



COLORADO

**Department of
Regulatory Agencies**

Colorado Office of Policy, Research &
Regulatory Reform

2021 Sunset Review

State Board of Optometry



October 15, 2021



COLORADO

Department of
Regulatory Agencies

Executive Director's Office

October 15, 2021

Members of the Colorado General Assembly
c/o the Office of Legislative Legal Services
State Capitol Building
Denver, Colorado 80203

Dear Members of the General Assembly:

The Colorado General Assembly established the sunset review process in 1976 as a way to analyze and evaluate regulatory programs and determine the least restrictive regulation consistent with the public interest. Pursuant to section 24-34-104(5)(a), Colorado Revised Statutes (C.R.S.), the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) at the Department of Regulatory Agencies (DORA) undertakes a robust review process culminating in the release of multiple reports each year on October 15.

A national leader in regulatory reform, COPRRR takes the vision of their office, DORA and more broadly of our state government seriously. Specifically, COPRRR contributes to the strong economic landscape in Colorado by ensuring that we have thoughtful, efficient and inclusive regulations that reduce barriers to entry into various professions and that open doors of opportunity for all Coloradans.

As part of this year's review, COPRRR has completed an evaluation of the State Board of Optometry. I am pleased to submit this written report, which will be the basis for COPRRR's oral testimony before the 2022 legislative committee of reference.

The report discusses the question of whether there is a need for the regulation provided under Article 275 of Title 12, C.R.S. The report also discusses the effectiveness of the State Board of Optometry in carrying out the intent of the statutes and makes recommendations for statutory changes for the review and discussion of the General Assembly.

To learn more about the sunset review process, among COPRRR's other functions, visit coprrr.colorado.gov.

Sincerely,

Patty Salazar
Executive Director





Sunset Review: State Board of Optometry

Background

What is regulated?

Doctors of Optometry (ODs), or optometrists, are the primary health care professionals for the eyes. ODs concentrate on vision. They perform eye examinations and vision tests, monitor medical conditions, treat conditions such as Glaucoma, and supply vision aids or therapy.

Why is it regulated?

ODs are trained to treat vision and most medical facets of eyecare, including prescribing medications and treating disease. Because there are risks associated with the treatment of the eyes, ODs are required by law to know what they are capable of doing and what they are not capable of doing and practicing accordingly.

Who is regulated?

At the end of fiscal year 19-20, there were 1,552 ODs licensed by the State Board of Optometry (Board), which is located in the Department of Regulatory Agencies' Division of Professions and Occupations.

How is it regulated?

The Board consists of seven Governor-appointed members including five licensed optometrists and two members-at-large.

To obtain a license, an applicant must have graduated from an accredited program, submit examination scores from the Board-approved examination, and pay a fee. To renew a license, each optometrist is required to complete 24 hours of approved continuing education every two years and pay a fee.

What does it cost?

In fiscal year 19-20, the Director expended \$140,755 and allotted 0.62 full-time equivalent employees to implement the program.

What disciplinary activity is there?

During the period examined for this sunset review, fiscal years 15-16 through 19-20, there were 82 complaints filed, 16 violations were established, and 20 disciplinary actions were taken by the Board.

Key Recommendations

- Continue the State Board of Optometry and the regulation of Optometrists for 11 years, until 2033.
- Allow ODs to practice according to their qualifications, as determined by the Board and national examinations.
- Synchronize common provisions of law with the Act.

Table of Contents

Background	1
Sunset Criteria	1
Sunset Process.....	3
Methodology	3
Profile of the Profession	4
Legal Framework	6
History of Regulation.....	6
Legal Summary	7
Program Description and Administration	14
Licensing	15
Examinations	17
Complaint and Disciplinary Activity.....	19
Collateral Consequences - Criminal Convictions.....	23
COVID-19 Response	23
Analysis and Recommendations.....	25
Recommendation 1 - Continue the State Board of Optometry and the regulation of optometrists for 11 years, until 2033.....	25
Recommendation 2 - Allow ODs to practice according to their qualifications, as determined by the Board and national examinations.....	26
Recommendation 3 - Synchronize common provisions of law with the Act.	29
Recommendation 4 - Repeal statutory references to national organizations.	29
Appendix A - Customer Service Survey	31

Background

Sunset Criteria

Enacted in 1976, Colorado's sunset law was the first of its kind in the United States. A sunset provision repeals all or part of a law after a specific date, unless the legislature affirmatively acts to extend it. During the sunset review process, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) within the Department of Regulatory Agencies (DORA) conducts a thorough evaluation of such programs based upon specific statutory criteria¹ and solicits diverse input from a broad spectrum of stakeholders including consumers, government agencies, public advocacy groups, and professional associations.

Sunset reviews are guided by statutory criteria and sunset reports are organized so that a reader may consider these criteria while reading. While not all criteria are applicable to all sunset reviews, the various sections of a sunset report generally call attention to the relevant criteria. For example,

- In order to address the first criterion and determine whether a particular regulatory program is necessary to protect the public, it is necessary to understand the details of the profession or industry at issue. The Profile section of a sunset report typically describes the profession or industry at issue and addresses the current environment, which may include economic data, to aid in this analysis.
- To ascertain a second aspect of the first sunset criterion--whether conditions that led to initial regulation have changed--the History of Regulation section of a sunset report explores any relevant changes that have occurred over time in the regulatory environment. The remainder of the Legal Framework section addresses the third sunset criterion by summarizing the organic statute and rules of the program, as well as relevant federal, state and local laws to aid in the exploration of whether the program's operations are impeded or enhanced by existing statutes or rules.
- The Program Description section of a sunset report addresses several of the sunset criteria, including those inquiring whether the agency operates in the public interest and whether its operations are impeded or enhanced by existing statutes, rules, procedures and practices; whether the agency performs efficiently and effectively and whether the board, if applicable, represents the public interest.
- The Analysis and Recommendations section of a sunset report, while generally applying multiple criteria, is specifically designed in response to the tenth criterion, which asks whether administrative or statutory changes are necessary to improve agency operations to enhance the public interest.

¹ Criteria may be found at § 24-34-104, C.R.S.

These are but a few examples of how the various sections of a sunset report provide the information and, where appropriate, analysis required by the sunset criteria. Just as not all criteria are applicable to every sunset review, not all criteria are specifically highlighted as they are applied throughout a sunset review. While not necessarily exhaustive, the table below indicates where these criteria are applied in this sunset report.

Sunset Criteria	Where Applied
(I) Whether regulation by the agency is necessary to protect the public health, safety, and welfare; whether the conditions that led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less, or the same degree of regulation;	<ul style="list-style-type: none"> • Profile. • History. • Legal Framework. • Program Administration. • Recommendations 1 and 2.
(II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent;	<ul style="list-style-type: none"> • Profile. • History. • Legal Framework. • Program Administration. • Recommendations 2 and 4.
(III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures, and practices and any other circumstances, including budgetary, resource, and personnel matters;	<ul style="list-style-type: none"> • History. • Legal Framework. • Program Administration. • Recommendations 1 and 2.
(IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;	<ul style="list-style-type: none"> • History. • Legal Framework. • Program Administration. • Recommendation 1.
(V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;	<ul style="list-style-type: none"> • History. • Legal Framework. • Program Administration. • Recommendation 1.
(VI) The economic impact of regulation and, if national economic information is not available, whether the agency stimulates or restricts competition;	<ul style="list-style-type: none"> • Profile. • History. • Legal Framework. • Program Administration. • Recommendations 1 and 2.
(VII) Whether complaint, investigation, and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;	<ul style="list-style-type: none"> • Legal Framework. • Program Administration. • Recommendation 1.
(VIII) Whether the scope of practice of the regulated occupation contributes to the optimum use of personnel and whether entry requirements encourage affirmative action;	<ul style="list-style-type: none"> • Profile. • History. • Legal Framework. • Program Administration. • Recommendations 1 and 2.

Sunset Criteria	Where Applied
(IX) Whether the agency through its licensing or certification process imposes any sanctions or disqualifications on applicants based on past criminal history and, if so, whether the sanctions or disqualifications serve public safety or commercial or consumer protection interests. To assist in considering this factor, the analysis prepared pursuant to subsection (5)(a) of this section must include data on the number of licenses or certifications that the agency denied based on the applicant's criminal history, the number of conditional licenses or certifications issued based upon the applicant's criminal history, and the number of licenses or certifications revoked or suspended based on an individual's criminal conduct. For each set of data, the analysis must include the criminal offenses that led to the sanction or disqualification.	<ul style="list-style-type: none"> • Legal Framework. • Program Administration.
(X) Whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest.	<ul style="list-style-type: none"> • Recommendations 1 - 4.

Sunset Process

Regulatory programs scheduled for sunset review receive a comprehensive analysis. The review includes a thorough dialogue with agency officials, representatives of the regulated profession and other stakeholders. Anyone can submit input on any upcoming sunrise or sunset review on COPRRR’s website at coprrr.colorado.gov.

The functions of the State Board of Optometry (Board), as enumerated in Article 275 of Title 12, Colorado Revised Statutes (C.R.S.), shall terminate on September 1, 2022, unless continued by the General Assembly. During the year prior to this date, it is the duty of COPRRR to conduct an analysis and evaluation of the Board pursuant to section 24-34-104, C.R.S.

The purpose of this review is to determine whether the currently prescribed regulation should be continued and to evaluate the performance of the Board and Division of Professions and Occupations (Division) staff. During this review, the Board must demonstrate that the program serves the public interest. COPRRR’s findings and recommendations are submitted via this report to the Office of Legislative Legal Services.

