

COLORADO DEPARTMENT OF REGULATORY AGENCIES
OFFICE OF POLICY AND RESEARCH

OPTICAL AND CONTACT LENS DISPENSERS

1995 SUNRISE REVIEW



**Joint Legislative Sunrise/Sunset Review Committee
1995-1996 Members**

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June 30, 1995

The Honorable Richard Mutzebaugh, Chair
Joint Legislative Sunrise/Sunset Review Committee
State Capitol Building
Denver, Colorado 80203

Dear Senator Mutzebaugh:

We have completed our evaluation of the sunrise application for licensure of **optical and contact lens dispensers** and are pleased to submit this written report which will be the basis for my office's oral testimony before the Sunrise and Sunset Review Committee. The report is submitted pursuant to § 24-34-104.1, Colorado Revised Statutes, 1988 Repl. Vol., (the "Sunrise Act") which provides that the Department of Regulatory Agencies shall conduct an analysis and evaluation of proposed regulation to determine whether the public needs, and would benefit from, the regulation.

The report discusses the question of whether there is a need for the regulation in order to protect the public from potential harm, whether regulation would serve to mitigate the potential harm and, whether the public can be adequately protected by other means in a more cost effective manner.

Sincerely,

Joseph A. Garcia
Executive Director

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INTRODUCTION

The Sunrise Process

The Department of Regulatory Agencies has completed its evaluation of the proposed licensure of optical and contact lens dispensers submitted by the Opticians Association of Colorado. The proposal seeks to regulate individuals who fit and sell eye wear to consumers, and to establish and maintain higher standards with qualified people in the profession of opticianry. The applicants argue that effective and efficient dispensing of eyeglasses requires the careful application of a considerable body of knowledge and the exercise of skill and judgment that distinguish dispensing of eyeglasses from the sale of more standardized products at retail. The applicants further assert that safe and effective fitting of contact lenses requires additional knowledge and skills of an even more specialized nature.

The Department considered the concerns of the applicants and evaluated the benefits to the public of the proposal according to the following statutory criteria:

- I. Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, and whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument;
- II Whether the public needs and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence; and
- III. Whether the public can be adequately protected by other means in a more cost-effective manner.

Methodology

The Department contacted and interviewed the applicants, the Opticians Association of America, and representatives of Cole Vision Corporation, Lens Crafters, and One Hour Optical. Optician licensure laws in other states were reviewed and interviews with administrators of a number of those programs were conducted. In order to determine the number and types of complaints filed against opticians in Colorado, the Department contacted representatives of the Denver District Attorney's office, the Better Business Bureau, the Colorado Attorney General's office and the Board of Optometric Examiners.

THE PROPOSAL FOR REGULATION

Request for Licensure

The applicants request that the state implement a licensure program for opticians. They assert that licensure will protect the public by assuring that adequate numbers of dispensing opticians will provide services and products that meet a standard of competence.

Other licensure programs in the Department consist of a board with approximately seven members who meet six to 12 times a year, although some boards meet more frequently. While the American Board of Opticians provides a certification exam for members, the state could consider developing its own exam. The Department estimates the implementation cost of a new licensure program to be between \$40,000 and \$45,000. If the newly created licensing authority elects to develop its own exam for licensees, the Department estimates the additional cost of an exam to be between \$30,000 and \$35,000.

Definition of Optician

Dispensing opticians (also known as ophthalmic dispensers) design, fit, and adjust corrective eye wear including eyeglasses, contact lenses, low vision aids, artificial eyes, and other specially fabricated optical devices, on the basis of prescription issued by licensed physicians and optometrists. Opticians who specialize in fitting contact lenses may also be referred to as contact lens technicians.

Scope of Practice

Dispensing opticians sell eye wear to consumers and take measurements to determine the size, shape and specifications of the lenses or frames best suited to the consumer's needs. They prepare and deliver work orders including the requisite measurements and specifications to optical laboratory technicians. The laboratory technicians return the fabricated glasses to the optician, who verifies the accuracy and quality of the finished lenses by using either a lensometer, calipers, or a lens clock. Finally, the optician fits and adjusts the lenses to the intended wearer's face or eyes.

