

# Report To The Mississippi Legislature



## A Program Evaluation of the State Board of Optometry

July 14, 1998

The Legislature created the State Board of Optometry to protect the public from incompetent or negligent optometric practice. The board should protect the public through licensure and disciplinary procedures. With the highest incidence of visual impairment in the nation, Mississippi has an unusually high level of need for competent eye care services.

In evaluating the Board of Optometry, PEER found that:

- Although state law provides the board with authority to license and discipline optometrists, the law provides few options to the board against unlicensed practitioners. The law can pursue unlicensed practitioners' violations of optometry laws only through the courts.
- Although the board has ensured that licensed optometrists meet minimum competency standards, the board's qualifications and competency requirements may impose needless restrictions. For example, the board requires passage of a pharmacology exam which does not fully comply with standards for professional testing and duplicates an already required national board exam.
- The board's disciplinary processes are inadequate to protect the public. For example, the complaint processing procedure does not ensure public access and limits the board's capacity for effectively imposing penalties.
- The board has not maximized use of its limited resources to support its licensure and disciplinary functions. For example, the board has not required spending authority in the major objects corresponding to its needs.

**The PEER Committee**

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The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

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The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

**A Program Evaluation of the State Board of Optometry**

**July 14, 1998**

**The PEER Committee  
Mississippi Legislature**

The Mississippi Legislature

**Joint Committee on Performance Evaluation and Expenditure Review**

PEER Committee

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July 14, 1998

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On July 14, 1998, the PEER Committee authorized release of the report entitled **A Program Evaluation of the State Board of Optometry.**

A handwritten signature in cursive script, reading "Ezell Lee", written over a horizontal line.

Senator Ezell Lee, Chairman

**This report does not recommend increased funding  
or additional staff.**

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# A Program Evaluation of the State Board of Optometry

July 14, 1998

## Executive Summary

### Introduction

The Legislature created the Board of Optometry to meet the public's need for protection from incompetent or negligent optometric practice. With the highest incidence of visual impairment in the nation, Mississippi has an unusually high level of need for competent eye care services. The PEER Committee's evaluation of the Board of Optometry sought to answer specific questions concerning the board's operations.

### Conclusions

Following are the primary questions PEER pursued in the review, along with summary conclusions:

**How should the State Board of Optometry regulate the practice of optometry to ensure adequate protection of the public?**

*The State Board of Optometry should protect the public through licensure and disciplinary procedures.*

**Do state statutes protect the public and ensure accountability by providing the Board of Optometry with the authority needed to fulfill its regulatory responsibility and by ensuring public involvement in regulation?**

*Although the statutes provide the Board of Optometry the necessary authority to license optometrists and offer a wide range of disciplinary options for use by the board against optometrists, the statutes provide limited options for use by the board against the unlicensed practice of optometry. Also, the statutes do not require involvement of the public in the regulatory process.*

**Has the board regulated the licensure of optometrists in a way that ensures that optometrists meet and maintain all necessary quali-**

**fications and competency requirements without imposing needless restrictions?**

*Although the Board of Optometry has ensured that licensed optometrists meet the minimum standards of competence in areas central to the practice of optometry, the board has not adequately regulated the initial licensure of optometrists to ensure that optometrists meet necessary qualifications and other board competency requirements without imposing needless restrictions. Specifically, the board has not ensured that optometrists can apply the board's rules and regulations to practice-related situations or that optometrists have demonstrated the necessary skills needed for permanent licensure. Also, the board has imposed unnecessary requirements in the licensure application process and in the use of the pharmacology exam which may deny qualified optometrists the opportunity to practice in Mississippi, an underserved state.*

**Are the board's disciplinary procedures and practices adequate to protect the public from harm associated with incompetent or unlicensed practice?**

*The Board of Optometry's disciplinary processes are inadequate to protect the public from harm. The board relies on complaints as its primary source of information on incompetent or improper optometric practice, but it has not developed procedures for ensuring that the public can contact the board. Also, the board has relied on another state agency for legal assistance in protecting the public from unlicensed practice of optometry, but that agency has not consistently provided the investigative and prosecution services needed by the board.*

**Do the board's administrative practices, including planning, budgeting, and reporting, support its licensure and discipline regulatory functions?**

*The Board of Optometry has not maximized use of its limited resources to support its licensure and discipline functions.*

PEER gives details on each of these conclusions in pages 18 through 49 of the report.

## **Recommendations**

The following summarize PEER's legislative and administrative recommendations concerning the Board of Optometry. Appendix K, page 68 of the report, contains proposed legislation concerning the board.

1. The Legislature should amend MISS. CODE ANN. Section 73-19-105 to eliminate the requirement for the board to prepare and administer the pharmacology examination. The statute should require the board to administer examinations that measure job competency and are based upon professional testing standards.
2. To address the risk of injury to the consuming public due to opticians' unlicensed practice of optometry, the Legislature should consider either licensure, registration, or certification of opticians. (See page 50 of the report for details on these three options.)
3. The Legislature should amend state law to allow the board to suspend immediately the license of any optometrist who poses a clear and present danger to the public.
4. The Legislature should amend state law to require that the membership of the Board of Optometry include a member of the consuming public. The board should provide orientation and training to newly appointed non-optometrist members in order to emphasize their role on the board—to serve the public and ensure competent practice.
5. The Board of Optometry should revise the optometry licensure application form to eliminate the requirement for applicants to submit a letter of recommendation by a Mississippi licensed optometrist.
6. The Board of Optometry should require documentation of the knowledge and skills needed for the Phase II mentoring process and interview and establish standards for assessing the passage of Phase II for permanent licensure.
7. The Board of Optometry should revise its law examination procedures to comply with professional testing standards, such as those promulgated by the Council on Licensure, Enforcement, and Regulation (CLEAR).
8. The Board of Optometry should improve the public's access to the complaint process by establishing procedures to ensure that the public is aware of the complaint resolution process. The board should maintain a listing in local telephone directories and make information available to the public which describes the complaint process.
9. The Board of Optometry should comply with MISS. CODE ANN. Sections 73-19-33 through 73-19-45 by ensuring that complaint files are complete and well-organized. The board should develop procedures for training board members on how to conduct investigations and maintain complete files that include a sufficient level of evidence, prioritizing and timely processing of complaints, and receiving information from other state agencies or entities on violations of the Optometry Act and for referring complaints outside the board's jurisdiction to the proper entity for action. The board should also publish information on disciplinary actions taken against optometrists in a medium such as a newsletter.
10. The Board of Optometry and the Attorney General's Office should jointly develop a procedure for determining when the board should act on an allegation of unlicensed practice or when a case regarding unlicensed practice should be referred to the Attorney General's Office for investigation and prosecution. By January 1999, the board and the Attorney General's Office should report to the Legislature on their progress in developing and implementing procedures related to unlicensed practice.
11. The Board of Optometry should establish a procedure to update its regulations routinely to remain consistent with state law and current board practices.
12. In preparing its FY 2000 budget request, the Board of Optometry should transfer a portion of the funds currently in the contractual major object into the salaries and fringe benefits major object in order to hire administrative personnel for assisting the board in its regulatory responsibilities.
13. The Board of Optometry should request assistance from the Department of Finance and

Administration in developing administrative policies and procedures related to long- and short-term planning, preparing and submitting budget requests, maintaining accounts, receiving and depositing funds in the state Treasury, hiring and compensating employees, and collecting and reporting financial and performance data.

14. The Board of Optometry should request assistance from the State Department of Health's Division of Professional Licensure and Certification in developing procedures and material for training new board members.
15. The Board of Optometry should submit a report to the Legislature in January 1999 describing its progress in implementing the above recommendations related to developing administrative policies and procedures with the assistance of the Department of Finance and Administration and the Department of Health.
16. The House and Senate Public Health and Welfare committees should consider studying, or should ask the PEER Committee to study, the need for technical assistance to small regulatory bodies (e.g., the Board of Optometry and other boards with few licensees and low rev-

enue) which might experience difficulty in collecting revenue needed to carry out their regulatory responsibilities effectively. The study should develop alternative arrangements through which state agencies would provide free or affordable technical assistance services to small boards. These arrangements could include assistance related to planning and budgeting; office and meeting facilities; staff and board training; and, litigation.

17. The Board of Optometry and Board of Medical Licensure should jointly develop written recommendations for presentation to the Legislature in January 1999. These recommendations should specify how the boards plan to work together to: (a) determine the causes for the shortage of optometrists and ophthalmologists in Mississippi; and, (b) develop a plan for providing eye care services that meets the state's needs.
18. The Executive Director of the PEER Committee should refer copies of this report to the directors of the Department of Finance and Administration, the Department of Health, and the Board of Medical Licensure.

The report contains detailed recommendations on pages 50 through 55.

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# **A Program Evaluation of the State Board of Optometry**

## ***Introduction***

### **Authority**

The PEER Committee authorized a review of the Mississippi State Board of Optometry pursuant to the authority granted by MISS. CODE ANN. Section 5-3-57 et seq. (1972).

### **Purpose**

The review sought to address the following questions:

- How should the State Board of Optometry regulate the practice of optometry to ensure adequate protection of the public?
- Do state statutes protect the public and ensure accountability by providing the Board of Optometry with the authority needed to fulfill its regulatory responsibility and by ensuring public involvement in regulation?
- Has the board regulated the licensure of optometrists in a way that ensures that optometrists meet and maintain all necessary qualifications and competency requirements without imposing needless restrictions?
- Are the board's disciplinary procedures and practices adequate to protect the public from harm associated with incompetent or unlicensed practice?
- Do the board's administrative practices, including planning, budgeting, and reporting, support its licensure and discipline regulatory functions?

### **Method**

In conducting this review, PEER:

- reviewed statutes and rules and board policies, procedures, reports, meeting minutes, records, data, and other documentation;

- reviewed appropriation bills and budget requests;
- interviewed board members, state agency personnel, and representatives of other state boards and associations;
- reviewed literature and relevant publications and materials from other state boards and associations; and,
- reviewed calendar years 1996 and 1997 examination and complaint files.

### **Overview**

The Legislature created the State Board of Optometry in 1920 to meet the public's need for protection from incompetent or negligent optometric practice. With the highest incidence of visual impairment in the nation, Mississippi has an unusually high level of need for competent eye care services. To protect the public from the risks of injury and blindness that may result from incompetent eye care services, the board's regulation of optometry should ensure that optometrists meet and maintain certain qualifications and competency requirements, act in a professional and competent manner, and comply with the laws and regulations governing the profession. Given the necessary legal authority, the Board of Optometry should meet these regulatory needs through effective licensure and disciplinary practices.

The Legislature has provided the Board of Optometry with the necessary legal authority to ensure that optometrists are minimally qualified to provide optometric services. However, state law imposes an unnecessary provision for licensure by requiring the board to develop its own pharmacology test instead of permitting the board to rely on the pharmacology sections of a valid and reliable national examination.

State law provides sufficient authority to discipline optometrists as needed. However, the law does not grant the board administrative authority to discipline unlicensed practitioners, such as opticians who may violate optometry laws. The board can pursue cases of unlicensed practice in the courts, but it cannot take less costly administrative measures to discipline opticians who violate the law. Also, appointment of a member of the consuming public to the board could enhance its capacity for responding to public needs.

In the area of licensure, the board uses a valid and reliable test developed by the National Board of Examiners in Optometry as its primary licensing examination, which should ensure that optometrists are at least minimally qualified for practice. However, the board imposes needlessly restrictive licensing requirements, such as a requirement that applicants submit letters of recommendation (which the board does not systematically

assess to determine suitability for licensure) and a requirement that applicants take a pharmacology examination that does not meet professional testing standards. Also, the board requires applicants to take a law exam that does not adequately test practical applications of current rules and regulations. Finally, the board issues both temporary and permanent licenses, but lacks standard policies and procedures for assessing temporary licensees' qualifications for permanent licensure.

Concerning complaint handling and discipline, the board has not published a telephone listing and address for the public to use in filing complaints. If the public cannot readily file complaints, the board cannot effectively identify problematic licensees. Also, the board's lack of a well-organized system for assessing and processing complaints limits its capacity to impose effective penalties for incompetent practice, prosecute violations of law and regulation, and ultimately protect the public from harm. Also, the board has not developed procedures for processing complaints against unlicensed practitioners. As a result of these systemic problems, the public has not been protected from the risks associated with failure to comply with the state's optometry statutes.

Finally, the Board of Optometry has not maximized use of its limited resources to support its regulatory functions. Although the board has recognized its need for administrative staff and equipment, it has not requested spending authority in the major objects corresponding to its needs. Also, the board has not complied with a statutory reporting requirement and has not developed the information system it needs to determine the quality and timeliness of its licensure and complaint handling processes.

## ***Background***

### **History of Eye Care**

In the late 1800s, persons who specialized in eye care were called either ophthalmologists, if formally trained in medical school, or oculists, if eye care was learned through experience without the benefit of formal training. Two classes of opticians specialized in supplying customers with glasses. Dispensing opticians filled patients' prescriptions and today are known as opticians. Refracting opticians made their own determinations concerning the strength of glasses, making the prescription as well as dispensing the glasses. Over time, this type of practitioner became known as an optometrist. In 1901, Minnesota was the first state to formally recognize the practice of optometry, and all states had passed optometry laws by 1924. The original laws did not permit the use of drugs, as that was considered to be a medical skill.

### ***Expanded Scope of Practice***

In recent years with the arrival of contact lenses and easier to use diagnostic drugs, optometrists have sought to change their profession from prescribing and selling glasses to a full-fledged health care profession. This has resulted in states expanding the scope of practice by authorizing optometrists' use of diagnostic and therapeutic pharmaceutical agents. Since 1989 all states have authorized optometrists' use of diagnostic pharmaceutical agents (DPAs), which is a limited category of drugs used to enable a more thorough eye examination. This was followed by optometrists seeking the privilege of using topical or systemic drugs for treatment of eye disease or injury--therapeutic pharmaceutical agents (TPAs). As of 1997, all states allowed optometrists' use of TPAs. However, significant variance exists regarding the conditions that optometrists can treat and the drugs they can use.

To address the needs of the expanded scope of practice allowing optometrists' use of pharmaceutical agents, the curricula at universities and colleges of optometry have been devoting more attention to pharmacology, diagnosis, and treatment. Requirements for the doctor of optometry degree include completion of a four-year program at an accredited school of optometry preceded by at least three years of preoptometric study at an accredited college or university. Currently, sixteen schools of optometry in the U. S. are accredited by the Council on Optometric Education of the American Optometric Association that is recognized by the U.S. Department of Education (see Appendix A, page 57).



### *Federal Regulation*

Some commercial practices of optometry and ophthalmology are regulated by the Federal Trade Commission (FTC). The FTC's Ophthalmic Practice Rules (16 CFR, Part 456) state certain requirements concerning eye examinations and the dispensing of prescriptions for eyeglasses. The regulations state that it is an unfair act or practice for an optometrist or ophthalmologist to:

- fail to provide to the patient one copy of the patient's prescription immediately after the eye examination unless the patient has not paid for the eye examination and payment would have been required if no prescription for ophthalmic goods had been indicated;
- condition the availability of an eye examination on an agreement by the patient to purchase ophthalmic goods;
- charge a fee as a condition of releasing the eyeglass prescription; or,
- place on the eyeglass prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the optometrist or ophthalmologist for the accuracy of the eye examination or the accuracy of ophthalmic goods dispensed by another seller.

### *Regulation of Service Providers*

Currently, the field of eye care has three providers of service. In general, the optometrist examines eyes for vision problems and eye disease and can prescribe eyeglasses, contact lenses, vision therapy, and low-vision aids. An ophthalmologist is a physician who not only examines eyes for vision problems and disease but can also perform surgery, prescribe drugs, and treat diseases and injuries. Most states statutorily require optometrists to refer patients to ophthalmologists for eye conditions beyond the scope of their practice. Opticians can dispense, fit, and adjust eyeglasses, and in some states may fit contact lenses.

All states regulate optometrists and ophthalmologists through licensure and twenty-one states require opticians to be licensed. Two additional states have established systems for registering opticians (New Hampshire and Texas) and Colorado recently passed a bill that provides "title protection" to opticians certified by the American Board of Opticianry (ABO) and the National Contact Lens Examiners (NCLE). These are national not-for-profit organizations for certification of ophthalmic dispensers (i.e., opticians). The ABO certifies opticians who dispense and work with spectacles and the NCLE certifies those ophthalmic dispensers

who fit and work with contact lenses. Together, these organizations certify over half of the ophthalmic dispensers throughout the states. Appendix B, page 58, lists the states that require opticians to be licensed.

## **Eye Care in Mississippi**

### *Regulation of Service Providers*

Eye care services are provided in Mississippi by optometrists, ophthalmologists, and opticians. The Legislature created the Mississippi State Board of Optometry to regulate optometrists through licensure and discipline. Optometrists in this state treat eye disorders requiring topical medications only and visual acuity problems requiring corrective lenses. Any disorder of the eye requiring more diagnostic expertise and treatment and/or surgery must be referred to an ophthalmologist as provided in MISS. CODE ANN. Sections 73-19-107 and 73-19-161. The Mississippi State Board of Medical Licensure regulates ophthalmologists.

The state has not established a board for regulating and licensing opticians. As a result, anyone can refer to themselves as an “optician” to the public regardless of whether they have received national certification or met or demonstrated a minimum level of knowledge or skills in their general area of practice. However, the Legislature has referred to opticians in the Optometry Act in the following sections:

- MISS. CODE ANN. Section 73-19-61 states that licensed optometrists or ophthalmologists are the only persons authorized to dispense, fit, or prescribe contact lenses; however, an optical dispenser may fill the prescription provided the dispenser directs the wearer back to the prescribing optometrist or ophthalmologist.
- MISS. CODE ANN. Section 73-19-63 states that a person violating the contact lens provision (Section 73-19-61) is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$1,000 and/or imprisoned not less than six months nor more than one year.

### *Supply of Eye Care Professionals*

In 1990, Mississippi had a higher rate of visual impairment than any other state. (See Exhibit 1, page 7, for a comparison of the rate of visual impairment in southern states and Appendix C, page 59, for a comparison of all states.) As Exhibit 1 shows, 7.7% of Mississippi’s population over age sixteen has difficulty seeing words and letters, even when using corrective lenses. An additional 1.5% is unable to see words and letters at all. The proportion of Mississippians with visual impairments would be even higher if these figures included Mississippi residents with milder forms of visual impairment, such as those who can see without difficulty if they

**Exhibit 1**

**U.S. Census Bureau Estimates of the Prevalence of Functional Limitations in Seeing  
Among Persons 16 and Over, Southern States, 1990**

<b>State</b>	<b>Persons with Difficulty Seeing Words and Letters in Newspaper Print*</b>			<b>Persons Unable to See Words and Letters in Newspaper Print</b>		
	<b>Population</b>	<b>Percentage</b>	<b>Rank</b>	<b>Population</b>	<b>Percentage</b>	<b>Rank</b>
Alabama	216,475	7.15%	4	40,434	1.33%	4
Arkansas	132,016	7.52%	2	24,498	1.40%	3
Florida	721,588	7.14%	5	120,118	1.19%	8
Georgia	288,959	6.04%	13	49,951	1.04%	13
Louisiana	208,985	6.92%	6	37,146	1.23%	6
<b>Mississippi</b>	<b>143,960</b>	<b>7.72%</b>	<b>1</b>	<b>27,574</b>	<b>1.48%</b>	<b>1</b>
North Carolina	318,545	6.37%	12	55,805	1.12%	12
South Carolina	166,999	6.51%	11	29,248	1.14%	10
Tennessee	248,258	6.69%	9	44,824	1.21%	7
Texas	734,438	5.97%	14	117,861	0.96%	14

NOTE: \*Includes those who have difficulty seeing even when they use corrective lenses.

SOURCE: U.S. Census Bureau, as reported by Association for the Blind.

**Exhibit 2**

**Optometrists and Ophthalmologists per 100,000 Population, Southern States, 1995**

State	†1995 Population (1,000s)	Optometrists			Ophthalmologists		
		Registered*	Per 100,000 Population	Rank	Registered*	Per 100,000 Population	Rank
Alabama	4,253	404	9.50	40	215	5.06	40
Arkansas	2,484	274	11.03	32	133	5.35	36
Florida	14,166	1,507	10.64	35	1,077	7.60	9
Georgia	7,201	600	8.33	47	365	5.07	39
Louisiana	4,342	357	8.22	48	351	8.08	6
Mississippi	2,697	220	8.16	49	129	4.78	44
North Carolina	7,195	718	9.98	36	389	5.41	35
South Carolina	3,673	313	8.52	45	223	6.07	22
Tennessee	5,256	627	11.93	27	316	6.01	25
Texas	18,724	1,726	9.22	41	1,028	5.49	34

SOURCES: PEER analysis of the following:

†U.S. Department of Commerce, Bureau of the Census, Current Population Reports, Series P-25, No. 1095 at the national level, CPH-L-74 (1990 data); and forthcoming state level P-25 Reports.

\*American Optometric Association, "Supply of Eye Care Providers by State, 1995."

wear corrective lenses. Although the total number of Mississippi residents who need the services of eye care professionals is unknown, the proportion with severe impairments suggests a high level of eye care need in relation to the state's population.

With the nation's highest rate of visual impairment, Mississippi's need for qualified professionals to provide eye care is unusually high, but its supply of eye care professionals is among the lowest in the nation. Mississippi's supply of eye care providers is extremely low compared to other states, even when comparisons are based on the general population (not the population of the visually impaired). A 1989 U. S. Department of Health and Human Services report found that the distribution of optometrists had remained uneven throughout the states. In 1984, for instance, there were 11.8 optometrists per 100,000 population in the West, 11.1 in the Midwest, 9.9 in Northeast, and 8.0 in the South. In 1984, ten states, nine of them southern, had what the American Optometric Association terms a critical ratio of less than seven practicing optometrists per 100,000 population. By 1995, several southern states continued to have a lower number of optometrists per 100,000 population than other states. Specifically, Mississippi had the lowest ratio of the southern states (8.16 optometrists per 100,000 population) and ranked 49th among all states. Additionally, Mississippi had a lower rate of ophthalmologists compared to other states (ranked 44th). (See Exhibit 2, page 7, for the comparison of the number of optometrists and ophthalmologists in southern states and Appendix D, page 60, for a comparison of all states.)

### *Demographics and Income*

In 1997, Mississippi had 272 licensed optometrists (11 of the 272 optometrists held inactive licenses which allowed them to maintain licensure but did not allow active practice) and 163 licensed ophthalmologists (including both active and inactive licensure status). Additionally, Mississippi had 141 American Board of Opticianry certified opticians and 20 National Contact Lens Examiners certified opticians practicing in the state. As the state does not license opticians, the total number of individuals practicing as opticians could not be determined. See Exhibit 3, page 9, for additional demographic information on Mississippi optometrists and national median income for optometrists.

