

Received

SEP 16 2009

Oregon Board of Optometry

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

EXEC _____ PUBLIC X
FILE UNDER- Administrative Rules
Committee
COPIED FOR 10/2/09
852

Oregon Board of Optometry
Agency and Division

Administrative Rules Chapter Number

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RULE CAPTION

Establishes:

1. Board member compensation; 2. definitions of dispensing & delegation; 3. fees for Electronic Prescription Monitoring Program
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

December 4, 2009

1900 Hines St., SE, Mezzanine Level, Salem OR 97302; Michelle Monkman, OD, Pres.

Hearing Date

Time

Location

Hearings Officer

Are auxiliary aids for persons with disabilities available upon advance request? Yes No

RULEMAKING ACTION

ADOPT: 852-005-0015

Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND: 852-010
852-020
852-050

FILED
SEP 11 2009
ARCHIVES DIVISION
SECRETARY OF STATE

REPEAL:

Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

Amend and Renumber: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

ORS 683; ORS 182; ORS 292

Stat. Auth.: ORS

Other Authority

HB 2058; SB 355; Oregon Law Chapter 535(2009 Laws); ORS 182.466; 683.010(2); 683.030(3); 683.070; 683.100; 683.120; 683.270;
ORS 689.225; OAR 855-043-0001

Stats. Implemented: ORS

RULE SUMMARY

- 852-005: Establishes Board member compensation.
- 852-010: Establishes fees for Electronic Prescription Monitoring Program.
- 852-020: Defines dispensing. Further defines delegation of optometric care.
- 852-050: Establishes collection of fees for Electronic Prescription Monitoring Program.

ORS 183.335(2)(G) requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

December 4, 2009

Last Day for Public Comment

December 4, 2009

Last day to submit written comments to the Rules Coordinator


Signature

David Plunkett, Executive Director
Printed name

9/11/09
Date

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00pm on the preceding workday. ARC 920-1997

STATE OF OREGON
OREGON BOARD OF OPTOMETRY
P.O. Box 13967
SALEM, OR 97309-1967

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form

Oregon Board Of Optometry

852

Agency and Division

Administrative Rules Chapter Number

In the Matter of: The amendment and adoption of rules relating to the field of optometry.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.) Establishes: Board member compensation, fees for Electronic Prescription Monitoring Program, Definition of dispensing, labeling and OD supervision.

Statutory Authority: ORS Chapter 683 authorizes the Board of Optometry to make and/or amend rules concerning the optometric laws of the State of Oregon. ORS Chapter 182 establishes statutory provisions applicable to semi-independent agencies. ORS 689.225 contains statutory provisions for dispensing and labeling of drugs. HB 2058 contains statutory provisions for board member compensation. SB 355 contains statutory provisions for the electronic prescription monitoring program.

Statutes Implemented: HB 2058, Oregon Law Chapter 535 (2009 Laws); ORS 182.466; SB 355; ORS 689.225.

Need for Rule(s): The proposed rules are needed for the following: (1) to establish by rule Board member compensation. (2) To specify that Doctors of Optometry certified for topical and nontopical TPA use may dispense, to a bona fide patient, any pharmaceutical agent that can be legally prescribed by them. Specific labeling requirements must be met. (3) Clarify direct supervision by optometric physicians.

Documents Relied Upon, and where they are available: All of the documents relied upon are available at either the Secretary of State's office, the Oregon Legislature, or the Oregon Board of Optometry: (a) The Oregon optometric laws, Chapters 683, 182 of the Oregon Revised Statutes; ORS Chapter 689 of the Pharmacy Laws. (b) The Oregon Administrative Rules, Chapter 852, et al. © SB 355 and HB 2058 from the 2009 regular legislative session.

Fiscal and Economic Impact, including Cost of Compliance: There should be minimum fiscal and economic impact from the adoption of these rules with the exception of the \$25 electronic prescription monitoring program fee. This fee is required to be assessed and collected by the Oregon Board of Optometry and remitted to the Department of Human Services for use by the EPMP.

How were small businesses involved in the development of this rule?
The individual Board members are representative of the optometric profession who work and own small business.

Administrative Rule Advisory Committee consulted?: There has not been a special advisory committee appointed for this rulemaking. The Board itself is representative of the optometric profession and the public which the rules will affect.