Opticians may also replace, repair, or reproduce previously prepared lenses, frames or other specially fabricated optical devices on the basis of the original prescription. Some opticians may also routinely perform certain material processing functions including the edging and finishing of spectacle lenses, the inserting of finished lenses into frames, and in certain cases the modification of contact lenses. In Colorado, opticians do not perform preliminary fittings of contact lenses unless they are employed by and work under the direct supervision of an optometrist or physician.

Work Setting and Supervision

Work settings for opticians include ophthalmic dispensing offices (store front), optical laboratories, and ophthalmologist' or optometrists' offices. Opticians working in a doctor's office work directly under the supervision of the doctor. Opticians employed in an optical shop sell eye wear directly to the consumer. These opticians may work without supervision and may have varying degrees of knowledge and skill. Opticians may also work in a laboratory fabricating lenses. Laboratories may be either a wholesale operation, part of a doctor's office or part of an optical shop.

Number of Practitioners

The Colorado Department of Labor and Employment (DOLE) estimates that 997 individuals worked as opticians during 1994. The DOLE expects that 1141 opticians will be employed in Colorado by 1999. The Opticians Association of Colorado reported that less than half, 472 individuals, are certified by either the American Board of Opticianry or the National Contact Lens Examiners. The DOLE also reported that there are 214 optical shops in Colorado and 237 Optometrists' offices. Many optometrists sell eye wear and employ opticians.

Private Certification

The American Board of Opticianry (ABO) and the National Contact Lens Examiners (NCLE) are national, nonprofit organizations which conduct voluntary certification programs for dispensing opticians and contact lens fitters. The ABO and NCLE state that the purposes of the credential are to "identify qualified eye wear providers through examination both for consumer protection and for industry uses; encourage enhancement of optical skills through recertification requirements of continuing education; and approve as acceptable for recertification continuing education offerings which may contribute to professional development."

The exam given by the ABO measures the basic knowledge required to dispense eyeglasses safely and effectively and to identify all individuals who pass the examination as having met predetermined standards. The examination given to persons who wish to be certified as a contact lens fitter measures the basic knowledge required to fit contact lenses safely and effectively and to certify the qualification of those who successfully complete the examination. There are no prerequisites to take the examination, however, the ABO cites that candidates with two to three years full-time, board-based, hands-on experience or optical schooling are more successful in passing the exams.

Certified opticians maintain their certification by meeting continuing education requirements every three years. The ABO and the NCLE may revoke an optician's certification for failing to meet any of the standards.

Education and Training

Opticians may receive their education and training through on the job training, academic programs offered at trade schools or community colleges, or books, tapes and classes offered by trade associations. On the job training may be acquired in an independently owned optical shop, through a chain store training program, or training in an optometrist's or ophthalmologist's office. The quality and expertise of the training received in this manner vary from business to business. Some national optical chain stores have standard training programs for all new employees and use the same training program regardless of whether or not the store is located in a state that issues licenses to opticians.

Academic programs at trade schools or community colleges are designed to teach students the basics of opticianry and prepare the student to successfully pass the American Board of Opticianry's certification exam. In the Denver metro area, two schools offer academic programs in this field. T.H. Pickens offers ten courses in opticianry preparing the student to successfully pass the ABO exam. If the student wishes to receive an associate's degree, additional schooling is available at the Community College of Aurora. Emily Griffith Opportunity School offers two evening courses to prepare the student to pass the exam.

The Opticians Association of Colorado offers courses to help prepare opticians for the ABO and NCLE exams. Both the National Academy of Opticianry and the Opticians Association of America offer continuing education classes as well as various training books and tapes.

**Rules,
Regulations,
Standards
and Statutes**

Federal. The Federal Trade Commission's "Prescription Release Rule" requires that optometrists and ophthalmologists release eyeglass prescriptions to their patients, but does not require that contact lens prescriptions be released. This rule allows patients to choose the location at which they purchase frames and lenses. Colorado law (§12-40-117, C.R.S.) provides that doctors release contact lens prescriptions, upon a patient's written request, at the time the doctor would otherwise replace a contact lens without any additional preliminary examination or fitting. This law permits a patient who has already been fitted for a specific contact prescription in a doctor's office to choose the location at which they purchase replacement contacts. In Colorado, opticians may fit contact lenses only in the presence of or under the personal supervision of a doctor.

