



**STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL**

A PERFORMANCE AUDIT
OF THE

BOARD OF DISPENSING OPTICIANS

SEPTEMBER 1981

**A REPORT TO THE
ARIZONA STATE LEGISLATURE**



DOUGLAS R. NORTON, CPA
AUDITOR GENERAL

STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

September 24, 1981

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Mr. Robert Hill, Chairman
Board of Dispensing Opticians

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Dispensing Opticians. This report is in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the Board of Dispensing Opticians is found on the yellow pages preceding the appendices.

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

Respectfully submitted,

Douglas R. Norton
Auditor General

Staff: Gerald A. Silva
Coni Rae Good
Martha Bradley-Rawls
Richard Booth

Enclosure

OFFICE OF THE AUDITOR GENERAL

A PERFORMANCE AUDIT OF THE
BOARD OF DISPENSING OPTICIANS

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 81-7

TABLE OF CONTENTS

	<u>Page</u>
SUMMARY	i
INTRODUCTION AND BACKGROUND	1
SUNSET FACTORS	5
FINDINGS	
FINDING I	9
The regulation of dispensing opticians and related occupations should be revised and substantially reduced.	
CONCLUSION	22
RECOMMENDATION	22
FINDING II	23
The examination process of the Board of Dispensing Opticians is arbitrary and of questionable integrity.	
CONCLUSION	35
RECOMMENDATION	36
FINDING III	37
Improvements are needed in the Board of Dispensing Opticians' complaint review process.	
CONCLUSION	52
RECOMMENDATION	53
FINDING IV	55
Statutory changes are needed if the Board of Dispensing Opticians is to be continued.	
CONCLUSION	66
RECOMMENDATION	66

FINDING V		69
	Questionable procedures are used to license dispensing opticians by credentials.	
	CONCLUSION	76
	RECOMMENDATION	76
FINDING VI		77
	Improvements are needed in the Board of Dispensing Opticians' record-keeping procedures.	
	CONCLUSION	83
	RECOMMENDATION	83
FINDING VII		85
	Although the Board of Dispensing Opticians is in compliance with State law regarding public notice, some improvements can be made.	
	CONCLUSION	93
	RECOMMENDATIONS	93
WRITTEN RESPONSE TO THE AUDITOR GENERAL'S REPORT		95
APPENDICES		
APPENDIX I	Memorandum from the Arizona Legislative Council regarding court cases related to harm caused by dispensing opticians - November 21, 1980	
APPENDIX II	Arizona statutes regarding dispensing opticianry	
APPENDIX III	Board of Dispensing Opticians rules and regulations	
APPENDIX IV	Memorandum from the Arizona Legislative Council regarding examination practices - May 20, 1981	
APPENDIX V	Memorandum from the Arizona Legislative Council regarding acceptance of national examinations - November 21, 1980	
APPENDIX VI	Memorandum from the Arizona Legislative Council regarding the scope of the Board's authority - November 24, 1980	

- APPENDIX VII Memorandum from the Arizona Legislative Council regarding penalties for occupational regulation - May 21, 1981
- APPENDIX VIII Memorandum from the Arizona Legislative Council regarding Arizona occupational regulation - August 10, 1981
- APPENDIX IX Memorandum from the Arizona Legislative Council regarding comity with other states - June 15, 1981
- APPENDIX X Memorandum from the Arizona Legislative Council regarding comity with Alaska - June 15, 1981
- APPENDIX XI Memorandum from the Arizona Legislative Council regarding adequate documentation of legal actions taken by the Board of Optometry - June 18, 1979
- APPENDIX XII Memorandum from the Arizona Attorney General to all State agencies regarding public notice requirements - August 19, 1975
- APPENDIX XIII Surveys of: 1) licensed dispensing opticians, 2) registered apprentice dispensing opticians in Arizona and 3) State regulatory agencies

LIST OF TABLES

		<u>Page</u>
TABLE 1	Actual workload measures for the activities of the Board of Dispensing Opticians from fiscal years 1976-77 through 1979-80 and estimated measures for fiscal years 1980-81 and 1981-82	2
TABLE 2	Actual full-time equivalent employees, receipts and expenditures for fiscal years 1976-77 through 1979-80 and estimates for fiscal years 1980-81 and 1981-82	3
TABLE 3	Professional and occupational regulation in Arizona	14
TABLE 4	Summary of dispositions of consumer complaints regarding optical dispensing by the BBB during 1978-1980 and by the Board during 1976-1980	21
TABLE 5	Review summary of selected examination questions used by the Board of Dispensing Opticians during 1979 and 1980	26
TABLE 6	Summary of the impact of the Board's practice of regrading examinations during 1979 and 1980	27
TABLE 7	Summary of the impact of the Board's inconsistent regrading during 1979 and 1980	28
TABLE 8	Usage of OAA examinations by states which license dispensing opticians as of March 1, 1981	35
TABLE 9	Summary of the number and bases of complaints received by the Board of Dispensing Opticians from January 1, 1976, through December 31, 1980	39
TABLE 10	Summary of dispositions of consumer and Board-initiated complaints received by the Board of Dispensing Opticians during calendar years 1976 through 1980	41
TABLE 11	Comparison of functions performed by surveyed licensed dispensing opticians, apprentice dispensing opticians and unlicensed dispensers in Arizona	57

		<u>Page</u>
TABLE 12	States which license dispensing opticians and their licensure requirements compared to those of Arizona	76
TABLE 13	Methods used by Arizona regulatory agencies to encourage public input and public participation in activities concerning regulatory duties	89
TABLE 14	Estimated costs for using three methods of encouraging public participation by the Board of Dispensing Opticians	92

SUMMARY

The Board of Dispensing Opticians has primary responsibility for regulating the practice of optical dispensing in Arizona. The duties of the Board include evaluating applications for examination and licensure, administering examinations, issuing licenses and enacting rules and regulations concerning licensed dispensing opticians and registered apprentice dispensing opticians.

Prior to 1979 legislative changes, the Board was comprised of five dispensing opticians appointed by the Governor to serve five-year terms. Legislative changes expanded Board membership to seven individuals; five dispensing opticians and two members representing the general public.

The Board and its activities are funded through fees charged for examinations and licenses issued. Ten percent of the fees received is deposited in the State General Fund; the remaining 90 percent is used for Board operations within the limits of an annual budget approved by the Legislature.

Our review determined that the regulation of optical dispensing in Arizona should be revised and substantially reduced. (page 9) In conjunction with this finding, our review revealed that statutory changes are needed if the Board of Dispensing Opticians is to be continued. (page 55)

Our review also revealed that the examination process of the Board is arbitrary and of questionable integrity. (page 23)

In addition, our review disclosed that improvements are needed in the Board's complaint review process. (page 37)

Our review also disclosed that questionable procedures are used to license dispensing opticians by credentials. (page 69)

Our review revealed that improvements are needed in the Board's record-keeping procedures. (page 77)

Finally, our review revealed that, although the Board of Dispensing Opticians is in compliance with State law regarding public notice, some improvements can be made. (page 85)

It is recommended that consideration be given to the following alternatives:

1. Revise statutes to require licensure of contact lens dispensers only.
2. Eliminate regulation of dispensing opticians and the Board of Dispensing Opticians.

If regulation is continued, it is recommended that consideration be given to the following:

1. A.R.S. §32-1682 be amended to allow acceptance of Opticians Association of America (OAA) scores in Arizona in lieu of a locally prepared examination.
2. The Board slow the frequency with which examination questions currently are repeated.
3. The Board consider contracting with examination experts to assist in the preparation of examination questions.
4. The Board establish and maintain better quality control of examination questions and grading procedures.
5. Arizona Revised Statutes, Title 32, chapter 15.1, be amended as recommended on page 66.

6. The Board of Dispensing Opticians establish specific procedures for the investigation and resolution of complaints. These procedures should meet the standards of a minimum investigation cited by the Legislative Council.
7. Amend the statutes relating to unlicensed personnel to:
 - a) require them to register as apprentices,
 - b) provide for penalties if they commit acts that are unlawful for license holders, and
 - c) define the duties of their supervisors, or
8. Abolish apprentice provisions and unlicensed exemptions.
9. Provide for the regulation of optical establishments.
10. Include penalties for statutory violations at a level commensurate with other regulatory agencies.
11. Specifically define those persons and entities subject to regulation.
12. Provide the Board with the specific requirement to investigate every complaint.
13. Provide the Board with enforcement responsibilities, including the imposition of penalties against individuals found guilty of providing substandard care or performing inappropriate functions.
14. The Board periodically review other states' requirements to keep abreast of other states' statutes.
15. A.R.S. §32-1682, subsection D, be revised to allow OAA examinations to be used in lieu of the Board's locally prepared examinations to avoid a possible legal problem regarding use of OAA examinations by other states.

In addition, if regulation is continued, it is recommended that the Board:

1. Establish a records management program to help ensure that its records are adequate as required by State law. To implement this, the Board should -
 - a. Request legal assistance in establishing procedures to document legal actions in Board minutes and to maintain those records necessary to support Board proceedings.
 - b. Follow recommended guidelines for a records management program proposed by the records management center.
 - c. Submit records retention and disposal schedules to the Director of Library, Archives and Public Records, along with lists of essential public records, as required by A.R.S. §41-1346.

2. Consider adopting the methods used by other Arizona regulatory bodies to encourage public input and participation in the promulgation of rules and regulations and development of legislative proposals, and the recommendations presented by the Attorney General and Ernest Gellhorn, former ASU College of Law dean.

3. Send notices to licensees and apprentices at least annually to notify them of the year's scheduled meetings.

INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Board of Dispensing Opticians, in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

Regulation of optical dispensing began in Arizona in 1956, with the creation of the State's Board of Dispensing Opticians. At the time of its creation, the Board was given the authority to examine, license and regulate dispensing opticians for the purposes of helping to ensure the competency of dispensing opticians and preventing conduct on their part which would tend to harm the visual health of the public.

Most of the original statutes pertaining to the Board remained in effect without major change until 1979, when the following major changes occurred: the authority (but not the requirement) to register apprentice dispensing opticians, the addition of two public members to the Board and the ability to apply to the court for injunctive relief in instances of violation of appropriate statutes.

Currently the Board is charged with the following regulatory duties:

- Examination of prospective licensed dispensing opticians,
- Licensure by examination, apprenticeship and reciprocity of qualified dispensing opticians,
- Registration of those individuals who wish to become apprentice dispensing opticians,
- Investigation and resolution of violations and complaints against licensed dispensing opticians and suspected unlicensed activity, and
- Promulgation of rules and regulations and proposals for statutory amendment to protect the public effectively.

The Board is comprised of seven members, of whom five are licensed dispensing opticians and two represent the consuming public. The State Boards Administrative Office, Department of Administration, provides clerical assistance to the Board.

The Board's budget remained stable from fiscal years 1976-77 through 1978-79, reflecting an unvarying level of Board activity. In fiscal year 1979-80 the numbers of licensed dispensing opticians, complaints received and hearings increased.

Table 1 contains a summary of selected actual and estimated workload measures for fiscal years 1976-77 through 1981-82. Table 2 summarizes the Board's receipts and expenditures for the same time period.

TABLE 1

ACTUAL WORKLOAD MEASURES FOR THE ACTIVITIES OF
THE BOARD OF DISPENSING OPTICIANS FROM FISCAL
YEARS 1976-77 THROUGH 1979-80 AND ESTIMATED
MEASURES FOR FISCAL YEARS 1980-81 AND 1981-82

	Actual Measures				Estimated Measures	
	<u>1976-77</u>	<u>1977-78</u>	<u>1978-79*</u>	<u>1979-80*</u>	<u>1980-81*</u>	<u>1981-82*</u>
Applicants for examination	62	55	66	62	65	70
Examinations administered	59	55	63	118**	N/A	N/A
New licenses issued	38	38	43	39**	45	50
Licenses renewed	243	277	290	366	400	440
Complaints received	4	5	3	12	20	28
Informal hearings held	1	2	3	12	18	22
Formal hearings held				4	1-2	1-2

* Source: Schedule 4 of the budget request from the Board for fiscal years 1978-79 through 1981-82.

** Source: Interview with Board recording secretary, April 20, 1981.

TABLE 2

ACTUAL FULL-TIME EQUIVALENT EMPLOYEES, RECEIPTS AND
EXPENDITURES FOR FISCAL YEARS 1976-77 THROUGH 1979-80
AND ESTIMATES FOR FISCAL YEARS 1980-81 AND 1981-82*

	Actual Amounts				Estimated Amounts	
	1976-77	1977-78	1978-79	1979-80	1980-81	1981-82
Number of full-time equivalent positions	**		.5	.5***	.5	.5
<u>Receipts:</u>						
Balance from previous years	\$14,100	\$ 9,500	\$ 7,900****	\$ 7,200	\$ 5,400	\$14,300
Appropriation (90 percent of total current year receipts)	<u>7,700</u>	<u>8,200</u>	<u>8,900</u>	<u>10,900</u>	<u>22,500</u>	<u>24,700</u>
Total	<u>\$21,800</u>	<u>\$17,700</u>	<u>\$16,800</u>	<u>\$18,100</u>	<u>\$27,900</u>	<u>\$39,000</u>
<u>Expenditures</u>						
Employee salaries	\$ 2,700	\$ 2,900	\$ 3,200	\$ 5,200	\$ 5,900	\$ 8,900
Employee-related	200	200	200	500	500	700
Professional and outside services	3,100	1,700	3,000	3,500	3,700	9,000
Travel:						
In-State			600	1,300	1,500	3,500
Out-of-State	100		1,000			
Other operating	1,000	1,100	1,600	2,100	2,000	2,600
Equipment	<u>5,200</u>	<u>3,700</u>		<u>100</u>		
Total	<u>\$12,300</u>	<u>\$ 9,600</u>	<u>\$ 9,600</u>	<u>\$12,700</u>	<u>\$13,600</u>	<u>\$24,700</u>
<u>Surplus</u>	\$ 9,500	\$ 8,100	\$ 7,200	\$ 5,400	\$ 14,300	\$14,300

* Source: Schedule 4 of the budget request from the Board for fiscal years 1978-79 through 1981-82.

** Not available

*** Source: State of Arizona Annual Budget: Legislative Staff Analysis and Recommendations, 1979-80 and 1981-82.

**** Unreconcilable difference between beginning balance of 1978-79 and surplus of prior year.

The Auditor General expresses gratitude to the members of the Board of Dispensing Opticians and the employees of the State Boards Administrative Office for their cooperation, assistance and consideration during the course of the audit.

SUNSET FACTORS

Nine factors were reviewed to aid in the process of determining if the Board of Dispensing Opticians should be continued or terminated, in accordance with A.R.S. §41-2354, subsection D.

SUNSET FACTOR: OBJECTIVE AND PURPOSE

IN ESTABLISHING THE BOARD

The intent of the Legislature in establishing the Board of Dispensing Opticians is stated in A.R.S. §32-1673, which grants the Board power to "prescribe and enforce rules and regulations...which help to assure the competency of dispensing opticians and prevent conduct on their part which would tend to do harm to the visual health of the public."

In addition, the Board has stated its goal to be "insuring...[to the public] the highest possible quality of optical dispensing services." Further, the Board recently outlined the following objectives:

Licensure - "...to continually license qualified dispensing opticians."

Continuing Education - "...to ensure that licensees continue to receive education directly related to the practice of optical dispensing."

Consumer Complaints - "...to handle consumer complaints within the limitations of our statutes."

Regulation - "...to oversee the actions of the licensees as required by [our statutes]..."

SUNSET FACTOR: THE DEGREE TO WHICH THE BOARD
HAS BEEN ABLE TO RESPOND TO THE NEEDS OF THE PUBLIC
AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

The ability of the Board to respond to the needs of the public has been impaired by unclear statutory authority and inadequate investigation of complaints. (See pages 37 and 55 for reviews of these issues.)

The Board appears to be operating efficiently in that expenditures for each licensee/registrant has remained at approximately \$30.50 from fiscal year 1977-78 through 1980-81. During this time, the number of licensees/registrants increased from 315 to 392 (an increase of 24 percent).

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD
HAS OPERATED WITHIN THE PUBLIC INTEREST

Regulation of dispensing opticians under current statutes and practices appears not to be within the public interest. Our review revealed that: 1) risk to the visual health of the public from the dispensing of eyeglasses does not appear to warrant licensure, and 2) benefits of regulating eyeglass dispensing do not outweigh potential adverse effects. In addition, the manner in which the Board prepares and administers licensure examinations raises serious questions regarding the validity of the entire process of regulating dispensing opticians. (See pages 9 and 23)

SUNSET FACTOR: THE EXTENT TO WHICH
RULES AND REGULATIONS PROMULGATED BY THE BOARD
ARE CONSISTENT WITH THE LEGISLATIVE MANDATE

The rules and regulations of the Board appear to be consistent with legislative mandate within the constraints of current, unclear statutory authority. (see page 55)

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD
HAS ENCOURAGED INPUT FROM THE PUBLIC
BEFORE PROMULGATING ITS RULES AND REGULATIONS
AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC
AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC

Our review revealed that, although the Board complies with statutory requirements regarding public notice concerning its regulatory activities, improvements can be made. A survey by the Auditor General of licensed dispensing opticians demonstrated that 55 percent of the licensees surveyed were not informed regularly of proposed Board actions. (see page 87)

SUNSET FACTOR: THE EXTENT TO WHICH
THE BOARD HAS BEEN ABLE TO INVESTIGATE AND RESOLVE
COMPLAINTS THAT ARE WITHIN ITS JURISDICTION

Our review revealed that the lack of disciplinary action imposed by the Board with regard to consumer complaints and Board-initiated complaints raises serious questions regarding the Board's ability to regulate optical dispensing effectively. In addition, the Board has not investigated numerous complaints sufficiently or imposed sufficiently severe penalties. (see page 37)

SUNSET FACTOR: THE EXTENT TO WHICH THE ATTORNEY GENERAL
OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT
HAS THE AUTHORITY TO PROSECUTE ACTIONS
UNDER ENABLING LEGISLATION

The Board of Dispensing Opticians and the Attorney General are constrained by unclear statutory authority in their ability to effectively regulate the optical dispensing profession in Arizona, in that inadequate penalty provisions and the presence of many occupational categories impede effective regulation, there is no statutory provision for the regulation of optical establishments, and most complaints are submitted against optical dispensing personnel or organizations that are not regulated. (see page 55)

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD
HAS ADDRESSED DEFICIENCIES IN ITS ENABLING STATUTES
WHICH PREVENT IT FROM FULFILLING
ITS STATUTORY MANDATE

During the 1981 Legislative session, the Board proposed legislation to amend its enabling statutes to allow, among other minor changes, licensure examinations administered by the Opticians Association of America in lieu of the State-administered examination. The proposed legislation was defeated.

SUNSET FACTOR: THE EXTENT TO WHICH
CHANGES ARE NECESSARY IN THE LAWS OF THE BOARD
TO ADEQUATELY COMPLY WITH THE FACTORS
LISTED IN THIS SUBSECTION

Our review found that numerous statutory changes are needed for the Board to comply more adequately with the factors listed in this subsection. (see pages 9, 23, 37 and 55)

FINDING I

THE REGULATION OF DISPENSING OPTICIANS AND RELATED OCCUPATIONS SHOULD BE REVISED AND SUBSTANTIALLY REDUCED.

Under Arizona law those persons who are licensed by the Board of Dispensing Opticians may: 1) dispense eyeglasses, contact lenses, artificial eyes and other optical devices on written prescription from a licensed physician or optometrist, and 2) reproduce existing eyeglasses or contact lenses without prescription. In addition, Arizona law allows both apprentice dispensing opticians and unlicensed optical dispensers to perform similar functions under the supervision of a licensed dispensing optician, optometrist or physician. Our review of the Board revealed that the degree of regulation over dispensing opticians and related occupations should be substantially revised and reduced in that:

- The potential risk to the consuming public regarding the dispensing of eyeglasses does not appear to warrant licensure,
- A potential negative effect on the economic well-being of the public exists due to unnecessary regulation,
- Arizona is one of only 19 states that license dispensing opticians, and
- The benefits of licensure do not clearly outweigh potential adverse effects.

Arizona Statutes

A.R.S. §§32-1671 through 32-1699 provide that licensed dispensing opticians may: 1) dispense eyeglasses, contact lenses, artificial eyes and other optical devices on written prescription from a licensed physician or optometrist, and 2) reproduce eyeglasses or contact lenses without prescription provided there is no change in the prescription.

The dispensing opticians law also allows two other categories of optical dispensers to perform similiar functions under the direct supervision of a licensed physician, optometrist or dispensing optician:

- A.R.S. §32-1682 subsection E requires that "any person desiring to work as an apprentice dispensing optician" must obtain a certificate of registration from the Board. An apprentice dispensing optician is defined by A.R.S. §32-1671 paragraph 1 as "a person engaged in the study of optical dispensing under the instruction and direct supervision of a dispensing optician, physician or optometrist licensed in this state."
- A.R.S. §32-1691 exempts unlicensed optical dispensers from the provisions of the dispensing opticians law, provided they work under the direct supervision of, and exclusively for, a licensed physician, optometrist or dispensing optician and do not hold themselves out to the public as a dispensing optician or apprentice dispensing optician.

As of December 31, 1980, there were 383 dispensing opticians and 141 registered apprentice dispensing opticians in Arizona.

Evidence Demonstrates the Need to Reduce
and Revise Optical Dispensing Regulation

Our review revealed that the current degree of regulation does not appear to be appropriate, given that:

- Little evidence exists to support the contention that physical harm can result from the dispensing of eyeglasses,
- Sunset legislation audit reports from other states indicate a possible degree of harm to the public from dispensing contact lenses and artificial eyes, and
- The benefits of licensing dispensing opticians do not clearly outweigh any potential adverse effects.

Licensing is the most extreme form of state occupational regulation. In March 1978, the Council of State Governments* published Occupational Licensing: Questions a Legislator Should Ask. In this publication licensing is defined as:

"...a process by which an agency or government grants permission to an individual to engage in a given occupation upon finding that the applicant has attained the minimal degree of competency required to ensure that the public health, safety, and welfare will be reasonably well protected.

"Licensing makes it illegal for anyone who does not hold a license to engage in the occupation, profession, trade, etc., covered by the statute...."

According to the Montana Office of the Legislative Auditor in its 1978 publication entitled Alternative Methods of Regulating Professions, Occupations, and Industries, there are seven methods of state occupational regulation.

These methods of occupational regulation range from the most extreme, licensing, to the least extreme, no regulation. The appropriate method of regulation for a particular occupation is dependent upon the severity of potential physical or financial harm incompetent or unscrupulous practitioners may inflict upon the general public. The more severe the potential for harm is to the public, the more extreme the appropriate method of state regulation. Conversely, the less severe the potential for harm is to the public, the less extreme the appropriate method of state regulation.

The seven alternative methods of state occupational regulation are listed below in order from the most extreme to the least extreme:

* The Council of State Governments is a joint agency of state governments - created, supported and directed by them. It conducts research on state programs and problems; maintains an information service available to state agencies, officials, and legislators; issues a variety of publications; assists in state-Federal liaison; promotes regional and state-local cooperation; and provides staff for affiliated organizations.

Licensing - The granting by some government authority of a right or permission to carry on a business or do an act which would otherwise be illegal. The essential elements of licensing are the stipulation of circumstances and individual prerequisites under which permission to perform an otherwise prohibited activity may be granted and the actual determination of permission in specific instances. The latter function is generally an administrative responsibility and includes rule-making authority by some entity. Licensing may also create a mechanism for monitoring an occupation or profession on an ongoing basis. This may entail enforcement decisions made during complaint adjudication, periodic inspections or investigations. Licensing also provides a "police effect" over the regulated profession, trade or industry.

Practice

Restriction - Differs from licensing in that there is no need for an interim body with the general authority to promulgate rules and regulations, and no specific mechanism for monitoring the profession, trade or industry on an ongoing basis.

Reserve of Title - Any member of the public, who desires, could participate in the regulated occupation. However, the titles of "certified," "licensed" or "registered" would be reserved by law for only those who have met certain statutory requirements. The stipulation of individual prerequisites would be set by the legislature. Requirements such as examination or education may be imposed. An administrative body attached to a state agency or department may also be necessary.

Limited Statutory

Regulation - State regulation of an occupation via statutes which specify certain requirements. Under this alternative, the state would statutorily require an individual to comply with certain measures to protect the public. These measures include requirements such as bonding, errors and omissions insurance, or a recovery fund which would monetarily protect the public in the case of harm or loss through erroneous actions.

- Registration - Allows persons practicing in a profession, trade or industry to register with the state, private or professional association. This alternative provides the public with a list of registered individuals but provides no assurance of the competency of the individuals. Nonregistered individuals may participate in the regulated profession, trade or industry.
- Certification* - Requires no state involvement. The profession, trade or industry is responsible for certification requirements and procedures. Certification acts as an identification measure only, indicating that the individual has complied with certain requirements.
- No Regulation - No regulation by the state or direct regulation by the profession, trade or industry.

Professional and Occupational

Regulation in Arizona

In Arizona 95 professional and occupational areas are regulated. Practitioners in 81 (85 percent) of the professions and occupations are licensed; 12 (13 percent) have reserved titles; and two (two percent) are registered. Table 3 lists the type of regulation for each of these 95 professions and occupations.

* The Council of State Governments defines certification as a form of regulation which grants recognition to individuals who have met predetermined qualifications set by a state agency. Only those who meet the qualifications may legally use the designated title. However, noncertified individuals may offer similiar services to the public as long as they do not describe themselves as "certified." For our purposes we have classified this method of occupational regulation as "Reserve of Title."

TABLE 3

PROFESSIONAL* AND OCCUPATIONAL REGULATION IN ARIZONA

<u>Regulated Professions</u>	<u>Regulated Occupations</u>
-LICENSURE-	-LICENSURE-
Architect	Agriculture Pest Control Advisor
Attorney at Law	Ambulance Service
Barber	Boxing and Wrestling Personnel
Chiropractor	Cemetery Broker
Cosmetologist	Cemetery Salesman
Dental Hygienist	Citrus Broker
Dental Laboratory Technician	Citrus Commission Merchant
Dentist	Citrus Dealer
Denturist	Citrus Packer
Doctor of Medicine	Citrus Shipper
Embalmers	Collection Agencies
Engineer	Contractor
Finger Waver	Court Reporter
Funeral Director	DISPENSING OPTICIAN
Geologist	Egg Dealer
Hair Stylist	Egg Manufacturer
Manicurist	Egg Producer
Naturopath	Escrow Agent
Optometrist	Hay Broker or Dealer
Osteopath Physician and Surgeon	Hearing Aid Dispenser
Pharmacist	Insurance Agent
Pharmacist Intern	Insurance Adjuster
Physical Therapist	Insurance Broker
Podiatrist	Insurance Solicitor
Registered Nurse	Meat Processor, Wholesaler or Jobber
Veterinarian	Midwife
	Manufactured Housing
-REGISTRATION-	Broker
Student Intern or Resident**	Dealer
	Installer
-RESERVE OF TITLE-	Manufacturer
Assayer	Mortgage Broker
Certified Public Accountant	Motor Carrier Transportation Agent***
Cosmetologist****	Motor Vehicle Dealer and Wrecker
Physician's Assistant	Motor Vehicle Operator and Chauffeur
Practical Nurse	Polygraph Examiner
Psychologist	Polygraph Intern
Public Accountant	Private Investigator
Surveyor	Private Security Guard Service
Teacher, Administrative Officer	Private Security Guard
	Private Technical or Business School
	Private Technical or Business School Agent
	Professional Driver Training School
	Instructor*****
	Public Weighmaster
	Racing Officials and Personnel
	Radiologic Technologist
	Real Estate Broker
	Real Estate Salesman
	Securities Dealer and Salesman
	Structural Pest Control
	Structural Commercial Application
	Taxidermist
	Trapper and Guide
	Weight and Measure Serviceman
	Weights and Measures Service Agencies
	-REGISTRATION-
	APPRENTICE DISPENSING OPTICIAN
	-RESERVE OF TITLE-
	Ambulance Driver and Attendant
	Emergency Medical Technician
	Public School Teacher, Administrative Officer

* Webster's Seventh New Collegiate Dictionary defines a profession as: "a calling requiring specialized knowledge and often long and intensive academic preparation."

** Student interns or residents must meet minimum requirements in addition to registering.

*** Repealed effective July 1, 1982.

**** Cosmetologists practicing without compensation have a reserved title.

***** Must be licensed only if compensation is received for the service.

Little Evidence of Physical Harm

During the five-year period between January 1, 1976, and December 31, 1980, the Board received only 96 complaints. Of these, only five involved allegations of possible visual harm. Of these five, three involved the dispensing of eyeglasses. An analysis of these complaints revealed that all three were initiated against an optical company and that optical companies are not subject to regulation under the dispensing opticians law. (see page 65) Following is a description of these complaints:

CASE 1

The complainant alleged that the optical company was taking an excessive amount of time to provide her with the eyeglasses she had ordered. The possibility of visual harm was alleged in that the complainant had "the beginning of a cataract" and the lack of eyeglasses was causing her "considerable strain and inconvenience." Board records indicate the optical company delivered the glasses approximately four months after they were ordered. However, Board files contain no record of the final disposition of the complaint.

CASE 2

The complainant requested a refund from an optical company for unsatisfactory glasses. The complainant stated in a letter that the optical establishment did not fill her prescription for eyeglasses correctly. When she tried to use the glasses, she "had to return them because they blurred and distorted my vision, caused headaches and painful eyeballs, as well as the danger of my falling, as I walk with some difficulty."

The complainant further explained:

"In filling my prescription, [the optical company] failed to use the correct base curve, as was found to be the case when I returned to my ophthalmologist to get the prescription checked....Reexamination proved the prescription to be correct, and [the ophthalmologist] stated the base curve had been changed at the laboratory. He notified [the optical company] to that effect."

Further, the complainant indicated that the optical establishment claimed it was unable to fill her prescription "with the correct base curve."

Board records indicate the complainant received a refund for the glasses from the management of the optical company.

CASE 3

Complainant reported that his eyes and face became irritated due to poor quality frames sold to him by the optical establishment. In a letter to the Board the complainant wrote:

"Last year I bought a pair of gold [rim] glasses from [the optical establishment]. I have had all kinds of trouble since wearing these gold [rim] glasses....

First my eyes were sore and red - I had to go to an eye specialist from wearing the [store's] glasses. I have never had eye trouble before. Also the gold has worn off around the [rim] of the glasses. Into my skin causing an infection of my face. Also my eyes were constantly irritated and I had to purchase two expensive prescriptions from the druggist because of the damage from the glasses."

Board records indicate the optical company offered the complainant a new pair of glasses at no cost. However, Board files contain no record of the final disposition of the complaint.

COMMENT

The above complainants made allegations of harm that appear to be minor in nature.* The remainder of the consumer complaints filed with the Board regarding eyeglasses dealt with complainants inconvenienced because of unacceptable product or service quality.

No Evidence Of Harm Nationwide

According to a Legislative Council memorandum dated November 21, 1980,** its staff was unable to locate a court case "...in which a court was presented with questions regarding the competency of an optician or a cause of action by a person allegedly harmed by the conduct of an optician," either in Arizona or nationwide.

Furthermore, four of five states that have issued Sunset legislation audit review reports concluded that no significant health hazard was posed by the dispensing of eyeglasses.

Specifically, Sunset legislation reports from Alaska, Connecticut, North Carolina and Vermont recommended that regulation of optical dispensing practitioners be terminated or substantially reduced. Each of the four reports cited lack of evidence of physical harm due to the dispensing of eyeglasses as a reason for their recommendation.

* The subject of visual harm from the dispensing of contact lenses appears on page 19.

** Appendix I contains this memorandum.

The Vermont report stated:

"This conclusion [that no significant health hazard exists due to opticians dispensing eyeglasses] was supported by the Federal Trade Commission lawyer..., who has headed the FTC studies on opticians and optometrists. [The FTC lawyer] stated that accidental falls are the leading cause of injury among the aged, and that uncorrected vision defects are the cause of over half of these accidents. These uncorrected vision defects however are more likely to be due to the unavailability of eyeglasses for the low income elderly because of higher cost of spectacles in licensed states, rather than improper dispensing. The problem of unavailability, he states, is more prevalent than the problem of harm resulting from poorly fitted eyeglasses in unlicensed states. He stated, '(the) very rare instances where it (improper fitting) can have a demonstrated impact is more than offset by the majority of cases where there is a negative impact by decreasing consumption'."*

Few States Deem Eyeglass

Dispensing Worthy of Regulation

Further evidence of the lack of harm associated with dispensing eyeglasses is that few states regulate dispensing opticians. Arizona is one of only 19 states that license dispensing opticians. Thirty states (60 percent) do not regulate them. One state, California, licenses optical businesses, but not individual dispensing opticians.

However, it should be noted that of the other 18 states which license dispensing opticians, a number have statutory provisions which are stricter than those in Arizona.** Specifically:

- Eight states define additional or separate requirements for licensure to fit contact lenses,
- Three states do not allow dispensing opticians to fit contact lenses,
- Six states require apprenticeship before licensing, and
- Nine states do not allow unlicensed persons to perform functions similar to those of licensees.

* "Sunset Review of the Board of Examiners of Opticians to the Vermont General Assembly," Legislative Council Staff, November 1980.

** See page 76 regarding licensing requirements in other states.

Possible Negative Effect on Economic Well-being
of Public from Unnecessary Regulation

Studies concerning the effect of regulation on the pricing of eyeglasses indicate that regulation of the optical industry and related professions and occupations appears to increase the price of eyeglasses. One study, conducted in 1975 by Lee and Alexandra Benham of Washington University, regarding the effect of professional regulation on the pricing of eyeglasses, concluded that:

"[P]rices appear to be 25 to 40 percent higher in the markets with greater professional control. These higher prices are in turn associated with a significant reduction in the proportion of individuals obtaining eyeglasses during a year."

A study by the Federal Trade Commission (FTC) in 1980 found similarly that, in states which restrict commercial practice, prices for eye examinations and eyeglasses are substantially higher than in states in which no such restrictions exist.*

Possibility of Physical Harm through Dispensing
of Contact Lenses and Prosthetic Devices

Our review disclosed an apparently greater potential for physical harm from the dispensing of contact lenses and prosthetic devices (such as artificial eyes) than from the dispensing of eyeglasses. Three of the four states whose Sunset legislation audit reports recommended termination or reduction of regulation related to eyeglass-dispensing,** indicated a need for regulation of prosthetic device and/or contact lens dispensers. Specifically, the Connecticut and Vermont reports pointed out the possibility of physical harm resulting from the fitting of contact lenses and prosthetic devices, and the North Carolina report mentioned the possibility of physical harm resulting from the fitting of contact lenses. The Connecticut report stated:

* Commercial practice restrictions are defined in the FTC study as "restrictions imposed primarily on optometrists and opticians which limit the ability of those professionals to work for 'for-profit' corporations, restrict the number of offices which they may operate, limit the locations at which they may practice...,or prohibit the use of a trade name."

