

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

COLORADO STATE BOARD OF OPTOMETRIC EXAMINERS

2001 SUNSET REVIEW



STATE OF COLORADO

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Bill Owens
Governor

October 15, 2001

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado Department of Regulatory Agencies has completed the evaluation of the Colorado Board of Optometric Examiners. I am pleased to submit this written report, which will be the basis for my office's oral testimony before the 2001 Legislative Committees of Reference. The report is submitted pursuant to §24-34-104(8)(a), of the Colorado Revised Statutes (C.R.S.), which states in part:

"The department of regulatory agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section..."

The department of regulatory agencies shall submit a report and supporting materials to the office of legislative legal services no later than October 15 of the year preceding the date established for termination...."

The report discusses the question of whether there is a need for the regulation provided under Article 40 of Title 12, C.R.S. The report also discusses the effectiveness of the Board and staff in carrying out the intent of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

A handwritten signature in black ink that reads "M. Michael Cooke". The signature is written in a cursive, flowing style.

M. Michael Cooke
Executive Director

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Background

The Sunset Process

The regulatory functions of the Colorado Board of Optometric Board of Examiners (Board) in accordance with Article 40 of Title 12, C.R.S., shall terminate on July 1, 2002 unless continued by the General Assembly. During the year prior to this date, it is the duty of the Department of Regulatory Agencies to conduct an analysis and evaluation of the Board pursuant to §24-34-104 (9)(b), C.R.S.

The purpose of this review is to determine whether the Board of Optometric Examiners should be continued for the protection of the public and to evaluate the performance of the Board and staff of the Department of Regulatory Agencies. During this review, the Board must demonstrate that there is still a need for the licensing program and that the regulation is the least restrictive regulation consistent with the public interest. DORA's findings and recommendations are submitted via this report to the Legislative Committee of Reference of the Colorado General Assembly. Statutory criteria used in sunset reviews may be found in Appendix A on page 30.

Methodology

As part of this review, DORA staff attended Board meetings, interviewed Board staff, reviewed Board records and minutes including complaint and disciplinary actions, interviewed officials with state and national professional associations, interviewed health care providers, reviewed Colorado statutes and Board rules, and reviewed other state laws.

Profile of the Profession

Optometry is the practice of examining, measuring, and treating vision problems through the use of corrective lenses. Some optometrists also diagnose certain diseases of the eye and treat those diseases by administration of certain drugs. Optometrists may practice as sole practitioners or within a health maintenance organization.

Optometry is a distinct profession apart from ophthalmology and opticianry. Ophthalmologists are physicians who, like optometrists, examine eyes and prescribe eyeglasses and contact lenses. However, ophthalmologists also diagnose and treat eye diseases and injury and perform eye surgery. Opticians fit and adjust eyeglasses and, in some states, adjust and fit contact lenses.

Colorado, like all other states, requires that an individual obtain a license in order to practice as an optometrist. To be licensed, an applicant must be 21 years of age, have graduated with a degree of doctor of optometry, and have passed the written examination of the National Board of Examiners of Optometry.

Optometrists licensed in Colorado and holding the designation AOT which indicates certification in Advanced Optometric Therapeutics may apply medications (mydriatics, miotics, cycloplegics, and anesthetics) as part of an examination. AOT certified optometrists may prescribe topical and oral antimicrobials, not including oral antiviral and oral antifungal agents. They may also prescribe topical and oral antihistamines, topical anti-inflammatory agents, topical and oral nonscheduled analgesics, and any controlled substance for ocular pain and inflammation except Schedule II drugs. AOT certified optometrists may also prescribe topical and oral antiglaucoma agents for the treatment of glaucoma.

History of Regulation

Licensing of optometrists began in 1901 in Michigan. Within 23 years, every state had regulated the profession of optometry.

The Colorado Board of Optometry was created in 1913 at the urging of a Cripple Creek jeweler and pawnshop owner. The early Board met twice a year to examine applicants. In the 1960's the Board's disciplinary powers were strengthened and Board activity focused on eliminating optometrists practicing in department stores. Such practitioners were known as "commercialists." Earlier sunset reviews note that Board minutes indicated that the understaffed Board often worked closely with the Colorado Optometric Association which routinely investigated complaints for the Board and sometimes recommended action.

A very dramatic movement in optometric regulation has been the expansion of the scope of practice to include use of diagnostic and therapeutic medications and treatment of uveitis and glaucoma. In the 1983 session, the General Assembly authorized the use of specific pharmaceutical agents for examination purposes. The legislation required that the standard of care provided be the same as the standard provided by an ophthalmologist and that authorized medication not be used for treatment of eye disease. In 1988, the scope of practice was again amended to include certain classes of pharmaceutical agents and procedures for treatment of the anterior segment of the eye by optometrists who have met Board requirements. And yet again, in 1996, the practice act was amended to provide for treatment of glaucoma. Each of these advancements was accompanied by increased standards for certification of licensed optometrists.

Summary of Statute and Regulations

The Board of Optometric Examiners is a seven member board consisting of five optometrists and two public members. The Board is under the supervision and control of the Division of Registrations in the Department of Regulatory Agencies.

The Board is empowered to perform a variety of common regulatory functions including testing candidates, granting licenses, conducting investigations, holding hearings and disciplining licensees.

The act empowers the Board to promulgate rules and regulations. In particular, the Board is authorized to prescribe rules regarding the utilization of therapeutic procedures and techniques in the practice of optometry. The Board is also authorized to establish educational programs and certification requirements for optometrists wishing to enter new, proven and generally accepted areas of lawful practice involving techniques for which they have not received appropriate education.

License Requirements

In order to become licensed to practice optometry in Colorado one must be 21 years of age, possess a doctor of optometry degree, and have passed the examination of the National Board of Examiners in Optometry. Included in the examination requirements is proof that the applicant has passed a standardized national examination in the treatment and management of ocular disease or equivalent requirements established by the Board. Applicants who are licensed to practice optometry in another state may receive a license by endorsement if the applicant possesses credentials and qualifications substantially equivalent to requirements for licensure by examination in Colorado.

Title Protection

The act protects the titles optometrist, the initials OD and the term doctor of optometry. Only individuals licensed as optometrists by the Board may use these terms in Colorado.

Exemptions

Optometrists serving in the United States Armed Forces, public health service, coast guard, or Veteran's Administration are exempt from the requirements of the act as are all licensed physicians. The statute further exempts opticians and persons or firms who duplicate eyeglasses and lenses or who supply, sell or repair eyeglasses and ophthalmic lenses. Finally, optometric student interns who are supervised by a licensed optometrist as part of a curriculum from an accredited college of optometry or a person serving post doctorate residency requirements are exempt.

Grounds for Discipline

The act establishes over 20 grounds of unprofessional conduct or grounds for discipline. An act of grossly negligent optometric practice or two or more acts or omissions which fail to meet generally accepted standards of optometric practice, habitual intemperance in the use of alcoholic liquor, failure to refer a patient to another provider when indicated, conviction of a felony or acceptance of a plea of guilty or no contest to a felony, and representations that a non-correctable condition can be permanently corrected are all grounds for discipline. In addition, a number of other grounds including deceiving or attempting to deceive the Board, fraud, misrepresentation, or deception in applying for a license or taking an examination, and practicing while having a physical or mental disability rendering the optometrist unable to treat with reasonable skill and safety are grounds for discipline.

Scope of Practice

The act establishes three levels of optometric practice in Colorado. Those levels are optometrist, optometrist certified to use pharmaceuticals for diagnosis, and optometrist certified to practice advanced therapeutics which includes prescribing pharmaceuticals and treating the eye diseases of anterior uveitis and glaucoma. The statute, in some cases augmented by Board regulation, establishes the educational requirements of the expanded scope of practice.

Summary of Rules and Regulations

The Board has promulgated 11 regulations which augment the statutory regulatory scheme. Several of those rules have subsections which further clarify Colorado's optometric regulation. Board rules include regulation of space rental which essentially requires that the practice of optometry must be owned by the optometrist and under his exclusive control, including prescription files and all patient records. The release of contact lenses prescriptions to patients is also covered by rule and the Board defines a valid written contact lenses prescription and establishes that such prescriptions must include a reasonable expiration date not to exceed one year. In compliance with the act, the Board has promulgated regulations defining "substantially equivalent" as regards licensure by endorsement. Further, the Board has promulgated several regulations establishing educational requirements for the treatment of glaucoma and anterior uveitis.

**Program
Description and
Administration**

Staffing and Budget

The State Board of Optometric Examiners is located in the Division of Registrations within the Department of Regulatory Agencies. As of July 2001, the Board licensed 1,069 optometrists. Of that total, 90 optometrists are certified to use diagnostic medications. Of that same total, 906 are certified to use therapeutic medications.

The Board is cash funded from fees paid by licensed optometrists. Fees which cover the direct and indirect costs of the program are: \$113 for initial licensure, \$188 for endorsement of a license from another state and \$200 for a biennial license renewal. Presently, the Board is staffed by one FTE. Staffing levels and budget expenditures for the last six fiscal years are depicted in Table 1.

Table 1

Board Staffing and Budget

Fiscal Year	Staff Level	Original Budget (Estimate Per Budget Document)	Actual Expenditures
FY 99-00	1.00	\$85,015	\$94,477
FY 98-99	0.70	\$75,509	\$82,191
FY 97-98	0.70	\$81,584	\$80,638
FY 96-97	0.70	\$76,293	\$88,614
FY 95-96	0.70	\$64,582	\$70,800
FY 94-95	0.70	\$72,642	\$70,596

In addition to the initial license fee, applicants for initial licensure must take the national examination. This examination is given six times yearly at 20 test centers across the nation. The examination fees are depicted in Table 2.

Table 2

Examination Fees

\$590	Part I (Basic Science)
\$590	Part II (Clinical Science)
\$590	Part III (Patient Care)
\$415	Treatment and Management of Ocular Disease
\$ 60	State Law

Complaints and Disciplinary Action

An important function of the Board is acting on complaints and, if required, imposing discipline. The practice act contains numerous grounds for discipline which are cited as unprofessional conduct in the statute. A summary of these grounds is described on page 5 of this report.

Table 3 depicts total disciplinary actions, total Board expenditures, and legal services expenditures for the period FY 94-95 through FY 99-00.

Table 3

Board Disciplinary Action

Fiscal Year	Total Disciplinary Actions
FY 99-00	4
FY 98-99	8
FY 97-98	5
FY 96-97	5
FY 95-96	2
FY 94-95	7

The Board is statutorily authorized a broad range of disciplinary powers. The most severe discipline is revocation of a license which eliminates the individual's ability to practice in Colorado. At the other extreme, the Board may issue a letter of admonition which does not impact the licensee's ability to continue practice. Table 4 depicts the Board's disciplinary activities for the period FY 95-96 through FY 00-01.

