

DEPARTMENT OF REGULATORY AGENCIES

State Board of Optometric Examiners

OPTOMETRIC EXAMINERS RULES AND REGULATIONS

4 CCR 728-1

**BASIS**

The authority for the promulgation of these rules and regulations by the Colorado State Board of Optometric Examiners ("Board") is set forth in Section 12-40-107(1)(g), C. R. S.

**PURPOSE**

These rules are adopted and revised to implement the board's authority to license persons as optometrists and to set forth the requirements for being so licensed.

**9.00 ~~RELEASE OF A CONTACT LENS AND EYEGLASS PRESCRIPTIONS TO THE PATIENT.~~**

9.01 ~~The An~~ optometrist shall release to the patient, upon written request, a valid written contact lens prescription and/or an eyeglass prescription at the time the optometrist would otherwise replace a contact lens or eyeglass without any additional preliminary examination or fitting. A written request is a written authorization, signed and dated, by the patient ~~which requests-requesting~~ a contact lens prescription or eyeglass prescription.

9.02 A valid written contact lens prescription or eyeglass prescription is an order by an optometrist to supply contact lens or eyeglass medical devices to a patient. It shall contain at least all of the following information:

- a. The patient's full name.
- b. The date.
- c. All usual and customary specifications, and manufacturer's name and manufacturer's trade or brand name necessary for an exact replacement contact lens.
- d. The statement, "No Substitution Without Doctor Approval" .
- e. The doctor's signature or electronic signature, name, license number, address and phone number.
- f. A reasonable limit on refills.
- g. A reasonable expiration date, not to exceed one (1) year.

9.03 References to contact lenses within the statutes and rules include, but are not limited to, Plano contact lenses worn for the sole purpose of their cosmetic or decorative colors.

**Rule 14 Reporting Convictions, Malpractice Judgments, Disciplinary Actions, Settlements or Arbitration Awards**

~~A. The purpose of this rule~~ is to clarify the procedures for reporting convictions, malpractice judgments, settlements and disciplinary actions pursuant to Sections 12-40-118(1)(r), (t) and (gg), C.R.S.

~~BA.~~ The conviction of the licensee of a felony under the laws of any state or of the United States, as described in Section 12-40-118(1)(t), C.R.S.

~~1.~~ For purposes of this rule, a "conviction" includes: a guilty verdict; ~~or;~~ an entry of a plea of guilty accepted by the court; ~~or~~ an entry of a plea of nolo contendere (no contest) accepted by the court, or the imposition of a deferred sentence.

~~CB.~~ A licensee, as defined under ~~this Article 40 Section this Article 40,~~ Section 12, C.R.S., shall inform the Board, in the manner set forth within ~~forty-five (45) thirty (30)~~ days of any of the following occurrences:

~~1.~~ Any judgment, award or settlement of a civil action or arbitration proceeding in which the licensee was a party, if the action or proceeding included any allegation of optometrist malpractice as described in Section 12-40-118(1)(r), C.R.S.

~~2.~~ A disciplinary action imposed upon the licensee by another jurisdiction that licenses optometrists as described in Section 12-40-118(1)(gg), C.R.S.

~~C.~~ The licensee shall inform the Board of the following information within ~~forty-five (45) days of each such occurrence:~~

~~1. The imposition of sentence for the felony conviction, settlement or arbitration award.~~

~~2. The completion of all terms of the sentence for the felony conviction.~~

~~D.~~ A licensee ~~notifying the Board may submit a written statement with any notice under this rule to be included in the licensee's records,~~ as defined under ~~this Article 40, Section 12 C.R.S. shall inform the Board, in a manner set forth by the Board, within sixty (60) days of any of the following occurrences:~~

~~1.~~ The notice to the Board shall include the following information:

~~i-a.~~ The court, agency, arbitrator or demand award;

~~ii-b.~~ The jurisdiction;

~~iii-c.~~ The case name;

~~iv-d.~~ The case number;

~~v-e.~~ A description of the matter, a copy of the indictment or charges or complaint or arbitration award.

~~E.~~ The licensee shall inform the Board of the following information within ~~forty-five (45) days of each such occurrence:~~

~~1. The imposition of sentence for the felony conviction, settlement or arbitration award~~

~~2. The completion of all terms of the sentence for the felony conviction.~~

~~F~~ The licensee notifying the Board may submit a written statement with any notice under this rule to be included in the licensee's records.

~~G-E~~ This rule shall apply to any conviction, judgment or disciplinary action as described in paragraphs ~~A-B~~ and ~~B-C~~ of this rule that occurs on or after the effective date of this rule.

## **Rule 15 Board Review of Initial Decisions**

~~A~~ ~~Basis~~: The authority for the promulgation of these rules and regulations by the Colorado State Board of Optometric Examiners ("Board") is set forth in Section 12-40-107(1)(g), C.R.S.

~~B~~ ~~Purpose~~: The purpose of ~~these~~ ~~this~~ rules and regulations is to set forth the procedures surrounding the filing of exceptions and review of initial decisions pursuant to Section 24-4-105(14) and (15), C.R.S.

### ~~C-A~~ Rules and Regulations – Written Form, Service, Time, and Filing Requirements

- ~~1~~. All designations of record, requests, motions, exceptions, and any responses thereto (hereinafter "Pleading" -or "Pleadings"-) must be in written form, mailed with a certificate of service to the Board and the opposing party.
- ~~2~~. In the event that an electronic filing system is implemented in the Division of Registrations for the receipt of Pleadings, the items listed in this ~~paragraph~~ ~~section~~ may be submitted in electronic form with a certificate of filing to the Board and the opposing party.
- ~~3~~. All Pleadings must be received by the Board by 5:00 pm on the date the filing is due and must be served on the opposing party. These rules do not provide any additional time ~~for~~ service by mail.
- ~~4~~. All Pleadings must be filed with the Board; not with the Office of Administrative Courts. Any Pleading filed in error with the Office of Administrative Courts will ~~not~~ ~~be~~ considered.

