

Burgos, Alexander N

Subject: FW: [External] RE: Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

From: Johnny Loper <jloper@loper-law.com>
Sent: Wednesday, May 29, 2024 9:25 AM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>
Subject: RE: [External] RE: Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

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Perfect. Many thanks.

Johnny

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Wednesday, May 29, 2024 9:18 AM
To: Johnny Loper <jloper@loper-law.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>
Subject: RE: [External] RE: Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

Good morning,

If the Commission approves the Rule today, the cited statute can be added to the History Note before codification. Our office will contact you to confirm proper formatting and it can be added at that time.

Thanks,

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

From: Johnny Loper <jloper@loper-law.com>
Sent: Wednesday, May 29, 2024 9:13 AM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>
Subject: RE: [External] RE: Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

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Mr. Wiggs:

In reviewing our proposed Rule 21 NCAC 42E .0103 in preparation for this morning's meeting, I noticed that we had not cited to G.S. 90-127.4 in the History Note as authority. The statute is cited at page 1, line 17 of the proposed rule, and it was this recently-enacted statute that allows/requires an optometrist who wants to dispense to register with the Pharmacy Board.

If you feel it's appropriate or required, I hope we could add that cite to the History Note without any delay to consideration of the proposed rule. If you feel it's not necessary, then that is fine with us.

Sorry for the late proofreading nit.

Johnny

Burgos, Alexander N

From: Janice Peterson <janice@ncoptometry.org>
Sent: Thursday, May 16, 2024 11:42 AM
To: Rules, Oah
Cc: Wiggs, Travis C; Burgos, Alexander N; Johnny Loper; exdir@ncoptometry.org
Subject: [External] 21 NCAC 42E .0103
Attachments: 21 NCAC 42E .0103.docx

Follow Up Flag: Follow up
Flag Status: Completed

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Good morning.

Pursuant to Mr. Wiggs' instructions, we are submitting revised Rule 42E .0103. Please let us know if you have questions or need additional information.

Thank you.

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

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1 21 NCAC 42E .0103 is adopted with changes as published in 38:15 NCR 970-971 as follows:

2
3 **21 NCAC 42E .0103 PRESCRIPTIONS PRESCRIPTIONS; DISPENSING**

4 (a) All prescription forms shall conform to 21 N.C.A.C. 46 .2301 state and federal statutes governing such forms and
5 shall include the name, address, state licensure number, and the Drug Enforcement Administration number of the
6 prescriber, if applicable. The provisions of 16 C.F.R. 315.2 and 16 C.F.R. 456.1(g) are hereby incorporated by
7 reference, including subsequent amendments and editions. The provisions of the Code of Federal Regulations (C.F.R.)
8 cited in this rule may be accessed at no charge at <https://www.ecfr.gov/current/title-16>. The optometrist shall be
9 responsible for ~~providing~~ implementing appropriate ~~safeguards~~ safeguards, including but not limited to the optometrist
10 keeping a physical prescription pad in his or her personal possession or under lock and key at all times and password-
11 protecting his or her electronic prescription form, within his ~~or her~~ practice to prevent the unauthorized use ~~or diversion~~
12 of his ~~or her~~ prescription forms, and shall immediately notify the Board upon determining that prescription blanks
13 might be missing or misused. ~~Should missing prescription blanks bear his DEA number, the optometrist shall also~~
14 ~~notify the North Carolina State Board of Pharmacy, giving that board the date he determined that the prescriptions~~
15 ~~blanks were missing or misused, the number missing, and any information that could be of help in preventing~~
16 ~~unauthorized use of the prescription blanks.~~

17 (b) Any optometrist licensed by the Board who wishes to dispense drugs pursuant to G.S. 90-127.4 must first register
18 with the North Carolina Board of Pharmacy pursuant to G.S. 90-85.26B. In the event that legend drugs being
19 prescribed by the optometrist are dispensed by the optometrist, the optometrist shall cause the following written or
20 printed information to be given to the patient for each such drug dispensed at the time the drug is dispensed:

- 21 (1) — date of issuance;
22 (2) — name and address of patient;
23 (3) — name, address and telephone number of prescriber;
24 (4) — name, strength, dosage form and quantity of drug dispensed;
25 (5) — the number of refills, if authorized;
26 (6) — route of administration of drug dispensed; and
27 (7) — directions for use.

28 (c) Any optometrist licensed by the Board ~~Within one year of examination, a patient may request and is entitled to~~
29 ~~and shall provide their patients receive~~ a copy of his ~~or her~~ ~~spectacle eyeglass prescription~~ prescription, once such
30 prescription is determined and finalized, consistent that complies with Federal Trade Commission regulations, rules
31 and guidelines. The prescription may show a statement of caution or a disclaimer if such a statement or disclaimer is
32 supported by appropriate findings and documented patient records. The provisions of 16 C.F.R. 456.2(a) are hereby
33 incorporated by reference, including subsequent amendments and editions. An expiration date of not less than one
34 year from the date of the prescribing examination shall appear on every such prescription. The prescription may show
35 a statement of caution or a disclaimer if such a statement or disclaimer is supported by appropriate findings and
36 documented patient records.

