

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

Received

JUL 16 2010

**Oregon Board of Optometry**

Agency and Division

**Oregon Board of Optometry** 852

Administrative Rules Chapter Number

**David Plunkett, Ex. Dir.**

Rules Coordinator

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Address

**(503) 399-0662**

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**RULE CAPTION**

**Establishes requirements for optometry business entity organization.**

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**September 10, 2010**

Hearing Date

**1:00**

Time

**1900 Hines St. SE, Mezzanine Level, Salem, OR 97302**

Location

**Michelle Monkman, O.D.**

Hearings Officer

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

**RULEMAKING ACTION**

**ADOPT:**

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

**852-020-0045**

**AMEND:**

**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 58; ORS 63; ORS 683**

Stat. Auth.: ORS

Other Authority

**ORS 58.367; ORS 63.074; ORS 683.270 (11)**

Stats. Implemented: ORS

**RULE SUMMARY**

**Establishes requirements for optometry business entity organization.**

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.

**September 10, 2010**

Last Day for Public Comment

**September 10, 2010**

Last day to submit written comments to the Rules Coordinator

Signature

**David Plunkett, Executive Director**

Printed name

**July 9, 2010**

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 requirements for optometry business entity organization.

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 58.367 and 63.074 grant authority for the Oregon Board of Optometry to establish rules affecting corporations in optometry.

Statutes Implemented: ORS 58.367; ORS 63.074; ORS 683.270.

Need for Rule(s): The proposed rules are needed for the following: (1) to establish by rule Board requirements when a new business entity is set up in optometry. (2) These administrative rule requirements supplement the corporation statutes which grants authority to professional licensing boards to establish additional rules for their profession. The rules require majority ownership interest by optometric physicians licensed in Oregon.

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, and 182, 58, 63 of the Oregon Revised Statutes. (b) The Oregon Administrative Rules, Chapter 852, et al.

Fiscal and Economic Impact, including Cost of Compliance: There should be minimum fiscal and economic impact from the adoption of these rules. The administrative rules will give guidance and requirements when optometric physicians are setting up their business entity organization. There may even be some reduction in costs due to less research being necessary when setting up a new business entity in optometry.

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

7/9/2010

Date

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

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**DIVISION 20**

**Requirements for Business Entity Organization**

**852-020-0045** The following provisions apply to licensed optometric physicians in Oregon organizing as a business entity and are in addition to the provisions for professional corporations, limited liability company and partnership outlined in ORS Chapters 58, 63,67, and 70.

(1) Definitions. As used in these administrative rules, unless the context requires otherwise.

(a) "Business entity" means:

(A) A professional corporation organized under ORS Chapter 58, predecessor law or comparable law of another jurisdiction;

(B) A limited liability company organized under ORS Chapter 63 or comparable law of another jurisdiction;

(C) A partnership organized in Oregon after January 1, 1998, or that is registered as a limited liability partnership, or that has elected to be governed by ORS Chapter 67 or comparable law of another jurisdiction; or

(D) A limited partnership organized under ORS chapter 70, predecessor law or comparable law of another jurisdiction.

(b) "Majority ownership interest" means more than 50 percent of:

(A) The issued voting stock of a professional corporation;

(B) The members of a limited liability company; or

(C) Participation in the profits of a partnership.

(c) "Organizational document" means:

(A) The articles of incorporation of a professional corporation, or comparable document of another jurisdiction;

(B) The articles of organization of a limited liability company, or comparable document of another jurisdiction;

(C) The partnership agreement and, for a limited liability partnership, its registration, or comparable document(s) of another jurisdiction; or

(D) A certificate of limited partnership, or comparable document of another jurisdiction.

(d) "Owner" means a voting shareholder of a professional corporation, member of a limited liability company, or partner of a partnership.

(e) "Principal" means a person who is a director of a professional corporation, manager of a limited liability company, or general partner of a limited partnership.