** See page 17 regarding the reports from other states.

"Data assembled by the committee and staff strongly indicate there exists no clear and present danger to the public health and safety in the preparation, fitting and dispensing of eyeglasses. There does exist, however, a potential danger to the public in the improper fitting and dispensing of contact lenses and prosthetic devices. A poorly fit contact lense can cause corneal abrasion or restrict the oxygen-carrying tear flow to the surface of the eye. In the extreme, this situation would create an abnormal growth of blood vessels within the eye and could ultimately affect vision. Similarly, an improperly fit or unsanitary prosthetic device has the potential for infection and/or irritation to the wearer."*

Although Legislative Council found no court cases nationally regarding physical harm resulting from the fitting of optical devices by dispensing opticians, our review of complaints received by the Board did disclose one instance of a complaint requiring emergency hospital care due to improper fitting of hard contact lenses by a licensed dispensing optician.** In addition, our review revealed a complaint alleging inflammation of the eyes due to unsatisfactory soft contact lenses. (See Case IV, page 46)

Benefits Of Licensure Do Not Clearly
Outweigh Any Potential Adverse Effects

We were unable to document clear evidence of benefit to the public resulting from licensure by the Board of dispensing opticians in that such regulation, as it presently exists, duplicates the activities of the Better Business Bureau (BBB). In addition, the Board appears to be less widely known to the public than the BBB.

* "Sunset Review: Commission of Opticians," Legislative Program Review and Investigations Committee of the Connecticut General Assembly. Vol. I-6, January 1, 1980.

** The absence of a Board investigation into the complaint and inadequate Board records preclude a determination of the validity of this complaint.

Duplication of Services Rendered
by the Better Business Bureau (BBB)

The BBB receives an average of three times as many consumer complaints regarding optical dispensing each year as the Board of Dispensing Opticians. In the three-year period from January 1, 1978, to December 31, 1980, the BBB received 95* consumer complaints, or an average of approximately 32 consumer complaints a year. However, in the five years from January 1, 1976, to December 31, 1980, the Board received only 51 consumer complaints, an average of approximately ten each year. In addition, the BBB disposes of its complaints in a comparable manner as the Board. Table 4 summarizes the number and disposition of complaints by the BBB and the Board.

TABLE 4

SUMMARY OF DISPOSITIONS OF CONSUMER COMPLAINTS
 REGARDING OPTICAL DISPENSING BY THE BBB DURING
 1978-1980 AND BY THE BOARD DURING 1976-1980

Disposition	Complaints Received By			
	BBB		Board	
	Number	Percentage Of Total	Number	Percentage Of Total
Reparation (replacement or refund)	54	59.3%	20	39.3%
Other action (other voluntary adjustments)	12	13.2	0	0
Complaint dismissed	21	23.1	18	35.3
In process on December 31, 1980	0	0	4	7.8
No record of action	<u>4</u>	<u>4.4</u>	<u>9</u>	<u>17.6</u>
Totals	<u>91*</u>	<u>100.0%</u>	<u>51</u>	<u>100.0%</u>

* Four of the 95 BBB complaints also appeared in the Board files. These complaints were removed from the BBB tabulations to avoid duplication.

As shown in Table 4, reparation was the most frequent disposition for both the Board (39 percent) and the BBB (59 percent). Thus, the BBB disposed of complaints in a manner at least comparable to the Board.

It should be noted that while reparation may be an appropriate disposition of complaints by the BBB, reparation is not a statutorily allowed complaint disposition by the Board. Statutorily required procedures notwithstanding, Board practice has been to pursue reparation in place of investigation of possible disciplinary action arising from consumer complaints regarding product or service quality.*

CONCLUSION

Regulation of dispensing opticians and related occupations should be substantially reduced because: 1) the risk to the visual health of the public from the dispensing of eyeglasses does not appear to warrant licensure, and 2) benefits of regulating eyeglass dispensing do not outweigh potential adverse effects.

RECOMMENDATION

It is recommended that consideration be given to the following alternatives:

1. Revise statutes to require licensure of contact lens dispensers only.
2. Eliminate regulation of dispensing opticians and the Board of Dispensing Opticians.

If continued regulation is chosen, the statutory changes detailed on page 66 should be considered.

* See Finding III on page 37.

FINDING II

THE EXAMINATION PROCESS OF THE BOARD OF DISPENSING OPTICIANS IS ARBITRARY AND OF QUESTIONABLE INTEGRITY.

Persons wishing to be licensed as dispensing opticians in Arizona, unless they have been licensed by Georgia, Massachusetts, Nevada or Virginia, must pass an examination prepared and administered by the Board. Our review of the Board's examination process revealed that: 1) the Board has graded answers to certain examination questions arbitrarily and inequitably, and 2) the manner in which the Board prepares and administers examinations raises serious questions regarding the validity of the entire process. As a result, it appears that the Board has not treated all license applicants equitably, and legislative intent regarding the testing of an applicant's knowledge is not being met.

Statutory Requirements

A.R.S. §32-1682* states, in part, that a written and practical examination shall be administered to license applicants:

"D. The board shall give a written and practical examination to all applicants, except for applicants who qualify by reciprocity, as provided in §32-1683, paragraph 6, subdivision (a), to assist it in determining whether an applicant has acquired the minimum basic skills required for optical dispensing. The board may prescribe such reasonable rules and regulations relating to the examination of applicants as may be deemed necessary for the performance of its duties."

* Appendix II contains applicable State laws.

Arizona Administrative Rule R4-20-02,* promulgated by the Board, further specifies that the Board's written examination shall consist of four sections, each containing one of the following subject areas:

1. Ocular anatomy, physiology and anomalies,
2. Geometric optics,
3. Ophthalmic laboratory, and
4. Contact lenses.

The Board's practice for at least the past five years has been to include in the written examination 20 multiple choice questions for each of the four sections.

The Rule also requires that a practical examination be administered, consisting of a test for "measuring optical devices such as eyeglasses and contact lenses, interpupillary distance and corneal curvature." The same rule requires that a minimum score of 75 percent be achieved on each of the four written examination sections and on the practical examination. In addition, the Board is required to administer an examination "not less than twice a year."

Applicants are allowed to repeat an unlimited number of times the portions of the examination they failed. However, for each retake after the second failure the applicant again must pay the \$50 filing fee.

Analysis of Questionable

Grading Procedures

Our review of examination grading practices consisted of a question-by-question analysis of every individual examination administered by the Board in the four separate examination sittings during 1979 and 1980. The following procedures were used:

* Appendix III contains applicable rules.

- Comparison was made of: 1) original answers marked by examinees, 2) the correct answers according to the Board's examination key, and 3) the answers graded as correct and incorrect on the answer sheets.
- Exceptions in grading were noted from the above comparison, such as: 1) credit given for more than one answer on a question, and 2) questions not graded according to the keys.
- Questions for which the Board allowed more than one answer were submitted, along with each possible answer choice to a professor of ophthalmology from the University of Arizona for review and analysis.
- The professor was requested to select the correct answers and comment on the validity of the questions and their answers.

During the calendar years 1979 and 1980, the Board administered 192 individual examinations during four separate examination sittings. Of these 192 individual examinations:

1. Grading changes were made arbitrarily on 25 examinations,*
2. Grading changes were not applied equally to all license applicants, thus adversely affecting 62 examinations,* and
3. Three examinations were not graded in accordance with the examination keys.

Arbitrary Grading Changes

Our review of every written examination in 1979 and 1980 disclosed that the Board arbitrarily regraded 23 applicants' tests. As a result, eleven applicants passed examination sections they otherwise would not have passed were it not for the regrading.

* Since individual applicants are allowed to repeat the examination an unlimited number of times at later sittings, the numbers in 1. and 2. above represent duplicated counts. The actual number of individuals involved is 23 for 1. and 53 for 2.

According to the University of Arizona ophthalmology professor, only one correct answer exists for four of the five questions involved in the regrading. The other question was so "poorly worded" that it should have been eliminated from the examination. Table 5 summarizes the results of our review of these five questions.

TABLE 5
REVIEW SUMMARY OF SELECTED EXAMINATION
QUESTIONS* USED BY THE BOARD OF DISPENSING
OPTICIANS DURING 1979 AND 1980**

Question Reviewed	Answer According to Original Examination Key	Answers Allowed by Board as Correct	Correct Answer as Identified by U of A Ophthalmologist
1	d	a, b, d, e	Unclear question/ should be eliminated
2	a	a, b, c, e	a
3	d	a, b, c, d, e	d
4	c	b, c, d	c
5	d	a, d	d

As shown in Table 5, the Board inappropriately accepted from two to five answers as correct for the five questions reviewed. Further, the ophthalmologist who reviewed the examinations considered one of the five questions unacceptable.

It should be noted that the Board originally graded the test questions shown in Table 5 according to their respective keys, but later changed the answers originally marked as incorrect to correct. Thus, the changes summarized in Table 5 represent deliberate decisions by Board members. Table 6 summarizes the impact of the Board's practice of regrading examinations during 1979 and 1980.

* Answers were multiple-choice, with five identified possible answers labeled a through e.

** On June 10, 1981, a Board member stated that four of these five questions had been eliminated from the question pool since the December 1980 sitting. The other questions had been changed so that only one answer could be regarded as correct.

TABLE 6

SUMMARY OF THE IMPACT OF THE BOARD'S PRACTICE
OF REGRADING EXAMINATIONS DURING 1979 AND 1980

<u>Examination Date</u>	<u>Question Regraded</u>	<u>Number of Instances of Regrading</u>	<u>Number of Candidates Affected</u>	<u>Number of Candidates Who Passed the Examination Because of Regrading</u>
June 1979	1	9	7*	1
December 1979	None	0	0	0
June 1980	2 and 3	18	11	7
December 1980	4 and 5	<u>7</u>	<u>5</u>	<u>3</u>
Totals		<u>34</u>	<u>23</u>	<u>11</u>

As shown above, during 1979 and 1980 the Board regraded 34 questions involving 23 applicants (eleven applicants had more than one question regraded), which resulted in eleven candidates receiving passing scores they otherwise would not have received were it not for the regrading.

Grading Changes Were Not
Applied Consistently

Our review also revealed that when the Board regraded an answer on one examination question, other applicants who responded similarly were not regraded. This inconsistent grading occurred 79 times in 1979 and 1980. This inconsistency resulted in one candidate's not passing an examination section that he otherwise would have passed had he been given credit for an answer the Board had accepted as correct from other candidates.

Table 7 summarizes the impact of the Board's inconsistent regrading practices during 1979 and 1980.

* Two applicants involved in the regrading who took the examination in June 1979 took a different examination section in June 1980, which the Board also regraded. To avoid duplication, audit staff reduced by two the Number of Candidates Affected for June 1979.

TABLE 7

SUMMARY OF THE IMPACT OF THE BOARD'S
INCONSISTENT REGRADING DURING 1979 AND 1980

Examination Date	Number of Instances in which a Candidate Did Not Receive Credit for an Answer Accepted as Correct from other Candidates	Number of Examinations on which a Candidate Did Not Receive Credit for an Answer Accepted as Correct from other Candidates	Number of Candidates Who Did Not Receive Credit for Answers Accepted as Correct from other Candidates	Number of Candidates Who Would Have Passed an Examination Section Had They Been Given Credit for an Answer Accepted as Correct from other Candidates
June 1979	7	7	7	0
December 1979	0	0	0	0
June 1980	57	41	32*	0
December 1980	15	14	14	1
Totals	<u>79</u>	<u>62</u>	<u>53</u>	<u>1</u>

As shown above, the Board was inconsistent in regrading questions 79 times on 62 examinations involving 53 individuals during 1979 and 1980. These 62 examinations represent 32 percent of the total 192 examinations administered in that period. Ultimately, the grading inconsistencies caused one individual to fail an examination section.

Grading Did Not Always Agree
with Examination Keys

Our review of the 1979 and 1980 examinations also disclosed that three examinations were graded incorrectly in that the marked answers did not agree with the examination key. Although these grading errors appear to be only Board oversight, one candidate did pass an examination section because of the misgrading.

* Since individuals can repeat examinations an unlimited number of times, the 62 examinations upon which a candidate did not receive credit for an answer accepted by the Board as correct from other candidates involved 53 individuals.

Grading Practices Raise
Serious Legal Questions

According to the Legislative Council in a memorandum dated May 20, 1981,* a State licensing board is responsible for fair and consistent examination of license applicants:

"The Board as the administrator of the examination and licensing process has the responsibility to administer examinations to ensure the fair and consistent application of examination requirements. Fundamental fairness dictates that credit be extended to all applicants who responded similarly to the same question."

Further, Legislative Council cited possible problems of due process and equal protection in cases of unfair or inconsistent grading:

"A state cannot exclude a person from the practice of an occupation in a manner, or for a reason, that contravenes the due process clause of the Fourteenth Amendment....

.

"Similarly, equal protection requires that different treatment of persons similarly situated be justified by an appropriate state interest. We fail to see on the facts provided an appropriate state interest in the differing treatment accorded by the board to applicants for licensure as dispensing opticians.

"The grading practices described raise serious questions concerning the effectiveness of the board's examination procedures to determine competency and proficiency of applicants. The dual purpose of determining competency of license applicants and protecting the public against unqualified professionals is not served by designing test questions in which four out of five possible answers are correct. The board's procedure for exam question development and exam grading should be closely reviewed to ensure that public purposes are being served and that license applicants are being fairly treated." (Emphasis added)

* Appendix IV contains a copy of this memorandum.

Questions Regarding the Validity
of the Entire Examination Process

The Board is required by State law to administer its own examination for licensure to applicants who do not qualify for comity.* Our review of the Board's locally developed examination and its administrative procedures raises serious questions regarding the validity of the licensure process in that: 1) the Board has failed to provide for adequate preparation, administration and storage of its examinations, and 2) the preparation and grading of specific examination sections are the responsibility of Board members who may not be qualified to perform those functions.

Lack of Adequate Preparation and
Administration of Examinations by the Board

Our review of the Board's preparation and administration of examinations revealed problems concerning the currency, validity and integrity of the examination process. The Board's established policies with regard to the preparation and administration of written examinations are as follows:

- Twenty questions for each of the four written sections are selected by the Board from a pool of examination questions established over approximately 20 years.
- The pool consists of approximately 50 to 70 questions for each of the four written examination sections.
- The examination questions were developed by individual Board members.
- An examination question to which fewer than approximately 50 percent of the applicants respond correctly is rejected by the Board for use in future examinations.
- Questions are not to be repeated from one examination to another sooner than the third consecutive examination following its use.
- An applicant who fails the examination may review orally with a Board member those questions missed, the answers they marked incorrectly and the correct answers.

* See footnote on page 69 for a definition of comity.

- An applicant who fails the examination may repeat it at the next sitting and at any number of sittings thereafter.
- According to a Board member, one applicant challenged an answer for which he received no credit. He was given credit for the question even though the Board thought that it was only remotely possible that his answer was correct.

Our review revealed serious deficiencies as a result of these policies and actual practices in that:

- New examination questions have not been added to the pool of questions for the past three years,
- Answers to questions they missed are accessible to applicants failing examinations,
- Applicants may take the licensure examination repeatedly, and
- Contrary to Board policy, in 1979 and 1980 identical questions from the four sections of the written examination were repeated in the same section at the next examination sitting 22.5 percent of the time.

Taken together, these facts demonstrate that: 1) an applicant has easy access to examination questions and their correct answers, and 2) because of question repetition, an applicant may improve his score without necessarily increasing his level of knowledge.

Problems with Examination Storage

The Board retains one copy only of examination questions and one copy of each examination that has been administered since 1973. Further, the questions and examinations are stored in the home of the Board's recording secretary. Such a policy could cause problems in the event of an emergency or if the single copy of the examination or questions were destroyed accidentally.

Questionable Board Procedures for Developing
and Grading the Dispensing Opticians Examination

The Board is required by statute to prepare and administer an examination for licensure to applicants who do not qualify by comity. Although the Board attempted to promulgate a rule in October 1980 allowing the examination given by the Opticians Association of America (OAA) to be used in lieu of its own examination, the Attorney General opined that State law precluded the Board from enacting the rule. A.R.S. §32-1682.D states, in part:

"The Board shall give a written and practical examination to all applicants, except for applicants who qualify for reciprocity..."

Legislative Council, in a memorandum dated November 21, 1980,* agreed with the Attorney General in this matter, stating that the Board cannot allow an examination prepared and administered by an outside source, such as the OAA, to be used in lieu of the examination which the Board prepares and administers locally:

"Administration and grading of an examination by (an organization other than the Board) would be an invalid delegation of a duty imposed upon the Board by statute.

"A provision that the Board 'shall give' a written and practical examination to all applicants, with the specific exception of applicants holding licenses from other states having requirements substantially equivalent to those of this State, imposes a mandatory duty upon the Board to give an examination to such applicants."

The process by which the Board prepares and administers its written examination relies heavily on the ability of Board members to: 1) prepare examination sections that are valid tests of an applicant's knowledge, and 2) correctly and equitably award points to applicants. Individual Board members may not possess such ability or the expertise to perform these functions, especially since they have not received specific training or education.

* Appendix V contains a copy of this memorandum.

It should be noted that from 1973 through 1975 the Board used staff from Pima Community College to prepare examination questions. However, according to a former Board chairman, the practice was discontinued because the failure rate was much higher when the college-developed examination questions were used.

A Study of Professional and Occupational Licensing in California, published in 1977, cited a national authority on occupational licensing who explained the problems of locally developed examinations:

"According to Benjamin Shimberg of the Educational Testing Service and author of several studies on occupational licensing, a source of many problems afflicting the examination process of licensing boards is the fact that:

'Board members have taken it upon themselves to develop and administer examination without any training for the task and without outside help'." (Emphasis added)

The study identified problems regarding Board-prepared examinations; the quality and appropriateness of the questions:

"Even more vexing problems exist with regards to the actual content of the examination. The material content of the exam ought to be limited to those types of questions that may be shown to have pertinency to the professed goals of licensure.

"There have been cases cited by critics to indicate that some boards ask questions which bear no relation to public welfare except by the most generous expansion of logic. Illustrative of this category are board examinations which test an applicant's knowledge of the custom, history or theory of the occupation and which require essays on esthetics or any understanding of helpful business methods."

According to Mr. Shimberg, the problems of Board-prepared examinations could be avoided if boards relinquished the job of designing tests to outside experts or used one of the national testing programs developed by many trade and professional associations.

Descriptions of the Opticians

Association of America (OAA) Examinations

Two divisions of OAA each prepare an examination for the certification of dispensing opticians. One division, the American Board of Opticianry (ABO) has prepared an examination which covers general optical dispensing, while the other division, the National Contact Lens Examiners (NCLE), has prepared an examination for proficiency in contact lens dispensing. Both examinations are administered by the Educational Testing Service (ETS) and, according to the director of government relations for OAA, both are given twice annually.

According to a survey by the Auditor General of states other than Arizona which require licensure of dispensing opticians, as of March 1981, eight of the 18 states accepted passage of one or both OAA examinations as either partially or completely fulfilling the written examination requirement for licensure. Table 8 lists the states accepting the OAA examinations as of that date.

TABLE 8

USAGE OF OAA EXAMINATIONS BY STATES WHICH
LICENSE DISPENSING OPTICIANS AS OF MARCH 1, 1981

<u>State</u>	<u>Accepts ABO Exam</u>	<u>Accepts NCLE Exam</u>	<u>Accepts Neither</u>
Alaska	X	X	
ARIZONA			X
Connecticut			X
Florida			X
Georgia			X
Hawaii			X
Kentucky	X	X	
Massachusetts	X	X	
Nevada	X	X	
New Jersey			X
New York			X
North Carolina			X
Ohio*	X*		
Rhode Island	X		
South Carolina			X
Tennessee			X
Vermont	X		
Virginia	X	X	
Washington	—	—	<u>X</u>
Totals	<u>8</u>	<u>5</u>	<u>11</u>

As illustrated in Table 8, 44 percent of the states other than Arizona which license dispensing opticians use the national examinations.

CONCLUSION

The Board of Dispensing Opticians has failed to maintain an adequate and equitable examination process. The Board has incorrectly, arbitrarily and inconsistently graded written examinations for licensure. In addition, the Board has maintained several questionable procedures with regard to preparation, administration and storage of its examinations. As a result of Board actions, it appears that: 1) the Board has not treated license applicants equally, and 2) legislative intent regarding the testing of an applicant's knowledge is not being met.

* ETS makes up a separate examination for Ohio. ETS administers all OAA examinations.

RECOMMENDATION

If regulation is continued, it is recommended that consideration be given to the following options:

1. A.R.S. §32-1682 be amended to allow acceptance of OAA scores in Arizona in lieu of a locally prepared examination.
2. The Board slow the frequency with which examination questions currently are repeated.
3. The Board consider contracting with examination experts to assist in the preparation of examination questions.
4. The Board establish and maintain better quality control of examination questions and grading procedures.

FINDING III

IMPROVEMENTS ARE NEEDED IN THE BOARD OF DISPENSING OPTICIANS' COMPLAINT REVIEW PROCESS.

The Board of Dispensing Opticians is responsible for prescribing and enforcing rules and regulations to help ensure the competency of dispensing opticians and prevent conduct on their part which would tend to harm the visual health of the public. An integral part of the Board's responsibility to protect the public is the investigation and resolution of consumer complaints filed with the Board. Our review revealed that the Board has been consistently deficient in its investigation and resolution of complaints from consumers for services rendered by dispensing opticians. The Board did not discipline a single dispensing optician as a result of a consumer complaint filed during the five-year period ended December 31, 1980.

Our review further demonstrated that:

- The Board has not investigated numerous complaints sufficiently, and
- Statutory changes are needed to enhance the Board's ability to resolve complaints effectively.

As a result, it appears that the Board's ability to regulate dispensing opticians effectively is questionable.

Statutory Requirements

Regarding Complaints

A.R.S. §32-1673* describes the duties and powers of the Board regarding complaints:

* Appendix II contains applicable statutes.

"The board shall prescribe and enforce rules and regulations ...necessary or advisable...which help to assure the competency of dispensing opticians and prevent conduct on their part which would tend to do harm to the visual health of the public." (Emphasis added)

Further, A.R.S. §32-1693 subsection A* defines the extent of disciplinary powers:

"The board...may suspend or revoke the license of any person who violates any provision of this chapter or the rules and regulations of the board."

A.R.S. §32-1697* contains a provision for the Board to refer cases to the courts for imposition of a fine for unlicensed activity:

"The practice of optical dispensing without a valid and subsisting license is a petty offense."**

In addition, the Board has promulgated Arizona Administrative Rule R4-20-06*** to define procedures for formal and informal hearings and informal disposition of cases through stipulation, agreed settlement, consent order or default.

Complaints Considered by the
Board of Dispensing Opticians

The Board reviews two types of complaints - consumer and Board-initiated. Consumer complaints include those filed by persons who believe they have received unsatisfactory or unacceptable services or products from: 1) a licensed dispensing optician, 2) another practitioner in the field of optical dispensing, or 3) an optical establishment. Board-initiated complaints are concerned primarily with possible violations of State laws regarding advertising, registration, use of the title "Dispensing Optician" by unlicensed persons, and the dispensing of optical devices by unlicensed persons without the direct supervision of a licensed dispensing optician, optometrist or physician.

* Appendix II contains applicable statutes.

** A.R.S. §13-802.D classifies petty offense convictions as criminal; however, no imprisonment is authorized for practicing optical dispensing without a license. The Board may refer cases to the courts which, in turn, may levy a fine of up to \$300 for such an offense.

*** Appendix III contains applicable rules.

Table 9 summarizes the number and bases of complaints received by the Board from January 1, 1976, through December 31, 1980.

TABLE 9

SUMMARY OF THE NUMBER AND BASES OF COMPLAINTS
RECEIVED BY THE BOARD OF DISPENSING OPTICIANS
FROM JANUARY 1, 1976, THROUGH DECEMBER 31, 1980

<u>Basis of Complaint</u>	<u>Number of Complaints Initiated by:</u>		<u>Total</u>
	<u>Consumers</u>	<u>Board</u>	
Unacceptable eyeglasses or related services	40		40
Unacceptable contact lenses or related services	6		6
Unlicensed activity		29	29
Fee dispute	3		3
False or misleading advertising		12	12
Assault	1		1
Other		4	4
Basis of complaint cannot be determined due to inadequate board records	1		1
Total	<u>51</u>	<u>45</u>	<u>96</u>
Percentages of total complaints	53.1%	46.9%	100.0%

As demonstrated in Table 9, consumer-filed complaints constituted 53.1 percent of the complaints reviewed by the Board from January 1, 1976, through December 31, 1980.

However, for the 96 complaints received in 1976 through 1980, the only discipline imposed by the Board against dispensing opticians involved Board-initiated complaints regarding licensure and advertising. The Board did not discipline a single dispensing optician as the result of 51 consumer complaints regarding quality of service or products during that period.*

* Based on a complaint received in November 1980 regarding assault of a consumer by a licensee, in March 1981 the Board voted to suspend the license of the dispensing optician for 30 days. The licensee appealed the decision to the Board and, in May 1981, the Board reduced the period of suspension to seven working days. As of May 1981, the case remained open pending further appeal action. Prior to the March 1981 decision, a former Board chairman, in discussing the fact that the Board had not suspended or revoked any license, indicated that this assault case was one that was serious enough to warrant suspension or revocation.

Furthermore, among 45 Board-initiated complaints, only six substantial* disciplinary actions have been imposed. As of December 31, 1980, the Board had not suspended or revoked any licenses.

Table 10 summarizes the disposition of complaints reviewed by the Board from 1976 through 1980.

* Includes revocation, suspension, cease and desist letters and fines.

TABLE 10

SUMMARY OF DISPOSITIONS OF CONSUMER AND BOARD-INITIATED COMPLAINTS
RECEIVED BY THE BOARD OF DISPENSING OPTICIANS DURING
CALENDAR YEARS 1976 THROUGH 1980

	Discipline Imposed				No Disciplinary Action by Board							Totals	
	Revocation	Suspension	Cease and Desist Letter	Fine	Board Ruled No Violation of Dispensing Optician Law	Board Ruled It Had No Jurisdiction	Reparations Made to Complainant: No Additional Action Taken	Voluntary Compliance	Other	In Process	Referred to Another Entity		No Record of Disposition
CONSUMER COMPLAINTS													
Unacceptable glasses and related services:													
a) Alleged visual harm							2					1	3
b) Other					1	1	14		5	2	5	9	37
Unacceptable contact lenses and related services:													
a) Alleged visual harm									2				2
b) Other							3			1			4
Fee dispute					1				1		1		3
Other										1*			1
Basis of complaint cannot be determined due to inadequate Board records							1						1
Total	<u>0</u>	<u>0*</u>	<u>0</u>	<u>0</u>	<u>2</u>	<u>1</u>	<u>20</u>	<u>0</u>	<u>8</u>	<u>4</u>	<u>6</u>	<u>10</u>	<u>51</u>
Percentage of total	0%	0%	0%	0%	3.9%	2.0%	39.2%	0%	15.7%	7.8%	11.8%	19.6%	
BOARD-INITIATED COMPLAINTS													
False or misleading advertising			2		1			2	3	1	1	2	12
Unlicensed activity			3	1**	5	1		4	4**	3		8**	29
Other					4								4
Total	<u>0</u>	<u>0</u>	<u>5</u>	<u>1</u>	<u>10</u>	<u>1</u>	<u>0</u>	<u>6</u>	<u>7</u>	<u>4</u>	<u>1</u>	<u>10</u>	<u>45</u>
Percentage of total***	0%	0%	11.1%	2.2%	22.2%	2.2%	0%	13.3%	15.6%	8.9%	2.2%	22.2%	

* As the result of a consumer complaint regarding assault by a licensee, the Board voted to suspend the license of the dispensing optician for 30 days in March 1981. On first appeal the Board reduced the suspension to 7 days. As of May 19, 1981, the case was still in process, pending further appeal.

** Initially received by the Board as a consumer complaint alleging unacceptable eyeglasses, contact lenses or related service. However, the Board chose to pursue the complaint solely on the basis of whether the dispenser was licensed and never addressed the issue of the quality of service provided to the consumer.

*** Percentage of total does not add to 100% due to rounding error.

As shown in Table 10, the only disciplinary actions imposed by the Board during 1976 through 1980 related to Board-initiated complaints concerning unlicensed activity and advertising. Furthermore, as of December 31, 1980, the most severe discipline imposed by the Board regarding Board-initiated complaints resulted in a fine of \$56 related to unlicensed activity.* The remainder of the actions consisted of cease and desist letters. This lack of disciplinary action on the part of the Board, together with inadequate investigation of complaints, raises serious questions regarding the Board's ability to effectively regulate optical dispensing in Arizona.

Board Failure to Resolve

Consumer Complaints Appropriately

During the five-year period ended December 31, 1980, the Board consistently failed to act appropriately on consumer complaints regarding the quality of service or products received. In seven of 51 cases, the Board did not investigate the consumer complaint to determine if State law had been violated, or it referred the complainant to another entity, such as the civil court system or the Consumer Fraud Division, Office of the Attorney General.

In 20 other cases, the Board attempted to placate the complainant by obtaining reparation, or some other concession, from the licensee. For these 20 cases, audit staff could not find a record of Board investigations to determine if the licensee had provided substandard or incompetent service.

The following cases are examples of inappropriate Board action on consumer complaints.

* It should be noted that the complaint that resulted in this fine was originated by a consumer regarding quality of service. (see page 63)

CASE I

On October 29, 1979, the Board received a copy of a complaint originally filed with the Financial Fraud Division, Office of the Attorney General.* Board records indicate the complainant had received eyeglasses which had not been made according to the prescription, and had complained, "if glasses were corrected it would cost us \$30 more."

Because of inadequate Board records,** we found no documentation regarding disposition of the case, except that it was discussed at the November and December 1979 regular Board meetings. However, audit staff discovered a memorandum from the Attorney General concerning this case and two others under consideration at the same time. The memorandum, dated November 28, 1979, read:

"I have reviewed your letters of November 10, 1979, concerning the three complaints. The method used to resolve this matter is inappropriate and does not meet the obligation of the Board of Dispensing Opticians to protect the public from unqualified practitioners. The matter should not be disposed of merely because the parties have reached a mutual agreement; it is necessary to investigate all complaints in order to determine if a violation of the Board...laws has occurred and the Board...is obligated to take appropriate action if and when a violation of its laws is discovered regardless of any settlement of the matter between the parties." (Emphasis added)

Board Action

No record of the Board's disposition of this case was available.

Comment

According to available records, the Board attempted to resolve this complaint through mutual agreement, but did not conduct an investigation.

* The Attorney General forwarded the complaint to the Board of Optometry which, in turn, forwarded it to the Board of Dispensing Opticians.

** See page 78 regarding record-keeping inadequacies.

CASE II

On November 17, 1976, the Board received a complaint regarding unsatisfactory eyeglasses, possible damage to an eye and extensive time lapse to replace the unsatisfactory glasses:

"On April 23, 1976, I...paid a deposit and ordered a pair of glasses. As of the above filing date, I have not received the glasses. I have the receipt...which verifies the glasses were ordered in April. I feel their negligence is unexcusable, and of possible damage to my eyes.

.

"...They presented me with the glasses in June, but as my eye doctor verified it as the wrong prescription, they were to re-do it." (Emphasis added)

Board Action

On November 18, 1976, the Board sent a letter to the person in charge of the optical establishment requesting that he "try to arrange a settlement which will be mutually satisfactory."

A week later the store manager advised the complainant by mail that a refund would be sent to him. On December 1, 1976, the complainant wrote the following to the Board:

"....I had sent a complaint to you regarding the fact that the optical establishment had taken over seven months not to get my glasses to me. You asked me to inform you of the disposition of the matter. Enclosed is a copy of the establishment's only reply.

"For the following reasons, the reply of the store manager is totally unsatisfactory to me:

- 1) There is no apology for the long delay.
- 2) There is no explanation for the long delay.
- 3) The language 'pleased be advised' is demeaning.

- "4) There is inadequate monetary compensation.
- 5) Their refund offer seems totally prompted by the fact that I contacted you.
- 6) If they could not prepare my glasses, why wasn't I told so six months ago?

"Last and least, their inadequate service is demonstrated by the fact they did not have the proper address on the envelop. I hope you pursue whatever regulatory measures necessary to insure that their 'service' is not replicated for other customers. Naturally, I would be receptive to attend a hearing on this matter. And, if it is your function to do so, please advise on whatever means of legal redress I may have." (Emphasis added)

Board Action

The Board replied on January 8, 1977:

"In reply to your inquiry as to what other action you may take against the optical establishment, you have the same recourse you had originally - the court system.

"The refund to you was a voluntary act on the part of the optical establishment, as this Board does not have authority to force any optical company to do this."
(Emphasis added)

No additional Board action was taken.

Comment

The Board attempted to resolve the complaint by obtaining reparation and subsequently referred the complainant to the court system. According to available records, no investigation was conducted.

CASE III

Board records include a letter dated April 24, 1978, from a consumer regarding redress for a pair of unsatisfactory glasses:

"When I continued to be very uncomfortable with my new glasses, I had them checked by my doctor. I learned that something was not quite right and could cause the discomfort.

"The glasses were...primarily ordered to wear on a forthcoming vacation cruise. Since I had to leave before they could make up a new pair, and they refused to refund my \$147.53 - I finally had to find outside help to recover my money.

. . . .

"...(W)hile it has been resolved, I certainly would not have gotten any money back without that outside help.

"I feel that your Office should be aware of this."
(Emphasis added)

The optical establishment apparently had refused to refund the complainant's money, and the complainant was compelled to seek outside assistance to recover the money.

Board Action

The Board sent a letter to the complainant dated May 9, 1978, indicating the optical establishment was under investigation. A Board investigative report dated the same day indicated a dispensing optician license was displayed in the store and identified the licensee indicated on the license by name and license number.

No further record of action or of further correspondence with the complainant regarding this case was found in the Board's files.

Comment

The Board investigation apparently was concerned only with the question of whether the dispenser was licensed. There is no record of an investigation into the quality of service provided.

CASE IV

In November 1979 the Board received a complaint involving an allegation of visual harm from contact lenses and questionable follow-up service. Eleven months later, the case had not been resolved by the Board.

Situation

On November 1, 1979, the Board received the following complaint:

"I purchased a pair of soft contact lenses...for \$94.50....I wore them for 3 day[s] but could not see out of them. [I] [r]eturned them for an exchange but after one day, my eye became very inflamed [and] irritated and still could not see out of them.

"The owner would only refund half of the \$94.50 (47.25) unless I bought another pair from him...." He would then apply the full cost of the [\$]94.50 to the [new contact lenses].

