

NOTICES OF SUPPLEMENTAL PROPOSED RULEMAKING

After an agency has filed a Notice of Proposed Rulemaking with the Secretary of State's Office for *Register* publication and the agency decides to make substantial changes to the rule after it is proposed, the agency must prepare a Notice of Supplemental Proposed Rulemaking for submission to the Office, and the Secretary of State shall publish the Notice under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.). Publication of the Notice of Supplemental Proposed Rulemaking shall appear in the *Register* before holding any oral proceedings (A.R.S. § 41-1022).

NOTICE OF SUPPLEMENTAL PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 20. BOARD OF DISPENSING OPTICIANS

[R05-56]

PREAMBLE

1. Register citation and date for the original Notice of Proposed Rulemaking:

Notice of Proposed Rulemaking: 10 A.A.R. 4526, November 12, 2004

2. Sections Affected

Rulemaking Action

R4-20-101	Amend
R4-20-102	Amend
R4-20-103	Amend
R4-20-104	Amend
R4-20-105	Amend
R4-20-106	Amend
R4-20-107	Amend
R4-20-109	Amend
R4-20-110	Amend
R4-20-111	Amend
R4-20-112	Amend
R4-20-113	Amend
R4-20-114	Amend
R4-20-115	Amend
R4-20-116	Amend
R4-20-117	No change
R4-20-118	Amend
R4-20-119	Amend
R4-20-120	Amend
R4-20-121	Amend
R4-20-122	New Section
R4-20-123	New Section
R4-20-124	New Section
R4-20-125	New Section
R4-20-126	New Section
R4-20-127	New Section
Table 1	Amend

3. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule are implementing (specific):

Authorizing statute: A.R.S. § 32-1673.

Implementing statute: A.R.S. §§ 32-1671, 32-1672, 32-1673, 32-1674, 32-1681, 32-1682, 32-1683, 32-1684, 32-1684.01, 32-1685, 32-1686, 32-1687, 32-1691, 32-1691.01, 32-1693, 32-1694, 32-1695, 32-1695, 32-1696, 32-1697, 32-1698, 32-1699

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Lori D. Scott, Executive Director
Address: 1400 W. Washington, Rm 230
Phoenix, AZ 85007
Telephone: (602) 542-3095

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Fax: (602) 542-3093
E-mail: director@asbdo.state.az.us

5. An explanation of the rule, including the agency's reasons for initiating the rule:

The rules provide detailed licensing and regulatory information and procedural instructions. The Board is amending the proposed rules for clerical clarification.

6. An explanation of the substantial change which resulted in this supplemental notice:

R4-20-117 was to include a broader scope of opticianry. Upon further review the Board decided not to include this scope and leave it as is. Clarification for reinstatement of optician's license was further explained with regards to taking the practical examination in R40-20-109(C)

7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:

The proposed amendments do not diminish a previous grant of authority of a political subdivision of this state.

8. The preliminary summary of the economic, small business, and consumer impact:

This rulemaking will impact applicants with the clarification of examination fees. The Board anticipates minimal to no impact on licensees or consumers with the amendments proposed.

9. The name and address of agency personnel with who persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Lori D. Scott, Executive Director
Address: 1400 W. Washington, Rm 230
Phoenix, AZ 85007
Telephone: (602) 542-3095
Fax: (602) 542-3093
E-mail: director@asbdo.state.az.us

10. The time, place and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where when and how persons may request an oral proceeding on the proposed rule:

No oral proceedings are scheduled at this time.

Written comments will be accepted by the Board office, Monday through Friday 8:00 a.m. to 5:00 p.m., no later than 5:00 p.m. March 30, 2005.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

None

12. Incorporations by reference and their location in the rules:

R4-20-119(B)

ANSI Z80.1-1999, "Prescription Ophthalmic Lenses-Recommendations".

ANSI Z80.20-1998, "Contact Lenses - Standard Terminology, Tolerances Measurements, And Physiochemical Properties".

ANSI Z80.5-2004, "Requirements for Ophthalmic Frames."

ANSI Z87.1-2003, "Practice for Occupational and Educational Eye and Face Protection".

ANSI Z80.3-1998 "Non Prescription Sunglasses And Fashion Eyewear – Requirements".

