

Recommendations Pursuant to Section 3 of Executive Order 2023-004:

Nevada Board of Dispensing Opticians

The following recommendations are respectfully submitted pursuant to Section 3 of Executive Order 2023-004. The Nevada Board of Dispensing Opticians (Board) does not believe eliminating licensure for opticians and apprentice opticians is in the best interest of the public; however, three main aspects of phasing out licensure are discussed below: 1) current roles and responsibilities served by the Board, 2) legal and administrative tasks related to eliminating licensure, and 3) how the roles and responsibilities currently served by licensure might be addressed by other means.

ROLES AND RESPONSIBILITIES SERVED BY CURRENT LICENSING REQUIREMENTS

Pursuant to NRS Chapter 637, the Board is tasked with protecting the public health, safety, and welfare by regulating the dispensing of prescription ophthalmic devices, primarily spectacles and contact lenses. Eyeglasses and their component parts (frames and lenses) and contact lenses are regulated as Class I and Class II-III medical devices by the U.S. Food and Drug Administration, respectively.¹ The FDA's guidelines inform the manufacture and various materials incorporated into a pair of spectacles or contacts. However, the most vital step in the production of a pair of lenses is the final customization of the product to meet the individual consumer's prescription needs. Verifying the final product is accurate and does not cause visual harm is a task left to the individual states.

Upon information and belief, there are 22 U.S. States and Puerto Rico which directly license dispensing opticians through a licensing board.² An additional 4 states require opticians to obtain a certificate of registration or similar to dispense ophthalmic devices.³ At least 3

¹ See, e.g., 21 C.F.R. §§ 886.5840-886.5850 (spectacles/prescription sunglasses); *id.* §§ 886.5918-886.5928 (contact lenses).

² The American Board of Opticianry and National Contact Lens Examiners ("ABO-NCLE") have compiled a list of opticianry licensing boards available at <https://www.abo-ncle.org/ABONCLE/ABONCLE/Communities/State-Licensing-Boards.aspx?hkey=32da630c-3663-4fd4-836d-e5d5fd2c1964>.

³ New Mexico requires all dispensing opticians to register with the State Board of Pharmacy. N.M. Stat. Ann. § 61-2-10.5(D) ("A person who is not a licensed optometrist or a licensed physician shall not sell or dispense a contact lens to a resident of this state unless he is registered with the board of pharmacy as a seller or dispenser of contact lenses").

In New Hampshire, it is "unlawful for any person to engage in the business of ophthalmic dispensing or the practice of dispensing contact lenses unless such person is registered" with the office of professional licensure and certification with continuing education required for renewal. N.H. Rev. Stat. Ann. §§ 327-A:2, 327-A:14.

Utah requires opticians to obtain a certificate from the ABO-NCLE to fit contact lenses. Utah Code Ann. § 58-16a-305(3)(a).

Kansas similarly requires registration before any person may dispense contact lenses. Kan. Stat. Ann. § 65-4967.

more states only allow licensed optometrists or ophthalmologists to dispense certain ophthalmic devices.⁴ Consequently, the dispensing of ophthalmic devices is regulated in more than half of the states.

In addition to the 29 states that restrict dispensing authority to licensed or certified/registered opticians, optometrists, or ophthalmologists, several more states impose other statutory restrictions on dispensing which fall under the Board's purview in Nevada. Such additional restrictions include, without limitation, only allowing optometrists or ophthalmologists to render assistance in the selection, fit, verification, measurement, or use of any instrumentation for dispensing contact lenses or glasses.⁵

Nevada currently provides consumer protections related to ophthalmic dispensing through the direct licensure of opticians and apprentice opticians. Apprentice opticians are required to demonstrate their competence at filling prescription orders via a combination of formal education and on-the-job training requirements, as well as by passing national certification exams. Additionally, NRS Chapter 637 adopts by reference the standards set by the American National Standards Institute (ANSI), which ensure dispensed products are accurate to the consumer's prescription within a specific margin of error.

CHANGES REQUIRED TO PHASE OUT LICENSURE

Eliminating licensure for opticians and apprentice opticians in Nevada would require the following statutory changes and administrative tasks:

- Repeal of Chapter 637 of the Nevada Revised Statutes and Nevada Administrative Code and/or passage of new laws specifying how licensure will be eliminated. Any statutory changes would need to address whether licensure would be eliminated immediately or phased out over time, as well as how to handle apprentice opticians already in the process of obtaining the education and training required for licensure as opticians under the current statute.

