

NEVADA STATE BOARD OF OPTOMETRY



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AGENDA & NOTICE OF WORKSHOP TO SOLICIT COMMENTS ON PROPOSED REGULATIONS

The Nevada State Board of Optometry
will hold a **telephonic** workshop
Tuesday October 1, 2019 at 11:00 am

The public is invited to attend telephonically, **(712) 451-0223, Access code: 292304**,
or participate at the Board's physical location at 937 Mica Dr. #17 in Carson City

AGENDA

Pursuant to NRS 241.020(6) PLEASE TAKE NOTICE: (1) Items on the agenda may be taken out of order;(2) Two or more agenda items may be combined for consideration; and (3) At any time, items on the agenda may be removed from the agenda or discussion of the items may be delayed.

***INDICATES ACTION MAY BE TAKEN.**

- 1. Call to Order** by Optometry Board Vice-President Mariah L. Smith, O.D., Chair, Subcommittee on Legislative and Regulatory Changes.
- 2. Public Comment.**
- 3. Open Public Workshop** to discuss Proposed Changes to NAC 636 to implement various provisions of NRS Ch. 636 and consideration of the Small Business Impact of proposed regulations. (Materials are attached to this Agenda, and will be updated as they become available)
- 4. Public Comment.**

5. Adjournment.

The Board posted this notice at the board office, and on the board website (nvoptometry.org), the State of Nevada Public Notices website (<https://notice.nv.gov>) and in the following locations: Carson City Courthouse, 885 East Musser Street, Carson City; Office of the NV Attorney General, 5420 Kietzke Lane, Suite 202, Reno & 555 E. Washington Ave. #3900, Las Vegas; and Douglas Co. Court, 1616 8th Street, Minden.

The Board will take reasonable measures to accommodate persons with disabilities who wish to attend the meeting. Please call Exec. Dir. Caren C. Jenkins at (775) 883-8367 in advance to make arrangements.

AGENDA & NOTICE OF REGULAR MEETING

The Nevada State Board of Optometry
will hold a **telephonic** meeting

**Tuesday October 1, 2019 at 12 Noon or
upon adjournment of the Regulatory Workshop**

**The public is invited to attend telephonically, (712) 451-0223, Access code: 292304,
or participate at the Board's physical location at 937 Mica Dr. #17 in Carson City**

AGENDA

1. **Welcome, Introductions and Public Comment.**

Introduction of Deputy Attorney General Asheesh S. Bhalla, Esq., recently assigned to serve as counsel to the Board.

A time limit may be set for each individual wishing to address the Board. No action will be taken on any issue initially presented either in public comment or during the Board Meeting. In accordance with the Nevada Open Meeting Law, an issue requiring action may be placed on an agenda for a future Board Meeting.

2. **Call to Order, Roll Call.**

3. ***For Possible Action.** Consideration and approval of the **minutes** of June 25, 2019 and August 5, 2019 Optometry Board meetings. (Materials provided)

4. ***For Possible Action. Reports and Recommendations.**

a. Consideration and approval of proposed modifications to NAC Chapter 636, and Small Business Impact Statement, Mariah Smith, O.D., Chair, Subcommittee on Legislative and Regulatory Changes.

b. Report on Education & Outreach Efforts, Jeffrey Austin, O.D., Chair.

c. Report on Website Revision, Drew Johnson, Chairperson.

d. Executive Director's Report, Caren C. Jenkins, Esq., Executive Director.

1. Revision of forms & website by December 1, 2019.

2. FARB Forum, Colorado Springs, Jan 23-26. 2020. (\$1200 registration plus

approx. \$1000 airfare and hotel costs per person)

3. Financial Report 2nd Quarter.

5. ***For Possible Action. Complaints before the Board.** (Materials provided)
- a. Delegation to Executive Director of jurisdictional review and sufficiency of allegations and evidence to undertake an investigation or to decline acceptance of certain Complaints.
 - b. Complaint No. 20-01 Consideration of just & sufficient cause to investigate.
 - c. Complaint No. 20-02 Consideration of just & sufficient cause to investigate.
 - d. Complaint No. 20-04 Consideration of just & sufficient cause to investigate.
6. Announcements and requests for **future Board consideration.** (No action shall be taken on these matters at this meeting)

<p>NEXT BOARD MEETINGS are scheduled for Noon on Tuesday, November 5, 2019 by telephone, Noon on Tuesday December 3, 2019 by telephone, and 9:00 am on Tuesday, January 7, 2020 in-person in Las Vegas.</p>
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7. **Public Comment.**

A time limit may be set for each individual wishing to address the Board. No action will be taken on any issue initially presented either in public comment or during the Board Meeting. In accordance with the Nevada Open Meeting Law, an issue requiring action may be placed on an agenda for a future Board Meeting.

8. Adjournment.

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The Board posted this notice at the board office, the board website (nvoptometry.org), the State of Nevada Public Notices website (<https://notice.nv.gov>), and in the following locations:

Carson City Courthouse, 885 East Musser Street, Carson City; Office of the Nevada Attorney General, 5420 Kietzke Lane, Suite 202, Reno & 555 E. Washington Ave. #3900, Las Vegas; and Douglas County Courthouse, 1616 8th Street, Minden

The Board will take reasonable measures to accommodate persons with disabilities who wish to attend the meeting. Please call Exec. Dir. Caren C. Jenkins at (775) 883-8367 in advance to make arrangements.

MEETING MATERIALS: To view the meeting materials provided to the Board, if any, visit www.nvoptometry.org, or request mailing of a hard copy not later than 5 working days in advance at 775-720-1181 or by email at admin@nvoptometry.org.

ATTACHED ARE THE MEETING MATERIALS FOR THE REGULATORY WORKSHOP

Proposed Amendments to **NAC Chapter 636**

When the Legislative Counsel Bureau has completed its draft of these proposed amendments, the resulting pages will be posted on the Board Website at

www.nvoptometry.org.

Please check our website for updates before the workshop.

PROPOSED REVISIONS TO NAC CHAPTER 636 **REGARDING OPTOMETRY**

Red = delete and Green = new language

GENERAL PROVISIONS

NAC 636.010 Definitions. ([NRS 636.125](#)) As used in this chapter, unless the context otherwise requires, the words and terms defined in [NAC 636.030](#), [636.050](#), ~~and~~ [636.055](#), and [636.XXX](#) have the meanings ascribed to them in those sections.

[Bd. of Optometry, part Definitions, eff. 5-26-78] — (NAC A 8-4-94; R126-99, 12-13-99)

NAC 636.030 “Board” defined. ([NRS 636.125](#)) “Board” means the Nevada State Board of Optometry.

[Bd. of Optometry, Definition No. 3, eff. 5-26-78]

NAC 636.050 “Office” defined. ([NRS 636.125](#)) “Office” means any office or other place for the practice of optometry. The term includes the contiguous area which the licensee owns or leases in conjunction with the practice of optometry **or a motor vehicle or trailer utilized as a certified mobile optometry clinic.**

[Bd. of Optometry, Definition No. 4, eff. 5-26-78]

NAC 636.055 “Ophthalmic products” defined. ([NRS 636.125](#)) “Ophthalmic products” means any materials used for the correction or relief of or remedy for any abnormal condition or inefficiency of the eye or visual process. The term includes, but is not limited to, spectacle frames, spectacle lenses, contact lenses, **devices** and ~~[ocular solutions and ointments]~~ **pharmaceutical agents.**

(Added to NAC by Bd. of Optometry, eff. 8-4-94)

Additional section for definitions:

A “vision screening” does not result in interpretation, treatment, diagnosis, or a prescription, or include a subjective refraction, and would not fall under the Board’s jurisdiction. Any optometric examination, eye exam, eye test, vision exam or vision test performed by a licensee that does result in one of a aforementioned would fall under the Board’s jurisdiction.

EXAMINATIONS

NAC 636.075 Two parts; review by Board. ([NRS 636.125](#), [636.150](#), [636.180](#))

1. The examination required pursuant to [NRS 636.150](#) will consist of two parts, as follows:

(a) The **Part I, Part II, and Part III examination and the Treatment and Management of Ocular Disease** examination prepared by the National Board of Examiners in Optometry **or the equivalent;** and

(b) The examination prepared by the Board which relates to the laws and regulations governing the practice of optometry in this State.

2. The Board **or its designee** will review the results of the examination of an applicant. If the Board determines that the results comply with the requirements of [chapter 636](#) of NRS, **and the applicant has met all of the other requirements identified,** the Board **or its designee** will **review, reject, or approve** the application for licensure of the applicant **within 30 days.**

3. Upon receipt of notice of approval of his or her application, the applicant must submit the required license fee and identify his or her practice to the Board.

4. Within 60 days of receipt of all required information and fees, the licensee will be provided a licensure certificate for display.