Methodology

As part of this review, COPRRR staff attended Board meetings; interviewed Board members, stakeholders, representatives from state and national professional and trade associations, educational stakeholders, and regulatory staff from other states; and reviewed education standards, Division records, Colorado statutes and rules, and the laws of other states.

The major contacts made during this review include but are not limited to:

- American Optometric Association
- Association of Regulatory Boards of Optometry
- Association of Schools and Colleges of Optometry
- Colorado Medical Society
- Colorado Optometric Association
- Colorado Society of Eye Physicians & Surgeons
- Division of Professions and Occupations
- Kaiser Permanente
- National Board of Examiners in Optometry
- Office of the Colorado State Attorney General

In the spring of 2021, Colorado Office of Policy, Research and Regulatory Reform staff conducted a survey of all optometrists who are licensed by the Board. The survey was sent to 1,578 optometrists; 9 emails were returned as undeliverable. The survey received 237 responses, which is a 15 percent response rate. Survey responses may be found in Appendix A.

Profile of the Profession

In a sunset review, COPRRR is guided by the sunset criteria located in section 24-34-104(6)(b), C.R.S. The first criterion asks whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation.

In order to understand the need for regulation, it is first necessary to understand what the profession does, where they work, who they serve and any necessary qualifications.

Optometrists and ophthalmologists are the two primary types of doctors who work with the eyes and vision. People often confuse the two, especially since they sometimes work together. Ophthalmologists are medical doctors who treat eye-related medical conditions and perform surgery. Optometrists concentrate on vision and are the primary health-care professionals for the eyes. In addition to performing eye examinations and vision tests, optometrists can monitor medical conditions, treat conditions such as glaucoma, and supply vision aids or therapy.² Optometrists are the subject of this sunset review.

Optometrist training commences during undergraduate years because optometry schools call for courses that emphasize math, science, human anatomy, and physiology.

² WebMD. *Eye Doctors: Optometrists and Ophthalmologists*. Retrieved December 28, 2020, from <https://www.webmd.com/eye-health/eye-doctors-optometrists-ophthalmologists>

Entrance into graduate school entails taking the standardized Optometric Admission Test. Optometry school includes four years of coursework and training includes classes and labs, clinical training, and externships. Once all is successfully completed, a candidate receives a Doctor of Optometry (OD) degree and is eligible to take the National Board of Examiners in Optometry (NBEO) national examinations or individual state board examinations for licensure.³ All 50 U.S. states, Washington, D.C., and Puerto Rico require passage of NBEO examinations.⁴ Additionally, all states require optometrists to hold a license and complete continuing education and some states require passing a clinical examination or a jurisprudence examination.⁵

The United States has 17 optometry schools, Canada has two, and there are no optometry schools in Colorado. However, through the Professional Student Exchange Program and the Western Interstate Commission for Higher Education, the State of Colorado incentivizes Colorado residents to study optometry. The program offers four years of tuition assistance for OD students.⁶ Nonetheless, the number of optometrists is limited by the number of accredited optometry schools in the United States.⁷

The sixth sunset criterion requires COPRRR to evaluate the economic impact of regulation. One way this may be accomplished is to review the expected salary of the profession.

In 2019, the median annual wage for U.S. optometrists was \$115,250 but the highest 10 percent earned more than \$194,100. The setting in which they work effects annual income. For example:⁸

- Offices of physicians \$122,800
- Health and personal care stores \$116,370
- Offices of optometrists \$110,930

Licensed optometrists should expect job prospects to grow the same as that of all other occupations, which is about four percent. Growth will be fueled by an aging population because vision problems tend to occur later in life.⁹

³ Colorado Optometric Association. *Optometry as a Career*. Retrieved December 29, 2020, from <https://colorado.aoa.org/about-the-coa/optometry-as-a-career>

⁴ National Board of Examiners in Optometry. *Advancing the Assessment of Competence*. Retrieved August 16, 2021, from https://www.nbeo.org/state_requirements.cfm

⁵ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook, Optometrists*. Retrieved December 29, 2020, from <https://www.bls.gov/ooh/health-care/optometrists.htm#tab-4>

⁶ Colorado Optometric Association. *Optometry as a Career*. Retrieved December 29, 2020, from <https://colorado.aoa.org/about-the-coa/optometry-as-a-career>

⁷ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook, Optometrists*. Retrieved December 29, 2020, from <https://www.bls.gov/ooh/health-care/optometrists.htm#tab-6>

⁸ U.S. Bureau of Labor Statistics. *Occupational Outlook Handbook, Optometrists*. Retrieved December 29, 2020, from <https://www.bls.gov/ooh/health-care/optometrists.htm#tab-5>

⁹ *ibid.*

Legal Framework

History of Regulation

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by the sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The first sunset criterion questions whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen that would warrant more, less or the same degree of regulation.

One way that COPRRR addresses this is by examining why the program was established and how it has evolved over time.

The Colorado State Board of Optometric Examiners, now called the State Board of Optometry (Board), was created in 1913. The Board met twice a year to examine applicants. In the 1960s, the Board's disciplinary powers were strengthened and Board activity focused on eliminating optometrists practicing in department stores. Such practitioners were known as "commercialists."

The history of optometry in Colorado illustrates how the profession is constantly evolving as new/better technology and procedures are developed and established. There have been several instances of expansion to the scope of practice that now includes the use of diagnostic and therapeutic medications and the treatment of uveitis¹⁰ and glaucoma.¹¹ These advancements have changed the way patients view eyecare.

In 1983, the General Assembly authorized the use of specific pharmaceutical agents for examination purposes only, not for the treatment of eye disease. The legislation required that the standard of care provided be the same as the standard provided by an ophthalmologist. The General Assembly amended the scope of practice again in 1988 to include the use of certain classes of pharmaceutical agents and procedures for treatment of the anterior segment of the eye by optometrists who met specific requirements. In 1996, the General Assembly authorized optometrists to treat glaucoma. These changes to the scope of practice were all accompanied by increased training standards.

Following the 2002 sunset review, the General Assembly further expanded the scope of practice to permit optometrists to prescribe oral antiviral medications and eliminated the requirement that optometrists consult with a physician to treat anterior uveitis and glaucoma.

¹⁰ Uveitis: Inflammation of the middle layer of the eye (uvea), which may cause permanent vision loss.

¹¹ Glaucoma: A group of conditions in which the optic nerve is damaged, usually caused by abnormally high pressure in the eye. Glaucoma is the second most common cause of blindness in the United States.

In 2009, a bill was passed to allow optometrists to prescribe and dispense medicated contact lenses.

A 2010 sunset review resulted in several changes. Among those changes were creation of a volunteer license for inactive optometrists who wanted to keep working without pay, increased liability protection requirements, and additions to what constitutes unprofessional conduct.

Senate Bill 17-242 modernized language of the framework that allows licensees who suffer from a mental or physical impairment to continue practicing.

In 2018, the General Assembly addressed the public opioid crisis by adding language limiting prescriptive and administrative authorities to several health-care-related professions, including optometrists.

During the 2019 legislative session, the General Assembly recodified Title 12, C.R.S. At that time, Article 40 was repealed and reenacted as Article 275. Though there were changes in the manner in which the law reads, and many provisions of law were combined with common elements of other laws, none of those changes affected the implementation or enforcement of the Act.

Legal Summary

The second and third sunset criteria question

Whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether agency rules enhance the public interest and are within the scope of legislative intent; and

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices and any other circumstances, including budgetary, resource and personnel matters.

A summary of the current statutes and rules is necessary to understand whether regulation is set at the appropriate level and whether the current laws are impeding or enhancing the agency's ability to operate in the public interest.

The laws that govern the practice of optometry in Colorado are found in Article 275 of Title 12, C.R.S., and are referred to in this report as the "Act." The Act was adopted to ensure that those practicing optometry in Colorado have met a minimum level of competence to protect consumers.¹²

Section 107 of the Act creates the Board as a Type 2 entity, meaning it is housed in

¹² § 12-275-101, C.R.S.

Department of Regulatory Agencies (DORA) with no power independent of DORA. The Board consists of seven Governor-appointed members including five licensed optometrists and two members-at-large. Members are appointed to four-year terms and no member may serve more than two consecutive terms. Optometrist members must be licensed for the five years preceding appointment and one of the members cannot have interest in or represent any profession, agency, or institution providing health services. The Act requires four members for a quorum and the Board must elect its officers annually. A member must recuse her- or himself in any matter in which she or he has a public or private interest, and the Governor may remove a member for misconduct, incompetency, or neglect of duty.¹³

As the regulator of the profession, the Board is authorized, to, among other things:¹⁴

- Adopt rules, however, the rules may not expand the scope of optometry;
- Communicate with consumers concerning the regulation of optometry;
- Establish educational programs and determine the acceptability of a national examination score;
- Grant licenses; and
- Investigate, take evidence, and conduct hearings in matters relating to Board powers and duties.

The Act is quite prescriptive in that it defines the practice of optometry both by what optometry is, and what optometry is not. It is a mandatory practice act that mandates a person be licensed prior to practicing optometry and no person may use "optometrist", "O.D.", "doctor of optometry", or any phrase indicating that he or she is licensed without being licensed.¹⁵ A person who practices or attempts to practice optometry without a license commits a class 2 misdemeanor for the first offense and a class 6 felony for the second or any subsequent offense.¹⁶

Generally, the Act defines the practice of optometry as:

[T]he evaluation, diagnosis, prevention, or treatment of diseases, disorders, or conditions of the vision system, eyes, and adjacent and associated structures, including the use or prescription of lenses, prisms, vision therapy, vision rehabilitation, and prescription or nonprescription drugs including schedule II controlled narcotic substances limited to hydrocodone combination drugs and schedule III, IV, and V controlled narcotic substances for ocular disease, so long as an optometrist is practicing within the scope of his or her education as is commonly taught in accredited schools and colleges of optometry and is practicing in accordance with applicable federal and Colorado law and Board rules.¹⁷

¹³ § 12-275-107, C.R.S.

