

# **Mississippi State Board of Optometry Rules and Regulations**

## **Title 30: Professions and Occupations**

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# **Mississippi State Board of Optometry Rules and Regulations**

## **Title 30: Professions and Occupations**

### **Part 2901: Mississippi State Board of Optometry Rules and Regulations**

#### **Part 2901 Chapter 1: Examinations**

##### **Rule 1.1 Definitions.**

The following words and terms, when used in these Rules and Regulations, shall have the following meanings, unless the context clearly indicates otherwise.

- (a) Open Records Act – Mississippi Public Record Act of 1983.
- (b) NBEO – National Board of Examiners in Optometry
- (c) Counsel – Attorney General’s Office
- (d) Executive Director – The person or entity hired to provide management services for the Board.
- (e) Diagnostic Optometrist – An optometrist certified to use diagnostic pharmaceutical agents.
- (f) Therapeutic Optometrist – An optometrist certified to use therapeutic pharmaceutical agents.
- (g) Primary Eye Care Procedures Optometrist (PEP) - An optometrist certified to perform primary eye care procedures. PEP certified optometrists will have a PEP designation added to their license number.
- (h) Primary Eye Care Procedures – Primary eye care procedures are procedures that employ incision, injection, laser, radiation, cautery, cryotherapy, vaporization, ultrasound, chelation, ionization, intense light, UV, radio frequency and other surgical methods, chemical reactions, or instruments, not otherwise excluded within this statute.

Exclusions defined within this statute include:

- (a). Intraocular surgery, not including YAG laser posterior capsulotomy.
- (b). Intraocular injection
- (c). Intraocular transplantation
- (d). Intraocular aspiration or the ordering of for diagnostic purposes
- (e). Intraocular penetration or the ordering of for diagnostic purposes
- (f). Use of medications that must be injected or implanted into the eye or orbit

- (g). Biopsy of any part of the globe or the ordering of for diagnostic purposes
- (h. Injection of dermal fillers and substances such as hyaluronic acid and poly-L-lactic acid for cosmetic purposes.
- (i). Removal of foreign bodies that involve eyelid margins, lacrimal drainage structures, or extending deeper than the orbicularis muscle.
- (j). Reconstructive surgery of the eyelid.
- (k). Cataract Surgery

(i) Authorized Ophthalmic Surgery Procedures - primary eye care procedures that may require a board approved credentialing process and shall include reporting of outcomes of every procedure performed as required by the board.

(j) Administration is the delivery of pharmaceutical agents that includes topical, oral, nasal, inhalation, implantation, intramuscular, infiltrative, intralesional, intravenous, subcutaneous, sublingual, subconjunctival and any delivery not excluded within this statute.

(k) Monitored anesthesia care and general anesthesia are not Board approved.

Source: *Miss Code Ann.* § 73-19-1; §73-19-101; §73-19-151 section 157

**Rule 1.2 Application process and background checks .**

- (a) The applicant shall make application to the Executive Director, on forms to be furnished by the board. And shall include a photograph for identification purposes.
- (b) Such application shall contain references as to good moral character from at least two optometrists licensed by the State of Mississippi and who are actively engaged in the practice of optometry, and in good standing. In the event this is not possible, affidavits from two persons not related to the applicant or to each other, who have known the applicant for at least five years, attesting to the good moral character of the applicant, will be acceptable.
- (c) The applicant shall provide primary source verification of passage of all parts the (NBEO) National Board of Examiners of Optometry examination.
- (d) The applicant must request that letters of good standing be sent to the state board office for all other states in which they have ever held a license to practice. Any person furnishing false information in such application shall be denied the right to take the examination, or if the applicant has been licensed before it is made known to the board of the falseness of such information, such license shall be subject to suspension, revocation, or cancellation.
- (e) Certified copies of the transcript of record from pre-optometry and optometry colleges attended by the applicant shall accompany each application, which certified transcript of record shall show the total number of hours of attendance, the subjects studied, the grades or marks given, and the date of graduation of the applicant. The completed application and examination fee must be filed with the Executive Director not later than 30 days prior to the date of the

examination. In the event an applicant intends to retake the examination, the fee therefore and the notice to this intention to retake said examination must also be in the Executive Director's office 30 days prior to the date of the examination.

- (f) The fee for taking the initial examination shall be \$200 for Mississippi residents and \$300 for non-residents. PEP certification will require an additional \$750.00 fee
- (g) No application fee for examination will be returned to any applicant after the application has been approved by the board, because of the decision of the applicant not to stand for the examination or failure for any reason to take the examination
- (h) To conduct a criminal history records, check on licensees whose licensure is subject to investigation by the Board and on applicants for licensure. In order to determine the applicant's or licensee's suitability for licensing, the applicant or licensee shall be fingerprinted. The Board shall be authorized to charge and collect from the applicant or licensee, in addition to all other applicable fees and costs, such amount as may be incurred by the Board in requesting and obtaining state and national criminal history records information on the applicant or licensee.

Source: *Miss Code Ann.* § 73-19-17 73-19-23 (b)

### **Rule 1.3 National Board Examination.**

- (a) The board determines that the written examination by the National Board of Examiners in Optometry (NBEO) complies in all material respects with the examination requirements of the Act.
- (b) Each applicant shall submit a true and correct copy of the applicant's score report to the Executive Director, and such other evidence of having achieved a passing grade on each Part of the NBEO examination as the Executive Director may determine.

Source: *Miss Code Ann.* § 73-19-17; §73-19-153

### **Rule 1.4 Jurisprudence Examination Administration.**

- (a) This examination, administered by the board, shall be a written jurisprudence examination. The passing grade shall be 70.
- (b) Examination for a license to practice optometry in this state shall be conducted in the English language in writing and by such other means as the board shall determine adequate to ascertain the qualifications of the applicant. Each applicant shall be given due notice of the date and place of examination.
- (c) Prior to an examination, the Executive Director or a member of the board designated by the chairman shall prepare a tentative schedule showing the time allotted to each examination and the order in which each will be given, said schedule to meet the approval of a majority of the members of the board. The tentative schedule of examination, and any changes made therein as the examination proceeds, shall be made known to the applicants during each day of the examination.

- (d) Applicants shall not communicate any words or signs with another applicant while the examination is in progress without the permission of the presiding examiner, nor leave the examination room except when so permitted by the presiding examiner. Violations of this rule shall subject the offender to expulsion.
- (e) One member of the board, or delegated proctor, shall at all times be in the exam room while the examination is in progress and no persons except applicants, board members, employees of the board or persons having the express permission of the board shall be permitted in the examination rooms.
- (f) At the beginning of an examination each applicant shall be assigned a number. Applicants shall use the number assigned to them for purposes of identification throughout the examination, and no applicant name or any other identification mark other than the assigned number shall be entered on any paper containing answers to the questions of an examination. Members of the board shall in every way endeavor to avoid identification of an applicant prior to the awarding of the general averages.
- (g) When examination papers are delivered to the presiding examiner, they become the property of the board and shall not be returned to the applicant. Each board member shall be responsible for his own examination papers until after final grading and awarding of general averages. All test papers must, at this point, be retained in the board office to be preserved for a period of 30 days after final grading in order to allow an unsuccessful candidate the opportunity to request an analysis of such person's performance, which request must be made in writing within such 30-day period.

**Rule 1.4.5 Primary Eyecare Procedure Certification**

Mississippi State Board of Optometry requires certification to perform primary eye care procedures and certain administration. The certification process will include the credentialing process to perform the authorized ophthalmic surgery procedure YAG laser posterior capsulotomy and require:

- (a) Provides proof of holding a Mississippi license to practice therapeutic optometry and is in good standing;
- (b) Provides proof of satisfactory completion of a course of instruction as approved by the board. Those graduating from an accredited school or college of optometry within five (5) years after the effective date of this act may be excluded from course completion requirement, provided that the candidate has successfully passed appropriate coursework to fulfill requirements as determined by the board.

The board-approved course of instruction shall be:

- (i) Provided by an accredited optometry, osteopathy or medical school and not completed before May 1,2021.
- (ii) To be completed in a time that is no longer than two years before final certification date

(iii) A minimum of thirty-two (32) clock hours in length that includes at least 6 hours in hands on laboratory work.

- a. laser physics, hazards, and safety;
- b. biophysics of lasers;
- c. laser application on clinical optometry;
- d. laser tissue interactions;
- e. laser indications, contraindications, and potential complications;
- f. gonioscopy;
- g. laser applications in glaucoma care;
- h. YAG application in primary eye care
- i. YAG laser posterior capsulotomy;
- j. common complications: lids, lashes, lacrimal system;
- k. medicolegal aspects of anterior segment procedures;
- l. minor surgical procedures;
- m. overview of surgical instruments, asepsis, and O.S.H.A.;
- n. surgical anatomy of the eyelids;
- o. emergency surgical procedures;
- p. chalazion management;
- q. epiluminescence microscopy;
- r. local anesthesia: techniques and complications;
- s. injectable pharmaceuticals in primary eye care;
- t. anaphylaxis and other office emergencies;
- u. radiofrequency surgery;
- v. post-operative wound care;
- w. suturing;
- x. clinical/lab work

(iv) Sponsored by an organization approved by the board

(c) Satisfactorily completes a written test approved by the board on aspects pertaining to primary eye care procedures including YAG laser posterior capsulotomy and injectable pharmaceuticals. Passage of the state board written exam or the National Board of Examiners in Optometry, Laser and Surgical Procedures Examination, and Injection Skills Examination will be accepted.

d) Passes a clinical skills assessment as it pertains to Yag laser posterior capsulotomy that is approved by the board;

(e) Participates in eight (8) additional hours of working under a preceptor who is either an ophthalmologist or licensed credentialed optometrist .The preceptor must be licensed to perform the ophthalmic YAG laser posterior capsulotomy procedures, and the training shall occur within the state in which the preceptor is licensed to perform such procedures. The preceptorship must be completed within 3 months of passage of skills assessment.

f) 32 hour course exemptions may be considered for qualifying optometry graduates from 2022 and after, if candidates' institution has signed and filed an affidavit attesting to curriculum inclusion of such course equivalent. The exemption is good for a period of two years from graduation date to certification date.



- (g) In case of failure, the Board will make available a re-test within 90 days. In case of a second failure, the applicant must repeat the certification process, including all fees.
- (h) Such other requirements as may be determined by the Board.

Source: *Miss Code Ann.* § 73-19-9 Section 73-19-1

**Rule 1.5 Re-examinations.**

- (a) Any applicant taking the board examination for the second time who has failed to pass one or more of the tests will be required to retake all tests which were failed.
- (b) If a candidate has not passed the board after a second examination, the candidate will not be permitted to retake the examination until he has completed a further course of study outlined by the board and paid the examination fee therefor.
- (c) An applicant will be considered to be taking the board examination for the first time regardless of the number of previous examinations taken if the examination is not taken within two years (two consecutive examinations as given by the board) following the last failure.
- (d) In case of failure of any examination, after the expiration of six (6) months, and within two (2) years, the applicant shall have the privilege of retaking the examination without payment of an additional fee. (73-19-17)

Source: *Miss Code Ann.* §73-19-17; §73-19-19

**Rule 1.6 Examination review procedure:**

- (a) Each individual who takes the examination for licensure as an optometrist and does not pass the examination shall be provided with copies of his/her examination scores upon notification or his/her failure of the examination. In addition, the failing candidate shall be provided with a copy of this regulation so that she/he will be fully advised of the review procedure.
- (b) If the failing candidate desires to see his/her failing criteria; she/he may make a written request for such information from the board. The board will see to it that contents of the examination are made available for the candidate's review for a period of up to 2 hours. The failing candidate will not be permitted to copy or reproduce anything, however, as the integrity of the examination must be preserved.
- (c) If a failing candidate desires to request a review by this board of his/her examination results, she/he must file a written request for review within ninety (90) days of the date of the notice of the failure of examination. The request must be in writing, sent by certified mail return receipt requested, and must be received in the office of the board on or before five (5) o'clock p.m. on the ninetieth (90) day.
- (d) The written request for review by the board must state with sufficient clarity the reasons why the applicant feels the results of the examination should be changed. If the board determines that the request does not adequately state the reasons for review, the board may either dismiss the review or request additional information from the candidate, and the board may extend the deadline mentioned above in order to permit elaboration by the candidate.

