PERFORMANCE AUDIT

ARIZONA BOARD OF OPTOMETRY

A Report to the Arizona Legislature
By the Auditor General
March 1984
84-1

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March 26, 1984

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Dr. George M. Sanchez, President
Arizona Board of Optometry

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona Board of Optometry. This report is in response to an April 27, 1983 resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset Review set forth in A.R.S. §§41-2351 through 41-2379.

This performance audit report on the Arizona Board of Optometry is submitted to the Arizona Legislature for use in determining whether to continue the Board beyond its scheduled termination date of July 1, 1985. The report evaluates the Board's effectiveness in regulating key aspects of optometry practice in Arizona.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

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SUMMARY

The Office of the Auditor General has conducted a performance audit of the Arizona Board of Optometry in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The Arizona Board of Optometry has the primary responsibility for protecting the visual health of the public by regulating the practice of optometry. The Board has six members, consisting of four practicing optometrists, one licensed physician and one layperson, each serving four-year terms. The duties of the Board include evaluating applications for examination and licensure, administering examinations, issuing licenses to qualified applicants, issuing certificates authorizing the use of diagnostic pharmaceutical agents, enacting rules and regulations and resolving complaints against licensed optometrists.

Deficiencies in the Board of Optometry Licensing Examination May Prevent the Board from Adequately Assessing Competency (see pages 13-22)

The Board of Optometry's licensing examination does not comply with nationally recognized examination standards. The overall content of the three-part exam is inadequate and may not measure optometric skill. In addition, procedures for developing and administering the individual parts - written, pathology slide and patient examination - have caused the Board to incorrectly judge applicant competence.

The optometry exam has not been developed in accordance with national standards. Overall exam content is not directly related to skill levels required for competent optometric practice. The Board has not determined the skills necessary for the practice of optometry or standardized examination difficulty from year to year.

The Board has not correctly followed pass/fail procedures for its written exam because the Board misinterpreted the statutes. As a result, it has licensed 28 applicants incorrectly since 1980. The Board has also unfairly weighted scores on the other two exam sections for applicants submitting passing scores on the national written exam. Correcting either content or procedural problems on the Board's written examination is unnecessary since use of the available national exam would correct the problems.

Procedures for the practical examination sections are inadequate. The Board's pathology examination procedures do not ensure the quality of test items. As a result, in 1983 fifteen applicants who initially failed were given licenses when the Board discovered that some slides were of poor quality. Inadequate grading and administrative procedures may also bias results of the Board's patient examination. In 1983, 30 percent of patient examination scores were calculated incorrectly, resulting in the licensure of one applicant who should have failed.

The Board should revise examination content, weighting and difficulty with assistance from an examining expert. Further, the Legislature should consider amending the optometry statutes to require all applicants to take the national exam rather than a Board written examination. The Board needs to improve the selection of pathology slides and improve the review and administration of the pathology slide examination. The Board should also improve the administration and grading of patient examinations to reduce errors and bias.

Improvements Have Been Made in the Handling of Consumer Complaints. However, Problems Exist in the Processing of Legal Notices (see pages 23-28)

The Arizona Board of Optometry has made improvements in the processing of complaints, but additional improvements are necessary. Problems identified in a previous performance audit report, such as inadequate investigations and improper closing of complaints have been corrected. However, excessive time is spent drafting and approving Board orders and

hearing notices. These delays have caused challenges to the legality of Board orders. Finally, statutory requirements mandating informal interviews delay the resolution of cases because the Board cannot proceed directly to formal hearing in cases with overwhelming evidence of violation.

The Board should monitor the preparation and approval of Board legal orders and take steps to expedite the delivery of orders when necessary. The Legislature should consider amending A.R.S. §32-1744.B to allow the Board to bypass the informal interview and proceed directly to formal hearing when warranted by available evidence.

The Board of Optometry Lacks Adequate Rules and Regulations (see pages 29-33)

The Board's rules and regulations do not adequately reflect its current statutes. The Board has not promulgated needed regulations because it has not prepared the required fiscal impact statements. As a result, the Board cannot monitor the use of diagnostic pharmaceutical agents, has inefficient procedures for approving continuing education credits and is subject to legal challenge if it attempts to enforce rules not consistent with federal and state law. The Board should seek clarification of information needed for preparing the fiscal impact statement.

The Statute Requiring Insurance Companies to Report Malpractice Claims Against Optometrists is not Enforceable (see page 35-37)

Although the optometry statutes require insurance companies to report any malpractice claim filed or settlements paid for any licensed optometrist in Arizona, the statutes do not clearly assign enforcement responsibility or direct the Board in using the information. A similar malpractice reporting requirement in the Board of Medical Examiner's (BOMEX) statutes was changed by the Legislature in 1982 to give the Department of Insurance clear authority to penalize insurance companies failing to report. The

statutory changes also require BOMEX to review these reports to determine if licensees have violated statutes or rules. The Legislature should make similar statutory changes in optometry law to ensure that the Board of Optometry receives and processes this information in regulating optometrists.

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INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit of the Arizona Board of Optometry in response to an April 27, 1983, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as part of the Sunset Review set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

History of Optometry

Spectacle makers, or opticians, began grinding lenses and fitting and selling spectacles, often in small shops or jewelry stores, in America as early as the 1700s. In the late 1800s "refracting opticians" began to conduct eye examinations to assist customers in the selection of appropriate spectacles. The first proposed legislation to define optometry in the United States was considered in New York. In 1901 Michigan enacted the first optometry law and by 1925 every state had passed laws defining and regulating the profession of optometry.

Today optometrists provide primary eye care for the majority of Americans and occupy the middle tier of the eye care hierarchy as shown below:

- Ophthalmologists - physicians who specialize in the medical and surgical diagnosis and treatment of defects and diseases of the eye.

- Optometrists - people who scientifically examine the eye to detect diseases or defects and prescribe correctional lenses or exercises.

- Opticians - individuals who fit, supply and adjust eye glasses and contact lenses prescribed by ophthalmologists and optometrists.

Regulation of Optometry in Arizona

The first optometry law adopted in Arizona in 1907 has undergone several changes. The last major revision was passed by the Legislature in 1980. This law changed the Board from five members to six members and, effective January 1, 1982, allowed the use of diagnostic pharmaceutical agents (DPAs) by qualified practitioners. These changes came after completion of a performance audit conducted by the Office of the Auditor General in September 1979 (Report 79-10).

The Arizona Board of Optometry has the primary responsibility for protecting the visual health of the public by regulating the practice of optometry in the state. The Board has six members, consisting of four practicing optometrists, one licensed physician and one layperson, each serving four-year terms. The duties of the Board include evaluating applications for examination and licensure, administering examinations, issuing licenses to qualified applicants, issuing certificates authorizing the use of DPAs, enacting rules and regulations and resolving complaints lodged against licensed optometrists. Table 1 shows a summary of examinations and licenses issued by the Board for the last four years and expected licensing activity for 1983-84 and 1984-85.

TABLE 1

EXAMINATION AND LICENSING ACTIVITY OF

BOARD OF OPTOMETRY

FISCAL YEARS 1979-80 THROUGH 1984-85

Fiscal Year	Applicants for Examinations	Initial Licenses Issued	Renewal Licenses Issued	Total Licenses Issued	Total Licensed In-State
1979-80	35	28	287	315	-
1980-81	44	42	196	238	-
1981-82(1)	42	37	404	441	277
1982-83	66	42	2	44	326
1983-84(2)	70	60	510	570	365
1984-85(2)	75	70	0	70	410

(1) Biennial renewal of licenses became effective in 1981-82.
(2) Estimated

Source: Board of Optometry Budget Requests for fiscal year 1983-84 and 1984-85.

Budget and Personnel

The Board's activities are currently funded through general fund appropriations. Prior to July 1980 the Board received 90 percent of its revenues for operations and the remainder went to the general fund as a 90-10 agency. The Board was changed to a general fund agency when the Legislature revised the optometry laws in 1980. Table 2 shows the current fees charged by the Board, which were increased in the 1983 legislative session.

TABLE 2

CURRENT FEES CHARGED BY THE
BOARD OF OPTOMETRY

Examination	$125	
New License	200	($100 in even-numbered years)
Biennial Renewal	150	
Reciprocal License	255	
Duplicate License	30	
Penalty	25	

Amounts charged are maximum established by law.

Source: Board of Optometry Budget Request for fiscal year 1984-85.

The Board of Optometry has no full-time clerical support staff. All support functions are provided by the Department of Administration through the Arizona State Boards Administrative Office (ASBAO). The ASBAO, created in 1976, provides general support functions and office facilities to ten small state boards and commissions, including the Board of Optometry. ASBAO duties include preparation of meeting minutes and Board correspondence, clerical assistance for licensing and registration and receipt of consumer complaints. ASBAO personnel also 1) provide support to the Boards in promulgating rules and regulations, 2) prepare annual budgets, 3) advise the Boards about state government operations, 4) appear at legislative hearings, and 5) supervise complaint investigations.

Since ASBAO does not receive appropriations, each Board pays a portion of the overall costs of the office. The payment reflects ASBAO employee time spent on each board's business and allocation of other expenses such as rent, equipment and supplies. These payments are placed in the Special Services Revolving Funds to reimburse the Department of Administration (DOA) for all ASBAO expenses. From 1979 through 1983 the Board of Optometry has paid an average of 45 percent of its total expenditures to ASBAO. Payments to ASBAO during fiscal year 1983-84 will account for an estimated 56 percent of the Board's budget. The remainder of the budget pays Board member travel and per diem costs, costs for resolving complaints and costs for licensing examinations.

In 1981 the Board of Optometry hired a half-time investigator to help with complaint cases. The investigator conducts complaint investigatons, writes up investigative reports and prepares legal orders when sanctions are imposed against a licensee.

