
Sunset Evaluation Update: Dispensing Opticians

A Report to the
Governor
and the
Legislature of
the State of
Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 90-13
December 1990

Foreword

Hawaii's Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The auditor is responsible for evaluating each program for the Legislature prior to the date of repeal.

This report evaluates the regulation of dispensing opticians under Chapter 458, Hawaii Revised Statutes. It presents our findings as to whether the program complies with policies in the Sunset Law and whether there is a reasonable need to regulate dispensing opticians to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Act 136, SLH 1986, the report incorporates in Appendix B the draft legislation intended to improve the regulatory program.

We acknowledge the cooperation and assistance of the Department of Commerce and Consumer Affairs, the Board of Dispensing Opticians, and other officials and practitioners contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Newton Sue
Acting Auditor
State of Hawaii

December 1990

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, *Hawaii Revised Statutes*, repeals occupational licensing statutes according to a specified timetable. The law directs the auditor to evaluate each of these statutes to determine if the public interest is best served by reenactment, modification, or repeal of the statute.

This report evaluates whether the regulation of dispensing opticians under Chapter 458, *Hawaii Revised Statutes*, complies with policies for occupational regulation in the Sunset Law.

Background on Dispensing Opticians

Dispensing opticians are technicians who fill prescriptions for glasses and contact lenses. The prescriptions are issued by eye doctors--ophthalmologists or optometrists. Ophthalmologists are physicians who specialize in the diagnosis and treatment of diseases and abnormal conditions of the eye. Optometrists diagnose and treat functional problems and visual defects that are correctable with glasses, contact lenses, or visual training.

Dispensing opticians do not examine eyes or prescribe treatment. They may or may not grind and polish lenses, but they do fit lenses into frames and adjust the fit for comfort and proper correction of vision defects. In many states they are authorized to duplicate spectacle lenses without a prescription, and in some states they may fit contact lenses on their own or under the supervision of an ophthalmologist or optometrist.¹

Dispensing opticians may work for ophthalmologists or optometrists who sell glasses to patients. They also work for independent optical shops, department stores, drug stores, and other retail outlets.

Most dispensing opticians learn their skills on the job. Training varies from employer to employer, but it usually includes instruction in optical mathematics and physics and the use of precision measuring instruments and other machinery and tools.

Formal training in opticianry is offered by community colleges, vocational technical institutes, trade schools, and manufacturers. In 1987 there were 45 such programs, of which 15 were accredited by the Commission of Opticianry Accreditation, an affiliate of the National Academy of Opticianry.² The academy also offers a home study program that allows students to progress as rapidly as they choose. Its purposes are to increase knowledge, skill, and competency; help students prepare for the National Opticianry Competency Examination; and provide a comprehensive review for the experienced optician.³

Findings and Recommendations From Previous Sunset Evaluations

Two sunset evaluations conducted in 1980 and 1987 resulted in similar findings and recommendations. We found no documented cases of physical harm and concluded that continued licensure of dispensing opticians was not needed. In our view, regulation did not ensure a minimum level of competency. Unlicensed employees could still work with considerable latitude as dispensing opticians. The requirements for licensure, such as three years of training and passing the practical examination, were arbitrary, restrictive, and of no demonstrated validity.

Some statutory provisions, we found, were anticompetitive and unnecessary. One required each place of business to have a separate license; another prohibited opticians from employing optometrists, physicians, or surgeons. In addition, a board rule restricted dispensing opticians from using the term "specialist" in advertisements for contact lenses or artificial eyes. We concluded that the board performed only minimal functions and could be eliminated. The department had assumed such key functions as licensing, examination administration, record keeping, and complaints.

In both reports, we recommended discontinuing regulation and allowing the statute to sunset. However, were the Legislature to continue the regulation, we recommended that the training requirement and the practical examination be deleted, the practice and advertising restrictions be eliminated, and the board be eliminated as well.

Legislative Amendments Following 1987 Sunset Report

After testimony from opticians and eye doctors, the Legislature decided to continue regulating dispensing opticians under the Board of Dispensing Opticians. The Legislature extended the sunset repeal date of Chapter 458, HRS, to December 31, 1990. The Legislature also increased the licensing requirements to include passing two national examinations--the National Opticianry Competency Examination and the Contact Lens Registry Examination. To encourage greater board activity, the Legislature amended the statute to require the board to meet at least four times a year and specified that each member must attend at least half of the meetings or be removed.

Current Regulation of Dispensing Opticians

State law defines dispensing opticians as individuals or firms that prepare and dispense lenses or eyeglasses to customers upon a written prescription from a licensed physician or optometrist. To correct visual abnormalities, the dispensing optician interprets the prescription, measures the eyes, and fits the lenses or eyeglasses to the consumer's face.

A five-member Board of Dispensing Opticians attached to the Department of Commerce and Consumer Affairs is responsible for implementing the statute. The board is empowered to formulate rules and to issue licenses and certificates to do business. It may revoke or suspend licenses for fraud or dishonesty, gross negligence or incompetency in business, or for violation of statutes.

To be licensed as a dispensing optician, applicants must complete one of the following: (1) High school or its equivalent, and three years of full-time practical and mechanical work experience as an opticianry apprentice; (2) graduation from an opticianry course accredited by the Commission on Opticianry Accreditation; or (3) previous licensure in another jurisdiction that requires successful completion of the national examinations. Applicants must also pass the National Opticianry Competency Examination, the Contact Lens Registry Examination, and a practical examination given by the board.