"He became angry in a phone conversation October 18, [19]79 and said that he had exchanged the lenses 3 times. This is not true. They were adjusted one time. The second time they were not exchanged nor corrected....

"I have 2 other pairs of contact lenses and do not need nor want the [new contact] lenses. The chemicals used to cleanse the soft lenses, according to [store owner] cost \$15. This I will pay although that is extremely high or if the lenses are adjusted to fit comfortabl[y]."

Board Action

Board records are sparse regarding this complaint. They indicate, however, that the licensee was contacted by the Board regarding his involvement in the complaint. On December 12, 1979, the Board received a letter from the licensee stating he had "left the company almost two months ago" and since he had left there had been "no license[d] optician working for that firm."

On December 19, 1979, the Board sent a letter to its Attorney General representative requesting advice as to what action should be taken on this and other cases. On January 22, 1980, the Attorney General representative replied as follows:

"The Office of the Attorney General provides legal advice to State agencies. Your December 19 letter asks that this office advise the Board as to what action the Board should take regarding the above-referenced licensee. It is the Board and not this office that should decide whether or not any action is warranted."
(Emphasis added)

On February 22, 1980, almost four months after they received the complaint, the Board sent letters to:

- The store's currently employed licensee, requesting attendance at the March 1980 Board meeting,
- The formerly employed licensee (who apparently had filled the contact lens prescription involved in the complaint), requesting a written reply to the complaint and inviting him to attend the meeting,
- The complainant, inviting her to attend the meeting, and
- The owner/manager of the optical store, requesting a written reply to the complaint and inviting him to attend.

The Board received a reply from the formerly employed licensee on February 26, 1980, in which he stated he had resigned before the complainant picked up the lenses at the store, thus claiming he had no responsibility for the complainant's alleged mistreatment.

On April 14, 1980, the Board:

- Sent by certified mail to the formerly employed licensee a "Complaint and Notice of Hearing" which alleged that the licensee was in violation of A.R.S. §32-1696.9 and specified:

"The prescription for glasses presented by [complainant] did not contain an approval from the prescribing ophthalmologist for the fitting of contact lenses. [Licensee] did not call the prescribing ophthalmologist for approval to fit contact lenses, prior to fitting contact lenses to [complainant]."

. . . .

"Said conduct and practice...constitutes a violation of A.R.S. §32-1696.9 which reads as follows: 'To fraudulently, dishonestly, illegally or unprofessionally conduct the practice of optical dispensing or engage in any conduct in such practice which would tend to do harm to the visual health of the public.'" (Emphasis added)

- Sent a letter to the city prosecutor requesting "the initiation of prosecutorial proceedings" against the store manager/owner.

On May 8, 1980, the Board held a formal hearing. Board minutes of that hearing state that:

- "A motion was made, seconded and carried that the Board find [licensee] not in violation of the State statutes, since the rule requiring the approval [i.e., of the prescribing ophthalmologist for the fitting of contact lenses] was adopted after the action occurred." (Emphasis added)
- The city prosecutor had informed the Board that he needed additional information.

The Board apparently did not respond to the city prosecutor's request for additional information.

On September 26, 1980, the city prosecutor sent the following memorandum to the Board:

"This is to advise that on September 26, 1980, the complaints in the named cases were dismissed upon motion of the defendants. The substance of the defense motion was that the six month statute of limitations applicable to petty offenses had expired prior to the June 25, 1980, filing of the complaints.

"In our conversation of September 22, 1980, you related to me that the optical establishment may still be in violation of the licensing provisions. If this is the case, please feel free to submit the matter to this office for consideration of the filing of new criminal complaints." (Emphasis added)

The Board took no further action regarding the licensure issue.

Comment

The original consumer complaint contained two issues: 1) unacceptable contact lenses resulting in possible visual harm, and 2) the possibility of fraudulent action on the part of the store manager/owner. The final result was that no disciplinary action was taken by the Board in that:

- the Board did not investigate adequately allegations against the formerly employed licensee and did not impose any discipline, and
- The Board did not follow up on possible violations of the licensing law.

Ultimately, the consumer complaint was ignored.

Lack of Substantial Disciplinary

Action on Board-initiated Complaints

As of December 31, 1980, the most severe penalty imposed by the Board regarding Board-initiated complaints was a fine of \$56 for unlicensed activity. The remainder of disciplinary actions on Board-initiated complaints consisted of cease and desist letters regarding advertising and unlicensed activity. Furthermore, our review revealed that a potential for fines existed in at least three* additional situations, but fines were not imposed by the Board.

A.R.S. §32-1697 states that practicing optical dispensing without a license is a petty offense. According to State law, conviction of a petty offense incurs a fine of not more than \$300.

In our review of 29 complaints** regarding unlicensed activity in which the potential for fine apparently was present under A.R.S. §32-1697, four such cases appear to have been substantiated. However, in only one case was a fine imposed.

* A fourth potential for fine exists, but as of June 30, 1981, action by the Board was pending.

** This figure includes complaints originated through a consumer regarding quality of services, but disposed of as a Board-initiated complaint regarding unlicensed activity.

The Board Has Not Investigated
Numerous Complaints Sufficiently

Our review revealed that the Board has failed to investigate adequately the vast majority of complaints received from 1976 through 1980. Of 51 consumer complaints, the Board did not conduct any prehearing investigations regarding the quality of service received by a consumer. Furthermore, hearing procedures were used 45 percent of the time for Board-initiated complaints but only 24 percent of the time for consumer complaints.

Infrequent Investigations Are Inadequate

The Board has used a process for investigating consumer complaints that is inadequate to determine if incompetency or unprofessional conduct was involved.

The Legislative Council, in a memorandum dated July 20, 1979, outlined a "proper investigation" as follows:*

"...a proper investigation would seem to include, as a minimum, the following procedures:

- a. Interviewing the complainant, the [licensee] who is the subject of the complaint and any third person who might have knowledge of the facts of the complaint.
- b. Verifying any previous complaint against the [licensee] and the disposition of the complaint.
- c. Checking for any previous complaints by the complainant.
- d. Identifying the generally accepted practice in the profession for the act which is the subject of the complaint.

"Finally, the Arizona Revised Statutes §41-1010, relating to evidence at hearings in a contested case, offers some insight into the kind of evidence which should be gathered in an investigation: it must be 'substantial, reliable and probative'."

* While this memorandum dealt specifically with the Board of Optometry, Legislative Council staff stated on May 25, 1981, that the section regarding elements of a proper investigation are so general as to apply to all Arizona regulatory boards.

Our review of the 51 consumer complaints the Board received from January 1, 1976, to December 31, 1980, revealed that no complaint was sufficiently investigated to satisfy Legislative Council criteria. All 51 consumer complaints were resolved by a mere review of written correspondence from the complainant and the optician or practitioner involved. There is no documentation of: 1) interviews of all parties involved, 2) verification of previous complaints against the licensee and their dispositions, 3) review of complaints by the same complainant, or 4) identification of the generally accepted practice in the profession. The process of depending on written correspondence provided by the complainant and the licensee does not appear to satisfy the requirement that evidence be "substantial, reliable and probative."

Recently the Board was admonished by the Attorney General to investigate and dispose of complaints adequately and completely. As previously noted on page 43, in a memorandum dated November 28, 1979, regarding Board actions on three different complaints, the Assistant Attorney General stated:

"The method used to resolve this matter is inappropriate and does not meet the obligation of the Board of Dispensing Opticians to protect the public from unqualified practitioners. The matter should not be disposed of merely because the parties have reached a mutual agreement; it is necessary to investigate all complaints in order to determine if a violation of the Board...laws has occurred and the Board...is obligated to take appropriate action if and when a violation of its laws is discovered regardless of any settlement of the matter between the parties." (Emphasis added)

CONCLUSION

The lack of disciplinary action imposed by the Board with regard to consumer complaints and Board-initiated complaints raises serious questions regarding the Board's ability to effectively regulate optical dispensing. Our review of the Board's disposition of complaints received during 1976 through 1980 revealed that the Board has not:

- Investigated numerous complaints sufficiently, and
- Imposed sufficiently severe penalties.

RECOMMENDATION

The performance of the Board of Dispensing Opticians with regard to investigating and resolving complaints needs to be improved significantly if the Board is to continue performing its complaint-handling functions. If regulation is continued, it is recommended that consideration be given to the following:

1. Arizona Revised Statutes, Title 32, chapter 15.1, be amended as recommended on page 66.

2. The Board of Dispensing Opticians establish specific procedures for the investigation and resolution of complaints. These procedures should meet the standards of a minimum investigation cited by the Legislative Council.

FINDING IV

STATUTORY CHANGES ARE NEEDED IF THE BOARD OF DISPENSING OPTICIANS IS TO BE CONTINUED.

The Board of Dispensing Opticians' ability to regulate the dispensing of optical goods and services is significantly impaired in that:

- Taken singly or together, the lack of penalty provisions and the presence of five occupational categories does not allow for effective regulation, and
- Since there is no provision for the regulation of optical establishments, many complaints concerning service and product quality cannot be resolved effectively.

If the Board is to be continued, statutory changes are needed to enhance its ability to regulate the dispensing of optical goods and services.

Few Penalty Provisions and
Many Occupational Categories

Our review of the statutes regulating dispensing opticians revealed serious deficiencies in that:

- Considerable overlap exists among the five occupational categories mentioned in the statutes,
- Not all individuals in three of the five categories are subject to statutory regulation, and
- There are few penalty provisions for violations of applicable State laws.

Arizona law regarding dispensing opticians specifically identifies three groups of persons involved in the occupational category: 1) licensed dispensing opticians, 2) registered apprentice dispensing opticians and 3) persons who may dispense optical goods but who work directly under the supervision of a licensed physician, optometrist or dispensing optician.

In addition, Arizona law indirectly identifies two other groups: 1) employers of the other groups, and 2) supervisors of apprentice dispensing opticians and unlicensed persons.

A comparison of the: 1) activities allowed and participated in by each group, 2) extent of Board jurisdiction concerning these groups, and 3) penalties that can be imposed on each group reveals overlap of activities, uneven jurisdiction and weak Board enforcement powers.

Activities Allowed and Participated
in by Persons Involved in Opticianry

According to Arizona law licensed dispensing opticians and registered apprentices are directly within the purview of the Board. A.R.S. §32-1681 subsection A states, in part:

"No person shall practice as a dispensing optician in this state without having a valid and subsisting license..."

Further, A.R.S. §32-1682 subsection E states, in part:

"The board shall require that any person desiring to work as an apprentice dispensing optician obtain a certificate of registration."

The Board is empowered through A.R.S. §32-1673 to enforce the law:

"...to help assure the competency of dispensing opticians and prevent conduct on their part which would tend to do harm to the visual health of the public."

Further, A.R.S. §32-1696 delineates unlawful acts over which the Board has jurisdiction.

Finally, the law specifically exempts from Board jurisdiction a person who: 1) works under the direct supervision of, and exclusively for, a licensed physician, optometrist or dispensing optician, and 2) does not represent himself to the public as a licensed or apprentice dispensing optician.

As demonstrated in a March 1981 survey conducted by the Office of the Auditor General, licensed dispensing opticians, apprentices and supervised but unlicensed persons perform substantially the same functions. Table 11 compares the activities of the three groups.

TABLE 11
COMPARISON OF FUNCTIONS PERFORMED BY SURVEYED* LICENSED
DISPENSING OPTICIANS, APPRENTICE DISPENSING
OPTICIANS AND UNLICENSED DISPENSERS IN ARIZONA

Activity	Licensed Dispensing Opticians		Registered Apprentices**		Supervised but Unlicensed Optical Dispensers**	
	Number	Percentage of Total***	Number	Percentage of Total***	Number	Percentage of Total***
Fitting eyeglasses	179	97.3%	72	96.0%	59	89.4%
Fitting contact lenses	125	67.9	23	30.7	14	21.2
Fitting artificial eyes	9	4.9	2	2.7	2	3.0
Neutralization****	176	95.6	55	73.3	41	62.1
Lens grinding	81	44.0	26	34.7	11	16.7

- * As reported by licensees.
 ** Percentage of licensees who responded to question regarding duties of those they supervise.
 *** Totals exceed 100 percent because individuals in each group perform more than one function.
 **** Neutralization: Determination of prescription readings from lenses instead of from doctor's prescription.

As demonstrated in Table 11, functions performed by licensed and registered apprentice dispensing opticians also are performed by supervised but unlicensed optical dispensers who are not subject to Board regulation. It should be noted that the two most common activities for the unregulated group, fitting eyeglasses and neutralization, also are the two most common activities for the two groups regulated by the Board.

Further, it is notable that under existing State laws the employers of licensed dispensing opticians, apprentice dispensing opticians and unlicensed optical dispensers are: 1) not subject to all statutory provisions regarding dispensing opticianry unless also licensed as a dispensing optician and 2) defined only in terms of what they cannot do rather than what they may or must do.

For example, according to A.R.S. §32-1696 paragraphs 3 and 9, it is unlawful for an employer to

"...hire, procure, or induce a person not licensed to practice as a dispensing optician, except as provided in §32-1682, subsection E (regarding apprentices)," or

"...fraudulently, dishonestly, illegally or unprofessionally conduct the practice of optical dispensing or engage in conduct in such practice which would tend to do harm to the visual health of the public." (Emphasis added)

Finally, State law does not specify the responsibilities of a person who supervises dispensing opticians, apprentice opticians and optical dispensers. Instead, it specifies only that an apprentice dispensing optician or unlicensed optical dispenser must work under the instruction and/or direct supervision of a dispensing optician, physician or optometrist.

Legislative Council, in a memorandum dated November 24, 1980,* stated that this lack of a supervisor-responsibility definition is unique in Arizona law.

* Appendix VI contains this memorandum.

"...In contrast with statutes providing for certification of apprentices or interns in other professions, the dispensing optician statutes do not expressly mandate any duties on the supervising practitioner." (Emphasis added)

As with employers, only supervisors who are licensed dispensing opticians are subject to Board jurisdiction. Physicians or optometrists who supervise dispensing opticians, apprentice dispensing opticians and optical dispensers are specifically exempted by A.R.S. §32-1691 paragraph 1 from the dispensing opticianry law and regulation by the Board.

Board Jurisdiction Is Uneven
among Optical Practitioners and
Enforcement Provisions Are Weak

The dispensing optician law is not clear regarding penalties to be imposed, even against licensees within its direct jurisdiction, for unlawful acts.

Legislative Council, in a memorandum dated November 24, 1980,* stated:

"The legislative intent of A.R.S. section 32-1696 is ambiguous in that it declares certain acts to be 'unlawful' but does not classify the acts as crimes or prescribe a penalty. Since A.R.S. section 32-1693 authorizes the board to deny, suspend or revoke the license of any person 'who violates any provision of this chapter' the board could deny, suspend or revoke the license of either an apprentice or a licensed dispensing optician who committed such acts. You may wish to recommend that A.R.S. section 32-1696 be amended to either provide a criminal classification or be rewritten to declare that the prohibited acts are grounds for denial, suspension or revocation of a license." (Emphasis added)

It should be noted that A.R.S. §13-602 subsection C prescribes unlawful acts which are not designated as to criminal status as petty offenses.

* Appendix VI contains this memorandum.

The statute reads:

"Any offense defined outside this title without either designation as a felony or misdemeanor or specification of the classification or the penalty is a petty offense."

According to a Legislative Council opinion dated May 21, 1981,*

"[T]he criminal penalties prescribed by the legislature for violations of A.R.S. Title 32, Chapter 15.1 (dispensing opticians) are the least severe of those found in the remainder of Title 32. A brief survey of enabling statutes of other selected Title 32 boards and commissions indicates that the great majority (22) have misdemeanor classifications while 5 have a felony classification or a combination felony-misdemeanor classifications." (Emphasis added)

Apprentice dispensing opticians also are within the direct purview of the Board. However, the only requirements for such persons are: 1) registration with the Board, and 2) direct supervision of their optical dispensing activities by a physician, optometrist or licensed dispensing optician.

State law does not specify whether obtaining the direct supervision is a responsibility of the supervisor or of the apprentice dispensing optician. Further, the Board cannot impose penalties directly against the apprentice dispensing optician regarding quality of service provided, and it is unclear what penalties could be imposed against a supervising licensed dispensing optician for violations committed by an apprentice.

Similarly with unlicensed optical dispensers, the Board cannot regulate their activities or impose penalties if required supervision is provided and the unlicensed persons do not hold themselves out to the public as licensed or registered apprentice dispensing opticians. However, if an unlicensed person represented himself as a licensed person, A.R.S. §32-1697 would apply:

"The practice of optical dispensing without a valid and subsisting license is a petty offense."

* Appendix VII contains this memorandum.

The Board has the authority, in such cases, to refer violations to the court system for trial and imposition of a fine not to exceed \$300.

As in the case of an apprentice, it is unclear as to what penalties could be imposed against a supervisory licensed dispensing optician for statutory violations committed by an unlicensed person. Legislative Council, in a memorandum dated November 24, 1980,* explained the statutory deficiency:

"There is no express statutory authority to suspend or revoke the license of a supervisor of an unlicensed person...."

. . . .

"...under paragraph 9 of A.R.S. §32-1696 the board could suspend or revoke the license of a person who 'fraudulently, dishonestly, illegally or unprofessionally' conducts the practice of optical dispensing or engages in 'any conduct in such practice which would tend to do harm to the visual health of the public'...

"We cannot say under what circumstances, if any, a supervisor's conduct would fall within the prohibited conduct described in paragraph 9." (Emphasis added)

Ramifications of Unclear

Enforcement Authority

Our review of complaints received by the Board revealed that the problem of jurisdiction over supervised persons has arisen in numerous cases, constraining the Board's ability to act. Of a total 45 Board-initialed complaints during the five-year period ended December 31, 1980, the lack of supervision was a problem in 14 cases (31 percent). Further, of these 14 cases, the only definitive disposition was voluntary compliance either by the optical establishment or by the licensee for four of the complaints.

* Appendix VI contains this memorandum.

It should be noted that according to a Legislative Council memorandum dated August 10, 1981,* no other set of Arizona statutes regarding occupational regulation provided an exemption for unlicensed persons when it includes provisions for apprentices.

According to the memorandum, four other statutes regarding occupational regulation contain provisions for apprentices or interns: barbers, embalmers, pharmacists and polygraph examiners. In each of these statutes, it is unlawful for anyone to engage in the specified occupation unless he is a licensee or a registered apprentice or intern.

Regarding employers of persons involved in dispensing opticianry, according to Legislative Council in a November 24, 1980, memorandum** the Board could suspend or revoke the dispensing optician license of an employer for certain activities:

"Under A.R.S. section 32-1696, paragraph 3, the board may suspend or revoke the license of an employer who hires an unlicensed person to practice as a dispensing optician, except if the unlicensed person is a registered apprentice practicing outside the scope of his authorized practice....

....As the negligent hiring of persons who are incompetent would clearly be conduct which 'would tend to do harm to the visual health of the public' the board would have authority to revoke that employer's license."

However, if the employer is not a licensee it is doubtful that the Board would have jurisdictional authority.

* Appendix VIII contains this memorandum.

** Appendix VI contains this memorandum.

Therefore, whether or not the Board could take direct action in the matter of a consumer complaint is dependent upon: 1) which group allowed to practice in the optical dispensing field is involved, 2) whether or not a person is subject to supervision by a Board licensee, and 3) whether the activity represented fraud and misrepresentation or was a quality of service complaint. Depending on the circumstances, the Board may or may not be empowered to act. In any case, Board powers are unclear and weaker than for most of Arizona's occupational regulatory boards.

The following case illustrates the problem of unclear regulatory authority:

Board records include a letter dated January 19, 1978, from a consumer regarding redress for a pair of unsatisfactory glasses and quality of service:

"In November 1977 I purchased a pair of glasses from the...optical shop. Cost, \$98.80.

.

First of all,...did not give me the tinted lenses which I had ordered, but gave me clear glass. Secondly, he was either unable or unwilling to properly adjust them. But worst of all is that he has been very rude to me; and on January 17, 1978, he became very angry and screamed and yelled at me, and ordered me out of his shop....

My husband and I together spent over \$300.00 for glasses (in 1977) in his shop and I feel that we deserve sympathetic and courteous service...."

Board Action

Upon investigation, the Board discovered that the individual who dispensed the complainant's eyeglasses claimed to be a licensed dispensing optician when, in fact, he was unlicensed. The Board pursued the matter through the county prosecutor's office, and on June 26, 1978, the unlicensed individual was fined \$56. The Board then dismissed the case.

On August 4, 1978, the Board received a letter from the complainant expressing concern that the unlicensed individual was "still working as a dispensing optician." In a letter dated August 21, 1978, the Board replied:

"In response to your original complaint of January 19, 1978, regarding Mr. _____, the State Board of Dispensing Opticians initiated an investigation to determine whether or not Mr. _____ was holding himself out to the general public as a dispensing optician or whether he was clearly operating under the direct supervision of a licensed physician, ophthalmologist, optometrist or duly licensed dispensing optician.

"The investigation showed that he was indeed holding himself out to be a licensed dispensing optician, for which he was duly fined.

"Under the Arizona Dispensing Optician Act and Rules and Regulations, Article 3, Statute 32-1691, 'Exemptions of persons, apprentices and sales (re:licensing)' paragraph 2, Mr. _____ is not illegally employed and I quote: 'Any person working under the direct supervision of a physician, optometrist or dispensing optician duly licensed to practice under the laws of this state, so long as the apprentice is working exclusively for the licensed physician, optometrist or dispensing optician and does not hold himself out to the public generally as a dispensing optician.'"

Comment

The Board pursued the consumer complaint solely on the basis of whether or not the individual dispensing the eyeglasses possessed a license. The Board deemed the quality of service complaint out of its jurisdiction because the individual dispenser was unlicensed and, therefore, if appropriately supervised, exempt from the statutory provisions. This illustrates how the lack of statutory clarity and authority impairs the Board's ability to resolve consumer complaints.

No Provision for Regulation
of Optical Establishments

Our review of the dispensing opticians law revealed that, since there is no provision for regulation of optical establishments, many complaints concerning product quality and service cannot be resolved effectively in that:

- Many factors affecting product quality are beyond the control of the licensed dispensing optician, especially if the licensee is an employee of a large organization, and
- Policies regarding several aspects of service (for example, refunds or exchanges regarding defective products and the length of time to receive products from the laboratories which actually grind the lenses) are controlled by the management of the optical establishment. Thus, these policies may be beyond the control of the licensed dispensing optician and, therefore, beyond the scope of Board regulation.

Our review of complaints submitted during the five-year period ended December 31, 1980, revealed that:

1. Of a total of 95 complaints (50* consumer and 45 Board-initiated complaints) for which appropriate records were available, 71 percent were initiated against optical establishments while only 29 percent were initiated against individuals.
2. Of the 50* consumer complaints for which appropriate records were available, 84 percent were initiated against optical establishments, while only 16 percent were initiated against individuals.

Thus, it appears that the object of a complaint is more likely to be an optical establishment than an individual licensee.

* The Board did not maintain appropriate records for one consumer complaint. Thus, information for this analysis was not available.

It should be noted that we identified three complaints against the same optical company that alleged visual harm. (see page 15) Each of the complaints involved problems with the laboratory employed by the optical company. During the five-year period ended December 31, 1980, the same optical company accumulated 19 complaints, eleven of which involved excessive time in providing the optical devices ordered. At an informal hearing held by the Board on March 13, 1981, a supervisory employee of the optical company stated that an out-of-State laboratory employed by the optical company was the cause of the delays. Thus, the majority of complaints directed against the optical company in question were beyond the purview of the Board.

CONCLUSION

The Board is significantly impaired in its ability to regulate the dispensing of optical goods and services, in that:

- Inadequate penalty provisions and the presence of many occupational categories impede effective regulation, and
- There is no statutory provision for the regulation of optical establishments.

RECOMMENDATION

If regulation is continued in its present form and level, it is recommended that consideration be given to the following statutory changes:

1. Amend the statutes relating to unlicensed personnel to:
 - a) require them to register as apprentices, b) provide for penalties if they commit acts that are unlawful for license holders, and c) define the duties of their supervisors, or
2. Abolish apprentice provisions and unlicensed exemptions.
3. Provide for the regulation of optical establishments.
4. Include penalties for statutory violations at a level commensurate with other regulatory agencies.

5. Specifically define those persons and entities subject to regulation.
6. Provide the Board with the specific requirement to investigate every complaint.
7. Provide the Board with enforcement responsibilities, including the imposition of penalties against individuals found guilty of providing substandard care or performing inappropriate functions.

FINDING V

QUESTIONABLE PROCEDURES ARE USED TO LICENSE DISPENSING OPTICIANS BY CREDENTIALS.

The Board of Dispensing Opticians currently grants licensure by credentials* to individuals who hold licenses from Georgia, Massachusetts, Nevada and Virginia. Our review revealed that the Board's decision to recognize licenses from these states only may result in 1) issuance of potentially invalid licenses and 2) restriction of trade among the states.

Arizona Statutes

State law allows the Board to grant licenses to individuals who have been granted licenses in other states, provided the requirements for licensure in those states are substantially equivalent to those of Arizona. A.R.S. §32-1683 reads, in part:

"An applicant for a license under this chapter shall:

.

"6. Establish that he has the required technical skill and training necessary for licensing by any one of the following means:

(a) Submit evidence of having a valid and subsisting license in good standing from another state which licenses dispensing opticians or ophthalmic dispensers, and whose requirements at the time of the issuance of the license were at least substantially equivalent to the requirements of this chapter." (Emphasis added)

* Licensure by credentials, or comity, refers to the practice of accepting credentials from other states in lieu of passing an Arizona examination and/or meeting other requirements for licensure.

The Board Has the Power to Determine Comity

Legislative Council, in a memorandum dated June 15, 1981,* stated:

"...[I]t is the duty of the Board to determine whether another State's requirements to license a dispensing optician are substantially equivalent to the requirements of Arizona law in order to assure the competency of the applicant and to protect the visual health of the public. To the extent they have done so, the agreements are valid and binding.

"...The law can be properly applied only after a close examination of the facts and is properly left to the administrative authority in the first instance and to the courts in the second....Generally, the contemporaneous and practical construction of the statutes by an administrative agency will be followed unless the construction is unreasonable and clearly erroneous...." (Emphasis added)

Thus, the Board has the power and the duty to determine which states will be granted comity. The only method to challenge a Board decision regarding comity would be to initiate court action.

However, our review revealed several circumstances that might preclude reasonable assurance that the Board's determinations of comity to date would be upheld in a court. These circumstances are: 1) licensure requirements among those states granted comity may not be substantially equivalent to those of Arizona; and 2) Board policies and practices with regard to comity appear to represent a restriction of trade.

* Appendix IX contains the entire memorandum.

Licenses May

Be Invalid

Our review of the Board's procedures for granting licensure by credentials revealed that the potential for invalid licenses exists in that at least one of the four states to which Arizona grants comity does not have licensure requirements which are "substantially equivalent" to those of Arizona.

Requirements Not

"Substantially Equivalent"

Of the four states to which Arizona grants comity, one (Georgia) does not allow dispensing opticians to fit contact lenses, based on a July 1980 opinion of the Georgia Attorney General. However, Arizona's statutes and rules and regulations: 1) allow dispensing opticians to fit contact lenses, and 2) require that prospective licensees be tested for proficiency in the area of contact lenses.

As of May 1, 1981, the Board had issued licenses to five individuals on the basis of their Georgia licenses. A review of the dates these five individuals received licenses indicated that each received his Georgia license before the July 1980 Georgia Attorney General opinion disallowing the fitting of contact lenses by dispensing opticians. However, as of June 30, 1981, eleven months had elapsed since the Attorney General ruling in Georgia disallowing the fitting of contact lenses by dispensing opticians and the Board still maintained its comity with Georgia.

In addition, the other three states to which the Board has granted comity (Massachusetts, Nevada and Virginia) allow examinations administered by divisions of the Opticians Association of America (OAA) to count in lieu of their state-administered examinations. Arizona law, however, prohibits the acceptance of OAA examinations in lieu of the Board's locally administered examination. Thus, it may not be proper for the Board to grant comity to Massachusetts, Nevada and Virginia.

Legislative Council, in a memorandum dated June 15, 1981,* stated:

"'Reciprocity' is essentially based on an agreement or quid pro quo. It is the relation when one state gives the subjects of another certain privileges, on condition that its own subjects shall enjoy similar privileges at the hands of the other state. Black's Law Dictionary 1142 (5th ed. 1979). 'Comity,' on the other hand, involves a unilateral willingness to grant a privilege out of deference and goodwill rather than as a matter of right or obligation. Black's Law Dictionary 242 (5th ed. 1979). It is the recognition that one sovereignty allows within its territory to the official act of another sovereignty. Under comity, recognition may be given by the board if not contrary to the public policy of Arizona. Brown v. Babbitt Ford, Inc., 117 Ariz. 192 (1977). The public policy of Arizona is stated in the previously cited statute as requiring that the other state's standards be 'at least substantially equivalent to the requirements of this chapter.' A.R.S. §32-1683, paragraph 6, subdivision (a). The statutory requirement dictates the terms of any reciprocal agreement or comity consideration." (Emphasis added)

Comity Not a

Two-way Street

A former Board chairman, when questioned by audit staff regarding the basis for determining which states were denied comity, said that licensure was denied to individuals from states which denied comity to Arizona licensees. He informed staff the Board's view was that such licensure was a "two-way street." However, a review of Arizona law revealed that there is no basis for such a viewpoint.

* Appendix X contains the entire memorandum.

Legislative Council, in a memorandum dated June 15, 1981*, commented:

"It should be emphasized that the correct reference here is to licensure by comity rather than licensure by reciprocity. A reciprocal licensing law, following Black's Law Dictionary (5th Ed. 1979) refers to a statute by which one state extends rights and privileges to the citizens of another state if such state grants similar privileges to citizens of the first state. As noted in Black's Law Dictionary, id., comity is the recognition that one entity allows within its territory to the legislative, executive or judicial acts of another entity, having due regard for the rights of its own citizens. The granting of licensure by comity in Arizona to the residents of any state 'X' does not require that state 'X' grant similar privileges to Arizona residents." (Emphasis added)

Potential Restriction of Trade

The policies and practices followed by the Board in granting licensure by credentials, or comity, to individuals licensed in other States represent potentially unfair restrictions of trade, in that:

- Arizona grants licensure by credentials to individuals of only four of the 18 other states which license dispensing opticians, and
- The licensure requirements of those states for which the Board does grant comity appear to be the same as those states for which the Board has refused to grant comity.

The Council of State Governments, in a publication entitled Occupational Licensing; Questions a Legislator Should Ask, specified that licensure by comity is essential to avoid restriction of trade among the states. The publication reads:

"Every out-of-state licensee or applicant should have fair and reasonable access to the credentialing process."

* Appendix IX contains the memorandum in its entirety.

"When two states have a [comity] arrangement, licensed practitioners from one state will be licensed by the other without further examination. However, where no such agreement exists, licensed applicants from other states may be required to undergo the entire licensing process - including written and performance examinations - regardless of their experience or qualifications. This can work a real hardship on qualified practitioners...." (Emphasis added)

While the Board grants comity to only four of the 18 states which license dispensing opticians, a March 1981 survey by the Auditor General revealed that several of the noncomity states appear to meet the same licensure requirements as Arizona. In fact, three of these noncomity states appear to align more closely with Arizona's requirements for licensure than do the four states for which the Board grants comity. Table 12 summarizes the requirements of Arizona and the 18 other states which license dispensing opticians.

TABLE 12

STATES WHICH LICENSE DISPENSING OPTICIANS AND THEIR
LICENSURE REQUIREMENTS COMPARED TO THOSE OF ARIZONA*

States Having Comity with Arizona	Examinations Required			Contact Lens Fitting Allowed	Combined License for Contact Lens and Eyeglass Fitting	Does the State Appear to Have Similar Overall Requirements to Arizona?
	Written**	Practical	National Exams May Not Count in Lieu of Locally Administered Written Exam***			
Georgia	X	X	X			No
Massachusetts	X			X	X ¹	No
Nevada	X	X		X	X ¹	No
Virginia	X	X		X	X ¹	No
States Not Having Comity with Arizona						
Alaska	X	X		X	X ²	No
Connecticut				X		No
Florida	X	X	X	X	X	Yes
Hawaii	X	X	X	X	X	Yes
Kentucky	X	X		X	X	No
New Jersey	X	X	X			No
New York	X	X	X	X		No
North Carolina	X	X	X	X	X	Yes
Ohio	X		3	X	X ²	No
South Carolina	X	X	X	X		No
Rhode Island	X	X				No
Tennessee	X		X	X	X	No
Vermont	X			X		No
Washington	X	X		X	X	No
						3 Yes
						15 No

* An "X" indicates a requirement appears to be similar to that of Arizona.

** Written examinations require review prior to approval to determine similarity of subject matter and passing score.

*** See Finding II on examinations. If, as recommended, national examinations are allowed in lieu of Arizona's locally administered examination, this column could be eliminated from the comparison.

Notes:

- 1 Additional certification required to receive approval for contact lens fitting; individual applicant review by Arizona Board would be necessary for approval.
- 2 Licenses for contact lenses both in a separate license and in combination with license for eyeglasses. Individual applicant review by Arizona Board is necessary before approval.
- 3 Ohio's board administers an examination developed by the Educational Testing Service (ETS), the same organization which develops the national examinations. (See Finding II)

As demonstrated in Table 12, three states (Florida, Hawaii and North Carolina) appear to have licensure requirements similiar to those of Arizona. It should be noted that none of these states currently are granted comity by Arizona's Board. In addition, if Arizona were statutorily allowed to use the national examinations in lieu of the locally administered examinations, the number of potential comity states would increase.

CONCLUSION

The Board's procedures in granting comity to individuals licensed in other states are questionable and may result in 1) possibly invalid licenses being issued, and 2) unfair restriction of trade. Although the Board has the power to determine which states may be granted comity, several circumstances preclude a reasonable assurance that the Board's determinations of comity would be upheld in a court of law. These circumstances are:

- Licensure requirements in the four comity states may not be substantially equivalent to those of Arizona,
- Board records regarding comity are unclear, and
- Board policies and practices with regard to comity appear to represent an unfair restriction of trade.

RECOMMENDATION

If regulation is continued, it is recommended that the following alternatives be considered:

1. The Board periodically review other states' requirements to keep abreast of other states' statutes.
2. A.R.S. §32-1682 subsection d be revised to allow OAA examinations to be used in lieu of the Board's locally prepared examinations to avoid a possible legal problem regarding use of OAA examinations by other states.*

* This alternative is further explained and developed in Finding II on examinations.

FINDING VI

IMPROVEMENTS ARE NEEDED IN THE BOARD OF DISPENSING OPTICIANS'
RECORD-KEEPING PROCEDURES.

