

Arizona State Board of Dispensing Opticians

Board has generally met its statutory objective and purpose but should ensure that dispensing optician license applicants submit required lawful presence documentation, provide written notice of application deficiencies to license applicants, and periodically review the appropriateness of its fees

Performance Audit and
Sunset Review

November 2020
Report 20-112

A Report to the Arizona Legislature

Lindsey A. Perry
Auditor General





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November 18, 2020

Members of the Arizona Legislature

The Honorable Doug Ducey, Governor

Ms. Megan Darian, Executive Director
Arizona State Board of Dispensing Opticians

Transmitted herewith is the Auditor General's report, *A Performance Audit and Sunset Review of the Arizona State Board of Dispensing Opticians*. This report is in response to a September 19, 2018, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the sunset review process prescribed in Arizona Revised Statutes §41-2951 et seq. I am also transmitting within this report a copy of the Report Highlights to provide a quick summary for your convenience.

As outlined in its response, the Arizona State Board of Dispensing Opticians agrees with all the findings and plans to implement all the recommendations.

My staff and I will be pleased to discuss or clarify items in the report.

Sincerely,

Lindsey Perry, CPA, CFE
Auditor General

cc: Arizona State Board of Dispensing Opticians members

Arizona State Board of Dispensing Opticians

Board has generally met its statutory objective and purpose but should ensure that dispensing optician license applicants submit required lawful presence documentation, provide written notice of application deficiencies to license applicants, and periodically review the appropriateness of its fees

Audit purpose

To evaluate the Board's processes for issuing and renewing licenses, handling complaints, and providing information to the public, and provide responses to the statutory sunset factors.

Key findings

- Although the Board ensured that optical establishment applicants for initial and renewal licensure met key statutory requirements for the applications we reviewed, such as ensuring optical establishments have a licensed dispensing optician on-site, it did not ensure that 8 of 17 dispensing optician initial licensure applicants provided adequate documentation to verify lawful presence.
- The Board did not send written notice to applicants of identified application deficiencies. By not doing so, licensees might contest Board licensing decisions.
- Contrary to best practices for government fee setting, the Board has not periodically reviewed the appropriateness of its fees.
- The Board has adopted rules when statutorily required, but some Board practices, such as the information it requests on its initial licensing applications and its complaint-investigation process, do not align with rule and statute, respectively.

Key recommendations

The Board should:

- Continue to ensure that initial dispensing optician applicants submit the required documentation to demonstrate lawful presence.
- Provide written documentation of application deficiencies identified during the application review process to applicants.
- Establish and implement a process to periodically review the appropriateness of its fees.
- Conduct its planned comprehensive rules review and align its practices with current rule requirements and/or work with its Assistant Attorney General to determine whether and when it should revise its rules.
- Review its statutes and align its practices with current requirements and/or work with the Legislature to amend its statutes.



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Board overview

The Arizona State Board of Dispensing Opticians (Board) regulates the opticianry industry by issuing licenses to dispensing opticians and optical establishments, investigating and adjudicating complaints, and providing information to the public about the status of licensees. Statute requires the Board to consist of 7 members appointed by the Governor for 5-year terms. In fiscal year 2020, the Board was allocated 1 full-time equivalent staff position. The Board does not receive any State General Fund appropriations. Rather, the Board's revenues consist primarily of licensing fees.

Active licensed dispensing opticians as of October 2020	Active licensed optical establishments as of October 2020
906	408
Complaints received between January 2018 and July 2020	
14	

Audit results summary

Key regulatory areas reviewed		
Dispensing optician licenses —Process initial applications within 60 days and comity (an application based on valid licensure in another state) applications within 90 days. Requirements for licensure include experience or licensure in another state, as well as lawful presence documentation.	Issued timely ✓	Ensured qualifications met ✗
Optical establishment licenses —Process initial applications within 60 days. Optical establishments must provide the name of at least 1 full-time licensed dispensing optician for each location.	Issued timely ✓	Ensured qualifications met ✓
Dispensing optician license renewals —Process renewal applications within 60 days. Licensed dispensing opticians must complete 12 hours of continuing education every 3 years.	Issued timely ✓	Ensured qualifications met ✗
Optical establishment license renewals —Process renewal applications within 60 days. Optical establishments must provide the name of at least 1 full-time licensed dispensing optician for each location.	Issued timely ✓	Ensured qualifications met ✓
Complaint handling —Investigate and adjudicate or dismiss complaints within 180 days.	Investigated and adjudicated within 180 days ✗	Followed complaint-handling policies and procedures ✓
Public information —Statute specifies the complaint and license status information the Board should provide to the public, including on its website. During the audit, the Board finalized a new policy to guide responses to public information requests.	Provided via website ✓	Has policy to guide responses ✓
Other responsibilities reviewed		
Fee setting —Fees should reflect the actual costs of providing services and should be reviewed periodically.	Based fees on actual costs ✗	Periodically reviews fees ✗
Conflicts of interest —Requirements and best practices include signing a disclosure form annually and recusing oneself from decisions involving substantial interests. During the audit, the Board developed and implemented a conflict-of-interest policy.	Board members and staff signed annual disclosure form ✓	Board members with conflicts recused selves during Board meetings ✓
Rulemaking and open meeting law —Requirements include involving the public in rulemaking and making public Board meeting minutes available within 3 working days.	Involved public in rulemaking ✓	Meeting minutes available within 3 working days ✓



The Office of the Auditor General has completed a performance audit and sunset review of the Arizona State Board of Dispensing Opticians (Board). This report addresses the statutory sunset factors and includes a review of the Board's processes for issuing licenses to individuals and businesses in the opticianry industry, investigating and adjudicating complaints, and providing information to the public.