- (e) Upon receipt of the written request for review, the board may conduct a review of the examination results and the written request for review in a closed session. This closed session review by the board may be conducted at a time and place to be determined by the board in its complete discretion.
- (f) If the candidate requests, an informal conference will be scheduled by the board. The informal conference may occur in closed session at a regularly scheduled board meeting and may be attended by the individual board members attending the meeting, the board's legal counsel or a representative or the Attorney General's office, and the candidate. The candidate may choose to be represented by counsel, however, counsel for the candidate will not be permitted to engage in discussions with the board. Counsel for the candidate may advise the candidate, but any questions propounded by the board to the candidate are to be answered by the candidate. The candidate will be afforded the opportunity to discuss his or her examination results with the board, but the board will not be required to answer questions propounded by the candidate.
- (g) The burden will be on the candidate to show substantial cause why the results should be changed. The board will consider the following to be adequate reasons for modification of examination results:
  - (1) A showing of significant procedural error in the examination process
  - (2) Evidence of bias, prejudice, or discrimination in the examination process
  - (3) Clearly erroneous grading
  - (4) Other significant errors which result in substantial disadvantage to the candidate

Source: *Miss Code Ann* § 73-19-9; §73-19-153

**Rule 1.7 Reciprocity**

The Mississippi State Board of Optometry will consider any licensed optometrist applying for licensure by reciprocity on a case-by-case basis as provided for in Section 73-19-25, *Miss. Code Ann.* (1972) as amended. The criteria for a license under this provision will include a determination of the following factors:

- (a) Whether or not the person has passed or failed a written examination in another state;
- (b) Whether the other state board similarly accredits the holder of a license issued by the Mississippi State Board;
- (c) Whether the applicant pays a \$50.00 fee, in addition to a prorated licensing fee.
- (d) Whether the applicant causes the other state board to file a true and attested copy of the other state license (certified by the president or secretary of that State Board issuing the license); the license must be mailed directly from the other state licensing board;
- (e) Whether the applicant establishes that the standard requirements adopted and enforced by the other state are equal to that provided by this state;
- (f) Whether or not the applicant has previously failed an examination administered by the Mississippi State Board.
- (g) Whether or not the applicant has taken and passed the examination on Mississippi Law and Rules and Regulations.

- (h) The issuance of a certificate of licensure by reciprocity to a military-trained applicant, military spouse or person who establishes residence in this state shall be subject to the provisions of the section 73-50-1 or 73-50-2, as applicable.

**Rule 1.8 Military Applicant/ Military Spouse**

The Mississippi State Board of Optometry shall issue a license, certification or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in Mississippi pursuant to Section 73-19-25, Miss. Code Ann. (1972) as amended. to if, upon application to the Board, the applicant satisfies the following conditions:

- (a). Has been awarded a military occupational specialty relating to optometry and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification or registration of the Board in this state: completed a military program of training, completed testing or equivalent training and experience as determined by the Board, and performed in optometry; and

- (b). Has engaged in active practice of optometry for at least two (2) of the five (5) years preceding the date of the application under this section; and

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

- (d). Pays any fees required by the Board.

- 2. The Board shall issue a license, certification or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in Mississippi if, upon application to the Board, the military spouse satisfies the following conditions:

- (a). equivalent to or exceed the requirements for licensure, certification or registration of the Board; and

- (b). Can demonstrate competency in optometry through methods as determined by the Board, such as having completed continuing education units or having had recent experience for at least two (2) of the five (5) years preceding the date of the application under this section; and

- (c.) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension or revocation of a license to practice optometry in this state at the time the act was committed; and

- (d). Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification or permit; and
  - (e). Pays any fees required by the Board.
3. The Board when issuing a license to a military spouse pursuant to Section 73-50-1 (3), Miss. Code Ann. as amended shall issue or deny the license within four (4) months of the military spouse's application if the spouse's orders are in Mississippi for thirty-six (36) months or less.
  4. All relevant experience of a military service member in the discharge of official duties or, for military spouse, all relevant experience, including full-time and part-time experience, regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under Section 73-50-1 (2) (3), Miss. Code Ann. (1972) as amended.
  5. A nonresident licensed, certified or registered under this section shall be entitled to the same rights and obligations as required of a resident licensed, certified or registered by the Board.
  6. Nothing in this section shall be considered to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification or registration requirements by the Board.

**Rule 1.9 Endorsement**

The Mississippi State Board of Optometry will consider any Mississippi licensed optometrist applying endorsement as provided for in 73-19-157, Miss. Code Ann. (1972) as amended. Endorsement for YAG laser posterior capsulotomy must hold a therapeutic license in Mississippi, either by completion of application process stated in 1.2 or by reciprocity outlined in 1.7.

Source: *Miss Code Ann.* §73-19-25 section 73-19-157

**Part 2901 Chapter 2: Administration**

**Rule 2.0 Request for Pre-Licensure Determination**

An individual may request the Board for a determination of whether the individual's criminal record will disqualify the individual from obtaining a license. The determination request shall be in writing, filed on a form supplied by the Board and signed in the presence of a notary. The request shall also be accompanied by a certified copy of any judgement of conviction and a fee of \$25.00.

(a) Disqualifying Crimes

An individual may be denied a license based on a felony conviction which includes the following: a deferred conviction, a deferred prosecution, a deferred sentence, finding or verdict of guilt, admission of guilt or a plea of nolo contendere.

An individual may be denied a license based on crimes directly related to licensure practice. Crimes involving fraud or misrepresentation, theft, cheating to pass a licensure exam, embezzlement, shoplifting, forgery, burglary, and identity theft.

An applicant may be denied a license based on the admission of multiple convictions, including misdemeanor convictions and pending unresolved charges; both may be used to determine if an individual shall be denied a license.

(b) Determination Notification

The Board or its designee shall issue a written determination notification to the individual within 30 days from the Board's receipt of the individual's request.

The individual shall be provided one of the following responses:

(1) If the individual's request contains insufficient information, the Board or its designee will notify the individual that a determination cannot be made at this time as to the individual's standing or whether or not the criminal record will disqualify the individual from obtaining a license.

(2) The Board or its designee shall notify the individual in writing of the following:

a. grounds and reasons for denial or disqualification.

b. the individual's right to an administrative hearing to challenge the Board or its designee's decision. The notice must include the time, date and nature of the hearing pursuant to the Board's statutory provisions and rules and regulations.

c. the earliest date to reapply for a license;

d. evidence of rehabilitation may be considered upon reapplication.

Sections 73-19-9, section 73-19-23

**Rule 2.1 Open Records.**

The following regulation is enacted for the purpose of providing reasonable written procedures concerning the cost, time, place, and method of access, under the provisions of the Mississippi Public Record Act of 1983 (Open Records Act). It is not intended that

these procedures shall apply to any public record or other document, which is exempt from the provisions of said Act or not covered by the provisions of the Open Records Act.

(a). Any individual seeking to inspect, copy or mechanically reproduce or obtain a reproduction of any public record of the board should make a written request, signed by themselves to be mailed to the Executive Director, Mississippi State Board of Optometry, Post Office Box 12370, Jackson, MS 39236.

(b). The written request must be typed or clearly hand printed on a letter size piece of paper and shall specify in detail the public record sought. The request should include, if possible, a description of the type of record, dates, title of a publication, and other information which may aid in locating the record.

(c). The written request must specify what the applicant proposes to do with the record, i.e., inspect, copy, etc. state the date and time for the proposed activity; state the number of persons scheduled to participate; and shall provide the name, address, and home and office telephone number of the applicant.

(d). The Executive Director, upon receipt of any such request, shall review same and determine whether the records sought are exempt under the Mississippi Public Records Act, and shall either produce records or access to records or deny access to or production of the records sought within seven (7) working days from the date of the receipt of the request for the production of the record. If the Board is unable to produce a public record by the seventh working day after the request is made, the Board will provide a written explanation to the person making the request stating that the record requested will be produced and specifying with particularity why the records cannot be produced within the seven-day period. Unless there is a mutual agreement of the parties, in no event shall the date for the Board's production of the request records be any later than fourteen (14) working days from the receipt of the original request.

(e.) All inspection, copying or mechanical reproduction shall be done in the offices of the Board or such other reasonable place within the State of Mississippi as may be designated by the Board. It shall be the duty of the applicant to contact the Executive Director by phone before noon of the first working day preceding the proposed date set out in the application to determine if same is acceptable and, if not, what date and/or time will be substituted.

(f). Where possible, nonexempt material will be separated from exempt material and only the exempt material will be withheld.

(g). If the Executive Director determines that the records requested are exempt or privileged under the law, she shall deny the request and shall send the person making the request a statement of the specific exemption relied upon by the Board for the denial. Such denials shall be kept on file for inspection by any person for three (3) years. This file shall be made available for inspection or copying or both during regular office hours to any person upon written request.

(h) The Executive Director is authorized to calculate the estimated cost of searching, obtaining from storage, reviewing, shipping and/or duplicating records and to require payment in advance of such estimated charges prior to complying with the request. There shall be a charge of \$0.50 per page for each copy. Copies printed on both sides (front & back) shall be considered as two pages for copy charge purposes. Mailing cost

shall be calculated at the applicable rate for each such mailing. If request involves notice to be given to a third party, the cost of mailing such notice via certified mail return receipt requested shall be charged to the person requesting such public records. In the event the actual cost of such activity exceeds the estimate, the Executive Director is authorized to withhold mailing or delivery of said documents or to delay the inspection until the difference is paid.

(i). There shall be no charge for inspection of the current Board's records maintained at the Board office. Cost of obtaining records from any state storage facilities and the search for it shall be charged to the applicant.

(j). The Executive Director may waive any or all of the foregoing requirements related to written notice, time, and method of access prepayment of expenses whenever the determination is made that such waiver would be in the public interest.

Source: Miss Code Ann §25-41-3

### **Rule 2.2 Public Participation in Meetings.**

A scheduled time shall be established on each agenda to allow the opportunity for public comment on any issue under the jurisdiction of the board. The time allowed an individual spokesperson may be limited at the discretion of the chair.

Source: *Miss Code Ann.* §25-41-3

### **Rule 2.3 Organization**

(a). The Board shall consist of five (5) members appointed by the Governor, with advice and consent of the Senate.

(b). Each member shall be appointed from a list submitted by The Mississippi Optometric Association consisting of its three (3) members, or by appointment by any qualified member of the association, all of whom must be residents of Mississippi.

(c). Initial appointments to the Board will be for staggered terms. All subsequent appointments to the Board shall be appointed by the Governor for the terms of five (5) years from the expiration date of the previous term. No person shall be appointed for more than two (2) consecutive terms. Each member shall remain in office after the expiration of his term until his successor shall be duly appointed and qualified.

(d). Board members shall receive the per diem authorized under Section 25-3-69 of the Miss. Code Ann. (1972) as amended for each day actually discharging his official duties, and shall receive reimbursement for mileage and necessary expense incurred, as provided in Section 25-3-41 of the Miss. Code Ann. (1972) as amended.

(e). No person so appointed shall be a stockholder or a member of the faculty or the board of trustees of any school of optometry.

(f). The Board shall organize by the election from its members of a president and a secretary, who shall hold their respective offices for one (1) year.

(g). A majority of the board shall constitute a quorum, but a less number by adjourn from time to time.