Table 4
Disciplinary Action Information

Type of Action	FY 95-96	FY 96-97	FY 97-98	FY 98-99	FY 99-00	FY 00-01
Revocation	0	0	0	0	0	0
Surrender of License / Retirement	0	0	0	0	1	0
Suspension with / without Probation	0	0	0	0	1	0
Probation (no suspension) / Practice Limitation	2	0	2	1	0	0
Letter of Admonition	2	2	1	3	4	2
License Granted with Probation / Limitations	0	0	0	0	0	0
License Denied after Hearing	0	0	0	0	0	0
Injunction / Stipulated Agreement	2	0	1	1	1	1
Cease and Desist	1	0	2	0	1	2
Other	0	0	0	0	0	0
TOTAL	7	2	5	5	8	4

Table 5 depicts complaints filed with the Board of Optometric Examiners for the period beginning FY 95-96 and ending August of FY 00-01. Further, the numbers of dismissed cases depicted in Table 5 include cases dismissed because of lack of jurisdiction such as fee disputes.

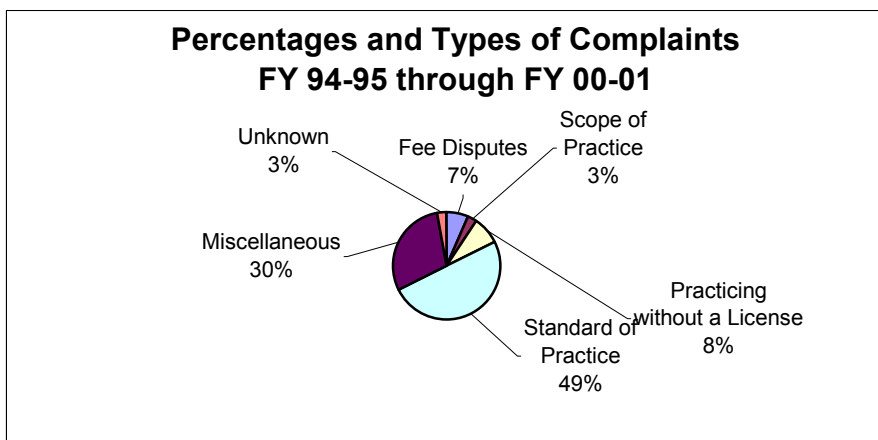
Table 5
Complaint Activity

Fiscal Year	Number of Complaints	Percent Resulting in Discipline	Number Dismissed*
95-96	23	30%	21
96-97	13	15%	18
97-98	22	23%	12
98-99	36	14%	12
99-00	41	20%	33
00-01	21	19%	39

*The number of dismissed cases can exceed the number of complaints because cases are often carried from one fiscal year to the next.

Over the same five year period, an examination of the types of complaints was conducted. That analysis reveals that the majority of complaints concern standard of practice followed by a relatively large percentage of cases that the Board classifies as miscellaneous. Standard of practice complaints include advertising, misrepresentation, negligence, prescription errors, record fraud or release of records, or substandard health care. Miscellaneous complaints may include violation of requirements involving leased space, optometrist working for optician and other complaints not readily assignable to specific categories. Figure 1 below shows categories of complaints and percentages over the period FY 94-95 through FY 00-01.

Figure 1



Analysis and Recommendations

Recommendation 1 - Continue the State Board of Optometric Examiners until 2011.

In Colorado, doctors of optometry are health care providers who examine, measure, and treat vision problems through prescription of corrective lenses. Certified optometrists with specialized training may also diagnose, treat and manage certain diseases and disorders of the eye. The regulatory structure in Colorado has evolved from permitting optometrists to use certain diagnostic medications to the current level which permits qualified optometrists to diagnose and treat certain diseases of the eye. Therefore, the need to ensure that the public is protected from incompetent practitioners has increased.

The Board provides public protection primarily through enforcement of rigorous educational and examination requirements prior to issuing a license to practice optometry in Colorado. This initial assessment of competence is performed in conjunction with enforcement and disciplinary activities in response to consumer complaints against licensed optometrists who may have violated generally accepted standards of care or other provisions of Colorado law. These functions, performed by a Board comprised of both licensed optometrists and public members, are vital to ensuring reasonable public protection.

The Board has responded well to certain reforms initiated through the legislative process and the June 1991 sunset review. As an example, the 1991 review uncovered a high number of consumer inquiries concerning release of contact lenses prescriptions. That problem was at least partially a result of a Board rule that established that contact lenses prescriptions were not part of a patient's medical records. Therefore, many Colorado patients were having a difficult time securing their prescriptions. The 1992 sunset bill to continue the Board amended the act to require optometrists to release contact lenses prescriptions when the required examination and fitting procedures were complete. The bill further required the Board to promulgate rules defining the components of a valid written prescription. The Board complied with this statutory directive by promulgating Rule 9.0 which defines certain requirements including a reasonable limit on refills and a reasonable expiration date. The Board has set this expiration date not to exceed one year.

This review found no formal complaints filed against optometrists for refusal to release contact lenses prescriptions. Interviews with Board members and Board staff revealed that the Board receives, on average, less than 20 patient inquiries per year concerning release of contact lenses prescriptions. The Board reports that these inquiries are usually resolved informally. In many instances, patients complain because they would like their contact lenses prescription released even though it has expired. In other instances, the contact lenses prescription should be released to the patient and a telephone call to the optometrist from the Board results in its release. Staff members who have discussed these complaints with the optometrists report that in some cases, optometrists were unaware of the change in the Colorado statute requiring the prescription be released.

Another area of concern addressed in the 1991 sunset review was the Board's lack of disciplinary actions. The Joint Legislative Sunrise Sunset Committee amended the statute at §12-40-106(3)(a), C.R.S., to require the Board to make an interim report to the committee on the operation of the Board's disciplinary actions. Further, the sunset continuation bill made numerous changes to the act including an amendment to the legislative declaration establishing that the priority of the optometric regulatory statute is to protect the consumers of optometric services through appropriate disciplinary procedures. Further, the definition of unprofessional conduct was amended and updated extensively to enhance the Board's disciplinary jurisdiction.

Since 1995, the Board has issued 14 letters of admonition, seven stipulated agreements and six cease and desist orders. The Board has revoked no licenses and has suspended one license.

As part of this review, nine cases in which discipline was imposed on a licensed optometrist were selected for review to determine the length of time from complaint to final agency action. One case was resolved in two months, four were resolved in three months, one case took five months, one case six months, one 10 months and another 14 months. This represents a timely and efficient response to consumer complaints.

We reviewed over half of the Board's dismissed cases to determine if complaints that appear to warrant action are dismissed. Many dismissed complaints involve contact lenses, fitting of contact lenses and difficulty adjusting to the contact lenses. Another large group of dismissed complaints involve fee disputes which are not within the Board's jurisdiction.

Also, the review found several "Letters of Concern" issued from the Board to optometrists. These cases tended to involve personality conflicts or the general management of the optometric office.

We also compared dismissed complaints against similar complaints resulting in disciplinary action to determine if there appears to be any inconsistency in administration of discipline. This review, which included review of original consumer complaints, investigation records, and Board actions revealed no apparent inconsistencies in the Board's handling of complaints.

In conclusion, the need for regulatory oversight is arguably greater at this time than in the history of the practice of optometry. The U.S. Department of Labor reports that optometrists provide most primary vision care nationally. It is clear that consumers rely greatly upon optometrists while it is unlikely that consumers are adequately informed and adequately educated to assess an optometrist's education, qualifications and skills. The advent of the Advanced Ocular Therapeutics (AOT) certification in 1996, which included treatment of uveitis and glaucoma by optometrists, potentially places consumers at an elevated level of risk.

Recommendation 2 - Eliminate prohibition against the use of oral antiviral agents.

Colorado law permits certified optometrists to use a wide variety of therapeutic medications. However, optometrists are not permitted to prescribe antiviral or antifungal medications. This recommendation argues that the prohibition against use of antiviral medication should be repealed. It is generally accepted that antiviral medications are safe to use and have few side effects. Further, it is common for optometrists to diagnose conditions which would require treatment by use of an antiviral medication. Colorado law already requires optometrists to refer patients to other health care providers if the required treatment is beyond the optometrist's scope of competency.

Colorado licensed optometrists certified as AOT would use an oral antiviral such as ACYCLOVIR in treating Herpes Zoster (commonly known as shingles) and Herpes Simplex when they affect the eye. Under current statutory prohibitions, Colorado patients under the care of optometrists may be deprived a reasonable level of care. Instead, they must be referred to another provider, costing the patient time, money, and perhaps delayed treatment.

Optometrists today are trained to use oral antiviral drugs in the treatment of eye disease. This review examined curricula at three optometric colleges. Curricula at these schools cover pharmacology, clinical medicine, system pathology, ocular pharmacology and ocular disease among other required classes.

Further, a comparison of optometric practice acts in other states support this recommendation. Thirteen states have no statutory restrictions prohibiting use of oral antiviral drugs although one state in this group prohibits any prescriptions to children under six years. As Table 6 (beginning on the following page) shows, restrictions on use of prescriptive medication vary across the nation.