Table 3 provides budget information for the last two years and estimated figures for fiscal year 1983-84.

TABLE 3

ACTUAL AND ESTIMATED FEE RECEIPTS, APPROPRIATIONS AND EXPENDITURES BY THE BOARD OF OPTOMETRY DURING FISCAL YEARS 1981-82 AND 1983-84

	Actual 1981-82	Actual 1982-83	Estimated 1983-84
Total Receipts	$49,779	$ 8,194	$101,400
Total Appropriations	51,900	42,800	43,700
Expenditures			
Personal Services	12,200	14,200	10,900
Employee Related	2,500	3,100	2,700
Professional and Outside Services	22,000	19,900	25,000
Travel In-State	4,600	2,400	1,800
Travel Out-of-State	1,100	- 0 -	- 0 -
Equipment	600	- 0 -	- 0 -
Other Operating Expenditures	4,300	3,200	3,300
Total Expenditures	$47,300	$42,800	$ 43,700

NOTE: Since the Board of Optometry is a general fund agency, all funds available at year-end revert back to the general fund.

Source: Board of Optometry Budget Requests for fiscal year 1983-84 and fiscal year 1984-85.

Audit Scope and Purpose

The purpose of the audit was to evaluate the need for and adequacy of the Board of Optometry's regulation of optometric practice. Specifically, we examined:

- The extent to which licensing examinations are an adequate measure of optometric competency.

- The extent to which the Board has been timely in its investigation and resolution of consumer complaints.

- The extent to which rules and regulations are adequate and consistent with statutes.

- The extent to which the Board of Optometry is able to enforce the statutory requirement of reporting by malpractice insurance companies.

The Auditor General and staff express appreciation to the members of the Arizona State Board of Optometry and ASBAO for their cooperation and assistance during the course of our audit.

SUNSET FACTORS

In accordance with A.R.S. §41-2354, the Legislature should consider the following 11 factors in determining whether the Arizona Board of Optometry should be continued or terminated.

1. Objective and purpose in establishing the Agency

The objective and purpose in establishing the Arizona Board of Optometry is to protect public health. The legislature clearly stated this intent in the laws of 1980:

> "The practice of optometry, being a profession which involves the examination, determination and care of conditions of the human vision system, is hereby declared to have a direct relationship to the health of the human body. Being involved with the public health, it is declared essential that the legislature regulate the practice of the profession of optometry to safeguard the public health, safety and welfare. It is further declared to be a matter of public interest and concern that the practice of the profession of optometry merit and receive the confidence of the public and that only qualified persons be permitted to engage in the practice of the profession of optometry in this state." (emphasis added)

To protect public health, the statutes direct the Board to determine qualifications and procedures for admitting people to the practice of optometry.

2. The effectiveness with which the Agency has met its objective and purpose and the efficiency with which it has operated

The agency has generally been effective in meeting its objective and purpose. However, improvements are needed. Licensing examinations do not meet current standards for examinations and may not ensure that only competent applicants are licensed (see page 13). Complaint

handling has improved since 1979, but the time taken to deliver legal orders has been excessive. During these delays, the sanctioned doctor is allowed to practice without restrictions (see page 23).

3. The extent to which the Agency has operated in the public interest

The Board of Optometry serves the public interest by regulating optometrists, who provide primary eye care for most people. Access to competent eye care is in the public interest and is important to public health. To ensure the competency of optometrists in Arizona, however, the Board of Optometry must have rules and regulations based on its current statutes. The Board has not promulgated rules based on its current statutes.

4. The extent to which rules and regulations promulgated by the Agency are consistent with legislative mandate

The Board of Optometry does not have rules and regulations that are consistent with current statutes. The Board prepared extensive revisions of its rules to conform to statutory changes of 1980. However, these revisions are currently awaiting preparation of a fiscal impact statement as required by the Governor's Regulatory Review Council. This delay has left the Board without rules needed to ensure that doctors are using diagnostic pharmaceutical agents responsibly. The Board also lacks rules that require fee and treatment information to be given to patients prior to actual treatment. Furthermore, existing rules on minimum eye examination and false advertising may violate federal and state anti-trust laws and should be removed (see page 29).

5. The extent to which the agency has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public

The Board has fulfilled requirements for public notice on Board actions and changes in rules and regulations. When rules were changed in 1980 a public hearing on the proposed rule changes was held and notices sent to the Arizona Optometric Association. The Board has posted public notice of Board meetings with agendas as required.

6. The extent to which the Agency has been able to investigate and resolve complaints that are within its jurisdiction

The Board of Optometry has adequately investigated and resolved most complaints. However, delays in preparing censure and probation orders for delivery to the licensees has hindered Board resolution of some complaints. Delays in issuing orders allows licensees to continue to practice without restriction, and in one case the Board had to rescind its order because of the excessive delay (see page 23).

7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under enabling legislation

All sections of the optometry statute are enforceable by the Attorney General, Board of Optometry or County Attorney, except the reporting of malpractice claims and settlements by insurance companies. Enforcement of malpractice reporting is difficult because there are no penalties for noncompliance and the Board of Optometry has no authority over insurance companies (see page 35).

8. The extent to which the Agency has addressed deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandate

The Board has attempted to make several statutory changes to increase its effectiveness. During the 1983 legislative session the Board of Optometry requested legislation to raise license fees. One-half of the requested fee increase was granted. The Board plans to introduce legislation in 1984 to make several changes including 1) funding the Board with 90 percent of license fees with the remainder going to the general fund, 2) making the use of informal interviews discretionary, and 3) allowing the charging of investigative fees to licensees who have violated statutory provisions or rules.

9. The extent to which changes are necessary in the laws of the agency to adequately comply with the factors listed in the Sunset laws

Based on our audit work, we recommend the legislature consider the following changes:

- Amend A.R.S. §32-1724 to omit all references to the Board written examination and require all applicants for initial licensure to submit proof of passing the exam of the National Board of Examiners in Optometry (see page 21).

- Amend A.R.S. §32-1744.B to allow the Board of Optometry to bypass the informal interview and proceed directly to formal hearing when warranted by available evidence (see page 28).

- Amend A.R.S. §20-1742 to a) require insurance companies to report malpractice claims and settlements against optometrists to the Department of Insurance, and b) require the Department of Insurance to forward all such reports to the Board of Optometry (see page 37).

- Amend A.R.S. §32-1745 to direct the Board of Optometry to investigate reports of malpractice claims and settlements against optometrists in a manner similar to that of the Board of Medical Examiners. This change would require the Board to determine if violation of optometry statutes, rules and regulations have occurred (see page 37).

10. The extent to which the termination of the agency would significantly harm the public health, safety or welfare

Termination of the Board of Optometry would harm the public. The practice of optometry is the examination of the human eye and fitting of corrective devices to aid in visual function. If performed incorrectly, these practices could lead to permanent eye damage or discomfort. Terminating this Board would unnecessarily expose the public to incompetent practitioners by eliminating assurances that practitioners demonstrate specific skill.

11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate

The overall level of regulation by the Board of Optometry appears to be appropriate but some changes in rules and regulations are necessary. The optometry statutes provide sufficient basis for regulating the profession. The Board, however, must define the regulatory procedures and requirements through the rules and regulations to further ensure competent practitioners. See Factor 4 for more information.

FINDING I

DEFICIENCIES IN THE BOARD OF OPTOMETRY LICENSING EXAMINATION MAY PREVENT THE BOARD FROM ADEQUATELY ASSESSING COMPETENCY

All three parts of the Board of Optometry licensing examination contain deficiencies that limit the Board's ability to make correct, defensible licensing decisions. The Board's procedures for developing the content of all three examinations are inadequate and limit the Board's ability to successfully defend examination validity. In addition to content problems, each part of the examination - written, slides and patient exam - has additional deficiencies that must be corrected to assure that only competent applicants are licensed. In particular, the Board's written examination has deficiencies that are difficult to correct and could be eliminated by using instead the national written exam.

The Arizona Board of Optometry licensing examination is offered annually in July. All applicants must pass the Board's two-part practical examination, which consists of a pathology slides examination requiring applicants to identify various eye conditions in writing while viewing slides, and a patient examination requiring applicants to perform an eye examination in the presence of a grading examiner. In addition, applicants for initial license must pass either the Board's nine-part written examination or the written examination offered semiannually at optometry schools by the National Board of Examiners in Optometry (NBEO). Eighty-four percent of initial applicants have submitted NBEO scores since 1982 when national scores were first accepted.

Exam Content May Not Relate to Skill Levels Required For Competent Optometric Practice

The examination's scope and weighting do not assure that only competent applicants receive optometric licenses. Clear standards exist that specify how licensing examination content should be developed. However,

no documentation indicates that the content of the Arizona examination adequately represents the scope and depth of knowledge required for optometric practice.

Clear Standards Exist - Nationally recognized standards exist for the development of licensure examinations.* An essential component of the standards is the requirement that examinations be valid - that they actually measure what they are intended to measure. (In the case of optometry applicants, this involves competency to practice optometry.) Although there are many ways to demonstrate examination validity, content validation is the easiest and least expensive method. Content validation requires that examination content be closely linked to occupational practice requirements. To accomplish this, job content is determined during examination creation by describing the major occupational duties, their relative importance and the amount of skill needed to perform these tasks competently. Pass/fail cutoffs are then set based on the examination goal of determining minimal optometric competence.

