

CHAPTER 15.1 - DISPENSING OPTICIANS

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Termination under Sunset Law

§§41-3012.06.

- A. The State Board of Dispensing Opticians terminates on July 1, 2012
- B. Title 32, Chapter 15.1 is repealed on January 1, 2013

ARTICLE 1. ADMINISTRATION

§32-1671. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the state board of dispensing opticians.
2. "Direct supervision" means the provision of direction and control through inspection and evaluation of work by consultation or instruction as needed, provided that at least one licensed dispensing optician works at each optical establishment on a full-time basis.
3. "Dispensing optician" means any person, except as provided in section 32-1691, who dispenses lenses, contact lenses, frames, artificial eyes, optical devices, appurtenances thereto or parts thereof to the intended wearer on written prescription from a duly licensed physician or optometrist, and in accordance with such prescription interprets, measures, adapts, fits or adjusts the same for the aid or correction of visual or ocular anomalies of the human eye or who duplicates, replaces, reproduces or repeats the same without prescription when there is no change in refractive value, provided that contact lenses shall never be dispensed without a written contact lens prescription being on file in any optical establishment, office of an optometrist or office of a physician or verbal confirmation of that written prescription. The dispensing optician shall advise the intended wearer at the time that contact lenses are delivered to return to the prescribing physician or optometrist for evaluation and follow-up care.
4. "Optical establishment" means a physical location in which lenses, contact lenses, frames, artificial eyes, optical devices, appurtenances thereto or parts thereof are dispensed to the intended wearer on written prescription from a physician licensed pursuant to chapter 13 or 17 of this title or an optometrist licensed pursuant to chapter 16 of this title.
5. "Person" means a natural person.

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

- A. The state board of dispensing opticians is established consisting of seven members appointed by the governor. Five members of the board shall be licensees in good standing under this chapter. Two members of the board shall be public members.
- B. Each member shall serve for a term of five years expiring on the first day in January of the appropriate year. A member shall not serve for more than two complete consecutive terms.

- C. The board shall elect from among its membership a chairman and such other officers as it deems necessary, who shall hold their offices at the pleasure of the board.
- D. Members of the board are eligible to receive compensation in the amount of fifty dollars for each day of actual service in the business of the board.
- E. The governor may remove a board member from office if the governor determines that the member is guilty of malfeasance, misfeasance or dishonorable conduct.
- F. The board, the secretary-treasurer of the board and permanent and temporary board personnel are immune from civil liability for any act the board, its officers and board personnel perform in good faith and in furtherance of this chapter.

§32-1673. Powers and duties of the board

- A. The board shall adopt rules to administer and enforce this chapter. Rules adopted pursuant to this section shall include rules to specify the lawful scope of the practice of dispensing opticians and necessary evidence that may support a charge of substandard care rendered by a dispensing optician or an optical establishment.
- B. The board may:
1. Hire or contract with investigators to assist in the investigation of violations of this chapter.
 2. Hire employees and contract with other state agencies as necessary to carry out this chapter.
 3. In connection with board hearings and investigations, issue subpoenas for the attendance of witnesses and the production of books, records, documents and other necessary evidence.

32-1674. Records

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

ARTICLE 2. LICENSING

§32-1681. Licensure; issuance

- A. A person shall not practice as a dispensing optician in this state without a valid license issued pursuant to this chapter.

B. The board shall issue a license to any person who complies with the provisions of this chapter and board rules. All licenses expire at the end of each calendar year but do not expire while an application for renewal is pending before the board.

§32-1682. Applications for a dispensing optician license; original and renewal; examination

A. An applicant for licensure shall submit a verified application to the board on a form prescribed by the board. The application shall contain information the board determines is necessary to assist the board in determining the applicant's ability to meet the requirements of this chapter and board rules.

B. A person who wishes to renew a license shall submit a verified renewal application to the board each year on a form prescribed by the board. The renewal application shall contain information the board determines is necessary to assist the board in determining that the applicant is not in default of or in violation of this chapter or board rules and that the licensee continues to meet the requirements of this chapter.

C. The board may require from all applicants any additional information that in its judgment is necessary to assist the board in determining whether the applicant is entitled to initial or continued licensure.

D. To assist it in determining if an applicant has acquired the minimum basic skills required for optical dispensing, the board shall require a written and practical examination of all applicants for an initial license. This requirement does not apply to applicants who qualify pursuant to section 32-1683, paragraph 5, subdivision (a). The board may prescribe other reasonable rules relating to the examination of applicants as it determines necessary for the performance of its duties. The board may accept the results of a written or practical examination prepared by a nationally recognized body as determined by the board in lieu of those portions of an examination prepared by the board if they are at least substantially equivalent to those prepared by the board. The board may keep all procedures relating to the administration of the examination and the answer keys confidential.

