

Title 17. Professions, Occupations, and Businesses

Chapter XII. Arkansas Board of Dispensing Opticians, Department of Health

Subchapter A. Generally

Part 70. Arkansas Board of Dispensing Opticians Rules

Codification Notes. This part as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"1 The Rules were revised January 1, 2022"

"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."

"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."

Subpart 1. Generally

17 CAR § 70-101. Definitions.

The Arkansas Board of Dispensing Opticians defines the following major terms used in the Ophthalmic Dispensing Act, Arkansas Code § 17-89-101 et seq., within the rules promulgated by the board:

(1) "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;

(2) "Board" means the Arkansas Board of Dispensing Opticians;

(3) "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;

(4) "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;

(5) A "full-service optical laboratory" fabricates prescription lenses from unfinished or semi-finished lenses;

(6) "Licensed dispensing opticians" means any person licensed by the Arkansas Board of Dispensing Opticians to engage in ophthalmic dispensing;

(7)(A) "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.

(B) It shall include the:

(i) Measuring, fitting, adapting, and adjusting of such spectacle lenses, spectacles, eyeglasses, and/or parts thereof to the human face;

(ii) Preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabrication of eyewear;

(iii) Verification of the quality of finished spectacle lenses, spectacles, or eyeglasses; and

(iv) Adjustment or repair of spectacle frames to the human face.

(C) The prescribing, adapting, fitting, duplicating, dispensing, modifying, selling, or supplying of contact lenses for or to the human eye is specifically excluded;

(8) The term "person" shall be interpreted to include:

(A) Individuals;

- (B) Partnerships;
- (C) Firms;
- (D) Corporations;
- (E) Professional corporations;
- (F) Unincorporated associations; or
- (G) Any of the foregoing;

(9) "Registered dispensing optician" means any person registered by the Arkansas Board of Dispensing Opticians to engage in ophthalmic dispensing;

(10)(A) "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.

(B) For the purpose of this subdivision, "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:

(i) Setting or attempting to influence the professional fees or office hours of a licensed optometrist or physician skilled in disease of the eye;

(ii) 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;

(iii) Defining the scope of or time limits for vision examinations;

(iv) Where more than one (1) 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 or receiving a kickback or rebate;

(v) 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;

(vi) Advertising in any way that indicated vision examinations might be scheduled or arranged through or by the dispensing optician's office; and

(vii) Advertising that indicated vision examinations can be secured "nearby" or similar statements; and

(11) "Supervision" means the direct personal physical provision of direction and control through personal inspection.

Authority. Arkansas Code § 17-89-203.

Subpart 2. Information for Public Guidance

17 CAR § 70-201. Generally.

(a)(1) The Arkansas Board of Dispensing Opticians makes available a list of persons holding certain responsibilities for handling Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., requests, licensing questions, and complaints against licensees so that the public may obtain information about the board or make submissions or requests.

(2) The names, mailing addresses, telephone numbers, and electronic addresses can be obtained by contacting the board's office.

(b) The board maintains a list of official forms used by the board and a list of all formal, written statements of policy and written interpretative memoranda, and orders, decisions, and opinions resulting from adjudications, which may be obtained from the board's office.

(c) 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.

Authority. Arkansas Code § 17-89-203.

Subpart 3. General Organization

17 CAR § 70-301. Description of organization.

(a) The officers of the Arkansas Board of Dispensing Opticians shall be a:

- (1) Chair;
- (2) Vice chair; and
- (3) Secretary-treasurer.

(b) 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 (1) year or until his or her successor is elected and duly qualified.

(c) If a vacancy occurs, the board shall elect a successor to complete the balance of the unexpired term of office.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-302. Meetings of the board.

(a)(1) Regular meetings of the Arkansas Board of Dispensing Opticians shall be held at least twice each year at a time and place determined by the board.

(2) Other meetings of the board shall be called:

- (A) By the Chair of the Arkansas Board of Dispensing Opticians; or
- (B) Upon the written request of two (2) board members.

(c) The Secretary-Treasurer of the Arkansas Board of Dispensing Opticians shall give timely notice of the time and place of such meetings to each member.

(d) Correspondence shall be directed to the board's office, whose address may be obtained through the Governor's office.

(e) All meetings will be conducted in conformity with the Freedom of Information Act of 1967, Arkansas Code § 25-19-101 et seq., and in accordance with Robert's Rules of Order except where such rules conflict with this part.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-303. Quorum.

(a) Five (5) members of the Arkansas Board of Dispensing Opticians shall constitute a quorum for the transaction of business.

(b) 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 this part.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-304. Agenda.

(a) The Secretary-Treasurer of the Arkansas Board of Dispensing Opticians will prepare the agenda for regular and special meetings.

(b) The agenda will be distributed to Arkansas Board of Dispensing Opticians members and made available to the public in advance of the meeting.

(c) The agenda should state with specificity the items that will be considered at the meeting or hearing.

(d) The order of the agenda items is tended to be flexible and may be adjusted to meet the needs of the board.

(e) The agenda may be amended by appropriate motion.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-305. Amendments to rules.

All requirements of the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., shall be complied with prior to the final adoption of an amendment to this part.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-306. Fiscal year of the board.

The fiscal year of the Arkansas Board of Dispensing Opticians shall be from July 1 to June 30.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-307. Book of licensure and book of registry.

(a) The Secretary-Treasurer of the Arkansas Board of Dispensing Opticians 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.

(b) 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-308. Annual report.

The Secretary-Treasurer of the Arkansas Board of Dispensing Opticians shall prepare and present an annual report of administration, licensure, registry, and investigation to the State Board of Optometry and to the Ophthalmology Section of the Arkansas Medical Society, as well as a copy of the book of licensure and book of registry listed in 17 CAR § 70-307.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-309. Financial affairs.

The current rules of the Department of Finance and Administration shall be followed in the financial affairs of the Arkansas Board of Dispensing Opticians.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-310. Compensation.

Arkansas Board of Dispensing Opticians members shall be compensated pursuant to Arkansas Code § 25-16-903.

Authority. Arkansas Code § 17-89-203.

Subpart 4. Rulemaking Authority

Codification Notes. This subpart as promulgated prior to codification into the Code of Arkansas Rules provided as follows:

"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."

17 CAR § 70-401. Initiation of rulemaking.

(a) The process of adopting a new rule or amending or repealing an existing rule (hereinafter referred to as "rulemaking") may be initiated by request of the Arkansas Board of Dispensing Opticians that the staff submit proposed drafts.