## **Regulation of Optometry in Mississippi**

### *Legislative History*

#### Board Creation and Optometry Defined

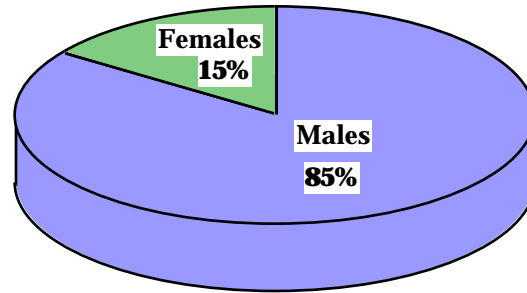
With passage of House Bill 194 in 1920, the Mississippi Legislature defined the practice of optometry and created the State Board of Optometry,

### Exhibit 3

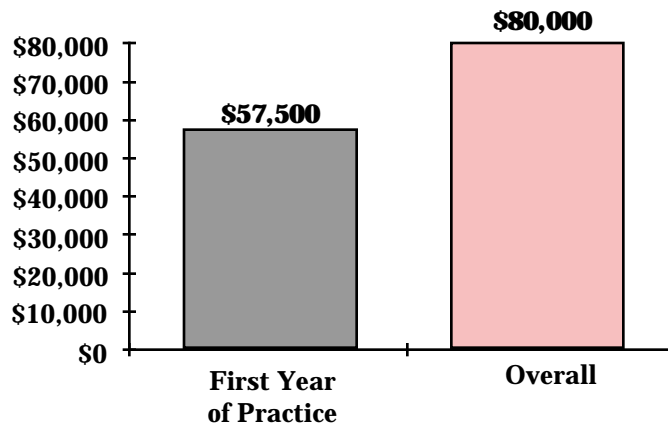
## Demographic Information on Mississippi Optometrists

### Gender and Average Age of Optometrists

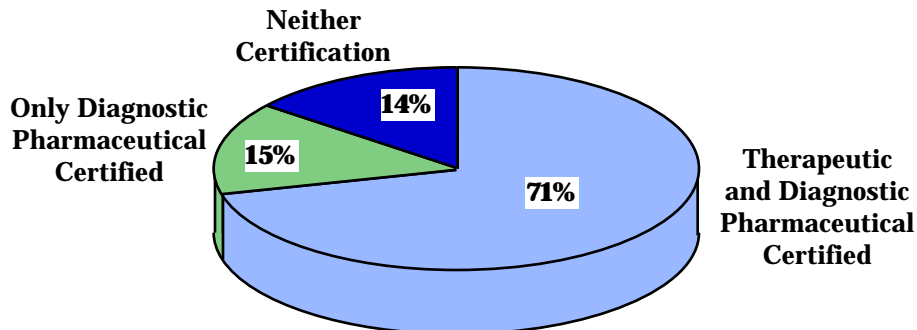
	<u>Average Age</u>
Males	47
Females	35
Overall	45



### First Year and Overall Median Income of Optometrists \*



### Optometrist Certification



SOURCE: PEER analysis of the following: Board data of optometrists licensed to practice as of April 1998;  
\*American Optometric Association information on national optometric income for 1996.

with authority to regulate optometrists through licensure and discipline. Codified as Sections 73-19-1 through 73-19-45, the measure also established penalties for violation of state optometry laws and prohibited the practice of optometry without a license. Section 73-19-1 defined the practice of optometry as:

*. . .the application of optical principles, through technical methods and devices in the examination of human eyes for the purpose of ascertaining departures from the normal, measuring their functional powers and adapting optical accessories for the aid thereof.*

The Legislature re-enacted this definition in 1983 and 1991 without substantial change.

### Use of Pharmaceuticals in Optometric Practice

Under Mississippi law, optometrists traditionally have been strictly prohibited from any practice which could be considered the province of a duly licensed medical doctor, including the use of any pharmaceutical substance which could be considered diagnostic or treatment-oriented (Section 73-19-27). That changed in 1982, when the Mississippi Legislature enacted House Bill 475, which authorized the use of “diagnostic pharmaceutical agents” such as topical anesthetics and dyes. Licensed optometrists willing to fulfill additional educational and examination requirements could gain the certification necessary to use DPAs in their practice (Sections 73-19-101 through 73-19-111). In 1994, House Bill 1859 authorized Mississippi optometrists to use “therapeutic pharmaceutical agents,” or TPAs. Certification to use TPAs also requires additional education and testing, as well as additional clinical training (Sections 73-19-151 to 73-19-165). Licensed optometrists who are certified to use TPAs are held to the same standard of care in their use and prescription as is a licensed medical doctor (Section 73-19-159).

### Contact Lenses

Mississippi law had no specific reference to contact lenses until 1987, when the Legislature enacted Senate Bill 2464. In the absence of specific language restricting the prescribing and fitting of contact lenses, optometrists were able to fit, dispense, and prescribe contact lenses. With the passage of Senate Bill 2464, Sections 73-19-61 through 73-19-65 made it unlawful for anyone but licensed optometrists or ophthalmologists to fit, dispense, or prescribe contact lenses, but these sections allow an optical dispenser to fill the prescription provided they direct the wearer back to the prescribing optometrist or ophthalmologist. The Board of Optometry is granted jurisdiction to seek legal relief to stop unlicensed practitioners in Sections 73-51-1 through 73-51-5.

## Other Statutory Changes

Organizationally, the most significant statutory changes in the optometry laws occurred in 1991 with passage of Senate Bill 2200. This measure expanded, clarified, and enhanced the Board of Optometry's mandate to regulate the profession. The changes described the process to be followed when a complaint is lodged against a licensed optometrist, from receipt of the initial complaint through investigation, notice, hearing and appeal (Sections 73-19-33 through 73-19-45). This law further detailed the range of actions for which disciplinary action could be taken (Section 73-19-23), as well as the sanctions (Section 73-19-43) available to the board. In 1996, Senate Bill 2070 provided for suspension of the license of any Mississippi optometrist upon notice that the licensee had failed to comply with a valid court order for payment of child support (Sections 73-19-23 and 73-19-43). In 1997, Senate Bill 2164 amended Section 73-19-19 to require that licensees provide their Social Security numbers.

### *Organization and Responsibilities*

The Mississippi State Board of Optometry is an autonomous licensing board, operating independently of a centralized agency. Throughout the history of state licensure, the primary mechanism for administering regulatory statutes has been through boards composed of members of the licensed profession. In other instances, some boards are administered by a centralized agency. Although the number of states centralizing the regulatory function has increased in recent years, the role of the boards and agency administrators varies dependent on the states' enabling legislation. Many of the states with centralized regulatory activities use a model in which boards retain considerable decision-making authority, but the centralized agency oversees much of the day-to-day operations. A 1989 U. S. Department of Health and Human Services study noted that approximately 60% of state optometry boards are part of a centralized state agency which often provides administrative and investigative assistance.

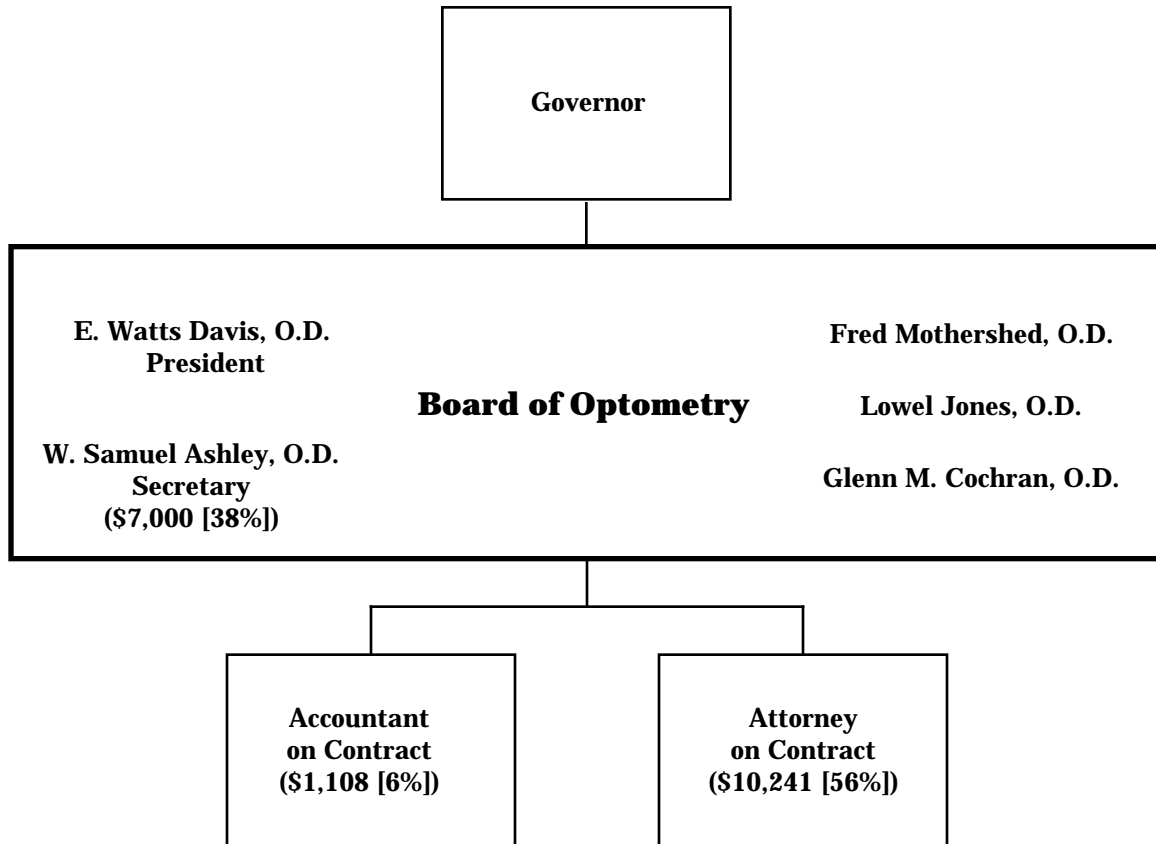
The Mississippi State Board of Optometry is composed of five optometrists, appointed by the Governor from each of the congressional districts. The members must be nominated by, or be a member of, the Mississippi Optometric Association. The board elects annually from its membership a president and a secretary. The member designated as Board Secretary performs administrative duties and receives an annual salary fixed by the board. The board contracts for legal and accounting services. Exhibit 4, page 12, shows the Board of Optometry's organizational chart.

In accordance with MISS. CODE ANN. Section 73-19-1 et seq., the Mississippi State Board of Optometry regulates the practice of optometry



**Exhibit 4**

**Organizational Chart for the Mississippi State Board of Optometry and FY 1997 Personnel Service Expenditures  
(Total FY 1997 Personnel Service Expenditures = \$18,349)**



**SOURCE:** PEER analysis of board records and budget request for fiscal year ending June 30, 1999.

primarily through licensing and disciplining optometrists. The board sets the minimum standards for practice in Mississippi by:

- examining and issuing licenses to qualified applicants;
- promulgating rules governing the practice and conduct of optometrists; and,
- processing complaints, holding hearings, and taking disciplinary action against optometrists who violate the statutes or rules.

The board also has the authority in Sections 73-51-1 through 73-51-5 to seek legal relief to stop unlicensed practitioners.

### *Revenues and Expenditures*

Licensing and examination fees, which are deposited into the state Treasury, fund the Board of Optometry's operations. The major source of revenue is the biennial renewal fee imposed on practicing optometrists.

Compared to boards with larger numbers of licensees, licensing boards with few licensees have more difficulty keeping fees low and maintaining sufficient revenue for covering the costs associated with a regulatory program, including valid examinations and effective complaint investigation. Possibly in an effort to compensate for its small base of licensees (272 licensed optometrists in 1997), the board's license renewal fees are among the state's highest. (See Exhibit 5, page 14.)

Although Mississippi optometrists' renewal fees are high in comparison with those of other Mississippi licensing boards, the license renewal fees of the Board of Optometry are similar to those of other southern state optometry boards. In 1995, the board increased its biennial renewal fee from \$200 to \$400. PEER surveyed ten other southern state optometry boards and found that minimum biennial license renewal fees range from \$180 to \$680. (See Exhibit 6, page 15.) In addition to Mississippi, four other southern state optometry boards require most optometrists to pay a minimum biennial license renewal fee of at least \$400 (\$520 Alabama, \$400 Louisiana, \$480 North Carolina, and \$680 Texas). (In some of these states, fees are lower for optometrists whose practices are limited [e.g., by the lack of certification to use therapeutic agents].)

The Legislature makes no appropriations of state general funds for the board's operations. However, as the board is subject to the state budget process, the Legislature does authorize its expenditures. Exhibit 7, page 16, shows that the board's expenditures for fiscal years 1993 through 1997 have not exceeded the amounts authorized by the Legislature. Exhibit 8, page 16, shows that the board has had excess revenue over expenditures in license renewal years and has spent more than it has collected during non-license

**Exhibit 5**

**Comparison of License Renewal Fees and Number of Licensees for Selected Mississippi Licensing Boards, 1997**

<b>Board</b>	<b>Number of Licensees</b>	<b>License Renewal Period</b>	<b>Minimum Biennial License Renewal Fee</b>	<b>Detailed Explanation of Number of Licensees and License Renewal Fee</b>
Dental Examiners	3,553	One year	\$300*	3,553 consists of dentists (generalists or specialists), hygienists, and dental assistants who held active licenses as of June 9, 1998; specialists pay \$200, generalists pay \$150, hygienists pay \$50, and assistants pay \$20 annually for license renewal
Medical Licensure	7,551	One year	\$200	7,551 consists of active and inactive licensees; physicians pay \$100 annually for license renewal
Nursing	37,655	Two years	\$50	37,655 consists of active and inactive licensees for registered nurses and practical nurses; registered and practical nurses pay \$50 biennially for license renewal
Pharmacy	3,276	Two years	\$205	3,276 consists of active and inactive licensees; pharmacists pay \$205 biennially for license renewal
Optometry	272	Two years	\$400	272 consists of both active and inactive licensees; optometrists pay \$400 biennially for license renewal

NOTES: \*Dentists who are generalists pay \$300 biennially for license renewal.

SOURCE: PEER interviews with representatives of other selected Mississippi health licensing boards.

**Exhibit 6**  
**Comparison of License Renewal Fees for**  
**Selected Southern States, 1998**

<b>State</b>	<b>License Renewal Period</b>	<b>Biennial License Renewal Fee</b>	<b>Explanation of License Renewal Fee</b>
Alabama	One year	\$320	\$160 for annual non-pharmaceutical license; \$260 for annual pharmaceutical license; (\$320 at minimum biennially -- as most optometrists are pharmaceutical certified, they pay \$520 biennially)
Arkansas	One year	\$200	\$100 for annual non-pharmaceutical license; \$150 for annual pharmaceutical license; (\$200 at minimum biennially -- as most optometrists are pharmaceutical certified, they pay \$300 biennially)
Florida	Two years	\$305	\$305 for biennial license; \$405 for biennial license for optometrists with more than one office location; (\$305 at minimum biennially)
Georgia	Two years	\$200	\$200 for biennial license
Louisiana	One year	\$200	\$100 for annual non-pharmaceutical license and/or diagnostic pharmaceutical license; \$200 for annual therapeutic pharmaceutical license; (\$200 at minimum biennially -- as most optometrists are therapeutic certified, they pay \$400 biennially)
Mississippi	Two years	\$400	\$400 for biennial license
North Carolina	One year	\$480	\$240 for annual license; plus \$45 for each additional office location; plus \$25 if registered as a professional corporation; (\$480 at minimum biennially)
Oklahoma	One year	\$300	\$150 for annual license
South Carolina	One year	\$180	\$90 for annual license of each office location; (\$180 at minimum biennially if only one office location -- as most optometrists have only one office location, they pay \$180 biennially)
Tennessee	Two years	\$240	\$240 for biennial license
Texas	One year	\$680	\$340 for annual license

SOURCE: PEER interviews with representatives of other state optometry boards.

**Exhibit 7**

**Board of Optometry, Appropriations and Expenditures, Fiscal Years 1993-1997**

	Fiscal Year				
	1993	1994	1995	1996	1997
<b>APPROPRIATIONS</b>					
Personnel	5,000	5,000	5,000	5,000	5,000
Travel	5,000	4,000	4,000	4,000	4,000
Contractual Services	23,000	27,800	27,800	41,320	44,820
Commodities	1,000	1,000	1,000	1,000	1,000
Equipment	0	2,500	2,500	7,500	4,000
Subsidies, Loans, & Grants	0	0	0	0	0
<b>Total Appropriations</b>	<b>34,000</b>	<b>40,300</b>	<b>40,300</b>	<b>58,820</b>	<b>58,820</b>
<b>EXPENDITURES</b>					
Personnel	1,783	680	2,110	400	280
Travel	3,760	2,015	4,584	987	1,021
Contractual Services	23,056	20,775	31,022	22,884	18,439
Commodities	316	60	866	870	26
Equipment	0	0	0	800	0
Subsidies, Loans, & Grants	0	0	0	0	0
<b>Total Expenditures</b>	<b>28,915</b>	<b>23,530</b>	<b>38,582</b>	<b>25,941</b>	<b>19,766</b>
<b>Expenditures (over) or under Appropriations</b>	<b>\$5,085</b>	<b>\$16,770</b>	<b>\$1,718</b>	<b>\$32,879</b>	<b>\$39,054</b>

SOURCE: Agency appropriation bills for fiscal years 1993 through 1997 and agency budget requests for fiscal years ending June 30, 1995, through June 30, 1999.

**Exhibit 8**

**Board of Optometry Cash Flow Analysis, Fiscal Years 1993-1997**

	Fiscal Year				
	1993	1994	1995	1996	1997
<b>Beginning Cash Balance</b>	<b>25,230</b>	<b>12,315</b>	<b>21,072</b>	<b>3,692</b>	<b>90,212</b>
<b>Revenues (Fees)</b>	<b>16,000</b>	<b>32,287</b>	<b>21,202</b>	<b>112,461</b>	<b>8,582</b>
<b>Expenditures</b>	<b>28,915</b>	<b>23,530</b>	<b>38,582</b>	<b>25,941</b>	<b>19,766</b>
<b>Expenditures (over) or under Revenues</b>	<b>(12,915)</b>	<b>8,757</b>	<b>(17,380)</b>	<b>86,520</b>	<b>(11,184)</b>
<b>Ending Cash Balance</b>	<b>\$12,315</b>	<b>\$21,072</b>	<b>\$3,692</b>	<b>\$90,212</b>	<b>\$79,028</b>

SOURCE: Agency budget requests for fiscal years ending June 30, 1995,  
through June 30, 1999.

renewal years, a practice permitted by state law. (As a special fund agency, the Board of Optometry is authorized to carry over excess funds.) Overall, the board has been self-supporting and should experience increasing revenues as a result of raising the biennial license renewal fee.

As previously discussed, the board pays an annual salary to the board member who is designated the Board Secretary to perform administrative duties and contracts for legal and accounting services. As show on Exhibit 4, page 12, expenditures for these personnel services during Fiscal Year 1997 totaled \$18,349 (secretary salary was \$7,000, legal fees were \$10,241, and accounting fees were \$1,108). Legal fees continue to be the board's major expenditure. Currently, the board has a contract for legal services with the law firm Chinn and Associates which contains provisions to compensate the firm at a rate of \$100 per hour for services provided by attorneys and \$50 per hour for paralegal services. The board has no part-time or full-time employees in addition to board members or contracted personnel.

## *Conclusions*

### **Need for Regulation**

**How should the State Board of Optometry regulate the practice of optometry to ensure adequate protection of the public?**

*The State Board of Optometry should protect the public through licensure and disciplinary procedures.*

### *Potential Harm*

Misdiagnosis, negligence, or improper treatment by optometrists, as well as the unlicensed practice of optometry, can cause blindness or death. Recent amendments to the law authorizing optometrists' use of pharmaceutical drugs have increased the potential danger. Serious vision and health problems could result if optometrists are not knowledgeable or trained in using pharmaceutical drugs or if they are not qualified to detect eye pathology and make appropriate referrals to physicians. The most serious error that can occur with the use of diagnostic pharmaceutical agents is that an optometrist will fail to detect a disease or a condition. That disease or condition will then take its course without help or hindrance from the optometrist. The most serious error that can occur with the use of therapeutic pharmaceutical agents is that the condition can be misdiagnosed and improper treatment applied, which can exacerbate the condition or the disease and hasten its course, resulting in blindness and even death. As a result, many states require optometrists to refer patients to physicians when they recognize ocular abnormalities or evidence of systemic diseases that do not improve or are beyond the scope of the optometrist's ability to treat.

The potential for harm is also reflected by the marked increase in the number of malpractice suits against optometrists. An American Academy of Ophthalmology review of malpractice cases that occurred during 1980 through 1993 showed instances in which patients suffered partial or total blindness due to a practitioner's failure to diagnose, diagnostic error, or negligent or improper treatment. Additionally, the fitting of contact lenses is another potential area of harm, as a contact lens that does not fit properly can cause injury. Optometrists argue that contact lenses must be fitted properly, a process that may take several attempts. Examinations of the eye are required to determine how the patient is adapting to the lenses. Also, the patient must be taught proper care of the contact lens, safe removal, and maximum time to wear them without removal. Even if all of these concerns are addressed, the patient may receive a contact lens that is the wrong prescription, wrong size, or, in the worst case, torn or defective. In the latter case, serious eye infection can develop.



To protect the public from these risks, the state should regulate the practice of optometry. Licensing of an occupation is warranted for such reasons as:

- there exists an identifiable potential danger to public health, safety, or welfare from the conduct of the profession;
- the parties subject to harm are members of the consuming public; and,
- the potential harm is one against which the public cannot reasonably be expected to protect itself, such as in the highly technical and complex fields of medicine or law.

Furthermore, the focus of protection should be the consuming public and not the related occupation or profession itself. Consequently, due to the complex and technical nature of the profession and the need to protect the public's health, safety, and welfare, the practice of optometry should be regulated. Without regulation, consumers would not have the information they need to judge the quality of optometric services.

#### *Framework for Regulation: Licensure and Discipline*

The state's regulation of optometry should ensure that optometrists meet and maintain certain qualifications and competency requirements, act in a professional and competent manner, and comply with laws and regulations governing the profession. Boards regulate the practice of optometry primarily through licensing and disciplining optometrists. Optometry board activities related to licensure should involve examining applicants to ensure they have the knowledge and skills needed to practice optometry and requiring continuing education for license renewal. Additionally, boards should establish disciplinary procedures and practices adequate to protect the public from harm associated with incompetent or unlicensed practice. The state's regulation of optometry should be administered in a manner that supports its licensure and disciplinary regulatory functions through proper planning, budgeting, and reporting. The public should also have input on licensure and disciplinary functions, as the primary purpose of regulation is to protect the public.

