

**PROPOSED REGULATION OF
THE BOARD OF DISPENSING OPTICIANS**

LCB File No. R137-17

April 17, 2018

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

AUTHORITY: §§1 and 12-15, NRS 637.070; §§2, 3 and 11, NRS 637.070 and 637.100; §§4 and 5, NRS 637.070, 637.121 and 637.135; §§6 and 7, NRS 637.070, 637.121 and 637.140; §8, NRS 637.070 and 637.150; §9, NRS 637.070, 637.100 and 637.123; §10, NRS 637.070 and 637.123.

A REGULATION relating to dispensing opticians; clarifying provisions which prohibit apprentice dispensing opticians and certain business managers from performing certain acts; revising requirements relating to applying to obtain a license as a dispensing optician; revising provisions governing continuing education required for a dispensing optician or limited license as a dispensing optician; waiving the annual renewal fee for certain licenses in certain circumstances; revising certain provisions governing unethical or unprofessional conduct; limiting the period for renewing the license of an apprentice dispensing optician whose license expired and was not reinstated; revising provisions governing educational requirements required for apprentice dispensing opticians; revising procedures concerning complaints alleging certain violations; revising provisions governing motions before the Board of Dispensing Opticians; revising provisions governing legal assistance provided to the Board relating to declaratory orders and advisory opinions; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing regulations establish the qualifications and duties of a person who manages a business engaged in ophthalmic dispensing. (NAC 637.144) **Section 1** of this regulation clarifies provisions which prohibit: (1) a business manager who is not the ophthalmic manager from making decisions concerning ophthalmic dispensing; and (2) an apprentice dispensing optician from performing certain managerial functions or exercising certain authority at a business engaged in ophthalmic dispensing.

Existing regulations set forth the required information and documentation to be submitted with an application for an examination to obtain a license as a dispensing optician. (NAC 637.150) **Section 3** of this regulation adds a requirement to include proof that he or she has correctly neutralized the prescriptions of not less than 100 pairs of prescription spectacles.

Existing regulations provide that a dispensing optician who received his or her license by examination is not required to submit a copy of a certificate of continuing education for the first renewal of his or her license. (NAC 637.190) **Section 4** of this regulation instead provides that a dispensing optician or dispensing optician with a limited license is not required to submit such a copy for the first renewal of a license. Therefore, no continuing education is required for the first year of licensure.

Existing regulations limit the number of credits of continuing education which a dispensing optician or a dispensing optician with a limited license may receive for completion of self-study courses or courses offered over the Internet. (NAC 637.200) **Section 5** of this regulation removes such limitations and provides that the requirements for continuing education may be satisfied through any combination of live courses, self-study courses and courses offered over the Internet.

Existing law provides that a license issued to a dispensing optician or apprentice dispensing optician or limited license as a dispensing optician expires on January 31 of each year. (NRS 637.121, 637.123, 637.140) Existing regulations set forth the fees for the annual renewal of a license as a dispensing optician, a limited license as a dispensing optician and a license as an apprentice dispensing optician. (NAC 637.220, 637.265) **Sections 7 and 10** of this regulation provide that the Board will waive the annual renewal fees for the first renewal of certain licenses which are initially issued or reactivated on or after November 1.

Existing regulations set forth the acts which the Board of Dispensing Opticians will interpret as “unethical or unprofessional conduct” for the purposes of refusing to issue a license to an applicant or taking disciplinary action against a licensee. (NAC 637.235) **Section 8** of this regulation revises this provision to include: (1) failure to cooperate with an investigation conducted by the Board; and (2) for a supervisor of record of an apprentice dispensing optician, allowing the apprentice to perform certain prohibited acts.

Existing regulations provide that the Board of Dispensing Opticians will not reinstate the delinquent license of an apprentice dispensing optician whose license expires and who does not apply for reinstatement before March 1 of each year. (NAC 637.263) **Section 9** of this regulation prohibits an apprentice dispensing optician whose license is not so reinstated from reapplying for licensure as an apprentice dispensing optician sooner than 1 year after the expiration date of his or her license.

