

## Burgos, Alexander N

---

**Subject:** FW: [External] RE: 21 NCAC 42D .0102 referral to OSBM

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**From:** Johnny Loper <jloper@loper-law.com>  
**Sent:** Friday, July 19, 2024 4:18 PM  
**To:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: 21 NCAC 42D .0102 referral to OSBM

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Thanks. We discussed **your comment below** earlier today, and that is our intention.

Have a good weekend.

Johnny

---

**From:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Sent:** Friday, July 19, 2024 2:37 PM  
**To:** Johnny Loper <[jloper@loper-law.com](mailto:jloper@loper-law.com)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 42D .0102 referral to OSBM

I think that is the best course of action. Your email will suffice for the withdrawal, and I will inform the RRC.

If it meets the Board's intentions, it seems to me that **removing any language governing tasks which do not fall within the definition of optometry from the rule** would clear much of the ambiguity.

Thank you and have a good weekend.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

## Burgos, Alexander N

---

**Subject:** FW: [External] RE: 21 NCAC 42D .0102 referral to OSBM

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**From:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Sent:** Friday, July 19, 2024 2:37 PM  
**To:** Johnny Loper <[jloper@loper-law.com](mailto:jloper@loper-law.com)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 42D .0102 referral to OSBM

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If it meets the Board's intentions, it seems to me that removing any language governing tasks which do not fall within the definition of optometry from the rule would clear much of the ambiguity.

Thank you and have a good weekend.

**William W. Peaslee**  
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Office of Administrative Hearings  
1711 New Hope Church Road  
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(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

---

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---

**From:** Johnny Loper <[jloper@loper-law.com](mailto:jloper@loper-law.com)>  
**Sent:** Friday, July 19, 2024 1:43 PM  
**To:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 42D .0102 referral to OSBM

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Seems like the appropriate thing to do, then, is for us to withdraw the rule and start the process over. I'm sure we'll seek a pre-review on the rule after we've generated the fiscal note and tried to resolve your stated objections.

Do I need to send you something other than this email asking for the withdrawal of the rule?

Thanks.

Johnny

## **Burgos, Alexander N**

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**To:** Peaslee, William W; Johnny Loper  
**Subject:** RE: [External] RE: 21 NCAC 42D .0102 referral to OSBM

---

**From:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Sent:** Thursday, July 18, 2024 12:27 PM  
**To:** Johnny Loper <jloper@loper-law.com>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: 21 NCAC 42D .0102 referral to OSBM

I don't know of a way to fix the 21.9(a)(4) issue without starting over.

Regarding the other issues raised in the previous staff opinion, you could request a pre-review of the rule after withdrawal and before filing once you have addressed the issues raised and revised the rule. In the absence of a revision my opinion would remain the same.

If the Board decides not to withdraw, I will issue an opinion and I am confident the RRC will object on at least 21.9(a)(4).

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
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(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## Burgos, Alexander N

---

**Subject:** FW: [External] RE: 21 NCAC 42D .0102 referral to OSBM

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**From:** Johnny Loper <jloper@loper-law.com>  
**Sent:** Wednesday, July 17, 2024 5:24 PM  
**To:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: 21 NCAC 42D .0102 referral to OSBM

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Do we have the option of working with you to resolve your objections and then re-publishing the revised rule with a fiscal note?

Or do we have to withdraw and start from scratch?

Thanks.

---

**From:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Sent:** Wednesday, July 17, 2024 5:15 PM  
**To:** Johnny Loper <[jloper@loper-law.com](mailto:jloper@loper-law.com)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 42D .0102 referral to OSBM

Good afternoon,

It is my present intention to recommend objection pursuant to G.S. 150B-21.9(a)(4) and hold in abeyance the recommendation for objection pursuant to G.S. 150B-21.9(a)(1). Given the statement by OSBM it seems clear that the Board did not follow the APA. (See G.S. 150B-21.4)

Or do you wish to withdraw the rule before the meeting?

Thank you.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)



---

**From:** Johnny Loper <[jloper@loper-law.com](mailto:jloper@loper-law.com)>  
**Sent:** Wednesday, July 17, 2024 4:18 PM  
**To:** Ventaloro, Julie W <[julie.ventaloro@osbm.nc.gov](mailto:julie.ventaloro@osbm.nc.gov)>; Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Arnold, Michael J <[michael.arnold@osbm.nc.gov](mailto:michael.arnold@osbm.nc.gov)>  
**Subject:** [External] RE: 21 NCAC 42D .0102 referral to OSBM

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Thanks, Julie. I'll check with Mr. Peaslee and see what the next steps are.


Johnny

---

**From:** Ventaloro, Julie W <[julie.ventaloro@osbm.nc.gov](mailto:julie.ventaloro@osbm.nc.gov)>  
**Sent:** Wednesday, July 17, 2024 4:00 PM  
**To:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Arnold, Michael J <[michael.arnold@osbm.nc.gov](mailto:michael.arnold@osbm.nc.gov)>; Johnny Loper <[jloper@loper-law.com](mailto:jloper@loper-law.com)>  
**Subject:** Re: 21 NCAC 42D .0102 referral to OSBM

Mr. Peaslee,

Please see the attached letter in response to your request for determination of whether a fiscal note is required for the subject Rule pursuant to G.S. 150B-21.4(b1).

