

**ADOPTED TEMPORARY REGULATION OF THE
NEVADA STATE BOARD OF OPTOMETRY**

LCB FILE NO. T002-25A

**The following document is an adopted temporary regulation submitted
by the agency on 01/01/2025**

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**Form For Filing
Administrative Regulations**

**Nevada State Board of
Optometry**

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Effective date _____

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Governor's signature

Classification: ADOPTED BY AGENCY

Brief description of action: Update to R066-19 section 12 re relationships between optometrists and non-optometry business entities

Authority citation other than 233B: NRS 636.125 ("The Board may adopt policies and regulations necessary to carry out the provisions of this chapter.")

Notice date: November 7, 2024

Date of Adoption by Agency: December 11, 2024

Hearing date: December 11, 2024

R066-19 Section (12) adopted temporary revisions

~~Strikethrough font~~ = approved removal

Bolded font = approved addition

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. 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:~~

4. 3. An optometrist who forms an association or other business relationship with a person, business, or entity who is not licensed to practice optometry, including, but not limited to, relationships formed for purposes of providing the optometrist support in the operation of the business, such as payroll, human resources, business development, banking, supply chain management, medical billing and business administration 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, control or influence:**

- (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; **and**

(d) No association or other business relationship entered into by an optometrist with a person who is not licensed to practice optometry shall alter or lessen the optometrist's ultimate responsibility for all exercises of professional or clinical judgment with regard to the conduct of the optometrist's professional practice or patient care.

(e) Nothing in this section shall eliminate a licensee's responsibility pursuant to NRS 636.373, NAC 636.240 and NAC 636.250 to not engage with any person, business, or entity not licensed to practice optometry who owns any part or portion of any Nevada optometry practice.



NEVADA STATE BOARD OF OPTOMETRY

Informational Statement Form re R066-19(12)

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 636.

1. A clear and concise explanation of the need for the adopted regulation.

NRS/NAC 636 govern optometry. This regulation seeks to clarify 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.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

The Board's discussion for the proposed regulations were 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, its second workshop on August 28, 2024, discussion and approval at a regular meeting for modifications on September 26, 2024, and Notice of Intent to Take Action on December 11, 2024.

Notice of the July 31, 2024 workshop and August 28, 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.

After the statutorily requisite amount of time after the posting of a Notice of Intent to Take Action on Regulation, on December 11, 2024, the Board conducted a meeting/hearing and approved R066-19(12).

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>

Public commentary is summarized as ensuring managed services organizations or private equity do not exert undue influence or control upon optometrists and their clinical-decision making while not creating any kind of anti-competitive atmosphere and that non-optometrists or corporations cannot own optometry practices.

3. The number of persons who:

(a) Attended each hearing:

July 31, 2024- workshop- 41¹
August 28, 2024- second workshop- 26
September 26, 2024- regular meeting- 17
December 11, 2024- Notice of Intent to Take Action hearing- 11

(b) Testified at each hearing:

July 31, 2024- workshop- 16
August 28, 2024- second workshop- 7
September 26, 2024- regular meeting- 0
December 11, 2024- Notice of Intent to Take Action hearing- 0

(c) Submitted to the agency written comments:

July 31, 2024- 7
August 28, 2024- second workshop- 4
September 26, 2024- regular meeting- 0
December 11, 2024- Notice of Intent to Take Action hearing- 0

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency

July 31, 2024: the following persons submitted written comments- Robert Horner, Robertkhorner@yahoo.com, Jon Christiansen, drjonchristiansen@yahoo.com, Thomas Daly 1550 Wilson Blvd. Ste. 700, Arlington, VA 22209, (703) 351-5034, Troy Ogden, togden@dtvisionreno.com; Ken Kopolow, kkopolow@yahoo.com, Steve Girisgen, s.girisgen@lasvegaseyedocs.com, Spencer Quinton, drquinton@gmail.com. Joe Fermin joe.fermin@gmail.com

¹ Concurrent with a regular board meeting.

July 31, 2024: the following persons testified- Steve Girisgen, Ken Kopolow, Jonathan Christiansen, Danny Thompson dannyt413@gmail.com, Chen Young drcyoung@aol.com, Amber Belaustegui amberbela@gmail.com, Jonathan Mather jonmather@gmail.com, Cheryl Adlington domagicaloils@gmail.com, Maria Nutile maria@nutilelaw.com, Jennifer Letten lettenj@yahoo.com, Tonya Hubbard hubbardtonya@hotmail.com, Evan Marchant emarchant@vspventures.com

August 28, 2024: the following persons submitted written comments- Jon Christiansen, Troy Ogden, Ken Kopolow, Steve Girisgen, Spencer Quinton, Amber Belaustegui,

August 28, 2024: the following persons testified- Jon Christiansen, Ken Kopolow, Stephanie Lee drstephlee@gmail.com, Steve Girisgen, Chen Young, Maria Nutile

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Commentary from any affected businesses was solicited through the Board's Newsletters to its membership, many of whom are small business owners, and posting the Notice of Workshop and regular meeting agendas listing proposed changes to NAC 636 as an action item on the Board's website and posting physically and electronically at the Board's office in Reno, NV 89523, and Public Notice website: <http://notice.nv.gov>; all of which expressly solicited public commentary.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

At the conclusion of the 8/28/2024 second workshop, the proposed language contained the phrases "per NRS 636.[xxx]," "non-licensee," and "optometric practice" which do not exist in NAC 636 or R066-19. Therefore in proposed section (e), synonyms were used that are already in NAC 636, R066-19, or internally within the proposed R066-19(12), i.e., "pursuant to," "any person, business, or entity not licensed to practice optometry," and "optometry practice." The Board believed using internally consistent terms within the NAC would lead to more efficient adoption and minimize risk of

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

Adverse and beneficial effects on optometry-
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.

Adverse and beneficial effects on the public-

The Board does not perceive any adverse effects on the public. The intent of R066-19(12) concerns in part that a 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. Therefore the Board sees this as a benefit to the public of licensees maintaining that autonomy regarding clinical decision making and the exercise of optometric judgment based upon the needs of any given optometric patient.

(b) Both immediate and long-term effects.

Immediate and long-term effects on optometry-

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.

Immediate and long-term effects on the public-

The Board considers the proposed changes in the regulation to have more impact on a licensee's business, business dealings, and business administration. The intent of R066-19(12) does not authorize a non-optometry entity to 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. Therefore the Board does not see this regulation impacting the public in terms of patients receiving appropriate optometric care.

8. The estimated cost to the agency for enforcement of the adopted regulation.

In and of itself, none as to the agency. Known violations or known alleged violations of the regulation, however, will result in an investigation as authorized under NRS 636, and possible prosecution and discipline upon the alleged violator. Attorneys' fees and costs via the Board's assigned deputy attorney general may be incurred upon the Board for such prosecution.

9. A description of any regulations of other state or 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 name of the regulating federal agency.

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.

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

N/A. None of the proposed regulation changes, duplicates, or is more stringent than any federal, state, or local standards regulating optometry to the best of the Board's knowledge.

11. If the 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.

N/A. The proposed regulation does not impose any fees.