



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

Agency Name:	Department of Professional and Occupational Regulation
VAC Chapter Number:	18 VAC 100-20-10 et seq.
Regulation Title:	Virginia Board for Opticians Rules and Regulations
Action Title:	Final Regulations
Date:	December 27, 2000

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The purpose of the proposal is to make the following changes:

- A. To amend existing regulations governing the licensure of opticians, to establish a definitions section, clarify entry requirements for licensure, specify examination procedures and examination content for licensure and contact lens examinations, modify the procedures and provisions regarding renewal, reinstatement, and the standards of practice and conduct.

- B. To review several provisions of the regulations and simplify them thereby ensuring that the Board is meeting its statutory mandate to ensure minimal competence of all licensees without burdensome requirements.

On December 18, 2000, the Board voted to amend the proposed regulations as follows:

- A. Corrected the definition of "contact lens certified optician" to "contact lens endorsed optician" and to eliminate references to the dispensing of contacts lens. This allows the Board to be consistent with its statutory and regulatory authority.
- B. Modified Regulation 18 VAC 100-20-10.A.4. so that an applicant must disclose any felony conviction in addition to any misdemeanor conviction at the time of initial application. Section 54.1-204 of the Code of Virginia provides the Board with authority to refuse a license if, based upon all the information available including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in the profession. The Board also included a statement that clearly sets forth that any determination to deny a license under this provision shall be related to the applicant's fitness and suitability to practice the profession. Inclusion of the specific language recommended by the Board's legal counsel.
- C. Clarified Regulation 18 VAC 100-20-10.A.5.a to show that "approved" means a Board approved two-year course in a school of opticianry.
- D. Provided a statement in 18 VAC 100-20-60 to include the term "contact lens endorsed optician" which has been listed in the definitions.
- E. Changed Regulation 18 VAC 100-20-81.A.1 to clarify that applicants for reinstatement must meet all entry requirements listed in 18 VAC 100-20-10.A.1-8.
- F. Deleted the reference to the required thickness in 18 VAC 100-20-85.G because it was pointed out that it is covered in the standards and this section is duplicative.
- G. Changed 18 VAC 100-20-110 to reflect the same language as listed in 18 VAC 100-20-10.A.4. regarding convictions.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

On December 18, 2000, the Board for Opticians voted to adopt the Virginia Board for Opticians Rules and Regulations and to proceed to file the final regulations with the Registrar of

Regulations on December 27, 2000, to be published on January 15, 2001 with an effective date of March 1, 2001.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

Section 54.1-201 of the Code of Virginia provides the Board with the authority to amend these regulations. Section 54.1-1700 defines “optician” and Section 54.1-1704 restricts the practice of opticianry to those holding a license.

1. Section 54.1-1704 permits only those who are licensed by the Board for Opticians to practice or offer to practice as an optician in Virginia.

2. In accordance with the Administrative Process Act (Section 9-6.14:1 et seq.), such amendments are necessary to assure continued competence, to prevent deceptive or misleading practices by practitioners, and to effectively administer the regulatory system administered by the Board as required by the statutes governing opticianry in the Commonwealth.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

Per Section 54.1-201 of the Code of Virginia, the Board for Opticians has proposed to amend its existing regulations governing the licensure of opticians. It proposed to establish a definition section, to clarify entry requirements for licensure, to specify examination procedures and examination content for licensure examination and contact lens examination, and to modify the procedures and provisions regarding renewal, reinstatement, and to establish the standards of practice and content. These final provisions are essential to protect the health, safety and welfare of the public in Virginia.

The purpose of the proposed changes is to ensure that the citizens of Virginia receive competent services from individuals licensed to fit and dispense prescription eyewear and to fit contact lens. The Board proposed two substantive changes to its regulations.

It proposed to adopt the ANSI standards as its regulations for the preparation of prescription eyeglasses. Although these are the acceptable minimal standards in the industry today, and ones, which would be used as a measuring tool in a standard of practice case, they are not specifically stated in the Board's current regulations.