**Julie Ventaloro**  
Economic Analyst  
NC Office of State Budget and Management  
[Chat with me in Teams](#)   
984-236-0694





**STATE OF NORTH CAROLINA  
OFFICE OF STATE BUDGET AND MANAGEMENT**



**Employment First State for Individuals with Disabilities**

**ROY COOPER**  
GOVERNOR

**KRISTIN WALKER**  
STATE BUDGET DIRECTOR

July 17, 2024

William Peaslee  
Commission Counsel  
Office of Administrative Hearings

RE: 21 NCAC 42D .0102

Mr. Peaslee:

In response to the Rules Review Commission's June 27, 2024 request pursuant to G.S. 150B-21.9, OSBM has determined that a fiscal note is required for the proposed amendments to the above referenced rule per G.S. 150B 21.4(b1). OSBM's determination is based on information gathered and analyzed by staff for the North Carolina State Board of Examiners in Optometry.

The amendments would establish new certification requirements for certain staff that provide direct patient care in optometry practices that offer telemedicine and which do not have an optometrist working on site. The new certification requirements apply to individuals working as "optometric assistants" or "optometric technicians" in telemedicine practices. Each of these roles is described in the proposed rule as assisting the optometrist in the evaluation and treatment of a patient.

The economic impact of the proposed intervention depends on multiple uncertain or variable factors such as the number of telemedicine practices operating in North Carolina, the number of technicians/assistants employed by these practices, the costs for obtaining certification, and the effect of certification on the quality of patient care.

Information provided to OSBM indicates that the amendments would result in total direct costs across 80 identified telemedicine practices of between \$133,000 and \$267,000 in the first year of implementation. These estimates include the costs of testing, study materials, and travel to testing sites. The lower estimate assumes each affected practice employs one certified assistant/technician. The higher estimate assumes each practice employs two certified assistants/technicians. Total costs are expected to be highest in the initial period of implementation as both existing and new staff seek certification.

The intent of the proposed certification requirement is to increase the likelihood that the standard of care will be met in telemedicine settings where there is no supervising optometrist physically present during a patient examination. The Board has received complaints demonstrating instances where the standard of care at telemedicine practices has not met due, in large part, to inadequate training and experience of the technician. The effect of the proposed training on the

quality of care, and thus the magnitude of any change in patient outcomes, is unknown. If the training is effective at achieving: 1) more timely and accurate identification of patients with disqualifying conditions or conditions that warrant immediate attention by an in-person doctor, and 2) avoided need for follow-up visits to an in-person optometrist due to inaccurate rendering of prescriptions, then the proposed change has the potential to have a significant impact (greater than \$1M in benefits and costs) when improved patient outcomes are considered together with certification costs. Therefore, a fiscal note is required by G.S. 150B 21.4(b1).

Sincerely,



Julie Ventaloro  
Economic Analyst  
NC Office of State Budget and Management

cc: Johnny Loper, Esq., Rulemaker for the Board of Examiners in Optometry

## **Burgos, Alexander N**

---

**Subject:** FW: 21 NCAC 42D .0102 referral to OSBM  
**Attachments:** 2024.06 Optometry referral to OSBM fiscal note.docx; 21 NCAC 42D .0102.docx

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**From:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Sent:** Friday, June 28, 2024 12:15 PM  
**To:** Ventaloro, Julie W <julie.ventaloro@osbm.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Arnold, Michael J <michael.arnold@osbm.nc.gov>  
**Subject:** FW: 21 NCAC 42D .0102 referral to OSBM

Good afternoon,

Mr. Arnold suggested that I forward this to you.

As always if you have any questions please do not hesitate to contact me.

Thank you.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## **Burgos, Alexander N**

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**From:** Peaslee, William W  
**Sent:** Thursday, June 27, 2024 12:21 PM  
**To:** Arnold, Michael J  
**Cc:** jloper@loper-law.com; Burgos, Alexander N  
**Subject:** 21 NCAC 42D .0102 referral to OSBM  
**Attachments:** 2024.06 Optometry referral to OSBM fiscal note.docx; 21 NCAC 42D .0102.docx

Mr. Arnold:

At its meeting on June 26, 2024, the Rules Review Commission (RRC) voted to refer the above-captioned Rule (copy attached) to the Office of Budget and Management pursuant to G.S. 150B-21.9 to determine whether a fiscal note is required pursuant to G.S. 150B-21.4(b1).

Please advise whether you are the correct person to address the referral notice.

Thank you in advance for your prompt reply.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## Burgos, Alexander N

---

**From:** Peaslee, William W  
**Sent:** Wednesday, June 26, 2024 1:57 PM  
**To:** Blue, Chris  
**Cc:** Schilling, Michelle; Snyder, Ashley B; Burgos, Alexander N  
**Subject:** 12 NCAC 09C .0401 Temp  
**Attachments:** 06.2024 - CJETS Temporary Rule Objection Letter.docx; 06.2024 Staff Opinion 12 NCAC 09C .0401.doc

**Importance:** High

Dear Chair Blue:

Attached please find the letter of objection required by G.S. 150B-21.1 notifying you of the Rule Review Commission's objection to the above captioned temporary rule.

