

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit



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SUMMARY OF: A Sunset Review of the Department of Community and Economic Development, Board of Dispensing Opticians, September 12, 2003.

PURPOSE OF THE REPORT

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Dispensing Opticians. The purpose of this audit was to determine if there is a demonstrated public need for the continued existence of the Board of Dispensing Opticians.

REPORT CONCLUSIONS

Under AS 44.66.050(d)(4), part of a sunset review is to provide “*an assessment of alternative methods of achieving the purposes of the program.*” In the prior audit we considered the merits of regulating opticians through a registration process and placing primary reliance on the successful completion of nationally recognized examinations to ensure competency.

Most states do not “regulate” or license opticians at all. According to the Opticians Association of America, only 22 states license dispensing opticians. Texas has a voluntary registration program – which allows the individual to advertise as a “registered optician” if they have met certain established criteria related to competency. Such an approach may be a viable alternative for Alaska.

Under this approach, an individual could advertise as being a registered optician once they provided proof to the Division of Occupational Licensing (OccLic) that they had met the necessary testing and continuing education requirements. Presumably, such designation would have some commercial advantages, assuring consumers the practitioner had met an established standard of competency.

The future operational viability of the board is questionable. In the long term, the number of new applicants seeking licensure as opticians may be reduced significantly due to creation of the optician assistant designation. Combined with fiscal instability brought on by licensing fee revenues insufficient to cover the operating costs of the board, the long-term viability of the Board of Dispensing Opticians (BDO) is problematic. Given these concerns, we recommend the legislature not extend the termination date for the board. Accordingly, the board will terminate operations at June 30, 2005.

In our view, the public can be adequately protected by competition in the marketplace, ongoing supervision of assistants, or professional standards already established for practicing opticians and ophthalmologists.

FINDINGS AND RECOMMENDATIONS

If the legislature decides to extend the termination date for the Board of Dispensing Opticians (BDO), we believe it is important for the board to take the following two actions.

Recommendation No. 1

The board should develop and propose legislation to clarify statutes related to the various aspects of dispensing optician licensing.

Opticianry statutes should be amended to address the following concerns:

The amount of apprentice training hours necessary for licensure should be clarified. Currently, AS 08.71.110(a)(2)(A) states an individual must complete “*at least 1,800 hours of training as an apprentice...*”. In regulation, BDO specifies the individual complete a board-approved course, accumulate 1,800 hours of training, and pass the necessary examinations to be licensed in dispensing spectacles. The regulations also state that in order for an individual to be licensed to dispense contact lenses they must complete an additional 1,800 hours and pass the relevant national examination. State law makes no distinction related to these endorsements.

Modification of apprentice registration requirements at AS 08.71.160.

Recognition, in statute, of a process to license individuals from other jurisdictions.

Recommendation No. 2

The Division of Occupational Licensing in conjunction with the board should increase optician’s licensing fees to eliminate the cumulative deficit.

Another increase in optician’s licensing fees is necessary to eliminate the cumulative deficit. Licenses are renewed every two years; therefore, the revenue generated in the renewal year must be sufficient to fund most of the board’s costs of the nonrenewal or subsequent year. The recent increase in licensing renewal fees for dispensing opticians and optician’s apprentices appears to be sufficient to cover the board’s costs for the two-year period. Depending on the amount of revenue collected in the nonrenewal year, the increased licensing fee may also reduce a small portion of the board’s continuing deficit. Alaska Statute 08.01.065(c) requires fees for an occupation to be set to approximate the regulatory costs for the occupation. We recommend the board and OccLic review the regulatory costs and licensing fees to ensure that BDO sufficiently eliminates the cumulative deficit and meets annual operating costs.

October 2, 2003

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 and Title 44 of the Alaska Statutes (sunset legislation), the attached report is submitted for your review.

DEPARTMENT OF COMMUNITY
AND ECONOMIC DEVELOPMENT
BOARD OF DISPENSING OPTICIANS
SUNSET REVIEW

October 2, 2003

Audit Control Number
08-20022-03

This audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently under AS 08.03.010(c)(9), the Board of Dispensing Opticians is scheduled to terminate on June 30, 2004. If the legislature takes no action to extend the termination date, the board would be allowed one year in which to conclude its administrative operations.

In our opinion, the termination date for the Board of Dispensing Options should not be extended. As discussed in the Report Conclusions section, various changes made in the opticianry statutes in 2002 have led to a situation that makes the board's long-term viability problematic. We recommend the legislature consider a registration process for opticians, but not extend the termination date and allow the board to go into its one-year wrap-up period.

The sunset review was conducted in accordance with generally accepted government audit standards. Fieldwork procedures utilized in the course of developing this report are set out in the Objectives, Scope, and Methodology section.

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with the intent of Titles 24 and 44 of the Alaska Statutes, we have reviewed the activities of the Board of Dispensing Opticians (BDO) to determine if the termination date for the board should be extended. As required by AS 44.66.050(a), the legislative committee of reference shall consider this report as part of the oversight process in determining if BDO should be reestablished. Currently, AS 08.03.010(c)(9) specifies that BDO will terminate on June 30, 2004. If no action is taken by the legislature, the board will have one year from that date to conclude its administrative operations.

Objectives

Central, interrelated objectives of our report are:

1. To determine if the termination date of the board should be extended.
2. To determine if the board is operating in the public interest.
3. To determine if the board has exercised appropriate regulatory oversight of licensed opticians.
4. To assess and report on the board's response to legislative concerns regarding use of, and alternatives to, a practical examination for licensing applicants as opticians.
5. To assess and report on actions taken in response to legislative concerns about charging licensees adequate licensure fees to cover the operating expenses of board.

The assessment of the operations and performance of the board was based on criteria set out in AS 44.66.050(c). Criteria set out in this statute relate to the determination of a demonstrated public need for the board.

Scope and Methodology

Under the direction and supervision of the Division of Legislative Audit, another auditor conducted the majority of this review. We followed professional standards to determine that the other auditor was independent and their work was competent and sufficient.

The major areas of our review were board proceedings, licensing, complaint investigation, and resolution functions. During the course of our examination we reviewed and evaluated the following:

- Applicable statutes and regulations.
- Compliance with statutes and regulations related to the licensing of Dispensing Opticians and the registration of optician apprentices.
- Files and documentation related to individuals licensed as dispensing opticians and dispensing optician apprentices.
- Files and documentation related to individuals who applied for licensure as a dispensing optician.
- Minutes of board meetings, budget documents, and annual reports related to, or issued by, BDO.
- Annual reports issued by the board.
- Complaints filed with the Division of Occupational Licensing.

Additionally, we conducted interviews with Division of Occupational Licensing staff, a program manager with the U.S. Department of Labor, and members of the board, including the current board chair.

ORGANIZATION AND FUNCTION

Alaska Statute 08.71.010 establishes the Board of Dispensing Opticians (BDO). The board consists of five members, specified in statute to be made up of four licensed opticians and one public member appointed by the governor.

The board regulates the practice of Opticianry. BDO sets the minimum standards to practice in Alaska by:

1. Registering dispensing optician apprentices.
2. Licensing opticians through examination or credentials.
3. Establishing, amending, or eliminating regulations that affect the standards of professional opticianry practice.
4. Taking disciplinary actions in accordance with the Administrative Procedures Act when a person has violated dispensing opticians' statutes or regulations.

BOARD OF DISPENSING OPTICIANS

(As of June 30, 2003)

James D. Rothmeyer, Optician, Chair

Larry E. Harper, Optician

David G. Matthews, Optician

Roberta (Bobbie) Rawcliffe, Public Member

Cindy S. Tidd, Optician

Licensed dispensing opticians, from a commercial perspective, are somewhat uniquely situated. The optician provides services that also can be provided by two other licensed professionals – optometrists and ophthalmologists (the latter being a licensed physician specializing in care of the eyes). State law specifies the rights, privileges, and obligations of dispensing opticians are designed not to *"limit or restrict a licensed physician or optometrist from the practices enumerated"* in the dispensing optician statutes. Additionally, statute provides that *"each licensed physician and optometrist has all the rights and privileges which may accrue under [statute] to a Dispensing Optician licensed [under state law]."*

Opticians provide services to the public that also can be provided by individuals associated and supervised by optometrists and ophthalmologists. Some opticians work independently while others are affiliated with optometrists or ophthalmologists.