These proposed standards are essential for enforcement purposes to enable the Board to take action to prohibit a licensee from committing negligent or incompetent acts. The Board proposed to eliminate the requirement that a licensee who allows his license to expire for more than one year must retake the Board's examination. The Board determined that a licensee remains competent without continuing to practice for a period of two years at which time a refresher course would be sufficient to allow the licensee to re-enter practice. The Board proposed to permit refresher courses for reinstatement until the license has been expired for a period of five years. After five years, the Board requires that the individual apply as a new applicant.

Other proposed amendments are strictly for clarification purposes as a result of questions raised by the regulant population and members of the public.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The regulations are essential to comply with state mandates and to increase the efficient and economical performance of an important governmental function by adopting the least burdensome alternatives allowed by state law.

The Board proposes final regulations, as follows:

- **18 VAC 100-20-5** – The Board proposes to define terms which cause confusion for applicants and the public in defining “apprentice,” “Board,” “contact lens endorsed optician,” “department,” “fit and dispense,” “licensed optician,” “optician,” “opticianry,” and incorporate terms from Chapter 17 Code of Virginia, Section 54.1-1700.
- **18 VAC 100-20-10.A** – The Board proposes to include language directing the applicant to furnish satisfactory evidence of entry requirements on an application provided by the Board.
- **18 VAC 100-20-10.A.1** - The Board proposes to include language specifically referencing

the applicant. The Board also proposes to include an exemption to the minimum age for licensure if the person qualifies per §16.1-333 of the Code of Virginia.

- **18 VAC 100-20-10.A.2-5** - The Board proposes to include clarifying language specifying the “applicant” as the responsible party in each requirement. The Board proposes to include in its final regulations that a felony conviction shall be disclosed at the time of initial application as provided for in Section 54.1-204 of the Code of Virginia.
- **18 VAC 100-20-10.A.6** – The Board proposes to require non-resident applicants to file and maintain an irrevocable consent for DPOR to be the service agent for all actions filed in any Virginia court. This is in accordance with requirements set forth in Section 13.1-763 of the Code of Virginia.
- **18 VAC 100-20-10.A.7** - The Board proposes to include clarifying language specifying the “applicant” as the responsible party in this requirement. The Board also proposes to include language requiring the applicant to certify that he has read and understands Chapter 17 of Title 54.1 of the Code of Virginia and the regulations of the Board.
- **18 VAC 100-20-20** – The Board proposes to repeal this section for clarifying language about DPOR standards for the opticians’ examination in 18 VAC 100-20-55.
- **18 VAC 100-20-30** – The Board proposes to repeal this section for clarifying language about the opticians’ examination and re-examination in 18 VAC 100-20-56.
- **18 VAC 100-20-40** – The Board proposes to repeal this section for clarifying language about fees in 18 VAC 100-20-54 and about the examination in 18 VAC 100-20-55.
- **18 VAC 100-20-50** – The Board proposes to clarify language by stating “licensed in another state” instead of “Licensing of out of state.”
- **18 VAC 100-20-54** – The Board proposes to include the Department of Professional and Occupational Regulation standard examination language, which limits the fee for examinations to \$300.
- **18 VAC 100-20-55** – The Board proposes to incorporate Department of Professional and Occupational Regulation standards for the conduct of the opticians’ examination.
- **18 VAC 100-20-56** – The Board proposes to clarify the contents of the optician examination, the policy regarding re-examination, and establish a time frame for passing both portions of the examination.
- **18 VAC 100-20-60** – The Board proposes to clarify the contents of the contact lens endorsement examination and reexamination, as well as establish a time frame for passing both portions of the examination.