ANSI Z80.9-1998 "Low Vision Aids - Requirements"

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 20. BOARD OF DISPENSING OPTICIANS

ARTICLE 1. IN GENERAL

Section

- R4-20-101. Definitions
- R4-20-102. Application for a Dispensing Optician's License by Examination
- R4-20-103. Approval to take dispensing optician examination

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R4-20-104.	Dispensing optician examinations
R4-20-105.	Examination procedures
R4-20-106.	Scoring of examination; failure to pass
R4-20-107.	Application for a Dispensing Optician's License by Comity
R4-20-109.	Renewal of Dispensing Optician's License
R4-20-110.	Application for an Optical Establishment License
R4-20-111.	Time-frames for License Approvals
R4-20-112.	Fees
R4-20-113.	Display of licenses, nontransferability
R4-20-114.	Notice of change of status
R4-20-115.	Renewal of Optical Establishment License
R4-20-116.	Rehearing or review of decision
R4-20-117.	Scope of practice
R4-20-118.	Unprofessional conduct
R4-20-119.	Substandard care
R4-20-120.	Continuing education; hours required; reporting
R4-20-121.	Continuing education; approval of courses
<u>R4-20-122.</u>	<u>Agency record; director of substantive policy statements</u>
<u>R4-20-123.</u>	<u>Petition for rulemaking; review of agency practice or substantive policy statement; objection to rule based upon economic, small business, or consumer impact</u>
<u>R4-20-124.</u>	<u>Public comments</u>
<u>R4-20-125.</u>	<u>Oral Proceedings</u>
<u>R4-20-126.</u>	<u>Petition for Delayed Effective Date</u>
<u>R4-20-127.</u>	<u>Written Criticism of Rule</u>
Table 1.	Time-frames (in days)

ARTICLE 1. IN GENERAL

R4-20-101. Definitions

The following definitions apply in this Chapter unless otherwise specified:

1. "ABO" means the American Board of Opticianry.
2. "Applicant" means an individual requesting an initial or renewal license from the Board.
3. "Application packet" means the forms and additional information the Board requires to be submitted by an applicant or on the applicant's behalf.
4. "Comity" means the procedure for granting an Arizona license to an applicant who is already licensed as a dispensing optician in another state of the United States.
5. "Days" means calendar days.
6. "Laboratory experience" means work directly involved in the process of producing optical devices and does not include work that is strictly clerical.
7. "License" means a written authorization issued by the Board to practice as a dispensing optician or operate an optical establishment in Arizona.
8. "NCLE" means the National Contact Lens Examiners.
9. "Nationally recognized body of opticianry accreditation" means the Commission on Opticianry Accreditation.
10. "Optical devices" means eyeglasses, contact lenses, prosthetic eyes, low-vision aids, other eyewear, or eyewear appurtenances or parts.
11. "Optometrist" means a person currently licensed in any state of the United States in the practice of the profession of optometry as defined in A.R.S. § 32-1701 ~~in any state of the United States~~.
12. "Physician" means a doctor currently licensed to practice allopathic or osteopathic medicine in any state of the United States.
13. ~~"Vision practitioner" means a physician licensed in Arizona.~~
14. "Work week" means the period of time beginning on Sunday at 12:00 a.m. and ending the following Saturday at 11:59 p.m.

R4-20-102. Application for a Dispensing Optician's License by Examination

At least 45 days before an examination date, an applicant for a dispensing optician's license by examination shall submit to the Board an application packet that contains:

1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
 - a. The applicant's name, social security number, address, and telephone number;
 - b. The name and address of the applicant's employer at the time of application, if applicable;
 - c. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(b), the name and address of each dispensing optician, physician, or optometrist for whom the applicant served as an apprentice for ~~3~~ three of the ~~6~~ six years immediately preceding the application date, and the ~~start~~ beginning and ~~last~~ ending dates of each apprentice-