Department of Community and Economic Development (DCED), Division of Occupational Licensing (OccLic)

The Department of Community and Economic Development (DCED), Division of Occupational Licensing (OccLic), provides administrative and investigative assistance to the Board of Dispensing Opticians. This includes budgetary services and functions such as: collecting fees, maintaining files, receiving and issuing application forms, and publishing notice of examinations and meetings.

Alaska Statute 08.01.065 mandates DCED, with the concurrence of the board, to adopt regulations establishing the amount and manner of payment for application fees, examination fees, license fees, registration fees, permit fees, investigation fees, and all other fees as appropriate for the occupations covered by the statute.

Alaska Statute 08.01.087 empowers OccLic with the authority to act on its own initiative or in response to a complaint. The division may:

1. Conduct an investigation if it appears a person is engaged in, or is about to engage in, a prohibited professional practice.
2. Bring an action in superior court to enjoin the act.
3. Examine the books and records of an individual.
4. Issue subpoenas for the attendance of witnesses and records.

REPORT CONCLUSIONS

In 2002 the legislature extended the termination date of the Board of Dispensing Opticians (BDO) for only two years to June 30, 2004. This reflected the legislature's concern regarding various aspects of the board's operations and enabling statutes. These concerns were set out in both the 2002 legislation extending the termination date of the board and a letter of intent from the House Labor and Commerce Committee. We incorporated these issues into the scope of this sunset review and present conclusions regarding how the board responded to these specific legislative concerns.

As discussed in the box below, the legislature was concerned about the board not setting fees high enough to cover operating costs. Additionally, the legislature wanted BDO to research and report on options for conducting a practical examination for licensure as a dispensing optician.

Practical examination eliminated

A BDO subcommittee researched and analyzed alternatives for the practical examination. In addition to revising the state practical exam to make it more objective, the subcommittee reviewed other alternatives including the purchase of exam and grading services from a private sector contractor.

Eventually, consideration of these alternatives was abandoned. BDO essentially decided to acquiesce to the legislature's decision when it repealed the requirement of applicants to pass a practical examination for optician licensure. This action was taken as part of the 2002 sunset extension legislation. No final report was completed for submission to the Chair of the House Labor and Commerce Committee or the Legislative Auditor – as was required in the original letter of intent.

In place of the state practical exam, dispensing optician candidates now must pass, with a score acceptable to the board, the National Contact Lens Examiners (to dispense contacts) and the National Opticianry Competency exam (to dispense spectacles).

Legislature Concerned about Fees, Costs, and Examination Requirements

Section 1 of Chapter 58, SLA 2002 set out the following legislative findings and intent:

- a. The legislature finds that the Board of Dispensing Opticians has not collected sufficient fees to cover its costs and may not have been complying properly with AS 08.01.065(c).
- b. It is the intent of the legislature that during the next review of the board under AS 44.66.050, an analysis and determination be made about the extent to which the board is complying with AS 08.01.065(c) and what factors, if any, hamper the board's ability to cover its costs with fee collections.

A letter of intent issued by the House Labor Commerce Committee and attached to the legislation specified the:

Board of Dispensing Opticians research the options for conducting a practical examination for licensure as a dispensing optician. ...

Despite large fee increases, BDO is currently, and prospectively will remain, in deficit

The board has been in a deficit position since FY 98. As reflected by the schedule on page 18 of this report, at the end of FY 03 the cumulative deficit was over \$22,000.¹

In recent years, relatively large increases in costs identified as “contractual” have had a significant impact to the continuing deficit. Most recently in FY03, BDO spent over \$3,800 for one-time examination fees to the National Academy of Opticianry and the Contact Lens Society of America. In the same fiscal year, the board spent almost \$3,000 on advertising and printing services which were primarily due to changes made in the regulations. Significant changes of this sort typify the unpredictable nature of contractual costs thus making fee setting difficult.

The department and board took action to reduce the cumulative deficit by increasing biennial licensing fees for both dispensing opticians and optician apprentices.² For the renewal period starting July 2003, fees for dispensing opticians and optician apprentices increased by \$210 (55%) and \$150 (300%), respectively. The FY 03 license renewal fees for opticians were \$590, up from the previous level of \$380. Prospectively, at this time BDO is facing renewal fees ranging from \$800-\$1,000 for the upcoming renewal cycle in June 2005 to eliminate the deficit and cover annual board operating costs.

Optimistically assuming that revenues for the next two years remain the same, and expenditures are reduced by 20%, BDO will still be facing a substantial continuing deficit at the end of the next biennial renewal period (2005). Given this conservative projection the Division of Occupational Licensing (OccLic), in conjunction with BDO, will need to increase fees to come into compliance with AS 08.01.065(c). For further discussion of this concern, see Recommendation No. 2.

Registration and reliance on national examination may be a viable licensing alternative

Under AS 44.66.050(d)(4) part of a sunset review is to provide “*an assessment of alternative methods of achieving the purposes of the program.*” In the prior audit we considered the

¹ Since licenses are renewed every two years, revenues generated by renewal fees alternate between high and low years. In license renewal years, the board does cover its operating costs, although the cumulative deficit continues. In the low revenue, non-renewal, years the costs are such that the deficit grows. Prior to the collection of biennial licensing renewal fees in FY 03, the board’s cumulative deficit was \$38,700.

² The cumulative deficit decreased by approximately \$16,300 from FY 02 to FY 03.

merits of regulating opticians through a registration process and placing primary reliance on the successful completion of nationally recognized examinations to ensure competency.³

Most states do not “regulate” or license opticians at all. According to the Opticians Association of America, only 22 states license dispensing opticians.⁴ Texas has a voluntary registration program – which allows the individual to advertise as a “registered optician” if they have met certain established criteria related to competency.⁵ Such an approach may be a viable alternative for Alaska.

Under this approach an individual could advertise as being a registered optician, once they provided proof to OccLic that they had met the necessary testing and continuing education requirements. Presumably, such designation would have some commercial advantages, assuring consumers the practitioner had met an established standard of competency.

Changing over to a registration, rather than licensing, process would not necessarily result in the disappearance of the optician profession and its related services. The scope of practice for opticians, to a large extent if not completely, falls within the purview and scope of optometrist and ophthalmologist professions.⁶ Given such circumstances, jurisdictions in which opticians are not licensed or registered still have opticians working – often in conjunction with licensed optometrists.

Termination date for the board should not be extended

BDO is serving a public purpose by promoting the competent and safe practice of opticianry. The board does this by: establishing standards for licensed professionals; monitoring the manner in which they practice; and, has carried out these responsibilities in a satisfactory manner. A licensed optician provides enhanced quality control in the dispensing of spectacles and contact lenses. Having an individual with the training to evaluate the

³ The American Board of Opticianry (ABO) and the National Contact Lens Examiners are national, nonprofit organizations which conduct voluntary certification programs for dispensing opticians. The examination given by ABO measures the basic knowledge required to dispense eyeglasses safely and effectively. While there are no prerequisites to take the examination, the ABO comments that candidates with two to three years of full-time, board-based, hands-on experience, or with formal optical schooling, are more successful in passing the examination.

⁴ Information from the internet website maintained by the Opticians Association of America is at: <http://www.oaa.org/navbar/4oamembers/8license/index.htm> (September 13, 2003)

⁵ An individual is allowed to register as an optician upon demonstrating they have seven classroom hours of recognized training prior to submitting a registration application and they had taken and passed, either or both, of the ABO examination or the National Contact Lens Examiners examination. See: <http://www.tdh.state.tx.us/hcqs/plc/optician.htm#requirements> (September 13, 2003)

⁶ This situation is explicitly recognized in state law at AS 08.71.230(1) which states no part of the optician licensing statute is to be construed as limiting or restricting “a licensed physician or optometrist from the practices enumerated in [the opticianry statutes], and each licensed physician and optometrist has all the rights and privileges which may accrue under [the statutes] to dispensing opticians...”

prescription of lenses – either eyeglasses or contact lens – and assisting in the proper fitting is a valuable, though not essential, service to the public.

