

STATE OF NORTH CAROLINA

OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA



NORTH CAROLINA STATE BOARD OF OPTICIANS

RALEIGH, NORTH CAROLINA

FINANCIAL RELATED AUDIT

DECEMBER 2014



NCOSA
The Taxpayers' Watchdog

EXECUTIVE SUMMARY

PURPOSE

The purpose of this audit was to determine whether the North Carolina State Board of Opticians (Board) has adequate operating funds to accomplish its statutory duties.

BACKGROUND

The Board was created in 1951 to regulate the training, education, examination and practice of dispensing opticians. Its functions include: (1) monitoring the location and activities of apprentices, interns, licensees and places where dispensing takes place; (2) administering the optician licensing examination; and (3) investigating and prosecuting complaints against licensees and unlicensed persons.

The Board's operations are funded by fees charged to opticians. For the period February 1, 2013, through January 31, 2014, the Board had total revenues of \$160,450 and total expenditures of \$252,207.

KEY FINDING

Based on current income and expenses, the Board will lack adequate operating funds during the 2015 state fiscal year. Despite newly implemented cost-cutting measures, a lack of funding will soon keep the Board from meeting its statutory duties to license opticians, collect fees, investigate complaints, and take necessary disciplinary actions. State law established fees that were intended to provide adequate operating funds for the Board. However, operational costs have exceeded fee income for each of the last five years.

KEY RECOMMENDATION

The Board should confer with the General Assembly to evaluate options for continuing services. Options include increasing fees or consolidating operations with another licensing board to save money.



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AUDITOR'S TRANSMITTAL

December 30, 2014

The Honorable Pat McCrory, Governor
The General Assembly of North Carolina
North Carolina State Board of Opticians
Sue Hodgins, Director

This report presents the results of our financial related audit at the North Carolina State Board of Opticians. Our work was performed as authorized by *North Carolina General Statutes*, Chapter 147, Article 5A and was conducted in accordance with the performance audit standards contained in *Government Auditing Standards*, issued by the Comptroller General of the United States.

Our audit identified a matter that is considered reportable under *Government Auditing Standards*. This item is described in the *Audit Finding and Response* section of this report.

North Carolina General Statutes require the State Auditor to make audit reports available to the public. Copies of audit reports issued by the Office of the State Auditor may be obtained through one of the ways listed in the back of this report.

A handwritten signature in cursive script that reads 'Beth A. Wood'.

Beth A. Wood, CPA
State Auditor

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Beth A. Wood, CPA
State Auditor

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Article V, Chapter 147 of the North Carolina General Statutes, gives the Auditor broad powers to examine all books, records, files, papers, documents, and financial affairs of every state agency and any organization that receives public funding. The Auditor also has the power to summon people to produce records and to answer questions under oath.



BACKGROUND, AUDIT OBJECTIVE AND SCOPE, AND METHODOLOGY

North Carolina General Statute 90-238 created the North Carolina State Board of Opticians (Board) to provide oversight of “dispensing opticians.”¹ The Board is responsible for carrying out the purposes and enforcing the provisions of Article 17 of the *North Carolina General Statutes* which include administering the optician licensing examination, collecting optician fees, investigating complaints, and taking disciplinary action when required.

The Board is comprised of seven members over whom the Governor has final appointment authority: five (5) licensed dispensing opticians, and two (2) public members. All Board members are appointed to serve three-year terms and can serve no more than two full consecutive terms. The terms are staggered so that each year at least one seat expires. The Board conducts annual elections for the licensees at large to elect optician member seats whose terms are expiring. The election results are submitted to the Governor for final appointment.

The daily operations are carried out by the Board Director, who works 24 hours per week under contract with the Board. The Board contracts for the following services: administrative, legal, information technology, and optician facility inspections.

For the period February 1, 2013, through January 31, 2014, the Board had total revenues of \$160,450 and total expenditures of \$252,207. The Board had oversight responsibility for approximately 1,106 licensed opticians.

