

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 120 ~~PRACTICE OF LICENSURE OF~~ OPTOMETRISTS

120-001 SCOPE AND AUTHORITY: These regulations ~~apply to licensure of Optometrists pursuant to Neb. Rev. Stat. §§ 71-1,133 to 71-1,136.09 and the Uniform Licensing Law govern the credentialing of optometry under Neb. Rev. Stat. §§ 38-2601 to 38-2623 and the Uniform Credentialing Act (UCA).~~

120-002 DEFINITIONS

Accredited school or college of optometry means a school or college which is accredited by a regional or professional accrediting organization that is recognized by the Council of Postsecondary Accreditation of the United States Department of Education and is approved by the ~~Department upon recommendation of the~~ Board.

Act means Neb. Rev. Stat. §§ ~~71-1,133 to 71-1,136.09~~ 38-2601 to 38-2623, known as the Optometry Practice Act.

Active addiction means current physical or psychological dependence on alcohol or a substance, which develops following the use of alcohol or a substance on a periodic or continuing basis.

Alcohol or substance abuse means a maladaptive pattern of alcohol or substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring at any time during the same 12-month period:

1. Recurrent alcohol or substance use resulting in a failure to fulfill major role obligations at work, school, or home;
2. Recurrent alcohol or substance use in situations in which it is physically hazardous;
3. Recurrent legal problems related to alcohol or substance use; or
4. Continued alcohol or substance use despite having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the alcohol or substance use.

~~Approved Clinical Facility means a clinical facility sponsored by an accredited college of optometry.~~

Approved Examination means an examination which is approved by the Department of Health and Human Services upon recommendation of the Board of Optometry.

Attest/Attestation means that the individual declares that all statements on the application/~~petition~~ are true and complete.

Board means the Board of Optometry.

Certificate means an authorization issued by the Department that gives a person the right to use a protected title that only a person who has met specific requirements may use.

Clinical training means training of an applicant for certification to use pharmaceutical agents for diagnostic purposes or for diagnostic and therapeutic purposes offered by a school or college approved by the Department.

~~Completed application~~ means an application with all of the information requested on the application filled in, the signature of the applicant verified, fees and all required documentation submitted.
Complete application means an application that contains all of the information requested on the application, with attestation to its truth and completeness, and that is submitted with the required fees and all required documentation.

Continuing education means the offering of instruction or information to licensees for the purpose of maintaining skills necessary to the safe and competent practice of optometry. The continuing education may be offered under such names as "scientific school", "clinic", "forum", "lecture", "course of study" or "educational seminar". In order for continuing education to be recognized for licensure renewal, it must be approved by the Board.

~~Continuing education provider~~ means an institution or individual that presents approved continuing education programs to licensees.

Confidential information means information protected as privileged under applicable law.

Consumer means a person receiving health or health-related services or environmental services and includes a patient, client, resident, customer, or person with a similar designation.

Conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere or non vult contendere made to a formal criminal charge, or a judicial finding of guilt irrespective of the pronouncement of judgment or the suspension thereof, and includes instances in which the imposition or the execution of sentence is suspended following a judicial finding of guilt and the defendant is placed on probation.

Course of study means a program of instruction necessary to obtain a credential meeting the requirements set out for each profession in the appropriate practice act and rules and regulations and includes a college, a professional school, a vocational school, hours of training, or a program of instruction with a similar designation.

Credential means a license, certificate, or registration.

~~Criterion-referenced standard setting method~~ means a method for pre-determining an absolute standard based on the difficulty of the items. ~~Acceptable criterion-referenced standard setting methods include Anghoff, Nedelsky, Ebel and modifications of these methods.~~

~~Department~~ means the Department of Health and Human Services Regulation and Licensure.
Department means the Division of Public Health of the Department of Health and Human Services.

Dependence means a maladaptive pattern of alcohol or substance use, leading to clinically significant impairment or distress, as manifested by three or more of the following occurring at any time in the same 12-month period:

1. Tolerance as defined by either of the following:
 - a. A need for markedly increased amounts of alcohol or the substance to achieve intoxication or desired effect; or
 - b. A markedly diminished effect with continued use of the same amount of alcohol or the substance;
2. Withdrawal as manifested by either of the following:
 - a. The characteristic withdrawal syndrome for alcohol or the substance as referred to in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association; or
 - b. Alcohol or the same substance or a closely related substance is taken to relieve or avoid withdrawal symptoms;
3. Alcohol or the substance is often taken in larger amounts or over a longer period than was intended;
4. A persistent desire or unsuccessful efforts to cut down or control alcohol or substance use;
5. A great deal of time is spent in activities necessary to obtain alcohol or the substance, to use alcohol or the substance; or to recover from the effects of use of alcohol or the substance;
6. Important social, occupational, or recreational activities are given up or reduced because of alcohol or substance use; or
7. Alcohol or substance use continues despite knowledge of having had a persistent or recurrent physical or psychological problem that was likely to have been caused or exacerbated by alcohol or the substance.

Drug Utilization Review (DUR) means an authorized, structured, ongoing program that collects, analyzes, and interprets drug use patterns to improve the quality of pharmacotherapy and patient outcomes.

~~Director means the Director of Regulation and Licensure or the Chief Medical Officer if one has been appointed pursuant to Neb. Rev. Stat. § 81-3201, for performance of the duties set out in that statute.~~

Director means the Director of Public Health of the Division of Public Health or his/her designee.

Hour means a period of 50 minutes of formal instruction, otherwise known as a "contact hour."

~~Inactive status means the voluntary termination of the right or privilege to practice optometry. The licensee retains the right or privilege to represent himself/herself as having an inactive license.~~
Inactive credential means a credential which the credential holder has voluntarily placed on inactive status and by which action has terminated the right to practice or represent him/herself as having an active credential.

Label means all legible written information provided by the optometrist to the patient that is affixed to the packaging provided to the patient.

~~Lapsed status means the voluntary termination of the right or privilege to represent himself or herself as a licensed person and to practice optometry.~~

~~Licensee means an individual licensed to practice optometry in Nebraska.~~

License means an authorization issued by the Department to an individual to engage in a profession or to a business to provide services which would otherwise be unlawful in this state in the absence of such authorization.

Medicated contact lenses means contact lenses containing an ocular pharmaceutical agent.

Military service means full-time duty in the active military service of the United States, a National Guard call to active service for more than 30 consecutive days, or active service as a commissioned officer of the Public Health Service or the National Oceanic and Atmospheric Administration. Military service may also include any period during which a servicemember is absent from duty on account of sickness, wounds, leave, or other lawful cause. (From the Servicemembers Civil Relief Act, 50 U.S.C. App. 501 et seq., as it existed on January 1, 2007.)

NAC means the Nebraska Administrative Code, the system for classifying State agency rules and regulations. These regulations are 172 NAC 120.

Official transcript means issued by and under the original seal of the educational institution.

~~Optometric services means those services provided by an optometrist pursuant to Neb. Rev. Stat. §§ 71-1,133-2601 through 71-1,136.0938-2623, the Optometry Practice Act.~~

Packaging means the container provided by an optometrist to the patient.

~~Pattern of negligent means a continued course of negligent conduct in performing the duties of the profession.~~

Pattern of incompetent or negligent conduct means a continued course of incompetent or negligent conduct in performing the duties of the profession.

Person means individual, corporation, partnership or other for-profit or not-for-profit entity.

Pharmaceutical agents for diagnostic purposes means anesthetics, cycloplegics, and mydriatics.

Pharmaceutical agents for therapeutic purposes means topical ophthalmic pharmaceutical agents which treat eye infection, inflammation, and superficial abrasions, or oral analgesics, including oral analgesics enumerated in Schedules III and IV of Neb. Rev. Stat. § 28-405 necessary to treat conditions of the eye and visual system, or oral pharmaceutical agents for the treatment of infections of the eye and visual system, or oral anti-inflammatory agents to treat conditions of the eye, ocular adnexa, or visual system excluding steroids and immunosuppressive agents.

Practice management means the study of management of the business affairs of optometric practice. This includes the concepts of managed care and operations management, courses designed to help market practices, to educate office staff, to improve billing efficiency and coding skills, to improve clinical recordkeeping and to enhance fiscal efficiency. This does not include courses that are intended for personal enhancement or investment prowess.

Prescription file means a file of prescriptions dispensed that is separate and distinct from the patient record.

Prescription label means a label that provides the patient all of the information required by section 120-012.02. The information required of a prescription label may be found either on a writing affixed to the packaging by the optometrist, or on the packaging (e.g., manufacturer's container), or a combination of the packaging and a writing affixed to the packaging.

Profession means any profession or occupation named in subsection (1) or (2) of Neb. Rev. Stat. § 38-121.

Record means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. Record includes a hard copy and record includes an "electronic medical record" (EMR).

Record keeping means creating, maintaining, and securing records necessary for drug utilization review and prescription files.

Served in the regular armed forces has the same meaning as "military service" in these regulations.

Storage means securing and preserving drug, device, or biological in accordance with the requirements of federal laws (e.g., Food and Drug Administration label specifications) and the requirements of Nebraska's laws (e.g., these regulations).

~~Supervised clinical training means training of an applicant for certification to use pharmaceutical agents for diagnostic purposes or for diagnostic and therapeutic purposes offered by a school or college approved by the Department.~~

~~Verified means sworn to before a Notary Public.~~

~~120-003 REQUIREMENTS FOR ISSUANCE OF LICENSE: Any person, except those listed in Neb. Rev. Stat. § 71-1,134, who wishes to practice and/or represent himself/herself as an Optometrist must be licensed as an Optometrist. The criteria for issuance of a license and the documentation required by the Department and the Board are set forth below.~~

~~120-003.01 Licensure of an Optometrist~~

~~120-003.01A Procedures for Licensure as an Optometrist by Examination: An applicant for a license to practice optometry on the basis of an examination must:~~

- ~~1. Have graduated from an accredited school or college of Optometry;~~
- ~~2. Pass an examination which consists of the following components:~~
 - ~~a. Part I, Part II, and Part III of the examination given by the National Board of Examiners in Optometry;~~

- ~~(1) The applicant must achieve a passing score as determined by using a criterion referenced standard setting method.~~
- ~~3. Pass a jurisprudence examination that relates to the statutes that govern optometry with a minimum score of 60% or above.~~
- ~~4. Have good moral character and have attained at least the age of majority (Neb. Rev. Stat. § 43-2101. All persons under 19 years of age are declared to be minors, but in case any person marries under the age of 19 years, his/her minority ends); and~~
- ~~5. Submit to the Department:
 - ~~a. A complete application for a license to practice optometry may be submitted on a form provided by the Department or on an alternate format. Only applications which are complete will be considered;
 - ~~(1) Legal name;~~
 - ~~(2) Place and date of birth;~~
 - ~~(3) Social Security Number;~~
 - ~~(4) Mailing address;~~
 - ~~(5) Telephone number (optional);~~
 - ~~(6) E-mail address/fax number (optional);~~
 - ~~(7) Permanent address;~~
 - ~~(8) Name and location of accredited optometry college attended by the applicant;~~
 - ~~(9) Date of graduation from accredited optometry college;~~
 - ~~(10) Whether you are applying for licensure by examination or by reciprocity;~~
 - ~~(11) Answer the following questions either yes or no:
 - ~~(a) Have you taken Parts I, II, and III given by the National Board of Examiners in Optometry?~~
 - ~~(b) Have you contacted the National Board of Examiners in Optometry to send your examination scores directly to the Department?~~
 - ~~(c) Have you requested that a certified transcript showing graduation be sent directly from your college or school of optometry to the Department (transcripts marked "issued to student" are unacceptable)?~~
 - ~~(d) Have you ever been licensed as an optometrist in another state or jurisdiction? If yes, list all other states where you have been or are currently licensed, including license number, issuance date and expiration date;~~~~~~~~
- ~~(12) Answer the following questions either yes or no; if you answer yes, explain the circumstances and the outcome:~~

- ~~(a) Has any state or territory of the U.S. ever taken any of the following actions against your license?
Denied — Suspended — Revoked — Limited~~
 - ~~(b) Has any licensing or disciplinary authority ever taken any of the following actions against your license?
Limited — Suspended — Restricted — Revoked~~
 - ~~(c) Has any licensing or disciplinary authority placed your license on probation?~~
 - ~~(d) Have you ever voluntarily surrendered a license issued to you by a licensing or disciplinary authority?~~
 - ~~(e) Have you ever voluntarily limited in any way a license issued to you by a licensing or disciplinary authority?~~
 - ~~(f) Have you ever been requested to appear before any licensing agency?~~
 - ~~(g) Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary authority or criminal prosecution authority?~~
 - ~~(h) Have you ever been addicted to, dependent upon or chronically impaired by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence?~~
 - ~~(i) During the past ten years, have you voluntarily entered or been involuntarily admitted to an institution or health care facility for treatment of a mental or emotional disorder/condition?~~
 - ~~(j) During the last ten years, have you been diagnosed with or treated for bipolar disorder, schizophrenia, or any psychotic disorder?~~
 - ~~(k) Have you ever been convicted of a felony?~~
 - ~~(l) Have you ever been convicted of a misdemeanor?~~
 - ~~(m) Have you ever been called before any licensing agency or lawful authority concerned with DEA controlled substances?~~
 - ~~(n) Have you ever been notified of any malpractice claim against you?~~
- ~~(13) A signed statement from the applicant that s/he is of good moral character and that the statements on the application are true and complete.~~
- b. ~~An official transcript from an accredited school or college of Optometry showing graduation from the school or college;~~

- ~~c. Official documentation, sent directly to the Department, of the scores obtained on Part I, Part II, and Part III of the examination given by the National Board of Examiners in Optometry (NBEO);~~
- ~~d. The required licensure fee; and~~
- ~~e. A copy of birth certificate, marriage license, driver's license or other valid verification of age.~~

~~120-003.01B The Department will act within 150 days upon all completed applications for licensure.~~

~~120-003.01C Procedures for Licensure as an Optometrist Based on a License in Another Jurisdiction: An applicant who is licensed as an Optometrist in another jurisdiction must:~~

- ~~1. Meet the requirements of 172 NAC 120-003.01A;~~
- ~~2. Be currently licensed to practice optometry in another state or jurisdiction; and~~
- ~~3. Submit to the Department:~~

~~a. The following documentation from the licensing agency of the jurisdiction where the applicant was initially licensed:~~

~~(1) A certification may be submitted on a form provided by the department or on an alternate format. The certification must reflect that the applicant is duly licensed, that his/her license was based on an examination, that his/her license has never been suspended or revoked, and that so far as the record of the agency is concerned, the applicant is entitled to its endorsement; and~~

~~(2) The nature of disciplinary actions, if any, taken against the applicant's license;~~

~~(3) If the applicant's license was based on the National Board of Examiners in Optometry (NBEO) Examination:~~

~~(a) The date of the applicant's license;~~

~~(b) The score attained on the examination; and~~

~~(c) Documentation of the requirements for licensure in the other jurisdiction which are currently in effect and which were in effect at the time the license was issued; or~~

~~(4) If the applicant's license was based on an examination other than the National Board of Examiners in Optometry (NBEO) Examination:~~

~~(a) The date of the applicant's license;~~

~~(b) The score attained on the examination; and~~

~~(c) Documentation of the requirements for licensure in the other jurisdiction which are currently in effect and which were in effect at the time the license was issued and that the examination taken is equivalent to the National Board of Examiners in Optometry (NBEO) Examination; or~~

~~(5) If the applicant's license was not based on the National Board of Examiners in Optometry (NBEO) Examination or an equivalent examination, the applicant must apply for licensure pursuant to 172 NAC 120-003.01A;~~

~~b. Documentation that the applicant has been actively engaged in the practice of optometry under such license for at least one of the three years immediately preceding the date of the application for Nebraska licensure.~~

~~120-003.01C1 The Board will review the documents submitted to determine if the applicant's license issued by the other jurisdiction was based upon requirements which are comparable to those maintained for practicing optometry in Nebraska and will recommend to the Department to issue or deny the license.~~

~~120-003.01D The Department will act within 150 days upon all completed applications for licensure.~~

~~120-003.01E If an applicant has met all the requirements for licensure pursuant to 172 NAC 120-003.01A or 172 NAC 120-003.01C within 90 days prior to the biennial renewal date, the applicant may:~~

- ~~1. Request that the Department delay the processing of the application and the issuance of the license until the biennial renewal date and pay only the fee for initial licensure; or~~
- ~~2. Request that a license which will be valid until the next subsequent renewal date be issued immediately and pay the fee for initial licensure and an additional fee of one-fourth of the biennial renewal fee.~~

120-003 INITIAL CREDENTIAL

120-003.01 Qualifications: To receive a credential to practice optometry, an individual must meet the following qualifications:

120-003.01A Optometrist Licensure by Examination:

1. Age and Good Character: Be at least 19 years old and of good character;
2. Citizenship/Lawful Presence: Be a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant lawfully present in the

- United States who is eligible for a credential under the Uniform Credentialing Act.
3. Education: Have graduated from an accredited school or college of Optometry;
 4. Examination:
 - a. Pass Part I, Part II and Part III of the examination given by the National Board of Examiners in Optometry (NBEO); and
 - b. Pass a jurisprudence examination that relates to the statutes and regulations that govern optometry with a minimum score of 60% or above.

120-003.01B Optometrist Licensure Based on Licensure in Another U.S. Jurisdiction: An Applicant who is currently licensed as an optometrist in another state or territory of the United States or the District of Columbia seeking a license in Nebraska must:

1. Age and Good Character: Be at least 19 years old and of good character;
2. Citizenship/Lawful Presence: Be a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act.
3. Education: Have graduated from an accredited school or college of Optometry;
4. Experience: Have been actively engaged in the practice of optometry for at least two years of the three years immediately preceding the date of application and must be credentialed in another U.S. jurisdiction at the highest level required for optometrist licensure in that U.S. jurisdiction where the applicant is currently licensed;
5. Examination: Pass a jurisprudence examination that relates to the statutes and regulations that govern optometry with a minimum score of 60% or above.

120-003.02 Application: To apply for a credential to practice optometry, the individual must submit a complete application to the Department. A complete application includes all required documentation, the required fee, and a written application. The applicant may obtain an application from the Department or construct an application that must contain the following information:

1. Written Application:
 - a. Personal Information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Date of birth (month, day, and year);
 - (3) Place of birth (city and state or country if not born in the United States);
 - (4) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
 - (5) The applicant's:
 - (a) Social Security Number (SSN);

(b) Alien Registration Number ("A#"); or

(c) Form I-94 (Arrival-Departure Record) number.

Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.

(6) The applicant's telephone number including area code (optional);

(7) The applicant's e-mail address (optional);

(8) The applicant's fax number (optional);

b. Practice Before Application: The applicant must state:

(1) That s/he has not practiced optometry in Nebraska before submitting the application; or

(2) If s/he has practiced optometry in Nebraska before submitting the application, the actual number of days practiced in Nebraska before submitting the application for a credential and the name and location of practice;

c. The applicant must also provide information related to the following, as requested on the application of the Department:

(1) History of charges, complaints, disciplinary actions, adverse actions, or other actions against a professional license or permit in any state or jurisdiction including, but not limited to:

(a) Voluntary surrenders or voluntary limitations;

(b) Currently pending investigations or complaints;

(c) Prior refusals to issue, refusals to renew, or denials of a license or permit;

(2) Information relating to fitness to practice including, but not limited to:

(a) Addiction, dependence upon or chronic impairment by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence;

(b) Physical, mental, or emotional conditions which impair the applicant's ability to practice the profession safely and competently;

(3) History of any remedial or disciplinary actions during optometry school or postgraduate training including, but not limited to restrictions, suspensions, terminations, request for voluntary resignation, probation, counseling, and receipt of warnings;

(4) Any employment disciplinary actions or non-renewal of an employment contract;

(5) Criminal history, including convictions and charges, complaints or other actions that did not result in convictions;

(6) History of adverse actions by the Federal Drug Enforcement Administration (DEA) or a state controlled substances agency including, but not limited to:

(a) Denials of registration;

(b) Calls to come before a licensing agency or other lawful authority in relation to DEA controlled substances;

(c) Surrenders of a state or federal controlled substances registration;

(d) Restrictions or disciplinary actions of a state or federal controlled substances registration;

(7) History of professional liability claims, adverse judgments,

settlements, or awards, including any pending professional liability claims.

c. Answer the following questions either yes or no. For any yes answers, explain the circumstances and outcome. Applicant will be notified of any additional documentation which is required by the Board/Department:

Section I

- (1) Have you ever had any disciplinary or adverse action imposed against a professional license or permit in any state or jurisdiction?
- (2) Have you ever voluntarily surrendered or voluntarily limited in any way a license or permit issued to you by a licensing or disciplinary authority?
- (3) Have you ever been requested to appear before any licensing agency?
- (4) Have you ever been notified of any charges, complaints or other actions filed against you by any licensing or disciplinary authority?
- (5) Are you aware of any pending disciplinary actions or of any on-going investigations of a complaint against your license or permit in any jurisdiction?
- (6) Have you ever been asked to and/or permitted to withdraw an application for licensure or permit with any Board or jurisdiction?
- (7) Has any state or jurisdiction refused to issue, refused to renew or denied you a license or permit to practice?

