

## CHAPTER 40 - BOARD OF OPTICIANS

### SECTION .0100 - LOCATION

#### 21 NCAC 40 .0101 LOCATION AND FUNCTION

The NC State Board of Opticians (Board) is physically located at 3809 Computer Drive, Raleigh, North Carolina 27609. Its mailing address is Post Office Box 6758, Raleigh, North Carolina 27628-6758.

*History Note:* Authority G.S. 90-239;  
Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Amended Eff. January 1, 1994; February 1, 1989; November 1, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;  
Amended Eff. October 1, 2019.

#### 21 NCAC 40 .0102 MAILING ADDRESS OF REGISTRANTS

#### 21 NCAC 40 .0103 CHANGE OF LOCATION

*History Note:* Authority G.S. 93B-3; 90-234 through 90-255;  
Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Repealed Eff. November 1, 1981.

#### 21 NCAC 40 .0104 INFORMATION AND APPLICATION

(a) Potential applicants for a North Carolina optician's license can download application forms from the Board's website [www.ncopticiansboard.org](http://www.ncopticiansboard.org). Application forms shall be submitted in order to be considered for licensure by waiver of the examination, or to sit for the licensure examination.

- (1) Applicants for licensure examination shall provide documentation of eligibility for examination participation by having met requirements of G.S. 90-240(a)(1) or (2), or G.S. 90-241(b).
  - (A) Applicants qualifying by G.S. 90-240(a)(2) shall provide a certified transcript showing completion of AAS degree from an accredited school of opticianry.
  - (B) Applicants qualifying by G.S. 90-241(b) shall provide a certified transcript showing completion of an optical certificate program from an accredited school of opticianry, or a Board-recognized training program.
- (2) Applicants for licensure by waiver of examination shall provide documentation for having met requirements of G.S. 90-241(a).
  - (A) Verification of good standing from the state where licensure was previously obtained.
  - (B) Affidavits as set forth in 21 NCAC 40 .0319.
- (3) Applicants shall provide a certified transcript showing graduation from high school as required by G.S. 90-237 for all applications shown in Subparagraphs (a)(1) through (2) of this Rule.

(b) Any person not able to download licensure information, or the licensure or examination application, or training or renewal application, may request that the Board office mail the materials which the Board will mail to the requesting person.

(c) When submitting an application as set forth in Subparagraphs (a)(1) through (2) of this Rule above, applicants shall submit the fee as set forth in G.S. 90-246. Additionally, the applicant shall provide:

- (1) information, including an affirmation regarding whether the applicant has violated G.S. 90, Article 17, or 21 NCAC 40 of the North Carolina Administrative Code, or been convicted of a felony or misdemeanor;
- (2) information as to whether the applicant has been named as a defendant or respondent to a lawsuit involving fraud, deceit, or misrepresentation, malpractice, unethical conduct, gross negligence, or gross misconduct;
- (3) the applicant's age; and
- (4) a passport-size photograph taken within six months of the date the application is submitted to the Board.

*History Note:* Authority G.S. 90-237; 90-239; 90-240; 90-246; 90-249(6); 90-249.1(a)(8);  
Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Amended Eff. September 1, 2012; August 1, 1998; February 1, 1989; February 1, 1988;  
November 1, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December  
22, 2018;  
Amended Eff. December 1, 2019.

## **21 NCAC 40 .0105 CERTIFICATE OF REGISTRATION**

*History Note:* Authority G.S. 90-234; 90-249;  
Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Repealed Eff. November 1, 1981.

## **21 NCAC 40 .0106 COPY OF THE LAW**

A copy of the laws and rules governing the practice of opticianry in North Carolina is available from the Board at a charge of ten dollars (\$10.00).

*History Note:* Authority G.S. 90-249;  
Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Amended Eff. February 1, 1989; November 1, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December  
22, 2018.

## **21 NCAC 40 .0107 INSPECTION OF MATERIALS**

A record will be kept of all rulemaking proceedings, declaratory rulings, and final orders or decisions of the Board. These records will include all relevant written material and will be available for inspection upon appointment with the executive secretary.

*History Note:* Authority G.S. 90-249; 150B-11(2);  
Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Amended Eff. November 1, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December  
22, 2018.

## **21 NCAC 40 .0108 FEES**

*History Note:* Authority G.S. 90-246; 90-249(a)(9);  
Eff. November 1, 1981;  
Temporary Amendment Eff. November 1, 1997;  
Amended Eff. April 1, 2004; August 1, 1998; February 1, 1989; February 1, 1988; August 1,  
1985;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December  
22, 2018;  
Repealed Eff. October 1, 2019.

## **21 NCAC 40 .0109 ELECTION OF MEMBERS**

(a) By April 1 of each year, any licensed optician desiring to be nominated for the Board shall forward a petition endorsed by five licensees to the Board.

(b) By April 10 of each year, the Board shall prepare and distribute by mail to each North Carolina licensed optician:

- (1) a notice of the election, and its dates;

- (2) the name of each nominee;
- (3) biographical information on each nominee;
- (4) a ballot; and
- (5) a return envelope.

(c) The return envelope containing the ballot shall be postmarked no later than April 30. The enclosed ballot shall not be valid unless the optician's signature, license number, and correct mailing address are on the left top corner of the return envelope.

(d) The Board Chair shall appoint an Election Committee of at least three members, who may be Board members, staff members, or a combination of the two, but who shall not be nominees. The Election Committee shall review all ballots for validity based on Paragraph (c) of this Rule, and count all valid ballots.

(e) Based upon the canvass by the Election Committee, the Board Chair shall submit to the Governor a list of three nominees for each vacancy for completion of the appointment process as set forth in G.S. 90-238.

*History Note:* Authority G.S. 90-238; 90-239;  
Eff. November 1, 1981;  
Amended Eff. September 1, 2012; April 1, 2011; February 1, 1989; January 1, 1986;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;  
Amended Eff. December 1, 2019.

#### **21 NCAC 40 .0110 OFFICERS**

*History Note:* Authority G.S. 90-239;  
Eff. November 1, 1981;  
Repealed Eff. February 1, 1989.

#### **21 NCAC 40 .0111 SUBJECT OF DECLARATORY RULINGS**

The Board will issue a declaratory ruling upon request of a person determined by the Board to be a "person aggrieved" within the meaning of G.S. 150B-2(6), unless the Board determines that issuance of a declaratory ruling would be undesirable, taking into account such factors as pending litigation or contested cases involving the same subject matter as the requested ruling, the number of licensees possibly affected by the ruling, and whether the same subject is adequately addressed by existing rules or prior declaratory rulings.

*History Note:* Authority G.S. 90-239; 90-249; 150B-17;  
Eff. November 1, 1981;  
Amended Eff. February 1, 1989; February 1, 1988;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

#### **21 NCAC 40 .0112 FORMS**

*History Note:* Authority G.S. 90-249;  
Eff. November 1, 1981;  
Amended Eff. January 1, 1994; February 1, 1989; August 1, 1985; July 1, 1983;  
Repealed Eff. April 1, 2011.

#### **21 NCAC 40 .0113 WAIVER**

(a) The Board may waive any rule in this Chapter that is not statutorily required if a licensee, business or training establishment, trainee, or continuing education course provider submits a written request. Factors the Board shall use in determining whether to grant the waiver are:

- (1) degree of disruption to the Board;
- (2) cost to the Board;
- (3) degree of benefit to the public;
- (4) whether the requesting party had control over the circumstances that required the requested waiver;
- (5) notice to and opposition by the public;
- (6) need for the waiver; and

- (7) previous requests for waivers submitted from the requesting party.
- (b) The Board may waive any rule in this Chapter that is not statutorily required upon its own initiative during an exercise of emergency authority by a federal, state, or local governmental authority impacting North Carolina citizens based on the factors set forth in Paragraph (a)(1), (2), (3), (5) and (6) of this Rule. If the Board wishes to waive a rule, it shall provide notice by posting a link on their website and sending out information to their interested persons mailing list.