¹ *North Carolina General Statute 90-235* defines “dispensing optician” as “one who prepares and dispenses lenses, spectacles, eyeglasses and/or appurtenances thereto to the intended wearers thereof on written prescriptions from physicians or optometrists duly licensed to practice their professions, and in accordance with such prescriptions interprets, measures, adapts, fits and adjusts such lenses, spectacles, eyeglasses and/or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eye.”

The audit objective was to determine whether the North Carolina State Board of Opticians (Board) has adequate operating funds to accomplish its statutory duties.

The audit scope included Board operations for the period February 1, 2013, through January 31, 2014. Auditors conducted fieldwork from March 2014 to June 2014.

To accomplish the audit objective, auditors analyzed audited financial statements for fiscal years 2009 through 2013. They also interviewed personnel, examined internal documentation, and reviewed the North Carolina State Board of Opticians' website.

As a basis for evaluating internal control, auditors applied the internal control guidance contained in professional auditing standards. As discussed in the standards, internal control consists of five interrelated components: (1) control environment, (2) risk assessment, (3) control activities, (4) information and communication, and (5) monitoring.

We conducted this audit in accordance with generally accepted government auditing standards applicable to performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.



FINDING, RECOMMENDATION, AND RESPONSES

STATUTORY DUTIES MAY NOT BE ACCOMPLISHED DUE TO LACK OF OPERATING FUNDS

Based on current income and expenses, the North Carolina State Board of Opticians (Board) will lack adequate operating funds during the 2015 state fiscal year. Consequently, unless changes are made, a lack of funding will keep the Board from meeting its statutory duties to license opticians, collect fees, investigate complaints, and take necessary disciplinary actions. State law established fees that were intended to provide adequate operating funds for the Board. However, operational costs have exceeded fee income for each of the past five years.

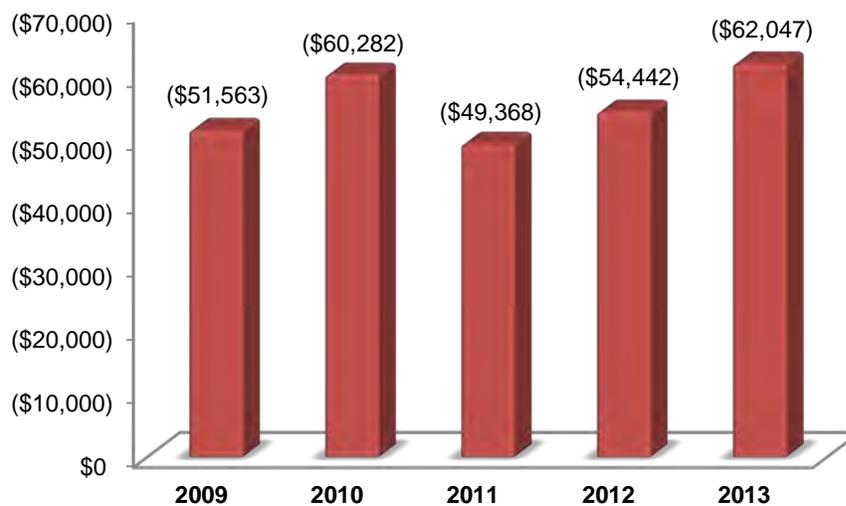
Board Will Lack Adequate Operating Funds Within the Next Year

State laws¹ prohibit the Board from spending more than it has on deposit with the State Treasurer and establishing fees over authorized amounts. This limits the Board's options to address operating losses since it is not allowed to incur debt or increase fees without legislative approval.

