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STATE OF FLORIDA  
BOARD OF OPTICIANRY

Final Order No. DOH-08-2861-<sup>DS</sup>MQA  
FILED DATE - 11-25-08  
Department of Health  
By: Rachul  
Deputy Agency Clerk

IN RE: PETITION FOR  
DECLARATORY STATEMENT

AMY ARCAND, Optician

FINAL ORDER

This matter appeared before the Board of Opticianry pursuant to Sections 120.565 and 120.57(2), Florida Statutes, and Chapter 120-105, Florida Administrative Code, at a duly-noticed public meeting on November 7, 2008, in Ft. Lauderdale, Florida, for consideration of a Petition for Declaratory Statement, which is attached as Exhibit "A." The Notice of Petition for Declaratory Statement was published on September 26, 2008, in Vol. 34, No. 39, of the Florida Administrative Weekly. Ms. Arcand was present and not represented by counsel.

The Petition, filed by **PETITIONER**, seeks the Board's guidance regarding several issues relating to Section 484.013(1)(b) and 484.014(p), Florida Statutes. Specifically, this includes a request as to the following questions:

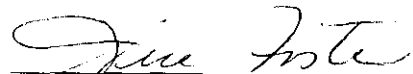
- 1) Whether a licensed optician can oversee a trained person and allow him or her to prepare or dispense lenses, spectacles, eyeglasses, contact lenses, or optical devices when such a person is not licensed as an optician in Florida; and
- 2) Whether a licensed optician can oversee a trained person and allow him or her to fit or dispense any lenses, spectacles, eyeglasses, or other optical devices.

1. The Petitioner, Amy Arcand, is a Florida-licensed optician.
2. The Board of Opticianry has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.
3. The Board of Opticianry declines to issue a declaratory statement in response to Amy Arcand's petition because Section 484.011, Florida Statutes, is clear regarding these questions.

This Final Order shall take effect upon being filed with the Clerk of the Department of Health.

DONE AND ORDERED this 24 day of November, 2008.

Board of Opticianry



Sue Foster, Executive Director  
For Margaret Slattery, Chairperson,  
Board of Opticianry

**NOTICE OF RIGHT TO JUDICIAL REVIEW**

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.569, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Appeal with the Agency Clerk of the Department of Health, and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the Florida appellate district where the party resides. The Notice of Appeal must be filed within thirty (30) days of rendition of the Order to be reviewed.

**CERTIFICATE OF SERVICE**

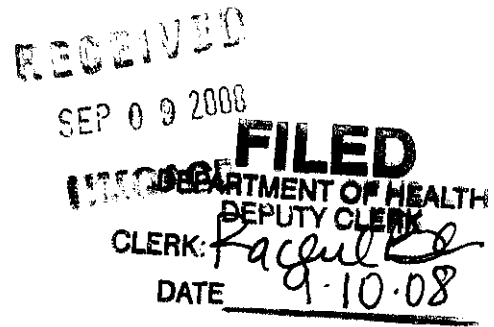
I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to **Amy Arcand**, 2532 W. Jean St., Tampa, FL 33614; and by interoffice mail to **Donna C. McNulty**, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050, this 25<sup>th</sup> day of November, 2008.

Angel Sanchez

Agency

September 2, 2008

Florida Department of Health  
4052 Bald Cypress Way  
Tallahassee, FL 32399-1700



Re: **Petition for Declaratory Statement Before the Florida Board of Opticianry**

**Name of Petitioner:**

Amy M. Arcand, LDO, ABOM  
2532 W. Jean St.  
Tampa, FL 33614  
(813) 348-4196  
(813) 317-4226 (cell) (no fax)

**Name of Attorney or Qualified Representative:**

None

**Provisions/Rules/Orders on which Declaratory Statement is Sought  
Included with Impact of Declaratory Statment:**

484.013(1)(b) It is unlawful for any person.—to prepare or dispense lenses, spectacles, eyeglasses, contact lenses, or other optical devices when such person is not licensed as an optician in this state.

484.014(p) The following acts constitute grounds for denial of a license or disciplinary action, as specified in s. 456.072(2):... Permitting any person not licensed as an optician in this state to fit or dispense any lenses, spectacles, eyeglasses, or other optical devices which are part of the practice of opticianry.

These statements seem fairly clear, yet on page 10 of 30, (i) it states as open to penalty:

*"Delegating or contracting for the performance of professional responsibilities by a person when the licensee delegating or contracting for performance of such responsibilities knows, or has reason to know, such person is not qualified by training, experience, and authorization when required to perform them."*

(456.072(1)(p),(F.S.)

This implies that if a licensee is comfortable with the level of a person's training, they may allow them to inspect and dispense eyewear under their license – accepting responsibility for their work. I know that many are interpreting it this

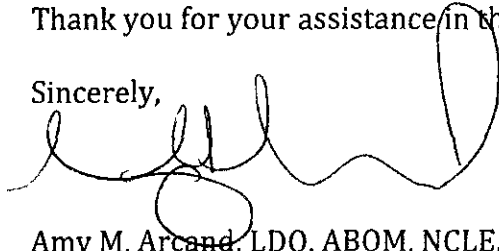
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way. However, I am also aware of the penalties the Board has imposed for this very same thing. And I see that the Statute number cited for this is a 456 number, not a 484 number, so is likely carried over from another source.

In the interest of clarification and strengthening the role of opticianry, whether it be as protector's of the consumers or as mentors for those who wish proper training, or both, I respectfully ask for a declaratory statement regarding the above. May a licensed optician oversee a trained person and allow them to inspect and dispense? Or is only the licensed optician permitted to inspect and dispense?

Thank you for your assistance in this matter.

Sincerely,



Amy M. Arcand, LDO, ABOM, NCLE, FNAO

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