Authorized Signer

David W. Plunkett, Executive Director
Printed Name

9/11/09
Date

DIVISION 5
BOARD ADMINISTRATION

Board Member Compensation

852-05-015 (1) Board members of the Oregon Board of Optometry, who are authorized by law to receive compensation for time spent in performance of their official duties, shall receive a payment of \$100 for each 8-hour day during which the member is actually engaged in the performance of official duties. If the hours engaged in official duties is less or more than 8 hours, payment will be made at an hourly rate of \$12.50 per hour or fraction thereof. This compensation amount shall be in addition to any eligible reimbursement of travel expenses. (2) Board members and employees of the Board are authorized to receive actual and necessary travel or other expenses actually incurred in the performance of their official duties as determined by the Board. Mileage reimbursement will be provided at the rate established by the Internal Revenue Service for privately owned vehicles. (3) No Board member shall be required to accept compensation or reimbursement of travel expenses while performing their official duties as a Board member.

Statutory Authority: ORS292; ORS 182

Statutes Implemented: ORS 182.466(3); IIB 2058, Oregon Law Chapter 535 (2009 Laws)

**OREGON ADMINISTRATIVE RULES
CHAPTER 852, DIVISION 10--BOARD OF OPTOMETRY**

DIVISION 10

GENERAL

Schedule of Fees

852-10-080 (1) The following fee schedule is established by the Oregon Board of Optometry to set forth in one place all of the fees charged by the Board:

- (a) Annual Renewal - Active License \$243
- (b) Annual Renewal - Inactive License \$98
- (c) Continuing Education Renewal Fee \$20
- (d) Disciplinary Renewal Fee \$35
- (e) Additional Office License \$45
- (f) Multiple Office License \$90
- (g) Application for Examination and Licensure ... \$200
- (h) Application for Endorsement Examination and Licensure \$300
- (i) Application for TPA Certification \$75
- (j) Law and Administrative Rule Examination \$75
- (k) Reactivation of License \$100

- (l) Reinstatement of License \$100
- (m) Wall Display Certificate \$30
- (n) License Verification \$20
- (o) Law and Administrative Rules Booklet \$25
- (p) List of Licensees \$25 - \$50
- (q) Late Renewal application, payment, continuing optometric education \$50- \$200
- (r) Failure to notify the Board of practice locations . \$50 - \$200

(s) Electronic Prescription Monitoring Program . \$25

(2) The Board will not refund any fee unless there has been an error by the Board in the charging of the fee. Information not known by the Board because the licensee, applicant, etc. has not supplied the correct information is not considered an error.

Stat. Auth.: ORS Chapter 683; ORS Chapter 182
Stats. Implemented: ORS 683.270 & ORS
182.466

**OREGON ADMINISTRATIVE RULES
CHAPTER 852, DIVISION 20---BOARD OF OPTOMETRY**

DIVISION 20

STANDARDS OF OPTOMETRIC PRACTICE

Prescribing

852-20-035 (1) A Doctor of Optometry shall only use, prescribe, **dispense** or administer controlled substances in Schedules III - V to a person whom he/she has a bona fide physician/patient relationship.

(a) a Doctor of Optometry shall not use, prescribe, **dispense** or administer Schedule III - V controlled substances to himself/herself.

(b) a Doctor of Optometry shall not use, prescribe, **dispense** or administer Schedule III - V controlled substances to an immediate family member except in emergency situations.

(i) Immediate family member means spouse, children, siblings, parents or other individual for whom a Doctor of Optometry's personal or emotional involvement may render him/her unable to exercise detached professional judgement in reaching diagnostic and/or therapeutic decisions.

(2) It shall be considered unprofessional conduct for a Doctor of Optometry to use, prescribe, **dispense** or administer controlled substances in Schedules III - V outside the scope of practice of optometry or in a manner that impairs the health and safety of an individual.

(3) All controlled substances in Schedules III -V dispensed by an optometric physician shall be labeled with the following information:

(a) Name, address and telephone number of the optometric physician;

(b) Date;

(c) Name of patient for which the drug is dispensed;

(d) Name of the drug, strength, the quantity dispensed. When a generic name is used, the label shall also contain the name of the manufacturer or distributor;

(e) Direction for use;

(f) Required precautionary information regarding controlled substances;

(g) Such other and further accessory cautionary information as required for patient safety; and

(h) An expiration date after which the patient should not use the drug. Expiration dates on drugs dispensed must be the same as that on the

original container unless, in the optometric physician's professional judgement, a shorter expiration date is warranted. Any drug bearing an expiration date shall not be dispensed beyond the said expiration date of the drug.

Stat. Auth.: ORS 683; ORS 182

Stats. Implemented: ORS 683.010(3), ORS 683.240(2), ORS 683.270(k) & ORS 182.466. **ORS 689.225; OAR 855-043-0001.**

Optometric Physician Responsibility, Supervision, and Delegation

852-20-060 (1)The optometric physician carries the sole responsibility for the patient's care.