Source: *Miss Code Ann.* § 73-19-7

#### **Rule 2.4 Board Operations**

(a). The Board shall make such rules and regulation as may be necessary to carry out the provisions of the statute; provided, however, that it shall require the concurrence of a majority of the member of the board to grant or revoke a license.

(b). The Board shall hold meetings for examination, beginning on the second week of January and July of each year, and additional meetings at such times and places as the board shall determine, said additional meetings not to exceed ten (10) meeting days annually, but the July meeting shall be held in the City of Jackson.

(c). Meeting dates, times, and locations are published in the Board's minutes.

(d). An organizational meeting shall be held in January of even numbered years for the purpose of electing officers.

Source: *Miss Code Ann.* § 73-19-9

#### **Rule 2.5 Oral Proceeding.**

(a). The Board will conduct an oral proceeding on a proposed rule or amendment if requested by a political subdivision, an agency or ten (10) persons in writing within twenty (20) days after the filing of the notice of the proposed rule.

(b). Each request must be printed, typewritten, or legibly handwritten. Each request must be submitted on standard business letter-sized paper (8-1/2 inches by 11 inches). Requests may be in the form of a letter addressed to the Board and signed by the requestor(s).

(c). The date, time, and place of all oral proceedings shall be filed with the Secretary of State's office and mailed to each requestor. The oral proceedings will be scheduled no earlier than twenty (20) days from the filing of this information with the Secretary of State.

(d). The Chairman or his designee, who is familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule.

(e). Public Presentations and Participation

(1) At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule.

(2) Persons wishing to make oral presentations at such a proceeding shall notify the Board at least one (1) business day prior to the proceeding and indicate the general subject of their presentations. The presiding officer, in his or her discretion may allow individuals to participate that have not previously contacted the Board.

(3) At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide



any other information relating to their participation deemed appropriate by the presiding officer.

(4) The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(5) Persons making oral presentations are encouraged to avoid restating matters that have already been stated or matters that have already been submitted in writing. Written materials may, however, be submitted at the oral proceedings.

(6) There shall be no interruption of a participant who has been given the floor by the presiding officer, except that the presiding officer may in his or her discretion interrupt or end the participant's time where the orderly conduct of the proceeding so requires.

(f). Conduct of Oral Proceeding

(1) Presiding Officer. The presiding officer shall have authority to conduct the proceeding in his or her discretion for the orderly conduct of the proceedings.

The presiding officer shall:

- (a) call the proceeding to order;
- (b) give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons provided by the Board for the proposed rule;
- (c) call on those individuals who have contacted the Board about speaking on or against the proposed rule;
- (d) allow for rebuttal statements following all participant's comments;
- (e) adjourn the proceeding.

(2) Questions. The presiding officer where time permits and to facilitate the exchange of information, may open the floor to questions or general discussion. The presiding officer may question participants and permit the questioning of participants by other participants about any matters relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding, but no participant shall be required to answer any questions.

(3) Physical and Documentary Submissions. Submissions presented by participants in an oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the Board and are subject to the Board's public records request procedure.

(4) Recording. The Board may record oral proceedings by stenographic or electronic means.

Source: *Miss Code Ann.* § 25-43-2.105 (Rev. 2006)

### **Rule 2.6 Declaratory Opinions**

These rules set forth the Mississippi State Board of Optometry hereinafter "Board", rules governing the form and content of requests for declaratory opinions, and the Board's procedures regarding the requests as required by Mississippi Code 305. These rules are intended to supplement and to be read in conjunction with the provisions of the Mississippi Administrative

Procedure Law, which contain additional information regarding the issuance of declaratory opinions. In the event of any conflict between these rules and the Mississippi Administrative Procedure Law, the latter shall govern:

(a) Any person with a substantial interest in the matter may request a declaratory opinion from the Board by following the specified procedures. “Substantial interest in the subject matter” means: an individual, business, group, or other entity that is directly affected by the Board’s administration of the law within its primary jurisdiction. “Primary jurisdiction of the Board” means the Board has a constitutional or statutory grant of authority in the subject matter at issue.

(b) The Board will issue a declaratory opinion regarding the applicability to specified facts of:

- (1) a statute administered or enforceable by the Board, or
- (2) a rule promulgated by the Board.

The Board will not issue a declaratory opinion regarding a statute or rule which is outside the primary jurisdiction of the agency.

(c) The Board may, for good cause, refuse to issue a declaratory opinion. The circumstances in which declaratory opinions will not be issued include, but are not necessarily limited to:

- (1) lack of clarity;
- (2) there is pending or anticipated litigation, administrative action, or other adjudication which may either answer the question presented by the request or otherwise make and answer unnecessary;
- (3) the statute or rule on which a declaratory opinion is sought is clear and not in need of interpretation to answer the question presented by the request;
- (4) the facts presented in the request are not sufficient to answer the question presented;
- (5) the request fails to contain information by these rules or the requestor failed to follow the procedure set forth in these rules;
- (6) the request seeks to resolve issues which have become moot, or are abstract or hypothetical such that the requestor is not substantially affected by the statutes or rule on which a declaratory opinion is sought;
- (7) no controversy exists concerning the issue as the requestor is not faced with existing facts or those certain to arise which raise a question concerning the application of the statute or rule;
- (8) the question presented by the request concerns the legal validity of a statute or rule;
- (9) the request is not based upon facts calculated to aid in the planning of future conduct but is, instead, based on past conduct in an effort to establish the effect of that conduct;
- (10) clear answer is determinable;
- (11) the question presented by the request involves the application of a criminal statute or a set of facts which may constitute a crime;
- (12) the answer to the question presented would require the disclosure of information which is privileged or otherwise protected by law from disclosure;
- (13) the question is currently the subject of an Attorney General’s opinion request which has been answered by an Attorney General’s opinion;

(14) a similar request is pending before this Board or any agency or a proceeding is pending on the same subject matter before any agency, administrative or judicial tribunal, or where such an opinion would constitute the unauthorized practice of law;

(15) where issuance of a declaratory opinion may adversely affect the interest of the State, the Board or any of their officers or employees in any litigation which is pending or may reasonably be expected to arise;

(16) the question involves eligibility for a license, permit, certificate, or other approval by the Board or some other agency, and there is a statutory or regulatory application process by which eligibility for said license, permit, certificate, or other approval would be determined.

(d). Each request must be printed or typewritten, or legibly handwritten. Each request must be submitted on standard business letter-sized paper (8-1/2 inches by 11 inches). Request may be in the form of a letter addressed to the Board.

(e). All requests must be mailed, delivered, or transmitted via facsimile to the Board. The request shall clearly state that it is a request for a declaratory opinion. No oral telephone requests or e-mail requests will be accepted.

(f) Each request must include the full name, telephone number, and , mailing address of the requestor. All requests shall be signed by the person filing the request, who shall attest that the request complies with the requirements set forth in these rules, including but not limited to a full, complete, and accurate statement of relevant facts and that there are no related proceedings pending before any other administrative or judicial tribunal.

(g). Each request shall contain the following:

(1). a clear and concise statement of all facts on which the opinion is requested;

(2) a citation to the statute or rule at issue;

(3) the question(s) sought to be answered in the opinion, stated clearly;

(4) a suggested proposed opinion from the requestor, stating the answers desired by petitioner and a summary of the reasons in support of those answers;

(5) the identity of all other known persons involved in or impacted by the described factual situation, including their relationship to the facts, name, mailing address, and telephone number; and

(6) a statement to show that the person seeking the opinion has a substantial interest in the subject matter.

(h). Within forty-five (45) days after the receipt of a request for a declaratory opinion which complies with the requirements of these rules, the Board shall, in writing:

(1) issue a declaratory opinion regarding the specific statute or rule as applied to the specific circumstances;

(2) decline to issue a declaratory opinion, stating the reason for its action; or

(3) agree to issue a declaratory opinion by a specific time but not later than ninety (90) days after receipt of the written request.

The forty-five (45) day period shall begin on the first State of Mississippi business day on or after the request is received by the Board, whichever is sooner.

(i). A declaratory opinion shall not become final until the expiration of sixty (60) days after the issuance of the opinion. Prior to the expiration of sixty (60) days, the Board may, in its discretion, withdraw or amend the declaratory opinion for any reason which is not arbitrary or capricious. Reasons for withdrawing or amending an opinion include, but

are not limited to, a determination that the request failed to meet the requirements of these rules or that the opinion issued contains a legal or factual error.

(j). The Board may give notice to any person, agency, or entity that a declaratory opinion has been requested and may receive and consider data, facts, arguments, and opinions from other persons, agencies or other entities other than the requestor.

(k). Declaratory opinions and requests for declaratory opinions shall be available for public inspection and copying in accordance with the Public Records Act and the Board's public records request procedure. All declaratory opinions and request shall be indexed by name and subject. Declaratory opinions and requests which contain information which is confidential or exempt from disclosure under the Mississippi Public Records Act or other laws shall be exempt from the requirements and shall remain confidential.

(l). The Board will not pursue any civil, criminal or administrative action against a person who is issued a declaratory opinion from the Board and who, in good faith, follows the direction of the opinion and acts in accordance therewith unless a court of competent jurisdiction holds that the opinion is manifestly wrong. Any declaratory opinion rendered by the Board shall be binding only on the Board and the person to whom the opinion is issued. No declaratory opinion will be used as precedent for any transaction or occurrence beyond that set forth by the requesting person.

### **Part 2901 Chapter 3. Fees.**

#### **Rule 3.1 Licensure and Renewal.**

The following schedule of fees for examination, registration and renewal of certificates is hereby established:

- (a) \$200.00 for an examination of an applicant who is a resident of Mississippi
- (b) \$300.00 for an examination of an applicant who is a non-resident of Mississippi
- (c) \$325.00 for every registered optometrist who desires to continue the practice of optometry. Said fee to be collected on an annual basis on or before January 1 for application to the one-year period then beginning.
- (d) Licensing fee via reciprocity Rule 1.7 will be prorated.
- (e) \$750.00 for Primary Eyecare Procedure certification fee. (Then \$750.00 fee is required for all Optometrists applying for PEP certification, including the Optometrists requesting endorsement.

Source: *Miss Code Ann.* §73-19-21

#### **Rule 3.2 Failure to Renew, Retired Optometrist Renewal.**

In the case of failure to obtain continuing education hours or to neglect to pay the renewal registration fee herein specified, the board may revoke any certificate granted and the holder thereof may be reinstated by complying with the conditions specified in Section 73-19-21 of the Mississippi Code of 1972 as amended and related Code sections. However, no certificate or permit shall be revoked without giving 60 days notice to the delinquent, who, within such period, shall have the right of renewal of such certificate on payment of a renewal fee of \$325.00

together with a penalty of \$15.00, provided, that retirement from practice for a period not exceeding five (5) years shall not deprive the holder of a certificate of the right to renew his certificate on the payment of all lapsed fees and meeting any applicable continuing education requirements. An optometrist shall not be deemed retired unless he in good faith so advises the board in writing prior to his certificate being revoked for failure to pay the fees required by law. Retired individuals seeking to return to the active practice of optometry under this provision shall pay a renewal fee based on \$325.00 per year for the period of his retirement and shall not have the benefit of the reduced fee for restricted practice provided in this rule.

