

NEVADA STATE BOARD OF OPTOMETRY



Informational Statement Form re LCB File No. R101-24

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, comprised of 21 sections, is necessary to update the regulations associated with NRS 636, as well as to comply with recent statutory changes of AB432 recently codified in NRS 636. Specifically, the adopted regulation adds to and/or amends NAC 636 as follows:

Section 2 limits graduate students and residency program residents to procedures within the scope of the optometrist who is physically present at the clinic when the student or resident performs the procedure, and for residents allows the performance of emergency care outside the presence of an optometrist or ophthalmologist to a duration of not more than 10 hours after consulting with the appropriate optometrist or ophthalmologist associated with the clinic.

Section 3 provides that a license issued by the Nevada State Board of Optometry is a revocable privilege.

Section 4 requires a license applicant's reporting requirements to include any history of professional negligence.

Section 5 requires an optometrist to review certain health records of a patient before or contemporaneous to providing health care services through optometric telemedicine, and prohibits an optometrist who is engaging in optometric telemedicine or remote patient monitoring from issuing a prescription for ophthalmic lenses without first performing a manifest refraction.

Section 6 clarifies that the Board may take disciplinary action against a licensee who has voluntarily surrendered his or her license, not renewed his or her license, or retired from the practice of optometry.

Section 7 requires the Board to keep the personal contact information of each licensee confidential, except where the personal contact information is also the public contact information of the licensee.

Section 8 makes a conforming change in NAC 636.120 to reference NAC 636.140 instead of repealed NAC 636.130.

Section 9 revises what constitutes proper broadcast advertising.

Section 10 revises what constitutes proper ophthalmic product or device advertising.

Section 11 revises what constitutes proper spectacle lenses advertising.

Section 12 imposes certain requirements for the sale of contact lenses intended to be used as scheduled replacements or disposable lenses.

Section 13 revises what constitutes proper advertising of optometric examinations with specific disclaimers.

Section 14 removes the requirement that an optometrist display his or her current renewal card to instead make available upon request, and provides an optometrist has the ultimate responsibility for: (1) the actions of each employee of the optometrist performed within the scope of the employment; and (2) the care of the patient of the optometrist.

Section 15 replaces a 10 working day requirement to a 90 calendar day deadline for the submission of fictitious name applications upon the change of any percentage of ownership.

Section 16 provides that the Board may enter an adverse decision or order against a party without proof of actual injury caused by the conduct of that party if the conduct of the party is grounds for disciplinary actions under NRS 636.295.

Section 17 revises the aspects of a prescription for certain contact lenses.

Section 18 imposes a \$100 fee on a person who seeks to change his or her legal name at a time other than when his or her license is renewed.

Section 19 allows the approval of continuing education courses for ophthalmology-specific courses approved by the American Medical Association or any ophthalmology residency program affiliated with an accredited medical school.

Section 20 requires the licensee or applicant's reporting of any civil action against the licensee or applicant or optometry practice or business or fictitious name business registered with the licensee or applicant no later than 30 days after the initial service of process upon the licensee or applicant.

Section 21 repeals NRS 636.110 and 636.130.

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.

On October 26, 2023 and November 28, 2023, the Board discussed the potential topics and text for the regulation at its regular board meetings. At each of those Board meetings, the

public had access to two periods of opportunity for public comment. Additionally, the Board President regularly accepted public comment when a person had a relevant comment during the Board's discussions.

The Board issued multiple Newsletters to its membership through its email-distribution list alerting the membership to an upcoming workshop and conducted a stakeholder meeting for such purposes prior to such workshop.

After the statutorily requisite amount of time after the posting of a Notice of Workshop, on January 24, 2024 the Board held a NRS 233B-compliant public workshop in-person at Nevada State Business Center, 3300 W. Sahara Ave., Red Rock Room, 4th Floor, Suite 440, Las Vegas, NV. 89102 to gain input regarding the language that became R101-24. No member of the public participated. No participant in the discussion presented any evidence or argument that the proposed language would have a positive or negative impact on small businesses.

On March 14, 2024, the Board issued a Newsletter to its membership through its email-distribution list, listing each proposed removal, edit, or addition to each discussed NAC 636 subsection during the course of the January 24, 2024 workshop, and invited commentary submitted to admin@nvoptometry.org on or before end of business March 24, 2024 and announcing that discussion of same will occur at the Board's then-next meeting on March 28, 2024 at 12pm.

