

# Tennessee Board of Optometry



## Newsletter

Winter 2009

A regulatory agency of the state of Tennessee

Vol. 9, No. 1

227 French Landing, Suite 300, Heritage Place Metro Center, Nashville, TN 37243 <http://tennessee.gov/health> (615) 532-5157 or 1-800-778-4123 extension 25157 • Office Hours: Monday – Friday 8 a.m. to 4:30 p.m. Central Time (except state and federal holidays) Fax: (615) 532-5369

In conjunction with the purpose and goals of the Department of Health, the mission of the Bureau of Health Licensure and Regulation is to: monitor, access, and enforce health care laws and regulations; protect, promote and enhance quality health care for all citizens; continuously strive to meet the needs of our customers in a respectful and caring manner; provide quality work-life necessary to attract and retain competent, caring employees; empower our employees to become entrepreneurs in their jobs; increase awareness and public confidence in our services; and, utilize our resources efficiently and cost effectively.



### About the Board of Optometry

The Board of Optometry was created in 1925 by an act of the state legislature. Its mission to safeguard the health, safety, and welfare of Tennesseans by requiring that all who practice optometry within this state is qualified. The board interprets the laws, rules, and regulations to determine the appropriate standards of practice in an effort to ensure the highest degree of professional conduct. The board is authorized to issue licenses to qualified candidates who have completed appropriate education and successfully completed required examinations. The board is also responsible for the investigation of alleged violations of the Tennessee Practice Act and rules and is responsible for the discipline licensees who are found guilty of such violations.

Optometrists may be licensed by either examination or endorsement from other states. The administrative staff of the Division of Health Related Boards supports the board by issuing licenses to those who meet all requirements. Renewal notices are mailed from the Board's administrative office 45 days prior to the expiration of the license to the current address on record. Licenses can be renewed on-line 120 days prior to expiration at [Tennessee.gov/health](http://Tennessee.gov/health). Click on the

"License Renewal" link and follow the prompts. Licensees are responsible for renewing their licenses on time and keeping the board apprised of current information. It is a violation of the law and of the board's rules to practice on an expired license. Licensees are responsible for renewing on time and keeping the board apprised of current information.

The board is required by statute to meet at least once per year, but typically convenes five or six times per year. A quorum of four members is required to conduct business. The meetings are open to the public.

All members of the board are appointed by the Governor and serve a five year term. The six member Board consists of five licensed optometrists, who must each have five years of experience, and one member who is a health care consumer.

### 2010 Board Meeting Schedule

February 17, 2010  
9 a.m., Poplar Room

May 26, 2010  
9 a.m., Poplar Room

August 25, 2010  
9 a.m., Poplar Room

October 27, 2010  
9 a.m., Poplar Room



**All board meetings will be held at 227 French Landing, Heritage Place, Metro Center, Nashville, TN 37243, unless otherwise noted.**

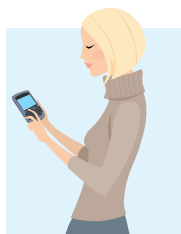
## Optometry Web Site

You may download a copy of the rules, applications and forms, board member list, board meeting schedule, policy statements, board meeting minutes, information on filing complaints and other pertinent information at the board's website :

<http://tennessee.gov/health>.

**To contact this board, call  
(615) 532-5157 local or (800) 778-4123  
extension 25157 nationwide  
or  
write to:**

**Tennessee Board of Optometry  
227 French Landing, Suite 300  
Heritage Place – MetroCenter  
Nashville, TN 37243**



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## Legislative Updates

### Public Chapter 228

Chapter 228 of the 2009 Public Acts provides that each practice site (prescriber's office or pharmacy that are required to report to the database) where a controlled substance is dispensed shall provide electronic access to the controlled substance monitoring database. Failure to comply may result in a one hundred dollar (\$100.00) civil penalty for each day of continued violation where there is a continued pattern or practice of not providing electronic access to the database. A dispenser of controlled drugs (prescriber's, prescriber's office, pharmacist or pharmacy) shall not be subject to a civil suit or held civilly liable for failure to check the database or for actions taken after reasonable reliance on the database information.

### Public Chapter 67

Chapter 67 of the 2009 Public Acts provides that physicians, dentists, optometrists, podiatrists,

veterinarians, advanced practice nurses with a certificate of fitness to prescribe, and physician assistants shall report to local law enforcement within three (3) business days if they have good reason to believe that a person has obtained or attempted to obtain a controlled substance when they have either received the same controlled substance, a prescription for the same controlled substance, or a therapeutically equivalent controlled substance from another practitioner within the previous thirty (30) days.