Content Not Substantiated - The Board's procedures used to develop the examinations do not conform to the national standards for test development. The Board has not substantiated the relationship between exam content and optometric practice. Board members preparing the exams have not received guidelines for determining exam content. Rather, exam content is dependent on the test items obtained from outside sources. In addition, exam sections and items have not been weighted based on their importance and frequency of use in optometric practice. The Board's failure to define the type of ability and knowledge needed for competent optometric practice has allowed exam content and competency requirements

* National standards for licensing examinations have been developed by a joint committee of the American Educational Research Association, American Psychological Association and the National Council on Measurement in Education. These standards cover a wide range of areas including examination preparation, validation, administration and scoring.

to change without cause from year to year. Finally, the Board has not ensured that examination difficulty is consistent from one year to the next. As a result, the level of skill required to demonstrate competency may vary each year.

Additional Written Examination Deficiencies Could be Corrected by an NBEO Examination Requirement

In addition to deficiencies in examination content, statutory misinterpretation and inadequate procedures have further limited the Board's ability to make sound licensing decisions. However, correcting the Board's written exam would be an inefficient use of its limited resources because a superior national examination is available. Requiring all applicants to take the NBEO examination would save the Board money and eliminate many problems with the current examination.

Incorrect Grading - The Board has not followed the statutory provision for computing applicants' written examination grades. Since A.R.S. §32-1724.C went into effect in 1980, 28 applicants who received licenses would have failed if the statutory grading formula were followed. Statutory misinterpretation also caused the Board to err in weighting practical examination scores inequitably.

Twenty-eight Incorrectly Licensed - Between 1980 and 1983, 18 percent of the 157 applicants licensed should have failed. On the last four exams administered, the Board did not use the correct pass/fail determination formula specified by law. A.R.S. §32-1724.C states that:

> "To receive a passing grade on a written examination administered by the Board, an applicant must make a grade of not less than seventy-five per cent on the whole examination. . . ." (emphasis added)

According to Legislative Council, this statute, which became effective in 1982, requires the Board to compute applicants' cumulative written examination scores independently of their practical exam scores (see Appendix). However, the Board averages the applicants' nine written exam section scores with their two practical scores to arrive at cumulative grades. This procedure resulted from misinterpreting the statute.

The Board's grade computation error affects only those applicants taking the Board's written examination. Since this excludes all reciprocal candidates and applicants submitting NBEO scores, the Board's error had much greater impact in 1980 and 1981 when NBEO scores were not accepted. In 1980 and 1981, 25 of the 55 applicants receiving initial license had cumulative written examination grades below the 75 percent statutory minimum (see Table 4). In 1982 and 1983 only 18 applicants took the Board's written examination. Three of the eight people receiving licenses did not meet the statutory standards for the state written examination.

TABLE 4

LICENSING EXAMINATION STATISTICS FOR 1980-1983

	1980	1981	1982	1983	Total
Licensing Examination Applicants	30	44	53	60	187
Applicants Receiving License	25	36	42	54	157
Applicants Taking Board's Written Examination	26	41	10(1)	8(1)	85
Applicants taking the Board's Written Exam and Receiving License	22	33	3	5	63
Licenses issued to Board Written Examination Applicants scoring below the 75% statutory minimum	11	14	2	1	28

(1) Statutory changes in 1982 allowed the Board of Optometry to accept passing NBEO scores in lieu of the Board's written examination. As a result, the number of applicants taking the State written examination decreased sharply.

Source: Board of Optometry Examination Score Summaries, 1980-83.

Discriminatory Weighting - Differential weighting of practical examination scores discriminates against applicants submitting NBEO scores. NBEO applicants' slide and patient exam scores each account for 50 percent of their overall grade. As discussed previously, because of the Board's misinterpretation of the statute, applicants taking the Board's written exam have all nine written exam section scores averaged with their slide and patient exam scores, so each practical exam accounts for only nine percent of their overall grade. This discriminates against NBEO applicants since their passing written exam scores are ignored when computing a grade. As a result, a Board written exam applicant may qualify for a license even if his exam scores are lower than a NBEO exam applicant who may not have qualified for license. The Board acknowledged this discrepancy when responding to a 1982 applicant who failed and felt the pathology slides exam was weighted too heavily:

> "Every applicant is given the choice of using qualified NBEO scores or taking the entire written examination. Taking the entire written examination raises the likelihood of achieving an overall passing grade."

Use of National Examination - Correcting the Board's written examination would be an inefficient use of its available resources because a superior national examination is available. Due to its size and limited resources, the Board is not capable of preparing a written examination comparable to the NBEO examination. In addition, requiring all applicants to take the NBEO examination would save Board resources and eliminate many current examination problems.

The Arizona Board of Optometry currently lacks the ability and resources to prepare a written examination that is comparable to the NBEO examination. Board members lack knowledge in examination techniques and technical assistance is not available. In addition, the Board lacks the technology and expertise needed for performing increasingly complex statistical operations. In contrast, NBEO has extensive resources for developing examinations. NBEO employs a psychometrician (examining expert) who keeps abreast of advances in exam science and constantly

reviews and revises its exam and analysis techniques to reflect most recent advances in testing.

The Board written examination does not make effective use of the Board's limited resources. Since 1982, the number of applicants taking the Board's written examination has dropped 75 percent. Preparing the written examination that was taken by only eight of the 60 applicants in 1983 consumed a great deal of the Board's time.

Relying solely on the NBEO examination would solve many of the Board's written examination problems. The NBEO requirement would resolve the written examination content problems and reduce the possibility of successful legal challenges. In addition to freeing resources for upgrading practical examinations, NBEO requirement would also eliminate problems of statutory noncompliance and differential weighting of the Board's written examinations. Finally, 20 states currently accept only NBEO exam scores as a written examination. Adoption of an NBEO requirement will increase the ease of reciprocity licensure between states.

Pathology Examination Uses
Poor Quality Slides

Fifteen qualified applicants were initially refused a license because poor-quality slides in the pathology examination resulted in incorrect judgments of their optometric competence. This error occurred because Board procedures were inadequate to discover the problem.

The Board initially failed 15 qualified applicants because poor-quality slides caused applicants' pathology examination scores to be incorrectly low. Initially, 21 of the 60 applicants in 1983 failed the licensing examination. One of these applicants challenged his pathology examination

score. A quality review conducted at the next Board meeting revealed that 20 percent of the pathology slides were unacceptable because an applicant could reasonably reach a conclusion that differed from the Board's "correct" answer. The Board adjusted the examination scores of all failing applicants, allowing 15 of the 21 to receive licenses.

The error occurred because the Board did not adequately review the slides prior to giving the examination or during initial grading. Prior review would have indicated that some of the slides, which were borrowed from the University of Arizona, did not clearly represent the eye condition identified as correct. In addition, the Board did not perform item analyses on the pathology examination results before sending grades to applicants. Item analyses would indicate slides identified incorrectly by a large percentage of examinees and indicate the necessity for quality review. If the Board performed item analyses, the poor quality slides could be identified and eliminated before assigning final grades. If this error had not been discovered, 15 applicants would have been unfairly restricted from entry into the profession.

Patient Exam Procedures
Were Inadequate

The Board's patient exam is an inadequate indicator of applicant competency because the Board lacks written procedures for exam creation, administration and grading. In 1983 the Board granted an optometric license to an applicant who was incompetent according to Board standards, because its grading procedures were inadequate. Furthermore, the Board's administration of the patient exam is not well standardized and does not control examiner bias.

The Board licensed an unqualified applicant in 1983 because the Board's grading procedures for the patient examination were inadequate. Each examiner is responsible for grading and computing the total scores of all applicants assigned him. The Board does not check the accuracy of these grading sheets. In 1983, an error in addition caused an applicant's

patient examination score to be incorrectly high, qualifying him for licensure. Although this was the only grading error that resulted in improper licensure, 30 percent of all 1983 licensing examination scores were incorrect due to undetected mathematical errors. Some grading sheets were also incomplete or not signed by the examiner, making accuracy checks difficult to perform.

The Board's patient exam administration procedures are not standardized and do not prevent examiner bias. Rather than having each examiner grade specific questions for all applicants, each examiner grades the entire examination for different applicants. Also, examiners are given no training that instructs them to uniformly assign points. One examiner may feel an applicant's performance merits a five while another examiner may feel the same performance deserves a three. The 11-point spread between the average grades assigned by different examiners indicates that the Board could not defend the exam against claims of biased exam administration. Optometric competency must be defined and measured equitably for all applicants. The Board's use of one examiner and a subjective rating scale may preclude unbiased exam results.*

CONCLUSION

The Board of Optometry's licensing examination does not comply with examination standards. Overall exam content is not directly related to skill levels required for competent optometric practice. The Board has not determined the skills necessary to practice optometry or ensured that examination difficulty is consistent from year to year. The Board has not strictly followed pass/fail procedures outlined in Arizona statutes, causing inequitable weighting of practical exam scores for applicants

* The Optometry Board may be able to correct problems in both of its practical examinations by using national examinations currently being developed. The IAB (International Association of Boards of Examiners in Optometry) is developing a regional clinical examination that tests clinical skills as does the Board's patient examination. The NBEO is planning to add a section to its written exam that can take the place of the Board's pathology slides examination.

submitting passing NBEO scores. The Board's written examination is unnecessary since the NBEO exam is available and is superior to the Board's written examination. Also, the Board's pathology examination procedures do not ensure the quality of test items. Furthermore, inadequate grading and faulty administrative procedures may bias results on the Board's patient examination.

RECOMMENDATIONS

1. The Board should revise practical examination content, weighting and difficulty, with the assistance of an examining expert, to properly measure applicants' ability to perform relevent optometric skills.

2. The Legislature should consider amending A.R.S. §32-1724 to omit all references to the Board written examination and require all applicants for initial licensure to submit proof of passing the NBEO examination.

3. The Board should improve the pathology examination by:

   a. Creating a slide bank that meets quality and content requirements.

   b. Including more slides in each exam so the removal of any slide has less overall impact on final grades.

   c. Assuring accuracy and quality through multiple gradings and the use of item analyses.

   d. Clarifying slides by using case histories or multiple choice formats when necessary.

   e. Developing written procedures for examination preparation, administration and grading, including instructions for all involved in the exam process.

f. Evaluating the feasibility of using the NBEO exam's pathology diagnosis section when it is instituted in 1985 or 1986 as a substitute for the Board's slides examination.