⁴ Illinois specifically prohibits "the dispensing of contact lenses by anyone other than a licensed optometrist, licensed pharmacist, or a physician licensed to practice medicine in all of its branches" 225 Ill. Comp. Stat. 80/3(c). North Dakota similarly makes it "unlawful for any person, or any entity other than a licensed optometrist or a licensed physician to dispense, fit, or prescribe to the public contact lenses, or any medical appliance having direct contact with the cornea of the eye." N.D. Cent. Code § 43-13-15.

Montana prohibits any person from dispensing contacts unless under the supervision of a licensed optometrist. Mont. Code Ann. § 37-10-301; *see also id.* § 37.10-302 (exempting certain sales of glasses); 28 A.G. Op. 46 (1959) (Montana Attorney General Opinion stating that "Only duly licensed medical practitioners, commissioned officers of the U.S. Armed Forces whose regular duty includes eye care and treatment, and duly licensed optometrists may prescribe and fit a contact lens or lenses or dispense an ophthalmic lens or lenses in this state.").

Alabama requires authorization from a licensed optometrist before an optical dispensary may dispense contact lenses, although dispensing of glasses is allowed. Ala. Code § 32-24-4(b).

⁵ *See e.g., Idaho*, Idaho Code § 54-1501 (optometrists responsible for adapting lenses and correcting defects); Mississippi, Miss. Code Ann. § 73-19-61 (requiring optical dispenser to direct wearers of optical devices to a licensed optometrist for verification and fit purposes).

- Notification to all licensees of elimination of licensing requirements.
- Shutting down of Board's online licensing programs and cancellation of contract for service of said programs.
- Transferal of all Board records and other property, whether physical or digital, to the appropriate State agencies.
- Cancellation or fulfillment of any contracts related to the Board's office including rental agreements, service agreements for phone, fax, internet, etc., and elimination of all online accounts.
- Closure of all financial accounts of the Board and transferal of funds to the appropriate State agency.
- Dismissal of staff and fulfillment of any staff contracts related to insurance, benefits, sick and vacation pay, etc.

ROLES AND RESPONSIBILITIES OF THE STATE ABSENT LICENSURE

Eliminating licensure for opticians and apprentice opticians would require the State to protect the public's health and safety via other measures. As stated above, NRS Chapter 637 adopts by reference the American National Standards Institute (ANSI) standards for ensuring ophthalmic products are accurate to consumers' prescriptions before they are dispensed.⁶ To provide consumer protections related to these devices, the State would need to adopt these standards elsewhere in the Nevada Revised Statutes or otherwise determine how to ensure these Class I-III medical devices meet national or other safety standards.

In addition to product standards, the State would need to determine whom to hold responsible should the products dispensed fail to meet these standards. As explained above, aside from the direct licensure of opticians, other states address these concerns by certifying/registering opticians, or limiting certain dispensing tasks to only licensed optometrists or ophthalmologists:

- Transitioning to a certification/registration model would require a complete restructuring of the provisions of NRS Chapter 637, or the repeal of Chapter 637 and enactment of new laws specifying the requirements for such certification, the standards for dispensing, and penalties for practicing without a certificate. The State would need to identify experts and stakeholders to provide guidance in the transition to this new model. This model would reduce licensing requirements, and likely the standard wage, for opticians in Nevada.
- Transitioning to a model that restricts dispensing activities to optometrists and ophthalmologists would require the repeal of NRS Chapter 637 and amendment of Chapter 636 (governing optometrists) and Chapter 630 (governing ophthalmologists). The Board of Optometry and the Board of Medical Examiners would need to identify experts and stakeholders to provide guidance in the

⁶ NRS 637.073(2).

transition to this new model. This model would eliminate the occupation of opticianry in Nevada.

- Complete deregulation of ophthalmic dispensing in Nevada is not recommended as it would leave consumers without any state-level protections or remedies for injuries caused by prescription ophthalmic devices that are improperly dispensed. It also does not reflect the national trend, as a majority of states restrict or regulate the practice in one way or another. This model would eliminate the occupation of licensed opticianry in Nevada.