This Public Chapter became effective on July 1, 2009.

### Public Chapter 581 Voluntary Provision of Health Care Services

Chapter 581 of the 2009 Public Acts provides that a person licensed by any of the health related boards who provides voluntary health care services to a patient of a sponsoring organization shall not be civilly liable for any act or omission in rendering these services, unless the act or omission constitutes gross negligence or willful misconduct.

This Public Chapter became effective on July 1, 2009.

### Public Chapter 425 Health Care Liability

This public chapter revises provisions governing notice that must be given by any person asserting a potential claim for medical malpractice to each health care provider against whom the claim is being made; revises provisions governing certificate of good faith that must be filed.

This Public Chapter became effective on July 1, 2009.

### Public Chapter 487 Non-Compete Covenants Between Health Care Providers and Employees

This new law sets forth parameters for reasonable non-compete covenants between health care providers and employees upon termination or conclusion of the employment or contractual relationship. It applies to health care providers licensed by the Board of Registration in Podiatry, Board of Chiropractic Examiners, Board of Dentistry, Board of Medical Examiners, Board of Optometry and Board of Examiners in Psychology. It does not apply to physicians who specialize in the practice of emergency medicine or radiology.

The restriction must be set forth in employment agreement or other written document signed by the health care provider and the employing or contracting

entity and must be for two years or less. The maximum allowable geographic restriction is the greater of a ten mile radius from the primary practice site of the health care provider while employed or contracted or the county in which the primary practice of the health care provider while employed or contracted is located or there is no geographic restriction but the health care provider is restricted from practicing his or her profession at any facility at which the employing or contracting entity provided services while the health care provider was employed or contracted with the employing or contracting entity. Any restriction under this subsection shall not be binding on a health care provider who has been employed by, or under contract with, the employing or contracting entity for at least six years.

It also allows that an agreement entered into in conjunction with the purchase or sale of a health care provider's practice, or all or substantially all of the assets of the health care provider's practice, may restrict such health care provider's right to practice his or her profession, provided that the duration of the restriction and the allowable area of the restriction are reasonable under the circumstances. There shall be a rebuttable presumption that the duration and area of restriction agreed upon by the parties in such an agreement are reasonable. Effective January 1, 2008.

### **Public Chapter 1060 Child Abuse Reporting**

Public Chapter 1060 provides immunity from civil and criminal liability for reporting abuse of children by a health care examiner when there is harm or reason to believe there is a mandate to report. No immunity is provided for reports by perpetrators of harm to children.

### **Public Chapter 83 Mandatory Domestic Violence Reporting**

Health care practitioners shall report cases of suspected or confirmed domestic violence to the Tennessee Department of Health. The system was operational in October 2007 and requires certain data to be reported using the reporting tool located on the Department of Health website.

### **Public Chapter 410 Non-Smoker Protection Act**

Public Chapter 410 creates the Non-Smoker Protection Act which **prohibits** smoking in all enclosed public places within the State of Tennessee including, but not limited to, the following places:

(2) **“Areas available to and customarily used by the general public** in businesses and non-profit

entities patronized by the public including, but not limited to, banks, laundromats, factories, **professional offices**, and retail service establishments; and

### **(7) “Health care facilities”. (Nursing homes and long-term care facilities are exempted)**

The legislation requires offices and health care facilities to do the following:

- Inform all existing employees and any prospective employees upon their application for employment of the prohibition on smoking; and
- “No Smoking” signs or the international “No Smoking” symbol, shall be clearly and conspicuously posted at every entrance to every public place and place of employment where smoking is prohibited.

The Department of Health shall, while an establishment is undergoing otherwise mandated inspections, inspect for compliance with this Act. Information about these inspections will be communicated with the appropriate offices and/or health care facilities in the future.

### **Public Chapter 529 Prohibition of Employment of Illegal Aliens**

If the Commissioner of Labor and Workforce Development receives a complaint that a person, licensed by a state regulatory board, knowingly employs, recruits or refers for a fee for employment an illegal alien, that person is subject to an investigation and contested case hearing.

If there is proof a person knowingly employed, recruited or referred for a fee for employment, an illegal alien, which occurred while acting within the scope of practice of his/her license, the regulatory board will be required to revoke, suspend, or deny the person's license.

For the first violation, the regulatory board will be required to suspend the person's license until they show they no longer employ, recruit or refer for a fee for employment, an illegal alien. This can be made by the person filing a sworn statement that they no longer employ illegal aliens.