Section II

- (1) Are you currently, or have you ever been, addicted to, dependent upon or chronically impaired by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence?
- (2) Within the past 5 years, have you received any therapy/treatment or been admitted to any hospital or other in-patient care facility for reasons relating to your use/abuse of alcohol, narcotics, barbiturates, or other drugs?
- (3) Do you currently, or have you ever had, any physical, mental, or emotional condition which impaired, or does impair your ability to practice your health care profession safely and competently?
- (4) Within the past 5 years, has any licensing agency or credentialing organization initiated any inquiry into your physical, mental or emotional health.

Section III

- (1) Have you ever been restricted, suspended, terminated, requested to voluntarily resign, placed on probation, counseled, received a warning or been subject to any remedial or disciplinary action during optometry school or postgraduate training?

Section IV

- (1) Have you ever been convicted of a felony?
- (2) Have you ever been convicted of a misdemeanor?
- (3) Have you ever been notified of any charges, complaints or other actions filed against you by any criminal prosecution authority?

Section V

- (1) Have you ever been denied a Federal Drug Enforcement Administration (DEA) Registration or state controlled substances registration?
- (2) Have you ever been called before any licensing agency or lawful authority concerned with DEA controlled substances?
- (3) Have you ever surrendered your state or federal controlled substances registration?
- (4) Have you ever had your state or federal controlled substances registration restricted or disciplined in any way?

Section VI

- (1) Have you ever been notified of any professional liability claim that resulted in an adverse judgment, settlement, or award, including settlements made prior to suit in which the patient releases any professional liability claim against the applicant?
- (2) Are you aware of any professional liability claims currently pending against you?

d. Attestation: The applicant must attest that:

- (1) S/he has read the application or has had the application read to him/her; and
- (2) All statements on the application are true and complete.;

2. Documentation: The applicant must submit the following documentation with the application:

a. Evidence of age, such as:

- (1) Driver's license;
- (2) Birth certificate;
- (3) Marriage license that provides date of birth;
- (4) Transcript that provides date of birth;
- (5) U.S. State identification card;
- (6) Military identification; or
- (7) Other similar documentation;

b. Evidence of:

- (1) Other Credential: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed. The applicant must have the licensing agency submit to the Department a certification of his/her credential;
- (2) Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;
- (3) Denial: If the applicant was denied a credential or denied the right to take a credentialing examination, an explanation of the basis for the denial;
- (4) Conviction Information: If the applicant has been convicted of a

- felony or misdemeanor, the applicant must submit to the Department:
- (a) A list of any misdemeanor or felony convictions;
 - (b) A copy of the court record, which includes charges and disposition;
 - (c) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address behaviors/actions related to the conviction;
 - (d) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;
 - (e) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and
 - (f) Any other information as requested by the Board/Department;
- c. Evidence that the applicant is a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act.
- d. Evidence of citizenship, lawful presence, and/or immigration status may include a copy of:
- (1) A U.S. Passport (unexpired or expired);
 - (2) A birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal;
 - (3) An American Indian Card (I-872);
 - (4) A Certificate of Naturalization (N-550 or N-570);
 - (5) A Certificate of Citizenship (N-560 or N-561);
 - (6) Certification of Report of Birth (DS-1350);
 - (7) A Consular Report of Birth Abroad of a Citizen of the United States of America (FS-240);
 - (8) Certification of Birth Abroad (FS-545 or DS-1350);
 - (9) A United States Citizen Identification Card (I-197 or I-179);
 - (10) A Northern Mariana Card (I-873);
 - (11) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
 - (12) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
 - (13) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or
 - (14) A Form I-94 (Arrival-Departure Record);
- e. Official transcript showing graduation from an accredited school or college of optometry sent directly to the Department from the educational institute;
- f. Satisfactory evidence of being credentialed in another U.S. jurisdiction at the highest level of licensure required to practice optometry in the U.S. jurisdiction where the applicant is currently licensed;
- g. Verification of licensure as an optometrist from all states or territories of the United States or the District of Columbia where the applicant holds or has ever held an optometrist license sent directly to the Department from the

- licensing agency;
h. A copy of the certificate of passing the Nebraska jurisprudence examination;
i. Official documentation of examination scores sent directly to the department from the entity that administered the examination (if applicable); and
3. Fee: The applicant must submit the required license fee along with the application and all required documentation.

120-003.02A Criminal Background Checks: An applicant must:

1. Obtain two fingerprint cards from the Department or from any State Patrol office or law enforcement agency;
2. Print the following information on the fingerprint cards:
 - a. Name;
 - b. Address;
 - c. Social Security Number;
 - d. Date of birth;
 - e. Place of birth;
 - f. Any physical identifiers; and
 - g. In the space on the fingerprint cards marked "Reason Fingerprinted", print "Credential";
3. Report to any State Patrol office, law enforcement agency, or other entity that offers the service of fingerprinting to provide their fingerprints on the fingerprint cards; and
4. Forward the completed fingerprint cards and payment for the criminal background check as specified in 172 NAC 120-003.02B1 to the Nebraska State Patrol, CID Division, P.O. Box 94907, Lincoln, NE 68509.

120-003.02A1 Payment for criminal background checks is the responsibility of the individual and can be made by personal check, money order or cashier's check, payable to the Nebraska State Patrol. The fee for criminal background checks is established by the Nebraska State Patrol and can be found on the web site of the Department. —at www.dhhs.ne.gov/crl/crlindex.htm.

120-003.02A2 Submission by the individual of completed fingerprint cards and the appropriate payment to the Nebraska State Patrol authorizes the release of the results of the criminal background check to the Department. The results will be forwarded by the Nebraska State Patrol directly to the Department for consideration with the application for licensure.

120-003.03 Department Review: The Department will act within 150 days upon all completed applications for initial credentialing.

120-003.04 Denial of Initial Credential: If an applicant for an initial credential does not meet all of the requirements for a credential; the Department will deny issuance of a credential. If

the applicant is found to have committed any act which would be grounds for denial of a credential as listed in 172 NAC 120-006, the Department may deny issuance of a credential. To deny a credential, the Department will notify the applicant in writing of the denial and the reasons for the determination. The denial will become final 30 days after mailing the notice unless the applicant, within that 30-day period, requests a hearing in writing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

120-003.05 Withdrawn Applications: An applicant for a credential who withdraws his/her application or whose application is rejected by the Department prior to administration of the examination will be allowed the return of his/her fee, except for a \$25 administrative fee to be retained by the Department.

120-003.06 Practice Prior to Credential: An individual who practices prior to issuance of a credential is subject to assessment of an administrative penalty under 172 NAC 120-010 or such other action as provided in the statutes and regulations governing the credential.

120-003.07 Confidentiality: Social Security Numbers obtained under this section are not public information but may be shared by the Department for administrative purposes if necessary and only under appropriate circumstances to ensure against any unauthorized access to this information.

120-003.08 Address Information: Each credential holder must notify the Department of any change to the address of record.

120-003.09 Non-English Documents: Any documents written in a language other than English must be accompanied by a complete translation into the English language. The translation must be an original document and contain the notarized signature of the translator. An individual may not translate his/her own documents.

120-004 JURISPRUDENCE EXAMINATION PROCEDURES

120.004.01 Administrative Procedures: The jurisprudence examination is administered:

1. By the Department throughout the year upon request by the applicant;
2. By the NBEO in conjunction with their national examination; or
3. By requesting that another State Board of Optometry proctor the examination at their office.

120-004.02 The Department will notify an applicant in writing of the jurisprudence examination results within 60 days after administration of the examination.

120-005 PROCEDURES FOR RENEWAL OF A LICENSE: All licenses issued by the Department under the Act and these regulations expire on August 1 of each even-numbered year.

120-005.01 Renewal process: Any licensee who wishes to renew his/her license must:

1. Meet the continuing competency requirements pursuant to 172 NAC 120-007;
2. Pay the renewal fee pursuant to 172 NAC 120-012;

~~3. Respond to the following questions:~~

- ~~a. Has your license in any profession in another state been revoked, suspended, limited or disciplined in any manner?~~
 - ~~b. Have you been convicted of a misdemeanor or felony?~~
- ~~These questions relate to the time period since the last renewal of the license or during the time period since initial licensure in Nebraska if such occurred within the two years prior to the license expiration date.~~

~~4. Cause to be submitted to the Department:~~

- ~~a. The renewal notice;~~
- ~~b. The renewal fee;~~
- ~~c. Attestation of completing 32 hours of continuing education or continuing competency earned within 24 months of the date of expiration or application for waiver of continuing competency, of which 16 hours must be earned annually. Attestation to meeting continuing competency requirements satisfies the submission of the documentation requirement of Neb. Rev. Stat. § 71-110;~~
- ~~d. If any disciplinary action was taken against the applicant's license by another state, an official copy of the disciplinary action, including charges and disposition;~~
- ~~e. If the licensee has been convicted of a felony or misdemeanor:
 - ~~(1) Official Court Record, which includes charges and disposition;~~
 - ~~(2) Copies of arrest records;~~
 - ~~(3) A letter from the licensee explaining the nature of the conviction;~~
 - ~~(4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
 - ~~(5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.~~~~

~~120-005.02 First Notice: At least 30 days before August 1 of each even-numbered year, the Department will send a renewal notice by means of regular mail to each licensee at the licensee's last place of residence as noted in the records of the Department. It is the responsibility of the licensee prior to the renewal period to notify the Department of any name and/or address changes.~~

~~120-005.02A The renewal notice must specify:~~

- ~~1. The name of the licensee;~~
- ~~2. The licensee's last known address of record;~~
- ~~3. The license number;~~
- ~~4. The expiration date of the license;~~
- ~~5. The renewal fee pursuant to 172 NAC 120-012;~~
- ~~6. The number of continuing education hours or type of continuing competency required for renewal; and~~

~~7. The option to place the license on either inactive or lapsed status.~~

~~120-005.02B The licensee must apply for renewal by submitting to the Department:~~

- ~~1. The renewal notice;~~
- ~~2. The renewal fee;~~
- ~~3. The licensee's social security number;~~
- ~~4. Attestation of completing 32 hours of continuing education or continuing competency earned within 24 months of the date of expiration or application for waiver of continuing competency, of which 16 hours must be earned annually; and~~
- ~~5. Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation or disciplinary action (if applicable).~~

~~120-005.02C If the licensee wishes to place his/her license on either inactive or lapsed status s/he must:~~

- ~~1. Request that his/her license be placed on inactive status by submitting to the Department:
 - ~~a. The renewal notice with a check in the box marked inactive; and~~
 - ~~b. The fee of \$25; or~~~~
- ~~2. Request that his/her license be placed on lapsed status by submitting to the Department:
 - ~~a. The renewal notice with a check in the box marked lapsed.~~~~

~~120-005.02D The Department will notify the licensee in writing of the acceptance or denial of the request to allow the license to be placed on lapsed or inactive status.~~

~~120-005.03 Second Notice: The Department will send to each licensee who fails to renew his/her license or place the license on inactive or lapsed status in response to the first notice, a second notice of renewal pursuant to 172 NAC 120-005.01 that specify:~~

- ~~1. That the licensee failed to pay the renewal fee;~~
- ~~2. That the license has expired;~~
- ~~3. That the licensee is subject to an administrative penalty pursuant to 172 NAC 120-013 if s/he practices after the expiration date;~~
- ~~4. That upon receipt of the renewal fee, together with an additional late fee of \$25, and documentation of continuing competency hours within that time, no order of revocation will be entered; and~~
- ~~5. That upon failure to receive \$25 in addition to the regular renewal fee, and documentation of continuing competency hours, the license will be revoked pursuant to 172 NAC 120-006.~~

~~120-005.03A The licensee must apply for renewal by submitting to the Department:~~

- ~~1. The renewal notice;~~
- ~~2. The renewal fee and the additional late fee of \$25;~~
- ~~3. The licensee's social security number;~~
- ~~4. Attestation by the licensee:
 - ~~a. That s/he has not practiced in Nebraska since the expiration of his/her license; or~~
 - ~~b. To the actual number of days practiced in Nebraska since the expiration of his/her license;~~~~
- ~~5. Attestation of completing 32 hours of continuing education or continuing competency earned within 24 months of the date of expiration or application for waiver of continuing competency, of which 16 hours must be earned annually; and~~
- ~~6. Documentation relating to misdemeanor or felony conviction(s) or licensure revocation, suspension, limitation or disciplinary action (if applicable).~~

~~120-005.03B If the licensee wishes to place his/her license on either inactive or lapsed status s/he must:~~

- ~~1. Request that his/her license be placed on inactive status by submitting to the Department:
 - ~~a. The renewal notice with a check in the box marked inactive; and~~
 - ~~b. The fee of \$25; or~~~~
- ~~2. Request that his/her license be placed on lapsed status by submitting to the Department:
 - ~~a. The renewal notice with a check in the box marked lapsed.~~~~

~~120-005.03C The Department will notify the licensee in writing of the acceptance or denial of the request to allow the license to be placed on lapsed or inactive status.~~

~~120-005.04 When any licensee fails, within 30 days of expiration of a license, to pay the renewal fee, to submit documentation of continuing competency, and/or to pay an additional late fee of \$25, the Department will automatically revoke the license without further notice or hearing and make proper record of the revocation.~~

~~120-005.05 Failure to meet the continuing competency requirement for renewal within 30 days of expiration of his/her license will constitute non-renewal of a license, unless a waiver of continuing competency is granted or the license is placed on inactive or lapsed status. When any licensee fails, within 30 days of expiration of a license, to meet the continuing competency requirements for renewal and pay an additional late fee of \$25, the Department revokes the license after notice and opportunity for hearing. Hearings held before the Department will be conducted pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920, Administrative Procedure Act and 184 NAC 1, Rules of Practice and Procedure of the Department.~~

~~120-005.06 When the licensee has given notification to the Department that s/he desires to~~

~~have the license lapse or be placed on inactive status upon expiration, 172 NAC 120-005.04 and 172 NAC 120-005.05 will not apply.~~

~~120-005.07 The Department may refuse to renew a license for falsification of any information submitted for renewal of a license. The refusal must be made pursuant to Neb. Rev. Stat. §§ 71-149 to 71-155 and 184 NAC 1, Rules of Practice and Procedure of the Department.~~

~~120-005.08 An individual who practices after expiration of his/her credential is subject to assessment of an Administrative Penalty pursuant to 172 NAC 120-013 or such other action as provided in the statutes and regulations governing the credential.~~

~~120-006 LICENSURE REVOCATION FOR FAILURE TO MEET RENEWAL REQUIREMENTS: The Department will revoke a license within 30 days of its expiration when the licensee fails to meet the renewal requirements.~~

~~120-006.01 Revocation for Non-payment of Renewal Fee~~

~~120-006.01A When a licensee fails to pay the required renewal fee or fails to request that his/her license be placed on either inactive or lapsed status within 30 days of its expiration, the Department will automatically revoke the license without further notice or a hearing.~~

~~120-006.01A1 The revocation notice will specify:~~

- ~~1. That the licensee was given first and second notice of renewal requirements and the respective dates for these notices;~~
- ~~2. That the licensee failed to renew the license or to request that his/her license be placed on inactive or lapsed status;~~
- ~~3. That the Department has revoked the license;~~
- ~~4. That the licensee has a right to appeal the revocation; and~~
- ~~5. That the licensee has a right to reinstatement of the license.~~

~~120-006.02 Revocation for Failure to Meet Continuing Competency Requirements~~

~~120-006.02A When a licensee fails within 30 days of the expiration of his/her license to meet the continuing competency requirement for licensure renewal, the Department will revoke his/her license after notice and opportunity for a hearing.~~

~~120-006.02A1 The revocation notice for failure to meet continuing competency requirements will specify:~~

- ~~1. That the licensee was given first and second notice of failure to meet the continuing competency requirement and the respective dates of each notice;~~
- ~~2. That the licensee either failed to renew the license or to have his/her license placed on inactive or lapsed status;~~
- ~~3. That the Department will revoke the license within 15 days of date of receipt of the notice unless the licensee requests in writing a hearing;~~
- ~~4. That the licensee has a right to appeal the revocation; and~~

5. ~~That the licensee has a right to reinstatement of the license.~~

~~120-007 CONTINUING COMPETENCY~~

~~120-007.01 General Requirements for Licensee:~~ ~~On or before August 1, 1986, and on or before August 1 of each even-numbered year thereafter, each Optometrist who is in active practice in the State of Nebraska must:~~

1. ~~Complete 32 hours of approved continuing education during the preceding 24 month period of which 16 hours must be earned annually. No more hours than the total number of approved hours offered in Nebraska will be required during this period;~~
2. ~~Submit to the Department an affidavit of continuing education hours on a form provided by the Department or on an alternate format. The completed affidavit must include the following information:~~
 - a. ~~The topic of the program;~~
 - b. ~~Name of approved continuing education provider;~~
 - c. ~~Location of continuing education;~~
 - d. ~~The date(s) of the program; and~~
 - e. ~~The number of hours received for the program.~~
3. ~~Be responsible for:~~
 - a. ~~Maintaining in his/her personal files the certificates or records of credit from continuing education activities received from approved continuing education providers;~~
 - b. ~~Verifying with the Department that the continuing education programs are approved by the Board;~~
 - c. ~~Maintaining documentation of attendance at or presentation of approved continuing education programs. Subject matter acceptable for continuing education credit is described as follows:~~
 - (1) ~~State and national meetings, i.e., a meeting of the Nebraska Optometric Association or American Optometric Association;~~
 - (a) ~~One hour credit for each hour of attendance, and only the portion of the meeting which meets the definition of continuing education can be accepted for credit.~~
 - (2) ~~Formal education courses which relate directly to the practice of optometry:~~
 - (a) ~~One hour credit for each hour of attendance;~~
 - (3) ~~Optometric college-sponsored courses in continuing education in optometry:~~

- ~~(a) One hour credit for each hour of attendance;~~
 - ~~(4) Home study with testing mechanism. Licensee may complete a maximum of two hours of the continuing education requirements by home study during each year of the 24 month renewal period. If there is not a testing mechanism or certificate of completion, the licensee must submit an abstract or resume of the material covered to the Board of Optometry. Said abstract or resume must be written by only the licensee and will be reviewed by members of the Board.
 - ~~(a) Examples of home study courses include, but are not limited to, professional journals articles, the profession related Internet courses, CD/ROM courses, videotape courses, and audiotape courses.~~
 - ~~(b) One credit hour for each hour of study; no more than two credit hours of this type of continuing education may be counted within each year of the 24 month renewal period.~~~~
 - ~~(5) Initial Cardiopulmonary Resuscitation (CPR) certification or CPR re-certification.
 - ~~(a) One credit hour for each hour of CPR certification or CPR re-certification; no more than two credit hours of this type of continuing education may be counted within the 24 month renewal period.~~~~
 - ~~(6) Examples of nonacceptable subject matter include, but are not limited to, practice management programs and education provided by a business entity for the purpose of promotion of their products or services.~~
 - ~~d. Maintaining documentation of presentation of an approved continuing education program. A presenter may receive credit for only the initial presentation during a renewal period. Credit will not be given for subsequent presentations of the same program.~~
- ~~4. If applicable, submit an application for waiver of the continuing competency requirement pursuant to 172 NAC 120-007.03.~~

120-007.02 Approval of Continuing Education Programs

120-007.02A The Board will evaluate applications from providers of continuing education programs in order to determine if approval is to be granted or denied. To be approved, a continuing education program must meet the following criteria:

- ~~1. The program must be at least one hour in duration;~~
- ~~2. The program's objectives must relate directly to the theory or clinical application of theory pertaining to the practice of optometry;~~

- ~~3. The presenter of the program must be qualified by education, experience or training; and~~
- ~~4. Programs must be open to all Optometrists licensed in Nebraska.~~

~~120-007.02B The continuing education provider must submit to the Board an application provided by the Department or on an alternate format. Only applications which are complete will be considered. The following information must be included in the application:~~

