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**COMMISSION  
APPROVED**

FEDERAL TRADE COMMISSION  
WASHINGTON, D. C. 20580

BUREAU OF  
CONSUMER PROTECTION

July 10, 1986

Eric Muir, O.D.  
President, Mississippi State Board of Optometry  
214 Sunflower  
Cleveland, Mississippi 38732

Dear Dr. Muir:

The Federal Trade Commission's Bureaus of Consumer Protection, Economics, and Competition are pleased to have the opportunity to comment on the proposed amendments to the advertising rules of the Mississippi State Board of Optometry ("Board").<sup>1</sup>

The Federal Trade Commission is empowered under 15 U.S.C. §§ 41 et seq. to prevent unfair methods of competition and unfair or deceptive acts or practices in or affecting commerce. Pursuant to this statutory mandate the Commission has attempted to encourage competition among members of licensed professions to the maximum extent compatible with other legitimate state and federal goals. For several years the Commission has been investigating the competitive effects of restrictions on the business practices of state-licensed professionals, including optometrists, dentists, lawyers, physicians, and others. Our goal has been to identify and seek the removal of those restrictions that impede competition, increase costs, and harm consumers without providing adequate countervailing benefits.

Your proposed rules, in our opinion, represent a significant improvement over the existing rules, and we especially applaud the Board's efforts to broaden the scope of permissible advertising. With the limited exceptions outlined below, we urge the adoption of these changes. We also suggest that the Board amend the rules that restrict the manner in which optometrists may practice, a matter which is not a part of this proposal.

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<sup>1</sup> These comments represent the views of the Bureaus of Consumer Protection, Economics, and Competition of the Federal Trade Commission and do not necessarily represent the views of the Commission or any individual Commissioner. The Commission, however, has authorized the submission of these comments.

Advertising Rules

As a part of the Commission's efforts to foster competition among licensed professionals, it has examined the effects of public and private restrictions that limit the ability of professionals to engage in nondeceptive advertising.<sup>2</sup> Studies have shown that prices for professional goods and services are lower where advertising exists than where it is restricted or prohibited.<sup>3</sup> Studies have also provided evidence that restrictions on advertising raise prices but do not increase the quality of goods and services.<sup>4</sup> Therefore, to the extent that

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<sup>2</sup> See, e.g., American Medical Association, 94 F.T.C. 701 (1979), aff'd, 638 F.2d 443 (2d Cir. 1980), aff'd mem. by an equally divided Court, 455 U.S. 676 (1982). The thrust of the AMA decision -- "that broad bans on advertising and soliciting are inconsistent with the nation's public policy" (94 F.T.C. at 1011) -- is consistent with the reasoning of recent Supreme Court decisions involving professional regulations. See, e.g., Zauderer v. Office of Disciplinary Counsel of the Supreme Court of Ohio, \_\_\_ U.S. \_\_\_, 105 S.Ct. 2265 (1985) (holding that an attorney may not be disciplined for soliciting legal business through printed advertising containing truthful and nondeceptive information and advice regarding the legal rights of potential clients or using nondeceptive illustrations or pictures); Bates v. State Bar of Arizona, 433 U.S. 350 (1977) (holding state supreme court prohibition on advertising invalid under the First Amendment and according great importance to the role of advertising in the efficient functioning of the market for professional services); and Virginia State Board of Pharmacy v. Virginia Citizens Council, 425 U.S. 748 (1976) (holding Virginia prohibition on advertising by pharmacists invalid).

<sup>3</sup> Cleveland Regional Office and Bureau of Economics, Federal Trade Commission, Improving Consumer Access to Legal Services: The Case for Removing Restrictions on Truthful Advertising (1984); Bureau of Economics, Federal Trade Commission, Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry (1980); Benham and Benham, Regulating Through the Professions: A Perspective on Information Control, 18 J.L. & Econ. 421 (1975); Benham, The Effects of Advertising on the Price of Eyeglasses, 15 J.L. & Econ. 337 (1972).