Arizona statutes require the Board of Dispensing Opticians to keep accurate and complete records of its actions. Our review revealed that Board record-keeping procedures are not in compliance with statutory requirements. As a result, Board actions could be declared null and void and Board records may have to be recreated.

Arizona Statutes Require the
Board to Maintain Records

Arizona Revised Statutes relating to the creation, maintenance and retention of public records require the Board to document and maintain such information as financial and personnel records, general administrative policies and Board licensing and enforcement activities. The Board does not comply with several of these statutory requirements. The pertinent statutes are presented below.

A.R.S. §§41-1345 through 41-1351 require governmental entities to maintain public records. A specific definition of agency responsibility is contained in A.R.S. §41-1346, which reads in part:

- "A. The head of each state and local agency shall:
1. Establish and maintain an active, continuing program for the economical and efficient management of the public records of the agency.
 2. Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures and essential transactions of the agency designed to furnish information to protect the rights of the state and of persons directly affected by the agency's activities." (Emphasis added)

A.R.S. §38-431 requires each governing body in the State to hold open meetings and to document legal actions taken in those meetings. A.R.S. §38-431.01 states:

"A. All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings.

B. All public bodies...shall provide for the taking of written minutes or a recording of all their meetings. Such minutes or recording shall include, but not be limited to....

...An accurate description of all legal actions* proposed, discussed or taken...." (Emphasis added)

A.R.S. §41-1346 outlines responsibilities of State agencies regarding public records management and specifies that each agency will establish records retention and disposal schedules and lists of essential public records. It states in part:

"A. The head of each state and local agency shall:

.

3. Submit to the director of the department of library, archives and public records, in accordance with established standards, schedules proposing the length of time each record series warrants retention for administrative, legal or fiscal purposes after it has been received by the agency. Also, submit a list of public records in the agency's custody that are not needed in the transaction of current business and that are not considered to have sufficient administrative, legal or fiscal value to warrant their inclusion in established disposal schedules.

* An August 1975 opinion by the Arizona Attorney General defined legal actions as follows:

"...it is our opinion that all discussions, deliberations, considerations or consultations among a majority of the members of a governing body regarding matters which may foreseeably require final action or a final decision of the governing body constitute 'Legal action' and must be conducted in an open meeting...."

"4. Submit to the director of the department of library, archives and public records lists of all essential public records in the custody of the agency." (Emphasis added)

A.R.S. §32-1674 requires the Board of Dispensing Opticians to:

"...keep readily available for inspection a record of all applications for licenses, including a record as to whether a license or renewal license has been issued, and, if revoked or suspended, the date of filing the order of revocation or suspension. It shall maintain a list of all persons who have had a license revoked or suspended, and may keep a written record of all complaints filed against licensees. Each license issued shall be indicated by the serial number thereof and by the name and address of the licensee. The records shall be public records open to inspection."

Our review of Board records revealed that it is not maintaining records in accordance with the above statutory requirement. Specific examples of Board noncompliance are detailed below.

Documentation of Legal Actions in Board Minutes Has Been Inadequate

As required by A.R.S. §38-431.01, legal actions of the Board must be conducted at public meetings and documented in the minutes. However, the Board's minutes do not document every legal action taken by the Board.

Specifically, four types of legal actions taken by the Board have not been recorded adequately. These actions are:

1. The approval or denial of applications for examination,
2. The investigation and disposition of complaints,
3. The passage or failure of examinations based upon grading according to examination keys, and
4. The approval or denial of a dispensing optician license based on comity arrangements with other states.

Records of these four types of legal actions are inconsistent, incomplete or absent from Board minutes.

For example, the Board did not record in its minutes decisions to license seven of 174 applicants from June 12, 1977, to December 31, 1980.

Regarding the record keeping of complaint investigations and resolutions, the Board has not recorded complaints consistently in its minutes. Between January 1, 1976, and December 31, 1980, the Board minutes did not include 13 complaints for which it had established files.

Additionally, basic information essential to identifying and understanding a complaint has been omitted. For example, the Board's dispositions of 31 separate complaints received between January 1, 1976, and December 31, 1980, were either absent from or unclear in complaint files and Board minutes. In addition, our office was unable to locate file records for 10 complaints mentioned in Board minutes between 1976 and 1980.

The Board contracted for clerical assistance at its inception in 1956. According to the administrative manager, ASBAO became fully responsible for Board minutes and maintenance of files on July 1, 1976. However, in spite of increased clerical support, omissions continue in the recording of legal actions in Board minutes regarding complaints.

The Board Does Not Maintain Adequate
Records of Examination Grading

The Board does not maintain adequate records of the grading of its written examinations, which applicants must pass in order to be licensed. (For details of the Board's deficiencies in examination procedures and grading, see page 23.)

The Board Does Not Maintain Adequate
Records of Its Comity Arrangements

The Board does not maintain adequate records of its comity arrangements with other states. (For details of the Board's lack of comity records, see page 69.)

The Board Does Not Submit Required
Information To Library and Archives

According to Library, Archives and Public Records staff, the Board does not comply with A.R.S. §41-1346 regarding the establishment of schedules for record retention and disposal and lists of public records.

Further, in April 1977 the records management center of the Department of Library, Archives and Public Records issued guidelines for establishing an economical and efficient records management program that was endorsed by the Attorney General and Auditor General. The guidelines explain records management principles and techniques and encourage agencies to adopt them as the framework for a file plan. As of May 31, 1981, the Board had not adopted the record management center guidelines.

Records management center guidelines identify two types of records, support and mission. Support records are the administrative files maintained by every agency. Examples of support records are agency minutes, financial and personnel records and general administrative information. Mission records are unique to an agency's identity, such as those for the licensing and enforcement functions of the Board of Dispensing Opticians.

In establishing a records management program, guidelines include: 1) an inventory of records, 2) organization of records along functional lines, and 3) establishment of a records retention schedule to determine which records should be retained for how long.

Legal Actions Not Taken at Board

Meetings and Not Documented in Board

Minutes Could Be Declared Null and Void

A board is responsible for documenting legal actions, such as licensing decisions and complaint dispositions, in the minutes of open meetings. In a June 18, 1979, memorandum, Legislative Council* warned that in the absence of adequate documentation, such actions could be nullified:

"...if the effect of the Board's action was to ban from the public view the decision-making process in approving or denying a person's application to practice optical dispensing in this state, it would appear that the decision would be null and void."

The Legislative Council opinion continued:

"In order to avoid this situation, it would be advisable that when the Board takes any legal action, it: '...be preceded both by disclosure of that amount of information sufficient to apprise the public in attendance of the basic subject matter of the action so that the public may scrutinize the action taken during the meeting and by an indication of what information will be available in the minutes pursuant to A.R.S. section 38-431.01(B) so that the public may, if it desires, discover and investigate further the background or specific facts of the decision.'"
(Emphasis added)

The documentation of the Board's complaint process is not sufficient to permit adequate public review.

* Appendix XI contains a copy of the June 18, 1979, Legislative Council memorandum. It should be noted that this memorandum was written in regard to the Board of Optometry. However, in a conversation on June 26, 1981, Legislative Council stated that the portions cited herein also could be applied to the Board of Dispensing Opticians.

Unavailable Documentation

May Have To Be Recreated

In addition to documenting legal actions in minutes, the Board is required to maintain files documenting regulatory activities. However, files of documents relating to licensing decisions, examination grading and comity arrangements have not been maintained adequately.

Since the passage of 1980 legislation, the legal proceedings of the Board can be accepted by the courts for appeals of Board decisions. If the Board cannot supply adequate documentation of appealed cases from its files, the adjudication of the Board's decision will be unnecessarily costly to the State, the courts and the appellant.

CONCLUSION

Several State laws require the Board of Dispensing Opticians to document its proceedings. Board actions could be declared null and void, and other records may have to be recreated, in the absence of accurate and complete records. Several areas of record keeping, especially complaint and written examination files, are in need of improvement. The records management center of the Department of Library, Archives and Public Records has published guidelines which would assist the Board to establish adequate records management and comply with State laws.

RECOMMENDATION

If regulation is continued, the Board of Dispensing Opticians should establish a records management program to help ensure that its records are adequate as required by State law. To implement this, the Board should:

1. Request legal assistance in establishing procedures to document legal actions in Board minutes and to maintain those records necessary to support Board proceedings.

2. Follow recommended guidelines for a records management program proposed by the records management center.

3. Submit records retention and disposal schedules to the Director of Library, Archives and Public Records, along with lists of essential public records, as required by A.R.S. §41-1346.

FINDING VII

ALTHOUGH THE BOARD OF DISPENSING OPTICIANS IS IN COMPLIANCE WITH STATE LAW REGARDING PUBLIC NOTICE, SOME IMPROVEMENTS CAN BE MADE.

The Board is in compliance with State law regarding public input. However, several improvements can be made in the Board's encouragement of input from consumers of optical dispensing services and in notifying license holders of Board meetings and actions, proposed rules and regulations and other related matters. The Board needs to expand its efforts to encourage participation by consumers and to notify licensees and registrants of Board meetings, activities and actions.

Board Actions Regarding

Public Notice of Meetings

Arizona Revised Statutes §38-431.02 subsection A defines the responsibility of the Board to provide public notice of meetings:

"Public notice of all meetings of public bodies shall be given as follows:

1. The public bodies of the state shall file a statement with the secretary of state stating where all public notices of their meetings will be posted and shall give such additional public notice as is reasonable and practicable as to all meetings." (Emphasis added)

The Board has filed a statement with the Secretary of State that meeting notices will be posted in the Occupational Licensing Building at the State Capitol Complex. Notices have been posted in this location consistently.

However, the Attorney General in a memorandum to State agencies dated August 19, 1975, noted that an:

"'open meeting' is open only in theory if the public has no knowledge of the time and place at which it is to be held."

The Attorney General stated that the law on open meetings was not specific, and suggested guidelines for complying with the public meeting law. He cautioned agencies against the serious consequences for failure to comply with the law:

"Decisions made at a meeting for which defective notice was given may likely be declared null and void...."*

In his guidelines to agencies regarding what constitutes sufficient "additional" public notice of meetings beyond posting printed notices, the Attorney General wrote:

"F. Additional Notice

In deciding what type of notice shall be given in addition to posting, governing bodies should consider the following:

1. Newspaper Publication

In many cases, notice of meetings can be disseminated by providing press releases to newspapers published in the area in which notice is to be given. In addition, paid legal notices in such newspapers may be purchased by the governing body.

2. Mailing List

Some bodies may wish to provide a mailing list whereby persons desiring to obtain notices of meetings may ask to be placed on a mailing list. All notices of meetings issued will then be mailed to those appearing on the current mailing list.

3. Articles or Notices in Professional or Business Publications

* Appendix XII contains the text of the Attorney General's memorandum.

"In addition, the governing body may obtain publication of articles or notices in those professional and business publications relating to the agency's field or regulation.

It is not necessary that all of these types of notices be given. Indeed, merely providing notice through the use of a mailing list and by posting should be sufficient in most cases. Neither should the above listings be considered exclusive and, to the extent other forms of notice are reasonably available, they should be used." (Emphasis added)

The Board regularly uses only one additional notice method outlined by the Attorney General, supplying the State Senate press room with notices of forthcoming meetings.

It should be noted that in a survey by the Auditor General of dispensing opticians licensed in Arizona,* 61 percent (114) who responded (187) said they were not aware of scheduled Board meetings. In addition, in a Auditor General survey of apprentice dispensing opticians registered in Arizona,* 87 percent (41) who responded (47) said they were not aware of scheduled Board meetings.

According to Board members, the Arizona Association of Dispensing Opticians (AADO) and the three major employers of dispensing opticians in the State receive notification of Board meetings and other actions. However, this notification is provided only after inquiry by these groups rather than on Board initiative.

Thus, only 40 percent of license holders, 13 percent of apprentice dispensing opticians and only those consumers who learn through the postings in the Occupational Licensing Building or notices to the press room** are aware of Board meetings through current Board public notice methods.

* Appendix XIII contains the results of these surveys.

** According to Board members, no articles ever have appeared in newspapers or other media announcing Board meetings.

Board Actions Regarding
Public Notice of Proposed
Rules and Regulations and
Other Board Actions

In proposing changes in rules and regulations, each agency is required by A.R.S. §41-1002 (Administrative Procedures Law) to file a notice of such changes with the Secretary of State at least 20 days before the proposed adoption date. The Secretary of State publishes the proposed changes monthly in the Administrative Procedures Digest.

The Board has complied with this statute; however, a review of the distribution list for the Digest as of April 22, 1981, revealed that 84.5 percent (207) of the 245 individuals or organizations reviewing the Digest were law firms or governmental agencies. Thus, the publication of proposed rules in the Digest does not appear to be an effective method of notifying the consuming public or Board registrants of proposed rule changes.

A survey by the Auditor General of 30 other Arizona regulatory agencies revealed that at least 50 percent of them use several methods of notification in addition to those required by statute. Table 13 summarizes the use of these methods of notification by the Board and by other regulatory agencies.

TABLE 13

METHODS USED BY ARIZONA REGULATORY AGENCIES
TO ENCOURAGE PUBLIC INPUT AND PUBLIC PARTICIPATION
IN ACTIVITIES CONCERNING REGULATORY DUTIES

	<u>Used by other Regulatory Agencies</u>		<u>Used by the Board of Dispensing Opticians</u>
	<u>Number</u>	<u>Percentage*</u>	
<u>NOTIFICATION REQUIRED STATUTORILY</u>			
- Post regular meeting notices at officially designated location	26	89.6%	X
- Post formal hearing notices at officially designated location	20	69.0	X
- Post notices of hearings regarding adoption of rules and regulations at officially designated location	27	90.0	X
<u>NOTIFICATION BEYOND THAT WHICH IS REQUIRED STATUTORILY</u>			
- Notify individual complainants by mail of formal hearings	21	72.4	X
- Notify by mail consumers who request information regarding:			
1) Regular meetings	18	60.0	
2) Formal hearings	17	58.6	X
3) Hearings on adoption of rules and regulations	25	83.3	
- Notify by mail affected licensees/registrants of:			
1) Regular meetings	15	50.0	
2) Formal hearings	26	89.7	
3) Hearings on adoption of rules and regulations	19	63.3	
- Notify by mail professional associations of hearings regarding adoption of rules and regulations	21	70.0	
- Notify news media by mail of hearings regarding adoption of rules and regulations	17	58.6	

* Percentage based on number of agencies responding to each question.

As demonstrated in Table 13, most other State regulatory agencies use other methods of public notification in addition to those required by statute. Since the Board uses only two of these additional notification methods, the Board is substandard in its efforts to encourage public participation in its decision-making.

As a result of this substandard effort, a substantial portion of Board license holders are not aware of actions or proposed actions by the Board. In surveys of licensed dispensing opticians and apprentice dispensing opticians* by the Auditor General, approximately 55 percent of responding licensees and 96 percent of responding apprentices claimed they were not aware of Board actions, and 40 percent of licensees and 100 percent of apprentices responded that they were unaware of proposed Board actions. Therefore, the Board does not appear to inform adequately persons who are directly impacted by its actions.

Methods for Improving

Public Participation

Ernest Gellhorn, former dean of the Arizona State University College of Law and a recognized authority on administrative procedural law, has formulated recommendations for improving the Federal Administrative Procedures Act.** Many of his recommended actions are equally applicable to State regulatory bodies. According to Mr. Gellhorn:

- "1. Agency obligations. Minimum constitutional requirements are insufficient reasons for agencies to fail to explore appropriate procedures for providing effective notice to the affected public.
2. Meeting public notice needs. Agencies should be required to provide identified, accessible sources of information about proceedings in which public participation is likely to be effective. At a minimum, each agency should:

* Appendix XIII contains the results of these surveys.

** Ernest Gellhorn, "Public Participation in Administrative Proceedings," Yale Law Journal, Volume 81, No. 3 (January 1972) pp. 398-401.

- a. Strive to provide notice as far in advance of the proceeding as possible; and
 - b. Prepare a separate bulletin issued periodically, identifying the proceeding and providing relevant information.
3. Attracting and focusing public attention. The public can be made aware of important agency proceedings in many ways, such as press releases to news media; requirements that applicants directly inform users; special notice to governmental bodies, citizen groups or trade associations and separate agency listing of significant matters.

Coverage in the news media is perhaps the most effective way of reaching the average citizen, and public interest groups and agencies should make special efforts to encourage reporting of their activities. Factual press releases written in lay language should explain the significance of the proceedings and the opportunities for public participation. Releases describing important proceedings with a local geographical impact should be sent to area news media. In major matters, agencies might consider public service advertisements and announcements over local broadcasting facilities. Direct mailings are yet another alternative." (Emphasis added)

Under A.R.S. §41-2354 (The Sunset Law), one factor to be considered in determining the need for continuation or termination of each agency is:

"The extent to which the agency has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public."

In our opinion, the Board of Dispensing Opticians has not adequately encouraged the input of license holders, registered apprentices, consumers of optical dispensing services or the general public in the promulgation of rules or other actions, and has not adequately informed the public of its actions and their expected impact.

Cost of Program to Encourage
Public Input Would Be Minimal

Board members stated on June 3, 1981, that the cost of notifying the public of meetings and actions is prohibitive for boards as small as the Board of Dispensing Opticians.

However, a review of Board costs of selected public input methods revealed that the combined cost for a mailing to license holders, apprentice opticians and professional associations, a press release to news media and legal advertisement in five Arizona newspapers would be approximately \$200.

Table 14 details estimated costs for obtaining public input.

TABLE 14
ESTIMATED COSTS* FOR USING THREE METHODS OF
ENCOURAGING PUBLIC PARTICIPATION BY THE
BOARD OF DISPENSING OPTICIANS

<u>Method</u>	<u>Estimated Cost</u>
Duplication and postage costs to mail announcements to license holders, 20 professional associations and interested individuals	\$150
Duplication and postage costs for press release to 25 newspapers, radio and TV stations	10
Legal advertisements in five Arizona newspapers @ \$8 average** cost per newspaper	<u>40</u>
Total	<u>\$200</u>

* Clerical time to type and mail copies not included in cost estimate.

** Based on actual costs for legal advertising in five Arizona newspapers.

The estimated cost for these three methods to encourage public participation, if used three times a year, would be approximately \$600. The amount is 4.7 percent of the fiscal year 1979-80 expenditures for the Board and 4.4 percent of the fiscal year 1980-81 estimated expenditures. It appears that this minimal level of expenditures is affordable by the Board.

CONCLUSION

The Board of Dispensing Opticians has been substandard as compared to other Arizona regulatory agencies in its encouragement and use of public input in its operations. As a result, license holders are not adequately informed of Board meetings, actions and proposed actions and consumers have significantly limited opportunities to be informed concerning Board activity.

RECOMMENDATIONS

If regulation is continued, it is recommended that the Board:

1. Consider adopting the methods used by other Arizona regulatory bodies to encourage public input and participation in the promulgation of rules and regulations and development of legislative proposals, and the recommendations presented by the Attorney General and Ernest Gellhorn, former ASU College of Law dean.
2. Send notices to licensees and apprentices at least annually to notify them of the year's scheduled meetings.



Arizona State Board of Dispensing Opticians

1645 West Jefferson

Phoenix, Arizona 85007

September 11, 1981

Mr. Douglas R. Norton, CPA
Auditor General
Legislative Services Wing, Suite 200
State Capitol
Phoenix, AZ 85007

Dear Mr. Norton:

First, let me thank you for extending the time we have to reply to the draft of the audit of the Board of Dispensing Opticians. We found areas in the report which we believe to be incorrect, and this letter will attempt to address those situations. I would also like to state that even though we disagree with some of the findings, we were at all times treated extremely courteously by your audit staff, namely Ms. Martha Rawls and Mr. Rick Booth.

Regarding the possible negative effect on the economic well-being of the public, the studies you quoted on page 19 found that prices were higher in states which restrict commercial practices. Our state law has not had the effect of restricting the practice of opticianry; indeed, the exact opposite has been the case. Had we not had our law, we would have been denied fitting corneal contact lenses over 15 years ago by another discipline. At that time, an Attorney General's opinion stated that our statute did specify that corneal contact lenses could be fit by licensed dispensing opticians. As you can readily see from the advertisements regarding the price of these lenses, allowing opticians to fit them has lowered the price to the public drastically in the last few years.

There are numerous examples of other restrictions placed upon opticians in non-licensed states, which in turn raise the price of eyewear to the public. In Arizona, even though we have had a licensing law since 1956, the price of eyewear is lower than most of the other neighboring Southwestern States, as indicated by the FTC and other studies.

The report indicates that the BBB is as effective as the Board in resolving consumer complaints. The BBB is better known to the general public than the Board, but all complaints to the BBB were complaints from consumers against optical companies, not specifically against licensed dispensing opticians. We have no jurisdiction over companies, only licensed individuals.

However, optical companies respond much more readily to Board actions than to BBB actions. If a company completely ignores a BBB complaint, nothing happens. Upon request for information regarding a certain company, the BBB will only state that they have X number of complaints against the company which have not been resolved. If the Board suspends or revokes the license of the dispensing optician involved, that company must replace that licensed optician in order not to be in violation of our statute. Therefore, companies really take complaints from the Board seriously.

Table 4 on page 21 states that the Board took "No Action" in 33.3% of the complaints it received. This is absolutely untrue, as every case ever received by the Board has been acted upon and resolved, with the exception of those recent cases still pending at this time. In discussion regarding this figure with Ms. Rawls and Mr. Booth, they stated that their listing of cases which made up the 33.3% consisted of cases where the following occurred:

1. The Board found there was no violation of the statutes.
2. The Board found it had no jurisdiction.
3. The matter was referred to another, more appropriate, agency.

It seems that the report should state that the Board took no disciplinary action in those cases; however, in each of those cases no disciplinary action was warranted. Again, the BBB has no authority for any disciplinary actions.

The same table states that in 17.6% of the cases there is no record of action. We personally reviewed each and every case mentioned, and found that each case had indeed been closed. The Board minutes were unclear as to the disposition of some of the cases, since we failed to state that the matter was closed and the reasons for closing the case.

A typical example of what we found was a case where the consumer wrote to the Board, complaining about the length of time it took to have eyewear prepared by an optical company. The normal course of events was for the Board to contact the company and the licensed dispenser involved, inform them of the complaint, and ask for a reply to the Board as to what they intended to do. The company would then reply that it would take or had taken appropriate action to resolve the matter. Once the company replied that the matter was resolved, the Board would then attempt to contact the complainant and see if the matter had been resolved to their satisfaction. In many cases, the complainant refused to reply. Then, we would attempt to call on the telephone, send follow-up letters, etc. This process took time, and if the Board was unable to receive a final response from the complainant, we considered the matter closed. In each case, this was done at a Board meeting, although sometimes the minutes did not reflect the closing of the matter in the proper form. The fact still remains that all cases were acted upon, and all were resolved.

The report states that the Board made "arbitrary" grading changes on the examinations given in 1979 and 1980. After every test, the Board listed the number of people who missed each question on each section of the exam. Every question where approximately 50% of the people gave wrong answers, was looked at to see if there was a possibility of more than one correct answer, and if the question was properly worded. If we found that there was indeed more than one answer, or that the question was invalid for other reasons, that question was thrown out, and did not count against those who missed it. This was not done in an "arbitrary" manner, but was done so as to make the exam as fair as possible.

Referring to Table 5 on page 26, we will explain exactly what happened in each of the cases listed:

Question 1 related to the name of the fourth layer of the eyeball, and the correct answer is the retina. However, three of the other answers are either parts of the retina or a part of the eyeball which could be considered the fourth layer. Since this question was unclear, it was discarded, and not counted against anyone who answered it wrong.

Question 2 is about what happens when a ray of light passes from one medium to a denser one. There were two possible answers. Our records indicate that we allowed answer C in addition to the key answer which was A, but did not allow answers B or E.

Mr. Douglas R. Norton, CPA
September 11, 1981
Page 4

Question 3 was about what happens when light rays enter the aperture of a pinhole camera. In reviewing the question, it was decided that it had no real relevance to optical dispensing, so it was thrown out and not counted against anyone who missed it.

Question 4 requires mathematical calculations, and there are two similar formulas which can be used. The choice of formula makes a small difference, but enough of a difference so as to make answer B as correct as the key answer, which was C. Answer D is grossly incorrect and was never considered correct by the Board.

Question 5 related to the name of an instrument which measures the corneal curvature by reflection. One of the possible choices was a device which may be added to the named instrument to aid in this measurement, so the Board decided to allow answer A as well as the key answer of D for this question. Please note that both of the last two questions mentioned (4 and 5) were on the Contact Lens section of the test given in December 1980.

The Board feels it was inappropriate to refer questions on the exam to an ophthalmologist at the University of Arizona. Ophthalmologists are trained to be physicians and surgeons, and they receive very little training in opticianry. The Board's reasons for changing the answers to the above questions are easier understood by practicing opticians than they would be by an ophthalmologist.

On page 27, it is stated that when the Board re-graded an answer on one examination question, other applicants who responded similarly were not re-graded. Since the Board is only concerned with whether or not a person passed or failed a section of the test, we often did not bother to re-grade those answer sheets where the change of answer would make no difference. For example, when we decided to allow answer A on question #18 of the Contact Lens exam given in December of 1980 as well as the key answer which was D, we reviewed only those people who had scored 70% on that section of the test. If they had given the answer A on question 18, we changed their score to 75% which allowed them a passing score. We did not change the answer sheets of those who scored 75% and above or those who scored 65% and below, since the difference in one question would not effect their passing. When we re-graded two questions on a single section, we looked at those who scored 65% and 70%. Typically, this regrading has always been done at the end of a long, hard day of examinations, and the Board has felt that going through all the answer sheets and changing grades which did not affect whether or not the individual passed was not an appropriate usage of our limited time.

The report states that one candidate did not pass an examination section when he should have, on page 27. We feel that this is entirely incorrect, even though a review of the answer sheets for that section of the exam supports the finding. Let me explain in detail exactly what occurred. On the Contact Lens section of the December 1980 exam, the Board re-graded two test questions. On question #13, answers B and C were considered correct. On question #18, answers A and D were considered correct. In reviewing those individuals who scored 65% or 70%, someone on the Board mistakenly marked the answer sheets of two candidates (candidate A and candidate B) incorrectly, giving them credit for answer D on question #13, in addition to answer A on question #18. This resulted in candidates A and B receiving a score of 80%. When the error was corrected later, their score was lowered to 75%, which was correct. Candidates A and B still passed that section of the exam.

The auditors found that candidate C had answered D on question #13, and their report states that candidate C should also have been given credit, since originally candidates A and B were given credit for the same answer. The Board feels that answer D on question #13 is grossly incorrect, and candidate C does not deserve credit for that question just because of a clerical error made on the answer sheets of candidates A and B. We must stress that we never gave credit to candidates A and B for the incorrect answer, it was strictly a clerical error which was later corrected.

On page 28, it is stated that one candidate did pass an examination section because of misgrading. A review of this particular case revealed that the candidate originally missed questions 9 and 17 of the Geometric Optics test given on June 12, 1980. The Board re-graded question 9, and allowed both answers A and C to be correct. Further, it threw out question 17. These actions changed the candidates score from 70% to 80%, thereby causing him to pass that section.

Regarding the statement made on page 29, it should be noted that no test question has ever been designed by our Board in which four of the five possible answers are correct. Bad test questions have been thrown out of exams, and those who missed the questions were not penalized for missing them, but this does not mean that the Board deliberately wrote questions in which four of the five possible questions were correct. It should be also noted that during 1980, all examination questions in the Board's file were reviewed, and any that were found to be unclear, confusing or irrelevant to the day-to-day practice of optical dispensing have either been corrected or discarded.

On page 31, it is stated that if an applicant challenges a question, he is given credit even though the possibility his answer was correct is remote. This statement is due to a misunderstanding of the meaning of the conversation held between the Board member mentioned and the auditor. There have been times when questions relating to theoretical matters have had different answers according to different reference sources. Where there was any reasonable doubt, the Board would allow the answer given by the applicant. However, the Board never gave credit to a remotely possible answer on a question which had a specific answer for which there is no differences of opinion among the reference sources. The Board has always tried to be fair about its questions, as it takes its duty of determining the qualifications of applicants very seriously.

For many years, the Board had no place to store examinations, since we had no office space. Examinations and all other records were kept in the home of the recording secretary. When space became available in the building located at 1645 W. Jefferson, all the records, except the old examinations, were transferred to the State Boards' Administrative Office. Tests were kept at the home of the Recording Secretary for security purposes, since the files in the State Boards' Administrative Office could not be locked, and there was easy access to them.

This matter has since been corrected. All old examinations are now kept in a locked cabinet in the State Boards' Administrative Office located in Room 418, 1645 W. Jefferson, Phoenix, AZ.

In the conclusion of this finding, the report states that the Board has incorrectly, arbitrarily and inconsistently graded written examinations for licensure. The Board takes strong exception to this statement. While clerical mistakes have been made, the Board has never acted arbitrarily or inconsistently. The auditors identified five questions as being inappropriate in Table 5 of the report. Notwithstanding our reply to our handling of these five questions, they represent only 1.6% of the questions given on the written examinations during the period studied, certainly a small figure. We do not believe the fact we did not re-grade answer sheets on candidates who received 75% or greater or 65% or lower in any given section necessarily denotes inconsistent actions on the part of the Board, as we have only been concerned with did the candidate pass or fail the exam. To say the Board acted incorrectly, arbitrarily and inconsistently is to insult the integrity of present and past Board members, all of whom have

constantly endeavored to fulfill their duties to the best of their ability in a very conscientious manner. It should be noted that only in the last few years have the Board members been compensated for their services. Prior to 1978, they did not receive compensation for their services nor did they receive re-imbusement for their actual expenses.

On page 38, the report indicates that the Board has the ability to levy fines. The advice received from the Assistant Attorney's General who serve our Board has always been that the statute allowed us to suspend or revoke licenses, but we could not levy fines. The Board, upon determining that a person was engaged in the practice of optical dispensing without a license was required to refer the case to the prosecuting officer of the city or county wherein jurisdiction resided. See A.R.S. § 32-1698.

The report, on page 39, states that the Board did not discipline a single dispensing optician as the result of 51 consumer complaints during the period from 1976 through 1980. In none of those cases did the Board determine that discipline was warranted. Most of the consumer complaints dealt with matters beyond the control of the dispensing optician, such as poor service from the laboratory resulting in a long delay in delivering the eyewear. In cases where it was alleged that the dispensing optician was at fault, the Board either found that the optician had done nothing wrong, or the Board was able to negotiate a settlement between the parties to the satisfaction of the complainant. The Board feels that its mandate to protect the rights of the consumer has been carefully followed, and is proud of its record of settlement of consumer complaints.

It should be noted that during 1981 the Board took action on the two most serious complaints it ever received, and each of these complaints resulted in the suspension of licenses for the dispensing opticians involved.

On page 42, it appears that the Board imposed a \$56 fine upon an individual for dispensing without a license. This case was referred to a city court, as required by Section 32-1698, and the court levied the fine, not the Board.

The report states that the Board, in 20 cases, did not conduct an investigation to determine if the licensee had provided substandard or incompetent service. The Board denies this statement, and states that it investigated each and every complaint brought to its attention, allocating its time to each complaint based on the severity of the complaint.

Case I, page 43, states that the Board did not conduct an investigation. A review of the minute book and the complaint file in this case reveals that on May 8, 1980 a formal hearing was held, to determine if the license of the dispensing optician involved should be suspended or revoked. After hearing testimony from all parties, the Board found that the licensee had not violated the dispensing opticians statute.

Case II, pages 44 and 45 was indeed investigated by the Board, and the matter successfully resolved to the satisfaction of the complainant, who wrote "... I have just received a check for the sum involved, \$31.50 ..." "This is a distinct relief for me, so believe me indeed grateful for what you have done in my behalf." The Board's investigation determined that no further action was warranted.

Case III, pages 45 and 46. The Board felt that the only complaint was that the eyeglasses had not been delivered in time for the customer to take them on vacation; therefore, the customer refused to accept them. Since the company involved returned the customer's money, the Board felt there was no need for a further investigation.

Case IV, pages 46 through 50. On page 49 it states the Board did not respond to the city prosecutor's request for additional information. The information requested was provided directly by one of the Board members, so no copy of the reply was available in the record. The reason for the long delay in filing the action was inactivity on the part of the Attorney General's office, as the Board had requested their assistance in drawing up the complaint. Regarding the comments on page 50, the Board did investigate the actions of the former employee, at the formal hearing on May 8, 1980. It was determined that the licensed dispensing optician did not violate the statute or the Rules, since the Rule in question became effective after the date of the incident.

Mr. Douglas R. Norton, CPA
September 11, 1981
Page 9

The complainant in this case left the area, and all attempts to reach her met with failure. Since we could not reach the complainant, and since the statute of limitations regarding the complaint had expired, the Board had no choice but to consider the matter closed. It was not ignored.

Page 50 also contains reference to fines which the report indicates should have been levied by the Board. It is our understanding that we do not have the statutory power to levy fines, as mentioned before in this reply.

On page 51 it is stated that the Board did not adequately investigate complaints. The Board has had limited funds with which to hire an investigator, and has hired outside investigators only when it was absolutely necessary. All complaints were investigated by the Board, using whatever method seemed appropriate for that particular case. We feel the duties outlined by the Legislative Council have been followed by our Board, even though our minutes may not reflect all that we have done.

Finding IV relates to statutory changes recommended by the auditors. The Board is in agreement, in general, with the recommendations at the end of this portion of the report. There has not been sufficient time to study each of the recommendations, but there is general agreement among members of the Board that our statute needs to be changed, along lines suggested in this report.

Finding V relates to the Board's practice of granting licenses by reciprocity with other states. Throughout this finding, the report refers to the word "comity", while the Board has always used the word "reciprocity". The auditors reported that they used the word comity based upon an opinion from Legislative Council regarding section 32-1683.6.(a). However, the Board feels that the fact that the word "reciprocity" is specifically mentioned in Section 32-1682.D, it is proper to license people by reciprocity as opposed to comity. This explains the actions of the Board in past years.

The fact that Georgia no longer allows dispensing opticians to fit contact lenses, therefore making that state ineligible for reciprocity, was just brought to our attention. The Board will follow-up on this matter, and will grant no more licenses by reciprocity with Georgia until the matter is corrected.

Mr. Douglas R. Norton, CPA
September 11, 1981
Page 10

Regarding unclear records about when comity (reciprocity) between the various states commenced, please refer to the Board's letter of August 7, 1981 regarding the same subject.

Please note that the Board has written to all states which currently license dispensing opticians regarding reciprocity between Arizona and their state. Very few states even bothered to reply to us; therefore, we accept reciprocity with very few states. Pending revision in our statute, required by the Sunset process, should clarify this problem.

The Findings in Section VI are substantially correct, with minor exceptions on page 82 which the auditors have told us will be corrected. The Board acknowledges that its past recordkeeping has not been absolutely perfect, and will strive to do better in the future.

