

PROPOSED REGULATION OF THE BOARD OF DISPENSING OPTICIANS

LCB File No. R073-12

Regulation review mandated by Executive Order 2011-01

Please note:

- A general assessment and overview of recommendations for revision or repeal precede each section in *bold, italic type*.
- Specific revisions are included within the sections themselves
 - Additions are in *bold, italic type*
 - Repeals are indicated by a line through the bold type ~~example~~.

CHAPTER 637 - DISPENSING OPTICIANS GENERAL PROVISIONS

Board assessment: Standard, clear language needed for reference. Recommend additional language in NAC 637.010 to include other NRS chapters that apply to the Board.

NAC 637.001 Definitions. (NRS 637.070) As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 637.003 to 637.008, inclusive, have the meanings ascribed to them in those sections.

NAC 637.003 “Board” defined. (NRS 637.070) “Board” means the Board of Dispensing Opticians.

NAC 637.006 “Dispensing optician” defined. (NRS 637.070) “Dispensing optician” means a person engaged in the practice of ophthalmic dispensing.

NAC 637.007 “Hour of continuing education” defined. (NRS 637.070) “Hour of continuing education” means 50 minutes of instruction devoted to a program of continuing education that is related to the practice of ophthalmic dispensing.

NAC 637.008 “Hour of training and experience” defined. (NRS 637.070) “Hour of training and experience” means 50 minutes of instruction devoted to a program of training and experience that is related to the practice of ophthalmic dispensing.

NAC 637.009 “Manage a business engaged in ophthalmic dispensing” interpreted. (NRS 637.070, 637.090) As used in this chapter and NRS 637.090, the Board will interpret the term “manage a business engaged in ophthalmic dispensing” to mean having the responsibility for ophthalmic dispensing and having direct supervisory responsibility for employees who engage in ophthalmic dispensing, including employees who are not licensed pursuant to this chapter and chapter 637 of NRS, at a single place of business.

NAC 637.010 Construction. (NRS 637.070) 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, **and other chapters that necessarily apply to the Board**, of NRS.
2. Construed as being in harmony with the provisions of chapter 637 of NRS.

NAC 637.020 Severability. (NRS 637.070) If any of the provisions of this chapter or any application thereof to any person, thing or circumstance is held invalid, it is intended that such invalidity not affect the remaining provisions, or their application, that can be given effect without the invalid provision or application.

BOARD OF DISPENSING OPTICIANS

Board assessment: Standard, clear language needed to define conduct of Board business and set compensation rate for Board members.

NAC 637.100 Officers. (NRS 637.040, 637.070)

1. The Board will elect its officers at its first regular or special meeting after October 1 of each year.
2. The term of office is 1 year.

NAC 637.110 Meetings. (NRS 637.050, 637.070)

1. A majority vote of a quorum of the Board is necessary to conduct business.
2. Robert's Rules of Order govern the general conduct of meetings of the Board when not otherwise provided by these rules or by law. Persons who willfully disrupt meetings may be removed.
3. Special meetings may be called by the President of the Board on his or her own motion or by written consent of two or more other Board members.

NAC 637.120 Salary of members. (NRS 637.045, 637.070) Each member of the Board is entitled to receive a salary of \$150 per day while engaged in the business of the Board.

LICENSING

Board assessment: Establishes minimum standards for entry into a profession which requires education, training, and experience to practice safely and competently to protect public's health, safety, and welfare. However, some sections unnecessarily restrict the ability of an individual to enter and/or remain in the profession, and other sections are not aligned with related provisions of Chapter 637. Recommendations for revision or repeal are noted under individual sections.

NAC 637.130 Definitions. (NRS 637.070) As used in NAC 637.130 to 637.230, inclusive, unless the context otherwise requires:

1. "Dispensing optician" means a person who holds a license as a dispensing optician pursuant to NRS 637.120; and
2. "Dispensing optician with a limited license" means a person who holds a limited license as a dispensing optician pursuant to NRS 637.121.

NAC 637.132 Special license: Interpretation of statutory requirements. (NRS 637.070) With respect to an applicant for a special license as a dispensing optician pursuant to NRS 637.127, the Board will interpret:

1. The requirement of passing an examination administered by the Board set forth in paragraph (i) of subsection 1 of NRS 637.127 to mean that the applicant must pass the Board's examination for a license as a dispensing optician set forth in NAC 637.160.
2. The requirement of 5 years of experience as a dispensing optician set forth in subparagraph (2) of paragraph (j) of subsection 1 of NRS 637.127 to include as a portion thereof the requirement of 100 hours of experience relating to the fitting and filling of prescriptions for contact lenses set forth in subsection 1 of NAC 637.148.

NAC 637.140 License required to provide ophthalmic products to public. (NRS 637.070, 637.090)

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 to the public.
2. 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.