Source: *Miss Code Ann.* §73-19-21

## **Part 2901 Chapter 4. Continuing Education.**

### **Rule 4.1 General Requirements for all therapeutic optometrists.**

- (a) All therapeutically certified optometrists are required to obtain twenty (20) hours of continuing education (CE) each year for as long as they are in active practice. Ten (10) of these hours shall consist of therapeutic subject matter.  
16 must be either, approved by the Counsel on Optometric Practitioner Education (COPE), must be taken at a National, Regional, or State Conference or at a school of optometry/teaching institution. The calendar year is considered to begin January 1 and run through December 31.
- (b) The board accepts for continuing education credit all courses sponsored by any board-accredited college or school of optometry and such other programs or courses of other organizations as are approved by the board. The board will consider, among other things in its discretion, the following criteria in approving courses:
  - (1) all subjects of education must be directly related to optometry;
  - (2) courses sponsored by or given by accredited optometry schools will be granted automatic approval;
  - (3) courses meeting evaluation standards and receiving approval of the Association of Regulatory Boards of Optometry (ARBO) will be granted automatic approval;
  - (4) courses sponsored by optometric organizations may be given approval;
  - (5) courses sponsored by universities or accredited non-optometric schools may be given approval if the subject matter is directly related to optometry;
  - (6) correspondence courses sponsored and graded by accredited optometry schools may be given approval, with a maximum of four hours of continuing education credit per calendar year per licensee;
  - (7) courses sponsored by individual providers may be approved but must supply the board with a synopsis of the lecture material to be presented, as well as resumes of the lecturers.
  - (8) The annual continuing education program of the Mississippi Optometric Association. A detailed summary of the annual continuing education program certified to by the Association's President shall be filed with the board prior to the meeting in which the course is offered.
  - (9) Other meetings or seminars either within or without the State of Mississippi that may be approved in advance by the board upon written request for

approval made to the board at least thirty (30) days prior to the meeting or seminar. A copy of the program, names of speakers with qualifications, subject matter covered by each speaker and class hours to be offered by each, proof of attendance procedure and the proposed form of the signed attendance certificates procedure and the proposed form of the signed attendance certificates to be used; and the legal name, mailing and the street address and telephone number of the sponsor of such program shall be included as part of the written request and the request application must be signed by the sponsor or a duly authorized officer of the sponsor. The board, in approving may limit the credit hours allowed for any meeting, seminar, or subject under this item.

- (10) In cases of extenuating circumstances, home study materials specified and approved by the board. Such will be allowed only upon submission of satisfactory evidence to the board of such circumstances and inability to otherwise acquire the required number of study hours. Credit hours to be allowed will be determined upon approval of such course of study.
- (c) There shall be no exemption for persons over the age of sixty-five (65). The burden is upon the sponsor applicant to file sufficient supporting material to show that the course proposed contains optometric educational material of a sufficient quality and value to justify board approval and that such material will be presented in a proper manner by qualified instructors.
- (d) The board shall be notified in writing by the sponsor of any variance between the course as submitted and as actually presented and shall be provided a statement as to the reason for such variance. Any material variance from the course of study and instructors as submitted and approved may result in rejection of credit for such course.
- (e) The board will grant one hour of education credit each year for required active CPR certification and one hour of education credit will be given annually for completion of a two hour course pertaining to the prescribing and diversion of controlled substances. **Both of these courses are mandatory for all optometrists.** The course pertaining to the prescribing and diversion of controlled substances must be completed every two years and initially by the 2022 renewal.
- (f) Approved courses must be available to all licensed optometrists at a fee considered reasonable and nondiscriminatory.
- (g) Written proof of attendance and completion of approved courses must be supplied by the licensed optometrist to the board in conjunction with the renewal application for an optometry license. Information such as the following will be required: sponsoring organizations; location and dates; course names; instructors; names of attendees; number of education hours completed; and any other information deemed necessary by the board. Proof of attendance supplied by the sponsor should contain at least one signature of the sponsor's designee.

Source: *Miss Code Ann.* § 73-19-153 section 73-19-157

#### **Rule 4.2 General requirements for PEP certified optometrists**

(a) PEP certified Optometrists, that are certified to perform Authorized Ophthalmic Surgical Procedures, such as YAG laser posterior capsulotomy, will be required to complete an outcomes form (provided by the Board) each year during the annual license renewal process.

(b). PEP Certified Optometrists must dedicate 6 hours annually of their 20 hours pertaining to the performance of primary eyecare procedures.

Source Miss Code Ann Section 73-19-1, 73-19-9, 73-19-153, 73-19-157

## **Part 2901 Chapter 5. Complaint Procedure.**

### **Rule 5.1. Filing, Investigation and Disposition.**

The complaint procedure will be as follows:

- (a) Filing complaints. Complaints shall be filed on the board's complaint form. The board shall adopt the following form as its official complaint form, which shall be maintained at the board's office for use at the request of any complainant. At a minimum, all complaints shall contain information necessary for the proper processing of the complaint by the board, including, but not limited to:
  - (1) Complainant's name, address and phone number
  - (2) Name, address and phone number of the optometrist, therapeutic optometrist, or other person, firm or corporation, if known
  - (3) Date, time and place of occurrence of alleged violation, and
  - (4) Complete description of incident giving rise to the complaint.
- (b) Complaint investigation and disposition.
  - (1) All Complaints received shall be sent to the Executive Director. The board shall distinguish between categories of complaints as follows:
    - (a) consumer and patient complaints against optometrists and therapeutic optometrists regarding alleged violation of the Mississippi Optometry Act or duly promulgated rules or orders.
    - (b) alleged unauthorized practice of optometry or therapeutic optometry by unlicensed individuals or by a licensee while a suspension order or restrictive sanction by the board is in effect.
    - (c) licensure or reinstatement applications
    - (d) alleged advertising violations by optometrists, therapeutic optometrists, persons, firms or corporations and
    - (e) licensee complaints regarding violations of the Act resulting in economic harm
  - (2) In the event of a dismissal the person filing the complaint and the accused optometrist shall be given written notice of the board's determination.
- (c) Investigation Enforcement

- (1) The chair may appoint an investigator to consider complaints filed with board.
- (2) The Executive Director shall forward the complaint to the member in charge of enforcement in the area of the complaint unless in the judgement of the President, unusual circumstances exist such that it is more appropriate that the complaint be under another member. The board shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, and documents to issue commissions to take depositions, to administer oaths and to take testimony concerning all matters within the assigned jurisdiction.
- (3) On receipt of the complaint, the member shall determine:
  - (a) whether to recommend dismissal the matter and take no further action.
  - (b) whether to send a letter to the person charged reciting that a complaint has been received and that while the investigating member cannot determine or pass upon the merits of the complaint without conducting further investigation that the subject of the complaint be asked to review the complaint to ensure that the Act is being complied with, and that if the allegations are true, to cease and desist from the alleged violations or words to that effect
  - (c) whether to conduct an informal conference or set the case for a formal hearing;
  - (d) whether to forward to the board the member's determination that there is reasonable cause to believe the accused optometrist is guilty of conduct which violates the board regulations or state laws, together with a recommendation that proceedings be instituted to consider cancellation, revocation, or suspension of a license or refusal to issue a license;
  - (e) whether to forward to the board the member's determination that some person, firm or corporation may be practicing optometry without a license or otherwise violating the provisions of the Act, along with the member's recommendation that the board notify the attorney general or appropriate district attorney with accompanying request that appropriate action be taken in accordance with law, and
  - (f) whether to forward to the Executive Director the member's determination of findings to subparagraph (3) for assessment of administrative penalties.
- (4)
  - (a) In addition, the optometrist or therapeutic optometrist shall perform and record keratometry testing.
  - (b) At a minimum, the optometrist or therapeutic optometrist must schedule one follow-up visit for examination within 30 days of the contact lens fitting, and must inform the patient on the initial visit regarding the requirement of the follow-up care.
  - (c) The optometrist or therapeutic optometrist must observe proper hygiene in the handling and dispensing of the contact lenses and in the conduct of the examination. Proper hygiene includes sanitary office conditions,



running water in the office where contact lenses are dispensed, and proper sterilization of diagnostic lenses and instruments.

(d) The optometrist or therapeutic optometrist, or staff members, must instruct the patient in the proper care of lenses, including proper hygiene.

Source: *Miss Code Ann.* §73-19-33; §73-19-37

### **Rule 5.2 Disciplinary Proceedings.**

- (a) **General Statement.** In any contested case, opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved. Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, default, or dismissal.
- (b) **Informal Disposition of Contested Case.** Prior to the imposition of disciplinary sanctions against a license, the licensee may be offered an opportunity to attend an informal conference and show compliance with all requirements of law.
  - (1) Informal conferences shall be attended by an attorney employed by the board, a board member and other representatives of the board as the President and legal counsel may deem necessary for the proper conduct of the conference. The licensee and/or the licensee's authorized representative may attend the informal conference and shall be provided an opportunity to be heard.
  - (2) In any case where charges are based upon information provided by a person who filed a complaint with the board (complainant), the complainant may attend the informal conference, and shall be provided with an opportunity to be heard with regard to charges based upon the information provided. Nothing herein requires a complainant to attend an informal conference.
  - (3) Informal conferences shall not be deemed to be meetings of the board and no formal record of the proceedings at the conferences shall be made or maintained.
  - (4) Any proposed order shall be presented to the board for its review. At the conclusion of its review, the board shall approve, amend, or disapprove the proposed order. Should the board approve the proposed order, the appropriate notation shall be made in the minutes of the board and the proposed order shall be entered as an official action of the board. Should the board amend the proposed order, the Board Attorney shall contact the respondent to seek concurrence. If the respondent does not concur, the provisions of the next sentence shall apply. Should the board disapprove the proposed order, the case shall be rescheduled for purposes of reaching an agreed order, or in the alternative forwarded to the State Office of Administrative Hearings for formal action.
- (c) **Formal Disposition of a Contested Case.** All contested cases not resolved by informal conference, shall be referred for Hearing.
  - (1) **Notice.** The respondent shall be entitled to reasonable notice of not less than 20 days. Notice shall include:
    - (a) a statement of the time and place of the hearing;

- (b) a statement of the offense or offenses for which the licensee is charged;
  - (c) a copy of the complaint
- (2) Service of notice. The notice of hearing and a copy of the formal complaint shall be served by mailing a copy thereof by certified mail, postage prepaid to the respondent's last known residence or business address at least twenty (20) days prior to the hearing. Service on the respondent shall be complete and effective if the document to be served is sent by registered or certified mail to the respondent at the address shown on the respondent's annual renewal certificate.
  - (3) Filing of documents. All pleadings and motions relating to any contested case pending before the board shall be filed at the board office and shall be deemed filed only when actually received. Copies of all pleadings and motions shall be served on board counsel.
  - (4) Motion for Continuance. Continuances may be granted by the board President.
  - (5) Transcription. All proceedings shall be transcribed by a court reporter. The agency may pay the cost of the transcript or assess the cost to one or more parties.  
Source: *Miss Code Ann.* §73-19-35;§73-19-41
- (d) An individual may appeal the decision of the Board to the Chancery Court of the county of residence of the licensee. The appeal shall be taken within thirty (30) days after notice of action of the Board. See §73-19-45.

Source: *Miss Code Ann.* § 73-19-9; §73-19-35; §73-19-41; §73-19-45

**Rule 5.3 Probation.**

- (a) The board shall have the right and may upon majority vote rule that an order denying an application for license or any order canceling, suspending, or revoking any license be probated so long as the probated practitioner conforms to such orders and rules as the board may set out in the terms of the probation. The board, at the time of its decision to probate the practitioner, shall set out the period of time which shall constitute the probationary period; provided, however, that the board may at any time while the practitioner remains on probation upon majority vote rescind the probation and enforce the board's original action denying, suspending, or revoking such license for violation of the terms of the probation or for other good cause as the board in its discretion may determine.
- (b) The Executive Director shall maintain a chronological and alphabetical listing of licensees who have had their license canceled, suspended, or revoked, and shall monitor each consent order in respect to each license holder's specific sanction. Any noncompliance observed as a result of monitoring shall be referred to the board.

