

**REVISED ADOPTED REGULATION OF THE
NEVADA STATE BOARD OF OPTOMETRY**

LCB File No. R045-15

Effective June 28, 2016

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §1, NRS 636.125 and 636.2891.

A REGULATION relating to optometry; revising provisions governing the treatment of persons diagnosed with glaucoma; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes an optometrist to treat persons diagnosed with glaucoma only if the optometrist has been issued a certificate by the Nevada State Board of Optometry to do so. (NRS 636.2891) To obtain such a certificate, the optometrist must have treated at least 15 persons who were diagnosed with glaucoma in consultation with an ophthalmologist for at least 12 consecutive months. (NRS 636.2893) Existing regulations require an optometrist who treats persons for glaucoma in consultation with an ophthalmologist to conduct an optometric examination of each such patient at least once every 4 months for not less than 1 year. (NAC 636.290) This regulation eliminates the requirement that optometric examinations be conducted at least every 4 months and requires instead that the optometrist: (1) establish a course of treatment for each patient; and (2) conduct optometric examinations at least three times over a period of not less than 1 year at times set forth in the course of treatment.

Section 1. NAC 636.290 is hereby amended to read as follows:

636.290 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) *Establish a course of treatment for each patient in accordance with the provisions of this section;*

(b) Conduct ~~{an}~~ *at least three* optometric ~~{examination}~~ *examinations* of ~~{the}~~ *each* patient ~~{at least once every 4 months for}~~ *over a period of* not less than 1 year ~~{;}~~ *at times set forth in the course of treatment;*

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

~~{(c)}~~ (d) 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.

**INFORMATIONAL STATEMENT FOR
REGULATION PROPOSED BY THE NEVADA STATE BOARD OF OPTOMETRY
(LCB NO. R045-15)**

The following statement is submitted for the proposed amendment to NAC 636.290.

1. A clear and concise explanation of the need for the adopted regulation.

The purpose of the proposed regulation is to ease specific time parameters from NAC 636.290 for optometrists who are training with an ophthalmologist regarding the treatment of glaucoma.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

On January 13, 2015 and on May 12, 2015, the Board discussed the potential text for the regulation at its regular board meetings. Attending and participating in the discussion were representatives from the Nevada Optometric Association and the Nevada Academy of Ophthalmology. Based upon the discussion, the Board made some changes to the proposed language. No participant in the discussion presented any evidence or argument that the proposed language would have a positive or negative impact on small businesses.

On July 14, 2015, the Board held a workshop regarding the language that became R045-15. Attending and participating in the workshop were representatives from the Nevada Optometric Association and the Nevada Academy of Ophthalmology. No participant in the discussion presented any evidence or argument that the proposed language would have a positive or negative impact on small businesses.

On January 26, 2016, the Board held a regulation hearing regarding R045-15. Attending and participating in the workshop were representatives from the Nevada Optometric Association and the Nevada Academy of Ophthalmology. Testimony was received from the lobbyist for each association and from individual optometrists in attendance. While discussion regarding the specifics of the language of R045-15 occurred, no participant in the discussion presented any evidence or argument that the proposed language would have a positive or negative impact on small businesses. The substantive discussion regarding the language of the proposed regulation related to whether the proposed regulation, as drafted, could be satisfied by a single examination. It was determined that the proposed language could be satisfied with a single examination, and concerns were expressed that a single examination would not be meet ophthalmological standard of care for the treatment and following of glaucoma patients. Therefore, the Board determined to return to language similar to the language it had originally presented to LCB, which the Board understood to disallow a single examination to be sufficient.

Subsequent to the January 26, 2016, the regulation had been scheduled to be heard by the Legislative Commission, and then was rescheduled to be heard by the Committee on Healthcare. The hearing before the Committee on Healthcare was postponed for further discussion of the regulation. A subsequent meeting occurred at which lobbyists for the Nevada Optometric Association and the Nevada Academy of Ophthalmology and the Board's President attended, and slightly amended language was worked out.

