

"HAWAII ADMINISTRATIVE RULES

TITLE 16

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

CHAPTER 91

OPTICIANS

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### SUBCHAPTER 1

#### GENERAL PROVISIONS

§16-91-1 Objective. This chapter is intended to clarify and implement chapter 458, Hawaii Revised Statutes, to the end that the provisions thereunder may be best effectuated and the public interest most effectively served. [Eff 7/2/64; am and ren §16-91-1, 7/2/81; am and comp 4/29/85; comp 5/28/87; comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §458-3)

§16-91-2 Definitions. As used in this chapter:

"Advertising" means any printed or visual communication which includes but is not limited to advertisements contained in newspapers, telephone directories, pamphlets, direct public mailings of books or periodicals, television, and radio communications.

"Board" means the board of dispensing opticians.

"Certificate holder" means the holder of a certificate of dispensing optician.

"Certificate of dispensing optician" means a document issued by the board which authorizes a firm, including a sole proprietorship, to engage in the business of a dispensing optician.

"Certificate of licensure" means a certificate issued by the department of commerce and consumer affairs to an individual licensed as a dispensing optician by the board.

"Direct personal supervision" means a licensee shall be available for consultation and referral to the individual who is receiving the supervision.

"Full-time" means principal occupation consisting of at least thirty hours a week.

"License identification card" means a pocket identification card issued by the department of commerce and consumer affairs to an individual licensed as a dispensing optician by the board.

"Licensee" means the holder of a license identification card and certificate of licensure.

"Personal supervision of an ophthalmologist or optometrist" means the dispensing optician shall fit or duplicate contact lenses or artificial eyes upon the written order of the prescribing ophthalmologist or optometrist and, refer the intended wearer back to the prescribing ophthalmologist or optometrist to ensure that the client has received contact lenses of the proper fit and prescription. [Eff 7/2/64; am and ren §16-91-2, 7/2/81; am and comp 4/29/85; am and comp 5/28/87; am and comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §§458-7, 458-13)

§16-91-3 Notification and filing of names, addresses, and changes. (a) Every certificate holder and licensee shall file and maintain a current mailing address with the board and shall immediately notify the board, in writing, within thirty days of any and all changes thereto.

(b) Every certificate holder shall file the name and certificate number of the licensee in charge of and responsible for the acts of all employees at each place of business and shall notify the board in writing of any and all changes, within thirty days of such change. Every certificate holder which is a partnership, corporation, or association, shall also file with the board the names and addresses of its partners, officers, and directors, as the case may be, and shall notify the board in writing of any and all changes within thirty days of such change.

(c) Every certificate holder shall file the names and experience of each person employed by a certificate holder, who, in the course of employment, takes facial measurements, fits or adjusts lenses or frames, or duplicates lenses, and shall notify the board in writing of any and all changes within thirty days of such change. [Eff 7/2/64; am and ren §16-91-3, 7/2/81; am and comp 4/29/85; am and

comp 5/28/87; am and comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §§458-6.5, 458-6.8, 458-7)

§16-91-4 Display of certificate of licensure and certificate of dispensing optician; license identification card. (a) The certificate of licensure shall at all times be conspicuously displayed in the licensee's place of business and a current license identification card shall be in the licensee's possession.

(b) The certificate of dispensing optician shall at all times be conspicuously displayed in the place of business for which the certificate was issued. [Eff 7/2/64; am and ren §16-91-4, 7/2/81; am and comp 4/29/85; comp 5/28/87; am and comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §§458-6.5, 458-6.8)

§16-91-5 Renewal of certificates and license identification cards. Biennial renewal fees paid by mail shall be considered as paid when due if the envelope bears a postmark of June 30 or earlier. [Eff 7/2/64; am and ren §16-91-5, 7/2/81; am and comp 4/29/85; comp 5/28/87; am and comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §458-8)

§16-91-6 Dispensing contact lenses; notice. (a) Upon dispensing contact lenses, the dispensing optician shall give the client a written notice on a board approved form which instructs the client to return to the prescribing ophthalmologist or optometrist to ensure that the client has received contact lenses of the proper fit and prescription.

(b) The written notice shall instruct the client to return to the prescribing ophthalmologist or optometrist for an examination as to the prescription and fit of the contact lenses and receipt of such written notice shall be acknowledged in writing by the client; provided that such written acknowledgment shall not be required when the contact lenses are delivered to the prescribing ophthalmologist or optometrist pursuant to subsection (c)(1). The notice shall be written clearly and coherently using words with common or ordinary meanings, shall be printed using eight-point or larger type with at least one point of leading between lines, and shall use paper and ink of sufficient quality and contrast to be easily legible.

