

Nevada Board of Optometry PROPOSED changes to AB 77

Contact: Caren C. Jenkins, Executive Director
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Sec. 1 NO CHANGE

Sec. 2 Limit pharmaceutical agents prescribed by optometrists to include only those agents used to address conditions of the eye and its appendages. Also, allow optometrists to prescribe less dangerous pain medication than the current limit to prescribe hydrocodone, and remove optometrists' ability to prescribe dangerous or highly addictive opioids in schedules I and II. See example below:

NRS 636.024 "Pharmaceutical agent" defined. "Pharmaceutical agent" means:

1. any topical or oral drug used or prescribed by a licensee for the examination, management, or treatment of an abnormality, disease, or condition of the eye or its appendages, including, without limitation, any narcotic analgesic drug subject to the requirements of NRS 636.2882 or, added to schedule III, schedule IV or schedule V by the State Board of Pharmacy by regulation pursuant to NRS 453.146.

2. For the purposes of this chapter, "pharmaceutical agent" does not include schedule I or schedule II controlled substances.

Sec. 3. 1. *In any setting where optometry is practiced, an assistant may fit ophthalmic lenses or spectacle lenses if the assistant acts under the direct responsibility and personal supervision of a licensed optometrist.*

Remove the requirement for personal supervision.

Rationale: 'personal supervision' is ambiguous. A definition could not be settled on at the Board's stakeholders meetings, and we do not mean to imply the optometrist must be physically present.

• *In addition to the provisions of subsection 1, an assistant in any setting where optometry is practiced may perform any of the following activities under the direct responsibility and personal supervision of a licensed optometrist:*

- *Prepare a patient for examination.*
- *Collect preliminary data concerning a patient, including taking the medical history of the patient.*
- *Perform simple, noninvasive and nonsubjective testing of a patient in preparation for any subjective refraction, testing, evaluation, interpretation, diagnosis or treatment of the patient by the licensed optometrist.*

Delete non-subjective, as certain testing may require subjective judgment of the patient or assistant.

- *For an ophthalmic purpose, administer any cycloplegic or mydriatic agent or topical anesthetic that is not a controlled substance.*

Add ability to use an ophthalmic device or oversee ocular exercises, visual training, vision therapy or visual rehabilitation as directed by an optometrist.

Rationale: These are tasks easily delegated to trained staff. The optometrist would still be performing the doctoral duties of refraction, examination, diagnosis, and management.

- *As used in this section, "assistant" means a person employed to assist an optometrist as authorized in this section.*

Require assistant to be employed by the optometrist or employed by the medical provider or facility with which the optometrist is offering services.

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Rationale: The assistant must not be supervised by a non-optometrist or his/her allegiance may be influenced to align with non-optometric goals. The assistant must be an employee of the optometrist, or of the medical provider or medical facility affiliated with the optometrist. Rationale: If a problem were to arise, there needs to be clear delineation to know the matter is under the Board's jurisdiction. The assistant should not be the employee of an optical retailer from which the optometrist leases space, as this would tend to impair the optometrist's independent clinical judgment.

Also, require that the final eye exam must be performed by the optometrist in person to avoid optometrists from providing eye exams solely based on data collected by an assistant without examining the eye and interacting with the patient.

Sec. 4. 1. Notwithstanding any provision of this chapter to the contrary, a licensee, nonprofit or charitable organization, governmental agency or school in this State who obtains a certificate pursuant to this section may own or operate a mobile optometry clinic pursuant to this section. Applications for the issuance or renewal of a certificate to own or operate the clinic must be submitted on a form approved by the Board and include any fees established by the Board pursuant to subsection 3. As soon as practicable after receiving an application and the appropriate fees, the Board shall approve or deny the application based upon the criteria established by the Board pursuant to subsection 3. A certificate issued to own or operate a mobile optometry clinic must be renewed on or before March 1 of each even-numbered year.

Remove ability of non-profit or charitable organization, governmental agency or school to obtain a mobile certificate so that only optometrists can obtain such certification, and limit mobile clinics to serving government agencies, patients with mobility impairments, under-served populations, underprivileged populations, or academic programs.

Rationale: The mobile clinic must be optometrist owned and operated, so it is clear that there is not outside influence on the optometrist's independent judgement and control. If a problem were to arise, we would know it falls under our Board's jurisdiction. The limitation on populations is suggested for proper oversight of the licensees. When there is a public complaint, it is hard to do verification when they are traveling from place to place. The concern is for protection of public health, and being able to maintain consistent, quality care.

- *A certified mobile optometry clinic may include any equipment required to operate the clinic, including, without limitation, a motor vehicle or a motor vehicle and trailer, which may be moved from one location to another. Any optometric services available at the clinic must be provided under the direction, control and personal supervision of a licensee.*

Remove personal supervision and require that the final eye examination must be provided by the optometrist in person.

Rationale: Eye exams and final diagnosis depend on having a trained and licensed medical provider look into the patient's eye - personally.

- *The Board shall adopt:*
- *Regulations setting forth:*
 - *The requirements for the issuance and renewal of a certificate to own or operate a mobile optometry clinic; and*
 - *The amount of the fees for the issuance and renewal of the certificate; and*

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- *Any other regulations necessary to carry out the provisions of this section.*

Sec. 5. **NO CHANGE**

Sec. 6. NRS 636.016 is hereby amended to read as follows:

“Advertise” means the commercial use of any medium, including, but not limited to, the **Internet**, radio, ~~or~~ television, ~~or a~~ newspaper, magazine, sign, or other printed ~~matter,~~ *or electronic medium*, by an optometrist to bring the services or materials offered by the optometrist to the attention of members of the general public

Change the examples list to include the Internet, brochure, business card, and add application of this section to an unlicensed person

Sec. 7: **NO CHANGE**

Sec. 8. NRS 636.019 is hereby amended to read as follows:

“Diagnostic pharmaceutical agents” means ~~topical ophthalmic anesthetics and topical cycloplegics, miotics and mydriatics.~~ *any agents used to examine and diagnose conditions of the eye.*

Make changes to specify that the diagnostic agent used to diagnose conditions of the eye or adnexa may be oral or topical and must be an agent used to diagnose conditions of the eye or adnexa.