The main findings were caused by requirements not known by the Board, and every effort will be made to correct them in the future.

It should be remembered that the Board is composed of dispensing opticians and lay members, but when it comes to being Board members, we are none of us experts. The Board has continually tried to do the very best job possible, and many of the problems listed in this report will be corrected in future years.

The Board feels it has given adequate notice to members of its profession, but agrees that this is an area where improvements can be made as suggested in Findings VII. The Board will send a notice of the schedule of meetings for the following year to each licensed dispensing optician with the annual renewal notices. In addition, the Board will request that the Arizona Association of Dispensing Opticians include notice of coming Board meetings with its monthly publication.

In conclusion, the Board of Dispensing Opticians feels that this report has, for the most part, been very helpful for the Board. With the exception of the items in this report, we found the audit to be very thorough and very fair. The auditors at all times conducted themselves in an outstanding manner; they were always very polite and readily listened to our explanations. In addition, every request for more information from our Board met with willing and even enthusiastic responses from the auditors. We feel this

Mr. Douglas R. Norton, CPA
September 11, 1981
Page 11

report will help the Board fulfill its duties to the people of
the State of Arizona in future years.

Sincerely,



R. L. Drinen
Board Member

RLD:cf

cc: Dispensing Opticians Board Members

WHY OPTICIANS SHOULD BE LICENSED

Prepared and Distributed by

The Opticians Association of America
1250 Connecticut Avenue, N.W.
Washington, D.C. 20036

NOTE: Added to response upon request of the Board.

Background

Dispensing opticians have for over one hundred years fitted the prescriptions of physicians for eyeglasses and spectacles, and later, the prescriptions of physician-ophthalmologists and optometrists for eyeglasses and optical devices including contact lenses. The optician's function has always included the adaptation and fitting of what he dispenses.

The opticians has always devoted his specialized knowledge and skill to the design, preparation, verification, fitting and dispensing of eyewear upon prescription only. Dispensing opticians do not measure the eye to determine refractive error and have no desire to do so.

The optician, in the broadest sense, may be considered as an allied health worker who adapts and fits such eyeglasses and optical devices, including contact lenses, as a physician or optometrist prescribes for a person. The position of the opticians is that they should be allowed to continue to assist the physician or the optometrist as they have over the years.

Until relatively recently, opticians have been permitted to perform these functions without interference or objection from other groups. Nor had any tangible evidence ever been presented that dispensing opticians have harmed the public in any way by carrying out these traditional functions.

Opticians Functions Being Threatened
in Many States

Since 1954, organized optometry has been engaged in a concerted effort -- through state legislation, administrative regulations and litigation -- not only to prevent opticians from dispensing contact lenses but also from performing many of the more traditional functions associated with conventional eyeglass dispensing. A few examples should suffice to illustrate the magnitude and scope of these initiatives and optometry's determination to eliminate opticians as independent dispensers of corrective eyewear.

State Legislative Initiatives

In 1975, optometry introduced a bill in the Maryland legislature that would have, had it been enacted, amended the statutory definition of optometry in such a way as to prohibit opticians from dispensing contact lenses when ordered by ophthalmologists, a service which Maryland opticians have been performing safely and effectively for more than forty years.

In an even broader attack in Ohio, last year optometry tried to redefine its scope of practice so as to restrict the design, fitting and adapting of (all) vision correcting procedures or devices to licensed optometrists.

A similar attempt to put opticians out of the contact lens business in South Dakota was defeated by that state's legislature earlier this year.

Administrative Restrictions

Optometry's determination to restrict and eliminate opticians as a competitive element in the nation's eyewear delivery system is vividly depicted in the South Dakota example cited above. When the state legislature defeated optometry's efforts to legislate opticians out of the contact lens business, optometry carried its fight to the State Board of Examiners in Optometry. Shortly after the legislature adjourned, the Optometry Board announced plans to promulgate a rule that would make the taking of measurements needed to design, manufacture, and dispense contact lenses the practice of optometry. With the help of the state medical society, opticians succeeded in postponing the proposed rulemaking.

Opticians and physicians have been less successful in other states. In Ohio, for example, optometry persuaded the State Attorney General to issue an opinion in January 1971 that read:

It is my opinion...that an optician or other lay person lacks the authority...to make any determination concerning whether or not a person may be fitted with glasses or contact lenses, to prescribe lenses and to fit glasses to the eyes in any manner other than by frame bending, and to alter or in any way change the prescription given by a licensed optometrist or physician.

Litigation

Where optometry has been unable to legislate or regulate opticianry out of business, it invariably tries to litigate it out of business by claiming that the services of an optician infringe upon the practice of optometry. In a number of cases, this claim has been supported, not on the basis of

evidence of harm but strictly on the merits of a strained interpretation of statutory language contained in state optometric practice acts. Accordingly, the ability of qualified opticians to dispense contact lenses on prescription from ophthalmologists has been severely restricted in such jurisdictions as Missouri (State of Missouri and State Board of Optometry v. Dale Curteman); Illinois (People ex rel Watson v. House of Vision); and Pennsylvania (Pennsylvania Optometry Association, Inc. v. F.P. DiGiovanni).

The lengths to which optometry will go to achieve its ends through strained interpretations of statutory language is nowhere more clearly illustrated than in the following colloquy between Senator Glen Yarborough and a former President of the American Optometric Association, H. Judd Chapman, O.D., at hearings before a U.S. Senate Subcommittee.

Senator Yarborough: But both the optometrist and ophthalmologist and oculist all fit glasses, all 3?

Dr. Chapman: Yes sir. That is correct.

Senator Yarborough: And the optician is not supposed to fit glasses.

Dr. Chapman: No, sir. He is not permitted to fit; his training is in the crafts, his training is not in the eye itself. It is the optician who fabricates the materials which are utilized to correct the eye.

Senator Yarborough: Are the laws of all states adequate to prohibit the optician from fitting glasses?

Dr. Chapman: Yes, sir. I believe they are.

Opticians know the meaning of Dr. Chapman's answers and readily admit that fitting glasses --- in the sense of determining what lenses a person needs -- is not part of their practice. On the basis of both the law and general usage in the optical field, however, it is presumptive, confusing and unfair to suggest that the optician does not and is not supposed to fit glasses or con-

tact lenses.

And if that were not enough -- optometry even presented testimony on behalf of an amendment to the D.C. Optometry law in 1966 that would have required an individual to secure a written prescription from a physician or an optometrist before an optician would be authorized to replace a broken frame!

Who Will Benefit from Opticians Licensure?

The legal right of opticians to perform the functions that constitute ophthalmic dispensing and concomitant requirements that individuals meet certain standards of competence in order to qualify for a license are currently reflected in the laws of only 20 states. In the absence of such statutory recognition, dispensing opticians are particularly vulnerable to undue interference and infringement from optometry and to allegations that "anyone can hang out a shingle and sell eyeglasses." In the absence of such statutory safeguards, ophthalmologists may also be justifiably reluctant to release their prescriptions, particularly if the prescription is complex.

In the face of increasing public demands for more and better eyewear and increasing efforts by optometry to limit the terms and conditions under which unlicensed persons can dispense eyeglasses and contact lenses, three groups stand to benefit from the licensing of dispensing opticians.

In the first place, persons in need of vision correction in 30 states and the District of Columbia will be provided more assurances than presently exist that the dispensing opticians will be qualified by training and experience to fill prescriptions for corrective eyewear.

In the second place, ophthalmologists and optometrists who release their prescriptions will also be more confident that the finished pair of eyeglasses or contact lenses will obtain the prescribed optical correction.

And finally, qualified dispensing opticians will be protected from unwarranted interference from optometry and undue infringement by persons who lack the qualifications needed to dispense safely and effectively.

To insure that opticians licensing legislation will be in the best interests of all concerned, the Opticians Association of America has developed a Model Ophthalmic Dispensing Act suitable for use by state associations that elect to seek enactment of such legislation. The model act has been designed in such a way as to minimize opposition from within opticianry itself and at the same time to overcome the criticisms that are being leveled at occupational licensing by public and private organizations, including the Department of Health, Education and Welfare and the American Medical Association.

The objectives of the Model Bill are:

- to obtain legal recognition for the functions that constitute ophthalmic dispensing
- to establish national standards of competence for persons who wish to dispense eyeglasses and contact lenses
- to require continuing education as precondition for licensure renewal at periodic intervals
- to insure impartial administration of the enabling legislation and minimize unnecessary interference in the competitive marketplace for corrective eyewear.

Such legislation is the only way, or so the courts have been telling us, that the optician's ability to perform the functions that constitute ophthalmic dispensing can be protected.

APPENDIX I

MEMORANDUM FROM THE ARIZONA LEGISLATIVE COUNCIL
REGARDING COURT CASES RELATED TO HARM CAUSED BY
DISPENSING OPTICIANS - NOVEMBER 21, 1980

ARIZONA LEGISLATIVE COUNCIL

MEMO

November 21, 1980

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-80-57)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated November 4, 1980. No input was received from the attorney general concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 32-1673 directs the state board of dispensing opticians (hereinafter the board) to "prescribe and enforce rules and regulations . . . which help to assure the competency of dispensing opticians and prevent conduct on their part which would tend to do harm to the visual health of the public."

QUESTIONS PRESENTED:

1. What sanctions are available to the board in the case of a licensee who dispenses spectacles of poor quality, when the possibility of actual "harm to the visual health of the public" may be limited or nebulous, but the occurrence of incompetence and/or unprofessional conduct remains?

2. What sanctions are available to the board in the case of a licensee who dispenses contact lenses of poor quality, when the possibility of "harm to the visual health of the public" is more readily apparent?

3. Has any legal precedent of physical harm from incompetent opticians occurred, either in Arizona or nationwide? If so, what were the circumstances?

ANSWERS:

See discussion.

DISCUSSION:

1. and 2. The sanctions available to the board in either of the cases set forth above are the same. A.R.S. section 32-1696 states that:

It is unlawful:

* * *

9. To fraudulently, dishonestly, illegally or unprofessionally conduct the practice of optical dispensing or engage in any conduct in such practice which would tend to do harm to the visual health of the public.

A.R.S. section 32-1699 provides that:

When in the judgment of the board any person has engaged in any act or practice which constitutes a violation of this chapter or the rules, regulations or standards promulgated pursuant to this chapter, the board may make application to the appropriate court for an order enjoining such acts or practices. Injunctive relief pursuant to this section is in addition to any other remedy prescribed by law.

A.R.S. section 32-1684, subsection A imposes an affirmative duty upon the board to investigate the qualifications of a licensee who submits a renewal application to it for approval. In addition to injunctive relief, A.R.S. section 32-1693 provides that:

A. The board may deny the application of any person who fails to meet the qualifications prescribed by this chapter or the rules and regulations adopted by the board, and may suspend or revoke the license of any person who violates any provision of this chapter or the rules and regulations of the board.

In all cases, the degree of potential harm to the visual health of the public will be a relevant factor which should be considered by the board in determining what, if any, sanctions should be imposed against a licensee. Please note, however, that under A.R.S. section 32-1696, paragraph 9, it is unlawful to either "unprofessionally conduct the practice of optical dispensing or engage in any conduct in such practice which would tend to do harm to the visual health of the public." (Emphasis added.) Therefore, although the actual harm by a licensee to the visual health of the public may be minimal or nebulous, if the licensee is not qualified to engage in the practice of optical dispensing or if the licensee is engaging in unprofessional conduct, the board may take appropriate actions to carry out the provisions of A.R.S. Title 32, chapter 15.1.

3. This office could not locate any cases in which a court was presented with questions regarding the competency of an optician or a cause of action by a person allegedly harmed by the conduct of an optician.

The courts have stated that:

1. The same rules that govern the duty and liability of physicians and surgeons in the performance of professional services are applicable to practitioners of the kindred branches of the

healing profession, such as dentists, and, likewise, are applicable to practitioners such as drugless healers, oculists, and manipulators of X-ray machines and other machines or devices.

The general rule, frequently expressed with a qualification with respect to the locality of practice, . . . is that a physician or surgeon is required, and is only required, to possess and exercise the degree of skill and learning ordinarily possessed and exercised, under similar circumstances, by the members of his profession in good standing, and to use ordinary and reasonable care and diligence, and his best judgment, in the application to his skill to the case. 70 C.J.S. Physicians and Surgeons section 41 (1955).

The above rules would probably be applied by the courts of this state if they were presented with questions regarding the competency of an optician or a cause of action by a person allegedly harmed by the conduct of an optician.

CONCLUSION:

The sanctions available to the board in either the case of a licensee who dispenses spectacles of poor quality and who is incompetent or engaging in unprofessional conduct or who dispenses contact lenses of poor quality include injunctive relief, denial of a renewal application for a license and suspension or revocation of the license of the dispensing optician.

Although no cases were found in which a court was presented with questions regarding the competency of an optician or a claim by a person allegedly harmed by the conduct of an optician, a court of this state could be reasonably expected to apply the general rules governing the duty and liability of health practitioners in the performance of professional services to dispensing opticians.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX II

ARIZONA STATUTES REGARDING DISPENSING OPTICIANRY

CHAPTER 15.1

DISPENSING OPTICIANS

ARTICLE 1. ADMINISTRATION

Sec.

- 32-1671. Definitions.
- 32-1672. Board of dispensing opticians; members; qualifications; terms.
- 32-1673. Rule-making power of board.
- 32-1674. Records.

ARTICLE 2. LICENSING

- 32-1681. License required; issuance by board.
- 32-1682. Applications for license; original and renewal.
- 32-1683. Qualifications of applicants.
- 32-1684. Issuance and renewal of licenses.
- 32-1685. Fees to accompany applications.
- 32-1686. Board of dispensing opticians fund.

ARTICLE 3. REGULATION

- 32-1691. Exemptions of persons, apprentices and sales.
- 32-1692. Hearings; record of proceedings; witnesses.
- 32-1693. Denial, suspension and revocation of license.
- 32-1694. Notice of action; request for hearing; practice pending appeal.
- 32-1695. Judicial review of decision of board; trial de novo; appeal to supreme court.
- 32-1696. Unlawful acts.
- 32-1697. Violations; penalty.
- 32-1698. Prosecution of violations.

Chapter 15.1 was added by Laws 1956, Ch. 32, § 1, effective Aug. 1, 1956.

Termination under Sunset Law

The state board of dispensing opticians shall terminate on July 1, 1982, unless continued. See §§ 41-2362 and 41-2377.

Title 32, Chapter 15.1, relating to dispensing opticians is repealed on January 1, 1983. See § 41-2370.

ARTICLE 1. ADMINISTRATION

For termination under Sunset Law, see italic note, ante.

§ 32-1671. Definitions

In this chapter, unless the context otherwise requires:

1. "Apprentice dispensing optician" means a person engaged in the study of optical dispensing under the instruction and direct supervision of a dispensing optician, physician or optometrist licensed in this state.
2. "An apprenticeship year" means a program of study and service as an apprentice dispensing optician for a time period of at least two thousand hours.
3. "Board" means the state board of dispensing opticians.
4. "Direct supervision" means the provision of direction and control through inspection and evaluation of work by consultation or instruction

as needed, provided that at least one licensed dispensing optician, physician or optometrist works at each optical dispensary on a full-time basis.

5. "Dispensing optician" means any person, except as provided in § 32-1691, who dispenses lenses, contact lenses, frames, artificial eyes, optical devices, appurtenances thereto or parts thereof to the intended wearer on written prescription from a duly licensed physician or optometrist, and in accordance with such prescription interprets, measures, adapts, fits or adjusts the same for the aid or correction of visual or ocular anomalies of the human eye or duplicates, replaces, reproduces or repeats the same without prescription when there is no change in refractive value.

6. "Person" means a natural person. As amended Laws 1979, Ch. 201, § 1, eff. May 2, 1979.

Laws 1979, ch. 201, § 11 provides:
"Notwithstanding the provisions of this act, the legislature intends that if the provisions of title 41, chapter 20 [§ 41-2351 et seq.], Arizona Revised Statutes, operate to terminate any agency, any provisions regarding powers, duties, functions or personnel added or amended by this act terminate on the date of termination of the particular agency."

Cross References
Apprentice dispensing optician, Exempt persons, see § 32-1691.
Qualifications for license, see § 32-1683.
Temporary license, see § 36-1681.
Unlawful acts, see § 32-1696.

§ 32-1672. Board of dispensing opticians; members; qualifications; terms

A. There shall be a state board of dispensing opticians which shall consist of seven members appointed by the governor. Five members of the board shall be licensees in good standing under this chapter. Two members of the board shall be lay persons.

B. Each member shall serve for a term of five years expiring on the first day in January of the appropriate year.

C. The board shall elect from among its membership a chairman and such other officers as it deems necessary, who shall hold their offices at the pleasure of the board.

D. Members of the board are eligible to receive compensation as determined pursuant to § 38-611. As amended Laws 1979, Ch. 201, § 2, eff. May 2, 1979.

For legislative intent regarding termination of provisions added or amended by Laws 1979, ch. 201, see note following § 32-1671.

Laws 1979, ch. 201, § 10 provides:
"Notwithstanding the provisions of § 32-1672, Arizona Revised Statutes, as amended by § 2 of this act, the initial

terms of the two members who are lay persons are:
"1. One term ending on the first day in January, 1983.
"2. One term ending on the first day in January, 1984.
"The governor shall make all subsequent appointments as prescribed by law."

§ 32-1673. Rule-making power of board

The board shall prescribe and enforce rules and regulations, not in conflict with the laws of this state, necessary or advisable to carry out the provisions of this chapter, and which help to assure the competency of dispensing opticians and prevent conduct on their part which would tend to do harm to the visual health of the public.

Added Laws 1956, Ch. 32, § 1.

Notes of Decisions

I. In general

Where legislature by enactment of § 32-1683 dealing with conditions under which licenses were to be issued by board of dispensing opticians prescribed certain experience which might well result in an acquisition of the minimum basic skills necessary for optical dispensing without the additional require-

ment of passing some examination on such subjects at such percentage as the board might choose to designate, rule of board setting forth such additional requirements was void since it entered the legislative field. State Bd. of Dispensing Opticians v. Carp (1959) 85 Ariz. 35, 330 P.2d 996.

§ 32-1674. Records

The board shall keep readily available for inspection a record of all applications for licenses, including a record as to whether a license or renewal license has been issued, and, if revoked or suspended, the date of filing the order of revocation or suspension. It shall maintain a list of all persons who have had a license revoked or suspended, and may keep a written record of all complaints filed against licensees. Each license issued shall be indicated by the serial number thereof and by the name and address of the licensee. The records shall be public records open to inspection.

Added Laws 1956, Ch. 32, § 1.

ARTICLE 2. LICENSING

For termination under Sunset Law, see italic note preceding § 32-1671.

§ 32-1681. License required; issuance by board; temporary apprentice license

A. No person shall practice as a dispensing optician in this state without having a valid and subsisting license issued under the provisions of this chapter.

B. The board shall issue a license to any person who complies with the provisions of this chapter and the rules and regulations adopted by the board. All licenses shall expire at the end of each calendar year, but no license shall be deemed expired while an application for a renewal thereof is pending before the board.

C. An apprentice dispensing optician registered pursuant to this chapter may apply to the board for a temporary license. If the board is satisfied that the applicant meets the requirements established by the board, the board may issue a temporary license. A temporary license so issued shall expire at the time of the next examination succeeding the date of issuance of the license. A temporary license may not be extended or renewed. As amended Laws 1979, Ch. 201, § 3, eff. May 2, 1979.

For legislative intent regarding termination of provisions added or amended by Laws 1979, ch. 201, see note following § 32-1671.

1979 Reviser's Note:

Pursuant to authority of section 41-1394.02, the words "; temporary apprentice license" were added to the heading of this section.

Cross References

Apprentice dispensing optician, Definition, see § 32-1671.
Exempt persons, see § 32-1691.
Qualifications for license, see § 32-1683.
Unlawful acts, see § 32-1696.

§ 32-1682. Applications for license; original and renewal; registration of apprentice

A. Any person desiring to obtain a license to be a dispensing optician shall make an original application to the board upon forms prescribed by it, setting forth verified information to assist the board in the determination of the applicant's ability to meet the requirements of this chapter and the rules and regulations adopted by the board.

B. Any person desiring to secure a renewal of a license to be a dispensing optician shall make a renewal application to the board each year upon forms prescribed by it, setting forth verified information to assist the board in determining that the applicant is not in default of or in violation of the provisions of this chapter and the rules and regulations adopted by the board, and continues to meet the requirements of this chapter.

C. The board shall have the right to require from all applicants any additional information which in its judgment may be necessary to assist the board in determining whether the applicant is entitled to the license.

D. The board shall give a written and practical examination to all applicants, except for applicants who qualify by reciprocity as provided in § 32-1683, paragraph 6, subdivision (a), to assist it in determining whether an applicant has acquired the minimum basic skills required for optical dispensing. The board may prescribe such reasonable rules and regulations relating to the examination of applicants as may be deemed necessary for the performance of its duties.

E. The board shall require that any person desiring to work as an apprentice dispensing optician obtain a certificate of registration. The person shall make an original application to the board upon forms prescribed by it. The apprenticeship shall be deemed to commence on the date of application. The application shall state whether the applicant is beginning employment and, if not, the date employment began for the purpose of obtaining practical experience. The application shall indicate the name of the applicant's employer and whether the employer is a duly licensed physician, optometrist or dispensing optician. The application shall be certified by the employer and the applicant. A fee for registration shall not be required. The board, upon receipt of the application, shall issue a certificate of registration valid at the establishment of the employer. As amended Laws 1979, Ch. 201, § 4, eff. May 2, 1979.

For legislative intent regarding termination of provisions added or amended by Laws 1979, ch. 201, see note following § 32-1671.

1979 Reviser's Note:

Pursuant to authority of section 4-1304.02, the words "registration of apprentice" were added to the heading of this section.

Cross References

Apprentice dispensing optician, Definition, see § 32-1671.
Exempt persons, see § 32-1691.
Qualifications for license, see § 32-1683.
Temporary license, see § 36-1681.
Unlawful acts, see § 32-1696.
Unlawful acts, see § 32-1696.

§ 32-1683. Qualifications of applicants

An applicant for a license issued under this chapter shall:

1. Be a citizen of the United States or have declared his intention of becoming a citizen in accordance with law.
2. Be of good moral character.
3. Not have been convicted of a crime involving moral turpitude.
4. Not be a former licensee under this chapter whose license was suspended or revoked and not subsequently reinstated.
5. Be a high school graduate or the equivalent as prescribed by rules of the board.

6. Establish that he has the required technical skill and training necessary for licensing by any one of the following means:

(a) Submit evidence of having a valid and subsisting license in good standing from another state which licenses dispensing opticians or ophthalmic dispensers, and whose requirements at the time of the issuance of the license were at least substantially equivalent to the requirements of this chapter.

(b) Submit evidence of having served apprenticeship in optical dispensing for three of the six years next prior to the date of application, under the direct supervision of a dispensing optician licensed under this chapter or a physician or optometrist licensed under the laws of this state, the apprenticeship to have included all principal phases of optical dispensing and to have resulted in the applicant's having acquired the minimum basic skills required for optical dispensing. The board may accept a maximum of one thousand hours of alternative optical laboratory experience toward satisfying the apprenticeship requirements if such experience meets the standards established by the board.

(c) Submit evidence of graduation from a school of optical dispensing which presently meets the standards required for approval by a nationally recognized body on opticianry accreditation as determined by the board. In addition, the applicant must have served an apprenticeship in optical dispensing of the kind and character set forth in subdivision (b) of this paragraph for one of the six years next prior to the date of application.

(d) Submit evidence of having been engaged as a dispensing optician or having served as an apprentice to a dispensing optician, a physician or an optometrist in a nonlicensing state for five of the seven years next prior to the date of application, such engagement or apprenticeship to have included all principal phases of optical dispensing and to have resulted in the applicant's having acquired the minimum basic skills required for optical dispensing. As amended Laws 1979, Ch. 201, § 5, eff. May 2, 1979.

For legislative intent regarding termination of provisions added or amended by Laws 1979, ch. 201, see note following § 32-1671.

Cross References

Apprentice dispensing optician, Definition, see § 32-1671.

Exempt persons, see § 32-1691.
Temporary license, see § 36-1681.
Unlawful acts, see § 32-1696.

Law Review Commentaries

Resident aliens employment rights, 19 Ariz. Law Rev. 409 (1977).

§ 32-1684. Issuance and renewal of licenses

A. Within a reasonable time after the receipt of an original application or renewal application, together with the fee required by § 32-1685, the board shall investigate the qualifications of the applicant and, if the applicant meets the qualifications of this chapter and the rules and regulations adopted by the board, the board shall approve the application. If the application is approved, the license shall be issued to the applicant. If the application is disapproved, the applicant shall be notified as provided in § 32-1694, subsection A.

B. Upon application, accompanied by the fee required by § 32-1685, the board shall issue an original license to each person actively engaged as a dispensing optician in this state for one year next preceding the effective date of this chapter, except that licensees under this subsection shall meet the qualifications of § 32-1683, paragraphs 1 through 6. As amended Laws 1979, Ch. 201, § 6, eff. May 2, 1979.

For legislative intent regarding termination of provisions added or amended by Laws 1979, ch. 201, see note following § 32-1671.

§ 32-1685. Fees

The board shall set fees not to exceed the following:

1. Filing an application, no more than one hundred dollars.
2. Issuing an original license, no more than one hundred dollars.
3. Renewing a license, no more than one hundred dollars. Added Laws 1980, Ch. 186, § 2.

Laws 1980, Ch. 186, § 3 provides:
"Notwithstanding the provisions of this act, the legislature intends that if the provisions of title 41, chapter 20 (§ 41-2351 et seq.), Arizona Revised Statutes, operate to terminate an agency, any provisions regarding powers, duties, functions or personnel added or amend-

ed by this act terminate on the date of termination of the particular agency."
Former § 32-1685 was repealed by Laws 1980, Ch. 186, § 1.

Library References
Physicians and Surgeons ⇨ 5(1).
C.J.S. Physicians and Surgeons § 6 et seq.

§ 32-1686. Board of dispensing opticians fund

A. All monies received by the board shall be paid to the state treasurer monthly. The state treasurer shall deposit ten per cent of such monies in the general fund and ninety per cent in the board of dispensing opticians fund.

B. Monies deposited in the board of dispensing opticians fund shall be subject to the provisions of § 35-143.01. As amended Laws 1977, Ch. 82, § 18, eff. May 23, 1977.

For legislative intent as to Laws 1977, Ch. 82, see note following § 3-375.

ARTICLE 3. REGULATION

For termination under Sunset Law, see italic note preceding § 32-1671.

§ 32-1691. Exemptions of persons and sales

This chapter shall not apply to:

1. Any physician or optometrist duly licensed to practice under the laws of this state.
2. Any person working under the direct supervision of a physician, optometrist or dispensing optician duly licensed to practice in this state, so long as the person is working exclusively for the licensed physician, optometrist or dispensing optician and does not hold himself out to the public as a dispensing optician or apprentice dispensing optician.
3. The sale of goggles, sunglasses, colored glasses or occupational protective eye devices, if they do not have refractive values.
4. The sale of complete ready-to-wear eyeglasses, toys, binoculars or scientific instruments as merchandise. As amended Laws 1979, Ch. 201, § 7, eff. May 2, 1979.

For legislative intent regarding termination of provisions added or amended by Laws 1979, ch. 201, see note following § 32-1671.

Cross References
Apprentice dispensing optician, Definition, see § 32-1671.
Qualifications for license, see § 32-1683.
Temporary license, see § 36-1681.
Unlawful acts, see § 32-1696.
Unlawful acts, see § 32-1696.

§ 32-1692. Hearings; record of proceedings; witnesses

A. Hearings before the board shall be conducted according to the rules and regulations adopted by the board.

B. A record of the proceedings shall be kept but need not be transcribed unless the decision is appealed or a transcript is requested by an interested party. In either event, the applicant or licensee shall bear the cost of transcription.

C. Witnesses may be subpoenaed by either party to the hearing and shall be entitled to the fees and mileage allowed a witness in civil cases.

Added Laws 1956, Ch. 32, § 1.

§ 32-1693. Denial, suspension and revocation of license

A. The board may deny the application of any person who fails to meet the qualifications prescribed by this chapter or the rules and regulations adopted by the board, and may suspend or revoke the license of any person who violates any provision of this chapter or the rules and regulations of the board.

B. Suspension of license shall be for a time certain but shall not be for longer than one year.

C. No person whose license shall have been revoked shall be permitted to again become a licensee under the terms of this chapter for two years. Reapplication for a license after revocation shall be made in the same manner as the application for an original license.

Added Laws 1956, Ch. 32, § 1.

Library References

Physicians and Surgeons ⇐11.2.

C.J.S. Physicians and Surgeons § 17.

§ 32-1694. Notice of action; request for hearing; practice pending appeal

A. When the board denies, suspends or revokes a license, it shall send notice of its action by registered mail to the applicant or licensee concerned, setting forth the reasons for the action taken.

B. Within thirty days after the date of the notice, the applicant or licensee may give written notice of his request for a hearing, and a hearing, at which the applicant or licensee shall have the right to present evidence, shall be held before the board. The board shall render its decision on the basis of the evidence presented and shall send a copy thereof by registered mail to the applicant or licensee.

C. If the applicant or licensee does not give written notice of his request for a hearing within thirty days of the date of the notice from the board, the decision of the board after the expiration of the thirty day period shall be final.

D. No applicant for original license may practice as a dispensing optician during the pendency of an appeal from a decision of the board. No licensee whose license is revoked or suspended or whose renewal application is refused by the board shall be denied the right to practice during the pendency of any appeal from a decision of the board.

Added Laws 1956, Ch. 32, § 1.

Library References

Physicians and Surgeons ☞11.3(1 to 5). C.J.S. Physicians and Surgeons § 18.

Notes of Decisions

I. In general

Subd. D of this section did not act as an automatic stay of execution of peremptory writ of mandamus to compel board to license petitioners to practice as dispensing opticians inasmuch as there was no appeal from board's action. *Carp v. Superior Court In and For Maricopa County* (1958) 84 Ariz. 161, 325 P.2d 413.

Where trial court issued peremptory writ of mandamus directing board of dispensing opticians to issue licenses to certain dispensing opticians and board

appealed from judgment but failed to obtain stay of execution, trial court had jurisdiction, notwithstanding appeal, to exercise discretion as to whether it should by formal order stay execution of its judgment and peremptory writ of mandamus or grant petitioners' application for an order to show cause and conduct a hearing thereon to determine whether board should be held in contempt for failure to comply with writ and trial court should have exercised that jurisdiction. *Id.*

§ 32-1695. Judicial review

Decisions of the board shall be subject to judicial review pursuant to title 12, chapter 7, article 6.¹ Added by Laws 1980, Ch. 231, § 51.

¹ Section 12-901 et seq.

For purpose of Laws 1980, Ch. 231, see note following § 3-104.
Former § 32-1695 was repealed by Laws 1980, Ch. 231, § 50.

Library References

Physicians and Surgeons ☞11.3(5).
C.J.S. Physicians and Surgeons § 18.

§ 32-1696. Unlawful acts

It is unlawful:

1. To practice as a dispensing optician without having a valid and subsisting license issued pursuant to this chapter, except as provided by § 32-1691, paragraphs 1 and 2. However, nothing in this chapter shall be deemed to prohibit the corporate form of organization provided the person actively in charge of the establishment be a licensee hereunder or a person registered pursuant to § 32-1682 from practicing as an apprentice dispensing optician.

2. To fraudulently procure a license.

3. To hire, procure or induce a person not licensed to practice as a dispensing optician, except as provided by § 32-1682, subsection E.

4. To give, pay or receive, or offer to give, pay or receive, directly or indirectly, any gift, premium, discount, rebate or remuneration to or from any physician or optometrist in return for the referral of patients or customers.

5. To engage in false or misleading representations or advertising. All advertising must conform with the provisions of § 44-1481.

6. To advertise or furnish any examination or treatment of the eye.

7. To advertise the furnishing of or furnish, directly or indirectly, the services of a physician or optometrist, but it is not unlawful to recommend the services of a physician or optometrist.

8. To make use of any advertising statement of a character tending to indicate to the public superiority of any particular system or type of eye-sight examination or treatment over that provided by other licensed ocular practitioners.

9. To fraudulently, dishonestly, illegally or unprofessionally conduct the practice of optical dispensing or engage in any conduct in such practice which would tend to do harm to the visual health of the public. As amended Laws 1979, Ch. 201, § 8, eff. May 2, 1979.

For legislative intent regarding termination of provisions added or amended by Laws 1979, ch. 201, see note following § 32-1671.

Cross References

Apprentice dispensing optician.
Definition, see § 32-1671.
Exempt persons, see § 32-1691.
Qualifications for license, see § 32-1683.
Temporary license, see § 36-1681.

§ 32-1697. Violations; classification

The practice of optical dispensing without a valid and subsisting license is a petty offense. As amended Laws 1978, Ch. 201, § 555, eff. Oct. 1, 1978.

For application of Laws 1978, Ch. 201, effective October 1, 1978, see note following § 1-215.

For effective date provision of Laws 1978, Ch. 201, see note following § 1-215.

Cross References

Classification of offenses, see § 13-601 et seq.

Fines, see § 13-801 et seq.

§ 32-1698. Prosecution of violations

The prosecuting officer of a county or city shall prosecute all violations of this chapter occurring within his jurisdiction by persons who do not have a valid and subsisting license issued under the provisions of this chapter.

Added Laws 1956, Ch. 32, § 1.

§ 32-1699. Enforcement powers of the board

When in the judgment of the board any person has engaged in any act or practice which constitutes a violation of this chapter or the rules, regulations or standards promulgated pursuant to this chapter, the board may make application to the appropriate court for an order enjoining such acts or practices. Injunctive relief pursuant to this section is in addition to any other remedy prescribed by law. Added Laws 1979, Ch. 201, § 9, eff. May 2, 1979.

For legislative intent regarding termination of provisions added or amended by Laws 1979, ch. 201, see note following § 32-1671.

APPENDIX III

BOARD OF DISPENSING OPTICIANS RULES AND REGULATIONS

CHAPTER 20

BOARD OF DISPENSING OPTICIANS

(Authority: A.R.S. § 32-1671 et seq.)

ARTICLE 1. IN GENERAL

Sec.

- R4-20-01. Original applications.
- R4-20-02. Examinations.
- R4-20-03. Renewals.
- R4-20-04. Definitions.
- R4-20-05. Continuing education.
- R4-20-06. Rehearing or review of decision.
- R4-20-07. Hearing procedures.
- R4-20-08. Request for hearing.