*History Note:* Authority G.S. 90-249; 150B-19(6);  
Emergency Adoption Eff. April 9, 2020;  
Temporary Adoption Eff. June 1, 2020;  
Eff. April 1, 2021.

## **SECTION .0200 - CONDUCT OF REGISTRANTS**

### **21 NCAC 40 .0201 NO DISPLAY OF REFRACTING EQUIPMENT**

*History Note:* Authority G.S. 90-249;  
Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Repealed Eff. February 1, 1989.

### **21 NCAC 40 .0202 REGISTRATION OF OPTICAL PLACE OF BUSINESS AND OPTICIAN IN CHARGE**

(a) As used in this Rule, "optical place of business" means the principal office, as well as each branch office of the business.

- (1) Every optical place of business shall be registered with the Board within 10 days following its opening for business and thereafter annually and in the event of relocation or change of ownership. The registration fee shall be paid for each registration.
- (2) Registration of an optical place of business automatically expires on the last day of June of each year, and it shall not engage in business until it is registered for the next annual period.
- (3) An optical place of business registration is the responsibility of the owner. Any business that violates the registration requirements of this Rule shall be subject to the Board's disciplinary authority under G.S. 90-249.1, G.S. 90-252, and G.S. 90-254.
- (4) An optical place of business registered in compliance with this Rule shall be eligible to be a training establishment when the requirements of Rules .0314 and .0321 of this Chapter are met.

(b) Every optical place of business shall register a licensed optician in charge, who shall serve as the licensee in charge of only one optical place of business.

- (1) Every optician in charge shall be registered with the Board within 10 days of the opening of an optical place of business, or change of optician in charge. The registration fee as set forth in G.S. 90-246 shall be paid for each registration.
- (2) Registration of an optician in charge automatically expires on the last day of June of each year, and the optical business shall not engage in dispensing activities under G.S. 90-236 until it has a registered optician in charge for the next annual period.
- (3) An optician in charge registration is the responsibility of both the licensed optician in charge and the owner. Any optician in charge of an optical place of business that violates the registration requirements of this Rule shall be subject to the Board's disciplinary authority under G.S. 90-249.1, G.S. 90-252, and G.S. 90-254.

*History Note:* Authority G.S. 90-239; 90-243; 90-249(5); 90-252; 90-253;  
Eff. February 1, 1976;  
Amended Eff. November 1, 1978; June 21, 1978; September 6, 1977;  
Readopted Eff. May 23, 1979;  
Amended Eff. August 1, 1998; January 1, 1994; August 1, 1991; February 1, 1989; August 1, 1985;  
Temporary Amendment Eff. November 1, 2016;

*Temporary Amendment Expired Eff. August 12, 2017;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;*  
*Amended Eff. November 1, 2020.*

## **21 NCAC 40 .0203      BRANCH OFFICES**

*History Note:      Authority G.S. 90-243;*  
*Eff. February 1, 1976;*  
*Readopted Eff. September 29, 1977;*  
*Amended Eff. August 1, 1985; January 1, 1983; November 1, 1981; November 1, 1978;*  
*Repealed Eff. February 1, 1989.*

## **21 NCAC 40 .0204      FINING OF REPETITIVE VIOLATORS OF THE LAW**

*History Note:      Authority G.S. 90-249;*  
*Eff. February 1, 1976;*  
*Amended Eff. September 6, 1977;*  
*Repealed Eff. November 1, 1981.*

## **21 NCAC 40 .0205      BAITING OR DECEPTIVE ADVERTISING**

(a) Statements regarding optical goods and services must be accurate and truthful pursuant to Article 1, Chapter 75, of the North Carolina General Statutes. Deceptive advertising of any kind is unlawful. Any advertising that tends to mislead the consumer is interpreted to be unlawful.

(b) If an item or service is advertised for sale but the offer is qualified the qualification must be conspicuously placed in the advertisement. For example, if spectacles or eyeglasses are offered for sale and a second pair is offered at a special or reduced price, the advertisement must state expressly whether the second pair is other than a duplicate of the first pair purchased. Likewise if a picture, illustration or description is included in the advertisement, it must accurately represent the item for sale. Bait advertising is an alluring but insincere offer to sell a product or service which the advertiser does not actually wish to sell at the price advertised. A seller may not in any way discourage the purchase of the advertised product. Specifically, he may not refuse to show or sell the advertised product or disparage the same in an attempt to sell another product. Furthermore, he may not demonstrate or show an unattractive or shopworn item or product in place of the advertised product. When a product is offered for sale at a discounted price, the discount must be truthful. In order to be truthful, the discounted price must be based upon a bona fide original price. A bona fide original price is established by selling the product at the original price for a majority of the time that the product is offered for sale.

(c) If the seller offers in an advertisement, whether written, oral, electronic or otherwise, a certificate, check payable to bearer or any coupon representing cash or a discount in any amount off the cost of a pair of spectacles or eyeglasses, the seller must be able to prove that the price has not been increased by that amount or more for the duration of the advertised offer or sale, that is, prior to the advertised discounted sale.

*History Note:      Authority G.S. 90-249;*  
*Eff. February 1, 1976;*  
*Amended Eff. July 1, 1991; February 1, 1989; November 1, 1981; September 6, 1977;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.*

## **21 NCAC 40 .0206      PROFESSIONAL RESPONSIBILITY; CONTINUING EDUCATION**

(a) A licensed optician shall:

- (1) maintain equipment and instruments in his or her office at all times to assure professional service to the public, and for use in training apprentices and interns as set forth in 21 NCAC 40 .0321;
  - (2) make a referral to another healthcare provider when, in the licensee's professional opinion, such referral would benefit the client;
  - (3) treat all information concerning his or her clients as privileged and not to be communicated to others except when authorized or required by a law or rule, or with express consent of the client;
- and

- (4) take annual courses of study in subjects related to the practice of opticianry for the purpose of enhancing his or her scientific knowledge and professional skills, learning new techniques, and acquiring increased knowledge of laws and rules governing the practice of opticianry, as set forth in Paragraph (b) of this Rule.
- (b) A licensee whose license was issued after July 1 shall be exempt from the continuing education requirement for renewal by December 31 of the same year. Otherwise, each North Carolina-licensed optician shall take a total of at least eight hours of continuing education each calendar year as follows:
- (1) three hours of study on the practice of contact lens fitting and dispensing. Alternatively, a licensee may take two hours of study on contact lens fitting and dispensing, and one hour of study on either: optical business management, consumer protection, or ethics;
  - (2) four hours of study on eyeglass fitting and dispensing; and
  - (3) one hour of education on the laws and rules affecting North Carolina opticians.
- (c) All hours shall be currently-approved by the American Board of Opticianry or the National Contact Lens Examiners.
- (d) Courses of self-study, taken by licensees through journal articles or online, where organized material is presented and written evaluations are offered prior to or after completing the course or courses shall be eligible for credit, provided the vendor or sponsor submits the course or courses for approval to the Board as described in Paragraph (j) of this Rule prior to offering it to licensed opticians. However, no licensee shall receive credit for more than four hours of continuing education credit by self-study in any calendar year.
- (e) Any licensed optician who is not practicing opticianry in the State shall annually obtain a total of at least eight hours of courses of study: three hours shall be on the practice of contact lens fitting and dispensing, and five hours shall be on eyeglass fitting and dispensing. Alternatively, one of the eight hours may be on optical business management, consumer protection, or ethics. No other state's hours pertaining to its laws or rules shall be allowed as credit.
- (f) All hours must be taken within the prior or current calendar year for which credit is sought, and a licensee shall not receive continuing education credit for any course that the licensee already has completed during the same calendar year.
- (g) Continuing education hours acquired in excess of the number required at the time of renewal shall not be applied to future requirements.
- (h) Submission of fraudulent statements or certificates concerning continuing education shall subject the licensee to disciplinary action.
- (i) The hours of study set forth in this Rule may not be waived, except by:
- (1) declared Board waiver as defined in 21 NCAC 40 .0113;
  - (2) presentation to the Board of evidence of illness, or residency outside the United States, that makes the licensee's attendance impossible; or
  - (3) presentation to the Board of active-duty orders for the licensee serving in a branch of the US armed forces.
- (j) Courses of study for which a licensee desires continuing education credit must be approved by the Board, meeting the following criteria:
- (1) Courses must be directly related to the practice of a dispensing optician as defined in G.S. 90-235 and G.S. 90-236. The education of opticians must be the primary objective of the education provider.
  - (2) Each course must be made available to all NC licensed opticians.
  - (3) The following information shall be submitted to the Board office no later than 45 days prior to the date the course is to be made available for presentation:
    - (A) The method of course presentation; if in-person training is utilized, the location and scheduled time;
    - (B) The course title;
    - (C) The instructor's name, mailing address, and resume or curriculum vitae to show education, training qualifications and experience;
    - (D) A course description, including course length, instructional objectives, or course outline;
    - (E) Documentation showing the course's approval status granted and course number assigned by the American Board of Opticianry or National Contact Lens Examiners;
    - (F) The name and address of the provider agency, and its preferred contact information;
    - (G) A description of the provider's attendance certification process; and