(c) Nothing in this chapter shall be construed to prohibit a dispensing optician from filling a prescription for contact lenses issued by an ophthalmologist or optometrist licensed in another state, territory, country, or the District of Columbia provided that:

- (1) The dispensing optician either adapts, fits, or adjusts the contact lenses for the intended wearer while the wearer is physically present or delivers the lenses to the prescribing ophthalmologist or optometrist for such adapting, fitting, or adjustment;
- (2) The dispensing optician complies with the requirements set forth in subsections (a) and (b);
- (3) Where the intended wearer is physically present, the dispensing optician shall offer to refer the intended wearer to an ophthalmologist or optometrist located on that island; and
- (4) No action is taken by the dispensing optician as a means of evading the licensing requirements of any profession. [Eff 7/2/64; am and ren §16-91-6, 7/2/81; am and comp 4/29/85; am and comp 5/28/87; am and comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §458-12.5)

## SUBCHAPTER 2

### APPLICATIONS

§16-91-10 Forms and instructions. An application filed with the board shall be prepared in accord with and contain the information called for in the application form provided by the board or any instructions which may be required by the board with respect to the filing. The following forms are currently in use by the board:

- (1) Application for examination and certificate of licensure;
- (2) Application for reexamination;
- (3) Application for reinstatement of certificate of licensure; and
- (4) Application for a certificate of dispensing optician. [Eff 7/2/64; am and ren §16-91-10, 7/2/81; am and comp 4/29/85; am and comp 5/28/87; am and comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §§458-6.5, 458-6.8)

§16-91-11 Application for examination and certificate of licensure. (a) An application for examination shall be filed at least forty-five days before the examination which is scheduled by the board at least two times each year. The applicant shall submit to the board the application for examination and certificate of licensure in a form approved by the board, which shall include the applicant's experience and signature, and shall be accompanied by the required application and examination fees.

(b) The executive secretary of the board shall determine the sufficiency of the application for examination and certificate of licensure and of the preliminary qualification of the applicant for admission to the examination.

(c) In order to apply for a certificate of licensure, an individual must have completed one of the following:

- (1) The equivalent of a high school education and three years of full-time practical and mechanical optical work experience as a opticianry apprentice;
- (2) Graduation from an opticianry course accredited by the Commission on Opticianry Accreditation; or
- (3) Previous licensure in another jurisdiction which required successful completion of the required national examinations described in subsection (e).

(d) To prove an applicant's work experience as required by subsection (c)(1), an applicant shall submit with the application for examination and certificate of licensure, notarized statements signed by a dispensing optician, ophthalmologist, or optometrist attesting that the applicant has had at least three years of full-time practical and mechanical optical work experience as an opticianry apprentice, including experience with eyeglasses and contact lenses or its equivalent under the direct personal supervision of a dispensing optician, ophthalmologist, or optometrist.

(e) Before being issued a certificate of licensure, an individual must pass the National Opticianry Competency Examination (NOCE), the National Contact Lens Registry Examination (NCLRE), and a practical examination. An individual who passes all three of these examinations shall be licensed as a dispensing optician. If the applicant fails to pass any one of the examinations, the individual shall not be licensed as a dispensing optician. Any applicant who has previously passed both the NOCE in another jurisdiction and the NCLRE shall not be required to retake these examinations and shall be issued a license upon successful completion of the practical examination.

(f) To qualify for admission to the practical examination covered in section 16-91-18, an applicant shall have successfully passed both the NOCE and the NCLRE.

(g) To prove that an applicant has previously passed both the NOCE and NCLRE, an applicant shall submit with the application for examination and certificate of licensure, verification of having successfully passed the NOCE and NCLRE. The passing score for the NOCE and NCLRE shall be that established by the NOCE and NCLRE. [Eff 7/2/64; am and ren §16-91-11, 7/2/81; am and comp 4/29/85; comp 5/28/87; am and comp 7/24/89; am and comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §458-6.5)

§16-91-12 Application for reexamination. An application for reexamination shall be filed at least forty-five days before the examination and shall be accompanied by the required fee. [Eff 7/2/64; am and ren §16-91-12, 7/2/81; am and comp 4/29/85; comp 5/28/87; comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §§458-3, 458-6.5)

§16-91-13 Application for certificate of dispensing optician. (a) Before engaging in the business of dispensing optician, a firm shall first be issued a certificate of dispensing optician.

(b) An application for certificate of dispensing optician shall be on a form prescribed by the board and shall contain:

- (1) The name of the licensee who will be employed at the applicable business address; and
- (2) The name and experience of each person who will take facial measurements, fit or adjust lenses or frames, or duplicate lenses.

