

## Burgos, Alexander N

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**Subject:** FW: [External] RE: RRC Meeting April 2026-Request for Technical Changes

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**From:** Johnny Loper <jloper@loper-law.com>

**Sent:** Monday, April 6, 2026 8:28 AM

**To:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Janice Peterson <janice@ncoptometry.org>; exdir@ncoptometry.org

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

**Subject:** RE: [External] RE: RRC Meeting April 2026-Request for Technical Changes

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Thanks, Mr. Wiggs. I'll plan to attend via WebEx.

Johnny

## Burgos, Alexander N

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**Subject:** FW: [External] RE: RRC Meeting April 2026-Request for Technical Changes  
**Attachments:** 21 NCAC 42B .0107.docx

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**From:** Janice Peterson <janice@ncoptometry.org>  
**Sent:** Friday, April 3, 2026 9:57 AM  
**To:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>  
**Cc:** Johnny Loper <jloper@loper-law.com>; exdir@ncoptometry.org; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>  
**Subject:** Re: [External] RE: RRC Meeting April 2026-Request for Technical Changes

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Good morning, Mr. Wiggs.

I have removed "with changes" from line 1 of the proposed Rule, and attached the revision to this email.

Thank you for your help.

Janice K. Peterson,  
Administrative Associate  
521 Yopp Rd.  
Suite 214 #444  
Jacksonville, NC 28540  
(910) 285-3160  
Fax: (910) 285-4546  
[janice@ncoptometry.org](mailto:janice@ncoptometry.org)

1 21 NCAC 42B .0107 is readopted as published in 40:13 NCR 1096-1098 as follows:

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

4 (a) Each applicant shall direct the National Board of Examiners in Optometry (NBEO) to release his or her official  
5 score report to the Board as evidence of having achieved a passing score as determined by the NBEO on:

- 6 (1) ~~Parts I, II, and III~~ I and II of the National Board of Examiners in Optometry (NBEO) Examinations  
7 ~~if as~~ offered in the calendar year the applicant graduated from an accredited school or college of  
8 optometry;
- 9 (2) NBEO's Treatment and Management of Ocular Disease Examination if offered in the calendar year  
10 the applicant graduated from an accredited school or college of optometry; ~~and~~
- 11 ~~(3) Part III of the NBEO's Clinical Skills Examination if offered in the calendar year the applicant~~  
12 ~~graduated from an accredited school or college of optometry;~~
- 13 ~~(4) Part III of the NBEO's Patient Encounters Examination if offered in the calendar year the applicant~~  
14 ~~graduated from an accredited school or college of optometry; and~~
- 15 ~~(3)(5)~~ NBEO's Injection Skills Examination.

16 (b) The applicant shall authorize the release of his or her official NBEO score report to the Board prior to the approval  
17 by the Board of his or her application to take the North Carolina ~~clinical practicum examination.~~ Clinical Practicum  
18 Examination.

19  
20 *History Note: Authority G.S. 90-117.5; 90-118;*

21 *Eff. February 1, 1976;*

22 *Readopted Eff. May 30, 1978;*

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

25 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,*  
26 *2015;*

27 *Amended Eff. July 1, 2023; May 1, 2026*

On Fri, Apr 3, 2026 at 9:41 AM Wiggs, Travis C <[travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)> wrote:

Good morning,

Thank you for the information and edits. Please remove “with changes” on line 1, then send the final revised Rule to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov) (or just reply all). The Rule is final for review at April’s RRC meeting.

Please let us know if anyone from your agency will be present for the meeting, in-person or on WebEx.

Thanks,

Travis C. Wiggs

Rules Review Commission Counsel

Office of Administrative Hearings

Telephone: 984-236-1929

Email: [travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)

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**From:** Johnny Loper <[jloper@loper-law.com](mailto:jloper@loper-law.com)>

**Sent:** Tuesday, March 31, 2026 11:50 AM

**To:** Wiggs, Travis C <[travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)>; Janice Peterson <[janice@ncoptometry.org](mailto:janice@ncoptometry.org)>; [exdir@ncoptometry.org](mailto:exdir@ncoptometry.org)

**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>

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Mr. Wiggs:

Thanks for the Request for Changes you provided regarding the above-referenced rule.