Source: *Miss Code Ann.* §73-19-43

**Rule 5.4 Reinstatement.**

Any practitioner whose license to practice has been suspended, revoked, or restricted may apply to the Board within a year unless an order from the Board says otherwise. In considering the reinstatement, the Board shall consider all factors it deems relevant, including, but not limited to, payment of applicable fees, proof of rehabilitation, and current passing scores on the Mississippi Rules & Regulations/Law examination. The applicant must appear before the Board to apply for reinstatement. After consideration of the proposal for decision, the board in its discretion may:

- (a) deny reinstatement of a lapsed, revoked, or suspended license;
- (b) reinstate a revoked or suspended license and probate the practitioner for a specified period of time under specified conditions;
- (c) authorize reinstatement of the lapsed, revoked, or suspended license.

Source: *Miss Code Ann.* §73-29-9; §73-19-23

### **Rule 5.5 Administrative Fines and Penalties.**

- (a) In accordance with Section 73-19-43 of the Act, penalties may be assessed for violations of the Act or rule or order of the board.
- (b) The amount of the penalty shall include, but not be limited to:
  - (1) the seriousness of the violation, including nature, circumstances, extent and gravity of any prohibited act, and hazard or potential hazard created to the health, safety, or economic welfare of the public;
  - (2) the economic harm to property or the environment caused by the violation;
  - (3) the history of previous violations;
  - (4) the amount necessary to deter future violations;
  - (5) efforts to correct the violation; and
  - (6) any other matter that justice may require.
- (c) Penalties imposed by the board pursuant to subsections (a) and (b) of this section may be imposed for each violation subject to the following limitations:
  - (1) imposition of an administrative penalty not to exceed the limits set forth in Section 73-19-43 of the Act.
  - (2) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.
- (d) Performance of any primary eye care procedures of administration without certification or credential may be grounds for license suspension or revocation. All Primary eyecare procedures or administration will be performed within the floorplan filed with the Board office and include a previously established doctor-patient relationship or the inclusion of such unless under emergency circumstances.

Source: *Miss Code Ann.* §73-19-23; § 73-19-43(c)

## **Part 2901 Chapter 6. Requirements for prescriptions.**

### **Rule 6.1 Contact Lens Prescriptions**

- (a) No person, other than persons licensed or regulated by Section 73-19-61 shall sell, dispense, or serve as a conduit for the sale or dispensing of contact lenses to the ultimate user of such contact lenses in the state through the mail or any other means other than direct in-person delivery, to such ultimate user by such person after having personally ascertained by reliable means the identity of the deliverer.
- (b) The written contact lens prescription of a licensed optometrist is the same as mentioned in Section 73-19-61 of the Act shall include the name of the patient, the date the prescription is written, and the expiration date of the prescription written in letter form. The foregoing information is necessary to assist any party filling the prescription in identifying the party for whom the prescription has been written and to ensure the prescription is current.
- (c) In order to fill contact lens prescriptions the original current prescription or a copy of the current original prescription signed by the licensed practitioner is required in hard copy form.
- (d) A contact lens prescription is valid for one (1) year. The practicing Optometrist is required to release the contact lens prescription whether the patient asks for it or not. The optometrist cannot require the patient to pay an extra fee or purchase contact lenses. The patient must sign acknowledgement of receipt.
- (e) The prescribing doctor or the entity filling the prescription is required to arrange for appropriate follow-up care within thirty (30) days.
- (f) The written prescription for hard contact lenses may include in addition to the foregoing, the following:
- (1) Base curve
  - (2) Sphere power with cylinder and axis, as necessary
  - (3) Diameter
  - (4) Optical zone size
  - (5) Secondary curve-radius and width
  - (6) Lens size
  - (7) Material to be used
  - (8) Degree of Blend (light, medium, heavy)
  - (9) Center Thickness
  - (10) Color
- (g) The written prescription for soft contact lens may include the following:
- (1) Base curve
  - (2) Sphere power with cylinder and axis, as necessary
  - (3) Manufacturer's name or Brand
  - (4) The prescribing doctor or the entity filling the prescription is responsible for arranging appropriate follow-up care and any other information needed to adequately fill the prescription.
  - (5) Diameter, when appropriate

Source: §73-19-61

## **Rule 6.2 Spectacle prescriptions**

- (a) The written spectacle prescription of a licensed optometrist shall include the name of the patient, the date the prescription is written, and the expiration date of the prescription.
- (b) Spectacle prescriptions are defined as follows:
  - (1) sphere power
  - (2) cylinder and axis power, if necessary
  - (3) prism and base amount, if necessary
  - (4) bifocal power, if necessary
- (c) A spectacle prescription is valid for no more than two (2) years.
- (d) If a practicing optometrist fits for glasses he/she must give the patient a copy of their written prescription whether they ask for it or not. The practicing optometrist cannot require the patient to pay an extra fee or purchase eyeglasses.

Source: *Miss Code Ann.* §73-19-61

**Part 2901 Chapter 7. Delegation of professional responsibility to laymen prohibited.**

**Rule 7.1 Delegation prohibited**

- (a) No optometrist shall delegate authority to a lay person to perform any act requiring the exercise of professional knowledge and judgment on any patient whose visual welfare is the responsibility of the licensed optometrist.
- (b) Non- licensed supportive personnel may not delegate diagnosis or treatment duties under any circumstances.
- (c) To ensure patient confidentiality of examination records, a non-employee shall not be allowed to perform any task or function which would require or give them access to patient records or examination reports of any person without prior written authorization of that patient. (This provision shall not be applicable to restrict access to patient records of staff members who are paid through employee leasing plans.)
- (d) The licensed practitioner shall be responsible for all delegated acts performed by persons under his/her direct and general supervision.

Source: *Miss Code Ann.* §73-19-3; § 73-19-9

**Part 2901 Chapter 8. Professional responsibility.**

**Rule 8.1. Optometrists shall remain free of control.**

- (a) The provisions of this section are adopted in order to protect the public in the practice of optometry or therapeutic optometry, better enable members of the public to fix professional responsibility, and further safeguard the doctor-patient relationship.  
 No optometrist or therapeutic optometrist shall divide, share, split, or allocate, either directly or indirectly, any fee for optometric or therapeutic optometric services or materials with any lay person, firm or corporation, provided that this rule shall not be interpreted to prevent an optometrist or therapeutic optometrist from paying an

employee in the regular course of employment, and provided further, that it shall be construed as a violation of this rule for any optometrist or therapeutic optometrist to lease space from an establishment, or to pay for franchise fees or other services, on a percentage or gross receipts basis.

Source: *Miss Code Ann.* § 73-19-3

**Rule 8.2 Lease of premises from mercantile establishment.**

- (a) In order to safeguard the visual welfare of the public and the doctor-patient relationship, fix professional responsibility, establish standards of professional surroundings, more nearly secure to the patient the optometrist's or therapeutic optometrist's undivided loyalty and service, and carry out the prohibitions of this Rule against placing an optometric or therapeutic optometric license in the service or at the disposal of unlicensed persons. No optometrist or therapeutically certified optometrist shall conduct his profession in a room or part of a room in or on the premises where commercial or mercantile establishment is the primary business being conducted.
- (b) The practice must be owned by a Mississippi-licensed optometrist or therapeutic optometrist. Every phase of the practice and the leased premises shall be under the exclusive control of a Mississippi-licensed optometrist or therapeutic optometrist.
- (c) The prescription files and all business records of the practice shall be the sole property of the optometrist or therapeutic optometrist and free from involvement with the mercantile establishment or any unlicensed person.
- (d) The lease space shall be definite and apart from the space occupied by other occupants of the premises. It shall be separated from space used by other occupants of the premises by solid, opaque partitions or walls from floor to ceiling. Railings, curtains, doors (locked or unlocked), and other similar arrangements are not sufficient to comply with this requirement.
- (e) The lease space shall have a patient's entrance opening on a public street, hall, lobby, corridor, or other public thoroughfare. The aisle of a mercantile establishment does not comply with this requirement.
- (f) No phase of the optometrist's or therapeutic optometrist's practice shall be conducted as a department or concession of the mercantile establishment; and there shall be no legends or signs such as "Optical Department," "Optometrical Department," or others of similar import, displayed on any part of the premises or in any advertising.
- (g) The optometrist or therapeutic optometrist shall not permit his name or his practice to be directly or indirectly used in connection with the mercantile establishment in any advertising, displays, signs, or in any other manner.
- (h) All credit accounts for patients shall be established with the optometrist or therapeutic optometrist and not the credit department of the mercantile establishment. However, nothing in this subsection prevents the optometrist or therapeutic optometrist from thereafter selling, transferring, or assigning any such account.

Source: *Miss Code Ann.* §73-19-3; § 73-19-9

**Rule 8.3 Relationships of optometrists with dispensing****opticians.**

- (a) The purpose of this section is to insure that the practices of optometry and therapeutic optometry shall be carried out in such a manner that they are completely and totally separated from the business of any dispensing optician, with no control of one by the other and no solicitation for one by the other, except as hereinafter set forth.
- (b) If an optometrist or therapeutic optometrist occupies space for the practice of optometry or therapeutic optometry in a building or premises in which any person, firm, or corporation engages in the business of a dispensing optician, the space occupied by the optometrist or therapeutic optometrist shall be separated from the space occupied by the dispensing optician by solid partitions or walls from floor to ceiling. The space occupied by the optometrist or therapeutic optometrist shall have a patient's entrance opening on a public street, hall, lobby, corridor, or other public thoroughfare.
- (c) An optometrist or therapeutic optometrist may engage in the business of a dispensing optician, own stock in a corporation engaged in the business of a dispensing optician, or be a partner in a firm engaged in the business of a dispensing optician, but the books, records, and accounts of the firm or corporation must be kept separate and distinct from the books, records, and accounts of the practice of the optometrist or therapeutic optometrist.
- (d) An optometrist shall not allow a person, firm, or corporation engaged in the business of a dispensing optician, other than a licensed optometrist, therapeutic optometrist, or physician, to have, own, or acquire any interest in the practice, books, records, files, equipment, or materials of a licensed optometrist or therapeutic optometrist, or have, own, or acquire any interest in the premises or space occupied by a licensed optometrist or therapeutic optometrist for the practice of optometry or therapeutic optometry other than a lease for a specific term without retention of the present right of occupancy on the part of the dispensing optician. In the event an optometrist, therapeutic optometrist, or physician who is also engaged in the business of a dispensing optician (whether as an individual, firm, or corporation) does own an interest in the practice, books, records, files, equipment or materials of another licensed optometrist or therapeutic optometrist, he shall maintain a completely separate set of books, records, files, and accounts in connection therewith. Provided however, this shall not require an optometrist practicing under his own name and dispensing, repairing or duplicating lenses or frames in his own office as a part of his practice to maintain separate records.

Source: *Miss Code Ann.* § 73-19-3

**Rule 8.4 Ownership of records.**

- (a) No optometrist shall permit ownership of his prescription files, patient records, and business records, by any individual or entity other than himself, with the exception set forth on §73-29-103.
- (b) A patient may, upon written request, obtain a report of the patient's optometric records, or may have a copy of it forwarded to his treating optometrist or physician.

Source: *Miss Code Ann.* § 73-19-3

**Rule 8.5 Other Provisions.**

No optometrist shall enter into an arrangement:

- (a) allowing, permitting, encouraging, forbearing, or condoning any advertisement, including those placed in a newspaper, magazine, brochure, flier, telephone directory, or on television or radio, which implies or suggests that the licensed practitioner is professionally associated or affiliated with an entity which itself is not a licensed practitioner;
- (b) occupying or otherwise using professional office space in any manner which does not clearly and sufficiently indicate to the public that his/her practice of optometry is independent of and not associated or affiliated with an entity which itself is not a licensed practitioner;
- (c) using or employing office staff in any manner that implies or suggests that the licensed practitioner is professionally associated or affiliated with an entity which itself is not a licensed practitioner;
- (d) failing to have a telephone listing and number that is separate and distinct from that of an entity which itself is not a licensed practitioner;
- (e) answering the telephone, or allowing the telephone to be answered, in a manner that does not clearly and distinctly identify his/her independent optometric practice, or in a manner that implies or suggests that the licensed practitioner is professionally associated or affiliated with an entity which itself is not a licensed practitioner;
- (f) accepting reduced rent or lease payments based upon the number of patients examined or treated or based upon the number of prescriptions written;
- (g) agreeing to any arrangement for the furnishing of equipment, supplies, or office staff that in any way impairs, limits, or restricts the licensed practitioner's full and independent professional judgement and responsibility;
- (h) failing to maintain full and independent control and discretion over fees charged to patients for optometric services and materials, including billing methods, except in the case of an association, partnership, or employment relationship which is permitted under the rules.
- (i) Accepting a commission for the writing or filling of any optometric prescription.
- (j) Nothing in these rules shall prevent a licensed practitioner from associating with a multidisciplinary group of licensed health care professionals, the primary objective of which is the diagnosis and treatment of the human body. A licensed practitioner may also employ, or form a partnership or professional association with, other licensed practitioners, or with other licensed health care professionals, the primary objective of whom is the diagnosis and treatment of the human body. A licensed practitioner may also be a contract provider for health maintenance organizations.

