

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS

As required by NRS 233B.066

LCB File R073-12

INFORMATIONAL STATEMENT

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

(a) How public comment was solicited: Copies of the proposed regulations and the Notice of Workshop and Hearing for the Adoption, Amendment or Repeal of Regulations were sent by U.S. mail and email to all licensees and persons who specifically requested such notice. Copies were also sent to all Nevada County Public Libraries, the Nevada State Library & Archives, and the Legislative Counsel Bureau for inclusion in the Register of Administrative Regulation. The regulations and notice were available for viewing at State of Nevada Board of Dispensing Opticians, 5565 Wedgewood Circle, Sparks, NV 89436-3716, and posted on the Board's website www.opticalboard.state.nv.us.

A workshop was held on Friday, March 15, 2013, via videoconference at Truckee Meadows Community College, 7000 Dandini Blvd., Sierra Bldg. Room 100, Reno, Nevada 89512 and the College of Southern Nevada, 6375 W Charleston Blvd, Room H105, Las Vegas, Nevada 89146. A hearing and meeting was conducted Wednesday, April 10, 2013, at the Airport Plaza Hotel, Second Floor, 1981 Terminal Way, Reno, Nevada 89502. In addition to oral testimony, written comments were accepted via U.S. mail and email in advance and during the workshop and hearing.

(b) A summary of public response: In addition to the brief summary provided here, the attached minutes of the Board's April 10, 2013 hearing and meeting provide detailed descriptions of both the public response and the Board's consideration of the comments it received. The total number of written and oral public comments received was 40. Several responses contained comments regarding different categories, as follows:

General

For: 27, Against: 1

Section 1 pg 2 *Inspections*

For: 7, Against: 1

Section 5 p 3 *637.140 Lab personnel*

For: 12, Against: 1

Section 6 pg 4 *637.148(3) accept alternate documentation of contact lens training*

Should be set standard, need clarification: 9

Section 7 pg 6 *637.150(7)*

Remove limit on exam taking

For: 5, Against: 8

Retake section of test failed

For: 2, Against: 4, Do one or the other: 1

Require at least one reference be employer:

Against: 3

Section 11 pg 9 637.230 *change appr work address notification to 10 days*

Against: 1

Section 14 pg 12 637.263 *requires apprentices make orderly progress to renew*

For: 1, Against: 1

Section 17 pg 14 637.295 *apprentices must make orderly progress (CEs no substitute)*

For: 1, Against: 1

Section 20 pg 16 637.340 *intervenor deletion*

Against: 1

Section 24 pg 18 637.440 *disciplinary actions stated with particularity deletion*

Against: 1

(c) An explanation of how other interested persons may obtain a copy of the summary: The hearing and meeting minutes are available on the Board's website under the tab Meetings & Exams and were sent via email and U.S. mail to persons who specifically requested to receive such notice.

2. A statement indicating the number of persons who attended each meeting or workshop, testified at each hearing, and submitted written statements regarding the proposed regulations. This statement should include information for each person identified, if provided to the agency.

(a) March 15, 2013 Workshop

Number of attendees: 15

Number who testified: 1

Information regarding testifier: Erin McMullen, Luxottica/Lenscrafters/NAOO

(b) April 10, 2013 Hearing

Number of attendees: 16

Number who testified: 4

Information regarding testifiers: John Schoenfeld, licensed optician, Patrick Phelan, assistant general counsel for Luxottica, representing NAOO; Kathy Adams, licensed optician; Lisa Stewart, licensed optician

(c) Written Comments

Number received: 36

Information regarding written commenters (all Nevada residents unless otherwise noted):

Franklin Rozak, Secretary-Treasurer, NAOO, Ohio; Linda Kimmett, licensed optician/Luxottica employee; Marcella Dean; John O'Brien, licensed apprentice optician; Christina Ruiz, licensed optician; Neisy Pineda, licensed optician; RoNene Bracken, licensed optician; Jeff Barnaby, licensed optician; Debra Bryant, licensed optician; Briane Little licensed optician; Sherri Hendley, licensed optician; Marsha Costuros, licensed optician; Janny Lac, licensed optician; Shona Wilson, licensed optician; Ellen Little, licensed optician; George Flemming, licensed optician; Howard Noble, licensed optician; Howard Noble, licensed optician; Marilyn Bruggemeyer, RN, BSN; Christine O'Brien, licensed optician; Ryan Rehm, licensed optician; Amy Patchett, licensed optician; Lisa Gibbs, licensed optician; Cathy Borden, licensed optician;

Robyn Seley, licensed optician; Kevin Sullivan, licensed optician; Shala Loper, licensed optician; Jeanie Hall, licensed optician; Mark Ingram, licensed optician; Dona Heiner, licensed optician; Christy Porter, licensed apprentice optician; Mark Bruggemeyer, Lt. Col, USAF (ret)

3. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation of how other interested persons may obtain a copy of the summary: Comments were solicited from affected businesses in the same manner as described in item #1. The summary of their response is included under item #1. The summary maybe obtained as noted in the response to #1.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change: As per the Board's cover letter and Notice of Adoption of Regulation, the regulation was adopted with changes, for the reasons provided. The majority of sections were adopted without changes, after thorough and deliberate consideration of public comments, as described in the attached hearing and meeting minutes.