I have attached to this email a copy of that Request with our responses/explanations interlineated after each individual request. I hope the responses are sufficient to answer your questions, but if not, please let us know.

I have also attached an updated copy of the proposed rule incorporating the change you requested.

Again, thanks, and let us know if further discussions are needed.

For the Board,

Johnny M. Loper

Loper Law, PLLC

1212 Briar Patch Lane

Raleigh, NC 27615

919-390-7749 (DD)

919-390-3342 (F)

[jloper@loper-law.com](mailto:jloper@loper-law.com)

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**From:** Wiggs, Travis C <[travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)>  
**Sent:** Monday, March 23, 2026 3:48 PM  
**To:** Johnny Loper <[jloper@loper-law.com](mailto:jloper@loper-law.com)>; Janice Peterson <[janice@ncoptometry.org](mailto:janice@ncoptometry.org)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RRC Meeting April 2026-Request for Technical Changes

Good afternoon,

I'm the attorney who reviewed the rules submitted by the Board of Examiners in Optometry for the April 2026 RRC meeting. The RRC will formally review these rules at its meeting on Tuesday, April 28, 2026, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get close to the meeting. If there are any other representatives from your agency who want to attend virtually, please let me know prior to the meeting, and we will get evites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit the revised rules to me via email, no later than 5 p.m. on April 7, 2026. Let me know if you have any questions.

Thanks,

Travis C. Wiggs

Rules Review Commission Counsel

Office of Administrative Hearings

Telephone: 984-236-1929

Email: [travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)

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## Burgos, Alexander N

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**Subject:** FW: [External] RE: RRC Meeting April 2026-Request for Technical Changes  
**Attachments:** Response to Mr. Wiggs' Request for Changes.docx; 21 NCAC 42B .0107.docx

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**Sent:** Tuesday, March 31, 2026 11:50 AM  
**To:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Janice Peterson <janice@ncoptometry.org>; exdir@ncoptometry.org  
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For the Board,

Johnny M. Loper  
Loper Law, PLLC  
1212 Briar Patch Lane  
Raleigh, NC 27615

919-390-7749 (DD)  
919-390-3342 (F)  
[jloper@loper-law.com](mailto:jloper@loper-law.com)

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

25 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,*  
26 *2015;*

27 *Amended Eff. July 1, 2023; May 1, 2026*

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

AGENCY: NC State Board of Examiners in Optometry

RULE CITATION: 21 NCAC 42B .0107

DEADLINE FOR RECEIPT: **April , 2026**

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

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

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

*Line 1 says this Rule was readopted “with changes” as published in the Register. What changes were made to the published version?*

In talking to Ms. Peterson, my understanding is that this was a formatting error on her part when she used the OAH template for creating the heading of a Rule to be submitted for readoption, and that there actually were no changes to the published version. Of course, now that we will be capitalizing the first letters in "Clinical Practicum Examination", the proposed amended Rule *is* slightly different from the one published in the *NC Register*. And if you have additional changes you wish us to make after reviewing our responses below, those changes will also differ from the published version.

*In Paragraph (a), will the “passing score as determined by the NBOE” vary or does it remain a fixed score for each National Board Examination?*

By way of background: the National Board of Examiners in Optometry (NBEO) is an entity separate and apart from the Optometry Board. Our Board has no influence on the grading of such examinations or in NBEO's determination of what the “passing score” should be. We simply require that candidates who wish to take our Clinical Practicum Examination must have “passed” the referenced NBEO examinations. (With a couple of minor exceptions, all other states also require passing scores as determined by NBEO on the NBEO Parts I, II,

and III and Treatment and Management of Ocular Disease (TMOD) Examinations for licensure as an optometrist. Not all states allow optometrists to perform injections, so not all states require that a potential licensee pass the Injection Skills Examination (ISE). North Carolina is a state that has injection privileges and therefore our Board requires ISE in addition to the other examinations.)