- **18 VAC 100-20-65** – The Board proposes to establish basic criteria for the content of the contact lens endorsement examination and reexamination.
- **18 VAC 100-20-70** – The Board proposes to change license renewal language to establish a staggered renewal date. The fees are not proposed for change.
- **18 VAC 100-20-80** – The Board proposes to repeal this section for clarifying language about reinstatement in 18 VAC 100-20-81.
- **18 VAC 100-20-81** – The Board proposes to clarify license reinstatement language and proposes no change in current requirements.
- **18 VAC 100-20-85** – The Board proposes to include ANSI Standards as part of its regulations. These are the acceptable minimal standards in the industry today, and ones, which would be used as a measuring tool in a standard of practice case.
- **18 VAC 100-20-87** – The Board proposes to include ANSI Standards as part of its regulations. These are the acceptable minimal standards in the industry today, and ones, which would be used as a measuring tool in a standard of practice case.
- **18 VAC 100-20-90** – The Board proposes to clarify license placement in the work place as well as in multiple workplaces.
- **18 VAC 100-20-100** – The Board proposes to change current language specifying “notification of change of address or name” to that consistent with other Boards in the Department.
- **18 VAC 100-20-110.A** – The Board proposes to clarify language authorizing it to discipline licensees. The Board also proposes to replace the term “offense” in current regulations to the term “violation.”
- **18 VAC 100-20-110.A.1** – The Board proposes to change the referenced Code of Virginia Section to one that provides definitions for “non-prescribed controlled substances.”
- **18 VAC 100-20-110.A.2** – The Board proposes to clarify “professional incompetence or negligence” by including, but not limiting compliance with Part V., Standards of Practice and Conduct, of the regulations.
- **18 VAC 100-20-110.A.3** – The Board proposes to clarify language relating to the presenting of false or fraudulent qualification information on an application. This clarification also includes the changing of regulations numbering from §1.1 to 18 VAC 100-20-10.
- **18 VAC 100-20-110.A.5** – The Board proposes to add language to limit the types of advertisements to those “related to opticianry.”

- **18 VAC 100-20-110.A.6** – The Board proposes to include in its final regulations that a felony conviction shall be disclosed at the time of initial application as provided for in Section 54.1-204 of the Code of Virginia. The Board proposes to strike language pertaining to various misdemeanors. The stricken language will be handled by Section 18 VAC 100-20-110.A.1 of these regulations. Further, the Board proposes to add language requiring the licensee to provide a certified copy of any disciplinary action against him within ten days after all appeal rights have expired.
- **18 VAC 100-20-110.A.7** – The Board proposes to add clarifying language which identifies the licensee as the person who must supply documentary evidence of discipline in another jurisdiction.
- **18 VAC 100-20-110.A.8** – The Board proposes to add language making it a violation to allow any person, except an optician apprentice or a student enrolled in a course in a school of opticianry to work under the direct supervision of a licensed optician.
- **18 VAC 100-20-110.B** - The Board proposes to add language stating that a finding of improper or dishonest conduct in the practice of the profession by a court of competent jurisdiction shall be cause for disciplinary action. This language is consistent with other Department of Professional and Occupational Regulation Board regulations.
- **18 VAC 100-20-120** – The Board proposes to add language making a licensee responsible for his actions or omissions in the performance of opticianry services as well as those of his agents and employees.
- **18 VAC 100-20-130** – The Board proposes to establish review course requirements for licensees who must apply for reinstatement between 24 and 60 months after the expiration of their license.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

The primary advantage will result in achieving specific needs and consideration to the practitioners as well as public protection to the citizens of the Commonwealth of Virginia. In addition, these changes will identify requirements of state law that affect the administration and enforcement of these regulations. There are no disadvantages to the public or the Commonwealth associated with the adoption of these final regulations.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

The Board made several changes to its published proposed regulations and voted on these changes to be incorporated into their final regulations on December 18, 2000.

- A. Corrected the definition of "contact lens certified optician" to "contact lens endorsed optician" and to eliminate references to the dispensing of contact lenses. This allows the Board to be consistent with its statutory and regulatory authority.
- B. Modified Regulation 18 VAC 100-20-10.A.4. so that an applicant must disclose any felony conviction in addition to any misdemeanor conviction at the time of initial application. Section 54.1-204 of the Code of Virginia provides the Board with authority to refuse a license if, based upon all the information available including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in the profession. The Board also included a statement that clearly sets forth that any determination to deny a license under this provision shall be related to the applicant's fitness and suitability to practice the profession. Inclusion of the specific language recommended by the Board's legal counsel.
- C. Clarified Regulation 18 VAC 100-20-10.A.5.a to show that "approved" means a Board approved two-year course in a school of opticianry.
- D. Provided a statement in 18 VAC 100-20-60 to include the term "contact lens endorsed optician" which has been listed in the definitions.
- E. Changed Regulation 18 VAC 100-20-81.A.1 to clarify that applicants for reinstatement must meet all entry requirements listed in 18 VAC 100-20-10.A.1-8.
- F. Deleted the reference to the required thickness in 18 VAC 100-20-85.G because it was pointed out that it is covered in the standards and this section is duplicative.
- G. Changed 18 VAC 100-20-110 to reflect the same language as listed in 18 VAC 100-20-10.A.4. regarding convictions.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