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- ship;
- d. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(c), the name and address of the school from which the applicant graduated, dates of attendance, date of graduation, degree received, and the name and address of each dispensing optician for whom the applicant served as a dispensing optician apprentice for ~~1~~ one of the ~~6~~ six years immediately preceding the application date and the ~~1st~~ beginning and ~~last~~ ending dates of service. The applicant shall submit a photocopy of a diploma from the optical dispensing school;
 - e. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(d), the name and address of each dispensing optician, physician, or optometrist for whom the applicant has worked for ~~3~~ three of the ~~6~~ six years immediately preceding the application date and the ~~first~~ beginning and ~~last~~ ending dates of employment;
 - f. A statement of whether the applicant has ever been convicted of a felony or misdemeanor involving moral turpitude in any state;
 - g. A statement of whether the applicant has ever ~~been denied~~ had an application for a professional license denied or had a license suspended or revoked in any state; and
 - h. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A photocopy of the applicant's high school diploma or general educational diploma issued in any state;
 3. Verification of passing a ABO and NCLE national Board examination in opticianry as evidenced by an original notice of examination results or original certificate of successful passage issued by the professional examination service that prepared the examination;
 4. A letter attesting to good moral character from each of ~~3~~ three individuals who are not family members, who have known the applicant for 2 two years immediately ~~preceding~~ before the date of the application, and support the applicant's licensure;
 5. A letter from each ~~ophthalmologist physician, optometrist, or dispensing optician~~ named in subsection (1)(c), (d), or (e), licensed in any state who provided direct supervision to the applicant during the applicant's apprenticeship that contains:
 - a. The individual's printed name, address, and telephone number; and
 - b. A statement that the applicant has either served as an apprentice or been employed as a dispensing optician by the ~~ophthalmologist physician, optometrist, or dispensing optician~~ for the time required in subsections ~~(A)(1)(c), (d), or (e). If the applicant served as an apprentice or was employed as a dispensing optician by more than 1 ophthalmologist, optometrist, or dispensing optician, the applicant shall submit a letter from each ophthalmologist, optometrist, or dispensing optician for whom the applicant is claiming experience.~~
 6. A ~~passport~~ photograph of the applicant no ~~larger~~ smaller than 1 1/2 x 2 inches and taken not more than ~~6~~ six months before the date of application; and
 7. The fee required in R4-20-112.

R4-20-103. Approval to take dispensing optician examination

- A. An applicant shall file an application to take the dispensing optician license examination ~~shall be received by~~ with the Board 45 days ~~prior to~~ before the date of the examination.
- ~~B.C.~~ The Board shall notify applicants Applicants whose applications have been approved ~~shall be notified prior to~~ before the date of the examination as to the time and place of the examination.
- ~~C.B.~~ The Board may reduce or waive the 45-day requirement for any portion of the application if its nonavailability is outside the applicant's control.

R4-20-104. Dispensing Optician Examinations

- A. At least twice each year, the Board shall administer a dispensing optician examination. The Board shall not space the examinations more than ~~8~~ eight months apart.
- ~~B.~~ A written dispensing optician examination shall cover the following subjects:
 1. ~~Ocular anatomy;~~
 2. ~~Geometric optics and laboratory;~~
 3. ~~Ophthalmic dispensing, and~~
 4. ~~Contact lenses.~~
- ~~C.B.~~ The practical examination shall include measurement of optical devices, interpupillary distance, segment heights, corneal curvature and the identification of lens styles and tints. Only Board supplied measuring equipment and optical devices shall be used in the practical examination.
- ~~D.~~ An individual who obtained a passing score on a dispensing optician examination administered by the ABO and holds a current certificate issued by the ABO, may substitute the dispensing optician examination for those portions of the examination required in subsections (B)(1), (B)(2), and (B)(3), by submitting to the Board a current ABO certificate that states ABO requirements have been met and by:
 1. ~~Submitting to the Board the original notice of examination results or the original certificate that states the individual passed the examination; or~~
 2. ~~Having the ABO submit directly to the Board a notice of examination results or certificate of passing the examination.~~

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- ~~E.~~ An individual who obtained a passing score on a contact lens examination administered by the NCLE, and holds a current certificate issued by the NCLE may substitute that examination for those portions of the examination required in subsection B(4), by submitting to the Board a current NCLE certificate that states NCLE requirements have been met and by:
- ~~1. Submitting the original notice of examination results or the original certificate that states the individual passed the examination; or~~
 - ~~2. Having the NCLE submit directly to the Board a notice of examination results or certificate of passing the examination.~~

R4-20-105. Practical Examination Procedures

- ~~A.~~ The Board's method of administering the written portion of an examination shall be for the applicant to apply to the American Board of Opticianry and National Contact Lens Examiners and successfully complete those examinations. Rules of the testing service shall apply.
- ~~B.A.~~ For the practical examination, an applicant shall not bring books or notes into the examination room, communicate by any means with other applicants while the examination is in progress, unless expressly authorized by the presiding examiner, or leave the examination room without first securing the presiding examiner's permission. Violation of this subsection shall terminate the applicant's right to continue the examination. If an applicant violates this Section, the presiding examiner shall confiscate the examination answer sheet and the applicant will not be allowed to complete the examination.
- ~~C.B.~~ For the practical examination, no persons except applicants, Board members, employees of the Board or persons having the express permission of the Board shall be permitted in the examination room while the examination is in progress.
- ~~D.C.~~ The Examination papers are the property of the Board and the Board shall will not be returned return examination papers to the applicant.

