

ARKANSAS REGISTER

Transmittal Sheet

Use only for **FINAL** and **EMERGENCY RULES**



Secretary of State

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For Office

Use Only:

Effective Date _____ Code Number _____

Name of Agency Department of Health

Department Division of Health Related Boards & Commissions/Board of Dispensing Opticians

Contact Jerry Himes E-mail _____ Phone 601-954-1278

Statutory Authority for Promulgating Rules Ark. Code Ann. § 17-89-203

Rule Title: Arkansas Board of Dispensing Opticians Rules

Intended Effective Date

(Check One)

☐ Emergency (ACA 25-15-204)

☒ 10 Days After Filing (ACA 25-15-204)

☐ Other _____
(Must be more than 10 days after filing date.)

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Reviewed by Legislative Council

Adopted by State Agency

Date

05/31/2020

07/05/2020

08/21/2020

06/12/2020

Electronic Copy of Rule e-mailed from: (Required under ACA 25-15-218)

Jerry Himes

aropticiansboard@hotmail.com

08/21/2020

Contact Person

E-mail Address

Date

CERTIFICATION OF AUTHORIZED OFFICER

I Hereby Certify That The Attached Rules Were Adopted
In Compliance with the Arkansas Administrative Act. (ACA 25-15-201 et. seq.)

Jerry B. Himes
Signature

601-954-1278

Phone Number

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E-mail Address

Secretary/Treasurer

Title

08/21/2020

Date

ARKANSAS BOARD OF DISPENSING OPTICIANS

RULES¹

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¹ The Rules are effective September, 2020

1. STATEMENT OF ORGANIZATION AND OPERATIONS

- 1.1. PURSUANT TO THE OPHTHALMIC DISPENSERS ACT originally adopted in 1981 and codified at Ark. Code Ann. § 17-89-101 et seq., the Arkansas Board of Dispensing Opticians promulgates and adopts the following rules of ophthalmic dispensing.

2. INFORMATION FOR PUBLIC GUIDANCE

- 2.1. THE BOARD MAKES AVAILABLE A LIST OF PERSONS holding certain responsibilities for handling FOIA request, licensing questions, and complaints against licensees so that the public may obtain information about the Board or make submissions or request. The names, mailing addresses, telephone numbers, and electronic addresses can be obtained by contacting the Board's office.
- 2.2. THE BOARD MAINTAINS A LIST OF OFFICIAL FORMS used by the Board and a list of all formal, written statement of policy and written interpretative memoranda, and orders, decisions and opinions resulting from adjudications, which may be obtained from the Board's office.
- 2.3. COPIES of all forms used by the Board, written statements of policy and written interpretive memoranda, and all orders issued by the Board, excluding materials related to written and practical testing, may be obtained from the Board's office.

3. GENERAL ORGANIZATION

- 3.1. DESCRIPTION OF ORGANIZATION. The officers of the Board of Dispensing Opticians shall be a Chairman, Vice Chairman, and Secretary-Treasurer. The Board shall elect officers from its membership at its first regular meeting of the year, and each officer shall serve for a term of one year or until his successor is elected and duly qualified. If a vacancy occurs, the Board shall elect a successor to complete the balance of the unexpired term of office.
- 3.2. MEETINGS OF THE BOARD. Regular meetings of the Board shall be held at least twice each year at a time and place determined by the Board. Other meetings of the Board shall be called by the Chairman or upon the written request of two Board members. The Secretary-Treasurer shall give timely notice of the time and place of such meetings to each member. Correspondence shall be directed to the Board's office, whose address may be obtained through the Governor's office. All meetings will be conducted

in conformity with the Arkansas Freedom of Information Act and in accordance with Robert's Rules of Order except where such rules conflict with these rules.

- 3.3. QUORUM. Five members of the Board shall constitute a quorum for the transaction of business. All official action of the Board must be approved by the majority vote of the members present and voting except where a two-thirds ($\frac{2}{3}$) or three-fourths ($\frac{3}{4}$) majority vote is required by these rules.
- 3.4. AGENDA. The Secretary-Treasurer will prepare the agenda for regular and special meetings. The agenda will be distributed to Board members and made available to the public in advance of the meeting. The agenda should state with specificity the items that will be considered at the meeting or hearing. The order of the agenda items is tended to be flexible and may be adjusted to meet the needs of the Board. The agenda may be amended by appropriate motion.
- 3.5. AMENDMENT TO RULES. All requirements of the Arkansas Administrative Procedures Act shall be complied with prior to the final adoption of an amendment to these Rules.
- 3.6. FISCAL YEAR OF THE BOARD. The fiscal year of the Board shall be from July 1 to June 30.
- 3.7. BOOK OF LICENSURE AND BOOK OF REGISTRY. The Secretary-Treasurer of the Board shall maintain an annually updated Book of Licensure and a Book of Registry of all opticians licensed or registered to engage in the business of ophthalmic dispensing in Arkansas. In addition, a listing of all apprenticed dispensing opticians together with the licensed or registered dispensing opticians by whom they are employed shall be maintained.
- 3.8. ANNUAL REPORT. The Secretary-Treasurer shall prepare and present an annual report of administration, licensure, registry, and investigation to the Arkansas State Board of Optometry and to the Ophthalmology Section of the Arkansas Medical Society, as well as a copy of the books of Licensure and Registry listed in Section 3.7 of these rules.
- 3.9. FINANCIAL AFFAIRS. The current rules of the Arkansas Department of Finance and Administration shall be followed in the financial affairs of the Board.

3.10. COMPENSATION. Board members shall be compensated pursuant to Ark. Code Ann. § 25-16-903.

4. RULE MAKING AUTHORITY

4.1. AUTHORITY. The Board has been authorized by the Legislature to promulgate rules. Ark. Code Ann. § 17-89-203 (a) (6). The Board follows the procedural requirement of the Arkansas Administrative Procedures Act, in particular Ark. Code Ann. §25-15-203 and §25-15-204. Additionally, the Board is required to abide by the provisions of Ark. Code Ann. §10-3-309.

4.2. INITIATION OF RULE-MAKING. The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to “rule-making”) may be initiated by request of the Board that the staff submit proposed drafts. Additionally, staff of the Board may request permission of the Board to initiate rule-making. Third persons outside the Board may petition for the issuance, amendment, or repeal of any rule.

4.3. PETITION TO INITIATE RULE-MAKING.

4.3.1. Third parties may initiate rule-making to adopt, amend, or repeal a rule by filing a petition with the Board to initiate rule-making. The petition must contain the name, address, and telephone number of the petitioner, the specific rule or action requested, the reasons for the rule or action requested, and facts showing that the petitioner is regulated by the Board or has a substantial interest in the rule or action requested.

4.3.2. The petition to initiate rule-making shall be filed with the Secretary-Treasurer.

4.3.3. Within thirty (30) days after submission of the petition, the Board will either deny the petition, stating its reason in writing, or will initiate rule-making. A special meeting will be called if necessary to meet this time frame.

4.4. PRE-FILING WITH THE BUREAU OF LEGISLATIVE RESEARCH. Thirty (30) days before the public-comment period ends, the Board will file with the Bureau of Legislative Research the text of the proposed rule or amendment as well as a financial impact statement and a Bureau of Legislative Research questionnaire as provided by Ark. Code Ann. §10-3-309.