Table 6

Oral Prescriptive Authority for Optometrists

State:	Oral Authority	Statutory Restrictions on Which Oral Drugs may be Prescribed
Alabama	Yes	excluding oral hydrocodone
Alaska	No	
Arizona	Yes	certain specific medications are the only oral agents authorized
Arkansas	Yes	none
California	Yes	specific medications or classes of medications for the Tx of certain conditions only
Colorado	Yes	excluding oral antivirals , oral antifungals, and oral steroids
Connecticut	Yes	excluding oral glaucomas except for emergency
Delaware	Yes	excluding oral steroids, oral antivirals, oral antifungals, and oral antiparasitics
D.C.	Yes	excluding oral steroids, oral antivirals, oral antifungals, and oral glaucomas except for emergency
Florida	No	
Georgia	Yes	analgesics only oral agents authorized
Hawaii	No	
Idaho	Yes	none
Illinois	Yes	non-narcotic analgesics only oral agents authorized
Indiana	Yes	excluding oral steroids and controlled substances
Iowa	Yes	excluding oral steroids
Kansas	Yes	may not Rx oral agents for children under 6 years
Kentucky	Yes	none
Louisiana	Yes	antibiotics and antihistamines only oral agents authorized
Maine	Yes	excluding oral steroids and oral glaucomas
Maryland	Yes	tetracycline for treatment of seborrhic blepharitis and meibomitis is the only oral agent authorized
Massachusetts	No	
Michigan	No	
Minnesota	No	
Mississippi	No	

State:	Oral Authority	Statutory Restrictions on Which Oral Drugs may be Prescribed
Missouri	Yes	none
Montana	Yes	none
Nebraska	Yes	excluding oral steroids, oral glaucomas, and oral immunosuppressive agents
Nevada	Yes	antibiotics, non-steroidal anti-allergy, analgesics, and emergency glaucoma agents are the only oral agents authorized
New Hampshire	Yes	antibiotics, analgesics, and NSAIDs are the only oral agents authorized
New Jersey	No	
New Mexico	Yes	excluding oral steroids, oral antifungals, oral osmotics, and oral immunosuppressive agents
New York	No	
North Carolina	Yes	none
North Dakota	Yes	none
Ohio	Yes	certain specific medications are the only oral agents authorized
Oklahoma	Yes	none
Oregon	No	
Pennsylvania	Yes	certain specific medications are the only oral agents authorized
Rhode Island	No	
South Carolina	Yes	excluding oral steroids
South Dakota	Yes	analgesics only oral agents authorized
Tennessee	Yes	none
Texas	Yes	antibiotics, antihistamines, nonsteroidal antiinflammatories, analgesics, emergency glaucoma medications, and other oral drugs approved by the Optometric Health Care Advisory Committee are the only oral agents authorized
Utah	Yes	none
Vermont	No	
Virginia	Yes	analgesics and emergency glaucomas only oral agents authorized
Washington	No	
West Virginia	Yes	none
Wisconsin	Yes	none
Wyoming	Yes	excluding oral steroids, oral antifungals, oral immunosuppressive agents, and oral sedative-hypnotics

Source: American Optometric Association

Opponents of this recommendation may argue that an expanded optometric scope of practice will result in more liability claims and more severe claims paid by malpractice carriers. It would follow, then, that insurance rates would be higher in those states with an expanded scope of practice. Documentation provided as part of this review included a letter from a professional liability insurance provider. This letter states that the insurer finds no correlation between the expanded scope of practice envisioned in this recommendation and the frequency and severity of claims against optometrists in states with similar provisions.

Rather, areas of higher population correlate to higher settlements. Therefore, a state with an expanded optometric scope of practice may have rates in the lowest tier while a state or geographic area of a state (such as a large urban area) may have the highest insurance rates even though optometrists in those high rate areas are not allowed to treat eye disease or use topical or oral medication.

The Colorado Legislature has created and empowered the Board of Optometric Examiners to protect the public from incompetent practitioners. The Board does this through assessing education, examination of optometrists, responding to complaints and enforcement of disciplinary standards, if appropriate. This policy approach of establishing standards and holding licensees accountable to those standards offers Colorado's citizens the maximum health care choices coupled with the appropriate degree of regulatory oversight.

Under the theory that a competitive marketplace best serves consumers and the economy, the burden to prove a need to distort the marketplace falls on the government. In the case of this sunset review, the statute requires that DORA examine if the regulation is the least restrictive consistent with the public interest.

We find no credible evidence that this restriction placed on optometrists serves to protect the public. Instead, the law may result in increased costs to consumers, increased inconveniences and reduced health care choices.

This unnecessary statutory prohibition should be removed by amending §12-40-102(5), C.R.S., as follows:

12-40-102 (5) The classes of pharmaceutical agents and the procedures approved for optometric use for treatment of the anterior segment of the eye or its appendages, including prescription, by certified therapeutic optometrists for treatment purposes under this section are as follows: Topical and oral antimicrobials (except ~~oral antiviral~~ and oral antifungal agents), topical and oral antihistamines, topical antiinflammatory agents, topical and oral nonscheduled analgesics, and any controlled substance for ocular pain and inflammation except those specified in schedules I and II as provided in part 2 of article 18 of title 18, C.R.S., and the removal of superficial foreign bodies from the human eye or its appendages.

Recommendation 3 - Eliminate the requirement that AOT certified optometrists must consult with a physician regarding treatment of anterior uveitis and glaucoma.

Section 12-40-102(7)(a), C.R.S., authorizes optometrists who meet specific requirements to use diagnostic and therapeutic drugs to treat anterior uveitis and glaucoma. Such optometrists must consult with a physician under the following conditions:

- The patient is under 12 years of age and the anterior uveitis is not caused by trauma;
- After 14 days of treatment, the anterior uveitis is not resolving;
- A diagnosis of glaucoma is made;
- Acute closed angle glaucoma is diagnosed – the statute requires consultation within 24 hours of initial treatment.

The Board has expanded on this requirement by promulgation of Rule 13.4, which requires an optometrist to request and make a good faith effort to obtain written documentation of the consultation.

This statutory requirement has been in place for approximately five years. During this period, there has been one disciplinary action by the Board against an optometrist regarding an optometrist who failed to diagnose properly resulting in blindness in one eye of the patient.

Physicians are the first to review optometrists' treatment plans where consultation is required. It is reasonable to expect that a physician would file a complaint with the Board if it was discovered that an optometrist's treatment plan failed to meet the generally accepted standard for treatment of glaucoma and anterior uveitis.

This statutory requirement may be costly to patients, and it may have the added negative effect of delaying treatment. Since the parameters of the consultation are at the discretion of the physician, a patient could be required to seek an appointment with the consulting physician after the initial diagnosis by the optometrist. In practice, one assumes an optometrist would not enter into such a restrictive collaboration, but it is clear that the statute allows for this type of inefficiency to exist.

Conversely, it appears that the statute may not accomplish the one thing that is intended – that a physician consult, and by implication review and approve, the treatment received by the patient. Treatment of these diseases may change according to a variety of factors such as a patient's response to the treatment. It is not clear that an optometrist is required to re-consult if a change in the plan is indicated. Of course, the physician establishes the parameters of the plan but that may or may not include the need for additional consultation.

As stated in the previous recommendation, the General Assembly has empowered the Board of Optometric Examiners to protect the public from incompetent practitioners. The Board has established by rule that an optometrist, in order to qualify for AOT certification, must prove successful completion by attendance and examination of 60 hours of approved glaucoma and anterior uveitis education. This education must include 44 didactic and 16 clinical hours including pharmacological, systemic, and laser management of these conditions.

Section 12-40-118(n), C.R.S., establishes as unprofessional conduct and, therefore, a ground for discipline “failing to refer a patient to the appropriate health care practitioner when the services required by the patient are beyond the scope of competency of the optometrist or the scope of practice of optometry.” This standard, which is similar to standards in most health care regulatory acts, assures that patients are protected while affording the patient adequate health care options.

To effect this recommendation, §12-40-102 should be amended:

~~(7) (a) An optometrist who meets the requirements established by the board pursuant to sections 12-40-107 (1) (n) and 12-40-109.5 (3) may treat anterior uveitis and glaucoma.; except that an optometrist shall consult with an ophthalmologist or other physician licensed to practice medicine when:~~

~~—— (I) A patient under twelve years of age presents with nontraumatic anterior uveitis;~~

~~—— (II) A patient's anterior uveitis is not resolving after a fourteen day period of treatment;~~

~~—— (III) A diagnosis of glaucoma is made;~~

~~—— (IV) Acute closed angle glaucoma is diagnosed in which case consultation shall occur within twenty four hours of initial treatment.~~

~~—— (b) The parameters of the consultation shall be at the discretion of the consulting ophthalmologist or other consulting physician licensed to practice medicine pursuant to article 36 of this title.~~

Recommendation 4 - Require a valid prescription for replacement of contact lenses.

Section 12-40-105(1)(c), C.R.S., exempts certain persons from the optometric practice act. One subsection exempts those who duplicate eyeglasses or spectacle lenses as well as those who sell ophthalmic lenses. The problem with the current construction involves contact lenses prescriptions.

The Board has received complaints directed at national companies (not located in Colorado) that sell contact lenses to patients with expired prescriptions or, in some cases, no prescriptions. Some companies assert that the statutory phrase “on prescription” does not preclude use of an expired prescription.

Colorado law, as discussed elsewhere in this report, requires a valid prescription for purchase of contact lenses. It is important that exemptions from the practice act be consistent with other statutory provisions while allowing other professions, such as opticians, the market flexibility to operate as long as the public is not at risk.

In this case, the arguably nebulous phrase “on prescription” should be replaced with a straightforward requirement that supply, sale, repair, and duplication of spectacle lenses, eyeglasses, or ophthalmic lenses requires a valid prescription. Section 12-40-105 (1)(c) should read:

(c) Opticians, persons, firms, and corporations who duplicate or repair eyeglasses or spectacle lenses; Opticians, persons, firms, and corporations who supply or sell eyeglasses or ophthalmic lenses, including but not limited to contact lenses, so long as they are provided pursuant to a valid prescription.

Recommendation 5 - Repeal continuing education requirement.

Section 12-40-113(1)(f), C.R.S., requires that every optometrist, upon renewal (every two years), complete 24 hours of board-approved continuing education.

A sunset review must examine if the regulation under review is the least restrictive form of regulation consistent with the public interest. Continuing education requirements do not meet that burden. Therefore, it is the recommendation of this review that the General Assembly eliminate the continuing education requirement for Colorado optometrists.

Although some optometric continuing education courses involve the use of proctors to assure that optometrists attend the course in its entirety, statutory continuing education requirements only direct licensees to show proof of attendance at an approved course. In general, this is how Colorado optometrists meet the existing continuing education requirements. The courses a licensee may select, however, may not necessarily address areas where the optometrist needs improvement. Relevance of the chosen courses to the licensee's practice, or whether the licensee understood the course and retained the information, are not subject to regulatory review nor is there any demonstration of competence by the licensee.

At a minimum, continuing education requirements, if left in place by the General Assembly, should adhere to two fundamental requirements:

- The licensee should undergo some type of needs assessment so that there is some assurance that the continuing education courses attended are relevant to the licensee's practice;
- There should be some demonstration by the licensee that he or she comprehended the material presented at the continuing education course and can assimilate and implement that material into his or her daily practice.

Absent these minimal standards, the self-selection educational process in place cannot demonstrate any positive, objective, measurable outcomes. Proponents of status quo continuing education requirements argue that licensees are professionals and, therefore, know what courses they should take and must also be relied upon to comprehend and implement the information communicated at the course. This same reasoning, however, is a persuasive argument for repeal of the continuing education requirements. If licensees can be relied upon to self-select continuing education coursework and if they can be relied upon to comprehend and implement the material, it is reasonable to conclude that they can be relied upon to pursue lifelong learning absent a state law requiring demonstration of compliance every two years.