R4-20-106. Scoring of Examination; Failure to Pass

- A. To pass, an applicant shall achieve a grade of 75% or more ~~shall be achieved~~ on the practical examination. For the written subjects exam, the applicant ~~must meet the passing~~ shall achieve a grade of 70% or more on the American Board of Opticianry examination and ~~must meet the passing~~ shall achieve a grade of 72% or more on the National Contact Lens Examiners examination.
- B. Failure to pass an examination shall not preclude an applicant from participation in a subsequent examination.
- C. An applicant who fails to pass the practical examination ~~may re-take the practical examination at either of the next two scheduled examinations without the payment of any additional fee~~ shall reapply as an original applicant.
- ~~D.~~ After the second failure of the practical examination, re-examination will be permitted only after filing a second application and payment of the fee for re-application.

R4-20-107. Application for a Dispensing Optician's License by Comity

An applicant for a dispensing optician's license by comity shall submit an application packet to the Board that contains:

1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
 - a. The applicant's name, social security number, address, and telephone number;
 - b. The applicant's dispensing optician license number and the state and date of licensure;
 - c. A statement of whether the applicant has ever been convicted of a felony or misdemeanor involving moral turpitude in any state;
 - d. A statement of whether the applicant has ever been denied an application or had a license suspended or revoked in any state; and
 - e. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A photocopy of the unexpired license and a written statement, signed by an officer of the licensing Board that issued the license, that states the license is in good standing, and that the license is valid to dispense both spectacles and contact lenses;
3. A photograph of the applicant no ~~larger~~ smaller than 1 1/2 x 2 inches and taken not more than ~~6~~ six months before the date of application; and
4. The fee required in R4-20-112.

R4-20-109. Renewal of Dispensing Optician's License; Late Renewal; Reinstatement

- A. No later than December 31 of each year, an applicant for renewal of a dispensing optician's license shall submit to the Board the fee required by R4-20-112, continuing education credits required by R4-20-120, and an application form, provided by the Board, signed and dated by the applicant, and notarized that contains:
1. The applicant's name, social security number, address, and telephone number;
 2. The name, address, telephone number, and Arizona license number of the optical establishment at which the applicant is currently practicing as a dispensing optician; and
 3. A statement that the information contained on the renewal application is true and correct.
- B. A licensee who submits a renewal application and renewal fee postmarked after December 31 but before January 31 of the following year shall also pay the late fee as outlined in R4-20-112.
- C. A licensee who fails to submit a renewal application postmarked before January 31 following a license expiration of

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December 31, and who wishes to reinstate the license, shall submit a reinstatement application within one year of license expiration, shall pay the renewal fee and the late fee as outlined in R4-20-112 and shall achieve a passing grade on the state board practical examination, unless they have successfully completed the practical examination in the five year period immediately preceding expiration. The applicant for reinstatement shall also achieve a passing score on the ABO and NCLE national board examinations if not previously completed.

R4-20-110. Application for an Optical Establishment License

An applicant for an optical establishment license shall submit an application packet to the Board that contains:

1. An application form provided by the Board, signed and dated by the applicant, and notarized that contains:
 - a. The applicant's name, establishment name, establishment address, and telephone number. An application form shall be signed by the following:
 - i. If a sole proprietorship, the individual owning the optical establishment;
 - ii. If a corporation, each individual owning 20% or more of the voting stock in the corporation;
 - iii. If a partnership, the managing partner and a general partner;
 - iv. If a limited liability company, the designated manager, or if no manager is designated, any ≥ two members of the limited liability company;
 - b. The hours the establishment will be open to the public for business;
 - c. If applicable, the name, business address, and telephone number of each licensed optical establishment currently being operated by the applicant in Arizona;
 - d. If a corporation, the name of the statutory agent, the corporation's officers, and the state of incorporation; and
 - e. The name, business address, telephone number, and license number of each licensed dispensing optician who is scheduled to work at the establishment on a full-time basis, consisting of ~~for~~ 32 hours or more per week;
2. If a corporation, the articles of incorporation; and
3. The fee required in R4-20-112.