Mission and responsibilities

The Board was established in 1956 to regulate the practice of opticianry in Arizona. The Board licenses both dispensing opticians and optical establishments (see textbox). The Board's mission is to ensure Arizonans are afforded quality optical services. Its responsibilities include:

- Issuing licenses that must be renewed annually to qualified dispensing opticians and optical establishments. Licensed dispensing opticians renew every calendar year by December 31, and optical establishment licensees renew every fiscal year by June 30. As of October 2020, the Board reported 906 active licensed dispensing opticians and 408 active licensed optical establishments in Arizona.
- Investigating and adjudicating complaints against licensees. The Board received or initiated 14 complaints between January 2018 and June 2020.
- Providing information about licensees to the public, such as license status and disciplinary history.

Dispensing opticians—Technical practitioners who design, measure, order or manufacture, fit, and verify prescription eyewear and contact lenses. Opticians also dispense optical items, such as eyeglass frames and lenses, contact lenses, and/or artificial eyes to individuals with a written prescription from a duly licensed physician or optometrist. Opticians may perform other actions, such as adjusting optical items for visual or ocular correction.

Optical establishments—Physical locations in which optical items are dispensed to the intended wearer on written prescription from a licensed physician or an optometrist.

Source: Auditor General staff review of Arizona Revised Statutes (A.R.S.) §32-1671 and discussions with Board staff.

Organization and staffing

As required by A.R.S. §32-1672, the Board consists of 7 governor-appointed members, including 5 licensees in good standing and 2 public members. Board members serve 5-year terms and are eligible to serve 2 consecutive terms. As of October 2020, the Board reported that all 7 Board member positions were filled.¹

The Board is appropriated 1 full-time staff position for fiscal year 2021 that is filled by an executive director.

Budget

The Board does not receive any State General Fund appropriations. Instead, the Board's revenues consist primarily of dispensing optician and optical establishment licensing fees. A.R.S. §32-1686 requires the Board to remit 10 percent of all monies received to the State General Fund, with the Board retaining the remaining 90 percent of these revenues. Additionally, although not statutorily required, the Board also remits 100 percent of

¹ The Board also reported that, as of October 2020, all 7 Board members continued to serve a second term without a current appointment from the Governor's office.

all civil penalties to the State General Fund (see Sunset Factor 9, page 11, for additional information). In fiscal years 2018 through 2020, most of the Board's revenues consisted of licensing and related fees, and most of its expenditures were for personnel costs (see Table 1). The Board also incurred a one-time cost of \$27,500 in fiscal year 2018 to help pay for the implementation of a new State-wide e-licensing system. As of the end of fiscal year 2020, the Board had a fund balance of approximately \$344,000, which is more than double its annual expenditures for that fiscal year. Although the Board's fund balance has increased between fiscal years 2018 and 2020, the annual net change fluctuated, including a loss of approximately \$31,000 in fiscal year 2018 and increases of approximately \$35,000 and \$15,000 in fiscal years 2019 and 2020, respectively.

Table 1
Schedule of revenues, expenditures, transfers, and changes in fund balance
Fiscal years 2018 through 2020
(Unaudited)

	2018	2019	2020
Revenues			
Licensing and related fees	\$174,020	\$179,127	\$165,195
Examination fees	9,600	6,600	6,700
Fines, forfeits, and penalties	3,400	8,168	7,150
Other	250	475	400
Total gross revenues	187,270	194,370	179,445
Credit card transaction fees ¹		(3,388)	(1,469)
Remittances to the State General Fund ²	(19,281)	(21,479)	(20,948)
Total net revenues	167,989	169,503	157,028
Expenditures and transfers			
Payroll and related benefits ³	119,999	102,372	105,242
Professional and outside services	129	385	
Travel	7,755	3,927	1,592
Other operating ⁴	39,418	26,712	29,641
Furniture, equipment, and software	2,182	1,447	5,662
Transfers to the other agencies ⁵	29,600		
Total expenditures and transfers	199,083	134,843	142,137
Net change in fund balance	(31,094)	34,660	14,891
Fund balance, beginning of year	325,672	294,578	329,238
Fund balance, end of year	\$294,578	\$329,238	\$344,129

¹ The Board began accepting credit card payments after its transition to e-licensing in May 2018.

² Per A.R.S. §32-1686, the Board is required to remit to the State General Fund 10 percent of its revenues. Additionally, although not required by statute, the Board also remits 100 percent of civil penalties to the State General Fund (see Sunset Factor 9, page 11, for additional information).

³ Payroll and related benefits in fiscal year 2018 included approximately \$14,300 paid to the previous director for an annual leave payout.

⁴ Other operating expenditures comprised various expenditures, including building rent, accounting services, and computer processing costs.

⁵ Transfers to other agencies were transfers to the Arizona Department of Administration for a portion of a State-wide e-licensing system and relocation costs.

Source: Auditor General staff analysis of A.R.S. §32-1686, the Arizona Financial Information System *Accounting Event Transaction File* for fiscal years 2018 through 2020, and the State of Arizona *Annual Financial Report* for fiscal years 2018 and 2019.



SUNSET FACTORS

Pursuant to A.R.S. §41-2954(D), the legislative committees of reference shall consider but not be limited to the following factors in determining the need for continuation or termination of the Board.

Sunset factor 1: The objective and purpose in establishing the Board and the extent to which the objective and purpose are met by private enterprises in other states.

The Board was established in 1956, and its mission is to ensure that Arizona consumers are afforded quality optical services. To accomplish this mission, the Board licenses qualified dispensing opticians and optical establishments and investigates and adjudicates complaints against licensees. The Board is also responsible for providing information to the public regarding licensees’ disciplinary history and license status.

We did not identify any states that met the Board’s objectives and purpose through private enterprise. According to the American Board of Opticianry & National Contact Lens Examiners (ABO-NCLE), Arizona is 1 of 21 states that regulate opticianry professionals.² In addition, we contacted 5 states that regulate opticianry professionals—California, Nevada, Rhode Island, South Carolina, and Tennessee—and found that none used private enterprises for licensing or complaint handling.³

Sunset factor 2: The extent to which the Board has met its statutory objective and purpose and the efficiency with which it has operated.