Source: *Miss Code Ann.* §73-19-1; § 73-19-3; § 73-19-9

**Rule 8.6 Confidentiality.**



- (a) Confidential Information; Disclosure.
  - (1) An optometrist shall keep in confidence whatever he or she may learn about a patient in the discharge of his or her professional duties. All reports and records relating to the patient, including those records relating to the identity, examination, and treatment of the patient, shall constitute “patient records.” Except upon written authorization of the patient or as otherwise provided by law, such records may not be furnished to and the condition of the patient may not be discussed with any person other than the patient or his legal representative or other health care providers who are involved in the diagnosis and treatment of that patient. Provided, however, that this shall not prohibit an optometrist from providing copies of a patient prescription.
  - (2) It is the responsibility of an optometrist to insure that his/her employees, as well as any personnel who are not his/her employees but who are performing assigned ministerial duties, tasks, and functions, do not violate the confidentiality of patient records.
- (b) Responsibility to patient.
  - (1) An optometrist shall have an established procedure appropriate for the provision of eye care to his/her patients in the event of an emergency outside of normal professional hours, and when the optometrist is not personally available.
  - (2) An optometrist shall give notice to the patient when he/she relocates his/her practice or withdraws his/her services so that the patient may make other arrangements for his/her eye care. Notice to the patient shall specifically identify the new location of the optometrist’s practice or the location at which the patient may obtain his or her patient record.
- (c) Patient Records; Transfer or Death of Optometrist.
  - (1) An optometrist shall maintain full and independent responsibility and control over all records relating to his/her patients and his/her optometric practice. All such records shall remain confidential except as otherwise provided by law and shall be maintained by the optometrist in compliance with Section (a) above. For the purposes of this rule, “maintain full and independent responsibility and control” means that the records shall be maintained in the optometrist’s office or solely in the possession of the optometrist, and that the optometrist shall not share, delegate, or relinquish either possession of the records or his/her responsibility or control over those records with or to any entity which is not itself an optometrist.
  - (2) The records relating to the patients of a multi-disciplinary group of optometrist professionals, or relating to the patients of a partnership or professional association, may be maintained by the group practice, partnership, or professional association on behalf of all optometrists employed by the group practice, partnership, or professional association.
  - (3) For the purposes of this rule, “entity which itself is not an optometrist” shall refer to any corporation, lay body, organization, individual, or commercial or mercantile establishment which is not an optometrist or which is not comprised solely of licensed health care professionals, the primary objective of whom is the diagnosis and treatment of the human body.

- (4) For the purpose of this rule, “commercial or mercantile establishment” shall include an establishment in which the practice of opticianry is conducted, and an establishment in which optical goods are sold.
  - (5) An optometrist shall keep patient records for a period of at least two years. Upon the discontinuance of his/her practice, the optometrist shall either transfer all patient records which are less than two years old to an eye care practitioner where they may be obtained by patients, or he/she shall keep them in his/her possession and make them available to be obtained by patients.
  - (6) An optometrist who retires or otherwise discontinues his/her practice shall cause to be published in the newspaper of greatest general circulation in each county where the optometrist practiced, a notice indicating to his/her patients that the optometrist’s patient records are available from a specified optometrist at a certain location. The notice shall be published once during each week for four (4) consecutive weeks. A copy of the published notice shall be delivered to the board office for filing.
  - (7) (a) Optometrists shall arrange to have his/her executor, administrator, personal representative or survivor arrange to retain or transfer to another licensed eye care practitioner the records concerning any patient of the deceased optometrist within 90 days from the date of death of the optometrist.
- (d) t The executor, administrator, personal representative or survivor o r licensed eyecare practitioner acting as transferee shall arrange within 90 days from the death of the optometrist to cause to be published in the newspaper of greatest general circulation in each county where the optometrist practiced, a notice indicating to the patients of the deceased optometrist the location at which whose patients may obtain their patient records. The notice shall be published once during each week for four (4) consecutive weeks. A copy of the published notice shall be delivered to the board office for filing.

Source: *Miss Code Ann.* § 73-19-9

**Rule 8.7 Standards for doctor/patient relationship established, duty to report lawsuits and claims to the board.**

Every optometrist will refrain from any exaggeration of the patient’s visual disturbances. Any optometrist presented with a claim against him involving his professional services, by letter or lawsuit, shall the same day as received report the same in writing to the Executive Director of the State board of Optometry, together with copies of any such demand.

Source: *Miss Code Ann.* § 73-19-9

**Rule 8.8 Specific guarantee prohibited.**

No deceptive, false or misleading guarantee or claim of curative results or professional abilities shall be made by any optometrist related to his professional services or any ophthalmic material.

Source: *Miss Code Ann.* § 73-19-9

**Rule 8.9 Proper use of the title Doctor and O.D. degree designation.**

No registered optometrist when using the doctor title shall qualify it in any other way than by the use of the “Optometrist”, “Therapeutic Optometrist”, “PEP Certified Optometrist”. He may, however, when not using the prefix, use after his/her name the “O.D.” degree designation.

- (a) In the event of the death or retirement of an optometrist who was practicing optometry in a partnership, or with a professional corporation or professional association, the surviving members of the professional corporation or association, may, with the written permission of the retiring optometrist, or the deceased optometrist’s legal representative, continue to use the name of the deceased or retired optometrist.
- (b) The fact that such optometrist is retired or deceased shall clearly be displayed in such manner that such facts will be clearly visible to the public prior to entry of the optometrist’s office or reception area. By way of example, an appropriate professional identifying sign might be as follows:

SMITH, JONES & BROWN, INC. OPTOMETRISTS  
Jim Smith, O.D. (1912-1981)  
Jim Jones, O.D., Retired  
Paul Brown, O.D.

Source: *Miss Code Ann.* § 73-19-9

**Rule 8.10 Restriction on commissions and secret divisions of fee to secure patients.**

No optometrist shall give or receive a commission or make a secret division of fees, by whatever permit may be called, or under guise or any pretext whatsoever from any unlicensed optometrist, person, firm or corporation to secure optometric patients.

Source: *Miss Code Ann.* § 73-19-9

**Rule 8.11 Signs on office doors, windows and buildings.**

The name of each optometrist practicing at each main or branch office shall be clearly posted in public view on or near each entrance used by the public or in each public waiting facility of such location.

Source: *Miss Code Ann.* § 73-19-9

**Rule 8.12 Incorporating under professional corporation laws.**

An optometrist may incorporate under current Mississippi Professional Corporation Laws. Any optometrist so incorporated or employed by a Professional Corporation shall abide by all of the optometry laws and the rules, regulations and orders of the Mississippi State Board of Optometry.

Source: *Miss Code Ann.* § 73-19-9

**Rule 8.13 Dissemination of optometric consumer information. Standards, restrictions and required disclosures.**

- (a) No optometrist shall by any means or method disseminate to his/her patients or the public information that is false, fraudulent, deceptive, misleading, or unfair; or information which contains any unverifiable statement or claim relating to the quality of the optometric services to be delivered or which contains any other claim which cannot be verified. Dissemination of optometric information offering delivery of professional services or ophthalmic materials of any kind, delivery of which generally required additional professional services or other services, must state whether the offer includes such additional or other services.
- (b) A copy of each public dissemination of information shall be retained in the office of the dissemination optometrist for a period of 18 months following the date of last dissemination. During such period a record of the date and manner of dissemination shall also be maintained. The copy and related information concerning dissemination shall be furnished, within seven (7) days of a written request, to the State board of its designated agent.

Source: *Miss Code Ann.* § 73-19-9

**Rule 8.14 Effect of failure to follow established rules and laws related to practice of Optometry.**

Any optometrist who willfully violates the Optometry Law of Mississippi, any of the rules and regulations of the State board of Optometry, or other lawfully adopted laws or regulations related to the practice of optometry, shall upon the filing of charges and after hearing before the board be subject to having his license revoked or suspended. Such violations are deemed to be unprofessional and unethical conduct. The establishment by these rules of certain acts as being unprofessional and/or unethical shall not limit the right and power of the board to determine what other acts or omissions on the part of a licensee may constitute unprofessional and/or unethical conduct.

Source: *Miss Code Ann.* § 73-19-9

**Rule 8.15 Notice of address and telephone number changes required to be given to State board.**

Any person licensed to practice optometry in this State shall, and at least fourteen (14) days prior to the change, send written notice to the board of any change in floor plan his/her office telephone number, his/her business street address, and/or mailing address for any office (including branch offices) in which he practices and the effective date of such change.

Source: *Miss Code Ann.* § 73-19-9

## **Part 2901 Chapter 9. Standards.**

### **Rule 9.1 Adequate Examination.**

- (a) In order to insure an adequate examination in the initial examination of the patient, the optometrist or therapeutic optometrist shall make and record, if possible, the following findings of the condition of the patient:
  - (1) case history (ocular, physical, occupational, and other pertinent information);
  - (2) visual acuity;
  - (3) biomicroscopy slit lamp examination (lids, cornea, sclera, etc.);
  - (4) internal ophthalmoscopic examination (media, fundus, etc.);
  - (5) static retinoscopy, O.D., O.S., or autorefractor;
  - (6) subjective findings, far point and near point;
  - (7) assessment of binocular function;
  - (8) amplitude or range of accommodation;
  - (9) tonometry;
  - (10) field of vision, to right and to left.
- (b) In order to insure an adequate contact lens exam, the optometrist or therapeutic optometrist shall preform following items in addition to 9.1 (a).
  - (1) perform and record keratometry testing.
  - (2) must schedule one follow-up visit for examination within 30 days of the contact lens fitting, and must inform the patient on the initial visit regarding the requirement of the follow-up care.
  - (3) must observe proper hygiene in the handling and dispensing of the contact lenses and in the conduct of the examination. Proper hygiene includes sanitary office conditions, running water in the office where contact lenses are dispensed and proper sterilization of diagnostic lenses and instruments.
  - (4) must instruct the patient in the proper care of lenses, including proper hygiene.
- (c) Basic Competence Violations.
  - (1) The omission of a single, essential finding shall be reason for an investigational hearing or informal conference. The following findings are essential in the initial examination of a patient:
    - (a) Biomicroscopy slit lamp examination (lids, cornea, sclera, etc.);
    - (b) Internal ophthalmoscopic examination (media, fundus, etc.);
    - (c) Subjective findings, far point and near point;
    - (d) Tonometry.
  - (2) The omission of a total of four significant findings in the initial examination of a patient shall be reason for an investigational hearing or informal

conference. The following findings are significant in the initial examination of a patient:

- (a) Case history (ocular, physical, occupational and other pertinent information);
  - (b) Visual acuity;
  - (c) Static retinoscopy, O.D., O.S., or autorefractor;
  - (d) Assessment of binocular function;
  - (e) Amplitude or range of accommodation;
  - (f) Angle of Vision, to right and to left.
- (3) All other omissions or combination of omissions of findings shall be reason to send noncompliance letters. The absence of the optometrist's or therapeutic optometrist's signature on the prescription shall be considered an omission.
- (4) An investigational hearing or informal conference is required when a second alleged violation has occurred. Likewise, if a licensee has had a previous investigational hearing or informal conference, a subsequent complaint may result in a formal disciplinary hearing.