1 (d) Any optometrist licensed by the Board shall provide their patients a copy of his or her contact lens prescription,
2 once determined and finalized, consistent with Federal Trade Commission regulations. ~~rules~~ The provisions of 16
3 C.F.R. 315.4 are hereby incorporated by reference, including subsequent amendments and edition. A prescription for
4 contact lenses shall ~~comply with Federal Trade Commission rules and guidelines and~~ explicitly state that it is for
5 contact lenses and specify the lens type and all specifications necessary for the ordering and fabrication of the lenses.
6 Words or phrases such as "OK for contact lenses", "fit with contact lenses", "contact lenses may be worn", or similar
7 wording do not constitute a contact lens prescription. Until all the requirements of a satisfactory fit of contact lenses
8 have been determined by the prescriber, the contact lens prescription cannot be written. The prescriber cannot write
9 the contact lens prescription until all the requirements of a satisfactory fit of contact lenses have been determined by
10 the prescriber. All contact lenses used in the determination of a contact lens prescription are considered to be
11 diagnostic lenses. At such time that it has been determined that a prescription can be written, such prescription may
12 show a statement of caution or a disclaimer if such a statement or disclaimer is supported by appropriate findings and
13 documented patient records. An expiration date consistent with the type and modality of use of the contact lens being
14 prescribed shall appear on every such prescription. An expiration date of not less than one year from the date of the
15 prescribing examination shall appear on every such prescription unless there is a medical justification for a shorter
16 duration. If the prescriber has such a medical justification, the prescriber must document the medical reason for the
17 shorter expiration date in the patient's medical record consistent with Federal Trade Commission regulations. The
18 provisions of 16 C.F.R. 315.6(a)(3) and (b)(1) are hereby incorporated by reference, including subsequent
19 amendments and editions. In the event that in the professional opinion of the prescribing optometrist, If a patient is
20 not adhering to appropriate regimens of care and follow-up with regard to the continuing use of contact lenses, the
21 prescribing optometrist may terminate his optometric care ~~of~~ for that patient and notify the patient that he or she is
22 terminating such relationship and the reasons for doing so.

23 (e) An optometrist shall provide a copy of a requesting patient's eyeglass prescription or contact lens prescription so
24 long as the requested prescription has not expired.

25
26 *History Note: Authority G.S. 90-114; 90-117.5; 90-127.2; 90-127.3;*

27 *Eff. June 1, 1989;*

28 *Amended Eff. April 1, 1993;*

29 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,*
30 *2015.*

31 *Amended Eff. June 1, 2024*

32

Burgos, Alexander N

Subject: FW: [External] RE: Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

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

Sent: Wednesday, May 15, 2024 12:02 PM

To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

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

Subject: RE: [External] RE: Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

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Will do. Thanks. Jan is off today, but we'll try to get this submitted tomorrow.

Johnny

Burgos, Alexander N

Subject: FW: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Monday, May 13, 2024 11:36 AM
To: Johnny Loper <jloper@loper-law.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>
Subject: RE: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

Adding the link to the first sentence is sufficient.

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

From: Johnny Loper <jloper@loper-law.com>
Sent: Monday, May 13, 2024 11:34 AM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>
Subject: RE: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

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Many thanks. Does the "link" sentence need to be inserted at each reference to the CFR, or is adding it to the first reference sufficient?

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Monday, May 13, 2024 11:18 AM
To: Johnny Loper <jloper@loper-law.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>
Subject: RE: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

Mr. Loper,

Yes, you can add the link and state that the C.F.R. can be accessed at no charge.

Thanks,

Travis C. Wiggs
Rules Review Commission Counsel

Office of Administrative Hearings
Telephone: 984-236-1929
Email: travis.wiggs@oah.nc.gov

Burgos, Alexander N

Subject: FW: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>

Sent: Monday, May 13, 2024 11:18 AM

To: Johnny Loper <jloper@loper-law.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

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

Subject: RE: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

Mr. Loper,

Yes, you can add the link and state that the C.F.R. can be accessed at no charge.

Thanks,

Travis C. Wiggs

Rules Review Commission Counsel

Office of Administrative Hearings

Telephone: 984-236-1929

Email: travis.wiggs@oah.nc.gov

Burgos, Alexander N

Subject: FW: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

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

Sent: Monday, May 13, 2024 10:35 AM

To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

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

Subject: RE: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

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Mr. Wiggs:

Thanks again for the prompt response. Only one question: regarding **item #2** below and the sentence that needs to be added: will a link to [eCFR :: Title 16 of the CFR -- Commercial Practices](#) be sufficient (since people can just print the sections off at no cost)?

If not, I'm not sure how we'd specify a location that would be generally applicable to any member of the public who might want to browse the C.F.R. — seems like we'd have to specify a particular law library and ask them their per page copying cost. For example, the Wake County Public Library system doesn't seem to have the C.F.R. — at least, my online search so indicates. I assume this would be true for most/all other large library systems in the state.

Sorry if I'm over-thinking this.

Johnny

Burgos, Alexander N

From: Johnny Loper <jloper@loper-law.com>
Sent: Thursday, May 9, 2024 2:46 PM
To: Wiggs, Travis C; Burgos, Alexander N
Cc: exdir@ncoptometry.org; Janice Peterson
Subject: RE: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

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Thanks for the prompt turnaround. We'll get these changes made and be back to you by the 15th.

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Thursday, May 9, 2024 1:04 PM
To: Johnny Loper <jloper@loper-law.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>
Subject: RE: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

Mr. Loper,

Thank you for the email. Please see below.

1. 21 N.C.A.C. 46 .2301 needs to be included in the first sentence. Here's a suggested re-wording: "All prescription forms shall conform to 21 N.C.A.C. 46 .2301 and shall include the name, address, state licensure number, and the Drug Enforcement Administration number of the prescriber, if applicable."
2. I don't interpret G.S. 90-85.3(t); 90-85.28; and GS 106-134.1 to apply to prescription "forms" or their content. Please delete the references to those statutes. The C.F.R.'s should be incorporated by reference in accordance with 150B-21.6. I suggest rearranging and using the exact language in the statute ("The provisions of 16 C.F.R. 315.2 and 16 C.F.R. 456.1(g) are hereby incorporated by reference, including subsequent amendments and editions."). Also, another sentence needs to be included that specifies "both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material."
3. Thank you for inserting the examples.
4. Please delete the words "or diversion".
5. Thank you for providing.
6. Please see #2 above to ensure the C.F.R. is incorporated in accordance with 150B-21.6.
7. Please delete "and" before "documented" on line 34.
8. Please see #2 above to ensure the C.F.R. is incorporated in accordance with 150B-21.6.
9. Thank you.
10. Thank you.
11. Please see #2 above to ensure the C.F.R. is incorporated in accordance with 150B-21.6.
12. Encompassed in #11.
13. Line 19, I suggest changing to, "terminate optometric care for that patient and notify the patient that he or she is terminating...."