R4-20-111. Time-frames for License Approvals

- A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is set forth in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frame. The substantive review time-frame may not be extended by more than 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1.
 1. The administrative completeness review time-frame begins:
 - a. For approval to take a dispensing optician examination or for an optical establishment license, when the Board receives an application packet.
 - b. For approval or denial of a license by examination ~~or license by comity~~, when the applicant takes the dispensing optician examination.
 - c. For approval or denial of a license by comity, when the Board receives an application packet.
 2. If the application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
 3. If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
 4. If the Board grants a license or approval during the time provided to assess administrative completeness, the Board shall not issue a separate written notice of administrative completeness.
- C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.
 1. During the substantive review time-frame, the Board may make ± one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
 2. The Board shall send a written notice approving the applicant ~~A.R.S. §§ 32-1681 through 32-1687~~ to take an examination or granting a license to an applicant who meets the qualifications in A.R.S. § 32-1681 through ~~32-1687~~ 1684 and 32-1687.
 3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. § 32-1681 through ~~32-1687~~ 1684 and 32-1687.
- D. The Board shall consider an application withdrawn if within 360 days from the application submission date the applicant fails to:
 1. Supply the missing information under subsection (B)(2) or (C)(1); or
 2. Take the dispensing optician examination.
- E. An applicant who does not ~~wish~~ want an application withdrawn may request a denial in writing within 360 days from the

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application submission date.

- F. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the next business day shall be considered the time-frame's last day.

R4-20-112. Fees

- A. Dispensing optician fees, which are non-refundable unless A.R.S. § 41-1077 applies, are as follows:

1. License application fee: \$75
2. License issuance fee: \$75
3. Renewal of dispensing optician license: \$100
4. License renewal late fee: \$100

- B. Optical establishment license fees are as follows:

1. License application fee: \$100
2. License issuance fee: \$100
3. Renewal of optical establishment license: \$100
4. License renewal late fee: \$100

- C. Fees for copies of public records are:

1. Duplicate optician license: \$25
2. Duplicate establishment license: \$25
3. Statutes and rules: \$10
4. Directories:
 - a. Commercial use: \$2.50 per page
 - b. Non-commercial use: \$1.00 per page
5. Labels
 - a. Commercial use: \$.30 per name
 - b. Non-commercial use: \$.10 per name
6. All other records: \$.50 per page

R4-20-113. Display of licenses, Nontransferability

- A. A licensee shall display all licenses, including temporary licenses, shall be displayed in public view in a conspicuous place. If a license has been renewed, the licensee shall display the evidence of renewal or copy thereof must be displayed with the license in public view.
- B. Optical establishment and dispensing optician licenses are not transferable.
- C. A licensee shall return the optical establishment licenses shall be returned to the Board upon transfer of ownership or going out of business.

R4-20-114. Notice of change of status

- A. An optical establishment licensees and dispensing optician licensees shall notify the Board of any change in the information provided to the Board concerning license application or its renewal, including any changes in name, address, work location, establishment ownership and or the name, address and or home telephone number of each dispensing opticians, ~~optometrists or vision practitioners~~ working at the establishment.
- B. This notice shall be in writing and made within thirty days of change of status.
- C. For purposes of this Section, a change of establishment ownership means:
1. The transfer of a controlling interest in the optical establishment business from one person to another;
 2. The addition or termination of a general partner;
 3. The transfer or agreement to transfer a block ~~of or~~ or twenty percent or more of the outstanding voting stock of a corporation or association or the transfer or agreement to transfer any amount of voting stock ~~which that~~ which that would give the transferee control of a majority of its outstanding voting stock. For purposes of this subsection, "voting stock" ~~includes means~~ includes means any interest or system whereby the operation of a corporation is controlled by its owners or trustees.

R4-20-115. Renewal of Optical Establishment License; Late Renewal; Re-application

- A. No later than June 30 of each year, an applicant for renewal of an optical establishment license shall submit to the Board the fee required by R4-20-112 and an application form, provided by the Board that contains:
1. The name, address, and telephone number of the optical establishment;
 2. The name and license number of each dispensing optician who is scheduled to work 32 hours or more each work week at the optical establishment; and
 3. The applicant's signature and title.
- B. A licensee who submits a renewal application and renewal fee postmarked after June 30 but before July 31 of the renewal year shall also pay a late fee as outlined in R4-20-112.
- C. A licensee who fails to submit a renewal application postmarked prior to July 31 following a license expiration of June 30, and who wishes to re-apply for an establishment license, shall submit an original application, and shall pay the application fee and license fee outlined in R4-20-112.

