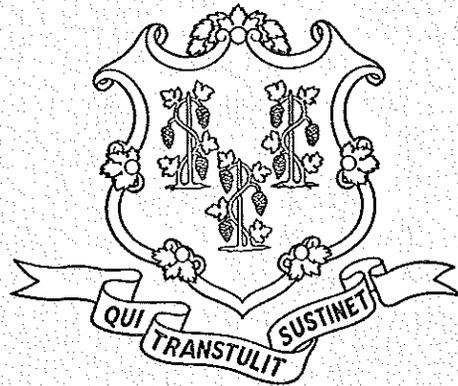


Connecticut General Assembly



Legislative Program Review and Investigations Committee

SUNSET REVIEW

Commission of Opticians

Vol. I-6

January 1, 1980

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.

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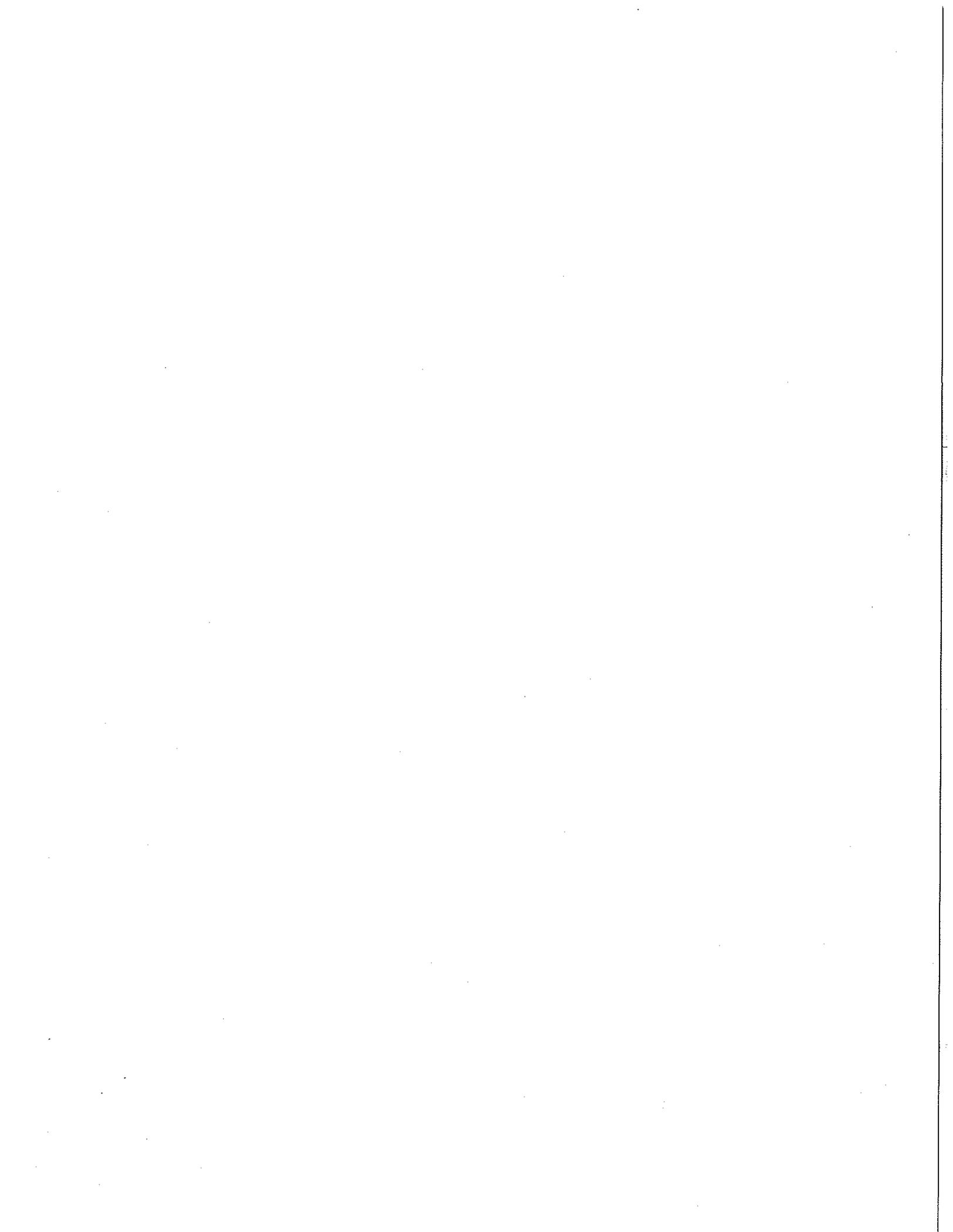
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SUNSET REVIEW 1980