§32-1683. Qualifications of applicants

An applicant for a license issued under this chapter shall:

1. Be of good moral character.
2. Not have been convicted of a crime involving moral turpitude.
3. Not be a former licensee under this chapter whose license was suspended or revoked and not subsequently reinstated.

4. Be a high school graduate or the equivalent as prescribed by rules of the board.
5. Establish that the applicant has the required technical skill and training necessary for licensing by any one of the following means:

(a) Submit evidence of having a valid and subsisting license in good standing from another state that licenses dispensing opticians or ophthalmic dispensers and whose requirements are substantially equivalent to the requirements of this chapter.

(b) Submit evidence of having served an apprenticeship in optical dispensing for three of the six years immediately preceding the date of application under the direct supervision of a dispensing optician, optometrist or an allopathic or osteopathic physician who holds an active license in good standing issued by any state. The apprenticeship must include all principal phases of optical dispensing in order to result in the applicant acquiring the minimum basic skills required for optical dispensing. The board may accept a maximum of one thousand hours of alternative optical laboratory experience toward satisfying the apprenticeship requirements if that experience meets the standards established by the board.

(c) Submit evidence of graduation from a school of optical dispensing that presently meets the standards required for approval by a nationally recognized body on opticianry accreditation as determined by the board. The applicant must also have served an apprenticeship in optical dispensing as prescribed in subdivision (b) for one of the six years immediately preceding the date of application.

(d) Submit evidence of having worked as a dispensing optician or having served as an apprentice to a dispensing optician, a physician or an optometrist in a nonlicensing state for three of the six years immediately preceding the date of application. This work or apprenticeship must include all principal phases of optical dispensing in order to result in the applicant acquiring the minimum basic skills required for optical dispensing.

§32-1684. License issuance, renewal and reinstatement

A. Within a reasonable time after the receipt of an original application or renewal application, together with the fee required by section 32-1685, the board shall investigate the qualifications of the applicant. The board shall approve the application if the applicant meets the qualifications of this chapter and board rules and shall allow the applicant for initial licensure to sit for the practical examination. The board shall issue a license if the applicant successfully completes this examination. If the board disapproves an original or renewal application it shall notify the applicant pursuant to section 32-1694, subsection A.

B. On or before December 31 of each year a licensee shall submit a renewal application on a form prescribed by the board. The licensee shall submit the renewal fee prescribed by section 32-1685 with the application.

C. A licensee who submits a renewal application and renewal fee after December 31 but before the following January 31 shall pay a late fee prescribed by section 32-1685 in addition to the renewal fee. The board may allow a licensee additional time to submit a renewal application if the licensee demonstrates to the board's satisfaction good cause to do so.

D. A license expires if it is not renewed before January 31 following the December 31 expiration date. A person who does not submit a renewal application, a renewal fee and a late fee before that date may submit an application for reinstatement on a form prescribed by the board within one year after the license expiration date. The applicant shall submit the renewal fee and a late fee prescribed by section 32-1685 with the application. The applicant shall take the state board practical examination. The applicant shall also take the national examinations if the applicant did not successfully complete those examinations before the applicant obtained the original license.

E. A person who does not submit a reinstatement application and applicable fees within one year after the license expiration date shall apply for licensure as an original applicant.

§32-1684.01. Optical establishment license; qualifications

A. Any person, corporation, company, partnership, firm, association or society that wishes to operate an optical establishment shall submit a verified application to the board on a form prescribed by the board. The application shall include the application fee and the following information:

1. The location of the proposed optical establishment.
2. The proposed business hours of the optical establishment.
3. The names and license numbers of the licensed dispensing opticians who work at the optical establishment.

B. An applicant for a license under this section shall provide evidence to the board's satisfaction that at least one licensed dispensing optician works at the optical establishment on a full-time basis.

C. Within thirty days after the receipt of an original application or renewal application and the application fee, the board shall investigate the qualifications of the applicant. If the applicant meets the qualifications of this chapter and board rules, the board shall approve the application and issue a license. If the application is disapproved, the board shall notify the applicant as provided in section 32-1694, subsection A.

D. To renew a license a licensee shall submit a renewal application to the board on or before June 30 of each year on a form prescribed by the board. The application shall include the applicable renewal fee and information the board deems necessary for it to

determine that the licensee continues to meet the requirements of this chapter and board rules.

E. A licensee that submits a renewal application and applicable fee after June 30 but before July 31 shall pay a late fee pursuant to section 32-1685 in addition to the renewal fee.