(Added to NAC by Bd. of Optometry, 8-4-94, eff. 1-1-95; A by R126-99, 12-13-99)

~~— [NAC 636.080 — Reexaminations. (NRS 636.125, 636.195)]~~

~~— 1. — An applicant who makes a request for reexamination to obtain a license to practice optometry must not be permitted to take more than three examinations.~~

~~— 2. — Reexaminations must take place within 5 years after the date the applicant was initially examined.~~

~~— 3. — An applicant who makes a request for reexamination must:~~

~~— (a) If he wishes to be reexamined on that part of the examination prepared by the Board, apply to the Board.~~

~~— (b) If he wishes to be reexamined on any part of the examination prepared by the National Board of Examiners in Optometry, apply to the National Board of Examiners in Optometry.~~

~~— [Bd. of Optometry, § III subsec. 1, eff. 5-26-78] — (NAC A 8-4-94, eff. 1-1-95)]~~

HEALTH MAINTENANCE ORGANIZATIONS

NAC 636.085 Application for permit to provide services. (NRS 636.125, 636.347) An applicant for a permit to be employed by or contract with a health maintenance organization to provide services therefor must submit to the Board:

1. Evidence that he or she is a licensed optometrist in this State;

2. A copy of the agreement for employment or contract and all renewals or extensions thereof;

3. A copy of the certificate of authority of the health maintenance organization issued pursuant to [chapter 695C](#) of NRS; and

4. Evidence that nothing contained in his or her agreement for employment or contract requires him to violate any of the provisions of [chapter 636](#) of NRS or this chapter.

(Added to NAC by Bd. of Optometry, eff. 3-6-86)

ADVERTISING

NAC 636.110 “Do not meet the specifications of the American National Standards Institute” defined. (NRS 636.125, 636.302, 636.380) As used in [NAC 636.120](#) to [636.200](#), inclusive, the phrase “Do not meet the specifications of the American National Standards Institute” means that the ophthalmic products:

1. Were not purchased from a manufacturer or wholesaler who warrants that they meet ~~[those]~~ the most current version of ANSI specifications, if applicable; or

2. Do not meet ~~[those]~~ the most current version of ANSI specifications, if applicable.

[Bd. of Optometry, Definition No. 6, eff. 5-26-78] — (NAC A 8-4-94; 1-24-96)

NAC 636.115 Manner in which optometrist who is certified to administer and prescribe ~~[therapeutic]~~ pharmaceutical agents may represent himself to public. (NRS 636.125, 636.287, 636.302, 636.380) An optometrist who is certified to administer and prescribe ~~[therapeutic]~~ pharmaceutical agents pursuant to [NRS 636.288](#):

1. May represent himself to the public as:

(a) Certified in the treatment of ocular disease;

- (b) Board certified in the treatment of ocular disease;
- (c) Board certified in the treatment and management of ocular disease; or
- (d) Certified in the treatment and management of ocular disease.

2. May not, when referring to his or her certification, represent himself or herself to the public in any manner other than the exact designations set forth in subsection 1.

(Added to NAC by Bd. of Optometry by R059-97, eff. 1-22-98)

NAC 636.120 Abbreviations. ([NRS 636.125](#), [636.302](#), [636.380](#))

1. An optometrist who is licensed in this state may represent his or her professional designation as:

- (a) Optometrist;
- (b) O.D.
- (c) OD
- (d) Doctor of Optometry
- (e) Dr. of Optometry
- (f) other options that aren't misleading as deemed by the Board

2. No abbreviation may be used for any of the information required by [NAC 636.130](#) to [636.200](#), inclusive, except abbreviations approved in writing by the Board.

[Bd. of Optometry, § I subsec. I, eff. 5-26-78] — (NAC A 12-1-86; 8-4-94)

NAC 636.130 Posting of signs. ([NRS 636.125](#), [636.302](#), [636.380](#))

1. A licensee shall post a sign at the entrance to his or her office address listed on his or her primary or any secondary practice location registered with the Board that specifies, at a minimum, ~~his~~ the ~~full~~ last name that appears on his or her license, professional designation and the hours during which the office is open.

2. A sign posted at a location which is remote from the office must specify, at a minimum, the ~~full~~ last name of the licensee as it appears on his or her license and his or her professional designation.

[Bd. of Optometry, § I subsec. A, eff. 5-26-78] — (NAC A 12-1-86; 8-4-94; 1-24-96)

NAC 636.140 Printed or electronic advertisements. ([NRS 636.125](#), [636.302](#), [636.380](#)) Any printed or electronic advertisement for the optometrist or ophthalmic product must contain, at a minimum, the ~~full~~ last name of the optometrist as it appears on the optometrist's license and his or her professional designation, or the fictitious name filled with the Board. Any disclaimer in ~~the~~ an advertisement must be printed in such a manner as to allow a reasonable person to read and understand it. Any printed or electronic advertisement for the licensee must be clearly separate from any advertisement paid for or produced by any unlicensed entity.

[Bd. of Optometry, § I subsec. B, eff. 5-26-78] — (NAC A 12-1-86; 1-24-96)

NAC 636.142 Broadcast advertisements. ([NRS 636.125](#), [636.302](#), [636.380](#)) Any broadcast advertisement placed by an optometrist licensed to practice in this State must include an oral statement of the ~~full~~ last name of the optometrist as it appears on the optometrist's license and his or her professional designation, or the fictitious name filled with the Board. Any disclaimer in the advertisement must be displayed or communicated in such a manner that a reasonable person would have the opportunity to read or hear and understand it. Any broadcasted advertisement for the licensee must be clearly separate from any advertisement paid for or produced by any unlicensed entity.

(Added to NAC by Bd. of Optometry, eff. 1-24-96)

NAC 636.145 Symbols or logos for advertising. ([NRS 636.125](#), [636.302](#), [636.380](#)) A licensee may use a symbol or logo for advertising if it is:

1. Displayed with, at a minimum, the ~~[full]~~ last name and professional ~~[identification]~~ designation of the licensee or their fictitious name filled with the Board; and
2. Printed no more prominently than the name and professional ~~[identification]~~ designation of the licensee.

(Added to NAC by Bd. of Optometry, eff. 8-4-94)

NAC 636.150 Ophthalmic products. ([NRS 636.125](#), [636.302](#), [636.380](#), [NRS 636.016](#)) Advertising of ophthalmic products or devices must include a statement whether the price or discounted price includes an examination of the eyes, ~~[the following information]~~ and, if printed or used in an electronic medium, the information must ~~[be printed]~~ appear as prominently as the words promoting the product~~:-~~

- ~~1. A statement whether the price or discounted price includes an examination of the eyes.~~
- ~~2. If applicable, a statement that the product is a second or has been discontinued.]~~
3. A notice, “Do not meet the specifications of the American National Standards Institute” if the ophthalmic products do not meet the applicable specifications of the American National Standards Institute. [Bd. of Optometry, § I subsec. C, eff. 5-26-78] — (NAC A 12-1-86; 8-4-94)

NAC 636.160 Spectacle lenses. ([NRS 636.125](#), [636.302](#), [636.380](#)) In addition to the information required pursuant to [NAC 636.150](#), the advertising of spectacle lenses must include the following information:

1. If applicable, a statement that the price for lenses may vary depending upon the purchaser’s specific prescription.
2. A statement that the advertised lenses are clear, tinted or photochromic.
3. A statement that the advertised lenses are glass or plastic, single vision, bifocal or trifocal, that they are occupational or aphakic, and if the lenses are:
 - (a) Bifocal, the advertisement must state the segment size except for executive or dualens types.
 - (b) Trifocal, the advertisement must state the segment size except for executive or dualens and variable focus types.
 - (c) Occupational or aphakic, the advertisement must state that they are lenticular aspheric, lenticular nonaspheric or full-field aspheric.

[Bd. of Optometry, § I subsec. D, eff. 5-26-78] — (NAC A 12-1-86; 8-4-94)

NAC 636.170 Contact lenses. ([NRS 636.125](#), [636.302](#), [636.380](#))

1. In addition to the information required pursuant to [NAC 636.150](#), the advertising of contact lenses must include the following information:
 - (a) A statement that the advertised lenses are hard or soft, daily or extended wear, or gas permeable.
 - (b) A statement that the advertised lenses are single vision or ~~[bifocal]~~ multifocal.
 - (c) A statement whether the price or discounted price advertised includes all the required accessories and fitting and/or evaluation fees ~~[and, if not, the cost of all the required accessories].~~

2. Contact lenses received from a manufacturer in a package containing multiple lenses of the same prescription that are intended to be used as scheduled replacements or as disposable lenses may not be advertised for sale or sold as permanent lenses.