<sup>4</sup> Bureau of Economics, Federal Trade Commission, Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry (1980); Muris and McChesney, Advertising and the Price and Quality of Legal Services: The Case for Legal Clinics, 1979 Am. B. Found. Research J. 179 (1979). See also, Cady, Restricted Advertising and Competition: The Case of Retail Drugs (1976); McChesney and Muris, The Effects of Advertising on the Quality of Legal (footnote continued)

nondeceptive advertising is restricted, higher prices and a decrease in consumer welfare may result. The Commission has also examined various justifications that have been offered for restrictions on advertising and has concluded, as have the courts, that these arguments do not justify restrictions on truthful advertising. For this reason, only false or deceptive advertising should be prohibited. Any other standard is likely to suppress the dissemination of potentially useful information and may contribute to an increase in prices.

The Board's proposal goes a long way toward adopting this approach. The proposal, for example, would repeal rules that ban displays of ophthalmic merchandise and that limit the advertising media optometrists may use and the types of information they can convey (Rules 1-E and 24). The proposal also relaxes restrictions in rules 17, 21, and 25.

We strongly endorse proposed rule 17, which would replace a blanket ban on guarantees with a more focused rule that prohibits "deceptive, false or misleading guarantees or claims of curative results." We believe that consumers are likely to realize benefits from this amended rule because the communication of nondeceptive offers of refunds to dissatisfied consumers will no longer be stifled.

Proposed rule 25 would forbid optometrists from disseminating information that is "false, fraudulent, deceptive, misleading or unfair." It would specifically allow them to advertise any claim that is "verifiable." This proposal represents a significant improvement over the current rule, which bans all quality claims and self-laudatory advertising and seems to require that optometric advertisements be submitted for Board approval before they are published. The new rule would allow optometrists to make claims concerning the quality of the goods and services they offer, provided these claims are capable of verification. We assume that the Board's intention here is to require merely that advertisers have a reasonable basis for any material claims made in their advertising.

We caution the Board that the rule as drafted may still be overbroad. It would appear to prohibit non-verifiable statements whether or not these statements are material.<sup>5</sup> As such, it may

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<sup>5</sup> The Federal Trade Commission has defined materiality as follows: "A 'material' misrepresentation or practice is one which is likely to affect a consumer's choice of or conduct regarding a product. In other words, it is information that is important to consumers." (Letter from James C. Miller III, Chairman of the Federal Trade Commission to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, October 14, 1983, pp. 15-16, footnote omitted.)

chill communication of truthful information or deter the use of attention-getting language, without providing any benefits to consumers. In our opinion the problem can be cured by inserting the word "material" before the words "information" and "claim."<sup>6</sup>

Proposed rule 23 requires, among other things, that "if an optometrist or professional corporation uses a partnership or professional corporation name (or other lawful name) the names and professional titles of each of the practitioners participating or employed must also appear on all . . . information" disseminated to the public. This rule is likely to raise the costs of advertising by large optometric practices and therefore inhibit advertising by such practices. As a consequence, consumers would be deprived of the benefits of that advertising. Consumers can learn the identity of the optometrist who is responsible for their care in a number of less burdensome ways. Proposed rule 21, for example, requires that the names of all optometrists practicing at a particular facility be clearly posted at that location. Moreover, proposed rule 23 requires that each prescription "be signed by the optometrist who conducted the . . . examination." Both these alternatives more directly inform patients of the identity of their optometrists without the attendant costs associated with the Board's proposal.

As stated above, we believe the Board has done a commendable job of removing unnecessary advertising restrictions from its rules. We believe, however, that the adoption of the additional changes discussed above would further enhance these rules, and we therefore urge the Board to consider our proposals.

#### Commercial Practice Rules

The Board's rules contain several provisions that seem to unduly limit the manner in which optometrists may do business and

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<sup>6</sup> We also note the inclusion of the concept of unfairness in this rule. Understanding of this requirement would be improved if the Board provides some guidance to optometrists as to what type of advertising would be considered "unfair." Without such guidance, useful and truthful information about the services being offered by optometrists may be unintentionally and needlessly chilled.

that may unnecessarily hamper optometrists<sup>7</sup> who wish to market their services in a cost-efficient manner.