(b) Additionally, staff of the board may request permission of the board to initiate rulemaking.

(c) Third persons outside the board may petition for the issuance, amendment, or repeal of any rule.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-402. Petition to initiate rulemaking.

(a)(1) Third parties may initiate rulemaking to adopt, amend, or repeal a rule by filing a petition with the Arkansas Board of Dispensing Opticians to initiate rulemaking.

(2) The petition must contain:

- (A) The name, address, and telephone number of the petitioner;
- (B) The specific rule or action requested;
- (C) The reasons for the rule or action requested; and
- (D) Facts showing that the petitioner is regulated by the board or has a substantial interest in the rule or action requested.

(b) The petition to initiate rulemaking shall be filed with the Secretary-Treasurer of the Arkansas Board of Dispensing Opticians.

(c)(1) Within thirty (30) days after submission of the petition, the board will either:

- (A) Deny the petition, stating its reason in writing; or
- (B) Initiate rulemaking.

(2) A special meeting will be called if necessary to meet this time frame.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-403. Prefiling with the Bureau of Legislative Research.

Thirty (30) days before the public comment period ends, the Arkansas Board of Dispensing Opticians 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 Arkansas Code § 10-3-309.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-404. Public input.

(a)(1) Before finalizing language of a proposed new rule or an amendment to, or repeal of, an existing rule, the Arkansas Board of Dispensing Opticians will receive public input through written comments and/or oral submissions.

(2) The board will designate in its public notice the format and timing of public comment.

(b) 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:

- (1) Duplication;
- (2) Irrelevant comments;
- (3) Unnecessary delay; or
- (4) Disruption of the proceedings.

(c)(1) The Chair of the Arkansas Board of Dispensing Opticians, any member of the board, or any person designated by the board may preside at the public hearing.

(2) The board must ensure that the board personnel responsible for preparing the proposed rule changes will be available to:

- (A) Explain the proposal; and
- (B) Respond to questions or comments regarding the proposed rule.

(d) The board must preserve the comments made at the public hearing by a certified court reporter or by recording instruments.

(e)(1) Any person may submit a written statement within the specified period of time.

- (2) All timely written statements will be:
 - (A) Considered by the board; and
 - (B) Made a part of the rulemaking record.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-405. Notice of rulemaking.

(a) The Arkansas Board of Dispensing Opticians will give notice of proposed rulemaking to be published pursuant to Arkansas Code § 25-15-204.

(b) The notice will:

- (1) Set any written comment period; and
- (2) Specify the time, date, and place of any public hearing.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-406. Decision to adopt a rule.

(a) The Arkansas Board of Dispensing Opticians will not finalize language of the rule or decide whether to adopt a rule until the period of public comment has expired.

(b) Before acting on a proposed rule, the board will consider:

(1) All of the written submissions and/or oral submissions received in the rulemaking proceedings or any memorandum summarizing such oral submissions; and

(2) Any regulatory analysis or fiscal impact statement issued in the rulemaking proceedings.

(c) The board may use its own experience, specialized knowledge, and judgment in the adoption of a rule.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-407. Variance between adopted rule and published notice of proposed rule.

(a) The Arkansas Board of Dispensing Opticians may not adopt a rule that differs from the rule proposed in the published notice of the intended rulemaking on which the rule is based unless the:

(1) 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

(2) Notice fairly apprised interested persons of the subject and the issues that would be considered so that those persons had an opportunity to comment.

(b) 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 rulemaking provided fair warning that the outcome of that rulemaking proceeding could be the rule in question, the board must consider the following factors:

(1) The extent to which persons who will be affected by the rule should have understood that the rulemaking proceeding on which it is based could affect their interest;

(2) The extent to which the subject matter of the rule or issues determined by the rule are different from the subject matter or issued contained in the notice of intended rulemaking; and

(3) The extent to which the effects of the rule differ from the effects of the proposed rule contained in the notice of intended rulemaking.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-408. Concise statement of reasons.

(a)(1) When requested by an interested person, either prior to the adoption of a rule or within thirty (30) days after its adoption, the Arkansas Board of Dispensing Opticians shall issue a concise statement of the principal reasons for and against its adoption of the rule.

(2) Request for such a statement must be in writing and be delivered to the Secretary-Treasurer of the Arkansas Board of Dispensing Opticians.

(3) The request should indicate whether the statement is sought for all or only a specified part of a rule.

(4) A request will be considered to have been submitted on the date on which it is received by the secretary-treasurer.

(b) The concise statement of reasons must contain:

(1) The board's reasons for adopting the rule;

(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

(3) The principal reasons urged in the rulemaking procedure for and against the rule, and the board's reasons for overruling the arguments made against the rule.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-409. Contents.

- (a) The Arkansas Board of Dispensing Opticians shall cause its rules to be published and made available to interested persons.
- (b) The publication must include:
 - (1) The text of the rule;
 - (2) A note containing the following:
 - (A) The date or dates the board adopted or amended the rule;
 - (B) The effective date or dates of the rule;
 - (C) Any findings required by any provisions of law as a prerequisite to adoption for effectiveness of the rule; and
 - (D) Citations to the entire specific statutory or other authority authorizing the adoption of the rule; and
 - (3) The publication of the rule or rules must state the date of publication.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-410. Format.

The published rules of the Arkansas Board of Dispensing Opticians will be organized substantially in the following format:

- (1) Statement of organization and operations;
- (2) Information for public guidance;
- (3) General organization;
- (4) Rulemaking;
- (5) Emergency rulemaking;
- (6) Declaratory orders;
- (7) Adjudicative hearings;
- (8) Licensing; and
- (9) Et seq., substantive rules and other rules of the board.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-411. Incorporated by reference.

(a) By reference in a rule, the Arkansas Board of Dispensing Opticians may incorporate all or any part of a code, standard, rule, or other matter if the Arkansas Board of Dispensing Opticians finds that copying the matter in the Arkansas Board of Dispensing Opticians' rule would be unduly cumbersome, expensive, or otherwise inexpedient.

(b) The reference in the Arkansas Board of Dispensing Opticians rule must:

(1) Fully and precisely identify the incorporated matter by title, citation, date, and edition, if any;

(2) Briefly indicate the precise subject and general contents of the incorporated matter; and

(3) State that the rule does not include any later amendments or editions of the incorporated matter.

