ADOPTED REGULATION OF

THE BOARD OF DISPENSING OPTICIANS

LCB File No. R073-12

Effective June 3, 2013

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

AUTHORITY: §§1, 3, 4, 11 and 19-39, NRS 637.070; §§2 and 12, NRS 637.070 and 637.150; §5, NRS 637.070 and 637.090; §§6, 16 and 18, NRS 637.070 and 637.100; §§7, 8 and 13, NRS 637.070, 637.100 and 637.110; §9, NRS 637.070, 637.121 and 637.140; §10, 637.070 and 637.120; §14, NRS 637.070, 637.100 and 637.123; §15, NRS 637.070, 637.100 and 637.125; §17, NRS 637.070 and 637.123.

A REGULATION relating to dispensing opticians; authorizing inspections of places of dispensing; establishing certain procedures for hearings and investigations; specifying certain acts by certain laboratory personnel as not constituting the practice of ophthalmic dispensing; revising provisions relating to the training and education required of applicants for licensure as dispensing opticians; revising provisions relating to the format of the examination for a license; revising the requirements for reactivation of licenses; revising the length of time in which a licensee must notify the Board of Dispensing Opticians of a change of address; revising provisions specifying grounds for disciplinary action; revising requirements for licensure as an apprentice dispensing optician; revising provisions relating to the reinstatement of delinquent licenses of apprentice dispensing opticians; revising provisions relating to the supervision of apprentice dispensing opticians; revising provisions relating to the progress toward completion of an apprenticeship; revising provisions relating to continuing education; revising the length of time in which an apprentice dispensing optician must notify the Board of a change of employer; revising provisions relating to the conduct required of persons appearing in proceedings before the Board; revising provisions relating to the filing and service of pleadings, motions and other documents; revising provisions relating to hearings held before the Board; revising provisions relating to petitions for declaratory orders and advisory opinions of the Board; revising the procedure for consideration of petitions for adoption, amendment or repeal of regulations; and providing other matters properly relating thereto.

Section 1. Chapter 637 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this regulation.

Sec. 2. ***1. The Board may inspect the place of dispensing of a licensee to ensure compliance with the provisions of this chapter and chapter 637 of NRS. This authority extends to any member of the Board and its authorized employees and designees.***

2. A licensee shall provide access to facilitate an inspection initiated pursuant to subsection 1.

3. Failure to cooperate with an inspection conducted pursuant to this section constitutes grounds for disciplinary action pursuant to NRS 637.150.

4. If the Board, its members or authorized employees or designees note one or more violations of this chapter or chapter 637 of NRS as a result of the inspection, the Board may initiate disciplinary action against one or more licensees in accordance with the provisions of this chapter and chapters 233B, 622A and 637 of NRS.

Sec. 3. ***In a manner consistent with the provisions of chapter 622A of NRS, the Board may hold hearings and conduct investigations relating to its duties under this chapter and chapter 637 of NRS and take evidence on any matter under inquiry before the Board.***

Sec. 4. NAC 637.010 is hereby amended to read as follows:

637.010 This chapter will be:

1. Liberally construed to secure just, speedy and economical determinations of all issues presented to the Board and to effectuate the purposes of chapters 233B ***, 622A*** and 637 of NRS ~~[.]~~ ***and all other applicable provisions of law.***

2. Construed as being in harmony with the provisions of chapter 637 of NRS.

Sec. 5. NAC 637.140 is hereby amended to read as follows:

637.140 1. Except as otherwise provided by specific statute, a person who does not hold a license as a dispensing optician, a limited license as a dispensing optician or a license as an apprentice dispensing optician shall not provide any ophthalmic products ***directly*** to the public.

2. ***Laboratory personnel, including, without limitation, laboratory technicians, shall be deemed not to be engaged in the practice of ophthalmic dispensing and are not required to be licensed pursuant to NRS 637.090 if the laboratory personnel:***

(a) Except as otherwise provided in subsection 3, do not perform any of the acts described in subsection 1 or 2 of NRS 637.022; and

(b) Provide ophthalmic products only and directly to licensed dispensing opticians, licensed ophthalmologists and licensed optometrists.

3. Without obtaining a license pursuant to this chapter and chapter 637 of NRS, a laboratory technician may perform any act to the fullest extent for which a license is not required pursuant to this chapter and chapter 637 of NRS, including, without limitation, grinding lenses or fabricating eyewear, as described in paragraph (b) of subsection 2 of NRS 637.022.