- (H) An agreement to provide an electronic attendance roster to the Board, and certified attendance documentation to attendees.
- (4) Course content shall be presented in a manner that does not promote the sale or marketing of one company's products or services over another. Presentations on new optical technology shall not include a specific brand/manufacturer of the technology in the title or content. Product-specific "info-mercials" and sales pitches shall not be approved.
- (5) Courses shall consist of a minimum 50 minutes' education for each hour's credit.
- (6) Online courses shall not exceed two hours in length.
- (7) In-person training instructors may not present more than two consecutive hours of continuing education.
- (k) Each course to be presented in-person shall be submitted for approval separately each time credit is sought as set forth in Subparagraph (j)(3) of this Rule.
- (l) The Board shall not grant retroactive approval of courses.
- (m) The course provider shall allow Board representation to attend courses approved for in-person training without registration charge.
- (n) Course sponsors shall, no later than 30 days following the presentation of in-person training:
  - (1) Certify opticians' attendance for the requisite period;
  - (2) Submit to the Board documentation of attendance in a format provided by the Board that includes:
    - (A) The course title and classification verification;
    - (B) The course provider or sponsor identification that includes name and contact information;
    - (C) The name of and license number of each attending North Carolina licensee;
    - (D) The sponsor's attestation or verification of attendance.
- (o) Any licensee may enter online continuing education hours taken through his or her portal on the Board website or by submitting their online continuing education hours taken to the Board office. The entries or submissions shall include information from the course provider that shall serve as attendance verification. A licensee who is unable to enter his or her hours shall mail the continuing education credits into the Board office during the annual renewal period for credit.
- (p) Course sponsors shall maintain for three years records of the names of attendees who complete continuing education hours.
- (q) Opticians and course attendees shall:
  - (1) Retain documentation for a minimum two-year period, beginning with the next renewal year immediately following the date the courses were taken; and
  - (2) Present the documentation to Board as required during the license renewal process, or complaint or disciplinary investigations.

*History Note:* Authority G.S. 90-235; 90-236; 90-249; 90-249.1; Eff. February 1, 1976; Amended Eff. September 6, 1977; Readopted Eff. September 29, 1977; Amended Eff. January 1, 2013; July 1, 1991; February 1, 1989; February 1, 1988; January 1, 1986; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018; Amended Eff. November 1, 2020.

**21 NCAC 40 .0207 LOCATION OF LICENSEE, INTERN OR APPRENTICE**

- (a) Prior to performing acts regulated by the Board, each dispensing optician, intern or apprentice shall notify the Board of their employment status and the name and physical address of their employment. Changes in employment status or employment address shall be reported to the Board within 10 days.
- (b) Each dispensing optician, apprentice, or intern shall report to the Board, within 30 days, of any change in his or her home address.
- (c) Notification from the Board is deemed to have been received if mailed to either the home or business address of the dispensing optician, intern, or apprentice provided by the individual and shown in the records of the Board.

*History Note:* Authority G.S. 90-243; 90-249(a)(4),(8),(11); 90-294.1; Eff. November 1, 1981;

*Amended Eff. September 1, 2012;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.*

#### **21 NCAC 40 .0208 LICENSE REVOCATION AND REINSTATEMENT**

*History Note: Authority G.S. 90-249;*  
*Eff. November 1, 1981;*  
*Repealed Eff. February 1, 1988.*

#### **21 NCAC 40 .0209 DISPLAY OF REGISTRATION AND LICENSE**

- (a) Each registered optical place of business or training establishment shall display its registration certificate, containing the name of the current optician in charge or the name of the current trainer or trainers, in a visible and public area of the place of business or training establishment.
- (b) Each apprentice and intern shall display his or her registration certificate in a visible and public part of the training establishment wherein he or she is engaged as a trainee.
- (c) Each optician to whom a license has been granted shall display his or her license and current renewal seal in a visible and public part of the office or establishment wherein he or she is engaged as a dispensing optician.

*History Note: Authority G.S. 90-244;*  
*Eff. November 1, 1981;*  
*Amended Eff. September 1, 2012; February 1, 1989; July 1, 1983;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;*  
*Amended Eff. December 1, 2019.*

#### **21 NCAC 40 .0210 PRESCRIPTION AND INTERPRETATION**

A prescription is a written direction from an ophthalmologist or optometrist for eyeglasses, contact lenses, or other ophthalmic appliances. The prescriber retains discretion in determining the number and type of measurements which will be placed upon the prescription and determines whether the patient is medically or physiologically suited for, or has need for eyeglasses, and/or contact lenses. The optician takes the measurements necessary to fill the prescription and determines the makeup of the lenses, supplementing but not contradicting the prescription. In the event of a question regarding interpretation of the prescription, the question will be discussed with the prescriber and his response shall be promptly recorded in writing by the optician.

*History Note: Authority G.S. 90-235; 90-236; 90-236.1;*  
*Eff. November 1, 1981;*  
*Amended Eff. February 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.*

#### **21 NCAC 40 .0211 MINOR ADJUSTMENTS OR REPAIRS**

To make a minor adjustment means to tighten the temple screws of eyeglasses. To make a minor repair means to replace the temple screws.

*History Note: Authority G.S. 90-239; 90-253;*  
*Eff. January 1, 1986;*  
*Amended Eff. February 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.*

#### **21 NCAC 40 .0212 DUTY TO PROVIDE DIRECT SUPERVISION**

- (a) The failure of a licensed optician who owns or has a controlling interest in an optical place of business, or under whose name an optical place of business or branch thereof is registered, to provide direct supervision as set forth in G.S. 90-253 of an unlicensed person working at such business or branch and performing acts constituting the practice of opticianry shall constitute a violation of G.S. 90-249.1(a)(2).



(b) The failure of an optical place of business to schedule a licensed optician to provide direct supervision as set forth in G.S. 90-253 of an unlicensed person working at the business shall constitute a violation of G.S. 90-249.1(a)(2).

(c) Optometrists and ophthalmologists, and individuals employed by them, are exempt from the provision of direct supervision as set forth in G.S. 90-253, except for those employees registered as trainees with the Board when the optometry or ophthalmology practice is registered with the Board as a training establishment.

*History Note:* Authority G.S. 90-239; 90-249.1(a)(2); 90-253;  
Eff. February 1, 1988;  
Amended Eff. August 1, 1998;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;  
Amended Eff. October 1, 2019.