Please reply by May 15 at 5pm. Enjoy your trip.

Thanks,

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

From: Johnny Loper <jloper@loper-law.com>
Sent: Thursday, May 9, 2024 8:47 AM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>
Subject: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

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Mr. Wiggs:

Attached to this email are a proposed revision of 42E .0103 which, as explained by my red interlined comments below, we believe is consistent with your most recent comments and questions, and a memorandum of understanding between the Pharmacy Board and the Optometry Board (see item #5 below). Obviously, if you have remaining questions or comments, or if you require edits, please let us know and we'll be happy to respond.

I'm on an anniversary trip, but will be checking emails regularly today and tomorrow; back home on Saturday.

Many thanks.

Johnny

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Friday, May 3, 2024 12:23 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] Response to your questions about proposed rule 21 NCAC 42E .0103

Mr. Loper,

Thank you for the responses. I have a few additional questions and suggestions below.

1. Are individual providers permitted to create and use their own prescription forms or are they required to use a standard template prescription form? **There is no template form required by the Board of Pharmacy or the Optometry Board. 21 N.C.A.C. 46 .2301 provides what prescription orders must include. It is our belief that the majority of OD's use electronic medical records, which require or allow the use of electronic prescriptions, which can be printed out or can be sent to a designated pharmacy electronically. ODs who use physical prescription pads often simply order printed fraudproof forms prepared by companies which offer prescription forms to medical providers. When registering with the Board of Pharmacy, the registering**

O.D. must provide a “draft pharmacy label” containing specified information which mimics in large part the requirements found in 21 N.C.A.C. 46 .2301: see Step Two at [NCSBEO - BOP Dispensing OD Guide \(ncoptometry.org\)](http://NCSBEO - BOP Dispensing OD Guide (ncoptometry.org)): screenshot of that information follows:

OPTOMETRIST NAME, O.D. _____ **Date** _____
OFFICE NAME _____ **Rx No:** _____
OFFICE ADDRESS _____
PBR: OD NAME _____
Patient Name: _____ **Directions:** _____
Name & Strength: _____
Generic Name: _____
Expiration Date: _____ **Cautionary Statements:** _____
Filled and dispensed by: OD NAME _____

Please let us know whether or how you wish us to proceed on this point.

2. Line 4, the regulated public needs to be informed as to what specific “state and federal statutes” govern “prescription forms.” It appears from your response that G.S. 90-85.28 is such a state statute that needs to be referenced in (a). All N.C. statutes governing prescription forms should be referenced. Any applicable federal statutes should be incorporated by reference in accordance with 150B-21.6. **We have made the suggested revisions, subject to your approval.**
3. Line 6, is there an existing rule or law that speaks to any of the “appropriate safeguards” that you included in your response? If so, please reference such rule or law. If not, please include the examples of safeguards you provided in the Rule. **We are aware of no law or rule which speaks to such “safeguards.” We have inserted the requested examples.**
4. Line 7, what is the usual and customary meaning of “diversion” that is clearly understood by your licensees? **In this context, “diversion” means the obtaining or use of a licensee’s prescription forms by someone other than the licensee. We also would be happy to delete the words “or diversion” since the preceding language (“unauthorized use”) seems to be sufficient.**
5. Lines 12-13, is there a policy or MOU between the two Boards indicating that the Pharmacy Board will make their optometrist registration information available? I’m concerned that the Pharmacy Board could rescind a verbal agreement arbitrarily. **We have obtained a MOU from the Pharmacy Board in response to your comments, and it is attached to this email.**
6. Lines 23-25, your proposed language is acceptable. Please incorporate 16 C.F.R. 456.2(a) by reference in accordance with 150B-21.6. **Done.**
7. Lines 28-30, the “appropriate findings” language is unclear and ambiguous in my opinion. Will you consider deleting that language and just use “documented patient records?” It appears that language alone will provide your agency with enough discretion to enforce this Rule and will clear to your licensees. **Done.**
8. Lines 31-32, your proposed language is acceptable. Please incorporate 16 C.F.R. 315.4 by reference in accordance with 150B-21.6. **Done.**
9. Lines 33-34, your proposed re-wording is acceptable. **Thanks; revision done.**
10. Lines 36-37, please re-word the sentence consistent with your response. **Thanks. Revision done.**
11. Page 2, line 1+, your proposed language is acceptable. Please incorporate the applicable FTC regulation by reference in accordance with 150B-21.6. **Thanks. Revision done.**
12. Lines 5-8, your proposed language is acceptable. Please incorporate 16 C.F.R. 315.6(a)(3) and (b)(1) by reference in accordance with 150B-21.6. **Thanks. Revision done. We understand that your number 11 and number 12 refer to the same FTC reference, and that our citation is correct. If not, please let us know.**
13. Lines 12-13 (e), this additional provision is acceptable. **Thanks. Revision done.**

I don't believe any of the changes require republication.

Please respond to this email by May 10th at 5pm.

Thank you for your work.

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

From: Johnny Loper <jloper@loper-law.com>
Sent: Wednesday, May 1, 2024 1:52 PM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>
Subject: RE: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

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Mr. Wiggs:

In response to your email below, I have attached our Board's comments and responses to your Request for Changes pursuant to G.S. 150B-21.10. As you will see, I have interlineated our responses to each comment in red font. Where we thought it appropriate, we have included background information and/or our reasoning for the response. I hope this proves to be helpful and not burdensome. I'm happy to discuss any or all of these responses with you at your convenience.

Also, you'll note that in considering your requests for changes and your comments and questions, we have suggested language that differs from the rule as submitted. So that you can see all of these potential changes in context, we have submitted a version of the rule with such changes and suggested changes highlighted in yellow (so, the changes as originally submitted are underlined/struck through without the yellow highlighting). Again, I'm happy to discuss any of these items with you.

Thanks for your cooperation and assistance.

