budget for fiscal year 2014-2015. During the closed session at the June meeting the Executive Director will be prepared to discuss and answer questions regarding the proposed budget and his review of the



performance of the Board's Staff over the past year.

**Report of the Executive Director.**

- Action on amending the Mission Statement of the ACOE by the AOA's HOD that was postponed in Chicago in June of 2012 was not on the agenda in San Diego last June (2013); however, this does not mean that there will no further efforts to amend the ACOE's Mission Statement in the future. Should the intent of the leadership of the AOA be to weaken, if not destroy, ARBO's COPE program by amending the mission statement of the ACOE to include the accreditation of the providers of continuing education, it will have adverse consequences on this Board's current rules and regulations and could eventually result in control over the approval process of continuing education programs offered outside the geographical boundaries of this state.
- At its last meeting the Board went on record opposing 'board certification' by reaffirming the resolutions adopted unanimously in 2009, 2010, 2011, 2012 and 2013 in opposition to the AOA efforts to 'force' board certification on the profession through the American Board of Optometry (ABO). It is with these facts in mind that this Board encourages the North Carolina State Optometric Society to reaffirm resolutions passed overwhelmingly in 2009, 2010, 2011, 2012 and 2013 at its Annual Business Meetings and send its delegates to the AOA HODs in June 2014 in Philadelphia instructed to vote against the amending of the ACOE's mission statement to include the approving of providers of optometric continuing education and against all motions and resolutions that support board certification as a means of assuring maintenance of competence and/or the further use of AOA dues monies in support of such activities. It is recommended that the action of the Board at this meeting in reaffirming its resolutions be forwarded to the Officers, Trustees and Staff of the North Carolina State Optometric Society prior to the 2014 Spring Meeting of the Society with a request that the matter be placed on the agenda of the Society's Executive Council meeting the evening before the opening session of the Society's Spring Meeting requesting that they too reaffirm previous resolutions in opposition to 'board certification' and the amending of the Mission Statement of the ACOE; and further, that the North Carolina delegation to the House of Delegates of American Optometric in Philadelphia go instructed to vote NO on all matters in support of board certification by the American Board of Optometry (ABO) and/or the amending of the Mission Statement of the ACOE to include the approving of providers of optometric continuing education.
- While the Board office continues to receive inquiries from licensees who are concerned about the need to become 'board certified' by the American Board of Optometry the numbers of inquiries have diminished noticeably. Those making the inquiries are informed that the Board's position on 'board certification' is no different than that expressed in past memorandums sent by the Board to every licensee on the subject over the past few years, the most recent memorandum on the subject dated December 3, 2012. Those who inquire are informed that the Board has seen no credible evidence that any licensee of this Board (or a licensee of any other Board in the entire country) has been denied being a provider on any managed care panel, or payment by any insurance company like BlueCross/BlueShield, Medicare, Medicaid, or refused hospital privileges based singularly on the fact that they were not 'board certified'.
- At this meeting the Board must act upon the its Rules, 21 NCAC 42B.0107, WRITTEN EXAMINATION, the proposed Rule as amended (to update the Board

Rule on Written Examinations in keeping with changes made in the content outline of the National Board of Examiners in Optometry) and 21 NCAC 42B.0107, licensing of military optometrists and spouses of military optometrists, both having been posted on the Board's web site for public comment for the required 60 day period which ended earlier this month; and further, without any comment(s) being received from the public during the that period. The action required in the rule making process is the Board's adoption of 21 NCAC 42B.0107 and 21 NCAC 42B.0114 as posted.

Dr. Cook this completes the report of the Executive Director.

On a motion by Dr. Herring seconded by Ms. Richardson and carried unanimously the report of the Executive Director was accepted.

**Adoption of 21 NCAC 42B.0107 and 21 NCAC 42B.0114.** On motion by Mr. Mitchell seconded by Dr. Johnson and carried unanimously the Board adopted 21 NCAC 42B.0107, WRITTEN EXAMINATION and 42B.0114, licensing of military optometrists and spouses of military optometrists as posted on the Board's web site for public comment for the required 60 day period.