I. NATIONAL ASSOCIATION OF OPTOMETRISTS AND OPTICIANS**1. A. 18 VAC 100-20-5. Definitions.**

The title “Contact lens certified optician” is **not** encompassed or defined in Chapter 17 Code of Virginia which governs the practice of opticians. Accordingly, the Board does **not** possess the statutory authority to establish a new category of optician without legislative approval.

In our judgement, the intent is to restrict the number of persons who can dispense and sell replacement lenses from the valid prescription of an authorized prescriber. We submit this proposed regulatory initiative is designed to prevent customers from refilling their contact lens prescriptions from alternative sources such as mail-order firms. Finally, it is clear our member firms would be required to hire additional licensees in order to meet the demands of our contact lens customers, which likely would raise prices—to the detriment of the consuming public.

In addition, we respectfully submit the Board does **not** possess the authority to define “Opticianry” and their proposed definition contrary to the explanation contained under the “Substance” portion of Form: TH-02 does **not** eliminate “confusion for applicants and the public...” and we challenge the Board to furnish evidence sustaining this contention.

Further, the definition of “Fit and dispense” requires clarification. Presumably, the Board intends that a licensee will “verify” that finished lenses accurately reflect the prescription they fill as opposed to actually “verifying the prescription.”

1. B. Agency Response:

The Board for Opticians has the authority to test and endorse licensed opticians to fit contact lenses. The Attorney General wrote an opinion on May 4, 1982, stating that the Board could test and endorse licensed opticians to fit contact lenses. Also, the Board has the statutory authority to interpret the statutes governing the practice of opticianry in the Commonwealth. The Board for Opticians has the statutory authority to promulgate regulations governing the practice of opticianry. All references to "dispensing" of contact lenses have been removed from the final regulations.

The Board rejects the proposed changes submitted by the National Association of Optometrists and Opticians.

The Board states that the proposed definition of “fit and dispense” is sufficient and additional information is unnecessary.

2.A. 18 VAC 100-20-10. Qualifications of applicant.

Subsection A.4b of the proposed 18 VAC 100-20-10 requires that one year of the three year apprenticeship program include “one year of related instruction or home study.” This requirement, while found in current regulations, should be deleted in that it is vague and unworkable. Further, the “one school year requirement” is not necessary to protect the public.

The ultimate measure of aptitude, whether an applicant has completed a two-year course in a school of opticianry or a three-year apprenticeship program, is the written and practical licensure exams, which serve as protection against the licensure of unqualified applicants.

2.B. Agency Response:

The Board states that the entry provisions are separate requirements to become licensed to fit and dispense prescription eyewear in the Commonwealth. “One year of related instruction or homestudy” is contained in the Department of Labor and Industry Apprenticeship Standards for Opticianry. The Board states that minimal competence is gained through training and education and tested through the written and practical examinations.

3.A. 18 VAC 100-20-55. Examinations.

The current regulation in this area (18 VAC 100-20-40) was entitled “Passing grade and examination” and under this proposal would be deleted. It stipulated that a passing grade of 70% was required for both the written section and the practical section of the licensure examination.

This proposed revision fails to establish a passing grade for applicants. The Board’s contention throughout the “Substance” portion of Form: TH-02 is to seek clarification of their regulations for applicants and the general public.

In our judgment, the Board fails to provide such “clarification” when it eliminates information and is silent about the required passing grade. We request the Board to reconsider their decision in this area and to maintain the current passing grade of 70%.