4. The Board should improve the patient exam by:

a. Providing all examiners with training and written instructions.

b. Rating all examination procedures on the same numeric scale correlated with specific skill levels (e.g, 1-unsatisfactory; 2-inferior; 3-satisfactory; 4-excellent; 5-superior). Points can then be multiplied by the procedures weight during the grading phase.

c. Controlling examiner bias by

- having multiple examiners evaluate each applicant, or;
- comparing patient examination results prepared by applicants to results previously recorded by multiple examiners, or;
- using examination stations so every applicant is rated on the same procedures by the same examiner.

d. Performing multiple accuracy checks on all grade computations.

e. Considering participation in the development of regional clinical examinations and evaluating the feasibility of their use when available.

FINDING II

IMPROVEMENTS HAVE BEEN MADE IN THE HANDLING OF CONSUMER COMPLAINTS. HOWEVER, PROBLEMS EXIST IN THE PROCESSING OF LEGAL NOTICES

The Arizona Board of Optometry has improved its handling of complaints in recent years, but additional improvements are needed. The Board no longer fails to conduct proper investigations or routinely dismisses complaints as documented in a previous performance audit. The Board has also made other improvements in resolving complaints. However, there are excessive delays in the drafting and approval of legal orders and other legal documents. In addition, the requirement for informal interview may hinder the Board in resolving complaints.

The Board of Optometry received approximately 110 complaints between January 1, 1981 and October 31, 1983. Complaints may come from consumers, other optometrists, Board members and other medical professionals. Complaints cover a range of problems including standards of practice, unprofessional conduct, unlicensed activities and fees. To process complaints the Board receives clerical assistance from the Arizona State Board's Administrative Office (ASBAO). The Board also employs a half-time investigator who prepares investigative reports and handles other Board business, such as drafting legal orders, when directed to do so.

The Board Has Improved Its Handling of Complaints

The Board of Optometry has improved its handling of complaints against licensed optometrists since 1979. At that time the Auditor General found that the Board was inappropriately dismissing many complaints. The Board has corrected this problem and has also improved its procedures to reduce delays in deciding complaint cases. The Optometry Board now routinely investigates and processes all complaints. Our complaint review showed that the staff investigator conducts adequate investigations and prepares reports for the Board on serious cases. The Board dismisses few complaints

as fee disputes and no longer closes cases simply because a licensee makes restitution to a complainant.

The Board has also recognized the need to prioritize complaints since the 1979 Auditor General report was issued. In response to this, the Board has adopted new procedures to allocate part-time investigative resources and deal with chronic violators. The new Board policy is to conduct field investigations on minor complaints* only if four or more similar complaints are received. Because these procedures are relatively new, the Board may need to make additional changes based on its experience with them.

Problems In Processing Legal Orders

The preparation and review of legal notices of censure and probation has delayed the resolution of complaints. Excessive time is spent drafting and approving Board orders and hearing notices. These delays have caused challenges to the legality of Board orders. In addition, one other Board order was not sufficiently specific. Although the cause for the delays is not certain, the Board of Optometry has final responsibility to enforce the optometry statutes and rules.

Legal Orders Delay - The time taken to prepare legal orders stating Board sanctions is excessive. A review of six complaints** resulting in legal orders showed that the Board took between one and seven months to draft the orders and that in five of these complaints another eight to 14 months were required for the Attorney General's Office to review them and the Board to take final action.*** During this review period, however, the

* Minor complaints are those that pose the fewest health risks and therefore receive the lowest investigative priority. Examples of these would include failure to provide eyeglass prescriptions on request, allegations of unsatisfactory goods and services and fee complaints.

** All legal orders issued during 1983 were reviewed. Of the eleven orders issued, complete information could be obtained on only six cases.

*** The Attorney General's Office regularly reviews the legal orders of Boards to 1) see if there is sufficient evidence to support the findings of fact and conclusions of law, and 2) to determine if the proper statutes were cited for the violations charged.

licensee is not legally required to practice under Board ordered stipulations.

The reason for these delays is not certain. Clear documentation is not available. According to the Board's Executive Director, extensive delays occurred during the Attorney General's review and the Board regularly asked the Attorney General representative about the orders that were being delayed. The Attorney General representative said that she usually advised the Board on most cases within a month of receiving its decision, but the Board delayed taking final action. The Attorney General representative also noted that the orders were received long after the Board decisions. Consequently, to refresh her memory regarding the cases, she needed to make extensive reviews of the investigative reports and case files before approving the orders.

Delays in issuing orders have resulted in challenges to Board legal orders. Licensees have challenged the legality of unreasonable delays in receiving Board orders. Due to a legal challenge, the Board rescinded an order approved in February 1983 because of "excessive administrative delays." Board minutes stated:

> "The Board reviewed (the doctor's) appeal of Censure. This Censure had been submitted to the Attorney General's office for approval in 1981. Approval was received in 1983 and the Censure was subsequently sent to (the doctor). [It was moved and] . . . seconded that the censure be rescinded due to administrative legal delays. Motion carried."

Another licensee complained that the Board deprived him of a fair hearing, in part because the Board issued an order two and one-half years after the initial eye examination. Although the doctor took eight months to respond to the Board's request for information, the Board requested a legal order within four months of receiving the needed records but did not receive the final order for an additional 14 months.

Hearing Notice Delay - Similar delays occurred in preparing one hearing notice.* The drafting of the hearing notice has caused more than a

* The Board of Optometry has held only three formal hearings since July 1980.

one-year delay in the resolution of one case involving 17 complaints. In this case, a law clerk worked on the notice under supervision of the Board's Attorney General representative and the Board subsequently directed its investigator to complete the notice. As of January 1984, this notice has not been completed.

The reason for the delay in preparing the hearing notice is not clear. According to the Attorney General representative, hearing notice preparation was awaiting the completion of Board deliberations. However, the Executive Director said that all deliberations had been completed. Further facts are difficult to determine because Board minutes do not state when the Board moved to go to formal hearing or requested that a notice be prepared. Board records show that the Board found cause to consider charges in 17 complaints against the optometrist in February 1982. Three of the complaints in the case were discussed at the May 1982 meeting and the matter was continued to June 1982. However, the matter did not appear in the minutes again until June 23, 1983, when the Board discussed the completion of the notice of hearing.

Order Not Specific - The Board encountered a problem with one other legal order. A recent Board order prohibited an optometrist from performing a procedure until he demonstrated competence to the Board. The optometrist failed to correctly diagnose glaucoma during a visual field examination. Arizona law requires optometrists to refer glaucoma cases to physicians. Because the optometrist failed to diagnose glaucoma, the patient did not seek medical care and lost vision. The Board felt that the optometrist needed to improve his skill in using field examinations. Its order, however, did not state how the licensee was to show competence and he requested clarification.

Board Responsibility - Regardless of the specific cause for the delays, the Board of Optometry has final responsibility to enforce the optometry statutes and rules. Therefore, the Board needs to monitor the progress of its legal orders in the future and expedite them when necessary. The Board recently cleared a backlog of five complaints that had been pending between 12 and 22 months. Earlier monitoring of the progress of these reports may have accelerated their delivery to sanctioned doctors.

Informal Interview Requirement
Delays Complaint Resolution

The informal interview requirement delays the resolution of some cases. By law, the Board of Optometry must complete an informal interview prior to formal hearings in all cases, even cases in which overwhelming evidence exists for revocation of license. A case that highlights this problem concerns a doctor who was convicted of a felony and is now serving time in prison. Statutes require that convicted felons no longer be allowed to practice optometry. To remove this optometrist's license, however, the Board must hold both an informal interview and a formal hearing, an unnecessary and costly procedure in light of the evidence. As a result, the Board is seeking statutory revisions to make the informal interview discretionary to avoid such delays.

Other regulatory boards are not required to hold an informal interview in every complaint case. In a review of seven regulatory boards, we found only two that must hold informal interviews. Five others may bypass the informal interview at their discretion.

CONCLUSION

The Arizona Board of Optometry has made improvements in the processing of complaints, but additional improvements are necessary. Problems identified previously, such as inadequate investigations and improper closing of complaints, have been corrected. However, the Board and the Attorney General's Office need to reduce the excessive amount of time taken to draft and review legal notices. Also, the informal interview requirement is costly and delays complaint resolution in cases with overwhelming evidence of violations.

RECOMMENDATIONS

1. The Board should monitor the preparation and approval of Board legal orders and should take steps to expedite the delivery of orders when delays are apparent.

2. The Legislature should consider amending A.R.S. §32-1744.B to allow the Board of Optometry to bypass the informal interview and proceed directly to formal hearing when warranted by available evidence.

FINDING III

THE BOARD OF OPTOMETRY LACKS ADEQUATE RULES AND REGULATIONS

The current optometry rules and regulations are inadequate. The rules do not allow the Board of Optometry to effectively monitor the use of diagnostic pharmaceutical agents (DPAs) and efficiently approve continuing education courses. In addition, some rules conflict with state and federal anti-trust laws. Although the Board has drafted new rules that correct these problems, the new rules have not been promulgated because the Board has not prepared the required fiscal impact statements.

The 1980 Legislature terminated the Board of Optometry and created a new Board with new statutes. The new law permitted optometrists to use DPAs for the first time. Because its enabling legislation had changed, the Board attempted to re-promulgate all rules and regulations. The Attorney General, however, would not allow the Board to simply re-promulgate its existing rules since they were inconsistent with the new law. The Board completed the final draft of its proposed rules and regulations in March 1983.