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R4-20-116. Rehearing or Review of Decision

- A. Except as provided in subsection (G), ~~any~~ a party in a contested case before the Board who is aggrieved by a decision rendered in ~~such the~~ case may file with the Board not later than ~~ten~~ 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds ~~therefore for the rehearing or review~~. For purposes of this subsection, a decision ~~shall be~~ is deemed to ~~have been~~ be served when personally delivered or mailed by certified mail to the party at ~~his the party's~~ last known residence or place of business.
- B. A party may amend a motion for rehearing or review ~~under this Section may be amended~~ at any time before it is ruled upon by the Board. ~~Any other party may file~~ a response ~~may be filed~~ within ~~ten~~ 15 days after service of ~~such the~~ motion or amended motion ~~by any other party~~. The Board may require the filing of written brief upon the issues raised in the motion and may provide for oral argument.
- C. A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the ~~agency Board, the Board's or its~~ informal interviewing officer, or the prevailing party, or any order or abuse of discretion whereby the moving party was deprived of a fair hearing or interview;
 2. Misconduct of the Board or the prevailing party;
 3. Accident or surprise ~~which that~~ could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence ~~which that~~ could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejections of evidence or other errors of law occurring at the administrative hearing; or
 7. That the decision is not justified by the evidence or is contrary to law.
- D. The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons ~~set forth~~ in subsection (C). An order granting a rehearing or review shall specify with particularity the ground ~~or grounds~~ on which the rehearing or review is granted, and the rehearing or review shall cover only those matters ~~so~~ specified.
- E. Not later than ten days after a decision is rendered, the Board may on its own initiative order a rehearing or review of ~~its a~~ decision for any reason for which ~~the Board it~~ might have granted a rehearing or review on motion of a party. After giving the parties or ~~their the parties'~~ counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion. ~~Any order granting such a rehearing or review shall specify the grounds therefore.~~
- F. When a motion for rehearing or review is based upon affidavits, ~~they the moving party shall be served~~ serve the affidavits with the motion. An opposing party may within ten days after ~~such service~~, serve opposing affidavits. ~~That period may be extended~~ The Board may extend the period for an additional ~~period not exceeding~~ twenty days ~~by the Board~~ for good cause shown or by written stipulation of the parties. ~~The Board may permit reply affidavits may be permitted.~~
- G. If in a ~~particular~~ decision the Board makes specific findings that the immediate effectiveness of ~~such the~~ decision is necessary for the immediate preservation of the public peace, health, ~~and or~~ safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the ~~board may issue the decision may be issued~~ as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, a party shall make any application for judicial review of the decision ~~shall be made~~ within the time limits permitted for applications for judicial review of the Board's final decisions.
- H. For purposes of this Section the terms "contested case" and "party" have the same meaning as in A.R.S. § ~~31-1671(3)~~ 41-1001.

R4-20-117. Scope of practice

The scope of practice of a dispensing optician includes those activities described in A.R.S. § 32-1671(3).

R4-20-118. Unprofessional Conduct

In addition to actions specified in A.R.S. § 32-1696, unprofessional conduct in the practice of optical dispensing includes the following:

1. Substandard care as specified in R4-20-119;
2. Failing to maintain a copy of the customer's prescription or failing to prepare and maintain a record of ~~the~~ optical devices ~~actually~~ dispensed for ~~a minimum period of at least~~ three years. The record shall include the brand, style and size of the frame, if any, and the style, material, and all other information necessary to accurately reproduce each lens. All such records shall be separate from Arizona state licensed optometrists' or physicians' records;
3. Failing or refusing to make a copy of a record described in ~~Paragraph subsection~~ (2) promptly available to the customer, who is the subject of the record, the customer's designated representative, the customer's prescribing practitioner, or the Board or its investigator, when requested. Notwithstanding this provision, a dispensing optician need not make the record of contact lenses dispensed on a trial basis available to the customer ~~until the trial period has ended or a period of 60 days has elapsed without the dispensing of a retrial lens; or~~
4. Failing or refusing to take corrective action or consider a customer complaint concerning the manufacture or fit of

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eyeglasses, contact lenses or other optical devices dispensed at the establishment by which the dispensing optician is employed if there is a substantial basis for the complaint.