¹⁴ § 12-275-108(1), C.R.S.

¹⁵ § 12-275-105, C.R.S.

¹⁶ § 12-275-126, C.R.S. Section 140 of Senate Bill 21-271, which goes into effect March 1, 2022, repeals the class 6 felony for a subsequent offense provision.

¹⁷ § 12-275-103(1)(a), C.R.S.

The Act further lists specific procedures that are considered practicing optometry, including:¹⁸

- Removing superficial foreign bodies from eyes or their appendages,
- Providing postoperative care in certain specific circumstances,
- Treating anterior uveitis,
- Treating glaucoma with all topical and oral anti-glaucoma drugs,
- Performing epilation,
- Dilating and irrigation of the lacrimal system,
- Inserting and removing a punctual plug,
- Puncturing the anterior cornea,
- Scraping the cornea for cultures,
- Debriding the corneal epithelium, and
- Removing the corneal epithelium.

Moreover, anyone who prescribes contact lenses, or treats or trains the eyes to correct or improve an abnormal condition, practices optometry.¹⁹

Among the actions not included in the practice of optometry, according to the Act, are surgery of the globe, orbit, or ocular adnexa. The Act defines surgery as, “any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or laser means.”²⁰ The Act also lists the following prohibitions:²¹

- Injections into the globe, orbit, or ocular addenda;
- Using schedule I or II narcotics, except for hydrocodone combination drugs;
- Treating Posterior uveitis; and
- Using injectable drugs, excepting an epinephrine auto-injector to counteract anaphylactic reaction.

The Act places limits on the ability of practitioners to purchase, possess, and administer prescription or nonprescription drugs. If an optometrist was licensed before 1993, she or he must be qualified as a therapeutic optometrist prior to using any drug to treat eye disease or disorder or for any therapeutic purpose.²² For the purpose of license renewal, the Board must produce a questionnaire to determine whether the licensee has been disciplined for actions that might be considered violations of the Act or that might make the licensee unfit to practice, including actions related to prescribing drugs.²³

¹⁸ S 12-275-103(1)(b), C.R.S.

¹⁹ § 12-275-103(1)(c), C.R.S.

²⁰ § 12-275-103(1)(d)(I), C.R.S.

²¹ §§ 12-275-103(1)(d)(II), 103(1)(d)(III), and 103(1)(d)(IV), C.R.S.

²² §§ 12-275-103(3), and 113, C.R.S. and 4 CCR 728-1, 1.12.C State Board of Optometry Rules

²³ § 12-275-115(2), C.R.S.

To qualify to become a licensed optometrist in Colorado, a person must be 21 years old, not suffer from a substance use disorder, have graduated from an accredited program, and pass the National Board of Examiners in Optometry or other Board-approved examination. The Board is authorized to issue a license by endorsement for those who satisfy the requirements of the occupational credential portability program.²⁴ Not surprisingly, it is a violation of law to use another person's diploma or sell one's own diploma to fraudulently obtain a license.²⁵

To obtain a license, an applicant must submit examination scores from the Board-approved examination and a fee. When a person has a passing score and is otherwise qualified, he or she is granted a license. If an applicant is denied a license, he or she may appeal within 60 days after the date of denial.²⁶ A practicing optometrist must post the license in a place visible to patients.²⁷

To renew the license, each optometrist is required to complete 24 hours of approved continuing education per renewal cycle.²⁸

The Act also provides for a volunteer license for individuals who have a valid unrestricted license or those who have been inactive two years or less.²⁹ A volunteer licensee pays a reduced license fee, cannot earn money as an optometrist, must maintain liability insurance, and must satisfy the continuing education requirements.³⁰ The Board can discipline a volunteer licensee in the same manner and for the same violations as a non-volunteer licensee.³¹

The Board has broad investigation and disciplinary authority. It may impose probation, summarily suspend a license, revoke, suspend, deny, issue, reissue, or reinstate licenses, send a letter of admonition to a licensee, and impose fines up to \$5,000 for violations of the Act.³² The Board may issue a confidential letter of concern when it dismisses a case. It may also reconsider any action and grant, reinstate, or restore a license, terminate probation, or reduce the severity of a disciplinary action.³³ The majority of Act violations fall under the broad category unprofessional conduct. Unprofessional conduct can further defined as “deception or fraud”, committing “undesirable professional actions”, “failure to act professionally”, and acting outside of the “scope of practice.”³⁴

²⁴ § 12-275-110, C.R.S.

²⁵ § 12-275-123, C.R.S.

²⁶ § 12-275-112, C.R.S.

²⁷ §§ 12-275-112(2) and 117, C.R.S.

²⁸ § 12-275-115(3), C.R.S.

²⁹ § 12-275-109(2)(a), C.R.S.

³⁰ § 12-275-109(2)(b), C.R.S.

³¹ § 12-275-109(4), C.R.S.

³² §§ 12-275-122(1)(a), 122(1)(d), and 122(3), C.R.S.

³³ §§ 12-275-122(4) and 122(6)(a), C.R.S.

³⁴ § 12-275-120, C.R.S.

The “deception or fraud” violations include:

- Deceiving or attempting to deceive the Board concerning an issue under investigation by the Board;
- Publishing or circulating fraudulent, false, deceitful, or misleading claims or statements relating to optometry;
- Misleading the Board in securing a license;
- Representing that a non-correctable condition can be permanently corrected;
- Expressly making a false or fraudulent statement regarding optometry, including entries or failing to make essential entries on patient records;
- Behaving in a manner to deceive or defraud the public; and
- Committing abuse of health insurance.

“Committing undesirable professional action” violations include:

- Retaining services to solicit patronage of optometry services;
- Habitually or excessively using alcohol, a habit-forming drug, or a controlled substance;
- Ordering unnecessary tests, treatments, or x-rays;
- Disobeying a Board rule or order;
- Practicing with a suspended license;
- Having a disciplinary action in another state or country if the underlying conduct would be a violation of the Act;
- Being convicted of a felony or entering a plea of guilty or *nolo contendere*, or a plea resulting in a deferred sentence to a felony;
- Interfering with the free choice of a person selecting a health-care practitioner;
- Engaging in a sexual act with a patient while a patient-optometrist relationship exists;
- Committing any violation of the Act; and
- Dividing professional fees with an unlicensed person who refers patients.

Violations for “failure to act professionally” include:

- Failing to notify the Board, of a physical, mental, or substance use issue that may endanger the health and safety of patients and acting within its limitations;
- Failing to refer a patient whose issues are beyond the range of optometrist competency;
- Failing to notify the Board within 30 days of a malpractice judgment or settlement;
- Failing to report any optometrist who has violated or who the licensee believes has violated the Act;
- Failing to report a licensee that has had an adverse action or surrendered a licensee in another jurisdiction for acts that constitute grounds for discipline under the Act;
- Failing to provide a patient with medical records;

-
- Failing to provide a patient with their written contact lens prescription; and
 - Failing to respond to the Board in a timely manner.

“Scope of practice” violations include:

- Practicing optometry with an unlicensed person;
- Performing a grossly negligent optometry activity or committing two or more acts or omissions that fall below generally accepted standards of practice;
- Aiding or abetting an unlicensed or suspended person in the practice of optometry;
- Committing an act or omission that fails to meet generally accepted standards of care whether or not there is an injury to the patient;
- Committing negligent malpractice;
- Administering, dispensing, or prescribing any prescription drug or controlled substance outside of legitimate professional practice; and
- Practicing beyond the scope of the license.

In addition to the aforementioned disciplinary actions, the Board may issue a cease and desist order or seek an injunction to prevent a violation from happening or continuing.³⁵

If the Board believes, with reasonable cause, that a licensee cannot practice safely, it may order the licensee to undergo a physical or mental examination.³⁶ The Board may enter into a confidential licensing agreement with a licensee whose practice may be affected by a physical illness, physical condition, or behavioral or mental health disorder when:³⁷

- The licensee agrees to enforceable practice modifications, and
- The modifications will permit safe treatment and protect the health and safety of patients.

A licensee’s insurance company must report any final judgment, settlement, or arbitration award for malpractice to the Board within 14 days for review, investigation, and action if it is determined to be necessary. If no commercial malpractice insurance is involved, the licensee must make the report. Failure to report the information, subjects the licensee to a civil penalty of up to \$2,500 that is determined in court.³⁸

Every licensee must maintain commercial professional liability insurance of at least \$1 million per incident and \$3 million annual aggregate, a surety bond in those amounts, a cash deposit in those amounts, or any other acceptable security.³⁹

³⁵ §§ 12-275-122(8), and 125(1), C.R.S.

³⁶ § 12-275-121(1), C.R.S.

³⁷ § 12-275-121(5), C.R.S.

³⁸ § 12-275-129, C.R.S.

³⁹ § 12-275-128(1), C.R.S.

The Act allows for the establishment of professional service corporations under the “Colorado Business Corporation Act” when certain conditions are followed:⁴⁰

- The name must contain “professional company”, “professional corporation”, or an abbreviation of such;
- The corporation must be established by licensees for the sole purpose of practicing optometry;
- Shareholders must be licensees actively practicing optometry;
 - If a shareholder no longer qualifies, he or she must dispose of shares.
- The president and board members must be shareholders and licensees;
- Shareholders are jointly and severally liable for all acts, errors, and omissions of employees; and
- The corporation must maintain professional liability insurance that insures all professional services and all nonprofessional employees.