If a second violation occurs within three (3) years from the first order, the regulatory agency will be required to suspend the person's license for one (1) year.

## **Public Chapter 1190 Long Term Care**

The long term care system shall recognize that aging is not a disease, but rather a natural process that often includes increasing needs for assistance with daily living activities. To the maximum extent possible and appropriate, the system shall be based on a model of care delivery which acknowledges that services delivered in the home and community-based settings are not primarily medical in nature, but rather, support services that will provide needed assistance with activities of daily living and that will allow persons to "age in place" in their homes and communities.

## **Public Chapter 864 Restroom Access Act**

PC 864 requires any place of business that is open to the general public for the sale of goods or services ("retail establishment") that has an employee toilet facility to allow a customer to use such facility during normal business hours, if:

1. The customer requesting the use of the employee toilet facility suffers from a medical condition that requires immediate access to a toilet facility or utilizes an ostomy device; the customer must present the employee with proof of an eligible medical condition, such as a document issued by a licensed medical provider;
2. Three or more employees of the retail establishment are working at the time of the request;
3. There is not a restroom available for public use in the retail establishment or otherwise immediately accessible to the customer; and
4. The employee toilet facility is not located in an area that poses an obvious safety or security risk.

This bill provides immunity from civil damages to any retail establishment or an employee of a retail establishment for any act or omission in allowing a customer to use an employee toilet facility that is not a public restroom if the act or omission:

1. Is not willful or grossly negligent;
2. Occurs in an area that is not accessible to the public; and
3. Results in an injury to or death of the customer or any individual other than an employee accompanying the customer.

This bill does not require any retail establishment to make any physical changes to an employee toilet facility. Any retail establishment or employee of a retail establishment that does not comply with the toilet facility access requirements of this bill commits a Class C misdemeanor punishable only by a fine of up to \$50.

## **Public Chapter 936 Improving Patient Safety through Medication Use Prescription Labeling Act of 2008**

Adds TCA 53-10-110:

Any person dispensing a legend drug for an elder person shall include on the label of the container in which the legend drug is dispensed, the indication for which the drug is being prescribed if requested by the prescriber, patient or patient's caregiver and the prescriber, patient or patient's caregiver provides the indication or indications to the person dispensing the legend drug. For purposes of this section, "elder person" means any person who is sixty (60) years of age or older.

Professions regulated by this board are not directly impacted by 2007 Public Chapters and therefore do not appear on the 2007 Legislative Action Plan.

## **Public Chapter 1035 Tamper Resistant Prescription Paper**

Tennessee Code Annotated, 63-3-127 governing Podiatrists, 63-5-122 governing Dentists, 63-6-236 governing Medical Doctors, 63-7-123(b)(3) governing Nurse Practitioners, 63-8-126 governing Optometrists, 63-9-116 governing Osteopathic Physicians and 63-19-107(2)(E) governing Physician Assistants are amended to add: All handwritten, typed or computer-generated prescription orders must be issued on tamper-resistant prescription paper which meets the current Centers for Medicare and Medicaid Service Guidance to State Medicaid Directors...and meets or exceeds specific TennCare requirements for tamper-resistant prescription paper. This legislation is a result of a federal law/mandate intended to reduce fraud and abuse.

All prescriptions for TennCare patients must be written using tamper resistant pads/paper. Exceptions are prescriptions sent to the pharmacy electronically, prescriptions communicated to the pharmacy by telephone and drugs administered in nursing facilities. The provisions of this act with respect to TennCare prescriptions became effective October 1, 2008 in compliance with federal requirements. The provisions of this act with respect to non-TennCare related prescriptions became effective July 1, 2009.



On October 1, 2008, prescriptions will be required to have a minimum of one feature from each of the following three CMS categories: 1) Industry-recognized feature(s) designed to prevent unauthorized copying. An example is paper that shows the word "Void" or "Illegal" if the prescription is photocopied. 2) Industry-recognized features(s) designed to prevent erasure or modification of information written by the prescriber. This may be uniform non-white background color or quantity check off boxes with refill indicator. 3) Industry-recognized feature(s) designed to prevent use of counterfeit prescription forms. Security features and descriptions are listed on prescriptions (required by TennCare tamper-resistant pads after October 1, 2008) or a heat sensing imprint, which causes the imprint to disappear if someone touches the imprint or design.

Prescribers who ordinarily transmit prescriptions via e-prescribe or fax will need a supply of tamper-resistant pads if they prescribe controlled substances since these prescriptions may not be transmitted electronically at this time.