[Bd. of Optometry, § I subsec. E, eff. 5-26-78] — (NAC A 12-1-86; 8-4-94; 1-24-96)

NAC 636.190 Optometric examinations. ([NRS 636.125](#), [636.302](#), [636.380](#)) An advertisement of an optometric examination~~[s]~~, eye exam, vision exam, eye test or vision test must include a specific disclaimer if any of the following services are not included:

1. An ophthalmoscopy.
2. A subjective examination.
3. Binocularity testing.
4. A check of normal aided and unaided acuities.
5. A case history.
6. Tonometry.
7. Near-point accommodative tests.
8. Keratometry.
9. Slit-lamp biomicroscopy.
10. A refraction.
11. A dilated fundus examination.

[Bd. of Optometry, § I subsec. H, eff. 5-26-78] — (NAC A 12-1-86; 1-24-96)

NAC 636.200 Disclosure of dispensing fees. ([NRS 636.125](#), [636.302](#), [636.380](#)) If a dispensing fee is required for delivery of frames or lenses, whether ophthalmic or contact, the amount of the fee must be printed in type of no smaller size than is used for the advertised price.

[Bd. of Optometry, § I subsec. G, eff. 5-26-78]

PROFESSIONAL CONDUCT

NAC 636.210 Restrictions on use of name and place of practice; required display of license; representation as specialist without certification; employer responsible for unprofessional conduct of employee. ([NRS 636.125](#), [636.360](#))

1. An optometrist shall not:

(a) Practice optometry or maintain an ownership interest in an office where optometry is practiced under any name other than the name on his or her license~~[,]~~, unless he or she has been issued a fictitious business name certificate pursuant to NAC 636.215 (1).

(b) Represent himself as a specialist in any optometric field unless he or she has been certified by a board for certifying specialties approved by the Nevada State Board of Optometry.

2. Except as otherwise provided by subsection 3, an optometrist shall display in a conspicuous place his or her license or a duplicate of his or her license to practice optometry and a current renewal card in a conspicuous manner at each office in which he or she practices optometry or has an ownership interest.

3. An optometrist may practice optometry outside his or her practice locations registered with the Board ~~[office without displaying his or her license or a duplicate of his or her license to practice optometry at that location]~~ for not more than ~~[14]~~ 28 working days during ~~[the]~~ each licensing period or renewal period ~~[from March 1 to February 29]~~ if the optometrist notifies the

Board in writing of the day and place of **each** such practice **location**. The notice must be given to the Board at least 24 hours before he **or she** practices optometry at any such place. If the optometrist is not able to notify the Board within the prescribed period because of an emergency, he **or she** shall notify the Board as soon as possible.

4. An optometrist who employs another optometrist on a temporary or permanent basis ~~is~~ **may be** subject to disciplinary action for any **violation of NRS chapter 636 or NAC chapter 626, including** unprofessional conduct of the optometrist he **or she** employs which takes place during the performance of services pursuant to such employment.

[Bd. of Optometry, § II subsec. 2, eff. 5-26-78] — (NAC A 3-6-86; 5-27-92; 10-5-93)

NAC 636.215 Certificate of registration required to practice under assumed or fictitious name. ([NRS 636.125](#), [636.350](#))

1. An optometrist shall not ~~practice optometry~~ **own all or any portion of an optometry practice** under an assumed or fictitious name unless he **or she** has been issued a certificate of registration **of the assumed or fictitious name** by the Board to practice optometry under the assumed or fictitious name **and at a specific location**.

2. Before a licensee may use or display an assumed or fictitious name in any manner or medium, he **or she** must submit a completed application for a certificate of registration of the assumed or fictitious name on a form provided by the Board. The application must be accompanied by documentation from the appropriate local governmental entity **or entities that a registration of the assumed or fictitious business names, a “dba” registration or a ~~issues~~** business licenses for the county in which the optometrist proposes to ~~practice~~ **own all or any portion of an optometry practice** under the assumed or fictitious name **or “dba”**, which verifies the local governmental entity has approved the use of the assumed or fictitious name **or “dba”** by the licensee.

3. The Board will not approve an application for a certificate of registration to practice optometry under an assumed or fictitious name which:

- (a) Contains any reference to price or cost;
- (b) Contains any reference to “superiority,” “better” or “best”;
- (c) Contains the word “physician”; or
- (d) Is in violation of any provision of this chapter or [chapter 636](#) of NRS.

4. If a licensee uses or displays an assumed or fictitious name **or “dba”** in any manner or medium before receiving a certificate of registration to practice optometry under an assumed or fictitious name from the Board, the optometrist:

(a) Shall, upon receipt of written notice from the Board, immediately cease using the assumed or fictitious name; and

(b) Is subject to an administrative fine imposed pursuant to [NRS 636.420](#).

(Added to NAC by Bd. of Optometry by R126-99, eff. 12-13-99)

NAC 636.220 Employment of unlicensed persons for certain services. ([NRS 636.125](#), [636.300](#)) A licensee shall not employ, either directly or indirectly, an unlicensed person to perform any services for which an optometrist’s license is required by law **except as permitted in NRS.XXX regarding the use of assistants**.

[Bd. of Optometry, § II subsec. 1, eff. 5-26-78]

NAC 636.230 Compliance with provisions of NAC and NRS relating to optometry. ([NRS 636.125](#), [636.295](#)) For the purposes of [NRS 636.295](#), the Board will consider the failure of a licensee to comply with any provision of [NRS 636](#) or [NAC 636](#) or provision of optometric services ~~[which relates to the practice of optometry]~~ to constitute unprofessional conduct.

(Added to NAC by Bd. of Optometry, eff. 5-27-92; A 8-4-94)

~~[NAC 636.235—Violation of [NRS 636.2882](#). ([NRS 636.125](#), [636.295](#))—A violation of [NRS 636.2882](#) constitutes unprofessional conduct.]~~

(Added to NAC by Bd. of Optometry by R126-99, eff. 12-13-99)

NAC 636.240 Agreements to lease between licensees and unlicensed persons. ([NRS 636.125](#), [636.372](#)) Except as otherwise provided in [NRS 636.347](#), an agreement between a licensee and a person who is not licensed pursuant to the provisions of [chapter 636](#) of NRS for the leasing of a building or a part thereof for use in the licensee's practice must not include a provision that:

1. Authorizes the person who is not licensed to exercise control over the operation of the licensee's practice or his or her employees in violation of the provisions of [chapter 636](#) of NRS.
2. Authorizes the person who is not licensed to share in the profits of the licensee's practice in violation of the provisions of [chapter 636](#) of NRS.
3. Authorizes the person who is not licensed to have access to the medical records of the licensee's patients.
4. Authorizes the licensee to locate his or her office in a part of the building where the person who is not licensed conducts business without providing a clear separation between the licensee's office and the business of the person who is not licensed.
5. Prohibits the licensee from having access to his or her office, equipment or patient records at any time.
6. Except as otherwise provided in [NRS 636.372](#), authorizes or requires the amount of rent to be determined on any basis other than the fair rental value of the building or a part thereof to be leased or of the leased premises and use of equipment materials used in the licensee's practice.
7. Violates any provision of NRS or NAC which relates to the practice of optometry.

(Added to NAC by Bd. of Optometry, eff. 8-4-94)

NAC 636.250 Separation between office of optometry and other businesses required. ([NRS 636.125](#), [636.300](#)) ~~[A licensee who locates his office in a part of a building where a person who is not licensed pursuant to the provisions of [chapter 636](#) of NRS conducts business shall construct and maintain a partition or wall in such a manner as to ensure a clear separation between his office and the business of the person who is not licensed.—(Added to NAC by Bd. of Optometry, eff. 8-4-94)]~~

A licensee who locates his or her office in a part of a building where a person who is not licensed pursuant to the provisions of [chapter 636](#) of NRS conducts an optical retail business shall construct and maintain a partition in such a manner as to ensure a clear separation and privacy between his or her office and the business of the person who is not licensed. This includes, but is not limited to, separate reception and cash drawer, appointment scheduling, patient-interfacing staff, computer systems, and physical space.

(a) This Provision expressly prohibits a non-licensed retailer from providing legal

representation before the Board involving the business relationship. This Provision expressly prohibits Licensees from becoming an employee of any non-licensed individual or entity (except as allowed in *new section*: Associations or other business relationships with physicians.)

(b) This Provision expressly prohibits independent contractor relationships between Licensees and non-regulated optical retailers with the exception of those arrangements approved under the Provision of Mobile Optometry Certification.

New Section

The optometrist who owns their records must have a named successor to serve as custodian to their records should the optometrist no longer be able to maintain their practice. This custodian must be a Nevada licensed optometrist, a Nevada licensed ophthalmologist, or a company whose purpose is to serve as custodian for protected health information and distribution of records. The custodian must agree to this designation in writing on a form provided by the Board. This custodian who will be required to abide by State and Federal medical record delivery requirements and protected health information requirements.

