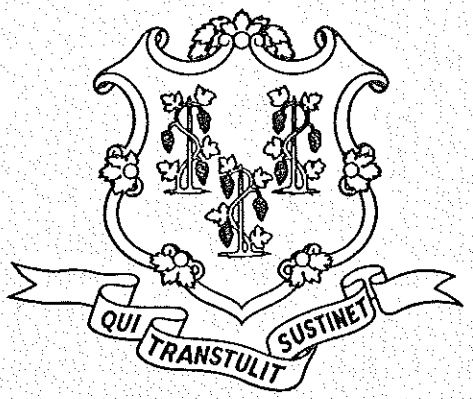
Connecticut General Assembly



Legislative Program Review and Investigations Committee

SUNSET REVIEW

Board of Examiners in Optometry

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CONNECTICUT GENERAL ASSEMBLY

LEGISLATIVE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE

The Legislative Program Review and Investigations Committee is a joint, bipartisan, statutory committee of the Connecticut General Assembly. It was established in 1972 as the Legislative Program Review Committee to evaluate the efficiency and effectiveness of selected state programs and to recommend improvements. In 1975 the General Assembly expanded the Committee's function to include investigations and changed its name to the Legislative Program Review and Investigations Committee. During the 1977 session, the Committee's mandate was again expanded by the Executive Reorganization Act to include "Sunset" performance reviews of nearly 100 agencies, boards, and commissions, commencing on January 1, 1979.

The Committee is composed of twelve members, three each appointed by the Senate President Pro Tempore and Minority Leader, and the Speaker of the House and Minority Leader.

This is the first of five annual reviews emerging from the first round of "Sunset" research.

1978-80 Committee Members

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SUNSET REVIEW 1980

CONNECTICUT STATE BOARD OF EXAMINERS IN OPTOMETRY

Vol. I-17

CONNECTICUT STATE BOARD OF EXAMINERS IN OPTOMETRY

The Connecticut State Board of Examiners in Optometry was reviewed by the Legislative Program Review and Investigations Committee in compliance with the Sunset mandate of P.A. 77-614. The nine criteria outlined in that act (Title 2c, Chapter 28) provided the basis upon which committee decisions were made. These criteria required legislators to address three fundamental questions in evaluating the boards and commissions slated for 1980 Sunset review:

1. Is regulation of the occupation or profession necessary to protect the public from harm?

2. What is the appropriate level of regulation?

3. Who should regulate the occupation or profession and how should it be regulated?

This board-specific report is supplemental to the Sunset Review 1980 - General Report which contains the background, methods, and recommendations of Sunset Review 1980. To appreciate fully the contents of this board-specific report, it is necessary to review and refer to the General Report, particularly the section "Model Legislation" which provides a single statutory framework to be applied uniformly and consistently to all regulated entities under Sunset review.

This specific report contains the following sections:

- Description of entity reviewed;
- Recommendations and discussion for entity reviewed; and
- Entity survey and analysis.

SECTION I

DESCRIPTION OF ENTITY

Definition and Background
Structure
Functions
Entry Requirements

Definition and Background

The profession of optometry is statutorily defined as the art and science of vision care. The practice of optometry includes the measurement and evaluation of vision, the refraction and examination of the human eye and related structures, prescribing and dispensing ophthalmic materials, and the maintenance, normalization and rehabilitation of visual functions and performance by any means.

Optometrists provide services which, if improperly performed, can result in physical harm. If the optometrist diagnoses an inappropriate referral for medical treatment, diseased or injured eyes can be damaged permanently. To protect the public from incompetence and malfeasance, a board of examiners in optometry regulates the licensure of all optometrists.

In the United States development of the profession of optometry was accompanied by establishing training schools. Legal regulation began with the adoption of a licensure law for optometrists in 1901 in Minnesota. In Connecticut, optometry has been an independent, licensed health care profession since 1913. The Board of Examiners of Optometry was created to implement the regulatory function.

As of 1978, 426 persons hold valid licenses to practice optometry in Connecticut.