Based on current income and expenses, the Board will lack adequate funds to continue operating within the next year. Consequently, the Board will no longer be able to provide the licensing services and practitioner oversight that state law requires.²

Despite implementing cost-cutting measures, the Board has sustained operating losses averaging \$55,540 a year for several years (amounts obtained from audited financial statements):

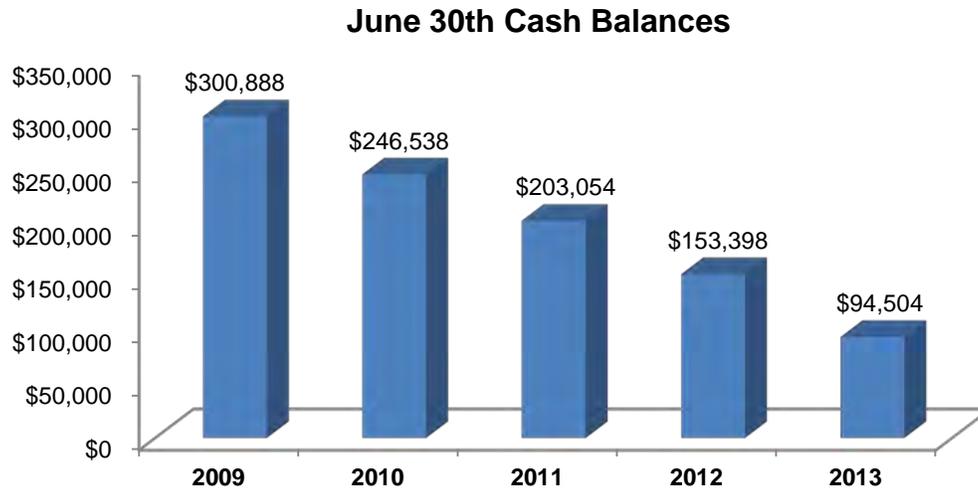
Operating Losses



¹ North Carolina General Statutes 90-245 and 90-246

² North Carolina General Statute 90-238

These operating losses have led to a decrease of more than \$206,000 in available cash balances (amounts obtained from audited financial statements):



The cash balances continued to decline during the 2014 state fiscal year. As of June 30, 2014, the unaudited cash balance was down to \$35,929.

Based on its \$55,540 average annual operating losses, the Board will exhaust its cash balance and expenses could exceed available income during the 2015 state fiscal year.

Inadequate Funds Will Keep Board from Meeting Its Statutory Duties

Inadequate funding will cause the Board to first reduce services and then to stop meeting its statutory duties. The Board's statutory duties include:

- Providing oversight of dispensing opticians,¹
- Administering the optician licensing examination,
- Collecting optician fees,
- Investigating complaints, and
- Taking disciplinary action when required.

¹ *North Carolina General Statute 90-235* defines "dispensing optician" as "one who prepares and dispenses lenses, spectacles, eyeglasses and/or appurtenances thereto to the intended wearers thereof on written prescriptions from physicians or optometrists duly licensed to practice their professions, and in accordance with such prescriptions interprets, measures, adapts, fits and adjusts such lenses, spectacles, eyeglasses and/or appurtenances thereto to the human face for the aid or correction of visual or ocular anomalies of the human eye."

In fact, the Board has already started implementing cost-cutting measures that have impacted services. On its website, the Board describes the impact of these cuts on services:

“With the 2013 General Assembly not taking action on a bill¹ that would, among other things, increase fees (for the first time since 2004), the Board finds itself forced to implement drastic cost-savings measures. It is unfortunate, but **services across-the-board will be affected. Staff hours will be cut; the office space will be downsized and its hours of operation reduced**, so callers may have to leave a message and be patient until their call is returned. The quick turnaround that licensees, businesses and the public have received for so many years when they request forms and information will be slowed.”

As shown above, the cost-cutting measures have not been sufficient to prevent operating losses and reductions in cash balances. Providing services, even at the current reduced level, likely cannot continue without revenue enhancements.

Fees Were Intended to Provide Adequate Operating Funds for Board

State law allows the Board to collect fees that it can then use to accomplish its statutory responsibilities.