On June 16, 2016, the Board adopted the amended language reached by the various parties. Throughout the discussion that resulted in the successful amended language, no mention was made by any of the parties about an adverse financial impact that the regulation might have on small businesses. Rather, the amendments to the language addressed specifics of how many visits would be necessary over a particular period of time.

A summary of the public comment as required by NRS 233B.066(1)(b) may be obtained by contacting Louis Ling, Board Counsel, by e-mail addressed to louisling@me.com, by calling him at (775) 883-8367, or by regular mail addressed to 1000 E. William Street, Carson City, Nevada 89701-3116.

3. The number of persons who:

(a) Attended the July 14, 2015 Workshop – 2

Testified at the July 14, 2015 Workshop – 2

(b) Attended the January 26, 2016 Hearing – 7

Testified at the January 26, 2016 Hearing - 5

(c) Submitted written statements for the July 24, 2015 Workshop – 1

Submitted written comments for the January 26, 2016 Hearing – 2

4. For each person identified in subparagraph (b) and (c) above, following is the information that was provided to the Nevada State Board of Optometry:

(a) Name

- (1) Michael Hillerby, Lobbyist, Nevada Optometric Association*
- (2) Jeanette Belz, Lobbyist, Nevada Academy of Ophthalmology*
- (3) Jeffrey K. Austin, Optometrist*
- (4) Mark R. Lee, Optometrist*
- (5) Robert D. Lyons, Optometrist*

(b) Telephone number

- (1) 775-398-4730*
- (2) 775-329-0119*
- (3) 702-485-5000*
- (4) 702-254-3558*
- (5) 775-320-2300*

(c) Business address

- (1) 50 W. Liberty St., Suite 900*
- (2) 10580 N. McCarran Blvd., Suite 115-222, Reno, Nevada 89503*
- (3) 2020 Goldring Avenue, Suite 402, Las Vegas, Nevada 89106*
- (4) 8937 West Sahara Avenue, Suite A, Las Vegas, Nevada 89117*
- (5) 5420 Kietzke Lane, Suite 103, Reno, Nevada 89511*

(d) Business telephone number

- (1) 775-398-4730*
- (2) 775-329-0119*
- (3) Same as above*
- (4) Same as above*
- (5) Same as above*

(e) Electronic mail address

- (1) mhillerby@kcnvlaw.com*

- (2) *jb@jkbels.com*
- (3) *austineeyecare@MSN.com*
- (4) *drlee@visionsourcewestsahara.com*
- (5) *dlyons@gmail.com*

(f) Name of entity or organization represented

- (1) *Nevada Optometric Association*
- (2) *Nevada Academy of Ophthalmology*
- (3) *Self and NOA*
- (4) *Self and NOA*
- (5) *Self and NOA*

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited by mailing the Notice of Hearing and the text of R045- 15 to all of the Board's licensees and to all persons on the Board's mailing list maintained pursuant to the Open Meeting Law. Other interested persons may obtain a copy of the comments received by contacting the Board's Executive Director.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation with change.

The testimony received and written documents presented at the hearing were considered by the Board and resulted in amendments to the language of R045-15 that were unanimously adopted by the Board. Additional amendments that had been negotiated by and between representatives of the Nevada Optometric Association, the Nevada Academy of Ophthalmology, and the Board President were considered and adopted by the Board at its meeting on June 16, 2016.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects.

There are no anticipated adverse or beneficial economic effects on the optometric profession or the public.

(b) Both immediate and long-term effects.

The Board intends that R045-15 will facilitate more optometrists becoming certified to treat glaucoma, which, if that occurs, will have immediate and long-term benefits to patients in Nevada.

8. The estimated cost to the agency for enforcement of the adopted regulation.

There will be no significant cost to the Nevada State Board of Optometry for enforcement of the proposed regulation.

- 9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency,.**

The Nevada State Board of Optometry is not aware of any similar regulations of other state or government agencies that the proposed regulation overlaps or duplicates.

- 10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.**

This proposed regulation is not required by federal law.

- 11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

This proposed regulation does not provide a new fee or increase an existing fee.