Structure

The board of examiners consists of five persons; three are registered optometrists who have practiced optometry in this state for at least five years, and two are public members. The Connecticut Optometric Society may submit a list of names from which the optometrist appointees shall be selected. All members are appointed by the Governor.

Functions

The board regulates licensure and enforces minimum standards by performing the following functions:

- Advise the Commissioner of Health Services in making and enforcing regulations to maintain proper professional and ethical standards for optometrists;

- Preside over and prescribe sanctions in disciplinary hearings;
- Revoke, suspend, or refuse to reissue licenses for cause;
- Develop, administer, and grade the practical exam; and
- Set minimum educational requirements and approve schools.

Requirements for Licensure

To qualify for an optometry license all applicants must be over 18 years of age, of good moral character, and meet the educational requirements of graduation from high school and an approved four-year school of optometry. In the future, the board plans to use the national board exam in place of its own written examination. All applicants also must complete satisfactorily a theoretical and practical examination supervised by the board. The fee for the examination is $50.00.

The board may accept, in lieu of the examination, a diploma of the National Board of Examiners in Optometry. Licensure by reciprocity is available to any person who previously has not failed the Connecticut examination, is licensed in a state having requirements equivalent to Connecticut's, and offers reciprocity to holders of licenses issued in this state. The fee for licensure under both provisions is $150.00. The State of Connecticut requires every optometrist to complete eight clock hours of post graduate study each year as a prerequisite for the renewal of the license.

Licensed optometrists in Connecticut are limited to owning and operating two offices of business. No licensed optometrist may practice in any mercantile establishment or engage or attempt to engage in the practice of optometry in behalf of an unlicensed person.

SECTION II

RECOMMENDATIONS AND DISCUSSION

Recommendations for the Regulation of Optometry (Chapter 380)

1. Continue licensure.

   Licensure has been found to be the most appropriate and necessary level of regulation for this healing art.

2. Continue the State Board of Examiners in Optometry.

   Retention of this board is necessary to provide the professional expertise needed in the entry and enforcement functions of licensure. The board is to be retained as an individual regulatory entity to preserve the distinction between optometry and the other healing arts.

3. Amend Chapter 380 to include Model Legislation standards, procedures, responsibilities, appropriate repealed sections and all other relevant sections.

   Model Legislation addresses and ameliorates previous and potential concerns about regulatory procedures and policies. By providing a single regulatory framework for all boards under the aegis of the Department of Health Services (DOHS), the Model Legislation insures consistency, objectivity and uniformity in the execution of regulatory functions. Specific areas of concern in the optometry board and the solution offered by the Model Legislation are listed below.

   a. Powers and Duties of the Department of Health Services - *Professional board members and others expressed concern about the perceived unilateral control and authority by this single agency after Executive Reorganization. Model Legislation delineates the Commissioner's powers and duties relative to the regulatory boards and provides mechanisms for countervailing powers and board input where necessary.*

   b. Powers and Duties of the Boards - *Critics of the boards prior to Executive Reorganization maintained that they had too much authority and lacked a necessary system of checks and balances in their powers and duties. After Executive Reorganization, however, board members and other professionals in particular believed that the board's regulatory role was overly diluted and not clearly specified with respect to the Department of Health Services.*

      Model Legislation delineates the board's powers and duties and provides mechanisms to insure professional expertise and input where necessary.

c. Business Practices - *The Committee found that regulation of business practices and statutory restrictions on business practices were not relevant to ensuring and enforcing minimum standards of competence. Such business practices recommended for repeal are included in the following statutes and regulations (See Model Legislation - Business Practices):*

- Sec. 20-133(a) - Optometrist employment and practice in mercantile establishments.
- Regs. 20-128-4, 20-128-5 - Advertising restrictions.

d. Entry Requirements - *The Committee found that the optometry statutes governing entry requirements contained certain qualifications not relevant to determining an applicant's competence. Such requirements*--age and good moral character--*are recommended for deletion.*

Model Legislation also provides for an intensive review and revision of entry requirements by the board and the Department of Health Services to bring them in conformance with the principles outlined in the Model Legislation and the current state of the art in the practice of optometry.