If you have any questions please feel free to contact me.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## Burgos, Alexander N

---

**Subject:** FW: [External] RE: June Rules Review Commission Meeting

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

**Sent:** Monday, June 24, 2024 12:27 PM

**To:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Peaslee, William W <bill.peaslee@oah.nc.gov>

**Cc:** exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>

**Subject:** RE: [External] RE: June Rules Review Commission Meeting

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Mr. Bugos: thanks for this. I'll be attending in person on Wednesday.

Johnny

## Burgos, Alexander N

---

**Subject:** FW: [External] RE: June Rules Review Commission Meeting

---

**From:** Burgos, Alexander N  
**Sent:** Monday, June 24, 2024 12:00 PM  
**To:** Johnny Loper <jloper@loper-law.com>; Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Cc:** exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>  
**Subject:** RE: [External] RE: June Rules Review Commission Meeting

Mr. Loper,

It was brought to my attention that Mr. Lovejoy has opted to address the Commission via Webex and was sent the invitation link for him to do so. The Commission will allow the agency to respond to any comments or questions arising during the presentation of the rule. If you intend to respond remotely, let me know, and I will keep an eye out for you on the screen.

Thank you,  
Alex

**Alexander Burgos**  
Paralegal  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1940  
[Alexander.burgos@oah.nc.gov](mailto:Alexander.burgos@oah.nc.gov)

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**From:** Johnny Loper <[jloper@loper-law.com](mailto:jloper@loper-law.com)>  
**Sent:** Monday, June 24, 2024 11:46 AM  
**To:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Cc:** [exdir@ncoptometry.org](mailto:exdir@ncoptometry.org); Janice Peterson <[janice@ncoptometry.org](mailto:janice@ncoptometry.org)>  
**Subject:** [External] RE: June Rules Review Commission Meeting

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Mr. Burgos:

I am the attorney for the North Carolina State Board of Examiners in Optometry. I note on the Agenda linked below that Mr. Lovejoy of the National Association of Retail Optical Companies has requested to speak in opposition to our proposed rule.

I understand that the Staff Recommendation is to send the rule at issue to OSBM to determine whether the rule has a substantial economic impact and to defer the issue of objections until OSBM makes its determination. Accordingly, it seems to me that at Wednesday's meeting the RRC would not want to hear comments for or against the rule if the Commission does decide to send the rule to OSBM.



If, however, the Commission does allow Mr. Lovejoy to speak, I request to be able to respond to his comments on behalf of the Board. I will be present in person at the meeting on Wednesday.

Many thanks.

Johnny

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)

## **Burgos, Alexander N**

---

**Subject:** FW: [External] RE: 21 NCAC 42D .0102

---

**From:** Peaslee, William W <bill.peaslee@oah.nc.gov>

**Sent:** Monday, June 24, 2024 9:54 AM

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

**Cc:** Janice Peterson <janice@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>;  
exdir@ncoptometry.org

**Subject:** RE: [External] RE: 21 NCAC 42D .0102

Received. Thank you.

**William W. Peaslee**

**Rules Review Commission Counsel / Legislative Liaison**

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## Burgos, Alexander N

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**From:** Johnny Loper <jloper@loper-law.com>  
**Sent:** Saturday, June 22, 2024 9:32 PM  
**To:** Peaslee, William W  
**Cc:** Janice Peterson; Burgos, Alexander N; exdir@ncoptometry.org  
**Subject:** [External] RE: 21 NCAC 42D .0102

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Mr. Peaslee:

I write in response to your RRC Staff Opinion dated June 22, 2024, and your earlier emails of June 19, 2024. Thank you for your patience, as I had just returned to town after about a week out, and Dr. Rafferty also was out of town through June 20.

As referred to in your Staff Opinion, in one of your June 19 emails you had asked our Board whether “the Board has failed to conduct the analysis required by G.S. 150B-21.4(b1) prior to publication of the proposed text of the rule” at issue, and if the Board has conducted the analysis, on what date was the analysis completed.

In another of your June 19 emails, you asked us to “explain why G.S. 150B-21.4(b1) [is] inapplicable to those agencies which do not expend ‘State Funds.’ State funds are not mentioned in (b1).”

We do not believe the Board has “failed” to conduct any analysis required by G.S. 150B-21.4. Let me try to answer your questions in the following way:

- As we interpret G.S. 150B-21.4, there are two circumstances in which a state agency such as our Board is required to prepare a fiscal note:
  - **G.S. 150B-21.4(a):** If the proposed permanent rule change “would require the expenditure or distribution of funds subject to the State Budget Act...” As indicated to you previously, our Board is funded entirely by fees and other monies collected from its licensees. It therefore has no funds subject to the Budget Act. Accordingly, we believed there was no requirement to prepare a fiscal note under G.S. 150B-21.4(a).
  - **G.S. 150B-21.4(b1):** The agency must submit a fiscal note before the agency publishes the text of a proposed rule change “that would have a substantial economic impact....” We believe the proposed rule would affect only a limited number of optometric practices in the state. Specifically, the Board Staff estimated that no more than 100 optometric practices offer remote/telemedicine eye exams when there is no optometrist physically present with the patient, and accordingly, fewer than 200 technicians would be required to become certified under the proposed rule. Given the estimated costs to become certified, we determined that the \$1,000,000/twelve-month threshold was not implicated, and we therefore did not prepare a fiscal note. Notably, we disagree with the contentions of the North Carolina Retail Merchants Association as to the scope of the language “all persons affected” by the rule as contained in G.S. 150B-21.4(b1) – but based on your recommendation discussed below, that may be an issue for resolution by or before the OSBM.