(2) Requirements for business entities organized to practice optometry:

(a) The majority ownership interest shall be held by optometric physicians licensed in this state to practice optometry.

(A) A majority of the principals shall be optometric physicians who are licensed in this state to

practice optometry.

(B) All officers except the secretary and treasurer, if any, must be optometric physicians who are licensed in this state to practice optometry. Any two or more offices may be held by the same person.

(b) A professional corporation may be a shareholder of a professional corporation organized for the purpose of practicing optometry solely for the purpose of effecting a reorganization as defined in the Internal Revenue Code.

(c) Business entities organized before the effective date of this rule that are not in compliance with the provisions of this rule have until July 1, 2011 to come into compliance.

(d) The Oregon Board of Optometry has the discretion to allow business entities to apply for a waiver of the majority ownership requirement provided full disclosure of business ownership is provided to the Board, a plan and timetable is presented for a transition to meet the requirements of this rule, and the Board finds that the health and welfare of the patient is the first priority of the optometric physicians and business entity.

(e) Upon a finding that a holder or owner of an optometric practice has failed to comply with the provisions of this rule or the regulations prescribed by the Board pursuant to the practice of optometry, the Oregon Board of Optometry may consider the failure to comply with this rule as a violation of this rule which may subject a holder or owner to discipline pursuant to ORS 683.140.

(3) Powers of professional corporations organized to practice optometry.

(a) A professional corporation organized for the purpose of practicing optometry has the powers enumerated in ORS 60.077 and 60.081, except as provided otherwise by the Oregon Board of Optometry.

(b) A general corporation under the provisions of ORS Chapter 60 may not be organized to practice optometry.

(4) Proxies:

(a) A proxy to exercise voting rights in a business entity organized for the purpose of practicing optometry may be given under the following conditions:

(A) If the voting rights belong to a optometric physician licensed in this state to practice optometry, the proxy may be given only to an owner of the same business entity who is also a optometric physician licensed in this state to practice optometry, or to an attorney licensed in this state to practice law.

(B) If the voting rights do not belong to a optometric physician licensed in this state to practice optometry, the proxy may be given only to another owner of the same business entity whether or not the other owner is a optometric physician licensed in this state to practice optometry, or to an attorney licensed in this state to practice law.

(b) No voting trust may be created to exercise

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

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the voting rights of one or more owners of a business entity organized for the purpose of practicing optometry.

(c) Two or more persons with voting rights in a business entity organized for the purpose of practicing optometry may enter into a voting agreement provided that the voting agreement does not transfer voting rights from an individual who is an optometric physician licensed in this state to practice optometry to an individual who is not so licensed. Notwithstanding any provision of this subsection, voting rights may be transferred to an attorney licensed in this state to practice law.

(5) Acquisition and disposition of ownership interest:

(a) Persons with an ownership interest in a business entity organized for the purpose of practicing optometry may acquire, transfer, assign or dispose of such ownership interest only in a manner that leaves the business entity in compliance with the provisions of this rule.

(b) If the majority ownership interest of a business entity organized for the purpose of practicing optometry is no longer held by optometric physician(s) licensed in this state to practice optometry due to such ownership interest being held by an administrator, executor, personal representative, guardian, conservator or receiver of the estate of a former owner, or by a transferee who receives such ownership interest by operation of law or court decree, such administrator, executor, personal representative, guardian, conservator, receiver or transferee may act in the same ownership capacity as the former owner, including acting in the former owner's capacity as principal or officer, until the ownership requirements are in compliance with the provisions of this rule, but not to exceed six months following receipt or transfer of such ownership interest.

(c) Subject to subsection (a) of this section, the organizational document, bylaws or agreements among owners of a business entity organized for the purpose of practicing optometry may provide limitations on the ability to acquire, transfer, assign or dispose of an ownership interest in the business entity.