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

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Friday, April 19, 2024 11:45 AM
To: Johnny Loper <jloper@loper-law.com>; Janice Peterson <janice@ncoptometry.org>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

Good morning,

I'm the attorney who reviewed the Rule submitted by the Board of Examiners in Optometry for the May 2024 RRC meeting. The RRC will formally review this Rule at its meeting on Tuesday, May 30, 2024, at 10:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite 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 invites out to them as well.

Attached is the Request for Changes Pursuant to G.S. 150B-21.10. Please submit the revised Rules and forms to me via email, no later than 5 p.m. on May 3, 2024.

Thank you.

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

From: Johnny Loper <jloper@loper-law.com>
Sent: Thursday, April 18, 2024 10:53 AM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Janice Peterson <janice@ncoptometry.org>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; exdir@ncoptometry.org
Subject: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

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Travis:

Apologies for the earlier email misfire. Please ping me back and let me know you opened this email.

Thanks for understanding our needing a day or two to respond. I've interlineated **in red font** some responses to your questions below. At the outset, let me say that we followed the same process for submitting this rule as we have for others in the past. If we have somehow been deficient in supplying the information you and your colleagues need to process our request, we apologize, and ask that you let us know what you need and the way in which you need to receive the information, and we'll make sure we fully comply going forward. We certainly are not trying to make your job any harder.

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

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Tuesday, April 16, 2024 4:43 PM
To: Johnny Loper <jloper@loper-law.com>; janice@ncoptometry.org
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 21 NCAC 42E .0103

Good afternoon,

I'm the attorney who is reviewing the above rule submitted by the North Carolina State Board of Examiners in Optometry for the May 2024 RRC meeting. I need some further information regarding this proposed permanent rule. The cover form (Submission for Permanent Rule-0400) does not contain all the information required for me to determine compliance with G.S. 150B-19.1(c) and G.S. 150B-21.2.

Did your agency receive a written request for a public hearing for this proposed rule within 15 days after notice of the text was published on January 4, 2024? **The Board received no request, written or oral, for a public hearing, within 15 days or at any time thereafter. If we need to affirmatively present such information on a form going forward, please let us know how/where.** Where do I find the instructions for the public to demand a public hearing on this rule? **Instructions for requesting a public hearing are found in item 6 of the Notice of Text (Form 300) submitted to OAH: "Contact the Board at 910-285-3160 or via email at janice@ncoptometry.org , and this information was published in the *North Carolina Register* at 38:15 pages 970-971.** Did your agency accept comments on this rule for at least 60 days after the notice of text was published? **Yes.** When was the public comment period? **The Board published the proposed rule on the Board website on January 4, 2004, and would have accepted comments from that date through the end of the comment period. The proposed Rule was published in the *North Carolina Register* on February 1 and that comment period ended on April 1, 2024. See *North Carolina Register* (38:15 pages 970-971). No comments were received during the period January 4, 2024 through April 1, 2024, or thereafter.**

The "Link to Agency notice" on the cover form does not take me to this Rule on your agency website. Can you provide me with proof that your agency posted all the information required by G.S. 150B-19.1(c) on your website "no later than the publication date of the notice of text in the North Carolina Register?" **We are not positive, but we think the fact that the published link no longer takes you to the subject Rule may be due to a website update that occurred on April 9. That same link, reproduced here [<https://www.ncoptometry.org/proposed-rules>] will take you to the current Board website, where the Rule is still listed. Below is a screenshot indicating that 21 NCAC 42E .0103 was added to the Board website by Janice Peterson on January 4, 2024.**

Again, if we need to supply any of this information to you in a different format or in different way going forward, please let us know and we'll be happy to comply.

← January 4, 2:23 PM [Restore this site version](#) [Restore this page version](#)

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[Proposed Amendments to 21 NCAC 42E.0103](#)

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 To verify any information please contact:
 North Carolina State Board of Optometry
 521 Yopp Road Suite 214 #444
 Jacksonville, NC 28540
 (910)-285-3160
 (910)-285-4546 Fax
info@ncoptometry.org

Version history

All versions

January 4, 2:23 PM
Janice Peterson

JANUARY

Published January 12, 10:36 AM
January 12, 10:35 AM
Samantha Goode

Published January 9, 10:53 AM
January 9, 10:53 AM
Samantha Goode

Published January 4, 2:24 PM
January 4, 2:23 PM
Janice Peterson

January 4, 2:23 PM
January 4, 2:23 PM
Janice Peterson

January 4, 2:21 PM
January 4, 2:21 PM
Janice Peterson

DECEMBER 2023

Published December 11, 2023, 8:33 AM
December 11, 2023, 8:33 AM
Samantha Goode

NOVEMBER 2023

Published November 30, 2023, 4:16 PM
November 30, 2023, 4:15 PM
Samantha Goode

Published November 22, 2023, 8:38 AM
November 22, 2023, 8:38 AM
Samantha Goode

Please reply at your earliest convenience. Thank you.

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

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

Subject: FW: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>

Sent: Thursday, May 9, 2024 1:04 PM

To: Johnny Loper <jloper@loper-law.com>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

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

Subject: RE: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

Mr. Loper,

Thank you for the email. Please see below.

1. 21 N.C.A.C. 46 .2301 needs to be included in the first sentence. Here's a suggested re-wording: "All prescription forms shall conform to 21 N.C.A.C. 46 .2301 and shall include the name, address, state licensure number, and the Drug Enforcement Administration number of the prescriber, if applicable."
2. I don't interpret G.S. 90-85.3(t); 90-85.28; and GS 106-134.1 to apply to prescription "forms" or their content. Please delete the references to those statutes. The C.F.R.'s should be incorporated by reference in accordance with 150B-21.6. I suggest rearranging and using the exact language in the statute ("The provisions of 16 C.F.R. 315.2 and 16 C.F.R. 456.1(g) are hereby incorporated by reference, including subsequent amendments and editions."). Also, another sentence needs to be included that specifies "both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material."
3. Thank you for inserting the examples.
4. Please delete the words "or diversion".
5. Thank you for providing.
6. Please see #2 above to ensure the C.F.R. is incorporated in accordance with 150B-21.6.
7. Please delete "and" before "documented" on line 34.
8. Please see #2 above to ensure the C.F.R. is incorporated in accordance with 150B-21.6.
9. Thank you.
10. Thank you.
11. Please see #2 above to ensure the C.F.R. is incorporated in accordance with 150B-21.6.
12. Encompassed in #11.
13. Line 19, I suggest changing to, "terminate optometric care for that patient and notify the patient that he or she is terminating...."