We are aware that several justifications may be proffered for these restraints. It may be argued that restrictions on employment, partnership, or other business relationships between licensed professionals and non-licensees and restrictions on the use of trade names are necessary to maintain a high level of quality in the professional services market. There may also be a concern that employer-employee and other business relationships between professionals and non-professionals will diminish the overall quality of care because of lay interference with the professional judgment of licensees or that lay corporations' concern with profits will erode the quality of professional care. It might also be feared that while lay firms would offer lower prices, they would also encourage their professional employees to cut corners to maintain profits. It might be argued that if that were the case, professionals who continue to practice in traditional non-commercial settings might also lower the price and quality of their services in order to meet the prices of their commercial competitors. Thus, it might be argued that the overall quality of optometric care available to consumers would be significantly lowered.

The Federal Trade Commission's Bureau of Economics and Consumer Protection have conducted two studies that tend to refute these contentions. They provide evidence that, rather than protecting consumers, restrictions on commercial practice by optometrists -- including restrictions such as those at issue here -- in fact harm consumers.

In 1980 the Commission's Bureau of Economics published the results of an empirical study<sup>8</sup> conducted to determine the effects of commercial practice restrictions on the price and quality of eye care. This study, designed and conducted with the help of the School of Optometry of the State University of New York, the

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<sup>7</sup> Restrictions of this kind have been the subject of a Commission Notice of Proposed Rulemaking for a Proposed Ophthalmic Trade Regulation Rule that would prohibit state-imposed bans on trade name usage, bans on locating in mercantile centers, bans on branch offices, and bans on employment or other relationships between optometrists and non-optometrists. The Commission stated in its Notice that public restraints on the permissible forms of ophthalmic practice appear to increase consumer prices for ophthalmic goods and services and decrease consumer access to eye care, but do not appear to protect the public health or safety. See 50 Fed. Reg. 598, 599-600 (1985).

<sup>8</sup> Bureau of Economics, Federal Trade Commission, Effects of Restrictions on Advertising and Commercial Practice in the Professions: The Case of Optometry (1980).

Pennsylvania College of Optometry, and the chief optometrist of the Veterans' Administration, compared the price and quality of eye examinations and eyeglasses provided by optometrists in markets with a variety of legal environments with respect to advertising and commercial practice. The study found that the average price of an eye examination and eyeglasses was 33 percent higher in the markets without advertising and chain optical firms than in the markets where advertising and chain firms were present. Although not reported in the study, calculations based on the study's underlying data show that more than half of the price difference was attributable to the presence of chain firms.

This study also provides evidence that commercial practice restrictions do not result in higher quality eye care. The thoroughness of eye exams, the accuracy of eyeglass prescriptions, the accuracy and workmanship of eyeglasses and the extent of unnecessary prescribing were, on average, the same in restrictive and non-restrictive markets.

A more recent study<sup>9</sup> of cosmetic contact lens fitting by the Commission's Bureau of Economics and Consumer Protection concluded that, on average, "commercial" optometrists -- that is, optometrists who were associated with chain optical firms, used trade names, or practiced in commercial locations -- fitted cosmetic contact lens at least as well as other fitters, but charged significantly lower prices. This study was designed and conducted with the assistance of the major national professional associations representing ophthalmology, optometry and opticianry.

These studies provide evidence that restrictions on commercial practice--such as employment, partnership, or other relationships between professionals and non-professionals, and limits on the number of branch offices and the use of trade names by professionals all tend to raise prices above the levels that would otherwise prevail, but do not seem to raise the quality of care in the vision care market.

The commercial practice rules that warrant review here are rules 1-B, 1-D, 5, 7, 10 and 22. We believe the combined effect of these rules could be to limit the development of innovative forms of practices (which can lead to lower prices) without providing any countervailing benefit to consumers.