4.5. PUBLIC INPUT.

- 4.5.1. Before finalizing language of a proposed new rule or an amendment to, or repeal of, an existing rule, the Board will receive public input through written comments and/or oral submissions. The Board will designate in its public notice the format and timing of public comment.
- 4.5.2. Any public hearing will provide affected persons and other members of the public a reasonable opportunity for presentation of evidence, arguments, and oral statements within reasonable conditions and limitations imposed by the Board to avoid duplication, irrelevant comments, unnecessary delay, or disruption of the proceedings.
- 4.5.3. The Board Chairman, any member of the Board, or any person designated by the Board may preside at the public hearing. The Board must ensure that the Board personnel responsible for preparing the proposed rule changes to be available to explain the proposal and to respond to questions or comments regarding the proposed rule.
- 4.5.4. The Board must preserve the comments made at the public hearing by a certified court reporter or by recording instruments.
- 4.5.5. Any person may submit written statement within the specified period of time. All timely, written statements will be considered by the Board and be made a part of the rule-making record.
- 4.6. NOTICE OF RULE-MAKING. The Board will give notice of proposed rule-making to be published pursuant to Ark. Code Ann. §25-15-204. The notice will set any written comment period and will specify the time, date, and place of any public hearing.
- 4.7. THE DECISION TO ADOPT A RULE.
 - 4.7.1. The Board will not finalize language of the rule or decide whether to adopt a rule until the period of public comment has expired.
 - 4.7.2. Before acting on a proposed rule, the Board will consider all of the written submissions and/or oral submissions received in the rule-making proceedings or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in the rule-making proceedings.
 - 4.7.3. The Board may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

4.8. VARIANCE BETWEEN ADOPTED RULE AND PUBLISHED NOTICE OF PROPOSED RULE.

- 4.8.1. The Board may not adopt a rule that differs from the rule proposed in the published notice of the intended rule-making on which the rule is based unless:
 - 4.8.1.1. The final rule is in character with the original scheme and was a logical outgrowth of the notice and comments stemming from the proposed rule, or
 - 4.8.1.2. The notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment.
- 4.8.2. In determining whether the final rule is in character with the original scheme and was a logical outgrowth of the notice and comments, and that the notice of the intended rule-making provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the Board must consider the following factors:
 - 4.8.2.1. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interest; and
 - 4.8.2.2. The extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issues contained in the notice of intended rule-making; and
 - 4.8.2.3. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intended rule-making.

4.9. CONCISE STATEMENT OF REASONS.

- 4.9.1. When requested by an interested person, either prior to the adoption of a rule or within thirty (30) days after its adoption, the Board shall issue a concise statement of the principal reasons for and against its adoption of the rule. Request for such a statement must be in writing and be delivered to the Secretary-Treasurer. The request should indicate whether the statement is sought for all or only a specified part of a rule. A request will be considered to have been submitted on the date on which it is received by the Secretary-Treasurer.
- 4.9.2. The concise statement of reasons must contain:
 - 4.9.2.1. The Board's reasons for adopting the rule;

- 4.9.2.2. An indication of any change between the text of the proposed rule and the text of the rule as finally adopted, with explanations for any such change; and
 - 4.9.2.3. The principal reasons urged in the rule-making procedure for and against the rule, and the Board's reasons for overruling the arguments made against the rule.
- 4.10. CONTENTS.
- 4.10.1. The Board shall cause its rules to be published and made available to interested persons. The publication must include:
 - 4.10.1.1. The text of the rule; and
 - 4.10.1.2. A note containing the following:
 - 4.10.1.2.1. The date(s) the Board adopted or amended the rule;
 - 4.10.1.2.2. The effective date(s) of the rule;
 - 4.10.1.2.3. Any findings required by any provisions of law as a prerequisite to adoption for effectiveness of the rule; and
 - 4.10.1.2.4. Citations to the entire specific statutory or other authority authorizing the adoption of the rule;
 - 4.10.1.3. The publication of the rule(s) must state the date of publication.
- 4.11. FORMAT. The published rules of the Board will be organized substantially in the following format;
- 4.11.1. Statement of Organization and Operations
 - 4.11.2. Information for Public Guidance
 - 4.11.3. General Organization
 - 4.11.4. Rule-making
 - 4.11.5. Emergency Rule-making
 - 4.11.6. Declaratory Orders
 - 4.11.7. Adjudicative Hearings
 - 4.11.8. Licensing
 - 4.11.9. Et seq. Substantive rules and other rule of the Board
- 4.12. INCORPORATED BY REFERENCE. By reference in a rule, the Board may incorporate all or any part of a code, standard, rule, or other matter if the Board finds that copying the matter in the Board's rule would be unduly cumbersome, expensive, or

otherwise inexpedient. The reference in the Board rule must fully and precisely identify the incorporated matter by title, citation, date, and edition, if any; briefly indicate the precise subject and general contents of the incorporated matter; and state that the rule does not include any later amendments or editions of the incorporated matter. The Board may incorporate such a matter by reference in a proposed or adopted rule only if the Board makes copies of the incorporated matter readily available to the public. The rules must state how and where copies of the incorporated matter may be obtained at cost from this Board, and how and where copies may be obtained from an Board of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The Board must retain permanently a copy of any materials incorporated by reference in a rule of the Board.

4.13. FILING.

4.13.1. After the Board formally adopts a new rule or amends a current rule or repeals and existing rule, and after the rule change has been reviewed by the Legislative Counsel, the staff will file final copies of the rule with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research, or as otherwise provide by Ark. Code Ann. §25-15-204(d).

4.13.2. Proof of filing a copy of the rule, amendment, or repeal with the Secretary of State, the Arkansas State Library, and the Bureau of Legislative Research will be kept in a file maintained by the Secretary-Treasurer.

5. **EMERGENCY RULE-MAKING**

5.1. REQUEST FOR EMERGENCY RULE-MAKING. The proponent of a rule may request the Board to adopt an emergency rule. In addition to the text of the proposed rule or amendment to an existing rule and any other information required by Section 4.3 of these rules, the proponent will provide a written statement setting out the facts or circumstances that would support a finding of imminent peril to the public health, safety, or welfare.

5.2. FINDING OF AN EMERGENCY. Upon receipt of the written statement requesting an emergency rule-making and documents or other evidence submitted in support of the assertion that an emergency exists, the Board will make an independent judgment as to whether the circumstances and facts constitute an imminent peril to the public health,

safety, or welfare requiring adoption of the rule upon fewer than 30 days notice. If the Board determines that the circumstances warrant emergency rule-making, it will make a written determination that sets out the reasons for the Board's finding that an emergency exists. Upon making this finding, the Board may proceed to adopt the rule without any prior notice or hearing, or it may determine to provide an abbreviated notice and hearing.

- 5.3. **EFFECTIVE DATE OF EMERGENCY RULE.** The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the Board finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The Board will file with the rule its written findings justifying the determination that emergency rule-making is appropriate and, if applicable, the basis for the effective date of the emergency rule being less than ten days after the filing of the rule pursuant to A.C.A. §25-15-204(e). The Board will take appropriate measures to make emergency rules known to persons who may be affected by them.

6. DECLARATORY ORDERS

- 6.1. **PURPOSE AND USE.** A declaratory order is a means of resolving a controversy or answering questions or doubts concerning the applicability of statutory provisions, rules, or orders over which the Board has authority. A petition for declaratory order may be used only to resolve questions or doubts as to how the statutes, rules or orders may apply to the petitioner's particular circumstances. A declaratory order is not the appropriate means of determining the conduct of another person or for obtaining a policy statement of general applicability from a Board. A petition or declaratory order must describe the potential impact of statutes, rules or orders upon the petitioner's interest.
- 6.2. **THE PETITION.** The process to obtain a declaratory order is begun by filing with the Board a petition that provides the following information:
- 6.2.1. The caption shall read: Petition for Declaratory Order before the Arkansas Board of Dispensing Opticians.
- 6.2.2. The name, address, telephone number and facsimile number of the petitioner.
- 6.2.3. The name, address, telephone number, and facsimile number of the attorney of the petitioner.
- 6.2.4. The statutory provision(s), Board rule(s), or Board order(s) on which the declaratory order is sought.

6.2.5. A description of whom the statute, rules, or orders may substantially affect the petitioner and the petitioner's particular set of circumstances, and the question or issue on which petitioner seeks a declaratory order.

6.2.6. The signature of the petitioner or petitioner's attorney.

6.2.7. The date.

6.2.8. A request for a formal hearing, if desired.

6.3. BOARD DISPOSITION.

6.3.1. The Board may hold a hearing to consider a petition for declaratory statement. If a hearing is held, it shall be conducted in accordance with Ark. Code Ann. § 25-15-208 and §25-15-213, and the Board's rules for adjudicatory hearing.

6.3.2. The Board may rely on the statements of fact set out in the petition without taking any position with regard to the validity of the facts. Within ninety (90) days of the filing of the petition, the Board will render a final order denying the petition or issuing a declaratory order.