- ~~1. A description in detail of program content;~~
- ~~2. A description of program objectives;~~
- ~~3. A description of the qualifications of each presenter;~~
- ~~4. The number of hours for which approval is requested;~~
- ~~5. The name, address, and telephone number of the continuing education provider and its administrator, operating officer and proctor;~~
- ~~6. A description of the process the continuing education provider uses to verify attendance by the licensee;~~
- ~~7. A sample copy of the documentation the continuing education provider issues to the licensee as proof of attendance at the program;~~
 - ~~a. Certificates verifying attendance at approved courses must contain at least the following information:
 - ~~(1) Name of the course;~~
 - ~~(2) Name of the continuing education provider which may be an individual, company, or institution;~~
 - ~~(3) Name of the licensee who attended the course;~~
 - ~~(4) Number of credit hours earned (actually attended) by the licensee; and~~
 - ~~(5) Date(s) the course was attended by the licensee.~~~~
- ~~8. Date, time and place of program; and~~
- ~~9. Verification that proctor is in attendance.~~

~~120-007.02C The continuing education provider may submit the additional documents or information as considered relevant to the application and in compliance with the provisions of 172 NAC 120.~~

~~120-007.02D The continuing education provider must submit a complete application to the Department at least 45 days prior to the date on which the program is to be given to gain approval before the program is presented.~~

~~120-007.02E Once a continuing education provider is granted approval by the Board for a continuing education program, re-approval will not be required for each subsequent occasion on which the program is administered, so long as the program or the laws and regulations governing continuing education are not changed. If any portion of the program is changed or if the applicable statutes and regulations have changed, reapplication must be made pursuant to 172 NAC 120-007.02B.~~

~~120-007.02F Post Program Approval Requested by the Continuing Education Provider: Applications for approval of a continuing education program may be made after the date of the program.~~

~~120-007.02G After the Board has granted its written approval of the application, the continuing education provider is entitled to state upon any publication which advertises or announces the program, the following statement: "This program is approved for ____ hours of continuing education by the Nebraska Board of Optometry."~~

~~120-007.02H Denial of Continuing Education Programs~~

~~120-007.02H1 The Department will, upon recommendation of the Board, deny an application for approval of a continuing education program or will suspend or revoke approval of a continuing education program on any of the following grounds:~~

- ~~a. Fraud or misrepresentation of information in an application;~~
- ~~b. Program content or the presenter's qualifications fail to meet requirements pursuant to 172 NAC 120-007.02. The Board will not approve continuing education programs related to practice management or promotion of products or services; or~~
- ~~c. If the program's objectives do not relate to the theory or clinical application of theory pertaining to the practice of optometry.~~

~~120-007.02H2 The Board may grant approval or recommend denial of an application for approval of continuing education programs. Should the Board determine to deny an application for a continuing education program, it will send to the applicant by either certified or registered mail to the last address of record in the Department, a notice setting forth the reasons for the determination.~~

~~120-007.02H2a Denial of an application submitted by a continuing education provider will become final 15 days after the mailing of the notice unless the continuing education provider, within the 15 day period, gives written notice to the Department of a desire for hearing. The hearing will be conducted pursuant to the Administrative Procedure Act and 184 NAC 1 of the Rules of Practice and Procedure for the Department.~~

~~120-007.02H3 Only applications which are complete will be considered. To be complete, an application must include:~~

- ~~1. All of the information requested on a verified complete application for approval of continuing education program on a form provided by the Department or on an alternate format; and~~
- ~~2. The verified signature of the licensee or administrator or operating officer of the continuing education provider making the application.~~

~~120-007.02H4 An applicant may submit the additional documents or information as the applicant may consider relevant to the application and in compliance with the Act and 172 NAC 120.~~

~~120-007.02H5~~ In the event that an application is determined to be incomplete, the Department will notify the applicant of the information necessary to complete the application and retain the application submitted pending receipt of the additional information. The applicant will have 10 days in which to provide the information necessary to complete the application. Should an applicant fail to complete the application within the 10 day period, all materials will be returned and a new application will be necessary.

~~120-007.03~~ Waiver of Continuing Competency: The Department, on the recommendation of the Board, may waive the continuing competency requirements, in whole or in part, for any two year licensing period when a licensee submits documentation that circumstances beyond his/her control prevented the completion of the requirements.

~~120-007.03A~~ These circumstances must include situations in which the licensee:

- ~~1. Holds a Nebraska license but is not practicing optometry in Nebraska; or~~
- ~~2. Has been in the service of the regular armed forces of the United States during any part of the 24 months immediately preceding the license renewal date; or~~
- ~~3. Has been suffering from a serious or disabling illness or physical disability which prevented completion of the required number of continuing education hours during the 24 months immediately preceding the license renewal date; or~~
- ~~4. Has been first licensed within 26 months immediately preceding the renewal date.~~

~~120-007.03B~~ Application for Waiver of Continuing Competency: Any licensee who seeks a waiver of continuing competency, in part or in total, for any two year licensing period must apply to the Department. The Department, on the recommendation of the Board, may waive continuing competency requirements in part or in total for any two year period. The licensee must submit:

- ~~1. A verified complete application for waiver of continuing competency on a form provided by the Department or on an alternate format. Only applications which are complete will be considered, and the application must be received by the Department on or before August 1 of the year the license is subject to renewal; and~~
- ~~2. Documentation of the circumstances beyond the licensee's control which prevented completion of continuing competency requirements pursuant to 172 NAC 120-008.03A must include the following:~~
 - ~~a. If the licensee holds a Nebraska license but has not resided in Nebraska or practiced in Nebraska during any part of the preceding 24 months, s/he must indicate this waiver option on the application; or~~

- ~~b. If the licensee has served in the regular armed forces of the United States during part of the 24 months immediately preceding the license renewal date, s/he must indicate this waiver option on the application and submit official documentation stating the dates of the service; or~~
- ~~c. If the licensee has suffered from a serious or disabling illness or physical disability which prevented completion of the required number of hours of continuing education during the 24 months immediately preceding the license renewal date, s/he must indicate this waiver option on the application and submit a statement from a treating physician(s) stating that the licensee was injured or ill, the duration of the illness or injury and of the recovery period, and that the licensee was unable to attend continuing education programs during that period; or~~
- ~~d. If the licensee was first licensed within the 26 months immediately preceding the license renewal date, s/he must indicate this waiver option on the application and list the date said license was issued.~~

~~120-007.03C The Department, on recommendation of the Board, may grant or deny, in part or in total, an application for waiver of continuing competency requirements, based on documentation that circumstances beyond the applicant's control prevented completion of the requirements.~~

~~120-007.03C1 When the Department determines to deny an application for waiver of continuing competency requirements, it will send to the applicant by certified mail to the last name and address of record in the Department, a notice setting forth the reason for the denial determination.~~

~~120-007.03C1a The applicant has 15 days from the date of receipt of the denial notice to make a written request to the Department for an appeal. The appeal will be conducted in accordance with The Administrative Procedure Act and 184 NAC 1 of the Rules of Practice and Procedure for the Department.~~

~~120-007.03C1b The Department will issue at the conclusion of the appeal under 184 NAC 1, a final order setting forth the results of the appeal.~~

~~120-007.03C2 When the Department determines to grant a waiver of continuing competency, the applicant will be notified within 30 days of receipt of the application.~~

~~120-007.04 Audit of Continuing Education: The Board may biennially select, in a random manner, a sample of 5-20% the license renewal applications for audit of continuing education credits. Each licensee must be responsible for maintaining in his/her personal files the certificates or records of credit from continuing education activities received from approved continuing education providers. Licensees selected for audit are required to produce documentation of his/her attendance at those continuing education activities listed on his/her renewal application.~~

~~120-007.04A~~ The Department will send to each licensee selected for audit a notice of audit.

~~120-007.04B~~ When selected for audit, the licensee must provide satisfactory documentation of attendance at or participation in approved continuing education activities listed on the licensee's sworn affidavit.

~~120-007.04C~~ Failure to comply with the audit may be grounds for non-renewal or revocation of the license.

120-004 CONTINUING COMPETENCY REQUIREMENTS: Each person holding an active credential within the state must, on or before the date of expiration of the credential, comply with the continuing competency requirements for his/her profession, unless the requirements are waived in accordance with 172 NAC 120-005.03 and 120-005.04. Each credentialed individual is responsible for maintaining certificates or records of continuing competency activities.

120-004.01 On or before the credential expiration date of August 1 of even-numbered years, the credential holder must complete 44 hours of approved continuing education during the preceding 24 month period. Subject matter acceptable for continuing education credit is described as follows:

1. State and national meetings, e.g., a meeting of the Nebraska Optometric Association or American Optometric Association;
 - a. One hour credit for each hour of attendance, and only the portion of the meeting which meets the definition of continuing education can be accepted for credit.
2. Formal education courses which relate directly to the practice of optometry:
 - a. One hour credit for each hour of attendance;
3. Optometric college-sponsored courses in continuing education in optometry:
 - a. One hour credit for each hour of attendance;
4. Home study with testing mechanism. Licensee may complete a maximum of eight hours of the continuing education requirements by home study during the 24 month renewal period. If there is not a testing mechanism or certificate of completion, the licensee must submit an abstract or resume of the material covered to the Board of Optometry. Said abstract or resume must be written by only the licensee and will be reviewed by members of the Board.
 - a. Examples of home study courses include, but are not limited to, professional journals articles, profession related Internet courses, CD-ROM courses, videotape courses, and audiotape courses.
 - b. One credit hour for each hour of study.

5. Initial Cardiopulmonary Resuscitation (CPR) certification or CPR re-certification.
 - a. One credit hour for each hour of CPR certification or CPR re-certification; no more than two credit hours of this type of continuing education may be counted within the 24 month renewal period.
6. Practice Management courses.
 - a. One credit hour for each hour of practice management; no more than four credit hours of this type of continuing education may be counted within the 24 month renewal period.
7. Examples of unacceptable subject matter include, but are not limited to, education provided by a business entity for the purpose of promotion of their products or services.

120-005 RENEWAL: An individual who wants to renew his/her optometry credential must request renewal as specified in 172 NAC 120-005.02. All optometry credentials issued by the Department will expire on August 1 of each even-numbered year.

120-005.01 Renewal Notice: At least 30 days before the expiration of a credential, the Department will notify each credential holder at the last known address of record. The renewal notice will include:

1. The type of credential;
2. The credential number;
3. The expiration date;
4. Continuing competency requirements for renewal;
5. The amount of the renewal fee; and
6. Information on how to request renewal and how to place a credential on inactive status.

120.005.02 Renewal Procedures: The request for renewal may be submitted in person or by mail or Internet, and must include all required documentation and the renewal fee, which must be paid no later than the expiration date. The applicant may obtain an application from the Department or construct an application.

1. Application: The applicant, on his/her application:
 - a. Must provide the following information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
 - (3) The applicant's:
 - (a) Social Security Number (SSN); or
 - (b) Alien Registration Number ("A#"); or
 - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both;

- b. May provide the following information about him/herself:
 - (1) The applicant's telephone number including area code;
 - (2) The applicant's e-mail address; and
 - (3) The applicant's fax number; and
 - c. Must attest that s/he has met the continuing competency requirements specified in 172 NAC 120-004 or has requested a waiver if s/he meets the requirements of 172 NAC 120-005.03 and/or 120-005.04.
 - 2. Documentation: The applicant must submit the following documentation with the application:
 - a. If the applicant is not a United States citizen, s/he must submit evidence of lawful admission or presence in the United States, which may include a copy of:
 - (1) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
 - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
 - (3) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or
 - (4) A Form I-94 (Arrival-Departure Record);
 - b. Other Credential: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed;
 - c. Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;
 - d. Denial: If the applicant was denied a credential or denied the right to take a credentialing examination, an explanation of the basis for the denial;
 - e. Conviction Information: If the applicant has been convicted of a felony or misdemeanor since his/her last renewal or during the time period since initial credentialing if such occurred within the previous two years, the applicant must submit to the Department:
 - (1) A list of any misdemeanor or felony convictions;
 - (2) A copy of the court record, which includes charges and disposition;
 - (3) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
 - (4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;
 - (5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and
 - (6) Any other information as requested by the Board/Department; and
 - 4. The renewal fee according to 172 NAC 2.

120-005.03 Waivers for Military Service: A credential holder who has served in the regular

armed forces of the United States during part of the credentialing period immediately preceding the renewal date, or is actively engaged in military service as defined in 172 NAC 120-002, is not required to pay the renewal fee or to meet the continuing competency requirements if acceptable documentation is submitted to the Department. The individual must document his/her military service by submitting to the Department:

1. Military identification proving that s/he is in active service;
2. Military orders; or
3. A letter from his/her Commanding Officer indicating that s/he is on active duty.

Upon receipt of acceptable documentation, the Department will waive the fee and the continuing competency requirements and renew the credential. The credential will remain active until the next renewal period.

120-005.04 Waiver of Continuing Competency Requirements:

1. The Department waives continuing competency requirements for individuals who were first credentialed within the 26-month period immediately preceding the renewal date.
2. The Department may waive continuing competency requirements, in whole or in part, upon submission by a credential holder of documentation that circumstances beyond his/her control have prevented completion of these requirements. These circumstances may include suffering from a serious or disabling illness or physical disability which prevented completion of the required continuing competency activities.

120-005.05 Audit of Continuing Competency Requirements: The Department or the Board may biennially select, in a random manner, a sample of the renewal applications for audit of continuing competency requirements. Each credential holder selected for audit must produce documentation of the continuing competency activities.

120-005.05A The Department/Board will notify each selected credential holder by mail. Failure to notify the Department of a current mailing address will not absolve the credential holder from the requirement for audit.

120-005.05B Within 30 days, each selected credential holder must respond by submitting documentation that s/he has met the requirements for continuing competency. An extension beyond 30 days for submission of the documentation may be granted at the discretion of the Department. Documentation submitted by the credential holder will not be returned.

120-005.05C Acceptable documentation that the credential holder has met the continuing competency requirements include documentation of attendance at or participation in acceptable continuing education activities. Documentation provided by OE Tracker, a service of the Association of Regulatory Boards of Optometry (ARBO), is acceptable documentation of continuing competency activities for audit purposes.

120-005.05D The Department/Board will review the submitted documentation to

determine if the credential holder has met the requirements for continuing competency activities for renewal of the credential. Only documented activities/hours that meet the continuing competency requirements will be counted toward the total requirements for renewal.

120-005.05E The Department/Board will notify the credential holder upon satisfactory completion of the audit.

120-005.05F The credential of any person who fails to comply with the conditions of the audit will expire 30 days after notice and an opportunity for a hearing.

120-005.05G The Board reserves the right to audit continuing competency requirements of any credential holder by notifying the credential holder and requesting that s/he produce the required documentation of attendance at or participation in acceptable continuing competency programs within 30 days of mailing.

120-005.06 Department Review: The Department will act within 150 days upon all completed applications for renewal.

120-005.06A False Information: The Department may refuse to renew a credential for falsification of any information submitted for renewal of a credential. The refusal will be made according to 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

120-005.07 Address Information: Each credential holder must notify the Department of any change to the address of record.

120-005.08 Expiration of a Credential: A credential expires if a credential holder fails to:

1. Notify the Department that s/he wants to place his/her credential on inactive status upon its expiration;
2. Meet the requirements for renewal on or before the date of expiration of his/her credential; or
3. Otherwise fails to renew his/her credential.

120-005.08A Failure to Renew: A credential automatically expires without further notice or opportunity for hearing if a credential holder fails by the expiration date of the credential to either:

1. Submit documentation of continuing competency; or
2. Pay the required renewal fee.

120-005.08B Failure to Meet Continuing Competency Requirements: The Department will refuse to renew a credential, after notice and opportunity for hearing, if a credential holder fails to meet the continuing competency requirements for renewal by the expiration date of the credential.

120-005.08C Right to Practice: When an individual's credential expires, the right to represent him/herself as a credential holder and to practice optometry terminates.

120-005.08D Practice After Expiration: An individual who practices after expiration of his/her credential is subject to assessment of an administrative penalty under 172 NAC 120-010 or such other action as provided in the statutes and regulations governing the credential.

120-005.08E Reinstatement of an Expired Credential: If a credential holder wants to resume the practice of optometry after failing to renew his/her credential by the expiration date, s/he must apply to the Department for reinstatement as specified in 172 NAC 120-008.

120-005.09 Inactive Status: When an individual wants to have his/her credential placed on inactive status, s/he must notify the Department in writing. There is no fee to have a credential placed on inactive status and continuing competency is not required.

120-005.09A Request for Inactive Status: When the Department has received notification that an individual wants to have his/her credential placed on inactive status, the Department will notify the credential holder in writing of the acceptance or denial of the request.

120-005.09B Placement on Inactive Status: When an individual's credential is placed on inactive status, the credential holder must not engage in the practice of optometry, but may represent him/herself as having an inactive credential.

120-005.09C Return to Active Status: A credential may remain on inactive status for an indefinite period of time. An individual who wants to have his/her credential returned to active status must apply to the Department for reinstatement and meet the requirements specified in 172 NAC 120-008.

120-006 DISCIPLINARY ACTIONS

120-006.01 Grounds for Action Against a Credential: A credential to practice a profession may have disciplinary actions taken against it on any of the following grounds:

1. Misrepresentation of material facts in procuring or attempting to procure a credential;
2. Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;
3. Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;
4. Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to Neb. Rev. Stat. § 38-175;
5. Conviction of:
 - a. A misdemeanor or felony under Nebraska law or federal law, or
 - b. A crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;

6. Practice of the profession:
 - a. Fraudulently,
 - b. Beyond its authorized scope,
 - c. With gross incompetence or gross negligence, or
 - d. In a pattern of incompetent or negligent conduct;
7. Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;
8. Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;
9. Illness, deterioration, or disability that impairs the ability to practice the profession;
10. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;
11. Having had his/her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to 172 NAC 120-006.05 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this part;
12. Use of untruthful, deceptive, or misleading statements in advertisements;
13. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;
14. Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;
15. Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;
16. Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;
17. Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act;
18. Failure to file a report required by Neb. Rev. Stat. §§ 38-1,124 or 38-1,125;
19. Failure to maintain the requirements necessary to obtain a credential;
20. Violation of an order issued by the Department;
21. Violation of an assurance of compliance entered into under Neb. Rev. Stat. § 38-1,108;
22. Failure to pay an administrative penalty;
23. Unprofessional conduct as defined in 172 NAC 120-006.02; or
24. Violation of the Automated Medication Systems Act.

