

Requirements for Business Entity Organization

The following provisions apply to licensed optometric physicians **Oregon optometry practices, as defined in ORS 683.010** in Oregon, organizing **or operating** as a business entity and are in addition to the provisions for a professional corporation, 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 must be held by optometric physicians licensed in this state to practice optometry:

(A) A majority of the principals must 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) 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; and

(d) 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.

852-050-0001

License Required

(1) Unless otherwise exempted by Oregon law, all persons practicing optometry in the state of Oregon must possess a valid, unrevoked, active status Oregon license.

(a) Optometry school graduates who have not been granted an Oregon optometry license are prohibited from the practice of optometry. When working in optometry prior to licensure, graduates may perform the work of unlicensed technicians under the supervision of a licensed optometrist, but cannot be referred to in any terms that imply being a doctor.

(2) Doctors of optometry who are not practicing in Oregon may hold an inactive status license.

(3) Those granted an inactive status license by the Board are exempt from ORS 683.100 and OAR 852-50-0016, which require the licensee to report each Oregon practice location to the Board:

(a) Inactive licensees are required to maintain a current mailing address and phone number of record with the Board. Upon written request, the Board will hold the phone number of record of an inactive licensee confidential if it is a personal number not associated with a business entity; and

(b) Inactive licensees failing to notify the Board in writing of any changes to their address or phone number of record before the change are subject to the fee listed in OAR 852-010-0080.

852-050-0025

State Criminal Records Check and Fitness Determination

(1) The purpose of these rules **this rule** is to provide for the reasonable screening of applicants and licensees to determine if they have a history of criminal behavior such that they are not fit to be granted or to hold a license that has been issued by the Board.

~~(2) These rules are to be applied when evaluating the criminal history of an applicant or licensee and conducting fitness determinations based upon such history. The fact that an applicant or licensee has cleared the criminal history check does not guarantee the granting or renewal of a license.~~

~~(3) (2) The Board may require criminal history of applicants for an initial licensure or renewal, licensees applying to reinstate or reactivate a lapsed license, or licensees under investigation to determine the fitness of an applicant or licensee. Fingerprints and other requested information must be provided upon request as prescribed by the Board. The Board will submit information to the Oregon Department of State Police Law Enforcement Data System to conduct an Oregon Criminal History Check and may also request a National Criminal History Check, and to other sources deemed necessary to ensure public protection.~~ **The Board may require legible fingerprints for the purpose of a criminal records check and fitness determination of all applicants and licensees including:**

(a) Applicants for a license;

(b) Licensees applying to reactivate a license;

(c) Licensees applying to reinstate a license;

(d) Licenses applying to renew a license

(e) Licensees renewing a license; and

(f) Licensees under investigation.

(3) Criminal records checks and fitness determinations are conducted according to ORS 181A.170 to 181A.215, ORS 670.280 and OAR 125-007-0200 to 127-007-0310.

(a) The Board will request the Oregon Department of State Police to conduct state and nationwide criminal records checks. Any original fingerprint cards will subsequently be destroyed.

(b) All background checks must include available state and national data, unless obtaining one or the other is an acceptable alternative to the Board.

(c) The applicant or licensee must disclose all arrests, charges, and convictions regardless of the outcome or date of occurrence. Disclosure includes any military or set aside criminal records.

(d) The Board may require additional information from the applicant or licensee, such as, but not limited to, proof of identity, previous names, residential history or additional criminal, judicial or other background information.

(4) The Board determines whether an applicant or licensee is fit to be granted a license based on the criminal records background check, any false statements made by the applicant or licensee regarding the criminal history of the individual, any refusal to submit or consent to a criminal records check, and any other pertinent information obtained as part of an investigation. If an applicant is determined to be unfit, the applicant may not be granted a license. If a licensee is determined to be unfit, the licensee's license may not be renewed, reactivated, or reinstated. The Board may make a fitness determination conditional upon applicant's or licensee's acceptance of probation, conditions, limitations, or other restrictions upon licensure.