NAC 637.144 Requirements for managing ophthalmic dispensing. (NRS 637.070, 637.090)

1. A person who manages a business engaged in ophthalmic dispensing:
 - (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 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 ophthalmic manager and the business manager may be the same person. The ophthalmic manager must 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. An apprentice dispensing optician shall not:
 - (a) Act as a person who manages a business engaged in ophthalmic dispensing; or
 - (b) Under any circumstances 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.

NAC 637.148 Completion and proof of required hours of training and experience. (NRS 637.070, 637.100)

1. 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 used in subsection 1, “supervisor” means an ophthalmologist, an optometrist or a dispensing optician.

4. The Board may request and accept other types of documentation proving applicant completed required hours of training described in subsection 1.

Recommend addition of NAC 637.148(4) to allow other types of documentation proving applicant completed required hours of contact lens training. This revision will help those individuals who received their training in other states or schools to provide proof they meet the requirements.

NAC 637.150 Application for examination; training and experience required for certain applicants; reexamination; fees. (NRS 637.070, 637.100, 637.110)

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 ***one of which must be from an optical employer;***

(d) An affidavit attesting to the truthfulness of all statements made in the application;

(e) 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) 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 ~~for~~ *and* submit to a background check *if requested by the Board.*

(g) A statement indicating whether he or she has any criminal convictions for misdemeanors or felonies in this State or any other state or jurisdiction. If so, the applicant must disclose the circumstances of criminal conviction(s) and submit to a background check, if requested by the Board.

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. *The applicant may request to retake the section that the applicant failed.*

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

Recommend deleting NAC 637.150(2)(b) because a photograph is not needed to prove identity of applicant; notarization of application serves that purpose. Recommend revising NAC 637.150 (2)(c) to add requirement that one of the reference letters must be from an optical employer to give the Board a vital reference point from which to judge an applicant's professional competence and qualifications. Recommend revising NAC 637.150(2)(f) and adding 637.150(2)(g) to help ensure applicants are of "good moral character" as required by NRS 637.100(1)(b). Recommend deleting NAC 637.150(7) to delete the limit on number of times an applicant may retake the examination because it unnecessarily restricts the ability of an individual to enter the profession. For the same reason, recommend adding language to NAC 637.150(6) to allow applicants, upon submission of \$250 fee, to retake only the section (written or practical) that they failed.

NAC 637.160 Scope, content and administration of examination; request for review of examination papers. (NRS 637.070, 637.100, 637.110)

1. The Board's examination for a license as a dispensing optician *will consist of two sections: a written and a practical section. The examination* will test the dispensing skills of the applicant.

2. The examination will test the applicant's proficiency and knowledge in the following subjects and approximate proportions:

(a) Neutralization of ophthalmic products, 30 percent, *(practical).*

(b) Optical theory, 15 percent, *(written).*

(c) Dispensing of ophthalmic products, 10 percent, *(written).*

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

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

- (f) Ophthalmic product identification, 5 percent, *(practical)*.
 - (g) Ophthalmic instrumentation, 10 percent, *(practical)*.
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, *(written)*.
 - (b) The provisions of this chapter and chapter 637 of NRS, 15 percent, *(written)*.
 - (c) Slide identification, 15 percent, *(written)*.
 - (d) Neutralization of ophthalmic products, 20 percent, *(practical)*.
 - (e) Instrumentation and fitting, 20 percent, *(practical)*.
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 applicant who fails the examination *will receive written notice of the percentage scored in each subject area.* ~~[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.]~~

Recommend revising NAC 637.160 (1-3) to provide examinees with more detailed information regarding the subjects of the written and practical sections of the examination, and revising NAC 637.160(5) to eliminate the review, which is an uncommon practice that has not proven beneficial to examinees nor has it been cost effective.

NAC 637.190 Continuing education: Submission of certificate; exemption. (NRS 637.070, 637.121, 637.135)

- 1. Except as otherwise provided in subsection 2, a copy of a certificate proving that a dispensing optician or a dispensing optician with a limited license has taken the required hours of continuing education must be submitted to the Board at the time of license renewal.
- 2. A dispensing optician or dispensing optician with a limited license 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 the license.

NAC 637.200 Continuing education: Subjects; approval of and credit for courses; minimum hours. (NRS 637.070, 637.121, 637.135)

- 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. 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. 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.

4. A licensee who attends the same educational lecture more than once every 3 years is entitled to count only his or her original attendance as credit toward the licensee's hours of continuing education.

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

6. 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.

7. A dispensing optician with a limited license shall complete at least 12 hours of continuing education 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.

8. A dispensing optician shall complete at least 14 hours of continuing education 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.

NAC 637.215 Transfer of license to inactive list; renewal of inactive status; reactivation of license. (NRS 637.070, 637.121, 637.140) 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 a license renewal application* ~~[the statement required pursuant to NRS 637.113];~~ and
- (d) Paying the fee for reactivation of the license as set forth in NAC 637.220.