## **21 NCAC 40 .0213 NEGLIGENCE IN DISPENSING CONTACT LENSES**

*History Note:* Authority G.S. 90-237; 90-240; 90-249;  
Eff. May 1, 1989;  
Repealed Eff. April 1, 2011.

## **21 NCAC 40 .0214 COMPLAINTS; PRELIMINARY DETERMINATIONS**

(a) Complaints may be lodged against any dispensing optician or Board registrant, including registered and non-registered businesses, and shall be submitted to the Board in writing with complainant's name, address, and contact information.

(b) A complaint shall be handled initially by the Board's Director, who may recommend to the Board to dismiss it as unfounded or trivial.

(c) Unless the complaint is dismissed pursuant to Paragraph (b) of this Rule, the Director shall notify the accused of the complaint in writing. Correspondence from the Board shall be deemed to have been received if mailed to either the home or business address of the dispensing optician or Board registrant provided by the individual and shown in the records of the Board, or by available public record for non-registered businesses. The correspondence shall require a written response within 20 days from the date of the Board's notification to the accused.

(d) If the accused does not respond to or denies the circumstances and accusations, the Board's Director shall investigate the allegations contained in the complaint, and may recommend to the Board to dismiss the complaint as unfounded or trivial, or may refer the complaint to a Disciplinary Committee for review. The Chair of the Board shall appoint a Disciplinary Committee of no less than two licensee Board members, who shall hear the Director's initial review of complaints and, if determined by the Director to be more than unfounded or trivial, shall hear the complaint, evidence and investigative findings and make preliminary determinations and recommendations to the Board that one of the following actions be taken:

- (1) the charges be dismissed as unfounded or trivial;
- (2) a Board reprimand be issued to the accused, in a case of admission of guilt;
- (3) if the accused is willing, a compromise be accepted which may include probation, civil penalty, disciplinary action, other penalties as permitted in G.S. 90-249.1 or a combination thereof; or
- (4) the case be presented to the Board, excluding Board members on the Disciplinary Committee, for a contested case hearing.

(e) The Board is not required to follow the recommendations of the Disciplinary Committee.

(f) Probation cessation shall be conditioned upon the optician or registrant's compliance with all provisions of G.S. 90, Article 17, or Title 21, Chapter 40, of the North Carolina Administrative Code for the period imposed, with suspension, revocation, or refusal to renew or reinstate a license, or loss of registrant's training time or revocation of registration upon failure to comply with the conditions.

*History Note:* Authority G.S. 90-239; 90-249(8); 90-249.1;  
Eff. March 1, 1993;  
Amended Eff. September 1, 2012; August 1, 1998;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

## SECTION .0300 - QUALIFICATIONS: APPLICATIONS: AND LICENSING

### 21 NCAC 40 .0301 APPLICATION PHOTOGRAPH REQUIREMENT

An applicant for licensure or examination must attach to an application form a passport-size photograph of the applicant's face taken within the past six months. Photographs shall be retained as a part of applicants' files for the purpose of identification.

*History Note:* Authority G.S. 90-249(a)(6);  
Eff. February 1, 1976;  
Amended Eff. April 1, 2011; February 1, 1989; November 1, 1981; September 6, 1977;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

### 21 NCAC 40 .0302 LICENSURE EXAMINATION FEES

- (a) The fee for licensure examination participation as set forth in G.S. 90-246 shall be remitted to the Board by cash, certified check, or money order. There shall be no prorating of the fee.
- (b) Licensure examination fees shall not be returned due to the withdrawal of the applicant or failure to take the examination after the fee has been accepted by the Board. If, during its review of an application, the Board determines that information submitted is false, misleading, or deceptive, the Board shall deny the application but retain any fees paid.

*History Note:* Authority G.S. 90-245; 90-246;  
Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Amended Eff. September 1, 2012; February 1, 1989; November 1, 1981;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;  
Amended Eff. October 1, 2019.

### 21 NCAC 40 .0303 LICENSURE EXAMINATION AND RE-EXAMINATION

- (a) The licensure exam shall consist of Basic and Practical components. An optician's license shall not be issued until a passing score has been achieved on all components within three years from the date of a passing score having been achieved on one component.
- (b) A candidate who has met the qualifications as defined in G.S. 90-237, and either 90-240 or 90-241(b) shall be admitted to a Practical component of the licensure examination upon the Board's receipt of an executed application and the examination fee as set out in G.S. 90-246.
- (c) The examination shall be administered at least twice yearly, at a time and location specified by the Board or any of its examination administration agents.
- (d) Exam applications obtained by procedures outlined in Rule .0104 of this Chapter must be executed and received by the Board no later than 60 days prior to the opening of the exam registration period specified by the Board or any of its examination administration agents.
- (e) If, during its review of an application, the Board determines that a candidate has participated in a Practical exam without first having their qualifications examined by the Board, the Board shall deny any passing score obtained by the candidate and require subsequent re-examination in the Practical.
- (f) A participant who is unsuccessful in passing an exam component may retake the failed components upon registration and remittance of the examination fee being submitted to the administration agent within the deadline specified by the agent.

*History Note:* Authority G.S. 90-240; 90-249; 93B-8;  
Eff. February 1, 1976;  
Amended Eff. September 1, 2012; February 1, 1989; February 1, 1988; August 1, 1985; July 1, 1983;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;  
Amended Eff. October 1, 2019.

**21 NCAC 40 .0304            QUALIFICATIONS FOR LICENSE**

*History Note:*    Authority G.S. 90-234; 90-236; 90-237; 90-249;  
                          Eff. February 1, 1976;  
                          Amended Eff. July 1, 1983; November 1, 1981; November 1, 1978; September 6, 1977;  
                          Repealed Eff. February 1, 1989.

**21 NCAC 40 .0305            YEARLY RENEWAL FEES**  
**21 NCAC 40 .0306            REINSTATEMENT OF LICENSE**

*History Note:*    Authority G.S. 90-246; 90-249;  
                          Eff. February 1, 1976;  
                          Amended Eff. September 6, 1977;  
                          Readopted Eff. September 29, 1977;  
                          Repealed Eff. November 1, 1981.

**21 NCAC 40 .0307            TIME AND PLACE OF EXAMINATION**

*History Note:*    Authority G.S. 90-240; 90-241;  
                          Eff. February 1, 1976;  
                          Amended Eff. September 6, 1977;  
                          Readopted Eff. September 29, 1977;  
                          Amended Eff. July 1, 1991; February 1, 1989; August 1, 1985; November 1, 1981;  
                          Repealed Eff. September 1, 2012.

**21 NCAC 40 .0308            RENEWAL FEES: LATE PENALTY**

*History Note:*    Authority G.S. 90-249;  
                          Eff. February 1, 1976;  
                          Amended Eff. September 6, 1977;  
                          Repealed Eff. November 1, 1981.

**21 NCAC 40 .0309            TERMS OF RE-EXAMINATION**

*History Note:*    Authority G.S. 90-249;  
                          Eff. February 1, 1976;  
                          Repealed Eff. September 6, 1977.

**21 NCAC 40 .0310            MISCELLANEOUS FEES**

*History Note:*    Authority G.S. 90-249;  
                          Eff. February 1, 1976;  
                          Amended Eff. September 6, 1977;  
                          Repealed Eff. November 1, 1981.

**21 NCAC 40 .0311            CITIZENSHIP**

*History Note:*    Authority G.S. 90-249;  
                          Eff. February 1, 1976;  
                          Repealed Eff. September 6, 1977.

**21 NCAC 40 .0312            APPROVED SCHOOLS OF OPTICIANRY**

A school of opticianry shall be considered approved by the North Carolina State Board of Opticians if it is accredited by the Commission of Opticianry Accreditation and confers a degree of associate in applied science through an ophthalmic dispensing program.