(d) Subject to subsection (a) of this section, the articles of incorporation, bylaws or agreements among shareholders of a professional corporation may provide for the purchase or redemption of shares by the corporation.

(6) Disqualification of optometric physician; disposition of ownership interest.

(a) If an optometric physician practicing optometry on behalf of a business entity is disqualified from practicing optometry for more than six months or assumes a public office, the duties of which prohibit practicing optometry for more than six months under the rules of the Oregon Board of Optometry or other law, within 60 days after the disqualification or prohibition,

the optometric physician's ownership interest shall be disposed of in accordance with Section (5); or

(A) In the case of a professional corporation, the corporation shall have the right to redeem the shares of the optometric physician.

(B) In the case of a limited liability company, the optometric physician shall cease to be a member by withdrawal or expulsion.

(C) In the case of a partnership, the optometric physician shall cease to be a partner by withdrawal, dissociation or expulsion

(b) If the disposition of ownership interest under subsection (a) of this section results in less than majority ownership of the business entity by optometric physicians licensed in this state to practice optometry, the business entity shall have six months from the date of disqualification or prohibition to come into compliance with the majority ownership provisions of this rule.

(c) If an optometric physician practicing optometry on behalf of a business entity is disqualified from practicing optometry for six months or less or assumes a public office, the duties of which prohibit practicing optometry for six months or less under the rules of the Oregon Board of Optometry or other law, the optometric physician may retain interest in the business entity and may remain a principal of the business entity during the period of disqualification or prohibition, unless otherwise prohibited under the rules of the Oregon Board of Optometry or by law.

(7) Disposition of ownership interest upon death of owner.

(a) A business entity organized for the purpose of practicing optometry may provide for the disposition of the ownership interest of a deceased owner in the organizational document, in the bylaws, by agreement between owners or between the business entity and its owners, providing such disposition leaves the business entity in compliance with the provisions of this rule.

(b) If there is no provision for the disposition of a deceased owner's interest as described in subsection (a) of this section, the ownership interest shall be disposed of in any manner that leaves the business entity in compliance with the provisions of this rule and the laws of this state.

(c) If the ownership interest of a deceased owner is not disposed of within twelve months after the owner's death, a special meeting of the remaining owners shall be called within fourteen months after the owner's death to decide by vote of the remaining owners whether the business entity shall dispose of such ownership interest in accordance with the provisions of this rule, or whether the business entity shall be voluntarily dissolved. The action determined to be taken by the remaining owners shall be completed within eighteen months after the owner's death. The Board may grant an extension of this time period upon request.

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

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(d) If the deceased owner of a business entity organized for the purpose of practicing optometry was the sole owner of the business entity at the time of death:

(A) The business entity shall cease the practice of optometry as of the date of the owner's death unless it has retained the services of another optometric physician licensed in this state to practice optometry.

(B) Notwithstanding Section (2)(c) of this rule, within twelve months after the date of the owner's death, the business entity shall be dissolved unless:

(i) The ownership interest of the deceased owner has been sold or assigned to one or more optometric physicians who are licensed in this state to practice optometry; and

(ii) The name of the business entity has been changed and a restated organizational document adopted in accordance with laws pertaining to that type of business entity.

(8) Multi-disciplinary Provisions.

(a) A business entity may be organized for the

purpose of rendering professional services within two or more health-related licensed professions, provided the majority ownership interest is held by persons licensed in this state in a health-related licensed profession, the primary objective of whom is the diagnosis and treatment of the human body, and such licensees are acting only within their license scope of practice and code of professional conduct and are subject to the disciplinary authority of their respective licensing board.

(9) Use of titles in business entity name.

(a) A business entity organized for the purpose of practicing optometry that uses the name of the optometric physician in the business entity name must comply with the use of titles as required in ORS 676.110.

Stat. Auth.: ORS 58 ORS 63, ORS 683

Stats. Implemented: ORS 58.367, ORS 63.074, ORS 683.270(11)