Recommend revising NAC 637.215(4)(c) to clarify an individual with an inactive license must complete a license renewal application, which includes screening questions required by 637.100 (1)(b).

NAC 637.218 Reinstatement of delinquent license. (NRS 637.070, 637.121, 637.140) 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]~~ 5 years of the expiration of the license or limited license;
2. Provides proof of completion of any required continuing education;
3. Pays the renewal fee; and
4. Pays the delinquency fee.

Recommend revising NAC 637.218(1) to allow a an individual with a delinquent license to apply for reinstatement within five years of license expiration, to align with the time period in NAC 637.215 allowed for an individual with an inactive license.

NAC 637.220 Fees for renewal, reinstatement, transfer and reactivation of license. (NRS 637.070, 637.121, 637.140)

1. 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 annual delinquency fee for reinstatement of a:
 - (a) License as a dispensing optician is \$300.
 - (b) Limited license as a dispensing optician is \$200.
3. 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. The fee for the reactivation of a:
 - (a) License as a dispensing optician is \$300.
 - (b) Limited license as a dispensing optician is \$200.

NAC 637.225 Issuance of duplicate license. (NRS 637.070, 637.120) 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.]~~

Recommend revising NAC 637.225 to eliminate unnecessary provision, and to align with requirements of NRS 637.120, which requires licenses must at all times be conspicuously

displayed at the holder's place of practice (which can be more than one location), and states the license is not transferable by the holder.

NAC 637.230 Licensees to file addresses and change of address with Board. (NRS 637.070)

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 *address within 30 days* or business address within ~~30~~ **10** days of such change.

Recommend revising NAC 637.230(2) to change the apprentice notification of employment change requirement to 10 days, to align with 10-day requirement for change of apprentice supervision notification in NAC 637.280.

PROFESSIONAL PRACTICE

Board assessment: These sections are needed to ensure licensees carry out their professional duties in a manner that protect the public's health, safety, and welfare
Recommend additional language to NAC 637.235 to make it clear that a violation of a Board Order is grounds for disciplinary action pursuant to NAC 637.690 (revised) and NRS 637.150(1)(I).

NAC 637.235 Grounds for disciplinary action: "Unethical or unprofessional conduct" interpreted. (NRS 637.070, 637.150)

1. As used in paragraph (k) 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 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.

(h) Engaging in conduct which violates an Order of 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.

NAC 637.237 Use of supervisory authority over person who manages business engaged in ophthalmic dispensing. (NRS 637.070, 637.090) A person who has supervisory authority over a person who manages a business engaged in ophthalmic dispensing and intentionally influences or attempts to influence the decisions of that person relating to ophthalmic dispensing shall be deemed to have violated the provisions of NRS 637.090.

NAC 637.239 Adoption by reference of certain standards for prescription ophthalmic lenses. (NRS 637.070, 637.073)

1. The Board hereby adopts by reference for use in this State the recommendations of the American National Standards Institute for prescription ophthalmic lenses set forth in ANSI Z80.1-2005, as those standards existed on April 17, 2008.
2. If the publication adopted by reference in subsection 1 is revised, the Board will review the revision to determine its suitability for this State. If the Board determines that the revision is not suitable for this State, the Board will hold a public hearing to review its determination and give notice of that hearing within 90 days after the date of the publication of the revision. If, after the hearing, the Board does not revise its determination, the Board will give notice that the revision is not suitable for this State within 90 days after the hearing. If the Board does not give such notice, the revision becomes part of the publication adopted by reference pursuant to subsection 1.
3. A copy of the publication adopted by reference in subsection 1 may be obtained from the American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, New York 10036, by telephone at (212) 642-4900 or at the Internet address <http://www.webstore.ansi.org>, at a price of \$63.20 for members and \$79.00 for nonmembers.

NAC 637.241 Equipment for dispensing opticians; general requirements. (NRS 637.070)

1. A dispensing optician:
 - (a) Shall have the following optical equipment at the place of dispensing:
 - (1) A lens clock;
 - (2) A lensometer; and
 - (3) A pupilometer.
 - (b) May have such additional equipment as he or she determines necessary.
2. All equipment must be in good working order.

NAC 637.245 Equipment for fitting contact lenses. (NRS 637.070) A dispensing optician shall not fit contact lenses unless the dispensing optician has access to equipment for fitting contact lenses on the premises, including, without limitation:

1. A slit lamp;
2. A radioscope;
3. A keratometer;
4. A contact lens loop;
5. A thickness and diameter gauge;
6. A fluoresce scope; and
7. Trial lenses.