The Board generally met its statutory objective and purpose but should improve in one area related to initial licensure for dispensing opticians. Specifically, we found that the Board:

- **Ensured dispensing optician applicants met applicable initial licensure requirements except for ensuring some applicants provided adequate documentation to verify lawful presence**—Our review of 17 dispensing optician applications for initial licensure, including 2 comity applications (an application

<p>Board did not ensure 8 of 17 initial dispensing optician applicants, including 2 comity applicants, provided required lawful presence documentation</p>  <p>8 did not include identification with a photograph</p>	<p>Board ensured 15 of 15 initial dispensing optician applicants met education, skill/training, and examination requirements¹</p>  <p>¹ These requirements do not apply to the 2 comity applicants.</p>	<p>Board ensured 2 comity applicants maintained a valid opticianry license in another state</p> 
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² ABO-NCLE is a nationally recognized opticianry organization.

³ See Appendix A, pages a-1 through a-2, for more information about how we selected these states.

based on valid licensure in another state), found that the Board ensured applicants met education, skill/training, examination, and existing licensure requirements, as applicable, prior to Arizona licensure.^{4,5}

However, the Board did not ensure that some applicants provided adequate documentation to verify lawful presence. Specifically, A.R.S. §41-1080 requires the Board to obtain documentation from applicants to verify lawful presence, which confirms that applicants are legally authorized to work in Arizona. The documentation should include a government-issued document that contains the individual's photograph. Despite this requirement, the Board accepted lawful presence documentation that did not meet the photograph requirement for 8 of the 17 applications we reviewed (e.g., it accepted a birth certificate but did not require additional documentation, such as a passport, that included a photograph). During the audit, the Board finalized a new policy that provides staff with guidance to ensure initial dispensing optician applicants submit lawful presence documentation as required by statute.

- **Ensured all but 1 dispensing optician renewal licensure applicant met continuing education requirements for applications we reviewed**—AAC R4-20-120 requires licensed dispensing opticians to complete 12 continuing education hours every 3 years and to provide required documentation of the continuing education completed during the appropriate renewal cycle.⁶ Based on our review of 15 renewal license applications, the Board ensured that 14 of the 15 applicants provided documentation to support the required number of continuing education hours.⁷ For the 1 applicant that did not provide all necessary documentation, the licensee explained to the Board that she mistakenly submitted 2 separate documents to support the same continuing education hour, which resulted in the licensee not having provided support for 1 of the required 12 hours of continuing education. During the August 2020 Board meeting, the Board reviewed the documents submitted by the licensee and recognized that it could not identify that the licensee submitted 2 documents for the same continuing education hour because each document had a different reference number to identify the continuing education session.⁸ The licensee subsequently agreed to retroactively apply 1 hour of continuing education she completed for the 2022 renewal cycle to the 2019 renewal cycle to correct the deficiency.⁹
- **Ensured that optical establishment applicants for initial and renewal licensure met statutory requirements for applications we reviewed**—Based on our review of 10 optical establishments for initial licensure and 12 applications for renewal licensure, the Board ensured these applicants met statutory

⁴ We reviewed a random sample of 15 of the 53 dispensing optician applications for initial licensure the Board received in calendar year 2019. We also reviewed the 2 comity applications included in the 53 applications.

⁵ A.R.S. §32-1683 requires dispensing optician applicants to be a high school graduate (or the equivalent) and possess the required technical skill and training necessary for licensure, which is demonstrated by submitting evidence of either (1) serving an apprenticeship in optical dispensing for 3 of the 6 years preceding the license application date under the direct supervision of a dispensing optician, optometrist, or an allopathic or osteopathic physician; (2) graduating from an approved school of optical dispensing and serving an apprenticeship in optical dispensing that must be supervised in the same manner as the 3-year apprenticeship for 1 of the 6 years preceding the license application date; (3) having a valid dispensing optician or ophthalmic dispensers license in good standing from another state whose requirements are substantially equivalent to those of the Board; or (4) having worked as a dispensing optician or apprentice in a nonlicensing state for 3 of the 6 years preceding the license application date. Arizona Administrative Code (AAC) R4-20-102(3) requires initial dispensing optician applicants to also meet examination requirements.

⁶ AAC R4-20-120(A) also includes alternate timelines for continuing education requirements during the initial period of licensure. Specifically, if an applicant is initially licensed between January 1 and June 30, continuing education hours are due by December 31 of the second full calendar year of licensure, and if an applicant is initially licensed between July 1 and December 31, continuing education hours are due by December 31 of the third full calendar year of licensure. For subsequent renewal periods, continuing education hours are due every 3 years.

⁷ We reviewed a random sample of 15 applications from the 179 renewal licensure applicants required to submit continuing education documentation during the calendar year 2019 renewal cycle.

⁸ AAC R4-20-120(C) specifies that the 12 hours of required continuing education must include 4 hours in eyeglass fitting and dispensing, 3 hours in contact lens fitting and dispensing, and 1 hour in State or national opticianry standards. In researching this situation, the Board determined that the continuing education provider gave attendees the option to pick up documentation for either the eyeglass or the contact lens continuing education requirements, but not both. The licensee should have picked up only 1 of the continuing education documents for either 1 hour of eyeglass or 1 hour of contact lens continuing education.

⁹ The Board and the licensee agreed that the hour of continuing education completed in January 2020 and applied retroactively to address the deficiency will not be valid for the 2022 renewal cycle.

requirements.¹⁰ For example, A.R.S. §32-1684.01(B) requires applicants to provide evidence that at least 1 licensed dispensing optician works full time at the establishment.

- **Denied licenses to dispensing optician applicants who did not meet requirements**—Based on our review of the 6 dispensing optician applications the Board denied between January 2019 and July 2020—4 renewal applications, 1 reinstatement application, and 1 comity application—the Board appropriately denied all 6 applications.¹¹ Specifically, the 4 renewal applicants and 1 reinstatement applicant had not completed the continuing education hours as required by rule, and the 1 comity applicant held a license from another state that did not meet Arizona licensure requirements.^{12,13}
- **Issued or denied licenses we reviewed in a timely manner**—The Board issued or denied all the license applications we reviewed in our samples within its established time frames. Specifically, AAC R4-20-111 requires the Board to approve or deny initial and renewal license applications within 60 days for both dispensing optician and optical establishment licenses and to approve or deny comity license applications within 90 days. Additionally, although not specifically referenced in statute, the Board’s Executive Director explained that reinstatement applications also fall within the time frames for renewal applications.