F. A license expires if a licensee does not submit a renewal application and renewal fee on or before July 31 pursuant to subsection E of this section. After that date the applicant shall apply for licensure as an original applicant.

§32-1685. Fees

- A. The board shall establish nonrefundable fees that do not exceed the following:
1. Filing an application for a dispensing optician license, two hundred dollars.
 2. Issuing an original dispensing optician license, two hundred dollars.
 3. Renewing a dispensing optician license, two hundred dollars.
 4. Late renewal of a dispensing optician license, two hundred dollars.
 5. Name change and issuance of a duplicate dispensing optician license, one hundred dollars.
 6. Reinstatement of a dispensing optician license, two hundred dollars.
 7. Filing an application for an optical establishment license, two hundred dollars.
 8. Issuing an original optical establishment license, one hundred dollars.
 9. Renewing an optical establishment license, one hundred dollars.
 10. Late renewal of an optical establishment license, two hundred dollars.
 11. Name or location change and issuance of a duplicate optical establishment license, one hundred dollars.
- B. The board may charge additional fees for services that the board deems are necessary to carry out this chapter and board rules. These fees shall not exceed the costs of rendering the services.

§32-1686. Board of dispensing opticians fund

- A. Before the end of each month, pursuant to sections 35-146 and 35-147, the board shall deposit ten per cent of all monies received by the board in the state general fund and deposit the remaining ninety per cent in the board of dispensing opticians fund.
- B. Monies deposited in the board of dispensing opticians fund are subject to section 35-143.01.

§32-1687. Continuing education

- A. All dispensing opticians licensed under this chapter shall satisfy a continuing education requirement in accordance with board rules.
- B. The board shall prescribe by rule the form and content of continuing education for dispensing opticians licensed under this chapter that is designed to educate the licensee in current developments, skills and procedures. Opticians may satisfy this continuing education requirement by home study courses or attending seminars and are not required to join a professional association of dispensing opticians in this state in order to fulfill the requirement. The rules shall establish the number of hours of continuing education required within a three-year period in an amount not to exceed twelve hours.

§32-1691. Exemptions of persons and sales

This chapter does not apply to:

1. Any physician or optometrist who is licensed to practice under the laws of this state.
2. Any person working under the direct supervision of a physician, optometrist or dispensing optician who is licensed to practice in this state, as long as the person is working exclusively for the licensed physician, optometrist or dispensing optician and does not claim to be a dispensing optician.
3. The sale of goggles, sunglasses, colored glasses or occupational protective eye devices, if they do not have refractive values.
4. The sale of complete ready-to-wear eyeglasses for near vision only, toys, binoculars or scientific instruments as merchandise.
5. The sale and fitting of ocular prosthetic appliances if they do not have refractive values.
6. The sale of replacement soft contact lenses as provided in chapter 16, article 5 and chapter 18 of this title.

§32-1691.01. Investigation and adjudication of complaints

- A. The board on its motion may investigate any evidence that appears to show the existence of any of the grounds for disciplinary action pursuant to section 32-1696.
- B. The board shall investigate the complaint of any person that appears to show the existence of any of the grounds for disciplinary action pursuant to section 32-1696. The board shall not disclose the name of the person who submitted the verified complaint unless that person's testimony is essential to the disciplinary proceedings conducted pursuant to this section.
- C. After a motion approved by the board or on receipt of a verified complaint, as provided in subsections A and B of this section, the chairman of the board or the chairman's designee shall either initiate an investigation or refer the complaint or motion to investigate to an investigative committee appointed by the board. The committee shall consist of both licensed dispensing opticians and lay persons who need not be members of the board.
- D. If an investigation is initiated the chairman or the chairman's designee shall appoint a member of the board to act as the investigative officer. Within ninety days after appointment, the officer shall conclude the investigation and make a written recommendation to the board on whether disciplinary action is appropriate and, if it is appropriate, the type of disciplinary action the board should take.
- E. If the matter is referred to an investigative committee, the committee shall investigate the charges and within ninety days after referral shall make a written recommendation to the board on whether disciplinary action is appropriate and, if it is appropriate, the type of disciplinary action it should take.
- F. The board shall make copies of the investigative officer's or investigative committee's report available to the complainant and to the licensed party.
- G. Within sixty days after receipt of the written report of the investigative officer or the investigative committee, the board shall issue preliminary findings based on the written report. If the board finds that the evidence would, if proved true, warrant suspension or revocation of a license issued under this chapter, formal proceedings for the revocation or suspension of the license shall be immediately initiated as provided in title 41, chapter 6, article 10. If the board finds that the evidence does not warrant suspension or revocation of a license, the board shall either dismiss the complaint or impose other lesser disciplinary action pursuant to section 32-1693.
- H. The board shall provide a copy of the preliminary order to the complainant and to the licensed party. Within fifteen days after receiving the copy either party may file a motion for a rehearing or review pursuant to title 41, chapter 6, article 10.