NAC 637.250 Advertising which quotes prices of ophthalmic goods and services. (NRS 637.070, 637.150)

1. Advertising which quotes prices of ophthalmic goods and services must include the following information:
 - (a) Whether the advertised price includes single vision or multifocal glass or plastic lenses;
 - (b) Whether the advertised price for contact lenses refers to “hard” or “soft” lenses;
 - (c) Whether the advertised price of ophthalmic goods includes all dispensing fees;
 - (d) Whether the advertised price for eyeglasses includes both frames and lenses; and

- (e) Whether the advertised lens price includes all lens prescription powers.
2. Each advertisement in violation of any one of the provisions of subsection 1 is a separate offense punishable pursuant to NRS 637.150.

APPRENTICE DISPENSING OPTICIANS

Board assessment: Provides clear direction regarding how an individual may apply for an apprentice license. Outlines the essential requirements needed to ensure the apprentice will gain the necessary skills, ability, and knowledge to work safely and effectively in a complex and challenging working environment. However, one section is duplicative and others need clarification and alignment with other sections of NRS and NAC Chapter 637.

Recommendations for revision or repeal are noted under the individual sections.

NAC 637.260 *Qualifications, [A]application; fee.* (NRS 637.070, 637.100, 637.110)

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. [1.] 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.***
- (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 submit to a background check, if requested by the Board.***
- (f) A statement indicating whether he or she has any criminal convictions for misdemeanors or felonies in this State or any other state or jurisdiction regardless of whether or not the record has been sealed. If so, the applicant must disclose the circumstances of criminal conviction(s) and submit to a background check, if requested by the Board.***

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

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

Recommending additions to NAC 637.160 to help ensure applicants are of “good moral character” as required by NRS 637.100(1)(b), and to make apprentice licensure requirements consistent with NAC 637.150.

NAC 637.263 Reinstatement of delinquent license. (NRS 637.070, 637.100, 637.123)

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 any required continuing education]~~ of *orderly progress per 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.

Recommend revising NAC 637.263(1)(a) to align it with requirements of NAC 637.287.

NAC 637.265 Fee for renewal or reinstatement of license. (NRS 637.070, 637.123)

1. The fee for the annual renewal of a license as an apprentice dispensing optician is \$50.

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

NAC 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.]~~

Recommend repealing NAC 637.275 because it is duplicative of NRS 637.123(3) and NAC 637.287.

NAC 637.280 Supervision of apprentice. (NRS 637.070, 637.100, 637.125)

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 *in 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.

Recommend revising NAC 637.280(4) to clarify supervisor must be employed at same location as apprentice per apprentice supervision requirements in NRS 637.125.

NAC 637.285 Evidence of enrollment in educational program on theory of ophthalmic dispensing. (NRS 637.070, 637.100) An apprentice dispensing optician shall, within 3 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 enrolled in an educational program on the theory of ophthalmic dispensing approved by the Board.

NAC 637.287 Demonstration of orderly progress toward completion of apprenticeship. (NRS 637.070, 637.100)

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 orderly progress by:

(a) At the end of his or her first year of apprenticeship, passing the examination of the American Board of Opticianry;

(b) At the end of his or her second year of apprenticeship, 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.

3. The Board may consider orderly progress as a basis for good cause for license renewal pursuant to NRS 637.123.

Recommend revising NAC 637.287 to clarify apprentice license renewal requirements.

NAC 637.290 Training and experience; areas of instruction. (NRS 637.070, 637.100)

1. An apprentice dispensing optician who desires to obtain a license as a dispensing optician pursuant to NRS 637.120 must receive instruction and personal supervision in the skills required in an optical establishment and in related duties during the 3 years of training required pursuant to subparagraph (1) of paragraph (f) of subsection 1 of NRS 637.100. Such training must include at least 2,000 hours of training and experience at the fitting table and in preparing laboratory orders, verifying processed work from the laboratory and the performance of other duties related to ophthalmic dispensing.

2. An apprentice dispensing optician who desires to obtain a license as a dispensing optician pursuant to NRS 637.120 and who has successfully completed a course of study in a school which offers a degree of associate of science in ophthalmic dispensing must receive at least 1,000 hours of training and experience at the fitting table and in preparing laboratory orders, verifying processed work from the laboratory and the performance of other duties related to ophthalmic dispensing.

3. The completion of one or more courses taught in a school which offers a degree of associate in applied science for studies in ophthalmic dispensing may count toward the completion of the hours of training and experience required pursuant to subsections 1 and 2 if the courses:

- (a) Provide the apprentice dispensing optician with instruction equivalent to training and experience at the fitting table and in preparing laboratory orders, verifying processed work from the laboratory or the performance of other duties related to ophthalmic dispensing; and
- (b) Are approved by the Board.

4. Upon approval by the Board, if an apprentice dispensing optician holds a limited license as a dispensing optician in good standing, the hours of training and experience that he or she received as a dispensing optician with a limited license may count towards the hours of training and experience required pursuant to subsections 1 and 2.