We identified 2 additional areas where the Board should improve its processes to support its statutory objective and purpose. Specifically, the Board:

- **Did not send written notice of identified deficiencies during the administrative review process**—AAC R4-20-111(B) requires the Board to provide written notice to applicants for any deficiencies identified during its review of dispensing optician and optical establishment applications. The Board’s Executive Director confirmed that rather than sending a written notice of identified deficiencies, she calls applicants to discuss any deficiencies. The Board’s initial licensing policy and procedures indicate that the Board will notify the applicant of missing documents or incomplete information; however, the policy does not reflect the requirement in rule to provide this notification in writing. Additionally, the Board’s renewal policy and procedures do not include the requirement to notify applicants about identified deficiencies. By not providing written notification as required by rule, the Board’s licensing decisions may be contested, such as an applicant contesting the Board denying a license, if it cannot show that it provided the applicant with written notification of deficiencies.
- **Has not evaluated the appropriateness of its fees**—The Board’s application and licensure fees are set forth in rule (see textbox). However, the Board’s Executive Director explained that it has not analyzed the costs of performing its regulatory responsibilities, such as processing initial and renewal applications, to determine the appropriateness of its fees. Additionally, although it has made changes to its fees, such as eliminating a \$100 application fee for an initial dispensing optician license application in 2018, it does not regularly review the appropriateness of its fees as

Board’s application and licensure fees¹

Dispensing opticians
License issuance fee: \$100
Renewal license fee: \$135
License renewal late fee: \$100

Optical establishments
License application fee: \$100
License issuance fee: \$100
Renewal license fee: \$135
License renewal late fee: \$100

¹ Per A.R.S. §32-1685, these individual fees may not exceed \$200.
Source: Auditor General staff review of A.R.S. §32-1685 and AAC R4-20-112.

¹⁰ We reviewed random samples of 10 of the 30 optical establishment applications for initial licensure the Board received in calendar year 2019 and 12 of the 382 renewal applications, including 2 of the 12 late renewal applications, that the Board received in fiscal year 2019.

¹¹ AAC R4-20-109(C) requires that a licensed dispensing optician who does not submit a renewal application within 1 month of the license expiration date and wishes to remain licensed by the Board must submit a reinstatement application. Dispensing opticians with expired licenses are eligible to submit a reinstatement application up to 1 year after the license expiration date.

¹² AAC R4-20-109 specifies requirements for renewal and reinstatement applications for dispensing opticians, and A.R.S. §32-4302 identifies licensure requirements for individuals licensed in another state.

¹³ The comity applicant subsequently submitted an initial licensing dispensing optician application and received a license.

recommended by best practices.¹⁴ Government fee setting standards and guidance state that user fees should be based on the costs of providing a service and reviewed periodically to ensure they are based on the costs of providing a service.¹⁵

Recommendations

The Board should:

1. Continue to implement its new lawful presence policy that requires Board staff to ensure initial dispensing optician applicants, including comity applicants, submit the required documentation to demonstrate lawful presence.
2. Revise its licensing policies and procedures to require its staff to provide written documentation of application deficiencies identified during the application review process to applicants.
3. Establish and implement a process to periodically review the appropriateness of its fees by analyzing the costs of its regulatory processes, comparing these costs to the associated fees, and determining the appropriate licensing fees, and then revise its fees as needed.

Board response: As outlined in its [response](#), the Board agrees with the findings and will implement the recommendations.

Sunset factor 3: The extent to which the Board serves the entire State rather than specific interests.

The Board serves the entire State by licensing dispensing opticians and optical establishments and investigating and adjudicating complaints against licensees throughout Arizona. However, we found that the Board had not complied with some conflict-of-interest requirements and best practices prior to our audit.¹⁶ Arizona law requires public officers and employees of public agencies, including Board members, to avoid conflicts of interest that might influence or affect their official conduct.¹⁷ These laws also require certain interests to be fully disclosed in a public agency's official records, either through a signed document or the agency's official minutes. Statute further requires that public officers/employees who have disclosed conflicts to refrain from participating in matters related to the disclosed interests. In addition, although not required by statute, best practices indicate that conflict-of-interest disclosure statements should be signed annually, which reminds public officers/employees of the importance of complying with conflict-of-interest laws and helps ensure that potential conflicts are disclosed if their circumstances change. Finally, statute requires public agencies to maintain a special file of all documents necessary to memorialize conflict-of-interest disclosures and to make this file available for public inspection.

Although the Board took steps to ensure its decisions were free of conflicts of interest prior to our audit, it did not adhere to all conflict-of-interest statutory requirements and best practices. Specifically, we reviewed the Board's meeting minutes between January 2019 and March 2020 and found instances where Board members verbally recused themselves during Board meetings for specific matters on the agenda, and the Board's official minutes documented members' verbal recusals. Additionally, Board members who verbally recused themselves refrained from voting in matters when they declared having a conflict. However, the Board did not document the details of the members' recusals in the official record, and neither the Board members nor the Board's Executive Director had signed annual disclosure statements. Finally, because the Board did not require conflict-of-interest documentation, it did not have a special file containing conflict-of-interest documentation available for public review.

¹⁴ The Board reported that it eliminated this application fee to correspond with reduced licensing costs that resulted when it stopped administering its practical examination and, instead, began accepting national practical examinations for initial licensure.

¹⁵ We reviewed fee-setting guidelines from the Arizona State Agency Fee Commission, the Government Finance Officers Association, the Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review, the U.S. Government Accountability Office, and the U.S. Office of Management and Budget (see Appendix A, pages a-1 through a-2, for more information).

¹⁶ See Appendix A, pages a-1 through a-2, for additional information on best practices we reviewed.

¹⁷ A.R.S. §38-501 et seq.