Existing regulations require an apprentice dispensing optician, within 6 months after initial licensure, to submit evidence to the Board of Dispensing Opticians that he or she has enrolled in an educational program on the theory of ophthalmic dispensing approved by the Board. (NAC 637.285) **Section 11** of this regulation authorizes an apprentice dispensing optician to submit evidence to the Board of adequate prior ophthalmic experience in lieu of the completion of such an educational program. **Section 11** also provides that the Board will inactivate the license of the apprentice dispensing optician if the apprentice dispensing optician fails to comply with such education and experience requirements within the required time. Finally, **section 11** provides that: (1) the Board will notify an apprentice dispensing optician that the license has been inactivated; and (2) the apprentice dispensing optician may appeal the decision by requesting a hearing not later than 30 days after the license becomes inactive.

Existing regulations set forth the procedure for the review and investigation of complaints alleging violations of certain provisions of chapter 637 of NRS or chapter 637 of NAC. (NAC 637.337) **Section 12** of this regulation provides that the Executive Director of the Board of Dispensing Opticians: (1) shall review each complaint and may cause the complaint to be investigated; (2) may enlist the assistance of the Board in the conduct of an investigation; and (3) shall prepare a charging document if he or she determines that allegations of one or more violations of chapter 637 of NRS or chapter 637 of NAC have been substantiated. **Section 15** of this regulation repeals provisions providing that the Board files charging documents. **Section 15** also repeals provisions governing the procedure by which a person may petition to appear before the Board and be heard on a matter within the Board's jurisdiction.

Section 13 of this regulation revises provisions governing the filing of motions with the Board of Dispensing Opticians and hearings and determinations thereon to limit the types of motions which may be filed and establish the timing of such filings.

Existing regulations establish procedures for the drafting of a declaratory order or advisory opinion by a member of the Board of Dispensing Opticians with the assistance of the Attorney General, if necessary. (NAC 637.670) **Section 14** of this regulation provides that the member of the Board may be assisted by legal counsel other than the Attorney General.

Section 1. NAC 637.144 is hereby amended to read as follows:

637.144 1. ~~{A person who manages a business engaged in}~~ *An* ophthalmic ~~{dispensing-}~~
manager:

- (a) Must be a dispensing optician or a dispensing optician with a limited license;
- (b) Is responsible for supervising the ophthalmic dispensing and the consulting on optical fashions conducted at ~~{the}~~ *a* business engaged in ophthalmic dispensing; and
- (c) Must, within 10 days after becoming the ophthalmic manager of the business, notify the Board, in writing, that he or she is the ophthalmic manager.

2. Each ophthalmic dispensing area of a business engaged in ophthalmic dispensing must have an ophthalmic manager as described in subsection 1 ~~{who makes decisions that concern ophthalmic dispensing}~~ and a business manager . ~~{who makes decisions that do not concern ophthalmic dispensing, except that the}~~

3. *The* ophthalmic manager and the business manager may be the same person. The ophthalmic manager must *be in charge of the ophthalmic dispensing area and* have ultimate authority with respect to any matter relating to ophthalmic dispensing governed by the provisions of this chapter or chapter 637 of NRS, and the decision of the ophthalmic manager with respect to any such matter may not be superseded by the business manager. †

~~—3.†~~ *If the business manager is not the ophthalmic manager, the business manager may not make decisions concerning ophthalmic dispensing but may make other business decisions.*

4. An apprentice dispensing optician shall not:

(a) Act as ~~†a person who manages a business engaged in†~~ an ophthalmic ~~†dispensing;†~~ *manager or a business manager;* or

(b) Under any circumstances *have any authority to, or* act in such a manner as to , supersede the authority or any decision of a dispensing optician or a dispensing optician with a limited license.

~~†4.—As used in this section, “person who manages a business engaged in ophthalmic dispensing” means the person who is in charge of the ophthalmic dispensing area of such a business. The term does not include the general manager of a retail establishment who is not in charge of ophthalmic dispensing.†~~

Sec. 2. NAC 637.148 is hereby amended to read as follows:

637.148 1. 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~~ *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. 3. NAC 637.150, as amended by section 2 of LCB File No. R106-14, 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 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) Three letters concerning his or her character from references, 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.

(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.

(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.

(g) Proof that the applicant has accurately and correctly neutralized the prescriptions of not less than 100 pairs of prescription spectacles.

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 1,000 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 \$100 must accompany the application.

Sec. 4. NAC 637.190, as amended by section 4 of LCB File No. R106-14, is hereby amended to read as follows:

637.190 1. Except as otherwise provided in subsection 4, a statement affirming that a dispensing optician or a dispensing optician with a limited license has completed the required hours of continuing education must be submitted to the Board at the time of license renewal. The dispensing optician or dispensing optician with a limited license must:

- (a) Sign the statement; and
- (b) For each course completed, include in the statement the:
 - (1) Name of the course;
 - (2) Date on which the course was completed; and
 - (3) Number of hours of credit given for the course.