(c) The Arkansas Board of Dispensing Opticians may incorporate such a matter by reference in a proposed or adopted rule only if the Arkansas Board of Dispensing Opticians makes copies of the incorporated matter readily available to the public.

(d) The rules must state:

(1) How and where copies of the incorporated matter may be obtained at cost from the Arkansas Board of Dispensing Opticians; and

(2) How and where copies may be obtained from a board of the United States, this state, another state, or the organization, association, or persons originally issuing that matter.

(e) The Arkansas Board of Dispensing Opticians must retain permanently a copy of any materials incorporated by reference in a rule of the Arkansas Board of Dispensing Opticians.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-412. Filing.

(a) After the Arkansas Board of Dispensing Opticians formally adopts a new rule or amends a current rule or repeals an existing rule, and after the rule change has been reviewed by the Legislative Council, 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 provided by Arkansas Code § 25-15-204(e).

(b) 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 of the Arkansas Board of Dispensing Opticians.

Authority. Arkansas Code § 17-89-203.

Subpart 5. Emergency Rulemaking

17 CAR § 70-501. Request for emergency rulemaking.

(a) The proponent of a rule may request the Arkansas Board of Dispensing Opticians to adopt an emergency rule.

(b) In addition to the text of the proposed rule or amendment to an existing rule and any other information required by 17 CAR § 70-402, 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-502. Finding of an emergency.

(a) Upon receipt of the written statement requesting an emergency rulemaking and documents or other evidence submitted in support of the assertion that an emergency exists, the Arkansas Board of Dispensing Opticians 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 thirty (30) days' notice.

(b) If the board determines that the circumstances warrant emergency rulemaking, it will make a written determination that sets out the reasons for the board's finding that an emergency exists.

(c) Upon making this finding, the board may:

- (1) Proceed to adopt the rule without any prior notice or hearing; or
- (2) Determine to provide an abbreviated notice and hearing.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-503. Effective date of emergency rule.

(a) The emergency rule will be effective immediately upon filing, or at a stated time less than ten (10) days thereafter, if the Arkansas Board of Dispensing Opticians finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare.

(b) The board will file with the rule its written findings justifying the determination that emergency rulemaking is appropriate and, if applicable, the basis for the effective date of the emergency rule being less than ten (10) days after the filing of the rule pursuant to Arkansas Code § 25-15-204(g).

(c) The board will take appropriate measures to make emergency rules known to persons who may be affected by them.

Authority. Arkansas Code § 17-89-203.

Subpart 6. Declaratory Orders

17 CAR § 70-601. Purpose and use.

(a) 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 Arkansas Board of Dispensing Opticians has authority.

(b) 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.

(c) 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.

(d) A petition or declaratory order must describe the potential impact of statutes, rules, or orders upon the petitioner's interest.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-602. Petition.

The process to obtain a declaratory order is begun by filing with the Arkansas Board of Dispensing Opticians a petition that provides the following information:

(1) The caption shall read: "Petition for Declaratory Order before the Arkansas Board of Dispensing Opticians";

(2) The name, address, telephone number, and facsimile number of the petitioner;

(3) The name, address, telephone number, and facsimile number of the attorney of the petitioner;

(4) The statutory provision or provisions, board rule or rules, or board order or orders on which the declaratory order is sought;

(5) A description of how 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) The signature of the petitioner or petitioner's attorney;

(7) The date; and

(8) A request for a formal hearing, if desired.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-603. Board disposition.

(a)(1) The Arkansas Board of Dispensing Opticians may hold a hearing to consider a petition for declaratory statement.

(2) If a hearing is held, it shall be conducted in accordance with:

(A) Arkansas Code §§ 25-15-208 and 25-15-213; and

(B) The board's rules for adjudicatory hearing.

(b)(1) 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.

(2) 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.

Authority. Arkansas Code § 17-89-203.

Subpart 7. Adjudicative Hearings

17 CAR § 70-701. Scope.

(a) This subpart applies in all administrative adjudications conducted by the Arkansas Board of Dispensing Opticians.

(b) 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).

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-702. Presiding officer.

The Arkansas Board of Dispensing Opticians shall preside at the hearing or may designate one (1) or more members of the board or one (1) or more examiners, referees, or hearing officers to preside at a hearing.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-703. Appearances.

(a) Any party appearing in any Arkansas Board of Dispensing Opticians proceeding has the right, at his or her own expense, to be represented by counsel.

(b) The respondent may appear on his or her own behalf.

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

(d) Service on counsel of record is the equivalent of service on the party represented.

(e) 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-704. 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-705. 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:

- (1) Notified of the proceeding; and
- (2) Given an opportunity to be joined as a party of record.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-706. 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-707. Initiation and notice of hearing.

(a) An administrative adjudication is initiated by the issuance by the Arkansas Board of Dispensing Opticians of a notice of hearing.

(b)(1) The notice of hearing will be sent to the respondent by United States mail, return receipt requested, restricted delivery to the named recipient or his or her agent.

(2) Notice shall be sufficient when it is so mailed to the respondent's latest address on file with the board.

(c) Notice will be mailed at least twenty (20) days before the scheduled hearing.

(d) The notice will include:

- (1) A statement of the time, place, and nature of the hearing;
- (2) A statement of the legal authority and jurisdiction under which the hearing is to be held; and
- (3) A short and plain statement of the matters of fact and law asserted.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-708. Motions.

(a) All requests for relief will be by motion.

(b) Motions must be in writing or made on the record during a hearing.

(c) A motion must fully state the action requested and the grounds relied upon.

(d) The original written motion will be filed with the Arkansas Board of Dispensing Opticians.

(e) When time allows, the other parties may, within seven (7) days of the service of the written motion, file a response in opposition.

(f)(1) The presiding officer may conduct such proceedings and enter such orders as are deemed necessary to address issues raised by the motion.

(2) However, a presiding officer, other than the board, will not enter a dispositive order unless expressly authorized in writing to do so.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-709. Answer.

A respondent may file an answer.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-710. Discovery.

(a) Upon written request, the Arkansas Board of Dispensing Opticians will provide the information designated in Arkansas Code § 25-15-208(a)(3).

(b) Such requests should be received by the board at least ten (10) days before the scheduled hearing.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-711. Continuances.

(a)(1) The Complaint Committee may grant a continuance of hearing for good cause shown.

(2) Requests for continuances will be made in writing.

(3) The request must:

(A) State the grounds to be considered; and

(B) 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.