Source: *Miss Code Ann.* § 73-19-3

#### **Rule 9.2 Standards for office.**

Each Optometrists must have the equipment to practice to the current standard of care to include but not limited to the following: An Ophthalmoscope, a retinoscope; an Ophthalmometer or Keratometer and a Refractor, or a trial frame with trial case auxiliary prisms and lenses, test objects of Stereopsis and fusion charts for distance and near visual acuity, Pseudoisochromatic charts for color vision, Tangent screen or Perimeter, Tonometer and a Biomicroscope (slit lamp). Every such examination must be made in an optometric office, and in a room of such office used exclusively for the practice of optometry. Provided that if a person desiring optometric services informs an optometrist that by reason of sickness or other cause he or she is confined to his or her place of abode, said optometrist may make said examination at the place of abode of said person. Provided, further, that said optometrist must have available at said place of abode for said examination the following minimum equipment, to include but not limited to: An Ophthalmoscope, a Retinoscope, a suitable astigmatic test and a reliable trial frame and lenses adequate for determining proper diagnosis.

Source: *Miss Code Ann.* § 73-19-3

#### **Rule 9.3 Designation of Main and Branch office location for board records.**

Every optometrist in active practice in this State shall designate in writing on his license application or renewal form one fixed location as his main office and shall identify any branch office locations then existing. A branch office is defined as any fixed location where the optometrist may practice other than his main office. Any change in office location or new opening of any office (main or branch) shall be reported in writing to the board, including change in ownership, the starting of a practice in the same physical

location where any other optometrist is already in practice. The provisions of this Rule shall apply without regard to the optometrist's ownership interest, or lack thereof, in the office facility or the practice located where any licensed optometrist may practice under his license granted by this board.

Source: *Miss Code Ann.* § 73-19-3

**Rule 9.4 Registration of main and branch offices.**

Each office shall be registered with the Mississippi State Board of Optometry. The Optometrists license must be displayed in each office location and shall be furnished by the board at a fee to be determined by the board.

Source: *Miss Code Ann.* § 73-19-3

**Rule 9.5 Timely Notice to board of Opening of office or branch office, inspection of newly opened office or branch office.**

No optometrist shall open an office or branch office for the practice of optometry in this State without first providing the board with a scale drawing of the floor plan of such proposed office showing the location of instruments and equipment and a dated certificate signed by the optometrist that the proposed office conforms to the rules of the board related to equipment, instruments and configuration required for such office. Such certificate and floor plan shall be delivered to the board in person or by registered mail no less than 14 days prior to the scheduled opening of the office. This Rule is in addition to all other rules governing establishment of an office or branch office and in no way restricts the power of the board or its designated agent to inspect at anytime to determine if the office and licensed individual conform to the rules of the board and the laws of this State.

Source: *Miss Code Ann* §73-19-9

**Part 2901 Chapter 10. Current Procedural Terminology (CPT) Codes**

**OFFICE OR OTHER OUTPATIENT SERVICES**

**Rule 10.1 Therapeutic CPT Codes**

**The CPT codes as set forth below are not all inclusive, and as such each Optometrists must check and verify that each code is appropriate.**

11000	76511	92002	92100	92286	92353	92533	96116	99053	99205	99245	99304	99355	99446
16000	76512	92004	92132	92287	92354	92534	97110	99056	99211	99251	99305	99356	99447

65205	76513	92012	92133	92310	92355	92541	97129	99058	99212	99252	99306	99357	99448
65210	76514	92014	92134	92311	92358	92542	97150	99060	99213	99253	99307	99358	99449
65220	76516	92015	92136	92312	92370	92544	97151	99070	99214	99254	99308	99359	99452
65222	76519	92018	92145	92313	92371	92545	97152	99071	99215	99255	99309	99401	67820
65430	76529	92019	92201	92314	92499	92546	97530	99075	99221	99271	99310	99402	
65435	82947	92020	92202	92315	92531	92547	97533	99078	99222	99272	99341	99406	
65778	82948	92025	92250	92316	92352	92950	97535	99080	99223	99273	99342	99407	
68020	83516	92060	92260	92317	92355	94010	97537	99082	99231	99274	99343	99421	
68040	83520	92065	92270	92325	92358	95004	99000		99232	99275	99345	99422	
68761	83861	92071	92273	92326	92370	95060	99001	99199	99233	99281	99347	99423	
68801	85018	92072	92274	92340	92371	95930	99002	99201	99241	99282	99348	99441	
68810	87070	92081	92283	92341	92499	96110	99024	99202	99242	99283	99349	99442	
68840	87809	92082	92284	92342	92531	96112	99050	99203	99243	99284	99350	99443	
76510	90782	92083	92285	92352	92532	96113	99051	99204	99244	99285	99354		



## Rule 10.2 (PEP) CPT Codes

Mississippi licensed Optometrists certified in Primary Eyecare Procedures are able to use the following:

10060	11900	67700	67999
10061	11901	67710	68100
10140	12011	67800	68110
10160	17000	67801	68115
11055	17003	67805	68135
11056	17004	67810	68200
11057	17110		68340
11200	17111	67825	68399
11201	64612	67840	68760
11310	65272	67850	68899
11311	65286	67914	76499
11312	65400	67915	92230
11313	65436	67921	92235
11440	65600	67922	92240
11441	66821	67930	92242
11442	67515	67938	92265

## Part 2901 Chapter 11, Telehealth

### Rule 11.1 Definition.

(a) Telehealth is the practice of medicine using electronic communication, information technology or other means between a physician in one location and a patient in another location with or without an intervening health care provider. This definition does not include the practice of optometry through postal or courier services. Telehealth means the delivery of optometric care such as diagnosis, consultation, or treatment through the use of interactive audio, video or other electronic media. Telehealth must be “real-time” consultation, and it does not include the use of audio-only telephone, e-mail or facsimile.

### Rule 11.2 Providers

(a) A provider is an optometrist that currently holds an active Mississippi license. Otherwise be authorized by law to practice in another jurisdiction where the patient is physically present or domiciled. Abide by the Board’s law and rules and regulations and all current standards of care requirements applicable to onsite optometric services.

(b) Optometric telehealth services in Mississippi shall remain within the scope of optometric licensing laws for the State of Mississippi, and that the services will require the use of advanced telecommunications technology, other than telephone or facsimile technology. At this time, these technologies include:

- (1) Compressed digital interactive video, audio, or data transmission.
- (2) Clinical data transmission using computer imaging by way of still image capture and store and forward.
- (3) Other technology that facilitates access to health care services or optometric specialty expertise.

(c) A provider who uses telehealth in his or her practice shall adopt protocols to prevent fraud and abuse through the use of telehealth. A provider shall make a good faith effort to provide the patients with notification of the provider's privacy practices before evaluation or treatment.

### **Rule 11.3 Maintenance and retention of records.**

(a) The licensee shall document in the file or record which services were provided by tele-health and adhere to the present record-keeping requirements.

### **Rule 11.4 Confidentiality.**

(a) The licensee shall ensure that the electronic communication is secure to maintain confidentiality of the patient's medical information as required by the Health Insurance Portability and Accountability Act (HIPAA) and other applicable Federal and State laws. Confidentiality shall be maintained through appropriate processes, practices and technology, including disposal of electronic equipment and data.

(b) A provider shall comply with all other applicable State and Federal Laws, rules and regulations.

### **Rule 11.5 Patient Identity and Communication.**

(a) The optometrist using telehealth to deliver optometric services or who practices tele-optometric treatment, upon initial contact with the patient shall:

- (1) Verify the identity of the patient prior to each encounter;
- (2) Obtain alternative means of contacting the patient;
- (3) Arrange for the patient to have alternative means of contacting the optometrist.
- (4) Provide contact methods of alternative communication the optometrist shall use for emergency purposes;
- (5) Use personal identifying information only in secure communications; and

- (6) Obtain written, informed consent from the patient or other appropriate person with authority to make optometric/ health care treatment decisions for the patient before services are provided through telehealth.

### **Rule 11.6 Patient Relationships**

- (a) The use of eye and vision telehealth services is not appropriate for establishing the doctor-patient relationship, for an initial diagnosis, as a replacement for recommended face-to-face interactions. It is therefore mandated that the doctor-patient relationship begin with an initial face-to-face encounter.
- (b) The standard of care must remain the same regardless of whether eye and vision telehealth services are provided in-person, remotely, via telehealth, or through any combination thereof. Doctors of optometry may not waive this obligation, or require patients to waive their right to receive the established standard of care in the state of Mississippi.
- (c) Eye and vision telehealth services cannot, based on current technologies and uses, replace an in-person comprehensive eye examination provided by an eye doctor. Eye and vision telehealth services provided must be consistent with and in compliance with existing rules and regulations of practice established in the State of Mississippi. In order to protect and insure patient safety, the Board recommends the use of only technology approved by the Food and Drug Administration, designed specifically for use in optometric care.
- (d) During telehealth encounters the patient must be in the presence of an onsite health provider.
- (e) An Established Treatment Site or distant site Mississippi licensed health care provider means a person licensed to provide health care to patients in Mississippi.
- (f) During telehealth encounters a Mississippi licensed optometrist must be present either onsite or distant site or both.

### **Rule 11.7 Established Treatment Site**

- (a) A location where a patient shall present to seek optometric care where there is an optometrist present and sufficient technology and equipment to allow for an adequate physical evaluation as appropriate for the patient's presenting complaint. The term requires an optometrist-patient relationship. A patient's private home is not considered an established treatment site.

### **Rule 11.8 Distant Site Provider**

- (a) The provider providing the telehealth service from a site other than the patient's current location. The distant site provider shall hold an active Mississippi license.
- (b) Limitations of telehealth. A provider who uses telehealth services, before providing services, shall give each patient notice regarding telehealth services, including the risks and benefits of being treated via telehealth, and how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or

in the event of an inability to communicate as a result of a technological or equipment failure. A signed and dated notice, including an electronic acknowledgement by the patient, establishes a presumption of notice.

- (c) Necessity of in-person evaluation. When, for whatever reason, the telehealth modality in use for a particular patient encounter is unable to provide all pertinent clinical information that a healthcare provider exercising ordinary skill and care would deem reasonably necessary for the practice of optometry at an acceptable level of safety and quality in the context of that particular encounter, then the distant site provider shall make this known to the patient and advise and counsel the patient regarding the need for the patient to obtain an additional in-person evaluation reasonably able to meet the patient's needs.

## OPTOMETRY CANNABIS CERTIFICATION RULES AND REGULATIONS

### Part 2901, Chapter 12 Cannabis Certification

#### Rule 12.1 Scope for Part 2901, Chapter 12

The rules contained in this Part 2901, Chapter 12 are promulgated by the Mississippi Board of Optometry (the “Board”) to implement the Mississippi Medical Cannabis Act, SB 2905, Mississippi Legislature Regular Session 2022 (the “Act”). These rules shall apply to all licensees who are registered as certifying practitioners; or who are applying, orre-applying, to register as certifying practitioners. Nothing in these rules shall be construed to require any licensee to issue any written certification pursuant to the Act.