- So if your question is merely “Did the Board prepare a fiscal note?” our answer is no, because we clearly were not required to under G.S. 150B-21.4(a) and we believed we were not required to under G.S. 150B-21.4(b1). If your question is “When did you make the determination that the proposed rule would not have a substantial economic impact on those who would be affected by the rule?”, I cannot give you a specific date, but can tell you that such determination was made prior to the proposed rule being presented to the full Board for its approval for publication in the Register, which occurred at the Board’s March 6, 2023 meeting. This was the first iteration of the proposed rule containing the “certification” requirement.

On a separate point: In your June 22 Staff Opinion, you indicate that the Commission must ask OSBM for a determination of “substantial economic impact” if the Commission receives a written request for such determination under G.S. 150B-21.9, and you recommend sending the proposed rule to OSBM for such a determination. We agree that the language of G.S. 150B-21.9 is mandatory.

It does seem odd to me, however, that the Commission must make such a request of OSBM no matter who makes such a written request. For example, if the Commission receives such a written request in this matter from a non-citizen of North Carolina located in Neah Bay, Washington State, who has never set foot in the state of North Carolina, much less been examined by a licensee of our Board, would the Commission still feel it is required to send the matter to OSBM? It seems to me that the written request would need to be from someone who would be affected by the proposed rule—sort of a “standing” issue. And it seems to us that the entity submitting the request here is not one that would be affected by the RRC’s approval of the proposed rule. Again, maybe this too is an OSBM issue.

Thanks for your consideration. I plan to appear in person at the Commission’s meeting on Wednesday the 26<sup>th</sup> meeting in the event the Commission has any questions or would like additional information.

Johnny

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)

---

**From:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Sent:** Saturday, June 22, 2024 11:58 AM  
**To:** Johnny Loper <jloper@loper-law.com>  
**Cc:** Janice Peterson <janice@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** 21 NCAC 42D .0102

Good afternoon,

Attached please find a copy of the staff opinion on the above captioned rule which will be considered by the RRC at its June 26, 2024 meeting.

As always if you have any questions or concerns please feel free to contact me.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## **Burgos, Alexander N**

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**From:** Peaslee, William W  
**Sent:** Wednesday, June 19, 2024 12:03 PM  
**To:** Janice Peterson  
**Cc:** jloper@loper-law.com; Burgos, Alexander N  
**Subject:** NC RMA comment 21 NCAC 42D .0102

Good morning,

The Rule Review Commission has received a comment from the North Carolina Retail Merchants Association (NCRMA).

In its comment, the NCRMA suggests that the Board has failed to conduct the analysis required by G.S. 150B-21.4(b1) prior to publication of the proposed text of the rule in the North Carolina Register.

Has the Board conducted this analysis? If so, what was the date the analysis was completed? Feel free to submit any documentation in support of your response to the questions posed.

Thank you in advance for your prompt reply.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## Burgos, Alexander N

---

**Subject:** FW: FW: [External] 21 NCAC 42D .0102

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**From:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Sent:** Tuesday, June 18, 2024 11:45 AM  
**To:** Janice Peterson <[janice@ncoptometry.org](mailto:janice@ncoptometry.org)>  
**Cc:** Johnny Loper <[jloper@loper-law.com](mailto:jloper@loper-law.com)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>;  
exdir@ncoptometry.org  
**Subject:** RE: FW: [External] 21 NCAC 42D .0102

Thank you for the prompt reply.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

---

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**From:** Janice Peterson <[janice@ncoptometry.org](mailto:janice@ncoptometry.org)>  
**Sent:** Tuesday, June 18, 2024 11:26 AM  
**To:** Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)>  
**Cc:** Johnny Loper <[jloper@loper-law.com](mailto:jloper@loper-law.com)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>;  
[exdir@ncoptometry.org](mailto:exdir@ncoptometry.org)  
**Subject:** Re: FW: [External] 21 NCAC 42D .0102

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Good morning, Mr. Peaslee.

I apologize. Form 0400 that was submitted was for the previous version of 21 NCAC 42D .0102. I have attached the corrected form. The Board did meet via video conference on May 16, 2024. This is the [link](#) to the Board's website where the Minutes from that meeting are posted. The Minutes from the June 6th meeting will be posted once they are approved at the next meeting; however, the agenda is posted on the website.

As always, thank you for your assistance and please let me know if there is anything else you need.