#### **Adequacy of State Law**

**Do state statutes protect the public and ensure accountability by providing the Board of Optometry with the authority needed to fulfill its regulatory responsibility and by ensuring public involvement in regulation?**

*Although the statutes provide the Board of Optometry the necessary authority to license optometrists and offer a wide range of disciplinary*

*options for use by the board against optometrists, the statutes provide limited options for use by the board against the unlicensed practice of optometry. Also, the statutes do not require involvement of the public in the regulatory process.*

### *Licensure*

- Do state statutes establish the necessary licensure requirements and provide the authority needed by the Board of Optometry to regulate the licensure of optometrists without imposing unnecessary requirements?

*Mississippi's statutes establish the necessary licensure requirements and provide the authority needed by the Board of Optometry to regulate the licensure of optometrists, but some testing provisions are so specific that they require the board to develop its own test in addition to using existing examinations.*

The statutes provide the board with the necessary licensure requirements and authority needed to regulate the licensure of optometrists. MISS. CODE ANN. Section 73-19-1 et seq. states applicant entry qualifications, skill areas to be examined, examination fees, test retake procedures, and procedures for licensing out-of-state optometrists. The board is given the authority to decide how it will assess the application entry qualifications and the skills needed for optometric practice in Mississippi.

The statutes also establish additional education and examination requirements for certification to use diagnostic and therapeutic pharmaceutical agents. MISS. CODE ANN. Section 73-19-105 states that upon successful completion of educational requirements, any optometrist or applicant who desires certification to use DPAs (diagnostic pharmaceutical agents) shall pass an examination prepared in consultation with the boards of medical licensure and pharmacy and administered by the Board of Optometry.

By specifying that the examination on use of DPAs be prepared and administered by the Board of Optometry, the statutes require the board to develop its own test to measure applicants' knowledge of optometric pharmacology. (See report page 33 for a discussion of problems related to the validity of the board's pharmacology examination.) This requirement limits the board to the development and administration of a board examination instead of or in addition to using an existing national exam that validly assesses the knowledge and skills needed for DPA certification.

## *Discipline*

- Do the statutes provide the authority needed by the Board of Optometry to protect the public from harm related to the licensed or unlicensed practice of optometry?

*Although they provide a wide range of disciplinary options for use by the Board of Optometry against licensed optometrists, the statutes provide limited options for use by the board against the unlicensed practice of optometry.*

### Licensed Optometrists

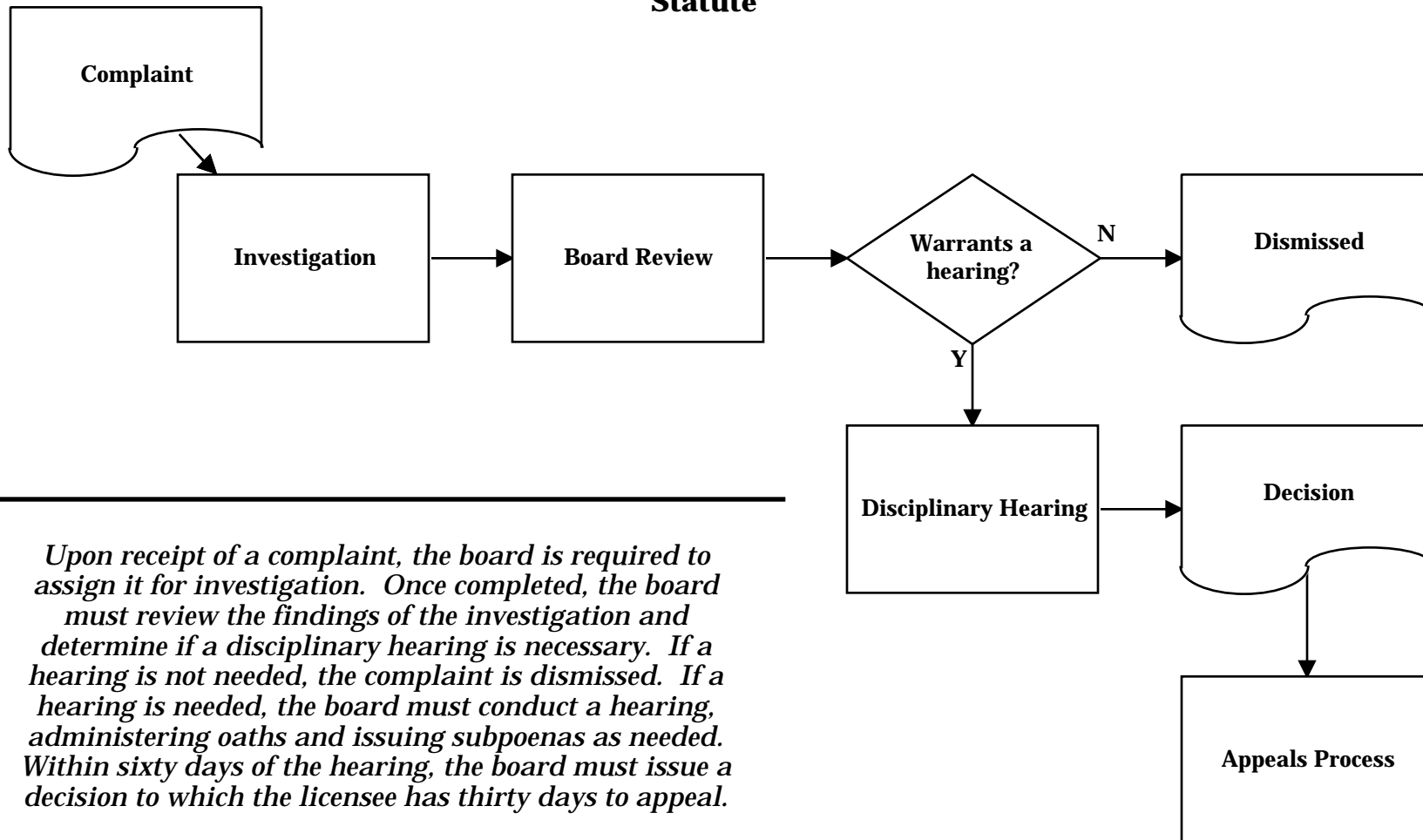
The statutes provide the Board of Optometry with sufficient enforcement authority by providing the board with a wide range of administrative disciplinary options for use against optometrists, as well as the authority to refer a case against an optometrist to the county prosecuting attorney for prosecution as a misdemeanor. The statutes provide the board with procedures for handling complaints, the board's primary source of information on violations of laws or regulations by optometrists. The procedures allow the board to administer oaths and issue subpoenas, as shown in Exhibit 9, page 22, and provide a wide range of disciplinary actions that may be taken against an optometrist once a determination is made that there has been a violation of the law or board rules. Exhibit 10, page 23, describes the sanctions available to the board for disciplining optometrists. As a violation of the Optometry Act is considered a misdemeanor, alleged violations can also be referred by the board to the county prosecuting attorney for prosecution as a misdemeanor. However, the statutes do not provide the board with the authority to suspend immediately the license of an optometrist who poses a clear and present danger to the public. Such authority is provided to the Mississippi State Board of Medical Licensure under Section 73-25-63, which states that the board may temporarily suspend a physician's license pending a hearing if the evidence clearly supports the determination that a licensee's continuation in practice would constitute an imminent danger to public health and safety.

### Unlicensed Practice

A combination of civil and criminal remedies against persons who are engaged in unlicensed practice of a profession provides the board with regulatory authority to protect against injury to the public health that could occur from the unauthorized practice of optometry. However, the statutes provide the board with no authority to take administrative disciplinary action in cases of unlicensed practice. Regulatory boards sometimes use administrative disciplinary options instead of civil and criminal remedies to avoid the high costs and delays that can be associated with litigation.

## Exhibit 9

### Major Steps in the Optometry Board's Complaint Process, as Required by Statute



SOURCE: MISS. CODE ANN. Sections 73-19-33 through 73-19-45.

## Exhibit 10

### Sanctions Available to the Optometry Board for Disciplining Optometrists

<i>Type of Sanction</i>	<i>Description</i>
<b>Suspension</b>	The licensee is not permitted to practice for a specified period.
<b>Revocation</b>	The optometrist's license is involuntarily terminated.
<b>Probation</b>	Conditions are imposed upon an licensee's practice. Once a specified period has elapsed, the licensee may resume unconditional practice.
<b>Restricted License</b>	A reduction in the licensee's permitted scope of practice.
<b>Public or Private Reprimand</b>	The board makes a public or private statement of displeasure concerning the licensee's behavior (e.g., through issuance of a warning letter).
<b>Fine</b>	A monetary penalty imposed by the board for violating the law or rules.

SOURCE: MISS. CODE ANN. Sections 73-19-33 and -45.

**Exhibit 11**  
**Membership of State Optometry Boards**  
**for Selected Southern States, 1998**

State	Board Membership		
	Optometrists	Public Citizens	Total Members
Alabama	7	0	7
Arkansas	5	2	7
Florida	5	2	7
Georgia	5	1	6
Louisiana	5	0	5
Mississippi	5	0	5
North Carolina	5	2	7
Oklahoma	4	1	5
South Carolina	5	2	7
Tennessee	5	1	6
Texas	6	3	9

NOTE: Of the 11 states reviewed, 8 state optometry boards (73%) require public board members.

SOURCE: PEER interviews with representatives of other state optometry boards.

MISS. CODE ANN. Section 73-51-1 provides a civil remedy by authorizing regulatory boards such as the Board of Optometry to seek injunctions against unlicensed practice. That section states:

*An action for an injunction may be brought and maintained in the name of any state board authorized to hold examinations and grant licenses to practice any profession to enjoin and prohibit any person from the practice of any profession required to be licensed by said board, when such person is practicing said profession and has not been granted a license therefor.*

The Board of Optometry could exercise this statutory authority by, for example, seeking an injunction to stop an optician from measuring the strength of eyeglasses to determine the prescription strength needed for contact lenses. Creating “prescriptions” in this way could result in harm to the patient from incorrectly fitted lenses. This practice is tantamount to practicing optometry without a license, because only optometrists and ophthalmologists may prescribe contact lenses. Another example of practicing without a license would be the case of an optician who dispenses contact lenses without instructing the customer to return to the prescribing optometrist for fitting. The board could seek an injunction to require that an optician discontinue such a practice. The board has identified cases in which opticians have engaged in the unauthorized practice of optometry and has pursued injunctions against such unlawful activities.

In addition to the injunction option as a civil remedy for cases involving practicing without a license, the Board of Optometry also has the option of a criminal remedy. The board is authorized to refer a case to a county prosecuting attorney for prosecution as a misdemeanor. (Additional discussion of the board’s efforts to deter unlicensed practice by opticians is found at page 42.)

Although state law authorizes the board to pursue the unlicensed practice of optometry through the courts, state statutes provide the board with no administrative disciplinary authority over opticians, the practitioners who are most commonly the subjects of complaints related to the unlicensed practice of optometry. The board is authorized to impose administrative disciplinary actions, such as suspension or revocation of licenses, on optometrists who violate optometry laws. Administrative disciplinary options offer a remedy for violation of optometry laws without the expenses associated with court action. Because opticians are not subject to licensure, the Board of Optometry cannot impose administrative actions on those who violate optometry laws or regulations. In the absence of administrative options, the board can pursue unlicensed practitioners’ violation of optometry laws only through the courts.

### *Public Participation*

- Do state statutes protect the public and promote accountability by ensuring public involvement in regulation of optometry?

*The optometry statutes omit any requirement that the public be represented in the regulatory process. The Board of Optometry's membership is restricted to optometrists, whose primary interest may be to promote the profession instead of protecting the public.*

Mississippi has no statutory requirement that a member of the general public be appointed to serve on the Board of Optometry. MISS. CODE ANN. Section 73-19-7 states that the board's composition is to consist of five optometrists engaged in the practice of optometry for five years preceding his or her appointment by the Governor. A board that is at least partially composed of practitioners is a reasonable approach to regulating optometrists. For example, the processing of complaints, which is the primary method for disciplining optometrists, is often complex. Complaint handling involves the review of procedures, practices, and records related to treatment and management of eye disease and disorders to determine whether a violation of the act or harm to the public has occurred. Such deliberations require assessment by members of the profession trained in the discipline that is in question.

Although optometry regulatory boards typically are composed primarily of members of the regulated profession, most of these boards also include one or two members of the consuming public. A 1989 U. S. Department of Health and Human Services study reports that at least 70% of the states have one or more public members on their optometry boards. Of the ten other southern state optometry boards PEER surveyed, most (80%) required one or more members of the consuming public in addition to practitioners. (See Exhibit 11, page 23.) Since the purpose of regulating optometry is to protect the public, the public should have a say in how it wants to be protected. Such a requirement would prevent practices that might be advantageous to the profession but not be in the consumer's best interest. Additionally, board members from the consuming public can help to ensure that the board establishes public information programs for effectively communicating important information to the public--e.g., how to file a complaint about a practice that seems harmful or unethical.

### **Adequacy of the Board's Licensure Processes**

Licensure of optometrists involves the examination of applicants for permanent practice and the completion of additional education classes for continued practice. Adequate licensure ensures that applicants meet and maintain minimal competency requirements for practice without requiring invalid or unnecessary certification steps which may restrict competent optometrists from practice. In Mississippi, where visual impairment rates



are unusually high and where relatively few eye care professionals are available to provide services, needless restrictions are particularly undesirable. (See report page 6 for a discussion of Mississippi's eye care services.)

Because Mississippi has relatively few eye care professionals available to provide services to the population, PEER sought to determine the adequacy of the board's initial licensing practices. Initial licensure includes the board's review of applicants' entry qualifications and examination of applicants for permanent practice.

**Has the Board of Optometry regulated the initial licensure of optometrists in a way that ensures that optometrists meet all necessary qualifications and competency requirements without imposing needless restrictions?**

*Although the Board of Optometry has ensured that licensed optometrists meet the minimum standards of competence in areas central to the practice of optometry, the board has not adequately regulated the initial licensure of optometrists to ensure that optometrists meet necessary qualifications and other board competency requirements without imposing needless restrictions. Specifically, the board has not ensured that optometrists can apply the board's rules and regulations to practice-related situations or that optometrists have demonstrated the necessary skills needed for permanent licensure. Also, the board has imposed unnecessary requirements in the licensure application process and in the use of the pharmacology exam which may deny qualified optometrists the opportunity to practice in Mississippi, an underserved state.*

In order to determine the adequacy of the Board of Optometry's licensure processes, PEER reviewed the necessity of the board's application requirements and compared the examination procedures to standard professional testing practices for regulatory boards.

#### *Licensure Application*

- *By requiring that applicants submit a letter of recommendation from a Mississippi licensed optometrist, the board imposes a needless requirement and may deny qualified optometrists the opportunity to practice.*

MISS. CODE ANN. Section 73-19-17 states that applicants for licensure must be over twenty-one years of age, a graduate of high school, and a graduate of an accredited school of optometry. (See Appendix A, page 57, for a list of accredited schools of optometry.) The board also requires that applicants complete an application form detailing applicant education, intended place of practice, and prior practice, including any disciplinary actions taken. (See Appendix E, page 61, for a copy of the board's optometry

application.) Applicants for licensure are required to send the board college transcripts (pre-optometry and optometry), a photograph, application fee (\$200 for Mississippi resident and \$300 for nonresident), completed application, National Board of Examiners in Optometry exam scores, three letters of recommendation (including one letter from a Mississippi licensed optometrist), and letters of standing from other state boards, if applicable.

After the board receives the information, it reviews the applicant's qualifications and determines if the applicant is qualified to sit for the state examinations. The board has not developed written criteria or instructions outlining how the required letters of recommendation should be rated. A board member reported that board members review the letters of recommendation, but no applicants have ever been denied entry due to the recommendations. Also, the requirement for applicants to submit a letter of recommendation from a Mississippi licensed optometrist may deter applicants from beginning the licensure process. Out-of-state optometrists and recent graduates may not have developed working relationships with Mississippi's licensed optometrists to facilitate the writing of a recommendation. Although board members told PEER that they have not denied any applicant a license based on assessments of the letters of recommendation, the board's application requirements potentially could restrict access to practice in Mississippi.

### *Board Examinations*

MISS. CODE ANN. Section 73-19-17 states that the board is required to test the skills needed to practice optometry, including:

- practical, theoretical, and physiological optics;
- theoretical and practical optometry;
- anatomy and physiology of the eye; and,
- pathology as applied to optometry.

The board currently requires applicants to pass the National Board of Examiners in Optometry (NBEO) Examination Parts I, II, III, and the Treatment and Management of Ocular Diseases (TMOD) examinations and the Board of Optometry's pharmacology and law examinations to receive temporary licensure to practice optometry in Mississippi. Also, the Board of Optometry requires temporary licensees to complete a mentoring process during the first year of practice and a final interview to receive permanent licensure to practice in Mississippi.

In order to license candidates to enter professional practice, regulatory boards should ensure that the individuals they license have the knowledge and skills needed to practice their profession. Boards can

accomplish this by developing defensible testing procedures based on standard testing practices. Because the Board of Optometry can prevent public health problems through ensurance of competent optometrists, PEER sought to determine the adequacy of the board's examination processes.

### Professional Standards for Testing Practices

Since the examination of applicants is an important role of regulatory boards, PEER researched and reviewed licensure and assessment literature and found that the Council on Licensure, Enforcement, and Regulation (CLEAR) provides standard professional testing practices for regulatory boards (see sidebar). Appendix F, page 63, provides detailed explanations of standard testing practices for the development, administration, statistical analysis, scoring and reporting, and security of examinations. These practices are in compliance with the Standards for Educational and Psychological Testing by the American Education Research Association, the American Psychological Association, and the National Council on Measurement in Education.

CLEAR's testing practices serve to develop valid and reliable examination procedures. A regulatory board should have documentation of the development and standardization of the procedures and rationales utilized in the examination processes to provide evidence of valid and reliable testing. Valid testing is essential for the board to maintain that occupational performance standards are measured and complied with for licensure. Reliable testing allows regulatory boards to license consistently those applicants determined competent for professional practice.

#### **The Council on Licensure, Enforcement, and Regulation (CLEAR)**

CLEAR is an international association with over four hundred members which serves to improve the quality of professional regulation to enhance public protection. (Appendix G, page 65, shows a selected portion of CLEAR's regulatory membership.) CLEAR's standard testing practices provide practical assistance to regulatory board members to aid in licensing competent applicants.

CLEAR is an affiliate organization of the Council of State Governments, which provides information and other services to government officials to aid in management and policy decisions.

SOURCE: Council on Licensure, Enforcement, and Regulation (CLEAR) and the Council of State Governments.

**In order to assure that its testing practices are valid and reliable, the Board of Optometry should adhere to standard testing practices, such as those advocated by CLEAR. If tests are not valid and reliable, the board may license incompetent applicants or deny competent applicants the opportunity to begin practice. Without documentation of testing practices, the board is unable to justify current testing and may be subject to potential lawsuits by candidates who have been restricted from practice.**

**The following paragraphs include a discussion of the Board of Optometry's test procedures, compliance with standard testing practices, and the effects of the board's testing practices.**

### **Test Procedures**

**The Board of Optometry administers its examinations in two phases. Phase I includes the passage of the National Board of Examiners in Optometry (NBEO) examinations and the state pharmacology and law examinations to receive temporary licensure to practice optometry in Mississippi.**

- NBEO examinations assess the cognitive, psychomotor, affective, and communication skills that are essential for entry-level optometric practice. By January of 1994, the Board of Optometry had begun requiring passage of all National Board exams. The National Board examinations are used in all states to assist in the licensing of optometrists. Appendix H, page 66, lists each state's use of the National Board examinations in optometric licensure. See Exhibit 12, page 30, for additional National Board exam procedures.**
- The Board of Optometry's pharmacology examination is a one-hundred-item test that assesses an applicant's knowledge of the use of diagnostic pharmaceutical agents in optometric practice. See Exhibit 13, page 31, for additional information about the pharmacology exam.**
- The Board of Optometry's law examination is a forty-item test that assesses an applicant's knowledge of the board's rules and regulations. See Exhibit 14, page 32, for additional information about the law exam.**

**Phase II includes the board's mentoring of temporary licensees during their first year of practice and a final interview to receive permanent licensure. The one-year mentoring process and final interview may assist entry-level optometrists in acquiring knowledge and skills needed for permanent licensure.**

**Exhibit 12**

**Analysis of the National Board of Examiners in Optometry Current Testing Practices**

Standards	Actions Needed to Meet Testing Standards	Did the Board Follow the Professional Testing Standards?
<b>Test Development</b>	<ul style="list-style-type: none"> <li>• analyze skills and knowledge required for optometric competency</li> <li>• ensure test includes questions on each necessary barber skill</li> <li>• set a valid passing score based on entry-level knowledge and skills</li> <li>• develop oral, practical, and essay exams with standard answers that can be consistently graded</li> </ul>	<p><b>Yes.</b></p> <p><i>Actions Taken</i>                      The National Board of Examiners in Optometry (NBEO) did research job competency through review of questionnaires and literature. The National Board provided a detailed table of specifications for the tested items and rationales for the development of the passing score and the practical examination. The National Board's exams currently assess content areas of <u>Part I Basic Science</u> -the knowledge and understanding of the basic scientific principles of optometric practice; <u>Part II Clinical Science</u>-the application of the knowledge of basic science to the prevention, diagnosis, treatment, and management of clinical conditions within the scope of optometric practice including the Treatment and Management of Ocular Disease (TMOD) exam; <u>Part III Patient Care</u>-the examination of patients including the evaluation of case history and findings, diagnoses, prescription regimens, and follow-up schedules; and <u>TMOD</u>-the skills for the use pharmacological agents for therapeutic management of ocular disease and trauma. Applicants who have taken the Part II exam, since 1993, do not need to take the stand alone TMOD. The National Board regularly updates the examinations to reflect current optometric practices.</p>
<b>Test Administration</b>	<ul style="list-style-type: none"> <li>• provide applicants with detailed information on testing times and dates, test content, test site conditions, grading procedures, and disclosure of test scores to applicants</li> <li>• develop a written plan for accommodating candidates with disabilities which complies with the 1990 Americans with Disabilities Act</li> </ul>	<p><b>Yes.</b></p> <p><i>Actions Taken</i>                      The National Board sent letters to the candidates informing them of testing times and dates, conducted formal briefings prior to the tests, and dealt with accommodations for candidates with disabilities on a case-by-case basis. The board also selected an appropriate testing facility and had a sufficient number of proctors present for each test administration. NBEO provides applicants with a candidate bulletin describing the test conditions and test content. In addition, the NBEO provides information to applicants concerning the accommodations for candidates with disabilities and provides training to test proctors to ensure uniform test administrations.</p>
<b>Statistical Analysis &amp; Research</b>	<ul style="list-style-type: none"> <li>• analyze test results to determine which test questions need revision to ensure the test is measuring appropriate knowledge and skills</li> </ul>	<p><b>Yes.</b></p> <p><i>Actions Taken</i>                      The National Board does use statistical analysis and research in the development and review of Parts I, II, III, and the TMOD.</p>
<b>Scoring &amp; Reporting</b>	<ul style="list-style-type: none"> <li>• ensure that tests are graded and tests results are reported to students in a fair and uniform manner</li> </ul>	<p><b>Yes.</b></p> <p><i>Actions Taken</i>                      NBEO does train graders to ensure uniform scoring of the examinations. NBEO reports test results privately and informs failing candidates of retake procedures. In addition, the National Board has written procedures to ensure candidates due process relating to test scoring concerns.</p>
<b>Examination Security</b>	<ul style="list-style-type: none"> <li>• ensure secrecy of test questions in advance</li> <li>• maintain test materials in secure locations</li> <li>• ensure students have no access to tests during printing, storage, transportation, and distribution</li> </ul>	<p><b>Yes.</b></p> <p><i>Actions Taken</i>                      Contracts are developed between the test developers and NBEO to assure confidentiality. NBEO requires examinees to present photo identification prior to testing for comparison with file photos to verify identity. The board administers more than one version of each examination to address the concern of test disclosure. Examination booklets are sealed and numbered to provide tracking of the examinations. There is restricted access to printed examination information and all computerized data is password protected. NBEO maintains documentation of all examination security procedures.</p>

NOTE: Appendix F, page 63, provides detailed explanations of the standards for the National Board's testing.