The liability insurance must cover each claim of at least \$50,000 multiplied by the number of licensees employed by the corporation. However, there may be an annual aggregate maximum liability of \$150,000 multiplied by the number licensees. No single company is required to carry insurance in excess of \$300,000 for each claim with an annual aggregate maximum of \$900,000.⁴¹

The Board may establish lesser financial responsibility standards for licensees who have an inactive license or who provide limited services.⁴² If the Board receives two or more malpractice reports concerning an optometrist in one year, the financial surety is doubled. However, in some circumstances, the Board may reduce that amount to what is fair and conscionable.⁴³

The corporation must uphold the standards of professional conduct the same as if it were an individual licensee. Any violation of the public service corporation provisions of the Act are grounds for the Board to terminate or suspend its right to practice.⁴⁴

In addition to licensing requirements, optometrists are required to comply with the “Michael Skolnik Medical Transparency Act of 2010” (Skolnick Act). The purpose of the Skolnick Act is to provide transparency concerning the competency of health-care professionals. Compliance requires health-care professionals to enter data into an online database concerning malpractice insurance settlements and criminal convictions, among other information that may be important to consumers of professional services.

⁴⁰ § 12-275-127(1), C.R.S.

⁴¹ § 12-275-127(1)(g)(III), C.R.S.

⁴² § 12-275-128(2)(a), C.R.S.

⁴³ § 12-275-128(4), C.R.S.

⁴⁴ § 12-275-127(2), C.R.S.

Program Description and Administration

In a sunset review, the Colorado Office of Policy, Research and Regulatory Reform (COPRRR) is guided by sunset criteria located in section 24-34-104(6)(b), Colorado Revised Statutes (C.R.S.). The third, fourth and fifth sunset criteria question:

Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures practices and any other circumstances, including budgetary, resource and personnel matters;

Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively; and

Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates.

In part, COPRRR utilizes this section of the report to evaluate the agency according to these criteria.

The State Board of Optometry (Board) is created within the Department of Regulatory Agencies' Division of Professions and Occupations (Division) to regulate optometry in Colorado.⁴⁵ The Board consists of seven Governor-appointed members, five of whom must be optometrists. The Board meets quarterly and all meetings are open to the public. Table 1 shows the monetary and full-time equivalent (FTE) employees used by the Division to assist in regulating the profession through the period examined for this sunset review.

Table 1
Expenditures

Fiscal Year	Total Program Expenditure	FTE
15-16	\$142,582	0.65
16-17	\$122,866	0.70
17-18	\$171,061	1.60
18-19	\$128,174	0.70
19-20	\$140,755	0.62

Table 1 shows that typically, there is less than 1.0 FTE used by the Division to administer the program. The anomaly is fiscal year 17-18. The increase in FTE in that fiscal year was due to the transition of the program from one Division team to another.

⁴⁵ § 12-275-107, C.R.S.

The 0.62 FTE the Division allotted to the program in fiscal year 20-21 break down as:

- Program Management III, 0.02 FTE - This position performs overall management of multiple programs as a second-level supervisor. This position directs the implementation of policies, rules, and regulations, and supports the strategic goals and objectives of the Division. This position also provides direct personnel supervision of multiple Program Directors.
- Program Management II, 0.15 FTE - This position performs overall management of the program, personnel management, complaint resolution, stakeholder engagement, outreach, and education.
- Technician III, 0.15 FTE - This position reviews statutes and rules, prepares case summaries, and performs case management.
- Administrative Assistant III, 0.20 FTE - This position performs complaint intake, correspondence, case summary preparation, and final action processing.
- Technician V, 0.10 FTE - This position supervises complaint management, correspondence, and follow-up.

The number of FTE reflected in the table does not include employees in the centralized offices of the Division that provide management, licensing, administrative, technical, and investigative support to the Board. However, the cost of those FTE is reflected in the total program expenditures.

Licensing

To acquire a license and practice optometry in Colorado, a person must be 21 years old, hold a Doctor of Optometry (OD) degree from an accredited institution, pass the National Board of Examiners in Optometry examination,⁴⁶ and pay the applicable fee. Except for optometrists who earned their degrees in 1993 or later, Colorado licensure also requires diagnostic certification, therapeutic certification, and advanced ocular training for the treatment of glaucoma and anterior uveitis.⁴⁷ Every optometrist must carry professional liability insurance, a surety bond, have a cash deposit, or other security acceptable to the Commissioner of Insurance, in the amount of \$1 million per incident and \$3 million annual aggregate.⁴⁸ The fee for an initial license was \$200 during the years examined for this sunset review.

License renewals are in odd-numbered years and the renewal fee was \$202 during the period examined for this sunset review. Prior to renewal, a licensee must complete substance use prevention training within the 24 hours of required clinically-based continuing education per renewal cycle. However, if the renewal happens the year after initial licensing, only 12 hours of continuing education is required for the biennial

⁴⁶ § 12-275-110(1), C.R.S.

⁴⁷ 4 CCR 728-1, 1.12.B., State Board of Optometry Rules

⁴⁸ § 12-275-128(1), C.R.S.

renewal.⁴⁹ The Board audits for compliance with the requirements.

If a licensee does not renew a license within 60 days of expiration, he or she must apply for reinstatement.⁵⁰ During fiscal year 19-20, the fee to have a license reinstated was \$217.

An optometrist licensed in another state may acquire a Colorado license by endorsement if she or he pays a \$200 application fee and meets these criteria:

- Holds an active license, in good standing, in another jurisdiction;
- Possesses credentials and qualifications substantially equivalent to those required by Colorado, including requirements for advanced therapeutic treatment; and
- Has 24 months of active practice experience immediately preceding the application for licensure by endorsement.

Alternatively, a candidate for license by endorsement may demonstrate competency as approved by the Board⁵¹ or by satisfying the requirements of the occupational credential portability program.⁵²

The Board also offers a volunteer license to optometrists who deliver limited optometry services for no compensation. To obtain a volunteer license a person must have an active Colorado license or have been inactive less than two years. In addition, he or she must:⁵³

- Confirm a date by which he or she will no longer earn income as an optometrist;
- Comply with continuing education, liability insurance, and any other requirement in statute; and
- Conform to the same disciplinary standards as a full-status optometrist.

The fee for an initial volunteer license, renewal of a volunteer license, and reinstatement of a volunteer license was \$20 during the time cohort examined for this review.

Table 2 shows the number of individuals licensed by the Board during the years under review.

⁴⁹ 4 CCR 728-1, 1.23 A and B., State Board of Optometry Rules.

⁵⁰ 4 CCR 728-1, 1.10.A., State Board of Optometry Rules.

⁵¹ 4 CCR 728-1, 1.13., State Board of Optometry Rules.

⁵² § 12-275-110(2), C.R.S.

⁵³ 4 CCR 728-1, 1.18., State Board of Optometry Rules.

Table 2
Licensing Information

Fiscal Year	Initial	Endorsement	Reinstatement	Renewal	Volunteer	TOTAL
15-16	59	37	6	0	3	1,379
16-17	43	53	3	1,293	3	1,354
17-18	55	30	12	0	3	1,425
18-19	71	31	9	1,362	3	1,433
19-20	67	38	12	0	3	1,552

Table 2 shows that the total number of licenses increased during the time examined. The increase is likely due to an increase in demand from the state’s overall population growth during that time.

Examinations

The eighth sunset criterion questions whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The National Board of Examiners in Optometry (NBEO) administers the examinations or the “National Boards” that optometrists are required to pass to become licensed in Colorado. The examinations are taken at different times during an optometry student’s schooling. Some optometry schools require their students to pass some of the examinations to graduate. Generally, Part I is taken in the third year, and Parts II and III during the fourth year of school.⁵⁴ As of Spring 2021, each of these examinations cost \$985.⁵⁵ While many individuals take the examinations when attending school, any graduate of an Accreditation Council on Optometric Education-accredited institution is eligible to take the National Boards.⁵⁶

⁵⁴ Ferris State University. *National Board of Examiners in Optometry (NBEO)*. Retrieved April 23, 2021, from <https://www.ferris.edu/optometry/admissions/Optometric-Licensure.htm>

⁵⁵ National Board of Examiners in Optometry. *Exam Fees*. Retrieved September 27, 2021, from https://www.optometry.org/registration/exam_fees

⁵⁶ National Board of Examiners in Optometry. *Exam Eligibility*. Retrieved April 23, 2021, from <https://www.optometry.org/registration/eligibility>

Part I of the National Boards is the Applied Basic Science examination. It tests fundamental science concepts necessary to practice optometry. The examination has 350 scored items and 20 non-scored pre-test items and is presented in two sessions. Candidates must be in the spring of their third year of school to take the examination.⁵⁷ The average national pass rate of Part I, for first time examinees graduating in 2017-2022, was 76.7 percent.⁵⁸

Part II of the National Boards is the Patient Assessment & Management examination. It emphasizes diagnosis and treatment while evaluating clinical thinking and decision-making. Part II also consists of 350 items taken in two sessions. Additionally, the examination has 45-55 full cases, 15-20 solo items, and 15-25 mini cases, geared to assessing entry-level competence. The soonest a candidate may take the examination is the December of her or his graduation year.⁵⁹ The average national pass rate of Part II, for first time examinees graduating in 2017-2021, was 89.5 percent.⁶⁰

Part III of the National Boards is the Clinical Skills Examination. It tests for the fundamental skills needed to practice. The examination rooms used in the examination replicate actual examination rooms.⁶¹ The average national pass rate of Part III, for first time examinees graduating in 2017-2022, was 81.9 percent.⁶²

The NBEO also examines candidates for competence in multiple other areas, including:

Treatment and Management of Ocular Disease⁶³

The examination measures thinking and decision-making with a clinical emphasis on diagnosis, treatment, and management of ocular disease.