7. **ADJUDICATIVE HEARINGS**

7.1. SCOPE OF THIS CHAPTER. This chapter applies in all administrative adjudications conducted by the Arkansas Board of Dispensing Opticians. This procedure is developed to provide a process by which the Board formulates orders (for example, an order revoking a license to practice, or imposing civil penalties).

7.2. PRESIDING OFFICER. The Board shall preside at the hearing or may designate one or more members of the Board or one or more examiners, referees, or hearing officers to preside at a hearing.

7.3. APPEARANCES. Any party appearing in any Board proceeding has the right, at his or her own expense, to be represented by counsel.

7.3.1. The respondent may appear on his or her own behalf.

7.3.2. Any attorney representing a party to an adjudicatory proceeding must file notice of appearance as soon as possible.

7.3.3. Service on counsel of record is the equivalent of service on the party represented.

7.3.4. On written motion served on the party represented and all other parties of record, the presiding officer may grant counsel of record leave to withdraw for good cause shown.

- 7.4. **CONSOLIDATION.** If there are separate matters that involve similar issues of law or fact, or identical parties, the matters may be consolidated if it appears that consolidation would promote the just, speedy, and inexpensive resolution of the proceedings, and would not unduly prejudice the rights of a party.
- 7.5. **NOTICE TO INTERESTED PARTIES.** If it appears that the determination of the rights of parties in a proceeding will necessarily involve a determination of the substantial interests of persons who are not parties, the presiding officer may enter an order requiring that an absent person be notified of the proceeding and be given an opportunity to be joined as a party of record.
- 7.6. **SERVICE OF PAPERS.** Unless the presiding officer otherwise orders, every pleading and every other paper filed for the proceeding, except applications for witness subpoenas and the subpoenas, shall be served on each party or the party's representative at the last address of record.
- 7.7. **INITIATION & NOTICE OF HEARING.** An administrative adjudication is initiated by the issuance by the Board of a notice of hearing. The notice of hearing will be sent to the respondent by U.S. Mail, return receipt requested, restricted delivery to the named recipient or his agent. Notice shall be sufficient when it is so mailed to the respondent's latest address on file with the Board. Notice will be mailed at least 20 days before the scheduled hearing. The notice will include:
- 7.7.1. A statement of the time, place, and nature of the hearing;
 - 7.7.2. A statement of the legal authority and jurisdiction under which the hearing is to be held; and
 - 7.7.3. A short and plain statement of the matters of fact and law asserted.
- 7.8. **MOTIONS.** All requests for relief will be by motion. Motions must be in writing or made on the record during a hearing. A motion must fully state the action requested and the grounds relied upon. The original written motion will be filed with the Board. When time allows, the other parties may, within seven (7) days of the service of the written motion, file a response in opposition. The presiding officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion. However, a presiding officer, other than the Board, will not enter a dispositive order unless expressly authorized in writing to do so.

7.9. ANSWER. A respondent may file an answer.

7.10. DISCOVERY. Upon written request, the Board will provide the information designated in A.C.A §25-15-208 (a) (3). Such requests should be received by the Board at least 10 days before the scheduled hearing.

7.11. CONTINUANCES

7.11.1. The Complaint Committee may grant a continuance of hearing for good cause shown. Requests for continuances will be made in writing. The request must state the grounds to be considered and be made as soon as practicable and, except in cases of emergencies, no later than five (5) days prior to the date noticed for the hearing. In determining whether to grant a continuance, the Complaint Committee may consider:

7.11.1.1. Prior continuances;

7.11.1.2. The interests of all parties;

7.11.1.3. The likelihood of informal settlements;

7.11.1.4. The existence of an emergency;

7.11.1.5. Any objection;

7.11.1.6. Any applicable time requirement;

7.11.1.7. The existence of a conflict of the schedules of counsel, parties, or witnesses;

7.11.1.8. The time limits of the request; and

7.11.1.9. Other relevant factors.

7.11.2. The Complaint Committee may require documentation of any grounds for continuance.

7.12. HEARING PROCEDURES

7.12.1. The presiding officer presides at the hearing and may rule on motions, require briefs, and issue such orders as will ensure the orderly conduct of the proceedings; provided, however, any presiding officer other than the Board shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.

7.12.2. All objections must be made in a timely manner and stated on the record.

- 7.12.3. Parties have the right to participate or to be represented by counsel in all hearings or pre-hearing conferences related to their case.
- 7.12.4. Subject to terms and conditions prescribed by the Administrative Procedure Act, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and, upon request by the Board, may submit briefs and engage in oral argument.
- 7.12.5. The presiding officer is charged with maintaining the decorum of the hearing and may refuse to admit, or may expel, anyone whose conduct is disorderly.
- 7.13. ORDER OF PROCEEDINGS. The presiding officer will conduct the hearing in the following manner:
- 7.13.1. The presiding officer will give an opening statement, briefly describing the nature of the proceedings.
- 7.13.2. The parties are to be given the opportunity to present opening statements.
- 7.13.3. The parties will be allowed to present their cases in the sequence determined by the presiding officer.
- 7.13.4. Each witness must be sworn or affirmed by the presiding officer, or the court reporter, and be subject to examination and cross-examination as well as questioning by the Board. The presiding officer may limit questioning in a manner consistent with the law.
- 7.13.5. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.
- 7.14. EVIDENCE
- 7.14.1. The presiding officer shall rule on the admissibility of evidence and may, when appropriate, take official notice of facts in accordance with all applicable requirements of law.
- 7.14.2. Stipulation of facts is encouraged. The Board may make a decision based on stipulated facts.
- 7.14.3. Evidence in the proceeding must be confined to the issues set forth in the hearing notice, unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer

decides to admit evidence outside the scope of the notice, over the objection of a party who did not have actual notice of those issues, that party, upon timely request, will receive a continuance sufficient to prepare for the additional issue and to permit amendment of pleadings.

7.14.4. A party seeking admission of an exhibit must provide 12 copies of each exhibit at the hearing. The presiding officer must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. All exhibits admitted into evidence must be appropriately marked and be made part of the record.

7.14.5. Any party may object to specific evidence or may request limits on the scope of the examination or cross-examination. A brief statement of the grounds upon which it is based shall accompany such an objection. The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve the ruling until the written decision.

7.14.6. Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony will briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

7.14.7. Irrelevant, immaterial, and unduly repetitive evidence will be excluded. Any other oral or documentary evidence, not privileged, may be received if it is of a type commonly relied upon by reasonably prudent men and women in the conduct of their affairs.

7.14.8. Reasonable inferences. The finder of fact may base its findings of fact upon reasonable inferences derived from other evidence received.

7.15. DEFAULT. If a party fails to appear or participate in an administrative adjudication after proper service of notice, the Board may proceed with the hearing and render a decision in the absence of the party.

7.16. SUBPOENAS

7.16.1. At the request of any party, the Board shall issue subpoenas for the attendance of witnesses at the hearing. The requesting party shall specify whether the witness is also requested to bring documents and reasonably identify said documents.

7.16.2. A subpoena may be served by any person specified by law to serve process or by any person who is not a party and who is eighteen (18) years of age or older.

Delivering a copy to the person named in the subpoena shall make service. Proof of service may be made by affidavit of the person making service. The party seeking the subpoena shall have the burden of obtaining service of the process and shall be charged with the responsibility of tendering appropriate mileage fees and witness fees pursuant to Rule 45, Arkansas Rules of Civil Procedure. The witness must be served at least two days prior to the hearing. For good cause, the Board may authorize the subpoena to be served less than two days before the hearing.

7.16.3. Any motion to quash or limit the subpoena shall be filed with the Board and shall state the grounds relied upon.

7.17. **RECORDING THE PROCEEDINGS.** The responsibility to record the testimony heard at a hearing is borne by the Board. Upon the filing of a petition for judicial review, the Board will provide a verbatim transcript of testimony taken before the Board.