Please reply by May 15 at 5pm. Enjoy your trip.

Thanks,

Travis C. Wiggs

Rules Review Commission Counsel

Office of Administrative Hearings

Telephone: 984-236-1929

Email: travis.wiggs@oah.nc.gov

Burgos, Alexander N

Subject: FW: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103
Attachments: 21 NCAC 42E .0103.docx; Memorandum of Understanding.pdf

From: Johnny Loper <jloper@loper-law.com>
Sent: Thursday, May 9, 2024 8:47 AM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>
Subject: [External] Optometry Board; further response to your questions about proposed rule 21 NCAC 42E .0103

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Mr. Wiggs:

Attached to this email are a proposed revision of 42E .0103 which, as explained by my red interlineated comments below, we believe is consistent with your most recent comments and questions, and a memorandum of understanding between the Pharmacy Board and the Optometry Board (see item #5 below). Obviously, if you have remaining questions or comments, or if you require edits, please let us know and we'll be happy to respond.

I'm on an anniversary trip, but will be checking emails regularly today and tomorrow; back home on Saturday.

Many thanks.

Johnny

1 21 NCAC 42E .0103 is adopted with changes as published in 38:15 NCR 970-971 as follows:

2
3 **21 NCAC 42E .0103 PRESCRIPTIONS PRESCRIPTIONS; DISPENSING**

4 (a) All prescription forms shall conform to state and federal statutes governing such forms and shall include the name,
5 address, state licensure number, and the Drug Enforcement Administration number of the prescriber, if applicable.
6 See G.S. 90-85.3(t); 90-85.28; GS 106-134.1; and 21 N.C.A.C. 46 .2301. The provisions of 16 C.F.R. 315.2 and 16
7 C.F.R. 456.1(g), as they may be amended from time to time, are hereby incorporated by reference. The optometrist
8 shall be responsible for providing implementing appropriate ~~safeguards~~ safeguards, including but not limited to the
9 optometrist keeping a physical prescription pad in his or her personal possession or under lock and key at all times
10 and password-protecting his or her electronic prescription form, within his or her practice to prevent the unauthorized
11 use or diversion of his or her prescription forms, and shall immediately notify the Board upon determining that
12 prescription blanks might be missing or misused. ~~Should missing prescription blanks bear his DEA number, the~~
13 ~~optometrist shall also notify the North Carolina State Board of Pharmacy, giving that board the date he determined~~
14 ~~that the prescriptions blanks were missing or misused, the number missing, and any information that could be of help~~
15 ~~in preventing unauthorized use of the prescription blanks.~~

16 (b) Any optometrist licensed by the Board who wishes to dispense drugs pursuant to G.S. 90-127.4 must first register
17 with the North Carolina Board of Pharmacy pursuant to G.S. 90-85.26B. In the event that legend drugs being
18 prescribed by the optometrist are dispensed by the optometrist, the optometrist shall cause the following written or
19 printed information to be given to the patient for each such drug dispensed at the time the drug is dispensed:

- 20 (1) ~~date of issuance;~~
21 (2) ~~name and address of patient;~~
22 (3) ~~name, address and telephone number of prescriber;~~
23 (4) ~~name, strength, dosage form and quantity of drug dispensed;~~
24 (5) ~~the number of refills, if authorized;~~
25 (6) ~~route of administration of drug dispensed; and~~
26 (7) ~~directions for use.~~

27 (c) Any optometrist licensed by the Board ~~Within one year of examination, a patient may request and is entitled to~~
28 ~~and shall provide a patient receive~~ a copy of his or her ~~spectacle eyeglass prescription~~ prescription, when such
29 prescription is determined and finalized, consistent that complies with Federal Trade Commission regulations, rules
30 and guidelines. ~~The prescription may show a statement of caution or a disclaimer if such a statement or disclaimer is~~
31 ~~supported by appropriate findings and documented patient records.~~ The provisions of 16 C.F.R. 456.2(a), as they may
32 be amended from time to time, are hereby incorporated by reference. An expiration date of not less than one year from
33 the date of the prescribing examination shall appear on every such prescription. The prescription may show a statement
34 of caution or a disclaimer if such a statement or disclaimer is supported by appropriate findings and documented
35 patient records.

36 (d) Any optometrist licensed by the Board shall provide a patient a copy of his or her contact lens prescription, when
37 determined and finalized, consistent with Federal Trade Commission regulations, rules The provisions of 16 C.F.R.

1 315.4, as they may be amended from time to time, are hereby incorporated by reference. A prescription for contact
2 lenses shall ~~comply with Federal Trade Commission rules and guidelines and~~ explicitly state that it is for contact
3 lenses and specify the lens type and all specifications necessary for the ordering and fabrication of the lenses. Words
4 or phrases such as "OK for contact lenses", "fit with contact lenses", "contact lenses may be worn", or similar wording
5 do not constitute a contact lens prescription. Until all the requirements of a satisfactory fit of contact lenses have been
6 determined by the prescriber, the contact lens prescription cannot be written. The prescriber cannot write the contact
7 lens prescription until all the requirements of a satisfactory fit of contact lenses have been determined by the prescriber.
8 All contact lenses used in the determination of a contact lens prescription are considered to be diagnostic lenses. At
9 such time that it has been determined that a prescription can be written, such prescription may show a statement of
10 caution or a disclaimer if such a statement or disclaimer is supported by appropriate findings and documented patient
11 records. An expiration date consistent with the type and modality of use of the contact lens being prescribed shall
12 appear on every such prescription. An expiration date of not less than one year from the date of the prescribing
13 examination shall appear on every such prescription unless there is a medical justification for a shorter duration. If
14 the prescriber has such a medical justification, the prescriber must document the medical reason for the shorter
15 expiration date in the patient's medical record consistent with Federal Trade Commission regulations. The provisions
16 of 16 C.F.R. 315.6(a)(3) and (b)(1) as they may be amended from time to time, are hereby incorporated by reference.
17 In the event that in the professional opinion of the prescribing optometrist, If a patient is not adhering to appropriate
18 regimens of care and follow-up with regard to the continuing use of contact lenses, the prescribing optometrist may
19 terminate his optometric care of that patient and notify the patient that he or she is terminating such relationship and
20 the reasons for doing so.
21 (c) An optometrist shall provide a copy of a requesting patient's eyeglass prescription or contact lens prescription so
22 long as the requested prescription has not expired.