R4-20-119. Substandard Care

- A. It is substandard care for a dispensing optician:
1. To dispense improperly manufactured eyeglasses or contact lenses ~~which are the subject of a complaint filed with the Board under A.R.S. § 32-1691.01(B).~~ If ~~the a~~ complaint indicates that eyeglasses or contact lenses dispensed by a dispensing optician or other employee of an optical establishment may have been improperly manufactured, the Board shall be guided in its determination of the facts by referring to the standards specified in subsection (B) with regard to the individual parameters listed in the standards and considering patient wear, care, and usage;
 2. When interpreting written prescriptions, to fail to follow ~~industry standards specified~~ standards incorporated by reference in subsection (B) in determining lens powers due to differences in vertex distances, base curvatures, special lens requirements, and facial fitting problems, or to fail to comply with special instructions of the vision practitioner or optometrist shown on the prescription without the full knowledge and consent of the customer, the ~~vision practitioner physician, or optometrist;~~
 3. To fail to follow manufacturer's guidelines regarding usual and customary lens thickness of eyewear;
 4. To intentionally or negligently injure a customer during the course of optical dispensing; ~~or~~
 5. To fail to give the customer appropriate instructions on the care, handling and wearing of the optical devices.
- B. The following standards published by the American National Standards Institute, Inc., ANSI, are incorporated herein by reference and are on file ~~in with the office of the Secretary of State Board:~~
1. ~~ANSI Z80.1-1987 1999, "Prescription Ophthalmic Lenses-Recommendations" and no further changes.~~
 2. ~~ANSI Z80.20-1989 1998, "Rigid Contact Lenses-Requirements Standard Terminology, Tolerances Measurements, And Physiochemical Properties" and no further changes.~~
 3. ~~ANSI Z80.5-1979 2004, "Requirements for Dress Ophthalmic Frames."~~
 4. ~~ANSI Z87.1-1989 2003, "Practice for Occupational and Educational Eye and Face Protection" and no further changes.~~
 5. ANSI Z80.3-1998 "Non Prescription Sunglasses And Fashion Eyewear – Requirements".
 6. ANSI Z80.9-1998 "Low Vision Aids- Requirements"

R4-20-120. Continuing Education; Hours Required; Reporting

- A. Within every three year period from the date of obtaining a license, ~~or renewing a license, subsequent to the effective date of this rule,~~ a person licensed as a dispensing optician shall complete no fewer than twelve ~~eleven~~ hours of approved continuing education that is approved by the Board for credit.
- B. Each licensee shall submit documentation to the Board verifying that the licensee has completed twelve ~~eleven~~ hours or more of continuing education, ~~as required,~~ within each three year ~~subsequent~~ period. ~~Any false statement by a licensee in the documentation shall be grounds for disciplinary action, including suspension or revocation of license.~~ The licensee shall provide documentation ~~shall that identify~~ identifies the courses and the number of credit hours completed and ~~shall~~ include the following:
- C. Of the twelve ~~eleven~~ hours of continuing education, each licensee shall ~~meet the following minimum course requirements as follows obtain~~ at least:
1. Four ~~eleven~~ hours ~~of in~~ eyeglass fitting and dispensing;
 2. Three ~~eleven~~ hours ~~of in~~ contact lens fitting and dispensing;
 3. One ~~eleven~~ hour ~~of in~~ state ~~and or~~ national opticianry standards.
- D. Hours will be measured as follows: ~~any single session covering not less than two hours and forty minutes will be assigned three hours; any single session covering not less than one hour and forty minutes will be assigned two hours; any single session covering not less than fifty minutes will be assigned one hour~~ one credit hour will be assigned for each 50 minutes of a single session.
- E. The Board shall take disciplinary action, for submitting false information in connection with continuing education documentation.

R4-20-121. Continuing Education; Approval of Courses

- A. American Board of Opticianry and National Contact Lens Examiners courses ~~shall be~~ are approved for continuing education credit. Other individuals or organizations seeking ~~credit for or~~ approval of a continuing education course for credit shall apply to the Board 45 days ~~prior to~~ before the date the course is offered. The application shall contain the following information ~~of on~~ the course:
1. Title and description of course content ~~for each course;~~
 2. Time, date, and place;
 3. Number of credit hours;
 4. Name of the sponsor and presenter; and
 5. Brief curriculum vitae of the presenter.
- B. A licensee shall not apply any ~~excessive~~ hours accrued during one reporting period ~~may not be applied~~ to any subsequent reporting period.

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R4-20-122. Agency Record; Directory of Substantive Policy Statements

The official rulemaking record for each rulemaking and directory of substantive policy statements is located in the office of the Board and may be reviewed any week day, 8:00 a.m. to 5:00 p.m., except state holidays.

R4-20-123. Petitions For Rulemaking; Review of Agency Practice or Substantive Policy Statements; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact.