On March 28, 2024 and April 25, 2024, the Board conducted meetings. Public comment was solicited prior to such meetings, and entertained at all such meetings. The sole proposed subsection that received any public comment concerned a proposed subsection 5 to NAC 636.670- "For spectacle lenses, a prescription shall be valid for a period of 24 months for patients age 18-65 years old unless the prescriber documents a reason for the shorter period of time." Each comment received was in opposition, i.e., its passage of changing the glasses prescription length from one year to two years would not be in the best interests of public optometric health wherein the one-year expiration for glasses prescriptions serves a vital purpose given vision is not a static aspect of a patient's health and can change rapidly due to various factors such as age, health conditions, and environmental influences. By requiring annual check-ups and prescription renewals, the current system enables optometrists to monitor and address any changes in vision promptly, thus safeguarding the ocular health of patients. Therefore extending the expiration period to two years would significantly compromise this crucial aspect of eye care and introduce unnecessary risks, potentially leading to undetected vision problems, delayed interventions, and compromised safety for individuals who rely on corrective lenses.

Over the course of these two meetings inclusive of public commentary and written oppositions, the proposed subsection was withdrawn before submitting to LCB for what is now R101-24.

After the statutorily requisite amount of time after the posting of a Notice of Intent to Take Action on Regulation, on July 31, 2024 the Board conducted a meeting/hearing and adopted R101-24.

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.

3. The number of persons who:

(a) Attended each hearing:

January 24, 2024 (Workshop)- 0

March 28, 2024 (supplemental meeting)- multiple persons attended, but no sign-in sheets provided or recorded during the meeting

April 25, 2024 (supplemental meeting)- 43

July 31, 2024 (Notice of Intent to Take Action)- 41¹

(b) Testified at each hearing:

January 24, 2024 Workshop in Las Vegas- 0

March 28, 2024 meeting- 4

April 25, 2024- 5

July 31, 2024- 0

(c) Submitted to the agency written comments:

January 24, 2024 Workshop in Las Vegas- 0

March 28, 2024 meeting- 65

April 25, 2024- 9

July 31, 2024- 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

January 24, 2024- the following persons submitted written comments- none. The following persons testified- none.

March 28, 2024: the following persons submitted written comments- Troy Ogden, togden@dtvisionreno.com; Tamara Gutierrez, vegasfrenchies@gmail.com; Ken Kopolow, kkopolow@yahoo.com; Beena Patel, beenampatel92@gmail.com; Steve Girisgen, s.girisgen@lasvegaseyedocs.com; Abraham Motola, abrahammotola@gmail.com; unidentified name, bayleri@netzero.net; Kelli McLaughlin, kellimclaughlin@yahoo.com; Jacqueline Anne

¹ Concurrent with a regular board meeting.

Julio, jacquelineanne.julio@gmail.com; Christopher Campana, dr.ccampana.od@gmail.com, 702-435-4301; Julio Ngo, dr.juliengo.od@gmail.com; Kim Shiraishi, kimshiraishi@gmail.com; Amy Hitzeman, amyidoc@icloud.com; Shannon Chandler, lveyedoc@yahoo.com; Brian Miller, bnmiller@cox.net; Corey Steed, doctor@drsteed.com; Cynthia Kiernan, ckiernanod@yahoo.com; Alaina Lavine, alainalevine@gmail.com; Tiffany Nguyen, tiffanyn.od@gmail.com, 702-496-3048; Esther Tan, eteyes2009@yahoo.com; Glenn Roter, gkroter@gmail.com; Dana Vo, danavood@gmail.com; Dorothea Muniz, dorotheamuniz@gmail.com; My Vuong, mymyskg@icloud.com; Pamela Nyon, drpnyon@gmail.com; Michael Roth, rotheyedoc@hotmail.com; Ena Dao, enadao.od@gmail.com; Justin Hart, jhart.od@gmail.com; Justin Lucido, justinlucido.od@gmail.com; Ethan Chan, ethanchanod@gmail.com; Robert Hoang, Robert.hoang12@gmail.com; alexandriashelbyj@gmail.com; Michael Mayer, drmayer@mayereyecarelv.com; Nair Borges, opticgalleryborges@hotmail.com, 702-451-3937; Helen Knisley, drhelenknisley@yahoo.com; Kara Kopolow, karakopolowod@gmail.com; Vanessa Kim, vankkim@gmail.com, 702-912-0460; Erin Frillarte, evfrillarte@gmail.com; Kristin Heilman, KristinLee.OD19@gmail.com; John Chan, sjohnchan@gmail.com; Jeremy Kei, jyewwk@gmail.com; Chrys Manos, cmanosod@aol.com; Vivienne Velasco, drvelasco@ifocuslasvegas.com, 702-473-5660; Jenny Tran, dr.jennytran@gmail.com; Phil Duran, pjduran11@gmail.com, 702-452-2020; Tascha Wells, twellsod@gmail.com; Sabrina Leong, sabrinaleong.od@gmail.com; Jessica Celestino, jesscelestinood@gmail.com; Rick Katz, drnickod@gmail.com; Cynthia Kiernan, office@cyntiakiernanod.com, 702-614-5435; Anne Valdez, annevaldezod@gmail.com; Jenny Tran, dr.jennytran@gmail.com; Fanny Chan, fannywchanod@gmail.com; Steve Girisgen, s.girisgen@lasvegaseyedocs.com; Kristin Difuntorum-Inouye, difuntorum.od@alohavisionlv.com, 702-357-5680; Jessica Dennis, foresightvisioncare@hotmail.com; Spencer McConkie, spencer.mcconkie@gmail.com, 801-856-7142; Elizabeth Peguese, elizabeth.peguese@gmail.com; Micah Williams, micahwilliams.od@gmail.com; Colby Curtis, drcurtis@totaleye.net; Spencer Quinton, drquinton@gmail.com; Keri Asraf, drthackerod@gmail.com; Lesa Davis, drlesadavis@cox.net; Eric Bendicion, eric.bendicion@gmail.com; Cindy Trinh, cindymytrinh@gmail.com; Tracy Tran, tracytranod@gmail.com; Raymond Ruckman, r.ruckman@easternsierraeyecare.com; Paul Wilson, pwilson@nevadavisiongroup.com. The following persons testified- Steve Girisgen, Ken Kopolow, Johndra McNeely, John David.