Requested by the Academy of Ophthalmology

Sec. 9 **NO CHANGE**

Sec. 10: NRS 636.025 is hereby amended to read as follows:

1. The act set forth in this section, whether done severally, collectively or in combination with other acts that are not set forth in this section constitute practice in optometry within the purview of this chapter:

(a) Advertisement or representation as an optometrist.

(b) Adapting, ~~or~~ *replacing, duplicating*, prescribing or dispensing, without a **valid** prescription by a practitioner of optometry or medicine licensed in this State, any ophthalmic lens, frame or mounting, or any part thereof, for correction, relief or remedy of any abnormal condition or insufficiency of the eye or any appendage or visual process. The provisions of this paragraph do not prevent, ~~under extraordinary or exigent circumstances~~, an optical mechanic from doing the mere mechanical work **of repairing** ~~or replacement or duplication~~ of the ophthalmic lens, ~~if the optical mechanic receives a valid prescription from the person for whom the mechanical work is performed~~, or prevent a licensed dispensing optician from engaging in the practice of ophthalmic dispensing ~~or~~, *if the optician receives a valid prescription from the person for whom the ophthalmic dispensing is performed.*

The Board’s changes in section (b) above remove the language that would imply an optician or optical mechanic cannot repair glasses without a valid prescription, but that there must be confirmation of a valid prescription to create the ophthalmic lenses themselves. This change is offered in response to testimony by Dispensing Opticians,

(c) The examination, **evaluation, diagnosis, and treatment** of the human eye and its appendages, the measurement of the powers or range of human vision ~~or~~, *by any means, including, without limitation, the use of an autorefractor or other automated testing device, unless performed under the direct responsibility and personal supervision of a licensed optometrist as authorized in section 3 of this act,*

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the determination of the accommodative and refractive states of the eye or the scope of its function in general, or the diagnosis or determination of any visual, muscular, neurological, interpretive or anatomic anomalies or deficiencies of the eye or its appendages or visual processes.

The changes in section (c) elaborate on the duties assigned to the optometrist, and removes “personal supervision” for the same rationale provided previously

(d) Prescribing, directing the use of or using any optical device in connection with ocular exercises, orthoptics, *vision rehabilitation*, *vision therapy* or visual training.

(e) The prescribing of contact lenses.

(f) The measurement, initial fitting as defined in NRS 636.387, or adaptation of contact lenses to the human eye except under the direction, and responsibility and ~~personal supervision~~ of ~~[a physician, surgeon or]~~ an optometrist licensed in the state of Nevada ~~[.]~~ *as authorized in section 3 of this act.*

The changes in section (f) were added after input from stakeholders to better clarify the roles opticians and optometrists have, and removes “personal supervision”.

(g) The topical use of ~~[diagnostic]~~ pharmaceutical agents to determine any visual, muscular, neurological, interpretive or anatomic anomalies or deficiencies of the eye or its appendages or visual process.

(h) Prescribing, directing the use of or using a ~~[therapeutic]~~ pharmaceutical agent or device to treat an abnormality of the eye or its appendages.

In section (h), adding the word “device” makes this a more comprehensive statement, as optometrists prescribe and use devices currently.

IN ITEMS (i), (j), and (l), below, remove the word “surgically”, and remove item (k) entirely. These changes were suggested by the Nevada Academy of Ophthalmology

(i) ~~[Removing]~~ *Surgically removing* a foreign object from the surface or epithelium of the eye.

(j) *Surgically removing eyelashes.*

(k) *Surgically removing any superficial lesion of the eye or adnexa.*

(l) *Surgically closing the lacrimal punctum of the eye.*

(m) The ordering or performing of laboratory tests *or imaging* to assist in the diagnosis of an abnormality of the eye or its appendages.

Allow available diagnostic lab tests an optometrist can easily perform in-office

2. The provisions of this section do not authorize an optometrist to engage in any practice which includes, but is not limited to:

~~(a) the incision or suturing of the eye or its appendages; or~~

~~(b) The use of lasers for surgical purposes.~~

Any procedure using an instrument, including a laser, scalpel or needle, in which human tissue is cut, burned, vaporized, by incision, injection, ultrasound, laser, infusion, cryotherapy, radiation, or by other means. The term includes a procedure using an instrument which requires closure of human tissue by suture, clamp, or other such device.

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. The changes in section 2 were proposed by the Nevada Academy of Ophthalmology.

Sec. 11 through 15: NO CHANGE

Sec. 16. NRS 636.110 is hereby amended to read as follows:

636.110 1. Except as otherwise provided in subsection 3, all money coming into possession of the Board must be deposited by the Executive Director in a special fund to be expended for payment of compensation and expenses of members of the Board and for other necessary or proper purposes in the administration of this chapter. The Executive Director shall deposit the money in banks, credit unions, savings and loan associations or savings banks in this State ~~+~~ *or invest the money in treasury bills or notes of the United States.*

2. The Board may delegate to a hearing officer or panel its authority to take any disciplinary action pursuant to this chapter, impose and collect administrative fines and penalties therefor and forward the money therefrom to the Executive Director for deposit in banks, credit unions, savings and loan associations or savings banks in this State ~~+~~ *or investment in treasury bills or notes of the United States.*

Remove amendments to this section.

Sec. 17. NO CHANGE

Sec. 18. NRS 636.125 is hereby amended to read as follows:

636.125 The Board may adopt *policies*, rules and regulations necessary to carry out the provisions of this chapter.

Delete "rules" from current language. Policies are non-binding direction and can not be used as the basis for disciplinary action. Rather, they provide suggestions and guidance to licensees.

Sec. 19 NO CHANGE

Sec. 20. NRS 636.143 is hereby amended to read as follows: 636.143 ~~[1. The]~~ *At least once every 2 years, the Board shall review and, if the Board deems it necessary, establish ~~[within the limits prescribed]~~ or revise* a schedule of fees for the following purposes or services, and within the following maximum amounts:

1. Examination related to licensure, a fee of not more than \$250;.
2. Application for the issuance or reinstatement of a license , a fee of not more than \$1200;
3. Issuance or renewal of a license, pro-rated quarterly for the remaining period of licensure, a fee of not more than \$1200
4. Application for the issuance or renewal of a certification to prescribe pharmaceutical agents; treat patients diagnosed with glaucoma; own, operate or practice in a mobile optometry clinic; or obtain other special certifications as established by this chapter, and its related regulations, a fee of of not more than \$1000.
5. Issuance or renewal of a license for additional practice locations other than the licensee's primary practice location, a fee of not more than \$500.
6. Individually verifying licensure or disciplinary status of a licensee in writing and by mail in response to a request, replacing a license or certificate previously issued, or responding to another special request, for individual services, a fee of not more than \$100.