During the audit, the Board took steps to better ensure its compliance with these requirements and best practices. Specifically, it developed a conflict-of-interest policy that documents its practices and also aligns with statutory requirements and best practices, including the requirements for members who verbally recuse themselves during a Board meeting to complete a conflict-of-interest form that includes details of the recusal and for Board members and staff to sign an annual disclosure statement that also affirms if no conflicts exist. As of August 2020, all Board members and the Board's Executive Director had completed the new annual disclosure statement. Finally, the policy includes a requirement that all conflict-of-interest documentation must be available for public inspection in a special file, which the Board has created.

Recommendation

4. The Board should continue to implement its new conflict-of-interest policy.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendation.

Sunset factor 4: The extent to which rules adopted by the Board are consistent with the legislative mandate.

Our review of the Board's statutes and rules found that the Board has adopted rules when statutorily required to do so; however, some of the Board's practices do not align with its rules. According to A.R.S. §32-1673(A), the Board has statutory authority to adopt rules to carry out its statutory duties, which include licensing dispensing opticians and optical establishments. The Board has revised its rules twice since 2018. The Board most recently revised its rules in January 2020 to clarify when applicants must complete their continuing education hours for the first renewal period. Additionally, in 2018, the Board made multiple changes to its rules, such as clarifying the documentation applicants must submit for licensure, repealing the requirement for the Board to administer a dispensing optician practical exam for licensure—instead, the Board accepts national practical exam results—and removing the requirement for notarization, as all applications are accepted through the e-licensing system.

However, we identified inconsistencies between the Board's rules and some of its practices, such as information requested in e-licensing applications. For example:

- AAC R4-20-109 requires dispensing optician renewal license applicants to provide the name, address, phone number, and license number of their place of employment at renewal, but the e-licensing application does not request this information.
- AAC R4-20-110(B) requires initial optical establishment corporate applicants to ensure all individuals owning 20 percent or more of the voting stock in the corporation sign the application. This rule also requires corporate applicants to include the name of the statutory agent and the corporation's officers. However, the e-licensing application does not request this information.

The Board's Executive Director explained that these inconsistencies are the result of several factors, including the migration from paper applications to e-licensing and potentially outdated license requirements in its rules. During the audit, the Board worked with the Arizona Department of Administration, which administers the e-licensing system, to address one migration error and revise the online dispensing optician renewal application by adding the requirement for applicants to enter information for place of employment. The Board also reported that it plans to conduct a comprehensive review of all its rules as part of its upcoming required 5-year rules review in 2021.

Recommendation

5. The Board should conduct its planned comprehensive rules review and, based on this review, align its practices with current rule requirements and/or work with its Assistant Attorney General to determine whether and when it should revise its rules, and make revisions to its rules as necessary.

Board response: As outlined in its [response](#), the Board agrees with the finding and will implement the recommendation.

Sunset factor 5: The extent to which the Board has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.

The Board has encouraged input from the public and informed the public of its actions and expected impact. Specifically, the Board:

- **Involved the public in adopting rules**—The Board informed the public of its recent rulemakings and their expected impacts and provided opportunities for public input as part of the rules it finalized in January 2020 and December 2018. Specifically, the Board published notices of its proposed rulemakings in the Arizona Administrative Register and included a statement detailing these proposed rules' impact on the public. Additionally, the Board provided contact information in the notices for Board staff who would receive public input about the proposed rulemaking, allowed the public to submit written comments on proposed rule changes for at least 30 days after it published the first notice, and held meetings where the public could provide input.
- **Complied with open meeting law requirements for meetings we reviewed**—The Board complied with the State's open meeting law for the 3 monthly Board meetings it held between March 2020 and May 2020. For example, as required by open meeting law, the Board posted meeting notices and agendas on its website at least 24 hours in advance and posted the meeting notices at the physical location as indicated on the Board's website. The Board also uploaded an audio recording of each meeting to its website within 3 business days following the meetings. Finally, the meeting notices and written minutes we reviewed complied with the provisions of open meeting law we tested, such as providing the date, time, and location of the meeting in the notices and written minutes, including indicating when the Board transitioned to telephonic meetings as a result of the COVID-19 pandemic.
- **Provided accurate and appropriate disciplinary information on its website for all the licensees we reviewed but did not provide complete information in the e-licensing record for 1 licensee**—The Board's website includes disciplinary information as required by A.R.S. §32-3214 for all 10 complaints it substantiated between January 2018 and June 2020, which involved disciplinary action against 16 licensees.¹⁸ However, the Board provided incomplete information through the e-licensing system for 1 of the 16 licensees. Specifically, the e-licensing record for 1 optical establishment did not accurately indicate that the establishment had received disciplinary action. The Board's Executive Director explained the error resulted from an oversight and corrected the e-licensing record to reflect the disciplinary action. During the audit, the Board also revised its complaint investigation policy and procedures to ensure an e-licensing record accurately reflects when a licensee has a disciplinary history.

However, we identified an area where the Board could improve its processes to ensure it provides appropriate information to the public. A.R.S. §32-3214 requires the Board to include disciplinary information on its website as stated previously, and although information about dismissed complaints may not be posted on its website, this information should be available to the public upon request. Additionally, statute prohibits the Board from releasing information regarding pending complaints or investigations. Although the Board's Executive Director indicated that she had not received public inquiries about complaints or the license status of licensees since joining the Board in December 2017, during the audit, the Board finalized a new policy to guide responses to public information requests. Without policies and procedures, the Board may be at risk of not providing responses in accordance with statute.

Finally, A.R.S. §32-3214 requires the Board to include a statement on its website indicating that a person may obtain additional public records related to a licensee by contacting the Board directly. Although the Board did not have this statement on its website when we began our work, after we made it aware of this requirement, it added this statement to the website during the audit.

¹⁸ Two of the 10 substantiated complaints involved multiple licensees.

Sunset factor 6: The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.

