



STATE OF NEVADA

BOARD OF DISPENSING OPTICIANS

4790 Caughlin Parkway #241; Reno, NV 89519 • Telephone 775 / 689-0132 • Fax 775 / 689-0133
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UPDATE! THIS HEARING WILL TAKE PLACE AT 2:30 PM ON MAY 22, 2018, NOT AT 1:00 PM AS STATED IN THE ORIGINAL NOTICE.

NOTICE OF INTENT TO ACT UPON A PROPOSED REGULATION R137-17

Notice of Hearing for the Adoption of a Permanent Regulation of the Nevada State Board of Dispensing Opticians

NOTICE IS HEREBY GIVEN that the Nevada State Board of Dispensing Opticians will hold a Public Hearing at ~~1:00 p.m.~~ 2:30 p.m., on May 22, 2018, at:

Clark County Library
1401 E. Flamingo Rd.
Las Vegas, NV 89119
Large Conference Room

The purpose of the hearing is to receive comments from all interested persons regarding the adoption of a regulation pertaining to Chapter 637 of the Nevada Administrative Code, LCB File No. R137-17. The following information is provided pursuant to the requirements of NRS 233B.0603:

1. The need for and the purpose of the proposed regulation.

The need and purpose of the proposed regulation is multifaceted and is intended to update various Board regulations to adapt them to present practices and needs, including the following as described by the Legislative Counsel Bureau:

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

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

Existing regulations provide that a dispensing optician who received his or her license by examination is not required to submit a copy of a certificate of continuing education for the first renewal of his or her license. (NAC 637.190) **Section 4** of this regulation instead

provides that a dispensing optician or dispensing optician with a limited license is not required to submit such a copy for the first renewal of a license. Therefore, no continuing education is required for the first year of licensure.

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

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

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

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

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

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

Section 13 of this regulation revises provisions governing the filing of motions with the Board of Dispensing Opticians and hearings and determinations thereon to limit the types of motions which may be filed and establish the timing of such filings. Existing regulations establish procedures for the drafting of a declaratory order or advisory opinion by a member of the Board of Dispensing Opticians with the assistance of the Attorney General, if necessary. (NAC 637.670) **Section 14** of this regulation provides that the member of the Board may be assisted by legal counsel other than the Attorney General.

2. Either the terms or substance of the proposed regulation or a description of the subjects and issues involved.

See text of R137-17 (attached hereto) for specific amendment language.

3. If the proposed regulation is a permanent regulation, a statement explaining how to obtain the approved or revised text of the proposed regulation prepared by the Legislative Counsel pursuant to NRS 233B.063.

A copy of the proposed language can be obtained by contacting the Nevada State Board of Dispensing Opticians, 4790 Caughlin Parkway #241, Reno, Nevada 89519-0907, telephone: (775) 689-0132, fax: (775) 689-0133, e-mail: info@nvopticians.org.

4. A statement of the estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately and, in each case, must include:

- (a) Both adverse and beneficial effects.

There are no anticipated adverse economic effects on the opticianry profession or the public. A beneficial effect is the fee for renewal of an apprentice or ophthalmic license issued after November 1 of the renewal year will be waived.

- (b) Both immediate and long term effects.

There are no anticipated immediate or long-term economic effects on the opticianry profession or the public except that the aforementioned renewal fees will be waived when the regulation becomes effective.

5. A statement identifying the methods used by the Nevada State Board of Dispensing Opticians in determining the impact on a small business prepared pursuant to subsection 3 of NRS 233B.0608:

The Board discussed and crafted the language that ultimately became R137-17 at its regular meetings on October 12, 2016, December 14, 2016, April 5, 2017, August 23, 2017, and October 11, 2017. At each such meeting, some of the Board's licensees were in attendance, and several spoke as to various aspects of the drafts at issue. Based upon the discussions, the Board made some changes to the proposed language. No participant in any of the discussions presented any evidence or argument that the proposed drafts would have a positive or negative impact on small businesses.

