

ARTICLE 3 - REGULATION

32-1691 Exemptions of persons and sales

32-1691.01 Investigation and adjudication of complaints

32-1693 Denial, suspension and revocation of license; other disciplinary sanctions

32-1694 Notice of action; practice pending appeal

32-1695 Judicial review

32-1696 Unlawful acts; grounds for disciplinary action; classification

32-1697 Violations; classification

32-1698 Prosecution of violations

32-1699 Injunctions; civil penalties

§32-1691. Exemptions of persons and sales

This chapter does not apply to:

1. Any physician or optometrist who is licensed to practice under the laws of this state.
2. Any person working under the direct supervision of a physician, optometrist or dispensing optician who is licensed to practice in this state, as long as the person is working exclusively for the licensed physician, optometrist or dispensing optician and does not claim to be a dispensing optician.
3. The sale of goggles, sunglasses, colored glasses or occupational protective eye devices, if they do not have refractive values.
4. The sale of complete ready-to-wear eyeglasses for near vision only, toys, binoculars or scientific instruments as merchandise.
5. The sale and fitting of ocular prosthetic appliances if they do not have refractive values.
6. The sale of replacement soft contact lenses as provided in chapter 16, article 5 and chapter 18 of this title.

§32-1691.01. Investigation and adjudication of complaints

- A. The board on its motion may investigate any evidence that appears to show the existence of any of the grounds for disciplinary action pursuant to section 32-1696.
- B. The board shall investigate the complaint of any person that appears to show the existence of any of the grounds for disciplinary action pursuant to section 32-1696. The board shall not disclose the name of the person who submitted the verified complaint unless that person's testimony is essential to the disciplinary proceedings conducted pursuant to this section.
- C. After a motion approved by the board or on receipt of a verified complaint, as provided in subsections A and B of this section, the chairman of the board or the chairman's designee shall either initiate an investigation or refer the complaint or motion to investigate to an investigative committee appointed by the board. The committee shall consist of both licensed dispensing opticians and lay persons who need not be members of the board.
- D. If an investigation is initiated the chairman or the chairman's designee shall appoint a member of the board to act as the investigative officer. Within ninety days after appointment, the officer shall conclude the investigation and make a written

recommendation to the board on whether disciplinary action is appropriate and, if it is appropriate, the type of disciplinary action the board should take.

E. If the matter is referred to an investigative committee, the committee shall investigate the charges and within ninety days after referral shall make a written recommendation to the board on whether disciplinary action is appropriate and, if it is appropriate, the type of disciplinary action it should take.

F. The board shall make copies of the investigative officer's or investigative committee's report available to the complainant and to the licensed party.

G. Within sixty days after receipt of the written report of the investigative officer or the investigative committee, the board shall issue preliminary findings based on the written report. If the board finds that the evidence would, if proved true, warrant suspension or revocation of a license issued under this chapter, formal proceedings for the revocation or suspension of the license shall be immediately initiated as provided in title 41, chapter 6, article 10. If the board finds that the evidence does not warrant suspension or revocation of a license, the board shall either dismiss the complaint or impose other lesser disciplinary action pursuant to section 32-1693.

H. The board shall provide a copy of the preliminary order to the complainant and to the licensed party. Within fifteen days after receiving the copy either party may file a motion for a rehearing or review pursuant to title 41, chapter 6, article 10.

I. Any person who in good faith makes a report as provided in this section to the board or to any person or committee acting on behalf of the board is not subject to liability for civil damages as a result of the report.

J. The board may proceed against all licenses held by a person or optical establishment in common, even if held for different physical locations, if in the opinion of the board the seriousness of the complaint or other evidence received by the board so warrants.

§32-1693. Denial, suspension and revocation of license; other disciplinary sanctions

A. The board may deny the application of any applicant who fails to meet the qualifications prescribed by this chapter or board rules.

B. The board may take any combination of the following disciplinary actions against a licensee pursuant to section 32-1691.01:

1. Suspend or revoke the license. Suspension of a license shall be for a specified period not to exceed one year.

2. Enter a decree of censure. In entering a decree of censure the board may require that restitution be made to the aggrieved party.