SOURCE: PEER analysis of the National Board's current testing practices in comparison to standard testing practices. The test practices listed above summarize the recommendations for board members developed by the Council on Licensure, Enforcement, and Regulation (CLEAR), which is affiliated with the Council of State Governments.

**Exhibit 13**

**Analysis of the Mississippi State Board of Optometry Pharmacology Examination Procedures**

Standards	Actions Needed to Meet Testing Standards	Did the Board Follow the Professional Testing Standards?
<b>Test Development</b>	<ul style="list-style-type: none"> <li>• analyze skills and knowledge required for optometric competency</li> <li>• ensure test includes questions on each necessary skill</li> <li>• set a valid passing score based on entry-level knowledge and skills</li> <li>• develop oral, practical, and essay exams with standard answers that can be consistently graded</li> </ul>	<p><b>Partially.</b></p> <p><i>Actions Taken</i> Previous board members reviewed optometric practices and pharmacology resource textbooks for information on required skills. The test currently consists of ninety-two multiple-choice and eight short essay questions. The board has documentation of only one revision to the pharmacology examination.</p> <p><i>Standards Not Addressed</i> The board could not document that it had fully analyzed pharmacology skills, tested each necessary skill, established a valid passing score, or developed standard answers for short-essay questions to ensure consistent grading.</p>
<b>Test Administration</b>	<ul style="list-style-type: none"> <li>• provide applicants with detailed information on testing times and dates, test content, test site conditions, grading procedures, and disclosure of test scores to applicants</li> <li>• develop a written plan for accommodating candidates with disabilities which complies with the 1990 Americans with Disabilities Act</li> </ul>	<p><b>Partially.</b></p> <p><i>Actions Taken</i> The board sent letters to the candidates informing them of testing times and dates, conducted informal briefings prior to the tests, and dealt with accommodations for candidates with disabilities on a case-by-case basis. The board also selected an appropriate testing facility and had a sufficient number of proctors present for each test administration.</p> <p><i>Standards Not Addressed</i> The board did not inform candidates of the detailed subject categories which would be included on the test, the test format, administration policies and procedures, scoring method, or rules on reporting test scores. The board also did not document standard test administration procedures or accommodations for candidates with disabilities.</p>
<b>Statistical Analysis &amp; Research</b>	<ul style="list-style-type: none"> <li>• analyze test results to determine which test questions need revision to ensure the test is measuring appropriate knowledge and skills</li> </ul>	<p><b>No.</b></p> <p><i>Standards Not Addressed</i> The board did not use statistical analysis or research in the development or review of the pharmacology examination.</p>
<b>Scoring &amp; Reporting</b>	<ul style="list-style-type: none"> <li>• ensure that tests are graded and tests results are reported to students in a fair and uniform manner</li> </ul>	<p><b>Partially.</b></p> <p><i>Actions Taken</i> The board scores multiple-choice sections of the examination uniformly, reports test results privately, and informs failing candidates of retake procedures. The board does have written procedures to ensure the candidates due process relating to test scoring concerns.</p> <p><i>Standards Not Addressed</i> The board has not been trained to score the short essay questions in a uniform manner.</p>
<b>Examination Security</b>	<ul style="list-style-type: none"> <li>• ensure secrecy of test questions in advance</li> <li>• maintain test materials in secure locations</li> <li>• ensure students have no access to tests during printing, storage, transportation, and distribution</li> </ul>	<p><b>Partially.</b></p> <p><i>Actions Taken</i> The board keeps applicant examinations in office files to facilitate the discussion of test concerns.</p> <p><i>Standards Not Addressed</i> Due to the lack of office facilities and equipment, the examinations are developed and printed at the current board members' homes. The board does not adequately document the procedures used to ensure examination security. The board also does not have procedures for the canceling or rescheduling of examinations upon discovery of a breach in test administration security.</p>

Note: Appendix F, page 63, provides detailed explanations of the standards for pharmacology testing.

SOURCE: PEER analysis of the Optometry Board's current testing practices in comparison to standard testing practices. The test practices listed above summarize the recommendations for board members developed by the Council on Licensure, Enforcement, and Regulation (CLEAR), which is affiliated with the Council of State Governments.

**Exhibit 14**

**Analysis of the Mississippi State Board of Optometry Law Examination Procedures**

Standards	Actions Needed to Meet Testing Standards	Did the Board Follow the Professional Testing Standards?
<b>Test Development</b>	<ul style="list-style-type: none"> <li>• analyze skills and knowledge required for optometric competency</li> <li>• ensure test includes questions on each necessary skill</li> <li>• set a valid passing score based on entry-level knowledge and skills</li> <li>• develop oral, practical, and essay exams with standard answers that can be consistently graded</li> </ul>	<p><b>Partially.</b></p> <p><i>Actions Taken</i> The board reviewed the rules and regulations to determine test questions. The test currently consists of thirty-eight true-false questions and two short essay questions. The examination tests the rules and regulations deemed important by the test administrator. The test does not assess the board's current revisions to the rules and regulations. The law examination was last updated in 1994.</p> <p><i>Standards Not Addressed</i> The board could not document that it had fully analyzed the rules and regulations, tested each necessary skill, established a valid passing score, or developed standard answers for short-essay questions to ensure consistent grading.</p>
<b>Test Administration</b>	<ul style="list-style-type: none"> <li>• provide applicants with detailed information on testing times and dates, test content, test site conditions, grading procedures, and disclosure of test scores to applicants</li> <li>• develop a written plan for accommodating candidates with disabilities which complies with the 1990 Americans with Disabilities Act</li> </ul>	<p><b>Partially.</b></p> <p><i>Actions Taken</i> The board sent letters to the candidates informing them of testing times and dates, conducted informal briefings prior to the tests, and dealt with accommodations for candidates with disabilities on a case-by-case basis. The board also sent applicants a copy of the board's rules and regulations. In addition, the board selected an appropriate testing facility and had a sufficient number of proctors present for each test administration.</p> <p><i>Standards Not Addressed</i> The board did not inform candidates of the detailed subject categories which would be included on the test, the test format, administration policies and procedures, scoring method, or rules on reporting test scores. The board also did not document standard test administration procedures or accommodations for candidates with disabilities.</p>
<b>Statistical Analysis &amp; Research</b>	<ul style="list-style-type: none"> <li>• analyze test results to determine which test questions need revision to ensure the test is measuring appropriate knowledge and skills</li> </ul>	<p><b>No.</b></p> <p><i>Standards Not Addressed</i> The board did not use statistical analysis or research in the development or review of the law examination.</p>
<b>Scoring &amp; Reporting</b>	<ul style="list-style-type: none"> <li>• ensure that tests are graded and tests results are reported to students in a fair and uniform manner</li> </ul>	<p><b>Partially.</b></p> <p><i>Actions Taken</i> The board scores true-false sections of the examination uniformly, reports test results privately, and informs failing candidates of retake procedures. The board also has written procedures to ensure the candidates due process relating to test scoring concerns.</p> <p><i>Standards Not Addressed</i> The board has not been trained to score the short essay questions in a uniform manner.</p>
<b>Examination Security</b>	<ul style="list-style-type: none"> <li>• ensure secrecy of test questions in advance</li> <li>• maintain test materials in secure locations</li> <li>• ensure students have no access to tests during printing, storage, transportation, and distribution</li> </ul>	<p><b>Partially.</b></p> <p><i>Actions Taken</i> The board keeps applicant examinations in office files to facilitate the discussion of test concerns.</p> <p><i>Standards Not Addressed</i> Due to the lack of office facilities and equipment, the examinations are developed and printed at the current board members' homes. The board does not adequately document the procedures used to ensure examination security. The board also does not have procedures for the canceling or rescheduling of examinations upon discovery of a breach in test administration security.</p>

NOTE: Appendix F, page 63, provides detailed explanations of the standards for law examination.

SOURCE: PEER analysis of the Optometry Board's current testing practices in comparison to standard testing practices. The test practices listed above summarize the recommendations for board members developed by the Council on Licensure, Enforcement, and Regulation (CLEAR), which is affiliated with the Council of State Governments.

## Compliance with Standard Professional Practices

To determine the adequacy of the Board of Optometry's testing practices, PEER compared the board's testing procedures to CLEAR's standard testing practices for regulatory board members. See Appendix E, page 61, for detailed explanations of CLEAR's five components of standard testing practices.

- *By requiring that applicants pass the National Board examinations, the Board of Optometry ensures that optometrists have the minimum entry-level knowledge and skills to practice optometry.*

Exhibit 12, page 30, shows the comparison of the National Board's examination practices to CLEAR's standard professional testing practices. The National Board examinations used by the Board of Optometry met all of the professional testing standards. Because the National Board has statistically established the reliability and validity of these examinations, state boards are relieved of this technical and expensive responsibility.

- *Because the Board of Optometry implements testing policies that introduce unnecessary restrictions, the board's practices may deny qualified optometrists the opportunity to practice in Mississippi.*

Exhibit 13, page 31, shows the comparison of the Board of Optometry's pharmacology testing practices to CLEAR's standard professional testing practices. The pharmacology examination does not fully comply with the standards for professional testing. The examination is not based on current research of optometric competency and is not statistically analyzed to determine the need to revise test questions. The board's set passing score is not based on the minimum level of knowledge and skills needed for optometric practice. Also, the board did not provide training to its members to ensure that short essay questions are consistently graded in the same manner. Also, the pharmacology exam's purpose is to assess an applicant's knowledge of diagnostic pharmaceutical agents for optometry, which is already being assessed by a portion of the TMOD examination, according to the NBEO.

Because eight out of nine failures to receive temporary licensure from January 1996 to January 1998 were attributed to failure on the pharmacology exam (see Exhibit 15, page 34), the board's Phase II examination procedures may be restricting optometric practice and contributing to the already low number of licensed optometrists in the state of Mississippi. Also, the board may be subject to potential lawsuits by candidates who have been restricted from practice.



**Exhibit 15**

**Number of Applicants Failing the Phase I Examinations,  
From January 1996 to January 1998**

	<b>Examination Dates</b>					<b>Totals</b>
	<b>Jan-96</b>	<b>Jul-96</b>	<b>Jan-97</b>	<b>Jul-97</b>	<b>Jan-98</b>	
<b>Issued temporary license</b>	5	9	2	7	2	25
<b>Failed pharmacology exam</b>	0	0	1	2	5	8
<b>Failed law exam</b>	0	0	0	0	0	0
<b>Failed part(s) of the National Board exams</b>	0	0	0	1	0	1
<b>Total:</b>	5	9	3	10	7	34

SOURCE: PEER analysis of the Optometry Board's testing records.

- *Because the Board of Optometry's law examination does not adequately test practical applications of current rules and regulations, the board cannot ensure that licensed optometrists can apply board rules and regulations to practice-related situations.*

Exhibit 14, page 32, compares the Board of Optometry's law examination practices to CLEAR's professional testing practices. The board's law examination procedures do not fully comply with the standards for professional testing. The law exam does not reflect a current analysis of the board's regulations, and the exam is not statistically analyzed to determine the need to revise test questions. Also, the set passing score is not based on the minimum level of knowledge needed for optometric practice and the board did not provide training to its members to ensure the short essay questions are consistently graded in the same manner. PEER requested that an expert psychometrician, a testing specialist, review the Board of Optometry's law examination to provide additional testing expertise and revision suggestions. The expert psychometrician noted that the test's true-false format measures only basic recall of information and makes it easy for applicants to guess the correct answer. See Appendix I, page 67, for the psychometrician's test review notes and revision suggestions.

- *Because the Board of Optometry does not have standard policies and procedures for assessing qualified temporary licensees, the board cannot assure that temporary licensees meet the necessary qualifications for permanent licensure.*

Exhibit 16, page 36, shows the comparison of the Board of Optometry's Phase II examination practices to CLEAR's professional testing practices. The board's Phase II examination procedures do not fully comply with the standards for professional testing. The board has not determined the needed knowledge and skills for permanent licensure or developed standards for assessing the examination results. The board does not document the mentoring process and has not determined a passing score for the examination, nor has the board failed any examinees. The board does not statistically review the mentoring process or the final interview for exam revisions or additions. Although the one-year mentoring process may help entry-level optometrists acquire knowledge and skills needed for permanent licensure, the board has not fully demonstrated compliance to its Phase II rules and regulations or established standards to evaluate the Phase II testing.

**Exhibit 16**

**Analysis of the Mississippi State Board of Optometry Phase II Examination Procedures**

Standards	Actions Needed to Meet Testing Standards	Did the Board Follow the Professional Testing Standards?
<b>Test Development</b>	<ul style="list-style-type: none"> <li>• analyze skills and knowledge required for optometric competency</li> <li>• ensure test includes questions on each necessary skill</li> <li>• set a valid passing score based on entry-level knowledge and skills</li> <li>• develop oral, practical, and essay exams with standard answers that can be consistently graded</li> </ul>	<p><b>Partially.</b></p> <p><i>Actions Taken</i> The board developed a geographical map to assign board members to mentor temporary licensees located nearest to them. The mentoring process currently consists of discussions between board members and temporary licensees concerning optometric study group sessions and the temporary licensee's first year of practice. The board also developed a list of questions to ask the temporary licensees during the final interview.</p> <p><i>Standards Not Addressed</i> The board has not specified the knowledge and skills that a temporary licensee should demonstrate to qualify for permanent licensure. In addition, the board did not develop standard scoring guidelines for interview questions to ensure consistency in grading or set a passing score to assess the passage of Phase II.</p>
<b>Test Administration</b>	<ul style="list-style-type: none"> <li>• provide applicants with detailed information on testing times and dates, test content, test site conditions, grading procedures, and disclosure of test scores to applicants</li> <li>• develop a written plan for accommodating candidates with disabilities which complies with the 1990 Americans with Disabilities Act</li> </ul>	<p><b>Partially.</b></p> <p><i>Actions Taken</i> The board sent copies of the board's rules and regulations, which includes Phase II information, to the candidates prior to testing. The board also sent letters to the candidates informing them of the interview time and date and dealt with accommodations for candidates with disabilities on a case-by-case basis.</p> <p><i>Standards Not Addressed</i> The board did not inform candidates of all Phase II test content, test format, administration policies and procedures, scoring method, or rules on reporting test scores. The board also did not document standard test administration procedures or accommodations for candidates with disabilities.</p>
<b>Statistical Analysis &amp; Research</b>	<ul style="list-style-type: none"> <li>• analyze test results to determine which test questions need revision to ensure the test is measuring appropriate knowledge and skills</li> </ul>	<p><b>No.</b></p> <p><i>Standards Not Addressed</i> The board did not use statistical analysis and research in the development or review of the Phase II examination.</p>
<b>Scoring &amp; Reporting</b>	<ul style="list-style-type: none"> <li>• ensure that tests are graded and tests results are reported to students in a fair and uniform manner</li> </ul>	<p><b>No.</b></p> <p><i>Standards Not Addressed</i> There is no evidence of scoring for the Phase II examination.</p>
<b>Examination-Security</b>	<ul style="list-style-type: none"> <li>• ensure secrecy of test questions in advance</li> <li>• maintain test materials in secure locations</li> <li>• ensure students have no access to tests during printing, storage, transportation, and distribution</li> </ul>	<p><b>Partially.</b></p> <p><i>Actions Taken</i> The board keeps written interviews in office files to facilitate the discussion of test concerns.</p> <p><i>Standards Not Addressed</i> Due to the lack of office facilities and equipment, the examinations are developed and printed at current board members' homes. The board does not adequately document the procedures used to ensure examination security. Also, the board does not have procedures for the canceling or rescheduling of examinations upon discovery of a breach in test administration security.</p>

NOTE: Appendix F, page 63, provides detailed explanations of the standards for the Phase II examination.

SOURCE: PEER analysis of the Optometry Board's current testing practices in comparison to standard testing practices. The test practices listed above summarize the recommendations for board members developed by the Council on Licensure, Enforcement, and Regulation (CLEAR), which is affiliated with the Council of State Governments.

## **Adequacy of the Board's Disciplinary Processes**

**Are the Board of Optometry's disciplinary procedures and practices adequate to protect the public from harm associated with incompetent or unlicensed practice?**

*The Board of Optometry's disciplinary processes are inadequate to protect the public from harm. The board relies on complaints as its primary source of information on incompetent or improper optometric practice, but it has not developed procedures for ensuring that the public can contact the board. Also, the board has relied on another state agency for legal assistance in protecting the public from unlicensed practice of optometry, but that agency has not consistently provided the investigative and prosecution services needed by the board.*

A board can assure that licensed health professionals such as optometrists act in a competent manner by actively investigating complaints and revoking or suspending licenses and through other disciplinary actions. To determine whether the Board of Optometry's disciplinary processes are adequate to protect the public from harm associated with incompetent or unlicensed practice, PEER compared the board's current disciplinary procedures and practices against procedures that should be in place for an effective complaint handling process.

Based on the nature of the risks against which the Board of Optometry must protect the public, and on research on effective complaint handling by professional regulatory boards, PEER determined that, at a minimum, the board's complaint handling process should include the following components:

- a method for ensuring that consumers with complaints can determine how to file complaints (e.g., through dissemination of pamphlets on how to file a complaint or through a requirement that notices be posted in optometrists' offices);
- provisions for ensuring public access to the board for filing complaints (e.g., a number listed in the telephone directory and an office address); and,
- a set of standard internal procedures for handling complaints against incompetent or unlicensed practice, including procedures for accomplishing the following:
  - classifying complaints based on the seriousness of the allegation to ensure that those cases with the most potential for harm are handled promptly;
  - processing complaints within a specified time frame dependent on initial complaint classification;

- training board members on conducting investigations and maintaining complete and organized files, including specifying the level of evidence needed for documenting decision making and for use in potential litigation;
- receiving information from other state agencies or organizations on violations of the Optometry Act;
- referring complaints outside the board's jurisdiction to the proper entity for action (e.g., other state licensing boards); and,
- for cases involving unlicensed practice, criteria for determining when to pursue unlicensed practice through the civil courts or when to refer a complaint to the Attorney General's Office for litigation.

See Exhibit 17, page 39, for procedures for an effective complaint handling process. The following sections describe the extent to which the board's current disciplinary procedures and practices meet these criteria.