It is particularly telling to note that the Board, in establishing educational requirements for certification to treat anterior uveitis and glaucoma, chose to require by regulation, that an optometrist prove by attendance and examination, his or her competence to receive the certification for extended scope of practice. Continuing education, however, is not held to this reasonable standard.

Also, the Board has attempted to reduce the often onerous task of monitoring continuing education by instituting an audit system which samples approximately 5 percent of all renewals to ensure compliance with the state law.

However, the literature regarding continuing competence, as well as Colorado's direct experience with elimination of continuing education requirements for physicians and nurses demonstrate that the continuing education for optometrists can be repealed without jeopardizing the safety or welfare of the Colorado public. Therefore, §12-40-113(1)(f), C.R.S., should be repealed as follows:

~~(f) Effective April 1, 1993, in addition to all other requirements of this section for license renewal, the board shall require that each optometrist seeking to renew a license shall have completed twenty four hours of board approved continuing education. Any optometrist desiring to renew a license to practice optometry in this state shall submit to the board the information the board believes is necessary to show that the optometrist has fulfilled the continuing education requirements of this paragraph (f). Implementation of this paragraph (f) shall occur within existing appropriations.~~

Technical/Administrative Changes to the Optometric Practice Act

Recommendation 6A - Repeal outdated provision concerning the Board of Optometric Examiners.

Section 12-40-107 (2), C.R.S., regarding powers and duties of the Board contains an outdated provision that takes effect should the Board not accept the scores of a national clinical examination by July 1, 1994. The Board has accepted the results of a national examination.

Section 12-40-107 (2), C.R.S., should be repealed as follows:

~~12-40-107 (2) If the board does not accept the scores of a national clinical examination for optometrists by the fiscal year beginning July 1, 1994, the board shall conduct a joint study to be completed by the end of the fiscal year beginning July 1, 1994, with the psychometrician in the division of registrations to revise the state clinical examination so that the test is psychometrically sound. The results of such joint study and changes to the clinical examination for optometrists shall be reported to the joint sunrise and sunset review committee of the general assembly by July 1, 1995.~~

Recommendation 6B - Repeal references to Certified Therapeutic Optometrists, update examination references and require licensees to display license.

Section 12-40-109, C.R.S., contains outdated provisions and references to practical and clinical examinations of the Board. In fact, no such examinations exist. Instead, the Board has approved the use of a national examination and the statutory requirement should be consistent with that practice.

In addition to the examination requirements cited above, §12-40-109, C.R.S., contains two references to “certified therapeutic optometrists,” a certification that has been repealed elsewhere in the statute. This section of the statute requires the Board to issue a “distinctive certificate” to qualified optometrists while §12-40-109.5 (3), C.R.S., requires that the Board suspend the same certificate after March 31, 1999 which was the implementation date of the new Advanced Ocular Therapeutics designation.

Section 12-40-109, C.R.S., should be amended to read:

12-40-109. Examination - licenses. (1) Each application shall be verified under oath by the applicant, and a material false statement thereon shall constitute grounds for the withholding or revocation of a license. **THE APPLICANT SHALL TAKE AND SUBMIT TEST SCORES FROM THE BOARD APPROVED EXAM.** ~~When such application and accompanying proofs as are required by section 12-40-108 are submitted to the board and approved, it shall notify the applicant to appear for examination at a time and place to be fixed by the board. The examination shall be clinical and of such a character as to test the qualifications of the applicant to practice optometry.~~

(2) Each person who makes a passing grade on the ~~practical and clinical~~ **BOARD APPROVED** examination of the board and who is otherwise qualified shall be granted a license evidenced by a certificate signed by the board. No license shall be granted by less than a majority vote of the board. The license certificate provided for in this section shall be in such form and wording as may be adopted by the board; ~~except that the board shall provide an optometrist who is certified as a therapeutic optometrist pursuant to section 12-40-109.5 (1.5) with a distinctive certificate indicating such certification. Such~~ **THE LICENSEE'S LICENSE** certificate shall be displayed by the optometrist for viewing by his patients, as provided in section 12-40-115. ~~An application for initial licensure as a certified therapeutic optometrist shall be accompanied by a processing fee in an amount to be determined by the board pursuant to the provisions of section 24-34-105, C.R.S. Such fee shall not be required for any renewal certificate obtained pursuant to the provisions of section 12-40-113.~~

(4) A person who fails to pass the examination provided for in this section may retake the examination the next time said examination is given. ~~after paying the fee pursuant to section 24-34-105, C.R.S.~~

Recommendation 6C - Repeal requirements for therapeutic certification.

The optometric practice act has been amended numerous times in order to codify the movement of the profession from the measurement of vision and prescription of eyeglasses to the present standard of diagnosing and treating eye disease.

This review found sections of the act concerning diagnostic and prescriptive authorization very difficult to comprehend. However, both the Board and the professional association raised objections to the proposition that these sections be clarified. One argument in opposition contends that no harm to the public occurs because of the way the Colorado law is written. While this may be true, at least arguably, good government practices suggest that the statute should be at least accurate if not clear.

To that end, §12-40-109.5 (1.5), C.R.S., is an outdated provision that lays out the requirements for TPA certification. In fact, the provisions of this section conflict with §12-40-109.5(3), C.R.S., which states that the Board shall suspend the TPA certificate of an optometrist who fails to meet new requirements set by the Board for treatment of glaucoma or anterior uveitis. This new level of certification is known as AOT or Advanced Ocular Therapeutics. AOT was implemented in 1996. The statute sets March 31, 1999 as the deadline for transition from the TPA certificate to the AOT certificate.

If is clear, therefore, that there can be no more TPA certified optometrists because the Board would have suspended their certification after the March 1999 deadline. Further, new applicants must meet the AOT certification requirement. If the Board relies upon these standards as part of the AOT certification requirements, then the standards should be promulgated in rule with the other AOT standards. This outdated and confusing language should be repealed.

Section 12-40-109.5 (1.5), C.R.S., should be repealed as follows:

~~(1.5) Notwithstanding the provisions of section 12-22-121, a licensed optometrist may purchase, possess, administer, and prescribe the classes of pharmaceutical agents for treatment referred to in section 12-40-102 (5) on and after July 1, 1988, only if the optometrist has obtained a certificate from the board certifying that the optometrist has complied with the following minimum requirements within twenty-four months preceding the application for certification: Successful completion, by attendance and examination, of at least sixty classroom hours of study in ocular pharmacology, clinical pharmacology, therapeutics, and anterior segment disease; and successful completion by attendance and examination of at least sixty hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its appendages. The courses shall be offered by an institution which is accredited by a regional or professional accreditation organization recognized or approved by the council of postsecondary education or the United States department of education or their successors.~~

Additionally, §12-40-108.5, C.R.S., should be amended to conform.

Recommendation 6D - Update statutory provision providing for dispute of Board actions.

Section 12-40-119, C.R.S., speaks to the Board's authority to impose discipline such as revocation or suspension of a license as well as its authority to impose supervision, probation and issue letters of admonition. To that end, the act provides due process by ensuring that respondents have access to a hearing.

Section 12-40-119(c), C.R.S., holds that a hearing be conducted if the probability is great that a licensee committed an act of unprofessional conduct or violated the terms of probation.

This language could be improved if, regarding any formal Board action, a licensee may request a hearing. Therefore, §12-40-119(c), C.R.S., should be amended as follows:

(c) **A LICENSEE MAY REQUEST A HEARING TO DISPUTE FORMAL BOARD ACTION. IF THE LICENSEE REQUESTS A HEARING**, the hearing shall be conducted in accordance with the provisions of section 24-4-105, C.R.S.; except that the board may use an administrative law judge, who shall perform all of those functions indicated in section 24-4-105 (4), C.R.S.

Recommendation 6E - Update disciplinary standard.

Regulatory statutes governing health care occupations and professions should contain strong provisions allowing for the denial of an application or discipline of a licensee in instances of substance abuse that could jeopardize the safety of patients.

Section 12-40-108 (d), C.R.S., requires that in order for the Board to deny an applicant for an optometry license, the applicant must be shown to be presently addicted to the use of any controlled substance or habitually intemperate in the use of alcohol. Such standards may be difficult to prove and may diminish the public protection function of the Board. More importantly, an individual may be able to temporarily cure his or herself of an addiction thus thwarting the jurisdiction of the Board. A regulatory problem arises because relapses in substance abuse addiction are possible, if not frequent. It is important that regulatory boards be authorized to evaluate such circumstances in light of the risk to patients. This language should be clarified to read:

(d) He is not presently addicted to, **DEPENDENT ON, OR HAS NOT HABITUALLY OR EXCESSIVELY USED OR ABUSED INTOXICATING LIQUORS, HABIT FORMING DRUGS AS DEFINED IN SECTION 12-22-102(13), OR CONTROLLED SUBSTANCES AS DEFINED IN SECTION 12-22-303(7).** ~~the use of any controlled substance, as defined in section 12-22-303 (7), or habitual intemperance in the use of alcoholic liquors.~~

For the same reasons, §12-40-118, C.R.S., should be amended so that the grounds for discipline, or definition of unprofessional conduct, conforms as follows:

(e) ADDICTION TO, DEPENDENCE ON, OR THE HABITUAL OR EXCESSIVE USE OR ABUSE OF, INTOXICATING LIQUORS, A HABIT FORMING DRUG AS DEFINED IN SECTION 12-22-102(13) OR A CONTROLLED SUBSTANCE AS DEFINED IN SECTION 12-22-303(7), CRS.

Recommendation 6F - Update grounds for discipline to include deferred sentences in court cases.

A disciplinary standard in occupational licensing is criminal conviction sentences. Over time, judicial sentencing options change, and it is necessary that occupational practice acts keep pace with such changes.

Individuals frequently receive deferred sentences for first time offenses. However, the action committed by the individual in this case a licensee, may be of such a serious nature that the Board should determine if regulatory action is indicated.

As an example, a licensee may have committed a sexual assault and received a deferred sentence. The Board should have the ability to discipline a licensee for engaging in felony behavior.

To effect this recommendation, §12-40-118(t), C.R.S., should be amended to read:

Conviction of a felony or the acceptance of a plea of guilty, nolo contendere OR A PLEA RESULTING IN A DEFERRED SENTENCE to a felony,

Recommendation 6G - Repeal outdated statutory provisions referencing dates that have passed.