ARTICLE 1. IN GENERAL

R4-20-01. Original applications

Each application for license or application for admission to examination must be accompanied by:

1. The appropriate fee as prescribed in A.R.S. §§ 32-1685A and 32-1685B in the form of a money order or certified or cashier's check payable to the Arizona State Board of Dispensing Opticians.
2. Three letters vouching for the fact that applicant is of good moral character.
3. At least two letters from physicians, optometrists or other dispensing opticians vouching for applicant's competency and reputation.
4. Photograph of applicant no smaller than 4x5 centimeters taken not more than six months next prior to the date of application.
5. Properly executed affidavit.

Historical Note

Former Rule I; Amended eff. Aug. 9, 1977 (Supp. 77-4). Amended eff. Dec. 14, 1979 (Supp. 79-6).

R4-20-02. Examinations

A. All applicants for licensure pursuant to A.R.S. § 32-1682D as amended 1958 whose applications have been approved by the Board shall be given an examination by the State Board of Dispensing Opticians such as will help the Board to determine whether they have acquired the minimum basic skills required for optical dispensing.

B. The examination will be divided into a written section and a practical

section. The subjects to be covered are as follows:

1. Ocular anatomy, physiology and anomalies.
2. Geometric optics,
3. Ophthalmic laboratory,
4. Contact lenses, and
5. Practical.

The practical shall consist of measuring optical devices such as eye glasses and contact lenses, interpupillary distance and corneal curvature.

C. Such examinations shall be given not less than twice each year. All applications must be received by the Board forty-five (45) days prior to the date of the examination. Applicants whose applications have been approved will be notified at least two weeks prior to the date of the examination as to the time and place of the examination.

D. Applicants shall not be permitted to bring books, notes, slide rules, or other aids into the examination room, nor to communicate by any means whatsoever with other applicants while the examination is in progress, unless said applicant first secures the express permission of the presiding examiner, nor will an applicant be allowed to leave the examination room unless he first secures the permission of said presiding examiner. Violations of the rule shall terminate all rights of applicant to continue the examination.

E. At least two members of the Board shall, at all times, be in the examination room. No persons except applicants, Board members, employees of the Board or persons having the express permission of the Board shall be permitted in the examination rooms while the examination is in progress.

F. When the examination papers are delivered to the presiding examiner they become the property of the Board and shall not be returned to the applicant nor to any unauthorized person.

G. Should an appeal be taken by a candidate said examination papers must be preserved in their entirety by said Board until their production is requested by the proper authority or the appeal is terminated.

H. For passing the examination, a grade of not less than 75% must be achieved on each of the four subjects covered by the written section of the examination and a like grade on the practical section thereof. Failure to pass an examination shall not debar an applicant from participating in a subsequent examination or examinations. Such subsequent examination or examinations may be confined to the subject or subjects in the examination upon which the applicant failed to secure a passing grade.

I. If any applicant fails to pass the standard examination, he or she shall, after a minimum period of six (6) months and prior to eighteen (18) months from the date of said failure, be permitted to take a second examination in those subjects failed without the payment of any additional fee.

J. Each subsequent examination after the second failure will be permitted only after filing an original application and payment of the appropriate fee for such original application. Subsequent examinations after the second failure shall be on the subjects failed.

Historical Note

Former Rule II; Amended eff. Dec. 14, 1979 (Supp. 79-6).

R4-20-03. Renewals

Each dispensing optician shall notify the Arizona State Board of Dispensing Opticians of change in place of employment as well as change in personal mailing address within 30 days of such movement.

Historical Note

Former Rule III; Amended eff. Aug. 9, 1977 (Supp. 77-4). Amended eff. Aug. 7, 1978 (Supp. 78-4). Amended eff. Dec. 14, 1979 (Supp. 79-6).

R4-20-04. Definitions

A. The Board may permit applicant to take written portion of the Board examination pending receipt of the verified information required by A.R.S. § 32-1682.

B. If a written prescription from a fully licensed physician or optometrist does not contain approval for contact lenses, the dispensing optician shall first obtain such approval from a physician or optometrist prior to the fitting of contact lenses.

C. All licenses or temporary licenses shall be displayed in public view.

D. If applicant is not a high school graduate, he must possess a certificate of equivalency of a high school education.

E. Any person applying for a temporary license under A.R.S. § 32-1681.C. must fulfill all requirements set forth in A.R.S. §§ 32-1682.A., 32-1683, and 32-1685.A., B., and D.

F. Laboratory experience set forth in A.R.S. § 32-1683.6.B. will consist of any duties directly involved in the production process. Duties which are strictly clerical are excluded from these provisions.

G. The nationally recognized body on opticianry accreditation set forth in A.R.S. § 32-1683.6.C. is the American Board of Opticianry.

Historical Note

Adopted eff. Aug. 9, 1977 (Supp. 77-4). Amended eff. Dec. 14, 1979 (Supp. 79-6).

R4-20-05. Continuing education

A. The Arizona State Board of Dispensing Opticians shall require for renewal

of license, as of December 31, 1977 and yearly thereafter, proof of continuing education.

B. Five classroom hours relating to the practice of dispensing opticianry, as defined in A.R.S. § 32-1671, shall be required annually.

C. Upon application for renewal of licensing annually, the licensee shall provide to the Board proof of continuing education. The information submitted to the Board should include the following:

- Date
- Name of instructor
- Subject matter
- Actual clock hours of instruction time
- Certification by instructor or officer of sponsoring group.

D. The Board may waive the continuing education requirement for an individual licensee upon application showing good cause.

Historical Note

Adopted eff. Aug. 9, 1977 (Supp. 77-4).

R4-20-06. Rehearing or review of decision

A. Except as provided in Subsection G., any party in a contested case before the Arizona State Board of Dispensing Opticians who is aggrieved by a decision rendered in such case may file with the Arizona State Board of Dispensing Opticians, not later than ten (10) days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this Subsection a decision shall be deemed to have been served when personally delivered or mailed by certified mail to the party at his last known residence or place of business.

B. A motion for rehearing under this Rule may be amended at any time before it is ruled upon by the Arizona State Board of Dispensing Opticians. A response may be filed within ten (10) days after service of such motion or amended motion by any other party. The Arizona State Board of Dispensing Opticians may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.

C. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:

1. Irregularity in the administrative proceedings of the agency or its hearing officer or the prevailing party, or any order or abuse of discretion, whereby the moving party was deprived of a fair hearing;
2. Misconduct of the Arizona State Board of Dispensing Opticians or its hearing officer or the prevailing party;
3. Accident or surprise which could not have been prevented by ordinary prudence;

4. Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original hearing;

5. Excessive or insufficient penalties;

6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing;

7. That the decision is not justified by the evidence or is contrary to law.

D. The Arizona State Board of Dispensing Opticians may affirm or modify the decision or grant a rehearing to all or any of the parties and on all or part of the issues for any of the reasons set forth in Subsection C. An order granting a rehearing shall specify with particularity the ground or grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.

E. Not later than ten (10) days after a decision is rendered, the Arizona State Board of Dispensing Opticians may on its own initiative order a rehearing or review of its decision for any reason for which it might have granted a rehearing on motion of a party. After giving the parties or their counsel notice and an opportunity to be heard on the matter, the Arizona State Board of Dispensing Opticians may grant a motion for rehearing for a reason not stated in the motion. In either case the order granting such a rehearing shall specify the grounds therefor.

F. When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may within ten (10) days after such service serve opposing affidavits, which period may be extended for an additional period not exceeding twenty (20) days by the Arizona State Board of Dispensing Opticians for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted.

G. If in a particular decision the Arizona State Board of Dispensing Opticians makes specific findings that the immediate effectiveness of such decision is necessary for the immediate preservation of the public peace, health and safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing, any application for judicial review of the decision shall be made within the time limits permitted for applications for judicial review of the Arizona State Board of Dispensing Opticians final decisions.

H. For purposes of this Section the terms "contested case" and "party" shall be defined as provided in A.R.S. § 41-1001.

I. To the extent that the provisions of this Rule are in conflict with the provisions of any statute providing for rehearing of decisions of Arizona State Board of Dispensing Opticians, such statutory provisions shall govern.

Historical Note

Adopted eff. Aug. 9, 1977 (Supp. 77-4).

R4-20-07. Hearing procedures

A. **Hearings:** A license shall be denied, revoked or suspended only after due notice and only after hearing before the Board. Failure to appear at a hearing duly noticed shall leave the Board free to act upon the evidence and other information at hand without further notice to the licensee. If the Board finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. Such proceedings shall be promptly instituted and determined.

B. **Notice of hearing:** Notice shall be given to all parties to the proceedings at least twenty (20) days prior to the date set for the hearing. The notice shall include:

1. A statement of the time, place and nature of the hearing;
2. A statement of the legal authority and jurisdiction under which the hearing is to be held;
3. A reference to the particular sections of the Statutes and Rules involved;
4. A short and plain statement of the matters asserted.

If the Board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished.

C. **Opportunity to respond:** Opportunity shall be afforded all parties to respond and present evidence and argument on all issues involved. Copies of documentary evidence may be received in the discretion of the presiding officer. Upon request, parties shall be given an opportunity to compare the copy with the original.

D. **Informality:** A hearing may be conducted in an informal manner and without adherence to the Rules of Evidence required in judicial proceedings. A decision or order of the Board must be supported by substantial, reliable, and probative evidence. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Every person who is a party to such proceedings shall have the right to be represented by counsel to submit evidence in open hearing and shall have the right of cross examination. All witnesses shall testify under oath.

E. **Informal disposition:** Informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default.

F. **The record:** The record in a contested case shall include:

1. All pleadings, motions, interlocutory rulings.
2. Evidence received or considered.
3. A statement of matters officially noticed.
4. Objections and offers of proof and rulings thereon.
5. Proposed findings and exceptions.

6. Any decisions, opinion or report by the officer presiding at the hearing.

7. All staff memoranda, other than privileged communications, or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

G. Judicial notice: Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. The parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed, including any staff memoranda or data and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

H. Subpoenas: The officer presiding at the hearing may cause to be issued subpoenas for the attendance of witnesses and shall have the power to administer oaths.

Historical Note

Adopted eff. Mar. 20, 1978 (Supp. 78-2). Amended eff. Aug. 7, 1978 (Supp. 78-4).

R4-20-08. Request for hearing

Any party aggrieved by any Board decision may request a hearing before the Board. Said hearing, if granted, shall be conducted in accordance with the hearing procedures outlined in Rule R4-20-07.

Historical Note

Adopted eff. Aug. 7, 1978 (Supp. 78-4).

APPENDIX IV

MEMORANDUM FROM THE ARIZONA LEGISLATIVE COUNCIL
REGARDING EXAMINATION PRACTICES - MAY 20, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

May 20, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-45)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated May 15, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

Our review of the examination procedures followed by the board of dispensing opticians (board) revealed several discrepancies in grading, namely:

1. Answers to questions originally marked incorrect by the board were later marked as correct, resulting in as many as four out of a possible five response choices being correct for one question. This practice was contrary both to the examination keys and to the opinion of a professor of ophthalmology from the University of Arizona, whom we consulted to determine correct answers to these questions. Further, this grading practice allowed eleven individuals to pass examination sections they otherwise would not have passed.

2. The grading practice described in Item 1 was not applied equitably to all applicants. In other words, credit was not given to all applicants who responded similarly to the same questions. This inequitable grading practice precluded three individuals from passing examination sections they otherwise would have passed.

3. Original grading did not coincide with examination keys in several instances, resulting in one applicant passing an examination the applicant otherwise would not have passed.

QUESTION PRESENTED:

What effects, if any, regarding: 1) license validity, or 2) proper use of board discretion, occur as a result of these grading practices?

ANSWER:

Traditionally, the state has required a license for the practice of certain occupations which affect the public interest. A common requisite for the issuance of a license has been the passage of an examination designed to test competency and proficiency. The possession of a license from the state is a sign of protection to those members of the public who have prospective dealings with the licensed professional. Arizona follows this traditional scheme of examining and licensing dispensing opticians

prior to their contact with the general public. Arizona Revised Statutes (A.R.S.) section 32-1682, subsection D provides that:

The board shall give a written and practical examination to all applicants, except for applicants who qualify by reciprocity as provided in section 32-1683, paragraph 6, subdivision (a), to assist it in determining whether an applicant has acquired the minimum basic skills required for optical dispensing. The board may prescribe such reasonable rules and regulations relating to the examination of applicants as may be deemed necessary for the performance of its duties.

The board has prescribed, by rule, procedures for examination of applicants. A.C.R.R. R4-20-02.

A state cannot exclude a person from the practice of an occupation in a manner, or for a reason, that contravenes the due process clause of the Fourteenth Amendment. Schwartz v. Bd. of Bar Exam., 35 U.S. 232, 77 S. Ct. 752, 1 L. Ed. 2d 796 (1957); Article 11, section 4, Constitution of Arizona.

The board as the administrator of the examination and licensing process has the responsibility to administer examinations to ensure the fair and consistent application of examination requirements. Fundamental fairness dictates that credit be extended to all applicants who responded similarly to the same questions. The fact situation described clearly raises issues of violation of due process.

Similarly, equal protection requires that different treatment of persons similarly situated be justified by an appropriate state interest. We fail to see on the facts provided an appropriate state interest in the differing treatment accorded by the board to applicants for licensure as dispensing opticians.

The grading practices described raise serious questions concerning the effectiveness of the board's examination procedures to determine competency and proficiency of applicants. The dual purpose of determining competency of license applicants and protecting the public against unqualified professionals is not served by designing test questions in which four out of five possible answers are correct. The board's procedure for exam question development and exam grading should be closely reviewed to ensure that public purposes are being served and that license applicants are being fairly treated.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX V

MEMORANDUM FROM THE ARIZONA LEGISLATIVE COUNCIL
REGARDING ACCEPTANCE OF NATIONAL EXAMINATION -
NOVEMBER 21, 1980

ARIZONA LEGISLATIVE COUNCIL

MEMO

November 21, 1980

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-80-58)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated November 7, 1980. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 32-1682, subsection D states:

D. The board shall give a written and practical examination to all applicants... to assist it in determining whether an applicant has acquired the minimum basic skills required for optical dispensing. The board may prescribe such reasonable rules and regulations relating to the examination of applicants as may be deemed necessary for the performance of its duties.

QUESTION PRESENTED:

Can the State Board of Dispensing Opticians (Board) allow an examination prepared by the Opticians' Association of America (OAA) and administered by the Educational Testing Service (ETS) to be used in lieu of the examination which the Board locally prepares and administers?

ANSWER:

No. Administration and grading of an examination by ETS would be an invalid delegation of a duty imposed upon the Board by statute.

A provision that the Board "shall give" a written and practical examination to all applicants, with the specific exception of applicants holding licenses from other states having requirements substantially equivalent to those of this state, imposes a mandatory duty upon the Board to give an examination to such applicants.

By the terms of A.R.S. section 32-1683, not materially amended since this occupation was first regulated in 1956, an applicant must establish by one of four means that he has the required technical skill and training necessary for licensure. Subsections A and C, not materially amended since 1956, of A.R.S. section 32-1682 impose a duty upon the Board to determine whether the applicant is entitled to a license:

A. Any person desiring to obtain a license to be a dispensing optician shall make an original application to the board upon forms prescribed by it, setting forth verified information to assist the board in the determination of the applicant's ability to meet the requirements of this chapter and the rules and regulations adopted by the board.

* * *

C. The board shall have the right to require from all applicants any additional information which in its judgment may be necessary to assist the board in determining whether the applicant is entitled to the license.

The substance of A.R.S. section 32-1682, subsection D was first initiated as a rule by the Board. The Supreme Court in State Board of Dispensing Opticians v. Carp, 85 Ariz. 35, 330 P.2d 996 (1958), considered the validity of the rule adopted by the Board requiring an examination of applicants who had not been practicing in Arizona, listing subjects of the examination and requiring a certain grade for passing. The Court stated at page 38 of the official report:

The board must decide whether such engaging as a dispensing optician or apprenticeship resulted in the applicant having acquired the minimum basic skills for optical dispensing. The fact of the acquisition of these basic skills from the required statutory experience is committed to the discretion of the board and if not abused, its action cannot be controlled by mandamus.

The board recognizing its duty to make this decision passed a resolution that it was unable to do so

The Court found the rule invalid as entering the legislative field:

We think the intention of the legislature by the enactment of the applicable portion of section 32-1683 was to prescribe certain experience which might well result in the acquisition of the minimum basic skills necessary for optical dispensing without the additional requirement of passing some examination on such subjects and at such percentage as the board might choose to designate.

In the first session of the Legislature following this decision, subsection D was added to A.R.S. section 32-1682.

The question in the Carp case, answered in the negative, was whether the Board could avoid its statutory duty to determine whether applicants had acquired basic skills by adopting a rule requiring an examination. The question presented here, which must also be answered in the negative, is whether the Board may avoid its statutory duty to determine whether applicants have acquired basic skills and its duty to give an examination in aid of that determination by delegating the writing of that examination to one private organization as its agent and the administration of that examination to another private organization as another agent.

CONCLUSION:

The Board, in the exercise of its statutory duty, could approve and adopt as its own an examination identical to the OAA examination or any other examination it might reasonably choose. We believe, however, that choosing a private organization as its agent to give and therefore to grade an examination in the guise of "reasonable rules and regulations relating to the examination" would be an invalid delegation of its duty.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX VI

MEMORANDUM FROM THE ARIZONA LEGISLATIVE COUNCIL
REGARDING THE SCOPE OF THE BOARD'S AUTHORITY -
NOVEMBER 24, 1980

ARIZONA LEGISLATIVE COUNCIL

MEMO

November 24, 1980

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-80-59)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated November 12, 1980. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) Title 32, chapter 15.1 provides for the licensure of dispensing opticians and the registration of apprentice dispensing opticians, but it does not limit the optical dispensing profession to these two classes of regulated personnel. A.R.S. section 32-1691, paragraph 2 states:

This chapter shall not apply to:

* * *

2. Any person working under the direct supervision of a physician, optometrist or dispensing optician duly licensed to practice in this state, so long as the person is working exclusively for the licensed physician, optometrist or dispensing optician and does not hold himself out to the public as a dispensing optician or apprentice dispensing optician.

QUESTIONS PRESENTED:

1. Is there any material difference in the State Board of Dispensing Optician's (Board) legal scope of authority to sanction or otherwise regulate an apprentice dispensing optician as opposed to an unlicensed, nonapprentice dispenser of ophthalmic goods?

2. Can the Board take any action in a case involving a justifiable consumer complaint against an individual who is unlicensed and who may be either:

(a) An apprentice dispensing optician.

(b) An unlicensed, unregistered apprentice (e.g., can the Board suspend or revoke the license of the supervisor of such individuals?)

3. How often in Arizona in other professional or occupational categories is this form of licensed supervision used?

ANSWERS:

1. See discussion.

2. See discussion.

3. Four times.

DISCUSSION:

Under A.R.S. section 32-1696, paragraph 3, it is unlawful to "hire, procure or induce" an unlicensed person to practice as a dispensing optician, "except as provided in section 32-1682, subsection E".

A.R.S. section 32-1682, subsection E creates a classification of persons designated as apprentice dispensing opticians and requires that persons wishing to work as such apprentices obtain a certificate of registration.

Therefore, reading these two statutes together, the classification of apprentice dispensing opticians is an exception to those unlicensed persons whom it is unlawful to hire.

We note that a person who is registered as an apprentice dispensing optician is not licensed to dispense optical goods independently. Under A.R.S. section 32-1696, paragraph 1, it is unlawful to practice as a dispensing optician without a valid license. A.R.S. section 32-1671, paragraph 5 does not exempt certified apprentice dispensing opticians from the definition of "dispensing optician". Under paragraph 1 of this section, apprentice dispensing optician is defined as a "person engaged in the study of optical dispensing under the instruction and direct supervision of a dispensing optician, physician, or optometrist". (Emphasis added.) Under A.R.S. section 32-1691, paragraph 2, the optical licensing statutes do not apply to persons working both under the direct supervision of, and exclusively for, a licensed physician, optometrist or optician. Therefore a registered apprentice dispensing optician is not authorized to dispense optical goods outside the direct supervision of his employer. (Under A.R.S. section 32-1681, subsection C, a registered apprentice dispensing optician may apply for a temporary license.)

Thus, Arizona statutes provide that an employer may be penalized for hiring unlicensed persons to practice as dispensing opticians, except an employer may not be penalized for hiring a registered apprentice dispensing optician who practices outside the scope of his authorized practice, that is, not under the direct supervision of a licensed practitioner. A.R.S. sections 32-1671, paragraph 1 and 32-1696, paragraph 3.

The exception for apprentices in A.R.S. section 32-1696, paragraph 3 from the prohibition against hiring an unlicensed person to practice as a dispensing optician does not seem to have a rational basis, in that an apprentice is by definition prohibited from independently practicing as a dispensing optician. A.R.S. section 32-1671, paragraph 1. We note that there is no statutory prohibition against an optician hiring an unlicensed person who is not a registered apprentice as long as the unlicensed person works exclusively and under the direct supervision of the licensed practitioner. A.R.S. section 32-1691, paragraph 2. Therefore, as to the board's power to suspend or revoke the license of a licensee who hires an unlicensed person to practice as a dispensing optician there is a difference, depending on whether the unlicensed person is a registered apprentice or not.

Under A.R.S. section 32-1699 the board may make application to the court to obtain an injunction to enjoin acts or practices which are in violation of the statutes or regulations. This injunctive remedy is applicable both to licensed and unlicensed persons.

A.R.S. section 32-1696 prescribes that certain acts are unlawful:

32-1696. Unlawful acts

It is unlawful:

1. To practice as a dispensing optician without having a valid and subsisting license issued pursuant to this chapter, except as provided by section 32-1691, paragraphs 1 and 2. However, nothing in this chapter shall be deemed to prohibit the corporate form of organization provided the person actively in charge of the establishment be a licensee hereunder or a person registered pursuant to section 32-1682 from practicing as an apprentice dispensing optician.

2. To fraudulently procure a license.

3. To hire, procure or induce a person not licensed to practice as a dispensing optician, except as provided by section 32-1682, subsection E.

4. To give, pay or receive, or offer to give, pay or receive, directly or indirectly, any gift, premium, discount, rebate or remuneration to or from any physician or optometrist in return for the referral of patients or customers.

5. To engage in false or misleading representations or advertising. All advertising must conform with the provisions of section 44-1481.

6. To advertise or furnish any examination or treatment of the eye.

7. To advertise the furnishing of or furnish, directly or indirectly, the services of a physician or optometrist, but it is not unlawful to recommend the services of a physician or optometrist.

8. To make use of any advertising statement of a character tending to indicate to the public superiority of any particular system or type of eyesight examination or treatment over that provided by other licensed ocular practitioners.

9. To fraudulently, dishonestly, illegally or unprofessionally conduct the practice of optical dispensing or engage in any conduct in such practice which would tend to do harm to the visual health of the public. (Emphasis added.)

The legislative intent of A.R.S. section 32-1696 is ambiguous in that it declares certain acts to be "unlawful" but does not classify the acts as crimes or prescribe a penalty. Since A.R.S. section 32-1693 authorizes the board to deny, suspend or revoke the license of any person "who violates any provision of this chapter" the board could deny, suspend or revoke the license of either an apprentice or a licensed dispensing optician who committed such acts. You may wish to recommend that A.R.S. section 32-1696 be amended to either provide a criminal classification or be rewritten to declare that the prohibited acts are grounds for denial, suspension or revocation of a license. Therefore, as to acts which are unlawful under A.R.S. section 32-1696 there is a difference as to whether the offender is unlicensed or licensed, since A.R.S. section 32-1696 cannot be applied to unlicensed persons.

Under A.R.S. section 32-1697, only the unauthorized practice of optical dispensing is a petty offense, punishable by a maximum fine of \$300. This is the only act on conduct in chapter 5.1 regulating dispensing opticians which is classified as a criminal offense. Criminal prosecution is under the jurisdiction of city prosecutors or county attorneys. A.R.S. section 32-1698.

2. There is no express statutory authority to suspend or revoke the license of a supervisor of an unlicensed person. Under A.R.S. section 32-1696, paragraph 3, the board may suspend or revoke the license of an employer who hires an unlicensed person to practice as a dispensing optician, except if the unlicensed person is a registered apprentice practicing outside the scope of his authorized practice. See discussion of question 1.

Also under paragraph 9 of A.R.S. section 32-1696 the board could suspend or revoke the license of a person who "fraudulently, dishonestly, illegally or unprofessionally" conducts the practice of optical dispensing or engages in "any conduct in such practice which would tend to do harm to the visual health of the public". As the negligent hiring of persons who are incompetent would clearly be conduct which "would tend to do harm to the visual health of the public" the board would have authority to revoke that employer's license. We cannot say under what circumstances, if any, a supervisor's conduct would fall within the prohibited conduct described in paragraph 9.

3. Arizona statutes provide for the supervision of licensed apprentices or interns in four instances:

(a) Barber apprentices.

Arizona statutes prescribe that to be eligible for a regular license to practice as a barber a person must, in addition to passing a barbering examination, complete eighteen months' apprenticeship under the personal supervision of a registered barber. A.R.S. section 32-323, paragraph 2.

Apprentice barbers may practice only under the supervision of a registered barber. A.R.S. section 32-324, subsection C. A barber shop may not employ more than two barber apprentices for each licensed barber. A.R.S. section 32-329, subsection C. To qualify for certification as a barber apprentice a person must be a graduate of a registered barber school and pass an apprenticeship examination. If an apprentice does not pass the regular examination to practice as a barber within three years of receiving his certificate of apprenticeship, the certificate is revoked, unless he completes two hundred fifty hours of further study in a registered barber school. A.R.S. section 32-324.

A barber who permits a person in his employ or under his supervision to practice as a barber apprentice without an apprentice certificate is guilty of a class 3 misdemeanor. A.R.S. section 32-356, paragraph 2.

(b) Embalmer apprentices.

Arizona statutes prescribe that to be eligible for a certificate to practice embalming a person must, in addition to being a graduate of an approved college of embalming, complete two years of practical experience as an embalmer under a qualified practicing embalmer, and such apprenticeship must include embalming at least twenty-five bodies. A.R.S. section 32-1322, paragraph 2. An apprentice embalmer may practice only under the direct supervision of a licensed embalmer. A.R.S. section 32-1327, subsection C. The supervisor must certify with his signature the work of the apprentice embalmer. A.R.S. section 32-1361, subsection B.

(c) Pharmacy interns.

Arizona statutes provide that a person accepted in a school or college of pharmacy may register as a pharmacy intern for the purpose of receiving instruction in the practice of pharmacy and the necessary experience to practice. A.R.S. section 32-1923.

"Intern training and registration as a pharmacy intern . . . is for the purpose of acquiring practical experience in the practice of the profession of pharmacy before becoming registered as a pharmacist". A.R.S. section 32-1923, subsection E.

A pharmacy intern who does not complete his pharmacy education within six years is not eligible for re-registration as an intern without an acceptable explanation to the board. An intern may dispense drugs and perform other duties of a pharmacist only in the presence and under the personal supervision of a licensed pharmacist. The supervising pharmacist must register with the board as a pharmacy intern preceptor and may not permit a person to act as a pharmacy intern until he has verified the intern's registration. A.R.S. section 32-1923.

(d) Polygraph examiner interns.

Arizona statutes permit a person who is in training and has completed a course in polygraphy in an approved school to administer polygraph examinations under the supervision and personal control of a licensed examiner. An intern license is valid for six months only and may be extended upon good cause for six months only. The apprentice must consult monthly with the supervising examiner for the purpose of having his work evaluated. The supervising examiner must furnish a written report on the intern's competency and expertise at the time the intern applies for a license to practice polygraphy. A.R.S. section 32-2707.

Like the above statutes, the statutes on apprentice dispensing opticians provide a means to qualify for a license to practice. A.R.S. section 32-1683, paragraph 6, subdivision (b).

However, in contrast with statutes providing for certification of apprentices or interns in other professions, the dispensing optician statutes do not expressly mandate any duties on the supervising practitioner. For example, compare with the other following statutory provisions:

---may not employ or supervise an unlicensed apprentice. A.R.S. section 32-356, paragraph 2 (barbers).

---must register with the board as a supervising practitioner and verify with the board the intern's registration. A.R.S. section 32-1923 (pharmacists).

---must certify the apprentice's work. A.R.S. section 32-1361, subsection B (embalmers).

---must evaluate the intern's progress and consult with him monthly and make a written report on his competency. A.R.S. section 32-2707 (polygraph examiners).

A.R.S. section 32-1671, paragraph 1 defines an "apprentice dispensing optician" as one who works "under the . . . direct supervision" of a licensed practitioner, and "direct supervision" is defined as "the provision of direction and control through inspection and

evaluation of work by consultation or instruction, as needed". Therefore, a duty of the supervisor to inspect and evaluate the apprentice's work may be implied. You may wish to suggest an amendment to the statutes that would expressly mandate that the supervising practitioner be responsible for the work of the apprentice.

Also, A.R.S. section 32-1682, subsection E, requires the employer of an apprentice to certify the application for apprenticeship.

E. The board shall require that any person desiring to work as an apprentice dispensing optician obtain a certificate of registration. The person shall make an original application to the board upon forms prescribed by it. The apprenticeship shall be deemed to commence on the date of application. The application shall state whether the applicant is beginning employment and, if not, the date employment began for the purpose of obtaining practical experience. The application shall indicate the name of the applicant's employer and whether the employer is a duly licensed physician, optometrist or dispensing optician. The application shall be certified by the employer and the applicant. A fee for registration shall not be required. The board, upon receipt of the application, shall issue a certificate of registration valid at the establishment of the employer. (Emphasis added.)

As the employer may not be the same person as the supervising practitioner, you may wish to suggest that the above provision be amended to require that the name of the supervising practitioner be included on the application.

cc: Gerald A. Silva

APPENDIX VII

MEMORANDUM FROM THE ARIZONA LEGISLATIVE COUNCIL
REGARDING PENALTIES FOR OCCUPATIONAL REGULATION -
MAY 21, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

May 21, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-81-42)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated May 12, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 32-1673 states:

The board shall prescribe and enforce rules and regulations, not in conflict with the laws of this state, necessary or advisable to carry out the provisions of this chapter, and which help to assure the competency of dispensing opticians and prevent conduct on their part which would tend to do harm to the visual health of the public.

A.R.S. section 32-1693, subsection A grants the board of dispensing opticians (board) the power to:

/S/suspend or revoke the license of any person who violates any provision of this chapter or the rules and regulations of the board.

Arizona Administrative Rules and Regulations Chapter 20, Article 1, Rule R4-20-06 provides for an informal hearing process and informal disposition of cases.

Finally, A.R.S. section 32-1696 delineates unlawful acts regarding dispensing opticians. However, no specific statutes or rules exist regarding the board's authority to act on complaints or the specific procedures to follow in doing so.

QUESTIONS PRESENTED:

1. What effect, if any, does the lack of specific statutes or rules and regulations regarding complaints have on the board's ability to handle complaints and/or their scope of authority in handling complaints?

2. How does the board's statutory authority to handle complaints compare with that of other boards in the state?

3. How do the penalties for violations of the dispensing optician statutes compare with those of other boards?

4. Are criminal offenses and penalties provided for in the case of violations of the dispensing optician statutes? In other words: a) Is the penalty provided for in A.R.S. section 32-1697 considered criminal; and b) are any other criminal offenses or penalties available under Arizona law?

ANSWERS:

1. It is inappropriate for this office to undertake a factual determination of the substantive effect on the board of the lack of statutory or regulatory complaint procedures without a case-by-case review of the handling of complaints made to the board. Obviously it would seem beneficial for the board, the complainant and the optician who is the subject of the complaint to have clear guidelines for handling complaint procedures. A routine process for reviewing complaints would help to ensure that the board conducts effective investigations plus it would provide procedural safeguards for the dispensing optician involved in the complaint.

You may wish to recommend that complaint review procedures be enacted by the legislature or promulgated by board rule.

2. The board's statutory authority to handle complaints is sketchy when compared to that of other licensing boards and commissions. A limited review of statutes of 25 other A.R.S. Title 32 boards indicates that in 18 cases the statutory complaint procedures are quite specific as opposed to the enabling legislation for the board of dispensing opticians.

3. The criminal penalties prescribed by the legislature for violations of A.R.S. Title 32, chapter 15.1 (dispensing opticians) are the least severe of those found in the remainder of Title 32. A brief survey of enabling statutes of other selected Title 32 boards and commissions indicates that the great majority (22) have misdemeanor classifications while 5 have a felony classification or a combination felony-misdemeanor classifications.

4. A.R.S. section 32-1697 provides that "the practice of optical dispensing without a valid and subsisting license is a petty offense." Petty offenses are criminal offenses. While no imprisonment is authorized for conviction of a petty offense, it is punishable by a criminal fine of up to three hundred dollars. A.R.S. section 13-802, subsection D.

A.R.S. section 32-1697 covers only the practice of optical dispensing without a valid and subsisting license; however, the items enumerated as unlawful in A.R.S. section 32-1696 would also be considered petty offenses by virtue of the general requirement prescribed by A.R.S. section 13-602, subsection C:

Any offense defined outside this title without either designation as a felony or misdemeanor or specification of the classification or the penalty is a petty offense.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX VIII

MEMORANDUM FROM THE ARIZONA LEGISLATIVE COUNCIL
REGARDING ARIZONA OCCUPATION REGULATION -
AUGUST 10, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

August 10, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-80-59, addendum)

This addendum is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated August 7, 1981. No input was received from the Attorney General concerning this request.

The memorandum dated November 24, 1980 indicates that Arizona Revised Statutes (A.R.S.) Title 32, chapter 15.1 excepts from the provisions of chapter 15.1 at section 32-1691, paragraph 2, any persons working under the direct supervision of a licensed dispensing optician who work exclusively for the licensed dispensing optician.

QUESTION PRESENTED:

Is there a similar broad exception in any other statutory regulation of occupations, with the result that an unlicensed or unregistered person may perform the same acts, under the supervision of a licensed person, as a registered apprentice may perform?

ANSWER: No.

Other provisions for licensed or registered apprentices are:

1. Barbers. A barber who permits a person under his supervision to practice as a barber apprentice without an apprentice certificate is guilty of a class 3 misdemeanor. A.R.S. section 32-356.

2. Embalmers. No dead human body shall be embalmed except by a qualified practicing embalmer or by a registered apprentice under direct supervision of a qualified embalmer. A.R.S. section 32-1361.

3. Pharmacists. It is unlawful for any person other than a pharmacist or pharmacy intern to sell or dispense drugs or compound prescription orders. A.R.S. section 32-1961.

4. Polygraph examiners. Only licensed polygraph examiners (A.R.S. section 32-2702) or interns (A.R.S. section 32-2707) or full-time employees of a law enforcement agency (A.R.S. section 32-2709) may administer polygraph examinations.