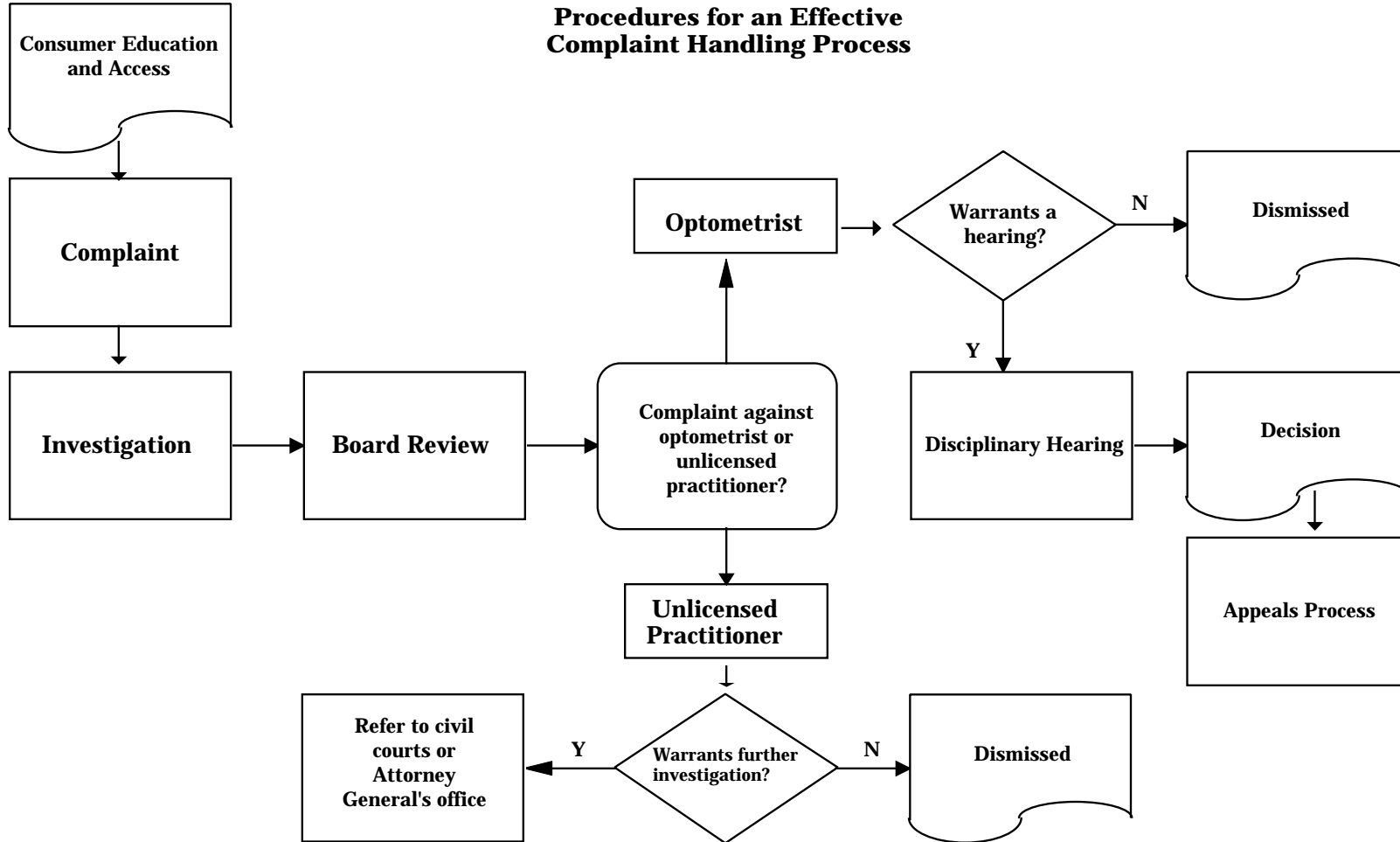
#### *Public Access*

- *Because the Board of Optometry does not publicly list a telephone number or permanent address and has not developed procedures for ensuring public awareness of the complaint process, the public is deprived of reasonable access to the board. Without reasonable access, consumers cannot conveniently file complaints in which disciplinary action may be needed against individuals who have failed to comply with state optometry laws or regulations.*

The Board of Optometry has not provided information to the public on the complaint process and has not provided reasonably easy access to the board for filing complaints. The board does not have a permanent office location or telephone number and has no consumer awareness program. The board's office generally has been maintained in the home of the board secretary, an arrangement that does not permit public access to the board's office. The board's legal counsel has maintained certain board records, such as meeting minutes and complaint documents. The current board secretary noted that the lack of a permanent office location, coupled with periodic transfer of the office of board secretary, has resulted in the board's lack of a telephone listing in any public directory. Without such a listing, the public does not have ready access to the board for making inquiries or filing complaints. Also, without a specific listing in the telephone directory, many would-be complainants may give up without making a complaint. Thus, the complaint process may be more likely to protect the

**Exhibit 17**

**Procedures for an Effective  
Complaint Handling Process**



SOURCE: PEER analysis of literature on effective complaint handling by regulatory boards.

interests of members of the middle- and upper-classes, who might have the knowledge and resources available to locate the board and file complaints.

The lack of a permanent office location and listed telephone number has also resulted in consumers contacting other state agencies or organizations for filing complaints involving incompetent or unlicensed practice. The board secretary noted that the public can file a complaint with the Board of Optometry by contacting the board's legal counsel (a lawyer in private practice whose telephone listing makes no reference to his position as the board's legal counsel), the Mississippi Optometric Association (which has no legal obligation to forward complaints against its members or other practitioners to the board), other state agencies or boards, or optometrists. PEER contacted one community organization, the Better Business Bureau in Jackson, Mississippi, and found that it had processed thirteen consumer complaints against eye care professionals since 1987. Six of these complaints were against optometrists. Three of these six complaints were against the same optometrist for allegations related to patients receiving inadequate examinations or incorrect prescriptions. These allegations of incompetent practice are precisely the types of complaints that the board should investigate to ensure that the public is protected from harm. However, the Better Business Bureau did not refer any of these complaints to the board because the bureau was unable to locate the board.

The Board of Optometry received forty-one complaints during calendar years 1992 through 1997, including complaints against optometrists as well as reports of opticians practicing optometry without a license. Although no standard exists for determining the number of complaints the board would have received during this period if it had been more accessible, attempts by the public to report incompetent practice by contacting a non-governmental agency such as the Better Business Bureau suggest that the board has neglected its responsibility to protect the public from harm related to the practice of optometry.

### *Complaint Processing*

- *The absence of certain critical procedures for processing complaints severely limits the Board of Optometry's capacity for effectively imposing penalties for incompetent practice, prosecuting violations of law and regulation, and ultimately protecting the public from harm.*

Because the Board of Optometry has a relatively low budget and cannot perform extensive monitoring of optometric practice, the board depends primarily on complaints as a source of information on possible violations of optometry laws and regulations. To protect the public through the discipline process, the board should systematically receive and process complaints, including complaints against licensed optometrists and

reports of violations of the optometry law by practitioners such as opticians, who are not licensed to practice optometry.

### Licensed Optometrists

*-- The Board of Optometry has not developed procedures for prompt and effective implementation of statutory provisions on handling complaints against optometrists.*

MISS. CODE ANN. Section 73-19-33 through 73-19-45 sets forth basic procedures for processing complaints against optometrists. These include provisions requiring the transfer of a complaint from the initial recipient to an investigator, then to the board for review. To ensure that these provisions are implemented consistently and effectively, the board must operationalize the framework provided in statute by establishing complaint processing standards, such as specifications on file content, level of evidence, and timeliness in processing.

The board has not developed procedures for implementing the statutory provisions related to complaint handling against optometrists. (See page 37, for previous discussion on complaint handling provisions). The board also has not developed procedures for training board members on how to conduct investigations and maintain complete and organized files that include the level of evidence needed to document decision making and for potential litigation. Also, the board has not developed procedures related to timely processing of complaints or prioritizing the handling of complaints, for receiving information from other state agencies or entities on violations of the Optometry Act, or for referring complaints outside the board's jurisdiction to the proper entity for action.

*-- Of the seventeen complaints filed with the Board of Optometry during calendar years 1996 and 1997, three had no case files. Of the cases PEER reviewed, none contained all of the documents required by statute. Without these documents, the board cannot support its administrative decisions or demonstrate that it has followed due process.*

PEER reviewed all complaints filed with the Board of Optometry during calendar years 1996 and 1997 to determine whether the files included statutorily required documentation and to determine the length of time taken to process complaints. Specifically, PEER reviewed the seventeen complaints filed with the board to determine whether the files included the following documents, which are required by statute:



- written complaint signed by the complainant;
- correspondence with the accused optometrist by certified or registered mail; and,
- written notice to complainant or optometrist regarding case dismissal.

None of the complaint files reviewed included all of the statutorily required documents. The file for the one case that resulted in a formal hearing did not include the required transcribed court proceedings. Also, the board could not locate three of the seventeen complaint files. Most of the files did not include information for determining case status, time taken to process a complaint (from date a complaint is received to the date written correspondence is issued regarding case dismissal), or the level of evidence needed to document board decisionmaking regarding the case and for use in potential litigation.

Few complaints filed with the Board of Optometry result in serious disciplinary action. From 1992 through 1997, only forty-one complaints were filed with the board and few of these resulted in serious disciplinary actions against optometrists. Only one complaint resulted in license revocation. Although three complaints resulted in one-year suspensions, each suspension was reduced to probation for one year. Additionally, the board issued letters of reprimand/warning to three optometrists. Deceptive advertising was the most common accusation against optometrists, followed by inadequate patient examinations and incorrect billing/charges.

The board also has not published information on disciplinary actions. If the public is not informed of the identity of optometrists who have been disciplined for incompetent practice or other violations, they cannot make fully informed choices in selecting eye care providers.

### Unlicensed Practice

- *The Board of Optometry does not protect the public from risks related to the unlicensed practice of optometry. The board has not developed procedures for processing complaints against unlicensed practice. Also, the board has relied on the Attorney General's office for assistance in prosecution, but that agency has not consistently provided the investigation and prosecution services needed by the board.*

In addition to processing complaints against licensed optometrists systematically, the board also should systematically receive, investigate, and determine the disposition of complaints against unlicensed practitioners who might be violating optometry laws. As previously discussed, the statutes provide the board with the authority to pursue action

against unlicensed practice through the civil courts. Under MISS. CODE ANN. Section 73-51-1 et seq., the board has authority to seek injunctive relief for activities considered to be unlicensed practice of optometry. Also, violations of the Optometry Act can also be referred to the county prosecuting attorney for prosecution as a misdemeanor. Because complaints against unlicensed practitioners engaging in the practice of optometry fall within the board's purview, the board should have procedures to ensure quality and timeliness in handling such complaints.

The board has received complaints against opticians, who are not licensed or otherwise regulated under Mississippi law. These opticians may be filling contact lens prescriptions without referring the patient back to the prescribing optometrist or ophthalmologist for verification of proper fit as required by MISS. CODE ANN. Section 73-19-61. Additionally, some opticians may be in violation of Board Regulation 35, which specifies the minimum elements of a written contact lens prescription (e.g., the material to be used in making the lenses and the lens parameters), including requiring an expiration date. For example, some opticians may be dispensing contact lenses without a valid prescription (i.e., without a current prescription which contains all the necessary elements) or may be dispensing lenses that are not in compliance with specifications of the written prescription.

The Board of Optometry successfully pursued a case against opticians working for Optical Warehouse during the late 1980s. Pursuing this case proved costly to the board, whose resources are extremely limited. After the Attorney General told a Senate subcommittee that his office would provide free legal services to the board for investigation and prosecution related to unlicensed practice, the board began referring cases to the Attorney General's office. In reviewing the board's effectiveness in protecting the public, PEER examined the Attorney General's efforts to assist the board in litigation involving unlicensed practice. Although the Attorney General has provided other uncompensated assistance to the board (such as its defense of the state and the Board of Optometry in *Mississippi State Medical Association and Mississippi Eye, Ear, Nose & Throat Association v. The State of Mississippi and Mississippi State Board of Optometry*), the scope of the following section is limited to reviewing the Attorney General's work in the area of unlicensed practice of optometry.

The law sets forth the duties of the Attorney General, which include responsibility for prosecuting cases such as those in which alleged violations of the optometry law have occurred. The duties of the Attorney General are the common-law duties defined in case law. These include management of the state's legal affairs; prosecution of all suits, civil or criminal, in which the state is interested; controlling and managing all litigation on behalf of the state, and maintaining all suits necessary for enforcement of state laws, preservation or order, and protection of public rights (*Kennington-Saenger Theatres v. State*, 196 M 841, 18 So 2d 483, 153 ALR 883). Because the Attorney General is required by law to manage the

state's legal affairs and prosecute cases in which the state has an interest, the Attorney General should assist the board with cases in which alleged violations of optometry laws have occurred. This general responsibility is supplemented by the Attorney General's Fall 1990 promise in testimony to a legislative committee that his office would handle all litigation of the Board of Optometry.

However, the Attorney General's office has not consistently provided assistance in investigating and prosecuting cases of unlicensed practice. Following is a detailed description of the board's litigation in the late 1980s, the Attorney General's initial assistance to the board in the early 1990s, and the Attorney General's more limited activity in recent years.

- *Successful Board of Optometry litigation.* In the late 1980s, the Board of Optometry began pursuing through civil court unlicensed practice by opticians based on complaints and investigation results. The first case pursued through injunction was against Optical Warehouse, located in Jackson. Within six months of filing the initial complaint in the chancery court of Hinds County, the board entered into an agreed order of dismissal in December 1989, which directed Optical Warehouse to abide by state law regulating contact lens dispensing, post state law regulating contact lens dispensing (Section 73-19-61), and have customers sign an invoice acknowledging that the contact lenses have been dispensed pursuant to a written contact lens prescription and that they have been directed back to the prescribing optometrist or ophthalmologist. The following year the board began receiving complaints against unlicensed practice by Country Optical, located in the Hattiesburg area. Several of these complaints alleged patient injury. Based on investigation results, the board filed a complaint against Country Optical in the chancery court of Lamar County in October 1991.
- *Successful litigation by the Attorney General's Office.* During special Senate sub-committee hearings held on sunset legislation in fall 1990, Attorney General Mike Moore testified that his office would represent the Board of Optometry to prosecute unlicensed practitioners without charge. In response, the board referred the Country Optical case to the Attorney General's Office in January 1991 for further investigation and prosecution. The Attorney General's office instigated legal proceedings, which resulted in Country Optical consenting to an agreed order of dismissal which included the same requirements as were specified in the order previously entered by the board against Optical Warehouse.
- *Absence of further Attorney General's Office involvement.* Although the Attorney General's Office indicated it would pursue unlicensed practice for the Board of Optometry, the Attorney General's Office has not continued to provide the investigation and

**prosecution needed by the board. Following are examples of the board's attempts to obtain assistance from the Attorney General's office:**

- In October 1991, the board requested assistance from the Attorney General's Office in pursuing allegations of unlicensed practice in the Hattiesburg area. Subsequent board meeting minutes and written correspondence with the Attorney General's Office show that the Attorney General's Office took the position that it was unable to provide the investigation and prosecution needed by the board due to lack of funding and staff.**
- In October 1992, the board sent information to the Attorney General's Office regarding Optical Warehouse's breach of the agreed order of dismissal entered in December 1989, noting that the breach may have caused a serious injury to a patient. The injury, an eye ulcer, allegedly was caused by an optician's improper fitting of contact lenses and failure to refer the consumer to an optometrist for fitting, as the law requires.**

**In the absence of action by the Attorney General's Office, subsequent board meeting minutes and written correspondence with the Attorney General's Office showed that the board asked for clarification on the Attorney General's position regarding pursuit of unlicensed practice for state agencies. In April 1993 the board corresponded with the Attorney General's Office requesting execution of a contract with the Attorney General's Office for the purpose of retaining the Attorney General to pursue unlicensed practice by Optical Warehouse. Although the Attorney General's office signed an interagency agreement with the Board of Optometry stating that it would assist the board in return for payment, the Attorney General's office has not pursued the Optical Warehouse case, as requested by the board.**

**The Board of Optometry and the Attorney General's Office share responsibility for the state's ineffectiveness in some cases in protecting the public from risks associated with the unlicensed practice of optometry. The Board of Optometry's difficulty in obtaining legal services to pursue litigation related to unlicensed practice illustrates small boards' need for affordable services. Even at the Attorney General's relatively low hourly rate for legal services to state agencies, legal costs could consume a small board's entire annual budget, leaving the board without resources to carry out other regulatory responsibilities. The Board of Optometry, with an annual expenditure rate of approximately \$25,000, could easily devote its entire budget to litigation of one case.**

## **Adequacy of the Board's Administrative Practices**

**Do the Board of Optometry's administrative practices, including planning, budgeting, and reporting, support its licensure and discipline regulatory functions?**

*The Board of Optometry has not maximized use of its limited resources to support its licensure and discipline functions.*

### *Planning and Budgeting*

- *The Board of Optometry has recognized its need for administrative staff and equipment to support its regulatory functions, but has not requested spending authority in the major objects corresponding to its needs.*

As the preceding sections show, the Board of Optometry has not established the systems needed to protect the public from harm related to the practice of optometry. Board operations may be hampered by its inefficient use of limited resources. For example, the board pays a contract attorney at a relatively high rate (\$100 per hour) to provide legal services. (See Appendix J, page 67.) The board also pays for administrative services provided by the same attorney or by a paralegal he employs. These administrative services could be provided competently at a lower rate by an administrative officer or clerk.

The board has recognized its need for administrative staff over the past several years. Recent budget request narratives have indicated a need for an investigative and administrative position to assist the board secretary, as well as office space, in response to an increasing workload and the board's desire to improve its operations. (The current board secretary, a practicing optometrist, performs his board duties at his home, uses his own computer, and has no staff.)

Although the board has recognized its staffing needs, it has not prepared its annual budget in a way that allows it to address these needs. The board historically has requested that a majority of its appropriation (71% in the past five years) be in the contractual services major object, instead of requesting funds in the salaries and fringe benefits major object. (See Exhibit 7, page 16.) Legal fee expenditures make up a higher proportion of the board's total expenditures than for other selected Mississippi regulatory boards, as shown in Exhibit 18, page 47. The Legislature routinely grants the board authority to spend its revenue as requested. The board uses its authority to spend contractual funds by contracting with the attorney who provides legal and administrative services. If the board instead would submit budget requests showing funds

**Exhibit 18**

**Comparison of Legal Fees Expended by Selected Mississippi  
Health-Related Boards, Fiscal Years 1993 through 1995**

Board	Fiscal Year 1993		
	Legal Fees	Total Expenditures	Percentage of Total
Dental Examiners	\$3,780	\$110,764	3.4%
Medical Licensure	\$65,745	\$356,421	18.4%
Nursing	\$7,140	\$492,634	1.4%
Pharmacy	\$0	\$250,071	0.0%
Optometry	\$13,191	\$28,915	45.6%

Board	Fiscal Year 1994		
	Legal Fees	Total Expenditures	Percentage of Total
Dentistry	\$16,440	\$120,679	13.6%
Medical Licensure	\$82,045	\$549,470	14.9%
Nursing	\$46,489	\$628,974	7.4%
Pharmacy	\$3,656	\$279,680	1.3%
Optometry	\$12,240	\$23,530	52.0%

Board	Fiscal Year 1995		
	Legal Fees	Total Expenditures	Percentage of Total
Dentistry	\$10,466	\$163,277	6.4%
Medical Licensure	\$80,277	\$458,811	17.5%
Nursing	\$16,531	\$599,938	2.8%
Pharmacy	\$3,940	\$253,500	1.6%
Optometry	\$15,931	\$38,582	41.3%

Board	Fiscal Year 1996		
	Legal Fees	Total Expenditures	Percentage of Total
Dentistry	\$24,459	\$195,671	12.5%
Medical Licensure	\$61,054	\$445,733	13.7%
Nursing	\$20,702	\$618,077	3.3%
Pharmacy	\$3,476	\$306,696	1.1%
Optometry	\$9,984	\$25,941	38.5%

Board	Fiscal Year 1997		
	Legal Fees	Total Expenditures	Percentage of Total
Dentistry	\$80,154	\$233,776	34.3%
Medical Licensure	\$79,560	\$618,636	12.9%
Nursing	\$21,588	\$712,037	3.0%
Pharmacy	\$3,124	\$358,942	0.9%
Optometry	\$11,259	\$19,776	56.9%

NOTE: PEER selected these Mississippi regulatory boards for comparison because licensees' access to controlled substances may be associated with relatively high legal cost for disciplinary actions. Optometrists do not have access to controlled substances.

SOURCE: PEER analysis of Statewide Automated Accounting System (SAAS) reports.

in the major objects corresponding to board needs (e.g., personnel and equipment), the resulting spending authority granted by the Legislature might support hiring an administrative staff member and purchasing a computer.

### *Reporting*

- *The Board of Optometry has provided limited performance data in its annual budget requests, but it has not complied with a statutory reporting requirement and it has not developed the information system it needs to determine the quality and timeliness of its licensure and complaint handling processes.*

To comply with its statutory reporting responsibilities, the board should annually submit budget requests containing performance measures approved by the Legislative Budget Office. Also on an annual basis, the board should comply with a statutory requirement to submit to the Governor a report that includes information on receipts and disbursements and on conditions of optometry in the state.

To oversee its licensure and discipline functions effectively, the board should collect and review information on the timeliness and quality of its work at various stages of the licensure and complaint handling processes. For example, the board should maintain information on items such as the date of each complaint, the nature of the allegation, board actions completed, and actions in progress (current status). By maintaining and periodically reviewing this information, the board could ensure that inactivity or other problems in complaint handling are identified and addressed.

The board has been submitting annual budget requests to the Legislature as is required. In the board's FY 1998 and FY 1999 budget requests, the board included performance information related to workload measures which showed the number of applications reviewed, licenses renewed, and licenses issued. However, the board has not submitted an annual report to the Governor as statutorily required.

Also, the board does not have an adequate system for collecting and reviewing the information it needs to oversee its licensure and discipline operations. No information was available to PEER (or to the board) for assessing the board's timeliness or effectiveness in carrying out its responsibilities.

### *Other Administrative Practices*

- *The Board of Optometry lacks procedures for record keeping and orienting/training new board members.*

In 1984, PEER found that the board had not developed a central reference on record keeping, budgeting, and report filing procedures (*Limited Program Evaluation of the State Board of Optometry*). The complexity of state record keeping and reporting requirements and the periodic transfer of the office of the secretary render such a manual increasingly necessary. Without detailed information on the board's procedures for carrying out its responsibilities, incoming board officers may unintentionally neglect important elements of their duties. A central reference would describe detailed procedures for carrying out the board's administrative functions, including functions such as long- and short-term planning; preparing and submitting budget requests; maintaining accounts; receiving and depositing funds in the state Treasury; hiring and compensating employees; procuring contractual services; and collecting and reporting financial and performance data.

The board does not have procedures for training new board members. When individuals are initially appointed to the board, they are unlikely to have a thorough understanding of the board's responsibilities for protecting public health. New members also are unlikely to comprehend the legal framework under which the board functions. To provide new members the information they need, the board should ensure that new members receive formal training before they participate in regulatory processes.

- *The Board of Optometry does not have a current, complete set of optometry regulations.*

The board should routinely update its regulations to remain consistent with the statutes and current practices. This document, known as the board rules, describes licensure requirements and other policies regulating optometric practice, such as continuing education requirements and restrictions on use of diagnostic and therapeutic drugs. The document currently maintained by the board is incomplete. For example, it omits recent policy amendments required by statute or approved by the board. The copy of the board rules does not reflect the recent statutory increase authorizing a sum of not more than \$400 for biennial license renewal or the board's decision to use this authority to raise licensing fees. Also, the board rules do not reflect the practice of requiring both DPA- and TPA-licensed optometrists to maintain CPR (cardiopulmonary resuscitation) certification for license renewal. If the central set of board rules is not complete, the board cannot effectively disseminate current information to licensees.



## ***Recommendations***

### **Adequacy of State Law**

1. The Legislature should amend MISS. CODE ANN. Section 73-19-17 to eliminate the requirement for the board to prepare and administer the pharmacology examination. The Legislature should also amend Section 73-19-17 to require the board to administer examinations that measure job competency and are based upon professional testing standards. (See Appendix K, page 68, for proposed legislation.)
2. To address the risk of injury to the consuming public due to opticians' unlicensed practice of optometry, the Legislature should consider one of the following options:
  - licensure of opticians;
  - registration of opticians; or,
  - certification of opticians.

These are discussed in detail below.

- a. ***Licensure of opticians***--The House and Senate Public Health and Welfare committees should study whether there is a need to license opticians by determining:
  - whether the unlicensed opticianry practice poses a serious risk to the public health, safety, or welfare;
  - whether the public can be expected to possess the knowledge needed to properly evaluate the qualifications of the services provided by opticians; and,
  - whether benefits to the public outweigh potential harmful effects, such as a decrease in the availability of persons providing opticianry services or higher costs of such services.