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7. In addition to any other fee or penalty, the Board may impose a late fee not more than \$1000 for a licensee's failure timely to comply with any act required under this chapter.

With the passage of AB77 as amended, the Board will renew optometry licenses every two years, rather than the current annual renewal. The proposed maximum fees reflect the doubling of many of the current fee ceilings with a small increase to allow the flexibility to set fees as needed within those parameters without additional statutory changes. The Board recommends the addition of the above, and the deletion of the corresponding AB77 Sec. 20 language below, in response to suggestions from members of the Assembly Committee on Commerce and Labor.

1. Examinations.
2. Applications for the issuance of a license.
3. Renewal of a license.
4. Granting certification or issuing certificates.
5. Licensing of extended clinical facilities and other practice locations.
6. Any other service provided by the Board pursuant to this chapter.

Sec. 21 through 29: NO CHANGE

Sec. 30. NRS 636.255 is hereby amended to read as follows:

The Executive Director shall mail a notice of renewal to each licensee before February 1 of each *even-numbered* year. The failure of the Executive Director to notify a licensee does not excuse the licensee from the requirements of NRS 636.250.

Change "mail a notice of renewal" to "provide notice of the renewal deadline", so electronic and other forms of reliable communication is permitted.

Sec. 31. NRS 636.260 is hereby amended to read as follows:

636.260 1. Before March 1 of each *even-numbered* year, each licensee shall pay a renewal fee to the Executive Director in the amount ~~specified in~~ *established pursuant to* NRS 636.143. For the purposes of this subsection, the date of the postmark on any payment received by mail shall be deemed the date of receipt by the Executive Director.

- The renewal fee must be accompanied by satisfactory evidence that the licensee has, within the immediately preceding ~~12-month~~ *24-month* period, completed the required number

of hours in a course or courses of continuing education that have been approved by the Board. This evidence must be indicated on the form for proof of completion of continuing education that is furnished by the Board. The Board shall not require a licensee to complete more than ~~24~~ *48* hours of continuing education during each ~~year~~ *period of renewal*. The Board may waive the requirement that a licensee complete all or part of the required number of hours of continuing education upon good cause shown by the licensee.

Change the maximum continuing education requirement to 40 hours.

Rationale: Nevada is among the most demanding states in the nation for optometry CE hours, with few courses available live., especially in rural areas. Neighboring states impose a much lower hour requirement.

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- A licensee who is certified to administer and prescribe ~~therapeutic~~ pharmaceutical agents pursuant to NRS 636.288 must, at the time of paying the renewal fee, present evidence satisfactory to the Executive Director that, during the ~~12~~ 24 months immediately preceding the payment of the renewal fee, the licensee completed an educational or postgraduate program approved by the Board. The Board shall establish the number of hours for completion of the program which must be not less than ~~30~~ 60 hours nor more than ~~50~~ 100 hours.

Change the minimum biennial requirement for optometrists authorized to prescribe to 50 hours. See above for rationale.

Sec. 32. through 34 NO CHANGE

Sec. 35. NRS 636.286 is hereby amended to read as follows:

- An optometrist shall not administer or prescribe a ~~therapeutic~~ pharmaceutical agent unless the optometrist has obtained a certificate pursuant to NRS 636.288.
- Allow administration of pharmaceutical agents for diagnostic purposes without a certificate.**

Sec. 36 through Sec. 39 NO CHANGE

Sec. 40. NRS 636.2891 is hereby amended to read as follows:

~~636.2891 1. An optometrist whose initial license to practice optometry is issued on or after October 1, 2020, may treat a person with glaucoma without obtaining a certificate to treat persons diagnosed with glaucoma pursuant to NRS 636.2895 in addition to his or her license to practice optometry.~~

~~2. An optometrist whose initial license to practice optometry is issued before October 1, 2020, shall not treat a person diagnosed with glaucoma unless the optometrist has been issued a certificate by the Board pursuant to NRS 636.2895.~~

After discussion with various stakeholders, the Board would like to remove the language AB77 proposed to add to section 1 and 2, above, insert that the certificate to treat glaucoma may be obtained per NRS 636.2893 and NRS 636.2895, or per the new proposed 'glaucoma certification by endorsement' (below). The new glaucoma certification by endorsement is proposed at the end of this document.

~~2~~ 3. An optometrist ~~who~~, **regardless of whether he or she** has been issued a certificate to treat persons diagnosed with glaucoma pursuant to NRS 636.2895, **NRS 636.2893 or the glaucoma certification by endorsement**, shall refer a patient diagnosed with glaucoma to an ophthalmologist for treatment if any one of the following is applicable:

- (a) The patient is under 16 years of age.

The Academy of Ophthalmology recommends the following changes to (b) & (c) below.

(b) The patient has been diagnosed with ~~malignant glaucoma or neovascular glaucoma.~~ **any glaucoma other than open angle glaucoma.**

(c) The patient has been diagnosed with acute closed angle glaucoma. The provisions of this paragraph do not prohibit the optometrist from administering appropriate **non-surgical** emergency treatment to the patient.

~~-(d) The patient's glaucoma is caused by diabetes, and, after joint consultation with a physician who is treating the diabetes and an ophthalmologist, the physician or ophthalmologist~~

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~~determines that the patient should be treated by an ophthalmologist. If an optometrist determines that a patient's glaucoma is caused by diabetes, the optometrist shall consult with a physician and ophthalmologist in the manner provided in this paragraph.~~

Sec. 41. NRS 636.2893 is hereby amended to read as follows:
636.2893 The Board shall adopt regulations that prescribe the requirements for the issuance of a certificate to treat persons diagnosed with glaucoma pursuant to NRS 636.2895. The requirements must include, without limitation:

1. A license to practice optometry in this State;
2. The successful completion of the "Treatment and Management of Ocular Disease Examination" administered by the National Board of Examiners in Optometry ~~on or~~ **after** ~~January 1, 1993,~~ or an equivalent examination approved by the Board; and
3. ~~Proof that each optometrist who applies for a certificate has treated at least 15 persons~~
~~who were:~~
 - ~~—(a) Diagnosed with glaucoma by an ophthalmologist licensed in this State; and~~
 - ~~—(b) Treated by the optometrist, in consultation with that ophthalmologist, for at least 12 consecutive months.~~

Leave paragraph 3 of Sec. 41 in statute.