COMMISSION OF OPTICIANS

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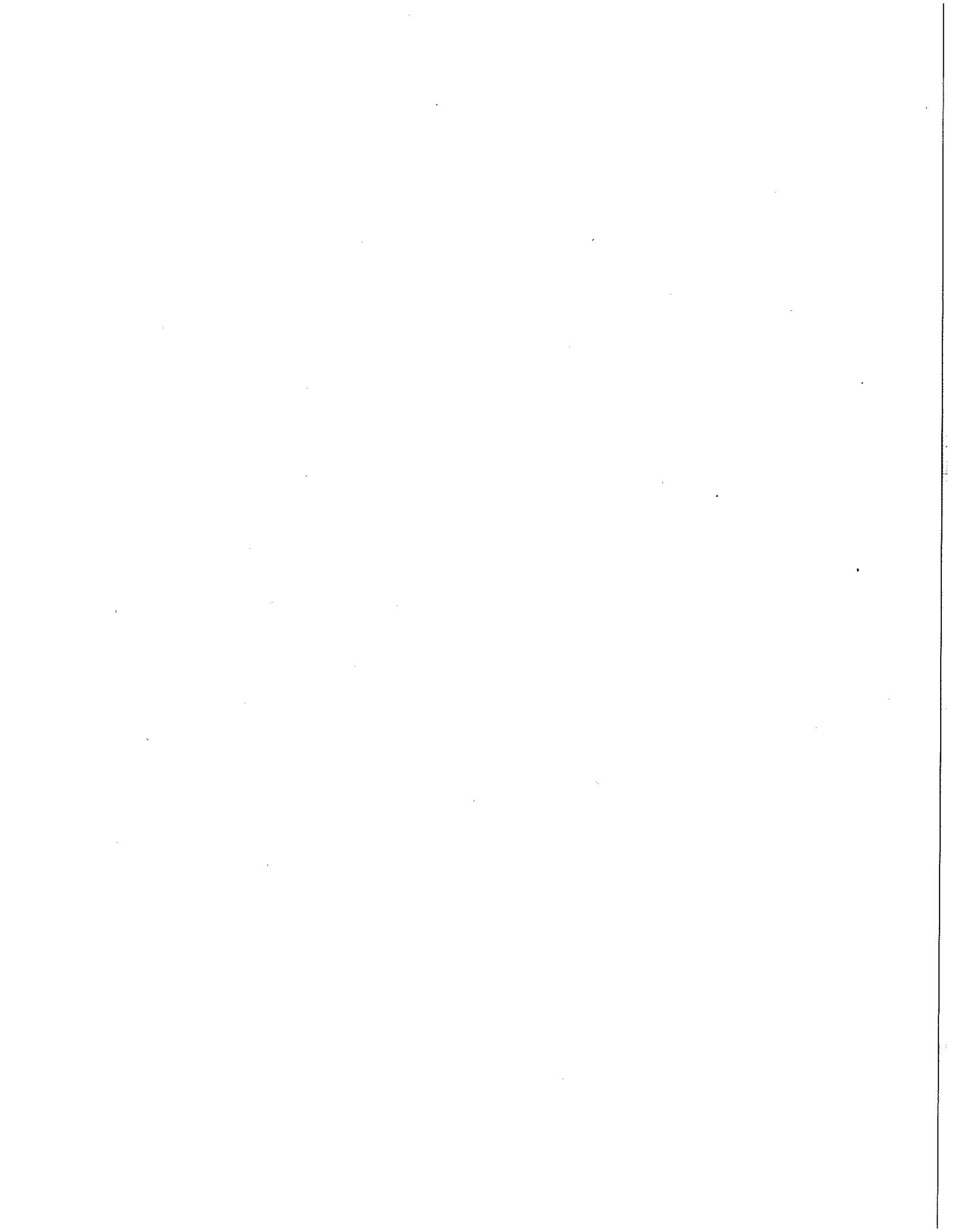
The Commission of Opticians was reviewed by the Legislative Program Review and Investigations Committee in compliance with the Sunset mandate of P.A. 77-614. The nine criteria outlined in that act (Title 2c, Chapter 28) provided the basis upon which committee decisions were made. These criteria required 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:

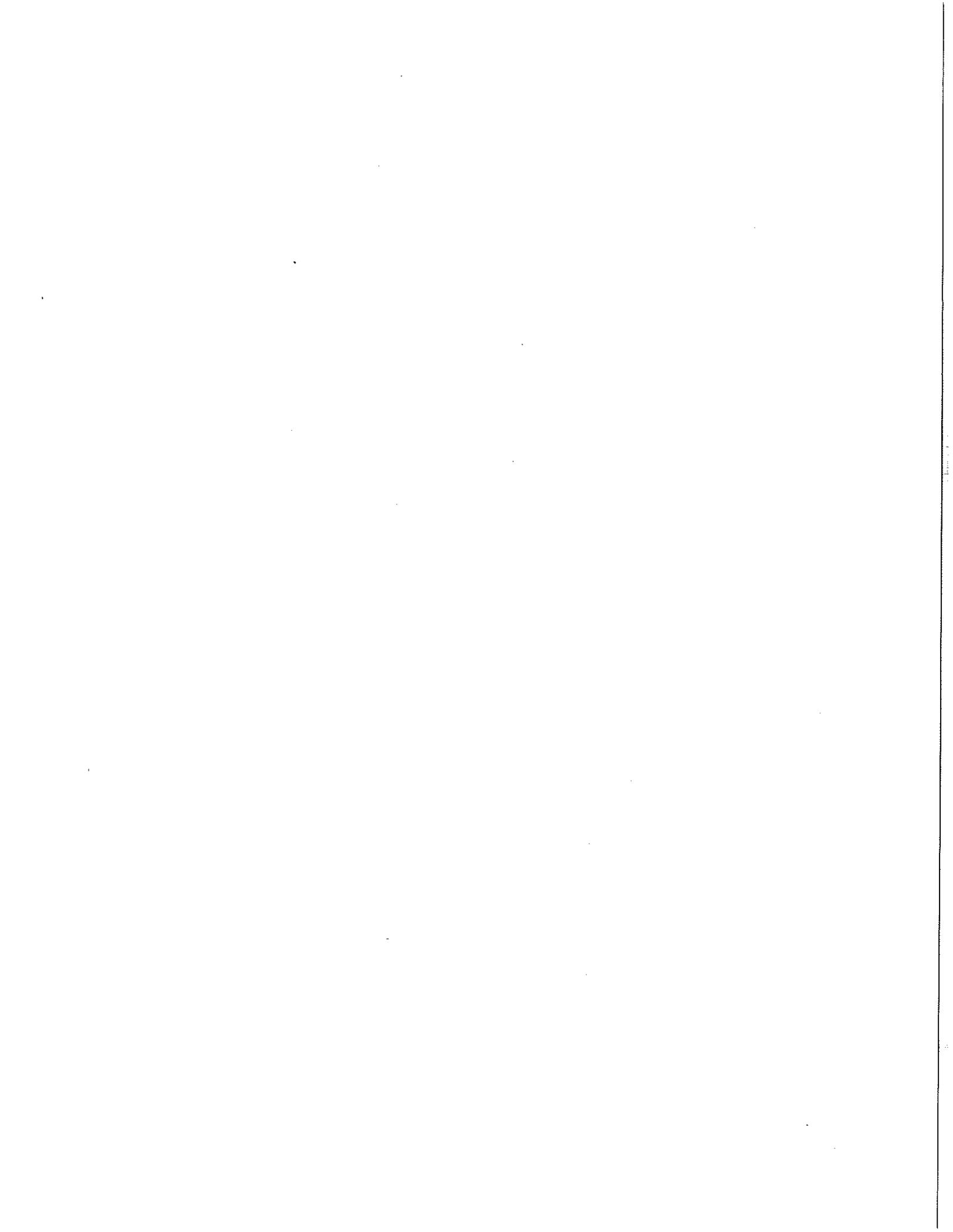
- Description of entity reviewed;
- Recommendations and discussion for entity reviewed; and
- Entity survey and analysis.



SECTION I

DESCRIPTION OF ENTITY

Definition and Background
Structure
Functions
Entry Requirements



Definition and Background

Opticianry includes the fabricating and manufacturing of eyeglass frames and lenses; and the molding, fitting, and adjusting of ophthalmic products to the human eye.

Opticians provide a variety of services which, if improperly performed, could result in financial or physical harm. To protect the public from the consequences of incompetence and malfeasance, the state requires licensure and registration of individuals and establishments.

Connecticut, the first state to regulate opticianry, has regulated the profession since 1935. The original composition of the commission was changed through the Executive Reorganization Act (P.A. 77-614) to include public members.

Currently, the commission holds licenses for 780 individuals and 2,409 businesses.

Structure

The commission consists of five members appointed by the Governor. Three members must be licensed opticians having at least ten years practical experience in this state and actively engaged as opticians. Two are public members. At least two commissioners shall be owners of optical establishments, stores, shops, or offices.

Functions

The commission enforces minimum standards by:

- prescribing (with the consent of the Commissioner of Health), administering and grading annual licensing exams for individuals;
- judging applicants' qualifications for licensure;
- certifying assistants and registering all apprentices;
- receive and screen complaints; and
- adjudicate hearings and impose disciplinary sanctions.

Requirements for Licensure

Licenses are issued for two types of individual opticians: mechanical and licensed. A mechanical optician must:

- be at least 18 years of age;
- be of good moral character;
- be free of communicable disease;
- have served as a registered apprentice for at least four calendar years in full time employment under the supervision of a licensed optician or a mechanical optician in an optical establishment, office, department store, shop, or laboratory where prescriptions for optical glasses have been filled; and
- have acquired experience in the production and reproduction of ophthalmic lenses, and mounting them to supporting materials. One year of this experience must have been acquired within the five years preceding the date of the application.

Those wishing to receive opticians' licenses must have at least one year of experience under the supervision of a licensed optician in the fitting of ophthalmic lenses to the eyes by mechanical manipulation, molding technique and related functions in addition to meeting the requirements of a mechanical optician.

Assistant opticians are certified through application and must have a minimum three years practical experience assisting in all the knowledge and skill areas required of licensed opticians.

Assistant mechanical opticians are also certified through application and must have at least three years practical experience in the knowledge and skill areas required of mechanical opticians.