Firms and individuals wishing to engage in the business of a dispensing optician must have a certificate for each address where business is conducted. A licensed dispensing optician must be at the site to supervise employees and be responsible

for their work. The statutes also require certificate holders to file the name, experience, and mailing address of each employee who takes facial measurements, duplicates lenses, or fits and adjusts lenses and frames.

The law prohibits doing business without a certificate, advertising in a misleading or deceptive manner, and dispensing services to a consumer without a prescription issued by a licensed ophthalmologist or optometrist. The statute exempts physicians, optometrists, ophthalmologists, or certified ocularists (those who design, fit, and fabricate artificial eyes under the supervision of a licensed ophthalmologist or optometrist). The statute does not prohibit the sale of sunglasses, colored glasses, or occupational eye devices.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of dispensing opticians complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Evaluate the need to continue to regulate dispensing opticians to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Determine whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations relating to the above.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on dispensing opticians and current developments in federal and state regulation. We contacted national professional associations in the field of opticianry for information about the industry and its trends. We also examined Hawaii statutes and rules and the changes that have taken place since our last sunset evaluation.

To determine the need for regulation, we reviewed complaints and other evidence of potential harm to consumers and examined alternative means of protection offered by the

industry and federal regulation. To assess appropriateness of regulatory provisions and the effectiveness of regulatory operations, we interviewed personnel from the Department of Commerce and Consumer Affairs, members of the Board of Dispensing Opticians, and practitioners in related fields such as ophthalmologists and optometrists. At the Department of Commerce and Consumer Affairs, we reviewed correspondence and other files relating to the subject.

Fieldwork on the project was performed between February 1990 and June 1990.

Chapter 2

Findings and Recommendations

The findings and recommendations presented in this chapter are very similar to those in our previous reports. The practice of dispensing opticians does not pose potential harm to consumers. The regulatory program therefore imposes unnecessary and arbitrary restrictions on the occupation.

Findings

1. Regulation is not needed to protect the public health and safety. If continued, it should be at a minimum level.
2. Certain statutory provisions establish arbitrary restrictions.
3. Many of the licensing requirements are unjustified and meaningless.
4. A board is not necessary.

Regulation Is Not Needed

There is no new evidence to suggest a need to regulate dispensing opticians to protect the public health and welfare. Consumer complaints are still not significant, federal regulations ensure product safety, and the dispensing optician's narrow scope of practice limits the risk to the consumer.

The Legislature, however, has decided twice before to reenact Chapter 458. Although the practice poses no serious harm to consumers, there appears to be a belief that dispensing opticians should be minimally competent to use standard ophthalmic equipment, verify prescriptions, and ensure proper fit. If Chapter 458 is reenacted, regulation should be minimal. This minimal level of competency can be insured by requiring applicants to pass national examinations in opticianry and contact lenses.

Few consumer complaints

Since 1987, only 12 complaints on dispensing opticians have been filed at the department's Regulated Industries Complaints Office. About half of these were filed by opticians or by optometrists charging other opticians with

deceptive advertising. The other complaints related to overcharging, underexplaining, or having no licensed dispensing optician on the premises. No complaints alleged physical harm. Most complaints were either dropped for lack of evidence or resulted in warning letters or refunds. No fines were levied and no licenses were revoked.

Adequate safety standards

Product safety standards have minimized the potential for harm to the public. Optical plastic has been used for spectacle lenses since the end of World War II. It is safe, strong, clear, and gives good optical performance.¹

The Federal Food and Drug Administration ensures product safety for contact lenses. It has regulations covering manufacturing practices, safety and effectiveness, performance standards, and the reporting of malfunctions or serious injuries during the clinical testing stages.²

Narrow scope of practice

Dispensing opticians have a narrow scope of practice that limits the potential risk to consumers. Opticians fill prescriptions from eye doctors for eyeglasses or contact lenses and try to ensure a comfortable fit. They do not perform eye examinations or diagnose diseases.

Opticians measure the consumer's eyes to determine where eyeglass lenses should be placed. They help consumers select styles and colors of frames. Opticians either grind and insert lenses in frames or arrange for this to be done. After the glasses are made, opticians check the power and surface quality with special instruments, then adjust the frames to the consumer's face. Opticians show consumers how to insert, remove, and care for contact lenses. To ensure a proper fit, the optician observes the patient's eyes, corneas, lids, and contact lenses with special instruments. These practices present little danger to consumers.

Adequate national examinations

The current requirement for applicants to pass the National Opticianry Competency Examination and the Contact Lens Registry Examination is sufficient to ensure a minimal level of competence to practice as a dispensing optician. The examinations were scientifically developed and validated by the Professional Examination Service for the American Board of Opticianry and the National Contact Lens Examiners. They are based on an updated job analysis, the performance domains important for competent practice, and the test specifications for measuring activities, knowledge, and skills.

The examinations test such skills as the ability to communicate with patients, analyze and interpret a prescription, fit and dispense spectacles, utilize standard ophthalmic equipment, and profit and evaluate contact lens types. Because the examinations have been nationally validated, no other licensing requirement is needed to ensure a minimum level of competency.

Arbitrary Restrictions Should Be Removed

Statutes and rules that continue to be restrictive, unnecessary, or anticompetitive are those that require (1) separate certificates for each place of business, (2) the reporting of employees' names and experience, and (3) notices signed by consumers and dispensing opticians for return examinations by the prescribing doctor. The prohibition on using the term "specialist" in advertising is also restrictive.

Certificates for separate sites are costly and not needed. Section 458-4, HRS, requires each place of business to have a certificate before operating. The board testified in 1987 that this was necessary in order to monitor compliance with the requirement that a licensed dispensing optician be at each site. The department, however, does not systematically monitor compliance. It investigates noncompliance with the site requirement only when complaints are filed. In the past three years, four complaints alleged a violation of the requirement, but none were substantiated.