CONCLUSION:

To bring chapter 15.1 into conformity with other regulatory statutes which provide for apprentices, the exception in A.R.S. section 32-1691, paragraph 2 should be narrowed from "person" to "apprentice". The present statute is apparently not the result of inadvertence, however. This section, as added by Laws 1956, chapter 32, section 1, excepted "any person working under the direct supervision . . . so long as the apprentice is working exclusively for the . . . dispensing optician . . .". It was Laws 1979, chapter 201, amending chapter 15.1 generally, which changed "apprentice" to "person".

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX IX

MEMORANDUM FROM THE ARIZONA LEGISLATIVE COUNCIL
REGARDING COMITY WITH OTHER STATES -
JUNE 15, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

June 15, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-81-43)

This memo is a revised response* to a request submitted on your behalf by Gerald A. Silva in a memo dated May 13, 1981. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 32-1683 requires, in part:

An applicant for a license under this chapter shall:

* * *

6. Establish that he has the required technical skill and training necessary for licensing by any one of the following means:

(a) Submit evidence of having a valid and subsisting license in good standing from another state which licenses dispensing opticians or ophthalmic dispensers, and whose requirements at the time of issuance of the license were at least substantially equivalent to the requirements of this chapter.

* * *

Arizona Administrative Rules and Regulations, Chapter 20, Article 1, Rule R4-20-02(B) requires that the examination for licensure be divided into:

A written examination, consisting of the following subjects:

1. Ocular anatomy, physiology and anomalies.
2. Geometric optics
3. Ophthalmic laboratory
4. Contact lenses; and

A practical examination.

Subsection (H) of the same rule requires a minimum score of 75 percent on each of the four written sections and the same on the practical examination. In addition, Arizona dispensing optician statutes disallow the substitution of examinations for licensure prepared by any person or group other than the Board of Dispensing Opticians (Board) (see Legislative Council memorandum No. 0-80-58).

*This replaces our memo (O-81-43) dated May 21, 1981.

Board in arbitrarily refusing, because of some finely drawn technicality, to allow a person to qualify as a dispensing optician on the basis of comity is subject to judicial review by way of a special action in mandamus. 61 Am. Jur. 2nd Physicians, Surgeons, Etc. section 68. A court may issue a writ of mandamus to any Board to compel the admission of a party to the use of a right to which he is entitled. A.R.S. section 12-2021.

CONCLUSION:

1. If the Board determines that the licensing requirements of Virginia, Georgia, Massachusetts and Nevada for dispensing opticians are substantially equivalent to Arizona's licensing requirements, the agreements to grant licensure by comity with such states are valid and legally binding. The Board's determination will be followed unless it is shown to be unreasonable and clearly erroneous.

2. Abuse of discretion by the Board in arbitrarily refusing to allow a person to qualify as a dispensing optician by comity is reviewable by the courts pursuant to a special action in mandamus.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX X

MEMORANDUM FROM THE ARIZONA LEGISLATIVE COUNCIL
REGARDING COMITY WITH ALASKA -
JUNE 15, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

June 15, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-39)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated May 7, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

The state board of dispensing opticians (board) initiated a verbal agreement with the State of Alaska to grant licensure by comity on approximately March 8, 1979. This agreement was arranged on the basis of information presented to the board that Alaska's licensing requirements were similar to those of Arizona. On approximately December 13, 1979, the board cancelled the comity agreement because additional information received indicated that Alaska's licensure requirements were not similar. (Alaska was found to license separately for eyeglasses and contact lenses; Arizona licenses for both under the same license.)

During the period for which reciprocity was granted to Alaska residents, several Alaska licensees received Arizona licenses through comity.

QUESTIONS PRESENTED:

1. Given the situation (i.e., that comity was granted on the basis of incomplete information and later revoked due to additional information received), would the licenses granted through comity to Alaska residents during the period between March and December of 1979 be invalid?

2. Is there any situation in which licenses granted through comity should be invalidated if an agreement to grant licensure by comity was subsequently cancelled?

ANSWERS:

1. Yes.

2. See discussion.

DISCUSSION:

1. This discussion assumes that there was no change in Alaska law during 1979.

The statutory provision under which licensed dispensing opticians or ophthalmic dispensers from other states may become licensed in this state is Arizona Revised Statutes (A.R.S.) section 32-1683, paragraph 6, subdivision (a):

An applicant for a license issued under this chapter shall:

* * *

6. Establish that he has the required technical skill and training necessary for licensing by any one of the following means:
 - (a) Submit evidence of having a valid and subsisting license in good standing from another state which licenses dispensing opticians or ophthalmic dispensers, and whose requirements at the time of issuance of the license were at least substantially equivalent to the requirements of this chapter.

The purpose of this statute is to allow the licensure of persons who are evidently qualified to practice as dispensing opticians but who have not had the training or experience in this state as is otherwise required. A license may be granted under such circumstances only when the prescribed conditions exist, i.e.:

- (a) The person has a valid and subsisting license
- (b) Issued by a state which licenses dispensing opticians or ophthalmic dispensers,
and
- (c) The licensing requirements at the time the license was issued were at least substantially equivalent to Arizona's licensing requirements.

Administrative agencies have no common law or inherent powers. Instead their powers are to be measured by the statutes under which they operate. Kendall v. Malcolm, 98 Ariz. 329 (1965); Garvey v. Trew, 64 Ariz. 342 (1946). The board must follow the standards prescribed by statute in determining whether a reciprocal license may be granted. If an act by the board abrogates a statutory standard, it is invalid. Akopianz v. Board of Medical Examiners, 11 Cal. Rptr. 810 (Ct. App. Cal. 1961); Lake v. Mercer, 58 S.E. 2d 336 (S.C. 1950). In the instant case, the license would have allowed a person who was licensed in Alaska to deal in either eyeglasses or contact lenses to become licensed to deal in both in Arizona with no showing that he was so qualified. Arizona law contemplates that a licensed dispensing optician is qualified to dispense both eyeglasses and contact lenses. (See definition of "dispensing optician", A.R.S. section 32-1671.) Since the Alaska requirements are not "substantially equivalent" to Arizona's requirements, the purported reciprocity agreement was invalid as were any Arizona licenses issued thereunder.

Whether the question is analyzed in terms of reciprocity or comity, the result is the same. "Reciprocity" is essentially based on an agreement or quid pro quo. It is the relation when one state gives the subjects of another certain privileges, on condition that its own subjects shall enjoy similar privileges at the hands of the other state. Black's Law Dictionary 1142 (5th ed. 1979). "Comity", on the other hand, involves a unilateral willingness to grant a privilege out of deference and goodwill rather than as a matter of right or obligation. Black's Law Dictionary 242 (5th ed. 1979). It is the recognition that one sovereignty allows within its territory to the official act of another sovereignty. Under comity, recognition may be given by the board if not contrary to the public policy of Arizona. Brown v. Babbitt Ford, Inc., 117 Ariz. 192 (1977). The public policy of Arizona is stated in the previously cited statute as requiring that the other state's standards be "at least substantially equivalent to the requirements of this chapter." A.R.S. section 32-1683, paragraph 6, subdivision (a). The statutory requirement dictates

the terms of any reciprocal agreement or comity consideration. Since Alaska's requirements did not meet the statutory standard, the board could not license an Alaska licensee under either reciprocity or comity.

The Supreme Court of Georgia addressed the same question involving a chiropractic license issued by comity to practice in Georgia based on a Kentucky chiropractic license. It was later discovered that the laws of Kentucky did not have requirements equal to those of Georgia. The putative licensee sought to enjoin the board of chiropractic examiners from rescinding the Georgia license. The court, however, held, as we conclude, that the board was without authority to issue the license, the license was invalid ab initio and the board could not be enjoined from rescinding the license. Rose v. Grow, 82 S.E. 2d 222 (1954).

Please note that, until notified of the invalidity or some other affirmative action by the board to revoke the licenses, the Alaskan opticians could continue to practice under the licenses which were issued under color of law. In any event the licenses which were issued in 1979 would have expired on December 31, 1979. A.R.S. section 32-1681, subsection B.

2. As indicated above, licenses issued by comity are invalid only when there is some defect in their issuance or continuation that would make the license invalid. Generally, however, if a person has met the requirements of A.R.S. section 32-1683, paragraph 6, subdivision (a), there should be no basis for determining invalidity.

CONCLUSION:

1. The agreement to grant licensure by comity with Alaska was invalid since Alaska's licensing requirements were not substantially equivalent to Arizona's and therefore the licenses issued pursuant to the agreement were also invalid. The board had no authority to issue licenses by comity in this case as to do so would be contrary to the public policy of Arizona as stated by statute.

2. A defect in the issuance or continuation of such a license, such as the licensee not meeting the required standards for issuance, will invalidate the license.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX XI

MEMORANDUM FROM THE ARIZONA LEGISLATIVE COUNCIL
REGARDING ADEQUATE DOCUMENTATION OF LEGAL ACTIONS TAKEN BY
THE BOARD OF OPTOMETRY - JUNE 18, 1979

ARIZONA LEGISLATIVE COUNCIL

MEMO

June 18, 1979

TO: Douglas R. Norton, Auditor General
FROM: Arizona Legislative Council
RE: Request for Research and Statutory Interpretation (O-79-42)

This is in response to a request made on your behalf by Gerald A. Silva in a memo dated May 12, 1979 and by Jim Sexton in a conversation on June 7, 1979.

BACKGROUND:

According to Arizona Revised Statutes section 32-1705, subsection B, the Arizona State Board of Optometry:

...shall meet at least once each year at the capitol and at such other times and places as its president or the governor may designate by call. The board shall keep a record of its acts, receipts and disbursements, and of examinations held, with the names and addresses of the applicants and the results thereof, the names of all persons to whom certificates have been issued, the date of issuance and all renewals. All such records shall be public.

QUESTIONS PRESENTED:

1. Does the pass/fail decision of the Board constitute a legal action which must be conducted at a formal Board meeting and included in the Board minutes?
2. Does the disposition of a complaint by the public against a registered optometrist constitute a legal action by the Board?
3. If contested, could a pass/fail decision be declared null or void if it was not conducted at a formal Board meeting and included in the minutes? What other legal ramifications could result from the improper handling of such decisions?

DISCUSSION:

1. The basic rule of the Arizona open meeting law prescribes that "All meetings of any public body shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings." Arizona Revised Statutes section 38-431.01, subsection A. A "meeting" according to Arizona Revised Statutes section 38-431, paragraph 3 is "...the gathering of a quorum of members of a public body to propose or take legal action, including any deliberations with respect to such action." In this context, "legal action" is "a collective decision...made by a majority of the members of a public body pursuant to the...specified scope of appointment or authority, and the laws of this state." Arizona Revised Statutes section 38-431, paragraph 2.

Clearly, the Arizona open meeting law (Arizona Revised Statutes section 38-431 et seq.), which is designed to expose to public view all meetings of any public body, applies to the Board of Optometry. Op. Atty. Gen. No. 75-7 p. 44, 1975-1976. This conclusion is given greater weight by the fact that the legislature recently amended the open meeting law to make it clear that meetings of all boards and commissions which are supported in whole or in part by tax revenues or which expend tax revenues are subject to the law. Arizona Revised Statutes section 38-431, Laws 1978, chapter S6, section 1.

Moreover, although the open meeting law contains certain exceptions and limitations, (Arizona Revised Statutes section 38-431.08), none of these exceptions and limitations apply to the fact situation presented to us.

Whether the law applies if the Board meets to consider whether an applicant should be issued or denied a certificate to practice optometry in this state, or when the Board disposes of a complaint against a registered optometrist, turns on the question of whether the Board is meeting to take legal action. As used in the open meeting law, the term legal action should be construed broadly and is not only the mere formal act of voting but includes discussions and deliberations by members of the public body prior to the final decision. Op. Atty. Gen. No. 75-8 p. 55, 1975-1976. The Board is empowered to issue certificates of registration to practice optometry in this state to qualified applicants. One prerequisite to the granting of a certificate is the successful passage by the applicant of an examination conducted by the Board. Arizona Revised Statutes sections 32-1705 and 32-1724. Therefore, any meeting by a majority of the Board to make a collective decision pursuant to such statutes would be legal action by the Board. The meeting must therefore be open to the public and the Board must maintain written minutes which include an accurate description of all legal action taken. Arizona Revised Statutes section 38-431.01, subsection B.

In addition, Arizona Revised Statutes section 32-1705, subsection B specifically requires the Board to keep a record of its acts. It would appear that a pass/fail decision of the Board is an "act" which requires the maintenance of adequate records.

2. Arizona Revised Statutes section 32-1755 authorizes the Board of Optometry, after notice and a hearing, to suspend or revoke the certificate of a registered optometrist for certain reasons. Arizona Revised Statutes section 32-1756, subsection A requires the Board to hold a public hearing for the purpose of determining if it should suspend or revoke the certificate of a registered optometrist. Read together, these statutes require the Board to hold a public hearing after receiving a complaint against a registered optometrist to decide if the optometrist's certificate should be suspended or revoked. Therefore, any decision made by a majority of the Board pursuant to these statutes would fall within the definition of legal action by the Board.

3. Arizona Revised Statutes section 38-431.05 requires that "All business transacted by any public body during a meeting held in violation of the provisions of this article shall be null and void." A strict reading of this statute suggests that any decision by the Board of Optometry at an informal meeting to determine whether an applicant should be issued a certificate to practice optometry without including the decision in the minutes would be null and void. The Arizona Court of Appeals recently held that if a meeting complies with the intent of the legislature in passing the open meeting law, "a

technical violation having no demonstrated prejudicial effect on a complaining party would not nullify all the business in a public meeting if to conclude otherwise would be inequitable". Karol et al. v. Board of Education Trustees, Florence Unified School District No. 1 of Pinal County C.A.No. 2 CA-Civ 2838 Ariz. ___ (App. March 19, 1979). The court stated that in order to arrive at the intent of the legislature, the provisions of the open meeting law must be read as a whole. The court went on to state that the intent of the legislature, in passing the open meeting law, was to open the conduct of the business of government to the scrutiny of the public and to ban decision-making in secret.

Thus, under the given fact situation, if the effect of the Board's action was to ban from the public view the decision-making process in approving or denying a person's application to practice optometry in this state, it would appear that the decision would be null and void. In order to avoid this situation, it would be advisable that when the Board takes any legal action, it:

...be preceded both by disclosure of that amount of information sufficient to apprise the public in attendance of the basic subject matter of the action so that the public may scrutinize the action taken during the meeting, and by an indication of what information will be available in the minutes pursuant to A.R.S. section 38-431.01 (B) so that the public may, if it desires, discover and investigate further the background or specific facts of the decision. Karol et al. at ___ (footnote omitted)

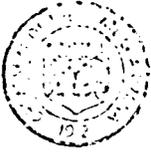
Finally, a meeting held by the Board of Optometry in violation of the open meeting law would cause a member of the Board to be guilty of a class 3 misdemeanor. Arizona Revised Statutes section 38-431.06.

CONCLUSION:

1. A pass/fail decision of the Board of Optometry is a legal action which requires a formal Board meeting and must be included in the Board minutes.
2. The disposition of a complaint against a registered optometrist by a member of the public is a legal action by the Board.
3. A pass/fail decision could be declared null and void if the effect of the decision is to hide the Board's actions from public examination. In addition, a violation of the open meeting law could subject the Board members to a criminal penalty.

APPENDIX XII

MEMORANDUM FROM THE ARIZONA ATTORNEY GENERAL
TO ALL STATE AGENCIES REGARDING PUBLIC NOTICE REQUIREMENTS -
AUGUST 19, 1975



OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

August 19, 1975

75-08-19LB

TO: All State Agencies
FROM: Bruce E. Babbitt, Attorney General
RE: The Public Notice and Minute Taking
Requirements Under Arizona's Open
Meeting Act, as amended Laws 1975

Several questions have arisen as to the specific requirements imposed by Arizona's Open Meeting Act with respect to the giving of notice of public meetings. In addition, the Legislature, in its last regular session, amended the Open Meeting Act by including specific requirements with respect to the taking of minutes of public meetings. This memorandum is designed to clarify the public notice requirements imposed under the Act and to inform all state agencies of the recently enacted minute taking requirements.

If you have any questions regarding this memorandum, please call Roderick G. McDougall, Chief Counsel of the Civil Division at 271-3562.

PUBLIC NOTICE REQUIREMENTS

It has been stated that an "open meeting" is open only in theory if the public has no knowledge of the time and place at which it is to be held. 75 Harv.L. Rev. 1199 (1962). The right to attend and participate in an open meeting is contingent upon sufficient notice being given. Like other acts, Arizona's Open Meeting Act affords few statutory requirements for the mechanics of giving notice of meetings of governing bodies.

A.R.S. § 38-431.02, added Laws 1974, which sets forth the public notice requirements, provides as follows:

- A. Public notice of all regular meetings of governing bodies shall be given as follows:
 1. The state and its agencies, boards and commissions shall file a statement with the secretary of state stating where all

Memorandum
All State Agencies
August 19, 1975
Page Two

notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.

2. The counties and their agencies, boards and commissions, school districts, and other special districts shall file a statement with the clerk of the board of supervisors stating where all notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.

3. The cities and towns and their agencies, boards and commissions shall file a statement with the city clerk or mayor's office stating where all notices of their meetings and the meetings of their committees and subcommittees will be posted and shall give such public notice as is reasonable and practicable as to the time and place of all regular meetings.

B. If an executive session only will be held, the notice shall be given to the members of the governing body, and to the general public, stating the specific provision of law authorizing the executive session.

C. Meetings other than regularly scheduled meetings shall not be held without at least twenty-four hours' notice to the members of the governing body and the general public. In case of an actual emergency, a meeting may be held upon such notice as is appropriate to the circumstances.

D. A meeting can be recessed and held with shorter notice if public notice is given as required in paragraph A of this section.

Memorandum
All State Agencies
August 19, 1975
Page Three

The Open Meeting Act when originally enacted in 1962 made no specific provision for the giving of notice. While the requirements set forth in the 1974 amendments provide some guidelines, the particular mechanics of giving notice have not been set forth. Moreover, the language used in the 1974 amendments relating to notice is ambiguous, confusing and often contradictory. Without engaging in a long discussion of the many problems involved, we offer the following guidelines to be followed in complying with the notice requirements of A.R.S. § 38-431.02. Although an agency in following these guidelines will in some cases do more than required by the Act, it should never fall short of the Act's requirements. Being over-cautious is certainly justified, however, in view of the serious consequences for violating the Act. For example, a decision made in a meeting for which defective notice was given may likely be declared null and void by reason of A.R.S. § 38-431.05.

A. Statement to Secretary of State

Each state agency which is a governing body as defined in A.R.S. § 38-431 must file a statement with the Secretary of State stating where notices of all its meetings and the meetings of its committees or subcommittees will be posted. See Appendix A for a sample statement. The purpose of the statement is to provide information to the public regarding the place where it can find notices of the governing body's meetings. Generally, a governing body will post notices of its meetings directly outside the door to its offices or on a bulletin board in the lobby of the building in which the governing body's offices are located. Governing bodies which hold regular meetings on the same day of each month may post notices of such meetings by providing the information under the body's name in the building directory. For example, the directory listing in the lobby of the building might look as follows:

Arizona Accountancy Board Room 202
(Regular meetings every 2nd Monday of each month)

B. Regular Meetings

Regular meetings are generally those required to be conducted on a regular basis by statute and the dates of which are set by statute, rule, ordinance, resolution or

Memorandum
All State Agencies
August 19, 1975
Page Four

custom. For each regular meeting, the governing body must post a Notice of Regular Meeting at the place described in the statement filed with the Secretary of State as described above. See Appendix B for a sample Notice of Regular Meeting. The posting of this notice must be done as far in advance of the regular meeting as is reasonable and in no event less than 24 hours prior to the meeting. In addition, the governing body must give additional notice as is reasonable under the circumstances. Several types of additional notices which might be given are described in Paragraph F below.

C. Special Meetings Other Than Emergency Meetings

Special meetings are all meetings other than regular meetings. For each special meeting, the governing body must post a Notice of Special Meeting at the place described in the statement filed with the Secretary of State. See Appendix C for a sample Notice of Special Meeting. The governing body should also give such additional notice as is reasonable under the circumstances. See Paragraph F below. This additional notice must include notice both to the general public and each member of the governing body. The several notices given, including the Notice of Special Meeting posted as described above, must be accomplished at least 24 hours prior to the time of the special meeting, except in the case of an emergency meeting covered under Paragraph D below.

D. Emergency Meetings

Emergency meetings are those special meetings in which the governing body is unable to give the required 24 hours notice. In the case of an actual emergency, the special meeting may be held "upon such notice as is appropriate to the circumstances". The nature of the notice required in emergency cases is obviously subject to a case by case analysis and cannot be specified by general rules. However, any relaxation or deviation in the normal manner of providing notice of meetings, either to the general public or to members of the governing body, must be carefully scrutinized and can be justified only for compelling practical limitations on the ability of the governing body to follow its normal notice procedures.

E. Executive Sessions

An executive session is nothing more than a meeting (regular or special) wherein the governing body is allowed under the Open Meeting Act to discuss and deliberate on matters in secret. See A.R.S. § 38-431.03. Separate notice need not be given of an executive session if it is held in conjunction with a properly noticed regular or special meeting. However, where only an executive session will be held, all notices of the meeting must state the specific provision of law authorizing the executive session, including a reference to the appropriate paragraph of Subsection A of A.R.S. § 38-431.03. See Appendix D for a sample Notice of Executive Session.

F. Additional Notice

In deciding what types of notice shall be given in addition to posting, governing bodies should consider the following:

1. Newspaper Publications

In many cases, notice of meetings can be disseminated by providing press releases to newspapers published in the area in which notice is to be given. In addition, paid legal notices in such newspapers may be purchased by the governing body.

2. Mailing List

Some bodies may wish to provide a mailing list whereby persons desiring to obtain notices of meetings may ask to be placed on a mailing list. All notices of meetings issued will then be mailed to those appearing on the current mailing list.

3. Articles or Notices in Professional or Business Publications

In addition, the governing body may obtain publication of articles or notices in those professional and business publications relating to the agency's field of regulation.

It is not necessary that all of these types of notice be given. Indeed, merely providing notice through the use of a mailing list and by posting should be sufficient in most cases. Neither should the above listings be considered exclusive and, to the extent other forms of notice are reasonably available, they should be used.

REQUIREMENTS FOR TAKING WRITTEN MINUTES

The first requirement for taking written minutes of meetings of governing bodies was included in the Open Meeting Act by the Legislature in 1974. The 1974 amendment, however, provided very little detail as to what the minutes must include. The original minute taking requirement read as follows:

* * *B. Governing bodies, except for subcommittees, shall provide for the taking of written minutes of all their meetings. Such minutes shall be properly and accurately recorded as to all legal action taken and open to public inspection except as otherwise specifically provided by statute.

A.R.S. § 38-431.01.

In its last regular session, the Legislature amended this section to read in part as follows:

* * *B. All governing bodies, except for subcommittees, shall provide for the taking of written minutes of all their official meetings. Such minutes shall include, but not be limited to: (1) the day, time and place of the meeting, (2) the numbers of the governing body recorded as either present or absent, (3) an accurate description of all matters proposed, discussed or decided, and the names of members who proposed and seconded each motion.

C. The minutes or recording shall be open to public inspection three working days after the meeting except as otherwise specifically provided by this article. * * *

A.R.S. § 38-431.01, as amended Laws 1975 (eff. 9/12/75).

Memorandum
All State Agencies
August 19, 1975
Page Seven

You should note that this section requires that the minutes or recording be open to public inspection, except as otherwise specifically provided by this article. The specific exception referred to is the provision in A.R.S. § 33-431.03 which provides that minutes of executive sessions shall be kept confidential.

BEB:P:W:lc

APPENDIX XIII

SURVEYS OF: 1) LICENSED DISPENSING OPTICIANS,
2) REGISTERED APPRENTICE DISPENSING OPTICIANS IN ARIZONA
AND 3) STATE REGULATORY AGENCIES

Office of the Auditor General
Survey Of Licensed
Dispensing Opticians

Please complete the following survey by indicating the appropriate answers in the spaces provided. We welcome your comments on any of the questions; if we have not provided enough space for your comments, please complete your answers in the space provided on the last page.

In order to ensure confidentiality, please do not write your name on the questionnaire or on the return envelope. Thank you very much for your cooperation.

1. a) Are you currently residing in Arizona? No. respondents = 191
- YES NO
160-83.8% 31-16.2%
- b) Do you currently hold a license to practice as a dispensing optician in Arizona? No. respondents = 192
- YES NO
191 99.5% 1-0.5%
- c) Are you currently practicing as as a dispensing optician in Arizona? No. respondents = 191
- YES NO
140-73.3% 51-26.7%
- d) Please indicate the type of license you currently hold: No. respondents = 190
- | | | |
|---|--------------------------|-----------|
| Permanent | <input type="checkbox"/> | 187-98.4% |
| Temporary | <input type="checkbox"/> | 2- 1.1% |
| N/A (am not currently licensed) | <input type="checkbox"/> | 1- 0.5% |
- e) How many hours per week do you work as a licensed dispensing optician? No respondents = 179
- | | | |
|-------------------------------------|--------------------------|-----------|
| 40 or more hours per week | <input type="checkbox"/> | 143-79.9% |
| 30 - 39 " " " | <input type="checkbox"/> | 9- 5.0% |
| 20 - 29 " " " | <input type="checkbox"/> | 3- 1.7% |
| 10 - 19 " " " | <input type="checkbox"/> | 5- 2.8% |
| Fewer than 10 " " | <input type="checkbox"/> | 19-10.6% |
- f) Is your place of employment located in a city with a population of: No. respondents = 176
- | | | |
|------------------------------|--------------------------|-----------|
| More than 100,000? | <input type="checkbox"/> | 133-75.6% |
| 50,000 to 100,000? | <input type="checkbox"/> | 18-10.2% |
| 30,000 to 49,999? | <input type="checkbox"/> | 8- 4.6% |
| 15,000 to 29,999? | <input type="checkbox"/> | 8- 4.6% |
| Less than 15,000? | <input type="checkbox"/> | 9- 5.1% |
2. How did you obtain your Arizona license? No. respondents = 191
- | | | |
|--|--------------------------|-----------|
| Examination by Arizona Board | <input type="checkbox"/> | 166-86.9% |
| Reciprocity | <input type="checkbox"/> | 9- 4.7% |
| Other (Specify) | <input type="checkbox"/> | 16- 8.4% |

(see reverse side)

3. IF YOU HAVE TAKEN THE EXAM:

a) Do you rate it: No. respondents = 171

Not difficult enough to measure knowledge and skills? 31-18.1%

A valid measure of the knowledge and skills required for your profession? 127-74.3

Excessively difficult measure of the knowledge and skills required for your profession? 13- 7.6

b) Was the exam content appropriate with regard to the duties a dispensing optician performs?

No. respondents = 169

Appropriate..... 60-35.5%

Mostly Appropriate..... 87-51.8

Mostly Inappropriate..... 15- 9.2

Inappropriate..... 6- 3.4

If you checked one of the latter two categories in what way(s) did you consider the exam inappropriate?

Not applicable to summary

c) How many times did you take the exam before receiving a passing score for each part of the exam?

No. respondents = 164

One time only - passed all five sections at first sitting 103-62.8%

Two times 47-28.7

Three times 11- 6.7

Four times 3- 1.8

Five or more 0- 0

4. a) Have you taken a national exam given by the Opticians Association of America (OAA) or the National Contact Lens Examiners (NCLE)?

62-33.7% 122-66.3% No. respondents = 184
 YES NO

If yes, indicate which exam(s) you have taken:

Both OAA and NCLE exams 14-64.5%

OAA exam only 8-12.9%

NCLE exam only 40-22.6%

Neither

100.0%

4. b) What is your opinion of the exams given by the OAA and the NCLE as compared to the exams administered by the State Board?

No. respondents = 60

OAA/NCLE exams more difficult than State Board exam 9-15.0%

OAA/NCLE exams comparable in difficulty to State Board exams 27-45.0%

OAA/NCLE exams less difficult than State Board exams 22-36.7%

Other (Specify) Not applicable to summary 2- 3.3%

c) Would the OAA and NCLE exams be more appropriate, approximately the same or less appropriate than the State exams as a measure of the knowledge and skills required for the duties a dispensing optician performs?

No. respondents = 58

OAA/NCLE exams more appropriate than State Board exams 16-27.6%

OAA/NCLE exams approximately the same as State Board exams . . 27-46.6

OAA/NCLE exams less appropriate than State Board exams 15-25.9

5. If you applied for reciprocity, do you feel that the present requirements are too restrictive? No. respondents = 52

15-28.9% 37-71.1%
YES NO

If yes, why? If no, why not?

Not applicable to summary

6. Does your work include: (Check all that apply)

Fitting eyeglasses	<input type="checkbox"/> 179-97.3%	No. respondents = 184
Fitting contact lenses	<input type="checkbox"/> 125-67.9	No. respondents = 184
Fitting artificial eyes	<input type="checkbox"/> 9- 4.9	No. respondents = 184
Neutralization	<input type="checkbox"/> 176-95.6	No. respondents = 184
Lens-grinding	<input type="checkbox"/> 81-44.0	No. respondents = 184
Other (Specify)	<input type="checkbox"/> 26-14.1	No. respondents = 184

(see reverse side)

7. Should the contact lens portion of the State Board exam be: No. respondents = 191
 Required of all applicants 117-61.3%
 Optional 74-38.7

If optional, why? (Check all that apply) No. respondents = 68

- Excessively restrictive licensure requirement 10-14.7%
- Only a few licensees fit contact lenses 42-61.8
- Other (please specify) 16-23.5

If you answered that the contact lens portion of the exam should be optional, should only those who have taken this portion of the State Board exam be allowed to fit contact lenses? No. respondents = 71

68-95.8% 3-4.2%
 YES NO

If yes, why? If no, why not? Not applicable to summary

8. a) Are you in charge of any non-licensed personnel? No. respondents = 181
 113-62.4% 68-37.6%
 YES NO

b) If yes, please indicate the number of personnel you supervise in the appropriate category below:

<u>Type of Personnel</u>	<u>Number</u>
Apprentice dispensing opticians.....	<u>Not applicable to summary</u>
Non-licensed optical dispensers.....	<u>Not applicable to summary</u>

c) What are their duties? (Check all that apply.)

	No. respondents = 75	66
	Apprentice Dispensing Opticians	Non-licensed Optical Dispensers
Fit eyeglasses.....	<input type="checkbox"/> 72-96.0%	<input type="checkbox"/> 59-89.4%
Fit contact lenses.....	<input type="checkbox"/> 23-30.7	<input type="checkbox"/> 14-21.2
Fit artificial eyes	<input type="checkbox"/> 2- 2.7	<input type="checkbox"/> 2- 3.0
Neutralization.....	<input type="checkbox"/> 55-73.3	<input type="checkbox"/> 41-62.1
Grind lenses.....	<input type="checkbox"/> 26-34.7	<input type="checkbox"/> 11-16.7
Other (please specify).....	<input type="checkbox"/> 9-12.0	<input type="checkbox"/> 8-12.1

9. a) Are you assigned to work at all times during the hours the business is open to the public?

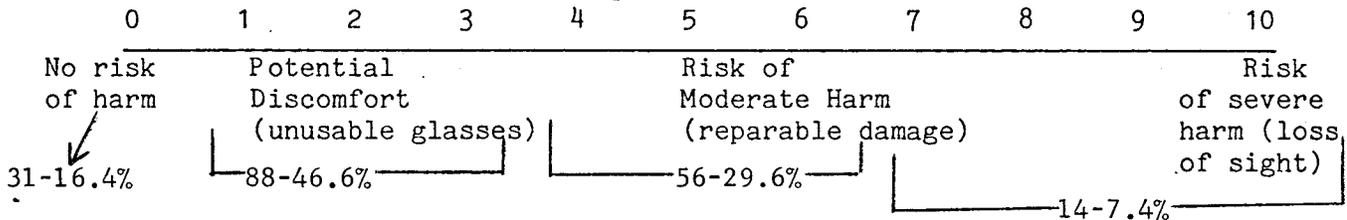
104-59.1% 72-40.9%
 YES NO

b) If no, who is in charge of the establishment when you are not in the office? (Check as many as apply, depending on the situation)

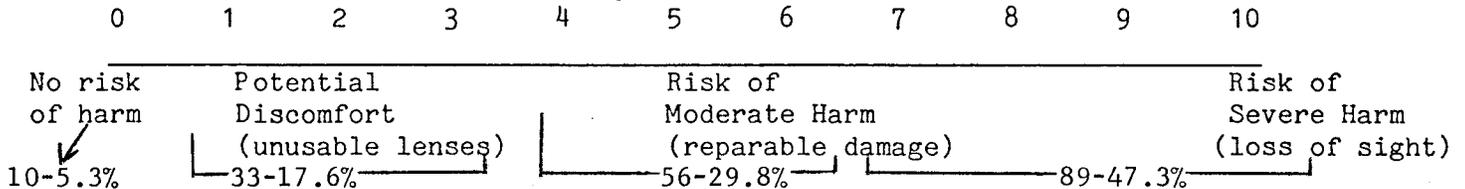
- Optometrist or Medical Doctor (Ophthalmologist)..... 20-28.6%
- Another Licensed Dispensing Optician..... 28-40.0
- Owner/Manager (not a Licensed Dispensing Optician)..... 6- 8.6
- Apprentice Dispensing Optician..... 16-22.9
- Another employee (not a Licensed Dispensing Optician)..... 13-18.5
- Other (please specify)..... 1- 1.4

10. a) On a scale of 0 to 10, how would you rate the potential harm to the public directly attributable to each of the following services provided by optical dispensing personnel? Circle the appropriate number on each scale.

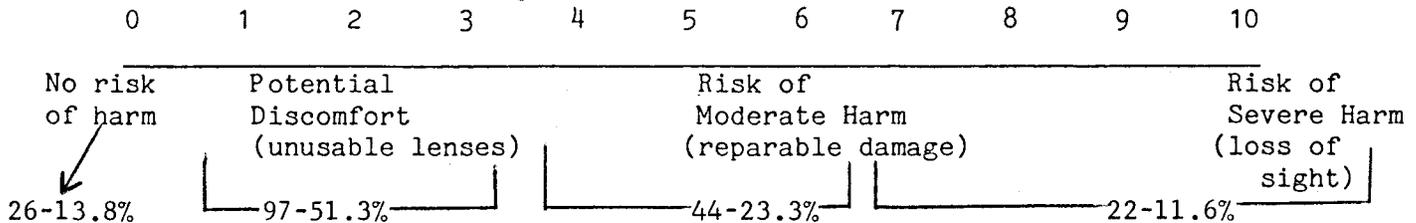
FITTING EYEGLASSES: No. respondents = 189



FITTING CONTACT LENSES: No. respondents = 188



NEUTRALIZATION: No. respondents = 189



(see reverse side)

GRINDING LENSES: No. respondents = 182

0 1 2 3 4 5 6 7 8 9 10

No risk of harm 20-11%	Potential Discomfort (unusable lenses) 105-57.7%	Risk of Moderate Harm (reparable damage) 38-20.9%	Risk of Severe Harm (loss of sight) 19-10.4%
---------------------------	---	--	---

b) If you answered that there is risk of either severe or moderate harm, please cite examples.