*History Note:* Authority G.S. 90-249;  
Eff. February 1, 1976;  
Amended Eff. February 1, 1989; February 1, 1988; November 1, 1981; September 6, 1977;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

## **21 NCAC 40 .0313 APPRENTICE TRAINING RESTRICTIONS**

*History Note:* Authority G.S. 90-249;  
Eff. February 1, 1976;  
Repealed Eff. September 6, 1977.

## **21 NCAC 40 .0314 APPRENTICESHIP AND INTERNSHIP REQUIREMENTS: REGISTRATION**

(a) Each trainee entering the apprenticeship or internship shall register with the Board providing contact information, training establishment wherein training is being served, name of sponsoring trainer, and paying fees per G.S. 90-246.

- (1) The apprenticeship registration fee shall be paid on initial registration and on or before June 30 each year for an annual renewal.
- (2) The internship registration fee shall be paid on initial registration.
- (3) The work as an apprentice or intern shall be full time, defined as a minimum of 32 hours per week, under the training sponsorship of a licensed optician, ophthalmologist, or optometrist.
- (4) Part-time work or work as an optical salesman or consultant shall not apply toward completion of apprenticeship or internship.
- (5) No more than two persons, whether apprentices or interns or a combination, may be registered and under training sponsorship of any one optician, ophthalmologist, or optometrist at the same time.
- (6) An apprentice or intern shall be credited with training time only from the date of registration and fee payment with the Board as an apprentice or intern.
  - (A) If an apprentice or intern is transferred to another business location or another registered trainer, or ceases employment with the registered training establishment, the trainer shall document to the Board the trainee's beginning and ending dates under their training.
  - (B) An apprentice or intern shall be credited by the Board with time documented by a prior trainer if the apprentice or intern registers under another trainer within 12 months of ending training with a prior trainer.

(b) In addition to the work specified in Subparagraph (a)(3) of this Rule, the curriculum for the apprentice shall include one of the following, as chosen by the apprentice:

- (1) an optical curriculum certificate program presented by a school of opticianry approved pursuant to Rule .0312 of this Chapter; or
- (2) the National Academy of Opticianry's home study Career Progression Program; or
- (3) any apprenticeship program, approved by the Board, which is offered by an optical place of business registered with the Board pursuant to Rule .0202 of this Chapter. The Board shall approve such apprenticeship program if the program's curriculum summary contains subject matter similar to the curriculum summary of the National Academy of Opticianry's home study Career Progression Program.

The classroom and laboratory time spent in the optical curriculum certificate program shall be credited as part of the apprenticeship period and its minimum of 32 hours per week. Certification that the apprentice has completed and passed one of the approved programs shall be required.

(c) When registering to serve a six month internship, the applicant must have completed the two and one-half years of apprenticeship as required by G.S. 90-240(a)(2) and (3) or have completed the course of training required by G.S. 90-240(a)(1).

(d) Trainers shall document to the Board completion of training for apprentices and interns.

*History Note:* Authority G.S. 90-239; 90-240; 90-243; 90-249;  
Eff. February 1, 1976;  
Amended Eff. September 6, 1977;  
Readopted Eff. September 29, 1977;  
Amended Eff. February 1, 1996; January 1, 1994; July 1, 1991; February 1, 1989;

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;*  
*Amended Eff. December 1, 2019.*

**21 NCAC 40 .0315      ADDITIONAL TRAINING REQUISITE TO LICENSURE**  
**21 NCAC 40 .0316      AUTHORITY TO FUNCTION**

*History Note:      Authority G.S. 93B-1 through 93B-10; 90-234; 90-235; 90-237 through 90-249;*  
*Eff. February 1, 1976;*  
*Readopted Eff. September 29, 1977;*  
*Repealed Eff. November 1, 1981.*

**21 NCAC 40 .0317      SCORES OF EXAMINATION**

*History Note:      Authority G.S. 90-240;*  
*Eff. November 1, 1981;*  
*Repealed Eff. February 1, 1989.*

**21 NCAC 40 .0318      TERMS OF EXAMINATION AND RE-EXAMINATION**

*History Note:      Authority G.S. 90-237; 90-240; 90-249;*  
*Eff. November 1, 1981;*  
*Amended Eff. February 1, 1989;*  
*Repealed Eff. September 1, 2012.*

**21 NCAC 40 .0319      APPLICANTS FROM OTHER STATES**

(a) An applicant seeking licensure in North Carolina under G.S. 90-241(a) shall tender an application to the Board as set out in 21 NCAC 40 .0104 accompanied by affidavits from two employers for whom the applicant worked as an optician for the four years immediately preceding the application to the Board, and affidavits from two persons who can attest to the moral character of the applicant. In addition, the applicant shall furnish affidavits from two licensed refractionists, either ophthalmologists or optometrists, for whom the applicant has practiced the profession of opticianry in the state in which the applicant claims credit for the four years prior to the application. An application under G.S. 90-241(a) shall be filed with the Board within 90 days following the termination of the applicant's out-of-state opticianry work for which the applicant claims credit.

(b) An applicant seeking admission to an examination under G.S. 90-241(b) shall tender an application to the Board as set out in 21 NCAC 40 .0104 accompanied by affidavits from two persons under whom or with whom the applicant worked in the practice of opticianry in the other state, either in one or multiple places of business. The application and the affidavits shall describe the tasks performed by the applicant in the other state and the dates the tasks were performed.

*History Note:      Authority G.S. 90-237; 90-239; 90-241; 90-249(12);*  
*Eff. November 1, 1981;*  
*Amended Eff. August 1, 1998; December 1, 1994; July 1, 1991; February 1, 1989;*  
*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;*  
*Amended Eff. December 1, 2019.*

**21 NCAC 40 .0320      LICENSE RENEWAL INFORMATION**

(a) The Board shall send each registrant an application to renew licensure yearly. The application, credits for required education as set forth in 21 NCAC 40 .0206, and the fee as set forth in G.S. 90-246(3) shall be received in the Board office prior to renewal.

- (1) The application form shall provide the registrant's current address, contact and employment information, and an attestation to the Board regarding the registrant's histories concerning arrest and conviction, licensure disciplinary actions, and civil or administrative court proceedings related to occupational licensure or the practice of opticianry.

(b) A registrant in current renewal status may apply to the Board for a change to inactive status. Application for any status change shall be made on the form provided by the Board.

- (1) The application form shall provide the registrant's current address and contact information, and an attestation to the Board that the registrant is working in a field other than opticianry, or is not engaged in active opticianry practice at the time of the status change application.
- (2) A registrant approved for inactive status shall not practice as a licensed optician.
  - (A) A registrant in inactive practice status shall not remain in inactive status if found in practice. The registrant shall apply for a change to active status as set forth in this Rule, and is subject to disciplinary action set forth in G.S. 90-249.1(1).
  - (B) Registrants in inactive status shall complete a renewal form for status renewal and pay the yearly renewal fee as set forth in G.S. 90-246(3) but are not required to obtain annual continuing education hours as set forth in 21 NCAC 40. 0206.

(c) A registrant in inactive status may apply to the Board to change to active status. Application for a status change shall be made on a form provided by the Board.

- (1) The application form shall provide the registrant's current address and contact information.
- (2) Credits for having attended required education, as set forth in 21 NCAC 40 .0206, the fee as set forth in G.S. 90-246(3), and the application form shall be received in the Board office and approved prior to the registrant's resumption of opticianry practice.

(d) The Board shall notify registrants of receipt of yearly licensure renewal and of approval of status changes.