**Review of the Scoring and Results of the Winter 2014 Clinical/Practicum Examinations.** At 5:25 p.m. on a motion by Dr. Herring, seconded by Dr. Johnson and carried unanimously, the Board went into Executive Session in accordance with NCGS 143-318.11(a)(1) to review the scoring and results of the Winter 2014 Clinical/Practicum Examination. At 7:00 p.m., on a motion by Ms. Richardson, seconded by Dr. Herring, and carried unanimously, the Board returned to open session. No motions were made and no action was taken while in closed session.

At 7:10 P.M. the President recessed the meeting until 8:45 A.M. on Saturday, March 22, 2014

At 8:55 A. M. the President called the meeting back to order. Present were Drs. Andrew Cook, Harold Herring, Mike Johnson, William Rafferty and Mr. Roger Mitchell and Ms. Mary Richardson, Members of the Board. Also present were Dr. John Robinson, Executive Director, Janice Peterson, Administrative Secretary and Ms. Samantha Jeffcoat, Administrative Assistant. Mr. Johnny Loper, the Board Attorney, joined the meeting at the time certain of 9:00 A.M. by means of a conference telephone.

**Determining the Results of the Examination.** Having reviewed the scoring of the Winter 2014 Examinations in closed session, in open session it was moved by Mr. Mitchell seconded by Ms. Richardson and carried unanimously that the following applicants be notified of their having achieved a passing score on the Winter 2014 Clinical/Practicum Examinations and that they are to be duly licensed to practice the profession of optometry in North Carolina; further that their names be entered in the Board Registry with license numbers assigned as follows:

#2356	Sana Rahman Aziem, O.D.
#2357	Jarrad M. Berry, O.D.
#2358	Kala Brown Brewer, O.D.
#2359	Kristen Glasgow, O.D.
#2360	Cassandra Hinderscheid, O.D.

#2361 Brianne Nicole Hobbs, O.D.  
#2362 Sunita Jagani, O.D.  
#2363 Pooja Jayesh Patel, O.D.  
#2364 Sita Patel, O.D.  
#2365 Robin Sinn, O.D.  
#2366 Binita B. Tailor, O.D.  
#2367 Lindsay Leigh Totten, O.D.  
#2368 Travis Steven Tucker, O.D.  
#2369 Jade M. Walker, O.D.

On a motion by Dr. Herring seconded by Mr. Mitchell that carried unanimously the following individuals were licensed in accordance with N.C.G.S. 93B-15.1:

#2370 Matthew R. Mahek, O.D.  
#2371 Anna J. O'Brien, O.D.

**Meeting with the Board Attorney.** Mr. Loper joined the meeting by conference telephone on Saturday morning. He brought the Board up to date on several matters, including information regarding the Board's proposed rules on licensing of military personnel and spouses and the General Assembly's possible plans to amend that statute; an indication that the investigation committee likely will bring a matter to the Board for its consideration a very complicated matter involving a licensee who has sought bankruptcy; and the sunset/review process required by the General Assembly and the Rules Review Commission. No vote or other action was taken in or as a result of this informational session.

The President thanked Mr. Loper for taking time on a weekend to take part in the Board's meeting.

**Old Business.** There was no old business.

**New Business.** Dr. Rafferty reported briefly on his attendance at the Educational Congress of the Southern Council of Optometry in Atlanta.

**Association of Regulatory Boards in Optometry/House of Delegates of the American Optometric Association.** Since the Board has previously approved the registration and attendance at these meetings by Dr. Robinson no further action was required.