New Rules and Regulations are Necessary

The Board needs to promulgate rules and regulations that would allow it to effectively carry out its statutory responsibilities. The Board's current rules do not address two important areas in its statutes. Some current rules on continuing education are inconsistent with revised statutory provisions and reduce the Board's operating efficiency. Some current regulations also conflict with federal and state anti-trust laws.

Lack of Rules - The Board has no rules covering two important areas of optometric practice. Current rules do not regulate use of DPAs by optometrists. In addition, the current rules lack practice requirements that ensure that consumers have access to fee and treatment information and that optometrists maintain adequate records.

Current rules do not provide effective control over the use of DPAs by qualified optometrists. DPA use was statutorily permitted on January 1, 1982, when the Legislature expanded the scope of optometric practice by allowing qualified optometrists to use certain pharmaceuticals for diagnostic purposes only. Rules that require doctors to record information on DPA use in patient files (i.e., type of DPA, dosage) and to publicly display the certificate authorizing use of these agents, are necessary for the Board to adequately monitor DPA use.

The proposed rules also contain optometric practice requirements that are absent in the Board's current rules. These rules are designed to further protect public welfare and may be difficult to enforce prior to the promulgation of the new rules. Among these are provisions that require optometrists to disclose fee and treatment information to patients so that they are aware of costs and treatments before they are performed. Also, the proposed rules require optometrists to maintain certain records and patient information on examinations given, DPAs used and prescriptions written for the patient.

Continuing Education - Optometry Board rules on continuing education are inefficient and time consuming. The Board must review each continuing education course submitted for credit prior to licensure. In addition, continuing education rules are based on annual renewal when statutes specify biennial renewal.

The Board must review all continuing education classes submitted by licensees to meet statutory requirements for relicensing. Currently, the Board must approve each continuing education course individually and licensees must submit evidence of approved hours for all continuing education credit claimed for relicensure. Approving the individual courses consumes valuable time at Board meetings. The proposed rules would save the Board time by providing blanket approval to certain organizations' continuing education courses. For example, approved organizations might include accredited optometry schools and American and Arizona Optometric Associations. The proposed rules would also reduce paperwork by allowing optometrists to submit biennially a notarized affirmation of continuing education attendance.

The Board's rules on continuing education are inconsistent with its statutes. The rules are based on annual relicensing but statutes now allow a two-year licensing period. In 1980, legislation was enacted to provide two-year licensing periods for the board to reduce costs. At this time, the rules require 16 hours of continuing education each licensing year. However, the Board strictly requires 32 hours over a two-year period. While this policy is appropriate, the proposed rule would clarify current Board operation.

Conflicts with State and Federal Law - Some of the Optometry Board's current rules and regulations conflict with federal and state anti-trust laws. In 1979, Legislative Council and Attorney General opinions stated that two optometry rules did not conform with state and federal laws. Patient exam requirements in R4-21-04.B. were deemed in violation of anti-trust law because they required optometrists to provide services that might be unnecessary, thus increasing consumer costs. Also, according to Legislative Council, a false advertising provision in R4-21-03.A may be more restrictive than the Federal Trade Commission (FTC) rule that does not allow a state to enforce a limit on the dissemination of information concerning ophthalmic goods and services. These rules have remained unchanged since receiving negative legal opinions. The proposed rules attempt to conform with federal and state law, but this has not been legally confirmed yet.

The Board Has Not Prepared the Required Fiscal Impact Statements

During the period of March through November 1983 the Board did not contact the Governor's Regulatory Review Council or Executive Budget Office to determine what needed to be done to meet fiscal impact statement (FIS) requirements for the promulgation of rules and regulations. The Board completed new rules and regulations in March 1983, but took no formal action to gain information on preparing the FIS necessary for their promulgation until November 1983.

Although the Board of Optometry received FIS guidelines in August 1982, it was uncertain about its ability to prepare the required statement when it completed the draft rules and regulations in March 1983. However, the Board did not formally contact either the Governor's Regulatory Review Council or the Executive Budget Office (EBO) before November 1983 to seek clarification of the guidelines or assistance in preparing the FIS. The Board informally attempted to obtain clarification on FIS requirements from the Governor's office and council chairman. However, neither attempt was successful. According to the Board president, FIS preparation is time consuming and difficult so the Board is delaying promulgation of new rules until a person can be found to prepare the FIS.

In November 1983 the Board formally requested assistance in fulfilling the FIS requirement. The Board's Executive Director submitted a $10,000 supplemental appropriation request, which included $2,000 for hiring outside professional staff to prepare the FIS. The Board also sent a letter to the Council explaining their problems and requesting assistance, but had not received a response as of February 10, 1984.

CONCLUSION

The Board of Optometry lacks adequate rules and regulations. The Board has delayed promulgation of needed rules and regulations because it has not prepared the required fiscal impact statements. The delay limits the

Board's ability to monitor DPA use by optometrists, maintains inefficient and time-consuming Board procedures for relicensing and creates the possibility for legal challenge if the Board attempts to enforce rules not consistent with federal and state law.

RECOMMENDATION

The Board of Optometry should use guidelines issued by the Governor's Regulatory Review Council and seek clarification to determine the information necessary to prepare an adequate FIS for promulgating new and revised regulations.

FINDING IV

THE STATUTE REQUIRING INSURANCE COMPANIES TO REPORT MALPRACTICE CLAIMS AGAINST OPTOMETRISTS IS NOT ENFORCEABLE

Enforcing the statute requiring insurance companies to report malpractice claims and settlements against optometrists is difficult. The current statute is not clear and does not ensure that the Optometry Board will receive malpractice reports. Recent changes in the Board of Medical Examiner's (BOMEX) statutes addressed identical problems. The changes transferred enforcement responsibility for reporting to the Department of Insurance and clarified the Medical Board's use of the malpractice reports.

Malpractice Reporting Statutes Are Not Clear

Although current statutes require insurance companies to report malpractice claims and settlements against optometrists, the law is not clear. Neither the Department of Insurance nor the Board of Optometry has specific responsibility for enforcement. The law provides no penalty for companies failing to report. Furthermore, the statutes do not direct the Optometry Board to review reports in any specific manner.

Arizona law does not designate an agency to enforce optometric malpractice reporting and does not provide sanctions against insurance companies that fail to report. Arizona Revised Statutes (A.R.S.) §32-1745.A states only that:

> "An insurer providing professional liability insurance to a doctor of optometry licensed by the Board pursuant to this chapter shall report to the Board, within thirty days of its receipt, any written or oral claim or action for damages for personal injuries claimed to have been caused by an error, omission or negligence in the performance of such insured's professional services or based on a claimed performance of professional services without consent or based upon breach of contract for professional services by a doctor of optometry."

Even though this provision is part of the optometry statutes, neither it nor any other law gives the Board any enforcement authority over insurance companies operating in Arizona. On the other hand, the Department of Insurance has sole authority over insurance companies but lacks specific authority to enforce the reporting requirement. Moreover, statutes do not provide penalties against insurance companies that fail to report, reducing the potential effectiveness of the reporting requirement.

The effectiveness of malpractice reporting is also limited because the law does not direct the Board of Optometry to use this information in any specific way. Unlike BOMEX laws, the optometry statutes provide for only a general review and do not specify whether the report is to be handled as a complaint or only as information for relicensure.

The Legislature Addressed Similar Problem in BOMEX Statutes

Recent changes in BOMEX enabling statutes provide a means for clarifying the malpractice reporting requirement in the optometry statutes. Previously, BOMEX had a malpractice reporting requirement similar to the Board of Optometry. In 1982 the insurance code was amended to require the Department of Insurance to obtain reports of malpractice claims and settlements from insurers and forward the information on to BOMEX. This allows the Department of Insurance clear authority to penalize companies who do not report. Furthermore, the law requires BOMEX to review malpractice reports and determine if licensees violated any statutes or rules.

CONCLUSION

Although the optometry statutes require insurance companies to report any malpractice claim filed or settlements paid for any licensed optometrist in Arizona, the statutes do not clearly assign enforcement responsibility or direct the Board in using the information. Clearly designating the Department of Insurance as the agency responsible for obtaining

malpractice reports and clarifying the Board's use of the reports would improve the Board's ability to obtain essential information about the competence of optometrists practicing in Arizona.

RECOMMENDATIONS

1. The Legislature should consider amending A.R.S. §20-1742 to a) require insurance companies to report malpractice claims and settlements against optometrists to the Department of Insurance, and b) require the Department of Insurance to forward all such reports to the Board of Optometry.

2. The Legislature should consider amending A.R.S. §32-1745 to direct the Board of Optometry to investigate reports of malpractice claims and settlements against optometrists in a manner similar to that of the Board of Medical Examiners. This change would require the Board to determine if violations of optometry statutes, rules and regulations have occurred.

OTHER PERTINENT INFORMATION

The Board of Optometry has not prepared an annual report for the Governor since 1981. By statute, the Board is required to submit an annual report on the Board's accomplishments and finances for the year. This has not been done recently and, as of January 31, 1984, there were no plans to complete one.

AUDITOR GENERAL COMMENT

The following response from the Arizona Board of Optometry contains statments about weighting and grading the Board's examination that require additional comment.

Weighting - On page two of its response the Board equates weighting questions with curving examination scores. Weighting refers to the procedure of ranking questions or groups of questions according to their relative importance to competent practice. Weighting takes place before an examination is given and does not change the passing grade. Curving, on the other hand, adjusts examination scores to a normal distribution curve after grading. As a result, curving, which is prohibited by law, does change the level of competency necessary to achieve a passing grade.

Grading - On page three of its response the Board refers to a 1979 Legislative Council Memorandum supporting its interpretation of A.R.S. §32-1724. This section was revised by the Legislature, effective in 1980. The memorandum used by the Auditor General is based on the current law.

