

EFFECTIVE
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NEBRASKA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

172 NAC 120

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 120 LICENSURE OF OPTOMETRISTS

001. SCOPE AND AUTHORITY. These regulations govern the licensure of optometrists under the Optometry Practice Act, Nebraska Revised Statute (Neb. Rev. Stat.) §§ 38-2601 to 38-2623 and the Uniform Credentialing Act (UCA).

002. DEFINITIONS. Definitions are set out in the Optometry Practice Act, the Uniform Credentialing Act, 172 Nebraska Administrative Code (NAC) 10, and this chapter.

002.01 ACCREDITED SCHOOL OR COLLEGE OF OPTOMETRY. 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 Board of Optometry.

002.02 APPROVED EXAMINATION. An examination which is approved by the Board of Optometry.

002.03 CLINICAL TRAINING. 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.

002.04 CONTINUING EDUCATION. 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 of Optometry.

002.05 COURSE OF STUDY. 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.

002.06 DIRECT SUPERVISION. Direct supervision is the physical presence and immediate availability of the optometrist.

002.07 DRUG UTILIZATION REVIEW (DUR). An authorized, structured, ongoing program that collects, analyzes, and interprets drug use patterns to improve the quality of pharmacotherapy and patient outcomes.

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002.08 HOUR. A period of 50 minutes of formal instruction, otherwise known as a "contact hour."

002.09 LABEL. All legible written information provided by the optometrist to the patient that is affixed to the packaging provided to the patient.

002.10 MEDICATED CONTACT LENSES. Contact lenses containing an ocular pharmaceutical agent.

002.11 PACKAGING. The container provided by an optometrist to the patient.

002.12 PRACTICE MANAGEMENT. 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.

002.13 PRESCRIPTION FILE. A file of drugs, devices, or medicated contact lens prescriptions dispensed that is separate and distinct from the patient record, and that require a dispensing practitioner license.

002.14 PRESCRIPTION LABEL. A label that provides the patient all of the information required by section 009. 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.

002.15 RECORD. 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).

002.16 RECORDKEEPING. Creating, maintaining, and securing records necessary for drug utilization review and prescription files.

002.17 STORAGE. Securing and preserving drug, device, or biological in accordance with the requirements of federal laws, such as Food and Drug Administration label specifications and the requirements of Nebraska's laws and this chapter.

002.18 SUPERVISION. Supervision is the availability of an optometrist on the premises or by telecommunications.

003. INITIAL CREDENTIAL. To obtain a license, an individual must submit a complete application provided by the Department and provide documentation demonstrating that the individual meets the requirements of Neb. Rev. Stat. §§ 38-2608, 38-131, 172 NAC 10, and this chapter.

003.01 LICENSURE BY EXAMINATION. Individuals applying for licensure by examination

must:

- (A) Request that an official transcript from an accredited school or college of optometry which shows the date the degree was conferred be sent directly to the Department by the issuing institution;
- (B) Request that a detailed score report showing successful passage of Part I, Part II and Part III of the examination given by the National Board of Examiners in Optometry (NBEO) be sent directly to the Department by the issuing institution; and
- (C) Pass a jurisprudence examination that relates to the statutes and regulations that govern optometry with a minimum score of 60 or above.

003.02 LICENSURE BASED ON LICENSURE IN ANOTHER STATE. Individuals applying for licensure based on licensure in another state must:

- (A) Request that an official transcript from an accredited school or college of Optometry which shows the date the degree was conferred be sent directly to the Department by the issuing institution;
- (B) Have been actively engaged in the practice of optometry in another jurisdiction for at least two of the last three years, and be credentialed in that jurisdiction at the highest level available and is equivalent to the current scope of practice in Nebraska as determined by the board; and
- (C) Pass a jurisprudence examination that relates to the statutes and regulations that govern optometry with a minimum score of 60 or above.

003.03 RECIPROCITY. To obtain a license based on reciprocity, an applicant must submit a complete application provided by the Department and provide documentation demonstrating that the applicant meets the requirements of § 38-129.02, 172 NAC 10, and this chapter. Applicants must provide documentation of the following:

- (A) Possession of a current and valid credential as a (license type), for at least one year in another state, a territory of the United States, or the District of Columbia;
- (B) The education required to obtain the credential;
- (C) The minimum work experience and clinical supervision requirements, if any, required for the credential and the applicant's completion of the experience and clinical supervision;
- (D) Passage of an examination for the credential, if required to obtain the credential in the other jurisdiction;
- (E) That the credential has not been subject to revocation or any other disciplinary action or voluntarily surrendered while the applicant was under investigation for unprofessional conduct or any other conduct which would be subject to Neb. Rev. Stat. § 38-178 if the conduct occurred in Nebraska; and
- (F) Information about any other credential the applicant has held and whether any disciplinary action has been taken against such credential. If disciplinary action has been taken documentation must be submitted showing the status of the action and whether the cause for the action has been corrected.