For Parts I and II of the NBEO Examination as currently offered, the minimum passing score is 300, and has been since the inception of the current Parts I and II Examinations.

For the TMOD and ISE Examinations, the minimum passing score is 75 and has been since the inception of those examinations.

Candidates are required to meet a “fixed performance standard” for the Part III Clinical Skills Examination and for the Part III Patient Encounters Examination because these are in part oral examinations. The fixed performance standard also remains the same from year to year. The NBEO does review its examination offerings and candidate performance and may make certain revisions to these examinations every five to seven years. After any such revision, any “new” fixed performance standard remains the same from year-to-year until such time, if any, as the next examination revisions are made. Our Board considers meeting this fixed performance standard to be “achiev[ing] a passing score as determined by the NBEO” as contained in paragraph (a) of this Rule.

*In Paragraph (a) (1), the applicant is required to achieve passing scores on Parts I and II of the National Board Examination “as offered in the calendar year the applicant graduated from an accredited school”. What does “as offered in the calendar year” mean? Please clarify.*

We used the language “as offered in the calendar year the applicant graduated” because the format of the NBEO examinations has changed over time. (The most recent format change is the thing that precipitated our proposed amendment of this Rule.) At one point, the NBEO examinations consisted only of Part I and Part IIA and Part IIB Examinations.

So, while the NBEO has always had examinations titled “Part I” and “Part II,” in earlier years there was a Part I Examination, Part IIA Examination and a Part IIB Examination. That subsequently changed to Part I, Part II, and Part III Examinations. Over time, the NBEO added separate examinations on TMOD, Clinical Skills, Injection Skills, and Patient Encounters.

So, candidates over the years have taken various forms of the NBEO examinations. This means that depending on the year in which a candidate for our Clinical Practicum Examination graduated, the candidate may have taken different NBEO examinations than candidates who graduated in preceding or succeeding years.

The use of the language “as offered in the calendar year the applicant graduated” was intended to confirm that applicants for the Optometry Board’s Clinical Practicum Examination need only have taken the NBEO examinations offered in the year the candidate graduated. For example, candidates who took and passed Part I and Parts IIA and IIB in the year they graduated need not take and pass subsequently offered examinations.

*In Paragraphs (a)(2) through (4), is the applicant only required to achieve passing scores for the listed examinations “if offered in the calendar year the applicant graduated”? Please elucidate the practical differences of using “as offered” vs. “is offered”.*

As indicated above, while the NBEO has always offered, in some form, a Part I and a Part II Examination, the NBEO has not always offered Part III, TMOD, Clinical Skills, and Patient Encounter Examinations. The “if offered” language is used to indicate that no candidate who graduated at a time when such examinations were not offered by the NBEO will be denied the opportunity to take the Optometry Board’s Clinical Practicum Examination by virtue of not having taken and passed these examinations.

In summary, the “as offered” language in subparagraph (a)(1) and the “if offered” language in subparagraphs (a)(2) through (a)(4) are there to take into account the different “versions” of the NBEO examinations so as to make the Optometry Board’s examination qualification process more inclusive rather than less inclusive.

*In Paragraph (b), capitalize “clinical practicum examination” if referring to a specific examination.*

We will make this change.

## Burgos, Alexander N

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**From:** Johnny Loper <jloper@loper-law.com>  
**Sent:** Monday, March 23, 2026 3:51 PM  
**To:** Wiggs, Travis C; Janice Peterson  
**Cc:** Burgos, Alexander N  
**Subject:** [External] Re: RRC Meeting April 2026-Request for Technical Changes

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Received, thanks. We will respond as requested.

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**From:** Wiggs, Travis C <travis.wiggs@oah.nc.gov>  
**Sent:** Monday, March 23, 2026 3:48:13 PM  
**To:** Johnny Loper <jloper@loper-law.com>; Janice Peterson <janice@ncoptometry.org>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
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Thanks,

Travis C. Wiggs  
Rules Review Commission Counsel  
Office of Administrative Hearings  
Telephone: 984-236-1929  
Email: [travis.wiggs@oah.nc.gov](mailto:travis.wiggs@oah.nc.gov)

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