120-006.02 Unprofessional Conduct: Unprofessional conduct means any departure from or failure to conform to the standards of acceptable and prevailing practice of a profession or the ethics of the profession, regardless of whether a person, consumer, or entity is injured, but does not include a single act of ordinary negligence. Unprofessional conduct also means conduct that is likely to deceive or defraud the public or is detrimental to the public interest. Unprofessional conduct includes but is not limited to:

1. Receipt of fees on the assurance that an incurable disease can be permanently cured;
2. Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer other than:

- a. With a partner or employee of the applicant or credential holder or his/her office or clinic;
- b. With a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts; or
- c. With a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement;
3. Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;
4. Cheating on or attempting to subvert the credentialing examination;
5. Assisting in the care or treatment of a consumer without the consent of the consumer or his/her legal representative;
6. Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that the person is entitled to practice a profession for which s/he is not credentialed;
7. Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;
8. Knowingly disclosing confidential information except as otherwise permitted by law;
9. Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;
10. Failure to keep and maintain adequate records of treatment or service;
11. Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;
12. Prescribing any controlled substance to:
 - a. Oneself; or
 - b. Except in the case of a medical emergency:
 - (1) One's spouse;
 - (2) One's child;
 - (3) One's parent;
 - (4) One's sibling; or
 - (5) Any other person living in the same household as the prescriber;
13. Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession;
14. Conduct by an optometrist that is likely to deceive, defraud, or harm the public;
15. Making a false or misleading statement regarding his/her skill as an optometrist or the efficacy or value of the medicine, device, treatment, or remedy prescribed by him/her or used at his/her direction in the practice of optometry;
16. Gross negligence in the practice of optometry;
17. Practice or other behavior that demonstrates a willful rendering of substandard care, either individually or as a part of a third-party reimbursement agreement or other agreement;
18. The use of any false, fraudulent, deceptive or misleading statement in any document pertaining to the practice of optometry;
19. Prescribing, selling, administering, or distributing, any drug legally classified as a prescription drug, other than with proper certification to prescribe topical ocular pharmaceutical agents which treat eye infection, inflammation and superficial abrasions;

20. Knowingly giving to a habitue or addict any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug;
21. Prescribing, selling, administering, distributing, or giving a drug legally classified as a controlled substance or recognized as an addictive or dangerous drug to a family member or himself/herself;
22. Conviction of any state or federal law or regulation relating to a drug legally classified as a controlled substance;
23. Failure to report to the Department the relocation of any or all of his/her office(s) or place(s) of practice, in or out of the jurisdiction, within 90 days of the relocation;
24. Failure to furnish the Board, its investigators or representatives, information legally requested by the Board;
25. Willful or repeated violation of any provision(s) of Neb. Rev. Stat. §§ 38-2601 through 38-2623 or any Rules and Regulations promulgated thereto;
26. To advertise in a manner that deceives, misleads, or defrauds the public. The following advertising practices will be considered to be deceptive:
 - a. To advertise or promote any optometric service as free or below the advertiser's or promoter's own cost without revealing in the advertising or promotion the minimum expenditure the consumer must incur in order to receive the service. If the consumer need not incur any expense to obtain the service, then the advertising or promotion must state that there is no minimum purchase required;
 - b. To fail to advertise the names of all licensed optometrists who are providing optometric service that are addressed by the advertisement;
 - c. To fail to place in any advertisement either the word Optometrist, the abbreviation O.D., or Doctor of Optometry behind one's name when it appears in an advertisement;
 - d. To place in any advertisement a name that is different than the name that appears on the optometrist's license;
 - e. To fail to inform the patient of any time schedule within which a fee is to be effective, if the fee applies to a particular service for a given time;
 - f. To fail to charge the same fee for a service as that which is advertised;
 - g. To advertise that in exchange for a particular fee, a manifestly incurable disease can be permanently cured;
 - h. To fail to specify the full name of the professional body from which board certification was received when referring to certificates from professional certifying bodies;
 - i. To advertise or promote any optometric service with statements that cannot be verified, substantiated or measured; and
 - j. To advertise or promote any optometric service in violation of Neb. Rev. Stat. §§ 87-301 through 87-306, the Uniform Deceptive Trade Practices Act.
27. Failing to include in any identification of an individual licensed under Neb. Rev. Stat. § 38-2601 the term Optometrist, O.D, or Doctor of Optometry;
28. Practicing optometry without the licensee's credential available in each place of practice. Failure to show their credential upon request. Failure to use the designation of Optometrist, O.D., or Doctor of Optometry on all signs, announcements, stationery, and advertisements of licensee's services pursuant to Neb. Rev. Stat. § 38-124;

29. Failure to report to the Department the name of every person without a license or certificate that s/he has reason to believe is engaging in the practice of any profession for which a license or certificate is required pursuant to the Uniform Licensing Law Neb. Rev. Stat. § 38-1,124;
30. Receiving or giving fees for professional services to any person in exchange for referring patients; and
31. Failure of a licensed optometrist who administers or prescribes pharmaceutical agents for examination or for treatment to provide the same standard of care to patients as that provided by a physician licensed in this state to practice medicine and surgery utilizing the same pharmaceutical agents for examination or treatment.
32. Any departure from or failure to conform to the ethics of the optometric profession, which ethics are found in the American Optometric Association's An Optometrist's Guide to Clinical Ethics;
33. Misrepresentation of material facts in applying for or procuring a renewal of a license or certification;
34. Misrepresenting one's credentials in an application submitted to a healthcare facility, insurance company, or prospective employer;
35. Providing treatment or consultation recommendations via electronic or other means, including issuing a prescription, unless the optometrist has obtained a history and evaluation of the patient adequate to establish diagnosis and identify underlying conditions and/or contraindications to the treatment recommended/provided and that arrangements exist to insure availability of the optometrist or optometrist coverage for follow-up patient care;
37. Disruptive behavior, whether verbal or physical, as manifested by an optometrist's aberrant behavior which interferes with patient care or could reasonably be expected to interfere with patient care, including, but not limited to, the following:
 - a. Outbursts of rage or violent behavior;
 - b. Throwing of instruments, records, or objects;
 - c. Insulting comments to a patient, patient's family, staff or other healthcare professionals;
 - d. Striking or assaulting a patient, patient's family, staff or other healthcare professionals; or
 - e. Poor hygiene; and
38. Refusal to cooperate or failure to furnish requested information during a licensing or discipline investigation by the Department.

120-006.03 Temporary Suspension or Limitation

120-006.03A The Department may temporarily suspend or temporarily limit any credential issued by the Department without notice or a hearing if the Director determines that there is reasonable cause to believe that grounds exist under 172 NAC 120-006.01 for the revocation, suspension, or limitation of the credential and that the credential holder's continuation in practice or operation would constitute an imminent danger to the public health and safety. Simultaneously with the action, the Department will institute proceedings for a hearing on the grounds for revocation, suspension, or limitation of the credential. The hearing will be held no later than 15 days from the date of the temporary suspension or temporary limitation of the credential.

120-006.03B A continuance of the hearing will be granted by the Department upon the written request of the credential holder, and the continuance must not exceed 30 days unless waived by the credential holder. A temporary suspension or temporary limitation order by the Director will take effect when served upon the credential holder.

120-006.03C A temporary suspension or temporary limitation of a credential under 172 NAC 120-006.03 will not be in effect for more than 90 days unless waived by the credential holder. If a decision is not reached within 90 days, the credential will be reinstated unless and until the Department reaches a decision to revoke, suspend, or limit the credential or otherwise discipline the credential holder.

120-006.04 Department Action: The Department will follow the procedures delineated in the Uniform Credentialing Act to notify credential holders of any disciplinary action to be imposed and the time and place of the hearing.

120-006.05 Sanctions: Upon the completion of any hearing held regarding discipline of a credential, the Director may dismiss the action or impose the following sanctions:

1. Censure;
2. Probation;
3. Limitation;
4. Civil Penalty;
5. Suspension; or
6. Revocation.

120-006.05A Additional Terms and Conditions of Discipline: If any discipline is imposed pursuant to 172 NAC 120-006.05, the Director may, in addition to any other terms and conditions of that discipline:

1. Require the credential holder to obtain additional professional training and to pass an examination upon the completion of the training. The examination may be written or oral or both and may be a practical or clinical examination or both or any or all of the combinations of written, oral, practical, and clinical, at the option of the Director;
2. Require the credential holder to submit to a complete diagnostic examination by one or more physicians or other qualified professionals appointed by the Director. If the Director requires the credential holder to submit to an examination, the Director will receive and consider any other report of a complete diagnostic examination given by one or more physicians or other qualified professionals of the credential holder's choice if the credential holder chooses to make available the report or reports by his/her physician or physicians or other qualified professionals; and
3. Limit the extent, scope, or type of practice of the credential holder.

120-008 GROUNDS ON WHICH THE DEPARTMENT MAY DENY, REFUSE RENEWAL OF, OR DISCIPLINE A LICENSE

~~120-008.01 The Department will deny an application for a license when the applicant fails to meet the requirements for licensure pursuant to 172 NAC 120-003 or is found to be in violation of any of the provisions of 172 NAC 120-008.03.~~

~~120-008.02 The Department will refuse renewal of a license if the licensee fails to meet the requirements pursuant to 172 NAC 120-005, 172 NAC 120-007.04C or in 172 NAC 120-008.03.~~

~~120-008.03 The Department may deny, refuse renewal of, limit, suspend, or revoke licenses for any of the following grounds:~~

- ~~1. Fraud, forgery, or misrepresentation of material facts in procuring or attempting to procure a license or certificate;~~
- ~~2. Grossly immoral or dishonorable conduct evidencing unfitness or lack of proficiency sufficient to meet the standards required for practice of the profession in this state;~~
- ~~3. Habitual intoxication or dependence or failure to comply with a treatment program or an aftercare program entered into under the Licensee Assistance Program (LAP) established pursuant to Neb. Rev. Stat. § 71-172.01;~~
- ~~4. Conviction of a misdemeanor or felony under state law, federal law, or the law of another jurisdiction and which, if committed within this state, would have constituted a misdemeanor or felony under state law and which has a rational connection with the applicant's or licensee's fitness or capacity to practice the profession;~~
- ~~5. Practice of the profession (a) fraudulently, (b) beyond its authorized scope, (c) with manifest incapacity, (d) with gross incompetence or with gross negligence, (e) in a pattern of negligent conduct. Pattern of negligent conduct means a continued course of negligent conduct in performing the duties of the profession;~~
- ~~6. Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, narcotic drugs, physical disability, mental disability, or emotional disability;~~
- ~~7. Physical or mental incapacity to practice the profession as evidenced by a legal adjudication or a determination thereof by other lawful means;~~
- ~~8. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a license or certificate by a person not licensed or certified to do so;~~
- ~~9. Having had his/her license, certificate, or registration denied, refused renewal, limited, suspended, or revoked or having had the license, certificate, or registration disciplined in any other manner pursuant to Neb. Rev. Stat. § 71-155 by another state or jurisdiction to practice the particular profession involved, based upon acts by the applicant, licensee, certificate holder, or registrant similar to acts described in this section. A certified copy of the record of denial, refusal of renewal, limitation, suspension, or revocation of a license, certificate, or registration or the taking of other disciplinary measures against it by another state or jurisdiction must be conclusive evidence;~~
- ~~10. Unprofessional conduct, which term includes all acts specified in Neb. Rev. Stat. § 71-148 and such other acts as may be defined in rules and regulations adopted and promulgated by the Board with the approval of the Department;~~

- ~~11. Use of untruthful or improbable statements, or flamboyant, exaggerated, or extravagant claims concerning the licensee's or certificate holder's professional excellence or abilities, in advertisements;~~
- ~~12. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;~~
- ~~13. Distribution of intoxicating liquors, controlled substances or drugs for any other than lawful purposes;~~
- ~~14. Willful or repeated violations of the Uniform Licensing Law or 172 NAC 120;~~
- ~~15. Unlawful invasion of the field of practice of any profession mentioned in the Uniform Licensing Law which the licensee is not licensed or certified to practice;~~
- ~~16. Practicing the profession of Optometry while his/her license is suspended or in contravention of any limitation placed upon his/her license;~~
- ~~17. Physical or mental illness or physical or mental deterioration or disability which would render the applicant unqualified to practice optometry; and~~
- ~~18. Refusal of an applicant for a license or of a licensee to submit to a physical or mental examination request by the Board, pursuant to Neb. Rev. Stat. §§ 71-161.12 to 71-161.16 to determine his/her qualifications to practice or to continue in the practice of optometry; and~~
- ~~19. Violation of the Uniform Controlled Substances Act or any rules and regulations adopted pursuant to the act; and~~
- ~~20. Failure to file a report pursuant to Neb. Rev. Stat. § 71-168.~~

~~120-008.04~~ If the Department proposes to deny, refuse renewal of, limit, revoke, or suspend the license of any licensee, the applicant or licensee must be given an opportunity for a hearing before the Department and must have the right to present evidence on his/her own behalf. Hearings before the Department will be conducted pursuant to the Administrative Procedure Act and 184 NAC 1, Rules of Practice and Procedure of the Department.

~~120-009 RE-CREDENTIALING:~~ This section applies to individuals previously issued a Nebraska credential who have lost the legal authority to practice in total or in part and who seek the authority to return to practice in Nebraska with a valid Nebraska credential.

~~120-009.01 Eligibility~~

~~120-009.01A~~ An individual whose credential has been previously:

- ~~1. Placed on lapsed status;~~
- ~~2. Placed on inactive status;~~
- ~~3. Revoked for failure to meet the renewal requirements;~~
- ~~4. Suspended or limited for disciplinary reasons; or~~
- ~~5. Voluntarily surrendered or voluntarily limited for an indefinite period of time;~~

~~may request, at any time, to be re-credentialed and re-authorized to practice under the credential, in accord with these regulations.~~

~~120-009.01B~~ An individual whose credential has been revoked for disciplinary reasons may apply for reinstatement only after a period of two years has elapsed from the date of revocation.

~~120-009.01C An individual who practices prior to re-credentialing, is subject to:~~

- ~~1. Assessment of an Administrative Penalty pursuant to 172 NAC 120-013; and~~
- ~~2. Limitation or other sanction on the credential, or denial of the request to be re-credentialed and re-authorized to practice under the credential, and referral for prosecution for uncredentialed practice, as provided in the statutes and regulations governing the credential.~~

~~120-009.02 Requirements for Restoration from Lapsed Status: A person whose credential has been placed on lapsed status may have their credential restored from lapsed to active status by the Department upon proof to the Department that they meet the requirements pursuant to 172 NAC 120-003.~~

~~120-009.02A If the Department has evidence that an applicant has practiced while his/her credential was lapsed, the Department may:~~

- ~~1. Assess an Administrative Penalty pursuant to 172 NAC 120-013;~~
- ~~2. Initiate disciplinary action against the lapsed credential;~~
- ~~3. Deny the request to restore the credential from lapsed to active status; or~~
- ~~4. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.~~

~~120-009.02B If the Department has evidence that an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:~~

- ~~1. Initiate disciplinary action against the lapsed credential;~~
- ~~2. Deny the request to restore the credential from lapsed to active status; or~~
- ~~3. Restore the credential to active status and impose limitation(s) or other sanctions on the credential.~~

~~120-009.02C The Department will act within 150 days on all completed applications.~~

~~120-009.02D The applicant will be provided with notice and the opportunity for hearing pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920 before any of the actions pursuant to 172 NAC 120-009.02A and 120-009.02B are final.~~

~~120-009.03 Requirements to Move a Credential from Inactive to Active Status: A person whose credential has been placed on inactive status may have his/her credential moved from inactive to active status upon proof to the Department that they meet the following requirements:~~

- ~~1. Meet renewal requirements, including:
 - ~~a. The continuing competency requirements; and~~
 - ~~b. Paying the renewal fee and any other applicable fees;~~~~

~~2. Attest:~~

- ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
- ~~b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.~~

~~120-009.04 Procedures for Moving from Inactive to Active Status: To move a credential from inactive status to active status, the applicant must submit the following to the Department:~~

~~1. A written application which contains the following information about the applicant:~~

- ~~a. Name;~~
- ~~b. Address;~~
- ~~c. Social security number; and~~
- ~~d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;~~
- ~~e. Answer the following questions either yes or no; if you answer yes, explain the circumstances and the outcome. These questions pertain to the time period since your credential was active.~~

- ~~(1) Has any state or territory of the U.S. ever taken any of the following actions against your license?
Denied _____ Suspended _____ Revoked _____ Limited _____~~
- ~~(2) Has any licensing or disciplinary authority ever taken any of the following actions against your license?
Limited _____ Suspended _____ Restricted _____ Revoked _____~~
- ~~(3) Has any licensing or disciplinary authority placed your license on probation?~~
- ~~(4) Have you ever voluntarily surrendered a license issued to you by a licensing or disciplinary authority?~~
- ~~(5) Have you ever voluntarily limited in any way a license issued to you by a licensing or disciplinary authority?~~
- ~~(6) Have you ever been requested to appear before any licensing agency?~~
- ~~(7) Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary authority or criminal prosecution authority?~~
- ~~(8) Have you ever been addicted to, dependent upon or chronically impaired by alcohol, narcotics, barbiturates, or other drugs, which may cause physical and/or psychological dependence?~~
- ~~(9) During the past ten years, have you voluntarily entered or been involuntarily admitted to an institution or health care facility for treatment of a mental or emotional disorder/condition?~~
- ~~(10) During the last ten years, have you been diagnosed with or treated for bipolar disorder, schizophrenia, or any psychotic disorder?~~
- ~~(11) Have you ever been convicted of a felony?~~
- ~~(12) Have you ever been convicted of a misdemeanor?~~
- ~~(13) Have you ever been denied a Federal Drug Enforcement~~

- ~~Administration (DEA) Registration or state controlled substances registration?~~
- ~~(14) Have you ever been called before any licensing agency or lawful authority concerned with DEA-controlled substances?~~
- ~~(15) Have you ever surrendered your state or federal controlled substances registration?~~
- ~~(16) Have you ever had your state or federal controlled substances registration restricted in any way?~~
- ~~(17) Have you ever been notified of any malpractice claim against you?~~
- ~~f. List your professional practice activities for the time period since your credential was active.~~
- ~~g. A statement describing all:~~
- ~~(1) Felony or misdemeanor convictions during the time period since the credential was active;~~
- ~~(a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:~~
- ~~[1] Official Court Record, which includes charges and disposition;~~
- ~~[2] Arrest records;~~
- ~~[3] A letter from the applicant explaining the nature of the conviction;~~
- ~~[4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
- ~~[5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.~~
- ~~(2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;~~
- ~~(a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~
- ~~(3) Disciplinary charges pending against any professional credential held by the applicant.~~
- ~~h. Verification that the continuing competency requirements for renewal have been met;~~
- ~~2. The renewal fee and any other applicable fees.~~

~~3. Attestation by applicant:~~

- ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
- ~~b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.~~

~~120-009.04A If an applicant has practiced while his/her credential was inactive, the Department may:~~

- ~~1. Assess an Administrative Penalty pursuant to 172 NAC 120-013;~~
- ~~2. Initiate disciplinary action against the credential;~~
- ~~3. Deny the request to move the credential from inactive to active status; or~~
- ~~4. Move the credential to active status and impose limitation(s) or other sanctions on the credential.~~

~~120-009.04B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:~~

- ~~1. Initiate disciplinary action against the credential;~~
- ~~2. Deny the request to move the credential from inactive to active status; or~~
- ~~3. Move the credential to active status and impose limitation(s) or other sanctions on the credential.~~

~~120-009.04C In either event pursuant to 120-009.04A or 120-009.04B, a notice and the opportunity for hearing will be given to the applicant.~~

~~120-009.04D The Department will act within 150 days on all completed applications.~~

~~120-009.05 Requirements for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: An applicant for reinstatement who applies not more than one year following revocation for failure to meet renewal requirements must:~~

- ~~1. Meet the renewal requirements, including:
 - ~~a. The continuing competency requirements; and~~
 - ~~b. Paying the renewal fee, the late fee of \$35 and any other applicable fees.~~~~
- ~~2. Attest:
 - ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential, or~~
 - ~~b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.~~~~

~~120-009.06 Procedures for Reinstatement Within One Year Following Revocation for Failure to Meet the Renewal Requirements: To reinstate a credential not more than one year following revocation for failure to meet renewal requirements, the applicant must submit the following to the Department:~~

1. ~~A written application which contains the following information about the applicant:~~
 - a. ~~Name;~~
 - b. ~~Address;~~
 - c. ~~Social security number; and~~
 - d. ~~If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;~~
 - e. ~~Answer the following questions either yes or no; if you answer yes, explain the circumstances and the outcome. These questions pertain to the time period since your credential was active.~~
 - (1) ~~Has any state or territory of the U.S. ever taken any of the following actions against your license?
Denied _____ Suspended _____ Revoked _____ Limited _____~~
 - (2) ~~Has any licensing or disciplinary authority ever taken any of the following actions against your license?
Limited _____ Suspended _____ Restricted _____ Revoked _____~~
 - (3) ~~Has any licensing or disciplinary authority placed your license on probation?~~
 - (4) ~~Have you ever voluntarily surrendered a license issued to you by a licensing or disciplinary authority?~~
 - (5) ~~Have you ever voluntarily limited in any way a license issued to you by a licensing or disciplinary authority?~~
 - (6) ~~Have you ever been requested to appear before any licensing agency?~~
 - (7) ~~Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary authority or criminal prosecution authority?~~
 - (8) ~~Have you ever been addicted to, dependent upon or chronically impaired by alcohol, narcotics, barbiturates, or other drugs, which may cause physical and/or psychological dependence?~~
 - (9) ~~During the past ten years, have you voluntarily entered or been involuntarily admitted to an institution or health care facility for treatment of a mental or emotional disorder/condition?~~
 - (10) ~~During the last ten years, have you been diagnosed with or treated for bipolar disorder, schizophrenia, or any psychotic disorder?~~
 - (11) ~~Have you ever been convicted of a felony?~~
 - (12) ~~Have you ever been convicted of a misdemeanor?~~
 - (13) ~~Have you ever been denied a Federal Drug Enforcement Administration (DEA) Registration or state controlled substances registration?~~
 - (14) ~~Have you ever been called before any licensing agency or lawful authority concerned with DEA controlled substances?~~
 - (15) ~~Have you ever surrendered your state or federal controlled substances registration?~~
 - (16) ~~Have you ever had your state or federal controlled substances registration restricted in any way?~~

- ~~(17) Have you ever been notified of any malpractice claim against you?~~
- ~~f. List your professional practice activities for the time period since your credential was active.~~
- ~~g. A statement describing all:~~
- ~~(1) Felony or misdemeanor convictions during the time period since the credential was active;~~
- ~~(a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:~~
- ~~[1] Official Court Record, which includes charges and disposition;~~
- ~~[2] Arrest records;~~
- ~~[3] A letter from the applicant explaining the nature of the conviction;~~
- ~~[4] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
- ~~[5] A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.~~
- ~~(2) Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was revoked;~~
- ~~(a) If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~
- ~~(3) Disciplinary charges pending against any professional credential held by the applicant.~~
- ~~h. Verification that the continuing competency requirements for renewal have been met;~~
- ~~2. The renewal fee, the late fee of \$35 and any other applicable fees.~~
- ~~3. Attestation by the applicant:~~
- ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
- ~~b. To the actual number of days practiced if the applicant has practiced in Nebraska since s/he last held an active credential.~~
- ~~(1) If an applicant has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172~~

~~NAC 120-013 in which case a notice and opportunity for hearing will be sent to the applicant.~~

- ~~(2) If an applicant has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 120-009.06B.~~