003.04 RESIDENCY. All applicants receiving a license pursuant to 172 NAC 120-003.03 must submit documentation of establishing residency in Nebraska as required by Neb. Rev. Stat. § 38-129.02. Such documentation must be submitted within 30 days of establishment of residency and consist of a rental or lease agreement with the signature of the owner or

landlord and the applicant, a deed or title to residential real property with the name of the applicant as an owner, or documents with the name and address of the applicant such as mortgage bills, home utility bills, medical or employee documents or similar documents that show the applicant residing in Nebraska.

004. RENEWAL, WAIVER OF CONTINUING EDUCATION AND INACTIVE STATUS. The applicant must meet the requirements set out in 172 NAC 10. All optometrist licenses expire on August 1 of each even-numbered year.

005. CONTINUING COMPETENCY. During the 24 months prior to the license renewal date, each licensed optometrist must complete 44 hours of approved continuing education. Each credentialed individual is responsible for maintaining certificates or records of continuing competency activities. Subject matter acceptable for continuing education credit is described as follows.

005.01 STATE AND NATIONAL MEETINGS. For attendance at state and national meetings, such as meetings of the Nebraska Optometric Association or the American Optometric Association, licensees may earn credit for only the portion of the meeting which meets the definition of continuing education can be accepted for credit.

005.02 FORMAL EDUCATION. For attendance at formal education courses which relate directly to the practice of optometry, licensees may earn credit for each hour of attendance.

005.03 OPTOMETRIC COLLEGE-SPONSORED COURSES. For attendance at optometric college-sponsored courses in continuing education in optometry, licensees may earn credit for each hour of attendance.

005.04 HOME STUDY. For completion of home study continuing education with a testing mechanism, licensees may earn credit with a maximum of 8 hours of continuing education 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 summary of the material covered to the Board. Such abstract or summary must be written by only the licensee and will be reviewed by members of the Board.

005.04(A) EXAMPLES OF HOME STUDY. Examples of home study courses include, but are not limited to, professional journal articles, profession related Internet courses, online web courses, or other digital media. For purposes of this section web based meetings that are live and interactive count as live in person continuing education and do not count towards the home study limits.

005.05 CARDIOPULMONARY RESUSCITATION (CPR). For completion of initial CPR certification or for the re-certification, licensees may earn 1 hour credit for each hour of training, with a maximum of 2 credit hours of this type of continuing education during the 24-month renewal period.

005.06 PRACTICE MANAGEMENT. For attendance at practice management courses, licensees may earn 1 credit hour for each hour of practice management, with a maximum of 4 credit hours of this type of continuing education during the 24-month renewal period.

005.07 UNACCEPTABLE SUBJECT MATTER. 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.

006. UNPROFESSIONAL CONDUCT. Unprofessional conduct is set out in Neb. Rev. Stat. § 38-179, and this chapter:

- (A) Making a false or misleading statement regarding his or her skill as an optometrist or the efficacy or value of the medicine, device, treatment, or remedy prescribed by him or her or used at his or her direction in the practice of optometry;
- (B) Prescribing, selling, administering, or distributing, any drug legally classified as a prescription drug, other than with proper certification;
- (C) Knowingly giving to an addict any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug;
- (D) Failure to furnish the Department, its investigators or representatives, information requested by the Department;
- (E) To advertise in a manner that deceives, misleads, or defrauds the public. The following advertising practices will be considered to be deceptive:
 - (i) 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;
 - (ii) To fail to advertise the names of all licensed optometrists who are providing optometric service who are addressed by the advertisement; and
 - (iii) To advertise or promote any optometric service with statements that cannot be verified, substantiated or measured;
- (F) 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;
- (G) 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;
- (H) Misrepresenting one's credentials in an application submitted to a healthcare facility, insurance company, or prospective employer;
- (I) 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 contraindications to the treatment recommended or provided and that arrangements exist to insure availability of the optometrist or optometrist coverage for follow-up patient care.

007. 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.