(4) In determining whether to grant a continuance, the Complaint Committee may consider:

(A) Prior continuances;

(B) The interests of all parties;

(C) The likelihood of informal settlements;

(D) The existence of an emergency;

(E) Any objection;

(F) Any applicable time requirement;

(G) The existence of a conflict of the schedules of:

(i) Counsel;

(ii) Parties; or

(iii) Witnesses;

(H) The time limits of the request; and

(I) Other relevant factors.

(b) The Complaint Committee may require documentation of any grounds for continuance.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-712. Hearing procedures.

(a)(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.

(2) Provided, however, any presiding officer other than the Arkansas Board of Dispensing Opticians shall not enter a dispositive order or proposed decision unless expressly authorized in writing to do so.

(b) All objections must be made in a timely manner and stated on the record.

(c) Parties have the right to participate or to be represented by counsel in all hearings or prehearing conferences related to their case.

(d) Subject to terms and conditions prescribed by the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq., 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.

(e) 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-713. Order of proceedings.

The presiding officer will conduct the hearing in the following manner:

(1) The presiding officer will give an opening statement, briefly describing the nature of the proceedings;

(2) The parties are to be given the opportunity to present opening statements;

(3) The parties will be allowed to present their cases in the sequence determined by the presiding officer;

(4)(A) 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 Arkansas Board of Dispensing Opticians.

(B) The presiding officer may limit questioning in a manner consistent with the law; and

(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-714. Evidence.

(a) 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.

(b)(1) Stipulation of facts is encouraged.

(2) The Arkansas Board of Dispensing Opticians may make a decision based on stipulated facts.

(c)(1) 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.

(2) 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.

(d)(1) A party seeking admission of an exhibit must provide twelve (12) copies of each exhibit at the hearing.

(2) The presiding officer must provide the opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility.

(3) All exhibits admitted into evidence must be:

(A) Appropriately marked; and

(B) Made part of the record.

(e)(1) Any party may object to specific evidence or may request limits on the scope of the examination or cross-examination.

(2) A brief statement of the grounds upon which it is based shall accompany such an objection.

(3) The objection, the ruling on the objection, and the reasons for the ruling will be noted in the record.

(4) The presiding officer may:

- (A) Rule on the objection at the time it is made; or
- (B) Reserve the ruling until the written decision.

(f)(1) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record.

(2) 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.

(3) 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.

(g)(1) Irrelevant, immaterial, and unduly repetitive evidence will be excluded.

(2) 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.

(h) **Reasonable inferences.** The finder of fact may base its findings of fact upon reasonable inferences derived from other evidence received.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-715. Default.

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

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-716. Subpoenas.

(a)(1) At the request of any party, the Arkansas Board of Dispensing Opticians shall issue subpoenas for the attendance of witnesses at the hearing.

(2) The requesting party shall specify whether the witness is also requested to bring documents and reasonably identify said documents.

(b)(1) 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.

(2) Delivering a copy to the person named in the subpoena shall make service.

(3) Proof of service may be made by affidavit of the person making service.

(4) 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.

(5) The witness must be served at least two (2) days prior to the hearing.

(6) For good cause, the board may authorize the subpoena to be served less than two (2) days before the hearing.

(c) Any motion to quash or limit the subpoena shall:

(1) Be filed with the board; and

(2) State the grounds relied upon.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-717. Recording the proceedings.

(a) The responsibility to record the testimony heard at a hearing is borne by the Arkansas Board of Dispensing Opticians.

(b) Upon the filing of a petition for judicial review, the board will provide a verbatim transcript of testimony taken before the board.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-718. Factors to be considered in imposing sanctions.

In addition to any other considerations permitted by the Ophthalmic Dispensing Act, Arkansas Code § 17-89-101 et seq., if applicable, the Arkansas Board of Dispensing Opticians in imposing any sanction may consider the following:

- (1) The nature and degree of the misconduct for which the licensee is being sanctioned;
- (2) The seriousness and circumstances surrounding this misconduct;
- (3) The loss or damage to clients or others;
- (4) The assurance that those who seek similar professional services in the future will be protected from the type of misconduct found;
- (5) The profit to the licensee;
- (6) The avoidance of repetition;
- (7) Whether the conduct was:
 - (A) Deliberate;
 - (B) Intentional; or
 - (C) Negligent;
- (8) The deterrent effect on others;
- (9) The conduct of the individual during the course of the disciplinary proceeding;
- (10) The professional's prior disciplinary record, including warnings; and
- (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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-719. Final order.

(a) The Arkansas Board of Dispensing Opticians will serve on the respondent a written order that reflects the action taken by the board.

(b) 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.

(c) It will also state conclusions of law and directives or other disposition entered against or in favor of the respondent.

(d)(1) The order will be served personally or by mail on the respondent.

(2) If counsel represents respondent, service of the order on respondent's counsel shall be deemed service on the respondent.

Authority. Arkansas Code § 17-89-203.

Subpart 8. Licensure, Registry, or Office Permit Requirements and Qualifications

17 CAR § 70-801. General.

All board action regarding licensure shall be governed by the Ophthalmic Dispensing Act, Arkansas Code § 17-89-101 et seq., and, when applicable, Arkansas Code §§ 25-15-208 – 25-15-213.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-802. Requirements to keep current addresses on file.

(a) All persons holding a license issued by the Arkansas Board of Dispensing Opticians are required to provide the board with information so that the board can remain in contact and provide notice of complaints and/or hearings.

(b) The licensee is required to provide written notice to the board of any change in business and/or residential address within ten (10) working days of the change.

(c) Service of notices of hearing sent by mail will be addressed to the latest address on file with the board.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-803. Licensure or registry requirements.

Except as otherwise provided in the Ophthalmic Dispensing Act, Arkansas Code § 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 17 CAR § 70-101(7), must be licensed or registered by the Arkansas Board of Dispensing Opticians.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-804. Qualifications for licensure or registry.

(a) Each applicant for licensure or registry shall make application to the Arkansas Board of Dispensing Opticians upon a form and in such a manner as the board may require.

(b) Each applicant shall:

- (1) Verify that he or she is over the age of twenty-one (21) years;
- (2) Be a high school graduate, or the equivalent thereof, and provide a certified copy of the high school transcript or Graduate Equivalency Diploma (GED);
- (3) Submit written proof that he or she possesses the experience and/or education requirements, which are specified in Arkansas Code §§ 17-89-302 and 17-89-303:

(A) Provide a certified copy of transcript from a nationally accredited organization approved by the board;

(B) 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

(C)(i) 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.