The optometric practice act contains a reference to a date that has passed. This references should be repealed as follows:

~~12-40-106 (3) (a) The board shall report no later than July 1, 1995, to the joint legislative sunrise and sunset review committee on the operation of its disciplinary activities, and such committee shall review such activities in 1995.~~

Appendix A - Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action; and
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.

Appendix B – Optometric Statute

12-40-101. Legislative declaration. The practice of optometry in the state of Colorado is declared to affect the public health and safety and is subject to regulation and control in the public interest. Optometry is declared to be a learned profession, and it is further declared to be a matter of public interest and concern that the practice of optometry as defined in this article be limited to qualified persons having been examined and meeting this state's minimum acceptable level of competence and having been admitted to the practice of optometry under the provisions of this article. The priority of this article shall be to protect the consumers of the services provided through appropriate disciplinary procedures. This article shall be liberally construed to carry out these objects and purposes in accordance with this declaration of policy.

12-40-102. Practice of optometry defined. (1) The practice of the profession of optometry is: The employment of any means other than medicine, surgery, invasive laser surgery, postoperative care management following surgery without referral from an ophthalmologist, unless ninety days have expired from and after the surgery or the physician justifies medically indicated reasons for extending the postoperative period or the patient has been released by the physician, X ray, or drugs, except as provided in subsections (4) and (5) of this section, to diagnose and treat the presence of abnormal conditions of the human eye or its appendages and the accommodative and refractive conditions of the human eye or the scope of its functions in general; except for treatment of posterior uveitis; and the measurement of the powers or range of human vision and the adaptation of lenses and frames to improve the powers or range of human vision. Any person who is engaged in the prescribing of visual training or orthoptics, or the prescribing of any contact lenses, or the fitting or adaptation of such contact lenses to the human eye, or the use of scientific instruments to train the visual system or any abnormal condition of the eyes for the correction or improvement of, or the relief to, the visual function, or who holds oneself out as being able to do so, is engaged in the practice of optometry.

(2) A licensed optometrist who utilizes, including prescribing, those classes of pharmaceutical agents described in this section shall be required to provide the same level and standard of care to his patients as the standard of care provided by an ophthalmologist utilizing the same class of pharmaceutical agents.

(3) A licensed optometrist shall not use pharmaceutical agents for treatment of eye disease or disorder or for any therapeutic purpose unless certified as a therapeutic optometrist pursuant to section 12-40-109.5 (1.5) and (3).

(4) The classes of pharmaceutical agents approved for optometric use for examination purposes under this section are topically applied mydriatics, miotics, cycloplegics, and anesthetics.

(5) The classes of pharmaceutical agents and the procedures approved for optometric use for treatment of the anterior segment of the eye or its appendages, including prescription, by certified therapeutic optometrists for treatment purposes under this section are as follows: Topical and oral antimicrobials (except oral antiviral and oral antifungal agents), topical and oral antihistamines, topical antiinflammatory agents, topical and oral nonscheduled analgesics, and any controlled substance for ocular pain and inflammation except those specified in schedules I and II as provided in part 2 of article 18 of title 18, CRS, and the removal of superficial foreign bodies from the human eye or its appendages.

(6) The classes of pharmaceutical agents approved for optometric use by certified therapeutic optometrists for treatment of glaucoma include topical and oral antiglaucoma agents.

(7) (a) An optometrist who meets the requirements established by the board pursuant to sections 12-40-107 (1) (n) and 12-40-109.5 (3) may treat anterior uveitis and glaucoma; except that an optometrist shall consult with an ophthalmologist or other physician licensed to practice medicine when:

(I) A patient under twelve years of age presents with nontraumatic anterior uveitis;

(II) A patient's anterior uveitis is not resolving after a fourteen-day period of treatment;

(III) A diagnosis of glaucoma is made;

(IV) Acute closed angle glaucoma is diagnosed in which case consultation shall occur within twenty-four hours of initial treatment.

(b) The parameters of the consultation shall be at the discretion of the consulting ophthalmologist or other consulting physician licensed to practice medicine pursuant to article 36 of this title.

12-40-103. Proprietor defined. (1) The term "proprietor", as used in this article, includes any person, group, association, or corporation not licensed under this article who:

(a) For financial gain employs optometrists in the operation of an optometric office;

(b) Places, directly or indirectly, in possession of an optometrist such optometric materials or equipment as may be necessary for the operation of an optometric office on the basis of any fee splitting, income division, profit sharing, or similar agreement or on any basis which has the effect of any such agreement, but the term "proprietor" does not include the bona fide seller of optometric equipment or material secured by chattel mortgage, conditional sales contract, or other title retention agreements or the bona fide leasing of such equipment by the manufacturer or by his franchised dealer; or

(c) Under the guise of a rental percentage lease or sublease or other leasing or rental arrangement, participates in the direction and control of a licensee's practice and business or in the receipts or profits accruing therefrom, but a bona fide percentage sale lease basing the rental of the premises let upon a percentage of gross income of not to exceed the reasonable, going rate for like quarters and location, as determined by the board after investigation, shall not be deemed an avoidance of the provisions of this section. Certified copies of all such leasing and rental arrangements and renewals thereof shall be filed with the board by the licensee within thirty days after execution.

12-40-104. Persons entitled to practice optometry - title protection of optometrists. It shall be unlawful for any person to practice optometry in this state, except those who are duly licensed optometrists before July 1, 1961, pursuant to the law of this state and those who are duly licensed optometrists pursuant to the provisions of this article. A person licensed as an optometrist pursuant to the provisions of this article may use the title "optometrist", the initials "OD", or the term "doctor of optometry". No other person shall use the title "optometrist", "OD", "doctor of optometry", or any other word or abbreviation to indicate or induce others to believe that one is licensed to practice optometry in this state.

12-40-105. Persons excluded from operation of this article.

(1) This article shall not apply to:

(a) Professional practice by a physician or surgeon licensed to practice medicine under the laws of the state of Colorado and ancillary or technical assistants working under the direction of any such physician or surgeon, with the exception of the fitting of contact lenses which must be done under the physician's or surgeon's direct supervision;

(b) The practice of optometry in the discharge of their official duties by optometrists or physicians and surgeons in the service of the United States armed forces, public health service, coast guard, or veterans administration;

(c) Opticians, persons, firms, and corporations who duplicate spectacles, eyeglasses, or ophthalmic lenses, or who supply, sell, or repair spectacles, eyeglasses, or ophthalmic lenses on prescription from persons authorized under the laws of this state to practice optometry or medicine;

(d) Persons serving a post-doctorate residency or optometric student internship under the supervision of an optometrist licensed in Colorado as part of a curriculum from an accredited college of optometry.

12-40-106. State board of optometric examiners - subject to termination. (1) The state board of optometric examiners, referred to in this article as the "board", shall be under the supervision and control of the division of registrations as provided by section 24-34-102, CRS The board shall consist of five optometrists and two members-at-large, to be appointed by the governor to serve for terms of four years; except that no person shall be appointed to serve more than two consecutive terms. Persons holding office on June 15, 1987, are subject to the provisions of section 24-1-137, CRS Each member of the board, except for the members-at-large, shall have been actually engaged and licensed in the practice of optometry as defined in section 12-40-102 in Colorado for the five years next preceding the member's appointment. At least one of the two members-at-large shall not be a member or representative of, nor have any direct interest in, any profession, agency, or institution providing health services. Any four members of said board shall constitute a quorum for the purpose of holding examinations, granting licenses, or transacting any business connected with the board. A vacancy in the membership of said board shall be filled by the governor for the remainder of the unexpired term. Any member of the board may be removed by the governor for misconduct, incompetency, or neglect of duty. Any board member having a personal or private interest in any matter before the board shall disclose such fact to the board and shall not participate in discussions related thereto or vote thereon.

(2) The board shall organize annually by electing one of its members as president, one as vice-president, and one as secretary.

(3) (a) The board shall report no later than July 1, 1995, to the joint legislative sunrise and sunset review committee on the operation of its disciplinary activities, and such committee shall review such activities in 1995.

(b) (Deleted by amendment, L. 92, p. 2021, 5, effective July 1, 1992.)

12-40-107. Powers and duties of the board. (1) In addition to all other powers and duties conferred upon the board by this article, the board has the following powers and duties:

(a) To provide for examinations at least once each year to ascertain the qualifications and fitness of applicants for licenses to practice optometry. The board may accept scores from tests administered by any approved or accredited national testing organization.

(b) To prescribe rules and regulations for conducting and administering examinations of applicants for licensing as optometrists and to carry out effectively the provisions of this article. In prescribing such rules and regulations the board shall set the passing score of any such examination at a minimum acceptable level of competence for the practice of optometry.

(c) Repealed.

(d) To grant licenses in conformity with this article to such applicants as have been found qualified;

(e) and (f) Repealed.

(g) To adopt and promulgate such rules and regulations as the board may deem necessary or proper to carry out the provisions and purposes of this article;

(h) Repealed.

(i) (Deleted by amendment, L. 92, p. 2022, 6, effective July 1, 1992.)

(j) To aid the several district attorneys of this state in the enforcement of this article and in the prosecution of all persons, firms, associations, or corporations charged with the violation of any of its provisions;

(k) To establish programs of education and certification for optometrists wishing to enter new, proven, and generally accepted areas of lawful practice involving techniques for which they have not received appropriate education;

(l) To prepare and distribute to consumers as is reasonably necessary written communication providing information concerning the board and optometric regulation in Colorado;

(m) To make investigations, hold hearings, and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the board and, in connection with any investigation (whether before or after a formal complaint is filed pursuant to section 12-40-119) subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to any inquiry or hearing. Any subpoena issued pursuant to this article shall be enforceable by the district court.

(n) To prescribe rules authorizing optometrists to utilize therapeutic procedures and therapeutic techniques in the practice of optometry as defined in section 12-40-102. These rules shall in no way expand the practice of optometry as defined in section 12-40-102 nor shall such rules include the use of therapeutic or cosmetic lasers. Such rules shall specify approved programs of education offered by an accreditation organization recognized or approved by the commission on recognition of postsecondary accreditation or the United States department of education or their successors.

(2) If the board does not accept the scores of a national clinical examination for optometrists by the fiscal year beginning July 1, 1994, the board shall conduct a joint study to be completed by the end of the fiscal year beginning July 1, 1994, with the psychometrician in the division of registrations to revise the state clinical examination so that the test is psychometrically sound. The results of such joint study and changes to the clinical examination for optometrists shall be reported to the joint sunrise and sunset review committee of the general assembly by July 1, 1995.

12-40-107.5. Limitation on authority. The authority granted the board under the provisions of this article shall not be construed to authorize the board to arbitrate or adjudicate fee disputes between licensees or between a licensee and any other party.