Rationale: our current licensees need an avenue to glaucoma certification.

~~—4. A certificate to administer and prescribe pharmaceutical agents issued pursuant to NRS 636.288.~~

Sec. 42. NRS 636.295 is hereby amended to read as follows:
636.295 The following acts, conduct, omissions, or mental or physical conditions, or any of them, committed, engaged in, omitted, or being suffered by a licensee, constitute sufficient cause for disciplinary action:

1. ~~Affliction of the licensee with any communicable disease likely to be communicated to other persons.~~
- ~~—2.~~ Commission by the licensee of a felony relating to the practice of optometry or a gross misdemeanor involving moral turpitude of which the licensee has been convicted and from which he or she has been sentenced by a final judgment of a federal or state court in this or any other state, the judgment not having been reversed or vacated by a competent appellate court and the offense not having been pardoned by executive authority.
 - ~~3. Conviction of any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive.~~
- ~~—4.~~ **2.** Commission of fraud by or on behalf of the licensee in obtaining a license or renewal thereof, or in practicing optometry thereunder.

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- ~~{5.}~~ **3.** Habitual drunkenness or addiction to any controlled substance.
- ~~{6.}~~ **4.** Gross incompetency.
- ~~{7.}~~ **5.** Affliction with any mental or physical disorder or disturbance seriously impairing his or her competency as an optometrist.
- ~~{8.}~~ **6.** Making false or misleading representations, by or on behalf of the licensee, with respect to optometric materials or services.
- ~~{9.}~~ **7.** Practice by the licensee, or attempting or offering so to do, while in an intoxicated condition.
- ~~{10.}~~ **8.** Perpetration of unethical or unprofessional conduct in the practice of optometry.
- ~~{11.} ——— Knowingly procuring or administering a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is not approved by the United States Food and Drug Administration, unless the unapproved controlled substance or dangerous drug:~~
- ~~—— (a) Was procured through a retail pharmacy licensed pursuant to chapter 639 of NRS;~~
- ~~—— (b) Was procured through a Canadian pharmacy which is licensed pursuant to chapter 639 of NRS and which has been recommended by the State Board of Pharmacy pursuant to subsection 4 of NRS 639.2328; or~~
- ~~—— (c) Is marijuana being used for medical purposes in accordance with chapter 453A of NRS.~~
- ~~{12.}~~ **9.** Any violation of the provisions of this chapter or any regulations adopted pursuant thereto.
- ~~{13.}~~ **10.** Operation of a medical facility, as defined in NRS 449.0151, at any time during which:
- The license of the facility is suspended or revoked; or
 - An act or omission occurs which results in the suspension or revocation of the license pursuant to NRS 449.160.
- ↪ This subsection applies to an owner or other principal responsible for the operation of the facility.
- ~~{14.} ——— Failure to obtain any training required by the Board pursuant to NRS 636.2881.~~
- ~~{15.}~~ **11.** Failure to comply with the provisions of NRS 453.163, 453.164, 453.226, 639.23507, 639.2391 to 639.23916, inclusive, and any regulations adopted by the State Board of Pharmacy pursuant thereto.
- ~~{16.}~~ **12.** Fraudulent, illegal, unauthorized or otherwise inappropriate prescribing, administering or dispensing of a controlled substance listed in schedule II, III or IV.
- Add failure to comply with the provisions of NRS chapter 89 as it relates to professional entities and associations that offer optometric services.**
- Add any violation of a provision of state or federal law or regulation related to or involving the practice of optometry, including but not limited to:**
- (a) **organizational structure or control of an optometric practice or entity,**
 - (b) **the maintenance, availability or distribution of patient medical records,**
 - (c) **improper disclosure of protected patient information, or**
 - (d) **fraud.**

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Rationale: The Board and the profession nationally has experienced a growing trend of corporate entities influencing greatly, and in some instances owning, part or all of optometry practices. A prohibition on such ownership is currently in our statutes., but the Board is unable to discover such ownership in many entities due to protections of the identity of shareholders, members and other owners of corporations and Limited Liability Companies (LLCs). Professional Corporations laws already exist in statute (Chapter 89) to tie the existence of an entity and all of its owners to valid professional licensure in Nevada. Non-licensed individuals are prohibited from owning any portion of a Professional Corporation, Professional Partnership or Professional LLC.

Additionally, the Board has intervened in a variety of instances when, on the death or disability of a licensee, the patient records held by the licensee become unavailable to the patients. This severely impedes a patient's ability to obtain continued care. Non-compliance with the federal laws regulating medical records and patient information by Nevada licensees, as they relate to optometrists, should be matters under the Board's jurisdiction and included as acts subjecting licensees to possible disciplinary action.

NRS 636.145 Unlawful practice of optometry; penalties.

The revisions in green and orange represent recommendations of the Office of the Attorney General to bring Chapter 636 into alignment with the requirements of the Open Meeting Law and Administrative Procedures Act.

1. A person shall not engage *or offer to engage through advertising or other means* in the practice of optometry in this State unless:

(a) The person has obtained a license pursuant to the provisions of this chapter; and

(b) Except for the year in which such license was issued, the person holds a current renewal card for the license.