The American Board of Opticianry (“ABO”) has developed and administers a competency examination for applicants seeking certification in spectacle dispensing tasks and functions. We recommend the Board consider utilizing the ABO examination for the reasons outlined herein above.

3.B. Agency Response:

The Board states that no change to the proposal is necessary. The change to eliminate the passing grade of 70% is to eliminate problems that occur when a new examination is created or purchased or new examination vendor offers a new grading methodology. The passing grade established by the Board is available to the public at all times. Since there are a variety of examination services available to the Board for Opticians, it would be a clear violation of the provisions of the Virginia Procurement Act to sole source this examination. Whenever the Board releases a Request for Proposals (RFP) for the Optician Examinations, ABO is included on the mailing list and will be sent a copy of the RFP. ABO may wish to submit a proposal for consideration by the Board.

4.A. 18 VAC 100-20-56. Content of optician examination or re-examination.

In its proposed regulation, the Board reiterates that both the written and practical examination is to be Board-approved. Again, the Board’s wide latitude raises issues of fairness and objectivity and we propose that the licensure exams be provided by the ABO and administered and graded by an outside entity.

4.B. Agency Response:

Comments on the Board’s examinations previously addressed.

5.A. 18 VAC 100-20-60. Endorsement to fit contact lenses.

Once again, we recommend the Board establish a passing grade for this examination and utilize the National Contact Lens Examiners (“NCLE”) as the vehicle, which determines competency to fit contact lenses. The NCLE examination is administered with fairness and objectivity.

5.B. Agency Response:

Comments on the Board’s examinations previously addressed.

6.A. 18 VAC 100-20-81. Reinstatement required.

We are unable to identify the “standards of entry” referred in subsection A. 1. Specifically, we don’t know what the standards are for subdivision 9 and request clarification from the Board prior to furnishing any further commentary.

6.B. Agency Response:

Clarification mailed to commentor on October 30, 2000.

7.A. 18 VAC 100-20-85. Lens and frames standards.

The standards proposed by the Board appear to be lens and frames standards developed by the American National Standards Institute (ANSI) and to that extent are acceptable. We suggest that the Board is better served by referring to the current ANSI standards in the subject regulation as opposed to spelling them out, in that such standards are subject to change.

7.B. Agency Response:

The Board states that the standards proposed in the section entitled “Lens and frames standards” are the ANSI standards and have been adopted by the Board for Opticians as recommended by the Board’s legal counsel. Rather than incorporating the standards by reference, the Board decided that the public could be better served by locating the standards in the Board’s regulations.

8.A. 18 VAC 100-20-87. Contact lens standards.

As previously delineated in our comments concerning 18 VAC 100-20-10, there is a significant difference between “filling” a prescription for replacement contact lenses and the “fitting” of the initial set of contact lenses. An unlicensed person acting under the direct supervision of a licensed practitioner may currently refill a customer who requires replacement contact lenses.

Accordingly, the words “prescription can be filled” found in the second line of subpart 1 should be deleted and replaced with: “prescribed contact lenses can be fitted.”

8.B. Agency Response:

The Board states that the proposed regulation as stated is clear and requires no change.

The Board discussed this matter again on December 18, 2000 at a special called meeting of the Board and determined that fitting is within the scope of practice of a contact lens

endorsed optician. The Board determined that all references to "dispensing" should be deleted from the final regulations.

9.A. 18 VAC 100-20-110. Grounds for disciplinary action.

Proposed subpart 8 requires substantive clarification since, Section 54.1-1701 of the statute permits unlicensed personnel who are **not** engaged in apprenticeship training or enrolled in an opticianry school to engage in opticianry under the direct supervision of a licensee.

We respectfully request the Board to amplify its meaning of this subpart in order that all licensees will have advance knowledge of the Board's intent with respect to potential disciplinary proceedings. It is imperative to have advance knowledge of those tasks and functions, which an unlicensed person can perform, based on what occurs daily in the average retail optical store.

9.B. Agency Response:

The Board states that Subpart 8 of 18 VAC 100-20-110 is specifically designed to ensure that the licensed optician understand the ramifications of allowing any unlicensed person to provide opticianry services while under the licensee's supervision. The Board states that the section when read in its entirety provides the licensee with more than sufficient notification of possible disciplinary action should there be a violation under subpart 8.