Rules 1-B, 1-D and 10 seem intended to ban optometrists from practicing in commercial establishments. Rule 10 expressly prohibits optometrists from practicing where a "commercial or

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<sup>9</sup> See A Comparative Analysis of Cosmetic Lens Fitting by Ophthalmologists, Optometrists and Opticians, Report of the Staff of the Federal Trade Commission (1983).

mercantile establishment is the primary business being conducted." Rule 1-D prohibits practicing in a room occupied by a "wholesale or retail mercantile establishment," and rule 1-B requires that optometrists' offices open onto a public street, lobby or corridor. Rules such as these appear to prevent optometrists from locating in shopping centers, department stores, pharmacies or retail optical dispensaries, where they could establish and maintain a high volume of patients because of the convenience of such locations and because of a high level of "walk-in" patients. This higher volume might, in turn, allow optometric practices to realize economies of scale that could be passed on to consumers in the form of lower prices. These restrictions also increase costs for chain optical firms by requiring optometrists associated with such firms to locate in separate offices or to establish separate entrances. Such higher costs may decrease the number of chain firms, resulting in higher prices for consumers.

Rule 7 forbids practicing under any "contract agreement, trade name, or arrangement . . . whereby [the optometrist's] professional services are . . . employed by any layman, store owner or business corporation." Such restrictions on affiliations between optometrists and lay corporations deprive optometrists of a potentially important source of capital and thus unnecessarily limit the ability of optometrists to finance their practices, thereby impeding entry and reducing the number of competing optometrists. They also impede the formation and development of innovative and efficient forms of professional practice that can take advantage of economies of scale. Such practices have the potential to offer lower prices without lowering the quality of their services, and can increase competition in health care markets.

Rules 5 and 22 prohibit optometrists from practicing in more than one branch office. Like the rules discussed above, such rules may unduly deter the establishment of high-volume practices that can realize significant cost savings, which can in turn result in lower prices for consumers. In addition, restrictions on the operation of branch offices reduce the number of optometrists available to practice in particular areas and thus may decrease or eliminate competition. In such cases consumers are deprived of the benefits of competition, which could lead to lower prices and better service. This rule could also prevent optometrists from splitting their time among a number of locations, no one of which has a sufficient volume of patients to support a full-time optometrist. As a result consumers in these areas may be deprived of local optometric services altogether. These restrictions seem to have no consumer benefit and should be eliminated.

### Conclusion

As explained above, we believe that the Board should prohibit only false or misleading advertising. Because the

proposed amendments to the Board's advertising rules are a significant improvement over the existing rules, we support them, but urge the Board to make the additional modifications discussed in this letter. We also ask the Board to amend its commercial practice rules. The benefits to the public from the removal of restrictions as discussed in this letter are likely to be real and substantial.

We have referred here to a number of studies, cases, and other materials. We will be happy to supply copies of these if you so desire. Please let us know if we can be of assistance in this or any other way.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "William MacLeod". The signature is written in dark ink and is positioned above the typed name and title.

William MacLeod  
Director



TO: Lewis Rose, Assistant to the Director  
Bureau of Consumer Protection

Winston S. ~~More~~, Assistant Director for Planning  
Bureau of Competition

Keith Anderson, Assistant Director for Regulatory  
Analysis, Bureau of Economics

FROM: Cynthia Wicker, Patricia Brennan, Attorneys  
Bureau of Consumer Protection

RE: Intervention Before the Mississippi Optometry Board

This is to request your comments on the attached letter, which the Division of Service Industry Practices proposes to send to the Mississippi State Board of Optometry. In order to be considered, our comments must reach the Board by July 11. Therefore, we need a Commission vote by July 10.

This rulemaking was initiated as a result of this Division's investigation of the Board, during which we identified overbroad advertising and commercial practice rules. The Board's proposal includes amendment of most of the overbroad advertising rules and we endorse those changes, while urging the Board to make additional modifications. The proposal omits any change in its commercial practice rules, which include restrictions on the operation of branch offices, affiliating with lay persons and locating in merchantile centers. We ask the Board to consider amending these rules.

