



Certification Page Regular and Emergency Rules

Revised September 2016

Emergency Rules (After completing all of Sections 1 through 3, proceed to Section 5 below)

Regular Rules

1. General Information		
a. Agency/Board Name Optometry, Board of Examiners in		
b. Agency/Board Address 2001 Capitol Ave, Room 104	c. City Cheyenne	d. Zip Code 82002
e. Name of Agency Liaison Emily Cronbaugh	f. Agency Liaison Telephone Number 307-777-6529	
g. Agency Liaison Email Address emily.cronbaugh@wyo.gov	h. Adoption Date January 25, 2018	
i. Program Optometry, Board of Examiners in		
2. Legislative Enactment For purposes of this Section 2, "new" only applies to regular rules promulgated in response to a Wyoming legislative enactment not previously addressed in whole or in part by prior rulemaking and does not include rules adopted in response to a federal mandate.		
a. Are these rules new as per the above description and the definition of "new" in Chapter 1 of the Rules on Rules?		
<input type="checkbox"/> No. <input checked="" type="checkbox"/> Yes. Please provide the Enrolled Act Numbers and Years Enacted: HEA 0053 (2017)		
3. Rule Type and Information		
a. Provide the Chapter Number, Title, and Proposed Action for Each Chapter. <i>(Please use the Additional Rule Information form for more than 10 chapters and attach it to this certification)</i>		
Chapter Number: 0	Chapter Name: <small>Appendix A: STATE OF WYOMING BOARD OF EXAMINERS IN OPTOMETRY Statutes 33-23-101 through 33-23-116</small>	<input type="checkbox"/> New <input type="checkbox"/> Amended <input checked="" type="checkbox"/> Repealed
Chapter Number: 1	Chapter Name: General Provisions	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: 2	Chapter Name: Requirements for Licensure	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: 3	Chapter Name: Renewal and Relicensure	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: 4	Chapter Name: Fees	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: 5	Chapter Name: Standards of Practice	<input checked="" type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: 6	Chapter Name: Handling of Complaints Against Licensees and Deficient Applications	<input type="checkbox"/> New <input type="checkbox"/> Amended <input checked="" type="checkbox"/> Repealed
Chapter Number: 7	Chapter Name: Process and Procedure for Application, Licensure, and Discipline Matters	<input type="checkbox"/> New <input checked="" type="checkbox"/> Amended <input type="checkbox"/> Repealed
Chapter Number: 8	Chapter Name: Information Practices	<input type="checkbox"/> New <input type="checkbox"/> Amended <input checked="" type="checkbox"/> Repealed
Chapter Number:	Chapter Name:	<input type="checkbox"/> New <input type="checkbox"/> Amended <input type="checkbox"/> Repealed

3. State Government Notice of Intended Rulemaking

a. Date on which the Proposed Rule Packet (consisting of the Notice of Intent as per W.S. 16-3-103(a), Statement of Principal Reasons, strike and underscore format and a clean copy of each chapter of rules were: **November 11, 2017**

- approved as to form by the Registrar of Rules; and
- provided to the Legislative Service Office and Attorney General:

4. Public Notice of Intended Rulemaking

a. Notice was mailed 45 days in advance to all persons who made a timely request for advance notice. No. Yes. N/A

b. A public hearing was held on the proposed rules. No. Yes. Please complete the boxes below.

Date:	Time:	City:	Location:

c. If applicable, describe the emergency which requires promulgation of these rules without providing notice or an opportunity for a public hearing:

5. Final Filing of Rules


a. Date on which the Certification Page with original signatures and final rules were sent to the Attorney General's Office for the Governor's signature: **February 1, 2018**

b. Date on which final rules were approved as to form by the Secretary of State and sent to the Legislative Service Office: **February 1, 2018**

c. The Statement of Reasons is attached to this certification.

6. Agency/Board Certification

The undersigned certifies that the foregoing information is correct.

Signature of Authorized Individual	
Printed Name of Signatory	Emily Cronbaugh
Signatory Title	Executive Director
Date of Signature	February 1, 2018

7. Governor's Certification

I have reviewed these rules and determined that they:

1. Are within the scope of the statutory authority delegated to the adopting agency;
2. Appear to be within the scope of the legislative purpose of the statutory authority; and, if emergency rules,
3. Are necessary and that I concur in the finding that they are an emergency.

Therefore, I approve the same.

Governor's Signature	
Date of Signature	

STATEMENT OF PRINCIPAL REASONS

FOR FORMAL ADOPTION OF REGULAR RULES

The Wyoming Board of Examiners in Optometry (Board) continues efforts to clarify and streamline their rules. At meetings throughout 2016 and 2017, the Board reviewed its Rules for areas where clarification or modifications would be beneficial to the public, licensees, and administrative staff.