Each comment is best summarized as being in opposition to proposed subsection 5 of NAC 636.670, i.e., its passage of changing the glasses prescription length from one year to two years would not be in the best interests of public optometric health wherein the one-year expiration for glasses prescriptions serves a vital purpose given vision is not a static aspect of a patient's health and can change rapidly due to various factors such as age, health conditions, and environmental influences. By requiring annual check-ups and prescription renewals, the current system enables optometrists to monitor and address any changes in vision promptly, thus safeguarding the ocular health of patients. Therefore extending the expiration period to two years would significantly compromise this crucial aspect of eye care and introduce unnecessary risks, potentially leading to undetected vision problems, delayed interventions, and compromised safety for individuals who rely on corrective lenses.

April 25, 2024- the following persons submitted written comments- Kent Wellish, drwellish@me.com; Doris Wong, drswongwilliamson@hotmail.com; James Williamson, drswongwilliamson@hotmail.com; Kristin Difuntorum-Inouye,

difuntorum.od@alohavisionlv.com, 702-357-5680; Spencer McConkie, spencer.mcconkie@gmail.com, 801-856-7142; Nicholas Inouye, ninouye@alohavisionlv.com, 702-357-5680; Steve Girisgen, s.girisgen@lasvegaseyedocs.com; Troy Ogden, togden@dtvisionreno.com; Ken Kopolow, kkopolow@yahoo.com; Spencer Quinton, drquinton@gmail.com; Margaret Raulino, tahoeyedocs@sbcglobal.net; Johndra Upton McNeely, uptownnw@yahoo.com; Ryan Peterson, rpetersonod@gmail.com; Ethan Lin, drlin@westwoodeyelv.com; Dennis Giang, dgiang@meadowseye.com; Peter DeBry, pwdebry@yahoo.com; Robert Horner, robertkhorner@yahoo.com; Micah Williams, micahwilliams.od@gmail.com; Grace Shin Kwok, graceshinkwok@idealeyecarelv.com, 702-896-2020; David Davis, drdavis.visionsource@gmail.com, 702-385-7331; Linda Davis, linda.visionsource@gmail.com, 702-385-7331; Cynthia Kiernan, ckiernanod@yahoo.com; Kevin Wogalter, wogalter5@aol.com; Stella Lau, stellalauod@gmail.com, 702-631-2015, Vanessa Kim, vankkim@gmail.com, 702-912-0460; Rene Zamora, renelzamora@gmail.com; Jennifer Burke, jenburkeod@gmail.com. The following persons testified- Kent Wellish, Stephanie Lee, Chen Young, Jacquy Julio, and Danny Thompson.