12-40-108. Application for license - licensure by endorsement. (1) Every person who does not currently hold a license to practice optometry in this state and who desires to practice optometry within the state shall file with the board an application for a license, giving the information required on a form to be provided by the board, wherein it shall appear that the applicant possesses the following qualifications:

(a) He has attained the age of twenty-one years.

(b) He has graduated with the degree of doctor of optometry from a school or college of optometry accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or the United States commissioner of education. The board shall have the authority, upon its investigation and approval of the standards thereof, to approve any other optometric college.

(c) He has successfully passed the written examination of the national board of examiners in optometry. The board shall have the authority, upon its investigation and approval of the examination standards, to approve some body other than the national board of examiners in optometry as the examining body.

(c.5) Repealed.

(d) He is not presently addicted to the use of any controlled substance, as defined in section 12-22-303 (7), or habitual intemperance in the use of alcoholic liquors.

(e) After July 1, 1988, he has satisfied the requirements of section 12-40-109.5 or equivalent requirements approved by the board, including passing a standardized national examination in the treatment and management of ocular disease.

(f) After July 1, 1996, the applicant has satisfied the requirements of section 12-40-109.5 (3) or equivalent requirements approved by the board, including passing a standardized national examination in the treatment and management of ocular disease.

(2) For the purpose of paragraphs (c) and (d) of subsection (1) of this section, it shall be sufficient if a statement pertaining to the qualifications appears on the application.

(3) The board may issue a license by endorsement to engage in the practice of optometry to an applicant who is currently licensed and is in practice and good standing in another state or territory of the United States or in a foreign country if the applicant presents proof satisfactory to the board that at the time of application for a Colorado license by endorsement, the applicant possesses credentials and qualifications which are substantially equivalent to requirements for licensure by examination and pays a fee as prescribed. The board shall specify by rule and regulation what shall constitute substantially equivalent credentials and qualifications.

12-40-108.5. Current licensees - treatment and therapeutic practice. On and after July 1, 1988, a person who is licensed under this article as an optometrist on June 30, 1988, and who is otherwise qualified under the provisions of this article may use the classes of pharmaceutical agents for examination purposes described in section 12-40-102 (4). However, such optometrist may utilize the classes of pharmaceutical agents for treatment of eye disease or disorder or for any therapeutic purpose described in section 12-40-102 (5) and (6) only if he or she becomes certified as a therapeutic optometrist pursuant to section 12-40-109.5 (1.5) and (3) on or after July 1, 1988.

12-40-109. Examination - licenses. (1) Each application shall be verified under oath by the applicant, and a material false statement thereon shall constitute grounds for the withholding or revocation of a license. When such application and accompanying proofs as are required by section 12-40-108 are submitted to the board and approved, it shall notify the applicant to appear for examination at a time and place to be fixed by the board. The examination shall be clinical and of such a character as to test the qualifications of the applicant to practice optometry.

(2) Each person who makes a passing grade on the practical and clinical examination of the board and who is otherwise qualified shall be granted a license evidenced by a certificate signed by the board. No license shall be granted by less than a majority vote of the board. The license certificate provided for in this section shall be in such form and wording as may be adopted by the board; except that the board shall provide an optometrist who is certified as a therapeutic optometrist pursuant to section 12-40-109.5 (1.5) with a distinctive certificate indicating such certification. Such certificate shall be displayed by the optometrist for viewing by his patients, as provided in section 12-40-115. An application for initial licensure as a certified therapeutic optometrist shall be accompanied by a processing fee in an amount to be determined by the board pursuant to the provisions of section 24-34-105, CRS. Such fee shall not be required for any renewal certificate obtained pursuant to the provisions of section 12-40-113.

(3) Any person denied a license under this article and believing himself aggrieved thereby may pursue the remedy for review as provided under article 4 of title 24, CRS, if such action is instituted within a period of sixty days after the date of denial.

(4) A person who fails to pass the examination provided for in this section may retake the examination the next time said examination is given after paying the fee pursuant to section 24-34-105, CRS.

12-40-109.5. Certification for use of pharmaceutical agents.

(1) Notwithstanding the provisions of section 12-22-121, a licensed optometrist may purchase, possess, and administer the classes of pharmaceutical agents for examination purposes referred to in section 12-40-102 (4) only if, after July 1, 1983, the optometrist has obtained a certificate from the board certifying that the optometrist has complied with the following minimum requirements: Successful completion, by attendance and examination, of at least fifty-five classroom hours of study in general, ocular, and clinical pharmacology which must have been completed within twenty-four months preceding the application for certification; except that, in the event that such classroom hours have been completed since 1976, only six of

such classroom hours must have been completed within twenty-four months preceding the application for certification. The courses shall be offered by an institution which is accredited by a regional or professional accreditation organization recognized or approved by the council on postsecondary education or the United States department of education or their successors.

(1.5) Notwithstanding the provisions of section 12-22-121, a licensed optometrist may purchase, possess, administer, and prescribe the classes of pharmaceutical agents for treatment referred to in section 12-40-102 (5) on and after July 1, 1988, only if the optometrist has obtained a certificate from the board certifying that the optometrist has complied with the following minimum requirements within twenty-four months preceding the application for certification: Successful completion, by attendance and examination, of at least sixty classroom hours of study in ocular pharmacology, clinical pharmacology, therapeutics, and anterior segment disease; and successful completion by attendance and examination of at least sixty hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its appendages. The courses shall be offered by an institution which is accredited by a regional or professional accreditation organization recognized or approved by the council of postsecondary education or the United States department of education or their successors.

(2) Prior to such certification, the optometrist shall successfully complete a course in cardiopulmonary resuscitation within twenty-four months preceding the application for certification and shall pass a written and clinical examination approved by the board.

(3) In addition to the requirements of section 12-40-108.5, any optometrist who holds a therapeutic optometrist certificate on or before July 1, 1996, and any new applicant for a license shall meet all requirements prescribed by the board before commencing treatment of glaucoma or anterior uveitis. The board shall suspend, as provided in section 12-40-119, the therapeutic optometrist certificate of any optometrist who fails to meet the requirements of this section on or before March 31, 1999. Such suspension shall be terminated when the optometrist has fulfilled the requirements of this section.

12-40-110. Examination fees. (Repealed)

12-40-111. Disposition of fees - reports - publications. (1) All examination and other fees prescribed in this article shall be determined and collected pursuant to section 24-34-105, CRS

(2) and (3) Repealed.

Editor's note: Subsections (2) and (3) were repealed in an act that was passed without a safety clause. It will take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly unless a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution. In that event, it will take effect on the date of the official declaration of the vote by proclamation of the governor if it is approved by the voters at the 1996 election.

12-40-112. Retention of examination papers. (Repealed)

12-40-113. License renewal - requirements - fee, failure to pay. (1) (a) On or before a date designated by the board, every optometrist licensed to practice optometry in this state shall transmit to the board, upon a form prescribed by the board, an application for renewal and such other pertinent information as may be requested, together with a fee which shall be determined and collected pursuant to section 24-34-105, CRS, and receive a renewal certificate authorizing him to continue the practice of optometry in this state for the renewal period.

(b) The board shall establish a questionnaire to accompany the renewal form. Said questionnaire shall be designed to determine if the licensee has acted in violation of or has been disciplined for actions that might be considered as violations of this article or that might make the licensee unfit to practice optometry with reasonable care and safety. Failure of the applicant to answer the questionnaire accurately shall be considered unprofessional conduct as specified in section 12-40-118.

(c) Any optometrist whose application for renewal is received by the board after the renewal date shall, in addition to the renewal fee, transmit to the board with such application an additional sum as a penalty which shall be determined and collected pursuant to section 24-34-105, CRS, and shall pay the renewal fee for each year the license was expired. Failure to so remit shall cause a denial of the application for renewal.

(d) If an optometrist's license has expired for more than two years and the optometrist is not currently licensed, and in practice and good standing in another state or territory of the United States or a foreign country, the board shall require the optometrist to take and pass a board approved clinical examination.

(e) Any optometrist whose license has expired for more than two years and has been actively practicing and in good standing in another state or territory of the United States or a foreign country may be issued a renewal certificate without reexamination if the board determines that the optometrist possesses the credentials and qualifications which are substantially equivalent to requirements in Colorado for current licensure by examination. The board may determine by rule and regulation what shall constitute substantially equivalent credentials and qualifications.

(f) Effective April 1, 1993, in addition to all other requirements of this section for license renewal, the board shall require that each optometrist seeking to renew a license shall have completed twenty-four hours of board-approved continuing education. Any optometrist desiring to renew a license to practice optometry in this state shall submit to the board the information the board believes is necessary to show that the optometrist has fulfilled the continuing education requirements of this paragraph (f). Implementation of this paragraph (f) shall occur within existing appropriations.

(2) Repealed.

12-40-114. Change of address, duplicate license certificates.

(1) Every person licensed under this article shall furnish to the board, in writing, prior to commencing practice in this state the address of each location at which he practices and shall notify the board of the discontinuance of such practice at a given location within ten days after such discontinuance.

(2) Any licensee may maintain offices which he periodically visits, other than that in which he maintains and carries on his principal practice. A licensee who maintains offices which he visits periodically shall notify the board in writing of the address of each of said offices.

(3) Every person licensed under this article shall notify the board in writing within thirty days of any change in mailing address.

12-40-115. Certificates to be displayed. Every practitioner of optometry within the meaning of this article shall post and keep conspicuously displayed his license certificate in the office wherein he practices. If an optometrist practices at several locations in the state, he shall display his license number and name in a manner that can be easily recognized by his patients. Any association of persons who engage in the practice of optometry under the name of a partnership, association, or any other title shall cause to be displayed and kept in a conspicuous place at the entrance of its place of business the name of each person engaged or employed in said partnership or association in the practice of optometry.

12-40-116. Records to be kept by the board. The board shall keep a record of all persons to whom licenses have been granted under this article. A copy of said records, certified by the board, shall be admitted in any of the courts of this state, in lieu of the originals, as prima facie evidence of the facts contained in said records. A copy of said records certified by the board of a person charged with a violation of any of the provisions of this article shall be evidence that such person has not been licensed to practice optometry.

12-40-117. Patient's exercise of free choice - release of patient records. (1) No person shall interfere with any patient's exercise of free choice in the selection of practitioners licensed to perform examinations for refractions and visual training or corrections within the field for which their respective licenses entitle them to practice.

