

NEVADA STATE BOARD OF OPTOMETRY



PUBLIC NOTICE OF WORKSHOP

Pursuant to NRS 233B.0601, NOTICE IS HEREBY GIVEN that the Nevada State Board of Optometry will hold a public workshop on **Wednesday August 28, 2024 12p.m. (pst)** to consider amendments to **R066-19(12)(3)-(4)**.

Pursuant to NRS 241.023(1)(c), the workshop is being conducted by means of remote technology and in-person. The public may attend via live stream remotely, or telephonically, or in-person:

Zoom

<https://us06web.zoom.us/j/82958279665?pwd=DERLs9b3HFcF1UIv4Cl3OIrOpmT0zr.1>

Meeting ID: 829 5827 9665

Passcode: 089267

Telephone

1 669 900 6833

Meeting ID: 829 5827 9665

In-person

Nevada Business Center

Red Rock Room

3300 W. Sahara Ave., 4th Floor, Ste. 440

Las Vegas, Nevada 89102

Written comments inclusive of impact on small business will be accepted by email to director@nvoptometry.org or alternatively to Nevada State Board of Optometry, PO Box 1824, Carson City, NV 89702 **on or before close of business August 21, 2024**.

All registrants and interested parties are encouraged to participate in the regulatory review process. The Board's discussion for this workshop occurred after proposed regulations discussed at its public meeting on May 30, 2024, written submissions on or before June 27, 2024 and discussion of same at its public meeting on June 27, 2024, written submission on or before July 31, 2024 and discussion of same at its workshop on July 31, 2024. Notice of this workshop was sent to all registered licensees on the Board's email-mailing list, as well as posted in the below-described locations on page two of this Notice.

WORKSHOP AGENDA

Pursuant to NRS 233B.061(2), Notice of Proposed Regulation Workshop for possible action:

Amendments to R066-19(12)(3)-(4)

❖ The Board is pleased to make reasonable accommodations for any member of the public who has a disability and wishes to attend the meeting. If special arrangements for the meeting are necessary, please notify the Nevada State Board of Optometry, in writing at P.O. Box 1824, Carson City, Nevada 89702; via email at admin@nvoptometry.org or call 775-883-8367 as far in advance as possible.

❖ To request an advance copy of the supporting materials including its small business impact statement, contact director@nvoptometry.org or call 775-883-8367.

This Notice has been posted at the following locations:

- Nevada State Board of Optometry office, Reno, NV 89523
- Nevada State Board of Optometry website: <https://nvoptometry.org/>
- Nevada Public Notice website: <http://notice.nv.gov>

R066-19 Section 12(3)-(4) proposed revisions

Strikethrough font = proposed removal; Bolded font = proposed additions

1. If an optometrist forms an association or other business relationship with a physician pursuant to NRS 636.373, the optometrist must:

- (a) Comply with any applicable requirements of the Internal Revenue Service;
- (b) Maintain financial and organizational independence from any person who is not licensed to practice optometry, other than the physician; and
- (c) Ensure that any advertising, marketing and promotional materials accurately portray the position of the optometrist within the association or business relationship, including, without limitation, whether the practice of the optometrist is included within any assumed or fictitious name used by the association or other business relationship.

2. An optometrist shall not employ or be employed by a physician.

~~3. An optometrist may form an association or other business relationship with a person, other than a physician, who is not licensed to practice optometry to perform duties concerning the operation of the business. Such duties must be limited to duties concerning the operation of the business and may include, without limitation, performing services related to payroll, human resources, real estate, regulatory matters not related to health care, banking, accounting, administration of benefits, marketing, merchandising, occupancy, accounts payable, accounts receivable, supply chain management, business development, business administration, labor, compliance with applicable laws and regulations, purchasing and medical billing.~~

4. **3.** An optometrist who forms an association or other business relationship with a person who is not licensed to practice optometry pursuant to subsection 3 shall:

- (a) Comply with any applicable requirements of the Internal Revenue Service;
- (b) Maintain organizational and financial independence from the person who is not licensed to practice optometry and ensure that the person who is not licensed to practice optometry **is not involved in shall not dictate or control:**

- (1) Clinical decisions;
 - (2) Scheduling of patients;
 - (3) Any decision concerning scope of practice or use of facilities, equipment or drugs; or
 - (4) Any other decision concerning the provision of care to a patient or the outcome of any treatment or other service provided to a patient; and
- (c) Ensure that any advertising, marketing and promotional materials accurately portray the position of the optometrist within the association or business relationship, including, without limitation, whether the practice of the optometrist is included within any assumed or fictitious name used by the association or other business relationship.

Small Business Impact Statement re R066-19(12)(3)-(4)

Background

NRS/NAC 636 govern optometry. R066-19(12), which was already the subject of oversight and Legislative Counsel Bureau (LCB) adoption in 2019-2020, governs allowances and prohibitions to business relationships between optometrists and non-optometrist entities. R066-19 has yet to be codified, so the Board seeks additional clarification on this topic for its membership and all interested persons with the subject modifications.

Description of the manner in which comment was solicited from affected small businesses, a summary of their response and an explanation of the manner in which other interested persons may obtain a copy of the summary (NRS 233B.0609(1)(a))

The Board's discussion for this workshop preceded proposed regulations discussed at its public meeting on May 30, 2024, written submissions on or before June 27, 2024, and discussion of same at its public meeting on June 27, 2024, written submission on or before July 31, 2024 and discussion of same at its workshop on July 31, 2024.