23
24 *History Note: Authority G.S. 90-114; 90-117.5; 90-127.2; 90-127.3;*
25 *Eff. June 1, 1989;*
26 *Amended Eff. April 1, 1993;*
27 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 23,*
28 *2015.*
29 *Amended Eff. June 1, 2024*
30

Jack W. Campbell, IV
Executive Director

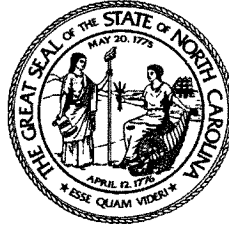
Barbara Ellen Vick
Associate Executive Director

Mailing Address:
6015 Farrington Rd., Suite 201
Chapel Hill, NC 27517
919-246-1050 FAX: 919-246-1056
www.ncbop.org

Clinton R. Pinyan
Brooks, Pierce, McLendon,
Humphrey & Leonard, LLP
Legal Counsel

NORTH CAROLINA

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May 3, 2024

VIA ELECTRONIC MAIL (exdir@ncoptometry.org)

Bill Rafferty
Executive Director
North Carolina Board of Optometry
521 Yopp Road
Suite 214, #444
Jacksonville, NC 28540

Dear Bill:

This letter memorializes our agreement that the Board of Pharmacy shall, pursuant to G.S. §§ 90-85.26B and 90-127.4, maintain a registry of all dispensing optometrists. The Board of Pharmacy and Optometry shall deem registration of a dispensing optometrist through the Board of Pharmacy's registry system to be a registration with both Boards. The Board of Pharmacy shall make the contents of the registry available to the Board of Optometry and its staff within one (1) business day of a request.

Sincerely yours,


Jay Campbell
Executive Director

cc: Clint Pinyan, Esq., Counsel to the Board of Pharmacy
Johnny Loper, Esq., Counsel to the Board of Optometry

Burgos, Alexander N

Subject: FW: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

Alexander Burgos

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

From: Johnny Loper <jloper@loper-law.com>
Sent: Tuesday, May 7, 2024 2:28 PM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

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Understood. Thanks.

Am having some problem tracking page and line numbers that have changed.

Johnny

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Tuesday, May 7, 2024 2:25 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] Response to your questions about proposed rule 21 NCAC 42E .0103

Mr. Loper,

My #10 below is in reference to the sentence on lines 36-37 of the Rule (“Until all the...”) after your changes. Your response suggested rewording the sentence to, *“The prescriber cannot write the contact lens prescription until all the requirements of a satisfactory fit of contact lenses have been determined by the prescriber.”* Your suggested rewording is acceptable.

Thanks,

Travis C. Wiggs
Rules Review Commission Counsel

Office of Administrative Hearings

Telephone: 984-236-1929

Email: travis.wiggs@oah.nc.gov

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

Sent: Tuesday, May 7, 2024 2:11 PM

To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>

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

Subject: RE: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

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Mr. Wiggs, I think I have answered my own question. Your comment #3 is on the same subject, and you have indicated we should include the examples. So you can disregard the question below, with my apologies.

Johnny

From: Johnny Loper

Sent: Tuesday, May 7, 2024 2:00 PM

To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>

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

Subject: RE: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

Mr. Wiggs: One further point of clarification needed: on item #10 below, are you instructing us to insert into the next draft of the proposed rule the examples I described to you previously, or is the explanation itself sufficient without further changing the language in the re-worded proposed rule we previously submitted?

Thanks.

From: Johnny Loper

Sent: Friday, May 3, 2024 12:50 PM

To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>

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

Subject: RE: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

Thanks for the prompt turnaround. We'll respond by the deadline. One preliminary question interlineated in **red font** below.

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>

Sent: Friday, May 3, 2024 12:23 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] Response to your questions about proposed rule 21 NCAC 42E .0103

Mr. Loper,

Thank you for the responses. I have a few additional questions and suggestions below.

1. Are individual providers permitted to create and use their own prescription forms or are they required to use a standard template prescription form?
2. Line 4, the regulated public needs to be informed as to what specific “state and federal statutes” govern “prescription forms.” It appears from your response that G.S. 90-85.28 is such a state statute that needs to be referenced in (a). All N.C. statutes governing prescription forms should be referenced. Any applicable federal statutes should be incorporated by reference in accordance with 150B-21.6.
3. Line 6, is there an existing rule or law that speaks to any of the “appropriate safeguards” that you included in your response? If so, please reference such rule or law. If not, please include the examples of safeguards you provided in the Rule.
4. Line 7, what is the usual and customary meaning of “diversion” that is clearly understood by your licensees? **Do you wish us include the proposed definition in the Rule, or just submit it to you for consideration?**
5. Lines 12-13, is there a policy or MOU between the two Boards indicating that the Pharmacy Board will make their optometrist registration information available? I’m concerned that the Pharmacy Board could rescind a verbal agreement arbitrarily.
6. Lines 23-25, your proposed language is acceptable. Please incorporate 16 C.F.R. 456.2(a) by reference in accordance with 150B-21.6.
7. Lines 28-30, the “appropriate findings” language is unclear and ambiguous in my opinion. Will you consider deleting that language and just use “documented patient records?” It appears that language alone will provide your agency with enough discretion to enforce this Rule and will clear to your licensees.
8. Lines 31-32, your proposed language is acceptable. Please incorporate 16 C.F.R. 315.4 by reference in accordance with 150B-21.6.
9. Lines 33-34, your proposed re-wording is acceptable.
10. Lines 36-37, please re-word the sentence consistent with your response.
11. Page 2, line 1+, your proposed language is acceptable. Please incorporate the applicable FTC regulation by reference in accordance with 150B-21.6.
12. Lines 5-8, your proposed language is acceptable. Please incorporate 16 C.F.R. 315.6(a)(3) and (b)(1) by reference in accordance with 150B-21.6.
13. Lines 12-13 (e), this additional provision is acceptable.

