

**BEFORE THE OPTOMETRY BOARD
OF THE STATE OF IOWA**

In the Matter of the Petition for Waiver by: Neil Scott Gorman, O.D. Petitioner.	ORDER GRANTING WAIVER
---	------------------------------

Pursuant to Iowa Code section 17A.9A and Iowa Administrative Code rule 481-6, the Board of Optometry (“Board”) makes the following ruling on the Petition for Waiver submitted by Neil Scott Gorman (“Petitioner”).

FACTS AND COURSE OF PROCEEDINGS

1. Petitioner seeks to waive Iowa Administrative Code rule 481.645-181.3(2)(c)(1), (currently 481-761.3(2)(c)(1)), which requires licensees to obtain “[c]urrent certification in CPR offered *in person* by the American Heart Association, the American Red Cross or an equivalent organization.”
2. Petitioner will be offering services through telehealth only beginning January 2025, due to disability.
3. Petitioner stated he uses a cane to walk and represented to the Board he is unable to get on the floor to administer chest compressions on a mannequin and cannot stand up unassisted.
4. The Board considered the Petition for Waiver at its regularly scheduled board meeting on January 2, 2025.

APPLICABLE LAW

5. Pursuant to Iowa Administrative Code chapter 481—6.5, the Board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:
 - a. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
 - b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
 - c. The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and
 - d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

6. “The petitioner has the burden of persuasion when a petition is filed for a waiver from a department rule. The standard of proof is clear and convincing evidence.” Iowa Admin. Code r. 481—6.11(2).
7. The Board's rules provide "At the sole discretion of the director/board, the director/board may issue an order, in response to a completed petition, granting a waiver from a rule adopted by the department, in whole or in part, as applied to the circumstances of a specified person or a specific and narrowly drawn class of persons..." Iowa Admin. Code r. 481—6.5. “Each petition for waiver shall be evaluated by the department based on the unique, individual circumstances set out in the petition.” Iowa Admin. Code r. 481—6.11(5)(a). A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.” *Id.* at 481—6.5(11)(5)(b).
8. The agency may place any condition on a waiver that the agency finds desirable to protect the public health, safety, and welfare.” Iowa Code § 17A.9(3).

ANALYSIS OF WAIVER CRITERIA

Whether the application of the rule would create an undue hardship on the person for whom the waiver is requested:

9. Petitioner’s disability(s) limits his physical ability to perform chest compressions on a mannequin and to stand up from the floor without assistance. Performing chest compressions on a mannequin is generally required to successfully receive CPR certification during in person classes. The application of this rule would create an undue hardship on Petitioner, given his physical limitations.

Whether the waiver from the requirements of the rule in the specific case would prejudice the substantial legal rights of any person:

10. Waiving the requirements of this rule would not prejudice the substantial legal rights of any person.

Whether the provision of the rule subject to the petition for waiver is not specifically mandated by another provision of law:

11. The requirement found in the Board’s administrative rule is not specifically mandated by statute.

Whether substantially equal protection of the public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested:

12. The public health, safety, and welfare will not be adversely affected by granting this waiver. Petitioner will only see clients via telehealth and is thus unlikely to be in a position to physically

perform CPR on a client. Further, Petitioner must complete an online CPR course, thus protecting the public health by ensuring Petitioner has relevant knowledge of CPR to draw upon in the event of an emergency.

PETITIONER HAS MET THE CRITERIA TO WAIVE RULE 645-181.3(2)(c)(1), (currently 481-761.3(2)(c)(1)).

Upon review of the Petition, the Board finds that Petitioner has satisfied the four criteria for waiver of the requirement to obtain CPR certification by attending an in person course.

ORDER

IT IS THEREFORE ORDERED the Petition for Waiver of the requirement to obtain CPR certification by attending an in person course is **GRANTED**, contingent upon Petitioner's successful CPR certification via an online course. The waiver shall be valid indefinitely.

Issued April 18, 2025

 (U) F.A.A.O.

Brian Kirschling, Chair, Iowa Board of Optometry