(ii) Said supervised period of time shall consist of no less than four thousand eight hundred (4,800) hours in the last five (5) years to qualify for the examination;

(4)(A) Enclose the examination fee of two hundred fifty dollars (\$250) for the National Practical Examination.

(B) Applicants for licensure or registry must successfully complete the National Practical Examination with a score of seventy percent (70%); and

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

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-805. Review of application.

(a)(1) The application and supporting documentation will be reviewed by the Secretary-Treasurer of the Arkansas Board of Dispensing Opticians.

(2) Applicants will be notified by the secretary-treasurer of the applicant's approval to test.

(3) Qualified applicants will be notified by the secretary-treasurer of the procedure to take the National Practical Examination.

(4) Applicants who fail to pass the National Practical Examination must submit a written request to retake the examination and submit the fee of two hundred fifty dollars (\$250).

(b) Incomplete applications will be returned to the applicant.

(c) The Arkansas Board of Dispensing Opticians shall grant a license to an applicant who fulfills the Arkansas requirements for licensure and is a person who holds a federal Form I-766 United States Citizenship and Immigration Services-issued Employment Authorization Document, known popularly as a "work permit".

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-806. Denial of application for licensure.

(a) If a preliminary determination is made that the application should be denied, the Arkansas Board of Dispensing Opticians will inform the applicant of the opportunity for a hearing on the application.

(b)(1) The grounds or basis for the proposed denial of a license will be set forth in writing by the board.

(2) Any hearing on the denial of a license will be conducted in accordance with Arkansas Code §§ 25-15-208 and 25-15-213, and unless otherwise provided by law, the applicant has the burden of establishing entitlement to the license.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-807. Written examination for licensure or registry.

(a) The Arkansas Board of Dispensing Opticians adopts the National Practical Examination for registry or licensure.

(b) Examinations shall be conducted pursuant to the guidelines established by the national testing service.

(c) Applicants shall be examined in the areas of:

- (1) Mechanical optics;
- (2) Occupational vision requirements;
- (3) Taking facial measurements for proper frame sizing;
- (4) Ophthalmic lens type;
- (5) Fitting and adjusting glasses to the face; and
- (6) Any other areas deemed necessary by the board.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-808. Certificates.

Every applicant successfully passing the examination of the Arkansas Board of Dispensing Opticians and satisfying the qualifications required under Arkansas Code §

17-89-304 and this part 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-809. Office permit requirements.

Pursuant to Arkansas Code § 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-810. Qualifications for office permit.

All applicants for an office permit must complete the Arkansas Board of Dispensing Opticians-approved application form and enclose an application fee of sixty dollars (\$60.00) for each location where an office permit is being sought.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-811. 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.

Authority. Arkansas Code § 17-89-203.

Subpart 9. Apprentices

17 CAR § 70-901. Use of apprentices approved.

Except as limited in 17 CAR § 70-909, 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-902. Apprentice application.

(a) Apprentice dispensing opticians shall be approved by the Arkansas Board of Dispensing Opticians upon receipt of:

- (1) A properly completed application;
- (2) A current photograph of himself or herself approximately one inch by one inch (1" x 1"); and
- (3) The payment of a sixty-dollar fee to the board.

(b) The board shall waive the initial apprentice application fee if the applicant:

- (1) Is receiving assistance through the:
 - (A) Arkansas Medicaid Program;
 - (B) Supplemental Nutrition Assistance Program;
 - (C) Special Supplemental Nutrition Program for Women, Infants, and Children;
 - (D) Temporary Assistance for Needy Families Program; or
 - (E) Lifeline Assistance Program;
- (2) Was approved for unemployment within the last twelve (12) months; or
- (3) Has an income that does not exceed two hundred percent (200%) of the federal poverty income guidelines.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-903. Apprentice supervision.

(a) Apprentice dispensing opticians must submit with their application request a Supervision Agreement in the form and format provided by the Arkansas Board of Dispensing Opticians and signed by the licensed or registered dispensing optician under whose supervision they will work during their apprenticeship.

(b) 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.

(c) Apprenticed licensed opticians shall keep copies of all Supervision Agreements and Quarterly Supervision Reports for submission with application to test for licensure.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-904. Termination of supervision.

(a) If a supervision agreement is terminated for any reason and the apprenticed dispensing optician has not obtained the required supervision time for licensure as a registered dispensing optician, a new Supervision Agreement must be submitted to the Arkansas Board of Dispensing Opticians within ten (10) days.

(b) 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.

(c) The apprentice and the supervisor are responsible for notifying the board in writing of the termination of the supervision agreement.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-905. 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-906. Reinstatement of apprentice license.

The apprenticed optician license shall be eligible for reinstatement for a period of one hundred eighty (180) days upon the following conditions:

- (1) Submission of a signed Supervision Agreement;
- (2) Payment of any and all annual renewal fees and/or late payment penalties accruing during the suspension; and
- (3) Payment of a reinstatement fee of sixty dollars (\$60.00).

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-907. Failure to reinstate suspended apprenticed license.

(a) Any apprenticed dispensing optician license not reinstated within the prescribed time period will be considered revoked without hearing.

(b) Any person for whom their apprenticed dispensing optician license has been revoked for failure to reinstate shall be required to reapply for licensure.

(c) Any hours of supervision earned prior to the reapplication process may be considered under the new apprentice license provided the hours are earned within the previous five (5) years before application for testing for licensure is made.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-908. Apprenticed supervision requirements.

(a) Apprenticed dispensing opticians must obtain four thousand eight hundred (4,800) actual hours of supervision to qualify as three (3) years of supervision.

(b) These hours must be submitted on the Arkansas Board of Dispensing Opticians-approved form and certified by the licensed or registered dispensing optician under whose supervision the apprentice is acting.

Authority. Arkansas Code § 17-89-203.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote immediately following "four thousand eight hundred (4,800)" as follows:

"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."

17 CAR § 70-909. Supervising apprenticed opticians.

A licensed or registered optician may not supervise more than three (3) full-time apprenticed dispensing opticians.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-910. Licenses granted.

The Arkansas Board of Dispensing Opticians shall grant a license to an applicant who:

- (1) Completes an apprenticeship as defined by the Earn and Learn Act, Arkansas Code § 17-6-101 et seq.;
- (2) Passes the National Optician's Practical Examination with a score required for licensure, if deemed to be necessary by the board and required of all applicants;
- (3) Pays any fees deemed necessary by the board;
- (4) Does not have a disqualifying criminal record as determined by the board under state law; and
- (5) Completes all other requirements for licensure unrelated to training and education.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-911. Applications denied.