**This law became effective October 1, 2008 in respect to TennCare prescriptions and July 1, 2009 for non-TennCare related prescriptions.**

## **Public Chapter 298 Controlled Drugs Reclassification**

Public Chapter 298 primarily corrects some discrepancies between Tennessee law listing Schedules for controlled substances compared to the DEA Schedules for the same drugs or chemicals. Some of the listed drugs have had their Schedule changed in recent years by the DEA, however they had not be reclassified in Tennessee law. Although individual states may place a drug into a more restrictive Schedule than DEA, states do not have the authority to be less restrictive than DEA. The language of this Act brings Tennessee in line with DEA classifications. Some of the more frequently encountered drugs affected are listed below along with their common trade names.

- Gamma hydroxybutyric acid (GHB) is classified by DEA as a Schedule I, however in Tennessee law it was still listed as a Schedule IV. PC 298 brought TN in line with DEA.
- Glutethimide (Doriden) is classified by DEA as a Schedule II however TN still listed as Schedule III. PC 298 now matches DEA and Glutethimide (Doriden) is Schedule II.
- Buprenorphine (Suboxone or Subutex) is a DEA Schedule III, however TN had it listed as Schedule V. PC 298 changed it to a Schedule III in TN.

- Some other changes for consistency include Dichloralphenazone (Midrin), Zaleplon (Sonata), Zopiclone (Lunesta), Butorphanol (Stadol), Fencamfamin (Reactivan), Fenproporex (Gacilin or Solvolip), Mefenorex (Pondonil), Modafinil (Provigil), and Sibutramine (Meridia) being listed as Schedule IV in TN to match DEA.
- Of interest in veterinary medicine, Carfentanil (Wildnil) is now classified as Schedule II which is consistent with DEA classification. The combination drug tiletamine-zolazepam (Telazol) is now listed as Schedule III in both TN and DEA.



**The complete text of the Public Act, including provisions for any areas of exemption; enforcement of the Act; and action to be taken for violations of the Act, is available at:**

<http://www.tennessee.gov/sos/acts/index.htm>

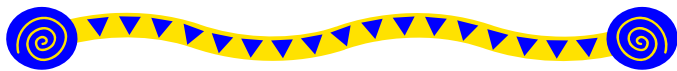
## **Controlled Substance Database Program**

**Note:** If you do not dispense, you are not required to register with the Board of Pharmacy or Optimum Technology.

On December 1, 2006, the Tennessee Board of Pharmacy began accepting prescription information into the Controlled Substance Database Program. The Program collects prescription data for Schedules II-V drugs into a central database, which can then be used by limited authorized users. The information collected in this program is maintained by the Department of Health and strict security and confidentiality measures are enforced. Only those persons authorized by law can be provided information from the database to assist in determining treatment history and to rule out the possibility that a patient may be "doctor shopping" or "scamming" in order to obtain controlled substances. Prescribers, dispensers, and other authorized users may soon make requests for data from the Controlled Substance Program via the secure website. This website will assist authorized users in organizing their requests and the reports that are generated by the program.

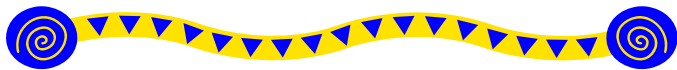
**Attention:** For questions about the Controlled Substance Program please email:

[Controlled.substancedatabase@tn.gov](mailto:Controlled.substancedatabase@tn.gov)



## Practitioners Licensed by the Board as of October 2009

Licensed Optometrists 1162



## Non-Compliance with License Renewal Requirements

Optometrists who fail to renew their licenses pursuant to Rule 1045-2-.04 are subject to disciplinary action. The licensee must pay a \$100 monthly civil penalty for each month the licensee has worked on an expired license, after an initial three month grace period. The licensee's name will be listed on the Department of Health web site.

## Non-Compliance with Continuing Education Requirements

Optometrists who fail to comply with the continuing education requirements pursuant to Rule 10450-2-.05 are subject to disciplinary action. The licensee must pay a \$300 civil penalty within thirty (30) days of notification from the board, obtain the deficient continuing education hours by the end of the next calendar year and complete an additional five (5) continuing education hours by the end of the next calendar year in the category of diagnosis, treatment and management in the practice of optometry, in addition to the current biennial continuing education hour requirement. The licensee's name will be listed on the Department of Health Web site.