~~The Department will forward the application to the Board for its recommendation pursuant to Neb. Rev. Stat. § 71-110 (5).~~

~~120-009.06A The Board's recommendation to the Department may be to:~~

- ~~1. Reinstatement of the credential;~~
- ~~2. Reinstatement of the credential with terms, conditions or restrictions; or~~
- ~~3. Denial of reinstatement.~~

~~120-009.06B Upon receipt of the Board's recommendation, the Department will, within 150 days, send to the applicant a written notice of the Department's response. The Department may:~~

- ~~1. Reinstatement of the credential. An Administrative Penalty may be assessed pursuant to 172 NAC 120-013 if warranted;~~
- ~~2. If the Department determines that the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. §§ 71-147 or 71-148, the Department may:
 - ~~a. Reinstatement of the credential with terms, conditions or restrictions. In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920. An Administrative Penalty may be assessed pursuant to 172 NAC 120-013 if warranted; or~~
 - ~~b. Denial of reinstatement. In such case the applicant will be provided notice and the opportunity for hearing before the Department pursuant to the Department's Rules of Practice and Procedure and Neb. Rev. Stat. §§ 84-901 to 84-920.~~~~

~~120-009.07 Requirements for Reinstatement More Than One Year Following Revocation for Failure to Meet the Renewal Requirements: An applicant for reinstatement who applies more than one year after revocation for failure to meet the renewal requirements must:~~

- ~~1. Petition the Board for reinstatement pursuant to Neb. Rev. Stat. § 71-161.05. The petition for reinstatement must be accompanied by:
 - ~~a. Verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was revoked; and~~
 - ~~b. Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was~~~~

~~revoked.~~

~~2. Meet the renewal requirements, including:~~

- ~~a. The continuing competency requirements; and~~
- ~~b. Paying the renewal fee, the late fee of \$75 and any other applicable fees.~~

~~3. Attest:~~

- ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
- ~~b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.~~

~~120-009.08 Procedures for Reinstatement More Than One Year Following Revocation for Failure to Meet Renewal Requirements: An applicant for reinstatement more than one year following revocation for failure to meet renewal requirements must submit to the Board:~~

~~1. A petition for reinstatement:~~

- ~~a. Stating the reason the petitioner believes his/her credential should be reinstated;~~
- ~~b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was revoked; and verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was revoked.~~
- ~~c. Containing the following information about the petitioner:~~
 - ~~(1) Name;~~
 - ~~(2) Address;~~
 - ~~(3) Social security number; and~~
 - ~~(4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential;~~
 - ~~(5) Answer the following questions either yes or no; if you answer yes, explain the circumstances and the outcome. These questions pertain to the time period since your credential was active.~~
 - ~~(a) Has any state or territory of the U.S. ever taken any of the following actions against your license?
Denied — Suspended — Revoked — Limited~~
 - ~~(b) Has any licensing or disciplinary authority ever taken any of the following actions against your license?
Limited — Suspended — Restricted — Revoked~~
 - ~~(c) Has any licensing or disciplinary authority placed your license on probation?~~
 - ~~(d) Have you ever voluntarily surrendered a license issued to you by a licensing or disciplinary authority?~~

- ~~(e) Have you ever voluntarily limited in any way a license issued to you by a licensing or disciplinary authority?~~
 - ~~(f) Have you ever been requested to appear before any licensing agency?~~
 - ~~(g) Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary authority or criminal prosecution authority?~~
 - ~~(h) Have you ever been addicted to, dependent upon or chronically impaired by alcohol, narcotics, barbiturates, or other drugs, which may cause physical and/or psychological dependence?~~
 - ~~(i) During the past ten years, have you voluntarily entered or been involuntarily admitted to an institution or health care facility for treatment of a mental or emotional disorder/condition?~~
 - ~~(j) During the last ten years, have you been diagnosed with or treated for bipolar disorder, schizophrenia, or any psychotic disorder?~~
 - ~~(k) Have you ever been convicted of a felony?~~
 - ~~(l) Have you ever been convicted of a misdemeanor?~~
 - ~~(m) Have you ever been denied a Federal Drug Enforcement Administration (DEA) Registration or state controlled substances registration?~~
 - ~~(n) Have you ever been called before any licensing agency or lawful authority concerned with DEA controlled substances?~~
 - ~~(o) Have you ever surrendered your state or federal controlled substances registration?~~
 - ~~(p) Have you ever had your state or federal controlled substances registration restricted in any way?~~
 - ~~(q) Have you ever been notified of any malpractice claim against you?~~
- ~~(6) List your professional practice activities for the time period since your credential was active.~~
- ~~(7) A statement describing all:~~
- ~~(a) Felony or misdemeanor convictions during the time period since the credential was active;~~
- ~~[1] If the petitioner has been convicted of a felony or misdemeanor, provide copies of:~~
- ~~[a] Official Court Record, which includes charges and disposition;~~
 - ~~[b] Arrest records;~~
 - ~~[c] A letter from the petitioner explaining the nature of the conviction;~~
 - ~~[d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was~~

- ~~obtained and/or required; and~~
- ~~[e]—A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.~~
- ~~(b)—Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was revoked;~~
- ~~[1]—If any disciplinary action was taken against the petitioner's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~
- ~~(c)—Disciplinary charges pending against any professional credential held by the petitioner.~~
- ~~(8)—Verification that the continuing competency requirements for renewal have been met.~~
- ~~2.—The renewal fee, the late fee of \$75 and any other applicable fees.~~
- ~~3.—Attestation by the petitioner:~~
- ~~a.—That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
- ~~b.—To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.~~
- ~~(1)—If a petitioner has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172 NAC 120-013 in which case a notice and opportunity for hearing will be sent to the petitioner.~~
- ~~(2)—If a petitioner has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 120-013.08F.~~
- ~~120-009.08A—The petition to recommend reinstatement will be considered at the next meeting of the Board that is held, but not earlier than 30 days after the petition is filed.~~
- ~~120-009.08B—Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Board within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Board.~~
- ~~120-009.08C—If the Board recommends reinstatement of the credential, no public hearing need be held on the petition.~~
- ~~120-009.08D—Prior to any recommendation by the Board against reinstatement of the credential, an opportunity for a formal public hearing on the petition must be granted by~~

~~the Board, if formally requested by the petitioner.~~

~~120-009.08D1 The petitioner's request for a formal hearing must be submitted within 30 days of the Board's notification of an opportunity for a formal public hearing.~~

~~120-009.08E If the petitioner formally requests a formal public hearing or if the Board otherwise holds such a hearing, the petitioner will be given at least 30 days prior notice by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the petitioner by personal service. The hearing will be conducted pursuant to 172 NAC 1.~~

~~120-009.08F The Board will review the petition to recommend reinstatement and the record of any hearing held, and submits its recommendation regarding reinstatement and the record on which such recommendation is made to the Department within 180 days of receipt of the petition to recommend reinstatement.~~

~~120-009.08F1 If the Board recommends reinstatement of the credential, the Department may:~~

- ~~1. Accept the Board's recommendation and grant reinstatement of the credential.~~
- ~~2. If the Department determines that the Board's recommendation is: in excess of statutory authority; made upon unlawful procedure; unsupported by competent, material, and substantial evidence; or arbitrary or capricious, the department may not accept the Board's recommendation and either:
 - ~~a. Deny reinstatement of the credential, or~~
 - ~~b. Grant reinstatement with terms, conditions, or restrictions.~~~~

~~120-009.08F2 If the Board recommends denial of reinstatement, the Board will send to the petitioner a written notice of the Board's recommendation. The petitioner may appeal the Board's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~120-009.08F3 If the Board recommends reinstatement with terms, conditions, or restrictions, the Department may:~~

- ~~1. Accept the Board's recommendation and grant reinstatement with terms, conditions, or restrictions; or~~
- ~~2. Not accept the Board's recommendation and either:
 - ~~a. Deny reinstatement of the credential; or~~
 - ~~b. Grant reinstatement of the credential.~~~~

~~120-009.08F4 The Department will, within 150 days of receipt of the Board's recommendation, send to the petitioner a written notice of the Department's~~

~~reinstatement with or without terms, conditions, or restrictions or denial of reinstatement of the credential.~~

~~120-009.08F5—The petitioner may appeal the Department's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~120-009.09—Requirements to Reinstate a Credential Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must meet the following requirements:~~

~~1. Petition the Board for reinstatement:~~

- ~~a. The petition for reinstatement must be accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and~~
- ~~b. Verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked.~~

~~2. Pay the reinstatement fee of \$75 and other profession-specific requirements if expressly set by law;~~

~~3. If the credential was revoked or suspended, attest:~~

- ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
- ~~b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.~~

~~120-009.10—Procedures for Reinstatement Following Suspension, Limitation, or Revocation for Disciplinary Reasons: An applicant for reinstatement following suspension, limitation, or revocation for disciplinary reasons must submit to the Board:~~

~~1. A petition for reinstatement:~~

- ~~a. Stating the reason the petitioner believes his/her credential should be reinstated;~~
- ~~b. Accompanied by verified recommendations from at least two credentialed practitioners of the same profession as the petitioner each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked; and verified recommendations from at least two citizens each having personal knowledge of the activities of the petitioner since the credential was suspended, limited, or revoked.~~
- ~~c. Containing the following information about the petitioner:~~

~~(1) Name;~~

~~(2) Address;~~

- ~~(3) Social security number; and~~
- ~~(4) If the petitioner holds a professional credential in another state, a list of the state(s) and type of credential;~~
- ~~(5) Answer the following questions either yes or no; if you answer yes, explain the circumstances and the outcome. These questions pertain to the time period since your credential was active.~~
 - ~~(a) Has any state or territory of the U.S. ever taken any of the following actions against your license?
Denied _____ Suspended _____ Revoked _____ Limited _____~~
 - ~~(b) Has any licensing or disciplinary authority ever taken any of the following actions against your license?
Limited _____ Suspended _____ Restricted _____ Revoked _____~~
 - ~~(c) Has any licensing or disciplinary authority placed your license on probation?~~
 - ~~(d) Have you ever voluntarily surrendered a license issued to you by a licensing or disciplinary authority?~~
 - ~~(e) Have you ever voluntarily limited in any way a license issued to you by a licensing or disciplinary authority?~~
 - ~~(f) Have you ever been requested to appear before any licensing agency?~~
 - ~~(g) Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary authority or criminal prosecution authority?~~
 - ~~(h) Have you ever been addicted to, dependent upon or chronically impaired by alcohol, narcotics, barbiturates, or other drugs, which may cause physical and/or psychological dependence?~~
 - ~~(i) During the past ten years, have you voluntarily entered or been involuntarily admitted to an institution or health care facility for treatment of a mental or emotional disorder/condition?~~
 - ~~(j) During the last ten years, have you been diagnosed with or treated for bipolar disorder, schizophrenia, or any psychotic disorder?~~
 - ~~(k) Have you ever been convicted of a felony?~~
 - ~~(l) Have you ever been convicted of a misdemeanor?~~
 - ~~(m) Have you ever been denied a Federal Drug Enforcement Administration (DEA) Registration or state controlled substances registration?~~
 - ~~(n) Have you ever been called before any licensing agency or lawful authority concerned with DEA-controlled substances?~~
 - ~~(o) Have you ever surrendered your state or federal controlled substances registration?~~
 - ~~(p) Have you ever had your state or federal controlled substances registration restricted in any way?~~
 - ~~(q) Have you ever been notified of any malpractice claim against you?~~

- ~~(6) List your professional practice activities for the time period since your credential was active.~~
 - ~~(7) A statement describing all:
 - ~~(a) Felony or misdemeanor convictions during the time period since the credential was suspended, limited, or revoked;
 - ~~[1] If the petitioner has been convicted of a felony or misdemeanor, provide copies of:
 - ~~[a] Official Court Record, which includes charges and disposition;~~
 - ~~[b] Arrest records;~~
 - ~~[c] A letter from the petitioner explaining the nature of the conviction;~~
 - ~~[d] All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
 - ~~[e] A letter from the probation officer addressing probationary conditions and current status, if the petitioner is currently on probation.~~~~~~
 - ~~(b) Revocations, suspensions, or other disciplinary actions against any professional credential held by the petitioner during the time period since the credential was suspended, limited, or revoked;
 - ~~[1] If any disciplinary action was taken against the petitioner's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~~~
 - ~~(c) Disciplinary charges pending against any professional credential held by the petitioner;~~~~
 - ~~(8) Any continuing competency activities.~~
- ~~2. The reinstatement fee of \$75.~~
- ~~3. Attestation by the petitioner, if the credential was revoked or suspended:
 - ~~a. That s/he has not practiced in Nebraska since s/he last held an active credential; or~~
 - ~~b. To the actual number of days practiced if the petitioner has practiced in Nebraska since s/he last held an active credential.~~~~
- ~~(1) If a petitioner has practiced after his/her credential was revoked the Department may assess an Administrative Penalty pursuant to 172~~

~~NAC 120-013 in which case a separate notice and opportunity for hearing will be sent to the petitioner.~~

- ~~(2) If a petitioner has practiced after his/her credential was revoked, or has committed any other violation of the statutes and regulations governing the credential, other action may be taken pursuant to 172 NAC 120-009.10G.~~

~~120-009.10A The Board will make a recommendation to the Director regarding reinstatement following disciplinary action. In determining whether reinstatement should be recommended, the Board may:~~

- ~~1. Request the Department investigate all activities of the petitioner since the disciplinary action was taken against him/her, including activities prohibited by Neb. Rev. Stat. §§71-147 and 71-148.~~
- ~~2. Require the petitioner to submit to a complete diagnostic examination by one or more physicians appointed by the Board, the petitioner being free also to consult a physician or physicians of his/her own choice for a complete diagnostic examination and make available a report or reports thereof to the Board;~~
- ~~3. Require the petitioner to pass a written, oral, or practical examination or any combination of such examinations; or~~
- ~~4. Require the petitioner to complete additional education.~~

~~120-009.10B The petition to recommend reinstatement will be considered at the next meeting of the Board that is held, but not earlier than 30 days after the petition is filed.~~

~~120-009.10C Any petition to recommend reinstatement of a credential will be conclusively acted upon by the Board within 180 days after the filing of a properly prepared petition and the necessary accompanying documents with the Board.~~

~~120-009.10D If the Board recommends reinstatement of the credential, no public hearing need be held on the petition.~~

~~120-009.10E Prior to any recommendation by the Board against reinstatement of the credential, an opportunity for a formal public hearing on the petition must be granted by the Board, if formally requested by the petitioner.~~

~~120-009.10E1 The petitioner's request for a formal hearing must be submitted within 30 days of the Board's notification of an opportunity for a formal public hearing.~~

~~120-009.10E2 If the petitioner had a hearing or an opportunity for a hearing on a prior petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04 within a period of two years immediately preceding the filing of the current petition, the Board may grant or deny, without a hearing, the current petition to recommend reinstatement filed pursuant to Neb. Rev. Stat. § 71-161.04.~~

~~120-009.10F If the petitioner formally requests a formal public hearing or if the Board otherwise holds such a hearing, the petitioner will be given at least 30 days prior notice~~

~~by sending to the petitioner a copy of the notice of hearing by certified or registered mail at his/her last known residence or business post office address as shown by the files or records of the Department or as otherwise known. Notice may be given to the petitioner by personal service. The hearing will be conducted pursuant to 172 NAC 1.~~

~~120-009.10G—The Board reviews the petition to recommend reinstatement, any examination or investigatory information and the record of hearing, if one was held. The Board will submit its recommendation to the Director within 180 days of receipt of the petition to recommend reinstatement.~~

~~120-009.10G1—If the Board recommends reinstatement of the credential:~~

- ~~1.—The Board will send its recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.~~
- ~~2.—The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Board's recommendation.~~
 - ~~a.—The application must include:
 - ~~(1)—Name of the petitioner; and~~
 - ~~(2)—Signed statement that the petitioner requests the Director to issue the credential in accordance with the Board's recommendation for reinstatement.~~~~
- ~~3.—Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:
 - ~~a.—The application;~~
 - ~~b.—The written recommendation of the Board, including any finding of fact or order of the Board;~~
 - ~~c.—The petition submitted to the Board;~~
 - ~~d.—The record of hearing, if any;~~
 - ~~e.—Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the petitioner.~~~~
- ~~4.—The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Board. The Director will not hold a second hearing. The Director may affirm, reverse or modify the Board's recommendation. A decision by the Director to reverse or modify the Board's recommendation will be based on finding that the Board's recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or capricious.~~

- a. ~~When the Director affirms, modifies or reverses the Board's recommendation for reinstatement, the Director will enter an Order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner;~~
- b. ~~If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~120-009.10G2 If the Board recommends reinstatement of the credential with terms, conditions, or restrictions:~~

- 1. ~~The Board will send its recommendation to the petitioner by certified mail along with notification that the petitioner must file an application for reinstatement with the Director.~~
- 2. ~~The petitioner must submit, to the Department, an application for reinstatement by the Director within 30 days of receipt of the Board's recommendation.~~
 - a. ~~The application must include:
 - (1) ~~Name of the petitioner; and~~
 - (2) ~~Signed statement that the petitioner requests the Director to issue the credential in accordance with the Board's recommendation for reinstatement.~~~~
- 3. ~~Upon receipt of the application for reinstatement from the petitioner, the Department will submit the following to the Director:~~
 - a. ~~The application;~~
 - b. ~~The written recommendation of the Board, including any finding of fact or order of the Board;~~
 - c. ~~The petition submitted to the Board;~~
 - d. ~~The record of hearing, if any;~~
 - e. ~~Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the petitioner.~~
- 4. ~~The Director will issue a decision regarding reinstatement within 150 days of receipt of the petitioner's application for reinstatement. The Director's decision will be based upon a review of the record of the proceedings before the Board. The Director will not hold a second hearing. The Director may affirm, reverse or modify the Board's recommendation. A decision by the Director to reverse or modify the Board's recommendation will be based on finding that the Board's recommendation is: in excess of statutory authority, made upon unlawful procedure, unsupported by competent, material, and substantial evidence in view of the entire record, or arbitrary or~~

~~capricious.~~

- ~~a. When the Director affirms, modifies or reverses the Board's recommendation for reinstatement, the Director will enter an Order setting forth the decision regarding reinstatement of the petitioner's credential. The order will be sent by certified mail to the petitioner;~~
- ~~b. If the petitioner does not accept the Director's decision, s/he may appeal such decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~120-009.10G3 If the Board denies reinstatement, the Board will send to the petitioner a written notice of the Board's recommendation to deny reinstatement. The petitioner may appeal the Board's decision to the District Court of Lancaster County pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920.~~

~~120-009.11 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for an Indefinite Period of Time:~~

~~120-009.11A Credentials voluntarily surrendered or limited for an indefinite period of time pursuant to Neb. Rev. Stat. §71-161.11 may be restored at the discretion of the Department.~~

~~120-009.11A1 An applicant for restoration of a credential that was voluntarily surrendered or limited for an indefinite period of time must submit to the Department:~~

- ~~1. A written application which contains the following information about the applicant:
 - ~~a. Name;~~
 - ~~b. Address;~~
 - ~~c. Social security number;~~
 - ~~d. If the applicant holds a professional credential in another state, a list of the state(s) and type of credential; _____~~
 - ~~e. Answer the following questions either yes or no; if you answer yes, explain the circumstances and the outcome. These questions pertain to the time period since your credential was active.
 - ~~(1) Has any state or territory of the U.S. ever taken any of the following actions against your license?
Denied — Suspended — Revoked — Limited~~
 - ~~(2) Has any licensing or disciplinary authority ever taken any of the following actions against your license?
Limited — Suspended — Restricted — Revoked~~
 - ~~(3) Has any licensing or disciplinary authority placed your license on probation?~~
 - ~~(4) Have you ever voluntarily surrendered a license issued~~~~~~

- to you by a licensing or disciplinary authority?
- ~~(5) Have you ever voluntarily limited in any way a license issued to you by a licensing or disciplinary authority?~~
- ~~(6) Have you ever been requested to appear before any licensing agency?~~
- ~~(7) Have you ever been notified of any charges or complaints filed against you by any licensing or disciplinary authority or criminal prosecution authority?~~
- ~~(8) Have you ever been addicted to, dependent upon or chronically impaired by alcohol, narcotics, barbiturates, or other drugs, which may cause physical and/or psychological dependence?~~
- ~~(9) During the past ten years, have you voluntarily entered or been involuntarily admitted to an institution or health care facility for treatment of a mental or emotional disorder/condition?~~
- ~~(10) During the last ten years, have you been diagnosed with or treated for bipolar disorder, schizophrenia, or any psychotic disorder?~~
- ~~(11) Have you ever been convicted of a felony?~~
- ~~(12) Have you ever been convicted of a misdemeanor?~~
- ~~(13) Have you ever been denied a Federal Drug Enforcement Administration (DEA) Registration or state controlled substances registration?~~
- ~~(14) Have you ever been called before any licensing agency or lawful authority concerned with DEA controlled substances?~~
- ~~(15) Have you ever surrendered your state or federal controlled substances registration?~~
- ~~(16) Have you ever had your state or federal controlled substances registration restricted in any way?~~
- ~~(17) Have you ever been notified of any malpractice claim against you?~~

~~f. List your professional practice activities for the time period since your credential was active.~~

~~g. A statement describing all:~~

- ~~(1) Felony or misdemeanor convictions during the time period since the credential was active;~~
- ~~(a) If the applicant has been convicted of a felony or misdemeanor, provide copies of:~~
- ~~[1] Official Court Record, which includes charges and disposition;~~
- ~~[2] Arrest records;~~
- ~~[3] A letter from the applicant explaining the~~

~~nature of the conviction;~~

- ~~[4]—All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required; and~~
- ~~[5]—A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation.~~

~~(2)—Revocations, suspensions, or other disciplinary actions against any professional credential held by the applicant during the time period since the credential was active;~~

~~(a)—If any disciplinary action was taken against the applicant's credential by another state, submit an official copy of the disciplinary action, including charges and disposition; and~~

~~(3)—Disciplinary charges pending against any professional credential held by the applicant.~~

~~h.—Any continuing competency activities.~~

~~i.—Attest:~~

~~(1)—That s/he has not practiced in Nebraska prior to the voluntary surrender of his/her credential; or~~

~~(2)—To the actual number of days practiced if the applicant has practiced in Nebraska prior to the voluntary surrender of his/her credential.~~

~~120-009.11A2—If an applicant has practiced while his/her credential was voluntarily surrendered, the Department may:~~

- ~~1.—Assess an Administrative Penalty pursuant to 172 NAC 120-013;~~
- ~~2.—Initiate disciplinary action against the credential;~~
- ~~3.—Deny the request to restore the credential; or~~
- ~~4.—Restore the credential to active status and impose limitation(s) or other sanctions on the credential.~~

~~120-009.11A3—If an applicant has committed any other violation of the statutes and regulations governing the credential while his/her credential was voluntarily surrendered or limited, the Department may:~~

- ~~1.—Initiate disciplinary action against the credential;~~
- ~~2.—Deny the request for restoration of the credential; or~~
- ~~3.—Restore the credential to active status and impose limitation(s) or other sanctions on the credential.~~

~~120-009.11A4~~ In either event pursuant to ~~120-009.11A2~~ or ~~120-009.11A3~~, a notice and the opportunity for hearing will be given to the applicant.