Arizona State Board of Optometry

1645 W. Jefferson

Phoenix, AZ 85007

MAR 1984
AUDITOR GENERAL

March 22, 1984

Mr. Douglas Norton
Auditor General
111 W. Monroe, Suite 600
Phoenix AZ 85003

Re: Optometry Board - Sunset Audit

Dear Mr. Norton:

Following is the Board's response to the recent Sunset audit of the Board of Optometry:

SUMMARY

1. The judgment that the State Optometric examination is inadequate is an assumption based on hypothesis and opinion, not fact.

2. Procedures used in the examination are in accordance with the legal requirements and have caused no error in judgment of competency.

3. The Board has determined the skills it believes to be necessary and has used the pass/fail cutoff points required by law.

4. The audit is in error in the interpretation of A.R.S. 32-1724. This statute and the procedures pertaining thereto were reviewed by Legislative Council during the 1979 performance audit and were not found wanting.

5. Some of the slides used on one examination were of poor quality and were obtained from the University of Arizona College of Medicine, Department of Ophthalmology, upon which the Board felt it could rely. The Board adjusted the scores of the examination when it discovered this fact so that no applicant failed on this account.

6. Requiring all applicants to successfully complete the NBEO examination could present problems for those applicants who completed the NBEO examination prior to its meeting present national standards.

7. The Board has no authority over the office of the Attorney General in monitoring the review of legal documents.

8. The Board has known since August 1982 the requirements for a fiscal impact statement. However, it has not had the resources to prepare such a statement and the Rules apparently cannot be processed without one. The absence of Rules has not limited the Board's enforcement activities.

FINDING I: EXAMINATIONS

Exam Content

The Arizona examination adequately represents the scope and depth of knowledge required for competent optometric practice. The Board does not pretend that it is composed of psychometricians, those persons whose scarcity is renowned; but, assisted by the knowledge and experience of about twenty-five highly competent practitioners some of whom are educators, teaching professionals from the Colleges of Medicine and the Colleges of Optometry, the Board developed what it believes to be examinations designed to test competency in the practice of optometry. The law requires an examination be given in the Phoenix area. A National examination is unavailable to be given in the Phoenix area. The NBEO examination is given only in the universities. In order to meet its mandate, the Board has no choice except to construct an examination which, to the best of its ability and knowledge, meets the requirements under the law.

In following its role of protecting the public from incompetent practitioners, one of the responsibilities of the Board is to prepare and administer written and practical examinations which should be designed to identify applicants who have not demonstrated a level of knowledge for entry into the practice of optometry. Graduation from an accredited program and successful performance on the Board's examinations provides the needed confidence to the Board that it is meeting its licensing responsibilities.

In developing the examination contents, the Board has followed accepted guidelines used to measure an applicant's fundamental knowledge of the scientific principles upon which optometric practice is based; i.e. to measure the applicant's ability to apply that knowledge in the prevention, detection, diagnosis, management and treatment of clinical conditions within the scope of optometric practice; and, through the Board's practical examination, to measure the applicant's clinical judgment and ability to integrate basic and clinical science knowledge through clinical examination of actual patients.

Weighting

The Board did not weight questions within an examination part because it felt that might be tantamount to "curving" the examination which it is expressly forbidden to do.

The issue of whether or not to average NBEO scores into the pathology slide and practical exam was brought forth under an appeal by an examinee after the 1982 examination. This matter was discussed at length with Board counsel and the Board was advised that it was discretionary with the Board and that either method would be appropriate. It was felt that it was not discriminatory to elect not to average the NBEO scores into the Board administered sections because every applicant had the equal opportunity to take the entire Board administered examination at no additional cost and the choice was up to the applicant if he wished to forego the board administered exam. Since the Board grading is not curved and the NBEO examination scoring is curved, the Board believed it is inequitable to those taking the written portion of the examination for the Board to use curved scores in its evaluation. In the eyes of some of the Board members it even appeared to be illegal to treat curved scores the same as non-curved. The Board feels its decision was most appropriate.

Pass/fail Cutoffs

Pass/fail cutoff scores are based on present law: 50% score on each part, 75% on the whole examination. The Board has strictly adhered to these criteria.

Grading

The audit quotes: "To receive a passing grade on a written examination administered by the Board, an applicant must make a grade of not less than seventy-five percent on the whole examination . . ." (Board emphasis added)

Webster's dictionary defines the adjective "whole" to mean:

"containing all the elements or parts; entire; complete; not divided up; in a single unit, constituting the entire amount, extent, number, etc."

The audit interpretation of A.R.S. Section 32-1724.C therefore is arbitrary and erroneous and the twenty-eight optometrists did indeed pass the whole examination with a grade of at least 75%.

When, in laws 1979, the word "written" was removed from Section 32-1724, Arizona Legislative Council, in response to the Auditor General's inquiry stated:. . . "It appears then that the optometry examination could consist of an oral or practical examination as well as a written examination. However, the requirement still remains that, in order to pass the examination, an applicant must receive a grade of not less than 75% in each subject." (75% in each subject was the requirement at that time.)

This opinion treated the practical and oral, if the Board elected to give one or both, as parts of the "whole" examination. This language appears in the present Section 32-1724 and it would appear that the clinical exam and the pathology slide exam, which constitute two parts of the practical exam, must be treated as separate parts of the "whole examination", each part requiring 50% for passing with an overall score of 75%. This is exactly how the Board scored these examinations and counsel for the Board raised no objections to this procedure.

Use of National Examination

The Board does not dispute the fact that requiring the satisfactory completion of the NBEO examination will save it time and headaches. The money saved by not giving the written exam amounts to about $250. The cost of the slide exam is about $270 and, since places are donated and professional time is volunteered, there are little or no costs for the clinical exam.

It must be pointed out that the Board feels NBEO examinations given prior to them meeting present national standards should not be accepted. Therefore the Board has felt it incumbent to accept NBEO scores which have been attained after that time but not before.

A change in the law to require the NBEO examination and the Board's refusal to accept inferior NBEO examinations could result in some problems:

1. Optometrists who have graduated prior to the achievement of NBEO exams gaining national acceptance may not have received adequate testing for competency.

2. Were the law to be changed to require the successful completion of the NBEO, it should be limited to those taking that examination after the national acceptance of the exam.

3. If it were limited, and the Board could not give written examinations, there may be no means by which an optometrist could receive licensure who did not meet that criteria.

1. Reciprocal licensure is limited to:

a. Optometrists who have been duly licensed and have practiced four out of the last five years in the state from which they are applying.

b. Optometrists who apply from a state whose licensing requirements are equal or more stringent than those of this State.

c. Optometrists who apply from a state which reciprocates with the State of Arizona.

2. Arizona reciprocates with eighteen states at the present time.

3. Eighteen other states would qualify for reciprocity except that they do not reciprocate with Arizona.

4. Fourteen states do not qualify for reciprocity because their licensing standards are less stringent than Arizona's.

5. The following persons could not receive reciprocity:

a. Dr. X who has graduated from a foreign university.

b. Dr. Z who has practiced optometry for twenty years but did not practice in one reciprocal state for four out of the past five years.

c. Dr. Y who is from New York because that state does not reciprocate with Arizona.

d. Dr. W who has practiced in Illinois for the past fifteen years, because Illinois' standards are less than those of Arizona.

e. Dr. V who is duly licensed in another state but has practiced in Africa for the past three years as a missionary.

Under current law, except for Dr. X, all of the above optometrists would be eligible to take a Board administered examination upon the successful completion of a course in ocular pharmacology.

Dr. X would not qualify because he graduated from a foreign university and there is no provision for him to be tested at all. Except for one university in Canada, foreign universities are not accredited.

Slide Examination

The Board does not dispute that some of the slides used in the 1983 Board examination were of poor quality. The Board had slides available in its files which met all the necessary qualifications of testing slides, but which had been used in the previous three examinations. The problem with the 1983 exam slides turned out to be that they were teaching slides rather than testing slides. They were provided by the University of Arizona and its policy is to lend them for three days only. The Board examination is three days long; hence, the Board had no way to review the slides prior to use. This was an unfortunate single occurrence. When discovered, the poor quality slides were stricken from the examination and the exam papers were regraded. The Board was aware there might be a problem, and the request to produce the slides was made by the President of the Board long before an appeal was received.

Conclusion

The Board is in total disagreement with the conclusions set forth under this finding.

COMMENTS ON AUDIT RECOMMENDATIONS:

1. The Board realizes psychometric expertise exists but, because of budget restrictions has not been able to adequately utilize these budget limitations.

2. Concerning the requirement for NBEO examination, caution is advised concerning those optometrists who would not qualify for licensure under this legal requirement.

3. Concerning the improvement of the pathology slide examination, the Board feels all the recommendations in this paragraph have merit and should be considered.

4. Concerning the improvement of the clinical examination upon a patient, the Board feels all the recommendations in this paragraph have merit, should be considered and makes special note of section e.:

> The International Boards of Examiners in Optometry (IAB) is the entity engaged in the development of a regional clinical examination. The Board, which belongs to the IAB has felt the need for its expert advice. IAB meetings are held once each year, generally out of state. Each year, this Board has sought legislative appropriation to attend these meetings. However, the budget restraints of the past several years have prevented the Board from actively attending these most valuable sessions due to the non-existence of out-of-state travel funds.

FINDING II: CONSUMER COMPLAINTS/LEGAL NOTICES

Problems in Processing Legal Orders

There are a number of problems that the Board has encountered:

The Board has dealt with 121 consumer complaints since January 1981. The Board considers this area its most important function, i.e. the protection of the public health and welfare. Since the inception of the new law in July 1980 it has continued to initiate and revise its procedures to better resolve these complaints. However, there are factors outside the control of this Board which have made it difficult and at times impossible to resolve all complaints.