## Retention of Optometric Records

Optometric records shall be retained for a period of not less than 10 years from the optometrist's or his

supervisees' last professional contact with the patient except for the following:

1. Optometric records for incompetent patients shall be retained indefinitely.
2. Optometric records of minors shall be retained for a period of not less than one year after the minor reaches the age of majority or 10 years from the date of the optometrist's or his supervisees' last professional contact with the patient, whichever is longer.
3. Notwithstanding the foregoing, no optometric record involving services which are currently under dispute shall be destroyed until the dispute is resolved.

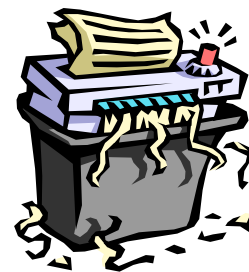
## Destruction of Optometric Records

No record shall be singled out for destruction other than in accordance with established office procedures.

Records shall be destroyed **only** in the ordinary course of business according to established office operating procedures that are consistent with these rules.

Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.

When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference. The record of destruction need not list the individual patient optometric records that were destroyed but shall be sufficient to identify which group of destroyed records contained a particular patient's optometric records.



## Complaints Against Optometrists

Practitioners should be aware that all complaints, no matter how frivolous they appear, must be reviewed by the designated board consultant (who is a practitioner from the particular health profession) and

an attorney to determine if there has been a violation of the Tennessee Practice Act. The following types of complaints were filed against Optometrists by consumers in 2006, 2007 and 2008:

- Failure to discuss treatable diagnosis with patient and/or performing too many tests
- No separate entrance for optometry services
- Working on an expired license or with no license
- Allowing unlicensed persons to practice at their facility
- Did not provide medical records request or did not provide records in a timely manner
- Dispensing outdated, free samples
- Prescribed medication not covered under patient insurance
- Rude to patient
- Kept patient waiting too long in waiting room

Serious complaints include:

- Over-prescribing medication
- Unprofessional conduct
- Malpractice/negligence, criminal charges
- Unlicensed practice
- Care of service
- Falsification of records
- Advertising
- Fraud/false billing

### **How to File a Complaint**

While the Department of Health hopes that you will never have to file a complaint against a health care practitioner, doing so is a simple matter. You may contact the Complaint Division of the Department of Health at 1-800-852-2187 to request a [complaint form](#).

The form must be completed in its entirety. You are also requested to complete and sign a [medical records release form](#). While the form may not always be used, it is helpful to have this form in the event records are needed to determine course of treatment or actions that have been taken with regard to care provided.

**All materials received in connection with the complaint will become property of the Department of Health and cannot be returned. Please return the complaint to:**

**Office of Investigations  
227 French Landing, Suite 201  
Heritage Place MetroCenter  
Nashville, TN 37243**



### **Complaint Review Process**

Upon receipt of the complaint form, the designated board consultant (who is a practitioner from the particular health profession) and an attorney review the complaint thoroughly to determine whether there has been a violation of the Tennessee Practice Act.

The board consultant and the attorney examine the details of the complaint. The practitioner may be contacted and relevant records may be studied. The review process may also involve the review of practitioner files, both public and confidential. Through the review process, the consultant and attorney will reach a decision whether to investigate the complaint or not. This process may take several months to complete. This is determined by the complexity of the complaint.

Throughout the process, the practitioner's due process rights are assured. The final decision that is reached by the board will be based on the findings of an investigation. In some cases, a formal public hearing is held.

You may call the Complaint Division from time to time to inquire about the progress of the complaint. While state law does not allow the staff to give details of an investigation, you may request a general status report. Due to the nature of complaints and complex legal and medical issues that are involved, your patience, cooperation and understanding is appreciated.

### **Investigative Results**

When a decision is reached, you will receive a letter from the board consultant. The specific content of such letters varies depending upon the circumstances of the complaint. However, they are generally one of the following types:

1. There was no violation of the Tennessee Practice Act that would lead to disciplinary action, but the practitioner has been informed of the concerns that lead to the complaint.
2. There was a violation of the Tennessee Practice Act and a formal disciplinary action was taken, made part of the public record, and reported statewide and to the national data bank.

All complaints received are taken seriously and a thorough and fair evaluation under the law is conducted.

### **Disciplinary Actions**

#### **William Holladay – License No. 2028**

License placed on probation. Assessed a \$1,200 civil penalty. Disciplined May 6, 2009.



Tennessee Board of Optometry  
227 French Landing, Suite 300  
Heritage Place, Metro Center  
Nashville, TN 37243



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**TENNESSEE BOARD OF OPTOMETRY**

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