Please direct your comments to Pat Brennan at 523-3767

NOTICE OF INTENT TO ADOPT, AMEND  
OR REPEAL AGENCY RULE(S)

NOTICE OF INTENT TO ADOPT, AM

Mississippi State Board of Optometry

(Name of Agency)

Name or No. of Rule(s)

Attention: Dr. Muir

214 W. Sunflower  
Cleveland, MS 38732

1-E, 17, 21, 23, 24, 25

(Address)

Anticipated date of adoption July 14, 1986 to become effective 30 days after filing  
of adopted rules with Secretary of State

Terms or substance of the intended actions or description of the subject and issues:  
Delete Rule 1-E; renumber Rule 1-F. Amend 17, 21, 23 and 25 to conform  
to standards related to commercial speech. Copies of proposed Rules  
17, 21, 23 and 25 are attached. Delete Rule 24.

Is a copy of the rule(s) attached?  yes  no See above

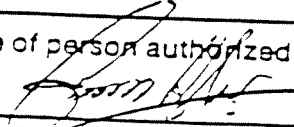
State how interested persons may present their views: write to Dr. Muir at address shown above

phone Dr. Muir at 601-774-9529

(phone no) ; Other (specify) \_\_\_\_\_  
Requests to be heard by Board should be addressed to Dr. Muir. Comments should be in writing.

Notice filed with Secretary of State on:

Signature of person authorized to file this notice:

  
CARSON M. HUGHES

Attorney for Mississippi State Board  
of Optometry (Title)

DO NOT WRITE BELOW THIS LINE

ADOPTION OF AGENCY RULE(S)

Pursuant to Section 23-43-9 of the Mississippi Code of 1972, and amendments thereto, the above agency hereby files with the Secretary of State  
a certified copy of the above shown rule(s) adopted by it on \_\_\_\_\_ and effective or to be effective on \_\_\_\_\_

Filed with Secretary of State on:

Signature of person authorized to file rule(s)  
with Secretary of State:

(Title)

PROPOSED AMENDMENT TO THE  
RULES

lenses, prism, spectacle or eyeglass cases, of any kind, optometric instruments, or optical machinery, or any merchandise, material or display of commercial nature in office windows or receptacle display cases outside of the office, where the merchandise, material or displays would make it outside of the office.

Rule 1-E is deleted and currently effective Rule 1-F shall be renumbered 1-(E).

Current Rule 24 is hereby withdrawn and that number is reserved for future assignment.

Current  
rule 24

RULE 24. In addition to other dissemination of information allowed by these rules, the following are permitted to be used:

Business cards; stationery; memo forms; prescription forms; post cards or announcements of opening of a practice or association, the holding of an "open house", a change of address or omission from the local telephone directory. In addition to the information being disseminated such materials shall contain only the name of the optometrist; partnership, group or professional corporate name together with the names of other optometrists associated as required by these rules; title; office hours; business location; office and home telephone numbers; and any duly recognized optometric specialties.

RULE 17. 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.

RULE 21. 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.

*Correct* RULE 21. Signs on office doors, windows and buildings. Signs identifying a practice location of an optometrist must be dignified and accurate. The signs shall not be lavish or self-laudatory or designed to attract attention of persons not seeking the services of the optometrist. Rather the sign shall be constructed in such a manner so that those patients seeking the services of the optometrist will be able to locate the office. Letters on the sign must not be constructed of self illuminated material. No licensed optometrist shall display any such sign containing information other than his name, profession, and office hours; provided in addition thereto, the optometrist may put the words "Eyes Examined", or "Examination of the Eyes" or "Examination, Diagnosis and Treatment of the Visual System". It being the intent of this rule that only one of the above phrases may be used. In addition thereto, no more than two designated services for which the optometrist is qualified may be listed.

RULE 23. Any dissemination of optometric information shall clearly identify by name the optometrist causing the dissemination to be made. Each prescription given shall be signed by the optometrist who conducted the supporting examination. If an optometrist or professional corporation uses a partnership or professional corporation name (or other lawful group name) the names and professional titles of each of the practitioners participating or employed must also appear on all dissemination of information made to the public; provided, however, where such dissemination has reference to only a certain location or locations the listing of names need only include the names with location designated of the optometrist(s) actually employed or practicing at the location(s) to which reference is made.

RULE 25. (a) No optometrist shall by any means or method disseminate to his 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 requires 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 disseminating 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 or its designated agent.