5. The estimated economic effect of the regulation on the business which it is to regulate and on the public.

(a) Both adverse and beneficial effects

The adoption of the regulation should not result in any adverse economic effects on either the licensee or the general public. Beneficial effects may result from the elimination of unnecessary, unclear, and duplicative regulations.

(b) Both immediate and long-term effects.

The immediate and long-term effect of eliminating unnecessary and duplicative provisions and clarifying those which are unclear should be beneficial, to both licensees and the general public.

6. The estimated cost to the agency for enforcement of the proposed regulation.

The cost to the Board should be minimal.

7. A description of and citation to any regulations of other state or local governmental agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary: The proposed regulation does not overlap or duplicate any regulation.

8. If the regulation is required pursuant to federal law, a citation and description of the federal law: Not applicable.

9. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions: Not applicable.

10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small

business? What methods did the agency use in determining the impact of the regulation on a small business?

The executive director determined that the proposed regulation does not impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business. In making this determination, the executive director considered these facts:

- The regulation does not establish a new fee or increase an existing fee. (The Board last raised licensure fees in 2004.)
- The elimination of unnecessary, unclear, and duplicative regulations is beneficial to the operation of small businesses.
- According to the Board's records, and per the definition in NRS 233B.0382, there are 21 small businesses in the state of Nevada which are owned by, or employ, licensed opticians. All 21 were directly noticed and encouraged to provide public comments regarding the proposed regulation. The Board received one comment from one employee of one small business, and the comment was in favor of the proposed regulation.

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(Final minutes will be available on the Board's website www.opticalboard.state.nv.us after approval by the Board at its next regularly scheduled meeting).

Minutes of Public Hearing and Meeting

April 10, 2013

The Public Hearing and Regular Meeting of the Nevada Board of Dispensing Opticians was called to order by President Joshua Wasson at 3:01 p.m. Wednesday, April 10, 2013, 3 p.m. Airport Plaza Hotel, Second Floor, 1981 Terminal Way Reno, Nevada 89502

Members Present

Josh Wasson, President
Tamara Sternod, Vice President
Danny Harris, Member (from 3 p.m. to 7:14 p.m.)
Marilyn Brainard, Public Member

Members Absent

Cheryl Mosser, Secretary

Others Present

Sarah Bradley, Deputy Attorney General, Board Counsel
Cindy Kimball, Executive Director

- 1. Call to Order:** President Josh Wasson called the meeting to order at 3:01 p.m.
- 2. Public Comment:** There was no public comment.
- 3. Public Hearing for the Adoption, Amendment or Repeal of Regulations R073-12:**

Sarah Bradley described the process for adopting, amending, or repealing regulations, from conception through codification. Cindy Kimball read into the record all 36 comments received by the March 22, 2013 deadline for receiving written comments. She noted 25 comments addressed the regulations as a whole, of which 24 were in favor and one opposed. Regarding Sections 1 and 2, allowing workplace inspections: five were in favor and one opposed; Section 5, licensure not required for laboratory personnel not engaged in ophthalmic dispensing: 12 were in favor, one opposed; Section 6, Board can accept alternate documentation of contact lens training on exam application: nine stated there should be a set standard, or at least clarification of what forms were acceptable; Section 7: three favored removing the limit on the number of times the state optical exam could be taken, eight opposed; two favored allowing examinees to retake only section of exam they failed, two opposed, and one stated either the limit should be removed or the section failed could be retaken, but not both; one was opposed to requiring at least one reference be employer; Section 11 requiring apprentices to notify the Board within 10 days of employment change: one opposed; Section 14 requiring apprentices to show proof of orderly progress for license renewal: one opposed; one in favor; Section 20, deleting reference to intervener: one opposed; and Section 24, deleting requirement for grounds for disciplinary