In general, with respect to all chapters, the Board adopted the following changes:

- Utilized consistent language when referring to the Board’s authority regarding rules,
- Removed unnecessary and duplicative language,
- Utilized organizational abbreviations and acronyms,
- Condensed sections regarding similar subject matter, and
- Reformatted chapter content utilizing recommended outline format to maintain consistency across chapters.

The Board has also added sections within Chapter 5 in an effort to clarify the practice of optometry that have been considered unclear or not applicable to evolving telehealth practices. In addition, the Board adopted the following proposed amendments related to each chapter:

Chapter 1: General Provisions

- Changes were made to correct grammatical errors and to better clarify existing language.
- In Section 1, clarified the Board’s authority to promulgate rules.
- In Section 2, clarified the statement of purpose.
- In Section 3, added definitions for terms used in later chapters, such as “AOA”, “ARC”, “Board Rules”, and “NBEO”.
- In Section 3, removed definitions of terms defined in the Practice Act, such as “Board”, “Controlled substance”, “License”, “Licensee”, and “Physician”.
- In Section 3, removed definitions of terms not used the Board’s rules, such as “Capper”, “Steerer”, and “Swindle”.
- In Section 3, removed definitions of commonly accepted terms such as “Contact Lenses” and “State”.
- Removed the severability section.
- In Section 4, defined Board Office.
- In Section 5, clarified regular meetings can be established by resolution. This is to comply with HEA040 (2014).
- In Section 6, added reference by incorporation to the Department of Administration and Information’s Chapter 2 - Uniform Procedures, Fees, Costs, and Charges for Inspection, Copying, and Producing Public Records and incorporated the Office of Administrative Hearings Chapter 2 - Uniform Rules for Contested Case Practice and Procedure.
- Added Section 7, to clarify that public records requests shall be conducted in accordance with incorporated Department of Administration and Information’s Chapter 2 - Uniform Procedures, Fees, Costs, and Charges for Inspection, Copying, and Producing Public Records.
- Added Section 8 to clarify change of name, address, or telephone number information that was previously in Chapter 8.

Chapter 2: Requirements for Licensure

- In Section 1, added Statement of Purpose section to clarify purpose of Chapter.
- Removed the education requirement section as previously outlined in the Practice Act.

- In Section 2, added application status section to clarify when competency should be met/completed, what constitutes a completed application, and how long an application is valid.
- Removed the examination section because the content was included in Licensure sections below.
- In Section 3, added ARC Review of Application section to clarify purpose for evaluating applications where applicants have committed acts which are grounds for discipline.
- In Section 4, clarified the Jurisprudence Examination requirements.
- In Section 5, clarified the Licensure by Examination section to more clearly explain eligibility and requirements. This format has been successfully used by other board rules.
- In Section 6, clarified the Licensure by Endorsement section to more clearly explain eligibility and requirements. This format has been successfully used by other board rules.
- Removed the Federal Service section as it requires completion of regular Licensure by Endorsement process.
- In Section 6, clarified the License Type Designation section. The current exams mandate testing on the treatment and management of ocular diseases and the Board no longer needs to grandparent those licensed before this standard without a special “T” designation.
- Removed the Notification of Applicants and Right of Appeal section as this process is more clearly outlined in Chapter 7 proposed changes.
- In Section 8, removed Volunteer’s Certificate requirements as they are copied directly from the Board’s Practice Act.

Chapter 3: Renewal and Relicensure

- In Section 1, added the Statement of Purpose section to clarify purpose of Chapter.
- In Section 2, reorganized the annual license renewal section to more clearly list the requirements.
- In Section 3, reorganized the continuing education requirements section to more clearly explain requirements.
- In Section 4, added the Reinstatement section to better clarify prior Failure to Renew section.
- In Section 5, added the Relicensure section to clarify to licensees that fail to renew or complete reinstatement how to obtain Wyoming licensure again. This clarification also requires the applicant to demonstrate current competency to the Board without having to document education and examination requirements again.
- In Section 6, added the Reinstatement Subject to Discipline section to clarify how a disciplined licensee can seek reinstatement following discipline.

Chapter 4: Fees

- In Section 1, added the Statement of Purpose section to clarify purpose of Chapter.
- In Section 2, moved the requirement for fees to be received in exact amount and prior to services rendered from end of chapter to beginning.
- In Section 2, moved the clarification that fees are non-refundable from end of chapter to beginning.
- In Section 3, changed the title of application by examination fee to “License by Examination Fee” to mirror “License by Endorsement Fee” which matches language in Chapter 3.
- In Section 3, removed examination fee as this cost will not be charged to application by examination candidates any longer, as these are generally new graduates entering the field without capital. Additionally, state jurisprudence examinations are now made available online at no charge to the applicant.