Janice K. Peterson,  
Administrative Associate

Please note new address:

521 Yopp Rd.

Suite 214 #444

Jacksonville, NC 28540

(910) 285-3160


Fax: (910) 285-4546

[janice@ncoptometry.org](mailto:janice@ncoptometry.org)

On Tue, Jun 18, 2024 at 10:13 AM Peaslee, William W <[bill.peaslee@oah.nc.gov](mailto:bill.peaslee@oah.nc.gov)> wrote:



# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency:</b> North Carolina State Board of Examiners in Optometry	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 21 NCAC 42D .0102 OPTOMETRIC ASSISTANT; OPTOMETRIC TECHNICIAN	
<b>3. Action:</b> <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> Notice Required Notice of Text published on: February 22, 2024 Link to Agency notice: <a href="https://docs.google.com/document/d/1tWNc4FH6oyMPM0OMQYOO1XXXtJTJvVCK/edit">https://docs.google.com/document/d/1tWNc4FH6oyMPM0OMQYOO1XXXtJTJvVCK/edit</a> Hearing on: none Adoption by Agency on: June 6, 2024 <input type="checkbox"/> Notice not required under: Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b>  <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority:  <input checked="" type="checkbox"/> No	<b>8. Fiscal impact. Check all that apply.</b>  <input type="checkbox"/> This Rule was part of a combined analysis.  <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b> <b>9A. What prompted this action? Check all that apply:</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> Agency  <input type="checkbox"/> Court order / cite:  <input type="checkbox"/> Federal statute / cite:  <input type="checkbox"/> Federal regulation / cite:         </div> <div style="width: 45%;"> <input type="checkbox"/> Legislation enacted by the General Assembly              Cite Session Law:  <input type="checkbox"/> Petition for rule-making  <input type="checkbox"/> Other:         </div> </div> <b>9B. Explain:</b> To set standards for staff providing direct patient care when the doctor is off site, thus assuring quality and safety of patient care.	
<b>10. Rulemaking Coordinator:</b> Johnny M. Loper  <b>Phone:</b> 919-390-7749 <b>E-Mail:</b> <a href="mailto:jloper@loper-law.com">jloper@loper-law.com</a>  <b>Additional agency contact, if any:</b> Janice K. Peterson <b>Phone:</b> 910-285-3160 <b>E-Mail:</b> <a href="mailto:janice@ncoptometry.org">janice@ncoptometry.org</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <div style="text-align: center; font-size: 1.5em;">  </div> <hr/> <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> <b>Title:</b>
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b>  <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

## Burgos, Alexander N

---

**Subject:** FW: FW: [External] 21 NCAC 42D .0102

---

**From:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Sent:** Tuesday, June 18, 2024 10:14 AM  
**To:** Janice Peterson <janice@ncoptometry.org>; Johnny Loper <jloper@loper-law.com>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; exdir@ncoptometry.org  
**Subject:** RE: FW: [External] 21 NCAC 42D .0102

I would also note that according to the NC Secretary of State's [website](#), it does not appear that the Board met on May 16, 2024. Please see [G.S. 143-318.12](#)

Thank you.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

---

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---

**From:** Peaslee, William W  
**Sent:** Tuesday, June 18, 2024 10:08 AM  
**To:** Janice Peterson <[janice@ncoptometry.org](mailto:janice@ncoptometry.org)>; Johnny Loper <[jloper@loper-law.com](mailto:jloper@loper-law.com)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; [exdir@ncoptometry.org](mailto:exdir@ncoptometry.org)  
**Subject:** RE: FW: [External] 21 NCAC 42D .0102

Good morning,

I noticed on the most current Form 0400 the date of adoption is May 16, 2024. How can that be considering that the previous submission listed the date of adoption (since withdrawn) as May 16, 2024? Did the Board adopt both versions on May 16, 2024?

Has the Board met since May 16, 2024?

Thank you in advance for your prompt reply.

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road

Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## Burgos, Alexander N

---

**Subject:** FW: [External] Resubmission of 21 NCAC 42D .0102

---

**From:** Janice Peterson <janice@ncoptometry.org>

**Sent:** Thursday, June 13, 2024 10:56 AM

**To:** Peaslee, William W <bill.peaslee@oah.nc.gov>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Johnny Loper <jloper@loper-law.com>;  
exdir@ncoptometry.org

**Subject:** Re: [External] Resubmission of 21 NCAC 42D .0102

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Thank you, Mr. Peaslee.

Janice K. Peterson,  
Administrative Associate

Please note new address:

521 Yopp Rd.

Suite 214 #444

Jacksonville, NC 28540

(910) 285-3160

Fax: (910) 285-4546

[janice@ncoptometry.org](mailto:janice@ncoptometry.org)

## **Burgos, Alexander N**

---

**Subject:** FW: [External] Resubmission of 21 NCAC 42D .0102

---

**From:** Peaslee, William W <bill.peaslee@oah.nc.gov>

**Sent:** Thursday, June 13, 2024 10:38 AM

**To:** Janice Peterson <janice@ncoptometry.org>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Johnny Loper <jloper@loper-law.com>;  
exdir@ncoptometry.org

**Subject:** RE: [External] Resubmission of 21 NCAC 42D .0102

Thank you for your email.

The rule will be considered at the June RRC meeting.

When I have determined my recommendation, you will be among the first to know. Thank you for your patience.

**William W. Peaslee**

**Rules Review Commission Counsel / Legislative Liaison**

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

---

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## Burgos, Alexander N

---

**Subject:** FW: [External] Resubmission of 21 NCAC 42D .0102  
**Attachments:** 21 NCAC 42D .0102.docx

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**From:** Janice Peterson <janice@ncoptometry.org>  
**Sent:** Thursday, June 13, 2024 9:52 AM  
**To:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Johnny Loper <jloper@loper-law.com>; exdir@ncoptometry.org  
**Subject:** [External] Resubmission of 21 NCAC 42D .0102

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Good morning, Mr. Peaslee

As you have directed, we have resubmitted 21 NCAC 42D .0102 (attached) to OAH.