Should the Arkansas Board of Dispensing Opticians deny an application under 17 CAR § 70-910, the board shall provide the applicant with a written denial detailing the reason for the denial, including whether the board determined the applicant's apprenticeship program does not correspond to the profession or level of license for which the applicant applied.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-912. Hours for apprenticeship.

An apprenticeship under 17 CAR § 70-910 is not required to exceed the number of hours required by the Arkansas Board of Dispensing Opticians for licensure, except as otherwise required by federal law.

Authority. Arkansas Code § 17-89-203.

Subpart 10. Annual Renewal

17 CAR § 70-1001. Renewal of a license, registration, or apprenticeship.

(a) Application for renewal of licensed, registered, or apprenticed dispensing opticians shall be received or postmarked no later than June 10 of each year.

(b) 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.

(c) Each applicant shall submit a current photograph of himself or herself approximately one inch by one inch (1" x 1").

(d) Furthermore, each licensed or registered dispensing optician shall attest to his or her compliance with all of the provisions of the Ophthalmic Dispensing Act, Arkansas Code § 17-89-101 et seq., and this part on the annual licensure and registry renewal forms.

(e) Upon submission of the photograph and payment of such renewal fee and in absence of a board finding against renewal under this part, such person shall have his

or her certificate of licensure, registry, or apprenticeship renewed for an additional year commencing on July 1 of that year.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1002. Continuing education.

(a) Pursuant to Arkansas Code § 17-89-308, each licensed, registered, or apprenticed optician registered under the provisions of the Ophthalmic Dispensing Act, Arkansas Code § 17-89-101 et seq., applying for the renewal of his or her license, shall furnish to the Arkansas Board of Dispensing Opticians satisfactory evidence that he or she successfully completed four (4) hours in even numbered years and five (5) hours, including one (1) hour of jurisprudence, in odd numbered years of continuing education hours approved by either the Arkansas Board of Dispensing Opticians or the American Board of Opticianry in the year preceding the expiration date of the license being renewed pursuant to Arkansas Code § 17-89-307.

(b) 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 Arkansas Board of Dispensing Opticians on or before ninety (90) days after the completion of the hours.

(c) Continuing education hours shall be obtained in person with the presenter.

(d) The Arkansas Board of Dispensing Opticians will not accept continuing education hours obtained by correspondence.

(e) Continuing education hours through any form of live media broadcast must receive prior approval by the Arkansas Board of Dispensing Opticians.

(f) The Arkansas Board of Dispensing Opticians shall recognize those schools that are accredited by an organization recognized by the United States Department of Education or by the Council on Postsecondary Accreditation.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1003. Documentation of continuing education.

(a) Documentation of said continuing education shall be a condition precedent for the renewal of licenses for registered, licensed, and apprentice opticians.

(b) Provided, however, the Arkansas Board of Dispensing Opticians shall reinstate any license not renewed for failure to comply with this part 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1004. 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 Arkansas Board of Dispensing Opticians, 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1005. Renewal fee for optician.

Upon receipt of the sixty-dollar 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1006. Lost or destroyed badges.

Replacement badges will be provided by the Arkansas Board of Dispensing Opticians for all lost or destroyed badges at a fee of ten dollars (\$10.00).

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1007. 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

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1008. 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 Arkansas Code § 17-89-309(a) and may result in action by the Arkansas Board of Dispensing Opticians pursuant to Arkansas Code 17-89-309(b).

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1009. Inactive status.

(a)(1) A licensed or registered dispensing optician who fails to renew their license shall be placed on inactive status.

(2) The Arkansas Board of Dispensing Opticians shall notify the licensed or registered dispensing optician fifteen (15) days prior to placing an optician on inactive status.

(3) 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.

(4) Mailing will constitute service.

(b) A licensed or registered dispensing optician may request to be placed upon inactive status by providing a written statement to the board.

(c) 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.

(d)(1) Licensed or registered dispensing opticians who are placed on inactive status for failure to renew may return to active status within two (2) years upon payment of all renewal fees and late penalties and submission of continuing education hours.

(2) 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.

(3) Failure to return from inactive status after two (2) years shall be considered voluntary surrender of the license by the licensee without further notice.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1010. Renewal fee for office permit.

(a) Each office permit must be renewed on or before July 1 of each year.

(b) Application for renewal should be received or postmarked no later than June 10 of each year.

(c) Such renewal shall include a completed renewal form along with a sixty-dollar renewal fee.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1011. Failure to renew office permit and pay renewal fee.

Any office that 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

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1012. 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 Arkansas Code § 17-89-408(a) and may result in action by the Arkansas Board of Dispensing Opticians pursuant to Arkansas Code § 17-89-408(d).

Authority. Arkansas Code § 17-89-203.

Subpart 11. Branch Offices

17 CAR § 70-1101. Optician present.

All open optical businesses that are subject to the provision of the Ophthalmic Dispensing Act, Arkansas Code § 17-89-101 et seq., must have physically present within the place of business at all times a licensed or registered dispensing optician.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1102. Branch office limit.

No licensed or registered dispensing optician or person in this state shall establish more than two (2) ophthalmic dispensing branch offices in addition to his or her principal office unless he or she shall first have secured a branch office permit from the Arkansas Board of Dispensing Opticians.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1103. Factors for board to consider.

The Arkansas Board of Dispensing Opticians shall consider, but not be limited to, the following factors when ruling on an application for a permit for additional branch offices:

(1) The availability of qualified personnel to staff the proposed ophthalmic dispensing office;

(2) The established standards of service of the applicant;

(3) The assurance of adequate supervision of the service provided by the proposed branch office; and

(4) The applicant's established record of compliance with the provisions of the Ophthalmic Dispensing Act, Arkansas Code § 17-89-101 et seq., and the rules of the board.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1104. 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.

Authority. Arkansas Code § 17-89-203.

Subpart 12. Certificate of Ownership

17 CAR § 70-1201. Annual filing of certificate of ownership.

(a) 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.

(b) 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1202. Failure to file certificate of ownership.

(a) When the Arkansas Board of Dispensing Opticians determines that a violation of this requirement has occurred, the board may undertake an investigation to determine ownership.

(b) 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.

(c) 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.

Authority. Arkansas Code § 17-89-203.