REQUEST FOR INFORMATION, SUBMISSIONS,  
REQUEST TO BE HEARD OR APPEAR

Request for information, submissions, or request to be heard by the Board or for notices of pending applications should be directed to the Secretary of the Board in writing at the address on file with the office of the Secretary of State and should contain a statement of the information desired together with the name, address, and phone number of the party filing the statement.

MISSISSIPPI STATE BOARD OF OPTOMETRY  
RULES AND REGULATIONS  
OPTOMETRY LAW

RULE NO. 1. In order to protect the public health and welfare throughout Mississippi there is hereby established a minimum standard of sanitation, hygienic professional surroundings, equipment and examination of optometric offices in this state. The State Board of Optometry of Mississippi does hereby prescribe the following rules and regulations, to-wit:

(A) All optometric offices, including instruments and equipment contained therein, in this state must at all times be kept clean and free from any condition or surrounding that will make or tend to make same unsanitary or unhygienic.

(B) The patient's entrance to each optometric office in this State shall open on a public street, lobby or corridor.

(C) Every optometrist practicing his profession in this State must have available in his office for examination of the human eye the following minimum equipment to-wit: 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 Bio-microscope [slit lamp]. Every such examination must be made in an optometric office, such as is referred to in Paragraphs (A) and (B) of this Rule, 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-wit: An Ophthalmoscope, a Retinoscope, a suitable astigmatic test and a reliable trial frame and lenses adequate for determining a proper diagnosis.

✓ (D) No optometrist shall practice optometry in a room or part of a room occupied in whole or in part by a wholesale or retail merchantile establishment, or maintain an optometric office therein.

✓ (E) No optometrist shall display any spectacle, eyeglasses, eyeglass or spectacle frames or mountings, goggles, lenses, prisms, spectacle or eyeglass cases, ophthalmic material of any kind, optometric instruments, or optical tools or machinery, or any merchandise, material or displays of a commercial nature in office windows or reception rooms or in display cases outside of the office, where the display of such merchandise, material or displays would make it visible from outside of the office.

(F) The minimum optometric examination shall include a complete history and such examination procedures as are necessary to arrive at and substantiate the diagnosis and case disposition. These examination procedures should comply with usual and customary standards. A written record of the optometric examination shall be kept by the optometrist and provided the State Board upon request.

RULE 2. Where an applicant whose original certificate of licensure was revoked after due notice for cause desires to apply for a new certificate of licensure, the Board may, after the expiration of a period of three months from said revocation, entertain his application for the issuance of such a certificate, and said Board may, in its discretion, issue a new certificate of registration to said applicant.

RULE 3. Where applicant for certificate of licensure whose original certificate of licensure was revoked for failure to pay annual license fees when due, applies for a new certificate of licensure the Board may, in its discretion, upon payment of a renewal fee with the statutory penalty issue to him such a certificate, provided that said applicant establish in a manner satisfactory to the Board his knowledge of optometry.

RULE 4. Since many states no longer grant reciprocity and/or come within the provision of the Mississippi law, the Mississippi Board has discontinued reciprocity with such other states.

✓ RULE 5. A branch office is defined and construed by the Board as a secondary office established by a registered

and licensed optometrist, at a fixed location, and which if open all day must have someone present during regular office hours to take appointments and keep the office open as a service to his patients. No optometrist shall practice in more than one (1) branch office in this State.

(✓) RULE 6. No optometrist shall open an office or branch office for the practice of optometry in this State without first providing the State Board's Secretary 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 Secretary 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 any reasonable time any office maintained by any person licensed by the Board for the purpose of determining that the office and licensed individual conform to the rules of the Board and the laws of this State.

✓ RULE 7. No optometrist shall practice his profession in such way or under any contract, agreement, trade name, or arrangement of whatever form or character, whereby his professional services are hired out or leased out, or employed by, any layman, store owner or business corporation. An optometrist shall always practice his profession in this State as a professional practitioner. He shall never practice his profession or commit any act or acts in connection therewith that would impair the professional aspect of his profession.

RULE 8. No optometrist shall practice optometry in, on, or about the premises where others engaged in any unlawful practice which is known to the optometrist or by the exercise of reasonable diligence should have come to his attention and further that no optometrist shall be associated with and/or share offices and/or fees with any person who is practicing unlawfully under the laws of Mississippi.