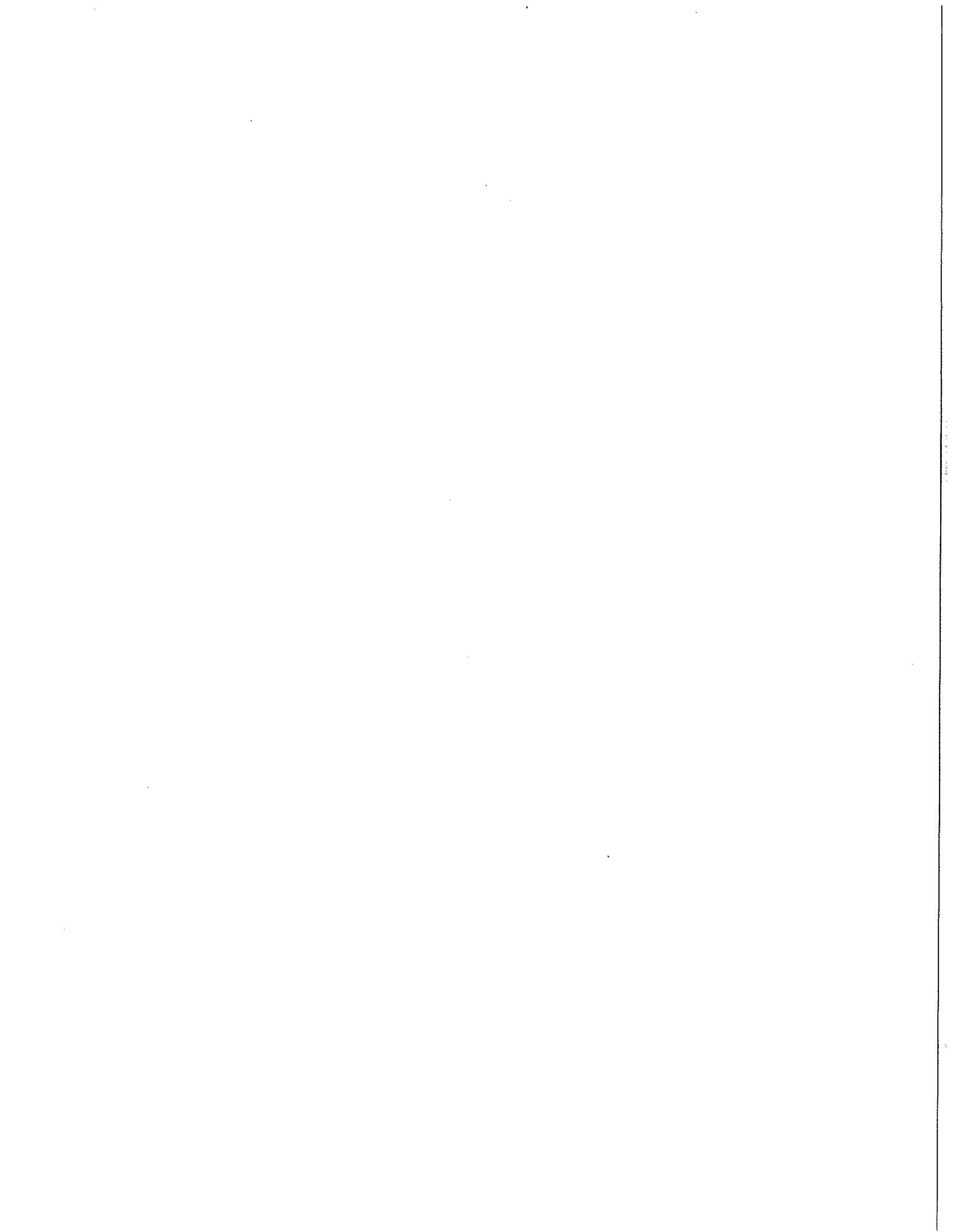
Each person entering into employment in an optical establishment for the purpose of obtaining the practical experience and skill required to become an optician may be registered as an apprentice through application.

Optical establishments are licensed through application, and fall into the following categories:

- Optical License Selling Permit - grants permission to sell retail optical devices and instruments from given formulas and to make and dispense reproductions of the same in an optical establishment owned and managed by a licensed optician, or where the optical department is under the supervision of a licensed optician;
- Optical Processing Permit - grants permission to process optical glasses and instruments from given formulas and make reproductions of same in an optical establishment owned or under the control of a mechanical optician or licensed optician;
- Optical Retail Vendor Permit - granted to non-optical establishments that sell optical merchandise as specified by the vendor exclusive of the privileges to: fill prescriptions or sell optical glasses and instruments made from given formulas, provide or reproduce optical glasses, adjust or bend frames, or perform services limited to opticians; and
- Optical License Permit - grants permission to any optical establishment under the personal and direct supervision of a licensed optician to sell, dispense, or supply to the ultimate wearer optical aids to vision instruments, appliances, eyeglasses, spectacles, and other kindred products.