Notice of the July 31, 2024 workshop was sent to all registered licensees on the Board's email-mailing list. Agendas associated with the above referenced meetings were posted consistent with NRS 241 timely, and physically and electronically as stated in the Agendas- Nevada State Board of Optometry office, Reno, NV 89523, Nevada State Board of Optometry website: <https://nvoptometry.org>, and Nevada Public Notice website: <http://notice.nv.gov>

Any public comment or testimony provided concerning the proposed regulations could have been obtained from the Board of Optometry by mail, telephone request or by email at any time. Interested persons may obtain a summary of responses to the Board's solicitation of comments by contacting the Board office via email at admin@nvoptometry.org.

Manner in which the analysis was conducted (NRS 233B.0609(1)(b))

See above. The Board engaged in discussions about each subject subsection for multiple hours with the public, the stakeholders, and all interested persons in a public forum wherein any impact on small business was able to be discussed, and is incorporated herein where appropriate.

Estimated economic effect of the proposed regulation on the small business which it is to regulate, including, without limitation both adverse and beneficial effects and both direct and indirect effects. (NRS 233B.0609(1)(c)(1)-(2))

Adverse and beneficial economic effects- the Board does not perceive any adverse economic effects. R066-19(12) is not mandatory for all licensees to expend capital or to enter into the kinds of business relationships discussed therein. Instead it is permissive to those licensees, many of whom are small business owners, who wish to avail themselves to different business associations, and not mandatory. Therefore should the licensee decide to enter into a certain kind of business relationship with a non-optometry entity, R066-19(12) allows the licensee to do so, but as long as the non-optometry entity does not control or dictate how the licensee performs his or her clinical/medical responsibilities to the patient in a manner consistent with the standard of care. R066-19(12) can be seen as a simultaneous allowance for business management services while ensuring the licensee does not lose autonomy within the scope of professional decision-making and

judgment for optometric care in Nevada which only licensees under NRS 636 are allowed to exercise. Moreover, the intent of revising R066-19(12)(3)-(4) is consistent with another chapter of statutory healthcare providers, the Nevada State Board of Dental Examiners' NRS 631.215(2)(i) and (3)(a), 631.3455 which likewise passed legislative muster both in 2009 then again in 2023.

Immediate and long-term effects- although not formally codified by LCB yet, R066-19 became law in 2020. Therefore the Board has a small sample size to address this topic. Clarification of R066-19(12) should assist licensees with a better understanding what kinds of non-clinical business services are permissible should a licensee seek to engage with a non-optometry entity for any such service. Clarification will help licensees, current non-optometric entities already in the stream of commerce in Nevada, and future prospective non-optometric entities who could seek to enter into the stream of commerce in Nevada, to know what is permissible and not permissible within the confines of NAC 636.

Description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of the methods. (NRS 233B.0609(1)(d))

Given the clarification of R066-19(12)(3)-(4) is a permissive structure and not a mandate, be it funded or unfunded, the agency states it did not use any such methods after engagement with the stakeholders for multiple hours in public forum consistent with NRS 241 and NRS 233B. As summarized above, none of the above "impose a direct and significant economic burden" or "directly restrict the formation, operation or expansion of a small business" (*see* NRS 233B.0608). To the extent one is seen, the only inhibition is not on the operation of a small business in and of the industry itself, but instead ensures for the protection of the profession and the public that the licensee does not lose healthcare provider autonomy where only Nevada-licensed optometrists are allowed to practice optometry in Nevada pursuant to NRS 636.

Estimated cost to the agency for enforcement of the proposed regulation (NRS 233B.0609(1)(e))

The Board estimates that the adopted regulation will result in minimal costs, if any, to the agency for enforcement after the initial costs of implementing the regulations, providing education to licensees and updating the Board's website reflecting the regulation changes. The Board expects that staff costs will be absorbed into the existing workloads of current staff. There is no perceived cost to the licensees governed under NRS 636. There is no perceived cost to the public.

A licensee who is known or alleged to have violated the above regulation will result in an investigation as authorized under NRS 636, and possible prosecution and discipline. Attorneys' fees and costs via the Board's assigned deputy attorney general may be incurred upon the Board for such prosecution.

If the proposed regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used (NRS 233B.0609(1)(f))

N/A.

If the proposed regulation includes provisions which duplicate or are more stringent than federal, state, or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary. (NRS 233B.0609(1)(g))

N/A. None of the regulation overlaps with any other state, local, or federal agency/regulation. No other chapter governs optometrists or the practice of optometry besides NRS 636/NAC 636.

The reasons for the conclusions of the agency regarding the impact of a regulation on small business (NRS 233B.0609(1)(h))

R066-19 is already effective law upon Nevada-licensed optometrists. A plain reading of R066-19(12)(3)-(4)'s text and the proposed revisions demonstrates it is not a mandate or a restriction on how licensees practice optometry which is a core focus of NRS/NAC 636, in addition to maintaining integrity of the profession and protecting the public. Instead it is permissive and non-prohibitive. It is at any given licensee's discretion to choose to avail himself or herself to such business associations, yet concurrent with the licensee's already-existing obligations under NRS/NAC 636.

I, Adam Schneider, Esq., Executive Director of the Nevada State Board of Optometry, certify that, to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulation on small business, and that the information contained in the statement above is accurate. (NRS 233B.0609(2))

Dated: 8/12/2024

/s/ Adam Schneider
Adam Schneider, Esq.
Executive Director
Nevada State Board of Optometry