North Carolina General Statute 90-246 established the following fees to support Board operations:

- Examination - \$200.00
- Initial license - \$50.00
- Renewal of license - \$100.00
- License issued to a practitioner of another state to practice in this State - \$200.00
- Registration of an optical place of business - \$50.00
- Application and renewals for registration as an opticianry apprentice or intern - \$25.00
- Registration of a training establishment - \$25.00
- License verification - \$10.00

However, as shown above, these fees have not covered the cost of operations for the past five years. Furthermore, the Board reports that these fees have not been increased since 2004.

Unless changes are made, the State may have to discontinue licensing and overseeing opticians.

¹ Senate Bill 435, Session 2013

RECOMMENDATION

The Board should confer with the General Assembly to evaluate options for continuing services. Options include increasing fees or consolidating operations with another licensing board to save money.

Government Auditing Standards require that explanatory comments be added to the report whenever an audit finding response is inconsistent or conflicts with the finding or recommendation. In accordance with this requirement and to ensure that the nature and seriousness of the finding is not minimized or misrepresented, comments have been provided to the Board's response.

State Auditor's Response

The Board's response is filled with information concerning the purpose of all licensing boards, and its perceived difficulties should it be combined with another board. The Board in no way disputes the facts of the audit finding.

The only disagreement that can be gleaned from the response is with the portion of the recommendation that the Board and the General Assembly consider combining with another board to save money. The Board's response notes that it does not believe that combining with another licensing board would provide any remedy to its funding problems, as any board absorbing them would incur as much additional cost as the Board currently expends; and would require a revenue increase equal to its existing operating costs.

The Board is currently paying \$20,736 in rent, \$44,415 for legal and administrative services (excluding the Board Director's salary), \$11,499 for information technology services, and \$20,301 for miscellaneous contractual services and travel expenses. Combining with another board could minimize and/or eliminate the overhead cost currently incurred by the Board and offer the benefit of administrative staff, technical support, and effective means of accomplishing the statutory requirements. In its current configuration with only the part-time Board Director responsible for the daily operations, fulfilling the statutory responsibilities to provide support to opticians and to the public is in jeopardy. The office is only occupied for approximately 24 hours during the normal work week and opticians and the public are asked on the Board's website to "leave a message and be patient until their call is returned." Administratively combining with another board would at least make someone available for interested parties to contact on a regular basis and increase outreach to both the profession and the public.

The Board agreed with the portion of our recommendation that the Board and the General Assembly consider increasing the fees. The Board acknowledges that their CPA has recommended this for at least five years and says it will "continue our aggressive attempts for a fee increase during the 2015 Regular Session of the General Assembly." They have provided no plan for this "aggressive attempt" or defined what measures they would take that have not already been taken in previous years to obtain this rate increase. The Board's response also noted that "we find ourselves near spending our cash balance accumulated over the years."

As stated in the report at June 30, 2014 the Board only had a cash balance of \$35,929 which, when weighed against an average annual loss of \$55,540, would leave the Board without adequate operating funds during the 2015 state fiscal year.

Consequently, unless changes are made, the lack of funding will keep the Board from meeting its statutory duties. Our recommendation remains that the Board should confer with the General Assembly to evaluate options for continuing services. Options include increasing fees or consolidating operations with another board to save money. Consideration should also be given as to whether the activity currently occurring is cost-effectively meeting the intent of the legislation or whether there are alternatives to the current operating structure.



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November 6, 2014

The Honorable Beth A. Wood, CPA
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Dear Ms. Wood:

This letter is in response to the draft of the Financial Related Audit prepared by the Office of the State Auditor following its audit of the Board over the last several months. In the September 17 transmittal letter you requested that the Board respond with its agreement or disagreement to the audit findings and recommendations. The following are the Board's comments:

The overriding purpose for which all licensing boards have been established is to protect the public. As Justice Ervin said in *State v. Balance*, 229 N.C. 764, 769, 51 S.E.2d 731, 735 (1949): "Undoubtedly, the State possesses the police power in its capacity as a sovereign, and in the exercise thereof, the Legislature may enact laws, within constitutional limits, to protect or promote the health, morals, order, safety, and general welfare of society. ... An exertion of the police power inevitably results in a limitation of personal liberty, and legislation in this field "is justified only on the theory that the social interest is paramount." [citation omitted] In exercising this power, the Legislature must have in view the good of the citizens as a whole rather than the interests of a particular class. [citation omitted] If a statute is to be sustained as a legitimate exercise of the police power, it must have a rational, real, or substantial relation to the public health, morals, order, or safety, or the general welfare. In brief, it must be reasonably necessary to promote the accomplishment of a public good, or to prevent the infliction of a public harm."