If the Legislature determines that opticians should be licensed based on the recommendations of the committees, then opticians' scope of practice should be coordinated with existing statutes related to optometry and ophthalmology to avoid fragmentation and inefficiency in the delivery of eye care services.

- b. ***Registration of opticians***--Registration should require any person, corporation, or partnership in the opticianry business to file names and addresses with the Board of Optometry, including paying a fee

to the board to cover the costs of processing permits. Opticians should be required to post permits in a conspicuous spot in their place of business. Revenue generated from processing permits would provide the board with the funds needed to pursue unlicensed practice of optometry by opticians. Also, the Board of Optometry should be authorized to take disciplinary action against any optician who fails to register with the board. As previously discussed on page 5, Texas and New Hampshire have systems for registering opticians.

In instances in which opticians engage in the unlicensed practice of optometry, the board should be authorized to follow the same statutory procedures for handling complaints against optometrists as provided in CODE Sections 73-19-33 through 73-19-37 (complaint should be docketed and investigated by the board). If upon conclusion of the board's investigation for a first offense the board determines that there is reasonable cause to believe the person(s) has violated the provisions of the Optometry Act, then the board should be authorized to issue a letter of warning, stating that the person(s) is engaged in the unauthorized practice of optometry and should cease such activity. The accused person(s) should be allowed to petition the board for a hearing within twenty days after notice of the action by the board. If the person(s) petitions for a hearing, then the board should follow the same statutory procedures for hearing complaints against optometrists as provided in Section 73-19-41.

In instances of a second offense, the board should be authorized to follow the same statutory procedures for handling complaints against optometrists as provided in Sections 73-19-33 through 73-19-37 (complaint should be docketed and investigated by the board). If upon conclusion of the board's investigation the board determines that there is reasonable cause to believe the person(s) has violated the provisions of the Optometry Act, then the board may prepare a formal complaint against the accused person(s). The board should follow the same statutory procedures for hearing complaints against optometrists as provided in Section 73-19-41. If upon conclusion of the hearing, the board determines the person(s) has violated the provisions of the Optometry Act by engaging in the unlicensed practice of optometry, then the board should be authorized to suspend the person's business operation for a period of thirty days. This should not prohibit the board's authority to pursue legal remedies as provided in the statutes against the unlicensed practice of optometry.

- c. *Certification of opticians*-Certification is a form of regulation that grants recognition to individuals who have met predetermined qualifications set by a state agency. Only those who meet the qualifications may legally use the designated title (e.g., optician).

**Non-certified individuals may still offer similar services to the public as long as they do not describe themselves as “certified” to use the specific title.**

**The Board of Optometry could consider only certifying those opticians who have been certified through national organizations such as the American Board of Opticianry and the National Contact Lens Examiners. Certification should include payment of a fee to the board to cover the costs of issuing certificates. Opticians should be required to post certificates in a conspicuous spot in their place of business. Revenue generated from issuing certificates would provide the Board of Optometry with the funds needed to pursue unlicensed practice of optometry by opticians. In instances in which a person(s) engages in the unlicensed practice of optometry, the board should be authorized to follow the same processes as described above for registered opticians.**

- 3. The Legislature should amend state law to allow the board to suspend immediately the license of any optometrist who poses a clear and present danger to the public. Such authority is provided to the Mississippi State Board of Medical Licensure under CODE Section 73-25-63, which states that the board may temporarily suspend a physician’s license pending a hearing if the evidence clearly supports the determination that a licensee’s continuation in practice would constitute an imminent danger to public health and safety. (See Appendix K, page 68, for proposed legislation.)**
- 4. The Legislature should amend state law to require that the membership of the State Board of Optometry include a member of the consuming public. The board should provide orientation and training to newly appointed non-optometrist member(s) in order to emphasize their role on the board--to serve the public and ensure competent practice. (See Appendix K, page 68, for proposed legislation.)**

#### **Adequacy of the Board’s Licensure Processes**

- 5. The Board of Optometry should revise the optometry licensure application form to eliminate the requirement for applicants to submit a letter of recommendation by a Mississippi licensed optometrist. If the board continues to use letters of recommendation in the application process, then the board should develop written criteria or instructions outlining how the letters should be rated.**
- 6. The Board of Optometry should require documentation of the knowledge and skills needed for the Phase II mentoring process and interview and establish standards for assessing the passage of Phase II for permanent licensure.**

7. **The Board of Optometry should revise its law examination procedures to comply with professional testing standards, such as those promulgated by the Council on Licensure, Enforcement, and Regulation (CLEAR).**

### **Adequacy of the Board's Disciplinary Processes**

8. **The Board of Optometry should improve the public's access to the complaint process by establishing procedures to ensure that the public is aware of the complaint resolution process. The board should maintain a listing in local telephone directories and make information available to the public which describes the complaint process (e.g., a brochure for public distribution which describes the complaint process, complainants' rights, where to file complaints, what information is needed by the board to respond to a complaint, and a telephone number for calling for more information). See Appendix L, page 74, for an example of an educational pamphlet developed by the Texas Board of Optometry. Also, see Appendix M, page 76, for a copy of a sign developed by the Texas Board of Optometry that provides information on where consumers can call for assistance.**
9. **The Board of Optometry should comply with statutory requirements (MISS. CODE ANN. Sections 73-19-33 through 73-19-45) by ensuring that complaint files are complete and well-organized. The board should develop procedures for training board members on how to conduct investigations and maintain complete files that include a sufficient level of evidence, prioritizing and timely processing of complaints, and receiving information from other state agencies or entities on violations of the Optometry Act and for referring complaints outside the board's jurisdiction to the proper entity for action. The board should also publish information on disciplinary actions taken against optometrists in a medium such as a newsletter. (See Appendix N, page 77, for an example of the Texas Board of Optometry's newsletter that includes notices of disciplinary action taken against optometrists.)**
10. **The Board of Optometry and the Attorney General's Office should jointly develop a procedure for determining when the board should act on an allegation of unlicensed practice or when a case regarding unlicensed practice should be referred to the Attorney General's Office for investigation and prosecution. By January 1999, the board and the Attorney General's Office should report to the Legislature on their progress in developing and implementing procedures related to unlicensed practice.**

### **Adequacy of the Board's Administrative Practices**

11. The Board of Optometry should establish a procedure to update its regulations routinely to remain consistent with state law and current board practices.
12. In preparing its FY 2000 budget request, the Board of Optometry should transfer a portion of the funds currently in the contractual major object into the salaries and fringe benefits major object in order to hire administrative personnel for assisting the board in its regulatory responsibilities.
13. The Board of Optometry should request assistance from the Department of Finance and Administration (as provided for in Section 27-104-3 [a], [b] and [c]) in developing administrative policies and procedures related to long- and short-term planning, preparing and submitting budget requests, maintaining accounts, receiving and depositing funds in the state Treasury, hiring and compensating employees, and collecting and reporting financial and performance data.
14. The Board of Optometry should request assistance from the State Department of Health's Division of Professional Licensure and Certification in developing procedures and material for training new board members.
15. The Board of Optometry should submit a report to the Legislature in January 1999 describing its progress in implementing the above recommendations related to developing administrative policies and procedures with the assistance of the Department of Finance and Administration and the Department of Health.
16. The House and Senate Public Health and Welfare committees should consider studying, or should ask the PEER Committee to study, the need for technical assistance to small regulatory bodies (e.g., the Board of Optometry and other boards with few licensees and low revenue) which experience difficulty in collecting revenue needed to carry out their regulatory responsibilities effectively. The study should develop alternative arrangements through which state agencies would provide free or affordable technical assistance services to small boards. These arrangements could include assistance related to planning and budgeting; office and meeting facilities; staff and board training; and, litigation.

### **Other**

17. The Board of Optometry and Board of Medical Licensure should jointly develop written recommendations for presentation to the Legislature

**in January 1999. These recommendations should specify how the boards plan to work together to: (a) determine the causes for the shortage of optometrists and ophthalmologists in Mississippi; and, (b) develop a plan for providing eye care services that meets the state's needs.**

- 18. The Executive Director of the PEER Committee should refer copies of this report to the directors of the Department of Finance and Administration, the Department of Health, and the Board of Medical Licensure.**

## **Appendix A**

### **American Optometric Association Accredited Schools of Optometry in the United States**

**Illinois College of Optometry  
3241 South Michigan Avenue  
Chicago, IL 60616**

**Indiana University  
School of Optometry  
800 East Atwater Avenue  
Bloomington, IN 47401**

**Michigan College of Optometry at  
Ferris State University  
1310 Cramer Circle  
Big Rapids, MI 49307**

**New England College of  
Optometry  
424 Beacon Street  
Boston, MA 02115**

**Northeastern State University  
College of Optometry  
600 North Grand Avenue  
Tahlequah, OK 74464**

**Nova Southeastern University  
Health Professions Division  
College of Optometry  
3200 S. University Drive  
Ft. Lauderdale, FL 33328**

**The Ohio State University  
College of Optometry  
3338 West Tenth Avenue  
Columbus, OH 43210-1240**

**Pacific University  
College of Optometry  
2043 College Way  
Forest Grove, Oregon 97116**

**Pennsylvania College of  
Optometry  
1200 West Godfrey Avenue  
Philadelphia, PA 19141**

**Southern California College of  
Optometry  
2575 Yorba Linda Blvd.  
Fullerton, CA 92831**

**Southern College of Optometry  
1245 Madison Avenue  
Memphis, TN 38104**

**State University of New York  
State College of Optometry  
100 East 24th Street  
New York, NY 10010**

**University of Alabama at  
Birmingham  
College of Optometry  
UAB Station  
Birmingham, AL 35294**

**University of California,  
Berkeley  
School of Optometry  
Minor Hall  
Berkeley, CA 94720-2020**

**University of Missouri- St. Louis  
School of Optometry  
8001 Natural Bridge Road  
St. Louis, MO 63121**

**University of Houston  
College of Optometry  
Houston, TX 77204-6054**

**SOURCE: American Optometric Association.**

## **Appendix B**

### **States that Regulate Opticians, 1998**

<b>State</b>
Alaska
Arizona
Arkansas
California
Connecticut
Florida
Georgia
Hawaii
Kentucky
Massachusetts
Nevada
New Hampshire
New Jersey
New York
North Carolina
Ohio
Rhode Island
South Carolina
Tennessee
Texas
Vermont
Virginia
Washington

**SOURCE: Opticians Association of America.**



**Appendix C**

**U.S. Census Bureau Estimates of the Prevalence of Functional Limitations in Seeing  
Among Persons 16 and Over, by State, 1990†**

State	Persons with Difficulty Seeing Words and Letters in Newspaper Print			Persons Unable to See Words and Letters in Newspaper Print		
	Population	Percentage	Rank	Population	Percentage	Rank
AK	10,135	2.78%	51	1,279	0.35%	51
AL	216,475	7.15%	4	40,434	1.33%	4
AR	132,016	7.52%	2	24,498	1.40%	3
AZ	124,914	4.59%	29	19,242	0.71%	31
CA	925,685	4.18%	40	140,200	0.63%	42
CO	96,262	3.94%	48	14,216	0.58%	47
CT	106,204	4.16%	41	16,543	0.65%	40
DC	32,446	6.71%	8	5,485	1.13%	11
DE	28,238	5.59%	15	4,491	0.89%	16
FL	721,588	7.14%	5	120,118	1.19%	8
GA	288,959	6.04%	13	49,951	1.04%	13
HI	31,420	3.96%	47	4,762	0.60%	46
IA	97,802	4.70%	23	15,375	0.74%	25
ID	31,615	4.43%	36	4,776	0.67%	38
IL	388,075	4.51%	35	62,451	0.73%	27
IN	186,012	4.70%	24	29,757	0.72%	29
KS	82,151	4.53%	32	12,910	0.71%	32
KY	191,010	6.91%	7	35,461	1.28%	5
LA	208,985	6.92%	6	37,146	1.23%	6
MA	201,537	4.28%	39	32,681	0.69%	35
MD	195,088	5.38%	17	31,116	0.86%	17
ME	42,935	4.63%	26	6,937	0.75%	22
MI	319,628	4.58%	31	51,839	0.74%	26
MN	134,807	4.14%	44	20,482	0.63%	43
MO	190,067	4.95%	18	31,938	0.83%	18
MS	143,960	7.72%	1	27,574	1.48%	1
MT	26,818	4.59%	28	4,075	0.70%	33
NC	318,545	6.37%	12	55,805	1.12%	12
ND	20,788	4.52%	33	3,084	0.67%	37
NE	52,112	4.51%	34	7,869	0.68%	36
NH	32,056	3.80%	49	4,857	0.58%	48
NJ	263,968	4.39%	37	41,826	0.70%	34
NM	53,097	4.90%	20	8,026	0.74%	24
NV	37,854	4.15%	43	5,567	0.61%	44
NY	661,528	4.76%	21	107,887	0.78%	20
OH	382,918	4.68%	25	62,544	0.76%	21
OK	154,116	6.64%	10	27,054	1.17%	9
OR	98,823	4.58%	30	15,499	0.72%	30
PA	453,004	4.92%	19	74,994	0.81%	19
RI	36,048	4.62%	27	5,876	0.75%	23
SC	166,999	6.51%	11	29,248	1.14%	10
SD	23,590	4.74%	22	3,568	0.72%	28
TN	248,258	6.69%	9	44,824	1.21%	7
TX	734,438	5.97%	14	117,861	0.96%	14
UT	42,015	3.70%	50	6,231	0.55%	50
VA	256,931	5.59%	16	42,388	0.92%	15
VT	17,148	4.01%	45	2,628	0.61%	45
WA	150,843	4.16%	42	23,058	0.64%	41
WI	159,460	4.36%	38	24,551	0.67%	39
WV	103,483	7.47%	3	19,572	1.41%	2
WY	12,893	3.99%	46	1,852	0.57%	49
<b>US Totals</b>	<b>9,635,746</b>	<b>5.16%</b>	<b>--</b>	<b>1,582,406</b>	<b>0.85%</b>	<b>--</b>

NOTE: †Sorted by rank on Persons with Difficulty Seeing Words and Letters in Newspaper Print.

SOURCE: U.S. Census Bureau, as reported by Association for the Blind.

**Appendix D**

**Optometrists and Ophthalmologists per 100,000 Population, by State, 1995**  
**(Sorted by rank on Optometrists per 100,000 Population)**

State	†1995 Population (1,000s)	Optometrists			Ophthalmologists		
		Registered*	Per 100,000 Population	Rank	Registered*	Per 100,000 Population	Rank
ND	641	139	21.67	1	38	5.92	27
SD	729	135	18.52	2	34	4.66	46
WY	480	84	17.49	3	15	3.12	51
MT	870	150	17.24	4	51	5.86	28
RI	990	169	17.07	5	66	6.67	15
IN	5,803	961	16.56	6	275	4.74	45
MA	6,074	964	15.87	7	534	8.79	5
OK	3,278	502	15.32	8	161	4.91	43
IA	2,842	424	14.92	9	173	6.09	21
OR	3,141	460	14.65	10	215	6.85	11
KS	2,565	372	14.50	11	146	5.69	32
CA	31,589	4,401	13.93	12	2,130	6.74	13
IL	11,830	1,637	13.84	13	717	6.06	23
WI	5,123	700	13.66	14	337	6.58	16
ME	1,241	168	13.53	15	62	4.99	41
PA	12,072	1,613	13.36	16	932	7.72	7
OH	11,151	1,477	13.25	17	667	5.98	26
CT	3,275	430	13.13	18	301	9.19	4
NE	1,637	214	13.07	19	95	5.80	31
CO	3,747	488	13.03	20	256	6.83	12
WA	5,431	691	12.72	21	318	5.86	29
MO	5,324	676	12.70	22	356	6.69	14
WV	1,828	231	12.64	23	96	5.25	38
AK	604	75	12.43	24	27	4.47	49
NJ	7,945	977	12.30	25	611	7.69	8
NH	1,148	141	12.28	26	67	5.83	30
TN	5,256	627	11.93	27	316	6.01	25
MN	4,610	548	11.89	28	299	6.49	17
ID	1,163	135	11.61	29	54	4.64	47
NY	18,136	2,057	11.34	30	1,761	9.71	3
MI	9,549	1,078	11.29	31	575	6.02	24
AR	2,484	274	11.03	32	133	5.35	36
VT	585	64	10.94	33	37	6.33	18
NM	1,685	183	10.86	34	77	4.57	48
FL	14,166	1,507	10.64	35	1,077	7.60	9
NC	7,195	718	9.98	36	389	5.41	35
VA	6,618	646	9.76	37	369	5.58	33
KY	3,860	376	9.74	38	192	4.97	42
NV	1,530	148	9.67	39	67	4.38	50
AL	4,253	404	9.50	40	215	5.06	40
TX	18,724	1,726	9.22	41	1,028	5.49	34
AZ	4,218	382	9.06	42	265	6.28	19
DE	717	64	8.92	43	44	6.13	20
UT	1,951	174	8.92	44	103	5.28	37
SC	3,673	313	8.52	45	223	6.07	22
HI	1,187	101	8.51	46	89	7.50	10
GA	7,201	600	8.33	47	365	5.07	39
LA	4,342	357	8.22	48	351	8.08	6
MS	2,697	220	8.16	49	129	4.78	44
DC	554	38	6.86	50	100	18.04	1
MD	5,042	316	6.27	51	511	10.13	2

SOURCES: PEER analysis of the following: †U.S. Department of Commerce, Bureau of the Census, Current Population Reports, Series P-25, No. 1095 at the national level, CPH-L-74 (1990 data); and forthcoming state level P-25 Reports.

\*American Optometric Association, "Supply of Eye Care Providers by State, 1995."

**Appendix E**  
**MISSISSIPPI STATE BOARD OF OPTOMETRY**

**APPLICATION TO PRACTICE OPTOMETRY IN STATE OF MISSISSIPPI**

1. Name \_\_\_\_\_ License Number \_\_\_\_\_
2. Permanent Mailing Address \_\_\_\_\_  
(Street/P.O. Box, City, State & Zip)
3. Phone Number \_\_\_\_\_
4. Intended Office Address \_\_\_\_\_  
(Street/P.O. Box, City, State & Zip)
5. Address of Intended Secondary Office \_\_\_\_\_  
(Street/P.O. Box, City, State & Zip)
6. Name of Intended Practice(s) \_\_\_\_\_
7. Name under which any ophthalmic dispensary owned or operated by you will  
do business \_\_\_\_\_
8. Date of Birth \_\_\_\_\_ Sex \_\_\_\_\_ Male \_\_\_\_\_ Female \_\_\_\_\_  
(Month/Day/Year)
9. Place of Birth \_\_\_\_\_  
(City, County, State)
10. Social Security Number \_\_\_\_\_ Tax ID Number \_\_\_\_\_
11. United States Citizen \_\_\_\_\_ Yes \_\_\_\_\_ No \_\_\_\_\_ Other (explain)  
\_\_\_\_\_  
\_\_\_\_\_
12. Marital Status \_\_\_\_\_  
(M,S,D, or W)
13. Spouse's Name \_\_\_\_\_
14. Have you ever legally changed your name? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
15. High School Graduation & Date \_\_\_\_\_  
(Name of School, City, and State and Date)
16. College/University Attended (Give Dates, Degrees, City and State)  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
17. Optometry College Attended (Give Dates, Degrees, City and State)  
\_\_\_\_\_  
\_\_\_\_\_

18. Are you licensed to practice optometry in another state? \_\_\_\_\_ Yes \_\_\_\_\_ No

19. List all states and dates of practice where you have practiced since graduation.

\_\_\_\_\_

20. Give current status in states where you have previously practiced.

\_\_\_\_\_

21. Are you DPA certified in another state? \_\_\_\_\_ TPA certified? \_\_\_\_\_

22. Have you ever served in the U.S. Military? \_\_\_\_\_ Yes \_\_\_\_\_ No

Give Branch/Rank/Discharge \_\_\_\_\_

23. Have you ever had any disciplinary action taken against you by a State Board of Optometry, a Peer Review Committee, Health Care Institution(s), Law Enforcement Agency, Court or Government Agency for acts or conduct described in the Optometry Practice Act or State Board Rules as grounds for disciplinary action?

\_\_\_\_\_ Yes \_\_\_\_\_ No

24. Have you ever been convicted of a felony or misdemeanor under the laws of any state or of the United States? \_\_\_\_\_ Yes \_\_\_\_\_ No

25. Have you ever had any adverse judgement, settlement, or award arising from a professional liability claim? \_\_\_\_\_ Yes \_\_\_\_\_ No

26. Do you now hold or have you held staff privileges at any health care facility? \_\_\_\_\_ Yes \_\_\_\_\_ No

Name and Location \_\_\_\_\_

Status \_\_\_\_\_

27. Enclosures: Photograph \_\_\_\_\_, Pre-Optometry Transcript \_\_\_\_\_, Optometry

Transcript \_\_\_\_\_, National Board Scores \_\_\_\_\_, Application Fee \_\_\_\_\_

(Resident Application fee is \$200.00 and Non-Resident fee is \$300.00)

Three letters of recommendation, one by a Mississippi licensed O.D. \_\_\_\_\_,

Letters from other state boards giving your status if you are licensed in

other states \_\_\_\_\_.

I agree to practice optometry in accordance with the provisions of the state laws and board rules and regulations fo Mississippi if granted a license by this state; and I solemnly swear or affirm that the foregoing answers are true and correct under the penalty of perjury, license refusal or disciplinary action.