Section 458-7, HRS, requires each holder of a business certificate to file a report with the board listing the names and experience of each employee who takes facial measurements, fits or adjusts lenses or frames, or duplicates lenses. The report was intended to verify the work experience of applicants. Until recently, the department did not enforce this requirement. It was only after we questioned the lack of compliance that the board mailed a reporting form to licensed opticians and certificate holders. The report, however, serves no public safety function and it merely creates paperwork.

When they dispense contact lenses, opticians are required by Section 458-12.5, HRS, to give customers a board-approved form instructing them to return to their prescribing eye doctor for an examination. This was intended to ensure that the customer received a lens that fitted properly. There appears

to be little justification for the notice. The department has not monitored the requirement, and no complaints of improper contact lens fitting have been filed with the Regulated Industries Complaints Office. The requirement was added in 1987 in response to concerns of optometrists and ophthalmologists that dispensing opticians would modify prescriptions, cause corneal damage in the fitting of lenses, and fail to detect eye diseases. In spite of these concerns, there have been no cases of cornea damage from an initial contact lens fitting. If the initial fitting were not appropriate, customers and the dispensing optician would be able to tell from obvious symptoms, such as redness, tenderness, and pain. The notice itself serves no purpose.

A board rule makes unlawful the use of the term “specialist” in advertising for contact lenses or artificial eyes. This rule restricts truthful and accurate information about professional qualifications. Some dispensing opticians, trained and certified to fill prescriptions in this area, are in fact specialists because other opticians only dispense spectacles. Consumers would benefit from being able to identify qualified practitioners.

Some Licensing Requirements Are Superfluous

Both previous sunset reports identified two unnecessary licensing requirements: (1) three years of work experience and (2) passing a practical examination. Also unnecessary is the alternative requirement to graduate from an opticianry course. The validity and the reliability of the two national examinations for establishing minimum competency make these three requirements superfluous.

Arbitrary experience requirement

Section 458-6.5(b)(1), HRS, requires a high school education and three years of work experience as an opticianry apprentice. The rules describe work experience as full-time practical and mechanical optical work with eyeglasses and contact lenses under the direct personal supervision of a dispensing optician, ophthalmologist, or optometrist.

Length of time alone will not guarantee that apprentices will gain the needed knowledge and skills. Because the board has not spelled out the requirements of training or the skills to be taught, apprentices are not necessarily being trained in appropriate mechanical and practical skills.

The 1987 Legislature noted the need to develop specific tasks for the three-year requirement.³ The Senate Committee on Commerce and Consumer Affairs said in its committee report that it understood that the board would (1) establish requirements for training to be covered in the three years of work experience, and (2) set forth the specific information and techniques to be tested in the practical examination administered by the board.

The board has not yet developed the training requirements. It merely added a requirement for an affidavit from the applicant attesting to what, when, and where practical training was conducted. The license application was revised to include a notarized signature by the applicant attesting to the information.

The amount of time spent in training actually ranges from two months to one-and-a-half years. One local firm has a formal training program that takes only two to four months, depending on the apprentice's ability, but the employee must still remain an apprentice for three years. This restricts the entry of individuals into the occupation and, for no good reason, forces individuals to remain in lower paying positions.

***Unnecessary
opticianry course***

Since the two national examinations required for licensure have been nationally validated to determine whether applicants have the minimal level of competency, the requirement for graduation from an accredited opticianry course is not necessary. No accredited opticianry courses are currently offered in Hawaii.

***Unjustified
practical
examination***

The statutes require applicants to pass a practical examination. Once again, we recommend that the practical examination be eliminated. It was not professionally developed, does not test actual tasks performed, and has no demonstrated validity. The rationale for the exam is flawed, and the reasons for including certain questions are not apparent.

Lack of validity

Instead of deleting the practical examination, the board revised it. The revision, however, did not address the lack of validity. The examination was not professionally developed. It lacks standardization and relevance to essential occupational skills, and it duplicates areas already tested in the national examinations.

In changing the examination, the board added a requirement to analyze five pairs of faulty contact lenses and changed the number of times contact lenses had to be neutralized. It made the changes without comparing the content to national examinations or establishing a meaningful pass/fail standard. The examination sites and equipment were not standardized. Sites have varied depending on which opticianry shops were willing to share equipment and time. Testing equipment is not the same at each site. Finally, the practical exam duplicates what is being tested in the national examinations. The National Opticianry Competence Examination and the Contact Lens Registry Examination already assess an applicant's competency to measure, fit, and adjust eyeglasses and contact lenses. Both examinations were developed by the Professional Examination Service and meet basic examination criteria for credentialing agencies. They accurately and completely reflect the tasks to be performed by the minimally competent licensee.

Questionable rationale

The board's justification for the current examination is a survey it conducted whose results favored a practical exam. The board used a replica of a national survey to poll 17 Hawaii opticians and 9 mainland opticians on the need for a practical examination and what it should include. A survey is not an appropriate justification for a practical examination. A practical examination should be used only if it tests critical competencies not already being tested elsewhere. Otherwise, the practical examination serves no useful purpose and is a meaningless, unnecessary, and costly additional step.

Uncertain status of exam on laws and rules

The practical examination consists of three parts: (1) state laws and rules, (2) a practical section on eye glasses, and (3) a practical section on contact lenses. Applicants must have a passing score in each part of the examination.