OSHA regulations govern the fabrication of prescription safety glasses used in industrial settings. The American National Standards Institute developed voluntary standards for the fabrication of all other types of prescription eye wear.

Colorado. Protection for consumers from unscrupulous opticians may be provided under the Colorado Consumer Protection Act (CCPA) (§6-1-105, et seq., C.R.S.). This act provides that persons involved in deceptive advertising or fraudulent marketing practices may be prosecuted for such activity. The consumer is eligible to receive treble damages, the cost of the action, and attorney fees.

The act protects citizens by prohibiting persons doing business, such as opticians or optical shops, from:

- making misleading statements concerning the price of a product or the reasons for the price reduction;
- knowingly passing off goods, services or property as those of another;

- knowingly making a false representation as to the characteristics, uses, benefits, or alteration of services or property;
- representing a product as original or new if he knows or should know that they are deteriorated, altered, reconditioned, reclaimed, used or second hand;
- representing that a product is of a particular standard, quality or grade, or that goods are of a particular style or model if he knows or should know that they are of another;
- advertising a product with intent not to sell them as advertised;
- employing "bait and switch" practices;
- accepting a deposit for the product and subsequently switching the purchase ordered to higher-priced goods; and
- failing to make delivery of the goods within a reasonable time or to make a refund therefor.

In addition to the above, the CCPA also prohibits many other types of unscrupulous business practices.

Potential Harm from Opticians

The applicants assert that:

Improperly or carelessly designed and fitted eyeglasses can cause moderate to severe discomfort ranging from blurred vision and eye strain to headaches. Costs associated with poorly designed or improperly fitted eyeglasses may include reduced efficiency in the wearer's ability to perform daily life tasks. Also, there is the additional cost in time, money, and aggravation of having to make return visits to the same or another dispenser or to the original prescriber for evaluation and correction of problems that would have been avoided had the wearer's glasses been designed and fitted properly in the first place.

The applicants further maintain that the "knowledge and skills needed to fit contact lenses safely and effectively are more complex and the possibility that serious physiological damage may result from improperly or carelessly fitted contact lenses is greater than in the case of eyeglasses."

The Department investigated the types and numbers of complaints received by various agencies in Colorado. Overall the complaints filed with the different agencies make claims of aggravation from receiving substandard service or poor quality merchandise as opposed to claims of major physical discomfort or harm. The agencies surveyed reported 75 complaints against optical shops during the previous two years. More than half of those complaints were against one company. The industry estimates that 40% (approximately 1.5 million) of Colorado citizens wear some type of corrective eye wear.

Colorado Society of Dispensing Opticians. In both 1993 and 1994, the Colorado Society of Dispensing Opticians received five complaints against opticians. Consumers' concerns reflected in the complaints were that their glasses did not fit properly, lenses were the wrong prescription, or that they returned to the optician several times before receiving a proper fit.

Better Business Bureau. In 1994, consumers filed 33 complaints against opticians with the Better Business Bureau (BBB). Consumers primarily complained about inaccurately filled prescriptions and delays in filling their prescriptions. One locally owned business received twelve of the 33 complaints. Within the first three months of 1995, this same business received eight complaints.

According to the BBB, opticianry was the 28th most complained about activity in 1994. Occupations and professions which received more complaints included new and used auto dealers, plumbers, roofing contractors, home remodeling contractors, moving and storage companies, heating and air-conditioning companies, mortgage companies, and appliance repair and sales companies. The BBB does not make any judgments as to the validity of complaints.

Denver District Attorney. The Denver District Attorney's office received 12 complaints against opticians in the past two years. These complaints were of similar nature to the complaints filed with the BBB. Eight of the complaints were against the same locally owned business that received twelve complaints at the Better Business Bureau.

Colorado Attorney General. Of the almost 10,000 formal complaints received by the Colorado Attorney General's office between 1993 and March 1995, 25 were against opticians or optical shops. Six of the complaints reported shoddy service/repair, five claimed defective goods, four concerned problems with deposits, three claimed non-performance, three complained against the sales practices, three were miscellaneous and one was against guarantees. Seventeen of the complaints filed were against the same locally owned business as mentioned above.