2. *The Board shall conduct an investigation of each complaint which sets forth reason to believe that a person has engaged in the practice of optometry in this state without a license.*

3. In addition to any other penalty prescribed by law, if the Board, *after an investigation and hearing held pursuant to NRS Chapter 622, NRS Chapter 622A, and NRS Chapter 233B,* determines that a person has committed any act described in subsection 1, the Board may:

(a) Issue and serve on the person an order to cease and desist *from the practice of optometry* until the person obtains *the proper license* from the Board ~~the proper license or otherwise demonstrates that he or she is no longer in violation of subsection 1. An order to cease and desist must include a telephone number with which the person may contact the Board.~~

(b) Issue a citation to the person. ~~A citation issued pursuant to this paragraph must be in writing, describe with particularity the nature of the violation and inform the person of the provisions of this paragraph. Each activity in which the person is engaged constitutes a separate offense for which a separate citation may be issued. To appeal a citation, the person must submit a written request for a hearing to the Board not later than 30 days after the date of issuance of the citation.~~

~~(c) Assess against the person an administrative fine as provided in NRS 636.420.~~

(c) ~~(d)~~ Impose any combination of the penalties set forth in paragraphs (a), and (b) ~~and (c).~~

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4. Unless the Board determines that extenuating circumstances exist, the Board shall forward to the appropriate law enforcement agency any substantiated information submitted to the Board concerning a person who practices or offers to practice optometry without the appropriate license issued pursuant to the provisions of this chapter. citation issued pursuant to subsection 2 must be in writing and describe with particularity the nature of the violation. The citation also must inform the person of the provisions of subsection ____

5. Each instance of unlicensed activity constitutes a separate offense for which a separate citation may be issued.

~~4.~~ Commission of fraud by or on behalf of the licensee in obtaining a license or a renewal thereof, or in practicing optometry thereunder.

Add. Provided any false or untrue statement to the Board.

~~5.~~ Habitual drunkenness or addiction to any controlled substance.

~~6.~~ Gross incompetency.

Add. Engaged in gross malpractice, repeated malpractice, or gross negligence in the practice of optometry.

~~7.~~ Affliction with any mental or physical disorder or ~~disturbance condition that seriously impairing~~ *currently impairs* his or her competency as an optometrist.

~~8.~~ Making false or misleading representations, by or on behalf of the licensee, with respect to optometric materials or services.

~~9.~~ Practice by the licensee, or attempting or offering so to do, while ~~in an intoxicated condition.~~ *impaired by alcohol or drugs, or other substance.*

. Perpetration of unethical or unprofessional conduct in the practice of optometry.

Add. Had a license or certificate to practice optometry suspended or revoked or has had any other disciplinary action taken against the person by another state or territory of the United States, the District of Columbia or a foreign country, if at least one of the grounds for discipline is the same or substantially equivalent to any ground contained in this chapter.

Add. Failed to report to the Board within 30 days the revocation, suspension or surrender of, or any other disciplinary action taken against, a license or certificate to practice optometry issued to the person by another state or territory of the United States, the District of Columbia or a foreign country.

Add. Violated or attempted to violate directly or indirectly, or assisted in or abetted the violation of or conspired to violate a provision of this chapter.

Add. Been convicted of abuse or fraud in connection with any state or federal program which provides medical assistance.

Add. Been convicted of submitting a false claim for payment to the insurer of a patient or client.

Add. Engaged in unethical or unprofessional conduct as defined by the Board.

Sec. 43 through Sec. 48 NO CHANGES

Sec. 49. NRS 636.350 is hereby amended to read as follows:

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636.350 1. An optometrist shall not practice optometry , *be employed by or own all or any portion of an optometry practice* under an assumed or fictitious name unless the optometrist has been issued a certificate of registration by the Board to practice optometry under ~~an~~ *the* assumed or fictitious name ~~and~~ *and at a specific location*.

2. An optometrist who applies for a certificate of registration to practice optometry under an assumed or fictitious name must submit to the Board an application on a form provided by the Board. *The application must be accompanied by proof satisfactory to the Board that the assumed or fictitious name meets the requirements of chapter 602 of NRS and has been registered or otherwise approved by any appropriate governmental entity, including, without limitation, any incorporated city or unincorporated town in which the optometrist practices, if the registration or other approval is required by the governmental entity.*

3. Each optometrist who is issued a certificate of registration pursuant to this section shall:

(a) Comply with the provisions of chapter 602 of NRS; and

(b) Display or cause to be displayed near the entrance of his or her business the full name of the optometrist and the words or letters that designate him or her as an optometrist. *Also, require the name of any optometrist who regularly provides optometric services at that location to be listed.*

(c) The Board shall adopt regulations that prescribe the requirements for the issuance of a certificate of registration to practice optometry under an assumed or fictitious name.

(d) As used in this section, “assumed or fictitious name” means a name that is not the real name of each person who owns an interest in a business.

Rather than using “real name”, suggest that it be “a name other than the name of the optometrist printed on his or her optometry license”.

Sec. 50 through Sec. 62 NO CHANGE

Sec. 63 through Sec. 64

Must be updated with these amendments

Sec. 65. NO CHANGE

Additional amendments proposed to Chapter 636

NRS 636.027 Applicability of chapter: Inapplicability to licensed physicians and surgeons. This chapter *shall apply to any person licensed to practice optometry in the State, and to any person practicing optometry in the State.* This chapter shall not be construed to apply to physicians and surgeons duly licensed to practice in this State.

Allows the Board to exercise its jurisdiction over the unlicensed practice of optometry.

NRS 636.107 Certain records relating to complaint or investigation deemed confidential; certain records relating to disciplinary action deemed public records.

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1. Except as otherwise provided in this section *and NRS 239.0115*, a complaint filed with the Board, all documents and other information filed with the complaint and all documents and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential, *unless the person submits a written statement to the Board requesting that such documents and information be made public records.*

2. ~~[The] A complaint or other~~ *The charging* document ~~filed by~~ *with the* Board to initiate disciplinary action *pursuant to chapter 622A of NRS* and all documents and information considered by the Board when determining whether to impose discipline are public records.

3. Subsections 1 and 2 do not prohibit the Board from communicating or cooperating with or providing any documents or other information in the Board's possession regarding a licensee or pending investigation to any other licensing board or any other agency that is investigating a person, including, without limitation, a law enforcement agency, a federal government agency, or a licensing board in this State or another state or territory of the United States. If information regarding an investigation is provided to another agency pursuant to this section, it retains its confidential status and may not be provided to other persons and the other agency shall treat it as confidential information inasmuch as practicable.

(Note that green insertions and orange strikethroughs are amendments proposed by the Office of the Attorney General)

NRS 636.145 Unlawful practice of optometry; penalties.

1. A person shall not engage in the practice of optometry in this State unless:

- (a) The person has obtained a license pursuant to the provisions of this chapter; and
- (b) Except for the year in which such license was issued, the person holds a current renewal card for the license.

2. The Board shall conduct an investigation of each complaint which sets forth reason to believe that a person has engaged in the practice of optometry in this state without a license.