4. As used in this section, "ophthalmic products" includes, without limitation:

(a) Ophthalmic lenses for sunglasses, dive masks, sports goggles and occupational goggles;

(b) Ophthalmic prescription lenses;

(c) Ophthalmic devices that have dioptric power and are attached to eyeglasses; and

(d) All prescription and nonprescription contact lenses, including, without limitation, prepackaged contact lenses, individual contact lenses, cosmetic contact lenses and theatrical contact lenses.

Sec. 6. NAC 637.148 is hereby amended to read as follows:

637.148 1. ~~[An]~~ ***Except as otherwise provided in subsection 3, an*** applicant for a license as a dispensing optician must furnish proof on a form provided by the Board and signed by the supervisor of the applicant that he or she has completed the following hours of training and experience relating to the fitting and filling of prescriptions for contact lenses required pursuant to subparagraph (2) of paragraph (g) of subsection 1 of NRS 637.100:

(a) Thirty hours of contact lens fitting;

(b) Twenty hours of follow-up care relating to contact lens fitting;

(c) Twenty hours of instrumentation;

(d) Fifteen hours of insertion and removal of contact lenses;

(e) Ten hours of inspection of contact lenses; and

(f) Five hours of filling prescriptions for contact lenses.

2. The completion of one or more courses of instruction in contact lens fitting or contact lens theory in a school which offers a degree of associate in applied science for studies in ophthalmic dispensing approved by the Board may count toward the completion of the hours of training and experience described in subsection 1.

3. ***As an alternative to the form described in subsection 1, the Board may request and accept other documentation proving that an applicant has completed the hours of training and experience described in subsection 1.***

4. As used in subsection 1, "supervisor" means an ophthalmologist, an optometrist or a dispensing optician.

Sec. 7. NAC 637.150 is hereby amended to read as follows:

637.150 1. An application for an examination required to obtain a license as a dispensing optician pursuant to NRS 637.120 must be made to the Board at least 60 days before the date of the examination. The application must be made on forms provided by the Board.

2. The applicant must provide with the application:

(a) Proof that he or she has met the requirements set forth in NRS 637.100 **.** ~~[;]~~

(b) ~~[A full-face, close-up photograph of the applicant taken within the last year, not smaller than 2 by 2 inches;~~

~~(c)]~~ Three letters concerning his or her character from references ~~[;~~

~~(d)]~~ ***, one of which must be from a dispensing optician or a person who has worked in the optical industry with the applicant.***

(c) An affidavit attesting to the truthfulness of all statements made in the application **.** ~~[;~~

~~(e)]~~ ***(d)*** Proof of completion of the hours of training and experience required pursuant to subparagraph (2) of paragraph (g) of subsection 1 of NRS 637.100 **.** ~~[; and~~

~~(f)]~~ ***(e)*** A statement indicating whether he or she has had a professional license revoked or suspended in this State or any other state or jurisdiction. If so, the applicant must disclose the circumstances of the revocation or suspension ~~[or]~~ ***and, if requested by the Board,*** submit to a background check.

(f) A statement indicating whether he or she has been convicted of a misdemeanor, gross misdemeanor or felony in this State or any other state or jurisdiction. If so, the applicant must disclose the circumstances of the conviction and, if requested by the Board, submit to a background check.

3. For the purposes of paragraph (d) of subsection 1 of NRS 637.100, the Board will consider an applicant who has received a general equivalency diploma to have graduated from the equivalent of an accredited high school.

4. An applicant who has successfully completed a course of study in a school which offers a degree of associate in applied science for studies in ophthalmic dispensing approved by the Board must obtain the required 2,000 hours of training and experience.

5. The submission of false or misleading statements on the application filed with the Board or the failure to provide information required on any form is sufficient cause for the Board to reject the application or revoke the license of a dispensing optician.

6. A fee of $350 must accompany the application. Upon approval by the Board, an applicant who has failed the examination may be reexamined for a license as a dispensing optician if the applicant submits to the Board a fee of $250 and a written request for reexamination at least 60 days before the next date of examination.

7. An applicant who has failed the examination may ***request to*** retake the examination ***.*** ~~[not more than three times.]~~

Sec. 8. NAC 637.160 is hereby amended to read as follows:

637.160 1. The Board's examination for a license as a dispensing optician will test the dispensing skills of the applicant ~~[.]~~ ***and will consist of a practical section and a written section.***

2. ~~[The]~~ ***Each section of the*** examination will test the applicant's proficiency and knowledge in the following subjects and approximate proportions:

(a) ***For the practical section:***

(1) Neutralization of ophthalmic products, 30 percent.