Not applicable to summary

c) If you answered that there is risk of either severe or moderate harm for any of the above, does the degree of risk differ among the following groups? On a scale of 1 to 5, rate each of the following according to the degree of risk each one represents, by circling the appropriate number on each scale.

	Low Risk				High Risk	
Licensed Dispensing Opticians	1	2	3	4	5	No. res. = 137
	120-87.6%		11-8%		6-4.3%	
Apprentice Dispensing Opticians	1	2	3	4	5	No. res. = 131
	51-38.9%		49-37.4%		31-23.7%	
Unlicensed Optical Dispensers	1	2	3	4	5	No. res. = 130
	21-16.2%		37-28.5%		72-55.4%	
Other (Specify) <u>Not applicable</u>	1	2	3	4	5	

to summary

If the degree of risk differs among these groups of personnel, please specify differences.

Not applicable to summary

11. a) Is it possible to ensure continued competency through regulation?

166-88.8% YES 21-11.2% NO

No. respondents = 187

b) If yes, how can continuing competency be best ensured? RANK THE FOLLOWING METHODS from 1 to 5 (or greater, if other methods are specified)

	RATING
Mandatory continuing education	_____
Voluntary continuing education	_____
Periodic reexamination	<u>Not applicable to summary</u>
More stringent disciplinary actions.....	_____
Peer review	_____
Other (please specify).....	_____

12. Have you ever been involved in the Board's complaint review process?
 22-11.7% 166-88.3% No. respondents = 188
 YES NO (If no, please go to question 14.)

13. If you have been involved in the complaint review process:

Was the matter resolved promptly?	17-85.0% YES <input type="checkbox"/>	3-15.0% NO <input type="checkbox"/>	NR*= 20
Was the resolution equitable?	16-84.2% YES <input type="checkbox"/>	3-15.8% NO <input type="checkbox"/>	NR = 19
Was a formal hearing held?	8-44.4% YES <input type="checkbox"/>	10-55.6% NO <input type="checkbox"/>	NR = 18
Was the Board's decision appealed?	2-11.7% YES <input type="checkbox"/>	16-88.9% NO <input type="checkbox"/>	NR = 18
If appealed, was the decision reversed?	0-0% YES <input type="checkbox"/>	1-100% NO <input type="checkbox"/>	NR = 1

COMMENTS: Not applicable to summary

14. a) Have you ever requested assistance from the Board's administrative office?
 54-29.2% 131-70.8% No. respondents = 185
 YES NO

b) If yes, was your request dealt with promptly?
 50-92.6% 4-7.4% No. respondents = 50
 YES NO

Was the quality of the response:

Excellent	<input type="checkbox"/>	34-68.0%
Adequate	<input type="checkbox"/>	12-24.0%
Substandard	<input type="checkbox"/>	4- 8.0%

Can you recommend changes for the office? Not applicable to summary

15. a) Have you had contact with similar boards in other states? No. respondents = 184
 35-19% 149-81%
 YES NO

(see reverse side)

* NR - No. respondents

15. b) If yes, how would you rate Arizona's Board? No. respondents = 34

Superior 15-44.1%

Equal 17-50.0%

Inferior 2- 5.9%

c) If it is inferior, how can Arizona's Board be improved?

Not applicable to summary

16. a) Do you receive notices or information from the Board regarding:

73-39% 114-61%

Scheduled Board meetings?YES NO NR = 187
114-60% 76-40%

Proposed rules or other proposed Board actionsYES NO NR = 190
85-44.7% 105-55.3%

Actions taken by the Board?YES NO NR = 190

b) Are you interested in receiving such information?

174-92.5% 12-7.5%

YES NO

17. a) Has the Board, through its licensing function, adequately protected the public from incompetent practioners?

127-72.2% 49-27.8%

YES NO

If yes, why? If no, why not?

Not applicable to summary

b) Please cite and explain instances of hardship or difficulty you have heard about or experienced regarding licensing or other regulatory functions of the Board.

Not applicable to summary

Office of the Auditor General
 Survey Of Registered
 Apprentice Dispensing Opticians

Please complete the following survey by indicating the appropriate answers in the spaces provided. We welcome your comments on any of the questions; if we have not provided enough space for your comments, please complete your answers in the space provided on the last page.

In order to ensure confidentiality, please do not write your name on the questionnaire or on the return envelope. Thank you very much for your cooperation.

1. a) Are you currently residing in Arizona? No. respondents = 50
 50-100% YES NO 0-0%
- b) Are you currently registered to practice as an apprentice dispensing optician in Arizona? No. respondents = 50
 48-96.0% YES NO 2-4.0%
- c) Are you currently practicing as an apprentice dispensing optician in Arizona?
 48-96% YES NO 2-4% No. respondents = 50
- d) How many hours per week do you work? No. respondents = 50
 40 or more hours per week 39-78.0%
 30 - 39 " " " 6-12.0
 20 - 29 " " " 3- 6.0
 10 - 19 " " " 1- 2.0
 Fewer than 10 " " " 1- 2.0
- e) Is your place of employment located in a city with a population of: No. respon.=47
 More than 100,000? 33-70.2%
 50,000 to 100,000? 6-12.8
 30,000 to 49,999? 6-12.8
 15,000 to 29,999? 0-0
 Less than 15,000? 2- 4.3
2. Does your work include: (Check all that apply) No. respondents = 50
 Fitting eyeglasses 47-94.0%
 Fitting contact lenses 22-44.0
 Fitting artificial eyes 0-0
 Neutralization 42-84.0
 Lens-grinding 20-40.0
 Other (Specify) 3- 6.0

No. respondents = 45

3. If you need advice or have a problem regarding your work, to whom do you go ?
- Office Manager: 13-28.9% Licensed Dispensing Optician: 3-6.7%
- Supervisor: 28-62.2% Other: 1-2.2%

No. respondents = 50

4. Do you receive direct supervision from one or more of the following?
- Licensed optometrist YES 18 NO
- Licensed medical doctor
(e.g., ophthalmologist) YES 6 NO
- Licensed dispensing optician YES 41 NO
- OTHER (please specify) YES 1 NO

If yes to any of the above, is the person who is supervising you always available? No. respondents = 49

42-85.7% YES NO 7-14.3%

COMMENTS: Not applicable to summary

5. a) Have you taken the Board of Dispensing Opticians' examination for licensure? No. respondents = 50
0-0% YES NO 50-100%
- b) If yes, did you pass the exam?
YES NO Not applicable = 50-100%
- c) If no to either of the above, do you plan to take the exam at a later date?
39-90.7% YES NO 4-9.3% No. respondents = 43

6. IF YOU HAVE TAKEN THE EXAM: Not applicable = 50-100%
a) Do you rate it:

Not difficult enough to measure knowledge and skills?

A valid measure of the knowledge and skills required for your profession?

Excessively difficult measure of the knowledge and skills required for your profession?

6. b) Was the exam content appropriate with regard to the duties a dispensing optician performs? Not applicable = 50-100%

- Appropriate
- Mostly Appropriate . . .
- Mostly Inappropriate . .
- Inappropriate

If you checked one of the latter two categories in what way(s) did you consider the exam inappropriate?

Not applicable

c) How many times did you take the exam before receiving a passing score for each part of the exam? Not applicable = 50-100%

- One time only - passed all five sections at first sitting
- Two times
- Three times
- Four times
- Five or more

7. a) Have you taken a national exam given by the Opticians Association of America (OAA) or the National Contact Lens Examiners (NCLE)? No. respondents = 43

7-16.3% YES NO 36-83.7%

If yes, indicate which exam(s) you have taken:

- Both OAA and NCLE exams 0-0
 - OAA exam only 7-16.3
 - NCLE exam only 0-0
 - Neither 36-83.7
 - Other (Specify) 0-0
-

7b not applicable

7. c) Would the OAA and NCLE exams be more appropriate, approximately the same or less appropriate than the State exams as a measure of the knowledge and skills required for the duties a dispensing optician performs? No. respondents = 6
- OAA/NCLE exams more appropriate than State Board exams 2-33.3%
- OAA/NCLE exams approximately the same as State Board exams . . . 3-50.0%
- OAA/NCLE exams less appropriate than State Board exams 1-16.7%

8. Should the contact lens portion of the State Board exam be: No. respondents = 35
- Required of all applicants 18 51.4%
- Optional 17-48.6
- If optional, why? (Check all that apply) No. respondents = 16
- Excessively restrictive licensure requirement 3-18.75%
- Only a few licensees fit contact lenses 15-93.75%
- Other (please specify) 1- 6.25%

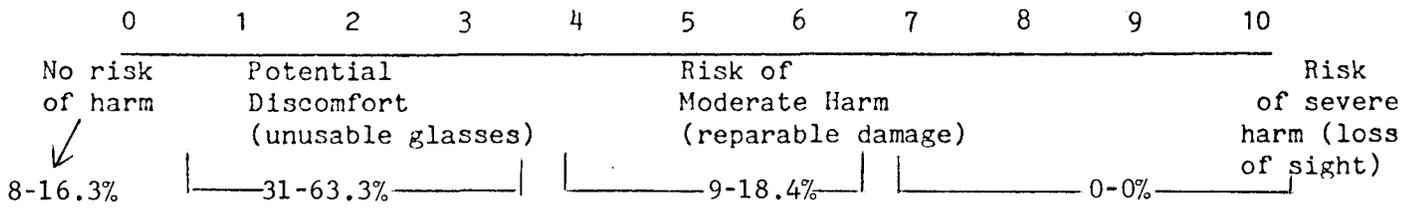
If you answered that the contact lens portion of the exam should be optional, should only those who have taken this portion of the State Board exam be allowed to fit contact lenses? No. respondents = 16

13-81.2% YES NO 3-18.8%

If yes, why? If no, why not? Not applicable to summary

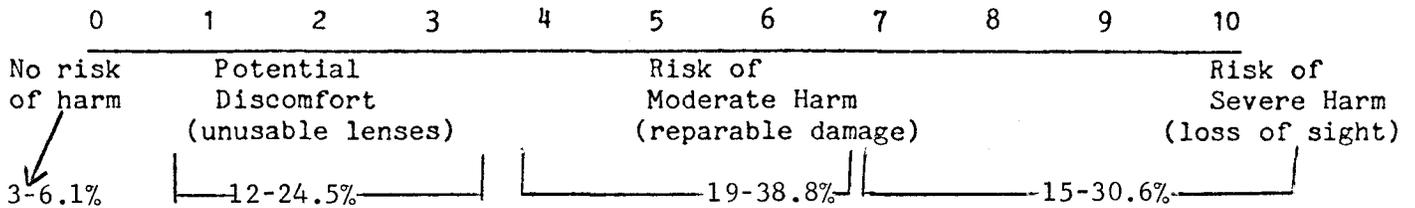
9. a) On a scale of 0 to 10, how would you rate the potential harm to the public directly attributable to each of the following services provided by optical dispensing personnel? Circle appropriate number. No. respondents = 49

FITTING EYEGLASSES

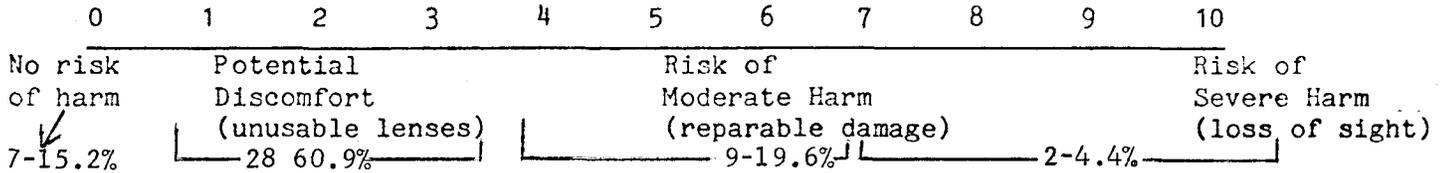


9. a) continued

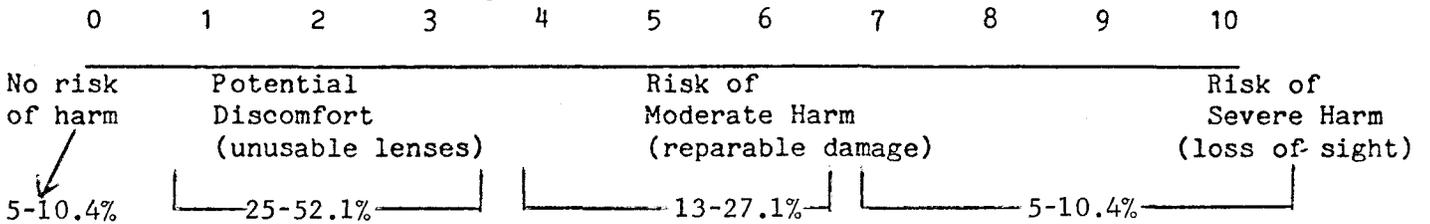
FITTING CONTACT LENSES: No. respondents = 49



NEUTRALIZATION: No. respondents = 46



GRINDING LENSES: No. respondents = 48



b) If you answered that there is risk of either severe or moderate harm, please cite examples.

Not applicable to summary

c) If you answered that there is risk of either severe or moderate harm for any of the above, does the degree of risk differ among the following groups? On a scale of 1 to 5, rate each of the following according to the degree of risk each one represents, by circling the appropriate number on each scale.

	Low Risk				High Risk	
Licensed Dispensing Opticians	1 ← 29 → 2		3 ← 3 → 4		4 ← 0 → 5	NR = 32
Apprentice Dispensing Opticians	1 ← 20 → 2		3 ← 10 → 4		4 ← 0 → 5	NR = 30
Unlicensed Optical Dispenser	1 ← 11 → 2		3 ← 7 → 4		4 ← 13 → 5	NR = 31
Other (Specify) <u>Not applicable</u>	1	2	3	4	5	

to summary

If the degree of risk differs among these groups of personnel, please specify differences.

Not applicable to summary

10. a) Is it possible to ensure continued competency through regulation?

35-74.5% YES NO 12-25.5% No. respondents = 47

b) If yes, how can continuing competency be best ensured? RANK THE FOLLOWING METHODS from 1 to 5 (or greater, if other methods are specified)

	RATING
Mandatory continuing education	_____
Voluntary continuing education	_____
Periodic reexamination.....	_____
More stringent disciplinary actions.....	_____
Peer review.....	_____
Other (please specify).....	_____

Not applicable to summary

11. Have you ever been involved in the Board's complaint review process?

1-2% YES NO 49-98% No. respondents = 50

12. If you have been involved in the complaint review process:

Was the matter resolved promptly?.....YES NO

Was the resolution equitable?.....YES NO Not applicable

Was a formal hearing held?YES NO only 1 response

Was the Board's decision appealed?YES NO

If appealed, was the decision reversed?.....YES NO

COMMENTS: _____

13. a) Have you ever requested assistance from the Board's administrative office?

15-30.6% YES NO 34-69.4% No. respondents = 49

b) If yes, was your request dealt with promptly?

11-84.6% YES NO 2-15.4% No. respondents = 13

Was the quality of the response: No. respondents = 11

Excellent 4-36.4%

Adequate 5 45.4%

Substandard 2-18.2%

Can you recommend changes for the office? Not applicable to summary

14. a) Have you had contact with similar boards in other states? No. respondents = 49
1-2% YES NO 48-98%

b) If yes, how would you rate Arizona's Board? No. respondents = 1
Superior Not applicable
Equal
Inferior

c) If it is inferior, how can Arizona's Board be improved?
Not applicable to summary

15. a) Do you receive notices or information from the Board regarding:
Scheduled Board meetings?..... YES NO
Proposed rules or other proposed Board actions?..... YES NO
Actions taken by the Board?..... YES NO

b) Are you interested in receiving such information? No. respondents = 47
44-93.6% YES NO 3-6.4%

16. a) Has the Board, through its apprenticeship program, provided a valuable and effective means to protect the public? No. respondents = 42
30 71.4% YES NO 12-28.6%

If yes, why? If no, why not?

Not applicable to summary

b) Please cite and explain instances of hardship or difficulty you have heard about or experienced regarding the apprenticeship program.
Not applicable to summary

17. ADDITIONAL COMMENTS:

Not applicable to summary

OFFICE OF THE AUDITOR GENERAL

Survey of Methods to Encourage Public Input
and Participation by State Regulatory Agencies

Please complete the following survey by inserting appropriate answers in the spaces provided. We welcome your comments on any of the questions; if we have not provided enough space for your comments, please complete your answers on the last page. Answers may be verified.

Thank you very much for your cooperation.

Name of Agency 30/32 = 93.8% response rate*

Name of Person Completing Questionnaire _____

Title of Person Completing Questionnaire _____

Telephone number _____

* Non-respondents: AZ Bar Association
AZ Racing Commission

1. What are your general responsibilities in regard to your regulatory duties?
(check all that apply)

LICENSURE/CERTIFICATION/REGISTRATION

License individuals.....	<input type="checkbox"/>	27	--	90%
License organizations....	<input type="checkbox"/>	12		40%
Certify individuals.....	<input type="checkbox"/>	10		33.3%
Certify organizations....	<input type="checkbox"/>	3		10.0%
Register individuals.....	<input type="checkbox"/>	8		26.7%
Register organizations...	<input type="checkbox"/>	4		13.3%
Other (specify) _____	<input type="checkbox"/>	8		26.7%
<hr/>				
None	<input type="checkbox"/>	0		

DISCIPLINARY ACTIONS

		NO.	%
Investigate complaints regarding licensees/registrants	<input type="checkbox"/>	30	100.0%
Fine licensees/registrants.....	<input type="checkbox"/>	13	43.3%
Order reparation (e.g., refund of fees).....	<input type="checkbox"/>	11	36.7
Recommend reparation.....	<input type="checkbox"/>	10	33.3
Consent agreement.....	<input type="checkbox"/>	23	76.7
Probation.....	<input type="checkbox"/>	19	63.3
Suspension.....	<input type="checkbox"/>	29	96.7
Summary suspension.....	<input type="checkbox"/>	14	46.7
Revocation.....	<input type="checkbox"/>	29	96.7
Censure.....	<input type="checkbox"/>	16	53.3
None.....	<input type="checkbox"/>	0	0

2. Which of the following activities does your Board or staff conduct to carry out its duties/responsibilities? (check all that apply)

Hold regular board meetings on the following schedule:

	NO.	%		NO.	%	
Monthly.....	<input type="checkbox"/>	15	50.0%	Bi-monthly...	3	10.0%
Quarterly.....	<input type="checkbox"/>	5	16.7	7-9 Year.....	2	6.7
Semi-annually.....	<input type="checkbox"/>	1	3.3	3 year.....	1	3.3
Annually.....	<input type="checkbox"/>	0	0	Weekly.....	1	3.3
Other (specify) _____	<input type="checkbox"/>			As needed....	5	16.7
				None.....	2	6.7

Investigate complaints as follows:

	#	%
Investigate each complaint upon receipt.....	<input type="checkbox"/>	27 90.0%
Investigate only those which have been predetermined by Board/ Agency to be of a serious nature.....	<input type="checkbox"/>	3 10.0
Board members investigate complaints.....	<input type="checkbox"/>	10 33.3
Paid staff (investigators) investigate complaints.....	<input type="checkbox"/>	22 73.3
Hire outside investigators.....	<input type="checkbox"/>	16 53.3
Hold investigational hearings (i.e., discuss results of investigation in a hearing).....	<input type="checkbox"/>	14 46.7
Hold informal hearings/interviews.....	<input type="checkbox"/>	23 76.7
Hold formal hearings.....	<input type="checkbox"/>	28 93.3

3. Are any activities conducted by your Agency/Board statutorily required to be confidential? 17 12

YES NO (1 - no response)

58.6% 41.4%

If YES, which activities and what are the circumstances? _____

4. Under what circumstances do you or your staff record minutes? (check all that apply)

	#	%
During regular Board meetings.....	<input type="checkbox"/> 26	86.7%
During investigative hearings.....	<input type="checkbox"/> 17	56.7
During informal hearings.....	<input type="checkbox"/> 19	63.3
During formal hearings.....	<input type="checkbox"/> 26	86.7
During executive sessions.....	<input type="checkbox"/> 19	63.3
Other (specify) _____		

5. What is your practice regarding the recording and/or transcription of hearings? (check all that apply)

	#	%
Proceedings of all formal hearings are recorded (taped or recorded by stenographer).....	<input type="checkbox"/> 28	93.3%
Transcriptions of all formal hearings are made.....	<input type="checkbox"/> 17	56.7
Transcriptions of all formal hearings are made available upon request.....	<input type="checkbox"/> 24	80.0
Proceedings are recorded for only those formal hearings which are selected to be recorded and transcribed.....	<input type="checkbox"/> 2	6.7
Proceedings are recorded for other hearings/meetings..... (please specify) _____	<input type="checkbox"/> 16	53.3

6. Under what circumstances, if any, do you use hearing officers instead of the Board to conduct hearings?

	#	%
All formal hearings.....	<input type="checkbox"/> 6	21.4%
Some formal hearings (specify circumstances).....	<input type="checkbox"/> 6	21.4

Other hearings (specify) _____	6	21.4

Under no circumstances.....	<input type="checkbox"/> 15	50.0
If not, why not? _____		

(No response = 2)

7. (a) When an individual/group requests access to Board minutes, transcripts of hearings, or other matters of public record, what procedures are followed? (check all that apply)

	#	%
Individual/group may come in to the Board/Agency office and view the records.....	<input type="checkbox"/> 24	80.0%
Individual/group may come in to the Board/Agency office and make copies of the requested records	<input type="checkbox"/> 22	73.3
Individual/group is sent copies of the requested records.....	<input type="checkbox"/> 17	56.7
Individual/group is given requested information by telephone.....	<input type="checkbox"/> 16	53.3
Other (specify) _____	6	20.0

(b) If an individual/group requests copies of records, does your Board/Agency charge for the copies?

	#	%
All individuals/groups are charged.....	<input type="checkbox"/> 14	46.7%
Only certain individuals/groups are charged (please specify who is charged and under what circumstances they are charged) _____	<input type="checkbox"/> 14	46.7

No individual/group is charged.....	<input type="checkbox"/> 2	6.7

(c) Are individuals/groups required to submit written requests for copies of records?

	#	%
All individuals/groups must submit written requests for copies	<input type="checkbox"/> 14	46.7%
Some individuals/groups must submit written requests for copies (specify circumstances).....	<input type="checkbox"/> 11	36.7

No individual/group must submit written requests for copies...	<input type="checkbox"/> 6	20.0

8. Who is notified about DISCIPLINARY ACTIONS your Board/Agency proposes to undertake, and how are they notified? (check the practices of your Board/Agency)

INDIVIDUALS/GROUPS NOTIFIED	#	METHODS OF NOTIFICATION		
		Mail	Telephone	Other*
No one is notified.....	<input type="checkbox"/> 1			
Notice is posted at officially designated location.....	<input type="checkbox"/> 17			
Secretary of State.....		<input type="checkbox"/> 5	<input type="checkbox"/> 0	<input type="checkbox"/> 0
Individual complainants.....		<input type="checkbox"/> 24	<input type="checkbox"/> 9	<input type="checkbox"/> 2
Consumers who request information.....		<input type="checkbox"/> 19	<input type="checkbox"/> 14	<input type="checkbox"/> 0
Licensee/registrant against whom complaint has been lodged.....		<input type="checkbox"/> 29	<input type="checkbox"/> 9	<input type="checkbox"/> 2
News Media: (a) News releases.....		<input type="checkbox"/> 10	<input type="checkbox"/> 4	<input type="checkbox"/> 0
(b) Paid advertisement.....		<input type="checkbox"/> 1	<input type="checkbox"/> 1	<input type="checkbox"/> 0
Consumer groups.....		<input type="checkbox"/> 6	<input type="checkbox"/> 3	<input type="checkbox"/> 0
Professional associations.....		<input type="checkbox"/> 9	<input type="checkbox"/> 2	<input type="checkbox"/> 0
Other (please specify) _____				

*Specify OTHER Methods of Notification here: _____

Comments: _____

9. Who is notified about DISCIPLINARY ACTIONS your Board/Agency has undertaken, and how are they notified? (check the practices of your Board/Agency)

INDIVIDUALS/GROUPS NOTIFIED	#	METHODS OF NOTIFICATION		
		Mail	Telephone	Other*
No one is notified.....	<input type="checkbox"/> 0			
Notice is posted at officially designated location.....	<input type="checkbox"/> 10			
Secretary of State.....		<input type="checkbox"/> 4	<input type="checkbox"/> 0	<input type="checkbox"/> 0
Individual complainants.....		<input type="checkbox"/> 25	<input type="checkbox"/> 9	<input type="checkbox"/> 1
Consumers who request information.....		<input type="checkbox"/> 22	<input type="checkbox"/> 10	<input type="checkbox"/> 1
Licensee/registrant against whom complaint has been lodged.....		<input type="checkbox"/> 28	<input type="checkbox"/> 9	<input type="checkbox"/> 0
News Media: (a) News releases.....		<input type="checkbox"/> 13	<input type="checkbox"/> 4	<input type="checkbox"/> 1
(b) Paid advertisement.....		<input type="checkbox"/> 1	<input type="checkbox"/> 0	<input type="checkbox"/> 0
Consumer groups.....		<input type="checkbox"/> 4	<input type="checkbox"/> 1	<input type="checkbox"/> 0
Professional associations.....		<input type="checkbox"/> 16	<input type="checkbox"/> 2	<input type="checkbox"/> 0
Other (please specify) _____				

*Specify OTHER Methods of Notification here: _____

Comments: _____

10. Who, if anyone, is notified of REGULAR BOARD/AGENCY MEETINGS, when are they notified, and how are they notified? (check the practices of your Board/Agency)

INDIVIDUALS/GROUPS NOTIFIED	METHOD OF NOTIFICATION			NUMBER OF DAYS IN ADVANCE	
	Mail	Telephone	Other*	More Than 20 Days	Less Than 20 Days
No one is notified...2...6.7%... <input type="checkbox"/>					
Notice is posted at officially designated location 26..89..6.. <input type="checkbox"/>	No.	No.	No.	No.	No.
Secretary of State..... <input type="checkbox"/>	10	0	0	5	7
Individual complainants..... <input type="checkbox"/>	10	4	0	2	4
Consumers who request information.. <input type="checkbox"/>	18	12	0	4	8
Licensee/registrant against whom complaint has been lodged..... <input type="checkbox"/>	15	2	1	6	4
News Media: (a) News release..... <input type="checkbox"/>	11	2	0	4	3
(b) Paid advertisement <input type="checkbox"/>	0	0	0	0	0
Consumer groups..... <input type="checkbox"/>	6	1	0	3	3
Professional associations..... <input type="checkbox"/>	13	2	0	4	6
Other (please specify) _____					

*Specify OTHER Methods of Notification here: _____

Comments: _____

11. Who, if anyone, is notified of INFORMAL HEARINGS/INTERVIEWS, when are they notified, and how are they notified? (check the practices of your Board/Agency)

INDIVIDUALS/GROUPS NOTIFIED	METHOD OF NOTIFICATION			NUMBER OF DAYS IN ADVANCE	
	Mail	Telephone	Other*	More Than 20 Days	Less Than 20 Days
No one is notified 0.....0%... <input type="checkbox"/>					
Notice is posted at officially designated location 13.50..0%.. <input type="checkbox"/>	No.	No.	No.	No.	No.
Secretary of State..... <input type="checkbox"/>	3	0	0	1	1
Individual complainants..... <input type="checkbox"/>	16	8	1	8	6
Consumers who request information.. <input type="checkbox"/>	13	9	1	3	5
Licensee/registrant against whom complaint has been lodged..... <input type="checkbox"/>	20	7	0	10	7
News Media: (a) News release..... <input type="checkbox"/>	6	3	0	1	2
(b) Paid advertisement <input type="checkbox"/>	0	0	0	0	0
Consumer groups..... <input type="checkbox"/>	2	2	1	1	2
Professional associations..... <input type="checkbox"/>	6	2	1	2	4
Other (please specify) _____					

*Specify OTHER Methods of Notification here: _____

Comments: N=26

12. Who, if anyone, is notified of INVESTIGATIVE HEARINGS, when are they notified and how are they notified? (check the practices of your Board/Agency)

INDIVIDUALS/GROUPS NOTIFIED	METHOD OF NOTIFICATION			NUMBER OF DAYS IN ADVANCE	
	Mail	Telephone	Other*	More Than 20 Days	Less Than 20 Days
No one is notified..... ⁰ 0%..... <input type="checkbox"/>					
Notice is posted at officially designated location..... ¹⁰ 50%..... <input type="checkbox"/>	No.	No.	No.	No.	No.
Secretary of State..... <input type="checkbox"/>	2	<input type="checkbox"/>	0	<input type="checkbox"/>	1
Individual complainants..... <input type="checkbox"/>	12	<input type="checkbox"/>	4	<input type="checkbox"/>	5
Consumers who request information.. <input type="checkbox"/>	7	<input type="checkbox"/>	4	<input type="checkbox"/>	3
Licensee/registrator against whom complaint has been lodged..... <input type="checkbox"/>	14	<input type="checkbox"/>	3	<input type="checkbox"/>	7
News Media: (a) News release..... <input type="checkbox"/>	4	<input type="checkbox"/>	1	<input type="checkbox"/>	1
(b) Paid advertisement..... <input type="checkbox"/>	0	<input type="checkbox"/>	0	<input type="checkbox"/>	0
Consumer groups..... <input type="checkbox"/>	2	<input type="checkbox"/>	1	<input type="checkbox"/>	1
Professional associations..... <input type="checkbox"/>	5	<input type="checkbox"/>	2	<input type="checkbox"/>	2
Other (please specify)_____					

*Specify OTHER Methods of Notification here: _____

Comments: (N = 20)

13. Who, if anyone, is notified of FORMAL HEARINGS, when are they notified, and how are they notified? (check the practices of your Board/Agency)

INDIVIDUALS/GROUPS NOTIFIED	METHOD OF NOTIFICATION			NUMBER OF DAYS IN ADVANCE	
	Mail	Telephone	Other*	More Than 20 Days	Less Than 20 Days
No one is notified..... ⁰ 0%..... <input type="checkbox"/>					
Notice is posted at officially designated location..... ²⁰ 69:0%..... <input type="checkbox"/>	No.	No.	No.	No.	No.
Secretary of State..... <input type="checkbox"/>	9	<input type="checkbox"/>	0	<input type="checkbox"/>	6
Individual complainants..... <input type="checkbox"/>	21	<input type="checkbox"/>	7	<input type="checkbox"/>	14
Consumers who request information.. <input type="checkbox"/>	17	<input type="checkbox"/>	8	<input type="checkbox"/>	7
Licensee/registrator against whom complaint has been lodged..... <input type="checkbox"/>	26	<input type="checkbox"/>	4	<input type="checkbox"/>	2
News Media: (a) News release..... <input type="checkbox"/>	12	<input type="checkbox"/>	3	<input type="checkbox"/>	0
(b) Paid advertisement..... <input type="checkbox"/>	3	<input type="checkbox"/>	0	<input type="checkbox"/>	0
Consumer groups..... <input type="checkbox"/>	5	<input type="checkbox"/>	2	<input type="checkbox"/>	5
Professional associations..... <input type="checkbox"/>	10	<input type="checkbox"/>	3	<input type="checkbox"/>	6
Other (please specify)_____					

*Specify OTHER Methods of Notification here: _____

Comments: (N = 29)

14. (a) Who, if anyone, is notified regarding ADOPTION OF RULES AND REGULATIONS prior to their adoption? How and when are they notified? (check the practices of your Board/Agency)

INDIVIDUALS/GROUPS NOTIFIED	METHOD OF NOTIFICATION			NUMBER OF DAYS IN ADVANCE	
	Mail	Telephone	Other*	More Than 20 Days	Less Than 20 Days
No one is notified..... <input type="checkbox"/>					
Notice is posted at officially designated location..... <input type="checkbox"/>					
Secretary of State..... <input type="checkbox"/>	No. 26	No. 0	No. 0	No. 23	No. 0
Consumers who request information... <input type="checkbox"/>	25	8	1	19	2
Licenseses/registrants (individually) <input type="checkbox"/>	19	3	1	16	0
News Media: (a) News releases..... <input type="checkbox"/>	13	3	0	14	1
(b) Paid advertisement <input type="checkbox"/>	9	0	0	8	0
Consumer groups..... <input type="checkbox"/>	12	1	0	2	1
Professional associations..... <input type="checkbox"/>	21	5	1	19	1
Other (please specify) _____ <input type="checkbox"/>					

*Specify OTHER Methods of Notification here: _____

Comments: _____

(b) Over the past three years, who has been responsible for initiating the rules and regulations promulgated by your Board/Agency? (check as appropriate)

	Always	Sometimes	Never
Registrants/licenseses.....	<input type="checkbox"/> 0	<input type="checkbox"/> 16	<input type="checkbox"/> 4
Administrative staff to/for your Board/Agency.....	<input type="checkbox"/> 12	<input type="checkbox"/> 15	<input type="checkbox"/> 1
Legal counsel.....	<input type="checkbox"/> 4	<input type="checkbox"/> 19	<input type="checkbox"/> 0
General public.....	<input type="checkbox"/> 1	<input type="checkbox"/> 8	<input type="checkbox"/> 8

15. Who, if anyone, is notified regarding DEVELOPMENT OF LEGISLATIVE PROPOSALS initiated by your Board/Agency which affect your Board's/Agency's activities? How are they notified? (check as appropriate)

INDIVIDUALS/GROUPS NOTIFIED	METHODS OF NOTIFICATION		
	Mail	Telephone	Other*
No one is notified..... ⁰ 0%..... <input type="checkbox"/>			
Notice is posted at officially designated location..... ¹⁰ 33.3%..... <input type="checkbox"/>	No.	No.	No.
Secretary of State.....	<input type="checkbox"/> 3	<input type="checkbox"/> 0	<input type="checkbox"/> 1
Licensees/registrants (individually).....	<input type="checkbox"/> 13	<input type="checkbox"/> 7	<input type="checkbox"/> 4
News Media: (a) News releases.....	<input type="checkbox"/> 8	<input type="checkbox"/> 7	<input type="checkbox"/> 3
(b) Paid advertisement.....	<input type="checkbox"/> 0	<input type="checkbox"/> 0	<input type="checkbox"/> 0
Consumer groups.....	<input type="checkbox"/> 11	<input type="checkbox"/> 5	<input type="checkbox"/> 3
Professional associations.....	<input type="checkbox"/> 20	<input type="checkbox"/> 14	<input type="checkbox"/> 5
Other (please specify) _____			

*Specify OTHER Methods of Notification here: _____

Comments: _____