TREATMENT OF GLAUCOMA

NAC 636.280 Requirements for certification. ([NRS 636.125](#), [636.2893](#), [NRS 636.XX on glaucoma certification by endorsement](#)) To receive a certificate to treat persons diagnosed with glaucoma pursuant to [NRS 636.2895](#) or [NRS 636.XX](#), an optometrist:

1. Must be licensed and in good standing to practice optometry in the State of Nevada.
2. Must possess a valid certificate to administer and prescribe ~~[therapeutic]~~ pharmaceutical agents issued pursuant to [NRS 636.288](#).
3. Must have successfully passed the “Treatment and Management of Ocular Disease Examination” administered by the National Board of Examiners in Optometry ~~[on or after January 1, 1993]~~.
4. Shall submit one of the following:

(a) Shall submit proof on a written form provided by the Executive Director of the Board that the optometrist has treated at least 15 persons described in subsection 3 of [NRS 636.2893](#).

The form must include:

- ~~(a)~~ 1) The name, address and license number of the optometrist;
- ~~(b)~~ 2) ~~[The name of]~~ An HPI redacted identifier for each patient treated, the date on which the optometrist’s treatment for each patient began and a description of the treatment plan which, for each patient, must be not less than 1 year in length beginning not earlier than October 1, 1999;
- ~~(c)~~ 3) A statement that the optometrist has, in consultation with an ophthalmologist licensed in the State of Nevada, treated the patients in accordance with the provisions of this chapter and [chapter 636](#) of NRS;
- ~~(d)~~ 4) A statement that the consulting ophthalmologist has diagnosed the patients with glaucoma or confirmed the diagnosis of the optometrist; and
- ~~(e)~~ 5) The signatures of the optometrist, the consulting ophthalmologist and a notary public attesting to the accuracy of the information.

(b) Shall submit proof as required by NRS 636.XX on a written form provided by the Executive Director of the Board that the optometrist has met the requirements for glaucoma certification by endorsement. The form must include:

(1) Proof that the optometrist holds a valid and unrestricted certificate or other credential approved by the Board to engage in the treatment of a person with glaucoma issued by the optometry licensing Board of another state, the District of Columbia, the Commonwealth of Puerto Rico or any other territory or possession of the United States which the Board has determined was issued in accordance with requirements that are substantially similar to or exceed the requirements for the issuance of a certificate to treat persons diagnosed with glaucoma in this State pursuant to NRS 636.2893;

(2) Has had no adverse actions reported to the National Practitioner Data Bank, or its successor organization, within the past 5 years; and

(3) An affidavit stating that the information set forth in the application and any accompanying material is true and correct.

5. If an applicant meets the foregoing requirements, the Board shall issue him or her a certificate to treat persons diagnosed with glaucoma.

(Added to NAC by Bd. of Optometry by R126-99, eff. 12-13-99)

NAC 636.290 Consultation with and referral to ophthalmologist; records. ([NRS 636.125](#), [636.2891](#))

1. An optometrist who treats persons for glaucoma in consultation with an ophthalmologist pursuant to [NRS 636.2891](#), [636.2893](#) and [636.2895](#) shall:

(a) Conduct ~~[an]~~ optometric examinations ~~[of]~~ as the patient requires ~~[at least once every 4 months]~~ for not less than 1 year;

(b) Provide written records of each examination of a patient and the treatment to the consulting ophthalmologist; and

(c) Refer the patient to an ophthalmologist for further examination or treatment if the ophthalmologist determines, after reviewing the written records, that such a referral is necessary.

2. Within 30 days after a consulting ophthalmologist receives the records of an optometric examination and a course of treatment from an optometrist, the consulting ophthalmologist shall notify the optometrist in writing as to whether the consulting ophthalmologist agrees to the course of treatment outlined by the optometrist.

3. During the period before an optometrist is certified to treat persons diagnosed with glaucoma, the optometrist shall not treat any patient found to have any of the conditions or complications set forth in [NRS 636.2891](#) which require referral of such patients to an ophthalmologist.

4. The records of each patient created as a result of treatment provided by an optometrist in accordance with the provisions of this section and [NRS 636.2891](#):

(a) Must be retained by the optometrist for not less than 5 years as required by [NRS 629.051](#); and

(b) Are subject to examination by the Board.

(Added to NAC by Bd. of Optometry by R126-99, eff. 12-13-99)

PRACTICE BEFORE THE NEVADA STATE BOARD OF OPTOMETRY

General Provisions

Pursuant to NRS 622A.360(4), the Board authorizes its President to decide pre-hearing motions listed in NRS 622A.360(2). If the President is unavailable, this authority is delegated to the Board's Vice President. If the President, or Vice President, as applicable, believes that the motion should be decided by the full Board, the President, or Vice President, may decline to exercise this authority and a Board meeting shall be scheduled to decide the motion at issue within the required timeframe.

Pursuant to NRS 622A.390(4), the Board authorizes its President to decide post hearing motions listed in NRS 622A.360(1). If the President is unavailable, this authority is delegated to the Board's Vice President. If the President, or Vice President, as applicable, believes that the motion should be decided by the full Board, the President, or Vice President, may decline to exercise this authority and a Board meeting shall be scheduled to decide the motion at issue within the required timeframe.

NAC 636.310 Scope. (NRS 636.125) ~~[The provisions of NAC 636.310 to 636.660, inclusive,]~~ NRS Chapter 233B, NRS Chapter 622, NRS Chapter 622A, and NAC Chapter 636 govern ~~[all practice and procedure]~~ regulation-making proceedings and contested cases before the Board ~~[whenever the Board is acting as an agency, as that term is defined in NRS 233B.031].~~

(Added to NAC by Bd. of Optometry, eff. 5-2-88)

~~—[NAC 636.320 Construction. (NRS 636.125)—The provisions of NAC 636.310 to 636.660, inclusive, will be liberally construed to secure a just, speedy and economical determination of all issues presented to the Board and to carry out the purposes of chapters 233B and 636 of NRS.]~~

(Added to NAC by Bd. of Optometry, eff. 5-2-88)

Parties

- ~~—[NAC 636.330 Classification of parties. (NRS 636.125)~~
- ~~—1. A party in a proceeding before the Board must be called applicant, petitioner, complainant, respondent, intervener or interested party, according to the nature of the proceeding and the relationship of the party thereto.~~
 - ~~—2. An “applicant” is a person who is applying or petitioning for any privilege, license or authority from the Board.~~
 - ~~—3. A “petitioner” is a person, other than a complainant, who is petitioning the Board for affirmative relief.~~
 - ~~—4. A “complainant” is a person who is complaining to the Board of any act or of any person.~~
 - ~~—5. A “respondent” is a person against whom any complaint is filed or investigation is initiated.~~
 - ~~—6. An “intervener” is a person, other than an original party to a proceeding, who may be indirectly and substantially affected by the proceeding, and who secures an order from the~~

~~Board or presiding officer granting leave to intervene. The granting of leave to intervene or otherwise appear in any matter or proceeding is not a finding or determination of the Board that such party will or may be a party aggrieved by any ruling, order or decision of the Board for purposes of court review or appeal.~~

~~—7.— An “interested party” is a person who believes that he may be affected by a proceeding, but who does not seek to participate in the proceeding.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~[NAC 636.340—Participation by staff of Board. (NRS 636.125)—The Board’s staff may appear at any hearing and has the right to participate as a party to the proceeding.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~[NAC 636.350—Permissible appearances. (NRS 636.125)—At any hearing, a party named in NAC 636.330, except an interested party, is entitled to enter an appearance, introduce evidence, examine and cross-examine witnesses, make arguments, and participate in the conduct of the proceeding. An interested party may be acknowledged by the Board for the purpose of stating his possible interest in the proceeding.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~[NAC 636.360—Entry of appearance. (NRS 636.125)—A party shall enter his appearance at the beginning of a hearing or at any time designated by the presiding officer by giving his name and address and stating his position or interest in the proceeding to the presiding officer. This information must be recorded in the record of the hearing.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~[NAC 636.370—Representation of parties. (NRS 636.125)~~

~~—1.— A party is entitled to be heard in person or by his attorney or other representative.~~

~~—2.— An attorney appearing as counsel in any proceeding must be an attorney at law in good standing and admitted to practice before the highest court of any state. If an attorney is not admitted and entitled to practice before the Supreme Court of Nevada, an attorney so admitted and entitled to practice must be associated with the attorney appearing before the Board.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

Proposed new section: Associations or other business relationships with physicians. (NRS 636.373). *An optometrist may form an association or other business relationship with a physician to provide their respective services to patients. If such an association or business relationship is formed, the Licensee and the contractual relationship must:*

(a) Comply with Internal Revenue Rulings.

(b) Be between a Licensee and an ophthalmologist licensed in Nevada.

(c) Adequately demonstrate the separation between the Parties of the relationship:

1. Maintain financial and organizational independence from each other.

2. Accurately portray the Licensee’s position within the host ophthalmologist’s organization in all advertising, marketing, and promotional materials.