3. In addition to any other penalty prescribed by law, if the Board, *after an investigation and hearing held pursuant to NRS Chapter 622, NRS Chapter 622A, and NRS Chapter 233B*, determines that a person has committed any act described in subsection 1, the Board may:

(a) Issue and serve on the person an order to cease and desist *from the practice of optometry* until the person obtains *the proper license* from the Board ~~the proper license or otherwise demonstrates that he or she is no longer in violation of subsection 1. An order to cease and desist must include a telephone number with which the person may contact the Board.~~

(b) Issue a citation to the person. ~~A citation issued pursuant to this paragraph must be in writing, describe with particularity the nature of the violation and inform the person of the provisions of this paragraph. Each activity in which the person is engaged constitutes a separate offense for which a separate citation may be issued. To appeal a citation, the person must submit a written request for a hearing to the Board not later than 30 days after the date of issuance of the citation.~~

~~(e) Assess against the person an administrative fine as provided in NRS 636.420.~~

~~(c) (d)~~ Impose any combination of the penalties set forth in paragraphs (a), and (b) ~~and (e)~~.

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4. Unless the Board determines that extenuating circumstances exist, the Board shall forward to the appropriate law enforcement agency any substantiated information submitted to the Board concerning a person who practices or offers to practice optometry without the appropriate license issued pursuant to the provisions of this chapter.

5. Each instance of unlicensed activity constitutes a separate offense for which a separate citation may be issued.

(Note that green insertions and orange strikethroughs are amendments proposed by the Office of the Attorney General)

NRS 636.290 Authority of Board.

1. A person licensed pursuant to the provisions of this chapter or engaged in the unlawful practice of optometry without a license may be disciplined by the Board for cause. **A person licensed to practice optometry in this State shall be subject to the jurisdiction of the Board for acts enumerated in this chapter regardless of license expiration, suspension or revocation.**

2. The Board is authorized to impose discipline on a licensee for a violation of this chapter or its related regulations in one or more of the following ways, with or without the imposition of a related financial penalty:

- a. Letter of Public Reprimand
- b. Order to Cease and Desist
- c. Order of Probation for a specified term, with or without conditions
- d. Order of Suspension for a specified term, with or without conditions
- e. Order of Revocation, with or without permission to apply for licensure at a future date

Outlines in one place the authorized penalties available to the Board.

NRS 636.373 Associations or other business relationships with physicians.

1. An optometrist may form an association or other business relationship with a physician to provide their respective services to patients.

2. If such an association or business relationship is formed, the optometrist may:

(a) Locate his or her office in the same place of business as the physician without a physical separation between the office and the place of business.

(b) Authorize the physician to have access to any medical records in the possession of the optometrist relating to a patient who is being treated by both the optometrist and the physician.

(c) Advertise and promote the services provided by the association or business consistent with the restrictions on advertising set forth in NRS 636.302.

3. This section does not authorize an optometrist to employ or be employed by a physician.

4. No optometrist shall be supervised, directly or indirectly, within the scope of the practice of optometry by any person who is not a Nevada-licensed optometrist.

5. No person, including an officer, employee, or agent of a commercial or mercantile establishment, who is not a Nevada-licensed optometrist, shall directly or indirectly control, dictate, or influence the professional judgment of the practice of optometry by a licensed optometrist, including but not limited to the level or type of care or services rendered.

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Rationale: Keeps the independent practice of optometry in the hands of the professional optometrist rather than allowing corporate or business bottom line interests to influence the standards of care provided to patients.

NRS 636.305 Complaint against licensee: Persons authorized to make complaint; particularity of charges.

1. A complaint may be made against a licensee by:

1. a. An ~~[agent]~~ *employee* or ~~[inspector employed by]~~ *contractor of* the Board;
2. b. Any ~~[other]~~ licensee~~[-]~~ or
- ~~[3.—Any aggrieved]~~ *other* person;

~~△ charging one or more of the causes for disciplinary action with such particularity as to enable the defendant licensee to prepare a defense—~~*alleging one or more grounds for disciplinary action set forth in NRS 636.295.*

2. When a complaint is filed with the Board, the Executive Director or his or her designee shall review the complaint. If after this review, the Executive Director or his or her designee determines that the complaint is not frivolous and alleges one or more grounds for disciplinary action set forth in NRS 636.295, the Board, through its Executive Director or his or her designee, shall cause the complaint to be investigated.

3. The Board shall retain all complaints received by the Board pursuant to this section for at least 10 years, including, without limitation, any complaints not acted upon.

(Note that green insertions and orange strikethroughs are amendments proposed by the Office of the Attorney General). Note: The defense only is an issue when a charging document is filed. Until then, complaints should be received, reviewed, and investigated.

NRS 636.310 Form and filing of complaint. A complaint ~~[must]~~:

1. Must be made in writing~~[- The original complaint and two copies must be filed with the Executive Director. A complaint may]~~ *and be signed and verified by the person making it.*

2. May not be filed anonymously. ~~[If a complaint is filed anonymously, the Board may accept the complaint but may refuse to consider the complaint if anonymity of the complainant makes processing the complaint impossible or unfair to the person who is the subject of the complaint.]~~
INSERT “Sworn” rather than “verified.”

3. If the Executive Director or his or her designee determines that a complaint filed with the Board concerns a matter within the jurisdiction of another regulatory body in title 54 of the NRS or NRS Chapter 437, the Executive Director or his or her designee shall refer the complaint to the other regulatory body.

4. Subsection 3 does not prevent the Executive Director or his or her designee from investigating a complaint which concerns a matter within the jurisdiction of the Board, and bringing that matter forward to the Board for further consideration if deemed warranted after an investigation, regardless whether the Executive Director or his or her designee refers the complaint to another regulatory body pursuant to subsection 3.

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5. Any member of the Board, employee of the Board, contractor of the Board, or an officer of the Board is immune from any civil liability for any decision or action taken in good faith and without malicious intent in carrying out the provisions of this section.

NRS 636.315—Procedure following filing of complaint; retention of complaints.