(2) An optometrist shall release to a patient all medical records pursuant to section 25-1-802, CRS

(3) The optometrist shall release to the patient, upon written request, a valid, written contact lenses prescription at the time the optometrist would otherwise replace a contact lenses without any additional preliminary examination or fitting. The board shall promulgate rules and regulations defining the components of a valid written contact lenses prescription.

12-40-118. Unprofessional conduct defined. (1) The term "unprofessional conduct", as used in this article, means:

(a) Willfully deceiving or attempting to deceive the board or its agents with reference to any proper matter under investigation by the board;

(b) Publishing or circulating, directly or indirectly, any fraudulent, false, deceitful, or misleading claims or statements relating to optometric services or ophthalmic materials or devices;

(c) Employing or offering compensation or merchandise of value to any salesman, runner, patient, or other person as an inducement to secure his services or assistance in the solicitation of patronage for the performing, rendering, supplying, or selling of optometric services or ophthalmic materials or devices;

(d) Resorting to fraud, misrepresentation, or deception in applying for, securing, renewing, or seeking reinstatement of a license or in taking any examination provided for in this article;

(e) Addiction to the use of any controlled substance, as defined in section 12-22-303 (7);

(f) Habitual intemperance in the use of alcoholic liquor;

(g) Repealed.

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- (h) Disobeying the lawful rule or order of the board or its officers;
- (i) Practicing optometry while license is suspended;
- (j) Practicing optometry as the partner, agent, or employee of or in joint venture or arrangement with any proprietor or with any person who does not hold a license to practice optometry within this state, except as permitted in section 12-40-122. Any licensee holding a license to practice optometry in this state may accept employment from any person, partnership, association, or corporation to examine and prescribe for the employees of such person, partnership, association, or corporation.
- (k) An act or omission constituting grossly negligent optometric practice or two or more acts or omissions which fail to meet generally accepted standards of optometric practice;
- (l) Sharing any professional fees with any person, partnership, or corporation which sends or refers patients to him, except with licensed optometrists with whom he may be associated in practice;
- (m) Practicing while having a physical or mental disability which renders an optometrist unable to treat with reasonable skill and safety or which may endanger the health and safety of persons under the care of any optometrist;
- (n) Failing to refer a patient to the appropriate health care practitioner when the services required by the patient are beyond the scope of competency of the optometrist or the scope of practice of optometry;
- (o) Aiding or abetting, in the practice of optometry, any person not licensed to practice optometry as defined under this article or any person whose license to practice is suspended;
- (p) Interfering with the free choice of any person selecting a physician or other health care practitioner;
- (q) Any disciplinary action against a licensee to practice optometry in another state or country, which action shall be deemed to be prima facie evidence of unprofessional conduct if the grounds for the disciplinary action would be unprofessional conduct or otherwise constitute a violation of any provision of this article;

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- (r) Failing to notify the board of a malpractice final judgment or settlement within thirty days;
 - (s) Any act or omission which fails to meet generally accepted standards of care whether or not actual injury to a patient is established;
 - (t) Conviction of a felony or the acceptance of a plea of guilty or nolo contendere to a felony;
 - (u) Representing that a noncorrectable condition can be permanently corrected;
 - (v) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of optometry, including falsifying or making incorrect essential entries or failing to make essential entries on patient records;
 - (w) Conduct which is likely to deceive or defraud the public;
 - (x) Repealed.
 - (y) Negligent malpractice;
 - (z) (Deleted by amendment, L. 92, p. 2026, 12, effective July 1, 1992.)
 - (aa) (I) Violation of abuse of health insurance pursuant to section 18-13-119, CRS; or
(II) Advertising through newspapers, magazines, circulars, direct mail, directories, radio, television, or otherwise that the licensee will perform any act prohibited by section 18-13-119 (3), CRS
 - (bb) Administering, dispensing, or prescribing any prescription drug, as defined in section 12-22-102 (30), or any controlled substance, as defined in section 12-22-303 (7), other than in the course of legitimate professional practice;
 - (cc) Dispensing for a fee any prescription drug, as defined in section 12-22-102 (30), or any controlled substance, as defined in section 12-22-303 (7);

(dd) Engaging in any of the following activities and practices: Willful and repeated ordering or performance, without clinical justification, of demonstrably unnecessary laboratory tests or studies; the administration, without clinical justification, of treatment which is demonstrably unnecessary; or ordering or performing, without clinical justification, any service, X ray, or treatment which is contrary to recognized standards of the practice of optometry as interpreted by the board;

(ee) Committing a fraudulent insurance act, as defined in section 10-1-127, CRS

(ff) Failing to report to the board any optometrist known to have violated or, upon information or belief, believed to have violated any of the provisions of this article;

(gg) Failing to report to the board any surrender of a license to, or any adverse action taken against a licensee by another licensing agency in another state, territory, or country, any governmental agency, any law enforcement agency, or any court for acts of conduct that would constitute grounds for discipline under the provisions of this article;

(hh) Engaging in a sexual act with a patient while a patient-optometrist relationship exists. For the purposes of this paragraph (hh), "patient-optometrist relationship" means that period of time beginning with the initial evaluation through the termination of treatment. For the purposes of this paragraph (hh), "sexual act" means sexual contact, sexual intrusion, or sexual penetration as defined in section 18-3-401, CRS

(ii) Failing to provide a patient with copies of patient medical records as required by section 25-1-802, CRS;

(jj) Failing to provide a patient with a valid written contact lenses prescription as required by section 12-40-117 (3);

(kk) A violation of any provision of this article;

(ll) Practicing beyond the scope of education and training prescribed by rules adopted by the board.

12-40-118.5. Mental and physical examination of licensees.

(1) If the board has reasonable cause to believe that a licensee is unable to practice with reasonable skill and safety, the board may require such person to take a mental or physical examination by a physician designated by said board. If such licensee refuses to undergo such a mental or physical examination, unless due to circumstances beyond the licensee's control, the board may suspend such licensee's license until the results of any such examination are known, and the board has made a determination of the licensee's fitness to practice. The board shall proceed with any such order for examination and such determination in a timely manner.

(2) An order to a licensee pursuant to subsection (1) of this section to undergo a mental or physical examination shall contain the basis of the board's reasonable cause to believe that the licensee is unable to practice with reasonable skill and safety. For the purposes of any disciplinary proceeding authorized under this article, the licensee shall be deemed to have waived all objections to the admissibility of the examining physician's testimony or examination reports on the ground that they are privileged communications.

(3) The licensee may submit to the board testimony or examination reports from a physician chosen by such licensee and pertaining to any condition which the board has alleged may preclude the licensee from practicing with reasonable skill and safety. These may be considered by the board in conjunction with, but not in lieu of, testimony and examination reports of the physician designated by the board.

(4) The results of any mental or physical examination ordered by the board shall not be used as evidence in any proceeding other than one before the board and shall not be deemed public records nor made available to the public.

12-40-119. Revocation, suspension, supervision, probation procedure - professional review - reconsideration and review of action by board.

(1) (a) With respect to licenses or certificates issued pursuant to this article the board may impose probation with or without supervision on a licensee, issue a letter of admonition to a licensee, suspend, revoke, or refuse to renew any license or certificate provided for by this article for any reason stated in section 12-40-118 or for violating any term of probation of the board.

(b) Upon its own motion or upon a signed complaint, an investigation may be made if there is reasonable cause to believe that an optometrist licensed or certified, or both by the board has committed an act of unprofessional conduct pursuant to section 12-40-118 or, while under probation, has violated the terms of said probation.

(c) If the board finds such probability great and a hearing is conducted, such hearing shall be conducted in accordance with the provisions of section 24-4-105, CRS

(d) The board may revoke, suspend, deny, issue, reissue, or reinstate licenses and certificates granted pursuant to this article or under the previous laws of this state, and the board may take such other intermediate action as may be deemed necessary under the circumstances of each case pursuant to this section.

(2) (a) to (c) Repealed.

(d) The hearing shall be conducted in accordance with the provisions of section 24-4-105, CRS; except that the board may use an administrative law judge, who shall perform all of those functions indicated in section 24-4-105 (4), CRS

(e) The action of the board in refusing to grant or renew, revoking, or suspending a license or certificate, issuing a letter of admonition, or placing a licensee on probation or under supervision pursuant to subsection (1) of this section may be reviewed by the court of appeals by appropriate proceedings under section 24-4-106 (11), CRS

(f) When a complaint or an investigation discloses an instance of misconduct which, in the opinion of the board, does not warrant formal action by the board but which should not be dismissed as being without merit, the board may send a letter of admonition by certified mail to the optometrist against whom a complaint was made and a copy thereof to the person making the complaint, but, when the board sends a letter of admonition by certified mail to an optometrist complained against, the board shall advise such optometrist that the optometrist has the right to request in writing, within twenty days after proven receipt of the letter, that formal disciplinary proceedings be initiated against the optometrist to adjudicate the propriety of the conduct upon which the letter of admonition is based. If such request is timely made, the letter of admonition shall be deemed vacated, and the matter shall be processed by means of formal disciplinary proceedings.

(2.3) No person whose license or certification, or both, is revoked by the board may reapply for a new license under the provisions of this article for at least two years after any such revocation.

(2.5) Any person participating in good faith in the making of a complaint or report or participating in any investigative or administrative proceeding pursuant to this section shall be immune from any liability, civil or criminal, that otherwise might result by reason of such action.

(3) (a) Repealed.

(b) Any member of the board and any witness appearing before the board or such professional review committee shall be immune from criminal liability and from suit in any civil action brought by a licensee if such member or witness acts in good faith within the scope of the function of the board, has made a reasonable effort to obtain the facts of the matter as to which the person acts, and acts in the reasonable belief that the action taken by the person is warranted by the facts.

(4) (a) The board, on its own motion or upon application, at any time after the refusal to grant a license or certificate, the imposition of any discipline, or the ordering of probation, as provided in this section, may reconsider its prior action and grant, reinstate, or restore such license or certificate or terminate probation, or reduce the severity of its prior disciplinary action. The taking of any such further action, or the holding of a hearing with respect thereto, shall rest in the sole discretion of the board.

(b) Upon the receipt of such application, it may be forwarded to the attorney general for such investigation as may be deemed necessary. The proceedings shall be governed by the applicable provisions governing formal hearings in disciplinary proceedings. The attorney general may present evidence bearing upon the matters in issue, and the burden shall be upon the applicant seeking reinstatement to establish the averments of the application as specified in section 24-4-105 (7), CRS. No application for reinstatement or for modification of a prior order shall be accepted unless the applicant deposits with the board all amounts unpaid under any prior order of the board.