Each comment is best summarized as being in opposition to proposed subsection 5 of NAC 636.670, i.e., its passage of changing the glasses prescription length from one year to two years would not be in the best interests of public optometric health wherein the one-year expiration for glasses prescriptions serves a vital purpose given vision is not a static aspect of a patient's health and can change rapidly due to various factors such as age, health conditions, and environmental influences. By requiring annual check-ups and prescription renewals, the current system enables optometrists to monitor and address any changes in vision promptly, thus safeguarding the ocular health of patients. Therefore extending the expiration period to two years would significantly compromise this crucial aspect of eye care and introduce unnecessary risks, potentially leading to undetected vision problems, delayed interventions, and compromised safety for individuals who rely on corrective lenses.

July 31, 2024- the following persons submitted written comments- none. The following persons testified- none.

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.

Each comment is best summarized as being in opposition to proposed subsection 5 of NAC 636.670, i.e., its passage of changing the glasses prescription length from one year to two years would not be in the best interests of public optometric health wherein the one-year expiration for glasses prescriptions serves a vital purpose given vision is not a static aspect of a patient's health and can change rapidly due to various factors such as age, health conditions, and environmental influences. By requiring annual check-ups and prescription renewals, the current

system enables optometrists to monitor and address any changes in vision promptly, thus safeguarding the ocular health of patients. Therefore extending the expiration period to two years would significantly compromise this crucial aspect of eye care and introduce unnecessary risks, potentially leading to undetected vision problems, delayed interventions, and compromised safety for individuals who rely on corrective lenses.

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.

No changes were requested.

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. The Board perceives positive effects upon optometry for the legality of optometric telehealth providing greater access to optometric services to the public in both synchronous and asynchronous manners, and simultaneously placing regulations upon the licensees to protect the public when telehealth is utilized. *See* Section 5. Advertisements via broadcasting and advertisements for ophthalmic products, devices, and spectacle lenses arguably deal with intrastate commerce and the economy. *See* Sections 9-11, 13. Certain requirements for the sale of contact lenses intended to be used as scheduled replacements or disposable lenses have been refined. *See* Section 12. Other portions of the regulation have no impact on the economy, and are more so regulatory in nature.

Adverse and beneficial effects on the public- the Board does not perceive any adverse effects on the public. The Board perceives positive effects upon the public for the legality of optometric telehealth providing greater access to optometric services to the public in both synchronous and asynchronous manners, and simultaneously placing regulations upon the licensees to protect the public when telehealth is utilized. *See* Section 5. Advertisements via broadcasting and advertisements for ophthalmic products, devices, and spectacle lenses have been clarified, and may be seen as related to intrastate commerce and the economy and therefore discussed hereto. *See* Sections 9-11, 13. Certain requirements for the sale of contact lenses intended to be used as scheduled replacements or disposable lenses have been refined. *See* Section 12. Licensees and potential licensees are to timely report any professional negligence lawsuit history. *See* Sections 4, 21. Doing so will allow the Board additional information to screen proper candidates for licensure or renewed licensure, where the public will benefit from having properly screened licensees before being allowed to practice upon the citizens of Nevada. Other portions of the regulation have no impact on the economy, and are more so regulatory in nature.

(b) Both immediate and long-term effects.

Immediate and long-term effects on optometry- utilization of optometric telehealth will assist optometrists providing access to healthcare to patients in rural communities and to increase access to patients with pre-existing relationship with their optometrists. *See* Section 5. Different kinds of continuing education are allowed, which will benefit the optometry community's knowledge base which will likewise increase the quality of service provided to the public. *See* Section 20.

Immediate and long-term effects on the public- utilization of optometric telehealth will assist

the public in access to healthcare, particularly those in rural communities. *See* Section 5. Under the supervision of an optometrist or ophthalmologist, graduate students can perform certain procedures which will increase short-term training and experience to the long-term benefit of the public having better trained optometrists entering the workforce. Emergency care can be rendered by residency program residents of a duration of not more than 10 hours after consulting with the appropriate optometrist or ophthalmologist associated with the clinic. *See* Section 2. To the benefit of the public, this allows the public to receive emergency care otherwise not available to them under prior law.

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

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 with forms and fees 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.

Known violations or known alleged violations of the 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.

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.

At most \$400 or \$500 per biennial renewal cycle. Such amounts will be used to offset the cost of providing information via the Board's website, processing applications, issuing certificates and licenses and regulating licensees in the same manner imposed upon any other professional licensee in Nevada. License and certification fees fund the entire operation of the Board with no reliance on the State General Fund.