Injections Skill Examination⁶⁴

The examination tests the basic skills needed to practice. Examination rooms replicate clinical examination rooms which ensure validity in the testing.

⁵⁷ National Board of Examiners in Optometry. *Applied Basic Science*. Retrieved April 23, 2021, from https://www.optometry.org/exams/part_i

⁵⁸ Berkley School of Optometry. *National Board Exam Pass Rates (NBEO)*. Retrieved April 29, 2021, from <https://optometry.berkeley.edu/about-us/why-berkeley/nbeo/>

⁵⁹ National Board of Examiners in Optometry. *Patient Assessment & Management*. Retrieved April 23, 2021, from https://www.optometry.org/exams/part_ii

⁶⁰ Berkley School of Optometry. *National Board Exam Pass Rates (NBEO)*. Retrieved April 29, 2021, from <https://optometry.berkeley.edu/about-us/why-berkeley/nbeo/>

⁶¹ National Board of Examiners in Optometry. *Clinical Skills Examination*. Retrieved April 23, 2021, from https://www.optometry.org/exams/part_iii

⁶² Berkley School of Optometry. *National Board Exam Pass Rates (NBEO)*. Retrieved April 29, 2021, from <https://optometry.berkeley.edu/about-us/why-berkeley/nbeo/>

⁶³ National Board of Examiners in Optometry. *Treatment and Management of Ocular Disease*. Retrieved April 29, 2021, from <https://www.optometry.org/exams/tmod>

⁶⁴ National Board of Examiners in Optometry. *Injection Skills Examination*. Retrieved April 29, 2021, from <https://www.optometry.org/exams/ise>

Laser and Surgical Procedures Examination⁶⁵

The examination measures the ability to manage and perform certain laser and surgical skills. This is a hybrid examination consisting of both a clinical skills portion and a written portion. This examination may be taken by fourth year optometric students, optometric residents, and optometric practitioners.

Advanced Competence in Medical Optometry⁶⁶

The examination provides an OD the same standing as other health-care professionals with the Veterans Administration.

Continued Professional Development in Optometry⁶⁷

The examination is a self-assessment intended to measure knowledge and experience in ocular disease and related systemic conditions.

Online State Law Examinations⁶⁸

Since January 2010, NBEO has offered the Online State Law Examination program to help state licensing boards administer jurisprudence examinations.⁶⁹ (Colorado has no such requirement)

The clinical examinations (Part III, Injections Skill Examination, and the Laser and Surgical Procedures Examination) are administered at the National Center of Clinical Testing in Optometry in Charlotte, North Carolina. The remaining computer-based examinations are administered by Pearson Vue at their test centers.⁷⁰ There are three locations in Colorado: Colorado Springs, Greenwood Village, and Westminster.⁷¹

Complaint and Disciplinary Activity

The seventh sunset criterion requires COPRRR to examine whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

⁶⁵ National Board of Examiners in Optometry. *Laser and Surgical Procedures Examination*. Retrieved April 29, 2021, from <https://www.optometry.org/exams/lspe>

⁶⁶ National Board of Examiners in Optometry. *Advances Competence in Medical Optometry*. Retrieved April 29, 2021, from <https://www.optometry.org/exams/acmo>

⁶⁷ National Board of Examiners in Optometry. *Continued Professional Development in Optometry*. Retrieved April 29, 2021, from <https://www.optometry.org/exams/cpdo>

⁶⁸ National Board of Examiners in Optometry. *Online State Law Exams*. Retrieved April 29, 2021, from <https://www.optometry.org/exams/osle>

⁶⁹ Colorado does not require a jurisprudence examination.

⁷⁰ National Board of Examiners in Optometry. *Test Center Information*. Retrieved April 29, 2021, from https://www.optometry.org/test_day/pearson_vue

⁷¹ National Board of Examiners in Optometry. *Find a Test Center*. Retrieved April 29, 2021, from <https://wsr.pearsonvue.com/testtaker/registration/SelectTestCenterProximity/NBEO?conversationId=1521310>

Table 3 enumerates the complaints received by the Board during the period examined for this sunset review. The complaints may be initiated by the Board or by any person outside of the regulatory system. When the complaints come to the Board, they allege the manner in which the practitioner has violated the Act. The Division then performs an investigation so the Board may determine if that, or any, violation occurred.

**Table 3
Complaints**

Alleged Violation	Fiscal Year				
	15-16	16-17	17-18	18-19	19-20
Practicing w/o a License	0	0	0	1	0
Standard of Practice	4	7	7	10	15
Fee Dispute	0	0	2	0	0
Scope of Practice	1	0	0	0	0
Sexual Misconduct	1	0	0	0	0
Substance Abuse	1	0	0	0	0
Unprofessional Conduct	2	4	1	3	3
Felony Conviction	0	1	0	0	0
Continuing Education Violation	11	0	1	0	3
Other	1	1	0	1	0
TOTAL	21	14	11	15	21

Table 3 shows that the majority of the complaints allege a violation of optometry’s generally accepted standards of practice or not completing Act-required continuing education.

The continuing education requirement occurs every two years because license renewal is in every odd-numbered year. Therefore, violations are only documented in the odd-numbered years. The category labeled, “unprofessional conduct,” includes violations unspecified by the complainant. In those cases, the complaint will come in without postulating a specific violation listed in the Act, only a perceived wrongdoing. All violations of the Act are included in the section titled “unprofessional conduct.” After the Division investigates, it is then able to specify what the violation is, if one was committed. Table 4 enumerates those violations.

**Table 4
Founded Violations**

Violation	Fiscal Year				
	15-16	16-17	17-18	18-19	18-19
Fraud in Licensing	0	0	1	0	0
Habitual Substance Use	1	0	0	0	0
Disobeying Board Rule or Order	0	0	1	0	0
Grossly Negligent Act or Omission	0	1	0	0	0
Physical Illness Issue	2	0	0	0	0
Failing to Refer	0	0	1	0	0
Discipline in Another State	0	0	0	1	0
Standards of Care	1	1	1	0	1
Sexual Act with Patient	0	1	0	0	0
Not Providing Records	1	0	0	0	0
General Violation of the Act	0	1	0	0	0
Failing to Respond to a Complaint	0	1	0	0	0
TOTAL	5	5	4	1	1

Table 4 shows that there are very few violations and there is no apparent pattern in the violations.

Recall from the “Legal Framework” section of this sunset report, that the Board is authorized to take several types of disciplinary actions against a person who violated the Act. It may impose probation, summarily suspend a license, revoke, suspend, deny, issue, reissue, or reinstate licenses, send a letter of admonition to a licensee, and impose fines up to \$5,000 for violations of the Act.⁷² The Board may also issue a confidential letter of concern when it dismisses a case.⁷³

Table 5 enumerates the actions that were taken by the Board during the period examined for this sunset review.

⁷² §§ 12-275-122(1)(a), 122(1)(d), and 122(3), C.R.S.

⁷³ §§ 12-275-122(4) C.R.S.

**Table 5
Disciplinary Actions**

Type of Action	Fiscal Year				
	15-16	16-17	17-18	18-19	19-20
Confidential Agreement	1	0	0	0	0
Fines	0	1	0	0	1
Cease and Desist Order	0	0	0	0	0
Letter of Admonition	3	2	0	0	0
Citation	0	0	0	0	0
Revocation	0	2	2	0	0
Suspension	0	0	0	0	0
Stipulation	0	3	1	1	2
Voluntary surrender/relinquishment	1	0	0	0	0
Total Disciplinary Actions	5	8	3	1	3
Dismiss	3	9	8	8	18
Letter of Concern	0	4	1	2	3
Total Dismissals	3	13	9	10	21

Table 5 indicates that the Board issued two fines during the time cohort. In fiscal year 16-17, a fine of \$2,000 was levied for multiple infractions by the same optometrist and in fiscal year 19-20, a fine of \$500 was issued for noncompliance with the mandatory continuing education requirement. Fines carry a 15 percent surcharge that is credited to the Consumer Outreach and Education Cash Fund. This fund was established by the General Assembly to develop, implement, and maintain the consumer outreach and education program.

Table 6 lists the average time it took to process a complaint through final disposition.

**Table 6
Case Processing Time**

Fiscal Year	Average Case Processing
15-16	291 Days
16-17	117 Days
17-18	107 Days
18-19	88 Days
19-20	106 Days

The case processing times vary significantly. There are several factors that contribute to the length of time a case is open such as the nature of the complaint, complexity of the investigation, the length of time between Board meetings, and the type of penalty imposed, if any.

Collateral Consequences - Criminal Convictions

The ninth sunset criterion requires COPRRR to examine whether the agency under review, through its licensing processes, imposes any sanctions or disqualifications based on past criminal history, and if so, whether the disqualifications serve public safety or commercial or consumer protection interests.

In part, COPRRR utilizes this section of the report to evaluate the program according to this criterion.

The Division reported that no sanctions were given to licensees due to criminal actions.

COVID-19 Response

The COVID-19 pandemic placed extraordinary pressures on the citizens of Colorado, the Colorado economy and Colorado state government. As a result, COPRRR asked the Division to summarize any measures the agency may have implemented in response to the COVID-19 pandemic, the results of those efforts and any lessons learned. This section of the report is intended to provide a high-level summary of those responses.