2. The Board may require a dispensing optician or a dispensing optician with a limited license to submit verification of the statement required by subsection 1. A dispensing optician or dispensing optician with a limited license who is notified by the Board that he or she has been chosen to submit verification pursuant to this subsection must submit to the Board a copy of the certificate of completion for each course of continuing education listed by the dispensing optician or dispensing optician with a limited license on his or her statement submitted pursuant to subsection 1.

3. Each dispensing optician and dispensing optician with a limited license must retain a copy of the certificate of completion for each course of continuing education taken for 3 years after the date of completion of the course of continuing education.

4. A dispensing optician ~~who received his or her license by examination~~ *or a dispensing optician with a limited license* is not required to submit a statement described in subsection 1 or copies of certificates of continuing education for the first renewal of the license.

5. A dispensing optician or a dispensing optician with a limited license who fails to complete the required number of hours of continuing education or who makes any false statement or representation regarding the completion of hours of continuing education is subject to discipline pursuant to NRS 637.150.

Sec. 5. NAC 637.200, as amended by section 5 of LCB File No. R106-14, is hereby amended to read as follows:

637.200 1. Subjects for continuing education in ophthalmic dispensing include:

- (a) Mechanical and geometric optics;
- (b) The measurement, fitting and adapting of eyeglasses, contact lenses and optical prosthetics;
- (c) Optical materials and their design and uses as visual aids;
- (d) The nature and properties of light and its refraction by lenses;
- (e) The anatomy and physiology of the eye and its appendages;
- (f) The principles of management relating to ophthalmic dispensing;
- (g) The principles of ophthalmic dispensing and the wearing of contact lenses related to ophthalmology and optometry;
- (h) Refractometry;
- (i) Anatomy, physiology and health of the eye;
- (j) Ethics in ophthalmic dispensing;
- (k) Ophthalmic products;

(l) Cardiopulmonary resuscitation training; and

(m) The provisions of this chapter and chapter 637 of NRS.

2. Except as otherwise provided in subsection 3, the Board will approve each course of continuing education and determine the number of credits to be given for each course. A sponsor of a course shall submit to the Board an outline of the course, and any other related materials that the Board may require, for approval of the course before the course is offered.

3. The Board may deem approved those courses of continuing education:

(a) Approved for credit by an accrediting organization recognized and approved by the Board; or

(b) Provided by a sponsor or organization that has been approved by the Board.

4. A licensee is not entitled to receive credit for a course of continuing education unless the course is approved by the Board. A licensee may seek approval of a course before attending the course to receive credit towards his or her hours of continuing education by submitting to the Board an outline of the course and any other related materials that the Board may require.

5. A licensee may not receive credit towards his or her hours of continuing education for a specific course of continuing education more than once every 3 years.

6. A *dispensing optician or* dispensing optician with a limited license may ~~not receive more than a total of six credits each year towards his or her hours of~~ *satisfy the requirements for* continuing education ~~for completion~~ *through any combination of live courses,* self-study courses ~~for~~ *and* courses offered over the Internet.

7. ~~A dispensing optician may not receive more than a total of seven credits each year towards his or her hours of continuing education for completion of self-study courses or courses offered over the Internet.~~

~~—8.1~~ A dispensing optician with a limited license shall complete at least 12 hours of continuing education *by* not later than December 31 of each year. The dispensing optician with a limited license is entitled to receive credit for not more than 6 additional hours of continuing education completed during a year and may apply those hours of continuing education to the requirement for continuing education for the following year.

~~19.1~~ 8. A dispensing optician shall complete at least 14 hours of continuing education not later than December 31 of each year, including 7 hours of instruction related to the practice and theory of fitting contact lenses. The dispensing optician is entitled to receive credit for not more than 7 additional hours of continuing education completed during a year and may apply those hours of continuing education to the requirement for continuing education for the following year.

~~110.1~~ 9. A dispensing optician or dispensing optician with a limited license who completes additional hours of continuing education pursuant to subsection 7 *or* 8, ~~for 9.1~~ as applicable, may not submit to the Board the certificate of completion for each course in which those additional hours of continuing education were completed unless he or she is required to do so pursuant to NAC 637.190.

