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July 24, 2020

register@sos.arkansas.gov

Mr. John Thurston
Secretary of State
State Capitol – Room 026
Little Rock, AR 72201-1094

**Re: My Client: Arkansas State Board of Optometry
Chapter IX, Article 1 – Pre-Licensure Criminal Background Check**

To Whom It May Concern:

Enclosed please find the following documents:

1. Arkansas Register Transmittal Sheet; and
2. Final to Chapter IX, Article 1 – Pre-Licensure Criminal Background Check

Please file this accordingly.

Sincerely,

HOPE, TRICE, O'DWYER & WILSON, P.A.



Kevin M. O'Dwyer
Attorney for the Arkansas State Board of Optometry

KMO:ena
enclosure

cc: Howard F. Flippin, O.D., aroptometry@sbcglobal.net
Matt Gilmore (via e-mail matt.gilmore@arkansas.gov)

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

John Thurston

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Division of Health Related Board and Commissions/Arkansas State Board of Optometry

Department Department of Health

Contact Howard F. Flippin, O.D., Executive Director E-mail aroptometry@sbcglobal.net Phone 501-268-4351

Statutory Authority for Promulgating Rules _____

Rule Title: Chapter IX, Article I - Pre-Licensure Criminal Background check

Intended Effective Date

(Check One)

☐ Emergency (ACA 25-15-204)

☐ 10 Days After Filing (ACA 25-15-204)

☐ Other _____
(Must be more than 10 days after filing date.)

Legal Notice Published

Final Date for Public Comment

Reviewed by Legislative Council

Adopted by State Agency

Date

3/24/2020

4/23/2020

3/18/2020

4/23/2020

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Kevin M. O'Dwyer

kodwyer@htolaw.com

7/24/2020

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Howard F. Flippin
Signature

501-268-4351

Phone Number

aroptometry@sbcglobal.net

E-mail Address

Howard F. Flippin, O.D., Executive Director

Title

7/24/2020

Date

CHAPTER IX, ARTICLE I - PRE-LICENSURE CRIMINAL BACKGROUND CHECK

- A. Pursuant to Act 990 of 2019, an individual may petition for a pre-licensure determination of whether the individual's criminal record will disqualify the individual from licensure and whether a waiver may be obtained.
- B. The individual must obtain the pre-licensure criminal background check petition form from the Board.
- C. The Board will respond with a decision in writing to a completed petition within a reasonable time.
- D. The Board's response will state the reason(s) for the decision.
- E. All decisions of the Board in response to the petition will be determined by the information provided by the individual.
- F. Any decision made by the Board in response to a pre-licensure criminal background check petition is not subject to appeal.
- G. The Board will retain a copy of the petition and response and it will be reviewed during the formal application process.

Waiver Request

- A. If an individual has been convicted of an offense listed in A.C.A. § 17-2-102(a), except those permanently disqualifying offenses found in subsection (e), the Board may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:
 - 1. An affected applicant for a license; or
 - 2. An individual holding a license subject to revocation.
- B. The Board may grant a waiver upon consideration of the following, without limitation:
 - 1. The age at which the offense was committed;
 - 2. The circumstances surrounding the offense;
 - 3. The length of time since the offense was committed;
 - 4. Subsequent work history since the offense was committed;
 - 5. Employment references since the offense was committed;
 - 6. Character references since the offense was committed;
 - 7. Relevance of the offense to the occupational license; and
 - 8. Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.
- C. A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees.
- D. The Board will respond with a decision in writing and will state the reasons for the decision.
- E. An appeal of a determination under this section will be subject to the Administrative Procedures Act §25-15-201 *et seq.*