3. Accurately portray the Licensee’s inclusion/exclusion within any fictitious name designation used in advertising, marketing, or promotion.

If such an association or business relationship is formed, the optometrist may:

- (a) Locate his or her office in the same place of business as the physician without a physical separation between the office and the place of business, so long as the primary activity of the host physician is the practice of ophthalmology and the Principal owner(s) of the host ophthalmology are primarily engaged in the clinical practice of ophthalmology onsite.
- (b) Authorize the physician to have access to any medical records in the possession of the optometrist relating to a patient who is being treated by both the optometrist and the physician.
- (c) Advertise and promote the services provided by the association or business consistent with the restrictions on advertising set forth in NRS 636.302.

This section prohibits an optometrist from employing or being employed by a physician.

This section does not prohibit a Licensee from entering a partnership, joint venture, or other equity arrangement with a Nevada licensed ophthalmologist, so long as such arrangements do not diminish the Licensee's operational control of the optometric portion of the joint venture.

Associations or other business relationships with physicians (Private Equity).

An optometrist may form an association or other business relationship with a Private Equity firm or other non-licensed entity to benefit from economies of scale and increased equity value. If such an association or business relationship is formed, the Licensee and the contractual relationship must:

- (a) Limit Equity Partner's role to business operational management duties including but not limited to payroll, human resources, real estate, non-health care related regulatory matters (business licensing, sales/use tax and permitting), banking, accounting, benefits administration, marketing, merchandising, occupancy, accounts payable & receivable, supply chain management, business development, administration, labor, compliance, purchasing, and medical billing.
- (b) Expressly exclude Equity Partner's involvement with clinical decision making, patient scheduling, office flow management, pace, scope of practice, medical facilities, medical equipment utilization, pharmaceutical utilization, and any other decision involving the patient health care experience and the outcome of any treatment or other encounter.

New Section NAC 636.374 - It has been determined that co-management complexity is no greater for a multifocal, toric or any other "premium" intraocular lens (IOL) vs. a standard IOL. The co-management fee must be divided based on the services provided by each provider (NRS 636.374, 2.). There should be no additional co-management fee paid to the optometrist for any premium IOL above that which is approved for a standard IOL.

NAC 636.380 Service upon attorney. (NRS 636.125) Pursuant to NRS 636.375, following the entry of an appearance by an attorney for a party, all notices, pleadings and orders must be served upon the attorney and such service is effective for all purposes upon the party represented by the attorney.

(Added to NAC by Bd. of Optometry, eff. 5-2-88)

~~[NAC 636.390 Withdrawal of attorney. (NRS 636.125) Any attorney of record wishing to withdraw from a proceeding before the Board must, in writing, immediately notify the Board~~

~~or the presiding officer, the party whom he represented and all other parties to the proceeding of his withdrawal.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~NAC 636.400 Conduct before Board. ([NRS 636.125](#)) [A person appearing in a proceeding before the Board shall conform to the recognized standards of ethical and courteous conduct.]~~

All parties to hearings or other Board proceedings, their counsel and spectators shall conduct themselves in a respectful manner.

(Added to NAC by Bd. of Optometry, eff. 5-2-88)

Pleadings, Motions and Other Papers

~~—[NAC 636.410 Captions, amendments and construction of pleadings. ([NRS 636.125](#))~~

~~—1. Pleadings before the Board must be called applications, petitions, accusations or answers.~~

~~—2. The Board may, when substantial rights of the parties are not violated, allow any pleading to be amended or corrected.~~

~~—3. All pleadings will be liberally construed with a view to effect justice between the parties, and the Board or presiding officer will, at every stage of any proceeding, disregard errors or defects in the pleadings or proceedings which do not affect the substantial rights of the parties.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~—[NAC 636.420 Applications. ([NRS 636.125](#))~~

~~—1. A pleading requesting a privilege, license or authority from the Board must be styled an “application.”~~

~~—2. An application must set forth the full name and address of the applicant and such facts or exhibits as may be required by statute or this chapter. An application must be signed by the applicant.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~—[NAC 636.430 Petitions. ([NRS 636.125](#)) A “petition” is a pleading other than an~~

~~application, accusation or answer, praying for affirmative relief, including requests for declaratory orders, advisory opinions, and requests for the adoption, amendment or repeal of any regulation. A petition must set forth the full name and post office address of the petitioner and be signed by the petitioner.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~—[NAC 636.440 Verification. ([NRS 636.125](#)) All pleadings must be verified.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~—[NAC 636.450 Motions. ([NRS 636.125](#))~~

~~—1. A motion is a request directed at the Board’s authority to act on a given subject.~~

~~—2. All motions, unless made during a hearing, must be in writing.~~

~~—3. All written motions must set forth the nature of the relief sought and the grounds therefor.~~

~~—4. A party desiring to oppose a motion may serve and file a written response to the motion.~~

~~— 5. — The moving party may serve and file a written reply only if an opposition to the motion has been served and filed.~~

~~— 6. — A decision on the motion will be rendered without oral argument unless oral argument is requested by the Board. If oral argument is requested, the Board will set a date and time for a hearing on the motion.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88)~~

~~— [NAC 636.460 — Filing and availability of papers. (NRS 636.125) — An original and two legible copies of all pleadings, motions or other papers must be filed with the Board. The Board may direct that a copy of all pleadings and motions be made available by the party filing them to any other person whom the Board determines may be affected by the proceeding and who desires copies thereof.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88)~~

~~— [NAC 636.470 — Service of process. (NRS 636.125)~~

~~— 1. — All notices, documents, advisory opinions and declaratory orders required to be served by the Board will be served by mail, and service thereof will be deemed complete when a true copy of such paper or document, properly addressed and stamped, is deposited in the United States mail. Parties will be notified either personally or by certified mail of any adverse decision or order.~~

~~— 2. — All documents required to be served by a party must be served by mail, and service thereof shall be deemed complete when a true copy of such paper or document, properly addressed and stamped, is deposited in the United States mail.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88)~~

NAC 636.480 Proof of service. (NRS 636.125) Pursuant to NRS 636.375, ~~t~~^Fhere will appear on all documents required to be served by the Board, other than decisions or orders, an acknowledgment of service or the following certificate, as applicable:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding (by delivering a copy in person to) (by mailing a copy, properly addressed, with postage prepaid, to)
(by e-mailing a copy, properly addressed to the person at the e-mail address on file with the Board office)

Dated at this day of the month of of the year

.....

..

Signature

(Added to NAC by Bd. of Optometry, eff. 5-2-88)

~~— [NAC 636.490 — Filing and contents of accusation. (NRS 636.125)~~

~~— 1. — Upon its own initiative, or following receipt of a verified complaint, the Board may cause an accusation to be filed alleging one or more grounds for disciplinary action arising pursuant to NRS 636.295. Facts constituting grounds for disciplinary action must be stated with such particularity as to enable the respondent to identify the charges against him.~~

~~— 2. — All applicable decisions, statutes, rules and regulations, or orders of the Board must be cited in the accusation, together with the dates on which the acts or omissions complained of allegedly occurred.~~

~~— 3. — If more than one cause of action is alleged, each cause of action must be stated and numbered separately.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88; A 5-27-92)}~~

Hearings

~~— [NAC 636.500 — Request for hearing; filing answer. (NRS 636.125) — A party or parties against whom an accusation is filed must, within 15 days of receipt of the accusation, notify the Board in writing whether a hearing on the accusation is requested. Failure to request a hearing will be deemed a waiver of the right to a hearing. However, the Board may grant a hearing notwithstanding the fact that the hearing was not requested within the 15 days allowed. If a hearing is requested, the respondent must file an answer within 20 days of receipt of the accusation.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~— [NAC 636.510 — Quorum required; notice and location of hearing. (NRS 636.125)~~

~~— 1. — Hearings will be held before the Board. A quorum of the Board is sufficient to convene any hearing.~~

~~— 2. — Notice of the hearing will be served at least 20 days before the time set therefor. A hearing which has previously been continued may be reset on notice of not less than 10 days.~~

~~— 3. — Hearings will be held at a place in the State designated by the Board in the notice of the hearing.~~

~~— 4. — Notice of the hearing will include:~~

~~— (a) A statement of the time, place and nature of the hearing.~~

~~— (b) A statement of the legal authority and jurisdiction under which the hearing is to be held.~~

~~— (c) A reference to the particular sections of the statutes and regulations involved.~~

~~— (d) A short and plain statement of the matters asserted.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~— [NAC 636.520 — Continuances. (NRS 636.125) — The Board may, either before or during a hearing, and on proper showing, grant a continuance to allow submission of additional proof of any relevant matter.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

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~~— [NAC 636.530 — Failure of party to appear. (NRS 636.125)~~

~~— 1. — If a party fails to appear at a hearing scheduled by the Board and no continuance has been requested or granted, the Board may hear the testimony of witnesses who have appeared and consider and dispose of the matter on the basis of the evidence before it.~~

~~— 2. — If, because of accident, sickness or other reasonable cause, a person fails to appear for a hearing scheduled by the Board or fails to request a continuance thereof, the party may, within a reasonable period, not to exceed 15 days after the date of the hearing, apply to the Secretary of the Board to reopen the proceedings and the Board, upon finding such cause sufficient and reasonable, will immediately fix a time and place for hearing and give such party notice~~

thereof. At the time and place fixed, the person may testify on his own behalf or present such other evidence as may be beneficial to his cause.