~~111.1~~ 10. A dispensing optician or dispensing optician with a limited license may receive credit for not more than 4 hours of continuing education each year for community service time spent providing dispensing optician services. Such credit:

- (a) Must be evidenced on a form provided by and submitted to the Board; and
- (b) Subject to the limit of 4 hours, will be credited on an hour-for-hour basis if approved by the Board.

Sec. 6. NAC 637.218 is hereby amended to read as follows:

637.218 A dispensing optician who fails to renew his or her license or limited license before the license or limited license expires on January 31 of each year may have the license or limited license reinstated if the dispensing optician:

1. Applies for reinstatement within 2 years of the expiration of the license or limited license;
2. Provides proof of completion of any required continuing education;
3. Pays ~~the~~ any renewal fee ~~+~~ *set forth in NAC 637.220 that is not waived*; and
4. Pays the delinquency fee ~~+~~ *set forth in NAC 637.220*.

Sec. 7. NAC 637.220 is hereby amended to read as follows:

637.220 1. ~~The~~ *Unless waived pursuant to subsection 2, the* fee for the annual renewal of a:

- (a) License as a dispensing optician is \$300.
 - (b) Limited license as a dispensing optician is \$200.
2. *The Board will waive the annual renewal fee set forth in subsection 1 for:*
- (a) *The first renewal if the initial license or limited license was issued to the dispensing optician on or after November 1; or*
 - (b) *The first renewal if the license or limited license was reactivated on or after November 1.*

3. The annual delinquency fee for *the* reinstatement of a:

- (a) License as a dispensing optician is \$300.
- (b) Limited license as a dispensing optician is \$200.

~~3.4~~ 4. The fee for the transfer of a:

- (a) License as a dispensing optician to an inactive list is \$300.
- (b) Limited license as a dispensing optician to an inactive list is \$200.

~~4.1~~ 5. The fee for the reactivation of a:

- (a) License as a dispensing optician is \$300.
- (b) Limited license as a dispensing optician is \$200.

Sec. 8. NAC 637.235 is hereby amended to read as follows:

637.235 1. As used in paragraph (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;
- (g) Engaging in conduct that would be a violation of NAC 637.237; ~~for~~
- (h) Violating an order issued by the Board ~~+~~

~~2.1~~ ; or

(i) Failing to cooperate with an investigation conducted by the Board, including, without limitation, failing to provide documents requested by a member of the Board, the staff of the Board or an investigator for the Board.

2. In addition to the conduct listed in subsection 1, the Board will further interpret the phrase “unethical or unprofessional conduct” to include a supervisor of record who allows an

apprentice dispensing optician whom the supervisor of record directly supervises to perform any task:

- (a) For which the apprentice dispensing optician is not trained;*
- (b) Which is outside the scope of practice of an apprentice dispensing optician; or*
- (c) Without the direct supervision of the supervisor of record.*

3. As used in this section ~~the~~ **“sexual”**:

(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) “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.

(c) “Supervisor of record” means an ophthalmologist, an optometrist or a dispensing optician who directly supervises an apprentice dispensing optician.

Sec. 9. NAC 637.263, as amended by section 6 of LCB File No. R106-14, is hereby amended to read as follows:

637.263 1. Except as otherwise provided in subsection 2 and NAC 637.285, 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) Pays ~~the~~ **any** renewal fee ~~the~~ **set forth in NAC 637.265 that is not waived;** and
- (b) Pays the delinquency fee ~~the~~ **set forth in NAC 637.265.**

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.

3. An apprentice dispensing optician whose license is not reinstated pursuant to subsection 2 may reapply for licensure as an apprentice dispensing optician pursuant to NAC 637.260 not sooner than 1 year after the expiration date of his or her license.

Sec. 10. NAC 637.265, as amended by section 7 of LCB File No. R106-14, is hereby amended to read as follows:

637.265 1. ~~The~~ *Unless waived, the* fee for the annual renewal of a license as an apprentice dispensing optician is \$100. *The Board will waive the annual renewal fee for the first renewal if the initial license was issued to the apprentice dispensing optician on or after November 1.*

2. The annual delinquency fee for reinstatement of a license as an apprentice dispensing optician is \$100.

Sec. 11. NAC 637.285, as amended by section 9 of LCB File No. R106-14, is hereby amended to read as follows:

637.285 1. An apprentice dispensing optician shall, within 6 months after the date of his or her initial licensure as an apprentice dispensing optician, submit evidence to the Board that he or she ~~is~~ :

(a) Is enrolled in an educational program on the theory of ophthalmic dispensing approved by the Board ~~[-An]~~ ; *or*

(b) Has received adequate prior ophthalmic experience in lieu of the completion of an educational program described in paragraph (a).