- In Section 3, removed the special examination fee as the Board no longer needs to convene an in-person meeting to administer an examination. State jurisprudence examinations are now made available online at no charge to the applicant.
- In Section 3, clarified the re-examination fee was for the Jurisprudence Re-Examination fee.
- In Section 3, added the relicensure fee to charge for process established in Chapter 3.
- In Section 3, added the reinstatement subject to discipline fee to charge for process established in Chapter 3.
- In Section 3, clarified the duplicate document fee instead of duplicate certificate fee, as sometimes pocket cards need reissued and “document” better encompasses requests received.
- In Section 3, removed the application packet fee, as documents are obtained online. The Board does not charge for the few applicants that are unable to obtain documents online.
- In Section 3, moved the roster fee charge from Chapter 8. Chapter 8 previously charged either \$100 or \$200 depending on method. The Board split the difference at \$150 for all methods.
- In Section 3, added non-sufficient fund fee. Chose amount based on Wyoming Statute § 1-1-115.

Chapter 5: Standards of Practice

- In Section 1, added the Statement of Purpose section to clarify purpose of Chapter.
- Moved ethical conduct violations to Chapter 7 to streamline and clarify violations and relevant complaint/application processes for violations.
- In Section 2, clarified that the practice of optometry as occurring where patients reside or receive services, regardless of means. This is to answer many questions received from those providing telehealth services and to create rule regarding telehealth per HEA0053 (2017).
- In Section 3, clarified the expiration of prescriptions to clarify statutory language and better enforce national standards created by the Federal Trade Commission’s Contact Lens Rule.
- In Section 4, created the section on records retention to ensure licensees maintain adequate patient records and understand they must provide records whenever requested by patients.
- In Section 5, clarified the section on Use of Optometry Assistants to better explain supervision expectations and appropriate delegation of duties.
- In Section 6, clarified the section on externships to provide guidance for licensees working with optometry students, who are exempt from the Practice Act.

Chapter 6: Handling of Complaints Against Licensees and Deficient Applications

- Repealed the chapter and incorporated complaint procedure into Chapter 7 to streamline and clarify rules.

Chapter 7: Process and Procedure for Application, Licensure, and Discipline Matters

- Renamed chapter to better clarify contents within.
- Changes were made to correct grammatical errors and to better clarify existing language.
- In Section 1, added the Statement of Purpose section to clarify purpose of Chapter.
- In Section 2, removed having a communicable disease as a violation, because endangering the public is the practice concern, which is already included.
- Removed outdated or inaccurate disciplinary processes at the advice of the attorney general’s office. Clarified all processes by adding the following:

- In Section 3 and 4, added the Application Review and Investigation Process to better inform licensees and applicants of potential outcomes.
- In Section 5, added a summary suspension section based on the administrative procedure act.
- In Section 6, added a formal proceedings for disciplinary action to clarify the procedural requirements.
- In Section 7, added a petition section to clarify how the investigative board member initiates formal disciplinary proceedings.
- In Section 8, added the Notice of Hearing section to better inform licensees and applicants of process and what information they should expect to receive.
- In Section 9, added a section regarding lawful service of documents.
- In Section 10, added a Dismissal and Default section to address disciplinary matters where the licensee or applicant do not cooperate or appear.
- In Section 11, added a contested case hearing section that references the Office of Administrative Hearing's Contesting Case rules which were incorporated by reference in Chapter 1 to comply with SEA0047 (2014).
- In Section 12, clarified the Burden and Standard of Proof for application/licensure matters and discipline matters.
- In Section 13, clarified the Board Decision and Order section to better inform licensees and applicants of process, what information they should expect to receive, and what the potential outcomes of a contested case are.
- In Section 15, added section for Judicial Review to reference how licensees may review Board decisions.

Chapter 8: Information Practices

- This chapter was repealed as A&I Uniform Procedures for Public Records was referenced by incorporation now in Chapter 1.
- The process for changing a licensee's name was moved to Chapter 1.
- The roster request process was removed from rule and clarified through an administrative form on the Board's website. The roster request fee was established in Chapter 4.

Appendix A: STATE OF WYOMING BOARD OF EXAMINERS IN OPTOMETRY Statutes 33-23-101 through 33-23-116

- This chapter was repealed as it is unnecessary to adopt the Practice Act language via Rulemaking.