As reflected in both the Auditor Comments and Findings and Recommendations sections of this report, the future operational viability of the board is questionable. In the long term, the number of new applicants seeking licensure as opticians may be reduced significantly due to creation of the optician assistant designation. Combined with fiscal instability involving operating costs, the long-term viability of the board is problematic. Given these concerns, we recommend the legislature not extend the termination date for the board.

In our view, the public can be adequately protected by competition in the marketplace, ongoing supervision of assistants, or professional standards already established for practicing opticians and ophthalmologists.

By not passing any extension legislation, BDO would go into a wrap-up phase. In the one-year wrap-up period, we recommend that the board formally recognize the U.S. Department of Labor (USDOL) apprentice program in regulation – as a means for individuals to continue training to be opticians – under the supervision of practicing opticians.

Additionally, during this wrap-up period, the legislature may want to consider putting a registration system in place. Such a process would allow individuals who have passed one or both of the national licensing examinations to show proof and obtain an “endorsement” from the State of Alaska – allowing them to advertise as a registered optician. The statute could require the optician to renew their registration every two years by showing proof they have obtained a required amount of continuing professional education.

AUDITOR'S COMMENTS

In 2002 the legislature, in the process of extending the termination date of BDO, made a small but important change to the opticianry statutes. The legislature created a statutory designation of optician assistant, in addition to the paraprofessional optician apprentice that was already recognized in law.

Previously, eyewear salespersons, termed stylists, had to register as an apprentice

The number of individuals registered as optician apprentices have always been very disproportionate to the number of apprentices who eventually sought licensure as opticians. In recent years, there have been almost 200 registered apprentices on record at the Division of Occupational Licensing (OccLic); but, each year only four or five, at most, would apply to take the optician licensing examination.

This situation developed from the statutory requirement that all nonlicensed personnel, involved in fitting eyewear in optical shops, had to be registered as an optician's apprentice. This registration was required whether the customer sales representative, or as they are often referred to as "stylists," worked for an optician, optometrist, ophthalmologist, or a large nationally-affiliated chain store. As a result, individuals who had little or no interest in becoming a licensed optician had to register as an apprentice.⁷

Key distinction between apprentices and assistants involve standards of supervision

BDO wanted to be sure apprentices were supervised appropriately. The general intent of this public policy was apprentices would someday be licensed opticians and it was important they be appropriately supervised by whatever professional was responsible for providing the oversight. Accordingly, BDO adopted specific requirements⁸ about supervision, requiring the professional involved:

- (1) be physically present at the same site as the apprentice at least once per day and not be absent for more than two hours while the apprentice is performing dispensing optician tasks;*

⁷ The statutory designation of an optician assistant has had an immediate impact on the number of individuals registering as a dispensing optician apprentice. In FY 00 through FY 02, the number of individuals registering as apprentices averaged 35 each year. In FY 03 the number of individuals registering as an apprentice decreased to eleven (11). The decrease of registered apprentices is substantial, but the financial impact will be minimal because of higher apprentice registration fees.

⁸ See regulations at 12 AAC 30.125.

(2) frequently observe and review performance of assigned tasks; and,

(3) ensure correct performance of assigned tasks.

These requirements, especially the regulation requiring the supervising professional to be physically present on the premises for a specific period of time, are much more restrictive than the standards applicable to the new optician assistant designation.

Under the 2002 amendments to the opticianry statutes, assistants must be supervised to the extent necessary to provide “*needed direction, control, consultation, instruction, evaluation and personal inspection of the work performed.*”⁹ This statutory language gives the supervising professional much more discretion in the supervision of assistants than they have under BDO regulations for apprentices.

Relaxed supervision standards may lead to less demand for opticians, devaluing licensure

Most licensed opticians in Alaska are employed by, or are a contractor with, other eye care professionals – optometrists and ophthalmologists. A current board member has estimated that as many as 80% of opticians work for, or in conjunction with, these other two eye care professionals. One reason that many of these opticians are employed in such settings is this arrangement allows an optometrist or ophthalmologist to meet supervision requirements for apprentices in the selling and fitting of eyeglasses and contact lenses.

Under the new state law, an optometrist or ophthalmologist can employ and designate stylists and customer service representatives as assistants while reasonably asserting they provide the necessary “*direction, control, consultation, instruction...*” over the phone, by e-mail, or with intermittent face-to-face contact. Such an arrangement eliminates the need to be physically present or to rely on another qualified supervising professional such as an optician. As a result, optometrists and ophthalmologists have less incentive to hire or contract with an optician.

Less demand and high licensing fees may lead to many opticians opting out of licensure

The creation of the optician assistant designation will likely serve to undercut the need for apprentices and, in the long run, may substantially reduce the number of people seeking to be licensed as a dispensing optician. The reduced supervision standards for assistants, coupled with the prospect of continued large increases in licensing fees, may lead to a situation where currently-licensed opticians no longer see the value of remaining licensed. Additionally, in the long term, such disincentives would further discourage interested individuals from enrolling in apprentice programs – further reducing the prospective number of individuals seeking licensure.

⁹These supervision standards are set out in state law at AS 08.71.240(4).

Optician license devaluation seems to have little adverse effect on public health and welfare

Given the scenario previously discussed, our overarching concern is what impact, if any, does the opticianry statute changes have on the health, safety, and welfare of the public. Based on the number and type of complaints often made to OccLic, there is no obvious direct impact. We reviewed investigative case-file summaries for both the Board of Dispensing Opticians and the Board of Optometric Examiners for FY 02 and FY 03. There is no evidence showing that a minimally-supervised assistant's services as being inferior to those services provided by licensed opticians or registered apprentices.

The harm that unlicensed opticians can potentially cause the public does not appear to warrant state licensure. The presence of licensed opticians and well-supervised apprentices can save the public from loss of time, money, and general aggravation involved with making return visits to a prescribing professional to remedy improperly fitted glasses. However, the avoidance of these costs, discomforts, and hassles does not necessarily warrant state licensure and oversight.

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FINDINGS AND RECOMMENDATIONS

If the legislature decides to extend the termination date for the Board of Dispensing Opticians (BDO), we believe it is important for the board to take the following two actions.

Recommendation No. 1

The board should develop and propose legislation to clarify statutes related to the various aspects of dispensing optician licensing.

When the 2002 legislature extensively revised the opticianry statutes, there were a few sections in the new statute that left inconsistent or vague requirements in place. We suggest BDO review these various sections of the statute. From this review, the board should develop proposed legislation to amend or delete these sections to better reflect current practices, regulations, and achieve the intended policy objectives. Specifically, we recommend review and revisions involving:

1. The amount of apprentice training hours necessary for licensure should be clarified. Currently, AS 08.71.110(a)(2)(A) states an individual must complete “*at least 1,800 hours of training as an apprentice...*” in order to qualify to receive a license from the board. In regulation, BDO specifies¹⁰ the individual complete a board-approved course, accumulate 1,800 hours of training, and pass the necessary examinations to be licensed in dispensing spectacles.

The regulations also state that in order for an individual to be licensed to dispense contact lenses they must complete an additional 1,800 hours and pass the relevant national examination. State law makes no distinction related to these endorsements. Under a plain reading of state law, an individual can be licensed as a dispensing optician with no reference to any limitation on what they can dispense and with 1,800 hours of apprentice training. This is not consistent with state regulation that requires 3,600 hours for full endorsement.

This discrepancy could lead to a situation where an individual, who met other licensing requirements including successful completion of required national examinations, can claim endorsements to dispense both contact lenses and spectacles after just 1,800 hours of apprentice training. The board could be open to legal action if it tried to enforce its regulatory requirements on such an individual. Since the change in the law, no one applying for licensure has challenged the board regarding this discrepancy.

As we recommended in the prior sunset review, the board, in conjunction with the legislature, reevaluated the reasonableness of the amount of apprenticeship training

¹⁰See regulations at 12 AAC 30.075.

necessary for licensure and significantly reduced the amount of apprentice training time required. Compared to the previous apprentice training requirement of 6,000 hours that the board had in place prior to FY 03 and the apprenticeship periods found in other jurisdictions, we agree the 3,600 hour requirement for both endorsements is a reasonable requirement.