7.18. **FACTORS TO BE CONSIDERED IN IMPOSING SANCTIONS.** In addition to any other considerations permitted by Ark. Code Ann. § 17-89-101 et seq., if applicable, the Board in imposing any sanction may consider the following:

7.18.1. The nature and degree of the misconduct for which the licensee is being sanctioned.

7.18.2. The seriousness and circumstances surrounding this misconduct.

7.18.3. The loss or damage to clients or others.

7.18.4. The assurance that those who seek similar professional services in the future will be protected from the type of misconduct found.

7.18.5. The profit to the licensee.

7.18.6. The avoidance of repetition.

7.18.7. Whether the conduct was deliberate, intentional, or negligent.

7.18.8. The deterrent effect on others.

7.18.9. The conduct of the individual during the course of the disciplinary proceeding.

7.18.10. The professional's prior disciplinary record, including warnings.

7.18.11. Matters offered by the professional in mitigation or extenuation, except that a claim of disability or impairment resulting from the use of alcohol or drugs may not be considered unless the professional demonstrates that he or she is successfully pursuing in good faith a program of recovery.

7.19. FINAL ORDER. The Board will serve on the respondent a written order that reflects the action taken by the Board. The order will include a recitation of facts found based on testimony and other evidence presented and reasonable inferences derived from the evidence pertinent to the issues of the case. It will also state conclusions of law and directives or other disposition entered against or in favor of the respondent. The order will be served personally or by mail on the respondent. If counsel represents respondent, service of the order on respondent's counsel shall be deemed service on the respondent.

8. DEFINITIONS

8.1. THE BOARD DEFINES the following major terms used in Ark. Code Ann. §17-89-101 et seq. within the Rules promulgated by the Board:

8.1.1. "Ophthalmic Dispensing" means the preparation of laboratory work orders, verification, and dispensing of spectacle lenses, spectacles, eyeglasses, and/or parts thereof to the intended wearer thereof on a written prescription from a licensed physician skilled in disease of the eye or licensed optometrist. It shall include; the measuring, fitting, adapting, and adjusting of such spectacle lenses, spectacles, eyeglasses, and/or parts thereof to the human face; the preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabrication of eyewear; the verification of the quality of finished spectacle lenses, spectacle or eyeglasses; and the adjustment or repair of spectacle frames to the human face. The prescribing, adapting, fitting, duplicating, dispensing, modifying, selling or supplying of contact lenses for or to the human eye is specifically excluded.

8.1.2. "Licensed Dispensing Opticians" means any person licensed by the Arkansas Board of Dispensing Opticians to engage in ophthalmic dispensing.

8.1.3. "Registered Dispensing Optician" means any person registered by the Arkansas Board of Dispensing Opticians to engage in ophthalmic dispensing.

- 8.1.4. “Apprentice Dispensing Optician” means an individual registered with the Arkansas Board of Dispensing Opticians to work under the supervision of a licensed or registered dispensing optician or a physician skilled in disease of the eye or optometrist licensed by this State.
- 8.1.5. “Supervision” means the direct personal physical provision of direction and control through personal inspection.
- 8.1.6. “Direct personal physical provision of direction and control” means in the optical dispensary and immediately available to address through personal inspection the actions of an apprentice or student optician.
- 8.1.7. The term “Board” as used in this Act means the Arkansas Board of Dispensing Opticians.
- 8.1.8. The term “person” as used in this Act shall be interpreted to include individuals, partnerships, firms, corporations, professional corporations, unincorporated associations, or any of the foregoing.
- 8.1.9. A “full service optical laboratory” fabricates prescription lenses from unfinished or semi-finished lenses.
- 8.1.10. “Side-by-side” operation means one in which a registered, licensed or apprenticed dispensing optician directly or indirectly controls or attempts to control the professional judgment, manner of practice or the practice of a licensed optometrist or physician skilled in the disease of the eye. For the purpose of this subsection, “controlling or attempting to control the professional judgment, manner of practice, or the practice of a licensed optometrist or physician skilled in the disease of the eye” may include or relate to but not be limited to:
- 8.1.10.1. Setting or attempting to influence the professional fees or office hours of a licensed optometrist or physician skilled in disease of the eye.
- 8.1.10.2. Termination or threatening to terminate any lease, agreement, or other relationship in an effort to control, the professional judgment, manner of practice, or practice of a licensed optometrist or physician skilled in disease of the eye.
- 8.1.10.3. Defining the scope of or time limits for vision examinations.

- 8.1.10.4. Where more than one optometrist or physician skilled in disease of the eye is generally available, the repeated directing of persons seeking vision care to a particular optometrist or physician skilled in disease of the eye, group practitioner or professional association, for the purpose of splitting fees, receive a kickback or rebate.
- 8.1.10.5. Distributing or causing to be distributed professional business cards or like materials of a particular optometrist or physician skilled in the disease of the eye, group, or professional association.
- 8.1.10.6. Advertising in any way that indicated vision examinations might be scheduled or arranged through or by the dispensing optician's office.
- 8.1.10.7. Advertising that indicated vision examinations can be secured "nearby" or similar statements.
- 8.1.11. "Capping and Steering" is defined as the practice of a licensed, registered, or apprenticed dispensing optician or their employees repeatedly referring prospective customers to a specific optometrist or physician skilled in the disease of the eye, for the purpose of securing a current prescription for eye glasses.

9. LICENSURE, REGISTRY OR OFFICE PERMIT REQUIREMENTS AND QUALIFICATIONS

- 9.1. GENERAL. All board action regarding licensure shall be governed by Ark. Code Ann. §§ 17-89-101 et seq. and, when applicable Ark. Code Ann. §§ 25-15-208 to 213.
- 9.2. REQUIREMENT TO KEEP CURRENT ADDRESSES ON FILE. All persons holding a license issued by the board are required to provide the board with information so that the board can remain in contact and provide notice of complaints and/or hearings. The licensee is required to provide is required to provide written notice to the board of any change in business and/or residential address within 10 working days of the change. Service of notices of hearing sent by mail will be addressed to the latest address on file with the board.
- 9.3. LICENSURE OR REGISTRY REQUIREMENTS. Except as otherwise provided in Ark. Code. Ann. §17-89-101 et seq., any person not licensed to practice medicine or optometry in Arkansas who shall perform or purport to perform any act described in

Section 8.1.1, Ophthalmic Dispensing definition, must be licensed or registered by the Arkansas Board of Dispensing Opticians.

9.4. QUALIFICATIONS FOR LICENSURE OR REGISTRY. Each applicant for licensure or registry shall make application to the Board upon a form and in such a manner as the Board may require. Each applicant shall:

9.4.1. Verify that he or she is over the age of 21 years;

9.4.2. Be of good moral character;

9.4.3. Be a high school graduate or the equivalent thereof; and provide a certified copy of the high school transcript or Graduate Equivalency Diploma (GED).

9.4.4. Submit written proof that he or she possesses the experience and/or education requirements which are specified in Ark. Code. Ann §17-89-302 and §17-89-303.

9.4.4.1. Provide a certified copy of transcript from a nationally accredited organization approved by this Board or;

9.4.4.2. Apprenticed Dispensing Opticians shall submit copies of all Supervision Agreements and Quarterly Supervision Reports as written proof that they have met the experience requirements, or

9.4.4.3. Applicants submitting experience for three (3) years' dispensing experience under the direct supervision of any Arkansas-licensed optometrist or Arkansas-licensed physician skilled in disease of the eye shall submit the Board approved Supervision Report forms attested to by the optometrist or physician skilled in disease of the eye. Said supervised period of time shall consist of no less than four thousand eight hundred hours in the last five (5) years to qualify for the examination.

9.4.5. Enclose the examination fee of two hundred fifty dollars (\$250.00) for the National Practical Examination. Applicants for Licensure or Registry must successfully complete the National Practical Examination with a score of 70% (Seventy) percent.

9.4.6. Enclose a current photograph approximately one inch by one inch (1" x 1") of the Applicant.

9.5. REVIEW OF APPLICATION.

9.5.1. The application and supporting documentation will be reviewed by the Secretary-Treasurer. Applicants will be notified by the Secretary Treasurer of the applicant's approval to test. Qualified applicants will be notified by the Secretary –Treasurer of the procedure to take the National Practical Examination. Applicants who fail to pass the National Practical Examination must submit a written request to re-take the examination and submit the fee of two hundred fifty dollars (\$250.00).