II. VIRGINIA OPTOMETRIC ASSOCIATION

1.A. 18 VAC 100-20-5. Definitions.

We note that the word "prepares" is not elsewhere defined in the proposed regulation. Additionally, statute specifically authorizes a "Contact lens endorsed optician" to "fit" contact lenses but makes no mention and does not include the word "prepares." Inclusion of the word "prepares" indicates a contact lens certified optician may provide services beyond that which is authorized by statute, especially in that "prepares" is not otherwise defined in statute or by regulation.

We note the definition fails to include any mention of language found in statute which requires the contact lens certified optician to fit contact lenses under the "direction" of a licensed physician or optometrist. Without inclusion and clarification of the statutorily required "direction of ," it appears the proposed regulations are in conflict with statute.

As written, the proposed language indicates a contact lens certified optician may refill a contact lens prescription by duplicating an existing contact lens without evidence of a

valid written contact lens prescription. Additionally, proposed language may allow the refilling of a contact lens prescription (by duplication of existing contact lenses) beyond a stated expiration date written on the original prescription. By statute, opticians are authorized to duplicate spectacles and eyeglasses but not contact lenses. Additionally, opticians are not permitted to alter a contact lens prescription, which includes fitting, dispensing or refilling of the contact lens prescription.

To ensure compliance with statute and to provide appropriate clarification, we suggest the definition be rewritten as follows. Note that the following represents the legally authorized scope of practice by contact lens certified opticians and in no way represents a reduction or restriction on their legally authorized services:

“Contact lens certified optician” means any person not exempted by §54.1-1701 of the Code of Virginia who is a Virginia licensed optician and who has received a contact lens certification from the Board, who fits or dispenses contact lenses in accordance with prescriptions from licensed physicians or optometrists for the intended wearers; or refills contact lenses from existing and valid written prescription presented by the wearer to or maintained in the files of the contact lens certified optician. Fitting or dispensing of contact lenses shall only be performed under the direction of the prescribing physician or optometrist which requires the contact lens certified optician to promptly refer the patient back to the prescriber for re-evaluation and re-examination. Unless otherwise specifically authorized by the prescriber, no contact lens certified optician may alter a prescription for contact lenses, including but not limited to the fitting, dispensing or refilling of a prescription for contact lenses beyond any expiration date.

1.B. Agency Response:

The Board for Opticians states that Section 54.1-1700 defines an optician, in part, as one who “prepares and dispenses” eyeglasses.

The Board has the authority to test and certify licensed opticians to fit and dispense contact lenses. The Attorney General wrote an opinion on May 4, 1982, stating that the Board could test and certify licensed opticians to fit and dispense contact lenses. The Board has the statutory authority to interpret the statutes governing the practice of opticianry in the Commonwealth. The Board for Opticians has the statutory to promulgate regulations governing the practice of opticianry including the fitting of contact lenses.

2.A. 18 VAC 100-20-65. Content of contact lens endorsement examination and reexamination.

We note that use of a slit lamp by a contact lens certified optician may be legally authorized when the slit lamp is used for purposes of aiding in the fit of contact lenses. However, we additionally note that statute prohibits the possession of “optometric instruments” by an optician and likewise prohibits an optician from refracting or diagnosing abnormal conditions of the eye. In that use of a slit lamp may have varied purposes, to comply with statute and for clarification, we suggest the following revision:

“4. Slit lamp, as restricted to aid in the fitting of contact lenses.”

2.B. Agency Response:

The Board states that the proposal is clear and no clarification is necessary.

3.A. 18 VAC 100-20-87. Contact lens standards are as follows:

We note that subsection #1 states that “Verbal approval may be obtained from the optometrist or ophthalmologist or its agents or employees is acceptable.” Such approval requires professional judgment or professional discretion. By statute, both ophthalmologists and optometrists are prohibited from delegating to their employees or agents the exercising of professional judgment or professional discretion. Furthermore, an employee or agent of an ophthalmologist or optometrist granting such approval may thus constitute an illegal practice and result in an invalid prescription for the optician to fit. Additionally, the last sentence of subsection #1 requires appropriate notation in the patient’s records of verbal authorization by the optometrists or ophthalmologist but makes do not address circumstances when such authorization is obtained by an employee or agent.