1.—~~Except as otherwise provided in NRS 636.338, as soon as practicable after the filing of a complaint, the Board shall notify the licensee against whom the complaint is filed and fix a date for its *initial* review of the complaint. If the Board receives a report pursuant to subsection 5 of NRS 228.420, a hearing must be held within 30 days after receiving the report. [The licensee must be allowed a reasonable amount of time to respond to the allegations of the complaint.] The Executive Director shall notify the licensee of the time, date and place fixed for the Board's *initial* review of the complaint.~~

2.—~~After reviewing the complaint, the Board shall dismiss the complaint or file a formal charge against the licensee. If a formal charge is filed, the Executive Director shall prepare the charge in accordance with the Board's regulations and send a copy to the licensee. The licensee must be allowed a reasonable amount of time to file a response to the charge.~~

3.—~~Within a reasonable time after the Executive Director sends a copy of the charge to the licensee, the Board shall fix the time, date and place for a hearing and the Executive Director shall notify the licensee thereof. *The licensee must be allowed a reasonable amount of time to respond to the complaint.*~~

4.—~~The Board shall retain all complaints received by the Board pursuant to this section for at least 10 years, including, without limitation, any complaints not acted upon.~~

(Note that **green** insertions and **orange** strikethroughs are amendments proposed by the Office of the Attorney General)

NRS 636.320 Public hearing of formal charge; rights of licensee. The *disciplinary hearing of a formal charge regarding an alleged ground for disciplinary action pursuant to NRS 636.295* must be conducted *pursuant to the requirements of NRS Chapter 622A, NRS Chapter 622, and NRS Chapter 233B.* publicly by the Board. The licensee against whom the charge is filed must be accorded the right to appear in person and by legal counsel, and given adequate opportunity to confront the witnesses against him or her, to testify and introduce the testimony of witnesses in his or her behalf, and to submit argument and brief in person or by counsel.

(Note that **green** insertions and **orange** strikethroughs are amendments proposed by the Office of the Attorney General)

NRS 636.325 Decision of Board; authorized disciplinary action; private reprimands prohibited; orders imposing discipline deemed public records.

1. ~~Upon conclusion of the hearing, or waiver thereof by the person against whom the charge is filed, the Board shall make and announce its decision. If the Board determines that the allegations included in the charge are true~~ *If the Board finds by a preponderance of evidence*

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that a person has engaged in one or more grounds for disciplinary action specified in NRS 636.295, it may take any one or more of the following actions:

- (a) Publicly reprimand the licensee *and imposing any terms or conditions deemed necessary by the Board;*
- (b) Place the licensee on probation for a specified or unspecified period *and imposing any terms or conditions deemed necessary by the Board;*
- (c) Suspend the person's license ~~licensee from practice for a specified or unspecified period not more than one year and imposing any terms or conditions deemed necessary by the Board;~~
- (d) Revoke the ~~person's licensee's~~ license *and imposing any terms or conditions for reinstatement deemed necessary by the Board;* ~~or~~
- (e) Impose an administrative fine pursuant to the provisions of [NRS 636.420](#);
- (f) *Limit the person's practice;*
- (g) *Suspend the enforcement of any penalty by placing the person on probation. The Board may revoke the probation if the person does not follow any conditions imposed;*
- (h) *Require the person to submit to the supervision of or counseling or treatment by a person designated by the Board. The person named in the complaint is responsible for any expense incurred for such services;*
- (i) *Impose and modify any conditions of probation for the protection of the public or the rehabilitation of the probationer;*
- (j) *Require the person to pay for the costs of remediation or restitution; or*
- (k) *Take any combination of the actions specified in (a) through (j).*

~~△ The Board may, in connection with a reprimand, probation or suspension, impose such other terms or conditions as it deems necessary.~~

~~2. If the Board determines that the allegations included in the charge are false or do not warrant disciplinary action, it shall dismiss the charge.~~

~~3.—~~The Board shall not issue a private reprimand.

43. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

~~NRS 636.330—Application for rehearing.—If the Board makes a decision which is adverse to the licensee, the licensee may apply for a rehearing within 15 days after the Board announces its decision. The Board shall grant or deny the application within a reasonable time thereafter. (Note that green insertions and orange strikethroughs are amendments proposed by the Office of the Attorney General) Note: Stricken language is not needed. This is in NRS 622A.~~

~~NRS 636.335—Rehearing: Notice to licensee; conduct; decision.—If the Board grants a rehearing, the Executive Director shall, as soon as is reasonably possible, notify the licensee of the time, date and place of the rehearing. The rehearing must be conducted in the same manner as the former hearing. Upon conclusion of the rehearing, or as soon as is reasonably possible, the Board shall make and announce its decision.~~

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(Note that **green** insertions and **orange** strikethroughs are amendments proposed by the Office of the Attorney General) Note: Stricken language is not needed. This is in NRS 622A.

~~NRS 636.336—Board to cooperate with other agencies investigating persons.—The Board shall, to the extent feasible, communicate or cooperate with or provide any documents or other information to any other licensing board or any other agency that is investigating a person, including a law enforcement agency.~~

(Note that **green** insertions and **orange** strikethroughs are amendments proposed by the Office of the Attorney General) Note: Already incorporated above.

NRS 636.337 Disciplinary action by hearing officer or panel: Procedural requirements; powers and duties of officer or panel; appeals.

1. Any disciplinary action taken by a hearing officer or panel pursuant to [NRS 636.110](#) is subject to the same procedural requirements which apply to disciplinary actions taken by the Board, and the officer or panel has those powers and duties given to the Board in relation thereto.

2. A decision of the hearing officer or panel relating to the imposition of an administrative fine or penalty is a final decision in a contested case. ~~Any party aggrieved by a decision of the officer or panel to revoke or suspend a license may appeal that decision to the Board.~~

~~NRS 636.341—Practicing or offering to practice without license: Reporting requirements of Board.—Unless the Board determines that extenuating circumstances exist, the Board shall forward to the appropriate law enforcement agency any substantiated information submitted to the Board concerning a person who practices or offers to practice optometry without a license issued pursuant to the provisions of this chapter.~~

(Note that **green** insertions and **orange** strikethroughs are amendments proposed by the Office of the Attorney General) .Note: Already incorporated above.

NRS 636.375 Manner of giving notices to licensees.

1. Service of process made under this chapter shall be made by one of the following methods:

- (a) Sending the document to be served to the person by certified mail at his or her last known address as indicated in the records of the Board, or*
- (b) Personal delivery of the document to be served upon the person.*

2. Service of process made under this chapter shall be deemed complete when a true and correct copy of the document, properly addressed and stamped is deposited in the United States mail, pursuant to subsection (1)(a) or when personal delivery is achieved, pursuant to subsection (1)(b).

