

**PROPOSED REGULATION OF THE
NEVADA STATE BOARD OF DISPENSING OPTICIANS LCB**

File No. R137-17

November 1, 2017

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

AUTHORITY: NRS 637.070.

A REGULATION relating to dispensing opticians and apprentice dispensing opticians.

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

637.144. 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chapter or chapter 637 of NRS, and the decision of the ophthalmic manager with respect to any such matter may not be superseded by the business manager.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]~~

ophthalmic manager or a business manager and shall not have any authority of any type over a dispensing optician; 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.

Section 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.

Section 3. NAC 637.215 is hereby amended to read as follows:

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

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

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

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

4. May reactivate his or her license by:

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

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

(1) If the holder is a dispensing optician, 14 hours of continuing education credits; or

(2) If the holder is a dispensing optician with a limited license, 12 hours of continuing education credits;

(c) Submitting an application for the renewal of a license; and

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

5. A license that was reactivated between November 1 of a particular and January 31 of following year is not required to be renewed until January 31 of the next year.

Section 4. NAC 637.235 is hereby amended to read as follows:

637.235. 1. As used in paragraph (1) 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; ~~(h)~~

(h) Violating an order issued by the Board [-];

(i) As a dispensing optician supervising an apprentice, allowing the apprentice to perform any task for which the apprentice is not yet trained, is outside the scope of the practice of an apprentice, or is performed outside the supervision of the dispensing optician; or

(j) Failing to provide documents requested by or failing to cooperate with an investigation conducted by a board member, board staff, or a board investigator.

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.

Section 5. NAC 637.260 is hereby amended to read as follows:

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

(a) Is at least 18 years of age.

(b) Is of good moral character.

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

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

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

(a) The date of the application for licensure.

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

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

(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, if requested by the Board, submit to a background check.

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

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

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

5. Except as provided in subsection 6, upon determining that an application is complete and that the applicant is qualified thereby, the Board's staff shall issue an initial license as an apprentice dispensing optician that shall expire in six months and may not be renewed. At any time after the issuance of the initial license and before its expiration, the apprentice may provide evidence to the Board that he or she is enrolled

in an educational program on the theory of ophthalmic dispensing approved by the Board, and upon validation of enrollment, the Board shall issue a license that is valid for one year and that may be renewed thereafter. An applicant may seek credit for prior employment in the optical field, but any application to do so must be received within the period of the initial six-month license. An apprentice whose initial license expires may not apply for another apprentice license for at least one year after the license expires.

6. If an apprentice dispensing optician provides evidence to the Board that he or she is enrolled in an educational program on the theory of ophthalmic dispensing approved by the Board at the time that he or she initially applies with the Board, then the Board's staff will issue an initial license that shall be valid for one year and that may be renewed thereafter.

Section 6. NAC 637.320 is hereby amended to read as follows:

637.320 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]~~.

Section 7. NAC 637.335 is hereby amended to read as follows:

- 637.335 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 *states that the contents of the complaint are true, correct, and complete and that the person* 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.

Section 8. NAC 637.337 is hereby amended to read as follows:

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

(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 ask a board member to serve as an investigative board member where the Executive Director determines that the assistance of such an investigating board member is in the best interests of reaching a complete, fair, and just determination regarding the matter.*

3. For any matter in which the Executive Director on his or her own initiative or in consultation with an investigating board member where one has been asked to be involved determines that the facts gathered in the course of the investigation substantiate one or more violations of the Board's statutes or regulations, the Executive Director shall prepare a charging document in compliance with NRS 622A.300. The charging document may be filed against:

(a) A licensee or apprentice;

(b) An unlicensed person; or

(c) A person who employs a licensee or apprentice or other person.

Section 9. NAC 637.450 is hereby amended to read as follows:

6337.450 *What motions may be filed at a particular time in a particular matter shall be governed by NRS 622A.360 and NRS 622A.390.* 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.

Section 10. 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.

Section 11. NAC 637.150 as amended in Section 2 of LCB File Number R104-14 is hereby amended to read as follows:

637.150 1. An application 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) Evidence on a form provided by the Board that the applicant has accurately and correctly neutralized the prescription of at least 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.

Section 12. NAC 637.190 as amended in Section 4 of LCB File Number R104-14 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. Any dispensing optician who became licensed before November 1 of a particular year is not required to complete continuing education courses or 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.

Section 13. NAC 637.200 as amended in Section 5 of LCB File Number R104-14 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 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]~~ *satisfy his or her continuing education requirement through any combination of live courses*, self-study courses or 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]~~ *satisfy his or her continuing education requirement through any combination of live courses*, self-study courses or courses offered over the Internet.

8. A dispensing optician with a limited license shall complete at least 12 hours of continuing education not later than January 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.

9. A dispensing optician shall complete at least 14 hours of continuing education not later than January 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.

10. A dispensing optician or dispensing optician with a limited license who completes additional hours of continuing education pursuant to subsection 8 or 9, 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.

11. 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.

Section 14. NAC 637.285 as amended in Section 9 of LCB File Number R104-14 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 enrolled in an educational program on the theory of ophthalmic dispensing approved by the Board. An apprentice dispensing optician who fails to enroll in such an educational program or fails to submit evidence to the Board as required by this subsection may not renew his or her license as an apprentice dispensing optician.~~

~~2.]~~ Except as otherwise provided in subsection ~~[3]~~ 2, an apprentice dispensing optician must complete his or her educational program required by subsection 1 not more than 40 months after the date of his or her initial licensure as an apprentice dispensing optician.

~~[3.]~~ 2. An apprentice dispensing optician may request an extension of the 40-month time limit imposed by subsection 2. 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. Upon receipt of a request for an extension pursuant to subsection 3, 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.]~~ **4.** 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.]~~ **5.** An apprentice dispensing optician who is not allowed to renew his or her license pursuant to subsection 1 or 5 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.

Section 15. NAC chapter 637 shall be amended to add the following new language:

A license for a dispensing optician or apprentice optician that is issued between November 1 of a particular year and January 31 of the following year is not required to be renewed until January 31 of the next year.

Section 16. NAC 637.440 and NAC 637.490 are hereby repealed.

TEXT OF REPEALED SECTIONS

NAC 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.

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 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.