(5) Except as otherwise provided in section (2), in making the fitness determination the Board considers:

(4) If the applicant or licensee has potentially disqualifying criminal offender information, the Board will consider the following factors in making the fitness determination:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or that indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the applicant's or licensee's present or proposed license; **and**

(d) Intervening circumstances relevant to the responsibilities and circumstances of the license.

Intervening circumstances include but are not limited to:

(A) The passage of time since the commission of the crime;

(B) The age of the applicant or licensee at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime; and

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction.

(F) Any other information the Board deems relevant or necessary.

(F) Any recommendation of an employer;

(e) Any false statements or omissions made by the applicant or licensee; and

(f) Any other pertinent information obtained as part of an investigation.

(6) All requested background checks include Oregon data. In some circumstances, national criminal data collection may be required.

(7) In order to conduct the Oregon Criminal History Check and fitness determination, the Board may require additional information from the licensee or applicant as necessary such as but not limited to: proof of identity, residential history, names used while living at each residence, or additional criminal, judicial or other background information.

(5) The Board will make a fitness determination consistent with the outcomes provided in OAR 125-007-0260.

(a) A fitness determination approval does not guarantee the granting or renewal of a license.

(b) A restricted or conditional approval may necessitate probation, conditions, limitation, or other restrictions on licensure.

(c) A denial prohibits the applicant from being granted a license or prohibits the licensee from holding a license.

(d) An incomplete fitness determination results if the applicant or licensee refuses to consent to the criminal history check, refuses to be fingerprinted or respond to written correspondence, or discontinues the criminal records process for any reason. Incomplete fitness determinations may not be appealed.

(8) **(6)** Criminal offender information is confidential. Dissemination of information received under ORS 181.534 is only to people with a demonstrated and legitimate need to know the information. The information is part of the investigation of an applicant or licensee and as such is confidential pursuant to 676.175(1).

(9) The Board may consider any conviction of any violation of the law for which the court could impose a punishment and that is in compliance with ORS 670.280. The Board may also consider any arrests, court records, or other information that may be indicative of an individual's inability to perform as a licensee with care and safety to the public.

(7) The Board will permit the individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.

(10) If an applicant or licensee is determined not to be fit for a license, the applicant or licensee is entitled to a contested case process pursuant to ORS 183.413-183.470. Challenges to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation, or reporting agency and not through the contested case process pursuant to ORS 183. If an individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the FBI or other reporting agency, the Board will conduct a new criminal history check upon request from the applicant or licensee.

(11) If the applicant discontinues the application process or fails to cooperate with the criminal history check process, the application is considered incomplete.

(8) An applicant or licensee may appeal a final fitness determination pursuant to OAR 125-007-0300. Challenges to the accuracy or completeness of criminal history information must be made in accordance with OAR 125-007-0300(7).

(9) The applicant or licensee must pay a criminal records check fee for the cost of acquiring and furnishing the criminal offender information per OAR 852-010-0080(5)(g).

852-060-0025

Disciplinary Action

(1) When disciplining an optometric physician or any other person, the Oregon Board of Optometry may do any of the following:

- (a) Deny an initial license;
- (b) Suspend, refuse to renew or revoke a license;
- (c) Impose probation on any licensee;