Subpart 13. Complaints

17 CAR § 70-1301. Composition of the Complaint Committee.

The Complaint Committee shall consist of the Secretary-Treasurer of the Arkansas Board of Dispensing Opticians.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1302. Procedure for initiation of complaints.

(a) Initiation.

(1) 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 Arkansas Board of Dispensing Opticians.

(2) The complaint must contain a brief statement setting forth the allegations of fact and naming the optician against whom the complaint is filed.

(b) Prima facie determination.

(1) 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 Arkansas Code § 17-89-201 et seq., or this part.

(2) 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 of the Arkansas Board of Dispensing Opticians 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.

(3) Should the board determine the complaint fails to state a prima facie violation, the board shall notify the complainant the complaint has been dismissed.

(c) Board initiation.

(1) The board may initiate an investigation upon its own motion when it has reason to believe a violation of Arkansas Code § 17-89-201 et seq., or this part may have occurred.

(2) Individual board members should utilize the written complaint method for complaints against individual dispensing opticians.

(d) Time limit for filing of complaint.

(1) 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.

(2) Any complaint not received within this time limit shall not be considered, and the complainant shall be so notified.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1303. Procedure for investigation of complaints.

(a) **Notification of the respondent.** If the complaint appears to state a prima facie violation of the law and/or other Arkansas Board of Dispensing Opticians 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 or allegations.

(b) **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 that appears to be appropriate based upon the circumstances of the individual case.

(c) Investigative officer.

(1) The Investigative Officer shall be a person designated by the Chair of the Arkansas Board of Dispensing Opticians.

(2) The chair shall agree, or contract, to pay compensation to, or reimburse the expenses of, any person serving as investigative officer authorized by the board.

(d) Investigative report.

(1) Upon completion of the investigation, the investigative officer shall provide a written report to the Complaint Committee the results of the investigation.

(2) The Complaint Committee will recommend to the board whether to:

- (A) Conduct a hearing;
 - (B) Take other action; or
 - (C) Dismiss the complaint.
- (3) The report of the Complaint Committee shall be:
- (A) A summary of the results of the investigation; and
 - (B) Presented to the board without naming the licensee.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1304. Action by board.

(a) A majority vote of the Arkansas Board of Dispensing Opticians shall be required to support the recommendation of the Complaint Committee.

(b)(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.

(2) **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.

(c)(1) If the board determines that the complaint presents sufficient evidence of a violation, it may decide to resolve the matter through:

- (A) An informal meeting;
- (B) An offer of consent agreement; or
- (C) A formal disciplinary hearing.

(2) If the board votes to hold a formal hearing, the board shall comply with the requirements of the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

(3)(A) 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.

(B) Prior to an informal hearing the respondent must sign a consent statement agreeing to the terms and conditions of an informal hearing.

(4)(A) 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.

(B) 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.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1305. Disqualification.

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

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1306. Counter complaints.

(a) 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.

(b) Counter charges will only be considered after the disposition of the initial complaint.

Authority. Arkansas Code § 17-89-203.

Subpart 14. Denial, Suspension, or Revocation of License, Registration, or Office Permit

17 CAR § 70-1401. Suspension, revocation, annulment, or withdrawal.

(a) 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 Arkansas Board of Dispensing Opticians will serve the licensee or permit holder a notice of hearing in the manner set out in Arkansas Code § 25-15-208 and 17 CAR § 70-707.

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

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1402. Voluntary surrender of license.

The licensee, in lieu of formal disciplinary proceedings, may offer to surrender his or her license, subject to the Arkansas Board of Dispensing Opticians' determination to accept the proffered surrender, rather than conducting a formal disciplinary proceeding.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1403. Basis of suspension, revocation, or denial.

The Arkansas Board of Dispensing Opticians shall revoke, suspend, or refuse to issue a license or registration of any dispensing optician or apprenticeship for any violation of any provision of Arkansas Code § 17-89-201 et seq., as amended, or of this part, including, but not limited to, the following:

(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;

(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";

(3)(A) 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.

(B) 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;

(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 or her professional practice adjacent to an opticianry for the purpose of capping and steering as defined by this part;

(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 or she should be entrusted to serve the public in the capacity of a dispensing optician;

(6) The applicant, licensee, registrant, apprentice, or person violating any prohibitive provision under this subpart;

(7) The applicant, licensee, registrant, apprentice, or person engaging in any fraudulent, misleading, or deceptive advertising;

(8) The applicant, licensee, registrant, apprentice, or person failing to qualify for the license, registration, apprenticeship, or office permit;

(9) The applicant, licensee, registrant, apprentice, or person violating any other rule promulgated by the board; or

(10) The applicant, licensee, registrant, apprentice, or person using any narcotic drug, psychoactive drug, or alcohol that impairs his or her ability to perform the work as an ophthalmic dispenser.

Authority. Arkansas Code § 17-89-203.

Codification Notes. This section as promulgated prior to codification into the Code of Arkansas Rules contained a footnote immediately following "The applicant, licensee, registrant, apprentice or person engaging in any fraudulent, misleading, or deceptive advertising" that follows:

"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."

17 CAR § 70-1404. 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 the Ophthalmic Dispensing Act, Arkansas Code § 17-89-101 et seq., and/or the rules promulgated by the Arkansas Board of Dispensing

Opticians may have any one (1) or more of the following sanctions imposed upon him or her by the board:

- (1) Suspension, revocation, or denial of the license, registration, apprenticeship, or office permit or the renewal thereof;
- (2) A penalty not to exceed one thousand dollars (\$1,000) for each violation;
- (3) Conditions or restrictions placed upon the person's license, registration, apprenticeship, or practice; or
- (4) Such other requirements or penalties as may be appropriate to the circumstances or the case, and that would achieve the desired disciplinary purposes, but that would not impair the public welfare and morals.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1405. 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 Arkansas Board of Dispensing Opticians shall have the power to file suit in the Pulaski County Circuit Court to obtain the judgment for the amount of penalty not paid.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1406. 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:

- (1) Return his or her license and any license badge to the Arkansas Board of Dispensing Opticians' office;
- (2) Notify all clients to make arrangements for other professional services, calling attention to any urgency in seeking the substitution of another licensed professional;

(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; and

(4) Refund any part of the fees paid in advance that have not been earned.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1407. Emergency action.

(a) If the Arkansas Board of Dispensing Opticians 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.

(b) The notice requirement in 17 CAR § 70-707 does not apply and must not be construed to prevent a hearing at the earliest time practicable.