~~[(b) Optical theory, 15 percent.~~

~~(c) Dispensing of ophthalmic products, 10 percent.~~

~~(d) The provisions of this chapter and chapter 637 of NRS, 15 percent.~~

~~(e) Anatomy, physiology and health of the eye, 15 percent.~~

~~(f)]~~ ***(2)*** Ophthalmic product identification, 5 percent.

~~[(g)]~~ ***(3)*** Ophthalmic instrumentation, 10 percent.

(b) For the written section:

(1) Optical theory, 15 percent.

(2) Dispensing of ophthalmic products, 10 percent.

(3) The provisions of this chapter and chapter 637 of NRS, 15 percent.

(4) Anatomy, physiology and health of the eye, 15 percent.

3. If an applicant for a license as a dispensing optician holds a limited license as a dispensing optician in good standing, the Board may modify the examination described in this section to test the applicant's proficiency and knowledge in the following subjects and approximate proportions:

(a) ~~[Basic contact lens, 30 percent.~~

~~(b) The provisions of this chapter and chapter 637 of NRS, 15 percent.~~

~~(c) Slide identification, 15 percent.~~

~~(d)]~~ ***For the practical section:***

(1) Neutralization of ophthalmic products, 20 percent.

~~[(e)]~~ ***(2)*** Instrumentation and fitting, 20 percent.

(b) For the written section:

(1) Basic contact lens, 30 percent.

(2) The provisions of this chapter and chapter 637 of NRS, 15 percent.

(3) Slide identification, 15 percent.

4. The examination will be conducted in the presence of at least two board members, both of whom must be dispensing opticians. Other dispensing opticians may be employed by the Board to assist in administering the practical examination.

5. ~~[An]~~ ***The Board will provide to an*** applicant who fails the examination ~~[and wishes to have a review of his or her examination papers must submit a request for a review on a form provided by the Board within 60 days after the examination.]~~ ***written notification of the percentage scored in each subject.***

Sec. 9. NAC 637.215 is hereby amended to read as follows:

637.215 The holder of a license as a dispensing optician or a limited license as a dispensing optician who has paid the fee for the transfer of the license to an inactive list as set forth in NAC 637.220:

1. Will remain on the inactive list for a period of 5 years, unless the holder of the license renews his or her inactive status pursuant to subsection 3 or reactivates the license pursuant to subsection 4.

2. Is not required to obtain the credits for continuing education required for the holder of an equivalent license that is on active status.

3. May renew his or her inactive status for a second 5-year period. To renew his or her inactive status, the holder of the license must submit to the Board a written notice of extension.

4. May reactivate his or her license by:

(a) Submitting a letter to the Board requesting the reactivation of the license;

(b) Obtaining, within the 12 months immediately preceding the submission of the letter requesting reactivation of the license:

(1) If the holder is a dispensing optician, 14 hours of continuing education credits, as required pursuant to NAC 637.200; or

(2) If the holder is a dispensing optician with a limited license, 12 hours of continuing education credits, as required pursuant to NAC 637.200;

(c) Submitting ~~[the statement required pursuant to NRS 637.113;]~~ ***an application for the renewal of a license;*** and

(d) Paying the fee for reactivation of the license as set forth in NAC 637.220.

Sec. 10. NAC 637.225 is hereby amended to read as follows:

637.225 The Board may, upon the receipt of a written application and the payment of a fee of $25, issue a duplicate license to the applicant. ~~[The duplicate license will be stamped as a duplicate.]~~

Sec. 11. NAC 637.230 is hereby amended to read as follows:

637.230 1. Each licensee in this State shall file with the Board the licensee's home or mailing address and business address.

2. The Board must be notified of a change of a licensee's home ~~[or business]~~ address within 30 days of such change.

3. The Board must be notified of a change of a licensee's business address within 10 days of such change.

Sec. 12. NAC 637.235 is hereby amended to read as follows:

637.235 1. As used in paragraph ~~[(k)]~~ ***(l)*** of subsection 1 of NRS 637.150, the Board will interpret the phrase "unethical or unprofessional conduct" to include, without limitation:

(a) Performing acts beyond the scope of the practice of ophthalmic dispensing;

(b) Performing dispensing duties while under the influence of intoxicating liquor or a controlled substance;

(c) Presenting any false or deceptive information to the Board or ***the*** public;

(d) Engaging in the sexual harassment of any employee or consumer;

(e) Attempting to obtain or retain a consumer, either directly or indirectly, by way of intimidation, coercion or deception;

(f) Engaging in conduct that would lead to the harm or endangerment of the public; ~~[or]~~

(g) Engaging in conduct that would be a violation of NAC 637.237 ~~[.]~~ ***; or***

(h) Violating an order issued by the Board.