actions to be stated with particularity: one opposed. Josh Wasson then called for oral public comments. John Schoenfeld, a Nevada licensed optician, referred to the comments regarding the Nevada labor market submitted during the March 15, 2013, public workshop on behalf of Luxottica and Lenscrafters by the National Association of Optometrists and Opticians (NAOO), an organization representing the retail optical industry. Schoenfeld said no supporting documents or specifics were provided to substantiate the assertion there was a shortage of licensed opticians. Patrick Phelan, assistant general counsel for Luxottica, stated he was representing NAOO. He said NAOO had very significant concerns that were articulated in the workshop and written comments, specifically that some of the proposed rules conflict with statutory law. He cited the section regarding laboratory personnel, who, he said, by existing statute are not required to be licensed. He added that the proposed prohibition on laboratory personnel interacting with customers is not supported by statutory law. Phelan stated that the requirement in Section 7 for a reference letter from an employer should be withdrawn because applicants are not required to be employed by an optician. He concluded that on behalf of Luxottica, he was not arguing to reduce the statutory duties of opticians or apprentices, but instead trying to ensure the proposed regulations comply with existing law and are clear for his company, other companies, their associates, and opticians. Kathy Adams, a Nevada licensed optician, stated that she would like to see the requirement in Section 7 for a reference letter from an employer be revised to allow acceptance of a letter from a licensed supervisor or associate, given that most employers are not licensed. She added that she and her fellow opticians do their best to comply with the law, and would welcome the inspection proposed in Section 1. Lisa Stewart, a Nevada licensed optician, stated she agreed with Adams' comments, in particular, those regarding the letter of reference. She said she opposed the provision in Section 7 to allow examinees to retake only the sections they failed, because it would give the examinee an opportunity to focus on just one area, when the exam should be a test of all the knowledge required, across the board. She stated she was in favor of removing the limit on the number of times an examinee could fail the test. Stewart concluded by expressing her support for the rest of the proposed regulations, specifically for the provision to inspect businesses to ensure all are in compliance with the law.

4. Consideration of Public Comments Received Regarding the Adoption, Amendment or Repeal of Regulations R073-12:

Cindy Kimball stated she would begin by addressing some assertions made in the workshop and in written comments. She said many of NAOO/Luxottica/Lenscrafter's comments challenge the Board's statutory authority for the proposed changes to Chapter 637 of the Nevada Administrative Code. By challenging that authority, she said NAOO/Luxottica/Lenscrafters is questioning the rulemaking process established by the Nevada Legislature and carried out by the Board, which submitted the proposed changes with not only the approval, but in many cases, per the specific recommendation of its deputy attorney general. Kimball added that it was also questioning the authority of the Legislative Counsel Bureau (LCB), which drafted the regulations, and which actually eliminated sections for which the Board did not have statutory authority, as well as the governor's legal counsel, to whom the changes were first submitted for review. Kimball stated it was ironic that NAOO/Luxottica/Lenscrafters was insisting on reducing the requirements for apprenticeship to merely earning 14 continuing education credits a year, given its inaccurate contention there is a shortage of opticians. If apprentices no longer need to make educational progress as a condition of license renewal, she said, there will be less incentive for apprentices to complete the requirements to become licensed opticians. She added that fewer

apprentices completing the requirements, would mean fewer qualified applicants for optician licensure. Regarding NAOO/Luxottica/Lenscrafters assertion that there is a critical shortage of licensed opticians in Nevada, Kimball stated that according to the Nevada Division of Employment, Training and Rehabilitation (DETR), there is no shortage of opticians, critical or otherwise--and none predicted for the foreseeable future, given the number of projected openings and the number of people who usually pass the state optical exam and become licensed every year. She added that anecdotally, the Board office has received no complaints from existing or new optical businesses struggling to find licensed opticians. Addressing NAOO/Luxottica/Lenscrafters comment that the Board has to propose any rule defining modern-day ophthalmic dispensing as part of the rulemaking process, Kimball said that the Board conducted a thoughtful public process to help provide plain language guidance to its licensees and the citizens they serve. She added that because it recognizes the fact that licensees use different systems and technologies that are subject to change and update, the Board created a FAQ sheet to give helpful examples that reflect the Board's position that the statutory definition in NRS 637.022 is clear, and applies to whatever system is used to perform ophthalmic dispensing. Regarding NAOO/Luxottica/Lenscrafters statement that existing statute does not require laboratory personnel to be licensed, Kimball said that the Board, under advice from its deputy attorney general, is proposing the addition to NAC 637.140 to make it clear that laboratory personnel, whose normal duties do not fall under NRS 637.022, were not required to hold an ophthalmic dispenser license. Regarding NAOO/Luxottica/Lenscrafters concern that the Board make sure the proposed regulations comply with existing law and are clear for his company, other companies, their associates, and opticians, and do not expand regulation of ophthalmic dispensing, Kimball stated that per Executive Order 2011-01, the Nevada Board of Dispensing Opticians completed a comprehensive review of the regulations subject to its enforcement. During public meetings held June 15, August 10, and October 12, 2011, the Board, its executive director, and its deputy attorney general conducted a thorough assessment of how each regulation is consistent with the governor's regulatory priorities—protecting the health and welfare of the people of the state of Nevada without discouraging economic growth. She added that the Board's detailed assessment and proposed changes reflect its dedication to carrying out the Board's mission of protecting the public's health, safety, and welfare without imposing unnecessarily regulatory barriers to the practice of opticianry. While it reached the conclusion that much of NAC Chapter 637 is needed to ensure that Nevada citizens enjoy the healthy vision and good eyesight that are essential elements in their overall lives, it also found much that was unnecessary, unclear, and duplicative. She explained that to bring its regulations in line with the governor's regulatory priorities, the Board is recommending the repeal of 17 sections, and the revision of 34 sections. She added that at this time, it is not recommending raising any fees, which were last increased in 2004. Kimball said the proposed regulations reflect the Board's view that as the pace of technological improvements in vision aids continues to accelerate, the expert guidance of licensed opticians is essential to assure consumers have correct and effective choices in eyewear to overcome vision deficiencies and safeguard their sight. She added that for 61 years, the State of Nevada Board of Dispensing Opticians has been dedicated to ensuring Nevada opticians provide that expert guidance safely and effectively. In recommending the removal of unnecessary and duplicative regulatory burdens, she said, the Board also recognizes that Nevada's licensed opticians are important members of the business community, providing the competitive balance that keeps eyewear within reach of all our citizens. Kimball concluded by stating that as the Board considered each section, if she had information on comments that