I don’t believe any of the changes require republication.

Please respond to this email by May 10th at 5pm.

Thank you for your work.

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

Burgos, Alexander N

From: Wiggs, Travis C
Sent: Friday, May 3, 2024 2:21 PM
To: Johnny Loper
Cc: exdir@ncoptometry.org; Janice Peterson; Burgos, Alexander N
Subject: RE: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

4. Please include the proposed definition in the Rule.

Thanks,

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

From: Johnny Loper <jloper@loper-law.com>
Sent: Friday, May 3, 2024 12:50 PM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

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Thanks for the prompt turnaround. We'll respond by the deadline. One preliminary question interlined in red font below.

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Friday, May 3, 2024 12:23 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] Response to your questions about proposed rule 21 NCAC 42E .0103

Mr. Loper,

Thank you for the responses. I have a few additional questions and suggestions below.

1. Are individual providers permitted to create and use their own prescription forms or are they required to use a standard template prescription form?
2. Line 4, the regulated public needs to be informed as to what specific "state and federal statutes" govern "prescription forms." It appears from your response that G.S. 90-85.28 is such a state statute that needs to be referenced in (a). All N.C. statutes governing prescription forms should be referenced. Any applicable federal statutes should be incorporated by reference in accordance with 150B-21.6.

3. Line 6, is there an existing rule or law that speaks to any of the “appropriate safeguards” that you included in your response? If so, please reference such rule or law. If not, please include the examples of safeguards you provided in the Rule.
4. Line 7, what is the usual and customary meaning of “diversion” that is clearly understood by your licensees? **Do you wish us include the proposed definition in the Rule, or just submit it to you for consideration?**
5. Lines 12-13, is there a policy or MOU between the two Boards indicating that the Pharmacy Board will make their optometrist registration information available? I’m concerned that the Pharmacy Board could rescind a verbal agreement arbitrarily.
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8. Lines 31-32, your proposed language is acceptable. Please incorporate 16 C.F.R. 315.4 by reference in accordance with 150B-21.6.
9. Lines 33-34, your proposed re-wording is acceptable.
10. Lines 36-37, please re-word the sentence consistent with your response.
11. Page 2, line 1+, your proposed language is acceptable. Please incorporate the applicable FTC regulation by reference in accordance with 150B-21.6.
12. Lines 5-8, your proposed language is acceptable. Please incorporate 16 C.F.R. 315.6(a)(3) and (b)(1) by reference in accordance with 150B-21.6.
13. Lines 12-13 (e), this additional provision is acceptable.

I don’t believe any of the changes require republication.

Please respond to this email by May 10th at 5pm.

Thank you for your work.

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

From: Johnny Loper <jloper@loper-law.com>
Sent: Wednesday, May 1, 2024 1:52 PM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Cc: exdir@ncoptometry.org; Janice Peterson <janice@ncoptometry.org>
Subject: RE: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

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Mr. Wiggs:

In response to your email below, I have attached our Board’s comments and responses to your Request for Changes pursuant to G.S. 150B-21.10. As you will see, I have interlineated our responses to each comment in red font. Where we thought it appropriate, we have included background information and/or our reasoning

for the response. I hope this proves to be helpful and not burdensome. I'm happy to discuss any or all of these responses with you at your convenience.

Also, you'll note that in considering your requests for changes and your comments and questions, we have suggested language that differs from the rule as submitted. So that you can see all of these potential changes in context, we have submitted a version of the rule with such changes and suggested changes highlighted in yellow (so, the changes as originally submitted are underlined/struck through without the yellow highlighting). Again, I'm happy to discuss any of these items with you.

Thanks for your cooperation and assistance.

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

From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Friday, April 19, 2024 11:45 AM
To: Johnny Loper <jloper@loper-law.com>; Janice Peterson <janice@ncoptometry.org>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

Good morning,

I'm the attorney who reviewed the Rule submitted by the Board of Examiners in Optometry for the May 2024 RRC meeting. The RRC will formally review this Rule at its meeting on Tuesday, May 30, 2024, 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 and forms to me via email, no later than 5 p.m. on May 3, 2024.

Thank you.

Travis C. Wiggs
Rules Review Commission Counsel
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From: Johnny Loper <jloper@loper-law.com>
Sent: Thursday, April 18, 2024 10:53 AM
To: Wiggs, Travis C <travis.wiggs@oah.nc.gov>; Janice Peterson <janice@ncoptometry.org>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; exdir@ncoptometry.org
Subject: [External] Response to your questions about proposed rule 21 NCAC 42E .0103

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Travis:

Apologies for the earlier email misfire. Please ping me back and let me know you opened this email.

Thanks for understanding our needing a day or two to respond. I've interlineated **in red font** some responses to your questions below. At the outset, let me say that we followed the same process for submitting this rule as we have for others in the past. If we have somehow been deficient in supplying the information you and your colleagues need to process our request, we apologize, and ask that you let us know what you need and the way in which you need to receive the information, and we'll make sure we fully comply going forward. We certainly are not trying to make your job any harder.