007.01 CERTIFICATION TO USE PHARMACEUTICAL AGENTS FOR DIAGNOSTIC PURPOSES. Applicants for certification to use pharmaceutical agents for diagnostic purposes must submit a completed application provided by the Department, have a current Nebraska license to practice optometry, and meet the following:

- (A) Satisfactorily complete an approved course in pharmacology provided by an accredited school or college of optometry;
 - (i) An approved course in pharmacology for a certification to use pharmaceutical agents for diagnostic purposes must meet the following criteria:
 - (1) 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;
 - (2) 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; and
 - (3) Correlate the utilization of pharmaceutical agents and optical instrumentation and procedures; and
- (B) Meet one of the following:
 - (i) Pass an approved examination which covers ocular pharmacology for the use of pharmaceutical agents for diagnostic purposes pursuant to 172 NAC 120 administered by the National Board of Examiners in Optometry (NBEO) with a passing score;
 - (ii) Pass an examination which covers ocular pharmacology pursuant to 172 NAC-120 administered by an accredited school or college of optometry with a passing score; or
 - (iii) Be credentialed in another U.S. jurisdiction at the highest level required for optometrist licensure in the U.S. jurisdiction where the applicant is currently licensed and such level is determined by the Board to be at least equivalent to the current scope of practice in Nebraska; and
- (C) Submit to the Department:
 - (i) An official transcript sent to the Department directly from an accredited school or college of optometry showing successful completion of the course of study for use of pharmaceutical agents for diagnostic purposes completed by the applicant which meets the requirements of this chapter;
 - (ii) A detailed score report showing the passing the approved examination; or
 - (iii) Certification of having a 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
 - (iv) The required certification fee.

007.02 CERTIFICATION TO USE PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES. Applicants for certification to use pharmaceutical agents for therapeutic purposes must submit a completed application provided by the Department, have a current Nebraska license to practice optometry, and meet the following:

- (A) Have been certified by the Department upon the recommendation of the Board to use pharmaceutical agents for diagnostic purposes and meet the following criteria:
 - (i) Satisfactorily complete the following educational requirements:
 - (1) Classroom didactic education concerning the use of pharmaceutical agents for therapeutic purposes provided by an accredited school or college of optometry; and
 - (2) Clinical training as it applies to optometry with particular emphasis on the examination, diagnosis and treatment of the eye, ocular adnexa, and visual system 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
 - (ii) Meet one of the following:
 - (1) Pass an approved examination which covers the treatment and management of ocular disease administered by the NBEO with a passing score; or
 - (2) 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; or
 - (4) Be credentialed in another U.S. jurisdiction at the highest level required for optometrist licensure in the U.S. jurisdiction where the applicant is currently licensed and such level is determined by the Board to be at least equivalent to the current scope of practice in Nebraska; and
 - (iii) Submit to the Department:
 - (1) An official transcript sent directly to the Department from an accredited school or college of optometry of successful completion of the didactic education and clinical training completed by the applicant; and
 - (2) A detailed score report showing successful passage of the approved examination;
 - (3) Certification of having a credential at the highest level required to practice optometry in the U.S. jurisdiction where the applicant is currently credentialed sent to the Department from that U.S. jurisdiction; and
 - (4) The required fee.

008. PRESCRIBING AND APPLICATION OF CONTACT LENSES. Optometrists and persons licensed to practice medicine and surgery are authorized to prescribe and apply and fit contact lenses as set out in Neb. Rev. Stat. §§ 38-2601 and 38-2607. 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 or fitting of contact lenses includes, but is not limited to, the following:

- (A) Assessment of the eyes to assure their suitability for contact lens wear;
- (B) Evaluation and measurement of the physical characteristics of the eye and lid;

- (C) Selection, application, and assessment of diagnostic trial lenses;
- (D) 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;
- (E) Patient instruction in care and usage of the lenses;
- (F) Monitoring of the patient during adaptation to contact lens wear; and
- (G) Determination of the final contact lens prescription.

009. DISPENSING MEDICATED CONTACT LENSES. Prior to dispensing a contact lens containing a pharmaceutical agent, the optometrist must assure that a legible prescription label is affixed to the container. Such prescription label shall contain the following information:

- (A) Name, address, and telephone number of the doctor's office;
- (B) Serial number of the prescription;
- (C) Name of the pharmaceutical agent contained in the contact lens;
- (D) Strength of the pharmaceutical agent contained in the contact lens, if applicable;
- (E) Directions for use;
- (F) Quantity of contact lens containing a pharmaceutical agent in the container;
- (G) Any cautionary statements contained in the prescription;
- (H) Name of the patient;
- (I) Name of the prescriber; and
- (J) Dosage form of the pharmaceutical agent.