COMMENT SUMMARY AND CHANGES BASED UPON PUBLIC COMMENT

The Wyoming Board of Examiners in Optometry proposed changes to Chapters 1, 2, 3, 4, 5, 6, 7, 8, and Appendix A. The Board held a public comment period from November 21, 2017 through January 8, 2018, and received comments from five (5) individual members of the public and the Wyoming Optometric Association.

Comment #1: Dr. Kim A. McDowell, OD, Tyler J. McDowell, OD, and Carla R. Iseman, OD emailed:
We have concerns of the Proposed Rules Chapter 5, Section 4a, page 5-5 changes. Licensees shall not withhold records if a patient owes an outstanding balance. This proposal takes away any leverage that a provider might have to obtain a past due balance from a patient. As soon as the public hears of this ruling, we, as providers, will have no chance to obtain past due accounts before transferring records. The patient can give another provider their unpaid exam and or materials information that they have obtained from their current provider.

Thank you for asking for provider input.

Response: *The Board thanks Dr. Kim McDowell, Dr. Tyler McDowell, and Dr. Carla Iseman for their comments. HIPAA 45CFR164.524(b) mandates this.*

Comment #2: Dr. Seth Jenkins, OD emailed:
I would like the Board to consider adding a rule that would disallow the legal validity of exam results coming from an "eye exam" that was performed online. It is dangerous, they can't even refract, there are too many possibilities of inaccuracies, the clinician can't assess ocular health, and the "final Rx" seems to be them copying previous prescriptions. I don't think we should ethically consider prescriptions from these avenues legitimate for the safety of the patient.

Also, the contact lens industry seems like the wild west with companies doing whatever they want and switching lenses on patients with no input from the doctor. When they do Rx verifications, they speak so quickly or muffled that we have no hope of understanding them. Their practices are a mockery of our laws. I'm not sure what we can do in Wyoming with our rules to address this problem, but something needs to be done.

Response: *The Board thanks Dr. Jenkins for his comments. The Board appreciates your concerns and is endeavoring to address these issues through the proposed Rules changes and will continue to consider this in future rules discussions. Protection of the public consumer is the Board's mission and they will continue to look into these concerns.*

Comment #3: Dr. James Boucher, O.D., M.S., FAAO, OD emailed the below comments in black. Board staff responded with the comments in blue.

CHAPTER 1

Who is on the ARC committee?

The Board appoints 1 member to serve this function.

Dr. Coby Ramsey is presently appointed as the Application Review Committee.

How is the IC formed? Who is on this committee?

The Board appoints 1 member to serve this function. This is done on a rotating basis so that each member takes turns with investigations. If the member has some conflict with either party of a complaint, they recuse and the complaint is assigned to the next member.

Section 5! The Board shall establish a regulator meeting by resolution. WHAT DOES THIS MEAN?

This means the Board creates a document called a resolution, where they declare that a next meeting is a "regular" meeting. Meetings that aren't pre-determined as "regular" meetings are considered "special" meetings. The biggest difference is that the Board can add topics for discussion without notice for regular meetings. If it is a special meeting they cannot discuss what is not on the agenda. However, even if a regular meeting this board in practice does stay on topic per their agendas.

CHAPTER 2

The way I understand this Chapter is "one can apply for a Wyoming License if he/she has been licensed in another state with requirements as stringent as Wyoming and pass the jurisprudence exam. If they have never been licensed, they need to comply with Section 5. Otherwise, there will no longer be a Wyoming test other than the jurisprudence exam? Correct?

There is still a requirement to take the national examinations. That is included for reciprocal candidates through the language stating "another state with requirements as stringent as Wyoming." If another state doesn't require national exams, they are not as stringent as Wyoming.

CHAPTER 3

Do the new rules say that one does not have to tell the Board their business address or when they retire. What happens if their license is lost, stolen or destroyed?

The requirement to notify the Board of address changes is at the end of Chapter 1. If a licensee does not plan to renew for whatever reason, they should inform the Board. They don't have to, however, as they simply fail to renew.

If a license is lost, stolen, or destroyed, they can request the Board re-print their materials for a fee. Chapter 4 lists that fee as \$25.

Under Section 2 (c) (i) how extensive will the renewal application be?

The renewal form will not change from the current form. This criteria is simply clarifying what must be done to renew. This is already what the practice is.

Under Section 2 (c) (ii) why do we have to submit documentation if all of us are being monitored through COPE by the Board and we are required to report our CE through the OE Tracker program?

This sentence is reiterating that all CE must meet the criteria in Section 3 which is evidenced through the OE Tracker reporting. It is not adding additional documentation criteria, but verifying those renewing must be in compliant with the continuing education criteria.