- (d) Limit the practice of any licensee; and
 - (e) Take other disciplinary action as the Board in its discretion finds proper, including the assessment of the costs of the disciplinary proceedings as a civil penalty, the assessment of a civil penalty not to exceed \$10,000 for each violation, or both.
- (2) The Board may discipline any optometric physician or person, where appropriate, for the following causes:
- (a) Conviction of a felony or misdemeanor where such an offense bears a demonstrable relationship to the duties of an optometric physician. The record of conviction, or a copy thereof certified by the clerk of the court or by the judge in whose court the conviction is had held, is conclusive evidence of such conviction;
 - (b) Practicing optometry without a license;
 - (c) Securing a license by practicing fraud or deceit upon the Board;
 - (d) Unprofessional conduct;
 - (e) Gross ignorance or inefficiency in the practice of optometry;
 - (f) Failing to comply with the requirements of continuing education;
 - (g) Obtaining any fee by fraud or misrepresentation;
 - (h) Employing directly or indirectly any suspended or unlicensed optometrist to perform any work covered by ORS 683.010 to 683.335;
 - (i) Advertising optometric services or treatment or advice in which untruthful, improbable, misleading or deceitful statements are made;
 - (j) Habitual, excessive or unlawful use of intoxicants, drugs or controlled substances;
 - (k) Permitting another person to use the optometrist's license;
 - (l) Using advertisements that do not indicate that a licensed optometrist is practicing at the advertised location or locations or advertising optometric services without having a licensed optometrist at the location or locations;
 - (m) Advertising professional methods or professional superiority;
 - (n) Violating the federal Controlled Substances Act;
 - (o) Prescribing controlled substances without a legitimate optometric purpose, or without following accepted procedures for examination of patients or for record keeping;
 - (p) Failing to report to the Board within 10 calendar days any adverse action taken against the optometrist or person by another licensing jurisdiction, health regulatory board, peer review body, health care institution, professional optometric society or association, governmental agency, law enforcement agency or court for acts similar to conduct that would constitute grounds for disciplinary action as described in this section;
 - (q) Having been disciplined by any health regulatory board of another state based on acts similar to acts described in this section. A certified copy of the record of disciplinary action is considered conclusive evidence of the action;
 - (r) Any violation of the provisions of ORS 683.010 to 683.335; or
 - (s) Practicing optometry in a location not reported to the Board.
 - (t) Failing to report the suspected prohibited or unprofessional conduct of another health care licensee to the appropriate board within 10 working days as required in ORS 676.150 and 683.340.
 - (u) Operating a business that violates the requirements of OAR 852-020-0045.**
- (3) The Board must report all disciplinary action taken by the Board to the National Practitioner Data Bank.

852-070-0010

Requirement of Continuing Optometric Education

The Oregon Board of Optometry is committed to ensuring the continuing education of its licensees for the protection, safety and wellbeing of the public. Continuing education is required to maintain and advance the professional skills and abilities of licensees and to educate optometric physicians in the application and use of new techniques, scientific and clinical advances and the achievements of research to ensure expansive and comprehensive care to the public.

(1) Every active status licensed optometric physician must complete at least 18 hours of clinical optometric courses each license year as a condition of license renewal. Continuing education hours cover 12-month periods and must be reported with license renewal applications. Upon written request, the licensee may carry forward approved excess CE hours completed in the prior license year to the current license year.

(2) Of the required 18 hours, at least nine hours each license year must be in the area of diagnosis, treatment and management of ocular disease (TMOD). The licensee must be the first or second author of the article or paper and the paper must have been published in the CE reporting period.

(3) Optometric physicians must complete one hour of approved credit for an optometric ethics or Oregon law course every other license year, regardless of credits carried forward under (1) of this section. Licensees may receive one hour of optometric ethics/Oregon law credit per year for verified attendance of at least one hour at an official meeting of the Oregon Board of Optometry. **One hour of law/ethics credit is granted for passing the Oregon law exam.**

(4) One hour of Board approved cultural competency continuing education may be used toward satisfying the required number of non-TMOD hours each license year.

(5) Credit will be given for no more than five hours of live observation in an approved surgical facility per license year.

(6) The required hours of continuing education used to meet the CE requirement each license year must be of different course content. When the Board determines that a licensee has submitted a course or lecture essentially identical to another presentation submitted for credit in the same license renewal period, credit will be given for only one.

(7) Credit will be given for no more than 2 hours for each publication of a qualifying article or paper.