~~120-009.11A5~~ The Department will act within 150 days on all completed applications.

~~120-009.12 Procedures for Restoration of Credentials Voluntarily Surrendered or Limited for a Specific and Definite Period of Time~~

~~120-009.12A~~ Credentials voluntarily surrendered or limited for a specific and definite period of time as agreed to between the holder and Department pursuant to Neb. Rev. Stat. § 71-161.11, will be automatically restored at the expiration of that period of time.

~~120-009.12B~~ If an individual has practiced while her/his credential was voluntarily surrendered for a specific and definite period of time, the Department may assess an Administrative Penalty pursuant to 172 NAC 120-013.

~~120-009.13 Credentials Voluntarily Surrendered or Limited Permanently.~~

~~120-009.13A~~ Credentials that are voluntarily surrendered or limited permanently pursuant to Neb. Rev. Stat. § 71-161.11 will not be restored.

~~120-010 UNPROFESSIONAL CONDUCT:~~ In addition to the unlawful or unprofessional acts listed in Neb. Rev. Stat. §§ 71-147 through 71-148, the following conduct will be considered unprofessional acts as defined by the Board pursuant to Neb. Rev. Stat. § 71-147(10):

- ~~1. Conduct by an optometrist that is likely to deceive, defraud, or harm the public;~~
- ~~2. Making a false or misleading statement regarding his/her skill as an optometrist or the efficacy or value of the medicine, device, treatment, or remedy prescribed by him/her or used at his/her direction in the practice of optometry;~~
- ~~3. Gross negligence in the practice of optometry;~~
- ~~4. Practice or other behavior that demonstrates a willful rendering of substandard care, either individually or as a part of a third-party reimbursement agreement or other agreement;~~
- ~~5. The use of any false, fraudulent, deceptive or misleading statement in any document pertaining to the practice of optometry;~~
- ~~6. Commission of any act of sexual abuse, misconduct, or exploitation related to the person's practice of optometry;~~
- ~~7. Prescribing, selling, administering, or distributing, any drug legally classified as a prescription drug, other than with proper certification to prescribe topical ocular pharmaceutical agents which treat eye infection, inflammation and superficial abrasions;~~
- ~~8. Knowingly giving to a habitue or addict any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug;~~
- ~~9. Prescribing, selling, administering, distributing, or giving a drug legally classified as a controlled substance or recognized as an addictive or dangerous drug to a family member or himself/herself;~~
- ~~10. Conviction of any state or federal law or regulation relating to a drug legally classified as a controlled substance;~~

- ~~11. Failure to report to the Department the relocation of any or all of his/her office(s) or place(s) of practice, in or out of the jurisdiction, within 90 days of the relocation;~~
- ~~12. Failure to furnish the Board, its investigators or representatives, information legally requested by the Board;~~
- ~~13. Willful or repeated violation of any provision(s) of Neb. Rev. Stat. §§ 71-1,133 through 71-1,136.09 or any Rules and Regulations promulgated thereto;~~
- ~~14. To advertise in a manner that deceives, misleads, or defrauds the public. The following advertising practices will be considered to be deceptive:
 - ~~a. To advertise or promote any optometric service as free or below the advertiser's or promoter's own cost without revealing in the advertising or promotion the minimum expenditure the consumer must incur in order to receive the service. If the consumer need not incur any expense to obtain the service, then the advertising or promotion must state that there is no minimum purchase required;~~
 - ~~b. To fail to advertise the names of all licensed optometrists who are providing optometric service that are addressed by the advertisement;~~
 - ~~c. To fail to place in any advertisement either the word Optometrist or the abbreviation O.D. behind one's name when it appears in an advertisement;~~
 - ~~d. To place in any advertisement a name which is different than the name that appears on the optometrist's license;~~
 - ~~e. To fail to inform the patient of any time schedule within which a fee is to be effective, if the fee applies to a particular service for a given time;~~
 - ~~f. To fail to charge the same fee for a service as that which is advertised;~~
 - ~~g. To advertise that in exchange for a particular fee, a manifestly incurable disease can be permanently cured;~~
 - ~~h. To fail to specify the name of the professional body from which certification or accreditation was received when referring to certificates from professional accrediting bodies;~~
 - ~~i. To advertise or promote any optometric service without plainly revealing in the advertising or promotion the name(s) of all optometric licensees practicing at the outlet(s) as described in Neb. Rev. Stat. § 71-107;~~
 - ~~j. To advertise or promote any optometric service with statements that cannot be verified, substantiated or measured; and~~
 - ~~k. To advertise or promote any optometric service in violation of Neb. Rev. Stat. §§ 87-301 through 87-306, the Uniform Deceptive Trade Practices Act.~~~~
- ~~15. The designation of any person licensed pursuant to Neb. Rev. Stat. § 71-1,133 other than by the terms Optometrist or O.D.;~~
- ~~16. Practicing optometry without the licensee's credential available in each place of practice. Failure to show their credential upon request. Failure to use the designation of Optometrist or O.D. on all signs, announcements, stationery, and advertisements of licensee's services pursuant to Neb. Rev. Stat. § 71-107;~~
- ~~17. Failure to report to the Department the name of every person without a license or certificate that s/he has reason to believe is engaging in the practice of any profession for which a license or certificate is required pursuant to the Uniform Licensing Law Neb. Rev. Stat. § 71-168;~~
- ~~18. Receiving or giving fees for professional services to any person in exchange for referring patients; and~~

- ~~19. Failure of a licensed optometrist who administers or prescribes pharmaceutical agents for examination or for treatment to provide the same standard of care to patients as that provided by a physician licensed in this state to practice medicine and surgery utilizing the same pharmaceutical agents for examination or treatment.~~
- ~~20. Noncompliance with 172 NAC 120-010 will be considered unprofessional conduct pursuant to Neb. Rev. Stat. § 71-147(10) and any licensee or person as defined herein in violation hereof will be subject to revocation of license or to other penalties pursuant to Neb. Rev. Stat. §§ 71-147 to 71-162.~~
- ~~21. Any departure from or failure to conform to the ethics of the optometric profession, which ethics are found in the American Optometric Association's An Optometrist's Guide to Clinical Ethics;~~
- ~~22. Misrepresentation of material facts in applying for or procuring a renewal of a license or certification;~~
- ~~23. Misrepresenting one's credentials in an application submitted to a healthcare facility, insurance company, or prospective employer;~~
- ~~24. The use of false or deceptive statements in any advertisement;~~
- ~~25. Prescribing drugs or devices to an individual the optometrist has never met based solely on answers to questions provided by the internet, telephone, or FAX;~~
- ~~26. Prescribing drugs or devices to an individual without first establishing a proper optometrist-patient relationship. A proper optometrist-patient relationship requires that the optometrist make an informed optometric judgement upon examination, diagnosis, and formulation of a treatment plan and that arrangements exist to insure availability of the optometrist or optometrist coverage for follow-up patient care;~~
- ~~27. Disruptive behavior as manifested by an optometrist's aberrant behavior which interferes with patient care or could reasonably be expected to interfere with patient care, including, but not limited to, the following:
 - ~~a. Outbursts of rage or violent behavior;~~
 - ~~b. Throwing of instruments, records, or objects;~~
 - ~~c. Insulting comments to a patient, patient's family, staff or other healthcare professionals;~~
 - ~~d. Striking or assaulting a patient, patient's family, staff or other healthcare professionals; or~~
 - ~~e. Poor hygiene.~~~~

120-007 VOLUNTARY SURRENDER OR LIMITATION: A credential holder may offer to voluntarily surrender or limit a credential issued by the Department. The credential holder must make the offer in writing on a form provided by the Department or constructed by the credential holder, which must include the following information:

1. Personal Information:
 - a. First, middle and last name;
 - b. Mailing address (street, rural route, or post office address), city, state, and zip code;
 - c. Telephone number (optional); and
 - d. Fax number (optional).
2. Information Regarding the Credential Being Offered for Surrender or Limitation:
 - a. List credential(s) and credential number(s) that would be surrendered or limited;
 - b. Indicate the desired time frame for offered surrender or limitation:

- (1) Permanently;
 - (2) Indefinitely; or
 - (3) Definite period of time (specify);
 - c. Specify reason for offered surrender or limit of credential; and
 - d. Specify any terms and conditions that the credential holder wishes to have the Department consider and apply to the offer.
3. Attestation: **The credential holder must:**
 - a. Attest that all the information on the offer is true and complete; and
 - b. Provide the credential holder's signature and date.

120-007.01 The Department may accept an offer of voluntary surrender or limitation of a credential based on:

1. An offer made by the credential holder on his/her own volition;
2. An offer made with the agreement of the Attorney General or the legal counsel of the Department to resolve a pending disciplinary matter;
3. A decision by the Attorney General to negotiate a voluntary surrender or limitation in lieu of filing a petition for disciplinary action; or
4. A decision by the legal counsel of the Department to negotiate a voluntary surrender or limitation in response to a notice of disciplinary action.

120-007.02 The Department may reject an offer of voluntary surrender of a credential under circumstances which include, but are not limited to, when the credential:

1. Is under investigation;
2. Has a disciplinary action pending but a disposition has not been rendered; or
3. Has had a disciplinary action taken against it.

120-007.03 When the Department either accepts or rejects an offer of voluntary surrender or limitation, the Director will issue the decision in a written order. The order will be issued within 30 days after receipt of the offer of voluntary surrender or limitation and will specify:

1. Whether the Department accepts or rejects the offer of voluntary surrender; and
2. The terms and conditions under which the voluntary surrender is accepted or the basis for the rejection of an offer of voluntary surrender. The terms and conditions governing the acceptance of a voluntary surrender will include, but not be limited to:
 - a. Duration of the surrender;
 - b. Whether the credential holder may apply to have the credential reinstated;
and
 - c. Any terms and conditions for reinstatement.

120-007.04 A limitation may be placed on the right of the credential holder to practice a profession or operate a business to the extent, for the time, and under the conditions as imposed by the Director.

120-007.05 Violation of any of the terms and conditions of a voluntary surrender or limitation by the credential holder will be due cause for the refusal of renewal of the credential, for the suspension or revocation of the credential, or for refusal to restore the credential.

120-007.06 Reinstatement following voluntary surrender is set out in 172 NAC 120-008.

120-008 REINSTATEMENT: This section applies to individuals previously credentialed in Nebraska who seek the authority to return to practice in Nebraska with a valid Nebraska credential. Individuals may apply for reinstatement as follows:

1. An individual whose credential has expired, been placed on inactive status, voluntarily surrendered for an indefinite period of time, or suspended or limited for disciplinary reasons, may apply for reinstatement at any time.
2. An individual whose credential has been voluntarily surrendered for a definite period of time may apply for reinstatement after that period of time has elapsed.
3. An individual whose credential has been revoked may apply for reinstatement only after a period of two years has elapsed from the date of revocation.
4. An individual whose credential has been permanently voluntarily surrendered may not apply for reinstatement.

The voluntary surrender of a credential may be unrelated to disciplinary matters, or may be done to resolve a pending disciplinary matter, in lieu of disciplinary action, or in response to a notice of disciplinary action.

120-008.01 Reinstatement From Expired or Inactive Status or Following Voluntary Surrender Unrelated to a Disciplinary Matter: The applicant must submit to the Department:

The applicant must submit to the Board a written application on a form provided by the Department or constructed by the applicant.

1. Application: The applicant, on his/her application:
 - a. Must provide the following information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code or country information);
 - (3) The applicant's:
 - (a) Social Security Number (SSN); or
 - (b) Alien Registration Number ("A#"); or
 - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
 - (4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
 - (5) The applicant must also provide information related to the following, as requested on the application of the Department:
 - (a) History of charges, complaints, disciplinary actions, adverse actions, or other actions against a professional license or permit in any state or jurisdiction including, but not limited to:
 - (i) Voluntary surrenders or voluntary limitations;
 - (ii) Currently pending investigations or complaints;

- (iii) Prior refusals to issue, refusals to renew, or denials of a license or permit;
- (b) Information relating to fitness to practice including, but not limited to:
 - (i) Addiction, dependence upon or chronic impairment by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence;
 - (ii) Physical, mental, or emotional conditions which impair the applicant's ability to practice the profession safely and competently;
- (c) History of any remedial or disciplinary actions during optometry school or postgraduate training including, but not limited to restrictions, suspensions, terminations, request for voluntary resignation, probation, counseling, and receipt of warnings;
- (d) Any employment disciplinary actions or non-renewal of an employment contract;
- (e) Criminal history, including convictions and charges, complaints or other actions that did not result in convictions;
- (f) History of adverse actions by the Federal Drug Enforcement Administration (DEA) or a state controlled substances agency including, but not limited to:
 - (i) Denials of registration;
 - (ii) Calls to come before a licensing agency or other lawful authority in relation to DEA controlled substances;
 - (iii) Surrenders of a state or federal controlled substances registration;
 - (iv) Restrictions or disciplinary actions of a state or federal controlled substances registration;
- (g) History of professional liability claims, adverse judgments, settlements, or awards, including any pending professional liability claims.

(5) Answer the following questions either yes or no. The questions pertain to the time period since the credential was last active, unless otherwise specified. For any yes answers, explain the circumstances and outcome. Applicant will be notified of any additional documentation which is required by the Board/Department:

Section I

- (a) Have you had any disciplinary or adverse action imposed against a professional license or permit in any state or jurisdiction?
- (b) Have you voluntarily surrendered or voluntarily limited in any way a license or permit issued to you by a licensing or disciplinary authority?

- ~~(c) Have you been requested to appear before any licensing agency?~~
- ~~(d) Have you been notified of any charges, complaints or other actions filed against you by any licensing or disciplinary authority?~~
- ~~(e) Are you aware of any pending disciplinary actions or of any on-going investigations of a complaint against your license or permit in any jurisdiction?~~
- ~~(f) Have you been asked to and/or permitted to withdraw an application for licensure or permit with any Board or jurisdiction?~~
- ~~(g) Has any state or jurisdiction refused to issue, refused to renew or denied you a license or permit to practice?~~

Section II

- ~~(a) Are you currently, or have you been, addicted to, dependent upon or chronically impaired by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence?~~
- ~~(b) Within the past 5 years, have you received any therapy/treatment or been admitted to any hospital or other in-patient care facility for reasons relating to your use/abuse of alcohol, narcotics, barbiturates, or other drugs?~~
- ~~(c) Do you currently, or have you had, any physical, mental, or emotional condition which impaired, or does impair your ability to practice your health care profession safely and competently?~~
- ~~(d) Within the past 5 years, has any licensing agency or credentialing organization initiated any inquiry into your physical, mental or emotional health.~~

Section III

- ~~(a) Have you been restricted, suspended, terminated, requested to voluntarily resign, placed on probation, counseled, received a warning or been subject to any remedial or disciplinary action during optometry school or postgraduate training?~~

Section IV

- ~~(a) Have you been convicted of a felony?~~
- ~~(b) Have you been convicted of a misdemeanor?~~
- ~~(c) Have you been notified of any charges, complaints or other actions filed against you by any criminal prosecution authority?~~

Section V

- ~~(a) Have you been denied a Federal Drug Enforcement Administration (DEA) Registration or state controlled substances registration?~~
- ~~(b) Have you been called before any licensing agency or lawful authority concerned with DEA controlled substances?~~
- ~~(c) Have you surrendered your state or federal controlled substances registration?~~
- ~~(d) Have you had your state or federal controlled substances registration restricted or disciplined in any way?~~

~~Section VI~~

- ~~(a) Have you been notified of any professional liability claim that resulted in an adverse judgment, settlement, or award, including settlements made prior to suit in which the patient releases any professional liability claim against the applicant?~~
- ~~(b) Are you aware of any professional liability claims currently pending against you?~~
- b. ~~If the applicant is not a United States citizen, s/he must submit evidence of lawful admission or presence in the United States, which may include a copy of:~~
 - ~~(1) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;~~
 - ~~(2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;~~
 - ~~(3) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable;~~
 - ~~or~~
 - ~~(4) A Form I-94 (Arrival-Departure Record);~~
- c. ~~May provide the following information about him/herself:~~
 - ~~(1) Telephone number including area code;~~
 - ~~(2) E-mail address;~~
 - ~~(3) Fax number; and~~
- d. ~~Must attest that s/he:~~
 - ~~(1) Has met the continuing competency requirements specified in 172 NAC 120-004 within the 24 months immediately preceding submission of the application;~~
 - ~~(2) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant practiced in Nebraska since s/he last held an active credential, the actual number of days practiced;~~
 - ~~(3) Has not committed any act which would be grounds for action against a credential as specified in 172 NAC 120-006 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts; and~~

2. Fee: The following fee(s):

- a. If the credential is expired or inactive, the reinstatement and renewal fees; or
- b. If the credential was voluntarily surrendered, the renewal fee.

120-008.01A If an applicant has practiced while his/her credential was expired, inactive, or voluntarily surrendered, the Department may, with the recommendation of the Board, take one or more of the following actions:

1. Deny the application to reinstate the credential;
2. Reinstate the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
3. Reinstate the credential.

120-008.01B If an applicant has committed any other violation of the statutes and regulations governing the credential, the Department may:

1. Deny the application for reinstatement of the credential;
2. Reinstate the credential to active status and impose limitation(s) or other disciplinary actions on the credential; and/or
3. Reinstate the credential.

120-008.01C The Department will act within 150 days on all completed applications.

120-008.01D The Department's decision may be appealed to the Director by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.

120-008.02 Reinstatement from Non-Disciplinary Revocation or Lapsed Status: An individual whose credential was placed on non-disciplinary revocation or lapsed status before December 1, 2008 may apply for reinstatement as provided in 172 NAC 120-008.01.

120-008.03 Reinstatement Following Suspension, Limitation, Revocation, or Voluntary Surrender to Resolve a Pending Disciplinary Matter, In Lieu of Discipline, or In Response to a Notice of Disciplinary Action: An individual whose credential was suspended or limited may apply for reinstatement at any time. An individual whose credential has been revoked may apply for reinstatement after a period of two years has elapsed from the date of revocation. An individual whose credential was voluntarily surrendered may apply for reinstatement according to the order entered by the Director.

The applicant must submit to the Board a written application on a form provided by the Department or constructed by the applicant.