(5) Upon dismissal of a complaint, which has gone to hearing, the board shall notify the complainant that he or she may receive a copy of the investigation report and the response of the optometrist or other person alleged to have violated the act upon payment of costs of copying and mailing such information.

12-40-120. Use of forged or invalid certificate. It is unlawful for any person to use or attempt to use as his own a diploma of an optometric school or college, or a license of another person, or a forged diploma or license, or any forged or false identification.

12-40-121. Sale or forgery of degree or license. It is unlawful to sell or offer to sell a diploma conferring an optometric degree or a license granted pursuant to this article or prior optometric practice laws, or to procure such diploma or license with intent that it shall be used as evidence of the right to practice optometry by a person other than the one upon whom it was conferred or to whom such license was granted or with fraudulent intent to alter such diploma or license or to use or attempt to use it when it is so altered.

12-40-122. Corporate practice prohibited - exceptions. The practice of optometry in a corporate capacity is prohibited, but this prohibition shall not apply to a professional corporation formed pursuant to this article or to optometric practice carried on by a nonprofit organization operating to assist indigent persons.

12-40-123. Enforcement - injunction - defense. (1) When the board has reasonable cause to believe that any person is violating any provision of this article or any lawful rule or regulation issued under this article, it may, in addition to all actions provided for in this article and without prejudice thereto, enter an order requiring such person to desist or refrain from such violation. An action may be brought on the relation of the people of the state of Colorado by the attorney general and the board to enjoin such person from engaging in or continuing such violation or from doing any act in furtherance thereof. In any such action an order or judgment may be entered awarding such preliminary or final injunction as may be deemed proper.

(2) When legal actions are instituted against a board member or authorized personnel for acts occurring while acting in their official capacities and such actions are free of malice, fraud, or willful neglect of duty, the member or employee served shall forthwith transmit any process served upon him to the attorney general who shall furnish counsel and defend against such action without cost to the board member or employee.

12-40-124. Penalty for violation. Any person who violates any of the provisions of this article commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, CRS Any person committing a second offense commits a class 1 misdemeanor and shall be punished as provided in section 18-1-106, CRS Any person committing a subsequent offense commits a class 6 felony and shall be punished as provided in section 18-1-105, CRS

12-40-125. Professional service corporations, limited liability companies, and registered limited liability partnerships for the practice of optometry - definitions. (1) Persons licensed to practice optometry by the board may form professional service corporations for the practice of optometry under the "Colorado Corporation Code", if such corporations are organized and operated in accordance with the provisions of this section. The articles of incorporation of such corporations shall contain provisions complying with the following requirements:

(a) The name of the corporation shall contain the words "professional company" or "professional corporation" or abbreviations thereof.

(b) The corporation shall be organized solely for the purposes of conducting the practice of optometry only through persons licensed by the board to practice optometry in the state of Colorado.

(c) The corporation may exercise the powers and privileges conferred upon corporations by the laws of Colorado only in furtherance of and subject to its corporate purpose.

(d) All shareholders of the corporation shall be persons who are licensed by the board to practice optometry in the state of Colorado and who at all times own their shares in their own right. They shall be individuals who, except for illness, accident, and time spent in the armed services, on vacations, and on leaves of absence not to exceed one year, are actively engaged in the practice of optometry in the offices of the corporation.

(e) Provisions shall be made requiring any shareholder who ceases to be or for any reason is ineligible to be a shareholder to dispose of all his shares forthwith, either to the corporation or to any person having the qualifications described in paragraph (d) of this subsection (1).

(f) The president shall be a shareholder and a director, and, to the extent possible, all other directors and officers shall be persons having the qualifications described in paragraph (d) of this subsection (1). Lay directors and officers shall not exercise any authority whatsoever over professional matters as defined in this article or in the rules and regulations as promulgated by the board.

(g) The articles of incorporation shall provide, and all shareholders of the corporation shall agree, that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation or that all shareholders of the corporation shall be jointly and severally liable for all acts, errors, and omissions of the employees of the corporation except during periods of time when the corporation shall maintain in good standing professional liability insurance which shall meet the following minimum standards:

(l) The insurance shall insure the corporation against liability imposed upon the corporation by law in the performance of professional services for others by those officers and employees of the corporation who are licensed by the board to practice optometry.

(II) Such policies shall insure the corporation against liability imposed upon it by law for damages arising out of the acts, errors, and omissions of all nonprofessional employees.

(III) The insurance shall be in an amount for each claim of at least fifty thousand dollars multiplied by the number of persons licensed to practice optometry employed by the corporation; the policy may provide for an aggregate maximum limit of liability per year for all claims of one hundred fifty thousand dollars also multiplied by the number of persons licensed to practice optometry employed by the corporation; but no firm shall be required to carry insurance in excess of three hundred thousand dollars for each claim with an aggregate maximum limit of liability for all claims during the year of nine hundred thousand dollars.

(IV) The policy may provide that it does not apply to: Any dishonest, fraudulent, criminal, or malicious act or omission of the insured corporation or any stockholder or employee thereof; the conduct of any business enterprise, as distinguished from the practice of optometry, in which the insured corporation under this section is not permitted to engage but which nevertheless may be owned by the insured corporation or in which the insured corporation may be a partner or which may be controlled, operated, or managed by the insured corporation in its own or in a fiduciary capacity including the ownership, maintenance, or use of any property in connection therewith, when not resulting from breach of professional duty, bodily injury to, or sickness, disease, or death of any person, or to injury to or destruction of any tangible property, including the loss of use thereof; and the policy may contain reasonable provisions with respect to policy periods, territory, claims, conditions, and other usual matters.

(2) Repealed.

(3) The corporation shall do nothing which, if done by a person employed by it and licensed to practice optometry in the state of Colorado, would violate the standards of professional conduct, as provided for in this article. Any violation by the corporation of this section shall be grounds for the board to terminate or suspend its right to practice optometry.

(4) Nothing in this section shall be deemed to diminish or change the obligation of each person employed by the corporation and licensed to practice optometry in this state to conduct his practice in accordance with the standards of professional conduct provided for in this article; any person licensed by the board to practice optometry who by act or omission causes the corporation to act or fail to act in a way which violates such standards of professional conduct, including any provision of this section, shall be deemed personally responsible for such act or omission and shall be subject to discipline therefor.

(5) A professional service corporation may adopt a pension, profit-sharing (whether cash or deferred), health and accident insurance, or welfare plan for all or part of its employees including lay employees, if such plan does not require or result in the sharing of specific or identifiable fees with lay employees and if any payments made to lay employees, or into any such plan in behalf of lay employees, are based upon their compensation or length of service, or both, rather than the amount of fees or income received.

(6) Except as provided in this section, corporations shall not practice optometry.

(7) As used in this section, unless the context otherwise requires:

(a) "Articles of incorporation" includes operating agreements of limited liability companies and partnership agreements of registered limited liability partnerships.

(b) "Corporation" includes a limited liability company organized under the "Colorado Limited Liability Company Act", article 80 of title 7, CRS, and a limited liability partnership registered under section 7-60-144, CRS

(c) "Director" and "officer" of a corporation includes a member and a manager of a limited liability company and a partner in a registered limited liability partnership.

(d) "Employees" includes employees, members, and managers of a limited liability company and employees and partners of a registered limited liability partnership.

(e) "Share" includes a member's rights in a limited liability company and a partner's rights in a registered limited liability partnership.

(f) "Shareholder" includes a member of a limited liability company and a partner in a registered limited liability partnership.

12-40-126. Financial responsibility. (1) Every optometrist who provides health care services within the state of Colorado shall establish financial responsibility as follows:

(a) By maintaining commercial professional liability insurance coverage with an insurance company authorized to do business in this state in a minimum indemnity amount of five hundred thousand dollars per incident and one million five hundred thousand dollars annual aggregate per year; or

(b) By maintaining a surety bond in a form acceptable to the commissioner of insurance in the amounts set forth in paragraph (a) of this subsection (1); or

(c) By depositing cash or cash equivalents as security with the commissioner of insurance in the amounts set forth in paragraph (a) of this subsection (1); or

(d) By providing any other security acceptable to the commissioner of insurance, which may include approved plans of self-insurance.

(2) The board may, by rule, establish lesser financial responsibility standards than those required in subsection (1) of this section for classes of license holders who render limited or occasional optometric services because of administrative or other nonclinical duties or partial or complete retirement or for other reasons that render the limits provided in paragraph (a) of subsection (1) of this section unreasonable or unattainable. However, nothing in this section shall preclude or otherwise prohibit a licensed optometrist from rendering appropriate patient care on an occasional basis when the circumstances surrounding the need for such care so warrant.

(3) Each optometrist, as a condition of receiving and maintaining an active license to provide optometric services in this state, shall furnish the board evidence of compliance with subsection (1) of this section. No license shall be issued or renewed unless such evidence of compliance has been furnished.

(4) Notwithstanding the amounts specified in subsection (1) of this section, if the board receives two or more reports concerning any optometrist pursuant to section 12-40-127 during any one-year period, the minimum financial responsibility requirement shall be two times the amount specified in subsection (1) of this section. However, upon motion filed by the optometrist and the presentation of sufficient evidence to the board that one or more such reports involved an action or claim which did not represent any substantial failure to adhere to accepted professional standards of care, the board may reduce such additional amount to that which would be fair and conscionable.

(5) Each optometrist subject to the provisions of this section shall pay, in addition to any license fee, an additional fee in an amount to be determined by the board pursuant to the provisions of section 24-34-105, CRS, not to exceed fifteen dollars. Such fee shall be transmitted to the state treasurer, who shall credit the same to the division of registrations cash fund, which moneys shall be used exclusively for the purposes as annually appropriated by the general assembly.

12-40-127. Judgments and settlements - reporting. Any final judgment, settlement, or arbitration award against an optometrist for malpractice shall be reported within fourteen days by such optometrist's malpractice insurance carrier in accordance with section 10-1-124.9, CRS, or by such optometrist himself if no commercial malpractice insurance coverage is involved to the board for review, investigation, and, where appropriate, disciplinary or other action. Any optometrist who knowingly fails to report as required by this section shall be subject to a civil penalty of not more than two thousand five hundred dollars. Such penalty shall be determined and collected in an action brought by the board in the district court in the city and county of Denver, which court shall have exclusive jurisdiction in such matters. All penalties collected pursuant to this section shall be transmitted to the state treasurer, who shall credit the same to the general fund.

12-40-128. Repeal of article - subject to sunset law. (1) This article is repealed, effective July 1, 2002.

(2) The provisions of section 24-34-104, CRS, concerning the termination schedule for regulatory bodies of the state unless extended as provided in that section, are applicable to the functions performed pursuant to this article.