Because this is an unusual situation (at least for this Board), we have a couple of questions:

-- Since the Optometry Board considered and adopted this version in order to satisfy your earlier objections, are you still recommending approval (as stated in the December 20th email)?

-- If "the rule remains under consideration by the RRC...", will it be voted on at the June meeting?

As always, we appreciate your time and the assistance you have given us.

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

---

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

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

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

(1)      Testing and Procedures

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

(B)      Perform testing procedures

(i)      Visual acuity testing and assess visual acuity

(ii)      Stereo acuity testing

(iii)      Blood pressure measurement (manual, automated)

(iv)      Keratometry

(v)      Color vision assessment

(vi)      Chair-side scribing

(vii)      Tonometry

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

(ix)      Dry eye testing

(x)      Meibography

(xi)      Corneal topography

(xii)      Scanning computerized ophthalmic testing

(xiii)      Visual field testing

(xiv)      Glaucoma ancillary testing

(xv)      Near points of accommodation and convergence testing

(xvi)      Macular Pigment Optical Density (MPOD)

(xvii)      Pupil evaluation screening

(xviii)      Amsler grid

(xix)      Frequency doubling technology (FDT) fields

(xx)      Aberrometry



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

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

2                   (B)   Administrative Duties

3                               (i)       Understand and perform medical billing and coding

4                               (ii)      Maintain diagnostic listings and fee schedule

5                               (iii)     Handle insurance issues

6                               (iv)      Perform staff training

7                               (v)       Purchase ophthalmic examination equipment and supplies

8                               (vi)      Maintain inventory of diagnostic/therapeutic medications

9                               (vii)     Take inventory and reorder office supplies

10                              (viii)    Comply with federal regulations

11                              (ix)      E-prescribe and managing medication refills

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

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

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

24                   (1)   Testing and Procedures

25                               (A)      Slit Lamp Examination

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

27                               (C)      Aseptic or Infection Control techniques

28                               (D)      Instrument and equipment sterilizing

29                               (E)      Automated and manual refractometry

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

31                               (G)      Binocularity testing including cover testing

32                               (H)      Goldmann tonometry - serial testing

33                               (I)       Assist with performing surgical tasks

34                               (J)       Low vision testing and training

35                               (K)       Specular microscopy

36                               (L)       Electrodiagnostic Testing and training

37                               (M)       Sports vision testing

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

1           (xvi) Supervise personnel

2           (xvii) Plan and lead staff meetings

3           (xviii) Organize in-house educational offerings

4           (xiv) Train personnel

5           (xx) Take office supply inventory

6           (xxi) Coordinate purchase of ophthalmic examination equipment and supplies

7           (xxii) Coordinate/maintain credentialing within the office

8           (xxiii) Maintain inventory of diagnostic/therapeutic medications

9           (xiv) Comply with federal regulations (e.g., HIPAA, OSHA, etc.)

10          (xv) Perform CPR certification in BLS in case of emergency

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

15  
16  
17  
18 *History Note: Authority G.S. 90-115.1(6); 90-117.5;*

19 *Eff. February 1, 1976;*

20 *Readopted Eff. May 30, 1978;*

21 *Amended Eff. June 1, 1989; September 30, 1981;*

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

24 *Amended Eff. March 1, 2023.*

25 *Amended Eff. July 1, 2024*

## **Burgos, Alexander N**

---

**Subject:** FW: [External] Optometry Board: proposed Rule 21 NCAC 42D .0102

---

**\From:** Peaslee, William W <bill.peaslee@oah.nc.gov>

**Sent:** Tuesday, June 11, 2024 4:02 PM

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

**Cc:** exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: [External] Optometry Board: proposed Rule 21 NCAC 42D .0102

Mr. Loper:

Thank you for your email.

The Board can adopt the version of the rule considered by the RRC at the January meeting. If that is what the Board intends to do, please submit that version of rule.

The rule remains under consideration by the RRC notwithstanding its republication.

As always if you have any questions or concerns please feel free to contact me.

**William W. Peaslee**

**Rules Review Commission Counsel / Legislative Liaison**

Office of Administrative Hearings

1711 New Hope Church Road

Raleigh NC, 27609

(984) 236-1939

[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

---

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## Burgos, Alexander N

---

**Subject:** FW: [External] Optometry Board: proposed Rule 21 NCAC 42D .0102

---

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

**Sent:** Tuesday, June 11, 2024 2:25 PM

**To:** Peaslee, William W <bill.peaslee@oah.nc.gov>

**Cc:** exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: [External] Optometry Board: proposed Rule 21 NCAC 42D .0102

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Mr. Peaslee:

Given the number and scope of your June 3, 2024, Request for Changes, the Board has decided not to seek those changes outlined in my May 17 email to you, with attachment.

As we understand it based on your January 16, 2024, RRC Staff Opinion (Revised) and your letter to me of February 1, 2024, the RRC, at its January 2024 meeting, found that the revised rule satisfied the RRC's objection, with the determination that the revised rule was a substantial change and would need to be re-published. As we further understand it, you had indicated in our emails of December 20, 2023, that you would recommend approval of that version (once re-published).