009.01 STORAGE OF CONTACT LENSES WITH A PHARMACEUTICAL AGENT. The optometrist shall provide equipment for the storage of contact lenses containing a pharmaceutical agent in a manner that meets the manufacturer's labeled requirements or in the absence of manufacturer's requirements in accordance with those listed in this chapter.

- (A) Those requiring a freezer must be stored between -4 and +14 degrees Fahrenheit;
- (B) Those requiring refrigeration must be stored between 36 and 46 degrees Fahrenheit;
- (C) Those 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; and
 - (i) For drugs, devices, or biologicals requiring a storage temp under -4 degrees Fahrenheit the temperature of the storage location must be within plus or minus 10 degrees;
- (D) Those requiring storage at controlled room temperature must be stored between 59 and 86 degrees Fahrenheit;
- (E) Other labeled storage instruction for contact lenses containing a pharmaceutical agent must be followed; and
- (F) Contact lenses containing a pharmaceutical agent stored in refrigerator must be kept in a compartment separate from staff food or beverages.

010. RECORDKEEPING AND INVENTORY. Drugs and devices including medicated contact lenses inventories which require a dispensing practitioner license must meet recordkeeping requirements as set out in this chapter.

010.01 INVENTORY. 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.

010.02 INVENTORY SECURITY. The optometrist must not have in his or her dispensable inventory any contact lenses containing a pharmaceutical agent which are misbranded or adulterated.

010.03 DRUG UTILIZATION REVIEW (DUR). The prescribing optometrist shall choose and implement a systematic approach for DUR. The DUR is part of the optometrist's record keeping duties.

010.04 MEDICATED CONTACT LENSES. 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.

010.05 MEDICATED CONTACT LENS PRESCRIPTIONS. A prescription for medicated contact lenses shall contain the following information:

- (A) Patient's name;
- (B) Date of the order;
- (C) Name of the pharmaceutical agent contained in the contact lens;
- (D) Strength of the pharmaceutical agent contained in the contact lens, if applicable;
- (E) Directions for administration to the patient, including the dose to be given, and the number of authorized refills; and
- (F) Prescriber's name.

010.06 PRESCRIPTION FILE. The dispensing optometrist's record keeping duties include a prescription file. The prescription file as defined in 002 shall contain the original record of all dispensed prescriptions which must:

- (A) 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;
- (B) Include the following information:
 - (i) All information required for prescriptions as set forth in 013.03(C);
 - (ii) Prescription serial number;
 - (iii) Date of initial filling;
 - (iv) Quantity dispensed; and
- (C) Be maintained by the optometrist for five years from the date of dispensing.

010.07 PATIENT CONSULTATION. The prescribing optometrist who also is dispensing the contact lens containing a pharmaceutical agent 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. Patient counseling shall occur, unless one of the following is documented:

- (A) The contact lens containing a pharmaceutical agent is being administered by a health

- care professional credentialed by the Department to a resident of a hospital or a long-term care facility;
- (B) Patient or caregiver refuses to be counseled; or
 - (C) Optometrist, in his or her professional judgment, determines that counseling could harm or injure the patient.

011. DELEGATION TO OPTOMETRIC ASSISTANTS. Under Neb. Rev. Stat. §§ 38-2607 and 38-2618, any licensed optometrist may employ optometric assistants and may delegate the performance of certain duties to optometric assistants under supervision. A licensed optometrist who chooses to delegate duties to optometric assistants must:

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

011.01 AUTHORIZED DUTIES. Optometric assistants, under the supervision or direct supervision of a licensed optometrist, may perform the following duties:

011.01(A) UNDER SUPERVISION. These services can be done under supervision of a licensed optometrist:

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

011.01(B) UNDER DIRECT SUPERVISION. These services can be done under direct supervision of a licensed optometrist:

- (i) Perform Goldmann contact tonometry; and
- (ii) Instill medication as instructed by the supervising optometrist.

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

011.02 PROHIBITED DUTIES. A licensed optometrist may not delegate the following:

- (A) Ophthalmoscopy;
- (B) Gonioscopy;
- (C) Biomicroscopy for the purpose of ocular health assessment;
- (D) Final refraction;
- (E) Final nervous system assessment;
- (F) Determination of any prescription, education or treatment plans;
- (G) Removal of superficial eyelid, conjunctival, and corneal foreign bodies; and
- (H) Ordering procedures and laboratory tests rational to the diagnosis of conditions or diseases of the human eye, ocular adnexa, or visual system.

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012. REINSTATEMENT. The applicant must meet the requirements set out in 172 NAC 10.

013. FEES. Fees are set out in 172 NAC 2.