Signature \_\_\_\_\_ Date \_\_\_\_\_

## Appendix F

### Standard Testing Practices in the Recommendations of the Council on Licensure, Enforcement, and Regulation (CLEAR)

<b>Test Development</b>	<p>1. <u>Job analysis</u> involves researching the knowledge and skills needed for overall job competence. State laws and regulations related to the specified job, such as the scope of practice, are considered in the test design to ensure that the findings are consistent with law.</p>
	<p>2. <u>Test specifications</u> are commonly known as the blueprint for the examination. A table of specifications contains an outline of the content, the number of questions, and type of questions for the examination. Documentation should exist to show how the job analysis led to the test specifications.</p>
	<p>3. <u>Developing Objectively Scored Examinations</u>- (A) The process of <u>question development</u> involves identifying experts in the specified job, training them in test development, and evaluating their work to create well-written test items. (B) <u>Assembling an examination form</u> involves selecting and reviewing test items as a set. It is important to ensure that the selected items selected do not contain clues to answering other questions on the examination. (C) <u>Standard setting</u> refers to the process of determining a minimum passing score. The process is standardized and documented to ensure the set score reflects minimally acceptable job competence and is legally defensible. (D) <u>Timing the examination</u> refers to setting a time limit for examinees to complete the testing process. The limit should be consistent with any job analysis findings and should ensure that a minimum of 95% of the examinees complete the examination. (E) If an outside agency is used to <u>print and distribute</u> the examinations, the security policies of these agencies must be reviewed and documented.</p>
	<p>4. <u>Developing oral, practical, and essay examinations</u> should be done only if the job analysis indicates that the skills and abilities cannot be assessed through multiple-choice examinations. The administration and scoring of the oral, practical, and essay examinations are designed and standardized to ensure that evaluated behaviors can be clearly elicited and objectively evaluated.</p>
<b>Test Administration</b>	<p>1. Prior to testing, a <u>candidate bulletin</u> is distributed to the examinees to explain testing procedures (e.g., location, materials needed) and the specific content to be covered in each subject area tested.</p>
	<p>2. Candidates taking the examination who have qualifying disabilities under the 1990 Americans with Disabilities Act must be <u>appropriately accommodated</u> when they sit for the examination.</p>
	<p>3. An <u>Administration Manual</u> provides procedural information to test proctors for the test administration.</p>
<b>Statistical Analysis &amp; Research</b>	<p>1. <u>Question Analysis</u>-A. Item <u>difficulty</u> refers to the number of examinees who correctly answered a test question. B. Item <u>discrimination</u> refers to the extent to which a test question is correctly answered by high-scoring candidates and incorrectly by low-scoring candidates.</p>

	<p>2. <b>Test Analysis-</b> A. The <u>mean score</u> is the arithmetic average of the test scores. Changes in the mean may indicate a variance in the testing procedures or in the examinees' capability. B. <u>Score standard deviation</u> is a measure of the dispersion of the examination scores. If candidate scores range from very high to very low, the standard deviation will be high. If the candidate scores are all clumped near the mean score, the standard deviation will be low. C. <u>Test reliability</u> refers to the level of consistency associated with a given candidate's test scores. The indices range from 0 to 1.0. Higher reliability indices are interpreted to mean that we can have a great degree of confidence in the accuracy of each candidate's score. D. <u>Standard Error of Measurement (SEM)</u> describes the variability of the test scores due to imprecision associated with the examinations. The test developer would want the SEM to as low as possible. E. <u>Score frequency distributions</u> show the number of examinees that achieved each score. The distributions allow the test developer to view any changes in achievement from group to group.</p>
	<p>3. <u>Test Equating</u> is a process of ensuring that the reported scores from all test forms have the same meaning. Test equating accounts for differences in the difficulty of alternative test forms.</p>
<b>Scoring &amp; Reporting</b>	<p>1. <u>Standardized score scales</u> are used to report the results of examinations that are equated. The use of score scales helps to assure that the same reported scores have the same meaning and interpretation from form to form.</p>
	<p>2. <u>Reporting</u> the results of testing to failing examinees is required. It is a standard practice to provide failing candidates with a diagnostic breakdown of their strengths and weaknesses.</p>
<b>Examination Security</b>	<p>1. Experts that participate in the <u>writing and review</u> process should sign a contract that obligates them to maintain the confidentiality of the examination questions to which they have access.</p>
	<p>2. The <u>Question pool</u>, potential test items, should be maintained in a database which is secure and to which access is permitted only with appropriate access and password recognition. Files should be given coded file names to obscure the file contents. Ideally, the data files should be encrypted.</p>
	<p>3. Documentation should be created and maintained related to the storage and disposal of <u>materials</u> used during the testing process.</p>
	<p>4. The agency selected for <u>book printing</u> should provide documentation of its security measures. Examination booklets should be uniquely numbered to provide a means of accounting for all booklets at all times.</p>
	<p>5. <u>Secure storage</u> should be provided for the materials sent to the examination proctors.</p>
	<p>6. Examination materials should be <u>transported</u> only by traceable carrier such as Federal Express. The U. S. Mail is considered untraceable.</p>
	<p>7. Planning for the <u>examination administration</u> should include responses to potential security problems.</p>

NOTE: The professional testing practices are in compliance with the Standards for Educational and Psychological Testing developed by the American Psychological Association, American Educational Research Association, and the National Council on Measurement in Education.

SOURCE: PEER staff review of the *Development, Administration, Scoring and Reporting of Credentialing Examinations: Recommendations for Board Members* by the Council on Licensure, Enforcement, and Regulation (CLEAR) and related information provided by Dr. Lee Schroeder, President of Schroeder Measurement Technologies.

## Appendix G

<b>List of Selected Membership of the Council on Licensure, Enforcement, and Regulation (CLEAR)</b>	
Agency	State
Board of Medical Examiners	Alabama
Division of Occupational Licensing	Alaska
State Board of Pharmacy	Arizona
Department of Regulatory Agencies	Colorado
Occupational and Professional Licensing Administration	District of Columbia
State Examining Board	Georgia
State Board of Medical Examiners	Iowa
Department of Health & Environment	Kansas
<b>Board of Optometric Examiners</b>	<b>Kentucky</b>
State Board of Nursing	Louisiana
Professions Regulation/Medical Care Development	Maine
<b>International Association of Board of Examiners of Optometry</b>	<b>Maryland</b>
<b>National Board of Examiners in Optometry</b>	<b>Maryland</b>
Health Licensing Boards	Minnesota
<b>Board of Optometry</b>	<b>Minnesota</b>
Board of Pharmacy	Minnesota
<b>Board of Examiners for Licensed Professional Counselors</b>	<b>Mississippi</b>
<b>Board of Nursing</b>	<b>Mississippi</b>
<b>Board of Public Accountancy</b>	<b>Mississippi</b>
<b>Board of Contractors</b>	<b>Mississippi</b>
<b>Bureau of Plant Industry</b>	<b>Mississippi</b>
<b>American Optometric Association</b>	<b>Missouri</b>
Division of Professional Registration	Missouri
Board of Pharmacy	North Carolina
State Board of Medical Examiners	Nevada
State Board of Pharmacy	New York
<b>State Board of Optometry</b>	<b>Ohio</b>
Board of Medical Licensure and Supervision	Oklahoma
Board of Medical Examiners	Oregon
National Board of Medical Examiners	Pennsylvania
Department of Health	Rhode Island
Department of Labor Licensing and Regulation	South Carolina
Department of Health	Tennessee
<b>Optometry Board</b>	<b>Texas</b>
Division of Occupational and Professional Licensing	Utah
Department of Licensing	Washington

NOTE: This list represents less than one-tenth of CLEAR's 1998 total membership.  
 Bold type represents Mississippi and optometry memberships.

SOURCE: Council on Licensure, Enforcement, and Regulation (CLEAR).

**Appendix H**  
**States' Requirements Concerning Portions of the National Board of**  
**Examiners in Optometry Examinations**

State	Part I	Part II	Part III	TMOD	Additional Examinations Required
Alabama	Y	Y	Y	N	written
Alaska	Y	Y	Y	Y	law, practical, written, and oral
Arizona	Y	Y	N	Y	law, practical, and slide
Arkansas	Y	Y	Y	Y	law
California	Y	Y	C	Y	law and practical
Colorado	Y	Y	Y	Y	law
Connecticut	Y	Y	Y	Y	none required
Delaware	Y	Y	Y	Y	none required
Florida	Y	Y	N	Y	law, practical, and written
Georgia	Y	Y	N	Y	law and practical
Hawaii	Y	Y	Y	N	none required
Idaho	Y	Y	Y	Y	law
Illinois	Y	Y	Y	Y	none required
Indiana	Y	Y	Y	Y	law
Iowa	Y	Y	Y	Y	practical and written
Kansas	Y	Y	Y	Y	law, practical, and written
Kentucky	Y	Y	Y	Y	law
Louisiana	Y	Y	N	N	law and practical
Maine	Y	Y	Y	Y	oral
Maryland	Y	Y	Y	N	law and TMOD for optometrists 3 years beyond graduation
Massachusetts	Y	Y	Y	N	none required
Michigan	Y	Y	N	N	law, practical, written, and oral
Minnesota	Y	Y	Y	Y	law
Mississippi	Y	Y	Y	Y	written
Missouri	Y	Y	C/V	Y	law
Montana	Y	Y	Y	Y	none required
Nebraska	Y	Y	Y	Y	law
Nevada	Y	Y	Y	Y	law
New Hampshire	Y	Y	Y	Y	law
New Jersey	Y	Y	Y	Y	law
New Mexico	Y	Y	Y	Y	law and practical
New York	Y	Y	Y	Y	none required
North Carolina	Y	Y	N	Y	practical
North Dakota	Y	Y	Y	Y	law
Ohio	Y	Y	Y	Y	law seminar
Oklahoma	Y	Y	Y	N	law, written, and oral
Oregon	Y	Y	Y	Y	law
Pennsylvania	Y	Y	Y	N	none required, TMOD pending
Rhode Island	Y	Y	Y	Y	practical
South Carolina	Y	Y	Y	Y	law, practical, and oral
South Dakota	Y	Y	Y	Y	law
Tennessee	Y	Y	Y	Y	law
Texas	Y	Y	Y	Y	law
Utah	Y	Y	Y	Y	law
Vermont	Y	Y	Y	Y	none required
Virginia	Y	Y	Y	N	law, TMOD accepted in lieu of state exam
Washington	Y	Y	Y	Y	law
West Virginia	Y	Y	N	N	written and oral
Wisconsin	Y	Y	Y	Y	written TMOD for therapeutic certification
Wyoming	Y	Y	Y	Y	law, practical, written, and oral
Dist. Columbia	Y	Y	Y	N	none required

NOTES: Y=Accepted or Required, N=Not Accept or Required, C=requires Clinical Skills exam only, and C/V=Requires Clinical Skills and Visual Recognition and Interpretation of Clinical Signs (VRICS) only. Part III exam includes Clinical Skills, VRICS, and Patient Management examinations. TMOD is the Treatment and Management of Ocular Diseases examination.

SOURCE: National Board of Examiners in Optometry 1998 Candidate Bulletin.



## **Appendix I**

### **Psychometrician's Review Notes and Testing Suggestions for the Optometry Board's Law Examination**

Licensure tests should place greater emphasis on items that measure understanding of facts and principles, and application of knowledge. If rote recall is all that is necessary to practice, one must challenge whether the test is needed. Requiring candidates to pledge to read and conform to state law would be a sufficient substitute for the test.

The format of 40-item test (i.e., 38 of 40 items) is true-false. This format is poorly regarded within the psychometric profession for several reasons. Two of the most prominent are that it is easy for candidates to guess the correct response, and that it is difficult for the items to measure thinking skills. Furthermore, it is difficult for candidates to identify what aspect of the item is to be judged as true or false.

The short-answer fill-in test format is no better than the true-false format.

**SOURCE:** Expert psychometrician.

## Appendix J

### Hourly Legal Fees for Selected Health-Related Boards, Fiscal Year 1997

<i>Agency</i>	<i>Legal Service Provider</i>	<i>Hourly Rate</i>
Dental Examiners	Private Attorney	\$90
Medical Licensure	Attorney General's Office	55
	Private Attorney	90
Nursing	Private Attorney	55
Optometry	Private Attorney	100
Pharmacy	Attorney General's Office	55

SOURCE: Attorney General's office records.

## Appendix K

### Proposed Legislation Concerning the Board of Optometry

Mississippi Legislature

Regular Session, 1999

BY:

#### BILL

AN ACT TO AMEND SECTION 73-19-7, MISSISSIPPI CODE OF 1972, TO RECONSTITUTE AND CONTINUE THE STATE BOARD OF OPTOMETRY; TO PROVIDE FOR THE APPOINTMENT OF BOARD MEMBERS BY SUPREME COURT DISTRICTS AND TO PROVIDE FOR AT-LARGE MEMBERS; TO REQUIRE THAT FOUR MEMBERS BE OPTOMETRISTS AND ONE MEMBER BE A CONSUMER REPRESENTATIVE; TO AMEND SECTION 73-19-17, MISSISSIPPI CODE OF 1972, TO REQUIRE THAT THE STATE BOARD OF OPTOMETRY USE STANDARDS OF THE COUNCIL ON LICENSURE, ENFORCEMENT AND REGULATION, AFFILIATED WITH THE COUNCIL OF STATE GOVERNMENTS; TO AMEND SECTION 73-19-105, MISSISSIPPI CODE OF 1972, TO DELETE THE REQUIREMENTS THAT THE BOARD DEVELOP A TEST MEASURING THE PHARMACOLOGICAL COMPETENCY OF CANDIDATES FOR LICENSURE; TO AMEND SECTIONS 73-19-39 AND 73-19-41 TO AUTHORIZE INVESTIGATORS OF THE BOARD TO RECOMMEND TEMPORARY SUSPENSION OF AN OPTOMETRIST'S LICENSE WHEN THE PUBLIC HEALTH AND SAFETY REQUIRE SUCH AND TO AUTHORIZE THE BOARD TO MAKE SUCH SUSPENSIONS WHEN IT DETERMINES THAT THE PUBLIC HEALTH AND SAFETY REQUIRE SUCH; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI.

Section 1. Section 73-19-7, Mississippi Code of 1972, is amended as follows:

The state board of optometry is hereby reconstituted and continued as follows. The Governor, with advice and consent of the senate, shall appoint to the state board of optometry four (4) non-medical persons who have been actively engaged in the practice of optometry immediately preceding their appointment to the board, and one (1) consumer representative. One (1) optometrist member shall be appointed from each of the state supreme court districts. One (1) optometrist member and one (1) consumer member shall be appointed from the state-at-large. There shall be no more than two (2) members from any one (1) supreme court district. The initial terms of the members appointed from the supreme court districts shall be as follows; one (1) year for the representative of the first supreme court district, two (2) years for the representative of the second supreme court district, and three (3) years for the representative of the third supreme court district. The optometrist member appointed from the state-at-large shall have an initial term of four (4) years. The consumer representative shall have an initial term of five (5) years. After the completion of the initial

terms, all members shall have terms of office of five (5) years. No member of the board shall be a stockholder in or a faculty member or member of the board of trustees of a school of optometry. No member shall be eligible to serve more than two five-year terms.

All initial and subsequent appointments of optometrist members shall be selected from a list submitted by the Mississippi Optometric Association. For each appointment there shall be three (3) names submitted by the association. In the event that the association does not submit a list of names, the Governor may appoint any member in good standing of the Mississippi Optometric Association to the board. The Consumer member shall be a qualified elector of the state and shall be of good moral character. The board shall insure that the consumer member receives an orientation to the practice of optometry within the first three months of such member's joining the board.

~~§ 73-19-7. Board of optometry; appointment; qualifications.~~

~~The governor, with the advice and consent of the senate, shall appoint a state board of optometry, consisting of five (5) persons, citizens of Mississippi, each of whom shall be a nonmedical man or woman actually engaged in the practice of optometry for five (5) years next preceding his appointment. Within ninety (90) days after March 25, 1974, the governor shall appoint: one (1) member for a term of one (1) year, one (1) member for a term of two (2) years, one (1) member for a term of three (3) years, one (1) member for a term of four (4) years, and one (1) member for a term of five (5) years; and upon the expiration of all such terms their successors shall be appointed by the governor for a term of five (5) years. From and after July 1, 1983, the appointments to the board shall be made with one (1) member to be appointed from each of the congressional districts as existing on January 1, 1980; provided that the present members of the state board of optometry whose terms have not expired by July 1, 1983, shall continue to serve until their terms of office have expired. Each member shall remain in office after the expiration of his term until his successor shall be duly appointed and qualified.~~

~~No person so appointed shall be a stockholder in or a member of the faculty or of the board of trustees of any school of optometry, or serve to exceed two (2) five-year terms.~~

~~Vacancies on said board shall be filled by appointment by the governor, with the advice and consent of the senate, from a list of names submitted by the Mississippi Optometric Association consisting of three (3) of its members, or by appointment of any qualified member of the association.~~

SOURCES: Codes, Hemingway's 1921 Supp. § 6124d; 1930, § 5655; 1942, § 8835; Laws, 1920, ch. 217; 1956, ch. 305, § 1; 1974, ch. 426, § 1; reenacted and amended, 1983, ch. 438, § 4; reenacted, 1991, ch. 303, § 4, eff from and after July 1, 1991.

Section 2.: Section 73-19-17, Mississippi Code of 1972, is amended as follows:

**~~§ 73-19-17. Examination; qualifications.~~**

Any person over the age of twenty-one (21) years, of good moral character, and who has graduated from a high school or preparatory school affiliated with and recognized by a state university, and who has graduated from a reputable school or college of optometry, shall be entitled to stand the examination for license to practice optometry in Mississippi. The examining Board of Optometry shall keep on file a list of schools or colleges of optometry which are recognized by said board. ~~The examination to practice optometry shall~~

Examinations shall test the professional competency of candidates for licensure. All examinations shall be developed in compliance with the professional testing standards developed by the Council on Licensure, Enforcement, and Regulation, affiliated with the Council of State Governments.

~~consist of tests in practical, theoretical and physiological optics, in theoretical and practical optometry and in anatomy and physiology of the eye and in pathology as applied to optometry.~~ The State Board of Optometry shall not examine or certify any optometrist in any therapeutic procedures unless the optometrist has successfully completed the proper didactic education and supervised clinical training taught by an institution accredited by a regional or professional accreditation organization that is recognized or approved by the Council on Postsecondary Accreditation of the United States Department of Education, or its successor, and approved by the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy.

SOURCES: Codes, Hemingway's 1921 Supp. § 6124i; 1930, § 5660; 1942, § 8840; Laws, 1920, ch. 217; 1956, ch. 305, § 3; reenacted, 1983, ch. 438, § 9; reenacted, 1991, ch. 303, § 9; 1994, ch. 573, § 11, eff from and after July 1, 1994.

Section 3. Section 73-19-39, Mississippi Code of 1972, is amended as follows:

**§ 73-19-39. Report of investigator; dismissal of complaint; formal complaint by board against optometrist; notice of action taken.**

After completion of his investigation, the board investigator shall make a report of his findings and recommendations to the member of the board designated to investigate the matter. After receipt of the investigator's report, the board member shall take the following action:

- (a) If upon review of the complaint, board investigator's report and any written response by the accused optometrist, the board member determines that there is not reasonable ground to believe that the accused optometrist has been guilty of unprofessional conduct or conduct evincing unfitness for the practice of optometry, the board member shall present his findings and recommendations to the board at the next regular board meeting. The board may dismiss the complaint or may prepare a formal complaint against the licensee as provided in Section 73-19-41, Mississippi Code of 1972. In the event of dismissal, the person filing the complaint and the accused optometrist shall be given written notice of the board's determination.

(b) If the board member determines there is reasonable cause to believe the accused optometrist is guilty of such conduct, which, if proven, would warrant suspension for a definite or an indefinite period or license revocation, the board member shall request the board to prepare and file a formal complaint against the accused optometrist. The board may dismiss the complaint or may prepare a formal complaint against the licensee as provided in Section 73-19-41, Mississippi Code of 1972. In the event of a dismissal, the person filing the complaint and the accused optometrist shall be given written notice of the board's determination.

SOURCES: Laws, 1991, ch. 303, § 19, eff from and after July 1, 1991.

(c) The investigator may recommend to the board that the license of any optometrist may be suspended prior to a hearing if the investigator has clear, competent, and unequivocal evidence that the optometrist's continuation in practice would constitute a danger to the health and safety of the public.

Section 4. Section 73-19-41, Mississippi Code of 1972, is amended as follows:

**§ 73-19-41. Hearing on formal complaint; decision.**

(1) The board shall fix a time and place for any formal complaint hearing and shall cause a written notice specifying the offense or offenses for which the licensee is charged and notice of the time and place of the hearing to be served upon the licensee at least twenty (20) days prior to the hearing date. Such notice may be served by mailing a copy thereof by certified mail, postage prepaid, to the last known residence or business address of the licensee.

(2) The board may temporarily suspend the license of any physician without a hearing, simultaneously, with the institution of proceedings for a hearing under this section, if it finds that the evidence in support of the investigator's determination of the need for such suspension is clear, competent, and unequivocal, and that the optometrist's continuation in practice would constitute an imminent danger to the public health and safety. Any optometrist whose license is suspended prior to a hearing may be entitled to receive a full hearing before the board on such temporary suspension in no less than seven (7) days after the board imposes temporary suspension of the optometrist's license. At the optometrist's request, such hearing may occur after the seven-day period.

(3) ~~(2)~~ The board is hereby authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers at such hearing. Process issued by the board shall extend to all parts of the state and shall be served by any person designated by the board for such service.

(4) ~~(3)~~ The accused shall have the right to appear either personally or by counsel or both to produce witnesses or evidence in his behalf, to cross-examine witnesses and to have subpoenas issued by the board.

(5) ~~(4)~~ At the hearing, the board shall administer oaths as may be necessary for the proper conduct of the hearing. All hearings shall be conducted by the board, with the exception of the investigating board member who shall not participate in the hearing. The board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be based upon sufficient evidence to sustain it. All proceedings shall be transcribed by a court reporter.

(6)

(5) Where, in any proceeding before the board, any witness fails or refuses to attend upon a subpoena issued by the board, refuses to testify, or refuses to produce any books and papers the production of which is called for by a subpoena, the attendance of such witness, the giving of his testimony or the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(7)

(6) The board shall, within sixty (60) days after conclusion of the hearing, reduce its decision to writing and forward an attested true copy thereof to the last known residence or business address of such licensee by way of United States first class, certified mail, postage prepaid.

SOURCES: Laws, 1991, ch. 303, § 20, eff from and after July 1, 1991.

Section 5. Section 73-19-105, Mississippi Code of 1972, is amended as follows:

**§ 73-19-105. Educational requirements; examination.**

(1) Before any optometrist or any applicant for a license to practice optometry may be certified to use diagnostic pharmaceutical agents as authorized in Section 73-19-103, he shall submit satisfactory evidence to the State Board of Optometry that he has successfully completed a course or courses in pharmacology as they apply to optometry, with particular emphasis on the topical application of diagnostic pharmaceutical agents to the eye, and any additional educational requirements prescribed by the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy. Such course or courses in pharmacology and any additional educational requirements prescribed shall be completed at an institution accredited by a regional professional accreditation organization that is recognized or approved by the Council on Postsecondary Accreditation or the United States Department of Education or its successors and approved by the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy.