RULE 9. 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.

✓ RULE 10. No optometrist shall conduct his profession in or on premises where a commercial or mercantile establishment is the primary business being conducted.

RULE 11. No optometrist will in his practice be associated with, partners with, or employed by a physician,

unless each practitioner is clearly identified by designation and title to practice the profession for which he is licensed. This applies equally to optometrists who may employ physicians.

RULE 12. Because of the rapid technical and worthwhile developments now being made in the practice of optometry, it is impossible for an optometrist today to maintain a high degree of professional optometric efficiency and render the best possible optometric service to his patient without having participated each year in extensive and organized courses of study of the latest optometric developments and procedures. For this reason the Board feels it would be unprofessional for an optometrist to fail to keep abreast of the advancements in optometry, and therefore adopts the following regulation.

Each optometrist licensed to practice optometry in Mississippi is required to have a minimum of twenty (20) clock hours of post graduate optometric study each year as a prerequisite to the renewal of his optometric license permitting him to continue to practice optometry in Mississippi. The State Board shall designate the courses of study which will be recognized and the method of certifying satisfactory completion of any of said courses to the State Board. Those optometrists who because of illness or other unavoidable circumstances are unable to comply herewith may make application to the State Board, stating the circumstances, as to why they are unable to so comply, and the Board in its discretion, may relieve the applicant from so complying for such time and under such circumstances as the Board deems proper. The Board will, from time to time, issue and/or revise the designated courses of study which it recognizes and set out the form of the certificate to be used in indicating compliance herewith.

Those optometrists who have been in continuous practice in Mississippi since January 1, 1940, upon presenting satisfactory evidence of such continuous practice at the time of each license renewal, shall be exempt from the provisions of this rule requiring post graduate work.

RULE 13. The examination for a license to practice optometry, as prescribed in the Mississippi Code of 1972, shall consist of two parts: The first part to be given at the first meeting of the Board held for the purpose of giving examinations following receipt of the application; and those successfully completing Part 1 of the examination shall be required to be further examined in theoretical and practical optometry during the ensuing twelve months. This is to be known as the second part of the examination, and to consist of, among other things, practical application of the theoretical and physiological theories of optics and optometry and during said twelve months.

the applicant will attend local optometric study groups in the area in which he is located and be under the direction of the member of the State Board nearest him and designated by the Board to whom the applicant will report every two months, either in person or in writing as required by the Board member, on his progress in the theoretical and practical application of optometric learning and principles in the practice of optometry.

Following the successful completion of the first part of the examination, the applicant shall be given a letter over the signature of the Secretary of the State Board of Optometry authorizing him to enter upon the second part of the examination in some place in Mississippi designated by the applicant and to do those things, as required by the Board, in taking and complying with the second part of his examination to practice optometry, and upon the completion of said twelve months, the applicant shall, if requested by the State Board after considering the advisor's recommendation, again appear before the State Board for further examination in theoretical and practical optometry and based on said examination, if required, and on consideration of the regular bi-monthly reports and interviews with the supervising Board member, the State Board shall thereafter determine whether the applicant has successfully completed Part 2 of his examination, and every applicant who shall pass the examination shall receive a Certificate of Licensure as authorized by law.

Applications for examination may be obtained by written request to the Secretary of the Board.

RULE 14. Before any certificate shall be suspended or revoked by the Board for any cause, the holder thereof shall have notice in writing of said charges against him, and at a day specified in said notice, at least ten (10) days after the service thereof by registered mail or by personal service, be given public hearing and have opportunity to engage counsel to produce testimony in his behalf and confront the witnesses against him. This does not apply to revocation for non-payment of renewal registration fees which are governed by Section 73-19-21.

RULE 15. Every optometrist will respect the professional confidence placed in him by a patient bringing his case to him, and all information received from him shall be treated as "Privileged communications" and not repeated except as required by law.

RULE 16. 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 President of the State Board of Optometry, together with copies of any such demand. When the exercise of professional judgment by the optometrist so requires, the optometrist will advise his patient of any apparent or suspected pathological condition coming to his notice and refer such cases to a proper person for medical or other care outside the field of optometry.