On December 18, 2017, the Board held a workshop regarding the language that became R137-17. Attending and participating in the workshop were some of the Board's licensees. No participant in the discussion presented any evidence or argument that the proposed language would have a positive or negative impact on small businesses.

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

There will be no significant cost to the Nevada State Board of Dispensing Opticians for enforcement of the proposed regulation.

7. A description of any regulations of other state or local government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.

There are no similar regulations of other state or government agencies that the proposed regulations overlap or duplicate.

8. If the regulation is required pursuant to federal law, a citation and description of the federal law.

This proposed regulation is not required by federal law.

9. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.

This proposed regulation does not include any provision that is more stringent than a federal regulation that regulates the same activity.

10. The time when, the place where, and the manner in which interested persons may present their views regarding the proposed regulation.

Persons wishing to comment upon the proposed action of the Nevada State Board of Dispensing Opticians may appear and make oral comment at the scheduled public hearing, or may address their comments, data, views or arguments, in written form, to the Nevada State Board of Dispensing Opticians, Attention: Corinne Sedran, Executive Director, at 4790 Caughlin Parkway #241, Reno, Nevada 89519-0907, telephone: (775) 689-0132, fax: (775) 689-0133, e-mail: info@nvopticians.org. Written submissions must be received by Nevada State Board of Dispensing Opticians on or before May 14, 2018. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Nevada State Board of Dispensing Opticians may proceed immediately to act upon any written submission.

Copies of this notice and the regulations to be adopted or amended will be available at the Nevada State Board of Dispensing Opticians, 4747 Caughlin Parkway, Unit 2, Reno, Nevada. A copy of this notice and the regulation to be adopted or amended has been submitted for posting for inspection by members of the public during business hours at the Nevada State Library and Archives, 100 Stewart Street, Carson City, Nevada. Copies of this notice and the proposed regulation will be mailed to members of the public upon request.

This notice and the text of the proposed regulation has been submitted to the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the Internet at <http://www.leg.state.nv.us>. This information is also available at the Nevada State Board of Dispensing Opticians' website at <http://nvopticians.org>.

Upon adoption of any regulation, the agency, if requested to do so by an interested person either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

This Notice of Hearing has been deposited at the following locations:

Nevada State Library and Archives - 100 North Stewart Street, Carson City, Nevada 89701
Nevada State Board of Dispensing Opticians – 4747 Caughlin Parkway, Reno, Nevada 89519
Carson City Library – 900 N. Roop Street, Carson City, Nevada 89701
Churchill County Library - 553 S. Maine Street, Fallon, Nevada 89406
Clark County Library – 1401 E. Flamingo Road, Las Vegas, Nevada 89119
Douglas County Public Library - 1625 Library Lane, Minden, Nevada 89423
Elko County Library - 720 Court Street, Elko, Nevada 89801
Esmeralda County Library - 10 Montezuma Dr., Silver Peak, Nevada 89047
Eureka Branch Library - 80 South Monroe Street; P.O. Box 293; Eureka, NV 89316
Humboldt County Library – 85 E. 5th Street, Winnemucca, Nevada 89445
Lincoln County Library – 63 Main Street, Pioche, Nevada 89043
Lyon County Central Library – 20 Nevin Way, Yerington, Nevada 89447
Mineral County Library – 110 1st Street, Hawthorne, Nevada 89415
Pershing County Library – 1125 Central Avenue, Lovelock, Nevada 89419
Storey County Library - 95 South R Street, Virginia City, Nevada 89440
Tonopah Library – 167 S. Central Street, Tonopah, Nevada 89049
Washoe County Library – 301 S. Center Street, Reno, Nevada 89505
White Pine County Library – 950 Campton Street, Ely, Nevada 89301

A copy of this notice of intent to act upon a regulation has been e-mailed to all licensees of the Nevada State Board of Dispensing Opticians for whom the Board has permission to contact via listserv, and to all persons who have requested in writing that they be placed upon a mailing list, which is maintained by the Nevada State Board of Dispensing Opticians for this purpose.