Board of Optometric Examiners. An administrative employee of the Board of Optometric Examiners stated that the board often receives calls from consumers complaining about optical shops. She stated that the complaints are not usually directed at the optician but rather at the store policies for refunds or reluctance to provide the customer with the exact item requested. The board does not formally accept complaints.

National Chain Stores. Governmental affairs' representatives of both Lens Crafters and Cole Vision Corporation (Sears and Montgomery Wards) stated that they receive the same types of complaints from consumers regardless of whether or not the outlet is located in a licensed or unlicensed state. The types of complaints received at these locations reflect consumers' dissatisfaction with the fit of the glasses, the correction the prescription provides, and service received from sales staff.

OTHER REGULATION

Other States

and one (Texas) has voluntary registration of opticians. Of the 22 states, 19 use the American Board of Optician's exam to test licensees. Some states also require that the optician take a practical exam and 18 states require that the licensee complete either an apprenticeship program or academic program prior to becoming licensed. While many states may amend their existing licensure statutes, Arkansas was the last state to enact a new licensure law in 1981.

Arizona. Arizona enacted licensure statutes in 1955. The licensing authority received approximately 30 complaints a year against opticians in both 1993 and 1994. Arizona reported that most consumers filed complaints concerning the high cost of their glasses or incorrect prescriptions.

Connecticut. Connecticut's licensure program dates back to 1941. The administrator of the Connecticut program did not report the number of complaints received but stated that most complaints from consumers concerned the fit of the glasses.

Nevada. In 1994, Nevada received four complaints against opticians. One complaint was against a licensed optician who was not properly supervising her employees. The second complaint involved an optician who was involved in a child molestation case. The other two complaints were against an optical shop in Las Vegas owned by the Colorado-based company that received numerous complaints in Colorado during 1993 and 1994. These two complaints concerned the company's policy for refunds and the practice of an unlicensed optician.

North Carolina. North Carolina has licensed opticians since 1951. The licensing authority received a few informal complaints in 1993 and 1994 which the board handled and resolved by telephone. They received one formal complaint in 1993 against an optician for dispensing contact lenses without a written prescription. The board fined the optician and suspended his license for 45 days. Opticians may receive third party payments.

Twenty-one states
license opticians

Ohio. Ohio enacted licensure statutes in 1980. The licensing authority received 53 complaints against opticians in 1994. The complaints involved a combination of consumer complaints and complaints from opticians against other opticians in violation of the licensure statutes, i.e., an apprentice working unsupervised. In 1994 Ohio suspended eight licenses and revoked three. Opticians in Ohio may not receive third party payment unless they work with a doctor.

Rhode Island. Rhode Island began licensing opticians in 1952. The licensing authority received three complaints in the last year. Two of the complaints were of a financial nature and one concerned the practice of an optician. The board dismissed one complaint and issued two "Letters of Concern." Opticians may collect third party payment in Rhode Island.

Vermont. The Vermont licensing authority received four complaints against opticians in 1993 and two in 1994. These complaints claimed verbal abuse, dispensing contacts without a license and glasses not fitting properly. Vermont has not taken action against an optician in five years.

Washington. Washington's licensure program started in 1957. The Washington Department of Health receives approximately one to two complaints a month concerning opticians. A number of these complaints are against unsupervised apprentices and other infractions of the licensure statute. Consumer complaints focus on opticians filling expired contact lenses prescriptions and glasses that do not fit properly.

Cost of Regulation

A study conducted by the Opticians Association of America showed that there was no substantial difference in the cost of eye wear in licensed states versus unlicensed states. The 1991 average cost for a pair of glasses in licensed states was \$148.71 and in unlicensed states was \$148.17. On the other hand, governmental affairs representatives of national chains claim that the cost of doing business in states with licensure laws is greater than the cost of doing business in unlicensed states.

Third Party Payment

The applicants state that the current lack of regulation makes opticians ineligible to participate in third party insurance plans and that failure to participate in these plans will put opticians on the road to extinction as a viable entity in the vision care world. The Department identified two types of vision plans: vision coverage included under major medical insurance plans; and group buying plans which provide discounts to participants due to the volume of business the provider expects to receive.

The Department surveyed two insurance plans (John Hancock and Metropolitan Life) and one vision purchasing plan (Avisas) to determine the eligibility requirements for opticians. All three plans accept, as providers, opticians qualified to dispense eye wear in the state in which service is provided. Therefore, if no licensure is required, the optician does not need a license to participate in the plan. These opticians must also agree to the payment terms of the plan.