5. Areas of instruction for apprenticeship must include the following:

- (a) Ocular anatomy, physiology and refractive anomalies of the eye;
- (b) Processes of vision, especially the effect of light, lenses and prisms placed before the eye;
- (c) Theoretical optics;
- (d) Ophthalmic vocabulary;
- (e) Ophthalmic prescription interpretation, eyeglass lens and contact lens identification, fitting and adjustment of eyeglasses, and use of instruments in the analysis of eyeglass lenses and contact lenses in a practical examination;
- (f) All facets of ophthalmic dispensing procedures; and
- (g) The provisions of this chapter and chapter 637 of NRS.

NAC 637.295 Continuing education. (NRS 637.070, 637.123)

1. 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 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 must be submitted to the Board not later than January 31 following the 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 *nationally or regionally accredited school* which offers a degree of associate in applied science for studies in ophthalmic dispensing.

3. The requirements of this section do not apply to apprentice dispensing opticians who are making orderly progress pursuant to NAC 637.287.

4. [3.] The Board may waive or alter the requirements of this section if the intent of the requirements would not be carried out by its strict application.

Recommend revising NAC 637.295 to recognize continuing education is represented by the orderly progress required by NAC 637.287.

NAC 637.300 Change of employer. (NRS 637.070, 637.100) An amended application on a form prescribed by the Board must be submitted by an apprentice dispensing optician within **10 [30]** days after his or her employment changes. The Board will not approve more than **10 [30]** days of experience gained by an apprentice dispensing optician with a new employer before the amended application is received by the Board.

Recommend revising NAC 637.300 to require written notification within 10 days of apprentice employment change to align with 10-day requirement for change of apprentice supervision notification in NAC 637.280.

PRACTICE BEFORE THE BOARD OF DISPENSING OPTICIANS

Board assessment: Establishes procedures and provides guidance on the Board's complaint and disciplinary process for licensees, attorneys, and other interested parties. It protects the public's health, safety, and welfare by providing means for reporting, investigating, and taking action on potential violations of Chapter 637 of NRS and NAC, while ensuring due process for those accused of such violations. However, some sections are outdated, duplicative of NRS 622A and NRS 233B, or in conflict with Nevada's Open Meeting Law (NRS Chapter 241). Recommendations for revision or repeal are noted under individual sections.

General Provisions

NAC 637.310 Scope. (NRS 637.070) NAC 637.310 to 637.700, inclusive, govern practice and procedure before the Board. **Amend as needed after all revisions are made to ensure numbered provisions are correct.**

NAC 637.320 Communications. (NRS 637.070) Any formal written communication, payment or document must be addressed to the Board at its office and is deemed filed or made on the date of the postmark on the envelope in which it was mailed in accordance with the provisions of NRS 238.100.

NAC 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.]~~

Recommend repeal NAC 637.330 because it is outdated and unnecessary.

NAC 637.333 Authority to file complaint. (NRS 637.070) Any member of the Board or public may file a written complaint with the Board if he or she believes:

1. A licensee has violated a provision of this chapter or chapter 637 of NRS;
2. An unlicensed person is engaged in activities requiring a license pursuant to the provisions of this chapter or chapter 637 of NRS; or
3. A person employs a dispensing optician, apprentice dispensing optician or other person in violation of NRS 637.125.

NAC 637.335 Form and contents of complaint. (NRS 637.070)

1. A complaint filed pursuant to NAC 637.333 must:
 - (a) Be on a form prescribed by the Board;
 - (b) Be signed and verified by the person filing the complaint, under penalty of perjury; and
 - (c) Include the name, address and telephone number of the person filing the complaint.
2. The form prescribed by the Board must state that:
 - (a) The person making the complaint may be required to testify at a judicial or administrative proceeding; and
 - (b) The Board may send a notice and copy of the complaint to the licensee or the person who is the subject of the complaint.

NAC 637.337 Review and disposition of complaint. (NRS 637.070, *NRS 622A, NRS233B*)

1. The person designated by the Board to review complaints filed pursuant to NAC 637.333 shall review each complaint *to determine if the information alone or together with evidence, documentary or otherwise, is sufficient to require an investigation and 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 ~~an accusation~~ *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, he is deemed to have admitted the allegations in the complaint.

Recommend revising NAC 637.337(1) to provide more information regarding investigation of complaints filed with the Board. Recommend revising NAC 637.337(2)(a) pursuant to NRS 622A and NRS 233B.

Parties

NAC 637.340 Classification of parties. (NRS 637.070)

1. A party in a proceeding before the Board ~~[must be]~~ **is** 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 may be affected by a proceeding, but who does not seek to participate in the proceeding.]~~

Recommend revising NAC 637.340(1) and (6) pursuant to NRS 622A and NRS 233B.