e. Renewal Standards - *The Committee found that standards for licensure renewal required review and revision to bolster the enforcement of continued competence. Model Legislation (Required Reports) provides for such updating.*

f. Grounds for Professional Discipline - *The Committee found a great variance among the statutes in this area. Model Legislation provides grounds for professional discipline which are focused on the delivery of service and quality of care rendered by the practitioner. Application of these grounds to all regulatory boards under the aegis of the DOHS insures a rational and uniform basis for peer review and imposition of disciplinary sanctions.*

g. Receiving and Processing Complaints - *An area of considerable controversy, mechanisms for receiving and processing complaints in the Model Legislation are delineated to provide the professional board with necessary information and input at appropriate stages, while maintaining the separation of powers and duties necessary in this regulatory aspect.*

h. Disciplinary Sanctions - *Model Legislation explicates a range of disciplinary sanctions and requires consistency and uniformity in their application.*

SECTION III

ENTITY DATA AND ANALYSIS

ENTITY DATA AND ANALYSIS

Section 2c-6 of Connecticut's Sunset Law mandates that the entity reviewed demonstrate a "public need for (its) reestablishment" and that "it has served the public interest and not merely the interests of the persons regulated." All boards, commissions and departments evaluated in Sunset Review 1980 received a questionnaire which addressed the nine statutorily specified Sunset criteria.

This questionnaire, the primary instrument used to evaluate the entity's "burden of proof," was followed by staff interviews with key board members and members of the professional associations for further clarification and amplification.

The following section contains the questionnaire sent to the Connecticut State Board of Examiners in Optometry. Where appropriate, Committee staff has edited the agency response without altering or diluting the argument. Committee staff then analysed the agency response. Because of the methodological constraints posed by Sunset evaluation and implementation of Executive Reorganization occurring simultaneously, manageable quantitative data were difficult to obtain. Qualitative analysis, based on relevant information and data derived from a variety of sources, was used primarily in the Committee staff comment. This annotation appears in italics below the agency response.

1. WOULD THE TERMINATION OF LICENSING REQUIREMENTS FOR YOUR PROFESSION SIGNIFICANTLY ENDANGER THE PUBLIC HEALTH, SAFETY, OR WELFARE? PLEASE EXPLAIN.

Yes, optometry is the first line of defense against blindness. Licensure helps assure that practitioners of optometry are qualified to deliver proper care for the maintenance and enhancement of good vision and the amelioration of vision defects.

As reported in 1970 by the Secretary of the U.S. Department of Health, Education and Welfare:

> *"Although the primary service performed by most practicing optometrists is the provision of eye examinations and visual analyses, optometrists are trained to detect any departure from the optimally healthy eye. The scope of optometric services has expanded beyond basic clinical refractions, fabricating and dispensing eyeware; now included are visual screening examinations, clinical instrumentation, contact-lens fitting, visual training, orthoptics, low-vision aids for the partially sighted, artifical eyes, industrial vision-consultation, and public and community health. The most rapidly expanding area of service is in school consultation and remedial services for low achievers."*

In addition, if optometrists make an inappropriate referral for medical treatment, diseased or injured eyes can be damaged permanently.

2. COULD THE PUBLIC BE ADEQUATELY PROTECTED BY ANOTHER STATUTE, OFFICE OR PROGRAM? IF SO, WHICH ONE(S)?

No, the present statute is adequate and the Board, functioning within the Department of Health Services (DOHS) is the most efficient means of regulating the profession.

Expanded health care programs and new technologies require regulation and quality control. Statutory regulation and peer review provide a means to insure the best possible eye care. The board is established to review such areas as standards, utilization, prior authorization for services, fees, appropriateness of care rendered, and other aspects of vision care delivery.

3. COULD THE PUBLIC BE ADEQUATELY PROTECTED BY A LESS RESTRICTIVE METHOD OF REGULATION THAN THE CURRENT LICENSING REQUIREMENTS, SUCH AS CERTIFICATION OR REGISTRATION? PLEASE EXPLAIN.

No. The board feels licensure recognizes the applicant has attained the minimal degree of education and competency necessary to ensure that public health, safety and welfare will be protected.