1. The State Boards' Office presently is not sufficiently funded to provide the high level and quantity of administrative services demanded by all the Boards in that office.

2. The Attorney General's office, particularly the Civil Division, is not sufficiently funded to provide the quantity of legal services which would meet the Boards' needs.

3. The Board's income does not enable them to pay for the level and quantity of administrative services it needs.

4. The statutory requirement for informal interview in every case before proceeding to formal hearing is inefficient and costly to the State, the Board, and the licensee.

Administrative Services

The complaint procedure is thus: A complaint is received, logged and investigated. If cause is found, an informal interview is held. With rare exception, immediately following an informal interview, the Board makes findings and either moves to (a) dismiss, (b) go to formal hearing or (c) take remedial action by way of a letter of concern, consent agreement or censure and/or probation order. During that same time, the Board would cite the violations, if any, in general and/or technical terms (as opposed to legal terms) and indicate the laws it believed were violated and establish its order in terms of censure, probation or both.

This information is recorded and, subsequently, the Board office is expected to draft the legal order for counsel's review.

The staff of the State Boards' Office (SBO) serves ten regulatory agencies. This office has six positions assigned to it. Until very recently, that office employed a manager, administrative assistant, an administrative secretary, an accounting clerk and a typist. A secretary position remained vacant for over a year although it was filled by a temporary during most of this time. This office is expected to handle all the administrative and clerical concerns of ten licensing agencies. In addition to six sunset audits and five financial audits performed during the year, at which times the personnel are required to provide records and information to the auditors, nine of the boards submitted legislation. The SBO was directly involved in four major pieces of legislation stemming from the sunset audits because they included administrative procedures and/or licensing which directly affects the office. It was also involved in three other pieces of legislation at the request of the boards involved. Five of the Boards are involved with rules promulgation.

The reorganization of the Department of Administration has resulted in some upgrading of this office since August 1983 and a review is currently in progress to determine if further adjustments are warranted. Present personnel consist of the manager, three administrative secretaries and an accounting clerk. One position is vacant. Two others were filled only recently. Of the five positions presently filled, two persons are handling three boards each, one is handling the accounting for all ten boards and administrates another board. One is handling the drafting of all legal documents, some rules, fee impact statements and administration for one Board and the manager is trying to make it all work in addition to preparing budgets, legislation, appearing before legislative committees, interviewing with auditors, totally administrating one Board and partially administrating another.

Each Board as it has undergone sunset audit has been mandated to perform more detailed, more complicated functions than before and all the boards have continued to increase their licensing enrollment each year. The Attorney General's office has repeatedly made it known that it is their function to advise the Boards, not perform such functions as the initial development of legal orders, notices, etc. Therefore, either the Board members or staff are charged with legal matters which they are not equipped to handle either through lack of legal expertise or too severe time restrictions or both.

Until such time as the Boards can afford to develop the staff of the SBO to include additional personnel with special training and knowledge such as legal expertise, or hire outside assistance for special projects, the SBO must continue to deal with matters for each Board in as fair and impartial manner as possible so that all are served as their priority needs require and as time permits.

One of the reasons for delay in preparation of legal orders is lack of guidance in the development of what legally constitutes their makeup. There are no set forms available. There is no standardization. Every attorney has a different way of stating them. If there were standardized legal forms such as informal interview notices, formal hearing notices, censure orders, suspension and revocation orders, consent orders, etc., the SBO could better assist the Boards in their preparation.

Recently, this Board has received guidance from counsel who has recommended time saving complaint procedures and standardized forms which, if adopted by other Boards in the office, would go a long way toward resolving this problem, if the other Boards in the office could accept these innovations.

Confusion in administrative legal procedures where multiple agencies are served by one office is the result of inconsistencies in the statutes concerning investigative and hearing procedures. There seems to be no logical reason why many of these licensing agencies could not operate under standardized requirements if those statutes were addressed either individually or in an omnibus type of legislation.

Legal Services

The Civil Division of the Attorney General's Office which serves as advisor to all except a very few agencies in the State is expected to provide such service with insufficient numbers of Assistant Attorneys General. Some of these attorneys are individually providing services to as many as seven licensing agencies at one time. As agencies are reviewed and new statutes are enacted, workload often doubles and those services are spread even thinner. In addition to advising State agencies, these same attorneys are required to engage in any court actions which may be precipitated by the actions of the agencies such as appeals to Superior or Appellate Court. Such service involves much more than just appearing in court. Most of the time is spent in the creation and filing of legal briefs, responding to challenges, etc. An increase of funding to the Civil Division of the Attorney General's Office to allow them to hire additional attorneys to serve State agencies would result in more legal services.

Board Funding

In 1979/80, the Board of Optometry consisting of three members spent $2900 on personal services and $1500 on travel in state. This represented about 25% of its funding. About 50% more was spent on administration and only $100 on investigations.

The 83/84 budget provides $1500 for personal services for the six members of the Board and a total of $1800 for travel including travel for the Board's investigator.

Board administrative costs have increased from $17,700 in 1981/82 to $23,700 in 1983/84, an increase of $6000. The appropriated budget for 1981/1982 was $51,900. The number of licensees has increased, the Board is required to investigate all complaints and administrative costs have risen greatly. However, the Board budget for 83/84 is $43,700.

The present budget only provides sufficient funds for the Board to meet six times, its statutory mandate. The examination alone takes three days. This leaves funding for three additional meetings during the entire year. Yet, the consumer complaints continue to be received.

The Board's ability to properly investigate consumer complaints is seriously impeded by lack of funds for investigator travel.

There is no money allocated to purchase services in the event the Board wishes to hold informal interview and particularly formal hearing. Formal hearing requires such services as expert witnesses, travel costs for witnesses, court reporters and the purchase of completed transcripts.

Informal Interview Requirement

The requirement for informal interview prior to conducting informal hearings is costly and delays the resolution of serious or multiple complaints.

The Board has the authority to take minor disciplinary action such as censure or probation after informal interview without going to a formal hearing. However, the Board may not go directly to formal hearing in those cases in which the allegations, if proved, would result in more serious disciplinary action such as revocation or suspension. This is more costly in terms of requiring more meeting dates, more witness fees, more court reporting expenses, etc. It delays the final resolution of the complaint. It is not in the best interest of the public, the Board or the licensee to be required to go through both procedures. It also impacts on the office of the Attorney General and is a major inconvenience and expense to witnesses who are needed during both phases of this disciplinary process.

COMMENTS ON AUDIT RECOMMENDATIONS

1. The Board already does all within its capacity to expedite legal orders.

2. The Board is in complete agreement with this recommendation for amendment of A.R.S. Section 32-1744.B to allow the Board to bypass informal interview when appropriate.

FINDING III - RULES

Lack of Rules in Critical Areas

Immediately after the new laws of 1980 went into effect, the Board of Optometry began the process of rules promulgation. It hired a law clerk to prepare a draft of proposed rules so the Board would have a starting point. The drafting and redrafting continued for well over a year and by that time the new 1982 laws were in effect. The scope of optometric practice was expanded in January 1982 to include the use of diagnostic pharmaceutical agents. The law is rather explicit as to the type of drugs and their limited use. The Rules were to serve as guidelines to enhance and define their use and the recording of that use in practice. Present optometry rules already define what types of records shall be kept. They do not however specifically relate to recordkeeping where the drugs are concerned.

In August 1982, the Governor's Regulatory Review Council expanded its requirements for submittal of rules for their review. They now require a specific detailed fiscal impact statement relating to each rule and a specific set of questions relative thereto. Unfortunately, the Board had neither the expertise nor time to prepare such a detailed report on its thirty-four drafted rules. The report itself would require extensive research time and would have to be drafted in language reflecting answers to very specific analytical questions. Refer to Addendum A attached hereto.

The report would consume so much research and preparation time that it was a task that the personnel in the State Boards' Office could not accomplish and still fairly serve the other nine boards for which it had responsibility. The office did, however, research the relative scope of what would be required to produce such a document. It used as a parallel, a thirty-four page document on seventeen rules produced by another regulatory agency. In speaking to a representative from that Board familiar with its cost for a similar project, that person agreed it would take at least $2000 in research and preparation time, not to mention the time required to type and copy this document. (Seven copies are required to be submitted to the Council) The Optometry Board proposed rules consist of thirty-four separate rules, each of which must be submitted with a separate impact statement relating to it.

The Board office contacted the Executive Budget Office with reference to assistance in constructing an impact statement and were told that they would assist after a draft construction was complete but that they did not have the time or resources to draft it themselves. Prior to November 1983, the Board did not contact the Council directly and formally as stated because it seemed a futile effort. That body is not funded and has no staff of its own. How then, was the Board to feel that it could assist it in the preparation of a lengthy, detailed statement. Its only manner of assistance would be to waive the requirement for a fiscal impact statement thus circumventing its own invention and procedures. Circumvention of this procedure could set a precedent which might weaken its entire process. It is suspected that our request to the Chairman of the Council which was precipitated by the preliminary performance audit review, placed it in just such a dilemma to which there may be no proper response.

The Board has requested a supplemental appropriation to cover the cost of preparing this fiscal impact statement.

COMMENTS ON AUDIT RECOMMENDATION

The Board agrees that the Rules should be promulgated as soon as possible and, if its supplemental appropriation is approved, outside help will be hired to prepare the fiscal impact statement.

FINDING IV - MALPRACTICE CLAIMS

The Board is in agreement with the finding and recommendations in this section. This Board adds its recommendation that the legislature consider amending the optometry statutes to require an optometrist against whom a malpractice claim has been made to report such information to the Board of Optometry.