NAC 637.350 Staff of Board may be party to proceeding. (NRS 637.070) The Board’s staff may appear at any hearing and has the right to participate as a party to the proceeding.

NAC 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 possible interest in the proceeding.]~~

Recommend repealing NAC 637.360 because it is duplicative of NRS 622A and NRS 233B.

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

Recommend repealing NAC 637.370 because it is duplicative of NRS 622A and NRS 233B.

NAC 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.]~~

Recommend repealing NAC 637.380 because it is duplicative of NRS 622A.310.

NAC 637.390 Service of process on attorney. (NRS 637.070) Following the entry of an appearance by an attorney for a party, all notices, pleadings and orders must be served upon the attorney and such service is effective for all purposes upon the party represented by the attorney.

NAC 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 he represented and all other parties to the proceeding of his withdrawal.]~~

Recommend repealing NAC 637.400 because it is in conflict with NRS 622A.

NAC 637.410 Conduct required. (NRS 637.070) ~~[A]~~ All persons appearing in a proceeding before the Board shall be ethical and courteous. *The Board may remove a person from a proceeding for violations of this provision.*

Recommend revising NAC 637.410 to protect due process rights of licensees by dictating the conduct of proceedings before the Board, and provide guidance to licensees and other interested parties. NRS 622A.310 requires that attorneys must be courteous in proceedings before the Board; licensees, who are often unrepresented in proceedings before the Board, should also be respectful, ethical, and courteous.

Pleadings, Motions and Other Papers

NAC 637.420 Captions, amendments and construction of pleadings. (NRS 637.070)

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, at any time*, any pleading to be amended or corrected.
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.

Recommend revising NAC 637.420 pursuant to NRS 622A and NRS 233B and to protect due process rights of licensees by dictating additional procedure.

NAC 637.430 Petitions. (NRS 637.070) 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.

Recommend revising NAC 637.430 pursuant to NRS 622A and NRS 233B.

NAC 637.440 ~~[Accusations]~~ Charging documents. (NRS 637.070)

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]~~ *charging document* to be filed against:

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

(b) An unlicensed person alleging one or more grounds for disciplinary action pursuant to NRS 637.183.

(c) 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. 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.]~~

Recommend revising NAC 637.440 pursuant to NRS 622A and NRS 233B.

NAC 637.450 Motions. (NRS 637.070)

~~[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.]~~ **1.** A decision on ~~[the]~~ *a motion filed pursuant to NRS 622A.360* 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. ***Further, as directed by the Board, motions filed pursuant to NRS 622A.360 may be decided by the Board President or the Board President's designee in lieu of convening a special meeting to decide those motions as provided in NRS 622A.350(4).***

Recommend repealing NAC 637.450(1-5) because they are duplicative of NRS 622A and NRS 233B. and revising NAC 637.450(6) pursuant to NRS 622A.

NAC 637.460 Filing. (NRS 637.070) ***At least one copy*** ~~[An original and two legible copies]~~ of all pleadings, ~~[and]~~ motions, ***and briefs*** must be filed with the Board ***by mailing or delivering a copy to the Board office. A second copy of all pleadings and motions must be sent to the Board's legal counsel of record in the proceeding.*** ~~[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.]~~

Recommend revising NAC 637.460 to provide updated and clear guidance regarding the procedure for filing pleadings, motions, and briefs with the Board.

NAC 637.470 Service of process. (NRS 637.070)

1. All notices, documents, advisory opinions and declaratory orders required to be served by the Board will be served by mail *to the last known 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. 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.

3. *Notice of a disciplinary hearing is deemed to be given upon personal delivery to the dispensing optician or apprentice dispensing optician, or upon mailing by certified mail to the last known address provided to the Board by the addressee. If the complaint is against an apprentice, the Board shall also notify the employer with whom the apprentice is associated by mailing an exact statement of the charges, and the date, time and place of the hearing, by certified mail to the last known address of the employer to the attention of the ophthalmic manager.*

Recommend revisions to NAC 637.470 to clarify that service of process is complete when mailed to the address provided to the Board per NAC 637.230. Recommend addition of NAC 637.470(3) to ensure employers are informed of Board actions taken in regard to apprentices for whom they are responsible per the provisions of NRS 637.125 and NAC 637.280.

NAC 637.480 Proof of service. (NRS 637.070) ~~[There will appear on all documents required to be served by the Board, other than decisions or orders, an]~~ *An* acknowledgment of service or the following certificate *shall be included with all charging documents and orders of the Board:*

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

Recommend revising NAC 637.480 to provide updated and clear guidance regarding the procedure for serving all charging documents and orders of the Board.

Hearings

NAC 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 ~~[40]~~ **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.

Recommend revising NAC 637.490(2) to provide adequate time for the Board to make an initial evaluation and place the matter on the Board's meeting agenda pursuant to NAC 637.490 (3), NAC 637.660 (revised), and NAC 637.700 (revised).