The wording of the current statute does not clearly specify that 1,800 hours are required for **each** license endorsement. This leads to situations where the statute and the regulation are not congruently matched. The board should adopt language to clarify the apprenticeship training requirement, especially as it relates to the minimum number of training hours necessary for each type of endorsement.

2. Modification of apprentice registration requirements at AS 08.71.160. The creation of the optician assistant has had a significant impact on the opticianry profession. The impetus behind the change was to reduce the number of registered apprentices and associated board costs. The optician assistant position helped to accomplish those goals by segregating individuals who previously registered because it was a job requirement from those seeking professional licensure. The anticipated results from the statutory changes were evidenced by the immediate decrease in numbers of registered apprentices (66%) and a reduction of associated board costs, albeit slight. However, the continuing, apprentice registration requirements result in unnecessary administrative duties and costs to the board. This is especially true in light of the development of the U.S. Department of Labor (USDOL) optician apprenticeship program.

Since the 2002 legislative changes to the opticianry statutes, the board, in conjunction with USDOL officials, has developed and implemented a dispensing optician apprentice program. USDOL administers the program; the Opticians Association of Alaska is the sponsor. The program was designed specifically to meet Alaska's dispensing optician statutory and regulatory requirements. There are many advantages of the apprentice program including specific training guidance for individuals seeking licensure as a dispensing optician, better prepared optician candidates, and for employers, access to federal grants to help offset the cost of the apprentice. Currently, individuals must register with the state; however, USDOL registration and participation in the apprenticeship program is optional.

The board should modify the apprentice registration statute by adding a requirement in the opticianry regulations that apprentices register with USDOL and complete the optician apprenticeship program. Implementation of such changes will eliminate all administrative duties and costs to the board relating to apprentice registration. The USDOL program has been designed to meet the state's statutory and regulatory requirements. Additionally, the structure of the newly-designed apprentice program will facilitate a better prepared and more competent dispensing optician candidate. It should be a requirement that apprentices register with and participate in the USDOL program and the state requirement for apprentices to register should be eliminated.

3. Recognition, in statute, of a process to license individuals from other jurisdictions. Currently, an individual from another jurisdiction with licensing requirement experience that is less than Alaska requires, can only obtain licensure by participating in the state's apprenticeship process. This puts an undue burden on qualified individuals, new to the state, who worked in the profession for several years.

BDO has suggested that if individuals pass the American Board of Opticianry (ABO) master-level examination, the board would be willing to license these individuals to practice in Alaska. This testing is appropriate for individuals who possess dispensing optician experience gained in another jurisdiction that has licensing requirements less stringent than those required in Alaska.

Since more than half of the states do not license opticians, many individuals practicing in these states are often permitted to call themselves opticians by virtue of passing a national licensing examination. Because these individuals would not easily qualify for licensure in Alaska under the current statute, this represents a significant barrier for entry into the profession. Allowing these individuals to be licensed, by virtue of successfully completing the ABO advanced exam, BDO can make the profession more accessible while ensuring the individual possesses the necessary competence to practice.

Recommendation No. 2

The Division of Occupational Licensing (OccLic), in conjunction with the board, should increase optician's licensing fees to eliminate the cumulative deficit.

As discussed in the report conclusions section of this report, it is clear another increase in opticianry licensing fees is necessary to eliminate the cumulative deficit and meet annual operating costs of the board. Licenses are renewed every two years; therefore, the revenue generated in the renewal year must be sufficient to fund most of the board's costs for the nonrenewal or subsequent year. The recent increase in licensing renewal fees for dispensing opticians and optician's apprentices appears to be sufficient to cover the board's costs for the two-year period. Depending on the amount of revenue collected in the nonrenewal year, the increase licensing fee may also reduce a small portion of the board's continuing deficit.

BDO members object to some of the charges made to the board by Department of Law (DOL). In recent years DOL charged BDO with litigation costs it incurred relating to a national contact lenses distribution case. BDO reports DOL pursued this matter unilaterally, with no direction or request from the board. Although these charges to the board may have been services not approved by the board, they do not contribute significantly to the cumulative deficit.¹¹ The major contributing factor to the deficit is board costs have exceeded license renewal fees without BDO instituting necessary fee adjustments to cover costs. As a result, the deficit has continued to grow for several years.

¹¹ In FY 00 and FY 01, there were no charges from the Department of Law. In FY 02 and FY 03, legal costs were approximately \$5,500 and \$1,100, respectively.

Without further increases to the renewal licensing fee for dispensing opticians, the cumulative deficit will remain and the board will likely meet annual operating costs – only.

Alaska Statute 08.01.065(c) requires fees for an occupation be set to approximate the regulatory costs for the occupation. We recommend that the board and OccLic review the regulatory costs and licensing fees to ensure that BDO licensing fees are sufficient eliminate the cumulative deficit and to meet annual operating costs.

A ANALYSIS OF PUBLIC NEED D

The following analyses of board activities relate to the public need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but address those areas we were able to cover within the scope of our review.

The extent to which the board, commission, or program has operated in the public interest.

The Board of Dispensing Opticians (BDO), by implementation of prior audit recommendations, has operated in the public interest. The current BDO is responsive to outside suggestions and is conscientious of its fiduciary responsibilities. Further, BDO, in conjunction with USDOL, has developed and implemented an optician apprenticeship program. As discussed in Recommendation No. 1 we encourage the board to mandate adoption of the USDOL apprenticeship program to replace the current state apprentice registration process.

The extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

Most of BDO's revenue is from certification, licensing, and renewal fees. Renewals are conducted on a biennial basis. This creates a two-year cycle in board revenues, with BDO receiving most of its revenues during the renewal period. We reviewed the internal records maintained by the OccLic for revenues and expenditures associated with BDO. We did not audit this information, but present it below for general information purposes.

Alaska Statute 08.01.065(c) requires "...that the total amount of fees collected for an occupation approximately equals the actual regulatory costs for the occupation." As the schedule on the next page reflects, the board was running a substantial deficit at the end of FY 03. As discussed in Recommendation No. 2, the Division of Occupational Licensing should increase fees substantially to bring BDO into compliance with state law.

State of Alaska
Board of Dispensing Opticians
Schedule of License Revenues and Board Expenditures
FY 00 - FY 03
(Unaudited)

	<u>FY 03</u>	<u>FY 02</u>	<u>FY 01</u>	<u>FY 00</u>
Revenue	\$ 46,500	\$ 17,300	\$ 32,700	\$ 11,800
Direct Expenses				
Personal Services	13,900	19,200	14,200	16,500
Travel	1,300	2,600	3,400	4,800
Contractual	9,300	8,900	2,900	2,300
Supplies	200	-	100	-
Equipment	-	-	-	-
Total Expenses	<u>24,700</u>	<u>30,700</u>	<u>20,600</u>	<u>23,600</u>
Indirect Expense	<u>5,500</u>	<u>3,800</u>	<u>4,900</u>	<u>5,000</u>
Total Expenses	<u>30,200</u>	<u>34,500</u>	<u>25,500</u>	<u>28,600</u>
Annual Surplus (Deficit)	<u>16,300</u>	<u>(17,200)</u>	<u>7,200</u>	<u>(16,800)</u>
Beginning Cumulative Surplus (Deficit)	<u>(38,700)</u>	<u>(21,500)</u>	<u>(28,700)</u>	<u>(11,900)</u>
Unallocated Administrative Indirect Revenue	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Ending Cumulative Surplus (Deficit)	<u>\$ (22,400)</u>	<u>\$ (38,700)</u>	<u>\$ (21,500)</u>	<u>\$ (28,700)</u>

The extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

All of BDO's board meetings had time available for public comment.

The extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

BDO, while not necessarily endorsing the statutory changes made by the 2002 legislature, did work constructively with legislative staff to develop changes in state law related to the opticianry profession.

The extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

The location, date, and time of upcoming meetings and exams were advertised in Alaskan newspapers, as well as on the Board of Dispensing Opticians' web page with adequate time for interested individuals to attend or to submit written comment for review. The board's meeting agenda sets aside suitable time for the board to receive public comment. Minutes from the meetings of the board reflect public participation at various meetings.

The efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

During the 48-month period from July 1, 1999 through June 30, 2003, OccLic opened eight investigative cases related to individuals certified by the board. None of the cases involved complaints made by clients or individuals from the general public. Six of the complaints were opened by OccLic as a result of a site visit/shop inspection. One of the complaints was made by an optometrist. Only one complaint appears to have originated from a member of the general public. Five of the complaints involved unlicensed practice by dispensing opticians, three of which were optician apprentices.

Of the seven cases closed as of the date of our review, two resulted in licensure action involving Memorandums of Agreement. Of the remaining cases, one was closed finding no violation, three were closed with warnings issued by BDO, and one by compliance. The one case not closed, as of the date of our review, is still being actively investigated even though it was opened in May 2001.

We have reviewed the nature and extent of complaints filed involving dispensing opticians. In our view OccLic, in conjunction with the BDO, has proceeded in a manner consistent with the potential threat the complaints posed to the public welfare.

There were no complaints filed with the Office of the Ombudsman or the Office of Victims' Rights for the period under review.

The extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

The table below summarizes licensing activity for the prior four fiscal years, listing the number of new licenses issued each year for each license type, as well as the total number of current certificates. The number of individuals registering as dispensing opticians has remained stable, while the number of apprentice registrants has decreased significantly as a result of Chapter 58 SLA 2002 (see discussion in both Auditor Comments and Report Conclusions section of this report).

	New Licenses Issued				Total Current Licensees/ Registrants
	FY 00	FY 01	FY 02	FY 03	
Dispensing Optician	2	3	3	4	107
Apprentice	40	32	34	11	191

Once an individual registers as an apprentice, they remain registered with OccLic indefinitely; there is no renewal requirement for the apprentice license. Apprentices are required to file any supervisory changes and submit the appropriate fee.

The extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

We did not find any evidence that BDO was not complying with state personnel practices, including affirmative action in qualifying applicants. In no instances has the board denied an applicant a license based on personal attributes.

The extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interest of the public and to comply with the factors enumerated in AS 44.66.050.

As discussed in Recommendation No. 1, legislation is needed to clarify various aspects of the optician statutes. Changes needing to be addressed:

1. The discrepancy between statute and regulation suggests that applicants may become licensed opticians with only 1,800 hours of registered practical experience. For an individual to be licensed as a dispensing optician with an endorsement to dispense both eyeglasses and contact lenses, they would need 3,600 hours of experience. Currently, this distinction is not made clear in state law.

2. The need for apprentices to continue registering with the Division of Occupational Licensing. With the creation of the optician assistant classification and establishment of an apprenticeship program administered by USDOL, the need for individuals to formally register as apprentices with the Division of Occupational Licensing is no longer necessary. Rather, as a condition for being licensed as a dispensing optician the statute should be modified to require applicants to complete a board-recognized apprenticeship program. Further, opticianry regulations should be developed requiring apprentices to register with USDOL and complete the optician apprenticeship program.
3. The need to recognize in statute a procedure available for individuals, who practiced as a dispensing optician in other states with licensing requirements less stringent than Alaska, to be licensed as dispensing opticians through the successful completion of a national “masters” examination.

As discussed in Recommendation No. 2, fees should again be increased to come into compliance with state law.

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November 17, 2003

Pat Davidson, Legislative Auditor
Division of Legislative Audit
PO Box 113300
Juneau, AK 99811-3300

Re: BOARD OF DISPENSING OPTICIANS – PRELIMINARY AUDIT

Dear Ms. Davidson:

Thank you for the opportunity to comment on your preliminary audit report of the Board of Dispensing Opticians.

The department concurs with the findings in your report. Specifically, we share your concerns with viability of the board and support the recommendation that the board not be extended.

The department recommends the legislature amend the law to provide for mandatory registration of Dispensing Opticians, through a registration program administered by the department. We recommend the registration be for the Dispensing Optician level only and that apprentices not be registered.

FINDINGS AND RECOMMENDATIONS

If the legislature decides to extend the termination date for the Board of Dispensing Opticians (BDO), we believe it is important for the board to take the following actions.

Recommendation No. 1

The board should develop and propose legislation to clarify statutes related to the various aspects of dispensing opticians.

The department concurs with the concerns raised in items 1-3 referenced under this recommendation. If the legislature decides to extend the termination of the board, the Board should be requested to assist with developing and proposing conceptual language

for legislation. However, we believe the legislature has the staff and expertise to draft legislation.

Recommendation No. 2

The Division of Occupational Licensing (OccLic), in conjunction with the board, should increase optician's licensing fees to eliminate the cumulative deficit.

The department recently increased the Dispensing Optician biennial license fee from \$380 to \$590. Although we concur that the board needs to be self-sufficient, we are concerned that as the fees continue to increase fewer licensees will chose to renew, thus creating a larger deficit. Licensing programs that show a significant deficit have been allowed to recoup the deficit over two biennial periods; this approach has provided incremental increase in fees and gives the profession time to reduce its operating costs where applicable. The department has attempted to apply this process consistently to all licensing programs, and will continue to work with professions in reducing their operating costs while also reducing their deficit. We believe by eliminating the board and creating a registration system administered by the department, reduction in operating costs can be realized.

We appreciate the thoroughness of your review and the opportunity to comment.

Sincerely,

Edgar Blatchford
Commissioner

Cc: Rick Urion, Director
Division of Occupational Licensing

November 10, 2002

Pat Davidson, Legislative Auditor
Alaska State Legislature
Legislative Budget and Audit Committee
P. O. Box 113300
Juneau, Ak. 99811-3300

Re: Audit Control Number 08-20022-03
Board of Dispensing Opticians Sunset Review
October 2, 2003

Dear Pat Davidson:

I received your Preliminary Audit Report and wish to thank you for an opportunity to respond.

Response to the recommendations in your October 29, 2003 letter follow:

- Recommendation No. 1 - "The board should develop and propose legislation to clarify statutes related to the various aspects of dispensing optician licensing." Item #1, #2 and #3 were addressed in my response, dated September 26, 2003, to the "management letter #1". dated September 18, 2003 from audit manager Mr. Jim Griffin. The legislative bill we propose (which was attached) would clarify these areas. This bill will be presented in the 2004 legislature.
- Recommendation No. 2 - "The Division of Occupational Licensing, in conjunction with the board, should increase optician's licensing fees to eliminate the cumulative deficit." The Schedule of License Revenues and Board Expenditures included in your report is information on FY2003 that had not been provided to the Board. I formally request a more detailed breakdown of FY2003 expenses and revenues. As to the recommendation, I refer to my response in my September 26, 2003 letter stating I do not believe there will need to be a substantial increase in licensing fees in 2005 because of cost cutting changes we are implementing and the passing of our 2004 legislative bill.

There are some short and long term consequences of de-licensing that should be considered:

- Short Term Consequences
 1. Licensed Opticians (spectacles). There is little likelihood that any portion of the present deficit, \$22,000, will be paid by individuals being de-licensed, or sunsetted. Economic revenue and activity from registration of apprentices will disappear as "entry"

into an occupation that has such a decreased level of economic opportunity with the prospect of wages being decreased by one half will no longer be attractive.

2. Licensed Opticians (contact lenses). This area will be addressed by another board member.

- Long Term Consequences

There are relative few licensed opticians in the State, approximately 100. These opticians and their families have enjoyed the opportunity to work for a “living wage”. You mentioned the state of Texas voluntary registration program as a viable alternative for Alaska. I have enclosed a wage comparison report that shows Texas median wages for opticians to be 56% of what Alaska, a licensed state is. De-licensing will mean no longer having “portable credentials” that distinguishes an educated and trained professional from anyone off the street. It will devalue the occupation and effectively close the door on what has been an alternative occupation and trade for someone unable to obtain a college education.

- Comments

On page #7 footnote #3 your report states “ The examination given by ABO measures the basic knowledge required to dispense eyeglasses safely and effectively.” This is an opinion, not a fact, and it is an opinion not supported by this Board or the professional optical community. To rely on the written ABO exam alone for competency can be likened to relying on a written DMV test for competency to operate a motor vehicle. There is much more involved in the fitting and dispensing of spectacles and contact lenses than the current entry level written test from ABO or NCLE alone can evaluate.