**Spring Meeting June 12-15, 2014.** The next regularly scheduled meeting of the Board will be held at the Kingston Plantation and Resort in Myrtle Beach, S.C. June 12 through June 15, 2014. Reaffirmation of the Board's past resolutions regarding the issues of 'board certification' and the 'amending of the ACOE's Mission Statement' to include the 'approving of vendors of optometric continuing education will continue to be a priority of North Carolina State Board of Optometry and is expected to be on the agenda of the State Society's Executive Council on the evening of June 12<sup>th</sup>. Arrivals will be on Wednesday afternoon, June 11, 2014 with the meetings starting at 8:30 a.m. on Thursday, June 12, 2014 and ending no later than 2:00 p.m. on Sunday, June 15, 2014. On a motion by Dr. Herring, seconded by Mr. Mitchell, and carried unanimously registration, travel, 4 hotel nights and 5

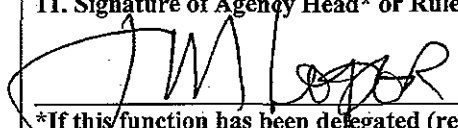
days meal expenses were approved for the Members of the Board and the Executive Director; further, that the Board Members be entitled to 5 days per diem for their attendance.

**Annual Meeting.** The Annual Meeting of the Board to elect officers for the coming Board year, July 1, 2013 through June 30, 2014, and for other purposes that might be properly before the Board will be held in the Oxford Room at the Embassy Suites Hotel at Kingston Plantation in Myrtle Beach, S.C. at a time certain of 12 o'clock noon on Thursday, June 12, 2014.

There being no further business, at 11:30 a.m. on Saturday, March 22, 2014, Mr. Mitchell moved and Dr. Johnson seconded a motion that the meeting be adjourned. The motion carried unanimously.



## SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency:</b> North Carolina Board of Examiners in Optometry	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 21 NCAC 42B .0114, Military License	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b>	<b>4. Exemption. Rule exempt from RRC review according to (cite session law or general statute):</b>
<b>5. Agency obtained G.S. 150B-19.1 certification:</b> <input type="checkbox"/> <b>OSBM certified on:</b> <input type="checkbox"/> <b>RRC certified on:</b> <input checked="" type="checkbox"/> <b>Not Required</b>	
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> <b>Notice of Text published on:</b> 12/6/13 <b>Link to Agency notice:</b> <a href="http://web1.ncoptometry.org/documents/notices/21%20NCAC%2042B%20%200114%20Proposed%20Rule.pdf">http://web1.ncoptometry.org/documents/notices/21%20NCAC%2042B%20%200114%20Proposed%20Rule.pdf</a> <b>Hearing on:</b> N/A <b>Adoption by agency on:</b> 11/14/14 <input type="checkbox"/> <b>Notice not required under G.S.:</b> <b>Adoption by agency on:</b>	
<b>7. Fee. Rule establishes or increases a fee? (See G.S. 12-3.1)</b>  <input type="checkbox"/> <b>Yes</b> Agency submitted request for consultation on: Consultation not required. Cite authority:  <input checked="" type="checkbox"/> <b>No</b>	<b>8. Fiscal impact (check all that apply):</b> <input type="checkbox"/> <b>State funds affected</b> <input type="checkbox"/> <b>Environmental permitting of DOT affected and analysis submitted to Board of Transportation</b> <input type="checkbox"/> <b>Local funds affected</b> <input type="checkbox"/> <b>Substantial economic impact (≥\$1,000,000)</b> <input type="checkbox"/> <b>Approved by OSBM</b> <input checked="" type="checkbox"/> <b>No fiscal note required</b>
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input type="checkbox"/> <b>Agency</b> <input type="checkbox"/> <b>Court order / cite:</b> <input type="checkbox"/> <b>Federal statute / cite:</b> <input type="checkbox"/> <b>Federal regulation / cite:</b> <input checked="" type="checkbox"/> <b>Legislation enacted in last General Assembly session</b> <b>Cite Session Law: G.S. § 93B-15.1</b> <input type="checkbox"/> <b>Petition for rule-making</b> <input type="checkbox"/> <b>Other:</b>	
<b>9B. Explain:</b> This rule is being enacted pursuant to N.C. Gen. Stat. § 93B-15.1's requirement that occupational licensing boards "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 the applicant meets certain requirements.	
<b>10. Rule-making Coordinator:</b> Johnny M. Loper <b>Address:</b> Womble Carlyle Sandridge & Rice, LLP 150 Fayetteville Street, Suite 2100 Raleigh, NC 27602 <b>Phone:</b> (919) 755-2116 <b>E-Mail:</b> jloper@wcsr.com  <b>Agency Contact, if any:</b> John D. Robinson, O.D. <b>Phone:</b> (910) 285-3160 <b>E-Mail:</b> exdir@ncoptometry.org	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b> <div style="text-align: center; margin-top: 10px;">   <hr style="width: 80%; margin: 0 auto;"/> </div> <b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b>  <b>Typed Name:</b> Johnny M. Loper <b>Title:</b> Rulemaking Coordinator
<b>RRC AND OAH USE ONLY</b>	