The Board has statutory authority to investigate and adjudicate complaints within its jurisdiction and has various disciplinary options available to address statute and/or rule violations (see textbox). Our review of all 14 complaints the Board received or initiated between January 2018 and June 2020 found that the Board followed its complaint investigation policies and procedures. The Board also appropriately dismissed 4 of these complaints after it determined that the allegations either did not fall within its jurisdiction or did not violate its statutes and rules. The Board substantiated allegations in the remaining 10 complaints, and we found that it consistently imposed disciplinary action in these complaints.

Board options for disciplinary actions

- Censure.
- Civil penalty (not to exceed \$1,000 per violation).
- Probation.
- Suspension of license.
- Revocation of license.
- Order of restitution.

The Board's statutes do not include the authority to impose nondisciplinary actions, such as a letter of concern.

Source: Auditor General staff analysis of A.R.S. §32-1693 and the Arizona Attorney General, Arizona Agency Handbook.

Further, the Board generally resolved the complaints in a timely manner, although 1 complaint took longer to resolve. Specifically, we have determined that Arizona health regulatory boards should investigate and adjudicate complaints within 180 days of receiving them, and the Board resolved 13 of the 14 complaints within this time frame. The Board took 273 days to resolve 1 complaint, which was a Board-initiated complaint that involved an optical establishment operating without a licensed dispensing optician and later without an active license. This complaint took longer to resolve because the optical establishment had taken the position that the Board did not have jurisdiction to require the establishment to be licensed. The Board had ongoing communication with the establishment between January 2019 and October 2019, including communications involving the Board's Assistant Attorney General and the establishment's legal representative. The optical establishment ultimately agreed to be licensed by the Board, entered into a consent agreement with the Board, and obtained a license.

Sunset factor 7: The extent to which the Attorney General or any other applicable agency of State government has the authority to prosecute actions under the enabling legislation.

The Attorney General serves as the Board's legal advisor and provides legal services as the Board requires according to A.R.S. §41-192(A)(1). In addition, various enabling statutes authorize criminal and civil legal actions for violations of specified Board statutes. Finally, the Board's Executive Director indicated that during her tenure as Executive Director, the Board has not encountered any instances where it became necessary to initiate legal action against an individual or entity for providing optician services without a license.

Sunset factor 8: The extent to which the Board has addressed deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.

According to the Board, there are no deficiencies in its enabling statutes that prevent it from fulfilling its statutory mandate.

Sunset factor 9: The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in this sunset law.

We identified some changes that may be necessary in the Board's laws. Specifically, we found the following inconsistencies between certain Board practices and its statutes:

- A.R.S. §32-1691.01(C) indicates that when the Board receives a complaint against a licensee, it will initiate an investigation or refer the complaint or a motion to investigate to a Board-appointed investigative committee, which should include both licensed dispensing opticians and lay persons who do not need to be Board members. However, according to Board policy and discussion with the Board's Executive Director, although the Board determines if an investigation is necessary, it does not convene a Board-appointed investigative committee.

- A.R.S. §32-1691.01(D) indicates that when an investigation is initiated, the Board shall appoint a Board member to act as the investigative officer. However, according to Board policy and discussion with the Board's Executive Director, the Board does not use a Board member to investigate complaints. Rather, the Board's Executive Director will conduct an initial inquiry into the allegation, and the Board may contract with a third-party investigator when it determines that additional information is necessary for the Board to complete its investigation.
- A.R.S. §32-1684(A) indicates that the Board shall approve an application if the applicant meets the statutory and rule qualifications and shall allow the applicant for initial licensure to sit for the practical examination. However, as indicated in Sunset Factor 4 (see page 8), the Board revised its rules in 2018 and no longer administers a dispensing optician practical examination required for licensure. As a result, the Board's Executive Director confirmed that in accordance with its rules, an applicant must provide evidence of passing the national practical examinations prior to submitting an initial application for licensure to the Board rather than submitting the application to the Board and seeking its approval to take the practical examination.

The Board reported that it intends to review its practices and statutes after the audit to determine whether to modify its practices or seek to amend its statutes.

Finally, as stated in the Introduction (see pages 2 through 3), the Board remits 100 percent of civil penalties it collects to the State General Fund, although its statutes do not include the requirement to do so. As reported in our June 2016 Arizona State Board of Respiratory Care Examiners Performance Audit and Sunset Review (Report No. 16-103), most Arizona health regulatory boards are required to remit all civil penalties to the State General Fund.¹⁹

Recommendations

The Board should:

6. Conduct a review of its statutes, and based on this review, align its practices with current statutory requirements and/or work with the Legislature to amend its statutes, and revise its policies and procedures as needed.
7. Propose legislation that would require it to remit 100 percent of all civil penalties to the State General Fund.

Board response: As outlined in its [response](#), the Board agrees with the findings and will implement the recommendations.

Sunset factor 10: The extent to which the termination of the Board would significantly affect the public health, safety, or welfare.

The Board indicated termination would impact public health, safety, and welfare by leaving opticianry consumers without regulated professionals to provide services. However, we found that although the Board ensures a level of professional knowledge for licensed dispensing opticians and makes license information available to the public for licensed dispensing opticians and optical establishments, it does not have a substantial impact on public health and safety. For example, as discussed previously, the Board investigates and adjudicates complaints of alleged statute and rule violations against licensees. Despite licensing 893 dispensing opticians and 404 optical establishments as of August 2020, the Board received or initiated only 14 complaints between January 2018 and June 2020 and substantiated 10 of these. The 10 substantiated complaints included a single complaint against a licensed dispensing optician for dispensing contact lenses without a prescription and a separate, corresponding complaint the Board opened against the optical establishment that employed the licensed dispensing optician, while the remaining 8 complaints involved optical establishments operating without a licensed dispensing optician onsite or without a license in violation of rule.

¹⁹ As indicated in the report, in addition to the Board's statutes not requiring it to remit 100 percent of civil penalties to the State General Fund, the Arizona State Board of Homeopathic and Integrated Medicine's statutes also do not include this requirement.