The Division took several key steps in responding to the COVID-19 pandemic, including:

- Working with the Governor's Office to issue Executive Order D 2020 038 - Medical Workforce Surge, which included, but was not limited to modifying/suspending numerous aspects of the health-care professions' practice acts, including allowing for greater flexibility in delegation and expanded scopes of practice;
- Expanding the use of telehealth;
- Quickly transitioning to near 100 percent work-from-home for Division employees;
- Expanding the scopes of practice for several health-care professions so that they could administer the COVID-19 vaccine; and
- Closely coordinating with other state agencies, such as the Department of Public Health and Environment (CDPHE), in issuing guidance and helping stakeholders navigate the demarcation between the Division and other state agencies.

The COVID-19 pandemic revealed a few regulatory gaps as well, including:

- The relative paucity of regulatory guidance on the use of telehealth;
- The unclear lines between the Division, the Department of Regulatory Agencies and CDPHE, particularly in health-care settings; and
- The need for the Division to be able to act more quickly in the face of another, future event like the COVID-19 pandemic.

While the full impact of many of the changes implemented by the Division are not yet fully understood, some key learning points include:

- Telehealth is here to stay;
- Coordinating efforts with other state agencies was essential to the Division's successful and timely response to the COVID-19 pandemic;
- Utilization of existing statutory authority aided in the Division's successful and timely response to the COVID-19 pandemic;
- Regulatory speed is key to successfully responding to a pandemic; and
- Emergency, remote work has proven efficient and allowed for continuity of services.

Analysis and Recommendations

The final sunset criterion questions whether administrative and statutory changes are necessary to improve agency operations to enhance the public interest. The recommendations that follow are offered in consideration of this criterion, in general, and any criteria specifically referenced in those recommendations.

Recommendation 1 - Continue the State Board of Optometry and the regulation of optometrists for 11 years, until 2033.

The statutes that govern the practice of optometry in Colorado are contained in section 12-275-101, *et seq.*, Colorado Revised Statutes (C.R.S.) (Act). The Governor-appointed, seven-member State Board of Optometry (Board) enforces the Act and the Department of Regulatory Agency's Division of Professions and Occupations (Division) provides administrative assistance to the Board.

Doctors of Optometry (ODs) are the primary health-care professionals regarding eye health. ODs conduct comprehensive eye examinations to measure eyesight and check for diseases that are otherwise not possible to detect and that may lead to loss of vision. A typical optometric examination includes a peripheral vision test, visual acuity test, glaucoma test(s), and dilation. The dilation allows the OD to examine the back of the eye, including the retina, macula, and optic nerve.

ODs are trained to treat most medical facets of eyecare, including prescribing medications and treating disease, but they do not perform surgery. If surgery is required or an issue is beyond the scope of their expertise or of optometry, they are required by the Act to refer the patient to the appropriate health-care practitioner.⁷⁴ In other words, to protect patients, ODs are required by law to know what they are capable of doing and what they are not capable of doing.

Licensing helps accomplish these ends by requiring that every OD be 21 years old, not suffer from a substance use disorder, have graduated from an accredited program, and pass the National Board of Examiners in Optometry or other Board-approved examination.⁷⁵ The accredited programs are four years and are generally followed by a year of residency.

When a licensee acts outside of the scope of practice or otherwise violates the Act, he or she may be disciplined by the Board. The Board may place a licensee on probation, revoke or suspend a license, send a letter of admonition to the licensee, or impose fines up to \$500 for violations of the Act. The stakes are high for those who violate but the consequences of incompetence could mean blindness for patients.

⁷⁴ § 12-275-120(1)(l), C.R.S.

⁷⁵ § 12-275-110(1), C.R.S.

The data provided for this sunset review show that the licensing program ensures protection for consumers. During the five fiscal year period examined for this sunset review, there were an average of nearly 1,430 ODs licensed annually. During that time, there was an average of only four disciplinary actions annually, zero suspensions, and a total of four revocations. The data indicate that the overwhelming majority of ODs practice safely and not outside of their expertise.

Among the tasks of a sunset review, the foremost is for the General Assembly to determine, “Whether regulation by the agency is necessary to protect the public health, safety, and welfare.”⁷⁶ Because the stakes are high, the verification of training and the ability to discipline is essential, and the Board has the requisite expertise necessary to deliberate on important regulatory matters, the General Assembly should continue the Act and the functions of the Board. Because there are no issues that will demand that the General Assembly scrutinize the program sooner, the Act should be continued for 11 years, until 2033.

Recommendation 2 - Allow ODs to practice according to their qualifications, as determined by the Board and national examinations.

Optometry like many professions, especially health-care-related professions, is constantly evolving. Advances in science, technology, and procedures change the manner in which ODs are trained and practice. Because they are the primary care specialists for eyes, they operate similarly to the way a primary care physician does for the body. As advances are made, new protocols for care and treatments for disease and other maladies are incorporated into practice, the professionals must be aware and up to date. In this light, as stated in Recommendation 1 of this report, it is very important for an OD to know what procedures she or he can legally and competently perform.

There are three sunset criteria that must be considered when reading the following recommendation:

- The first criterion asks if conditions have changed that warrant a change in the level of regulation of the profession.
- The second criterion asks that if regulation is necessary, is current regulation the least restrictive form of regulation consistent with the public interest.
- The eighth criterion asks whether the scope of practice of the regulated occupation impacts the optimum use of personnel.

The Act is very prescriptive. It contains lists of what constitutes the practice of optometry and what does not. When practice acts are written in such a manner, they can have an unintended consequence of stifling innovation and ultimately hurting

⁷⁶ § 24-34-104(6)(b)(I), C.R.S.

consumers. The effect of the Act, in its current form, is that ODs are not allowed to practice up to the level of their education and training. In this case, regulation is too restrictive and does not promote the optimum use of personnel.

When the General Assembly determined it was necessary to regulate ODs to protect the public's health, safety, and welfare, it determined that the Board had the necessary expertise to establish initial competency. The National Board of Examiners in Optometry (NBEO) examinations are required by all 50 U.S. states plus Washington, D.C. and Puerto Rico. An OD who graduates from an accredited program and passed the series of high stakes examinations required by the NBEO is capable and can perform several procedures that are not currently allowed under Colorado law.

Examples of the types of procedures that can be done in an optometrist's office without significant risk are the removal of skin tags or Chalazions from the eye lid. Skin tags are small benign growths that can be safely eliminated by way of an injection or radio frequency removal. A Chalazion is a styne or a small lump that occurs on the eyelid when a pore or gland is clogged. When one is removed it requires no general anesthetic, merely a local or no anesthetic. The procedure involves mostly the outermost layer of skin, and there is a shield between the lesion and the eyeball. Patients usually drive themselves to the office and home after these procedures because there is only slight disruption to tissue. These are brief procedures with minimal to no recovery time. Because an OD is a trained professional, risk to the patient is virtually nonexistent.

Most ODs are trained to remove lumps and bumps such as these prior to being licensed to practice in Colorado, but for some who were trained many years ago, it may require remedial training. ODs who have not been trained, should not have the ability to administer to the problems.

Those who oppose allowing ODs practicing to the level of their training, do not trust that OD training leads to competence. They contend that ODs, "lack training and experience" necessary to perform additional procedures. Allowing them to do so will result in major issues or blindness.

In conjunction with this sunset review, Colorado Office of Policy, Research, and Regulatory Reform (COPRRR) staff reached out to states that have expanded the scope of practice for ODs. What staff found was that there has not been the increase in regulatory actions taken against practitioners that opponents indicate. In fact, states that have expanded practice, often have it written into law that ODs are held to the same standard of care as other licensed professionals who perform the tasks. Adding such a provision would generate more regulatory actions if there was evidence of problems. This same provision is in the Act and applicable when ODs use or prescribe drugs.⁷⁷

⁷⁷ § 12-275-103(2), C.R.S.

It is important to reiterate, the General Assembly established the standardized national examinations and the Board as the arbiters of competence, and this recommendation does not propose expansion beyond training and examination.

Another reason to allow ODs to practice to their level of education and training is that access to other eyecare professionals in rural Colorado is lacking. Information provided to COPRRR by the those who oppose these changes illustrated that very few people live longer than 30 minutes or more than 50 miles from an eye surgeon.⁷⁸ However, among the ways to define “rural,” is a lack of population per square mile. The opposing information also shows that approximately half of Colorado’s land mass falls outside of those 30-minute or 50-mile parameters. It would logically follow that it is the “few people” to which they refer, who need better access. The Rural Health Information Hub estimates that 12.4 percent of Colorado’s population lives in a rural area.⁷⁹ Generally, fewer people leads to fewer services and less access.

The General Assembly has a history of trying to solve health-care accessibility issues for Colorado’s rural citizens and this recommendation would track that course.

Moreover, a patient should not be forced by Colorado law to see a different professional for a minor procedure, regardless of the distance. This is especially the case when a trained professional is in the room making the diagnosis and advising the patient. The opposition’s data indicated that treatment of a Chalazion or sty, is needed in 50 percent of cases and surgery is needed in 10 percent.⁸⁰ Forcing a patient to expend extra time and resources to unnecessarily see an additional specialist appears to be statutory overreach when viewed through the lens of the sunset criteria.

Considering those criteria cataloged above: It is clear conditions have changed since the last sunset review and that less regulation would benefit, and not hurt, the public; Prohibitions on ODs performing tasks that they have been qualified to perform, by the very organizations the General Assembly determined have the expertise to determine competency, is overly restrictive; and not allowing capable, qualified, licensed professionals to take the actions their patients need is not the most efficient use of personnel. Therefore, Colorado should join at least 14 other states, including neighboring rural states New Mexico, Utah, and Wyoming, and allow ODs to practice according to their qualifications determined by the standardized national examinations.

Because education and training has also evolved over time, the General Assembly should empower the Board to determine requirements for additional practice authorities. Assessments should be made based on the content of the NBEO examinations at the time they were taken by an OD. The General Assembly should also insist that ODs are held to the same standards of care as other licensed professionals that perform similar tasks.