(2) Direct supervision as used in 683.030 means **a person employed by that** the optometric physician **and whose is monitoring the** activities of **all are being directly or indirectly** supervised **individuals** and **has** an appropriate intervention protocol **is** in place.

(3) An optometric physician may not delegate ophthalmoscopy, gonioscopy, final central nervous system assessment, final biomicroscopy, final refraction, final determination of any prescription or treatment plans.

(4) Tonometry may be delegated to well-trained and directly supervised ancillary personnel. An Oregon licensed optometric physician must personally perform tonometry on glaucoma patients.

(5) Therapeutic procedures involving pharmaceutical agents may not be delegated other than to instill medication or provide educational information as instructed by the optometric physician.

Stat. Auth.: ORS 683; ORS 182

Stats. Implemented: ORS 683.010(2), ORS 683.030(3) & ORS 182.466

DIVISION 50

LICENSING

Annual Renewal of Active License

852-50-006 (1) Active licensees shall annually renew their license to practice optometry for the license period established by the Board. License year renewal periods are established by the Board based upon birth dates of licensees in order that expiration dates fall due each month of the year.

(a) If the licensee's date of birth is not available to the Board, a license renewal period will be established for the licensee.

(b) License renewals will cover 12-month license periods based upon birth dates.

(2) License renewal applications are due in the Board's office on the first day of the month of license expiration (month of licensee's birth date).

(3) The license renewal application must include the following to be considered complete:

(a) A completed license renewal form signed by the licensee;

(b) Check or money order for the correct license renewal fees;

(c) Documentation of completion of the required continuing optometric education.

(d) Documentation of current CPR certification, as required in OAR 852-80-040, ~~if licensed to use Nontopical TPA's.~~

(4) The Board will, as a courtesy, send license year renewal forms to the licensees last address of record. The license renewal application is due and must be postmarked on or before the first day of the month of license expiration.

(5) A licensee who is not more than 30 days delinquent in renewing the license may renew the license upon payment to the Board of the required fee plus a

delinquent fee. If a licensee is more than 30 days delinquent the license is automatically suspended upon 30 day notice given to the licensee.

(6) If a person is more than 60 days in renewing the license the person may be required to take an examination and pay the examination fee as required in ORS 683.060. The Board may, upon written application, waive the examination requirement when in its opinion it is in the best interest of the public to do so.

(7) The annual fee for the renewal of a license to practice optometry shall be \$243, plus an additional \$20 assessed for continuing education offerings and a \$35.00 disciplinary fee. **In addition to the optometry renewal fees, the Board is required by SB 355 (2009 Regular Session) to collect an annual \$25 fee from each optometry license renewal for the Electronic Prescription Monitoring Program in the Department of Human Services. The fees collected for the Electronic Prescription Monitoring Program will be remitted to the Department of Human Services as required by law.**

(8) Any licensee whose license renewal fee is postmarked after the first day of the month of license expiration shall be subject to a late payment fee of \$50 for the first failure; \$100 for the second failure; \$200 for each subsequent failure. This late payment fee must be received before the license will be issued.

(9) Any licensee whose CPR certification lapsed at any time during the license renewal period shall be subject to a fee of \$50 for the first failure; \$100 for the second failure; \$200 for each subsequent failure. This fee must be received before the license will be issued.

Stat. Auth.: ORS Chapter 683; ORS Chapter 182
Stats. Implemented: ORS 683.070, ORS 683.100, ORS 683.120, ORS 683.270 & ORS 182.466; **SB 355 (2009 Laws)**

Electronic Prescription Monitoring Program (EPMP)

There will be a new \$25 fee included in your license renewal application for the EPMP (Electronic Prescription Monitoring Program) in the Oregon Department of Human Resources. The 2009 Legislature passed [SB 355](#) which requires that DHS establish and maintain a prescription monitoring program for monitoring and reporting prescription drugs dispensed by pharmacies in Oregon that are classified in Scheduled II through IV under the Federal Controlled Substances Act. The EPMP will operate and be accessible by practitioners and pharmacies 24 hours a day, seven days a week. Pharmacies are required to electronically report to the EPMP information on each prescription prescribed by a practitioner. As a licensed optometric physician you will have access to the system for your use in providing eye care to your patients.

The Oregon Board of Optometry has no responsibility for this prescription monitoring system. We are required by the provisions of SB 355 to collect a \$25 fee on all license renewals and send the money to the EPMP for their use in setting up and maintaining this system. This will be an annual renewal fee that will be collected with each year's license renewal beginning January 2010. Please contact the Board's office if you would like further information on this matter.