~~(2) Upon the successful completion of all specified educational requirements, any optometrist or any applicant for a license to practice optometry who desires certification to use diagnostic pharmaceutical agents as authorized in Section 73-19-103 shall satisfactorily pass an examination administered by the State Board of Optometry. Such examination shall be prepared by the State Board of Optometry with the advice and consultation of the designated members of the State Board of Medical Licensure and the State Board of Pharmacy. No credit for such examination may be given unless the applicant for certification has achieved a score equal to or greater than a score which is generally accepted in medical schools as a passing score for the same subject areas of the examination, as determined by the State Board of Optometry. All examinations and scores shall be made available for inspection to the State Board of Medical Licensure and the State Board of Pharmacy through their designated members.~~

(2) (3) The additional educational requirements necessary to become certified to use diagnostic pharmaceutical agents may be completed simultaneously with the educational requirements necessary to become licensed to practice optometry or may be completed after the person is licensed to practice optometry. Any applicant for a license to practice optometry who has met the additional educational requirements for certification to use diagnostic pharmaceutical agents may take the examination to become licensed to practice optometry and the examination to become certified to use diagnostic pharmaceutical agents at the same time.

SOURCES: Laws, 1982, ch. 353, § 3; reenacted, 1985, ch. 374, § 4, eff from and after July 1, 1985.

Section 6. This act shall take effect and be in force from and after July 1, 1999.

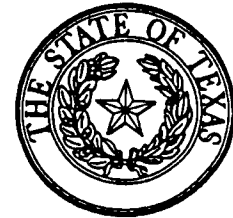


## Appendix L

### Educational Pamphlet Developed by the Texas Board of Optometry

#### HOW CAN A COMPLAINT BE FILED?

A complaint can be submitted in writing to the Texas Optometry Board. All facts should be included. The Board will furnish a form when contacted. The Texas Optometry Board has no authority to resolve certain complaints such as fee disputes.



### THE COMPREHENSIVE EYE-HEALTH EXAMINATION

Optometrists are required by law to perform certain testing procedures to assure that the eyes are free from disease or other disorder and are functioning visually. These tests include testing for glaucoma, visual acuity, the refraction of the eye, muscle function, and any other procedures the optometrist may feel necessary to assess the condition of the eyes.

The Texas Optometry Act and a Federal Trade Commission Rule require optometrists to furnish a copy of the spectacle prescription upon completion of the comprehensive eye examination. For health reasons, a doctor is not required to prepare or release a copy of a contact lens prescription.

#### CALL OR WRITE:

TEXAS OPTOMETRY BOARD  
333 GUADALUPE STREET  
SUITE 2-420  
AUSTIN, TEXAS 78701-3942

Telephone: 512/305-8500  
FAX 512/305-8501

Or

1-800-821-3205 - Health Professions  
Council Complaint System - to leave name  
and address for mailing of a complaint  
form.

#### Americans with Disabilities Act

It is the goal of the Texas Optometry Board to assure the public and all constituencies that the agency is in full compliance with the Americans with Disabilities Act and that the office, programs, activities, and publications are accessible to anyone needing reasonable accommodations.

Information concerning the provisions of the ADA, and rights provided, are available from the Agency ADA Coordinator at 512/835-1938 or 1-RELAY TEXAS (TDD).

## OPTOMETRY

THE PRIMARY  
EYE CARE  
PROFESSION

## PATIENT INFORMATION

Presented By  
TEXAS OPTOMETRY  
BOARD

## MISSION OF THE PROFESSION OF OPTOMETRY

The mission of the profession of optometry is to fulfill the vision and eye care needs of the public through clinical care, research, and education, all of which enhance the quality of life. Doctors of optometry are independent primary health care providers who examine, diagnose, treat and manage diseases and disorders of the visual system, the eye and associated structures as well as diagnose related systemic conditions.

This brochure contains information for consumers about optometry in the State of Texas. It is made available by the Texas Optometry Board, which regulates the profession. Additional information can be obtained by writing or calling:

TEXAS OPTOMETRY BOARD  
333 GUADALUPE STREET  
SUITE 2-420  
AUSTIN, TEXAS 78701-3942

Telephone: 512/305-8500  
FAX 512/305-8501

*Esta publicación se puede pedir en español. (This pamphlet is available in the Spanish language upon request.)*

## INFORMATION ABOUT OPTOMETRY

### **WHAT IS THE DIFFERENCE BETWEEN AN OPTOMETRIST, OPHTHALMOLOGIST AND OPTICIAN?**

An optometrist, licensed by the Texas Optometry Board, is a health care practitioner trained to diagnose signs of ocular, neurological and systemic health problems and treat vision disorders. Therapeutically licensed optometrists treat eye diseases and injuries, prescribe medicine and perform other procedures such as eye foreign body removal. Optometrists prescribe glasses and contact lenses.

An ophthalmologist is an eye surgeon trained in eye surgery and eye disease. Ophthalmologists prescribe glasses, contact lenses, medicine, and perform major eye surgery such as cataract surgery.

An optician is an eye wear provider trained to select, manufacture and dispense spectacles and sell or deliver contact lenses upon a prescription written by an optometrist or ophthalmologist. An optician is not licensed as an optometrist or ophthalmologist.

### **WHAT IS THE EDUCATION AND TRAINING OF AN OPTOMETRIST?**

The academic credentials of students entering a college of optometry are the same as those entering other health professions. The optometry college curriculum is a minimum of four years. After graduation, the national and Texas Board examinations must be passed to be eligible for licensure.

### **HOW IS THE COMPETENCY OF THE OPTOMETRIST CONTINUALLY EVALUATED?**

Optometrists, by law, must complete 16 hours of continuing education each year. Six of these hours must be in diagnostic and therapeutic education and techniques.

### **WHAT IS THE TEXAS OPTOMETRY BOARD?**

The Texas Optometry Board serves to protect the public and regulate the profession of optometry. It is comprised of nine members, six of whom are optometrists practicing in the State of Texas, and three public members. All are appointed by the Governor and confirmed by the Senate. The duties of the Board include conducting examinations, issuing and renewing licenses, monitoring professional practice, answering questions and receiving and processing complaints from the public.

Sign Developed by the Texas Board of Optometry

# **NOTICE CONCERNING COMPLAINTS**

**COMPLAINTS ABOUT OPTOMETRISTS, THERAPEUTIC OPTOMETRISTS, AS WELL AS OTHER INDIVIDUALS REGULATED BY THE TEXAS OPTOMETRY BOARD, MAY BE REPORTED TO THE FOLLOWING ADDRESS:**

**TEXAS OPTOMETRY BOARD  
333 GUADALUPE STREET, SUITE 2-420  
AUSTIN, TEXAS 78701-3942**

**ASSISTANCE IN FILING A COMPLAINT IS AVAILABLE  
BY CALLING THE FOLLOWING TELEPHONE NUMBER:**

**(512) 305-8500**

**OR**

**1-800-821-3205 - Health Professions Council Complaint System -  
to leave name and address for mailing of a complaint form.**

Notice to Licensees: This sign shall be conspicuously and prominently displayed in a location where it may be seen by all patients.

# Appendix N

## Texas Board of Optometry's Newsletter



TEXAS OPTOMETRY BOARD  
333 GUADALUPE STREET, SUITE 2-420  
AUSTIN, TEXAS 78701-3942  
(512) 305-8500  
FAX (512) 305-8501

In order for the Board to determine if there is such illegal dispensing occurring, please feel free to contact the Board Office. In writing, we ask that you (1) identify on your letter that you are responding to the Board's request for information regarding "prescription substitution", (2) furnish your name, address, and telephone number, (3) furnish specific and documented occurrences, providing the patient's name, address, and prescription, and (4) provide the name and address of the optician and/or optical company along with information regarding the specific substitution. General information will not be considered; information must be specific and documented.

### DISCIPLINARY ACTIONS

During the past year, the Board has taken action against licensees, as follows:

Craig Edwin Schacherer, O.D., License No. 4141, of Wylie, Texas. Summary of charges within Agreed Settlement: Dr. Schacherer, who does not possess a therapeutic license, (1) prescribed drugs on at least seventeen occasions for the treatment of visual defects, abnormal conditions, and diseases of the human eye; (2) on at least one occasion, issued a prescription for drugs using a prescription pad of a medical doctor, and (3) issued a prescription for the drug timoptic, an antiglaucoma drug not authorized for use by therapeutic optometrists. Such activities are in violation of Sections 1.02, 1.03, 4.04, and 5.05 of the Texas Optometry Act. Dr. Schacherer's license was suspended for five years, probated with the exception of a sixty (60) day period commencing on July 15, 1996, and was assessed an administrative penalty of \$5,000 dollars.

Robert M. Birenbaum, O.D., License No. 1925, of Terrell, Texas. Summary of charges within Agreed Settlement: Dr. Birenbaum, who does not possess a therapeutic license, (1) administered an eye drop to an investigator retained by the Board referring to the solution as an antibiotic and (2) noted the condition of episcleritis on the investigator/patient's chart, but did not refer the patient for medical care. Such activities are in violation of Sections 1.03, 4.04, 5.04 and 5.05 of

the Texas Optometry Act, therefore, the license of Dr. Birenbaum was suspended for one year, fully probated, an administrative penalty of \$2,500 was assessed, with the condition that within one year from the date of the agreed settlement, he would become licensed as a therapeutic optometrist.

Willard J. Choates, O.D., License No. 1879, of Fort Worth, Texas. Summary of charges within Agreed Settlement: Dr. Choates indirectly contributed to a fraudulent prescription being issued from his office which allowed for an excessive number of contact lenses to be dispensed through a prescription written for a patient, and (2) allowed an optical company to supply prescription forms for use in his individual practice of optometry. Such activities are in violation of Sections 4.04(a)(1),(5),(6),(8) and 5.11(b)(5) of the Texas Optometry Act. Dr. Choates' license was suspended for one year, fully probated with the following conditions: (1) that each prescription written for contact lenses must contain the number of lenses intended for each patient and be personally signed, with procedures instituted to protect the prescription pads; (2) additionally, Dr. Choates shall notify the optical companies and the patient that the prescription was immediately rescinded, and institute steps to assure that no business services are provided by the optical company.

### FLEA MARKET SALES OF CONTACT LENSES

On behalf of the Texas Optometry Board and the Texas Health Department, the Texas Attorney General has obtained injunctions against several individuals for the illegal sale of contact lenses at flea markets operating in Amarillo, Dallas, and Fort Worth. Temporary injunctions were filed against six opticians and the companies under which they operate to stop the unauthorized practice of optometry. A court date for permanent injunction has been set for early December. The majority of lenses being sold were plano, colored contact lenses. The vendors represented that no prescription was required.

VOL. IV, No. 1

NEWSLETTER

OCTOBER, 1996

### LICENSE RENEWAL

Your license renewal is enclosed with this mailing and is due before January 1. You should verify all printed information, making any changes necessary, confirm that the number of continuing education hours listed are sixteen or more, sign the form, and forward the correct fee. You MUST complete the dispensing portion of the form; if this information is not furnished, the renewal form will be returned to you. Further, the Board has asked for additional information on the form concerning whether or not you have been convicted of a felony, which MUST be completed. Failure to complete this portion will require that your renewal form be returned to you, thereby delaying the processing of your 1997 license renewal.

There is no grace period regarding the renewal of your license. The Board will use the postmark date as the "cut-off" date and any renewals postmarked after December 31st will be returned for the late penalty fee. NO EXCEPTIONS will be made. You are advised to timely place your renewal in the mail. The Board may issue monetary penalties and/or suspension of license for failure to timely renew.

If less than 16 hours are recorded on your renewal form, do NOT return your form without proof of the required sixteen hours. Please don't assume that the Board has information as to where, when and what you intend to do to fulfill that requirement. Unless the Board has the required number of hours on record, your renewal form will be returned to you.

You are also reminded that the Texas Optometry Act requires that licensees maintain a current address with the Board Office at all times. Failure to notify the Board within ten days of a change of address constitutes a violation of the Act.

The Board will not accept post-dated checks, unsigned checks or checks in the wrong amount. Further, if you are in default on the Texas Guaranteed Student Loan Corporation, do not forward your renewal until you have confirmed that the Board Office is in receipt of the written notification of repayment agreement between you and the Corporation.

### RULE RE: COCAINE EYE DROPS

As was reported in the Board's last newsletter, a rule was adopted by the Board - Rule 280.5(j) - which allowed therapeutic optometrists to possess and administer cocaine eye drops under restrictive and monitored conditions. Immediately upon passage of the rule, the Texas State Board of Medical Examiners requested an Attorney General Opinion (Request No. 877) regarding whether or not therapeutic optometrists had the authority to possess and administer such drops under current law. The Attorney General has rendered A.G. Opinion No. DM-416, which states in summary:

*The Texas Optometry Board may adopt a rule permitting a therapeutic optometrist to administer cocaine eye drops for diagnostic purposes, but only if the eye drops are not an antiviral or antiglaucoma agent and if the purpose of the eye drops is to diagnose visual defects, abnormal conditions, and diseases of the human eye and adnexa.*

Rule 280.5(j) as adopted by the Board will appear at the conclusion of this article. To possess and administer cocaine eye drops requires that a therapeutic optometrist first obtain a Department of Public Safety (DPS) Controlled Substance Registration Number prior to requesting a Drug Enforcement Administration

(DEA) mid-level provider number. The Department of Public Safety will be sending a general mailing and application to therapeutic optometrists as soon as they have adopted proper rules and procedures. This process may take several months; please do not contact that office as you will only delay the process. The Board is working closely with that agency and will monitor the process.

#### TEXT OF BOARD RULE 280.5(j)

(Note:) This rule should be placed with your Board Rules booklet .)

(j) A therapeutic optometrist may possess and administer cocaine eye drops for diagnostic purposes. The cocaine eye drops must be no greater than 10 percent solution in prepackaged liquid form.

(1) A therapeutic optometrist must observe all requirements of the Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, and all requirements of the Texas Department of Public Safety (DPS) Drug Rules in making application and maintaining renewal of a United States Drug Enforcement Administration (DEA) registration number for possession of the cocaine eye drops, a Schedule II controlled substance.

(2) A therapeutic optometrist must obtain a registration number from the DPS for the principal office of practice. Application may be made for a separate registration for the practice of optometry at a satellite office but all requirements of this rule shall apply in all locations.

(3) The therapeutic optometrist must use the required DEA form for the purchase of the cocaine eye drops and shall maintain a complete and accurate record of purchases (to include samples received from pharmaceutical manufacturer representatives) and administration of controlled substances. The maximum amount to be purchased and maintained in an office of practice shall be no more than two vials, one opened and one in inventory.

(4) The recordkeeping listed in this section shall be subject to inspection at all times by the Texas Department of Public Safety, the U. S. Drug Enforcement Administration, and the

Texas Optometry Board and any officer or employee of the governmental agencies shall have the right to inspect and copy records, reports, and other documents, and inspect security controls, inventory and premises where such cocaine eye drops are possessed or administered.

(5) Minimum security controls shall be established to include but not be limited to :

(A) establishing adequate security to prevent unauthorized access and diversion of the controlled substance,

(B) during the course of business activities, not allowing any individual access to the storage area for controlled substances except those authorized by the therapeutic optometrist,

(C) storing the controlled substance in a securely locked, substantially constructed cabinet or security cabinet which shall meet the requirements under the DPS Drug Rules,

(D) not employ in any manner an individual that would have access to controlled substances who has had a federal or state application for controlled substances denied or revoked, or have been convicted of a felony offense under any state or federal law relating to controlled substances or been convicted of any other felony, or have been a licensee of a health regulatory agency whose license has been revoked, canceled, or suspended.

(6) Failure of the therapeutic optometrist to maintain strict security and proper accountability of controlled substance shall be deemed to be a violation of the Texas Optometry Act, Sec. 4.04.

#### THERAPEUTIC EDUCATION

The University of Houston College of Optometry has notified the Texas Optometry Board that it will present its concentrated ocular therapeutics course for the FINAL time on March 31-April 8, 1997. Since a number of Texas licensees have not yet become therapeutically certified, a general mailing was sent to all non-therapeutic optometrists regarding the finality of the University of Houston course. Anyone interested in taking that course should contact the University of Houston College of Optometry, Houston, TX 77204-6052; telephone (713) 743-1900.

#### NEW BOARD MEMBER

Mark A. Latta, O.D. of Amarillo, Texas, was appointed by Governor Bush to fill the unexpired term of Barry Moores, O.D., whose term will expire on January 31, 1999. Dr. Latta obtained his license to practice optometry in 1980 and became certified as a therapeutic optometrist in January of 1992.

#### FTC EYEGLASS RULE I

A recent settlement agreement has been reached between an optometrist and the Federal Trade Commission (FTC), whereby a fine of \$10,000 was assessed. Basically, the complaint involved two areas, i.e., nonrelease of an eyeglass prescription and a waiver or disclaimer being placed on the eyeglass prescription, when released.

Under the FTC Eyeglass Rule I, ophthalmologists and optometrists are required to release a prescription for eyeglasses. Under the Texas Optometry Act, Section 5.15(e), an optometrist is required to release a copy of the eyeglass prescription following an eye examination, provided the examination fee is paid. There should be no reason under both authorities not to release the prescription for eyeglasses.

The FTC has stated that waivers of liability as to accuracy are in violation of the FTC Rule. The language that was being used, according to the optometrist, was: "Optical Dispenser, in accepting this Rx you assume the obligation to accurately fill the Rx, to make frame adjustments, lens power adjustments, or remakes, if required. Contact lenses may not be filled from this prescription. Otherwise, do not accept." The Board Office has received numerous telephone calls regarding variations of disclaimers or waivers being used. The Board has requested comment from FTC and is awaiting specific information.

The FTC Rule also states that it is unfair practice for an ophthalmologist or optometrist to condition the availability of an eye examination to any

person on a requirement that the patient agree to purchase any ophthalmic goods and to charge the patient any fee in addition to the examination fee as a condition to releasing the prescription to the patient (provided that an ophthalmologist or optometrist may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed.)

#### EXAMINATION/LICENSURE

Some of you may not be aware that the Board no longer administers its own written and clinical examination, with the exception of the written Jurisprudence examination. The Board accepts passing scores from Parts I, II, and III of the National Board, and will administer its Jurisprudence examination on a quarterly basis within the Board Office in Austin. Many of you are accustomed to receiving passing candidates listings on a semi-annual basis. That list will now be updated on a quarterly basis, or as the need arises, and may be requested by contacting the Texas Optometry Board Office.

#### PRESCRIPTION SUBSTITUTIONS

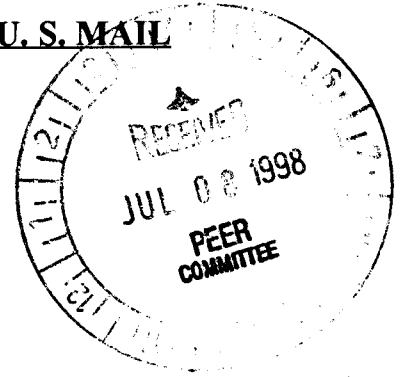
It has been brought to the Board's attention that substitutions by ophthalmic dispensers in violation of Rule 279.12 may exist in regard to eyeglasses. That rule provides that *the prescribing optometrist or therapeutic optometrist has the authority to specify any and all parameters of an optical prescription for the therapeutic and visual health and welfare of a patient, but the prescription shall not contain restrictions limiting the parameters to private labels not available to the optical industry as a whole.* Such substitutions involve dispensing another brand of lens or composition of material other than that which was prescribed, substituting progressive lenses when a bifocal lens has been prescribed, or general substitution of a lens at the request of the patient. The rule further provides: *the specifications of the prescription may not be altered without the consent of the prescribing doctor.*

*Agency Response*

CHINN & ASSOCIATES  
ATTORNEYS AT LAW

July 6, 1998

VIA FACSIMILE AND U. S. MAIL



MARK A. CHINN  
LESLIE RIDLEHOOVER BROWN  
BENITA P. COLLIER

PEER Committee  
Post Office Box 1204  
Jackson, Mississippi 39215-1204

JANICE R. GATEWOOD  
OFFICE ADMINISTRATOR

To the Committee:

PEGGY EARWOOD  
BOOKKEEPER

The Mississippi State Board of Optometry has authorized me to respond to the evaluation presented by your staff on July 1, 1998.

MARY ANNE LEFOLDT  
CLIENT ACCOUNTING

The Board thanks the PEER committee for the substantial investment of time, talent and resources in the study of the delivery of eye care and the Board's role in regulating optometry and protecting the public. This was a resource the Board did not have available to it through its own budget. The Board commits to pursuing all recommendations of PEER and looks forward to receiving the necessary funding to do so, funding which has been absent in the past.

JUDI SHARPE, LPC  
CASE COUNSELOR

RUBY SHARP  
LEGAL SUPPORT

ANGIE GIUFFRIDA  
CUSTOMER RELATIONS

LOCATION:

RIVERHILL TOWER  
SUITE 505  
1675 LAKELAND DRIVE  
JACKSON, MS  
39216

Several times over the last nine years, the Board has petitioned the Legislature for funding which would allow the Board to obtain an office, equipment and staff. The Board has also sought the resources to pursue unlicensed practice and other problems of the profession. But, as your report has recognized, the special funding of the Board through fees from the 272 optometrists in Mississippi has not been adequate to accomplish these tasks.

REPLY TO:

P.O. BOX 13483  
JACKSON, MS  
39236  
(601) 366-4410

The Board thanks the PEER Committee and its staff for recognizing the limitations placed on the Board by its funding source. These limitations are best exemplified by the following information from one of your charts in your report:

TOLL FREE:

1-888-477-4410

FACSIMILE:

(601) 366-4010

E-MAIL:

divorce@teclink.net

Chart of Total Expenditures of Health Related Boards, 1997

Dentistry	\$233,776
Medical Licensure	\$618,636
Nursing	\$712,037
Optometry	\$ 19,776

PEER Committee  
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July 6, 1998

As you can see from the numbers above, the Mississippi State Board of Optometry has been attempting to operate on less than adequate funds. It is shocking that the Board's expenditures are a paltry 3.1% of Medical Licensure's expenditures, 8.4% of Dentistry's expenditures, and 2.7% of Nursing's expenditures.

The Board accepts PEER's recommendation that it reallocate some of its "limited resources," but submits that even such a reallocation would not begin to put a dent in the funds needed to comply with PEER recommendations for staff, office space, equipment, computers, computer software, manuals, training, examination procedure studies, maintenance of documentation, updated regulations, telephone lines, public notices, disciplinary actions, brochures, tracking of optometrists, investigation, pursuit of unlicensed practice and other recommendations.

Perhaps, now that PEER has rendered its excellent report, pointing out these and other deficiencies, Optometry will receive the funding necessary to accomplish the recommended tasks.

The Board salutes PEER's recognition of the important role that optometry plays in the delivery of necessary eye care to our citizens and for bringing public attention to our plight.

Sincerely,

MISSISSIPPI STATE BOARD OF OPTOMETRY

By:   
Mark A. Chinn, Board Counsel

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## **PEER Staff**

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### **Corrections Audit**

**Louwill Davis, Corrections Auditor**

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