*History Note: Authority G.S. 90-239; 90-244(b);  
Eff. November 1, 1981;  
Amended Eff. February 1, 1989; February 1, 1988; August 1, 1985; July 1, 1983;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;  
Amended Eff. October 1, 2019.*

#### **21 NCAC 40 .0321 TRAINING ESTABLISHMENT REQUIREMENTS**

(a) Any North Carolina licensed optician, ophthalmologist, or optometrist as provided in G.S. 90-237(4) and G.S. 90-240(a)(2) and (3) who are potential trainers for an apprentice or intern to become an optician can download an application form from the Board's website at [www.ncopticiansboard.org](http://www.ncopticiansboard.org). Any person not able to download an application form may request that the Board mail the materials which the Board will mail to the requesting person.

- (1) In completing the application, applicants shall provide address and contact information for optical place of business, optometry, or ophthalmology office where training will be given, name or names of training sponsors and license numbers, and pay registration fees per G.S. 90-246.
- (2) The registration fee shall be paid on initial registration and on or before June 30 each year for an annual renewal.

(b) The apprentice or intern shall provide to the Board documentation to show that the training establishment provides optical equipment and instruments, reference resources and work processes and tasks to conduct training in opticianry.

(c) Optical equipment and instruments required to be on site and used during training are:

- (1) Focimeter, also termed lensometer;
- (2) Pupillary distance ruler;
- (3) Pupillometer;
- (4) Lens clock;
- (5) Calipers, also termed thickness gauge;
- (6) Polariscope;
- (7) Salt or bead pan, also termed frame warmer;
- (8) Frame adjustment tools;
- (9) Distometer;
- (10) Staking kit, also termed punch kit;
- (11) Frame repair replacement parts to include screws, temples, and hinges; and
- (12) Training establishments wherein only interns are registered are not required to have a polariscope as set forth in Paragraph (c) of this Rule.

(d) Reference materials required to be on site for use by trainees may be either one or both of:

- (1) The textbooks used by students of the certificate program administered by Durham Technical Community College, or
  - (2) All volumes of the National Academy of Opticianry's home study Career Progression Program approved pursuant to Rule .0314(b)(1) or (2) of this Section.
- (e) Apprentice training shall be comprised of work processes required for proficiency, and successful completion of the licensure examination as defined in G.S. 90-240(b) and Rule .0303(a) of this Section.
- (1) Topics and processes to be covered during training, with minimum hours are:
    - (A) Orientation to opticianry – 38 hours
    - (B) Ophthalmic optics – 461 hours
    - (C) Assembly and repair of eyewear – 576 hours
    - (D) Eyewear fitting – 1,114 hours
    - (E) Lens grinding – 422 hours
    - (F) Ocular anatomy and physiology – 422 hours
    - (G) Contact lenses – 653 hours
    - (H) Recordkeeping – 177 hours
  - (2) An apprentice shall complete a competency review test issued by the Board every six months of their registered apprenticeship and have their sponsoring trainer sign to its completion.
    - (A) The review test shall cover the processes defined in the Board training topics in Paragraph (e) above that correspond to the six-month period of training in which the apprentice is registered and contain multiple-choice answers.
    - (B) The Board shall return the graded answer sheet of the review test for the trainee and trainer to identify training topics and processes wherein additional training may be beneficial.
    - (C) A passing score on the review test is not required for apprenticeship registration to continue.
- (f) Internship training shall be comprised of work processes required for review of training received during the apprenticeship defined in Paragraph (e) of this Rule, or as required by G.S. 90-240(a)(1) or G.S. 90-240(a1). Topics and processes to be covered during internship, with minimum hours are:
- (1) Assembly and repair of eyewear – 355 hours
  - (2) Repair of eyewear – 160 hours
  - (3) Eyewear fitting – 375 hours
  - (4) Recordkeeping – 50 hours
  - (5) Contact lenses – 100 hours
- (g) The apprentice or intern shall provide any information requested by the Board for documentation regarding the manner and method by which training is conducted and allow random inspections by Board staff of the facility wherein training is conducted.
- (1) At the time of inspection, Board staff shall verify the presence of the required training equipment and reference materials per Paragraph (d) and (e) of this Rule; the registrations and display of same for trainees and the facility per Rule .0209(a) and (b) of this Chapter; and the documentation maintained by the trainee of the topics and work processes covered in training by trainee and trainer per Paragraph (f) of this Rule.
  - (2) The trainee and Board staff shall sign the inspection form verifying their acknowledgement of any missing equipment or resources, or missing or incomplete documentation required by this Rule.

*History Note:* Authority G.S. 90-237(4); 90-240(a)(3); 90-243; 90-246; 90-249; 90-249.1; Eff. November 1, 1981; Amended Eff. February 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018; Amended Eff. March 1, 2020.

## **21 NCAC 40 .0322            TEMPORARY LICENSES**

*History Note:* Authority G.S. 90-241; 90-249; 90-250; 90-252; Eff. November 1, 1981; Repealed Eff. February 1, 1989.

**21 NCAC 40 .0323 AFFIDAVIT OF APPLICANT**

- (a) Applicants for any Board training, registration, examination, and licensure process shall attest to the completeness and accuracy of the information contained in applications.
- (b) Upon obtaining agreement from an applicant, the Board shall conduct a criminal background check during review of an applicant as identified in Paragraph (a) of this Rule. Application fees are inclusive of costs involved for such investigations, and no additional charges shall be assessed against the applicant.
- (c) If an applicant submits incomplete, false, or misleading information, the Board shall deny the applicant admission to examination, apprenticeship, internship, business, or training establishment registrations or licensure.
- (d) It is a violation of G.S. 90-249.1 for any optician shown on a registration application to submit incomplete, false, or misleading information.

*History Note:* Authority G.S. 90-243; 90-249; 90-249.1;  
Eff. November 1, 1981;  
Amended Eff. September 1, 2012; February 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018;  
Amended Eff. December 1, 2019.

**21 NCAC 40 .0324 CHARACTER; CONVICTIONS**

When any provision of G.S. 90, Article 17, requires an applicant to have good moral character, the applicant shall submit to the Board affidavits of two persons who have been acquainted with the applicant for at least three years immediately preceding the application. The Board shall require applicants for licensure and for license renewals and reinstatements to state whether the applicant has been convicted of a crime.

*History Note:* Authority G.S. 90-237(2a); 90-239; 90-241(a)(2); 90-249.1(a)(8);  
Eff. August 1, 1998;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

**21 NCAC 40 .0325 LICENSURE FOR MILITARY-TRAINED APPLICANT; LICENSURE FOR MILITARY SPOUSE**

- (a) Licensure for a military-trained applicant. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military-trained applicant, the Board shall issue a license to the applicant who satisfies the following conditions:
  - (1) submission of a complete application with applicant's name and contact information, and date of birth;
  - (2) providing documentation to satisfy conditions set out in G.S. 93B-15.1(a)(1) and (2); and
  - (3) providing documentation that the applicant has not committed any act in any jurisdiction that would constitute grounds for refusal, suspension, or revocation of a license in North Carolina at the time the act was committed.
- (b) Licensure for a military spouse. Upon receipt of a request for licensure pursuant to G.S. 93B-15.1 from a military spouse, the Board shall issue a license to the applicant who satisfies the following conditions:
  - (1) submission of a complete application with applicant's name and contact information, and date of birth;
  - (2) submission of written documentation demonstrating that the applicant is married to an active member of the U.S. military; and
  - (3) providing documentation to satisfy conditions set out in G.S. 93B-15.1(b)(1) through (4).

*History Note:* Authority G.S. 90-234; 90-239; 93B-15.1;  
Eff. December 1, 2019.