⁷⁸ 2021 Sunset Review of the Colorado State Board of Optometry: Access to Care to Optometrists and Ophthalmologists, Colorado Society of Eye Physicians & Surgeons, pp.3 and 7. Submitted May 24,2021.

⁷⁹ Rural Health Information Hub. *Colorado*. Retrieved August 17, 2021, from <https://www.ruralhealthinfo.org/states/colorado>

⁸⁰ *ibid.* p.5.

Recommendation 3 - Synchronize common provisions of law with the Act.

Section 12-30-108(1)(a), C.R.S., is a provision relating to confidential agreements between a regulator and the regulated population. The section requires licensees to notify the regulator if she or he cannot treat patients with reasonable skill and safety.

If a licensee, registrant, or certificate holder has a physical illness, physical condition, or behavioral or mental health disorder that renders the person unable to practice the applicable health-care profession or occupation with reasonable skill and safety to patients or clients, the licensee, registrant, or certificate holder shall notify the regulator that regulates the person's profession or occupation of the physical illness, physical condition, or behavioral or mental health disorder in a manner and within a period determined by the regulator.

ODs are exempt from this requirement. However, they are subject to discipline under the Act if they fail to notify the Board of a condition, illness, or disorder that renders the OD unable to treat patients with reasonable skill and safety.⁸¹

Notify the board, in a manner and within a period determined by the board, of a physical illness, physical condition, or behavioral, mental health, or substance use disorder that renders an optometrist unable to treat with reasonable skill and safety or that may endanger the health and safety of persons under the optometrist's care;

The tenth sunset criterion asks if changes are necessary to improve agency operations. The exclusion appears to be contrary to the Act and is confusing. Therefore, the General Assembly should eliminate the exemption to synchronize this common provision and the Act.

Recommendation 4 - Repeal statutory references to national organizations.

Section 12-275-110, C.R.S, states that applicants for licensure must pass NBEO examinations.

By naming organizations in statute, the General Assembly cedes the state's ability to deviate from the standards established by those organizations. Additionally, these organizations are not subject to the state's rulemaking or transparency requirements.

Additionally, since the Act already provides the Board with the authority to approve examinations, the Board may continue to approve the same examinations in the same manner but may retain flexibility regarding any potential examinations that may be approved in the future.

⁸¹ § 12-275-120(1)(k)(l), C.R.S.

The second sunset criterion asks if regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest.

Naming specific organizations in statute limits the Board's authority and flexibility, which is contrary to the goal to protect the public interest. For this reason, the General Assembly should repeal statutory references to both NBEO examinations and continue to authorize the Board to approve examinations.

Appendix A - Customer Service Survey

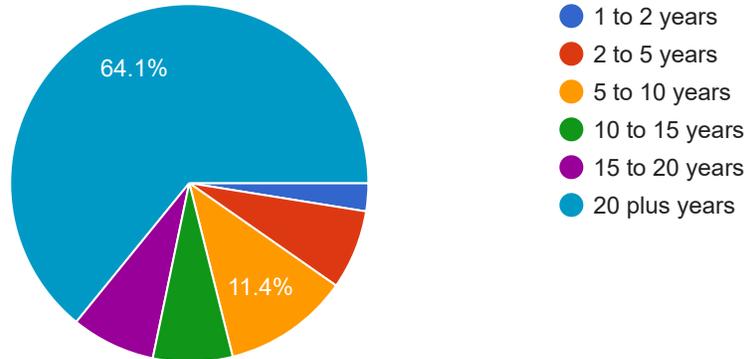
In the spring of 2021, Colorado Office of Policy, Research and Regulatory Reform staff conducted a survey of all optometrists who are licensed by the State Board of Optometry. The survey was sent to 1,578 optometrists; 9 emails were returned as undeliverable. The survey received 237 responses, which is a 15 percent response rate. Survey responses may be found on the pages that follow.

Customer Service Survey for the Colorado State Board of Optometry

237 responses

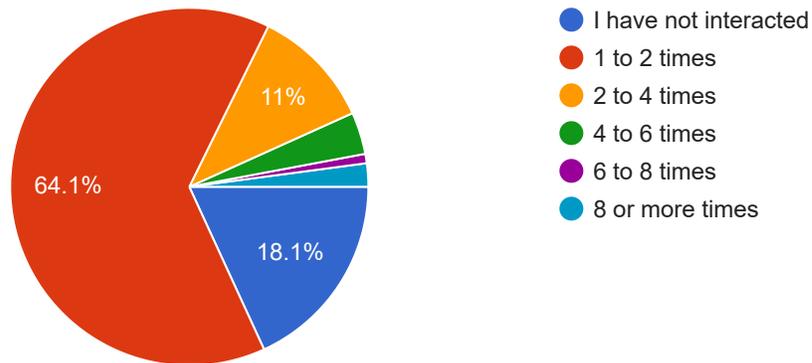
If you are a member of the profession or occupation that is regulated by the Board of Optometry, please indicate your years of experience.

237 responses



In the past year, how many times have you interacted with the State Board of Optometry. Please count all forms of interaction (telephone, e-mail, internet or website, regular mail, in person).

237 responses



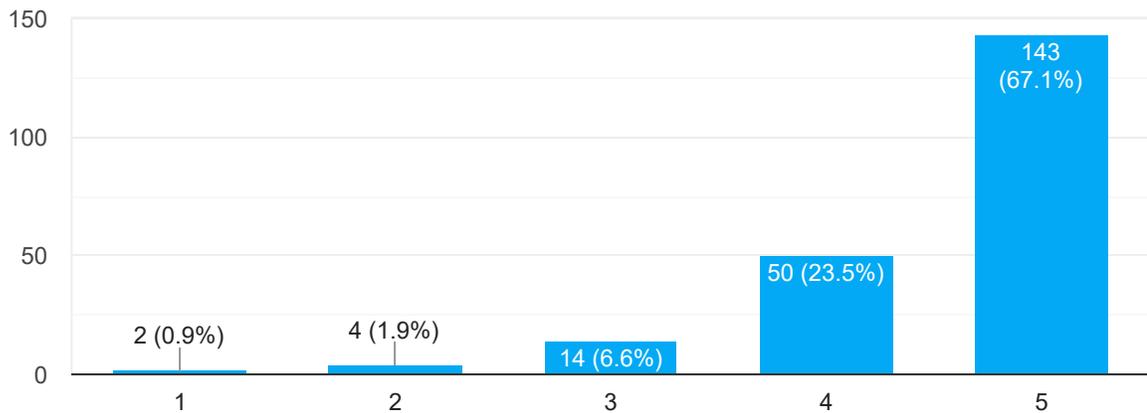
What was your primary purpose in interacting with the board?

205 responses

- licensing and registration - 71.7%
- to learn about the functions of the Board of Optometry - 11.2%
- update my information - 4.4%
- respond to a complaint - 3.4%
- comment on or learn about existing/proposed rules or legislation - 2.4%
- questions about scope of practice - 1.5%
- to learn about the requirements for an occupation/profession - 1.5%
- other - 3.9%

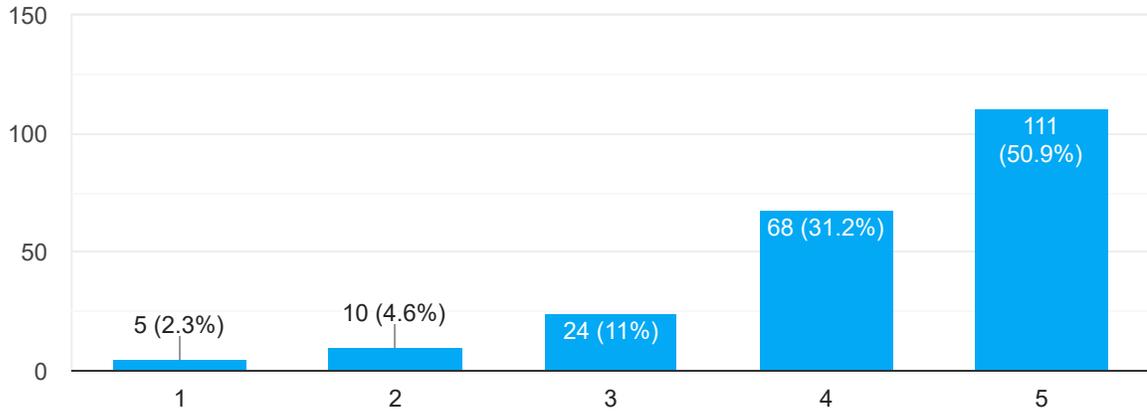
Overall please rate the service provided by the Board of Optometry on a scale of 1 to 5 with 1 being unacceptable and 5 being very acceptable.

213 responses



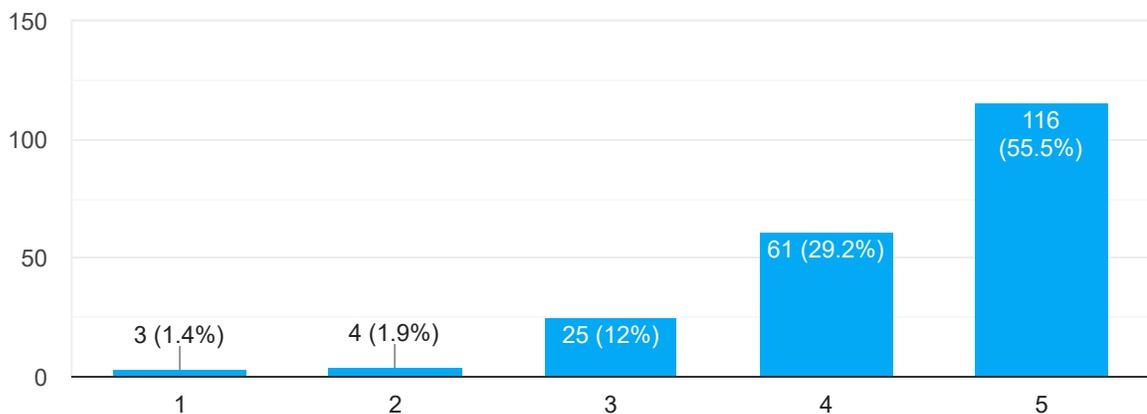
Please rate the the usefulness of the Board of Optometry's website in answering your questions or providing needed information on a scale of 1 to 5 with 1 being not very useful and 5 being very useful.