In *Baker Constr. Co. v. Phillips*, 333 N.C. 441 (N.C. 1993) Chief Justice Exum, speaking for the Supreme Court of North Carolina said, "The purpose of Article 1 of Chapter 87 of the General Statutes [licensing statute for General Contractors Board] is to protect the public from incompetent builders."

In *re Legg*, 325 N.C. 658 (N.C. 1989), the Supreme Court of North Carolina held: "The prime obligation and responsibility of both the Board and this Court are to protect the public from incompetent and dishonest lawyers, and to assure that those admitted to the Board possess the requisite attributes of good moral character, learning and ability."

Like our peer boards the NC State Board of Opticians was established for, and remains committed to, public protection – in this case, ensuring that those individuals providing eyewear services are properly trained and licensed.

We partially agree with your findings. We reject the proposition that we be combined with another licensing Board; we do not believe such combination would provide any remedy to our funding problems, as any Board absorbing us would incur as much additional cost as our Board expends as it exists and would require a revenue increase equal to our existing operating costs.

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Website: www.ncopticiansboard.org

Letter to Beth A. Wood

Re: Audit Report Response

November 6, 2014

Page Two

We do not believe any cost reduction could be accomplished through economies of scale for this situation because our Board is unique wherein many operating costs are fixed, and even variable costs would not likely decrease inside a new board. Further, the Board of Opticians has special examination procedures which are tailor-made and cannot be accomplished through uniform testing modules. Such procedures require the expertise of existing staff and Board members familiar with the field of opticianry.

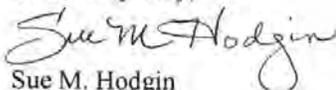
Our Board has been very frugal over its 63 years' existence and the Board has not had a fee increase in over 10 years. Whereas the typical State agency intentionally expends monies to maintain its appropriation level, the Board of Opticians is self-supporting and has operated with monetary frugality. This frugality is antithetical to the usual mindset of government agencies, wherein the mindset is to expend everything in order to maintain the same appropriation level. Therefore, we find ourselves near expending our cash balance accumulated over the years.

Finally, it is likely that the NC Board of Optometry would be the board which would absorb our Board *if* this were to transpire. Our Board, pursuant to our enacting statute, is subject to the oversight of the Office of State Human Resources and the Office of State Budget and Management whereas the Board of Optometry is not subject to the oversight of either of these agencies. This attempted combination of boards would present a conundrum which might not could be accomplished because of this great difference in organizational structure.

We do agree with your finding that we should seek a fee increase. We believe that we have possibly exhausted all the cost reduction techniques we can accomplish, and we plan to continue our aggressive attempts for a fee increase during the 2015 Regular Session of the General Assembly. Of note, we mention that our private CPA auditing firm has recommended that we seek a fee increase from the legislature for at least the last 5 or more years. Concerning this matter, we believe that the Board of Optometry (or any other board that might absorb ours) would have to obtain at least the same fee increase we need (or possibly more) in order to afford to manage our operations. Accordingly, we contend that the sensible and logical conclusion is that the Board of Opticians remain intact as is, that the Board of Optometry's combination with our Board is not logical or accomplishable (without drastic statutory changes to both boards' organization structures), and that the Office of State Auditor should have only recommended that we obtain a fee increase from the General Assembly.

Thank you and please let me know if you have any questions.

Yours very truly,



Sue M. Hodgin
Board Director

SMH

Cc: Board Members, Counsel

ORDERING INFORMATION

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This audit required 861 audit hours at an approximate cost of \$65,436.