NAC 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 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.]~~

Recommend repealing NAC 637.500 because it violates due process, NRS 233B and NRS 622A.

NAC 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.]~~

Recommend repealing NAC 637.510 because it conflicts with notice provisions and is duplicative of other provisions of NRS 241, NRS 233B and NRS 622A.

NAC 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.]~~

Recommend repealing NAC 637.520 because it is duplicative of NRS 622A.

NAC 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.]~~

Recommend repealing NAC 637.530 because it is duplicative of NRS 622A.

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

Recommend repealing NAC 637.540 because it is duplicative of NAC 637.410 (revised).

~~NAC 637.550 Testimony must be under oath. (NRS 637.070) All testimony to be considered by the Board in any *proceeding* [hearing], except matters noticed officially or entered by stipulation, must be sworn testimony. Each witness must swear or affirm that the testimony he is about to give in the *proceeding* [hearing] before the Board will be the truth, the whole truth, and nothing but the truth.~~

Recommend revising NAC 637.550 to clarify that all testimony provided to the Board must be truthful.

~~NAC 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.]~~

Recommend repealing NAC 637.560 because it is duplicative of NRS 622A; specifically, NRS 622A.380 is clearer and more detailed.

~~NAC 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.]~~

Recommend repealing NAC 637.570 because it is duplicative of NRS 622A.380.

NAC 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.}~~

Recommend repealing NAC 637.580 because it is duplicative of NRS 622A.300.

NAC 637.590 Stipulations. (NRS 637.070) With the approval of the Board, the parties may stipulate as to any fact at issue, either by written stipulation introduced in evidence as an exhibit or by oral statement shown upon the record. Any such stipulation will be binding upon all parties to the stipulation, and it may be treated as evidence at the hearing. The Board may require proof by evidence of the facts stipulated to, notwithstanding the stipulation of the parties.

NAC 637.600 Official notice of Board. (NRS 637.070) In addition to the facts mentioned in subsection 5 of NRS 233B.123, the Board may take official notice of regulations, official reports, decisions, orders, standards or records of the Board, and any regulatory agency of the State of Nevada or any court of record.

NAC 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.}~~

Recommend repealing NAC 637.610 because it is unnecessary.

NAC 637.620 Decision by Board. (NRS 637.070)

1. A proceeding stands submitted for decision by the Board after the taking of evidence *at a hearing*, 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 *or of the Board meeting at which the matter is 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.

Recommend revising NAC 637.620 to provide updated and clear guidance regarding the procedures for making, rendering, and serving decisions and orders of the Board.

NAC 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.]~~

Recommend repealing NAC 637.630 because it is duplicative of NRS 622A.390.

~~**NAC 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.]**~~

Recommend repealing NAC 637.640 because it is duplicative of NRS 622A.400 and NRS 233B.121.

Declaratory Orders and Advisory Opinions

NAC 637.650 Form of petition for declaratory order or advisory opinion. (NRS 637.070) ~~[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.]~~

- 1. The Board will consider petitions for declaratory orders or advisory opinions as to the applicability of any statutory provision or any regulation or decision of the Board.*
- 2. All petitions for declaratory orders and advisory opinions must be in writing and shall be written on the forms provided by the Board or otherwise prepared substantially in the format of the Board's forms provided for this purpose.*

Recommend revising NAC 637.650 to provide clearer guidance regarding the procedure for filing a petition for a declaratory order or advisory opinion.

NAC 637.660 Procedure for consideration of petition. (NRS 637.070) ~~[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 his last known address, for his 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.]~~

- 1. Except as otherwise provided in subsection 2, upon receiving a petition for a declaratory order or an advisory opinion, the Board will place the matter on the agenda for discussion at the next regularly scheduled meeting of the Board.*
- 2. If the petition is received within 30 days before the next regularly scheduled meeting, the petition may be placed on the agenda for discussion at the next meeting after that meeting.*

3. *The Board will then hear the matter at the meeting for which it has been agendized and either grant or deny the petition.*
4. *If the Board denies the petition, no further action will be taken.*
5. *If the Board grants the petition, the Board will review the facts and the issues involved, receive evidence including documents and testimony at that meeting, deliberate, and then issue its declaratory order or advisory opinion within 90 days after granting the petition unless good cause exists for taking additional time, and in that case, the order or opinion will be issued within 120 days.*
6. *If the Board deems it necessary, the Board may schedule additional time at a future meeting to review the facts and the issues involved, receive evidence including documents and testimony, and/or deliberate about any issue raised in the petition before issuing its decision.*
7. *Should the Board schedule the matter for further consideration at a future meeting as provided in subsection 6, the Board shall issue its declaratory order or advisory opinion within 90 days after the last meeting during which the Board considers the matter, unless good cause exists for taking additional time, and in that case, the order or opinion will be issued within 120 days.*

Recommend revising NAC 637.660 because it violates NRS 241 and NRS233B. requires the Board have a procedure for declaratory orders and/or advisory opinions.