~~— 3. — Witnesses who have previously testified are not required to appear at the second hearing unless so directed by the Board.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~— [NAC 636.540 — Conduct at hearings. (NRS 636.125) — All parties to a hearing, their counsel and spectators shall conduct themselves in a respectful manner.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~— [NAC 636.550 — Preliminary procedure. (NRS 636.125) — The presiding member of the Board will call the proceeding to order, take the appearances and act upon any pending motions or petitions. The parties may then make opening statements.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~— [NAC 636.560 — Testimony must be under oath. (NRS 636.125) — All testimony to be considered by the Board in any hearing, except matters noticed officially or entered by stipulation, must be sworn testimony. Each witness must swear or affirm that the testimony he is about to give in the hearing before the Board will be the truth, the whole truth and nothing but the truth.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~— [NAC 636.570 — Order of presentation. (NRS 636.125)~~

~~— 1. — Evidence at the hearing will ordinarily be received from the parties in the following order:~~

~~— (a) Upon petitions:~~

~~— (1) Petitioner;~~

~~— (2) Board's staff;~~

~~— (3) Intervener; and~~

~~— (4) Rebuttal by petitioner.~~

~~— (b) Upon accusations:~~

~~— (1) Board;~~

~~— (2) Respondent; and~~

~~— (3) Rebuttal by the Board.~~

~~— 2. — This order of procedure may be modified by the Board or presiding board member.~~

~~— 3. — Closing statements by the parties may be allowed by the Board or presiding Board member.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~— [NAC 636.580 — Consolidation of proceedings. (NRS 636.125) — The Board may consolidate two or more proceedings into one hearing whenever it appears that the issues are substantially the same and the interests of the parties will not be prejudiced by such consolidation. At any consolidated hearing, the presiding Board member will determine the order of procedure.~~

~~— (Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~— [NAC 636.590 — Stipulations. (NRS 636.125) — With the approval of the Board, the parties may stipulate as to any fact at issue, either by written stipulation introduced in evidence as an exhibit or by oral statement shown upon the record. Any such stipulation will be binding upon~~

~~all parties to the stipulation, and it may be treated as evidence at the hearing. The Board may require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

NAC 636.600 Official notice. ([NRS 636.125](#)) In addition to the facts mentioned in subsection 5 of [NRS 233B.123](#), the Board may take official notice of regulations, official reports, decisions, orders, standards of records of the Board, and any regulatory agency of the State of Nevada **or any other state or territory of the United States** or any court of record.

(Added to NAC by Bd. of Optometry, eff. 5-2-88)

~~—[NAC 636.610 Briefs. ([NRS 636.125](#)) The Board may require that briefs be filed and accompanied by proof of service pursuant to [NAC 636.480](#).~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~—[NAC 636.620 Orders and decisions of Board. ([NRS 636.125](#))~~

~~—1. A proceeding stands submitted for decision by the Board after the taking of evidence, the filing of briefs or the presentation of such oral argument permitted by the Board.~~

~~—2. A decision or order which is adverse to a party in any hearing will be in writing or stated in the record and will include findings of facts and conclusions of law.~~

~~—3. Orders or decisions will be rendered within 90 days after the hearing unless a shorter time is required by statute.~~

~~—4. Decisions and orders of the Board will be served by sending a copy thereof by certified mail to the parties of record or their representatives or by personal service. Additional copies of orders may be obtained upon written request.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~—[NAC 636.630 Rehearings. ([NRS 636.125](#))~~

~~—1. Within 15 days after the rendering of a decision or order by the Board, the aggrieved party may apply for a rehearing by filing a written petition for rehearing setting forth the grounds for rehearing.~~

~~—2. The Board will act upon the petition within 30 days after the effective date of the order or decision upon which the rehearing is requested. If no action is taken by the Board within the time specified, the petition will be deemed denied and the Board's decision is final for the purposes of judicial review.~~

~~—3. The Board, on its own motion, may order a rehearing within 30 days of its decision if mistake, fraud or misconception of facts existed in the forming of its original decision.~~

~~—4. Rehearings will be conducted in accordance with the procedure for hearings.~~

~~—5. The filing of a petition for rehearing does not excuse compliance with the order or decision or suspend the effectiveness of the order unless otherwise ordered by the Board.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

~~—[NAC 636.640 Record of case. ([NRS 636.125](#)) Upon the filing of a petition for judicial review of a final decision in a contested case, the Board will cause a record of the case to be made in accordance with subsection 6 of [NRS 233B.121](#) for transmittal to the reviewing court in accordance with [NRS 233B.131](#). Persons desiring copies of the record may obtain the copies from the office of the Board upon payment of the fees fixed therefor.~~

~~—(Added to NAC by Bd. of Optometry, eff. 5-2-88)}~~

Miscellaneous Petitions

NAC 636.650 Petitions for declaratory orders and advisory opinions. ([NRS 636.125](#))

1. The Board will consider petitions for declaratory orders or advisory opinions relating to the applicability of any statutory provision, regulation or decision of the Board.

2. A ~~[H]~~ petition~~[s]~~ for a declaratory order~~[s and]~~ or an advisory opinions~~s~~ must be in writing on ~~[using substantially the format of]~~ a form prescribed by the Board.

~~[3.— Upon submission of a petition for a declaratory order or advisory opinion, the Board will, within 30 days, deny the petition in writing, stating its reasons or initiate proceedings in accordance with [NRS 233B.060.](#)]~~

(Added to NAC by Bd. of Optometry, eff. 5-2-88)

New Provision: ([NRS 233B.120](#))

1. Except as otherwise provided in subsection 2, upon receiving a petition for a declaratory order or an advisory opinion, the Board will place the matter on the agenda for discussion at the next regularly scheduled meeting of the Board.

2. If the petition is received within 30 days before the next regularly scheduled meeting, the petition may be placed on the agenda for discussion at the next meeting after that meeting.

3. At a meeting at which a petition has been placed on the agenda for discussion, the Board will consider any information relevant to the petition, including, without limitation:

- (a) Oral or written testimony; and
- (b) Any other evidence.

4. After consideration of the information relevant to the petition, the Board will grant or deny the petition.

5. If the Board denies the petition, no further action will be taken.

New Provision: ([NRS 233B.120](#))

1. If the Board grants a petition pursuant to subsection 4 of New Provision 3, the Board will issue a declaratory order or advisory opinion. The President or other presiding officer shall assign one member of the Board to write the declaratory order or advisory opinion. The member so assigned has 30 days within which to submit to the Board the final draft, after reviewing comments by all members of the Board on the issue, researching the issue and seeking the assistance of the Attorney General, if necessary. Upon completing his or her draft of the declaratory order or advisory opinion, the assigned member shall submit it to the Board for final approval at the next regularly scheduled meeting of the Board. The declaratory order or advisory opinion must be approved by a majority of the members of the Board who are present at the meeting.

2. After the Board renders its declaratory order or advisory opinion, the Board will give notice of it to the petitioner.

New Provision:

A petitioner shall comply with the provisions of a declaratory order or advisory opinion issued by the Board.

NAC 636.660 Petitions requesting adoption, amendment or repeal of regulations. ([NRS 636.125](#))

~~[1.—A petition requesting the adoption, amendment or repeal of any regulation must be in writing using the format of a form prescribed by the Board.~~

~~— 2.— Within 30 days of the submission of the petition, the Board will deny the petition in writing, stating its reasons or initiate proceedings in accordance with [NRS 233B.060](#).]~~

1. Pursuant to [NRS 233B.100](#), any interested person may petition the Board for the adoption, filing, amendment or repeal of any regulation.

2. A petition for the adoption, filing, amendment or repeal of a regulation must be in writing on a form prescribed by the Board and must include:

(a) The name and address of the petitioner;

(b) The reason for petitioning for the adoption, filing, amendment or repeal of the regulation;

(c) The proposed language of the regulation to be adopted, filed, amended or repealed;

(d) The statutory authority for the adoption, filing, amendment or repeal of the regulation; and

(e) Any relevant data, views and arguments that support the petition for the adoption, filing, amendment or repeal of the regulation.

3. The Board may refuse to act upon a petition for the adoption, filing, amendment or repeal of a regulation if the petition does not include the information required by subsection 2.