*Source: Miss. Code Ann. § 73-19-9 (1972, as amended)*

#### Rule 12.2 Definitions for Part 2901, Chapter 12.

For the purposes of Part 2901, Chapter 12 the following terms have the meanings indicated:

- A. “Bona-fide practitioner-patient relationship” means:
- 1) A certifying practitioner and patient have a treatment or consulting relationship, during the course of which the certifying practitioner, within his or her scope of practice, has completed an in-person assessment of the patient’s medical history and current mental health and medical condition and has documented their certification in the patient’s medical records;
  - 2) The certifying practitioner has consulted in person with the patient with respect to the patient’s debilitating medical condition; and
  - 3) The certifying practitioner is available to or offers to provide follow-up care and treatment to the patient.
- B. “Cannabis” means all parts of the plant of the genus cannabis, the flower, the seeds thereof, the resin extracted from any part of the plant and every compound, manufacture, salt, derivative, mixture or preparation of the plant, its seeds or its resin, including whole plant extracts. Such term shall not mean cannabis-derived drug products approved by the federal Food and Drug Administration under Section 505 of the Federal Food, Drug, and Cosmetic Act.
- C. “Certifying practitioner” means any Optometrist who is licensed to prescribe under the licensing requirements set forth in the Administrative Code and the laws of this state, who maintains a current and unrestricted Mississippi optometry license, has

satisfied all continuing education requirements, and who has registered with both the Mississippi Board of Optometry and the Mississippi State Department of Health to certify patients as qualifying patients.

- D. "Chronic pain" means a pain state in which the cause of the pain cannot be removed or otherwise treated, and which in the generally accepted course of medical practice, no relief or cure of the cause of the pain is possible, or none has been found after reasonable efforts by the certifying practitioner.
- E. "Debilitating medical condition" means:
- 1) Cancer, Parkinson's disease, Huntington's disease, muscular dystrophy, glaucoma, spastic quadriplegia, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis, amyotrophic lateral sclerosis (ALS), Crohn's disease, ulcerative colitis, sickle-cell anemia, Alzheimer's disease, agitation of dementia, post-traumatic stress disorder (PTSD), autism, pain refractory to appropriate opioid management, diabetic/peripheral neuropathy, spinal cord disease or severe injury, or the treatment of these conditions;
  - 2) A chronic, terminal or debilitating disease or medical diagnosis, or its treatment, that produces one or more of the following: cachexia or wasting syndrome, chronic pain, severe or intractable nausea, seizures, or severe and persistent muscle spasms, including, but not limited to, those characteristics of multiple sclerosis; or
  - 3) Any other serious medical condition or its treatment added by the Mississippi Department of Health, as provided for in the act which shall be rational to the State Board of Optometry practice.
- F. "Medical use" includes the acquisition, administration, cultivation, processing, delivery, harvest, possession, preparation, transfer, transportation, or use of medical cannabis or equipment relating to the administration of medical cannabis to treat or alleviate a registered qualifying patient's debilitating medical condition or symptoms associated with the patient's debilitating medical condition. The term "medical use" does not include:
- 1) The cultivation of cannabis unless the cultivation is done by a cannabis cultivation facility; or
  - 2) the extraction of resin from cannabis by mechanical or chemical extraction unless the extraction is done by a cannabis processing facility.
- G. "Qualifying Condition" means any condition as described in this chapter in R.12.2 (E).

- H. “Qualifying Patient” means a person who has been diagnosed by a certifying practitioner as having a debilitating medical condition and has been issued a written certification, or who is eligible to receive such certification, under the Act.
- I. “Scope of Practice” means the defined parameters of various duties, services or activities that may be provided or performed by a certifying practitioner under state law Miss. Code Ann. § 73-19-1 and the rules and regulations adopted by the Board.
- J. “Written Certification” means a form approved by the Mississippi State Department of Health, signed and dated by a certifying practitioner, certifying that a person has a debilitating medical condition, and that includes the following:
  - 1) The date of issue and the effective date of the recommendation;
  - 2) The patient's name, date of birth and address;
  - 3) The practitioner's name, address, and federal Drug Enforcement Agency number; and
  - 4) The practitioner's signature.

Source: Miss. Code Ann. § 73-19-9 (1972, as amended).

### Rule 12.3 Registration and Certification.

- A. Registration. Certifying practitioners must register with the Board within 30 days of receiving the unique identifier as assigned by the Mississippi Department of Health.
- B. General Certification. Certifying practitioners must be authorized and registered with both the Board and the Mississippi State Department of Health to certify patients to obtain cannabis for medical use.
  - 1) A practitioner shall not issue a written certification unless
    - (a) a bona fide certifying practitioner-patient relationship exists;
    - (b) the certifying practitioner has diagnosed the patient as having a qualifying condition after an in-person evaluation, including any necessary and appropriate diagnostic testing; and
    - (c) the certifying practitioner believes, in his or her professional opinion, that the patient would likely receive medical or palliative benefit from the medical use of cannabis to treat or alleviate the patient's qualifying condition or symptoms associated with that condition.
  - 2) A certifying practitioner shall conduct the evaluation, diagnosis, and certification processes in a manner consistent with all professional and medical standards of care, and document all information related to those processes in the patient's records.
  - 3) The diagnosis of a debilitating condition must be documented in a written certification that shall:

- a) Affirm that it is made in the course of a bona fide practitioner-patient relationship;
- b) Remain current for twelve (12) months, unless the certifying practitioner specifies a shorter period of time;
- c) Be issued only after an in-person assessment of the patient by the certifying practitioner;
- d) Only be issued on behalf of an adult, 18 years of age or older; and
- e) Be limited to the allowable amount of cannabis in a thirty-day period.

B. Treatment Plan. Prior to certifying a patient, certifying practitioners must document a written treatment plan that includes:

- 1) Review of other measures attempted to ease the suffering caused by the qualifying condition that do not involve the recommendation of cannabis.
- 2) Advice about other options for managing the qualifying condition.
- 3) Determination that the patient may benefit from cannabis.
- 4) Stated goals that include the reduction of, and optimally the elimination of, controlled substances used to treat the qualifying condition.
- 5) Advice about the potential risks of the medical use of cannabis, to include:
  - (a) The risk of cannabis use disorder;
  - (b) Exacerbation of psychotic disorders and adverse cognitive effects;
  - (c) Adverse events, including falls or fractures;
  - (d) Use of cannabis during pregnancy or breast feeding;
  - (e) The need to safeguard all cannabis and cannabis-infused products from children and pets; and
  - (f) Notification to the patient that the cannabis is for the patient's use only and the cannabis should not be donated or otherwise supplied to another individual (i.e., diverted).
- 6) Additional diagnostic evaluations or other planned treatments.
- 7) A specific duration for the cannabis authorization for a period no longer than twelve (12) months.
- 8) Patients with a history of substance use disorder or a co-occurring mental health disorder may require specialized assessment and treatment. The certifying practitioner should seek consultation with, or refer the patient to, a pain management, psychiatric, addiction, or mental health specialist as needed.
- 9) After a certifying practitioner has issued a written certification for a patient, the Act requires the patient to make a follow-up visit with the practitioner



not less than six (6) months after the date of issuance of the certification, for the practitioner to evaluate and determine the effectiveness of the patient's medical use of medical cannabis to treat or alleviate the patient's qualifying condition or symptoms associated with that condition. Should the patient fail to attend a follow-up visit as required, the certifying practitioner may not re-certify said patient until an in-person follow-up visit is conducted.

C. Pediatric and Young Adult Certifications. Only physicians (Medical Doctors [MD] or Doctor of Osteopathic Medicine [DO]) may issue written certifications to registered qualifying patients who are minors (younger than eighteen (18) years of age). Optometrists are not allowed to certify any patient under the age of eighteen (18).

*Source: Miss. Code Ann. § 73-19-9 (1972, as amended).*

#### Rule 12.4 Patient Record.

- A. A practitioner who evaluates a patient for certification must maintain a complete medical record.
- 1) The record must contain a record of his or her examination, evaluation and treatment of the patient.
  - 2) The record required by this rule must be maintained in the patient's medical records, and said records must be available for inspection by the representatives of the Mississippi State Board of Optometry.
  - 3) Records shall be maintained for a minimum period of seven (7) years from the date of completion or the last certification occurred.

*Source: Miss. Code Ann. § 73-19-9 (1972, as amended).*

#### Rule 12.5 Continuing Education (CE).

- A. Practitioners applying to register with the Board as a certifying practitioner must complete continuing education hours.
- 1) Practitioners applying to register with the Board as a certifying practitioner for the first time must complete a minimum of eight (8) hours of CE in the area of medical cannabis before initial registration shall be approved. by the Mississippi State Department of Health and the Mississippi State Board of Optometry.
  - 2) After the first year of registration, certifying practitioners shall complete at least five (5) hours of CE in the area of medical cannabis before a reapplication shall be approved.
  - 3) All CE hours in the area of medical cannabis must be earned in the courses approved by the Mississippi State Board of Optometry and the Mississippi State Department of Health. CE hours obtained under this

rule are in addition to the standard number of CE hours in Pt. 2901.

*Source: Miss. Code Ann. § 73-19-9 (1972, as amended).*

#### Rule 12.6 Advertising.

Refer to Title 15: Mississippi State Department of Health Part 22: Medical Marijuana Advertising and Marketing Chapter 1, Subchapters 1-5 Regulations for Advertisement and Marketing.

*Source: Miss. Code Ann. § 73-19-9 (1972, as amended).*

#### Rule 12.7 Freedom of Choice and Conflicts of Interest.

Patients are entitled to the same freedom of choice in selecting where to obtain their cannabis as they are in the choice of a certifying practitioner. The following conduct by any certifying practitioner is a direct violation of the Mississippi Medical Cannabis Act and is prohibited: (a) purposefully referring patients to a specific medical cannabis establishment or to a registered designated caregiver, (b) advertising in a medical cannabis establishment, or (c) issuing written certifications while holding a financial interest in a medical cannabis establishment.

*Source: Miss. Code Ann. § 73-19-9 (1972, as amended).*

#### Rule 12.8 Mississippi Prescription Monitoring Program (MPMP) and Urine Drug Screening.

- A. Certifying Practitioners who certify patients for cannabis must review the MPMP at each patient encounter involving certification, re-certification, or follow-up related to medical cannabis.
  - 1) MPMP data reviewed shall include all information since the previous review.
  - 2) The certifying practitioner shall note in the patient's chart that the MPMP was reviewed and provide appropriate information regarding the findings of said review.
  
- B. Urine Drug Screening (UDS) and Other Diagnostic Tests.
  - 1) As part of the in-person evaluation of a patient for initial certification or for re-certification each year, certifying practitioners shall conduct urine

- drug screening (UDS) and other diagnostic tests necessary for full evaluation of the patient's eligibility for medical cannabis.
- 2) In the absence of urine, other testing methods may be used.
  - 3) Tests must include, at a minimum, assays for opioids, benzodiazepines, amphetamines, cocaine, and cannabis. Inconsistent UDS should be utilized as a tool to determine compliance with treatment.

*Source: Miss. Code Ann. § 73-19-9 (1972, as amended).*

#### Rule 12.9 Concomitant Prescribing of Controlled Substances and Cannabis Certification.

##### A. Concomitant Prescribing.

- 1) The concomitant prescribing of controlled substances after certification for cannabis is generally discouraged and should be done with caution. There is a lack of data currently on the interactions between controlled substances and cannabis.
- 2) When considering certification or re-certification for cannabis, certifying practitioners should focus on improving their patient's quality of life while simultaneously assessing for contraindications to the concurrent use of controlled substances and cannabis, with the goal of greatly reducing or completely eliminating other mood-altering substances when possible.

*Source: Miss. Code Ann. §73-19-9 (1972, as amended).*

#### Rule 12.10 Violations.

Violation of any of the rules or requirements in this Part 2901, Chapter 12, or of any provision of the Mississippi Medical Cannabis Act, constitutes unprofessional conduct in violation of Miss. Code Ann. § 73-19-23 and may subject a licensee to discipline. Discipline under this Chapter and other provisions of the Administrative Code shall be in addition to any other civil, criminal, or administrative penalties available under state law.

*Source: Miss. Code Ann. § 73-19-9 (1972, as amended).*

**Effective <DATE>**