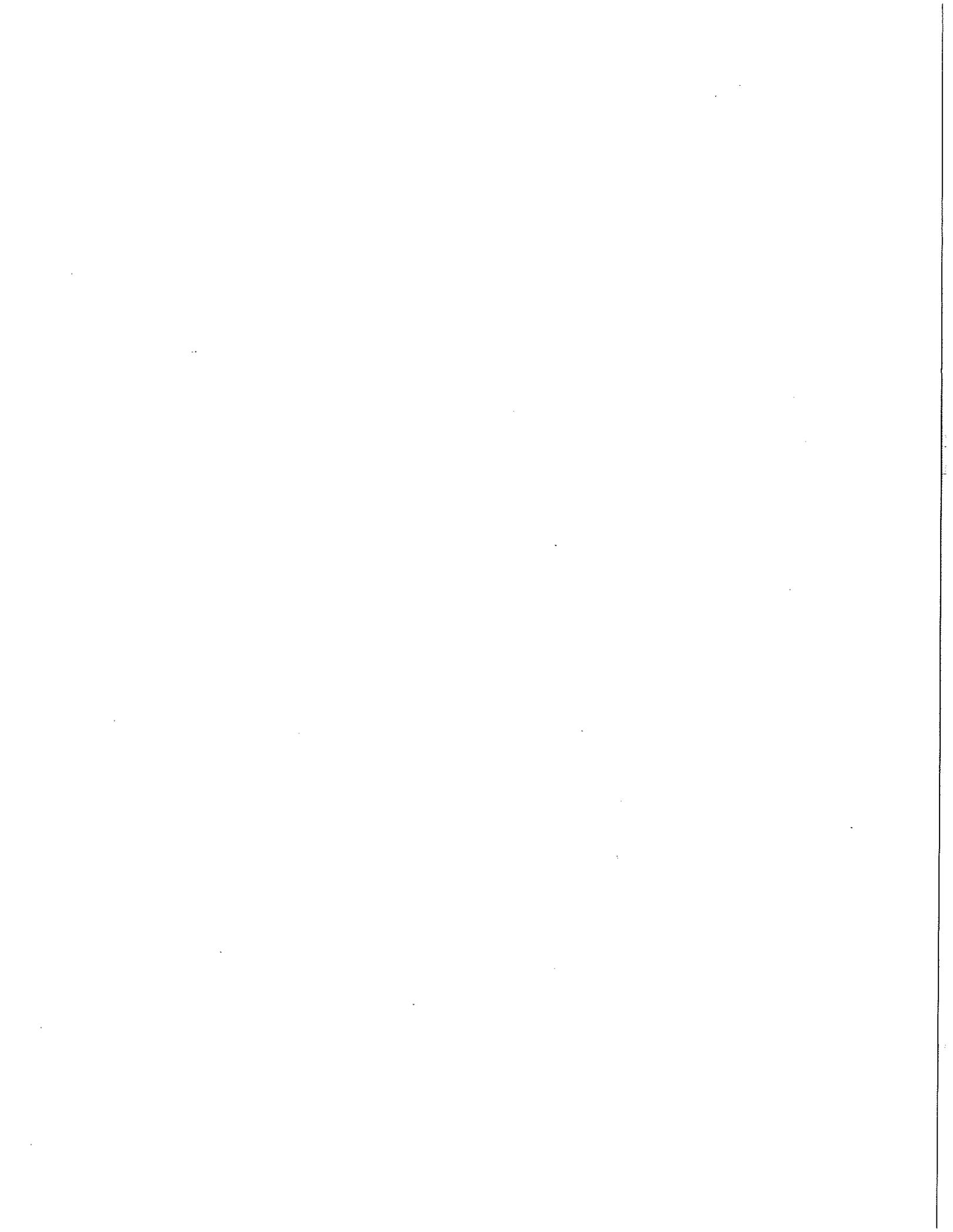
Initial and renewal fees are as follows:

	<u>Initial</u>	<u>Renewal</u>
Licensed Optician	\$50.00	\$30.00
Mechanical Optician	40.00	20.00
Assistant Licensed Optician	20.00	10.00
Assistant Mechanical Optician	20.00	10.00
Apprentice	5.00	5.00



SECTION II

RECOMMENDATIONS AND DISCUSSION



Recommendations for the Regulation
of Opticianry (Chapter 381)

1. Continue licensure of "Licensed Opticians."

The overriding majority of activities and tasks performed by the licensed optician do not pose any threat to the public health and safety. Opticians do, however, fit contact lenses and prosthetic devices (false eyes). These two tasks, if improperly done, can impair vision, create infection and cause discomfort.

2. Terminate licensure and registration of Mechanical Opticians, Assistant Licensed Opticians, Assistant Mechanical Opticians and Apprentices.

None of these categories of professionals performs any tasks or activities which pose a threat to the public health and safety. None is directly involved in the fitting of contact lenses nor prosthetic devices to the public.

3. Register Apprentices.

Entry into this profession is exclusively apprenticeship-based in Connecticut. Given this structure, it is essential that some provision be made for recognizing, measuring, assessing and controlling the individual apprenticing to become an optician. Registration will insure that the apprentice receives proper recognition and credit for his or her period of training.

4. Terminate the Commission on Opticians.

The Legislative Program Review and Investigations Committee has found that the functions performed by the Commission can be assumed by the Department of Consumer Protection. Distinct boards and commissions have been retained for those healing arts and practices in which professional peer review is essential in the entry and enforcement aspects of regulation. Given the mechanical nature of this profession, the Department of Consumer Protection is well suited and adapted to oversee professionals within the industry.