1. Application: The applicant, on his/her application:
 - a. Must provide the following information:
 - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
 - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code or country information);

(3) The applicant's:

- (a) Social Security Number (SSN); or
- (b) Alien Registration Number ("A#"); or
- (c) Form I-94 (Arrival-Departure Record) number.

Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.

(4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;

(5) A statement of the reason the applicant believes his/her credential should be reinstated;

(6) The applicant must also provide information related to the following, as requested on the application of the Department:

(a) History of charges, complaints, disciplinary actions, adverse actions, or other actions against a professional license or permit in any state or jurisdiction including, but not limited to:

- (i) Voluntary surrenders or voluntary limitations;
- (ii) Currently pending investigations or complaints;
- (iii) Prior refusals to issue, refusals to renew, or denials of a license or permit;

(b) Information relating to fitness to practice including, but not limited to:

- (i) Addiction, dependence upon or chronic impairment by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence;
- (ii) Physical, mental, or emotional conditions which impair the applicant's ability to practice the profession safely and competently;

(c) History of any remedial or disciplinary actions during optometry school or postgraduate training including, but not limited to restrictions, suspensions, terminations, request for voluntary resignation, probation, counseling, and receipt of warnings;

(d) Any employment disciplinary actions or non-renewal of an employment contract;

(e) Criminal history, including convictions and charges, complaints or other actions that did not result in convictions;

(f) History of adverse actions by the Federal Drug Enforcement Administration (DEA) or a state controlled substances agency including, but not limited to:

- (i) Denials of registration;
- (ii) Calls to come before a licensing agency or other lawful authority in relation to DEA controlled substances;
- (iii) Surrenders of a state or federal controlled substances registration;
- (iv) Restrictions or disciplinary actions of a state or federal controlled substances registration;

(g) History of professional liability claims, adverse judgments, settlements, or awards, including any pending professional liability claims.

~~(6) Answer the following questions either yes or no. The questions~~

pertain to the time period since the credential was last active, unless otherwise specified. For any yes answers, explain the circumstances and outcome. Applicant will be notified of any additional documentation which is required by the Board/Department:

Section I

- (a) Have you had any disciplinary or adverse action imposed against a professional license or permit in any state or jurisdiction?
- (b) Have you voluntarily surrendered or voluntarily limited in any way a license or permit issued to you by a licensing or disciplinary authority?
- (c) Have you been requested to appear before any licensing agency?
- (d) Have you been notified of any charges, complaints or other actions filed against you by any licensing or disciplinary authority?
- (e) Are you aware of any pending disciplinary actions or of any on-going investigations of a complaint against your license or permit in any jurisdiction?
- (f) Have you been asked to and/or permitted to withdraw an application for licensure or permit with any Board or jurisdiction?
- (g) Has any state or jurisdiction refused to issue, refused to renew or denied you a license or permit to practice?

Section II

- (a) Are you currently, or have you been, addicted to, dependent upon or chronically impaired by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence?
- (b) Within the past 5 years, have you received any therapy/treatment or been admitted to any hospital or other in-patient care facility for reasons relating to your use/abuse of alcohol, narcotics, barbiturates, or other drugs?
- (c) Do you currently, or have you had, any physical, mental, or emotional condition which impaired, or does impair your ability to practice your health care profession safely and competently?
- (d) Within the past 5 years, has any licensing agency or credentialing organization initiated any inquiry into your physical, mental or emotional health.

Section III

- (a) Have you been restricted, suspended, terminated, requested to voluntarily resign, placed on probation, counseled, received a warning or been subject to any remedial or disciplinary action during optometry school or postgraduate training?

Section IV

- (a) Have you been convicted of a felony?

~~(b) Have you been convicted of a misdemeanor?~~

~~(c) Have you been notified of any charges, complaints or other actions filed against you by any criminal prosecution authority?~~

~~Section V~~

~~(a) Have you been denied a Federal Drug Enforcement Administration (DEA) Registration or state controlled substances registration?~~

~~(b) Have you been called before any licensing agency or lawful authority concerned with DEA controlled substances?~~

~~(c) Have you surrendered your state or federal controlled substances registration?~~

~~(d) Have you had your state or federal controlled substances registration restricted or disciplined in any way?~~

~~Section VI~~

~~(a) Have you been notified of any professional liability claim that resulted in an adverse judgment, settlement, or award, including settlements made prior to suit in which the patient releases any professional liability claim against the applicant?~~

~~(b) Are you aware of any professional liability claims currently pending against you?~~

b. If the applicant is not a United States citizen, s/he must submit evidence of lawful admission or presence in the United States, which may include a copy of:

(1) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;

(2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;

(3) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or

(4) A Form I-94 (Arrival-Departure Record);

c. May provide the following information about him/herself:

(1) Telephone number including area code;

(2) E-mail address;

(3) Fax number; and

d. Must attest that s/he:

(1) Has met the continuing competency requirements specified in 172 NAC 120-004 within the 24 months immediately preceding submission of the application;

(2) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant practiced in Nebraska since s/he last held an active credential, the actual number of days practiced;

(3) Has not committed any act which would be grounds for action against a credential as specified in 172 NAC 120-006 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts; and

2. Fee: The renewal fee.

120-008.03A The Board will make a recommendation regarding reinstatement following suspension, limitation, revocation, or voluntary surrender within 180 days of receipt of the application.

120-008.03B The Department, with the recommendation of the Board, may:

1. Conduct an investigation to determine if the applicant has committed acts or offenses prohibited by Neb. Rev. Stat. § 38-178;
2. Require the applicant to submit to a complete diagnostic examination, at the expense of the applicant, by one or more physician(s) or other professionals appointed by the Board. The applicant may also consult a physician(s) or other professionals of his/her own choice for a complete diagnostic examination and make available a report(s) of the examination(s) to the Department and to the Board;
3. Require the applicant to pass a written, oral, or practical examination or any combination of examinations at the expense of the applicant;
4. Require the applicant to successfully complete additional education at the expense of the applicant;
5. Require the applicant to successfully pass an inspection of his/her practice site; or
6. Take any combination of these actions.

120-008.03C On the basis of the written application, materials submitted by the applicant, and the information obtained under 172 NAC 120-008.03B, the Board may:

1. Deny the application for reinstatement; or
2. Recommend to the Department:
 - a. Full reinstatement of the credential;
 - b. Modification of the suspension or limitation; or
 - c. Reinstatement subject to limitations or subject to probation with terms and conditions.

If the applicant has practiced while his/her credential was suspended, limited, revoked, or voluntarily surrendered, the Department may assess an administrative penalty pursuant to 172 NAC 120-010, in which case a separate notice of opportunity for hearing will be sent to the applicant.

120-008.03D An affirmative vote of a majority of the full membership of the Board as authorized by statute is required to recommend reinstatement of a credential with or without terms, conditions, or restrictions.

120-008.03E Full Reinstatement: If the Board recommends full reinstatement of the credential, modification of the suspension or limitation, or reinstatement of the credential subject to limitations or subject to probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

1. The written recommendation of the Board, including any finding of fact or

- order of the Board;
2. The application for reinstatement;
 3. The record of hearing, if any; and
 4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.

120-008.03F Denial, Modification, Limitation, or Probation: If the Board's initial decision is to deny the application for reinstatement, recommend modification of the suspension or limitation, or reinstate the credential subject to limitation or probation with terms and conditions, notification of the Board's decision will be mailed to the applicant by certified mail.

1. The initial decision or recommendation of the Board will become final 30 days after the decision or recommendation is mailed to the applicant unless the applicant requests a hearing within that 30-day period.
 - a. If the applicant requests a hearing before the Board, the Department will mail a notice of the date, time, and location of the hearing. The notice will be sent by certified mail at least 30 days before the hearing.
 - b. Following the hearing, the Board may deny the reinstatement or recommend full reinstatement of the credential, or recommend modification of the suspension or limitation, or recommend reinstatement of the credential subject to limitations or probation with terms and conditions.
2. If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years before filing the current application, the Department may grant or deny the application without another hearing before the Board.

120-008.03G Denial Decision: if the Board's final decision is denial of the application for reinstatement, the applicant will be notified by certified mail. The applicant may appeal the Board's denial to District Court in accordance with the Administrative Procedure Act.

120-008.03H Board Recommendation: If the Board's final recommendation is full reinstatement of the credential, modification of the suspension or reinstatement of the credential subject to limitations or probation with terms and conditions, the Board's recommendation will be sent to the applicant by certified mail. The following information will be forwarded to the Director for a decision:

1. The written recommendation of the Board, including any findings of fact or order of the Board;
2. The application for reinstatement;
3. The record of hearing, if any; and
4. Any pleadings, motions, requests, preliminary or intermediate rulings and orders, and similar correspondence to or from the Board and the applicant.

120-008.031 Director's Review: The Director, upon receipt of the Board's recommendation for full reinstatement, modification, or probation, will review the application and other documents and make a decision within 150 days of receipt of the Board's recommendation and accompanying documents. The Director will enter an order setting forth the decision. The Director may:

1. Affirm the recommendation of the Board and grant reinstatement; or
2. Reverse or modify the recommendation if the Board's recommendation is:
 - a. In excess of statutory authority;
 - b. made upon unlawful procedure;
 - c. Unsupported by competent, material, and substantial evidence in view of the entire record; or
 - d. Arbitrary and capricious.

The order regarding reinstatement of the applicant's credential will be sent to the applicant by certified mail. The Director's decision may be appealed to District Court by any party to the decision. The appeal must be in accordance with the Administrative Procedure Act.

120-011-009 PROCEDURES FOR CERTIFICATION TO USE PHARMACEUTICAL AGENTS: In order to use pharmaceutical agents for diagnostic or therapeutic purposes, a licensee must be certified by the Department. The criteria for issuance of certification to use pharmaceutical agents for diagnostic or therapeutic purposes and the documentation required by the Department and the Board are set forth below.

120-011-009.01 Certification to Use Pharmaceutical Agents for Diagnostic Purposes:

~~120-011.01A Persons Certified in Nebraska on or Before April 30, 1987: Licensed optometrists certified by the Department to use pharmaceutical agents for diagnostic purposes on or before April 30, 1987, need not be recertified pursuant to 172 NAC 120-011.01C.~~

~~120-011.01B Persons Certified in Other States on or Before April 30, 1987: Any licensed optometrist certified in another state to use pharmaceutical agents for diagnostic purposes on or before April 30, 1987, may be so certified in Nebraska on the basis of certification in another state under the conditions set forth below. In order to be certified, such persons must:~~

- ~~1. Have a current license to practice optometry in the State of Nebraska;~~
- ~~2. Have been certified in the other state on or before April 30, 1987, under standards which are substantially equivalent to the standards in effect in this state on or before April 30, 1987, pursuant to 172 NAC 120-011.01C; and~~
- ~~3. Submit to the Department:~~
 - ~~a. A complete application on a form provided by the Department or on an alternate format. The application must include the following information:~~

- ~~(1) Name;~~
- ~~(2) Address, including city, state and zip code;~~
- ~~(3) Telephone number (optional);~~
- ~~(4) Nebraska optometry license number (if applicable);~~
- ~~(5) Name of accredited optometry college attended;~~
- ~~(6) Location of accredited optometry college attended;~~
- ~~(7) Date of graduation from accredited optometry college;~~
- ~~(8) Verified documentation from an accredited school or college of optometry of successful completion of the course of study for use of pharmaceutical agents for diagnostic purposes completed by the applicant which included at least 100 hours of lectures, clinics and examination which involved at a minimum a study of:~~

- ~~(a) Ocular anesthetics, mydriatics, and cycloplegics;~~
- ~~(b) Ocular toxicity of pharmaceutical agents;~~
- ~~(c) Allergies of ocular agents;~~
- ~~(d) Pharmacological effects of all ocular drug substances;~~
- ~~(e) Consideration of the mechanism of action of anesthetics, cycloplegics and mydriatics in human beings and the use of such substances in the diagnosis of occurring ocular disorders;~~
- ~~(f) Correlating the utilization of pharmaceutical agents and optical instrumentation and procedures; and~~
- ~~(g) A statement that the applicant passed the required examination;~~

- ~~b. Verification on a form provided by the Department or on an alternate format, that the applicant is duly certified to use pharmaceutical agents for diagnostic purposes and should contain the following information:~~

- ~~(1) Applicant's name;~~
- ~~(2) Name of other licensing agency;~~
- ~~(3) Diagnostic Certification number issued by other licensing agency;~~
- ~~(4) Date of issuance and date of expiration;~~
- ~~(5) Name of examination(s) taken including examination score information, if available;~~
- ~~(6) Answer the following questions either yes or no; if you answer yes, explain the circumstances and outcome:~~
 - ~~(a) Has the applicant's diagnostic certification ever been suspended?~~
 - ~~(b) Has the applicant's diagnostic certification ever been revoked?~~
 - ~~(c) Has the applicant's diagnostic certification ever had any other disciplinary action taken against it?~~

~~(d) The nature of disciplinary actions, if any, taken against the applicant's diagnostic certification;~~

~~(e) As far as the licensing agency's records are concerned, is the applicant entitled to your endorsement?~~

~~(7) Date verification was prepared;~~

~~(8) Signature of official from licensing agency;~~

~~(9) Printed name and title of official from licensing agency;~~

~~(10) Name and address of licensing agency; and~~

~~(11) Seal of the licensing agency.~~

~~e. Documentation from the proper authority of the place from which s/he comes, of the standards maintained there, and the laws and rules and regulations relating to certification to use pharmaceutical agents for diagnostic purposes in effect at the time the applicant was certified.~~

~~d. The required certification fee.~~

~~4. The Department will:~~

~~a. Act within 150 days upon all completed applications for certification; and~~

~~b. Issue to each qualified person a certificate to use pharmaceutical agents for diagnostic purposes.~~

~~120-011.01C Certification After April 30, 1987: 120-009.01A Applicants for certification to use pharmaceutical agents for diagnostic purposes who do not meet the conditions pursuant to 172 NAC 120-011.01A and 172 NAC 120-011.01B must:~~

~~120-011.041. Have a current Nebraska license to practice optometry and meet the following criteria:~~

~~1a. Have graduated from an accredited school or college of optometry after August 25, 1989; or~~

~~2. Satisfactorily complete an approved course in pharmacology provided by an accredited school or college of optometry;~~

~~a(1). An approved course in pharmacology for a certification to use pharmaceutical agents for diagnostic purposes must meet the following criteria:~~

~~(1a) Include a study of ocular anesthetics, mydriatics, cycloplegics, ocular toxicity of pharmaceutical agents, ocular allergies of ocular agents, and pharmacologic effects of ocular drug substances;~~

~~(2b) Include the consideration of the mechanism of action of anesthetics, cycloplegics, and mydriatics in human beings and the uses of the substances in the diagnosis of occurring ocular disorders;~~

~~(3) Include at least 100 hours of classroom education, clinical training, and examination; and~~

(4c) Correlate the utilization of pharmaceutical agents and optical instrumentation and procedures; and

3b. Meet one of the following:

(1) Pass an approved examination which covers ocular pharmacology for the use of pharmaceutical agents for diagnostic purposes pursuant to 172 NAC 120-~~011009~~.01C4A item 21 administered by the National Board of Examiners in Optometry (NBEO) with a passing score ~~as determined by a criterion-referenced standard setting method on ocular pharmacology~~, or

(2) ~~the applicant must pass~~ Pass an examination which covers ocular pharmacology pursuant to 172 ~~NAC-NAC-120-011009~~.01C4A item 21 administered by an accredited school or college of optometry with a passing score ~~as determined by a criterion-referenced standard setting method on ocular pharmacology~~; and
or

(3) Be credentialed in another U.S. jurisdiction at the highest level required to practice optometry for optometrist licensure in the U.S. jurisdiction where the applicant is currently credentialed Provide evidence of certification in another state for use of diagnostic pharmaceutical agents which is deemed by the board as satisfactory validation of such qualifications; and

4c. Applicants who have graduated from an accredited school or college of optometry prior to August 25, 1989, must submit to the Department:

a(1). A complete application on a form provided by the Department or on an alternate format, ~~as outlined in 172 NAC 120-011.01B item 3.a.(1) through (8)~~; The application must include the following information:

(a) Name;

(b) Address, including city, state and zip code;

(c) Telephone number (optional);

(d) Nebraska optometry license number (if applicable);

(e) Name of accredited optometry college attended;

(f) Location of accredited optometry college attended;

(g) Date of graduation from accredited optometry college;

(2). One of the following:

(a) Official documentation:

[1] from an accredited school or college of optometry of successful completion of the course of study for use of pharmaceutical agents for diagnostic purposes completed by the applicant which meets the requirements of 172 NAC 120-009.01A item 1; and

- ~~b. Official documentation^[2] of passing the approved examination; and or~~
~~^[3] of being credentialed in another U.S. jurisdiction at the highest level required to practice optometry in the U.S. jurisdiction where the applicant is currently credentialed; and~~
- ~~€(3). The required certification fee; or,~~

~~5. Applicants who have graduated from an accredited school or college of optometry after August 25, 1989, must submit to the Department:~~

- ~~a. A complete application on a form provided by the Department or on an alternate format as outlined in 172 NAC 120-011.01B item 3.a.(1) through (7);~~
- ~~b. Official documentation of passing the approved examination; and~~
- ~~c. The required certification fee.~~

120-011.01C22. The Department will:

- ~~4a.~~ Act within 150 days upon all completed applications for certification; and
- ~~2b.~~ Issue to each person who meets the requirements of 172 NAC 120-~~011009~~.01A, ~~172 NAC 120-011.01B, or 172 NAC 120-011.01C,~~ a certificate to use pharmaceutical agents for diagnostic purposes.

120-011009.02 Certification to Use Pharmaceutical Agents for Therapeutic Purposes:

120-011009.02A Applicants for certification to use pharmaceutical agents for therapeutic purposes must:

1. Have been certified by the Department upon the recommendation of the Board to use pharmaceutical agents for diagnostic purposes and meet the following criteria:
 - ~~a. Have graduated from an accredited school or college of optometry after August 25, 1989; or~~
 - ~~b. Satisfactorily complete the following educational requirements:~~
 - (1) ~~Forty clock hours of eC~~classroom didactic education concerning the use of pharmaceutical agents for therapeutic purposes. ~~These 40 clock hours must have been obtained after January 1, 1984, and they must have been obtained from provided by an accredited school or college of optometry; and institution which uses staff, facilities, and administration that is comparable when the education is offered either on the institution's campus or at an alternate site; and the institution must have a curriculum for the use of pharmaceutical agents for therapeutic purposes. These 40 hours must include:~~

- ~~(a) A review of general pharmacology and therapeutics;~~
- ~~(b) A review of ocular therapeutic pharmacology;~~
- ~~(c) Diagnosis and treatment of diseases of the eye, ocular adnexa, and visual system.~~
- ~~(d) Diagnosis of corneal disease and trauma including corneal foreign bodies;~~
- ~~(e) Diagnosis and treatment of anterior segment eye diseases;~~
- ~~(f) Clinical procedures related to the diagnosis and treatment of the eye, ocular adnexa, and visual system;~~
- ~~(g) Ocular manifestations of systemic disease;~~
- ~~(h) A review of systemic disease syndromes;~~
- ~~(i) Ocular therapy including management of acute systemic emergencies;~~
- ~~(j) Consultation criteria in ocular disease and trauma; and~~

- (2) ~~Sixty clock hours of supervised c~~Clinical training as it applies to optometry with particular emphasis on the examination, diagnosis and treatment of the eye, ocular adnexa, and visual system. ~~This training must have been completed after January 1, 1984, and it must~~ provided by an accredited school or college of optometry that includes, but is not limited to, case histories, diagnosis, treatment and management regimens, special instrumentation and grand rounds; and

eb. Meet one of the following:

- ~~(1) Pass an approved examination which covers the Treatment treatment and Management management of Ocular ocular Disease disease (TMOD) administered by the International Association of Boards (IAB) or the National Board of Examiners in Optometry (NBEO) with a passing score; as determined by a criterion-referenced standard setting method; or~~
- ~~(2) p~~Pass Part II of the examination administered by the NBEO after 1992; with a passing score; or
- ~~(+)(3) Pass an examination that is approved by the Board as equivalent to the examination given by the NBEO as determined by a criterion-referenced standard setting method; or~~
- ~~(4) Be credentialed in another U.S. jurisdiction at the highest level required to practice optometry for optometrist licensure in the U.S. jurisdiction where the applicant is currently credentialed; and~~

ec. Applicants who have graduated from an accredited school or college of optometry prior to August 25, 1989, must sSubmit to the Department:

- (1) A complete application on a form provided by the Department or on an alternate format. The application must include the following information:

- (4a) Name;
- (2b) Address, including city, state and zip code;
- (3c) Nebraska optometry license number;
- (4d) Name of accredited optometry college attended;
- (5e) Location of accredited optometry college attended;
- (6f) Date of graduation from accredited optometry college;
- (7g) Whether the applicant ~~contacted~~ requested the National Board of Optometry (NBO) entity that administered his/her examination to send his/her examination score in the Treatment and Management of Ocular Disease (TMOD);
- (8h) Date the applicant sat for the TMOD Examination;
- (9) One of the following:
 - (a) Verified Official documentation:
 - [1] -from an accredited school or college of optometry of successful completion of the didactic education and supervised clinical training including the number of hours of supervised clinical training completed by the applicant; and
 - (10) [2] Official documentation of passing the approved examination; and or
 - [3] of being credentialed in another U.S. jurisdiction at the highest level required to practice optometry in the U.S. jurisdiction where the applicant is currently credentialed; and
- (11) The required certification fee; or.

e. ~~Applicants who have graduated from an accredited school or college of optometry after August 25, 1989, must submit to the Department:~~

- (1) ~~Name;~~
- (2) ~~Address, including city, state and zip code;~~
- (3) ~~Nebraska optometry license number;~~
- (4) ~~Name of accredited optometry college attended;~~
- (5) ~~Location of accredited optometry college attended;~~
- (6) ~~Date of graduation from accredited optometry college;~~
- (7) ~~Whether the applicant contacted the National Board of Optometry (NBO) to send his/her examination score in the Treatment and Management of Ocular Disease (TMOD);~~
- (8) ~~Date the applicant sat for the TMOD Examination;~~
- (9) ~~Official documentation of passing the approved examination; and~~
- (10) ~~The required certification fee.~~

2. The Department will:

- a. Act within 150 days upon all completed applications for certification; and

- b. Issue to each person who meets the requirements in 172 NAC 120-~~011.010~~.02A item 1., a certificate to use pharmaceutical agents for therapeutic purposes.