2. As used in this section, "sexual harassment" means unwelcome sexual advances, requests for sexual favors, or other speech or physical conduct of a sexual nature that has the purpose or effect of unreasonably interfering with an employee's work performance or creating an environment which is intimidating, hostile or offensive to an employee or consumer.

Sec. 13. NAC 637.260 is hereby amended to read as follows:

637.260 1. ***To qualify for licensure as an apprentice dispensing optician, an applicant must furnish proof that the applicant:***

(a) Is at least 18 years of age.

(b) Is of good moral character.

(c) Is a citizen of the United States, or is lawfully entitled to remain and work in the United States.

(d) Is a graduate of an accredited high school or its equivalent.

2. Each person desiring to be employed as an apprentice dispensing optician must file an application with the Board stating:

(a) The date of the application for licensure. ~~[;]~~

(b) The name and address of the optical establishment where the apprenticeship will be conducted. ~~[;]~~

(c) The name and license number of the supervisory ophthalmologist, optometrist or dispensing optician. ~~[; and]~~

(d) The name and license number of the ophthalmic manager of the optical establishment where the apprenticeship will be conducted and, if applicable, the name of the business manager.

~~[2.]~~ ***(e) A statement indicating whether he or she has had a professional license revoked or suspended in this State or any other state or jurisdiction. If so, the applicant must disclose the circumstances of the revocation or suspension and, if requested by the Board, submit to a background check.***

(f) A statement indicating whether he or she has been convicted of a misdemeanor, gross misdemeanor or felony in this State or any other state or jurisdiction. If so, the applicant must disclose the circumstances of the conviction and, if requested by the Board, submit to a background check.

3. Each application must be certified under oath by the applicant and the supervising ophthalmologist, optometrist or dispensing optician.

~~[3.]~~ ***4.*** A fee of $100 must accompany each application. The fee will not be refunded.

Sec. 14. NAC 637.263 is hereby amended to read as follows:

637.263 1. Except as otherwise provided in subsection 2, an apprentice dispensing optician who fails to renew his or her license before the license expires on January 31 of each year may have the license reinstated if the apprentice dispensing optician:

(a) Provides proof ~~[of completion of any required continuing education;]~~ ***that he or she made orderly progress toward the completion of his or her apprenticeship pursuant to NAC 637.287;***

(b) Pays the renewal fee; and

(c) Pays the delinquency fee.

2. The Board will not reinstate the delinquent license of an apprentice dispensing optician who does not apply for reinstatement before March 1 of each year.

Sec. 15. NAC 637.280 is hereby amended to read as follows:

637.280 1. A supervisor who is licensed in this State must be on the premises of the optical establishment at all times to directly supervise an apprentice dispensing optician. In all instances of a supervisor's absence, a substitute supervisor who is licensed in this State must be obtained to directly supervise the apprentice dispensing optician.

2. When a permanent change of supervision is made by the employer, the supervisor and apprentice dispensing optician shall notify the Board, in writing, of the change within 10 days.

3. A supervisor shall not directly supervise more than two apprentice dispensing opticians at any one time.

4. Except as otherwise provided in subsection 5, an apprentice dispensing optician and his or her supervisor must be employed by the same employer ~~[.]~~ ***at the same work location.***

5. An apprentice dispensing optician may be directly supervised by any dispensing optician authorized to fit and fill prescriptions for contact lenses, ophthalmologist or optometrist in order to complete the 100 hours of training and experience in the fitting and filling of prescriptions for contact lenses required pursuant to subparagraph (2) of paragraph (g) of subsection 1 of NRS 637.100.

6. An apprentice dispensing optician and his or her supervisor must each be able to read, write, speak and understand the English language.

7. As used in this section:

(a) "Directly supervise" means physically providing individual direction, control, inspection and evaluation of work based on the training, experience and education of the apprentice dispensing optician, and any other relevant factors.

(b) "Supervisor" means an ophthalmologist, an optometrist or a dispensing optician who directly supervises the apprentice dispensing optician.

Sec. 16. NAC 637.287 is hereby amended to read as follows:

637.287 1. At the time an apprentice dispensing optician who desires to obtain a license as a dispensing optician pursuant to NRS 637.120 applies for the renewal of his or her license, the apprentice dispensing optician must demonstrate to the Board that he or she made orderly progress during the current year toward the completion of his or her apprenticeship.