218 responses



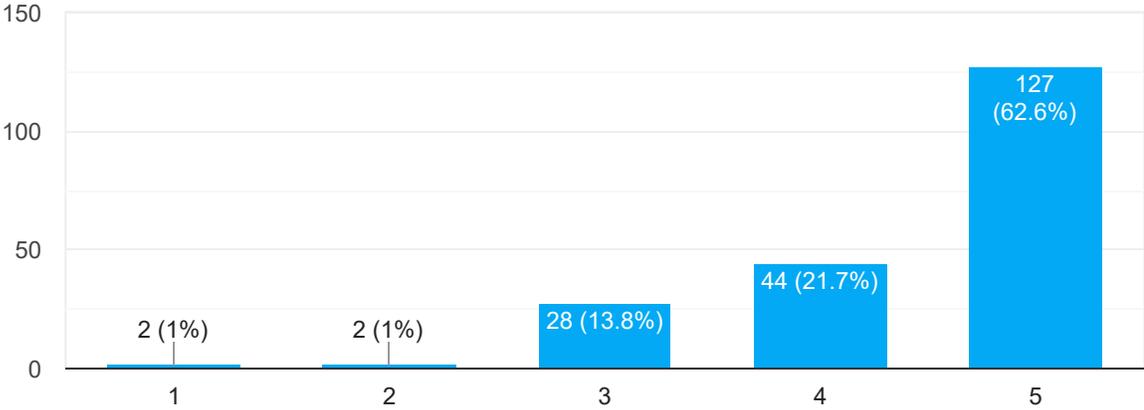
Please rate the the usefulness of the Board of Optometry's communications in answering your questions or providing needed information on a scale of 1 to 5 with 1 being not very useful and 5 being very useful.

209 responses



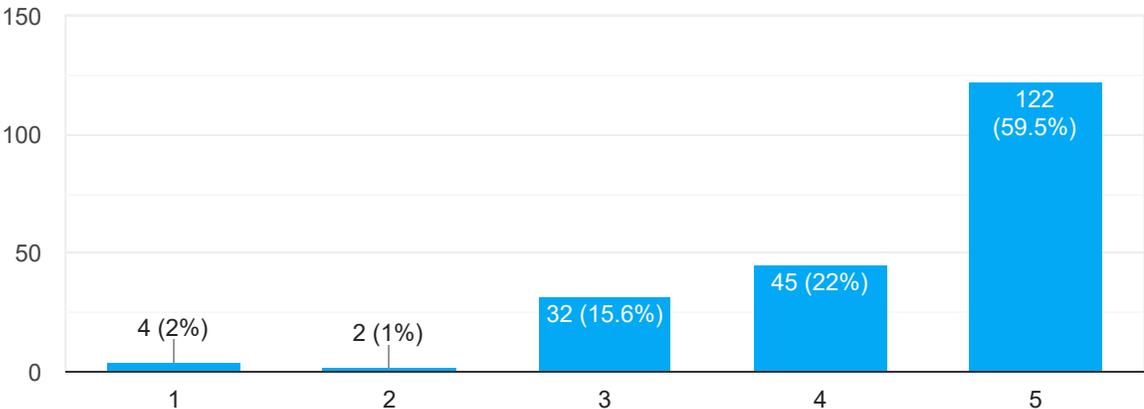
Regardless of the outcome of your most recent issue, do you feel the Board of Optometry listened to your concerns? Please use a scale of 1 to 5, with 1 being none of my concerns were heard and 5 being all of my concerns were heard.

203 responses

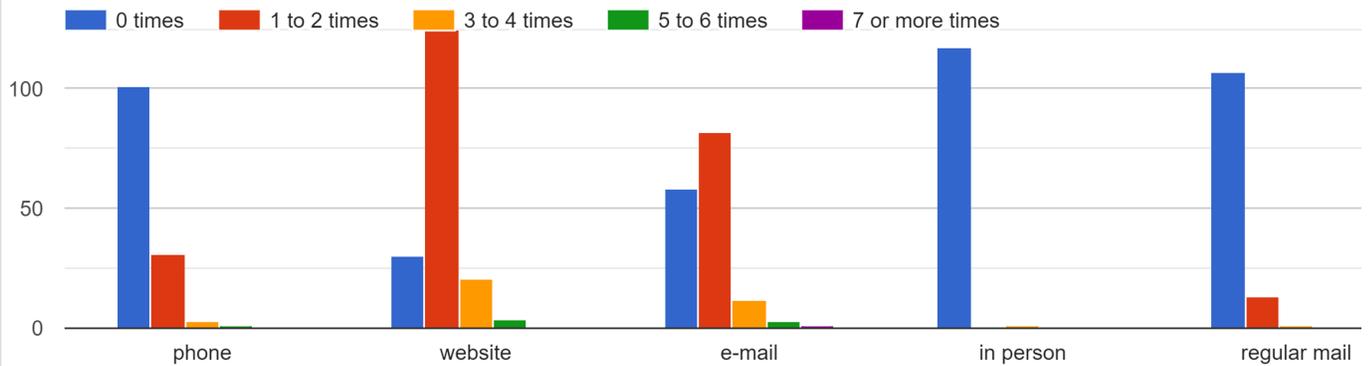


Please rate the timeliness of the Board of Optometry in responding to your issues on a scale of 1 to 5 with 1 being very untimely and 5 being very timely.

205 responses

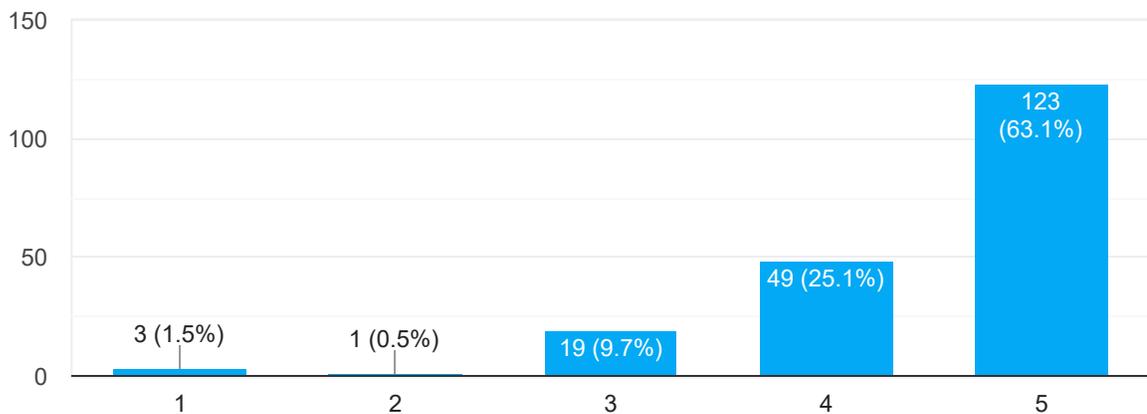


Please provide the number and types of interactions that were required to resolve or address your most recent issue. (Please select all applicable types of interactions used AND the number times for each type interaction selected.)



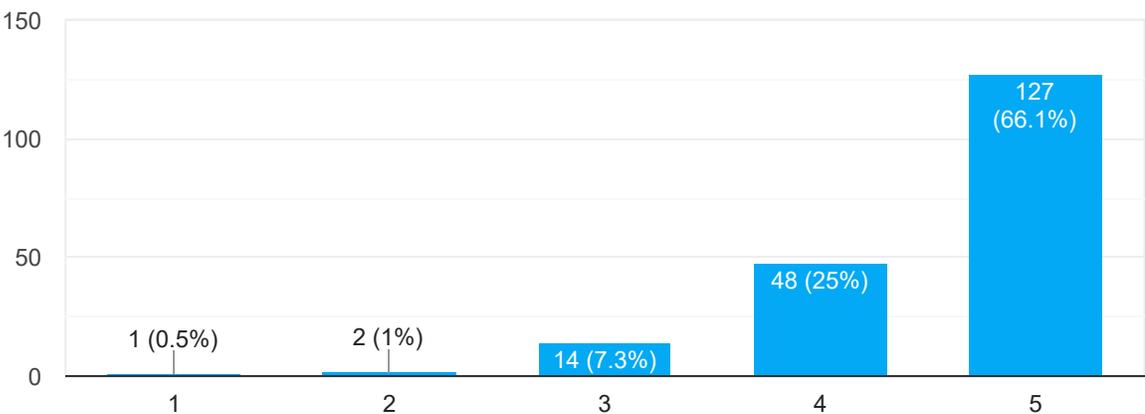
Please rate the helpfulness of the Board of Optometry in resolving your issue or need with 1 being not very helpful and 5 being very helpful.

195 responses



Please rate the professionalism of the program's staff on a scale of 1 to 5 with 1 being very unprofessional and 5 being very professional.

192 responses



On a scale of 1 to 5 please rate the accuracy of information provided by the board with 1 being not very accurate and 5 being very accurate.

199 responses