**SECTION .0400 - ADMINISTRATIVE HEARINGS**

**21 NCAC 40 .0401 NOTICE OF HEARING**



<b>21 NCAC 40 .0402</b>	<b>AGGRIEVED PERSON</b>
<b>21 NCAC 40 .0403</b>	<b>INTERVENTION DURING HEARING</b>
<b>21 NCAC 40 .0404</b>	<b>TYPES OF INTERVENTION</b>
<b>21 NCAC 40 .0405</b>	<b>FAILURE TO APPEAR</b>
<b>21 NCAC 40 .0406</b>	<b>SIMPLIFICATION OF ISSUES</b>
<b>21 NCAC 40 .0407</b>	<b>SUBPOENAS</b>

*History Note:* Authority G.S. 1A-1; 90-249; 150A-23(a); 150A-25(a); 150A-27; 150A-33(5); 150A-43 through 150A-46; Eff. February 1, 1976; Readopted Eff. September 29, 1977; Repealed Eff. November 1, 1981.

**21 NCAC 40 .0408 APPLICABLE HEARING RULES**

When the Board elects to have the Office of Administrative Hearings hear a contested case, the Board's rules pertaining to contested case hearings, instead of the rules of the Office of Administrative Hearings, shall apply.

*History Note:* Authority G.S. 90-249; 150B-38(h); Eff. May 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

**21 NCAC 40 .0409 RIGHT TO HEARING**

When the Board acts or proposes to act, other than in rulemaking or declaratory ruling proceedings, in a manner which will affect the rights, duties, or privileges of a specific, identifiable person, such person has the right to an administrative hearing. When the Board proposes to act in such a manner, it shall give all such affected persons notice of their right to a hearing by mailing to them, by certified mail, at their last known address a notice of the proposed action and a notice of a right to a hearing.

*History Note:* Authority G.S. 90-239; 150B-11; 150B-38; Eff. May 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

**21 NCAC 40 .0410 REQUEST FOR HEARING**

(a) Any time an individual believes that individual's rights, duties, or privileges have been affected by the Board's administrative action, but has not received notice of a right to an administrative hearing, that individual may file a formal request for a hearing.

(b) Before an individual may file a request, that individual is encouraged to exhaust all reasonable efforts to resolve the issue informally with the Board.

(c) Subsequent to such informal action, if still dissatisfied, the individual should submit a request to the Board's office, with the request bearing the notation: REQUEST FOR ADMINISTRATIVE HEARING. The request should contain the following information:

- (1) name and address of the petitioner,
- (2) a concise statement of the action taken by the Board which is challenged,
- (3) a concise statement of the way in which the petitioner has been aggrieved, and
- (4) a clear and specific statement of request for a hearing.

(d) The request will be acknowledged promptly and, if deemed appropriate by the Board in accordance with 21 NCAC 40 Rule .0411, a hearing will be scheduled.

*History Note:* Authority G.S. 90-239; 150B-11; 150B-38; Eff. May 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

**21 NCAC 40 .0411 GRANTING OR DENYING HEARING REQUEST**

- (a) The Board will grant a request for a hearing if it determines that the party requesting the hearing is a "person aggrieved" within the meaning of G.S. 150B-2(6).
- (b) The denial of a request for a hearing will be issued immediately upon decision, and in no case later than 60 days after the submission of the request. Such denial shall contain a statement of the reasons leading the Board to deny the request.
- (c) Approval of a request for a hearing will be signified by issuing a notice as required by G.S. 150B-38(b) and explained in Rule .0412 of this Section.

*History Note:* Authority G.S. 90-239; 150B-11; 150B-38;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

#### **21 NCAC 40 .0412 NOTICE OF HEARING**

- (a) The Board shall give the party or parties in a contested case a notice of hearing not less than 15 days before the hearing. Said notice shall contain the following information, in addition to the items specified in G.S. 150B-38(b):
  - (1) the name, position, address, and telephone number of a person at the offices of the Board to contact for further information or discussion;
  - (2) the date, time, and place for a pre-hearing conference, if any; and
  - (3) any other information deemed relevant to informing the parties as to the procedure of the hearing.
- (b) If the Board determines that the public health, safety or welfare requires such action, it may issue an order summarily suspending a license. Upon service of the order, the licensee to whom the order is directed shall immediately cease the practice of opticianry in North Carolina. The Board shall promptly give notice of hearing pursuant to G.S. 150B-38 following service of the order. The suspension shall remain in effect pending issuance by the Board of a final agency decision pursuant to G.S. 150B-42.

*History Note:* Authority G.S. 90-239; 150B-3(c); 150B-11; 150B-38;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

#### **21 NCAC 40 .0413 WHO SHALL HEAR CONTESTED CASES**

All administrative hearings will be conducted by the Board, a panel consisting of a majority of the members of the Board, or an administrative law judge designated to hear the case pursuant to G.S. 150B-40(e).

*History Note:* Authority G.S. 90-239; 150B-11; 150B-38; 150B-40;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

#### **21 NCAC 40 .0414 INFORMAL PROCEDURES**

The Board and the party or parties may agree in advance to simplify the hearing by: decreasing the number of issues to be contested at the hearing; accepting the validity of certain proposed evidence; accepting the findings in some other case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

*History Note:* Authority G.S. 90-239; 150B-11; 150B-41;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

#### **21 NCAC 40 .0415 PETITION FOR INTERVENTION**

- (a) A person desiring to intervene in a contested case must file a written petition with the Board's office. The request should bear the notation: PETITION TO INTERVENE IN THE CASE OF (Name of case).
- (b) The petition must include the following information:
  - (1) the name and address of petitioner;
  - (2) the business or occupation of petitioner, where relevant;

- (3) a full identification of the hearing in which petitioner is seeking to intervene;
  - (4) the statutory or non-statutory grounds for intervention;
  - (5) any claim or defense in respect of which intervention is sought; and
  - (6) a summary of the arguments or evidence petitioner seeks to present.
- (c) If the Board determines to allow intervention, notice of that decision will be issued promptly to all parties, and to the petitioner. In cases of discretionary intervention, such notification will include a statement of any limitations of time, subject matter, evidence or whatever else is deemed necessary which are imposed on the intervenor.
- (d) If the Board's decision is to deny intervention, the petitioner will be notified promptly. Such notice will be in writing, identifying the reasons for the denial, and will be issued to the petitioner and all parties.

*History Note:* Authority G.S. 90-239; 150B-11; 150B-38;  
 Eff. May 1, 1989;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

**21 NCAC 40 .0416 TYPES OF INTERVENTION**

- (a) Intervention of Right. A petition to intervene as of right, as provided in the North Carolina Rules of Civil Procedure, Rule 24, will be granted if the petitioner meets the criteria of that rule and the petition is timely.
- (b) Permissive Intervention. A petition to intervene permissively as provided in the North Carolina Rules of Civil Procedure, Rule 24 will be granted if the petitioner meets the criteria of that rule and the Board determines that:
- (1) There is sufficient legal or factual similarity between the petitioner's claimed rights, privileges, or duties and those of the parties to the hearing; and
  - (2) Permitting intervention by the petitioner as a party would aid the purpose of the hearing.
- (c) Discretionary Intervention. The Board may allow discretionary intervention, with whatever limits and restrictions are deemed appropriate.