were made, she would provide it during the discussion of that section. Josh Wasson read Section 1 aloud, which added Sections 2 and 3. Kimball stated written comments were five for and one against Section 2, allowing workplace inspections, in addition to the two favorable comments heard today. She noted that NAOO/Luxottica/Lenscrafters made the comment against Section 2, stating that the Board currently has no statutory authority to inspect optical stores, and no authority to adopt a rule authorizing such inspections. She said that LCB agreed the Board did have such statutory authority, under NRS 637.070, 637.120, 637.125, and 637.150. Sarah Bradley added that the only way the Board can ensure compliance with statutory requirements such as conspicuous posting of licenses, is to inspect premises. Tamara Sternod asked if a Board member could report seeing a violation in a workplace, even though it wasn't part of a formal inspection. Bradley replied the Board member should report it, as well as any member of the public. Marilyn Brainard asked if whether the requirement for a licensee to provide access to facilitate an inspection should be broadened to unlicensed personnel. Bradley replied that it was written that way because the Board's authority over unlicensed people is limited to those who direct or allow unlicensed activities. Danny Harris said he agreed with the commenters who said Section 2 would make sure everyone is abiding by the rules. Sternod and Brainard said they also support the way Section 2 was written. Wasson read Section 3, which cites NRS 622A affirming the Board's right to hold hearings, conduct investigations, and take evidence. Bradley explained she requested Section 3 be added as part of the update of the regulations, which repeals many of the provisions that were in conflict or duplicative of NRS 622A and other statutes that apply to occupational licensing boards. There were no public or Board member comments regarding Section 3. Wasson read Section 4, which Bradley described as language added by LCB to make Chapter 637 consistent with other chapters. There were no public or Board member comments regarding Section 4. Wasson read Section 5, regarding laboratory personnel. Kimball said the Board received 12 comments in favor and one opposed. Bradley explained she proposed the revisions in Section 5 because as NAC 637.140(1) and (2) is currently written, it could be construed that laboratory personnel who are not licensed are in violation of the law, which is not the intent of the Board. She added the changes were to clarify that if you are working in the laboratory, you don't need to be licensed. Bradley said that after listening to the public comments, she would suggest changing the wording to further clarify that laboratory personnel could not engage in interaction with customers that fell under the definition of ophthalmic dispensing. Brainard said she felt it was important to ensure the public knew who they were interacting with, and that if someone from the laboratory came out in to the dispensary, the perception is the person would be knowledgeable. She added that nothing is more precious than our eyesight, and she wanted to ensure that someone is not making comments or suggestions that could be perceived as coming from a licensed, knowledgeable individual. Sternod said the Board proposed the changes in Section 5 because there are many laboratories that do strictly laboratory work, and they don't work with the public, so their employees shouldn't have to be licensed. She said she thought it made it clear that laboratory employees can manufacture and repair, but they couldn't interact with the final wearer of the product, because that fell under the NRS 637.022, the statutory definition of dispensing. Harris said that since the Board had already established that talking to customers, in general, about frames or lenses, was not dispensing, the wording prohibiting laboratory personnel from interacting with the intended wearer might be construed as keeping them from talking to customers at all. Sternod agreed, but emphasized that laboratory personnel should be handing the product to a licensed apprentice or optician, not directly to the customer. Harris agreed. Discussion ensued regarding possible text revisions. Wasson said the