A petition to adopt, amend, or repeal a rule or to review an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule under A.R.S. § 41-1033 or to object to a rule in accordance with A.R.S. § 41-1056.01 shall be filed with the Board as prescribed in this Section. Each petition shall contain:

1. The name and current address of the petitioner;
2. For the adoption of a new rule, the specific language of the proposed rule;
3. For the amendment of a current rule, the applicable A.A.C. citation and section heading. The request shall include the specific language of the current rule, any language to be deleted shall be stricken through but legible, and any new language shall be underlined;
4. For the repeal of a current rule, the applicable A.A.C. citation and section heading;
5. The reasons the rule should be adopted, amended, or repealed, and if for an existing rule, why the rule is inadequate, unreasonable, unduly burdensome, or otherwise not acceptable. The petitioner may provide additional supporting information, including:
 - a. Any statistical data or other justification, with clear reference to an attached exhibit;
 - b. An identification of what persons or segment of the public would be affected and how they would be affected; and
 - c. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or as written comments offered by the public;
6. For a review of an existing Board practice or substantive policy statement alleged to constitute a rule, the reasons the existing Board practice or substantive policy statement constitutes a rule and the proposed action requested of the Board;
7. For an objection to a rule based upon the economic, small business or consumer impact, evidence that:
 - a. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted during the making of the rule; or
 - b. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement submitted during the making of the rule and the actual impact imposes a significant burden on persons subject to the rule; and
8. The signature of the person submitting the petition.

R4-20-124. Public Comments

- A. On or before the close of record, a person may comment upon a rule proposed by the Board by submitting written comments to the Board.
- B. The Board considers a written comment submitted on the date it is received by the Board, except if a comment is mailed the date of receipt is the postmark date.
- C. The Board shall consider all written comments.

R4-10-125. Oral Proceedings

- A. A person requesting oral proceedings as prescribed in AR.S. § 41-1023, shall:
 1. File the request with the Board;
 2. Include the name and current address of the person making the request; and
 3. Refer to the proposed rule and include, if known, the date and issue of the Arizona Administrative Register in which the notice was published.
- B. The Board shall record an oral proceeding either electronically or stenographically, and any cassette tapes, transcripts, and written comments submitted during the proceeding shall become part of the official record;
- C. The presiding officer shall utilize the following guidelines to conduct oral proceedings:
 1. Registration of attendees. Registration of attendees shall be voluntary.
 2. Registration of persons intending to speak. Registration information shall include the person's name, representative capacity, if applicable, a notation of the person's position with regard to the proposed rule and the approximate length of time the person wishes to speak.
 3. Opening of the record. The presiding officer shall open the proceeding by identifying the rules to be considered, the location, date, time, and purpose of the proceeding, and present the agenda;
 4. A statement by Board representative. A Board representative shall explain the background and general content of the proposed rules;
 5. A public oral comment period. The presiding officer may limit comments to a reasonable time period, as determined by the presiding officer; and to prevent undue repetition.
 6. Closing remarks. The presiding officer shall announce the location where written public comments are to be sent.

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R4-20-126. Petition for Delayed Effective Date

A person wanting to delay the effective date of a rule under A.R.S. § 41-1032 shall file a petition with the Board. The petition shall contain:

1. The name and current address of the person submitting the petition;
2. Identification of the proposed rule;
3. The need for the delay, specifying the undue hardship or other adverse impact the may result if the request for a delayed effective date is not granted, and the reasons why the public interest will not be harmed by the later date; and
4. The signature of the person submitting the petition.

R4-20-127. Written Criticism of Rule

- A. Any person may file a written criticism of an existing rule with the Board.
- B. The criticism shall clearly identify the rule and specify why the existing rule is inadequate, unduly burdensome, unreasonable, or otherwise improper.
- C. The Board shall acknowledge receipt of a criticism within 15 days and shall place the criticism in the official record for review by the Board under A.R.S. § 41-1056.

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
Approval to Take a Dispensing Optician Examination (R4-20-102)	A.R.S. § 32-1682	90	30	60
License by Examination (R4-20-102)	A.R.S. § 32-1682 A.R.S. § 32-1684	60	30	30
License by Comity (R4-20-107)	A.R.S. § 1683	90	30	60
Optical Establishment License R4-20-110	A.R.S. § 32-1684.01	30	10	20
<u>Optician's License Renewal (R4-20-109)</u>	<u>A.R.S. § 32-1682</u>	<u>60</u>	<u>30</u>	<u>30</u>
<u>Establishment License Renewal (R4-20-115)</u>	<u>A.R.S. § 32-1684.01</u>	<u>60</u>	<u>30</u>	<u>30</u>