I. Any person who in good faith makes a report as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

J. The board may proceed against all licenses held by a person or optical establishment in common, even if held for different physical locations, if in the opinion of the board the seriousness of the complaint or other evidence received by the board so warrants.

§32-1693. Denial, suspension and revocation of license; other disciplinary sanctions

A. The board may deny the application of any applicant who fails to meet the qualifications prescribed by this chapter or board rules.

B. The board may take any combination of the following disciplinary actions against a licensee pursuant to section 32-1691.01:

1. Suspend or revoke the license. Suspension of a license shall be for a specified period not to exceed one year.

2. Enter a decree of censure. In entering a decree of censure the board may require that restitution be made to the aggrieved party.

3. Place a licensee on probation. In the issuance of an order fixing a period and terms of probation, the board shall be guided by such considerations as are necessary to protect the public health, safety and welfare and to rehabilitate the licensee.

4. Enter an order of restitution.

5. Impose a civil penalty of not more than one thousand dollars for each violation of this chapter or board rules.

C. Reapplication for a license after revocation shall be made in the same manner as the application for an original license and not sooner than two years after the date the board revoked the license.

D. Failure to comply with any final board order, including an order prescribed by this section, is cause for suspension or revocation of a license.

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

- A. When the board denies, suspends or revokes a license, it shall send notice of its action by registered mail to the applicant or licensee concerned, setting forth the reasons for the action taken.
- B. Within thirty days after the date of the notice, the applicant or licensee may request a hearing before the board pursuant to title 41, chapter 6, article 10.
- C. No applicant for original license may practice as a dispensing optician during the pendency of an appeal from a decision of the board. No licensee whose license is revoked or suspended or whose renewal application is refused by the board shall be denied the right to practice during the pendency of any appeal from a decision of the board.

§32-1695. Judicial review

Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

§32-1696. Unlawful acts; grounds for disciplinary action; classification

- A. It is unlawful to:
1. Obtain or attempt to obtain a license by fraud or misrepresentation or by knowingly taking advantage of a mistake of another person or agency.
 2. Hire, procure or induce a person to act as a licensed dispensing optician if the person is not licensed to practice as a dispensing optician.
 3. Give, pay or receive, or offer to give, pay or receive, directly or indirectly, any gift, premium, discount, rebate or remuneration to or from any physician or optometrist in return for the referral of patients or customers.
 4. Engage in false or misleading representations by knowingly and with the intent to sell to the public real or personal property or services, or to induce the public to acquire an interest in real or personal property or services, make and publish an advertisement, either printed or by public proclamation, or otherwise, containing any false, fraudulent, deceptive or misleading representations in respect to such property or services or the manner of sale or distribution.
 5. Provide any examination or treatment of the eye or advertise eye examinations without the disclaimer "by independent doctor of optometry", "by independent doctor of ophthalmology" or "by independent physician licensed pursuant to title 32, chapter 13 or 17, Arizona Revised Statutes".

6. Use any means to measure the refractive value of the human eye, except nonrefractive, nondiagnostic devices, such as a keratometer, ophthalmometer or other instrumentation that is required to fit a contact lens to an intended wearer.

7. Make use of any advertising statement of a character tending to indicate to the public superiority of any particular system or type of eyesight examination or treatment over that provided by other licensed ocular practitioners.

8. Fraudulently, dishonestly, illegally or unprofessionally conduct the practice of optical dispensing or engage in any conduct that would tend to do harm to the visual health of the public.

B. A person who violates this chapter or a board rule is subject to disciplinary action as prescribed in this article.

C. A person or licensee who violates subsection A, paragraph 1, 4, 5 or 8 is guilty of a class 1 misdemeanor. A person or licensee who violates subsection A, paragraph 2, 3, 6 or 7 is guilty of a class 2 misdemeanor.

§32-1697. Violations; classification

The practice of optical dispensing or operation of an optical establishment without a valid and subsisting license is a class 2 misdemeanor.

§32-1698. Prosecution of violations

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

§32-1699. Injunctions; civil penalties

A. If the board believes that a person has violated this chapter or board rules, the board may make application to the appropriate court for an order enjoining such acts or practices. Injunctive relief pursuant to this section is in addition to any other remedy prescribed by law.

B. The board may impose a civil penalty of not more than one thousand dollars against any person or entity acting without a license issued by the board in violation of this chapter.