- Conclusion

The State of Alaska has a skilled, educated and trained workforce providing professional services in the fitting and dispensing of spectacles and contacts. What is proposed by this Legislative Budget Audit is to dismantle this profession by de-licensing. I feel it is in the best interest of the public to maintain licensure of Dispensing Opticians. Thank you for your consideration.

Other board members may be responding to this preliminary audit report. My hard copy response will contain a copy of my response to “letter No. 1, dated September 26, 2003, for your reference. Thank you for your time and consideration.

Sincerely,

James Rothmeyer, Chair
Board of Dispensing Opticians.

2

September 26, 2003

Mr. Jim Griffin
Alaska State Legislature
Legislative Budget and Audit Committee
Division of Legislative Audit
P. O. Box 113300
Juneau, Ak. 99811-3300

Re: Letter Sept. 18, 2003

Dear Mr. Griffin:

I received management letter No. 1 on September 23, 2003, thank you. I will try to respond as briefly and the best I can.

Just for clarification the Board does not set renewal fees. They are set by the Department of Commerce, Division of Occupational Licensing .

The notion that untrained, uneducated persons perform to the standards of practice as those who have spent hundreds of hours and thousands of dollars in educational courses and training , is in my opinion not a sensible argument.

Ensuring the individual dispenser/optician has the education and training to sort and select the appropriate and safe combination of eyewear and lenses from the complex and extensive variety of products on the market is not just a valuable service it is essential to the public's safety. This is amply documented by the numerous warnings and vision safety notices that are part of every set of lenses from optical laboratories. Concern for "vision safety" has never been more acute than now. The wide choices of sport, safety and dress eyewear can lead to mistakes and have caused the loss of sight (see attached documents). The need for educated and trained contact lens fitters and dispensers is even more important as permanent harm can be caused by patients not having professional advice regarding their contact lenses. (see attached)

The Board has reviewed the 2002 changes in statutes that were vague and inconsistent. The Board had a bill to remedy this in 2002. That bill never made it into the legislation because the lobbyist for the Opticians Association of Alaska thought the timing to introduce the bill was wrong and then it became too late in the legislative session for consideration. The Board will have this introduced in the 2003 legislation. (see attached draft).

The Board did research and give recommendations to the then licensing examiner and the Director of the Division of Occupational Licensing for a practical exam from a private sector contractor. One alternative, Dr. Ferguson's The Learning Curve could of been procured and administrated at no cost to the Department. This information was a part of the 2001 audit report (Sept. 2001). The "acquiescence" to the 2002 legislatures bill SB 270 (no practical) was the best alternative available to us at the time as we were told it would take at least 2 years and a large sum of money for a "request for proposal" bid for a practical test.

Deficit - The current deficit began in 1998 when the board was informed of an "accounting error" which caused a deficit. In the next two years our licensing examiner was new and spent probably more time than necessary getting up to speed. From documented time sheets, she spent about one half of her time on the apprentice program. In 2002, \$5,500 was billed to the Board by the Department of Law for litigation from a class action law suit regarding contact lenses. This constitutes 22% of our current deficit and these charges should be reversed. The Board has yet to received a breakdown of the \$9300.00 "contractual" charges for 2003.

RECOMMENDATIONS

I agree with your recommendations for clarifying training hours, licensing individuals from other jurisdictions and transferring apprentice registration and administration to the U.S.D.O.L. See attached "draft bill".

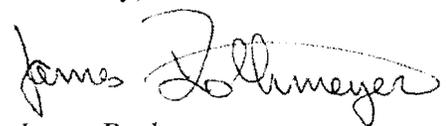
I feel that there is no need to increase licensing fees. I have been in contact with the licensing examiner, Denise Williams, and she states that if there is no apprentice program to administer, she will spend less than 5% of her time on BDO activities annually. With no other unforeseen bills from the Department of Law, this should bring our expenses to a manageable figure and reduce our deficit to the point we will be in compliance.

The Board respectfully request that you extend the Board of Dispensing Opticians for another 6 years. The Board has made great strides to comply with recommendations and work with the Optometrist and Ophthalmologists.

The fact that of the 83% of the licensed opticians in the state, renewed their license even with the increased fees, shows that the profession feels the need to hold themselves up to a higher standard of performance and education then stylists, assistants or sales persons. The Licensed Optician whether licensed in spectacles, contacts or in both is continually working to insure the health, safety and welfare of the public through education and training.

Thank you for your time and consideration.

Sincerely,



James Rothmeyer
Chair, Board of Dispensing Opticians

Corrected Copy

A BILL
FOR AN ACT ENTITLED

“An act relating to dispensing Opticians and dispensing Opticians apprentices”
BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

-
-
- Section 08.71.080 License required is amended to read;
- Sec. 08.71.080 License required. A person may not act as a dispensing optician in the state unless that person is licensed under this chapter. A license shall be issued for (1) the fitting and dispensing of contact lenses, or (2) the fitting and dispensing of other lenses, eyeglasses, spectacles, artificial eyes and their appurtenances, or (3) both.

*Sec. 08.71.090. Examination requirement is amended to read,

Sec.08.71.090 Examination requirement. To be licensed to fit and dispense contact lenses, a person, unless eligible for licensing under AS 08.71.145, shall document to the board that the person has passed the contact lens registry exam offered by the National Contact Lens Examiners with a score acceptable to the board. In order to be licensed to fit and dispense other lenses, eyeglasses, spectacles, artificial eyes, and their appurtenances, a person, unless eligible for licensing under AS 08.71.145, shall document to the board that the person has passed the national opticianry competency examination offered by the American Board of Opticianry with a score acceptable to the board. An applicant for licensure in both areas shall document having received a score acceptable to the board on both examinations. The board shall by regulation, establish the scores that will be acceptable for the examinations described in this section.

*Section 1. AS08.71.110(a) is amended to read:

- (a) The board may issue a license to a person who
 - (1) has [HAD EDUCATION EQUIVALENT TO FOURS YEARS ATTENDANCE AT] a high school diploma or its equivalent;
 - (2) Has either
 - (A) completed at least 1,800 hours of training for spectacles and/or 1,800 hours for contact lenses as an apprentice after registering with the US Dept. of Labor as an apprentice; or
 - (B) been engaged for at least 1,800 hours practice as a dispensing optician in spectacles and/or 1,800

hours practice in contact lenses, in a state, territory, district, or possession of the ~~United~~ States; ^{NITEL}

- (3) has passed the applicable examination required under AS08.71.090 with a score acceptable to the board;
- (4) has passed a course designated in the board's regulations as being acceptable; and
- (5) has paid the required license fee.

*Sec. 2 AS 08.71.145 is amended to read:

08.71.145. Licensure by credentials. A person with a valid license as a dispensing optician from another state, territory, district, or possession of the United States with licensing requirements substantially equivalent to or higher than those of this state shall, without further examination, be issued a license under this chapter for those professional areas in which the person is licensed in the other jurisdiction upon payment of any fee and documentation that the board may require by regulation.

*Sec.3 AS 08.71.145 is amended by adding a new subsection to read:

- (b) A person who is designated by the American Board of Opticianry as a Master Optician or as an individual certified as an Advanced Certified optician may be issued a license authorizing that person to be a licensed dispensing optician with respect to spectacles upon payment of the appropriate fee and submission of the documentation that the board may require by regulation.;
- (c) A person who is designated a Fellow of the Contact Lens Society of America, or who is designated by the National Contact Lens Examiners as an Advanced Certified Contact Lens Fitter may be issued a license authorizing that person to be a licensed dispensing optician with respect to contact lenses upon payment of the appropriate fees and submission of the documentation that the board may require by regulation.

*Sec. 4. AS. 08.71.160 (a) is amended to read:

(a) A person may be employed by [OR SERVE UNDER] a licensed Physician, optometrist, or dispensing optician as an apprentice for dispensing optician tasks. An apprentice shall register with the U.S. Department of Labor [DEPARTMENT] before beginning employment [OR SERVICE] as an apprentice[, SHALL BE DESIGNATED AS SUCH IN THE RECORDS OF THE BOARD] and shall be in training under the supervision of the [a] licensed physician, optometrist, or dispensing optician. Notwithstanding AS 08.71.180, a registered apprentice may perform dispensing opticians tasks that are delegated by and performed under the regular supervision of the licensed physician, optometrist, or dispensing optician and may use the title "dispensing optician apprentice".

