



**North Carolina
State Board of Opticians**

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January 7, 2015

VIA EMAIL

Mr. John Turcotte, Director
Program Evaluation Division
300 North Salisbury Street, Suite 100
Raleigh, NC 27603

Re: Response by the North Carolina State Board of Opticians ("Board") to PED
Report on Occupational Licensing Agencies

Dear Mr. Turcotte:

Thank you for the opportunity to review and respond to the recent report by the Program Evaluation Division ("PED") on Occupational Licensing Agencies ("OLA").

Of course, we were pleased that PED did not recommend an umbrella agency because we did not believe that was a workable solution for the OLA in North Carolina.

In this letter, the Board is responding to the PED's recommendation that the proposed Occupational Licensing Commission ("OLC") develop a plan to review the Board for possible consolidation. For the reasons set forth below, we respectfully request both the PED and the Commission to reconsider this recommendation.

I. Background

The State Board of Opticians was created during the 1951 session of the General Assembly. North Carolina was one of the first states in the nation to have such a licensing board.

Governor Kerr Scott appointed the original members of the Board; they were sworn in January, 1952.

In 1977, the Governmental Evaluation Commission reviewed the Board.

There is some degree of confusion about the scope of activities of the Board, which is in part due to misunderstanding about the role of ophthalmologists, optometrists, and opticians.

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- Ophthalmologists are medical doctors who have specialized in the care and treatment of the eye.
- Optometrists¹ are licensed professionals who can:
 - examine the human eye by any method, other than surgery, to diagnose, to treat, or to refer for consultation or treatment any abnormal condition of the human eye and its adnexa; or
 - Employ instruments, devices, pharmaceutical agents and procedures, other than surgery, intended for the purposes of investigating, examining, treating, diagnosing or correcting visual defects or abnormal conditions of the human eye or its adnexa; or
 - Prescribe the application of lenses, devices containing lenses, prisms, contact lenses, orthoptics, vision training, pharmaceutical agents, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the human eye or its adnexa.
- Opticians² are licensed persons who can:
 - Interpret prescriptions issued by licensed physicians and/or optometrists;
 - Fit glasses on the face;
 - Service glasses or spectacles;
 - Measure a patient's face for fitting frames, compounding and fabricating lenses and frames, and any therapeutic device used or employed in the correction of vision, and alignment of frames to the face of the wearer;
 - Recommend all types of eyewear available for vision;
 - Measure and fit eyeglass frames and lenses to maximize the use for the patient;
 - Inspect all manufactured lenses to meet ANSI standards in order to provide good vision;
 - Educate the patient on all visual and safety options to maintain and protect the patient's vision.

II. Growing Trend in Other States & Expanded Need for Opticians

In 1951, North Carolina was one of only a few states that required the licensing of opticians. Today, 23 states require this occupation to be licensed or registered. Of that number, 20 states require opticians to have continuing education.

Initially, there was opposition to the licensure of opticians. In the 1950's, opticians in Oklahoma challenged a law that restricted the type of work that they could do by forbidding them from fitting lenses for eyeglasses unless they had a license, or from advertising eyeglasses frames. In *Williamson v. Lee Optical, Inc.*, 348 U.S. 483 (1955), the U.S. Supreme Court reversed the trial court which had held the law unconstitutional, and held that Due Process does

¹ G.S. 90-114.

² G.S. 90-235.

not prevent states from regulating conditions in the workplace even when these laws are unwise, flawed, or otherwise potentially questionable. Later, this opinion was overruled the federal courts, and a North Carolina Supreme Court decision upheld the 1951 statute³ creating the Board and prohibiting practice of opticianary without a license.

According to the US Department of Labor, the number of opticians is expected to grow by 29% between 2010 and 2020, due to the need created by an aging population. In addition, there are more visual needs for middle-age consumers. Therefore, the need for qualified eye care professionals is growing.

III. Importance of Board in Protecting Public

From its inception in 1951, the Board's primary purpose has been to protect the public's interests in quality vision care. To set a benchmark for this protection, training programs and a comprehensive licensing examination were established and are currently administered. The Board's training and exam processes are held in extremely high regard from other states: it is considered quite an accomplishment to have obtained an optician's license from North Carolina.

Opticians advise patients on their prescriptions and their needs, and oftentimes intervene and consult with the prescriber on the patient's behalf. Minimally trained/certified individuals would not have the in-depth knowledge to articulate concerns to a prescriber.

Moreover, an increasing number of drivers require corrective lenses for issuance of their driver's license. As the population ages, this number is expected to increase.

IV. Complaints

Consistent with its statutory charge to protect the public health and safety, the Board receives and handles two types of complaints received from the public: (1) those involving licensees and (2) those filed against unlicensed persons. The Board has made the process as straightforward for the public as possible; access to a Complaint form, which does not have to be notarized, is prominently displayed and easily obtainable on the Board website and may be filed electronically.

Over the past ten years, approximately 250 complaints and disciplinary actions have been filed with or by the Board; a majority of these complaints and actions have been filed against licensees for performing inadequate work, improper renewal or registration procedures, or other instances of unprofessional conduct. The Board's Disciplinary Committee investigates all of these cases and makes a determination on the merits and recommends to the Board either a dismissal or, if the allegations are credible, first attempts a resolution through a Consent Order, imposing a variety of disciplinary actions. Most often, the licensee will agree to a Consent

³ See *High v. Ridgeway Opticians*, 258 N.C. 626, 129 S.,E,2d 301 (1963).

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Order; the Board has not often had to initiate a hearing process, which lengthens the time to resolve the matter.

Despite the fact that the Board typically resolves these cases with a Consent Order, it has had 5 hearings within the last ten years, and another is scheduled for next month.

Complaints against unlicensed persons performing work included within the scope of the statutory definition are less frequent than complaints against licensed persons. If the unlicensed subject of the complaint fails to respond to the Board inquiry, then the Board must weigh the risk to the public and decide whether to seek an Injunction from the court.

Whether the complaint involves an unlicensed person or a licensee, the complainant is informed of the Board decision and, in most cases, provided a copy of the Final Agency Decision issued by the Board after the hearing.

V. Revenue.

There is no question that the Board is in need of revenue. It had not increased fees since 2004. In the last several audits, the Board auditor has recommended a fee increase. The Office of State Budget and Management has also recommended a fee increase. In both the 2013 and 2014 sessions of the General Assembly, the Board sought authorization for a fee increase. Given the inevitable delay in the creation of the Commission and its review of the Board and the other identified programs, the Board proposes that it be given an interim fee increase until such consolidation decision is made.

VI. Consolidation

PED has recommended the possible consolidation of the Board with another agency. The Board of Optometry has publically stated that they do not wish to be merged with the Board of Opticianry.

Moreover, what will consolidation accomplish? The agency will still need licensed opticians to administer the exam and to review complaints about opticianry. Presently, the Board obtains the expertise for both of these functions by using Board members at the nominal amount of \$100 per day in *per diem*. Even then, only one or two Board members are involved. Hiring a licensed optician as a staff person would clearly cost more. Consolidation will not provide a solution, and will probably cost more money.

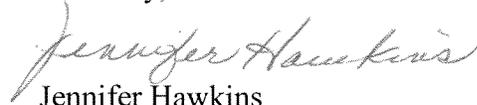
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The Board looks forward to the opportunity to present its arguments against consolidation.

Sincerely,

A handwritten signature in cursive script that reads "Jennifer Hawkins".

Jennifer Hawkins

Board Chair