In August 1988, the DCCA examination supervisor recommended to the board that the laws and rules examination should be deleted because "laws and rules do not in any way determine the person's competency in the area of opticianry work."⁴ A year later, however, the supervisor and the board agreed to continue administering the test of state laws, but as an open book exam that would not be counted as part of the practical examination.⁵

This decision makes the status of this test uncertain. The Board's rules still require applicants to have a passing score on each part of the practical examination including the part on state laws and rules. The board has not clarified what is to be done if an applicant fails this part of the practical examination.

The Board Is Still Not Needed

The 1987 sunset report recommended that the board be eliminated because its duties were minimal. To ensure board activity, the Legislature amended the statute to require the board to meet four times a year. The board was given until December 31, 1990, to develop specific three-year training requirements and a valid practical examination. The board has done neither. During the past three years, the board has made some revisions to the rules, the practical exam, and the application form. None of these activities, however, ensure competency, validity, and fairness.

Board members argue that a governmental board is needed as an unbiased public forum for the occupation--it gives dispensing opticians access to support services and reliable information. Separate statutory authority gives them independence from optometrists and ophthalmologists. Professional benefits, however, do not justify the existence of a board. Boards exist to benefit the consumer. The board contributes little to regulatory operations. The department already has assumed the administrative functions of licensing, license renewals, and investigation of complaints. The board should be eliminated.

Recommendations

Chapter 458 should be sunsetted. However, should the Legislature choose to reenact the statute, it should do so for a period of ten years. Section 26H-8(G) permits statutes to be reenacted for a period of up to ten years if the legislation has been reviewed and reenacted twice within a ten-year period. In addition, the Legislature should consider eliminating the board and removing the following requirements:

1. Separate certificates for each business site;
2. Reporting of names and experience of employees to the board;
3. Written notice to customers to return to the prescribing eye doctor to ensure proper fitting and prescription of contact lenses;
4. Three years of experience for applicants;
5. Graduation from an accredited opticianry course; and
6. Passing a practical examination.

Notes

Chapter 1

1. Egon Weck, "Taking a Look at Eye Examinations," *FDA Consumer*, vol. 21, no. 4, May 1987, p. 16.
2. *Occupational Outlook Handbook*, 1988-89 edition, U.S. Department of Labor, Bureau of Labor Statistics, April 1988, p. 162.
3. National Academy of Opticianry, "Career Progression Program," Bowie, Maryland, no date.

Chapter 2

1. James R. Gregg, O. D., *The Story of Optometry*, New York, Ronald Press Co., 1965, p. 138.
2. U.S. Food and Drug Administration, Center for Devices and Radiological Health, *Guidance Document for Class III Contact Lenses*, Silver Springs, Maryland, April 1989.
3. Senate Standing Committee Report No. 1069 on House Bill 498, Regular Session of 1987.
4. Minutes of the Board of Dispensing Opticians, Honolulu, August 9, 1988, p. 3.
5. Minutes of the Board of Dispensing Opticians, Honolulu, June 23, 1989, p. 3.

Response of the Affected Agency

Comments on Agency Response

We transmitted a draft of this Sunset Evaluation Update to the Board of Dispensing Opticians and the Department of Commerce and Consumer Affairs on September 28, 1990. A copy of the transmittal letter to the board is included as Attachment 1 of this Appendix. A similar letter was sent to the department. The response from the board is included as Attachment 2. The department did not respond.

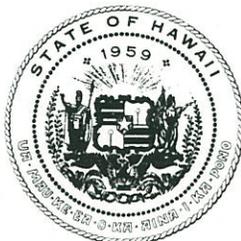
The board disagrees that Chapter 458 should be sunsetted. It also takes strong exception to the recommendation that the board be eliminated should the statute be reenacted. It says that regulation is needed to ensure competent practitioners and the expertise of the board is necessary in formulating and overseeing policies to protect consumers. The board does not agree with the report's conclusion that the practice of opticians poses no potential harm to consumers, although it cited only one incident nationally of a suit alleging improper placement of bifocals.

Should the statute be reenacted, the board agrees that separate certificates for each business site are not needed. However, the board disagrees with the recommendations to eliminate the current requirements to report the names and experience of employees to the board, to provide written notice to purchasers of contact lenses to return to the prescribing eye doctor, and to have applicants for licensure complete three years of experience or graduate from an accredited opticianry course and pass a practical examination.

As the report points out, none of the above regulations are needed to protect consumers. The practical examination is of particular concern because of its questionable validity and lack of standardization. Because of the State's vulnerability in this litigious area, the department has been shifting to written examinations prepared by neutral testing agencies. We would encourage the department to continue its efforts in this area.

ATTACHMENT 1

STATE OF HAWAII
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(808) 548-2450
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September 28, 1990

C O P Y

Mr. Doss K. Tannehill, Chairman
Board of Dispensing Opticians
Department of Commerce and Consumer Affairs
Kamamalu Building
1010 Richards Street
Honolulu, HI 96813

Dear Mr. Tannehill:

Enclosed are six copies, numbers 9 to 14 of our draft report, *Sunset Evaluation Update: Dispensing Opticians*. We ask that you telephone us by October 3, 1990, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than October 29, 1990.

The Director of the Department of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Newton Sue
Acting Legislative Auditor

Enclosures



JOHN WAIHEE
GOVERNOR

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NOE NOE TOM
LICENSING ADMINISTRATOR

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October 29, 1990

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STATE OF HAWAII

Mr. Newton Sue
Acting Legislative Auditor
Office of the Auditor
465 S. King St., Rm. 500
Honolulu, HI 96813

Dear Mr. Sue:

Thank you for the opportunity to comment on the Sunset Evaluation Update on Dispensing Opticians. The Board appreciates the time and effort that you have put into the preparation of this report.