(c) The application shall bear the signature of the proprietor if the applicant is a sole proprietorship, partner if the applicant is a partnership, or a president or secretary if the applicant is a corporation, and shall contain the name under which the applicant proposes to do business and the business address. Separate applications shall be made for each place of business, and each application shall be accompanied by the application and registration fees. [Eff 7/2/64; am and ren §16-91-13, 7/2/81; am and comp 4/29/85; am and comp 5/28/87; am and comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §458-6.8)

§16-91-14 Issuance of certificate of licensure, license identification card, and certificate of dispensing optician. (a) A certificate of licensure and license identification card shall be issued upon satisfaction of the requirements of sections 16-91-3 and 16-91-11.

(b) A certificate of dispensing optician shall be issued upon satisfaction of the requirements of sections 16-91-3 and 16-91-13. Upon approval of the application for certificate of dispensing optician and payment of a certificate fee, the board shall issue the certificate of dispensing optician within sixty days. A separate certificate of dispensing optician shall be required for each address where the business of dispensing optician is being conducted.

(c) No certificate of dispensing optician shall be issued unless a licensee is to be employed at the place of business and the licensee is in charge of and responsible for the acts of all employees at the place of business. No certificate holder shall cause any person to take facial measurements, fit or adjust

lenses, or duplicate frames unless such persons are acting under the direct personal supervision of a licensee.

(d) The certificate of dispensing optician shall not be transferable.

(e) The executive secretary of the board may approve the issuance of certificates of licensure and of dispensing optician subject to the ratification of the board.

(f) The certificate of licensure shall be in full force and effect only as long as it is supported by a current license identification card. [Eff 7/2/64; am and ren §16-91-14, 7/2/81; am and comp 4/29/85; am and comp 5/28/87; am and comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §§458-1, 458-6.5, 458-6.8)

§16-91-15 Denial of certificate of licensure or certificate of dispensing optician. In the event an application for the issuance of a certificate of licensure or certificate of dispensing optician or for the reinstatement thereof is denied, the board shall notify the applicant by certified letter of the board's action which shall include a concise statement of the reasons therefor and a statement informing the applicant of the applicant's right to a hearing. [Eff 7/2/64; am and ren §16-91-15, 7/2/81; am and comp 4/29/85; comp 5/28/87; am and comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §§458-6.5, 458-6.8, 458-11)

§16-91-16 Demand for hearing. Any person whose application for a certificate of licensure or certificate of dispensing optician or whose application for the reinstatement of a certificate of licensure or certificate of dispensing optician has been denied by the board shall be entitled to a hearing after notice, provided that a demand for a hearing is filed with the board within sixty days of receipt of the letter informing the applicant of the denial of the application. [Eff 7/2/64; am and ren §16-91-16, 7/2/81; am and comp 4/29/85; comp 5/28/87; am and comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §458-10)

§16-91-17 Proceedings upon demand for hearing. If a demand for hearing is filed within the time prescribed, the board shall order a hearing upon notice, which shall be conducted pursuant to chapter 91, HRS, and chapter 16-201 relating to contested cases. [Eff 7/2/64; am and ren §16-91-17, 7/2/81; am and comp 4/29/85; am and comp 5/28/87; comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §458-10)



§16-91-18 Repealed. [R 7/24/89]

§16-91-19 Practical and written laws and rules examinations. (a) An applicant shall attain a passing score in each of the following parts of the examination:

- (1) Laws and rules affecting dispensing opticians in Hawaii;
- (2) A practical examination in contact lenses; and
- (3) A practical examination in eye glasses.

(b) A grade of seventy-five points (75.00) or greater shall be a passing score for each part of the examination.

(c) An applicant may be reexamined any number of times and need only file a reexamination application accompanied by the required fee.

(d) An applicant who obtains a grade of seventy-five points (75.00) or greater in two of the three parts of the complete examination shall be required to take only that part in which the applicant failed to obtain a grade of seventy-five points (75.00) or greater.

(e) An applicant who is required to take only one part of the examination shall take the reexamination at the next scheduled examination but may postpone the reexamination no more than once for reasons of:

- (1) Health, as certified by a medical doctor;
- (2) Military service on extended active duty in the armed forces of the United States; or
- (3) Other good and valid causes, as determined and approved by the board.