(c) **Emergency order.**

(1) An emergency adjudicative order must contain findings that the public health, safety, and welfare imperatively required emergency action to be taken by the board.

(2) The written order must include notification of the date on which the board proceedings are scheduled for completion.

(d) **Written notice.**

(1) The written emergency adjudicative order will be immediately delivered to persons who are required to comply with the order.

(2) One (1) or more of the following procedures will be used:

(A) Personal delivery;

(B) Certified mail, return receipt requested, to the last address on file with the board;

(C) First class mail to the last address on file with the board;

(D)(i) Fax.

(ii) 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; or

(E)(i) Oral notice.

(ii) 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.

(e) Unless otherwise provided by law, within ten (10) days after emergency action taken pursuant to this section, the board must initiate a formal suspension or revocation proceeding.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1408. Reinstatement after suspension.

(a) An order suspending a license may provide that a person desiring reinstatement may file with the Secretary-Treasurer of the Arkansas Board of Dispensing Opticians a verified petition requesting reinstatement.

(b) The petition for reinstatement must set out the following:

(1) That the individual has fully and promptly complied with the requirements of 17 CAR § 70-1406 pertaining to the duty of a sanctioned professional;

(2) That the individual has refrained from practicing in this profession during the period of suspension;

(3) That the individual's license fee is current or has been tendered to the board; and

(4) That the individual has fully complied with any requirements imposed as conditions for reinstatement.

(c) Any knowing misstatement of fact may constitute grounds for denial or revocation of reinstatement.

(d) Failure to comply with the provisions of Sections 15.6.7 and 15.6.8 of these Rules precludes consideration for reinstatement.

(e) No individual will be reinstated unless the board approves reinstatement by majority vote.

Authority. Arkansas Code § 17-89-203.

17 CAR § 70-1409. Relicensure for revoked or surrendered license.

(a)(1) 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 Arkansas Board of Dispensing Opticians.

(2) The application for relicensure is not allowed until at least two (2) years after the revocation or surrender of license took effect.

(b) The applicant bears the burden of proof that he or she is rehabilitated following the revocation or surrender of his or her license, that he or she can engage in the conduct authorized by the license without undue risk to the public health, safety, and welfare, and that he or she is otherwise qualified for the license pursuant to the Ophthalmic Dispensing Act, Arkansas Code § 17-89-101 et seq.

(c) The board may impose any appropriate conditions or limitations on a license to protect the public health, safety, and welfare.

Authority. Arkansas Code § 17-89-203.

Subpart 15. Waiver Request

17 CAR § 70-1501. Waiver request.

(a) If an individual has been convicted of an offense listed in Arkansas Code § 17-3-102(a) or (e), the Arkansas Board of Dispensing Opticians 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 an:

- (1) Affected applicant for a license; or
- (2) 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:

- (1) Be in writing; and
- (2) Accompany the completed application and fees.

(d) The board will:

- (1) Respond with a decision in writing; and
- (2) State the reasons for the decision.

(e) An appeal of a determination under this section will be subject to the Arkansas Administrative Procedure Act, Arkansas Code § 25-15-201 et seq.

Authority. Arkansas Code § 17-89-203.

Subpart 16. Disclosure

17 CAR § 70-1601. Requirements to provide information to the board.

Every person licensed or registered under the provisions of the Ophthalmic Dispensing Act, Arkansas Code § 17-89-101 et seq., shall upon request make available to the Arkansas Board of Dispensing Opticians or its duly authorized representative any information that the board requires to verify compliance of the licensee or registrant with all provisions of the Ophthalmic Dispensing Act and this part.

Authority. Arkansas Code § 17-89-203.

Subpart 17. Ophthalmic Standards

17 CAR § 70-1701. Board to provide ophthalmic standards.

The Arkansas Board of Dispensing Opticians 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.

Authority. Arkansas Code § 17-89-203.

Subpart 18. Prohibited Practice

17 CAR § 70-1801. Prohibited practice.

(a)(1) 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:

(A) 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

(B) 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.

(2) 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)(1) Nothing in this part 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 or herself out as being able to:

(A) Examine eyes by any objective or subjective method or exercises eyes;

(B) Undertake by any method or means the measurement of the cornea of the human eye; or

(C) Examine, prescribe, diagnose, treat, or correct for visual deficiency.

(2) 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.

Authority. Arkansas Code § 17-89-203.

Subpart 19. Uniformed Service Member Licensure

17 CAR § 70-1901. Uniformed service member licensure.

(a) As used in this section, “uniformed service veteran” means a former member of the United States uniformed services discharged under circumstances other than dishonorable.

(b) The Arkansas Board of Dispensing Opticians shall grant automatic licensure to an individual who is the holder in good standing of a license with a similar scope of practice issued by another state, territory, or district of the United States and is:

(1) A uniformed service member stationed in the State of Arkansas;

(2) A uniformed service veteran who resides in or establishes residency in the State of Arkansas; or

(3) The spouse of a:

(A) Person under subdivisions (b)(1) or (2) of this section;

(B) Uniformed service member who is assigned a tour of duty that excludes the uniformed service member's spouse from accompanying the uniformed service member and the spouse relocates to this state; or

(C) Uniformed service member who is killed or succumbs to his or her injuries or illness in the line of duty if the spouse establishes residency in the state.

(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 license with a similar scope of practice in another state; and

(3) Evidence that the applicant is a qualified applicant under subsection (b) of this section.

(d) The expiration date of a license for a deployed uniformed service member or spouse will be extended for one hundred eighty (180) days following the date of the uniformed service member's return from deployment.

(e) A full exemption from continuing education requirements will be allowed for a deployed uniformed service member or spouse until one hundred eighty (180) days following the date of the uniformed service member's return from deployment.

(f) The board shall accept relevant and applicable uniformed service education, training, national certification, or service-issued credential toward licensure qualifications or requirements when considering an application for initial licensure of an individual listed in Arkansas Code § 17-4-104.

Authority. Arkansas Code § 17-89-203.

Subpart 20. Reciprocity

17 CAR § 70-2001. Reciprocity.

(a) The Arkansas Board of Dispensing Opticians will only consider a grant of reciprocity to an individual from a state that grants reciprocity to Arkansas licensees.

(b) The board shall require that any person requesting reciprocity of the State of Arkansas shall meet the requirements as set forth in Arkansas Code §§ 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.

Authority. Arkansas Code § 17-89-203.