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 ADMIN HEARINGS  
 2011 MAR 20 PM 4:14  
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STATE OF NORTH CAROLINA  
**OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:  
6714 Mail Service Center  
Raleigh, NC 27699-6714

Street address:  
1711 New Hope Church Rd  
Raleigh, NC 27609-6285

April 17, 2014

Johnny M. Loper  
NC Board of Examiners in Optometry  
**Sent via email to [jloper@wcsr.com](mailto:jloper@wcsr.com)**

Re: Objections to Rules 21 NCAC 42B .0107 and .0114.

Dear Mr. Loper:

At its meeting this morning, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to both rules for failure to comply with the Administrative Procedure Act. In the initial filing on March 20, 2014, the Board stated on the Submission for Permanent Rule forms that the rules had not yet been formally adopted by the agency, but would be on November 14, 2014. Agencies are required to adopt rules before submitting them to the Commission. (*See* G.S. 150B-21.1) In response to a Request for Technical Change from Commission staff that requested the actual date of adoption by the agency, the Board filed new Submission for Permanent Rule forms on April 11, 2014. The new forms stated the rules had been adopted by the Board on November 14, 2013. The comment period for both rules was January 2, 2014 through March 3, 2014. G.S. 150B-21.2(g) states, in relevant part, "An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed[.]"

Based upon the submissions of the agency, the Commission found that the Board failed to comply with the Administrative Procedure Act. If the Board did comply with the Act, it may file evidence of compliance with the Commission for review at a later meeting in accordance with G.S. 150B-21.12.

The Commission also objected to Rule 42B .0114 based upon ambiguity. In Subparagraphs (a)(1) and (b)(2), the Board proposed to determine "other methods as appropriate to the Board" and gave no guidance on how this will be determined. This lack of guidance makes the rule unclear.

Administration  
919/431-3000  
fax: 919/431-3100

Rules Division  
919/431-3000  
fax: 919/431-3104

Judges and  
Assistants  
919/431-3000  
fax: 919/431-3100

Clerk's Office  
919/431-3000  
fax: 919/431-3100

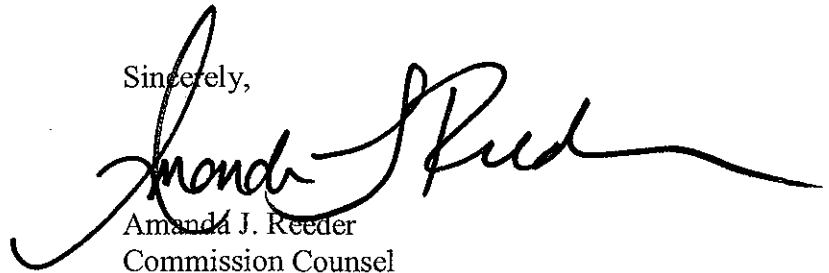
Rules Review  
Commission  
919/431-3000  
fax: 919/431-3104

Civil Rights  
Division  
919/431-3036  
fax: 919/431-3103

The Commission also objected to the rule for lack of statutory authority to require in Subparagraph (a)(1)(iii) for the applicant to be performing at a satisfactory level of competency in the occupational specialty. G.S. 93B-15.1 requires 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, but instead speaks to those who have received military training and been awarded an MOS. The law can extend to retired or discharged military applicants seeking licensure. In addition, the language is ambiguous, as there is no guidance in the Rule as to what will constitute the "satisfactory level" of competency.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "Amanda J. Reeder", with a long, sweeping horizontal flourish extending to the right.