2. ~~[An apprentice dispensing optician may demonstrate]~~ ***The Board will consider the following as proof of*** orderly progress ~~[by:~~

~~(a) At the end of his or her first year of apprenticeship,]~~ ***:***

(a) For an apprentice dispensing optician who has not yet completed the educational program on the theory of ophthalmic dispensing in which the apprentice dispensing optician is required to be enrolled pursuant to NAC 637.285 and who has not been licensed for at least 6 months of the calendar year:

(1) Successful completion of one or more educational courses as part of an approved program for a degree of associate in applied science for studies in ophthalmic dispensing; or

(2) Successful completion of one or more college or home-study courses as part of an approved program for a certificate for studies in ophthalmic dispensing or contact lens theory.

(b) For an apprentice dispensing optician who has completed the educational program on the theory of ophthalmic dispensing in which the apprentice dispensing optician is required to be enrolled pursuant to NAC 637.285:

(1) Successful completion of 100 hours of practical instruction or training in contact lenses;

(2) Taking or passing the examination of the American Board of Opticianry;

~~[(b) At the end of his or her second year of apprenticeship,]~~

(3) Taking or passing the Contact Lens Registry Examination of the National ~~[Committee of]~~ Contact Lens Examiners;

~~[(c) By the end of his or her third year of apprenticeship, successfully completing a course of instruction pursuant to subparagraph (1) of paragraph (g) of subsection 1 of NRS 637.100; and~~

~~(d) Any other manner approved by the Board.]~~

(4) Taking or passing the Board's examination for a license as a dispensing optician; or

(5) Successful completion of at least 14 hours of continuing education in accordance with NAC 637.295 if the apprentice:

(I) Made orderly progress as described in each of subparagraphs (1) to (4), inclusive, before the current renewal period; and

(II) Does not have the experience required in NRS 637.100 to qualify for the Board's examination for a license as a dispensing optician.

Sec. 17. NAC 637.295 is hereby amended to read as follows:

637.295 1. ~~[An]~~ ***Except as otherwise provided in subsection 2, an*** apprentice dispensing optician who desires to obtain a license as a dispensing optician pursuant to NRS 637.120 must ~~[successfully complete 14 hours of continuing education]~~ ***make orderly progress as described in NAC 637.287*** for each year of his or her apprenticeship as a prerequisite to the renewal of his or her license. ~~[The continuing education must be completed not later than December 31 of each year, and proof of that completion]~~ ***For the purpose of proving orderly progress pursuant to subparagraph 5 of paragraph (b) of subsection 2 of NAC 637.287, continuing education must meet the requirements of this section and proof of successful completion of the continuing education*** must be submitted to the Board not later than January 31 following the ***calendar*** year in which the continuing education was completed.

2. A course, seminar or workshop for continuing education must be:

(a) Approved by the Board or the Board's committee on continuing education at least 15 days before it is offered; or

(b) Taught in a school which offers a degree of associate in applied science for studies in ophthalmic dispensing ~~[.]~~ ***and which is nationally or regionally accredited.***

3. The Board may waive or alter the requirements of this section ***relating to continuing education*** if the intent of the requirements would not be carried out by its strict application.

Sec. 18. NAC 637.300 is hereby amended to read as follows:

637.300 An amended application on a form prescribed by the Board must be submitted by an apprentice dispensing optician within ~~[30]~~ ***10*** days after his or her employment changes. The Board will not approve more than ~~[30]~~ ***10*** days of experience gained by an apprentice dispensing optician with a new employer before the amended application is received by the Board.

Sec. 19. NAC 637.337 is hereby amended to read as follows:

637.337 1. The person designated by the Board to review complaints filed pursuant to NAC 637.333 ~~[shall]~~ ***:***

(a) Shall review each complaint ***to determine whether the information, alone or taken together with other evidence, documentary or otherwise, is sufficient to require an investigation;*** and ~~[may]~~

(b) May cause any complaint to be investigated.

2. If a complaint is filed pursuant to NAC 637.333:

(a) The matter will be placed on the Board's agenda to consider whether the complaint should be dismissed or investigated further, whether ~~[an accusation]~~ ***a charging document*** should be filed pursuant to NAC 637.440 or, if the complaint is filed against:

(1) An unlicensed person pursuant to subsection 2 of NAC 637.333, whether the Board should issue a cease and desist order pursuant to subsection 2 of NRS 637.181; or

(2) A person pursuant to subsection 3 of NAC 637.333, whether the Board should impose a fine pursuant to subsection 1 of NRS 637.183; and

(b) The Board may send written notice and a copy of the complaint to the licensee or person who is the subject of the complaint.

3. If a licensee or person who is the subject of a complaint does not respond within 20 days after receipt of a written notice of a complaint, the licensee or person is deemed to have admitted the allegations in the complaint.