The objective of licensure is to insure and maintain high standards for providing quality care. Certification grants recognition to those who have met predetermined levels of training and/or experience. Permanent damage can occur to the public if individuals improperly trained in optometry diagnose or treat the eyes.

4. DOES YOUR BOARD OR COMMISSION HAVE THE EFFECT OF INCREASING THE COSTS OF GOODS OR SERVICES TO THE PUBLIC EITHER DIRECTLY OR INDIRECTLY? PLEASE EXPLAIN THE BASIS FOR YOUR ANSWER.

No.

Research on regulation indicates that licensing does have the effect of increasing earnings in the licensed occupations and that licensing of an occupation reduces the number who practice in that occupation.[1]

In response to a recent Federal Trade Commission report, the Connecticut Board has proposed an amendment to present regulations permitting optometrists to advertise costs of ophthalmic materials and services. Data suggest restrictions on information concerning fees, quality and availability of the product hamper the consumer's ability to shop for services. In addition, when competition is lessened, pressure to reduce fees also decreases.[2] *(See Business Practices, the Model Statute).*

5. IF YOUR BOARD HAS THE EFFECT OF INCREASING COSTS, IS THE ADDITIONAL COST JUSTIFIED THROUGH PUBLIC BENEFITS ATTRIBUTABLE TO THE ACTIONS OF THE BOARD? PLEASE EXPLAIN.

Not applicable.

See preceding commentary.

6. IS THE EFFECTIVENESS OF YOUR BOARD OR COMMISSION HAMPERED BY EXISTING STATUTES, REGULATIONS OR POLICIES, INCLUDING BUDGET AND PERSONNEL POLICIES? IF SO, PLEASE BE SPECIFIC IN YOUR ANSWER.

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[1] Simon Rottenberg, A Review of the Professional Literature on Occupational Licensing, conference paper, Crotonville, New York, April 28, 1978.

[2] The Council of State Governments, Occupational Licensing: Questions A Legislator Should Ask, Lexington, Kentucky: March 1978.

No.

7. WHAT STATUTES AND REGULATIONS IMPINGE DIRECTLY ON THE OPERATIONS OF YOUR BOARD? PLEASE LIST OR ATTACH COPIES.

Present General Statutes and Regulations and the Uniform Administrative Procedures Act do not impede the board from functioning efficiently. However, the board states a provision for "Injunctive Relief" would increase its efficiency.

Under the Executive Reorganization Act (P.A. 77-614), the board currently is granted the power of injunctive relief (see General Statutes, Sec. 19-41).

8. TO WHAT EXTENT HAVE QUALIFIED APPLICANTS BEEN PERMITTED TO ENGAGE IN THE PROFESSION LICENSED BY YOUR BOARD? PLEASE COMMENT ON WAITING PERIODS, DELAYS, PAPERWORK, ETC.

Any qualified applicant who passes our exams may be licensed in Connecticut. A delay in licensure is very seldom experienced. Rare delays in the licensure of individuals has been caused in the past by waiting for the National Board of Examiners grade results. This board has given a written exam to those individuals who have failed to obtain a passing grade in the National Board written examinations. Delays might be more prevalent now, due to loss of the two optometrists on this board by reorganization. Connecticut has always been one of the first New England states to give examinations in June or July. The examination dates are coordinated by the six New England states at our Annual Meeting held in Boston each March. At present we are studying the feasibility of giving a regional practical examination at the clinics of the New England College of Optometry in Boston. A regional practical examination would eliminate delays and would be a convenience to applicants seeking a license in one or more New England states. All applicants are notified as to their passing or failing within seven days after taking their practical clinical examinations.

In the past, the board has developed, administered and graded the entry exam. In the future, the board will use the results of the national board test, generally taken by students while in optometry school, in place of its own written exam. Use of the national exam provides a more objective and standardized evaluation. In addition, a national exam could increase the mobility of professionals between states. The board will continue to develop, administer and grade the practical examination.