Board would return to Section 5 later, and read the change Section 6 made to NRS 637.148, which would allow the Board to accept an alternate form of documentation of contact lens training. Kimball noted one comment was received expressing concern that this would lead to inconsistency and saying there should be standardization. She added that the Board's rationale behind the change was the recognition that in some cases, the applicant's contact lens training could have occurred years before, and the log would have to be completed retroactively. Rather than look at a log that could be initialed by anyone, she said, the Board had more assurance the training requirements were met by accepting verification letters from current or previous employers or teachers. Wasson added that this was specifically directed at out-of-state applicants. Sternod said if that if the form was available to the applicant at the time of training, the form would still be used. Harris and Brainard said they agreed with the wording of Section 6. Wasson read the changes to NAC 637.150 made by Section 7. Kimball said the Board's rationale for requiring an employer to provide one of the three reference letters was to codify something the Board currently asks for. She added there were one written and two oral comments objecting to the change because sometimes the employer may not be a dispensing optician. Brainard, Wasson, Harris, and Sternod agreed the comments were valid. Sternod moved to delete, "one of which must be from a dispensing optician who employs, or has employed, the applicant." Harris seconded. Discussion ensued regarding wording that would require a reference letter from someone with knowledge of the applicant's practice, who did not necessarily need to be an employer. Sternod moved to amend her motion to replace the deleted wording with "one of which must be from a dispensing optician or someone that has worked in the optical industry with said applicant." Harris seconded. Motion carried unanimously. Wasson read the other changes in Section 7, the last of which Kimball noted had been commented on. She said four were in favor and eight were opposed to removing the limit on the number of times an examinee can fail the state optical examination; and two were in favor, while two opposed allowing the examinees to retake only the sections they failed. She added that one comment suggested revising one or the other, but not both. Harris said he thought there should be no limit on how many times an applicant can take the exam, but also he agreed with the comments that were made against allowing examinees to retake only the sections they failed. Brainard agreed, saying that while she agreed tests were hard for some people, the exam should be a test of all knowledge, and it would give an examinee an unfair advantage if they were allowed to retake the section(s) they failed an unlimited number of times. Sternod said she believed examinees should be allowed to retake the entire exam as many times as it took to pass it because most are apprentices, and therefore, have sponsors or mentors, who should be taking an active role in helping their apprentices with the knowledge they aren't grasping. She added she thought the entire exam should be retaken, rather than the portion that was failed. Brainard moved to revise section 7 of Section 7 to read, "An applicant who has failed the examination may request to retake the examination." Sternod seconded. Motion carried unanimously. Wasson read aloud the proposed changes in Section 8, which provides examinees with more detailed information regarding the subjects of the written and practical sections of the examination, and eliminates the exam review, which is an uncommon practice that has not proven beneficial to examinees nor has it been cost effective. Kimball noted there were no comments received regarding Section 8. Board members expressed no concerns. Wasson read the changes in Section 9, which clarifies that an individual with an inactive license must complete a license renewal application. There were no public comments or Board concerns. Wasson read aloud the changes in Section 10, which Kimball noted received no public comments. Sternod asked the reason for removing the

requirement for a duplicate license to be stamped as such, and Kimball replied it was unnecessary, because the law requires licenses to be conspicuously displayed at all locations an optician works, and the license is nontransferable. There were no other Board questions or comments. Wasson read aloud the proposed changes in Section 11, requiring apprentices notify the Board of a change in employment within 10 days of the change. Kimball said one unfavorable comment was received arguing that the provision should align with the other statutory requirements requiring 30 days' notice of a change in home or business address. She explained the Board proposed this revision which applies to apprentices only to align with the requirement in NRS 637.280 requiring apprentices to notify the Board within 10 days of any change in supervision. She added that since a change in employment meant a change in supervision, the Board felt it would be less burdensome for the apprentice to notify the Board of both events at the same time. Sternod and Wasson agreed it made sense to align the two requirements. Bradley added that it was also done to protect the public, to ensure that if an apprentice changes an employer, that apprentice is properly supervised. Wasson read aloud the proposed changes in Section 12, which Bradley said she helped draft to make it clear that a violation of a Board order is grounds for disciplinary action. Kimball said no public comments were received. Board members expressed no concerns Wasson read aloud the proposed changes in Section 13, about which Kimball noted there were no public comments received. Bradley explained the changes were proposed to help ensure apprentice licensure requirements are consistent with requirements they will have to meet when applying for optician licensure. Wasson read aloud the proposed changes in Section 14, which clarifies apprentices must show proof of career progression as a requirement for license renewal. He also read aloud a proposal which had been distributed to Board members and the audience that applied to both Section 14 and Section 16, in that it proposed additional changes to NAC 637.287. Kimball noted one comment was received in favor of Section 14, and that NAOO/Luxottica/Lenscrafters submitted a comment in opposition, stating the Board had no statutory authority to require anything other than continuing education as a prerequisite to apprentice license renewal. Kimball said the Board has the statutory authority in NRS 637.100 to require career progression as a condition of apprentice license renewal, and that Board's rationale in revising NAC 637.263(1)(a) is to align it with requirements of NAC 637.287. She added the additional changes to Section 16 were being proposed to reflect that progress in educational programs is a priority, and must be made every year, until the programs were completed. Bradley added that the proposed changes in Section 14 and 16 actually made it less burdensome on licensees, because the continuing education requirement was always meant to be in addition to orderly career progression, and the revisions would clarify that licensees need only to earn continuing education if they had met all requirements except for experience. Bradley stated that regarding NAOO/Luxottica/Lenscrafter's comment, the legislature gave the Board broad authority to make regulations for apprentices, and that is why LCB had no objection to their inclusion. Wasson asked if Board members had any concerns or questions regarding Section 14, and Brainard said she thought Bradley expressed her position very well. Wasson read aloud the changes in Section 15, which clarified that apprentices and their supervisors must work at the same location. Kimball said there were no public comments. Brainard stated she thought it was a very important clarification. Wasson read aloud the proposed changes in Section 16, and reminded the Board members they had discussed Section 16, the comment in opposition, and the proposed additional revisions during their discussion of Section 14. Bradley read aloud the proposed additional revisions and responded to Sternod's request for clarification. Marilyn Brainard moved to amend Section 16 of the original