First, the Board would like to list some of its accomplishments since the last sunset evaluation of 1987:

1. Major revisions were made to the Board's rules which included:
 - a. the establishment of the requirement that applicants take and pass the National Opticianry Competency Exam (NOCE) and the National Contact Lens Registry Exam (NCLRE);
 - b. the definition of "personal supervision of an ophthalmologist or optometrist" was clarified;
 - c. the responsibilities of certificate holders and licensees in notifying the Board of their current addresses, officers, and apprentice employees was clarified; and

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October 29, 1990
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- d. a procedure for dispensing of contact lenses which are prescribed by ophthalmologists or optometrists, including those from out-of-state was established.
2. Chapter 458, HRS, was revised wherein (1) the exception for certified ocularists was addressed and clarified and (2) a requirement was added that written notice be given to clients who receive contact lenses to return to the prescribing doctor.
3. The application forms were revised and upgraded to assist the department with its responsibilities.

Despite the length of time it takes to process statutory and administrative rules changes through the legislative and the administrative procedures, the Board was able to comply with the majority of the particular recommendations it did agree with as listed in your 1987 sunset evaluation report.

In reference to your current evaluation, the Board agrees with your recommendation that the requirement of separate certificates for each business site should be removed.

On the other hand, the Board disagrees with your recommendation to remove requirements numbered 2 through 6 as listed on pages 13 and 14 in your report. The Board's position on these items is as follows.

1. The requirement that names and experience of apprentices be reported to the Board (item No. 2) and the three years of opticianry experience for applicants (item No. 4) should not be eliminated. The apprentice option towards fulfilling the education/training component towards licensure is needed. The Board believes that a level of training is necessary to provide opticians with the broad scope of knowledge of opticianry, especially at this time of rapid technological advances in the eye care industry. However, the Board is planning to modify and clarify these requirements. The Board does recognize that length of time alone (current minimum requirement is three years of fulltime work consisting of 30 hours per week) should not be the sole criteria for determining that apprentices have gained the necessary knowledge and skills.

With the allowance of additional time, the Board will be able to amend and clarify its rules relative to the above concerns.

2. As for the requirement that notices be given to clients instructing them to return to the prescribing eye doctor (item No. 3), this rule was established at the request of the optometrists and ophthalmologists. Nevertheless, the Board agrees with the intent of the notice which serves as a reminder to the client to return to the prescribing doctor for a recheck. The Board disagrees that this rule is restrictive, unnecessary or anticompetitive.
3. Graduation from an accredited opticianry course (item No.5) as an option towards fulfilling the educational/training requirement towards licensure should be retained. While it is true that the NOCE and NCLRE exams have been validated, the exams have a limited number of questions. The Board believes that a basic level of training, whether through academic coursework or on-the-job apprenticeship, is necessary to ensure that opticians are adequately equipped with knowledge of the broader scope of opticianry.
4. Passing a practical examination (item No.6) should be retained. The Board reaffirms the previous Board's position as stated in Mr. Ted H. Yamada's (then Board Vice Chairman) January 15, 1987 letter to Mr. Clinton T. Tanimura concerning elimination of the practical exam: "The Board disagrees that the national examination be the only prerequisite for licensure. The national examination is a written examination used to test the applicant's knowledge in geometric optics, anatomy, physiology and theory of dispensing glasses and fitting contact lens. It does not test the applicant's ability to properly work with the equipment of the trade and to show competency in the use of the equipment. Competency is being able to use these equipment as an integral part in the overall performance of an optician."

In regard to the validity of the practical exam, it is inaccurate to state that it "has no demonstrated validity." The Board has been assured by the Department's licensing examination supervisor that the exam questions are job-related as they pertain to what dispensing opticians actually do.

The Board does concede that further refinements can be made for a more stringent adherence to guidelines for establishment of the validation criteria. However, your statement, "The rationale for the exam is flawed, and the reasons for including certain questions are not apparent", is unjustified and incorrect. The Board would like to add that it did explore the possibility of utilizing other exams. However, the costs of alternate exams were found to be excessive and would pose a greater hardship for applicants.

While the testing equipment may not be the same from one examination date to the next, opticians are expected to be familiar with differing ones. Moreover, applicants are informed that they have the opportunity to familiarize themselves with the actual equipment to be used prior to the testing. As an alternative, the State could purchase its own testing equipment.

However, again, the costs will have to be considered. As for the criticism that exam sites are not the same each time, space availability is naturally subject to change over a period of time.

In reference to the "laws and rules" portion of the Board's exam, it is not part of the practical exam. However, this portion is part of the licensure exam requirement. Being knowledgeable about one's practice act is essential for each licensee and the ultimate goal of consumer protection.

The report also states that most dispensing opticians learn their skills on the job. In the absence of formal education and the lack of uniformity of instruction by employers, there is a need for testing and evaluation of opticians to gauge a level of competency.

Again, the Board reaffirms the previous Board's position on this matter. As the Opticians Association of America is still in the process of developing a practical exam, the profession still "believes in and sees the need for prospective opticians to be able to demonstrate and meet the mechanical abilities necessary for entry level proficiency. When this exam is developed, the Board will look into its possible use as a replacement for the Board's practical examination."