4. The Board will notify the petitioner in writing of the Board's decision regarding the petition within 30 days after the date on which the petitioner filed the petition. If the Board approves the petition for the adoption, filing, amendment or repeal of a regulation, the Board will initiate regulation-making proceedings concerning that regulation within 30 days after the date on which the petitioner filed the petition.

New Provision:

1. All licensee and applicants must report to the Board, within 30 days:

a. Any criminal conviction or pending criminal action initiated in this State or any other state or territory or by the Federal Government, a branch of the Armed Forces of the United States or any local or federal jurisdiction of a foreign country. Minor traffic violations are not required to be reported to the Board,

b. Any action taken against any professional license that they possess in this State or any other state or pending administrative action initiated in this State or any other state,

c. Any pending civil action filed against them relating to their practice as an optometrist in this State or any other state or territory or any federal court, and

d. Any extended order for the protection against domestic violence issued against him or her pursuant to NRS 33.020, or the equivalent in the state, territory, or jurisdiction where the order was issued.

2. The Executive Director or his or her designee will review a report made under this section and investigate it in the manner used for the investigation if he or she deems necessary. The licensee or applicant may be asked for additional information about this event, and making a report as required by this section does not automatically mean the Board will take disciplinary action against the licensee or deny the pending application of an applicant. Failure to report a qualifying event under this section is grounds for disciplinary action and/or denial of an application or license renewal application, as applicable. (Added to NAC by Bd. of Optometry, eff. 5-2-88)

PRESCRIPTIONS

NAC 636.670 Contents. ([NRS 636.125](#))

1. A prescription for spectacle lenses must specify the refractive power necessary for best vision [and contain instructions concerning the times at which the lenses are to be worn].

2. A prescription for polymethylmethacrylate (Hydrophobic) contact lenses must specify the base curve, diameter and refractive power of the lenses.

3. A prescription for rigid gas permeable contact lenses must:

(a) Specify the base curve, diameter and refractive power of the lenses;

(b) Specify the:

(1) Brand name or manufacturer and type of lens; or

(2) The actual materials desired[, with their ability to transmit oxygen]; and

(c) State whether the prescription is for daily wear or for a stated maximum number of 24-hour periods.

4. A prescription for soft (Hydrophilic) contact lenses must:

(a) Specify the base curve or equivalent, diameter and refractive power of the lenses;

(b) Specify the:

(1) Brand name and type of lens; or

(2) The actual materials desired, with their percentage of water content and thickness;

and

(c) State whether the prescription is for daily wear or for a stated maximum number of 24-hour periods.

(Added to NAC by Bd. of Optometry, eff. 6-15-90) — (Substituted in revision for NAC 636.720)

NAC 636.680 Contact lenses. ([NRS 636.125](#))

1. Except as otherwise provided in this section, a copy of a prescription for a ~~[polymethylmethacrylate (Hydrophobic) contact lens,]~~ rigid gas permeable contact lens or soft ~~[(Hydrophilic)]~~ contact lens issued by an optometrist following the completion of the fitting and/or evaluation must ~~[be]~~:

(a) be p[P]rovided to the patient~~[, upon an oral or written request from the patient]~~ as required by the Federal Trade Commission.

(b) be r[R]eleased to an authorized agent of the patient~~[, upon a written request from the patient]~~.

(c) be v[V]erified to an authorized agent of the patient~~[, upon a written request from the patient]~~.

(d) express the date the prescription expires.

2. An optometrist shall not release a prescription for a ~~[polymethylmethacrylate (Hydrophobic) contact lens,]~~ rigid gas permeable contact lens or soft ~~[(Hydrophilic)]~~ contact lens to a patient, until the optometrist has:

(a) Conducted an initial evaluation of the fit of the lens on the eye of the patient;

(b) Conducted any follow-up examination that the optometrist deems medically necessary; and

(c) Determined that a successful fit has been achieved.

3. An optometrist shall not fail or refuse to provide all the information necessary to duplicate accurately a valid prescription for a ~~[polymethylmethacrylate (Hydrophobic) contact lens,]~~ rigid gas permeable contact lens or soft ~~[(Hydrophilic)]~~ contact lens unless the optometrist maintains proper documentation of a sufficient clinical rationale.

4. Upon the release of a prescription for a ~~[polymethylmethacrylate (Hydrophobic) contact lens,]~~ rigid gas permeable contact lens or soft ~~[(Hydrophilic)]~~ contact lens, no changes may be made in the brand or type of lens prescribed or dispensed without the issuance of a new prescription. A new prescription to make changes in the brand or type of lens prescribed must not be issued unless an optometrist has completed any evaluations or examinations that the optometrist deems medically necessary for such changes.

5. After the release of a prescription for a ~~[polymethylmethacrylate (Hydrophobic) contact lens,]~~ rigid gas permeable contact lens or soft ~~[(Hydrophilic)]~~ contact lens, the prescriber is not liable for any future changes in the fitting or dispensing of the lens by another source.

~~— [6. — If a patient requests the release of a prescription for a [polymethylmethacrylate (Hydrophobic) contact lens,] rigid gas permeable contact lens or soft [(Hydrophilic)] contact lens before [an optometrist] the patient has completed any evaluation or examination that the optometrist deems medically necessary, the optometrist may release a prescription for an ophthalmic lens [which must indicate that the prescription is not approved for contact lenses in the manner set forth in NRS 636.387].~~

(Added to NAC by Bd. of Optometry by R215-03, eff. 4-23-2004)

MISCELLANEOUS PROVISIONS

~~[NAC 636.700 — Mailing of fees and documents to Board. (NRS 636.125) — Any fee or document:~~

~~— 1. — That is required or permitted by the provisions of this chapter or chapter 636 of NRS to be filed with or paid to the Board or its staff; and~~

~~— 2. — That is mailed to the Board, must be sent by registered or certified mail.~~

~~— (Added to NAC by Bd. of Optometry, eff. 6-15-90)~~

NAC 636.710 Referral bureaus for optometrists. (NRS 636.125)

1. A licensee shall not permit himself or herself to be listed with a referral bureau for optometrists unless the bureau complies with the provisions of this chapter and chapter 636 of NRS.

2. A referral bureau shall maintain listings for at least five optometrists. None of these persons may have a business relationship with any of the others.

3. Unless there is a request for an optometrist who is located in a specific geographic area or is able to speak a certain language, all referrals by a referral bureau must be made on a

rotating basis so that each optometrist listed with the bureau receives approximately the same number of referrals.

4. The telephone number of the referral bureau must not be the number of the office, residence or answering service of any optometrist listed with the bureau.

5. A record of each referral must be made by the bureau and maintained by it for at least 1 year after the referral is made. The record must include the date and time of the referral, the name and address of the person referred, and the name of the optometrist to whom the person was referred. The record must be made available upon request for inspection by any optometrist listed with the bureau or any representative of the Board.

(Added to NAC by Bd. of Optometry, eff. 6-15-90)

NAC 636.730 Certification to administer and prescribe [therapeutic] pharmaceutical agents. (NRS 636.125, 636.287)

1. The Board shall provide a certificate to administer and prescribe [therapeutic] pharmaceutical agents (CAPP) to each optometrist who:

(a) Is licensed to practice optometry in the State of Nevada and is in good standing.

(b) Has successfully completed the "Treatment and Management of Ocular Disease Examination" administered by the National Board of Examiners in Optometry or its equivalent [on or after January 1, 1993]. The Board must receive verification that the person successfully completed the examination from the testing agency.

(c) Submits a form which meets the requirements set forth in subsection 2 and which states that the optometrist successfully completed a training program of not less than 40 hours of clinical training in administering and prescribing [therapeutic] pharmaceutical agents which was:

(1) Conducted by an ophthalmologist who is licensed and in good standing in any state, territory or possession of the United States;

(2) Comprehensive in nature and covered the use of all classes of [therapeutic] pharmaceutical agents which may be administered or prescribed pursuant to chapter 636 of NRS;

~~(3) Practical in nature and had a primary focus on the examination of patients; and
(4) Structured to maximize the interrelationship between the doctor and the patient, emphasizing one-on-one interaction between the doctor and the patient.~~

2. Upon completion by an optometrist of a training program which meets the requirements of paragraph (c) of subsection 1, the ophthalmologist who conducted the program shall, on a form provided by the Executive Director of the Board, certify under penalty of perjury that the optometrist named on the form satisfactorily completed the training program. Additionally, on the same related form, the named optometrist shall certify under penalty of perjury that he or she completed the training program and satisfies all of the other requirements for certification to administer and prescribe [therapeutic] pharmaceutical agents. The certifying signatures of the ophthalmologist and optometrist must be notarized.

3. The form provided by the Executive Director of the Board pursuant to subsection 2 must:

(a) Set forth the requirements for the training program described in this section;

(b) Contain the certifications for the ophthalmologist and optometrist which are required by this section; and

(c) Provide space and appropriate designations for the notarization of the signatures of the ophthalmologist and optometrist.