draft to incorporate the proposed additions, as written in the handout. Sternod seconded. Motion carried unanimously. Wasson read aloud the first changes to Section 17, which revise NAC 637.295 to recognize that continuing education is no substitute for the orderly progress required by NAC 637.287 and to provide clarity regarding under what circumstances continuing education is required for apprentice license renewal. Kimball noted there was one comment received. NAOO/Luxottica/Lenscrafters objected, stating that the Board is without statutory authority to impose an orderly progress requirement for apprentice license renewal, that continuing education is the only statutorily authorized prerequisite to apprentice renewal per NRS 637.123, and that NAC 637.295 should be maintained in its current form. She added that the Board's rationale for proposing the revisions was to recognize that continuing education is no substitute for the orderly progress required by NAC 637.287 and to provide clarity regarding under what circumstances continuing education is required for apprentice license renewal. Continuing education credits are not a substitute for the knowledge, skills, and abilities acquired through the formal ophthalmic education and training programs required by NAC 637.287. In addition, successful completion of those programs was required for qualification for the Nevada state ophthalmic dispenser's examination, while continuing education credits were not an examination prerequisite. Finally, the Board is proposing in other sections to remove the limit on the number of times apprentices can renew their licenses and the limit on the number of times apprentices can retake the optical examination. If those limitations are removed, NAOO/Luxottica/Lenscrafters' assertion that apprentices need only complete continuing education hours for license renewal could create a class of lifetime apprentices who must be supervised by licensed opticians. This situation would also leave Nevada citizens without the assurance that licensed apprentices are acquiring the skills, knowledge, and ability they need to provide them with the safe and effective vision care they expect from licensed professionals. Bradley added that the LCB reviews proposed regulations to make sure Boards have the statutory authority, and under NRS 637.100 (2) the Board has very broad authority to make regulations regarding the program of apprenticeship for apprentice dispensing opticians; the training and experience of apprentice dispensing opticians; and the issuance of licenses to apprentice dispensing opticians. Sternod said she strongly agreed with the changes, and the Board's original rationale in proposing them. She added that the original regulations ensuring apprentices made career progression were put into place years ago during an actual shortage in the state, because apprentices who only took continuing education and didn't make progress toward becoming an optician were tying up positions for others who were committed to do the work required to earn their optician licenses. Brainard said the optician's field of study is so specialized that it is very important to develop a strong apprenticeship program. She added that it makes consumers feel much more confident knowing there is such careful oversight. Harris said he agreed with all comments made in support of the proposed changes. Wasson read aloud the other revisions in Section 17 that state if a school offers continuing education, it must be nationally or regionally accredited, and that clarify the Board can waive the requirements related to what constitutes continuing education. There were no public comments, nor Board member concerns regarding those revisions. Wasson read aloud Section 18, and Kimball noted there were no comments received. Sternod stated it just aligned the 10-day deadline for reporting changes in apprentice employment and supervision. Wasson read aloud the proposed changes in Section 19. Kimball said there were no comments received and she would defer to Bradley to describe the rationale for the changes made in this and the remaining sections, because Bradley originally recommended and drafted them. Bradley explained that she reviewed the sections related to legal