Mr. Newton Sue
October 29, 1990
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Further, the Board does not agree that Chapter 458 should be sunsetted. The Board strongly believes that regulation is necessary at the state level to provide assurance of competent practitioners. As the statistics show, the older/aged population is becoming proportionately larger. In this decade and beyond, therefore, there will be more and more people who will be vulnerable and apt to be taken advantage of. Under Title IV of Public Law 100-93, the Medicare and Medicaid Patient and Program Protection Act of 1987, the U.S. Dept. of Health and Human Services is drafting regulations to implement this law. The intent of the law is to provide protection from unfit health care practitioners to beneficiaries participating in the Social Security Act's health care programs. Preliminary information received indicates that dispensing opticians are to be included in this health care practitioners group. Dispensing opticians are being recognized nationally as valid health care providers.

One of the primary reasons that dispensing opticians should remain regulated is the fact that opticians fit contact lenses. Contact lenses are put directly on the cornea of the eye. The cornea is a sensitive, complex membrane which protects the inner structures of the eye, refracts, and is permeable to medications.

In addition to dealing with normal corneas which simply need visual correction, contact lenses are also used to provide vision for eyes which are diseased or scarred or for corneas which are injured. Also, the only way a person with keratoconus can obtain maximum vision is with a contact lens--soft, rigid gas permeable and, in extreme cases, a combination of both a soft lens with a gas permeable lens fitted over it. Soft lenses are also used as bandage lenses to protect painful, injured or diseased corneas.

Patients routinely spend hundreds of dollars for eye examinations, consultation, and surgery. But, if the patient's glasses is not properly made, or if the optician recommends the wrong type of lens design, or index of refraction, the patient's health and welfare is not properly protected. Many patients go to their opticians for advice and help when they experience problems with the glasses they have been prescribed. This means that the optician must be thoroughly familiar with the broad range of ophthalmic products designed for that customer in terms of their technical aspects, how to measure those products accurately, and how to describe them in language that the layperson can easily understand.

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As the technology of the eye care industry is rapidly advancing, the regulation of dispensing opticians is all the more compelling. The development of new materials and processes requires trained, educated opticians to properly advise patients which product will provide the proper protection and vision correction. For example, if a patient were given incorrect data about sunglasses, the eyes could be damaged by ultra violet rays. Therefore, the Board does not agree with your assessment that the practices of opticians "present little danger to consumers."

Moreover, the Board takes strong exception to your opinion that the Board be eliminated or that "the Board contributes little to regulatory operations." Although it is true that the department handles the administrative work of licensing and license renewals, these functions are delegated to the department and are of a ministerial nature for the most part. The Board's function is to formulate and oversee policies which will serve to protect the consumer. In the health care arena, of which the dispensing opticians are a part, the department relies on the expertise of the Board to carry out that function. The Board is needed for the input of its expertise concerning the technical aspects of the profession coupled with the non-industry members' public input as to how best to protect the consumers' interests.

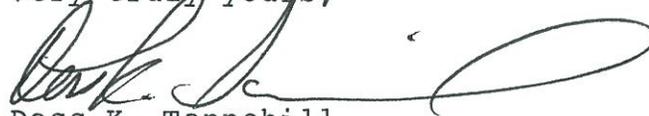
While the investigation of complaints has been delegated to the Regulated Industries Complaints Office, it is still the Board's responsibility to adjudicate just and proper disciplinary actions against licensees who have violated the Board's laws and rules.

And, while your report suggested that the Board is not needed, in part, because there were not a large number and/or serious complaints, the Board submits that this is the result of the standards developed by the Board. Although there may have been no cases of physical harm which reached the courts in Hawaii during the period in question, the Opticians Association of America recently received notice of a lawsuit in which a patient sued an optician for improper placement of bifocals. The patient fell as a result of incorrect measurement. As a result of the fall, her hip was broken. This case supports the argument for the need for continued regulation through the Board.

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In conclusion, the Board firmly believes that there is a need to continue regulation of opticianry through a board. However, if the Legislature's decision is to eliminate the Board, the Board feels that there should be some one or some body to ensure the competency of persons engaged in the profession of dispensing optician and to assure consumers adequate protection from harm.

Very truly yours,

A handwritten signature in black ink, appearing to read "Doss K. Tannehill", with a large, sweeping flourish extending to the right.

Doss K. Tannehill
Chairman
Board of Dispensing Opticians

THE SENATE
SIXTEENTH LEGISLATURE, 1991
STATE OF HAWAII

S.B. NO.

A BILL FOR AN ACT

RELATING TO DISPENSING OPTICIANS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 26H-4, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§26H-4 Repeal dates. (a) The following sections are
4 hereby repealed effective December 31, 1990:

5 (1) Sections 321-13 to 321-15 (laboratory directors,
6 laboratory technologists, laboratory supervisors, and
7 laboratory technicians)

8 (b) The following chapters are hereby repealed effective
9 December 31, 1991:

10 [(1) Chapter 458 (Board of Dispensing Opticians)

11 (2)] (1) Chapter 460J (Pest Control Board)

12 [(3)] (2) Chapter 462A (Pilotage)

13 [(4)] (3) Chapter 468K (Travel Agencies)

14 (c) The following chapters and sections are hereby repealed
15 effective December 31, 1992:

16 (1) Chapter 446 (Debt Adjusters)

17 (2) Chapter 467D (Social Workers)