We also learned that Texas deregulated opticians and contact lens dispensers in 2015. The Texas Sunset Advisory Commission (Commission) looked at criteria, such as the impact of deregulation on public health or safety, the extent of regulatory activity, and consumer access to information to make informed choices in the industry or field. The Commission found that deregulation of opticians and contact lens dispensers would have little impact on public health or safety. The Commission further found that both opticians and contact lens dispensers had very low complaint numbers, which typically indicates a lower risk of harm.

Sunset factor 11: The extent to which the level of regulation exercised by the Board compares to other states and is appropriate and whether less or more stringent levels of regulation would be appropriate.

We judgmentally selected 5 states that regulate opticianry professionals—California, Nevada, Rhode Island, South Carolina, and Tennessee—to compare with the Board and found that some of these states issue a single license for both opticians and contact lens dispensers and others issue separate licenses or certifications for opticians and contact lens dispensers.²⁰

In addition, we found the level of regulation the Board exercises for licensed dispensing opticians is similar to the level of regulation in the 5 states we reviewed. For example:

- **National and state examinations**—Arizona and all 5 states require examinations for licensure but have varying requirements for national and state examinations.
- **Education**—Arizona, Nevada, Rhode Island, South Carolina, and Tennessee require applicants to have a minimum of a high school diploma or equivalent. California has not established education requirements.
- **Additional requirements**—Arizona, Nevada, Rhode Island, South Carolina, and Tennessee require applicants to demonstrate industry knowledge by providing evidence of experience and/or training through either employment or a state-approved opticianry program. California has not established additional training requirements.
- **Fingerprints required**—Arizona, Nevada, Rhode Island, and South Carolina do not require applicants to submit fingerprints, whereas California and Tennessee require applicants to submit fingerprints for a criminal history records check and a criminal background check, respectively.

Finally, the opticianry regulatory agencies in Arizona and California also license optical establishments. Similar to Arizona's requirement to have a licensed dispensing optician for each location, California's current laws also require an individual registered as both a spectacle and contact lens dispenser at an establishment.

Sunset factor 12: The extent to which the Board has used private contractors in the performance of its duties as compared to other states and how more effective use of private contractors could be accomplished.

The Board pays a third-party investigator to assist with complaint investigations on an as-needed basis. We contacted 5 other states to obtain information regarding their opticianry regulatory entity's use of third-party contractors and found that 4 of them—California, Rhode Island, South Carolina, and Tennessee—do not use contractors. However, Nevada reported using a third-party investigator to perform undercover investigations of unlicensed/illegal activity.

We did not identify any additional areas where the Board should consider using private contractors.

²⁰ See Appendix A, pages a-1 through a-2, for more information about how we selected these states.



SUMMARY OF RECOMMENDATIONS

The Auditor General makes 7 recommendations to the Board

The Board should:

1. Continue to implement its new lawful presence policy that requires Board staff to ensure initial dispensing optician applicants, including comity applicants, submit the required documentation to demonstrate lawful presence (See Sunset Factor 2, pages 4 through 7, for more information).
2. Revise its licensing policies and procedures to require its staff to provide written documentation of application deficiencies identified during the application review process to applicants (See Sunset Factor 2, pages 4 through 7, for more information).
3. Establish and implement a process to periodically review the appropriateness of its fees by analyzing the costs of its regulatory processes, comparing these costs to the associated fees, and determining the appropriate licensing fees, and then revise its fees as needed (See Sunset Factor 2, pages 4 through 7, for more information).
4. Continue to implement its new conflict-of-interest policy (See Sunset Factor 3, pages 7 through 8, for more information).
5. Conduct its planned comprehensive rules review and, based on this review, align its practices with current rule requirements and/or work with its Assistant Attorney General to determine whether and when it should revise its rules, and make revisions to its rules as necessary (See Sunset Factor 4, page 8, for more information).
6. Conduct a review of its statutes, and based on this review, align its practices with current statutory requirements and/or work with the Legislature to amend its statutes, and revise its policies and procedures as needed (See Sunset Factor 9, pages 10 through 11, for more information).
7. Propose legislation that would require it to remit 100 percent of all civil penalties to the State General Fund (See Sunset Factor 9, pages 10 through 11, for more information).



Objectives, scope, and methodology

The Office of the Auditor General has conducted a performance audit and sunset review of the Board pursuant to a September 19, 2018, resolution of the Joint Legislative Audit Committee. The audit was conducted as part of the sunset review process prescribed in A.R.S. §41-2951 et seq. This audit addresses the Board's processes for issuing and renewing licenses, handling complaints, and providing information to the public. It also includes responses to the statutory sunset factors.

We used various methods to address the audit's objectives. These methods included reviewing Board statutes, rules, and policies and procedures; interviewing Board members and the Board's Executive Director; and reviewing information from the Board's website. We also attended and reviewed minutes or audio recordings from 3 public Board meetings held between March 2020 and May 2020. In addition, we used the following specific methods to meet the audit objectives:

- To evaluate whether the Board issued initial licenses to qualified applicants in accordance with statute and rule requirements and in a timely manner, we reviewed random samples of 15 of 53 initial dispensing optician license applications, plus the 2 comity applications the Board included in a list of 53 license applications, and 10 of the 30 initial optical establishment license applications the Board received in calendar year 2019. Additionally, to determine whether the Board renewed licenses to dispensing opticians according to its statutes and rules, including requirements for continuing education, we selected and reviewed a random sample of 15 of the 179 licensure applicants the Board identified as required to provide continuing education documentation during the calendar year 2019 renewal cycle. Further, to determine whether the Board renewed licenses to optical establishments according to its rules, we selected and reviewed a random sample of 10 of the 382 optical establishment renewal applications the Board received during fiscal year 2019.
- To evaluate the Board's complaint investigation and adjudication processes, including the timeliness of complaint resolution and appropriateness of complaint dismissal, we reviewed information from all 14 complaints the Board received or initiated between January 2018 and June 2020. The Board dismissed 4 of these 14 complaints. The remaining 10 complaints included substantiated allegations where the Board took disciplinary action. Two of these 10 complaints included disciplinary action against optical establishment owners with multiple licensees, which resulted in the Board taking disciplinary action against a total of 16 licensees, including a dispensing optician and 15 optical establishments.
- To determine whether the Board appropriately established fees, we interviewed the Board's Executive Director and reviewed Board rulemaking packets. Additionally, we analyzed unaudited information from the Arizona Financial Information System (AFIS) *Accounting Event Transaction File* for fiscal years 2018 through 2020 and the State of Arizona *Annual Financial Report* for fiscal years 2018 and 2019. Finally, we reviewed best practices for fee setting developed by government and professional organizations.²¹