Sec. 20. NAC 637.340 is hereby amended to read as follows:

637.340 1. A party in a proceeding before the Board must be called applicant, petitioner, complainant ~~[,]~~ ***or*** 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 directly 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 or she may be affected by a proceeding, but who does not seek to participate in the proceeding.]~~

Sec. 21. NAC 637.410 is hereby amended to read as follows:

637.410 ***1.*** A person appearing in a proceeding before the Board shall be ethical and courteous.

2. The Board may remove a person from a proceeding for a violation of this section.

Sec. 22. NAC 637.420 is hereby amended to read as follows:

637.420 1. Pleadings before the Board must be called applications, petitions, ~~[accusations]~~ ***charging documents, motions, briefs*** or answers.

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

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

Sec. 23. NAC 637.430 is hereby amended to read as follows:

637.430 A "petition" is a pleading other than an application, ~~[accusation]~~ ***charging document*** 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.

Sec. 24. NAC 637.440 is hereby amended to read as follows:

637.440 ~~[1.]~~ Upon its own initiative, or following the receipt and review of a verified complaint filed pursuant to NAC 637.333, the Board may cause ~~[an accusation]~~ ***a charging document*** to be filed against:

~~[(a)]~~ ***1.*** An applicant or holder of a license alleging one or more grounds for disciplinary action pursuant to NRS 637.150.

~~[(b)]~~ ***2.*** An unlicensed person alleging one or more grounds for disciplinary action pursuant to NRS 637.183.

~~[(c)]~~ ***3.*** A person who employs a dispensing optician, apprentice dispensing optician or other person in violation of NRS 637.125 alleging one or more grounds for disciplinary action pursuant to NRS 637.181.

~~[2. Facts constituting grounds for disciplinary action must be stated with sufficient particularity to enable the respondent to identify the charges against him or her. 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.]~~

Sec. 25. NAC 637.450 is hereby amended to read as follows:

637.450 ~~[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]~~ ***a*** motion ***filed pursuant to NRS 622A.360 or 622A.390*** 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. ***The Board may authorize the President of the Board or his or her designee to rule on the motion without a hearing.***

Sec. 26. NAC 637.460 is hereby amended to read as follows:

637.460 ~~[An original and two legible copies]~~

1. At least one copy of all pleadings ***,*** ~~[and]~~ motions ***and briefs*** 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.]~~ ***by mailing or delivering the copy or copies to the office of the Board.***

2. A copy of all pleadings, motions and briefs filed with the Board must also be mailed or delivered to the Board's counsel of record in the proceeding at the same time the pleadings, motions and briefs are filed with the Board.

Sec. 27. NAC 637.470 is hereby amended to read as follows:

637.470 1. ~~[All]~~ ***Except as otherwise provided in subsection 2, all*** notices, documents, advisory opinions and declaratory orders required to be served by the Board will be served by mail ~~[,]~~ ***to the last known home address provided to the Board by the addressee,*** 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. ***Notice of a disciplinary hearing will be served either personally or by certified mail upon the dispensing optician or apprentice dispensing optician who is the subject of the disciplinary hearing. If an apprentice dispensing optician is the subject of a disciplinary hearing, the Board will also notify the employer of the apprentice dispensing optician by mailing a copy of the charging document and a copy of the notice of the disciplinary hearing by certified mail to the last known address of the employer to the attention of the ophthalmic manager at the same time notice is given to the subject of the disciplinary hearing.***

3. All documents required to be served by a party must be served by mail ~~[,]~~ ***to the last known address provided to the Board by the addressee,*** 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.

Sec. 28. NAC 637.480 is hereby amended to read as follows:

637.480 There will ~~[appear on]~~ ***be included with*** all ***charging*** documents ***and orders*** required to be served by the Board ~~[, other than decisions or orders,]~~ an acknowledgment of service or the following certificate:

I hereby certify that I have this day served the foregoing document upon all parties of record in this proceeding (by delivering a copy thereof in person to .....) (by mailing a copy thereof, properly addressed, with postage prepaid to .....).

Dated at ....., this .....(day) of .....(month) of .....(year)

.....

Signature

Sec. 29. NAC 637.490 is hereby amended to read as follows:

637.490 A person may petition to appear before the Board and be heard on a matter within the Board's jurisdiction, as follows:

1. The petition must be submitted to the Board on a form prescribed by the Board and must contain a brief summary of the subject matter and a statement of the petitioner's reasons for wishing to bring the matter before the Board.

2. The petition must be received by the Board at least ~~[10]~~ ***45*** days before the meeting at which the petitioner wishes to be heard but the Board may waive this time requirement.