5. Transfer regulatory responsibility to the Department of Consumer Protection.

Because the practice of opticianry is heavily impacted by business practices issues, the Legislative Program Review and Investigations

Committee recommends that the Department of Consumer Protection be the regulatory agent for this industry. Testimony by members of the profession and its present commission also suggested shifting the regulatory responsibility from the Department of Health Services to the Department of Consumer Protection.

6. Register all optical establishments, offices, departments and stores that sell or dispense to the ultimate wearer lenses and supporting materials produced or reproduced to specific prescriptions.

The Legislative Program Review and Investigations Committee contends that regulation of a particular industry or business would be meaningless without an appropriate enforcement mechanism. Registration of a business provides this enforcement leverage in that a firm could be closed for transgressions through the lifting of its registration. This form of regulation is limited to those businesses involved in the prescription, fitting and dispensing of prosthetic devices, eyeglasses or contact lenses to the wearer.

7. Terminate regulation of the optical processing component of the industry. (Sec. 20-151)

This segment of the industry is involved only in the mechanical or process aspects. It does not fit the ophthalmic devices (eyeglasses, contact lenses, false eyes) to the ultimate wearer. These firms or laboratories only prepare the lenses from specific prescriptions and the process involves no independent judgment based upon the final consumer. Members of the profession have conceded there is no need to continue regulation of this component of the industry.

8. Terminate regulation of all optical retail venders covered under Section 20-152 of the Connecticut General Statutes.

This section of the law regulates those commercial establishments which sell non-prescription optics such as sunglasses, binoculars, safety glasses and the like. Under the current regulatory system, these businesses sell their optics under a permit arrangement and are subject to health law regulations. This is purely a mercantile activity posing no threat whatsoever to the public health and safety.

9. The Department of Consumer Protection should periodically review and update standards impacting the quality and accuracy of prescription ophthalmic lenses dispensed to the wearer.

Adherence to these standards should be the primary grounds upon which disciplinary actions against individuals and establishments are based.

This notion is central to the recommendations of the Legislative Program Review and Investigations Committee pertaining to opticianry. It is the committee's position that regulation of this industry should focus on product quality and consumer protection issues (business practices).

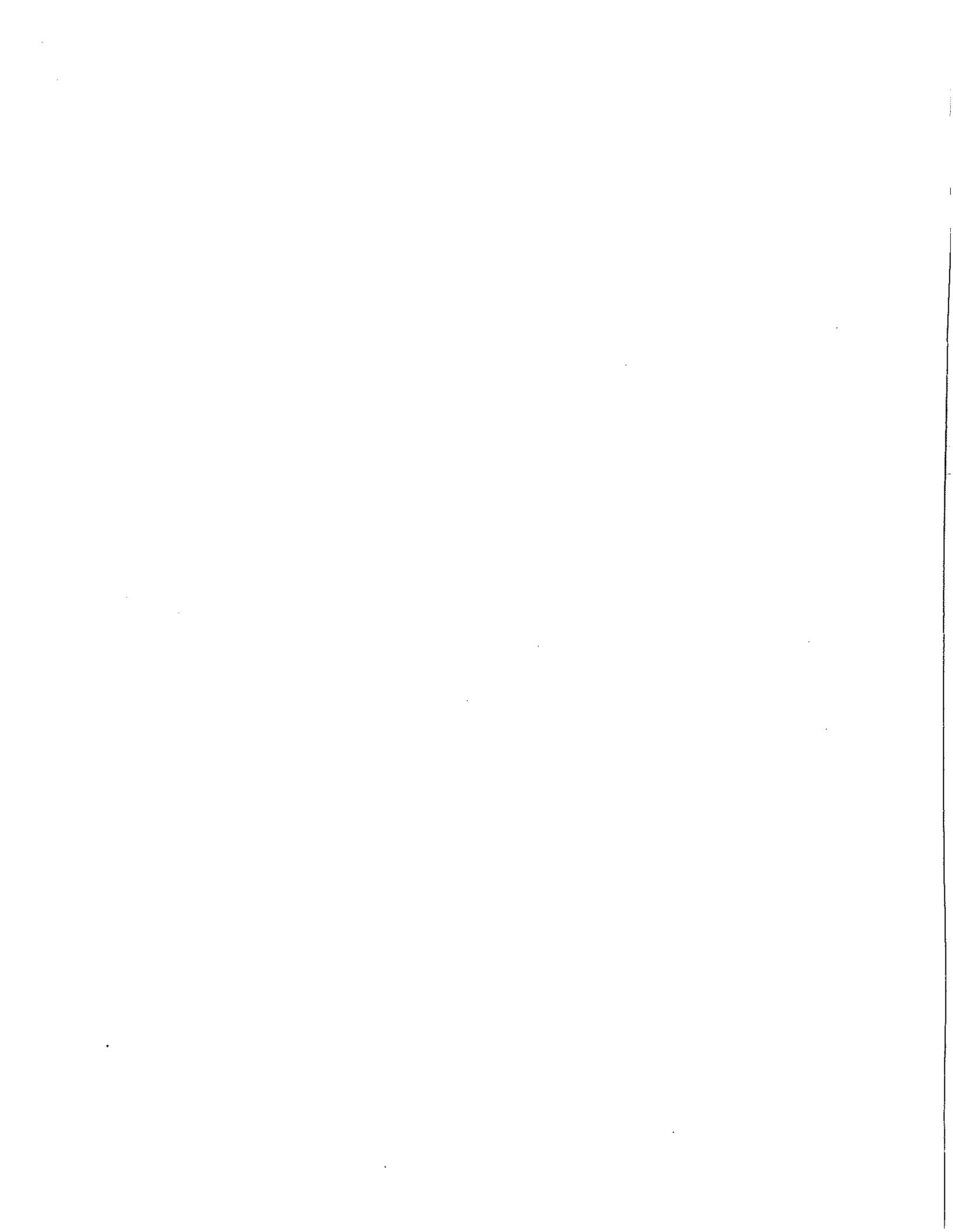
10. The Department of Consumer Protection should consider the proposed Model Legislation in the regulation of opticianry.