9.5.2. Incomplete applications will be returned to the applicant.

9.6. DENIAL OF APPLICATION FOR LICENSURE.

9.6.1. If a preliminary determination is made that the application should be denied, the Board will inform the application of the opportunity for a hearing on the application.

9.6.2. The grounds or basis for the proposed denial of a license will be set for in writing by the Board. Any hearing on the denial of a license will be conducted in accordance with Ark. Code Ann. §25-15-208 and Ark. Code Ann. §25-15-213, and unless otherwise provide by law, the applicant has the burden of establishing entitlement to the license.

9.7. WRITTEN EXAMINATION FOR LICENSURE OR REGISTRY. The Board adopts the National _Practical examination for Registry or Licensure. Examinations shall be conducted pursuant to the guidelines established by the national testing service. Applicants shall be examined in the areas of mechanical optics, occupational vision requirements, the taking of facial measurements for proper frame sizing, ophthalmic lens type, fitting and adjusting of glasses to the face, and any other areas deemed necessary by the Board.

9.8. CERTIFICATES. Every Applicant successfully passing the examination of the Board and satisfying the qualifications required under Ark. Code. Ann. § 17-89-304 and these Board rules shall receive from the Board a “Certificate of Licensure”, or a “Certificate of Registry” to provide ophthalmic dispensing services to the public as a registered or licensed dispensing optician in Arkansas.

9.9. OFFICE PERMIT REQUIREMENTS. Pursuant to Ark. Code Ann. § 17-89- 408 (a), it is unlawful for any person or legal entity to conduct an office or place of business in this State, where ophthalmic dispensing services are offered or performed without an office permit.

9.10. QUALIFICATIONS FOR OFFICE PERMIT. All Applicants for an office permit must complete the Board approved application form and enclose an application fee of \$60.00 each location where an office permit is being sought.

9.11. OFFICE PERMIT TO BE DISPLAYED. Each office permit obtained shall be prominently displayed in each office or place of business in this State where ophthalmic dispensing services are offered or performed.

10 APPRENTICES

10.1 USE OF APPRENTICES APPROVED. Except as limited in Section 10.9 of these rules, licensed or registered dispensing opticians may utilize no more than three (3) apprentice dispensing opticians to engage in ophthalmic dispensing under their direct personal physical supervision and at the same location where the licensed or registered optician dispenses.

10.2 APPRENTICE APPLICATION. Apprentice dispensing opticians shall be approved by the Board upon receipt of a properly completed application, a current photograph of himself/herself approximately one inch by one inch (1"x1") and the payment of a sixty dollar (\$60.00) fee to the Board.

10.3 APPRENTICE SUPERVISION. Apprentice dispensing opticians must submit with their application request a Supervision Agreement in the form and format provided by the Board and signed by the Licensed or Registered Dispensing Optician under whose supervision they will work during their apprenticeship. Quarterly, and at the termination of any supervision agreement, the apprenticed dispensing optician shall submit a Supervision Report in the form and format provided by the Board attested to by the Supervising Licensed or Registered Dispensing Optician. Apprenticed Licensed Opticians shall keep copies of all Supervision Agreements and Quarterly Supervision Reports for submission with application to test for licensure.

10.4 TERMINATION OF SUPERVISION.

10.4.1 If a supervision agreement is terminated for any reason and the Apprenticed dispensing opticians has not obtained the required supervision time for licensure as a Registered Dispensing Optician, a new Supervision Agreement must be submitted to the Board within ten (10) days.

- 10.4.2 Termination of the supervision agreement occurs when for any reason the supervisor is no longer able to provide direct personal physical provisions of direction and control to the supervisee.
- 10.4.3 The Apprentice and the Supervisor are responsible for notifying the Board in writing of the termination of the supervision agreement.
- 10.5 **FAILURE TO SUBMIT SUPERVISION AGREEMENT.** Failure to submit a Supervision Agreement in the time required shall result in immediate suspension of the Apprentice license without hearing.
- 10.6 **REINSTATEMENT OF APPRENTICE LICENSE.** The Apprenticed optician license shall be eligible for reinstatement for a period of 180 days upon the following conditions.
- 10.6.1 Submission of a signed Supervision Agreement.
- 10.6.2 Payment of any and all annual renewal fees and/or late payment penalties accruing during the suspension.
- 10.6.3 Payment of a reinstatement fee of \$60.00.
- 10.7 **FAILURE TO REINSTATE SUSPENDED APPRENTICED LICENSE.** Any apprenticed dispensing optician license not reinstated within the prescribed time period will be considered revoked without hearing. Any person for whom their apprenticed dispensing optician license has been revoked for failure to reinstate shall be required to reapply for licensure. Any hours of supervision earned prior to the re-application process may be considered under the new apprentice license provided the hours are earned within the previous five (5) years before applications for testing for licensure is made.
- 10.8 **APPRENTICED SUPERVISION REQUIREMENTS.** Apprenticed dispensing opticians must obtain four thousand eight hundred (4800)² actual hours of supervision to qualify as three (3) years of supervision. These hours must be submitted on the Board approved form and certified by the Licensed or Registered dispensing optician under whose supervision the apprentice is acting.

² Hours computed on a basis of 32 hours per week for a period of 50 weeks in a twelve month period of time times 3 years.

- 10.9 SUPERVISING APPRENTICED A Licensed or Registered Optician may not supervise more than three (3) full time Apprenticed Dispensing Opticians

11 ANNUAL RENEWAL

11.1 RENEWAL OF A LICENSE, REGISTRATION OR APPRENTICESHIP.

Application for renewal of Licensed, Registered or Apprenticed dispensing opticians shall be received or postmarked no later than June 10th of each year. Each application for renewal shall include a renewal fee in the amount of sixty dollars (\$60.00) payable to the Arkansas Board of Dispensing Opticians. Each applicant shall submit a current photograph of himself/herself approximately one inch by one inch (1"x 1").

Furthermore, each licensed or registered dispensing optician shall attest to his or her compliance with all of the provisions of Ark. Code. Ann. § 17-89-101 et seq., and the Arkansas Board of Dispensing Optician's Rules on the annual licensure and registry renewal forms. Upon submission of the photograph and payment of such renewal fee and in absence of a Board finding against renewal under these rules, such person shall have his Certificate of Licensure, Registry or Apprenticeship renewed for an additional year commencing on July 1 of that year.

- 11.2 CONTINUING EDUCATION. Pursuant to Ark. Code. Ann. §17-89-308, each licensed, registered, or apprenticed optician registered under the provisions of Ark. Code. Ann. §17-89-101 *et seq.* applying for the renewal of his license, shall furnish to the Arkansas State Board of Dispensing Opticians satisfactory evidence that he successfully completed four (4) hours in even numbered years and five (5) hours including one hour of jurisprudence in odd numbered years of continuing education hours approved by either the Arkansas State Board of Dispensing Opticians or the American Board of Opticianry in the year preceding the expiration date of the license being renewed pursuant to Ark. Code. Ann. § 17-89-307. In order to obtain credit for hours that are received, a licensed, registered or apprenticed optician must submit all evidence establishing the approved hours completed to the Board on or before ninety (90) days after the completion of the hours. Continuing education hours shall be obtained in person with the presenter. The Board will not accept continuing education hours obtained by correspondence. Continuing education hours through any form of live media broadcast must receive prior approval by the Board. The Board shall

recognize those schools which are accredited by an organization recognized by the United State Department of Education or by the Council on Postsecondary Accreditation.