*Sec. 5 AS 08.71.200 is amended to read:

Sec. 08.71.200 Contact lenses. Contact lenses shall be fitted in conjunction with and under the supervision of a licensed physician or an optometrist using [AND WITH] a written contact lens fitting authorization that (1) shows the powers of the sphere, cylinder and axis location; (2) includes an authorization to fit; and (3) states a requirement that the patient return to the prescriber for a final recheck after the contact fitting has been completed. [PRESCRIPTION SHOWING THAT THE PRESCRIPTION MAY BE FILLED FOR CONTACT LENSES AND REQUIRING THAT THE PATIENT RETURN TO SEE THE PRESCRIBING PHYSICIAN OR OPTOMETRIST]. In no case may contact lenses be prepared by neutralizing a persons eyeglasses or spectacles. Duplicated contact lenses may be dispensed, mailed to, or otherwise delivered to a patient from a written contact lens prescription that shows the exact specifications and parameters needed to exactly duplicate the patients previous contact lenses. Notwithstanding other provisions of this section, contact lenses may not be provided to a patient at a time that is after the expiration of the most recent prescription for the patient unless authorized in writing or orally by the person who issued the prescription.

*Prescription
Physician or
Optometrist*

Evaluated

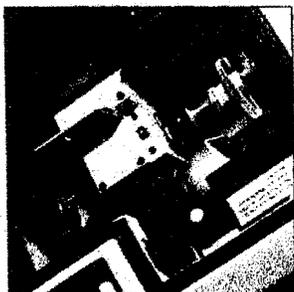
*Sec. 6 AS 08.71.230 is amended to read:

Sec. 08.71.230 Exemptions from and limitations on the application of this chapter. This chapter may not be construed to

- (1) limit or restrict a licensed physician or optometrist from the practices enumerated in this chapter, and each licensed physician and optometrist has all the rights and privileges which may accrue under this chapter to dispensing opticians licensed under it;
- (2) prohibit an unlicensed person from performing mechanical work upon inert matter in an optical office, laboratory or shop;
- (3) prohibit an unlicensed person from engaging in the sale of eyeglasses, spectacles, magnifying glasses, goggles, sunglasses, telescopes, binoculars, or any like articles which are completely preassembled and sold only as merchandise; however, the exemption in this paragraph does not authorize an unlicensed person to sell contact lenses of any type.
- (4) authorize or permit a licensee under this chapter to hold out as being able to, or to offer to, or to attempt by any means, to refract or exercise eyes, diagnose, treat, correct, relieve, operate or prescribe for any human ailment, deficiency, deformity, disease or injury.

"Duty To Warn" – A Growing Responsibility

It has been seven years since the Optical Laboratories Association (OLA) issued its first "Duty To Warn" kit. To appreciate why this subject has become so important to the whole industry, it might help to review how laboratories first became involved in a problem that seems to be more a concern of those who deal directly with patients at the retail level.



When retail offices are involved in litigation resulting from broken eyewear, manufacturers and laboratories used in making the glasses are usually brought into the action so that, no matter who ends up with the blame, that person will be involved in the lawsuit. What brought "duty to warn" into prominence in recent years has been the emergence of polycarbonate as a viable lens material for dress eyewear.

The first recorded court case occurred in 1981 when a Wyoming rancher wearing photochromic lenses in a dress frame, sustained an injury while roping. No award was granted on the basis that polycarbonate was so new a product, it was only available from one source at the time the glasses were dispensed. The case did, however, alert the Optical Laboratories Association to the problem and their concern led directly to the development of the OLA "Duty To Warn" kit.

Since that time, polycarbonate lenses have matured and are now readily available in almost any type of lens design. At the same time, there has been additional litigation in which the courts consistently ruled that "failure to warn" patients about their options regarding lens materials justifies damage claims. This places a considerable burden on everyone dispensing eyewear to the public. The OLA is attempting to answer that concern with their program. They have just revised their kit and reissued it with a number of improvements and additions.

Among the new items included in the revised kit are the following:

Practitioner Forms. One of the most persistent requests from retail offices during the last few years

has been for office forms that would help establish that patients had been properly informed regarding lens materials. They particularly asked for a Patient Rejection Form. Three new practitioner forms are now included in the kit.

Refractionist's Duty and Script. A concise examination of the refractionist's obligations under "Duty To Warn" is provided along with a suggested script for the doctor to follow.

Dispenser's Duty and Script. Just as the refractionist has a "duty to warn", so do dispensers, whether they work in the refractionist's office or in an outside office. These duties are clearly outlined.

Lens Menu. The Lens Menu patient brochure is a key component in the "Duty To Warn" process. A sample Lens Menu and an order form are included.

Safety Warnings. Every pair of eyeglasses dispensed must be accompanied by a printed Safety Warning. Offices that order finished eyewear from an OLA laboratory usually receive this important form with each pair of finished eyewear they order. Offices doing their own edging have the obligation of providing their own Safety Warnings to pass on with the eyewear they dispense. Camera-ready artwork for each Safety Warning form (dress eyewear and safety eyewear) is part of the kit.

In-Office Edging. Edging lenses in a retail office imposes special responsibilities under the "Duty To Warn". In the eyes of the FDA and OSHA, these offices become the eyewear manufacturer and, as a consequence, assume the same legal responsibilities as laboratories. To help them meet these obligations, a brochure titled "Impact Testing of Ophthalmic Dress Lenses" is included in the kit.

A variety of other background material is also included so that retail offices have everything they need to set up a "Duty To Warn" process in their office. Today's economic climate makes compliance with the duty to warn process as important as maintaining proper fire insurance.

The OLA is making these kits available at minimal cost (\$14.95). They are available through most OLA laboratories. If you need information on OLA laboratories in your area, you may call 1-800-477-5652 for the names.

— Joe Bruneni

Informing The Patient

An Increasingly Important Professional Responsibility

by

Pamela Joyce Miller, O.D., F.A.A.O., J.D.



Published as a public service
to the Eyecare Professions by the

Optical Laboratories Association

Informing The Patient — An Increasingly Important Professional Responsibility

by Pamela Miller, O.D., F.A.A.O., J.D.

It was not until the mid 1980's that this industry began to realize that there were some potential problems regarding the impact resistance of lens materials. The subject first arose when a Wyoming lawsuit was filed over a broken lens. The suit claimed one lens material was more impact resistant than any other and the company selling the glasses should have informed the patient about polycarbonate.

In that case, the patient was a cowboy wearing glasses while performing in a rodeo. While twirling a rope, his glasses broke and an eye injury resulted. Fortunately for the dispenser, the court ruled that, while the dispenser had a duty to inform the patient about polycarbonate, these lenses were not yet readily available or in general use at that time. The Court issued no award, but the subject did receive close attention from the industry. It illuminated a subject to which few eyecare professionals had given much thought.

The Optical Laboratories Association (OLA) immediately set up a study group to establish how laboratories and their customers could best deal with the legal, professional, moral and business issues involved. The result of this study was the development of a practical program to meet these new responsibilities of retailers and labora-

tories.

The study concluded that dispensers and doctors have a legal and professional responsibility to make sure patients have all the information required to make an informed decision about lens materials and frames. **Because of these legal responsibilities, the duty to warn must be part of every dispensing transaction.** To help professionals comply with this new responsibility, the OLA published a "DUTY TO WARN" kit, with sections fully documenting the responsibilities of the doctor, the dispenser and the manufacturing laboratory. It provided specific details on how to discharge the professional's "duty to warn" and included sample forms for setting up a "Duty to Warn" system for retailers and for laboratories.

Issued in 1988, the OLA has distributed thousands of these guides through member labs and made them available to O.A.A. and A.O.A. members. That, however, was six years ago and concerns about the doctor/dispenser's responsibilities and "DUTY TO WARN" were gradually forgotten.

A recent lawsuit in Minnesota reminded the professions of the importance of this duty to warn patients regarding choice of lens material. A youngster suffered an eye injury while wearing conventional plastic lenses. The court ruled the retailer did not adequately inform the patient about a safer lens material. The award was for \$73,610.93.