18 (3) Sections 321-13 to 321-15 only as they relate to
19 sanitarians

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- 1 (4) Sections 445-21 to 38 (Auctions)
- 2 (5) Sections 445-131 to 136 (Pawnbrokers)
- 3 (6) Sections 445-171 to 172 (Secondhand Dealers)
- 4 (7) Sections 445-231 to 235 (Scrap Dealers)
- 5 (d) The following chapters are hereby repealed effective
- 6 December 31, 1993:
 - 7 (1) Chapter 452 (Board of Massage)
 - 8 (2) Chapter 453 (Board of Medical Examiners)
 - 9 (3) Chapter 460 (Board of Osteopathic Examiners)
 - 10 (4) Chapter 461J (Board of Physical Therapy)
 - 11 (5) Chapter 463E (Podiatry)
- 12 (e) The following chapters are hereby repealed effective
- 13 December 31, 1994:
 - 14 (1) Chapter 447 (Dental Hygienists)
 - 15 (2) Chapter 457 (Board of Nursing)
 - 16 (3) Chapter 457A (Nurse Aides)
 - 17 (4) Chapter 457B (Board of Examiners of Nursing Home
 - 18 Administrators)
 - 19 (5) Chapter 461 (Board of Pharmacy)
- 20 (f) The following chapters are hereby repealed effective
- 21 December 31, 1995:
 - 22 (1) Chapter 437 (Motor Vehicle Industry Licensing Board)

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- 1 (2) Chapter 437B (Motor Vehicle Repair Industry Board)
- 2 (3) Chapter 440 (Boxing Commission)
- 3 (4) Chapter 448H (Elevator Mechanics Licensing Board)
- 4 (5) Chapter 451A (Board of Hearing Aid Dealers and Fitters)
- 5 (g) The following chapters [[]and sections[]] are hereby

6 repealed effective December 31, 1996:

- 7 (1) Chapter 321, Part XXX, (Tattoo Artists)
- 8 (2) Chapter 321, Part XXXI, (Midwives)
- 9 (3) Chapter 448F (Electrologists)
- 10 (4) Chapter 466J (Board of Radiologic Technology)
- 11 (5) Sections 321-13 to 321-15 (laboratory directors,
- 12 laboratory technologists, laboratory supervisors,
- 13 laboratory technicians, and sanitarians)
- 14 (6) Sections 431:10A-116(4) and 432:1-605 (Mammogram
- 15 Screening)

16 (h) The following chapters are hereby repealed effective
17 December 31, 1997:

- 18 (1) Chapter 438 (Board of Barbers)
- 19 (2) Chapter 448 (Board of Dental Examiners)
- 20 (3) Chapter 455 (Board of Examiners in Naturopathy)
- 21 (4) Chapter 459 (Board of Examiners in Optometry)
- 22 (5) Chapter 471 (Board of Veterinary Examiners)

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1 (i) The following chapters are hereby repealed effective
2 December 31, 1998:

- 3 (1) Chapter 373 (Commercial Employment Agencies)
- 4 (2) Chapter 441 (Cemetery and Funeral Trusts)
- 5 (3) Chapter 443B (Collection Agencies)
- 6 (4) Chapter 463 (Board of Private Detectives and Guards)
- 7 (5) Chapter 468 (Solicitors; Business of Taking Orders)

8 (j) The following chapters are hereby repealed effective
9 December 31, 1999:

- 10 (1) Chapter 436E (Board of Acupuncture)
- 11 (2) Chapter 442 (Board of Chiropractic Examiners)
- 12 (3) Chapter 444 (Contractors License Board)
- 13 (4) Chapter 448E (Board of Electricians and Plumbers)
- 14 (5) Chapter 464 (Professional Engineers, Architects,
15 Surveyors and Landscape Architects)
- 16 (6) Chapter 465 (Board of Psychology)
- 17 (7) Chapter 468E (Speech Pathology and Audiology)

18 (k) The following chapters are hereby repealed effective
19 December 31, 2000:

- 20 (1) Chapter 439 (Board of Cosmetology)
- 21 (2) Chapter 448F (Electrologists)
- 22 (3) Chapter 454 (Mortgage Brokers and Solicitors)

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1 (4) Chapter 454D (Real Estate Collection Servicing Agents)

2 (5) Chapter 466 (Board of Public Accountancy)

3 (6) Chapter 466K (Real Estate Appraisers)

4 (7) Chapter 467 (Real Estate Commission)

5 (1) The following chapter is hereby repealed effective
6 December 31, 2001:

7 (1) Chapter 458 (Dispensing Opticians)"

8 SECTION 2. Section 458-6.5, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "[~~§~~458-6.5] License to engage in the occupation of
11 dispensing optician; application; issuance. (a) Before engaging
12 in the occupation of dispensing optician, an individual must be
13 licensed as a dispensing optician by the [board.] director of
14 commerce and consumer affairs (hereinafter in this chapter
15 referred to as the director).

16 (b) To apply for a license to engage in the occupation of
17 dispensing optician an individual must have [completed one of the
18 following:

19 (1) The] the equivalent of a high school education [and
20 three years of work experience as an opticianry
21 apprentice as required by the board's administrative
22 rules;

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- 1 (2) Graduation from an opticianry course accredited by the
2 Commission on Opticianry Accreditation; or
3 (3) Previous] or previous licensure in another jurisdiction
4 which required successful completion of the national
5 examinations specified in subsection (c).

6 The applicant shall submit to the [board] director an application
7 for a license in a form approved by the [board,] director, which
8 shall include the applicant's experience and signature, and an
9 application fee.

10 (c) Before being licensed to engage in the occupation of
11 dispensing optician, an individual must pass the National
12 Opticianry Competency Examination[,] and the National Contact
13 Lens Registry Examination[, and a practical examination]. The
14 [board] director shall issue a license to an individual who
15 passes [all three] both of these examinations[.] and pays a
16 license fee. [If the applicant fails to pass any one of the
17 examinations, the individual shall not be licensed.] Any
18 applicant who has previously passed both the National Opticianry
19 Competency Examination in another jurisdiction and the National
20 Contact Lens Registry Examination shall not be required to retake
21 these examinations and shall be issued a license upon [successful
22 completion of the practical examination.] payment of a license

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1 fee."