The Board republished the rule as required. Since the Optometry Board has determined not to seek further changes to that rule, is it permissible to simply revert to the version of the rule that was acted on by the RRC at its January 2024 meeting?

Thanks.

Johnny

## Burgos, Alexander N

---

**From:** Peaslee, William W  
**Sent:** Monday, June 3, 2024 11:24 AM  
**To:** Johnny Loper  
**Cc:** exdir@ncoptometry.org; Janice Peterson; Burgos, Alexander N  
**Subject:** RE: [External] Optometry Board: proposed Rule 21 NCAC 42D .0102  
**Attachments:** 06.20243 Request for Changes Optometry 21 NCAC 42D .0102.docx

Good morning,

Attached please find the request for changes for the above captioned rule.

The Form 0400 lists the Notice of Text published as "February 22, 2024." Can you explain the significance of this date? Put another way, what happened on this date that you would list it as the publication date?

Thank you

**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

---

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---

**From:** Johnny Loper <jloper@loper-law.com>  
**Sent:** Tuesday, May 21, 2024 1:44 PM  
**To:** Peaslee, William W <bill.peaslee@oah.nc.gov>  
**Cc:** exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] Optometry Board: proposed Rule 21 NCAC 42D .0102

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Mr. Peaslee:

Sorry for not being explicit: yes, please consider this a submission for consideration at the June meeting. And a new form 400 is attached.

Please let us know if you need any further information or explanation.

Thanks.

Johnny

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**William W. Peaslee**  
**Rules Review Commission Counsel / Legislative Liaison**  
Office of Administrative Hearings  
1711 New Hope Church Road  
Raleigh NC, 27609  
(984) 236-1939  
[Bill.Peaslee@oah.nc.gov](mailto:Bill.Peaslee@oah.nc.gov)

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## Burgos, Alexander N

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**Subject:** FW: [External] Optometry Board: proposed Rule 21 NCAC 42D .0102  
**Attachments:** Form 0400 for Permanent Rule 21 NCAC 42D .0102.docx

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# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency:</b> North Carolina State Board of Examiners in Optometry	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 21 NCAC 42D .0102 OPTOMETRIC ASSISTANT; OPTOMETRIC TECHNICIAN	
<b>3. Action:</b> <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: X No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: X No
<b>6. Notice for Proposed Rule:</b> X Notice Required Notice of Text published on: February 22, 2024 Link to Agency notice: <a href="https://docs.google.com/document/d/1tWNc4FH6oyMPM0OMQYOO1XXXtJTJvVCK/edit">https://docs.google.com/document/d/1tWNc4FH6oyMPM0OMQYOO1XXXtJTJvVCK/edit</a> Hearing on: none Adoption by Agency on: May 16, 2024 <input type="checkbox"/> Notice not required under: Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b>  <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority:  X No	<b>8. Fiscal impact. Check all that apply.</b>  <input type="checkbox"/> This Rule was part of a combined analysis.  <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM X No fiscal note required
<b>9. REASON FOR ACTION</b> <b>9A. What prompted this action? Check all that apply:</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> Agency  <input type="checkbox"/> Court order / cite:  <input type="checkbox"/> Federal statute / cite:  <input type="checkbox"/> Federal regulation / cite:         </div> <div style="width: 45%;"> <input type="checkbox"/> Legislation enacted by the General Assembly              Cite Session Law:  <input type="checkbox"/> Petition for rule-making  <input type="checkbox"/> Other:         </div> </div> <b>9B. Explain:</b> To set standards for staff providing direct patient care when the doctor is off site, thus assuring quality and safety of patient care.	
<b>10. Rulemaking Coordinator:</b> Johnny M. Loper  <b>Phone:</b> 919-390-7749 <b>E-Mail:</b> <a href="mailto:jloper@loper-law.com">jloper@loper-law.com</a>  <b>Additional agency contact, if any:</b> Janice K. Peterson <b>Phone:</b> 910-285-3160 <b>E-Mail:</b> <a href="mailto:janice@ncoptometry.org">janice@ncoptometry.org</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <div style="text-align: center; font-size: 1.5em;">  </div> <hr/> <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> <b>Title:</b>
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b>  <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

## **Burgos, Alexander N**

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

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

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

(1)      Testing and Procedures

- (A)      Take case histories (including chief complaint, patient and family medical and ocular history, current medications, and allergies).
- (B)      Perform testing procedures including: visual acuity testing and assess visual acuity; stereo acuity testing; blood pressure measurement (manual, automated); keratometry; color vision assessment; chair-side scribing; tonometry; screening for binocular abnormalities, including cover test screening; dry eye testing; meibography; corneal topography; scanning computerized ophthalmic testing; visual field testing; glaucoma ancillary testing ; near points of accommodation and convergence testing; macular pigment optical density (MPOD); pupil evaluation screening; Amsler grid; frequency doubling technology (FDT) fields; aberrometry; automated refractometry; contrast sensitivity tests; anterior segment photography; fundus photography; low vision testing; pachymetry; traumatic brain injury testing; vision therapy testing; administer diagnostic/therapeutic medications.