and disciplinary proceedings, and overall, the proposed revisions reflected the fact some sections are outdated or duplicative and/or in conflict with other statutes. Regarding Section 19, she said the changes clarified that complaints are reviewed for jurisdiction and replaced the outdated term “accusation” with “charging document.” Board members had no comments. Wasson read aloud the proposed changes in Section 20, which removed the sections regarding interveners and interested parties. Kimball said one comment was received, from NAOO/Luxottica/Lenscrafters, which requested the Board explain its rationale for eliminating the existing right of intervention. Bradley stated that due process is required to be given to licensees, which means disciplinary action cannot be taken against their licenses unless they have been noticed and given an opportunity to respond. She said that interveners were an outdated concept not addressed in other statutes, and where they were, their use was rare and not applicable to the due process rights addressed by this section. There were no comments from the Board members. Wasson read aloud the proposed changes in Section 21, which clarifies that the Board may remove a person who is not ethical and courteous. There were no public or Board comments. Wasson read aloud the proposed changes in Section 22, which replaced the outdated term “accusations” and clarified pleadings before the Board can include charging documents, motions, or briefs. There were no public or Board comments. Wasson read aloud the proposed changes in Section 23, which replaced the outdated terms “accusation” with “charging document.” There were no public or Board comments. Wasson read aloud the proposed changes in Section 24, which replaced outdated terms and removed NAC 637.440(2), the subsection requiring disciplinary actions be stated with particularity. Kimball said one public comment was received, from NAOO/Luxottica/Lenscrafters, which requested the Board explain its rationale for removing the section, stating that it is fundamental that a respondent in a licensure action or other disciplinary case be entitled to understand the charges against them in order to formulate a defense. Bradley explained that the right is stated very clearly in both NRS 622A.300 and NRS 233B.121, and therefore, NAC 637.440(2) was duplicative and unnecessary. There were no Board comments. Wasson read aloud the proposed changes in Section 25, regarding motions. Bradley said the changes were to align the regulations with NRS 622A and to replace outdated language. Kimball noted there were no public comments on Sections 25 through 39. Wasson read aloud the proposed changes in Section 26, regarding copies and deliveries of pleadings and motions. Bradley said the changes were to align the regulations with NRS 622A and to replace outdated language, as were the proposed changes in Sections 27 through 38, which with the Board’s permission, she then briefly reviewed. There were no Board comments on Sections 27 through 38. Bradley then described Section 39 as the text of all the sections that the Board proposed to repeal, many of which had been discussed earlier. Kimball pointed out that the Board proposed to repeal NAC 637.275, which limited the number of times an apprentice can renew his/her license. She said the Board’s rationale was that given the proposed changes in other sections clarifying that apprentices must make career progression for license renewal, the limit on license renewal was unnecessary. Bradley pointed out that this section was also duplicative of NRS 637.123. Sternod asked if the apprentices who failed the state optical examination would also have to provide 14 continuing education credits as proof of career progression. Kimball said the Board had considered imposing that requirement, but determined that studying for the exam would be sufficient proof of continuing education. Bradley then directed the Board’s attention back to Section 5. She proposed the wording of NAC 637.140(1) read, “Except as otherwise provided by a 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 product directly to the public.” She proposed NAC 637.140(2) read, “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) Do not perform any of the acts described in subsection 1 or 2 of NRS 637.022; (b) Provide ophthalmic products only and directly to licensed dispensing opticians, licensed ophthalmologists, and licensed optometrists.” Bradley also proposed the addition of “3. This provision does not prohibit the verification of the quality of finished ophthalmic products or the adjustment, replacement, repair, or reproduction of previously prepared ophthalmic lenses, frames, or other specially fabricated ophthalmic devices by laboratory personnel while in the laboratory.” She said the remainder of NAC 637.140 would remain the same and be numbered NAC 637.140(4). Bradley repeated and clarified the wording in response to Board member requests. Sternod moved to revise Section 5, replacing the existing text with Bradley’s wording, as stated on the record and to be verified by a follow up email from Bradley. Brainard seconded. Motion carried unanimously.

5. Adoption, Amendment or Repeal of Regulations R073-12:

Sarah Bradley said now that the Board had considered the proposed regulation changes and all the public comments received regarding them, it was under this agenda item the Board would vote to adopt, amend or repeal the Regulations R073-12. Marilyn Brained moved to adopt the regulations, amendments, and repeal of regulations contained in LCB File No. R073-12 with the additional revisions as identified and voted upon in Sections 5, 7, and 16. Tamara Sternod seconded. Motion carried unanimously.

6. Approval of Board meeting minutes:

A. Board Meeting February 13, 2013. Marilyn Brainard moved to approve. Tamara Sternod seconded. Motion carried unanimously.

B. Optical Exam Subcommittee Meeting March 18, 2013. Josh Wasson moved to approve. Marilyn Brainard seconded. Motion carried unanimously.

7. Executive director’s report:

A. Progress on FY13 Goals and Objectives: This item was deferred to the June 12, 2013 Board meeting.

B. Legislative Update: This item was deferred to the June 12, 2013 Board meeting.

C. Annual Licensee Report: This item was deferred to the June 12, 2013 Board meeting.

D. Review and decision regarding effective methods of communicating with Board members and licensees: This item was deferred to the June 12, 2013 Board meeting.