3. Any notice *not* required to be *served pursuant to subsection 1 and 2* ~~given by the Board or the Executive Director to a licensee~~ may be transmitted by **[ordinary]**:

1. Ordinary, a. First-class, certified or registered mail, postage prepaid, addressed to the licensee at the location listed by the ~~[Executive Director for that]~~ licensee ~~[.]~~ *on his or her most recent change of address form or application for the renewal of his or her license or the last known address as indicated in the records of the Board for any other person;*

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~~2.~~ *b. Electronic mail to the address for electronic mail most recently provided by the licensee person to the Board; or*

~~3.~~ *c. Facsimile machine to the number most recently provided by the licensee person to the Board.*

(Note that green insertions and orange strikethroughs are amendments proposed by the Office of the Attorney General)

NRS 636.407 Injunctive relief. The Board may cause appropriate legal action to be taken in the district court of any county to secure an injunction or order restraining the unauthorized practice of optometry. *Such an injunction may be issued without proof of actual damage sustained by any person, this provision being a preventive as well as punitive measure and does not relieve any person from criminal prosecution for practicing without a license.*

(Note that green insertions and orange strikethroughs are amendments proposed by the Office of the Attorney General)

NRS 636.420 Administrative fines. *After notice and hearing pursuant to NRS Chapter 622A, the Board may assess an administrative fine of not more than \$5,000 for each violation against [A]any person licensed under this chapter who engages in conduct constituting grounds for disciplinary action as specified in NRS 636.295* ~~violates any provision of this chapter or any regulation of the Board [relating to the practice of optometry] is liable to the Board for an administrative fine of not [less than \$100 or] more than \$5,000[.]~~

(Note that green insertions and orange strikethroughs are amendments proposed by the Office of the Attorney General)

NEW PROPOSED SECTION

Glaucoma certification by endorsement.

1. The Executive Director may issue a certificate to treat persons diagnosed with glaucoma by endorsement to an applicant who meets the requirements set forth in this section.
2. An applicant for a certificate by endorsement pursuant to this section must submit to the Board an application in the form prescribed by the Board and:
 - (a) Proof satisfactory to the Board that:
 - (i) The applicant holds a valid and unrestricted certificate or other credential to engage the treatment of persons with glaucoma issued in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any other territory or possession of the United States;
 - (ii) Has not ever been held civilly or criminally liable for malpractice related to his or her certificate or other credential to treat persons with glaucoma;
 - (b) An affidavit stating that the information contained in the application and any accompanying material is true and correct; and
 - (c) Any other information or fee required by the Board.
3. Not later than 15 business days after receiving an application for a certificate to treat persons diagnosed with glaucoma by endorsement pursuant to this section, the Executive Director shall provide written notice to the applicant if additional information is required to

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consider the application. Unless the application is denied for good cause, the Executive Director shall approve the application and issue a certificate to treat persons diagnosed with glaucoma within 45 days after receiving the application.

This section is proposed by the Academy of Ophthalmology. It allows for the addition of well qualified optometrists to monitor and treat patients with glaucoma and create more access to care. In our state.

New Revision to NRS Chapter 637 - Dispensing Opticians:

NRS 637.200 Unlawful acts. The following acts constitute misdemeanors, unless a greater penalty is provided pursuant to **NRS 200.830** or **200.840**:

1. The insertion of a false or misleading statement in any advertising in connection with the business of ophthalmic dispensing.
2. Making use of any advertising statement of a character tending to indicate to the public the superiority of a particular system or type of eyesight examination or treatment.
3. Furnishing or advertising the furnishing of the services of a refractionist, optometrist, physician or surgeon.
4. Changing the prescription of a lens without an order from a person licensed to issue such a prescription.
5. Filling a prescription for a contact lens in violation of the expiration date or number of refills specified by the prescription.
- 6. Producing or delivering a prescription spectacle lens without a valid prescription or in violation of the expiration date specified by the prescription.**

(a) A licensed dispensing optician may replace an ophthalmic lens without a valid prescription:

- (1) under extraordinary or exigent circumstances as defined by the Board in regulation if the licensee, within 7 business days of such replacement or duplication, notifies the Board of Dispensing Opticians in writing of the replacement or duplication and the exigent circumstances under which the replacement or duplication was undertaken.
- (2) if the prescription spectacle lenses are covered by a warranty, become damaged and are presented to the licensee for replacement or repair within the period of warranty, not to exceed one year from the date they were originally dispensed.

~~67.~~ Violating any provision of this chapter.

[12:216:1951] — (NRS A 1967, 642; 1979, 1200; 1997, 1258; 2013, 1000)

Rationale: Duplicating or replacing a lens that could be many years old, without any assessment of the patient's vision status or ocular health poses a public safety issue. These changes are proposed as a compromise to address input from opticians to previously suggested language. The Board understands the balance between convenience and health, but it is important that certain duplication be reported, should a problem arise that needs to follow up. Since this should happen infrequently, we feel that reporting it would not pose a large burden. If the Board of Dispensing Opticians prefers not to collect such reports, the statute could require reporting to the original prescribing doctor, who has a stake in that patient's eye health.

LEADLINES OF REPEALED SECTIONS

Page 20

New and ~~deleted~~ statutory language from AB77

Optometry Board proposed changes and explanations therefor

New and ~~deleted~~ suggestions from the Office of the Attorney General

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636.024

“Therapeutic pharmaceutical agent” defined.

636.160

Application for examination.

636.175

Equipment required for examination.

636.195

Request for reexamination.

636.200

Scope of reexamination.

636.220

Licenses: Issuance.

636.296

Inspection of premises by Board.

Leave this in statute

NRS 636.296 Inspection of premises by Board. A member or any agent of the Board may enter any premises in this State where a person who holds a license issued pursuant to the provisions of this chapter practices optometry and inspect it to determine whether a violation of any provision of this chapter has occurred, including, without limitation, an inspection to determine whether any person at the premises is practicing optometry without a license issued pursuant to the provisions of this chapter.

(Added to NRS by 2013, 2231)

636.336

Board to cooperate with other agencies investigating persons.

636.341

Practicing or offering to practice without license: Reporting requirements of Board.

636.385

Use of and payment for optometric services by administrative agencies and public schools.