✓ RULE 17. Every optometrist will refrain from all forms of specific guarantees related to his professional services.

RULE 18. No registered optometrist when using the doctor title shall qualify it in any other way than by the use of the word "Optometrist." He may, however, when not using the prefix, use after his name his "O.D." degree designation.

RULE 19. No optometrist shall accept rebates on prescriptions, lenses, or optical appliances used in the practice of optometry.

✓ RULE 20. No optometrist shall give or receive a commission or make a secret division of fees, by whatever term it may be called, or under guise or any pretext whatsoever from any unlicensed optometrist, person, firm or corporation to secure optometric patients.

✓ RULE 21. Signs on office doors, windows and buildings. Signs identifying a practice location of an optometrist must be dignified and accurate. The signs shall not be lavish or self-laudatory or designed to attract attention of persons not seeking the services of the optometrist. Rather the sign shall be constructed in such a manner so that those patients seeking the services of the optometrist will be able to locate the office. Letters on the sign must not be constructed of self illuminated material. [No licensed optometrist shall display any such sign containing information other than his name, profession, and office hours;] provided in addition thereto, the optometrist may put the words "Eyes Examined", or "Examination of the Eyes" or "Examination, Diagnosis and Treatment of the Visual System". It being the intent of this rule that only one of the above phrases may be used. In addition thereto, no more than two designated services for which the optometrist is qualified may be listed.

(✓) RULE 22. 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 and shall only practice in one branch office in addition to his main office location.

✓ RULE 23. Dissemination of optometric information shall clearly identify by name the optometrist causing the dissemination to be made. If an optometrist or professional corporation uses a partnership or professional corporation name (or other lawful group name) the names and professional titles of each of the practitioners participating or employed must also appear on all dissemination of information to the public or for delivery to the patient; provided, however, where such dissemination has reference to only a certain location or locations the listing of names need only include the names with location designated of the optometrist(s) actually employed or practicing at the location(s) to which reference is made. This rule does not apply to the business calling cards of a particular optometrist.

✓ RULE 24. In addition to other dissemination of information allowed by these rules, the following are permitted to be used:

Business cards; stationery; memo forms; prescription forms; post cards or announcements of opening of a practice or association, the holding of an "open house", a change of address or omission from the local telephone directory. In addition to the information being disseminated such materials shall contain only the name of the optometrist; partnership, group or professional corporate name together with the names of other optometrists associated as required by these rules; title; office hours; business location; office and home telephone numbers; and any duly recognized optometric specialties.

✓ RULE 25. No optometrist shall use any means or method to disseminate information to his patients or the public which contains information that is false, fraudulent, deceptive, misleading, unprofessional, self-laudatory, unfair, or which contains any statement or claim relating to the quality of his optometric services or which contain any claim which has not been verified. Dissemination of optometric information offering delivery of professional services or ophthalmic materials of any kind, delivery of which is likely to require additional professional services or other services, must state whether the offer includes such additional or other services.

RULE 26. 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.

RULE 27. Any person licensed to practice optometry in this State shall in writing, and at least fourteen days prior to the change, advise the Secretary of the State Board of any change in his office telephone number, his business street address, and/or mailing address for any office (including branch office) in which he practices and the effective date of such change.

RULE 28. Repeal of all prior rules - separable nature of rules; effective date. The State Board of Optometry of Mississippi does hereby prescribe the following rules and regulations, to-wit:

(A) All rules heretofore promulgated and adopted by this Board are hereby repealed as of the effective date hereof. Repeal of said rules shall not prohibit the Board from reviewing, hearing, and acting on complaints of violations of these rules which occurred prior to the repeal thereof nor shall the repeal be deemed to change any action of the Board based on the repealed rules.

(B) These rules, and amendments thereto hereafter adopted, are for the regulation of the practice of optometry and the protection of the public and the provisions thereof are hereby declared to be separable and the invalidity of any rule, clause, sentence, paragraph or section hereof shall not affect the validity of the remainder thereof.

(C) These rules shall be effective thirty (30) days after they are filed with the Secretary of State.