8. Financials:

A. Review and approval of January, February, and March financial statements: This item was deferred to the June 12, 2013 Board meeting.

B. Review and decision on FY12/13 budget: This item was deferred to the June 12, 2013 Board meeting.

C. Review and decision on signing authority on checking account. Cindy Kimball reviewed the proposal, which would grant the executive director authority to sign checks up to \$1,000 after receiving email approval from the Board treasurer. Marilyn Brainard and Tamara Sternod suggested revisions that would allow the other Board member with signature authority on the

account to grant such approval in the absence of the Board treasurer. Tamara Sternod moved to approve the proposed procedure with the discussed revisions. Brainard seconded. Motion carried unanimously.

9. Review and decision regarding apprentice applications:

Brittany Harris, Melinda Johns, Kyler Lund, Rama Nichols, Ricardo Santos, Jr., Jodie Speers, Brandi Warner

Brittany Harris. Not present. Tamara Sternod moved to approve and grant one year credit for prior experience. Danny Harris abstained. Marilyn seconded. Motion carried 3-0-1. Melinda Johns. Not present. Tamara Sternod moved to approve. Danny Harris seconded. Motion carried unanimously. Kyler Lund. Not present. Danny Harris moved to approve. Tamara Sternod seconded. Motion carried unanimously. Rama Nichols. Not present. Tamara Sternod moved to approve. Danny Harris seconded. Motion carried unanimously. Ricardo Santos, Jr. Not present. Danny Harris seconded. Motion carried unanimously. Jodie Speers. Danny Harris seconded. Request for credit for prior experience did not include required documentation, and therefore, was not considered. Motion carried unanimously. Brandi Warner. Not present. Danny Harris seconded. Motion carried unanimously.

10. Review and decision regarding issuing ophthalmic dispenser licenses to the March 30, 2013 examinees:

Madelaine Buendia, Marcella Dean, Wesley Deputy, Katelyn Gray, Sean Guillen, Rhonda Harjo, Cherie Harris, Rachel Hassall, Eric Healey, Jessica Kirkland, Patricia Lee, Gerardo Munguia, Amber Reyes, Nathalie Rosado, Jessica Sandoval

Josh Wasson announced the names of the individuals who achieved a passing score on the March 30, 2013 state optical examination. Tamara Sternod moved to issue Nevada ophthalmic dispenser licenses to those individuals: Madelaine Buendia, Wesley Deputy, Katelyn Gray, Sean Guillen, Cherie Harris, Rachel Hassall, Eric Healey, Jessica Kirkland, Gerardo Munguia, Nathalie Rosado, and Jessica Sandoval. Danny Harris seconded. Motion carried unanimously

11. Review and decision regarding request to reactivate optician license: Don Nguyen. Sarah Bradley stated that given the fact that the requester was not adequately informed regarding the five-year deadline to request reactivation, that his request was only one month late, and he had kept up his continuing education and there is no discipline against his license, NAC 637.010 gives the Board authority to liberally construe provisions in the interest of justice. Marilyn Brainard moved to reactivate the Nevada optician license of Don Nguyen, given the information received by the Board and per the provisions of NAC 637.010. Tamara Sternod seconded. Motion carried unanimously.

12. Review and decision on continuing education classes:

2013-04 Contact Lens Updates, Dr. David Leonard, 5260 West 7th Street, Reno, Nevada, 6pm, April 18 and April 25, 2013 (6 cl): Marilyn Brainard moved to approve. Tamara Sternod seconded. Motion carried unanimously.

13. Review and decision on complaints 2012-10 and 2013-07 through 2013-18: Cindy Kimball requested the Board close complaint 2012-10 because the investigation did not provide sufficient evidence of a violation. Marilyn Brainard moved to close complaint 2012-10. Tamara

Sternod seconded. Motion carried unanimously. Kimball reviewed complaints 2013-07 through 2013-08, which contain allegations of unethical conduct, lack of appropriate apprentice supervision, patient harm, and unlicensed ophthalmic dispensing.

14. Review, discussion, and decision regarding optical examination: This item was deferred to the June 12, 2013 Board meeting.

15. Future meetings and agenda items: Josh Wasson moved to defer agenda items 7, 8A, 8B, and 14 to the June 12, 2013 Board meeting. Marilyn Brainard seconded. Motion carried unanimously. At the Board's direction, Cindy Kimball said she would request an earlier meeting time for the June 12, 2013 meeting, but the request could not be made until two weeks before the meeting.

16. Public Comment: There was no public comment.

17. Adjournment: President Josh Wasson adjourned the meeting at 7:34 p.m.