NAC 637.670 Draft of opinion or order by member of Board. (NRS 637.070) If the Board determines that it will issue a declaratory order or advisory opinion, 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 Board's next regularly scheduled meeting. Once the draft of the order or opinion is approved by a majority of the Board it is deemed rendered for purposes of NAC 637.680 and NAC 637.690.*

Recommend revising NAC 637.670 because it violates NRS 241, and NRS233B. requires the Board have a procedure for declaratory orders and/or advisory opinions.

NAC 637.680 Notice. (NRS 637.070) After the Board renders its order or opinion, the Board will serve notice of it to the petitioner *pursuant to NAC 637.470 and NAC 637.480.*

Recommend revising NAC 637.680 to align it with the provisions of NAC 637.470 and NAC 637.480 (revised).

NAC 637.690 Violation of opinion or order. (NRS 637.070) After the Board renders ~~[such]~~ any order or opinion, *including orders entered by the Board to resolve contested cases*, any violation of ~~[it]~~ *the order or opinion* by a licensee of the Board is a ground for disciplinary action against *the licensee* ~~[him]~~.

Recommend revising NAC 637.690 to make it clear that violating a Board order is grounds for disciplinary action pursuant to NAC 637.235 (revised) and NRS 637.150(1)(I).

Petitions for Adoption, Amendment or Repeal of Regulations

NAC 637.700 Procedure for consideration of petition. (NRS 637.070) ~~[The Board will use the following procedure upon receipt of a petition requesting the adoption, 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 his last known address, for his 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.]~~

1. A petition for the adoption, amendment or repeal of a regulation must be in writing and shall be written on the forms provided by the Board or otherwise prepared substantially in the format of the Board's forms provided for this purpose.

2. The following procedure applies to such a petition:

(a) Except as otherwise provided in subsection b, upon receiving a petition for the adoption, amendment or repeal of a regulation, the Board will place the matter on the agenda for discussion at the next regularly scheduled meeting of the Board.

(b) 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.

(c) The Board will then hear the petition at the meeting for which it has been agendized and either grant or deny the petition.

(d) If the Board denies the petition, no further action will be taken.

(e) If the Board grants the petition, the Board will direct the Executive Director to begin the procedures necessary for adoption of the regulations.

(f) In situations where circumstances may warrant more immediate action, the Board President or his or her designee, may call a special meeting to hear the petition.

(g) At the time the Board hears the petition:

(i) the Petitioner may provide evidence, including documents and testimony to the Board in support of the Petitioner's proposed action,

(ii) other interested parties may provide evidence, including documents and testimony to the Board in support of the interested parties' position on the petitioner's proposed action,

(iii) the Board may request legal advice or guidance regarding the Petitioner's proposed action from its legal counsel, and

(iv) the Board shall deliberate and vote on whether or not to grant the petition.

Recommend revising NAC 637.700 because it violates NRS 241, and NRS233B requires the Board have a procedure for declaratory orders and/or advisory opinions.

PROPOSED REGULATIONS:

REGULATION 1

The Board will charge and collect the following fees:

For a licensee mailing list sent via electronic mail.....\$25

For a licensee mailing list sent by U.S. mail.....\$30

For a dishonored check.....\$25

For license verification letter.....\$25

Recommend adding provision to authorize the Board to recover the costs associated with providing the listed services.

REGULATION 2

- 1. The Board may inspect the workplace of all licensees to ensure compliance with the statutory requirements and all adopted regulations of the Board. This authority extends to any member of the Board or its authorized employees or designees.*
- 2. All licensees shall provide access to facilitate an inspection initiated pursuant to subsection 1.*
- 3. Failure to cooperate with an inspection by the Board may be grounds for disciplinary action pursuant to NRS 637.150.*
- 4. If the Board or its designee notes violations of statutory requirements or adopted regulations of the Board in the inspection, the Board may initiate disciplinary action against the licensee(s) according to the requirements of NRS and NAC Chapters 637, NRS Chapter 233B, and NRS Chapter 622A.*

Authority for the proposed regulation: NRS 637.070, NRS 637.120, NRS 637.125, and NRS 637.150.

The Board recommends adding this provision to better ensure compliance with the statutes and regulations which were passed and adopted to protect the public's health, safety, and welfare. The Board has the authority to file a complaint if it believes a licensee has violated a provision of Chapter 637 of NRS and/or NAC. This provision would authorize workplace inspections to better determine if the Board should file such complaints. It also reflects the Board's dedication to ensuring that Board complaints are based on evidence of violations of statutory requirements or adopted regulations.