3. Upon receipt of the petition, any member of the Board may make an initial evaluation to determine whether the subject of the petition is a proper item for the agenda of a formal hearing and ***,*** if so, whether a special meeting of the Board must be called for the hearing.

4. If a member of the Board evaluates the petition as presenting a cause for a disciplinary action involving a revocation, suspension or probation, the petitioner must file a formal complaint and the Board will notify the petitioner of the requirements for making the complaint.

5. If the evaluation of the petition is that it does not present a cause for a disciplinary action involving a revocation, suspension or probation and if the subject matter of the petition is within the jurisdiction of the Board, the petition will be placed on the agenda as an item of new business for discussion.

Sec. 30. NAC 637.550 is hereby amended to read as follows:

637.550 All testimony to be considered by the Board in any ~~[hearing,]~~ ***proceeding,*** except matters noticed officially or entered by stipulation, must be sworn testimony. Each witness must swear or affirm that the testimony he or she is about to give in the ~~[hearing]~~ ***proceeding*** before the Board will be the truth, the whole truth, and nothing but the truth.

Sec. 31. NAC 637.590 is hereby amended to read as follows:

637.590 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]~~ ***in*** the ~~[hearing.]~~ ***proceeding.*** The Board may require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.

Sec. 32. NAC 637.620 is hereby amended to read as follows:

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

2. Orders or decisions will be rendered within 90 days of the completion of the ~~[hearing]~~ ***proceeding or of the Board meeting at which the matter is last considered,*** unless a shorter time is required by statute.

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

Sec. 33. NAC 637.650 is hereby amended to read as follows:

637.650 ***1. The Board will consider petitions for declaratory orders or advisory opinions as to the applicability of a statutory provision or a regulation or decision of the Board.***

2. All petitions for declaratory orders and advisory opinions must be in writing ~~[and substantially in the format of Form No. 1.*~~

~~*See adopting agency for form.]~~ ***on a form prescribed by the Board.***

Sec. 34. NAC 637.660 is hereby amended to read as follows:

637.660 ~~[Upon]~~

1. Except as otherwise provided in subsection 2, upon receiving a petition for a declaratory order or an advisory opinion, the Board will ~~[, within 30 days, deny the petition in writing, stating its reasons, or initiate the following proceedings:~~

~~1. Within 4 working days after receiving such a petition, a copy of the petition must be mailed to each member of the Board, at the member's last known address, for his or her consideration.~~

~~2. Within 15 days after receiving the copy of the petition, each member shall submit a written decision on whether to deny the petition or have it considered by the Board.~~

~~3. Within 4 working days after all the members' decisions are received, written notice of the decision of a majority of the members will be given to the petitioner. If that decision is to have the petition considered by the Board, the Board will issue a declaratory order or advisory opinion within 60 days thereafter.~~

~~4. Before issuing any such order or opinion, the Board may schedule a hearing on the issue raised in the petition.]~~ ***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 the meeting described in subsection 1 or 2, the Board will consider any information relevant to the petition, including, without limitation:

(a) Taking testimony on the petition; and

(b) Receiving evidence.

4. The Board will then grant or deny the petition.

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

Sec. 35. NAC 637.670 is hereby amended to read as follows:

637.670 If the Board ~~[determines that it]~~ ***grants a petition pursuant to subsection 4 of NAC 637.660, the Board*** will issue a declaratory order or advisory opinion, ~~[the]~~ ***as applicable. The*** President of the Board or other presiding officer shall assign one member of the Board to write the order or opinion. The member has 30 days within which to submit to the Board a draft, after reviewing comments by all other members on the issue, researching the issue and seeking the

assistance of the Attorney General, if necessary. Upon completion of the draft, the assigned member shall submit it to the Board for approval ~~[.]~~ ***at the next regularly scheduled meeting of the Board. To be issued as a final declaratory order or advisory opinion of the Board, the draft of the order or opinion must be approved by a majority of the members of the Board who are present at the meeting.***

Sec. 36. NAC 637.680 is hereby amended to read as follows:

637.680 After the Board renders its order or opinion, the Board will serve notice of it to the petitioner ~~[.]~~ ***pursuant to NAC 637.470 and 637.480.***

Sec. 37. NAC 637.690 is hereby amended to read as follows:

637.690 ~~[After the Board renders such an]~~ ***A petitioner must comply with the provisions of a declaratory*** order or ***advisory*** opinion ~~[, any violation of it by a licensee of the Board is a ground for disciplinary action against the licensee.]~~ ***rendered by the Board.***