9. WHAT ACTIONS HAS YOUR BOARD OR COMMISSION TAKEN TO INSURE COMPLIANCE WITH FEDERAL AND STATE AFFIRMATIVE ACTION POLICIES AND TO ENCOURAGE ACCESS BY WOMEN AND MINORITIES INTO YOUR PROFESSION?

   1. Members of this board have been the leaders in the drive requesting the legislature to provide for capitation funding for prospective optometry college students.

   2. Special efforts have been made to encourage non-whites and women to enter the field of optometry.

   3. A woman optometrist, the first ever named, was appointed to serve as a member of this board three years ago.

   4. PA 74-219--An act providing for capitation grants for optometry students was introduced to the legislature by a member of this board and a black optometrist from New Haven in 1974. This provides for five optometry students to enter a college through the New England Board of Higher Education Program offerings.

Committee staff found nothing to the contrary.

10. WITHIN THE PAST FIVE (5) YEARS, WHAT CHANGES IN STATUTE, RULES OR REGULATIONS HAS YOUR BOARD OR COMMISSION RECOMMENDED WHICH WOULD BENEFIT THE PUBLIC AS OPPOSED TO LICENSEES?

   1. Continuing education regulation--Eight clock hours of continuing education required each year for all registered optometrists to enhance their qualifications in visual care subjects only.

   2. Practice and Procedures Regulation--Better procedure for handling consumer complaints against an optometrist.

   3. (In Process) Regulation allowing truthful advertising in accordance with FTC regulation.

   4. Allowed optometrists to add the word "contact lenses" with their name and office hours in the telephone directories. This addition will make it much easier for patients to locate an optometrist who includes contact lens fitting as one of his or her office procedures.

1. *The board designates courses of study and the method of certifying satisfactory completion. Courses given outside the state are acceptable.*

2. *During 1978, the optometry board received 64 complaints against licensed optometrists. Thirty complaints were investigated and three formal hearings were held regarding the complaints. Three licenses were suspended or revoked.*

   Executive Reorganization and recommendations made under this Sunset review (see Model Legislation) are designed to refine and standardize the complaint and adjudication process. Evaluating the effectiveness of this procedure and the board's behavior in the adjudication phase now will be possible.

3. *The board reviewed its advertising regulations and proposed an amendment specifying which forms of advertising are appropriate for optometrists and which are considered unprofessional conduct and prohibited.*

11. WHAT HAS YOUR BOARD OR COMMISSION DONE TO ENCOURAGE PUBLIC PARTICIPATION IN THE FORMULATION OF YOUR RULES, REGULATIONS AND POLICIES?

    Held public hearings, encouraged all individuals or groups to submit briefs relative to new regulation or to request declaratory rulings on points of law, held public board meetings and sent schedules of all meetings to interested persons or associations who have requested such notice.

12. WHAT HAS BEEN YOUR PROCESS THROUGH DECEMBER 31, 1978 TO RESOLVE PUBLIC COMPLAINTS CONCERNING PROFESSIONALS REGULATED BY YOUR BOARD OR COMMISSION?

    Complaints against optometrists have been processed according to 20-128-9 thru 16 and P.A. 71-854 (Chapter 54), the Uniform Administrative Procedures Act.

    (See discussion under question ten pertaining to public complaints).

13. WITHIN THE PAST FIVE (5) YEARS, WHAT STATUTES, RULES, OR REGULATIONS HAS YOUR BOARD OR COMMISSION PROPOSED OR ADVOCATED TO PROTECT YOUR PROFESSION FROM THE LICENSURE OF UNQUALIFIED PERSONS?

    1. We have changed our law to permit us to accept the written examinations of the National Board of Examiners in Optometry in lieu of our own written examinations. Beginning in 1979, all candidates must submit their National Board grades to the board.

2. We have accepted only qualified candidates for examination who have graduated from a college of optometry approved by the Council on Optometric Education and Connecticut State Board of Examiners. Schools are approved in the United States and Canada.

3. The board started administering the Continuing Education Regulation requiring all applications for license renewal include certification of eight clock hours of classroom attendance in approved professional courses.

The National Board exam is a standardized form of evaluation. (See discussion under question ten pertaining to continuing education regulation).