Under Section 3 (c) (iii) Does this apply to course not approved by COPE and not listed on the OE Tracker?

CE provided by "AOA recognized state associations" do not have to be approved by COPE. These still must be listed in OE Tracker.

Section 3 (f) (ii) I assume March 31 is the next year-right?

If CE is due 12/31/2017 the licensee has until 3/31/2018 to satisfy any disallowances. So yes.

Section 4 (i) Shouldn't it be April 1 rather than April 2?

33-23-109(d) of the Board's Practice Act reads:

The board of examiners, pursuant to W.S. 33-1-201, shall establish fees for the standard examination, initial license and the annual renewal of the license. Every optometrist who desires to continue the practice of optometry shall annually, on or before April 1, pay the board the required renewal fee.

The opinion was that because the license could be renewed ON or before April 1, that it actually expired April 1 and the new period would then start April 2. Because of this new opinion, the Board modified the Rule accordingly.

CHAPTER 5

Section 2 (a) by adding "electronic" Is this what the Board added per the legislation that was passed this last session relating to Boards rule making powers?

Yes, that is correct. The Board's Practice Act provides the Board the authority to regulate anyone practicing optometry in Wyoming, regardless of means. This section just reiterates that but clarifies electronic to further ensure those practicing with telehealth means understand they must be licensed.

Section 3 (a) (i) (ii) & (iii). I do not believe the board should specify the expiration times. They should just specify that all prescriptions should have expiration dates!

Thanks for your comment. I'll share this and all your comments with the Board. **The Board created these requirements to coincide with the FTC Contact Lens Rule.**

Section 3 (b) (i) The "Feds" are considering requiring all prescribers of contact lens prescriptions to document in the patients record for three years that they gave the patient their Rx. Should this be added to the rule? Also the term "at the end of the contact lens fitting" should be defined what is after all trial lenses and the final lens is prescribed! (ii) there should be an expiration date required!

Thanks for your comment. I'll share this and all your comments with the Board. **The Board created these requirements to coincide with the FTC Contact Lens Rule.**

Section 4 (a) What if the office policy is that the examination fee must be paid in full before the release of a prescription of any kind for anyone!

Thanks for your comment. I'll share this and all your comments with the Board. **HIPAA 45CFR164.524(b) mandates this.**

Section 4 (a) I question this requirement! (b) (i) How about a "minor". Shouldn't it be 7 years after they are 21?

Thanks for your comment. I'll share this and all your comments with the Board. The Board declined to make this change to the Rules.

CHAPTER 7

Section 11 What does WAPA stand for?

This is defined in Chapter 1, "WAPA" means the Wyoming Administrative Procedure Act, W.S. §§ 16-3-101 through -115.

Response: The Board thanks Dr. Boucher for his comments. Detailed responses to each question are listed with each question for clarity's sake.

Comment #4: Wyoming Optometric Association (WOA) emailed:

The Wyoming Optometric Association (WOA) is writing today in response to a call for public comment on the recent Proposed Rules and Regulation Changes.

The WOA would like to propose additional language and the opportunity to present these proposals to the Board of Examiners. Specifically, on Chapter 5, Section 2; Practice of Optometry. The WOA feels that additional language further clarifying and defining the Standard of Practice and eye examinations is needed to enable the Board of Examiners to provide a more comprehensive patient protection process.

Thank you for your attention and consideration to our concerns.

Response: The Board thanks WOA for their comments. The Board will consider WOA proposed changes at their next meeting.

APPENDIX A

**STATE OF WYOMING
BOARD OF EXAMINERS IN OPTOMETRY**

Statutes 33-23-101 through 33-23-116

REPEALED

CHAPTER 1

GENERAL PROVISIONS

Section 1. Authority. These Board Rules are adopted to implement the Board's authority under the Act as it relates to the licensure and discipline of an optometrist and regulation of the practice of optometry in Wyoming.

Section 2. Statement of Purpose. These Board Rules are adopted implement the Board's authority to establish administrative procedures.

Section 3. Definitions.

- (a) "Act" means Wyoming Statute §§ 33-23-101 through -117.
- (b) "AOA" means American Optometric Association.
- (c) "ARC" means Application Review Committee.
- (d) "ARBO" means Association of Regulatory Boards of Optometry.
- (e) "Board Rules" means the administrative rules promulgated by the Board.
- (f) "CE" means continuing education.
- (g) "COPE" means Council on Optometric Practitioner Education.
- (h) "IC" means Investigative Committee.
- (i) "Incompetence" means an act or omission that presents a danger to an individual's life, health, or safety and is likely to cause death or injury.
- (j) "NBEO" means National Board of Examiners in Optometry.
- (k) "OE Tracker" means an ARBO program that captures and stores CE information for optometrists.
- (l) "Permissible removal of foreign bodies" means removal of superficial ocular foreign bodies not penetrating the intraocular spaces or tissues.
- (m) "Pharmaceutical Agents" means those Food and Drug Administration approved pharmaceutical agents related to the practice of optometry.
- (n) "Surgery" means the penetration by manual operation into the intraocular tissues or spaces for healing diseases, deformations, or injuries.