(Added to NAC by Bd. of Optometry, eff. 3-28-96)

Additional Proposed new sections:

1. Mobile Optometry Certification

1. Shall not be construed to apply to “vision screenings”, where no subjective refraction, interpretation, diagnosis or treatment are being performed by the licensed optometrist.
2. “Underserved”: The Board of Optometry shall adopt a definition of “medically underserved” as it applies to optometric services not less than every 4 years based upon objective data regarding access to optometrists and the adequacy of available services for the population. The Board may use the term as it is defined by the *Officer of Rural Health of the University of Nevada School of Medicine, or its successor, or may use another data source, or a combination of data sources to make its determination.*
3. Define that there may be either: 1) a physical mobile optometric clinic, or 2) a mobile optometrist that travels, ie. to nursing homes.
4. Require there to be a physical address (not a P.O. Box) associated with the mobile clinic, and other requirements for issuance and renewal.
5. The medical records belong to the doctor performing the examinations, NOT the clinic.
6. Shall keep a log of all locations and dates when services were rendered
2. Jurisdictional Review of Complaints: Allow ED to reject complaints that do not meet the requirements for a complaint, do not fall under our jurisdiction or that do not allege violations of NRS 636 or NAC 636, allowing the ED to direct the complainant to a more appropriate state or federal Board or organization, and relieving the Board from consideration of such complaints. Do we need ability for Board reporting and oversight to these determinations.
3. The optometrist who performs an examination owns the medical record if they are performing services as an independent contractor at a location not owned by another optometrist. If providing services as an employee, the record belongs to the employer.

Pursuant to NRS 636.143, the Board will charge and collect the following fees:

...

All fees submitted to the Board are non-refundable.

Initial application: \$75.00 (+ prorated quarterly \$750 for 2 year license, includes certificate);

Endorsement application: \$375+\$75 (includes 2 year license, application fee and certificate)

2 year Renewal: active license and one practice location: \$750.00

2 year Renewal, each additional location: \$200.00

2 year renewal mobile optometry clinic: \$600.00

2 year renewal, inactive license: \$500.00

Activation of current inactive license: \$250.00

For both active and inactive license renewals, your complete renewal form, continuing education compliance information and proper fees must be submitted bearing a postmark on or before February 28th of each year to avoid suspension.

Reinstatement of license suspended for non-renewal after February 28th: \$750 renewal fee, plus additional locations as applicable. \$500 late fee if postmarked between March 1st and date of suspension.

After the reinstatement period, the license and any related certifications expire. To practice again in the state, the optometrist must reapply.

Additional fees:

Mobile Optometry Fees: initial application \$75, and prorated quarterly \$750; \$750 for 2 year renewal.

Certificate to Administer and Prescribe Pharmaceutical Agent (CAPPA) Application \$75

Nevada Glaucoma Certification Application \$175

Add a practice location (includes duplicate certification) \$200

Fictitious Name or DBA Registration \$50 (one time per location)

Change of practice address \$25

Letter of good standing \$25

Replacement license certificate \$75

Replacement location card \$25

6. Policy Number 2: change in location of practice

NRS 636.370 and this policy require each optometrist to notify the Board of the place of his or her practice or any change in location of that practice, in writing prior to the date the change becomes effective.

7. Policy Number 5 & 6: license renewal

Pursuant to NRS 636.250, a licensee (active or inactive) must renew his or her license by March 1 of each even-numbered year. For renewal by mail to be timely, the United States Postal Service must postmark it before March 1.

Electronic renewal is effective upon receipt of all required information and fees. It is the renewing licensee's responsibility to confirm receipt of renewal materials.

If a license is not renewed by March 1 of even-numbered years, the license will be suspended. A license may be relieved from suspension if the licensee renews before July 1 and pays a penalty of \$250.00 as authorized by NRS 636.285, plus the renewal fee. If the license renewal is received after June 30 of the even-numbered year and before January 1 of the following odd-numbered, a \$500 penalty will attach to relieve a license from suspension. As of January 1 of the following odd-numbered year, the license will expire, and if the former licensee

wishes to practice in Nevada, he or she must apply as though no previous licensure existed.

Pursuant to NRS 636.250, a licensee must renew his/her license by March 1 of each even-numbered year. License renewal requires a completed renewal application, fees, and proof of appropriate Continuing Education based on license and certification requirements.

8. Policy 7, 11: CE requirements

NRS 636.260[2] requires the renewal fee and satisfactory evidence that the licensee, within the 24-month period immediately preceding license renewal, has completed the required number of hours of continuing education approved by the Board.

The continuing education requirements for licensees certified in diagnostic pharmaceutical agents may not exceed 40 hours per 24-month period. The Board has established 40 hours as the requirement for licensees who are certified in diagnostic pharmaceutical agents, of which 5 hours may be practice management. All of the 40 hours may be by live attendance, by Internet, correspondence or video. Licensees submitting courses taken via the Internet, correspondence or video must submit proof they received a grade of 75% or higher on the course exam.

The Board counts hours in 0.25-hour increments using the 1/4 hour nearest the actual teaching time, with the exception that 50-minute lectures are counted as one hour in accord with academic tradition.

The requirement for licensees who are certified in pharmaceutical agents may not exceed 50 hours per 24-month period. The Board has established 50 hours as the requirement for licensees who are certified in pharmaceutical agents. Of the 50 hours, not fewer than 30 hours must be pharmaceutical agent or disease related. Up to ten hours may be practice management. Any or all of the 50 hours may be completed by live attendance, or by Internet, correspondence or video. Licensees submitting courses taken via the Internet, correspondence or video must submit proof they have received a grade of 75% or higher on the course exam.

The Board reviews pre-approved providers periodically to verify adherence to established standards and hours for reporting. The Board has established two categories of acceptable and approved continuing education:

1. Pre-approved – This category requires the licensee to submit a signed or verified Continuing Education Attendance form or the ARBO/OE Tracker summary through which attendance is certified. Other certifications may be submitted. Certification can be by stamp or signature. A list of pre-approved

providers appears in policy.

*Note: a maximum of 10 continuing education hours will be allowed for any 24 hour period.

2. Other – Other providers will be approved on an individual basis. Such providers may submit the course syllabus or programs in advance for approval or may be considered when the licensee submits a CE Summary Form. The licensee will receive notice from the Board only if the course is not approved.

A licensee shall not report or submit his/her continuing education information to the Board until the licensee has sufficient hours to fulfill the total requirements for the license year. Interim submission of continuing education will not be accepted.

9. Policy 8 - accredited colleges of optometry

Pursuant to NRS 636.135, only certain schools and colleges of optometry are accredited by the Nevada Board of Optometry. The Board shall rely on the Accreditation Council on Optometric Education (ACOE) for information regarding accreditation.

10. Policy 10

NRS 636.350 requires that each licensee, prior practicing under an assumed or fictitious name, must be issued a certificate from the Board. The Fictitious Name Application must be approved before the licensee commences using the assumed or fictitious name. Any licensee practicing at a medical or surgical facility who applies for registration of an assumed or fictitious name to be used at the facility must include his/her professional designation in the name.

11. Policy 12

The Board shall maintain in an account, separate from its operating account, liquefiable funds estimated to be sufficient to pay the operating expenses of the Board for a thirteen (13) month period.

LEGISLATIVE REVIEW OF PROPOSED REGULATIONS: SMALL BUSINESS IMPACT STATEMENT

In early July 2019, the Board distributed copies of AB 77 as enrolled and the Board's draft amendments to NAC Chapter 636 via email to each active and inactive holder of a license to practice optometry in the state of Nevada, comprising over 500 individuals. The Board invited feedback via telephone, email and mail, and received an encouraging response.

On July 30, in Reno the Board held an in-person forum at a restaurant in Reno NV to collect feedback on its proposed regulatory changes. Approximately 17 optometrists and others participated. Then, the Board held a state-wide telephonic open forum during which any licensee or other interested person was invited to speak up. Numerous licensees participated, including 15 callers in the telephone event. The Board also received numerous emails offering suggestions.

The public response to the regulatory process related to AB 77 was overwhelmingly positive, but several important perspectives came to light during the discussions. All in all, after every comment was heard and considered, Dr. Smith summarized the input and made recommendations at the August 8, 2019 Board Meeting. After some discussion, the Board voted unanimously to forward the regulations to the Legislative Counsel Bureau for review and drafting.

While waiting for the drafted regulations, Board staff undertook an email survey to determine the small business impact of the changes.

The Board hopes to consider the results of the survey, the LCB version of the changes to its regulations, and few other issues to be ready to put the new regulations into place before the license renewal season, which begins in November 2019.

Anyone interested in participating in the small business impact survey and development of the resulting small business impact statement may contact cjenkins@nvoptometry.org.