Sec. 38. NAC 637.700 is hereby amended to read as follows:

637.700 ~~[The Board will use the following procedure upon receipt of a]~~

1. Pursuant to NRS 233B.100, any interested person may petition ~~[requesting]~~ ***the Board for*** the adoption, ***filing,*** amendment or repeal of any regulation ***.*** ~~[:~~

~~1. Within 4 working days after receiving such a petition, a copy of the petition must be mailed to each member of the Board, at the member's last known address, for his or her consideration.~~

~~2. Within 15 days after receiving the copy of the petition, each member shall submit a written decision on disposition of the matter.~~

~~3. Within 4 working days after all the members' decisions are received, written notice of the decision of the majority of the members will be given to the petitioner.]~~

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 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 or amended or the existing language of the regulation to be repealed, as applicable;

(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 the regulation, the Board will initiate regulation-making proceedings concerning that regulation within 30 days after the date on which the petitioner filed the petition.

Sec. 39. NAC 637.275, 637.330, 637.360, 637.370, 637.380, 637.400, 637.500, 637.510, 637.520, 637.530, 637.540, 637.560, 637.570, 637.580, 637.610, 637.630 and 637.640 are hereby repealed.

/

TEXT OF REPEALED SECTIONS

637.275 Written application for additional renewal of license; limitation. (NRS 637.070, 637.100, 637.123)

1. Except as otherwise provided in subsection 2:

(a) An apprentice dispensing optician whose license has been renewed by the Board four or more times may submit a written application to the Board for an additional renewal of his or her license; and

(b) The Board will find that good cause exists pursuant to NRS 637.123 for the renewal of the license of the apprentice dispensing optician and will renew the license if the applicant, in his or her application, demonstrates to the satisfaction of the Board that:

(1) The apprentice dispensing optician has made orderly progress toward the completion of his or her apprenticeship; and

(2) Unforeseen circumstances have occurred which have prevented the completion of the apprenticeship at an earlier time.

2. The Board will not renew the license of an apprentice dispensing optician pursuant to this section more than two times.

637.330 Fees and remittances. (NRS 637.070) Fees and remittances to the Board must be made by money order, bank draft or check payable to the Board. Remittances in currency or

coin are made wholly at the risk of the remitter and the Board assumes no responsibility for loss thereof. Postage stamps will not be accepted.

637.360 Rights of parties. (NRS 637.070) At any hearing, a party named in NAC 637.340 or 637.350, 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 or her possible interest in the proceeding.

637.370 Appearances. (NRS 637.070) A party shall enter his or her appearance at the beginning of a hearing or at any time designated by the presiding officer by giving his or her name and address and stating his or her position or interest in the proceeding to the presiding officer. This information must be recorded in the record of the hearing.

637.380 Qualifications of attorneys. (NRS 637.070) 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 the attorney is not admitted to practice before the Supreme Court of Nevada, an attorney so admitted must be associated with the attorney appearing before the Board.

637.400 Withdrawal of attorney. (NRS 637.070) 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 the attorney represented and all other parties to the proceeding of his or her withdrawal.

637.500 Request for hearing; filing of answer. (NRS 637.070) A party against whom an accusation is filed may, within 15 days of receipt of the accusation, notify the Board in writing that he or she requests a hearing on the accusation. 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.

637.510 Hearings held before Board: Notice; location. (NRS 637.070)

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.

637.520 Continuances. (NRS 637.070) 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.

637.530 Failure of party to appear. (NRS 637.070)

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. Where, because of an accident, sickness or other reasonable cause, a party fails to appear for a hearing scheduled by the Board or fails to request a continuance thereof, the party may within a reasonable period of time, not to exceed 15 days after the date of the hearing, apply to 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 the party notice thereof.

637.540 Conduct at hearings. (NRS 637.070) All parties to a hearing, their counsel and spectators shall conduct themselves in a respectful manner.

637.560 Preliminary procedure. (NRS 637.070) The presiding Board 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.

637.570 Presentation of evidence. (NRS 637.070)

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

(a) Upon petitions:

(1) Petitioner;

(2) Board 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 member.

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

637.580 Consolidation. (NRS 637.070) 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.

637.610 Briefs. (NRS 637.070) The Board may require that briefs be filed and accompanied by proof of service in accordance with NAC 637.480.

637.630 Rehearings. (NRS 637.070)

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

3. The Board on its own motion may order a rehearing within 30 days of the rendering 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.

637.640 Records of hearings. (NRS 637.070) 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. Persons desiring copies of the record may obtain the copies from the Office of the Board upon payment of the fees fixed therefor.