(o) “WAPA” means the Wyoming Administrative Procedure Act, W.S. §§ 16-3-101 through -115.

Section 4. Board Office. The Board Office shall be located at 2001 Capitol Avenue, Cheyenne, Wyoming.

Section 5. Board Meetings. The Board shall establish a regular meeting by resolution. The Board may call special meetings as necessary.

Section 6. Reference by Incorporation. The Board hereby incorporates by reference the following uniform rules:

(a) Each rule and code incorporated by reference is further identified as follows:

(i) Chapter 2 - Uniform Procedures, Fees, Costs, and Charges for Inspection, Copying, and Producing Public Records, adopted by the Department of Administration and Information and effective on September 6, 2016, available on the Board’s website at <http://optometry.wyo.gov/rules-and-regulations>.

(ii) Chapter 2 - Uniform Rules for Contested Case Practice and Procedure, adopted by the Office of Administrative Hearings and effective on October 17, 2014, available on the Board’s website at <http://optometry.wyo.gov/rules-and-regulations>.

(b) For these rules incorporated by reference:

(i) The Board has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules;

(ii) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (a) of this section; and

(iii) The incorporated rules are maintained at the Board Office and are available for public inspection and copying at cost at the same location.

Section 7. Public Records Inspection. Public records inspections shall be conducted pursuant to the Department of Administration and Information’s rules concerning public records.

Section 8. Change Name, Address, or Telephone Number. Each applicant and licensee shall notify the Board in writing of any change to their legal name, home address, business address, e-mail address, or telephone number within thirty (30) days of the change.

CHAPTER 2

REQUIREMENTS FOR LICENSURE

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to establish the requirements for licensure.

Section 2. Application Status.

(a) For those applicants seeking licensure, competency shall be met during the timeframe identified immediately prior to submitting a completed application.

(b) Applications shall be deemed "complete" when all necessary documentation has been received by the Board office.

(c) Applications shall expire one year after submission. If an application expires, an applicant shall submit a new application, including payment of fee.

Section 3. ARC Review of Applications. An applicant for licensure or a volunteer certificate shall have committed no acts that are grounds for disciplinary action, or if the act was committed, the ARC has found after investigation that sufficient restitution has been made and the applicant no longer presents a threat to the public safety.

Section 4. Jurisprudence Examination.

(a) The ARC shall recommend eligibility to sit for the jurisprudence examination.

(b) To successfully pass the jurisprudence examination, the applicant shall score at least 75%.

Section 5. Licensure by Examination.

(a) Eligibility. An applicant may seek licensure by examination if the applicant graduated from a school or college accredited by the Accreditation Council on Optometric Education and has never been licensed to practice as an optometrist in any state or is unable to apply by endorsement.

(b) Applicant Requirements. Applicant shall:

(i) Submit a completed application and payment of fee;

(ii) Submit acceptable fingerprint cards;

(iii) Request an official transcript from the optometry college or university to be sent directly to the Board Office;

(iv) Request a verification of successful passage of parts one (1), two (2) including passage of Treatment and Management of Ocular Disease, and three (3) of the examination administered by NBEO taken within five (5) years to be sent directly to the Board Office; and

(v) Successfully pass the jurisprudence examination.

Section 6. Licensure by Endorsement.

(a) Eligibility. An applicant may seek licensure by endorsement if the applicant has an active license in another jurisdiction.

(b) Application Requirements. An applicant shall:

(i) Submit a completed application and payment of fee.

(ii) Submit acceptable fingerprint cards;

(iii) Successfully pass the jurisprudence examination; and

(iv) Submit evidence that demonstrates competency including:

(A) Verification of licensure where the applicant holds an active license in another jurisdiction with licensure requirements as stringent as Wyoming; or

(B) Completion of twenty (20) hours of CE each year that meets the criteria in Chapter 3, Section 3 for the last five (5) years.

Section 7. License Type Designation. All licenses issued by the Board will contain the letter “T” following the license number to designate the holder as being qualified and authorized to use diagnostic and therapeutic pharmaceutical agents in his/her practice.