To comply with applicable statutes governing both ophthalmologists and optometrists, and to ensure the optician obtaining verbal approval thus obtains a valid prescription, we recommend rewriting this sentence to state:

“... Verbal approval from the optometrist or ophthalmologist is acceptable. The licensed optician must make a notation in the patient’s record of the name of the authorizing optometrist or ophthalmologist and the date of the authorization.”

We note that subsection #2 C specifically requires the optician to use a “Standardized Snellen type acuity chart.” In that opticians are specifically prohibited from performing refractions, and recognizing that use of a Snellen type acuity chart may be construed as performing a type of refraction, to comply with the Code of Virginia we suggest #2 C be revised as follows:

“2. c. Standardized Snellen type acuity chart, restricted to aid in the fitting of contact lenses and excluding use of said chart for purposes of performing a refraction or over-refraction.”

In that 18 VAC 100-20-87 relates to contact lens standards and delineates which services are required to be performed, compliance with the Code of Virginia clearly indicates that an additional subsection should be included which addresses the statutorily required “direction of” provision. For the regulations to comply with statute, we recommend a new and additional subsection #3 be incorporated as follows:

“3. In accordance with § 54.1-1705 of the Code of Virginia, the fitting of contact lenses shall only be performed by a contact lens certified optician and under the direction of an optometrist or ophthalmologist. The optician shall promptly refer the patient back to the prescribing optometrist or ophthalmologist for re-evaluation and re-examination.”

3.B. Agency Response:

The Board states that the proposed regulation does not allow for an employee or agent to annotate the patient’s record. Today, medical practitioners are busy and many times an optician must communicate with the physician or Doctor of Optometry (OD) through his employee or agent. Since the employees and agents of physicians and ODs are prohibited from acting independently, there should be no problem with an employee or agent communicating the orders of the practitioner directly to the optician. Requiring the licensed optician to talk directly with the medical practitioner would unnecessarily inhibit the conduct of business and could be injurious to patients waiting to see the medical practitioner. This could cause delays in patients receiving their prescription eyewear. Clarification of this proposal is unnecessary.

The Standardized Snellen type acuity chart is necessary to confirm a prescription. Therefore, the use of the chart strictly for this purpose provides added protection for the patients and eliminates problems for medical practitioners and opticians.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

18 VAC 100-20-5 - Corrected the definition of "contact lens certified optician" to "contact lens endorsed optician" and to eliminate references to the dispensing of contacts lens. This allows the Board to be consistent with its statutory and regulatory authority.

18 VAC 100-20-10.A.4. - Modified Regulation so that an applicant must disclose

any felony conviction in addition to any misdemeanor conviction at the time of initial application. Section 54.1-204 of the Code of Virginia provides the Board with authority to refuse a license if, based upon all the information available including the applicant's record of prior convictions, it finds that the applicant is unfit or unsuited to engage in the profession. The Board also included a statement that clearly sets forth that any determination to deny a license under this provision shall be related to the applicant's fitness and suitability to practice the profession. Inclusion of the specific language recommended by the Board's legal counsel.

18 VAC 100-20-10.A.5 -Clarified a to show that "approved" means a Board approved two-year course in a school of opticianry.

18 VAC 100-20-60 - Provided a statement in to include the term "contact lens endorsed optician" which has been listed in the definitions.

18 VAC 100-20-81.A.1 - Changed to clarify that applicants for reinstatement must meet all entry requirements listed in 18 VAC 100-20-10.A.1-8.

18 VAC 100-20-85.G - Deleted the reference to the required thickness in because it was pointed out that it is covered in the standards and this section is duplicative.

18 VAC 100-20-110 - Changed to reflect the same language as listed in 18 VAC 100-20-10.A.4. regarding convictions.

Family Impact Statement

Please provide an analysis of the regulatory action that assesses the impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

These final regulations are not anticipated to have any significant impact on Virginia's families.