(f) An applicant who fails to obtain a passing score of seventy-five points (75.00) or greater in the part or parts being retaken shall be required to take all three parts of the examination and the foregoing subsections shall apply. [Eff 7/2/64; am and ren §16-91-19, 7/2/81; am and comp 4/29/85; am and comp 5/28/87; am and comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §§458-3, 458-6.5)

§16-91-20 Repealed. [R 4/29/85]

### SUBCHAPTER 3

### ADVERTISEMENT

§16-91-24 Repealed. [4/29/85]

§16-91-25 Repealed. [4/29/85]

§16-91-26 Repealed. [R 4/29/85]

§16-91-27 Repealed. [R 4/29/85]

§16-91-28 Repealed. [R 4/29/85]

§16-91-29 Repealed. [R 4/29/85]

§16-91-30 Repealed. [R 4/29/85]

§16-91-31 Repealed. [R 4/29/85]

§16-91-32 Advertising practices. The following advertising practices are unlawful:

- (1) To allow an unregistered person to advertise;
- (2) To allow an unregistered firm or dba of the dispensing optician to advertise; and
- (3) Failure to state that the fitting and duplication of contact lenses and artificial eyes are done upon written prescription and personal supervision of an ophthalmologist or optometrist. [Eff and comp 4/29/85; comp 5/28/87; comp 7/24/89; am and comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §458-13)

#### SUBCHAPTER 4

§16-91-35 Repealed. [R 4/29/85]

## SUBCHAPTER 5

### PRACTICE AND PROCEDURE

§16-91-39 Administrative practice and procedure. The rules of practice and procedure for dispensing opticians shall be as provided in chapter 16-201, the rules of practice and procedure of the department of commerce and consumer affairs which are incorporated by reference and made a part of this chapter. [Eff and comp 5/28/87; comp 7/24/89; comp 5/23/92] (Auth: HRS §§91-2, 458-3) (Imp: HRS §§91-2, 458-10)

## SUBCHAPTER 6

### ORAL TESTIMONY

§16-91-43 Oral testimony. (a) The board shall accept oral testimony on any item which is on the agenda, provided that the testimony shall be subject to the following conditions:

- (1) Each person seeking to present oral testimony shall so notify the board not later than forty-eight hours before the meeting, and at that time shall state the item on which testimony is to be presented;
  - (2) The board may request that any person providing oral testimony submit the remarks, or a summary of the remarks, in writing to the board;
  - (3) The board may rearrange the items on the agenda for the purpose of providing for the most efficient and convenient presentation of oral testimony;
  - (4) Persons presenting oral testimony shall, at the beginning of the testimony, identify themselves and the organization, if any, that they represent;
  - (5) The board may limit oral testimony to a specified time period but in no case shall the period be less than five minutes, and the person testifying shall be informed before the commencement of the testimony of the time constraints to be imposed; and
  - (6) The board may refuse to hear any testimony which is irrelevant, immaterial, or unduly repetitious to the agenda item on which it is presented.
- (b) Nothing in this section shall require the board to hear or receive any oral or documentary evidence from a person on any matter which is the

subject of another pending proceeding subject to the hearings relief, declaratory relief, or rule relief provisions of chapter 16-201.

(c) Nothing in this section shall prevent the board from soliciting oral remarks from persons present at the meeting or from inviting persons to make presentations to the board on any particular matter on the board's agenda. [Eff and comp 5/28/87; am and comp 7/24/89; comp 5/23/92] (Auth: HRS §458-3) (Imp: HRS §92-3, 458-3)

Amendments to and compilation of chapter 16-91, Hawaii Administrative Rules, on the Summary Page dated March 17, 1992, were adopted on March 17, 1992, following a public hearing held on March 17, 1992, after public notices were given in the Honolulu Star-Bulletin, Honolulu Advertiser, West Hawaii Today, Hawaii Tribune Herald, and Maui News on February 9, 1992, and Kauai Times on February 11, 1992.

They shall take effect ten days after filing with the Office of the Lieutenant Governor.

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/s/ Doss K. Tannehill  
DOSS K. TANNEHILL, Chairman  
Board of Dispensing Opticians

APPROVED AS TO FORM: Date: 4/23/92

\_\_\_\_\_  
/s/ David A. Webber  
Deputy Attorney General

APPROVED AS TO FORM: Date: 5/5/92

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/s/ Robert A. Alm  
ROBERT A. ALM  
Director of Commerce and Consumer Affairs

APPROVED AS TO FORM: Date: 5/13/92

\_\_\_\_\_  
/s/ John Waihee  
JOHN WAIHEE  
Governor of Hawaii

\_\_\_\_\_  
May 13, 1992  
Filed

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

Amendment and Compilation of Chapter 16-91  
Hawaii Administrative Rules

March 17, 1992

SUMMARY

1. 16-91-11 is amended.
2. 16-91-32 is amended.
3. Chapter 91 is compiled.