OTHER PERTINENT INFORMATION

The Board's budget limits its enforcement and follow-up activities to a large degree except in areas of critical concern, i.e., the protection of the public health and welfare. Its limited time and resources are devoted entirely to this end. The requirement in the law for a report to the Governor should be deleted in that all the information relative to the actions and licensing by this Board is readily available at the State Boards' Office whereas the Governor's report consists of little more than a financial statement and a brief recap of events. It would be much more beneficial to the Arizona citizen if the Board were funded so that it could print a consumer brochure informing the public of its rights, options and responsibilities as it pertains to the optometric profession in Arizona or a newsletter to the licensees in the State reporting on the Board's disciplinary actions and providing a vehicle to inform them of changes in Board policy and procedure, problems encountered through the complaint process, etc.

It should be noted that this requirement for a report to the Governor is a carryover from the days when State agencies were not accessible to the public and the only source of information was contained in the Governor's office. Many of the Boards and Commissions in the State do not have this requirement and many are deleting it.

CLOSING STATEMENT

When appropriations were cut back in recent years, all state agencies suffered to the extent that often essential services were trimmed. It is difficult for any agency with severe staff shortages to meet the increasing demand placed upon them by the public and the law. The Auditor General's report obviously approaches their review from the standpoint of the ideal. It is virtually impossible to achieve the ideal under the severe budget restraints prevalent today. It should be recognized by the public and the Auditor General that the ideal costs a great deal of money. It is the Board's duty to regulate its profession to the best of its ability whenever possible and to use its resources in the most economical manner possible. It is doubtful anyone could question its intent but they might cast their eyes on the Board's pocketbook or lack thereof.

Sincerely,

George Sanchez O.D.

George Sanchez, O.D.
President

GOVERNOR'S REGULATORY REVIEW COUNCIL

GUIDELINES

INSTRUCTIONS:

The information outlined below should be submitted in letter form and addressed to the Chairman of the Regulatory Review Council. This information must be clearly labeled (e.g., Section I.a., Section II.b., etc.) and furnished for each proposed rule change or new rule.

I. BRIEFLY DESCRIBE THE PURPOSE OF THE PROPOSED RULE:
(PLEASE COMPLETE BOTH "a" AND "b")

a. Briefly explain why the proposed rule is needed. In particular, identify problem. If a new rule is being proposed because a new law was passed or an old law was changed, reference each applicable section of each applicable state or federal law.

b. Summarize what the proposed rule would accomplish. What alternatives were considered? Why is this the most effective solution?

II. IDENTIFY THE COSTS AND BENEFITS OF THE DIRECT CONSEQUENCES OF THE PROPOSED RULE AND ESTIMATE APPROXIMATE DOLLAR VALUE OF THE COSTS AND BENEFITS FOR:*

a. Your agency (be sure to list changes in internal operating procedures which would be required by the proposed rule).

b. Other public agencies; e.g., state, county, city or town, community college district, or school district agencies.

c. Private entities (include large businesses, small businesses, and nonprofit organizations).

d. Consumer of the product or service.

*NOTE: Direct consequences must involve increased costs, decreased costs, increased revenues or decreased revenues. When completing II.a., b., c., and d., please use the following format:

Description of Consequences	Dollar Value of Increased Cost/ Decreased Revenue	Dollar Value of Decreased Cost/ Increased Revenue

ADDENDUM A.

III. IDENTIFY THE COSTS AND BENEFITS OF INDIRECT CONSEQUENCES OF THE PROPOSED RULE:

a. List the consequences for your agency. (Be sure to list changes in internal operation procedures which would be required by the proposed rule.)

b. List the consequences for other public agencies; e.g., state, county, city or town, community college district, or school district agencies.

c. List the consequences for private agencies (include both profit and nonprofit organizations).

d. List the consequences for the public.

NOTE: When developing a list of indirect consequences, the agency should ask itself the following questions:

1. Will the rule increase or decrease cost of the product or service?

2. Will it change availability to consumer?

3. Who ultimately pays the increased cost of the rule?

4. Who ultimately benefits from the rule?

5. What incentives/disincentives are created by the rule?

The Council recognizes that these questions can be difficult to answer precisely. However, the agency should make a good faith effort to identify if increased costs will be absorbed by the regulated entity, or passed on to customers in Arizona, or passed on to customers outside of Arizona. In addition, the agency should identify whether dollar effect should be minimal or substantial.

Further, the Council recognizes that it is equally difficult to precisely identify the ultimate beneficiaries of a rule. Agencies should, however, attempt to analyze the impact of a proposed rule in those terms. For example, improved water quality may cause more people to boat and fish, which may cause more boats and fishing equipment to be manufactured, which may increase the demand for steel, and so forth. In addition, a rule which increases the price of one product may cause increased sales of substitute products which, in turn, may increase employment in those industries.

Finally, rules may create incentives to resort to disreputable/illegal practices. For example, if a product is taxed heavily, bootlegging and barter may result. The Council does not expect agenies to quantify the consequences of illegal practices unless it is very confident that such

practices will result and will have significant impacts in terms of increased costs, decreased revenues, decreased costs, or increased revenues.

IV. The following information is required per ARS §§ 41-1001, 41-1002, and 41-2001.02 relating to the impact of proposed rules on small businesses. For the purpose of this section, a small business is defined as a concern, including its affiliates, which is independently owned and operated, not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

a. Describe the types of small businesses subject to the proposed rule. Briefly describe the proposed reporting, bookkeeping, and other procedures required for compliance with the proposed rule and describe the types of professional skills necessary for compliance.

b. Identify which of the following methods will be utilized to reduce the impact of the proposed rule on small businesses.

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.

2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.

4. Establish performance standards for small businesses to replace design or operational standards in the rule.

5. Exempt small businesses from any or all requirements of the rule.

If none of the above methods are legal or feasible in meeting the statutory objectives which are the basis of the proposed rule, the agency should so state.

V. FILING OF RULES.

1. Rules shall be in such form as necessary for filing with the Secretary of State.

2. An original and six (6) copies of the proposed rules and related material must be filed at least twenty (20) days prior to the Council's meeting.

3. Rules must be accompanied by a statement of approval from the agency head, date approved and a name and phone number of a person to contact for questions or to establish a time for appearance before the Council. No rule proposed will be approved by the Council which does not satisfy the above requirements of filing.

4. Rules are to be filed with the Chairman of the Governor's Regulatory Review Council, Office of the Director, Department of Administration, Capitol Executive Tower, Room #804, Phoenix, Arizona 85007.

August 10, 1982

APPENDIX

LEGISLATIVE COUNCIL OPINION ON OPTOMETRY EXAMINATION

ARIZONA LEGISLATIVE COUNCIL

MEMO

March 16, 1984

TO: Douglas R. Norton, Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (0-84-1)

This memo is sent in response to a request made on your behalf by William Thomson in a memo dated March 14, 1984.

FACT SITUATION:

The Arizona board of optometry examination statute, Arizona Revised Statutes (A.R.S.) section 32-1724, was enacted in 1980 and states:

> 32-1724. Examination of applicants; time of examination
>
> A. Licensing examinations shall be conducted and graded according to rules and regulations prescribed by the board.
>
> B. Applicants shall be given an examination on the subject matter currently being taught in universities or colleges of optometry.
>
> C. To receive a passing grade on a written examination administered by the board, an applicant must make a grade of not less than seventy-five per cent on the whole examination and not less than fifty per cent in any one subject. The examination shall not be graded on a curve.
>
> D. The board may accept a certificate issued by the national board of examiners in optometry in lieu of the written portion of the board's examination for licensure.
>
> E. Examinations shall be held at least once each year in Phoenix and at such other times and places as the board designates. Notice of examination shall be given not less than sixty days prior to the date of examination. If an applicant is unable to take the examination and notifies the board prior to the date fixed for examination, the board may refund to the applicant the application fee and may allow the applicant to take the examination within one year.

The Arizona board of optometry (board) has two examinations: a written examination consisting of nine sections and a practical examination consisting of a pathology examination and a patient examination. The board has required candidates taking the board's written examination to receive fifty percent on each of nine written examination sections and both practical examination sections and an average of seventy-five percent or greater on all eleven examination sections, written and practical, to receive a license. The nine sections of the board's written examination have not been independently averaged since the law was enacted in 1980.

QUESTIONS PRESENTED:

1. Does A.R.S. section 32-1724, subsection C require the board to compute applicants' written examination scores independently and pass only those applicants who have scored an average of seventy-five percent or more on the written examination?

2. Does the board's method of averaging written and practical examination scores together comply with A.R.S. section 32-1724, subsection C?

ANSWERS:

1. A.R.S. section 32-1724, subsection C only concerns written examinations. It states in part that:

> C. To receive a passing grade on a written examination administered by the board, an applicant must make a grade of not less than seventy-five per cent on the whole examination and not less than fifty per cent in any one subject. (Emphasis added.)

"It is a fundamental rule of statutory construction that plain, clear and unambiguous language of a statute is given that meaning unless impossible or absurd consequences may result." Balestrieri v. Hartford Accident and Idemnity Insurance Co., 112 Ariz. 160, 163, 540 P.2d 126 (1975). A.R.S. section 32-1724, subsection C is clear and unambiguous and impossible or absurd consequences do not result from the plain meaning of the statute.

In order to pass a written examination administered by the board an applicant is required to make a grade of at least seventy-five percent on the whole written examination and not less than fifty percent in any one subject on the written examination. Since A.R.S. section 32-1724, subsection C deals exclusively with written examinations, an applicant's written examination scores must be computed independently from practical examinations and only those applicants who achieve a score of seventy-five percent or more on the whole written examination and not less than fifty percent on any one subject on the written examination pass the written examination.

2. No. The board is not precluded from requiring a practical examination (see A.R.S. section 32-1724, subsection A), but it cannot average the results of a practical examination with those of the written examination because of the clear meaning of A.R.S. section 32-1724, subsection C.

cc: William Thomson, Manager
Performance Audit Division