Benefits from Regulation

The applicants believe that licensure will ensure that qualified and skillful opticians provide service to the citizens of Colorado. Administrators of optician licensing programs in states that license opticians stated that the programs protected the public from potential harm and unscrupulous opticians. However, these states still received complaints about the quality and accuracy of the product consumers receive. In addition, three states surveyed reported numerous complaints against opticians or apprentices who were in violation of the licensure statutes. In these states, the most complained about actions were apprentices working without the supervision of a licensed optician. Typically, other opticians filed these complaints.

RECOMMENDATIONS

The harm that opticians cause the public does not appear to be of a proportion to warrant state licensure. The public can be adequately protected by competition in the marketplace and the Colorado Consumer Protection Act. Therefore, the Department of Regulatory Agencies recommends that the profession of optical and contact lens dispensing not be licensed or further regulated.

Pursuant to §24-4-104.1, C.R.S., the applicants must prove the benefit to the public of their proposal for regulation according to the following criteria:

1. Whether the unregulated practice of the occupation or profession clearly harms or endangers the health, safety or welfare of the public, whether the potential for harm is easily recognizable and not remote or dependent on tenuous argument;

Each year several complaints against opticians are filed with the Denver District Attorney, the Colorado Attorney General, the Better Business Bureau, and the Colorado Opticians Association. However, the nature of these complaints, e.g., glasses do not fit, received wrong prescription, or needed to return to the shop several times before glasses were fitted properly, does not clearly harm or endanger the public health. While it is true that these types of practices cause consumers extra time and perhaps expense in obtaining their eye wear, these practices do not overly harm the well being or financial solvency of consumers. The Department did not review every complaint filed, but no complaints were identified which alleged that an optician or optical shop had endangered the health or safety of an individual, or caused the individual irreparable financial damage.

2. Whether the public needs and can be reasonably expected to benefit from, an assurance of initial and continuing professional or occupational competence;

Licensure may insure that those persons holding a license meet minimum standards for the profession. However, it does not assure that consumers will receive better service and care. The types of complaints filed in states with licensure laws reflect the same types of complaints received in Colorado. Three of the licensed states surveyed receive a number of complaints from opticians concerning infractions of the licensure statutes by other opticians, e.g., an apprentice working unsupervised.

The Department identified that over half of the complaints received by the Denver District Attorney, the Colorado Attorney General, and the Better Business Bureau were against one locally owned optical business, leaving the other 35 complaints against a portion of the more than 200 other optical shops in the state. In addition, this is an insignificant percentage of complaints considering that approximately 40% of Colorado citizens wear corrective eye wear.

The Nevada licensing authority received four complaints last year. Two of the complaints filed were against the same Denver-based company as mentioned above. Apparently, licensure cannot assure ethical business practices. The Department does not recommend creating a state licensure program in response to one seemingly unethical business.

Licensure may also reduce the number of practitioners by as much as one third to one half. Currently, less than half of the estimated 997 opticians are certified by either the ABO or the NCLE. Eighteen of the 22 licensed states use the ABO or NCLE exam to test their licensees. If Colorado follows the lead of these other states, the ABO or NCLE exam may eliminate many of the currently employed opticians from qualifying for licensure.

3. Whether the public can be adequately protected by other means in a more cost-effective manner.

Current Colorado statutes provide penalties for persons involved in deceptive advertising and fraud. If a consumer finds an optician in violation of this law, the consumer may pursue treble damages. Consumers have a number of choices in selecting a shop to purchase eye wear. The Department of Labor and Employment reported that there are 214 optical shops and as many optometrists offices in Colorado employ approximately 997 opticians. These shops and offices offer a wide selection of quality and price in eye wear. Competition in the marketplace should allow Colorado citizens to select an optician that will meet their needs.

The American Board of Opticians certifies opticians who pass an exam and meet certain continuing education requirements. This same exam is used in 18 of the 22 states which license opticians. Since this ABO exam is used in the majority of states as the vehicle for testing the competency of an optician and the exam is available to anyone in Colorado who wishes to take it, the state does not need to duplicate the efforts of the ABO.