2 SECTION 3. Section 458-6.8, Hawaii Revised Statutes, is
3 amended to read as follows:

4 "[~~§~~458-6.8~~]~~ Certificate to engage in the business of
5 dispensing optician; application; issuance. (a) Before engaging
6 in the business of dispensing optician, a firm, including a sole
7 proprietorship for which the proprietor is to be a licensed
8 dispensing optician, shall first be issued a certificate of
9 dispensing optician by the [board.] director.

10 (b) Each application shall be on forms prescribed by the
11 [board] director and shall contain:

12 (1) The name of the licensed dispensing optician who will
13 be employed at that business address;

14 [(2) The names and experience of each person who will take
15 facial measurements, fit or adjust lenses or frames, or
16 duplicate lenses; and

17 (3) Such other information as the board requires. The
18 application shall bear the] (2) The signature of the
19 proprietor if the applicant is a sole proprietorship,
20 partner if the applicant is a partnership, or a
21 president or secretary if the applicant is a
22 corporation, and shall contain the name under which the

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1 applicant proposes to do business and the business
2 address. [Separate applications shall be made for each
3 place of business, and each application shall be
4 accompanied by the application and registration fees.]

5 (c) The [board] director shall establish the procedures for
6 issuing certificates of dispensing opticians and qualifications
7 of firms applying to engage in the business of dispensing
8 optician. Upon approval of an application for a certificate of
9 dispensing optician and payment of a certificate fee, the [board]
10 director shall issue a certificate of dispensing optician within
11 sixty days. [A separate certificate shall be required for each
12 address where the business is to be conducted.] No application
13 for certificate of dispensing optician shall be approved unless a
14 licensed dispensing optician is to be employed at the place of
15 business. The certificate shall authorize the applicant to
16 engage in the business of dispensing optician. The certificate
17 or a copy shall at all times be displayed in a conspicuous place
18 at [the] each place of business. The certificate shall not be
19 transferable."

20 SECTION 4. Section 458-7, Hawaii Revised Statutes, is
21 amended to read as follows:

22 "§458-7 [Reports to board; required experience] Supervision

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1 of employees. [Each holder of a certificate of dispensing
2 optician shall file with the board a report containing the names
3 and experience of each person employed by the certificate holder,
4 who, in the course of the person's employment, takes facial
5 measurements, fits or adjusts lenses or frames, or duplicates
6 lenses, together with such other information as the board
7 requires.] No certificate holder shall cause any person to take
8 facial measurements, fit or adjust lenses or duplicate frames
9 unless such persons are acting under the direct personal
10 supervision of a licensed dispensing optician."

11 SECTION 5. Section 458-9, 458-10, and 458-11, Hawaii
12 Revised Statutes, are amended by substituting the word "director"
13 whenever the word "board" appears, as the context requires.

14 SECTION 6. Section 458-2 and 458-3, Hawaii Revised
15 Statutes, are repealed.

16 ["§458-2 Board of examiners; members, qualifications. The
17 governor shall appoint in the manner prescribed in section 26-34
18 as the board of dispensing opticians (hereinafter in this chapter
19 referred to as the "board") five members.

20 Upon the expiration of the member's term of office a member
21 shall continue to serve until the member's successor has been
22 appointed and has qualified. A member may be removed by the

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1 governor in the manner prescribed in section 26-34. Three
2 members of the board shall be persons engaged in the occupation
3 of dispensing opticians and two shall be public members. Each
4 member of the board is entitled to necessary travel and other
5 expenses incurred in the discharge of the member's duties.

6 **§458-3 Organization; meetings, records.** The board of
7 dispensing opticians shall annually elect from its members a
8 chairman and a vice-chairman. The board shall keep a complete
9 record of its proceedings. The board, subject to chapter 91 and
10 with the approval of the governor and the director of commerce
11 and consumer affairs may make, amend, and repeal rules for the
12 administration of this chapter.

13 The board shall meet a minimum of four times a year, at
14 quarterly intervals. Each member is required to attend at least
15 one-half of all board meetings in a year. Any member not
16 attending at least one-half of all board meetings in a year shall
17 forfeit that member's seat on the board."]

18 SECTION 7. Section 458-12.5, Hawaii Revised Statutes, is
19 repealed.

20 ["[§458-12.5] **Dispensing contact lenses; notice.** (a) Upon
21 dispensing contact lenses, the dispensing optician shall give the
22 client a written notice on a board approved form that the client

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1 should return to the prescribing ophthalmologist or optometrist
2 to ensure that the client has received contact lenses of the
3 proper fit and prescription.

4 (b) The form approved by the board shall be written clearly
5 and coherently using words with common or ordinary meanings,
6 shall be printed using eight-point or larger type with at least
7 one point of leading between lines, and shall use paper and ink
8 of sufficient quality and contrast to be easily legible."]

9 SECTION 8. All rights, powers, functions, and duties of the
10 board of dispensing opticians are transferred to the director of
11 the department of commerce and consumer affairs.

12 SECTION 9. All appropriations, records, equipment,
13 machines, files, supplies, contracts, books, papers, documents,
14 maps, and other personal property heretofore made, used,
15 acquired, or held by the board of dispensing opticians relating
16 to the functions transferred to the department of commerce and
17 consumer affairs shall be transferred with the functions to which
18 they relate.

19 SECTION 10. Statutory material to be repealed is bracketed.
20 New statutory material is underscored.

21 SECTION 11. This Act shall take effect on July 1, 1991.

22

23

INTRODUCED BY: _____