Section 8. Volunteer’s Certificate. Any applicant that meets the qualifications under Wyoming Statute § 33-23-117 shall submit a completed application.

CHAPTER 3

RENEWAL AND RELICENSURE

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to establish the requirements for renewal, reinstatement, relicensure, and reinstatement subject to discipline.

Section 2. Annual Licensure Renewal.

(a) Notice. Failure to receive notice for renewal of a license or certificate shall not excuse a licensee from the requirement for renewal under the Act and these Board Rules.

(b) Expiration.

(i) All licenses and certificates shall expire on April 1 of each year. License renewal applications and fees shall be postmarked no later than April 1 to be timely.

(ii) Unless a licensee timely renews their license, the licensee shall not practice after April 1.

(c) Renewal Application. A licensee seeking renewal shall:

(i) Submit a completed renewal application and payment of fee; and

(ii) Submit documentation verifying completion of CE identified in Section 3.

Section 3. Requirements.

(a) CE Requirements for Renewal. As a condition for renewal, each licensee shall complete a total of forty (40) hours of CE.

(b) Timeframe for Earning CE for Renewal.

(i) The first renewal period begins on January 1st following the date their license was issued. Following the first renewal period, if the license was issued in an even year the licensee shall submit twenty (20) hours of CE. If the license was issued in an odd year the licensee shall submit forty (40) hours of CE.

(ii) CE will be required following the first renewal period and each two (2) calendar years thereafter.

(iii) Only those CE acquired during the CE reporting period will be considered. Duplicate courses taken during a CE reporting period will not be accepted.

(c) The Board shall approve courses related to the practice of optometry offered by the following:

(i) COPE qualified or COPE sponsored;

(ii) AOA;

(iii) AOA recognized state associations;

(iv) American Academy of Optometry;

(v) Schools and colleges of optometry;

(vi) College of Visual Development; and

(vii) Optometric Extension Program and clinical facilities specializing in eye care that are staffed by professors or adjunct professors of optometry or ophthalmology at accredited optometry or medical schools.

(viii) Other courses may be submitted to the Board Office for pre-approval.

(d) Composition of CE.

(i) Licensees authorized to prescribe therapeutic pharmaceuticals shall obtain fifteen (15) hours of the required forty (40) hours of CE in topics addressing ocular systemic therapeutics.

(ii) A maximum of six (6) hours of CE in the area of practice management may be applied towards the required forty (40) hours.

(iii) A combined maximum of ten (10) hours of COPE qualified CE through the Internet or correspondence may be applied towards the required forty (40) hours.

(iv) One (1) CE may be earned during each renewal period for passing the Board's jurisprudence examination.

(e) Reporting Requirements.

(i) Licensees shall report their CE through the OE Tracker program.

(ii) Licensees shall be able to furnish copies of any certificates of attendance, letters certifying attendance, transcripts, or any other official documents that serve as proof of CE participation or attendance for at least two (2) years from the date submitted for renewal.

(iii) Proof of attendance shall contain the activity title, date(s), contact hours attended, sponsor, presenter, name of licensee and be signed by the sponsor or the presenter.

(iv) All CE must be posted on the OE Tracker website no later than December 31 of the renewing biennium year. CE posted after December 31 will be assessed a late fee.

(f) Auditing.

(i) CE may be audited by the Board for verification of compliance with these requirements and the Board may disallow any course not meeting the intended CE criteria.

(ii) If the Board disallows any CE hours as a result of an audit, the licensee shall have until March 31 following the CE period to:

(A) Provide further evidence that the disallowed CE hours meet the criteria established by these rules;

(B) Provide evidence of having completed appropriate CE during the required time frame, which may substitute for the disallowance; or

(C) Remedy the disallowance by completing the number of additional CE hours necessary to fulfill the requirements. These additional CE hours shall not be reported on subsequent applications for license renewal.

(iii) Failure to provide the documents requested for audit within thirty (30) days of the date of the request may subject the licensee to disciplinary action.

(g) Waiver. The Board may grant a waiver for CE requirements for licensees who have petitioned and demonstrated just cause based on extenuating circumstances.

(h) Volunteer Certificate Holders shall complete twenty (20) hours of CE per year. If the Volunteer Certificate Holder is therapeutically authorized eight (8) hours shall address systemic ocular therapeutics.

Section 4. Reinstatement.

(a) Failure to timely renew may subject the licensee to disciplinary action for unlicensed practice.

(b) Reinstatement.

(i) Licensees that failed to timely renew may apply for reinstatement from April 2 to June 30. However, licensees shall not practice until the Board approves their request.

(ii) Licensees applying for reinstatement shall comply with the requirements in Section 3.