### ~~D-B~~ Authority to Review

- ~~1~~. The Board hereby initiates the review of all initial decisions on its own motion pursuant to Section 24-4-105(14)(a)(11), C.R.S., without requiring a vote in each case.
- ~~2~~. This option to review shall apply regardless of whether a party files exceptions to the initial decision.

### ~~E-C~~ Designation of Records and Transcripts

- ~~1~~. Any party seeking to reverse or modify the initial decision of the administrative law judge shall file with the Board a designation of the relevant parts of the record for review ("Designation of Record"-). ~~Designations of Record are due and must be received by the Board within twenty~~ ~~days~~ (20) days of the date on which the Board mails the initial decision to ~~the~~ parties' address of record with the Board.
- ~~2~~. In the absence of a Designation of Record, the record for purposes of the Board's review of the initial ~~Decision~~ ~~decision~~ as set forth in Section 24-4-105(14)(a), ~~C.R.S.~~ shall include the following:

- a. All Pleadings filed with the Office of Administrative Courts or applicable hearing tribunal;
- b. All applications presented or considered during the hearing;
- c. All documentary or other exhibits admitted into evidence at the hearing;
- d. All documentary or other exhibits presented or considered during the hearing;
- e. All matters officially noticed during the hearing; and
- f. Any findings of fact and conclusions of law proposed by any party at the hearing.

**F-D. Transcripts** – Transcripts shall not be deemed part of a Designation of Record unless specifically identified, ordered and timely filed. To designate a transcript or portion thereof, the following procedures apply.

1. The Designation of Record must identify with specificity the transcript or portion thereof to be transcribed. For example, a party may designate the entire transcript, testimony of particular witness(es), a legal ruling or argument, or other information necessary to identify the portion of the transcript to be transcribed.
2. Any party who includes a transcript or a portion thereof as part of the Designation of Record must order the transcript or relevant portions by the date on which the Designation of Record is due. As noted above, a Designation of Record is due within twenty (20) days of the date on which the Board mails the initial decision to the parties.
3. When ordering the transcript, the ordering party shall request the court reporter to complete and provide the Board the transcript and one copy of the transcript within thirty (30) days and shall timely pay all fees associated with such a request.
4. If a party designates a portion of the transcript, the opposing party may file a Supplemental Designation of Record identifying additional portions of the transcript. This Supplemental Designation of Record is due and must be received by the Board within ten (10) days after the date on which the original Designation of Record was due and received by the Board.
5. A party filing a Supplemental Designation of Record shall request the court reporter to complete and provide the Board the supplemental transcript and one copy of the supplemental transcript within thirty (30) days of the Supplemental Designation of Record and shall timely pay all fees associated with such a request.
6. Transcripts that are ordered by either party and not provided to the Board in a timely manner by the court reporter due to non-payment, insufficient payment or failure to request as set forth above will not be considered by the Board.

**G-E. Exceptions and Responsive Pleadings**

1. Any party filing exceptions shall adhere to the following timelines:

- a. ~~If no transcripts are ordered~~, exceptions are due within thirty (30) days from the date the Board mails the initial decision to the parties. Both parties' exceptions are due on the same date.
- b. ~~If transcripts are ordered by either party~~, the following procedure shall apply:
  - i. Upon timely receipt of all transcripts identified in the Designations of Record, the Board shall mail notification to the parties stating that the transcripts have been received. ~~Exceptions are due within thirty (30) days from the date on which such notification is mailed. Both parties' exceptions are due on the same date.~~
2. Either party may provide a responsive pleading to the other party's exceptions. All responsive pleadings shall be due and received by the Board within ten (10) days of the date on which the exceptions were due. No other pleadings will be considered except for good cause shown.
3. The Board may in its sole discretion, upon a showing of good cause, grant an extension of time to provide a designation of record, exceptions or responsive pleadings, or may delegate the discretion to grant such an extension of time to the Board's Program Director or the Program Director's designee.

#### **H-F. Request for Oral Argument**

1. All requests for oral argument must be in writing and filed by the deadline for responsive pleadings. Requests received by the Board after this time will not be considered.
2. It is within the sole discretion of the Board to grant or deny a request for oral argument. If oral argument is granted, both parties shall have the opportunity to participate.
3. Each side shall be permitted five (5) minutes for oral argument unless such time is extended by the Board or its Program Director.

#### **Rule 16 Expiration Dates for Prescriptions of Eye Glasses and Contact Lens'**

The purpose of this rule is to clarify the procedures for expiration dates for prescriptions of eye glasses and contact lens' pursuant to Section 12-40-107(g), C.R.S.

A. The expiration date of a contact lens shall not be more than one year from the date of issuance. In no circumstance shall the expiration date be longer than the period of time recommended by the prescriber for reexamination of the patient. Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber's license to practice.

B. The expiration date of a spectacle lens prescription shall not be more than one year from the date of issuance. In no circumstance shall the expiration date be longer than the period of time recommended by the prescriber for reexamination of the patient. Establishing an expiration date that is not consistent with this section shall be regarded as unprofessional conduct by the board that issued the prescriber's license to practice.