With the recommendation that the regulatory authority of opticianry be changed from the Department of Health Services to the Department of Consumer Protection, the recommended processes proposed in the Model Legislation do not specifically apply in this case. However, the spirit and intent of those Model Legislation sections dealing with business practices, due process, technical expertise in policy-making, entry requirements, renewal standards, complaint processing and disciplinary sanctions are recommended to the Department of Consumer Protection to be considered for inclusion in the regulatory process.

11. Repeal Specified Business Practices.

The Committee found that regulation of certain business practices and statutory restrictions on business practices were not relevant to ensuring minimum standards of professional performance and competence. In short, many codified business practice restrictions have no bearing on the quality of professional services provided. Given this finding, the Committee recommends that the following statutes and regulations be repealed:

- Sec. 20-150 - Restricts where optical goods may be sold;
- Sec. 20-141-19 - Concerns association with establishments; and
- Sec. 20-141-20 - Concerns association with establishments.



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 Commission of Opticians. 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.

...the Commission of Opticians receives and deliberates over consumer complaints. Many ophthalmic consumers are protected from shoddy workmanship, inferior materials, and unethical business practices.

The present members of this Commission are in total agreement, that terminating the General Statutes, Rules and Regulations governing opticians in Connecticut during this period of advancing technology, could be tantamount to utter confusion and chaos.

The focus of the commission's commentary is on the business practices issues, rather than the potential harm to the public health and safety. Functions performed by opticians include the grinding, fitting and preparation of eyeglasses; fitting, grinding and dispensing of contact lenses; and the fitting and preparation of prosthetic devices (false eyes).

Data assembled by the committee and staff strongly indicate there exists no clear and present danger to the public health and safety in the preparation, fitting and dispensing of eyeglasses. There does exist, however, a potential danger to the public in the improper fitting and dispensing of contact lenses and prosthetic devices. A poorly fit contact lense can cause corneal abrasion or restrict the oxygen-carrying tear flow to the surface of the eye. In the extreme, this situation would create an abnormal growth of blood vessels within the eye and could ultimately affect vision. Similarly, an improperly fit or unsanitary prosthetic device has the potential for infection and/or irritation to the wearer.

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

Chapter 381 of the General Statutes adopted in 1935, are the oldest set of laws governing opticians in the United States. Their adoption set a precedence by which eyeglasses, optical instruments and other ophthalmic appliances are mathematically and scientifically fabricated and fitted to the human eye.

Professional, technical expertise governing the fitting of contact lenses and prosthetic devices notwithstanding, the vast majority of statutes and regulations either fall under the rubric of business practices and/or are not crucial to protecting the public health and safety.

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.

Registration is only understood to open up a line of communications between the buyer, seller, and governmental regulating body. The Commission is the instrument of reproach whereby consumers are protected and sellers are admonished for improprieties. Certification is recommended for those persons, in states where appropriate laws do not exist.

Committee and staff regard continuation of licensure for the fitting and dispensing of contact lenses and prosthetic devices as necessary to insure adequate protection for the public. Statutes and regulations governing business practices issues do not impact public health and safety.

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.

There is no evidence to support or substantiate that licensing laws, or regulatory boards have a tendency of effectuating higher prices, although there is a segment of the industry that makes this claim...

The Commission of Opticians encourages price advertising, enabling the buyers to be made aware of all the necessary information pertinent to his or her personal needs, before consummating the final sale.

Studies have indicated that tight regulation of a particular occupation has a tendency to restrict entry into the profession and create an oligopolistic market with attending higher prices to the consumer.

Committee and staff concur with the commission's position on advertising.

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.

This Commission is unaware of any disparity in prices brought about by its laws and regulations. However, if advertising is responsible for marginally raising the prices, this Commission can only conclude that any additional price increase is justifiable and can only attribute to better disclosure which will eventually help to protect the consumer.

Committee and staff were unable to assemble any specific data to suggest that prices for prescription optics in Connecticut were either higher or lower as a result of the regulatory process. Similarly, there exists no firm data at this point to suggest that advertising has contributed to marginally higher prices.

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.