²¹ We reviewed the following fee-setting best practices: Arizona State Agency Fee Commission. (2012). *Arizona State Agency Fee Commission report*. Phoenix, AZ; U.S. Government Accountability Office. (2008). *Federal user fees: A design guide*. Washington, DC; Michel, R.G. (2004). *Cost analysis and activity-based costing for government*. Chicago, IL; Government Finance Officers Association; Mississippi Joint Legislative Committee on Performance Evaluation and Expenditure Review. (2002). *State agency fees: FY 2001 collections and potential new fee revenues*. Jackson, MS; and U.S. Office of Management and Budget. (1993). *OMB Circular No. A 25, revised*. Washington, DC.

- To assess whether the Board provided appropriate information to the public, we reviewed the disciplinary information for the 16 licensees from our complaints review to assess whether the information on the Board's website provides accurate information consistent with statutory requirements.
- To obtain information for the Introduction, we reviewed Board-provided information regarding Board member vacancies and the number of active licensees as of October 2020. In addition, we compiled and analyzed unaudited financial information from the AFIS *Accounting Event Transaction File* for fiscal years 2018 through 2020 and the *State of Arizona Annual Financial Report* for fiscal years 2018 and 2019.
- To obtain additional information for the Sunset Factors, we reviewed the Arizona Administrative Register regarding the Board's rulemakings in December 2018 and January 2020 and assessed the Board's compliance with various provisions of the State's open meeting law for 3 Board meetings held from March 2020 through May 2020. Further, to assess the Board's compliance with the State's conflict-of-interest laws and best practices, we reviewed statute, the Board's conflict-of-interest practices and policy, the Board's conflict-of-interest forms, and Board meeting minutes for meetings held between January 2019 and March 2020.²² Finally, we judgmentally selected and contacted 5 states with regulation both similar to and different than Arizona's regulation—California, Nevada, Rhode Island, South Carolina, and Tennessee—and reviewed their regulation of the opticianry industry, including their use of private contractors.
- Our review of internal controls included reviewing the Board's policies and procedures for ensuring compliance with Board statutes and rules, and where applicable, testing its compliance with these policies and procedures. Our internal control work was limited to reviewing the control activities component of internal control and its related principles, which were significant to our objectives. We reported our conclusions on these internal controls in the Sunset Factors and, where applicable, made recommendations for improvement.

We selected the previously indicated audit samples to provide sufficient evidence to support our findings, conclusions, and recommendations. Unless otherwise noted, the results of our testing using these samples were not intended to be projected to the entire population.

We conducted this performance audit and sunset review in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

We express our appreciation to the Board and its Executive Director for their cooperation and assistance throughout the audit.

²² Best practices we reviewed included the following: Organisation for Economic Co-operation and Development (OCED) (2003). *Recommendation of the council on OCED guidelines for managing conflict of interest in the public service*. Paris, France. Retrieved 4/16/2020 from <https://legalinstruments.oecd.org/public/doc/130/130.en.pdf>.

BOARD RESPONSE



Douglas A. Ducey
Governor

Dale Nyblade
Chairman

ARIZONA STATE BOARD OF DISPENSING OPTICIANS

Suzanne Coleman
Vice-Chairman

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Megan Darian
Executive Director

November 5, 2020

Ms. Lindsey Perry
Auditor General
29010 N. 44th Street, Suite 410
Phoenix, Arizona 85018

Re: AZ Dispensing Opticians Board's Sunset Review

Enclosed please find the Board's response to Auditor General Recommendations.

I hope this information is useful. If there is anything further, please do not hesitate to contact my office.

Sincerely,

Megan Darian
Executive Director

Sunset Factor 2: The extent to which the Board has met its statutory objective and purpose and the efficiency with which it has operated.

Recommendation 1: The Board should continue to implement its new lawful presence policy that requires Board staff to ensure initial dispensing optician applicants, including comity applicants, submit the required documentation to demonstrate lawful presence.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board continues to implement.

Recommendation 2: The Board should revise its licensing policies and procedures to require its staff to provide written documentation of application deficiencies identified during the application review process to applicants.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has revised the policy and will continue to implement.

Recommendation 3: The Board should establish and implement a process to periodically review the appropriateness of its fees by analyzing the costs of its regulatory processes, comparing these costs to the associated fees, and determining the appropriate licensing fees, and then revise its fees as needed.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will implement.

Sunset Factor 3: The extent to which the Board serves the entire State rather than specific interests.

Recommendation 4: The Board should continue to implement its new conflict-of-interest policy.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board continues to implement.

Sunset Factor 4: The extent to which rules adopted by the Board are consistent with the legislative mandate.

Recommendation 5: The Board should conduct its planned comprehensive rules review and, based on this review, align its practices with current rule requirements and/or work with its Assistant Attorney General to determine whether and when it should revise its rules, and make revisions to its rules as necessary.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board has amended/repealed a number of rules the last two years (December 2018 and January 2020) and will continue to review its rules.

Sunset Factor 9: The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in this sunset law.

Recommendation 6: The Board should conduct a review of its statutes, and based on this review, align its practices with current statutory requirements and/or work with the Legislature to amend its statutes, and revise its policies and procedures as needed.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board will update its strategic plan to include review of its statutes.

Recommendation 7: The Board should propose legislation that would require it to remit 100 percent of all civil penalties to the State General Fund.

Board response: The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

Response explanation: The Board historically and consistently submitted 100% of all monies received as administrative penalties to the State's General Fund. The Board will update its strategic plan to include a statutory change reflecting and mandating this practice.