(2)      Ophthalmic Optics and Dispensing

- (A)      Order and maintain eyewear inventory and frame display
- (B)      Educate and assist patient in selecting eyewear
- (C)      Take appropriate frame and eye measurements on patient
- (D)      Use digital dispensing technology
- (E)      Lensometry
- (F)      Dispense/adjust/repair eyewear
- (G)      Understand fabrication requirements with various frames and prescriptions

(3)      Contact Lenses

- (A)      Maintain/order/inventory contact lenses

(B) Educate patients concerning contact lens options and fees

(C) Basic Insertion and removal of contact lenses

(D) Select proper care system for contact lenses

(E) Perform and evaluate contact lens preliminary fitting

(F) Educate patients on contact lens care and handling

(G) Measure base curves using radiuscope

(H) Verify contact lens diameter, thickness, and power

(I) Clean and polish gas permeable lenses or prosthetic eyes

(J) Use slit lamp to evaluate contact lens fit

(4) Other Duties

(A) Office Operations including: prepare patient charts for optometrist to review; patient education and communications; direct patient flow; provide patient education; perform telephone triage; computer skills and documentation in the electronic health record; relay communication between doctor, patient, specialists, and pharmacy; maintain and clean examination rooms and testing equipment.

(B) Administrative Duties including: understand and perform medical billing and coding; maintain diagnostic listings and fee schedule; handle insurance issues; perform staff training; purchase ophthalmic examination equipment and supplies; maintain inventory of diagnostic/therapeutic medications; take inventory and reorder office supplies; comply with federal regulations; E-prescribe and managing medication refills; coordinate referrals to other offices for surgeries or other specialty; administer, record, and transmit prescribed medications.

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

(1) Testing and Procedures

(A) Slit Lamp Examination

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

(C) Aseptic or Infection Control techniques

(D) Instrument and equipment sterilizing

- (E) Automated and manual refractometry
- (F) Ocular motility testing (pursuits and saccades)
- (G) Binocularity testing including cover testing
- (H) Goldmann tonometry - serial testing
- (I) Assist with performing surgical tasks
- (J) Low vision testing and training
- (K) Specular microscopy
- (L) Electrodiagnostic Testing and training
- (M) Sports vision testing
- (N) Vision therapy testing
- (O) Understand use of YAG lasers
- (2) Ophthalmic Optics and Dispensing
- (A) Fabricate eyewear
- (B) Measure parameters of special lenses including prism and slab off prescriptions
- (C) Calculate Spherical Equivalent and Transpose lens prescriptions
- (D) Write/copy prescriptions
- (E) Troubleshoot problems with eyewear
- (3) Contact Lenses
- (A) Advanced handling - Insertion and removal of specialized and various types of contact lenses (e.g., soft, gas permeable, hybrid, scleral)
- (B) Using slit lamp perform contact lens fitting and assessments (e.g., soft, gas permeable, hybrid, scleral, etc.)
- (C) Educate patients on contact lens care and handling of specialized contact lenses
- (D) Trouble shoot contact lens problems
- (E) Perform progress checks on contact lens patients
- (F) Clean and polish gas permeable lenses
- (4) Other Duties
- (A) Office Operations including: overseeing management of daily patient flow; management of patient clinical issues between patient and doctor.
- (B) Administrative Duties including: coordinate patient correspondence; assist in publication of office newsletter; assist in use of social media; assist in website development and maintenance; maintain and update policy and procedure manuals; implement new software; prepare internal reports; use computer for billing/accounting; maintain diagnostic listings and fee schedule; perform medical coding; verify accuracy of procedure and medical coding; provide patient education regarding diagnoses and ophthalmic surgery; help to resolve patient complaints and concerns; implement and maintain Meaningful Use (MACRA/MIPS) and PQRS; assist in hiring and termination of employees; supervise personnel; plan and lead staff meetings; organize in-house



educational offerings; train personnel; take office supply inventory; coordinate purchase of ophthalmic examination equipment and supplies; coordinate/maintain credentialing within the office; maintain inventory of diagnostic/therapeutic medications; comply with federal regulations (e.g., HIPAA, OSHA, etc.); perform CPR certification in BLS in case of emergency.

(c) Certified optometric assistants and certified optometric technicians are individuals who have been certified through the American Optometric Association's certification process. The Board recognizes the American Optometric Association's certification process for certified optometric assistants and certified optometric technicians.

~~(b) (e) (d)~~ The Board may require that paraoptometric personnel. An A certified optometric technician be currently certified by the American Optometric Association and maintain this certification shall be in the physical presence of the patient during any patient examination in environments where there is no onsite optometrist physically present during such examination. and supervision is limited. The optometrist conducting the patient examination is responsible for ensuring the physical presence of a certified technician during that examination. The Board will also accept certified ophthalmic technicians certified through the International Joint Commission on Allied Health Personnel in Ophthalmology as satisfying this requirement so long as such persons register with the Board.

(e) The Board will allow until January 1, 2025, for licensees to comply with the requirement in subsection (d).

*History Note: Authority G.S. 90-115.1(6); 90-117.5;*

*Eff. February 1, 1976;*

*Readopted Eff. May 30, 1978;*

*Amended Eff. June 1, 1989; September 30, 1981;*

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

*Amended Eff. March 1, 2023.*

*Amended Eff. July 1, 2024*