*History Note:* Authority G.S. 90-239; 150B-11; 150B-38;  
 Eff. May 1, 1989;  
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

**21 NCAC 40 .0417 DISQUALIFICATION OF BOARD MEMBERS**

- (a) Self-disqualification. If for any reason a Board member determines that personal bias or other factors render that member unable to hear a contested case and perform all duties in an impartial manner, that Board member shall voluntarily decline to participate in the hearing or decision.
- (b) Petition for Disqualification. If for any reason any party in a contested case believes that a Board member is personally biased or otherwise unable to hear a contested case and perform all duties in an impartial manner, the party may file a sworn, notarized affidavit with the Board. The title of such affidavit should bear the notation: AFFIDAVIT OF DISQUALIFICATION OF BOARD MEMBER IN THE CASE OF (Name of case).
- (c) Contents of Affidavit. The affidavit must state all facts the party deems to be relevant to the disqualification of the Board member.
- (d) Timeliness and Effect of Affidavit. An affidavit of disqualification will be considered timely if filed ten days before commencement of the hearing. Any other affidavit will be considered timely provided it is filed at the first opportunity after the party becomes aware of facts which give rise to a reasonable belief that a Board member may be disqualified under this Rule. Where a petition for disqualification is filed less than ten days before or during the course of a hearing, the hearing shall continue with the challenged Board member sitting. Petitioner shall have the opportunity to present evidence supporting his petition, and the petition and any evidence relative thereto presented at the hearing shall be made a part of the record. The Board, before rendering its decision, shall decide whether the evidence justifies disqualification. In the event of disqualification, the disqualified member will not participate in further deliberation or decision of the case.
- (e) Procedure for Determining Disqualification:
- (1) The Board will appoint a Board member to investigate the allegations of the affidavit.
  - (2) The investigator will report to the Board the findings of the investigation.
  - (3) The Board shall decide whether to disqualify the challenged individual.
  - (4) The person whose disqualification is to be determined will not participate in the decision but may be called upon to furnish information to the other members of the Board.

- (5) When a Board member is disqualified prior to the commencement of the hearing or after the hearing has begun, such hearing will continue with the remaining members sitting provided that the remaining members still constitute a majority of the Board.
- (6) If four or more members of the Board are disqualified pursuant to this Rule, the Board shall petition the Office of Administrative Hearings to appoint an administrative law judge to hear the contested case pursuant to G.S. 150B-40(e).

*History Note: Authority G.S. 90-239; 150B-11; 150B-38; 150B-40; Eff. May 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.*

#### **21 NCAC 40 .0418 SUBPOENAS**

- (a) Requests for subpoenas for the attendance and testimony of witnesses or for the production of documents, either at a hearing or for the purposes of discovery, shall be made in writing to the Board, shall identify any document sought with specificity, and shall include the full name and home or business address of all persons to be subpoenaed and, if known, the date, time, and place for responding to the subpoena. The Board shall issue the requested subpoenas within three days of receipt of the request.
- (b) Subpoenas shall contain: the caption of the case; the name and address of the person subpoenaed; the date, hour and location of the hearing in which the witness is commanded to appear; a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any; the identity of the party on whose application the subpoena was issued; the date of issue; the signature of the presiding officer or his designee; and a "return of service". The "return of service" form, as filled out, shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person directed to make service, the date on which service was made, the person on whom service was made, the manner in which service was made, and the signature of the person making service.
- (c) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the sheriff's service fee. The subpoena shall be issued in duplicate, with a "return of service" form attached to each copy. A person serving the subpoena shall fill out the "return of service" form for each copy and properly return one copy of the subpoena, with the attached "return of service" form completed, to the Board.
- (d) Any person receiving a subpoena from the Board may object thereto by filing a written objection to the subpoena with the Board's office.
- (e) Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.
- (f) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.
- (g) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.
- (h) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party challenging the subpoena, and may notify any other party or parties of an open hearing, to be scheduled as soon as practicable, at which evidence and testimony may be presented, limited to the narrow questions raised by the objection and response.
- (i) Promptly after the close of such hearing, the majority of the Board members hearing the contested case will rule on the challenge and issue a written decision. A copy of the decision will be issued to all parties and made a part of the record.

*History Note: Authority G.S. 90-239; 150B-11; 150B-38; 150B-39; 150B-40; Eff. May 1, 1989; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.*

#### **21 NCAC 40 .0419 WITNESSES**

Any party may be a witness and may present witnesses on the party's behalf at the hearing. All oral testimony at the hearing shall be under oath or affirmation and shall be recorded. At the request of a party or upon the Board's own motion, the presiding officer may exclude witnesses from the hearing room so that they cannot hear the testimony of other witnesses.

*History Note:* Authority G.S. 90-239; 150B-11; 150B-38; 150B-40;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

#### **21 NCAC 40 .0420 FINAL DECISION**

In all cases heard by the Board, the Board will issue its decision within 60 days after its next regularly scheduled meeting following the close of the hearing. This decision will be the prerequisite "final agency decision" for the right to judicial review.

*History Note:* Authority G.S. 90-239; 150B-11; 150B-38; 150B-42;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

#### **21 NCAC 40 .0421 PROPOSALS FOR DECISIONS**

(a) When an administrative law judge conducts a hearing pursuant to G.S. 150B-40(e), a "proposal for decision" shall be rendered within 45 days of the hearing pursuant to the Rules of the Office of Administrative Hearings, 26 NCAC 3 .0026. The parties may file written exceptions to this "proposal for decision" and submit their own proposed findings of fact and conclusions of law. The exceptions and alternative proposals must be filed within ten days after the party has received the "proposal for decision" as drafted by the administrative law judge.

(b) Any exceptions to the procedure during the hearing, the handling of the hearing by the administrative law judge, rulings on evidence, or any other matter must be written and refer specifically to pages of the record or otherwise precisely identify the occurrence to which exception is taken. The exceptions must be filed with the Board within ten days of the receipt of the proposal for decision. The written exceptions should bear the notation: EXCEPTIONS TO THE PROCEEDINGS IN THE CASE OF (Name of case).

(c) Any party may present oral argument to the Board upon request. The request must be included with the written exceptions.

(d) Upon receipt of request for further oral argument, notice will be issued promptly to all parties designating the time and place for such oral argument.

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered will be a part of the record and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision will be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision will be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions.

*History Note:* Authority G.S. 90-239; 150B-11; 150B-38; 150B-40;  
Eff. May 1, 1989;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

#### **21 NCAC 40 .0422 MOTIONS FOR CONTINUANCE**

(a) The Chair or presiding officer shall grant motions for a continuance of a hearing upon a showing of good cause. In determining whether good cause exists, the Chair or presiding officer shall consider the ability of the party requesting a continuance to:

- (1) Proceed effectively without a continuance;
- (2) Obtain legal counsel, and whether efforts to obtain counsel have been diligent;
- (3) Obtain consent of the other party in the hearing;
- (4) Have key witnesses that are unavailable for the hearing; and

- (5) Have witnesses who have been served with a subpoena unavailable for the hearing.
- (b) Motions for a continuance shall be in writing and shall be received in the office of the Board no less than seven calendar days before the hearing date.
- (c) A motion for a continuance which is filed less than seven calendar days from the date of the hearing shall be denied, unless the reason for the motion could not have been ascertained earlier.
- (d) Motions for continuance filed on the day of the hearing shall be ruled on by the Chair or presiding officer.

*History Note:* Authority G.S. 90-239;  
Eff. September 1, 2012;  
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. December 22, 2018.

#### **SECTION .0500 - DECLARATORY RULINGS**

**21 NCAC 40 .0501**      **SUBJECTS OF DECLARATORY RULINGS**  
**21 NCAC 40 .0502**      **SUBMISSION OF REQUEST FOR RULING**  
**21 NCAC 40 .0503**      **DISPOSITION OF REQUESTS**

*History Note:* Authority G.S. 90-249; 150A-17;  
Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Repealed Eff. November 1, 1981.

#### **SECTION .0600 - RULEMAKING HEARINGS**

**21 NCAC 40 .0601**      **REQUEST TO PARTICIPATE**  
**21 NCAC 40 .0602**      **CONTENTS OF REQUEST: TIME LIMITATIONS**  
**21 NCAC 40 .0603**      **WRITTEN SUBMISSIONS**  
**21 NCAC 40 .0604**      **BOARD PRESIDING AT HEARING**  
**21 NCAC 40 .0605**      **STATEMENT OF REASONS FOR DECISION**

*History Note:* Authority G.S. 90-249; 150A-12(a); 150A-12(d); 150A-12(e);  
Eff. February 1, 1976;  
Readopted Eff. September 29, 1977;  
Repealed Eff. November 1, 1981.