Johnny

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From: Wiggs, Travis C <travis.wiggs@oah.nc.gov>
Sent: Tuesday, April 16, 2024 4:43 PM
To: Johnny Loper <jloper@loper-law.com>; janice@ncoptometry.org
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: 21 NCAC 42E .0103

Good afternoon,

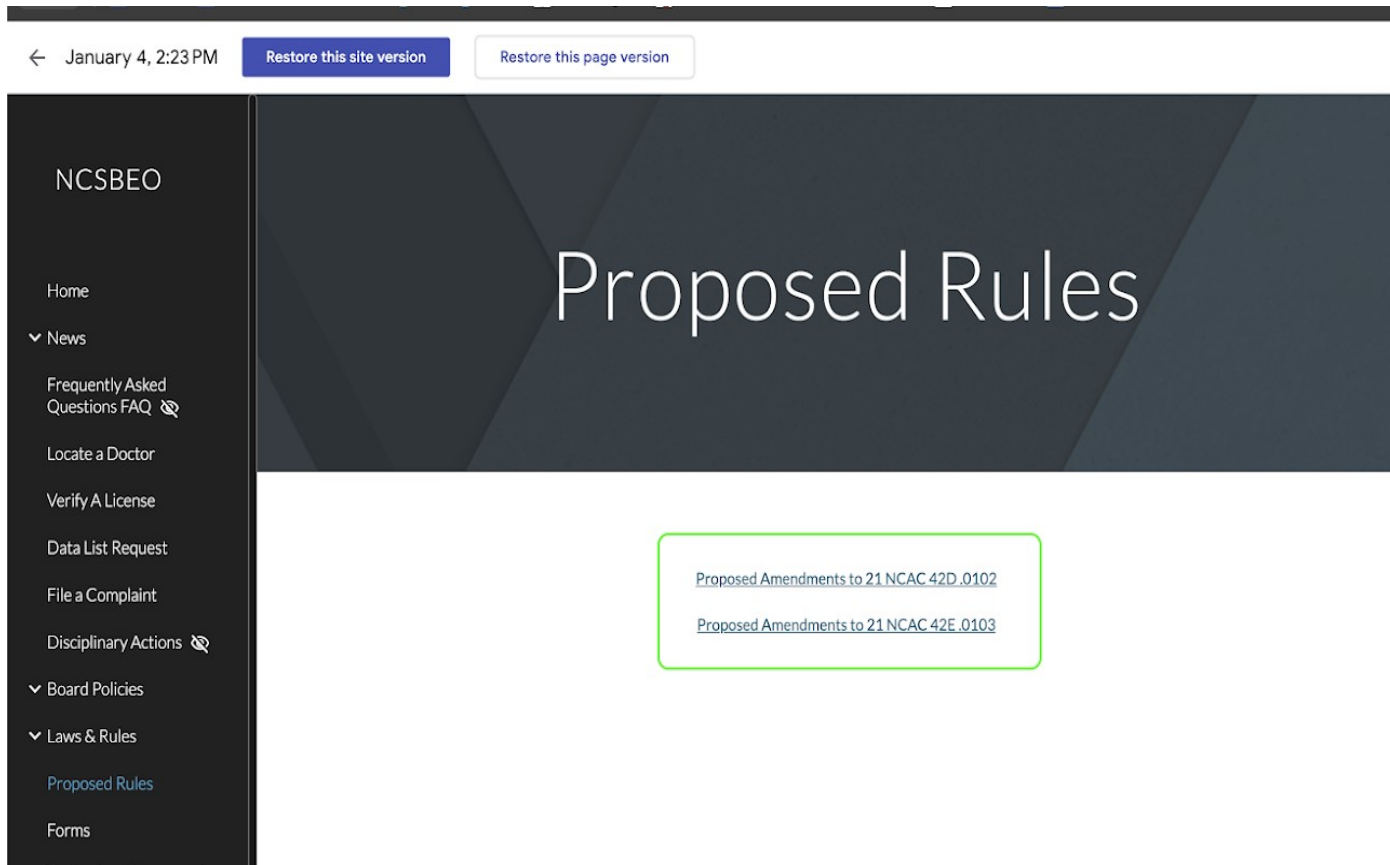
I'm the attorney who is reviewing the above rule submitted by the North Carolina State Board of Examiners in Optometry for the May 2024 RRC meeting. I need some further information regarding this proposed permanent rule. The cover form (Submission for Permanent Rule-0400) does not contain all the information required for me to determine compliance with G.S. 150B-19.1(c) and G.S. 150B-21.2.

Did your agency receive a written request for a public hearing for this proposed rule within 15 days after notice of the text was published on January 4, 2024? **The Board received no request, written or oral, for a public hearing, within 15 days or at any time thereafter. If we need to affirmatively present such information on a form going**

forward, please let us know how/where. Where do I find the instructions for the public to demand a public hearing on this rule? Instructions for requesting a public hearing are found in item 6 of the Notice of Text (Form 300) submitted to OAH: "Contact the Board at 910-285-3160 or via email at janice@ncoptometry.org , and this information was published in the *North Carolina Register* at 38:15 pages 970-971. Did your agency accept comments on this rule for at least 60 days after the notice of text was published? Yes. When was the public comment period? The Board published the proposed rule on the Board website on January 4, 2004, and would have accepted comments from that date through the end of the comment period. The proposed Rule was published in the *North Carolina Register* on February 1 and that comment period ended on April 1, 2024. See *North Carolina Register* (38:15 pages 970-971). No comments were received during the period January 4, 2024 through April 1, 2024, or thereafter.

The "Link to Agency notice" on the cover form does not take me to this Rule on your agency website. Can you provide me with proof that your agency posted all the information required by G.S. 150B-19.1(c) on your website "no later than the publication date of the notice of text in the North Carolina Register?" We are not positive, but we think the fact that the published link no longer takes you to the subject Rule may be due to a website update that occurred on April 9. That same link, reproduced here [<https://www.ncoptometry.org/proposed-rules>] will take you to the current Board website, where the Rule is still listed. Below is a screenshot indicating that 21 NCAC 42E .0103 was added to the Board website by Janice Peterson on January 4, 2024.

Again, if we need to supply any of this information to you in a different format or in different way going forward, please let us know and we'll be happy to comply.



Please reply at your earliest convenience. Thank you.

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