Duplication could be eliminated to assure expediency and lessen confusion. Section 20-162 of the General Statutes has undoubtedly caused the greatest amount of controversy ... (by) exempt(ing) physicians and surgeons (from) the laws (and) allowing them to practice opticianry without training, examination or licensing. This Commission generates many dollars for the general fund, while only a small portion is retained for administrative purposes only.

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

Obviously, the reorganization of government will have some adverse effects on the operational aspect of the Commission of Opticians. For years an autonomous body, free to wield the power of authority, now must yield to the advice of the Commissioner of Health.

To reiterate an earlier statement, the most profound impingements upon the General Statutes governing opticians, has been the exemption of physicians and ophthalmologists licensed to practice under the provision of Chapter 380.

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

Entry into the optical profession is relatively simple. All the trainee has to do is... (submit) an application with the necessary fee. Apprenticeship commences with the issuance of his or her apprentice registration from the Commission's office. The remaining procedures are spelled out in the General Statutes and Handbook of Rules and Regulations.

A weakness is that trainees are not adequately screened originally for academic abilities, (and) they ultimately fall short on the necessary knowledge needed to pass a

written examination. The trainee is capable of performing the practical and mechanical aspects of the art, but is not capable of comprehending the academic aspects.

(For out-of-state practitioners) the Commission does not have any rules on reciprocity. Each applicant is handled individually, and independent decisions are made according to each person's qualifications. The Commission prefers it this way, thereby insuring qualified candidates for licensure.

Entry into the profession is entirely apprenticeship-based. No allowance is made for technical training in an academic environment, such as an occupational school. It can be argued that intensive training in an academic setting could shorten the period between initial entry and eligibility for licensure exam without compromising the candidate's ability to perform the technical and mechanical aspects of the trade.

The Commission has suggested that additional studies in non-technical areas such as physics, chemistry, anatomy and physiology are necessary to "analyze and evaluate a written prescription." Given the mechanical nature of opticianry, this is a debatable point.

The absence of rules on reciprocity and precise standards for admitting out-of-state practitioners creates an environment for abuse at the worse and inconsistency and inequity at the least in admitting this particular group to practice in Connecticut.

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?

The optical industry is open to any individual, regardless of race, creed, or color. The Commission of Opticians has not knowingly or wantonly precluded any individual from entering or learning the Profession of Opticianry.

Applicants for licensure are assigned numbers, rather than names, to ensure equality and freedom from discrimination. Women are entering the field in greater numbers and at the last examination, twenty-five percent of those who took the test were female. Minorities are of a lesser amount, but the Commission is aware that several establishments do gamely employ minorities.

The committee has found no data that indicate a pattern of discrimination against any group within the application or licensing process on an industry-wide basis.

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

This Commission has made tireless efforts over the past five years in the introduction of legislation to improve and expand it's activities in the area of public protection:

1. More Inspectors
2. An Executive Secretary
3. Continuing Education
4. Establish Ophthalmic Courses in Community Colleges
5. Exempt Viet Nam War Veterans from General Statutes
6. Adopted American National Standards of Quality
7. Elimination of Glazed Goods from Dime Stores
8. Elimination of Unqualified Personnel Handling Eyeglasses in Doctor's Offices
9. Control Safety Eyewear Distributed in Factories
10. Amendments to Somers Prison Law
11. Establish a Training Facility for Inmates
12. Regulations on the Fitting of Contact Lenses

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

The Commission of Opticians always felt that laymen should be members of this Commission, thereby enabling them to participate in the formulation of laws, rules and regulations and to oversee the Commission's activities. The Commission is happy that the reorganization of government has sought fit to make this a reality. Meetings have always been open to the public and critical remarks are welcome. We have worked in conjunction with the Connecticut State Opticians Association to disseminate necessary information to the public through radio, television and mail, thereby alerting them of impending legislation and other proposals.

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

Probably the biggest responsibility of the Commission of Opticians is to resolve consumer complaints. We encourage unhappy consumers to report in writing (by law) all infractions which they feel have been perpetrated upon them.

Telephone calls exceed formal written complaints, therefore, many of the problems are corrected by direct telephone conversation. The Better Business Bureau and the Department of Consumer Protection have been very helpful in assisting this Commission with consumer complaints.

Since the reorganization of government, the Health Department has developed a central office to handle medical quality service complaints. Each complaint is received by the Health Department, processed to each department for investigation and follow-up. The Health Department is now a monitor to assure that all complaints are handled properly.

Approximately 275 complaints were filed with the Commission during 1978, of which 200 were by telephone. Of the total, 250 or 91 per cent were investigated and formal hearings held for two. Fifty-one disciplinary actions were taken against opticians during this period.

As noted above, the Commission received all complaints filed prior to the Executive Reorganization Act. Now, of course, complaints are processed by the Department of Health Services as is the case with other boards and commissions regulated by DOHS.

Recommendations contained elsewhere in this report are designed to refine and rationalize the complaint process for all health related activities covered by this sequence of Sunset Review.

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

The Commission of Opticians take exception to this question... This Commission would like to feel that the consumer is and always was, the reason why the Commission was created. Section 20-139, clearly defines the purpose as to why the General Statutes were originally promulgated.

In order to better serve the public, the Commission has endeavored to upgrade the qualifications and image of the local licensed opticians so as to insure consumer better services.