The OLA has now revised the original "Duty to Warn" kit and again made it available through OLA members for \$14.95. One issue is clear. The only way to make sure every patient is properly informed regarding lens materials is to set up a standard office routine and follow it for every patient. The "Duty to Warn" kit provides camera ready copies of various forms to be used for this purpose. It's always best when the dispenser (*or doctor*) personally discusses the options for polycarbonate lenses with each patient. This is sometimes difficult and it only takes one omission to lay the groundwork for potential problems.

The OLA recently revised their popular "Lens Menu", an attractive four color patient brochure that explains each lens option available to persons ordering eyewear. This latest revision adds a powerful "Vision Safety Notice" to the back panel. Verbiage in this important section was taken in whole from the OLA "Duty to Warn" kit. **Now, offices who provide the Lens Menu to each patient going through their office will be subtly reinforcing their professional responsibility to fully inform patients regarding lens materials.**

The obligation to inform buyers of a product's inherent dangers is nothing new. Nearly every product today is accompanied by warnings of one type or another. When someone is involved in recommending a product, they assume certain liabilities based on those recommendations. It's important to remember that eyeglass manufacturers-

and/or laboratories cannot get their warning message to the purchaser until after the patient has selected a lens material and a frame.

Because of this, doctors and dispensers have a legal and professional responsibility to make sure patients understand the risks involved in wearing eyeglasses and the relative safety of each lens material or frame style. This doesn't mean every patient must order polycarbonate. It just means that each lens material must be explained, along with the relative risks of each material. It's important to establish a program in your office that makes sure every patient is fully informed about lens materials. Some offices take this so seriously they insist every patient sign a document indicating that they have been told about the safety issues involved. There is some question whether this really does much good and it does have the potential of upsetting some patients. The best procedure is to set up a standard routine that makes sure every patient is informed of safety issues with the doctor or dispenser noting on the patient's file that the patient was so informed.

Do this and you can be secure you are fulfilling your "duty to warn".

Pamela Joyce Miller holds a doctorate in both Optometry and Jurisprudence. She has a solo practice in Highland, California and is a widely known practice management consultant who lectures and publishes worldwide. She has authored over 100 articles, including THE VISION CARE ASSISTANT, a guide for new paraoptometric, published by Vision Extension in Santa Ana, California.



LITIGATION YOU SHOULD KNOW ABOUT

by Pamela Joyce Miller, O.D., F.A.A.O., J.D.

(12)

January, 1981

January, 1981 saw one of the first significant cases involving Polycarbonate lenses. In essence, a Wyoming farmer, wearing photochromic lenses in a dress frame, suffered an injury resulting in a cataract, when his lens shattered during a roping accident. The basic claim was that the doctor should have prescribed polycarbonate lenses in view of the fact that the patient was involved in an active and dangerous endeavor. The jury concluded *(based on expert testimony)* that the accident would not have been prevented with polycarbonate lenses, although polycarbonate was a new product and only available from one source at the time of the dispensing.

1982

A 1982 case in Louisiana involved a high school student who suffered a severe eye and lower lid cut during a volleyball game, while wearing glass lenses. The patient claimed that no one had told him that scratched lenses had a greater propensity toward shattering. Although the case was settled, it was alleged that the dispenser failed to warn of the risks associated with wearing the glasses in sporting events. A claim for contribution against the school board was also filed by the dispenser *(to defray the costs of settlement)*.

January, 1993

A January, 1993 jury ruling involved a Minnesota optical chain that failed to warn a customer sufficiently about his spectacle lens options. A 13 year old boy purchased a metal semi-rimless frame with CR 39 lenses in November, 1986. Some 6 months later, he was hit in the eye, and the lens shattered resulting in permanent eye damage. The case centered on the "FAILURE TO WARN" issue. The case resulted in a settlement *(not to exceed \$73,610.93)*, with the amount and the jury proceedings sealed in the court records.

The Present

"Duty to Warn"

The trend is obviously toward an emphasis on the dispenser's or doctor's "duty to warn" or failure to advise a patient of their options. Greater responsibility is placed on patient education, informed consent, and documentation of the information given to a patient *(or the parent or guardian)*.

Your Duty

You have a clear cut duty to the patient. A breach of that duty, which results in harm to the patient, could result an action for Negligence. The result may be lengthy and costly litigation against the dispenser, the laboratory, and the lens manufacturer. If you elect to have an in-office laboratory, your liability may be substantially increased.

Your Responsibility

In essence, the last person to work on the lens may be regarded as the manufacturer in a Product Liability case. The concept of professional responsibility is growing and with that growth comes your responsibility to document what was advised and provided to every patient.

o The continued impact resistance of your lenses depends on how well you protect them from physical shocks and abuse. For your own protection, scratched or pitted lenses should be replaced immediately.

o If your occupational or recreational activities expose you to the risk of flying objects or physical impacts, your eye safety requires special safety spectacles with safety lenses, side shields, goggles and/or a full face shield.

o Federal Regulation 29 CFR 1910.133 states that your employer shall make available eye protection suitable for your work, and that you shall use such protectors. For more information, consult your safety officer or supervisor.

Your vision specialist can provide more information and help you select the proper eyewear to meet these vision safety needs.

Sports Eyewear

Many sports present unique eye safety risks. Industrial safety eyeglasses are not designed to protect against these special risks. As a result, special eyewear designs have been developed for a number of sports. The standards for such eyewear vary according to the sport for which they are designed, so it is important to base your selection on how the eyewear will be used.

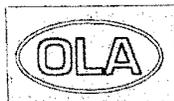
• The continued impact resistance of your lenses depends on how well you protect them from physical shocks and abuse. For your own protection, scratched or pitted lenses should be replaced immediately.

• If your occupational or recreational activities expose you to the risk of flying objects or physical impacts, your eye safety requires special safety spectacles with safety lenses, side shields, goggles and/or a full face shield.

Your vision specialist can provide more information and help you select the proper eyewear to meet these vision safety needs.

Sports Eyewear

Many sports present unique eye safety risks. Neither dress eyewear nor industrial safety eyewear are designed to protect against these special risks. As a result, special eyewear designs have been developed for a number of sports. The standards for such eyewear vary according to the sport for which they are designed, so it is important to base your selection on how the eyewear will be used.



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Dispenser: Safety spectacles with polycarbonate lenses must not be dispensed without this warning.

Important!

Read this notice before using your new safety eyewear.

Proper selection and use of eyewear is critical to your eye safety. No single pair of eyeglasses is best for all situations, so make sure you consider how your eyeglasses will be used before deciding whether to wear dress, safety or sports eyewear.

Vision Safety Notice:

- The polycarbonate lenses in these safety spectacles have been prepared in accordance with the order of your plant safety officer or vision specialist. The lenses meet or exceed American National Standard Z87.1 and the requirements of the Occupational Safety and Health Administration, but they are not unbreakable or shatterproof.
- If struck with sufficient force, the lenses can break into sharp pieces that can cause serious injury to the eye, or blindness. Even if the lenses do not break, the force of impact may cause the lenses or spectacle frame to contact the eye or surrounding area, causing injury.
- For tasks requiring additional impact protection, polycarbonate lenses should be used. Of all the materials that lenses can be made from, polycarbonate is the most impact resistant.

Dispenser: Dress eyewear must not be dispensed without this warning.

Important!

Read this notice before using your new eyewear.

Proper selection and use of eyewear is critical to your eye safety. No single pair of eyeglasses is best for all situations, so make sure you consider how your eyeglasses will be used before deciding whether to wear dress, safety or sports eyewear.

Vision Safety Notice:

- Your new eyeglasses are dress eyewear, not safety spectacles.
- The type and style of the spectacle frame is an important factor in determining how much protection your eyeglasses will provide. Many frames are fragile and are designed for appearance—not for protection.
- Your lenses meet or exceed American National Standard Z80.1 and FDA requirement 21 CFR Sec 801.410 for impact resistance, but they are not unbreakable or shatterproof. Of all the materials that lenses can be made from, polycarbonate is the most impact resistant.
- If struck with sufficient force, the lenses can break into sharp pieces that can cause serious injury to the eye, or blindness. Even if the lenses do not break, the force of impact may cause the lenses or spectacle frame to contact the eye or surrounding area, causing injury.

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