- 11.3 **DOCUMENTATION OF CONTINUING EDUCATION.** Documentation of said continuing education shall be a condition precedent for the renewal of licenses for registered, licensed and apprentice opticians. Provided, however, the board shall reinstate any license not renewed for failure to comply with this rule upon the subsequent presentation of satisfactory evidence of said continuing education and payment of all fees due on or before October 1 of each year.
- 11.4 **EXCEPTION TO CONTINUING EDUCATION REQUIREMENT.** Provided, however, that any optician who, because of illness or other unavoidable circumstances, is unable to comply herewith may make application to the Board, reasonably documenting the circumstances as to why he or she is unable to comply, and the Board in its discretion may relieve the applicant from so complying for such time and under such circumstances as the Board deems proper.
- 11.5 **RENEWAL FEE FOR OPTICIAN.** Upon receipt of the sixty dollars (\$60.00) renewal fee each licensed, registered, and apprenticed optician will be issued a photo badge to wear at all times they are performing duties of a registered, licensed or apprentice optician.
- 11.6 **LOST OR DESTROYED BADGES.** Replacement badges will be provided by the Board for all lost or destroyed badges at a fee of ten dollars (\$10.00).
- 11.7 **FAILURE OF LICENSEE, REGISTRANT OR APPRENTICE TO PAY RENEWAL.** Any licensed, registered or apprentice dispensing optician who has not paid his or her renewal fee in full by July 1 of that year shall be required to pay the following renewal penalty.
- | | |
|----------------------------|---------|
| July 1 – July 31 | \$25.00 |
| August 1 – August 31 | \$50.00 |
| September 1 – September 30 | \$75.00 |
- 11.8 **FAILURE OF LICENSEE, REGISTRANT OR APPRENTICE TO PAY RENEWAL BY SEPTEMBER 30.** Any licensed, registered or apprenticed dispensing optician who fails to renew their license on or before September 30 of each year and continues

to provide ophthalmic dispensing services shall be deemed to have committed a violation of Ark. Code Ann. §17-89-309 (a) and may result in action by the Board pursuant to Ark. Code Ann. 17-89-309 (b).

11.9 INACTIVE STATUS.

11.9.1 A licensed or registered dispensing optician who fails to renew their license shall be placed on inactive status. The Board shall notify the licensed or registered dispensing optician 15 days prior to placing an optician on inactive status. The optician shall be notified of their inactive status and inability to continue to provide ophthalmic dispensing services by regular first class mail at the last address provided by the licensee. Mailing will constitute service.

11.9.2 A licensed or registered dispensing optician may request to be placed upon inactive status by providing a written statement to the Board.

11.9.3 The Board may approve inactive status for a period of no longer than two (2) years and shall notify the requesting licensed or registered dispensing optician in writing of the approval.

11.9.4 Licensed or registered dispensing opticians who are placed on inactive status for failure to renew may return to active status within 2 years upon payment of all renewal fees, late penalties and submission of Continuing Education hours. Licensed or registered dispensing opticians who have been granted Board approved inactive status shall only be required to pay the annual renewal fee to reinstate their license or registration. Failure to return from inactive status after two (2) years shall be considered voluntary surrender of the license by the licensee without further notice.

11.10 RENEWAL FEE FOR OFFICE PERMIT. Each office permit must be renewed on or before July 1 of each year. Application for renewal should be received or postmarked no later than June 10th of each year. Such renewal shall include a completed renewal form along with \$60.00 renewal fee.

11.11 FAILURE TO RENEW OFFICE PERMIT AND PAY RENEWAL FEE. Any office which fails to renew its Office Permit and pay the renewal fee by July 1 shall be considered delinquent and subject to the following penalty.

July 1 – July 31

\$25.00

August 1 – August 31 \$50.00

September 1 – September 30 \$75.00

11.12 FAILURE TO RENEW OFFICE PERMIT BY SEPTEMBER 30. Any individual, partnership, corporation or other business entity who fails to renew an office permit by September 30 including the payment of the renewal fee and any appropriate penalty and continues to provide ophthalmic dispensing services shall be deemed to have committed a violation of Ark. Code Ann. § 17-89-408 (a) and may result in action by the Board pursuant to Ark. Code Ann. § 9-89-408 (d).

12 BRANCH OFFICES

12.1 OPTICIAN PRESENT. All open optical businesses which are subject to the provision of Ark. Code Ann. § 17-89-101 et seq. must have physically present within the place of business at all times a licensed or registered dispensing optician.

12.2 BRANCH OFFICE LIMIT. No licensed or registered dispensing optician or person in this state shall establish more than two ophthalmic dispensing branch offices in addition to his principal office unless he shall first have secured a branch office permit from the Board.

12.3 FACTORS FOR BOARD TO CONSIDER. The Board shall consider, but, not be limited to, the following factors when ruling on an application for a permit for additional branch offices:

12.3.1 The availability of qualified personnel to staff the proposed ophthalmic dispensing office;

12.3.2 The established standards of service of the applicant;

12.3.3 The assurance of adequate supervision of the service provided by the proposed branch office;

12.3.4 The applicant's established record of compliance with the provisions of Ark. Code. Ann. § 17-89-101 et seq. and the rules of the Arkansas Board of Dispensing Opticians.

12.4 NAME OF OPTICIAN DISPLAYED. The name and Certificate of Registry or Licensure of the supervising dispensing optician shall be prominently displayed at all times in each ophthalmic dispensing office.

13 CERTIFICATE OF OWNERSHIP

- 13.1 ANNUAL FILING OF CERTIFICATE OF OWNERSHIP. Each optical dispensary in the State of Arkansas whose title does not contain the proper name of an Arkansas optometrist or Arkansas physician skilled in the diseases of the eye, or a licensed or registered dispensing optician holding a certificate of licensure or registry in the State of Arkansas must file a certificate of ownership each year with the Arkansas Board of Dispensing Opticians between June 1 and June 30. Each certificate of ownership must give the name and address of the dispensary, the optometrist or physician skilled in diseases of the eye, or licensed or registered dispensing optician or person who owns or maintains legal responsibility of the dispensary.
- 13.2 FAILURE TO FILE CERTIFICATE OF OWNERSHIP. When the Board determines that a violation of this requirement has occurred, the Board may undertake an investigation to determine ownership. If ownership is determined to be an optometrist or a physician skilled in diseases of the eye, the Board shall report the failure to file the Certificate of Ownership to the appropriate governing board of the optometrist or physician skilled in diseases of the eye. If the ownership is determined to be a licensed or registered optician, the Board shall initiate a complaint for violation of the rule of this Board and the law of the State of Arkansas.

14 COMPLAINTS

14.1 COMPOSITION OF THE COMPLAINT COMMITTEE:

- 14.1.1 The Complaint Committee shall consist of the Secretary/Treasurer of the Board.

14.2 PROCEDURE FOR INITIATION OF COMPLAINTS:

- 14.2.1 Initiation. The formal investigation of a complaint against a licensed, registered, apprentice or student optician may be initiated when the complaint is in writing and filed with the board. The complaint must contain a brief statement setting forth the allegations of fact and naming the optician against whom the complaint is filed.

- 14.2.2 Prima Facie Determination. Upon receipt of a complaint, the Complaint Committee shall review same to determine whether the complaint states a prima facie violation of any provision of A.C.A §17-89-201 or Board rules. Should the Complaint Committee determine that the complaint does not state a prima facie violation of the law or other Board Rules the Secretary/Treasurer shall

submit the complaint to the Board at the first available opportunity for the Board's determinations whether a prima facie case is stated in the complaint. Should the Board determine the complaint fails state a prima facie violation; the Board shall notify the complainant the complaint has been dismissed.

14.2.3 Board Initiation. The Board may initiate an investigation upon its own motion when it has reason to believe a violation of A.C.A. § 17-89-201 et seq. or Board rule may have occurred. Individual board members should utilize the written complaint method for complaints against individual dispensing opticians.

14.2.4 Time Limit for Filing of Complaint. The Complaint committee may consider complaints only if the complaint was filed within one (1) year from the time the alleged complaint either occurred or was discovered. Any complaint not received within this time limit shall not be considered and the complainant shall be so notified.

14.3 PROCEDURE FOR INVESTIGATION OF COMPLAINTS

14.3.1 Notification of the Respondent. If the complaint appears to state a prima facie violation of the law and/or other Board rules the Complaint Committee shall notify the dispensing optician named in the complaint by certified or registered mail of the complaint and request a written response to the allegation/s.

14.3.2 Investigation. Upon receipt of the licensee's response or upon the expiration of the time period permitted for the licensee's response, the Complaint Committee may conduct any further inquiry or investigation which appears to be appropriate based upon the circumstances of the individual case.