~~120-011.02B Procedures for Use of Pharmaceutical Agents Other than Oral for the Treatment of Glaucoma are Listed Below:~~

- ~~1. An optometrist who wishes to use pharmaceutical agents other than oral for the treatment of glaucoma must meet one of the following:~~
 - ~~a. An optometrist who has graduated from an accredited school or college of optometry prior to January 1, 1996, who holds a Nebraska license to practice optometry and is certified to use pharmaceutical agents for therapeutic purposes must, prior to treating glaucoma:~~
 - ~~(1) Hold a current license to practice optometry in another state which includes glaucoma certification and that the educational requirements for that glaucoma certification are determined by the Nebraska Board of Optometry to be equivalent to the requirements pursuant to 172 NAC 120-011.02A through 172 NAC 120-011.02A item 2.b.; or~~
 - ~~(2) Meet the requirements pursuant to 172 NAC 120-011.02A through 172 NAC 120-011.02A item 2.b. within the two years immediately preceding the date of application for updated therapeutic certification which includes the use of pharmaceutical agents for the treatment of glaucoma; or~~
 - ~~(3) Complete a glaucoma refresher course of at least ten hours, approved by the Department upon recommendation of the Board of Optometry.~~
 - ~~(4) Failure to complete the education prior to January 1, 2000, will result in the revocation of the licensee's certification to use pharmaceutical agents for therapeutic purposes.~~
 - ~~b. An optometrist who has graduated from an accredited school or college of optometry prior to January 1, 1996, and who applies for a license to practice optometry on or after July 15, 1998, must meet the requirements pursuant to 172 NAC 120-011.02B item 1.a.(1) or 172 NAC 120-011.02B item 1.a.(2) or 172 NAC 120-011.02B item 1.a.(3).~~
 - ~~c. An optometrist who has graduated from an accredited school or college of optometry after January 1, 1996, must be deemed to have met the educational requirements for certification to use pharmaceutical agents for therapeutic purposes which includes the treatment and management of glaucoma.~~
- ~~2. An optometrist who meets the requirements in 172 NAC 120-011.02B item 1.a. or 172 NAC 120-011.02B item 1.b. or 172 NAC 120-011.02B item 1.c must submit to the Department:~~
 - ~~a. Name;~~

- ~~b. Address, including city, state, zip code;~~
- ~~c. Nebraska optometry license number;~~
- ~~d. Nebraska therapeutic certification number;~~
- ~~e. Name of accredited optometry college attended;~~
- ~~f. Date of graduation from accredited optometry college;~~
- ~~g. For applicants who graduated from optometry college prior to January 1, 1996, who hold a Nebraska license to practice optometry and are therapeutically certified, one of the following:
 - ~~(1) Proof that the applicant holds a current license to practice optometry in another state which includes glaucoma certification and documentation of the educational requirements for that glaucoma certification from that state; or~~
 - ~~(2) Proof that the applicant has met the requirements for Nebraska therapeutic certification within the two years immediately preceding the date of application for updated therapeutic certification; or~~
 - ~~(3) Proof that the applicant has completed a glaucoma refresher course of at least ten hours that has been approved by the Department upon recommendation of the Board of Optometry and documentation of the glaucoma refresher course s/he has completed;~~~~
- ~~h. For applicants who graduated from optometry college prior to January 1, 1996, who are applying for a Nebraska license to practice optometry on or after July 15, 1998, one of the following:
 - ~~(1) Proof that the applicant holds a current license to practice optometry in another state which includes glaucoma certification and documentation of the educational requirements for that glaucoma certification from that state; or~~
 - ~~(2) Proof that the applicant has met the requirements for Nebraska therapeutic certification within the two years immediately preceding the date of application for updated therapeutic certification; or~~
 - ~~(3) Proof that the applicant has met the requirements for Nebraska therapeutic certification, but it has been longer than two years ago, so s/he has also completed a glaucoma refresher course of at least ten hours that has been approved by the Department upon recommendation of the Board of Optometry and documentation of the glaucoma refresher course s/he has completed;~~~~
- ~~i. For applicants who graduated from optometry college after January 1, 1996:~~

- ~~(1) Proof that the applicant has met the educational requirements for certification to use pharmaceutical agents for therapeutic purposes which includes the treatment and management of glaucoma by virtue of graduation from an accredited school or college of optometry after January 1, 1996.~~
- ~~3. The Department will:~~
- ~~a. Act within 150 days upon all completed applications for updated therapeutic certification which includes the use of pharmaceutical agents for the treatment of glaucoma; and~~
 - ~~b. Issue to each person who meets the requirements of 172 NAC 120-011.02B item 1.a. or 172 NAC 120-011.02B item 1.b. the authority to use pharmaceutical agents for the treatment of glaucoma.~~
- ~~4. No course of instruction in the treatment of glaucoma will be approved by the Department upon the recommendation of the Board of Optometry unless:~~
- ~~a. It is taught by an institution that is recognized by the United States Department of Education or its successor; and~~
 - ~~b. The content for the course is certified to the Board by the institution as being comparable in content to a course of instruction in the treatment of glaucoma required by other licensing boards for licensees or registrants allowed to treat glaucoma in the scope of their professional practice.~~

~~120-012 SCHEDULE OF FEES:~~ The following fees have been set by the Department:

~~120-012.01 Initial Optometry License Fee:~~ By an applicant for a license to practice optometry, the fee of \$200 and the Licensee Assistance Program fee of \$1 for each year remaining during the current biennial renewal period.

~~120-012.02 Proration of Initial License Fee:~~ For issuance of a license that will expire within 180 days after its initial issuance date, a fee of \$50 and the Licensee Assistance Program fee of \$1.

~~120-012.03 Initial Optometry License by Reciprocity Fee:~~ By an applicant for a license to practice optometry, granted on the basis of a license granted by another state or territory, the fee of \$200 and the Licensee Assistance Program fee of \$1 for each year remaining during the current biennial renewal period.

~~120-012.04 Proration of Initial License by Reciprocity Fee:~~ For issuance of a license, granted on the basis of a license granted by another state or territory, that will expire within 180 days after initial issuance date, a fee of \$50 and the Licensee Assistance Program fee of \$1.

~~120-012.05 Diagnostic Certification Fee:~~ By an applicant for a certification to use pharmaceutical agents for diagnostic purposes, the fee of \$10.

~~120-012.06 Therapeutic Certification Fee: By an applicant for a certification to use pharmaceutical agents for therapeutic purposes, the fee of \$10.~~

~~120-012.07 Optometry License Renewal Fee: By an applicant for a renewal on a biennial basis of a license to practice optometry, the fee of \$10 and the Licensee Assistance program fee of \$2.~~

~~120-012.08 Inactive License Status Fee: By an applicant to have his/her license placed on inactive status, the fee of \$25.~~

~~120-012.09 Renewal Late Fee: By an applicant for renewal on a biennial basis of license, who fails to pay the renewal fee on or before the expiration date of his/her license, the fee of \$25 as a late fee in addition to the renewal fee.~~

~~120-012.10 Certification of License Fee: For issuance of a certification of a license, the fee of \$25. The certification includes information regarding:~~

- ~~1. The basis on which the license was issued;~~
- ~~2. The date of issuance;~~
- ~~3. Whether disciplinary action has been taken against the license; and~~
- ~~4. The current status of the license.~~

~~120-012.11 Verification of License Fee: For issuance of a verification of a license, the fee of \$5. The verification includes written confirmation as to whether a license was valid at the time the request was made.~~

~~120-012.012 Duplicate License Fee: For a duplicate of original license document or reissued license, the fee of \$10.~~

~~120-012.13 Administrative Fee: For a denied license or a withdrawn application, an administrative fee of \$25 will be retained by the Department, except if the fee is less than \$25, the fee will be forfeited and an examination fee will not be returned.~~

~~120-012.14 Reinstatement Late Fee: For reinstatement of a license for failure to meet renewal requirements:~~

- ~~1. Within one year of revocation, the fee of \$35 in addition to the renewal fee;~~
- ~~2. After one year of revocation, the fee of \$75 in addition to the renewal fee.~~

~~120-012.15 Reinstatement Fee: For reinstatement following suspension, limitation or revocation for disciplinary reasons, the fee of \$75.~~

~~120-013 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists that a person or entity practices without a credential. Practice without a credential for the purpose of this regulation means practice:~~

- ~~1. Prior to the issuance of a credential;~~
- ~~2. Following the expiration of a credential; or~~

~~3. Prior to the reinstatement of a credential.~~

~~120-013.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without a credential:~~

- ~~1. The person admits to engaging in practice;~~
- ~~2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;~~
- ~~3. Billing or payment records document the provision of service, care, or treatment by the person;~~
- ~~4. Service, care, treatment records document the provision of service, care, or treatment by the person;~~
- ~~5. Appointment records indicate that the person was engaged in practice;~~
- ~~6. Other government records indicate that the person was engaged in practice; and~~
- ~~7. The person or entity opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.~~

~~For purposes of this regulation prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.~~

~~120-013.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a credential. To assess such penalty, the Department will:~~

- ~~1. Provide written notice of the assessment to the person. The notice will specify:
 - ~~a. The total amount of the administrative penalty;~~
 - ~~b. The evidence on which the administrative penalty is based;~~
 - ~~c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;~~
 - ~~d. That the Department will within 30 days following receipt of payment of the administrative penalty, transmit the penalty to the State Treasurer for credit to the Permanent School Fund; and~~
 - ~~e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property.~~~~
- ~~2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.~~

~~120-013.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to Neb. Rev. Stat. §§ 84-901 to 84-920 and the Department's rules and regulations adopted pursuant to these statutes.~~

~~120-014 RESERVED~~

~~120-010 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists of practice without a credential to practice a profession. Practice without a~~

credential for the purpose of this regulation means practice:

1. Prior to the issuance of a credential;
2. Following the expiration of a credential; or
3. Prior to the reinstatement of a credential.

120-010.01 Evidence of Practice: The Department will consider any of the following conditions as prima facie evidence of practice without being credentialed:

1. The person admits to engaging in practice;
2. Staffing records or other reports from the employer of the person indicate that the person was engaged in practice;
3. Billing or payment records document the provision of service, care, or treatment by the person;
4. Service, care, or treatment records document the provision of service, care, or treatment by the person;
5. Appointment records indicate that the person was engaged in practice;
6. Government records indicate that the person was engaged in practice; and
7. The person opens a business or practice site and announces or advertises that the business or site is open to provide service, care, or treatment.

For purposes of this regulation, prima facie evidence means a fact presumed to be true unless disproved by some evidence to the contrary.

120-010.02 Penalty: The Department may assess an administrative penalty in the amount of \$10 per day, not to exceed a total of \$1,000 for practice without a credential. To assess the penalty, the Department will:

1. Provide written notice of the assessment to the person. The notice will specify:
 - a. The total amount of the administrative penalty;
 - b. The evidence on which the administrative penalty is based;
 - c. That the person may request, in writing, a hearing to contest the assessment of an administrative penalty;
 - d. That the Department will within 30 days following receipt of payment of the administrative penalty, remit the penalty to the State Treasurer to be disposed of in accordance with Article VII, section 5 of the Constitution of Nebraska;
 - e. That an unpaid administrative penalty constitutes a debt to the State of Nebraska which may be collected in the manner of a lien foreclosure or sued for and recovered in a proper form of action in the name of the state in the District Court of the county in which the violator resides or owns property. The Department may also collect in such action attorney's fees and costs incurred directly in the collection of the administrative penalty;
and
 - f. Failure to pay an administrative penalty may result in disciplinary action.
2. Send by certified mail, a written notice of the administrative penalty to the last known address of the person to whom the penalty is assessed.

120-010.03 Administrative Hearing: When a person contests the administrative penalty and

requests a hearing, the Department will hold a hearing pursuant to the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

120-015-011 PRESCRIBING AND APPLICATION OF CONTACT LENSES: Pursuant to Neb. Rev. Stat. §§ 71-1,13338-2601 and 71-1,13438-2607 only optometrists and persons licensed to practice medicine and surgery are authorized to prescribe and apply (fit) contact lenses. Each contact lens prescription is valid for the duration of the prescription as indicated by the optometrist or physician or for a period of twelve months from the date of issuance, whichever period expires first. Merchants or dealers may sell contact lenses from a prescription but are not authorized to prescribe, apply or fit the lenses. The prescribing and application (fitting) of contact lenses includes, but is not limited to, the following:

1. Assessment of the eyes to assure their suitability for contact lens wear.
2. Evaluation and measurement of the physical characteristics of the eye and lid.
3. Selection, application, and assessment of diagnostic trial lenses.
4. Determination of a preliminary contact lens prescription including all the parameters needed to describe the lens so that it can be correctly provided to the patient and can be precisely duplicated in the future. These parameters can include lens material, power, base curve, overall diameter, color, manufacturer, series, optical zone, peripheral curve radii, widths and blends and edge treatment.
5. Patient instruction in care and usage of the lenses.
6. Monitoring of the patient during adaptation to contact lens wear.
7. Determination of the final contact lens prescription.

120-012 DISPENSING MEDICATED CONTACT LENSES

120-012.01 A prescription label is required. Prior to dispensing a drug, device or biological, the optometrist must assure that a legible prescription label is affixed to the container. Such prescription label shall contain the following information:

1. Name, address, and telephone number of the doctor's office,
2. Serial number of the prescription,
3. Name of the drug, device, or biological,
4. Strength of the drug or biological, if applicable,
5. Directions for use,
6. Quantity of drug, device, or biological in the container,
7. Any cautionary statements contained in the prescription,
8. Name of the patient,
9. Name of the prescriber,
10. Dosage form of the drug

120-012.02 Storage.

120-012.02A The optometrist shall provide equipment for the storage of drugs, devices, and biologicals at the proper temperature.

1. Drugs, devices, or biologicals requiring a freezer must be stored between -4 and 14 degrees Fahrenheit.
2. Drugs, devices, or biologicals requiring refrigeration must be stored

- between 36 and 46 degrees Fahrenheit.
3. Drugs, devices, or biologicals requiring storage in a cool place must be stored between 46 and 59 degrees Fahrenheit, or under refrigeration, between 36 and 46 degrees Fahrenheit, unless otherwise specified.
 4. Drugs, devices, or biologicals requiring storage at controlled room temperature must be stored between 59 and 86 degrees Fahrenheit.
 5. Other labeled storage instruction for drugs, devices, or biologicals must be followed.

120-012.02B Drugs, devices, and biologicals stored in a refrigerator must be kept in a separate compartment from food.

120-012.02C The prescription inventory and prescription records must be maintained in a secure location when there is no optometrist on the premises. Loss of prescription inventory or prescription records due to theft or any other cause resulting from failure to secure the inventory or records are grounds for disciplinary action.

120-012.02D The optometrist must not have in its dispensable inventory any drug, device, or biological which is misbranded or adulterated.

120-012.03 Recordkeeping.

120-012.03A The prescribing optometrist shall choose and implement a systematic approach for Drug Utilization Review (DUR). The DUR is part of the optometrist's record keeping duties.

120-012.03B The prescribing optometrist shall make notation of the prescription for medicated contact lenses in the patient record which is a part of the optometrist's record keeping duties.

120-013.03C A prescription for medicated contact lenses shall contain the following information:

1. Patient's name,
2. Date of the order,
3. Name of the drug, device, or biological,
4. Strength of the drug or biological, if applicable,
5. Directions for administration to the patient, including the dose to be given, and the number of authorized refills; and
6. Prescriber's name.

120-012.03D The dispensing optometrist's record keeping duties include a prescription file. The prescription file, as defined in 120-002 shall contain the original record of all dispensed prescriptions which must:

1. Be filed, in numeric order, in a file system that excludes, as per statute, any prescription filled for Schedule II-V controlled substances or other prescription drug product that are not within Nebraska scope of practice to be dispensed in the optometrists office.

2. Include the following information:
 - a. All information required for prescriptions as set forth in 120-013.03C;
 - b. Prescription serial number;
 - c. Date of initial filling; and
 - d. Quantity dispensed;
3. Be maintained by the optometrist for five years from the date of dispensing.

120-012.04 The prescribing optometrist who also is dispensing the drug shall take steps to insure adequate doctor-patient consultation on drug utilization instructions related to medicated contact lenses. The optometrist shall make a verbal offer to counsel to the patient or to counsel the patient's caregiver.

120-012.05 Patient counseling shall occur, unless one of the following is documented:

1. Drug, device, or biological is being administered by a health care professional credentialed by the Department to a resident of a hospital or a long-term care facility,
2. Patient or caregiver refuses to be counseled, or
3. Optometrist, in his/her professional judgment, determines that counseling could harm or injure the patient.

120-046-013 DELEGATION TO OPTOMETRIC ASSISTANTS: Pursuant to Neb. Rev. Stat. §§~~71-1,13438-2607~~ and ~~71-1,135-0738-2618~~, any licensed optometrist may employ optometric assistants and may delegate the performance of certain duties to optometric assistants under supervision.

120-046013.01 Definitions:

Supervision means the supplying or providing of direction, control, instruction, and evaluation by the licensed optometrist, including personal review of the results of testing. Direct supervision is supervision which also requires the physical presence of the licensed optometrist.

120-046013.02 Optometrist Responsibilities: A licensed optometrist who chooses to delegate duties to optometric assistants must:

1. Ensure that optometric assistants have received the appropriate level of training necessary to satisfactorily complete the delegated duties;
2. Conduct the qualitative assessment of the data collected by the optometric assistant and make any appropriate diagnosis;
3. Accept legal responsibility and liability for the accuracy of the results, as well as any consequences of the testing procedure; and
4. Authenticate and direct, by full signature, the entire examination and treatment provided to the patient.

120-046013.03 Authorized Duties: Optometric assistants, under the supervision or direct supervision of a licensed optometrist, may perform the following duties:

120-046013.03A Under Supervision:

1. Gather clinical information, which includes subjective and objective data (example – initial refraction and visual field testing); and
2. Provide educational information as instructed by the supervising optometrist.

120-~~016013~~.03B Under Direct Supervision:

1. Perform Goldmann contact tonometry; and
2. Instill medication as instructed by the supervising optometrist; and
- ~~3. Perform final nervous system assessment.~~

Each optometric assistant involved in the data collection must sign the chart indicating their participation.

120-~~016013~~.04 Prohibited Duties: A licensed optometrist may not delegate the following:

1. Ophthalmoscopy;
2. Gonioscopy;
3. Biomicroscopy for the purpose of ocular health assessment;
4. Final refraction;
5. Final nervous system assessment;
- ~~56.~~ Determination of any prescription, education or treatment plans;
- ~~67.~~ Removal of superficial eyelid, conjunctival, and corneal foreign bodies; and
- ~~78.~~ Ordering procedures and laboratory tests rational to the diagnosis of conditions or diseases of the human eye, ocular adnexa, or visual system.

120-014 FEES: Fees referred to in these regulations are set out in 172 NAC 2, unless otherwise specified.

~~Approved by the Attorney General on June 23, 2004~~

~~Approved by the Governor on June 24, 2004~~

~~Filed by the Secretary of State on June 24, 2004~~

~~Effective Date: June 29, 2004~~