2. *The Board will inactivate the license of an* apprentice dispensing optician who fails to enroll in ~~{such}~~ an educational program or fails to submit evidence *of experience* to the Board ~~{as required by this subsection may not renew his or her license as an apprentice dispensing optician.}~~

~~—2.—~~ *and within the time required by subsection 1. The Board will notify the apprentice dispensing optician of such action. The decision to inactivate the license may be appealed by the apprentice dispensing optician by submitting a written request to the Board within 30 days after the license becomes inactive.*

3. Except as otherwise provided in subsection ~~{3.}~~ 4, an apprentice dispensing optician ~~{must}~~ *who is required to* complete ~~{his or her}~~ *the* educational program required by *paragraph (a) of* subsection 1 *must complete the program* not more than 40 months after the date of his or her initial licensure as an apprentice dispensing optician.

~~{3.}~~ 4. An apprentice dispensing optician may request an extension of the 40-month time limit imposed by subsection ~~{2.}~~ 3. Such an extension:

(a) May not exceed 12 months; and

(b) Must be requested on a form provided by and submitted to the Board not later than 90 days before the expiration of the 40-month time limit imposed by subsection ~~{2.}~~

~~—4.—~~ 3.

5. Upon receipt of a request for an extension pursuant to subsection ~~{3.}~~ 4, the Board will grant the request if the Board finds that:

(a) The reason for or cause necessitating the request for an extension is the result of circumstances that are emergent or were unforeseeable or otherwise outside the control of the apprentice dispensing optician;

- (b) The length of the requested extension is reasonable under the circumstances; and
- (c) The apprentice dispensing optician will be able to complete his or her educational program within the requested extension of time.

~~5.1~~ **6.** An apprentice dispensing optician who fails to complete his or her educational program in the time required by this section may not renew his or her license as an apprentice dispensing optician.

~~6.1~~ **7.** An apprentice dispensing optician who is not allowed to renew his or her license pursuant to subsection ~~4 or 5~~ **6** may reapply for initial licensure as an apprentice dispensing optician not sooner than 1 year after the date on which his or her previous license as an apprentice dispensing optician expired.

Sec. 12. NAC 637.337 is hereby amended to read as follows:

637.337 1. The ~~person designated by~~ *Executive Director of the Board* : ~~to review complaints filed pursuant to NAC 637.333;~~

(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

(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 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.} *The Executive Director may enlist the assistance of a member of the Board in the conduct of an investigation if the Executive Director determines that such assistance is in the best interests of reaching a complete, fair and just determination of the matter.*~~

3. If the Executive Director determines pursuant to an investigation that allegations of one or more violations of the provisions of this chapter or chapter 637 of NRS have been substantiated, the Executive Director shall prepare a charging document in accordance with NRS 622A.300. The charging document may be filed against:

(a) A licensee who is alleged to have violated a provision of this chapter or chapter 637 of NRS;

(b) An unlicensed person who is alleged to have engaged in activities requiring a license pursuant to the provisions of this chapter or chapter 637 of NRS; or

(c) A person who is alleged to have employed a dispensing optician, apprentice dispensing optician or other person in violation of NRS 637.125.

Sec. 13. NAC 637.450 is hereby amended to read as follows:

637.450 *1. The provisions of NRS 622A.360 and 622A.390 govern a motion which may be filed pursuant to this chapter, including, without limitation, the time for the filing of the motion.*

2. A decision on 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. 14. NAC 637.670 is hereby amended to read as follows:

637.670 If the Board grants a petition pursuant to subsection 4 of NAC 637.660, the Board will issue a declaratory order or advisory opinion, 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,~~ *legal counsel*, 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. 15. NAC 637.440 and 637.490 are hereby repealed.

TEXT OF REPEALED SECTIONS

637.440 Charging documents. (NRS 637.070) Upon its own initiative, or following the receipt and review of a verified complaint filed pursuant to NAC 637.333, the Board may cause a charging document to be filed against:

1. An applicant or holder of a license alleging one or more grounds for disciplinary action pursuant to NRS 637.150.
2. An unlicensed person alleging one or more grounds for disciplinary action pursuant to NRS 637.183.
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.

637.490 Petition for hearing. (NRS 637.070) 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 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.