14.3.3 Investigative Officer. The Investigative Officer shall be a person designated by the Chair of the Board. The Chair of the Board shall agree, or contract, to pay compensation to, or reimburse the expenses of, any person serving as investigative officer authorized by the Board.

14.3.4 Investigative Report. Upon completion of the investigation, the investigative officer shall provide a written report to the Complaint Committee the results of the investigation. The Complaint Committee will recommend to the Board whether to conduct a hearing, take other action or dismiss the complaint. The

report of the Complaint Committee shall be a summary of the results of the investigation and shall be presented to the Board without naming the licensee.

14.4 ACTION BY BOARD. A majority vote of the board shall be required to support the recommendation of the Complaint Committee.

14.4.1 If the board agrees with the determination of the Complaint Committee that the case should be dismissed, the complainant and the respondent shall be so notified.

14.4.1.1 Additional Evidence. If additional evidence of conduct contrary to the laws, or Rules governing Dispensing Opticians is presented within sixty (60) days after the matter has been closed with no action, the case may be reopened and acted upon under regular procedures.

14.4.2 If the board determines that the complaint presents sufficient evidence of a violation; it may decide to resolve the matter through an informal meeting, an offer of consent agreement or through a formal disciplinary hearing.

14.4.2.1 If the board votes to hold a formal hearing, the board shall comply with the requirements of the Administrative Procedure Act.

14.4.2.2 The Board may offer or the Respondent may request an informal hearing of a complaint before the Board consisting of a face to face meeting with the Respondent to discuss the allegations of the complaint. Prior to an informal hearing the Respondent must sign a consent statement agreeing to the terms and conditions of an informal hearing.

14.4.2.3 If the Board determines that a consent agreement may be appropriate, the Board shall authorize its Attorney to enter into negotiations for a consent agreement subject to the Board's final approval. The Board may recommend terms for a consent agreement offer by the attorney to the respondent based only upon the anonymous report presented to the Board by the Complaint Committee.

14.5 DISQUALIFICATION. During a formal disciplinary hearing, any members of the Board who served on the Complaint Committee, was involved in the investigation or who initiated the complaint shall be disqualified from participation in the hearing.

14.6 COUNTER COMPLAINTS. The Arkansas Board of Dispensing Opticians will not accept formal complaints from a respondent against a complainant during the course of an investigation of the initial complaint. Counter charges will only be considered after the disposition of the initial complaint.

15 DENIAL, SUSPENSION, OR REVOCATION OF LICENSE, REGISTRATION OR OFFICE PERMIT

15.1 SUSPENSION, REVOCATION, ANNULMENT OR WITHDRAWAL. Prior to the entry of a final order to suspend, revoke, annul or withdraw a license, registration, or office permit, or to impose other sanctions upon a licensee or permit holder, the board will serve the licensee or permit holder a notice of hearing in the manner set out in Ark. Code Ann. §25-15-208 and Section 7.7 of these rules.

15.1.1 The board has the burden of proving the alleged facts and violations of law stated in the notice.

15.2 VOLUNTARY SURRENDER OF LICENSE. The licensee, in lieu of formal disciplinary proceedings, may offer to surrender his or her license, subject to the Board's determination to accept the proffered surrender, rather than conducting a formal disciplinary proceeding.

15.3 BASIS OF SUSPENSION, REVOCATION OR DENIAL. The board shall revoke, suspend or refuse to issue a license or registration of any dispensing optician or apprenticeship for any violation of any provision of Ark. Code. Ann. §17-89-201 et seq., as amended, or of any of these rules, including, but not limited to, the following:

15.3.1 The applicant, licensee, registrant, apprentice or person obtaining a license, registration, apprenticeship or office permit by means of fraud, misrepresentation, or concealment of material facts;

15.3.2 The applicant, licensee, registrant or apprentice engaging in conduct, including, but not limited to, engaging in the advertising practice commonly known as "bait and switch," or establishing an ophthalmic dispensing business immediately adjacent to the office of a licensed optometrist or physician skilled in the disease of the eye in what is commonly known as a "side-by-side" operation, or engaging in the referral procedure commonly known as "capping and steering";

- 15.3.3 Any licensed, registered or apprenticed dispensing optician, either directly or indirectly, to participate in any manner in the division, assignment, rebate, kickback, splitting or refunding of service fees or costs of completed eyeglasses with a physician skilled in the disease of the eye or optometrist. Nothing in the above is to be construed so as to interfere with the ownership, profit sharing programs, pensions, or retirement programs of any optometrist's or ophthalmologist's office where the professional is incorporated.
- 15.3.4 Any licensed, registered or apprenticed dispensing optician or person requesting, encouraging, or enticing a licensed optometrist or physician skilled in disease of the eye to locate an office for the purpose of conducting his professional practice adjacent to an Opticianry for the purpose of capping and steering as defined by these rules.
- 15.3.5 The applicant, licensee, registrant, apprentice or person being convicted of a felony in any state or federal court, and not pardoned, if the acts for which the person is convicted are found by the board to have a direct bearing on whether he should be entrusted to serve the public in the capacity of a dispensing optician.
- 15.3.6 The applicant, licensee, registrant, apprentice or person violating any prohibitive provision under this chapter;
- 15.3.7 The applicant, licensee, registrant, apprentice or person engaging in any fraudulent, misleading, or deceptive advertising³;
- 15.3.8 The applicant, licensee, registrant, apprentice or person failing to qualify for the license, registration, apprenticeship or office permit;

³ All advertising must conform to the provisions of Ark. Code. Ann. §§17-89-405 & 406. The following examples are provided to assist in determining whether an advertisement is considered to be fraudulent, misleading or deceptive:

1. Advertisements which include prices of prescription glasses may be considered fraudulent, misleading or deceptive if they do not meet the following standards:

(a) A statement of whether or not the quoted cost includes an examination by a licensed optometrist or physician skilled in the diseases of the eye.

(b) If the advertised price is for a limited period of time, the advertisement shall state the expiration date of the offer.

(c) Any limits on a customer's rights to purchase the advertised product shall be stated in the advertisement.

(d) If a reduced price is offered on a specific item or items, the regular retail price of the specific item or items must be included in the advertisement.

(e) Knowingly and repeatedly advertising a manufacturer's discontinued item, whether or not prices are given, must so state the item has been discontinued.

2. Any licensee or registrant who fails to satisfy the requirements of this section shall be deemed to have committed fraudulent, misleading, or deceptive advertising.

- 15.3.9 The applicant, licensee, registrant, apprentice or person violating any other rule promulgated by the board; or
- 15.3.10 The applicant, licensee, registrant, apprentice or person using any narcotic drug, psychoactive drug or alcohol which impairs his or her ability to perform the work as an ophthalmic dispenser.
- 15.4 HEARING AND SANCTIONS. After due notice and hearing, a person licensed or registered as an optician or apprentice or an applicant or person holding or seeking to hold an office permit, found to have violated any provision of Ark. Code Anno. § 17-89-101 et seq. also known as the Ophthalmic Dispensing Act and/or the Rules promulgated by the Board of Dispensing Opticians may have any one or more of the following sanctions imposed upon him by the board:
- 15.4.1 Suspension, revocation or denial of the license, registration, apprenticeship or office permit or the renewal thereof;
- 15.4.2 A penalty not to exceed one thousand dollars (\$1,000.00) for each violation;
- 15.4.3 Conditions or restrictions placed upon the person's license, registration, apprenticeship or practice; or
- 15.4.4 Such other requirements or penalties as may be appropriate to the circumstances or the case, and which would achieve the desired disciplinary purposes, but which would not impair the public welfare and morals.
- 15.5 FAILURE TO PAY PENALTY. Unless the penalty assessed under this section is paid within fifteen (15) days following the date for an appeal from the order, the board shall have the power to file suit in the Circuit Court of Pulaski County to obtain the judgment for the amount of penalty not paid.
- 15.6 DUTY OF A SANCTIONED PROFESSIONAL. In every case in which a professional shall, within thirty (30) days of the revocation, suspension, or surrender, do the following;
- 15.6.1 Return his or her license and any license badge to the Board's office;
- 15.6.2 Notify all clients to make arrangements for other professional services, calling attention to any urgency in seeking the substitution of another licensed professional;

15.6.3 Deliver to all clients any papers or property to which they are entitled, or notify the client of a suitable time and place where the papers or other property may be obtained, calling attention to any urgency for obtaining the papers or other property;

15.6.4 Refund any part of the fees paid in advance that have not been earned;

15.7 EMERGENCY ACTION. If the board finds that the public health, safety, or welfare imperatively requires emergency action and incorporates that finding in its order, the board can summarily suspend, limit, or restrict a license. The notice requirement in Section 7.7 of these rules does not apply and must not be construed to prevent a hearing at the earliest time practicable.