Amanda J. Reeder  
Commission Counsel



1 21 NCAC 42B .0107 is proposed for amendment as follows:

2  
3 **21 NCAC 42B .0107** ~~WRITTEN~~ **NATIONAL BOARD EXAMINATIONS**

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

- 10 (1) April, 1978 through August, 1986 administrations: passing scores on Parts I, IIA, and IIB, with scores  
11 of not less than 75 in Section 7 (Pathology) and Section 9 (Pharmacology) on the Part IIB examination,  
12 and a score of not less than 75 on the National Board's Treatment and Management of Ocular Disease  
13 ("TMOD") examination.
- 14 (2) April, 1987 through August, 1992 administrations: passing scores on the Part I Basic Science (BS)  
15 examination and Part II Clinical Science (CS) examination of the National Board, with scores of not  
16 less than 75 on the Ocular Disease/Trauma and Clinical Pharmacology sections of the PART II  
17 Clinical Science (CS) examination, and a score of not less than 75 on the National Board's Treatment  
18 and Management of Ocular Disease (TMOD) examination.
- 19 (3) April, 1993 through December, 2008 administrations: passing score on the Part I Basic Science  
20 Examination of the National Board.
- 21 (4) April, 1993 through April, 2009 administrations: passing score on the Part II Clinical Science  
22 Examination of the National Board, with a score of not less than 75 on the Ocular Disease/Trauma  
23 component within the Clinical Science examination, and a score of not less than 75 on either the  
24 TMOD component within the Clinical Science examination, or on the equivalent stand-alone TMOD  
25 examination.
- 26 (5) March, 2009 administrations and thereafter: passing score on Part I Applied Basic Science (ABS)  
27 examination of the National Board.
- 28 (6) December, 2009 administrations and thereafter: passing score on Part II Patient Assessment and  
29 Management (PAM) examination of the National Board, with a score of not less than 75 on the  
30 Disease/Trauma component within the Patient Assessment and Management (PAM) examination, and  
31 a score of not less than 75 on the TMOD component within the Patient Assessment and Management  
32 (PAM).
- 33 (7) March, 2010 administrations and thereafter: passing score on the Part III Clinical Skills Examination  
34 (CSE) of the National Board.
- 35 (8) March 1, 2014 administrations and thereafter: passing score on Part III Injection Skills Examination  
36 (ISE) of the National Board.
- 37 (9) March 2015 administrations and thereafter: all applicants must have passed Part III Clinical Skills  
38 Examination (CSE) with a score of not less than 75% on the Skills of gonioscopy, binocular indirect  
39 ophthalmoscopy and slit lamp biomicroscopy; and a passing score on Part III Injection Skills  
40 Examination (ISE) of the National Board.

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

- 44 (1) Part I and IIA is the equivalent of Basic Science.
- 45 (2) Part IIB is the equivalent of Clinical Science without the inclusion of TMOD.
- 46 (3) Part I Applied Basic Science (ABS) is the equivalent of Part I Basic Science.
- 47 (4) Part II Patient Assessment and Management (PAM) is the equivalent of Part II Clinical Science.

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

50 *History Note:* Authority G.S. 90-117.5; 90-118;  
51 Eff. February 1, 1976;  
52 Readopted Eff. May 30, 1978;  
53 Amended Eff. April 1, 2011; July 1, 1998; May 1, 1995; April 1, 1993; June 1,  
54 1989; September 30, 1981; May 1, 2014.

55

1 21 NCAC 42B .0114 is proposed for adoption as follows:

2  
3 **21 NCAC 42B .0114 MILITARY LICENSE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

45 *Eff. May 1, 2014*

46