3. Place a licensee on probation. In the issuance of an order fixing a period and terms of probation, the board shall be guided by such considerations as are necessary to protect the public health, safety and welfare and to rehabilitate the licensee.

4. Enter an order of restitution.

5. Impose a civil penalty of not more than one thousand dollars for each violation of this chapter or board rules.

C. Reapplication for a license after revocation shall be made in the same manner as the application for an original license and not sooner than two years after the date the board revoked the license.

D. Failure to comply with any final board order, including an order prescribed by this section, is cause for suspension or revocation of a license.

§32-1694. Notice of action; practice pending appeal

A. When the board denies, suspends or revokes a license, it shall send notice of its action by registered mail to the applicant or licensee concerned, setting forth the reasons for the action taken.

B. Within thirty days after the date of the notice, the applicant or licensee may request a hearing before the board pursuant to title 41, chapter 6, article 10.

C. No applicant for original license may practice as a dispensing optician during the pendency of an appeal from a decision of the board. No licensee whose license is revoked or suspended or whose renewal application is refused by the board shall be denied the right to practice during the pendency of any appeal from a decision of the board.

§32-1695. Judicial review

Except as provided in section 41-1092.08, subsection H, final decisions of the board are subject to judicial review pursuant to title 12, chapter 7, article 6.

§32-1696. Unlawful acts; grounds for disciplinary action; classification

A. It is unlawful to:

1. Obtain or attempt to obtain a license by fraud or misrepresentation or by knowingly taking advantage of a mistake of another person or agency.
2. Hire, procure or induce a person to act as a licensed dispensing optician if the person is not licensed to practice as a dispensing optician.
3. Give, pay or receive, or offer to give, pay or receive, directly or indirectly, any gift, premium, discount, rebate or remuneration to or from any physician or optometrist in return for the referral of patients or customers.
4. Engage in false or misleading representations by knowingly and with the intent to sell to the public real or personal property or services, or to induce the public to acquire an interest in real or personal property or services, make and publish an advertisement, either printed or by public proclamation, or otherwise, containing any false, fraudulent, deceptive or misleading representations in respect to such property or services or the manner of sale or distribution.
5. Provide any examination or treatment of the eye or advertise eye examinations without the disclaimer "by independent doctor of optometry", "by independent doctor of ophthalmology" or "by independent physician licensed pursuant to title 32, chapter 13 or 17, Arizona Revised Statutes".
6. Use any means to measure the refractive value of the human eye, except nonrefractive, nondiagnostic devices, such as a keratometer, ophthalmometer or other instrumentation that is required to fit a contact lens to an intended wearer.
7. Make use of any advertising statement of a character tending to indicate to the public superiority of any particular system or type of eyesight examination or treatment over that provided by other licensed ocular practitioners.
8. Fraudulently, dishonestly, illegally or unprofessionally conduct the practice of optical dispensing or engage in any conduct that would tend to do harm to the visual health of the public.

B. A person who violates this chapter or a board rule is subject to disciplinary action as prescribed in this article.

C. A person or licensee who violates subsection A, paragraph 1, 4, 5 or 8 is guilty of a class 1 misdemeanor. A person or licensee who violates subsection A, paragraph 2, 3, 6 or 7 is guilty of a class 2 misdemeanor.

§32-1697. Violations; classification

The practice of optical dispensing or operation of an optical establishment without a valid and subsisting license is a class 2 misdemeanor.

§32-1698. Prosecution of violations

The prosecuting officer of a county or city shall prosecute all violations of this chapter occurring within his jurisdiction by persons who do not have a valid and subsisting license issued under the provisions of this chapter.

§32-1699. Injunctions; civil penalties

A. If the board believes that a person has violated this chapter or board rules, the board may make application to the appropriate court for an order enjoining such acts or practices. Injunctive relief pursuant to this section is in addition to any other remedy prescribed by law.

B. The board may impose a civil penalty of not more than one thousand dollars against any person or entity acting without a license issued by the board in violation of this chapter.