15.7.1 Emergency Order: An emergency adjudicative order must contain findings that the public health, safety, and welfare imperatively required emergency action to be taken by the board. The written order must include notification of the date on which the board proceedings are scheduled for completion.

15.7.2 Written Notice. The written emergency adjudicative order will be immediately delivered to persons who are required to comply with the order. One or more of the following procedures will be used:

15.7.2.1 Personal Delivery

15.7.2.2 Certified mail, return receipt requested, to the last address on file with the board

15.7.2.3 First class mail to the last address on file with the Board;

15.7.2.4 Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that Board orders be sent by fax and has provided a fax number for that purpose.

15.7.2.5 Oral Notice. Unless the written emergency order is served by personal delivery on the same day that the order issues, the Board shall make reasonably immediate efforts to contact by telephone the persons who are required to comply with the order.

15.7.3 Unless otherwise provided by law, within ten (10) days after emergency action taken pursuant to Section 16.1 of these rules, the board must initiate a formal suspension or revocation proceeding.

- 15.8 REINSTATEMENT AFTER SUSPENSION. An order suspending a license may provide that a person desiring reinstatement may file with the Secretary-Treasurer a verified petition requesting reinstatement.
- 15.8.1 The petition for reinstatement must set out the following:
- 15.8.1.1 That the individual has fully and promptly complied with the requirements of Section 15.6 of these rules pertaining to the duty of a sanctioned professional;
 - 15.8.1.2 That the individual has refrained from practicing in this profession during the period of suspension;
 - 15.8.1.3 That the individual's license fee is current or has been tendered to the Board; and
 - 15.8.1.4 That the individual has fully complied with any requirements imposed as conditions for reinstatement.
- 15.8.2 Any knowing misstatement of fact may constitute grounds for denial or revocation of reinstatement.
- 15.8.3 Failure to comply with the provisions of Sections 15.6.7 and 15.6.8 of these Rules precludes consideration for reinstatement.
- 15.8.4 No individual will be reinstated unless the Board approves reinstatement by majority vote.
- 15.9 RE-LICENSURE FOR REVOKED OR SURRENDERED LICENSE. No individual who has had his or her license revoked or who has surrendered his or her license will be licensed, except on petition made to the Board. The application for re-licensure is not allowed until at least two (2) years after the revocation or surrender of license took effect.
- 15.9.1 The applicant bears the burden of proof that he is rehabilitated following the revocation or surrender of his license, that he can engage in the conduct authorized by the license without undue risk to the public health, safety, and welfare, and that he is otherwise qualified for the license pursuant to Ark. Code Ann. §§ 17-89-101 et seq..
- 15.9.2 The Board may impose any appropriate conditions or limitations on a license to protect the public health, safety, and welfare.

16. Waiver Request

- A. If an individual has been convicted of an offense listed in A.C.A. § 17-3-102, except those permanently disqualifying offenses found in subsection (e), the Board may waive disqualification of a potential applicant or revocation of a license based on the conviction if a request for a waiver is made by:
 - 1. An affected applicant for a license; or
 - 2. An individual holding a license subject to revocation.
- B. The Board may grant a waiver upon consideration of the following, without limitation:
 - 1. The age at which the offense was committed;
 - 2. The circumstances surrounding the offense;
 - 3. The length of time since the offense was committed;
 - 4. Subsequent work history since the offense was committed;
 - 5. Employment references since the offense was committed;
 - 6. Character references since the offense was committed;
 - 7. Relevance of the offense to the occupational license; and
 - 8. Other evidence demonstrating that licensure of the applicant does not pose a threat to the health or safety of the public.
- C. A request for a waiver, if made by an applicant, must be in writing and accompany the completed application and fees.
- D. The Board will respond with a decision in writing within thirty (30) days and will state the reasons for the decision.
- E. An appeal of a determination under this section will be subject to the Administrative Procedures Act §25-15-201 *et seq.*

17 DISCLOSURE

17.9 REQUIREMENTS TO PROVIDE INFORMATION TO THE BOARD. Every person licensed or registered under the provisions Ark. Code. Ann §17-89-101 *et seq.*, shall upon request make available to the Arkansas Board of Dispensing Opticians or its duly authorized representative any information which the Board requires to verify compliance of the Licensee or Registrant with all provisions of Ark. Code. Ann. § 17-89-101 *et seq.*, and these Board rules.

18 OPTHALMIC STANDARDS

- a. BOARD TO PROVIDE OPTHALMIC STANDARDS. The Board shall provide a copy of the American National Standards Institute Z-80.1 Ophthalmic Materials Standards to each person who is licensed or registered as a dispensing optician in the State of Arkansas.

19 PROHIBITED PRACTICE

- a. It shall be unlawful for any dispensing optician or person engaged in the business of manufacturing, selling, or dispensing regular and/or safety ophthalmic materials to fill or duplicate an ophthalmic prescription without having a written prescription signed by the licensed optometrist or licensed physician skilled in disease of the eye who conducted the examination from which the prescription was prepared; or fail to comply with the written instructions when such instructions are included on a written prescription signed by a licensed optometrist or licensed physician skilled in disease of the eye. No change or alteration from the prescription of the prescribing optometrist or physician shall be made, except that changes may be made in tint or material of the lenses unless such changes are specifically prohibited on the written prescription.
- b. Nothing in these rules shall be construed to authorize or permit any licensed or registered dispensing optician or any other person, except a licensed optometrist or licensed physician skilled in disease of the eye, to undertake or hold himself out as being able (1) to examine eyes by any objective or subjective method or exercises eyes; (2) to undertake by any method or means the measurement of the cornea of the human eye; or (3) to examine, prescribe, diagnose, treat, or correct for visual deficiency. The prescribing, adapting, fitting, duplicating, dispensing, modifying, selling, or supplying of contact lenses for or to the human eye is specifically prohibited except when done by a licensed optometrist or licensed physician skilled in disease of the eye.

20 Returning Military Veteran Licensure

- A. As used in this subsection, “returning military veteran” means a former member of the United States Armed Forces who was discharged from active duty under circumstances other than dishonorable.
- B. The Board shall grant automatic licensure to an individual who holds a substantially equivalent license in another U.S. jurisdiction and is:
 - 1. An active duty military service member stationed in the State of Arkansas;
 - 2. A returning military veteran applying for licensure within one (1) year of his or her discharge from active duty; or
 - 3. The spouse of a person under B (1) or (2) above.
- C. The Board shall grant such automatic licensure upon receipt of all the below:
 - 1. Payment of the initial licensure fee;
 - 2. Evidence that the individual holds a substantially equivalent license in another state; and
 - 3. Evidence that the applicant is a qualified applicant under Section B.

21 RECIPROCITY

- a. RECIPROCITY. The Board will only consider a grant of reciprocity to an individual from a state which grants reciprocity to Arkansas licensees. The Board shall require that any person requesting reciprocity of the State of Arkansas shall meet the requirements as set forth in Ark. Code. Ann. §17-89-305 and §17-89-306 and provide written proof from the appropriate board or agency of reciprocity to Arkansas licensees from the state they are currently licensed.

22 SEVERABILITY

- a. SEVERABILITY. These rules being for the regulation of the business of ophthalmic dispensing and the protection of the public, the provisions hereby are declared to be severable and the invalidity of any rule, clause, sentence, paragraph or section hereof shall not affect the validity of the remainder thereof.