(iii) If an expired license is not reinstated by June 30, an applicant may seek relicensure.

Section 5. Relicensure.

(a) Eligibility. An applicant may seek relicensure if the applicant has been licensed in Wyoming and either failed to reinstate or is seeking to return to active clinical practice.

(b) Application Requirements. Applicant shall:

(i) Submit a completed relicensure application and payment of fee;

(ii) Demonstrate competency by:

(A) Submitting verification showing completion of twenty (20) hours of CE for every year the license has been lapsed, not to exceed five (5) years; or

(B) Submitting verification showing successful completion of parts one (1), two (2), and three (3) of the examination administered by NBEO within the last five (5) years, if not actively practicing within the last five (5) years; and

(iii) Successfully pass the jurisprudence examination.

Section 6. Reinstatement Subject to Discipline.

(a) Eligibility. An applicant may seek reinstatement subject to discipline if that license has been revoked, surrendered, suspended, conditioned, or restricted.

(b) Application Reinstatement Requirements. The applicant shall:

(i) Submit a completed reinstatement subject to discipline application and payment of fee;

(ii) Submit evidence of complying with the requirements of a previous Board order;

(iii) Submit evidence of applicant's ability to safely and competently practice; and

(iv) Submit evidence demonstrating just cause for reinstatement subject to discipline.

CHAPTER 4

FEES

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board’s authority to determine and collect reasonable fees.

Section 2. General Information.

(a) Fees shall be payable in the exact amount and shall be paid in advance of the services rendered.

(b) All fees collected by the Board are non-refundable.

(c) Fees related to public records requests shall be assessed pursuant to the Department of Administration and Information’s rules concerning public records.

Section 3. Fees. Services for which the Board charges a fee shall include, but is not limited to, the following fee schedule.

- (a) License by Examination Fee\$250.00
- (b) License by Endorsement Fee\$800.00
- (c) Jurisprudence Re-Examination Fee\$250.00
- (d) License Renewal Fee\$175.00
- (e) Reinstatement Fee\$350.00
- (f) Continuing Education Late Fee\$175.00
- (g) Relicensure Fee\$500.00
- (h) Reinstatement Subject to Discipline Fee\$500.00
- (i) Duplicate Document Fee.....\$25.00
- (j) License Verification Fee\$25.00
- (k) Roster Fee\$150.00
- (l) Non-Sufficient Fund Fee.....\$30.00

CHAPTER 5

STANDARDS OF PRACTICE

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to define standards of practice of optometry.

Section 2. Practice of Optometry.

(a) The practice of optometry occurs where the patient is located or receives services regardless of means, in person or electronic.

(b) Furnishing or providing a contact or ophthalmic lens prescription is the practice of optometry.

Section 3. Prescriptions.

(a) Expiration of Prescriptions.

(i) Contact lens prescriptions shall expire one (1) year from the date of issuance.

(ii) Ophthalmic lens prescriptions shall expire two (2) years from the date of issuance.

(iii) A licensee may set an expiration date of earlier than one (1) or two (2) year expiration periods identified above only if that date is based on the licensee's medical judgment about the patient's eye health. In these cases, the licensee shall document the medical reason for the shorter expiration date with enough detail to allow for review by a qualified medical professional. The licensee shall also maintain these records for at least three (3) years.

(b) Providing Prescriptions. Licensees shall:

(i) Provide the contact lens prescription to the patient at the end of the contact lens fitting.

(ii) Provide or verify the contact lens prescription to anyone who is designated to act on behalf of the patient.

Section 4. Records Retention.

(a) Licensees shall not withhold records if a patient owes an outstanding balance.

(b) Patient records shall be:

- (i) Maintained for a minimum of seven (7) years from the date of the last patient clinical encounter;
- (ii) Maintained in a physically secure and confidential manner; and
- (iii) Accessible to the patient and treating doctor within a reasonable period.

Section 5. Use of Optometry Assistants. A licensee may employ an optometry assistant(s). All optometry assistants shall practice under the licensee's general supervision.

(a) General supervision means the procedures are performed under a licensee's overall direction and control. The licensee's physical presence is not required during the performance of the procedures. The training of assistants who actually perform the diagnostic procedure and maintain necessary equipment and supplies is the continuing responsibility of the licensee.

- (i) Assistants shall not write orders.
- (ii) The testing of patients can only be performed upon the verbal or written direction of the licensee.
- (iii) The physical presence of the licensee is not required if the assistant can easily contact the licensee. Treatment plans, however, can only be directed once the licensee physically reviews test results.

(b) An assistant cannot, in any manner, practice optometry.

(c) The Board does not recognize nor bestow any level of competency upon an assistant to carry out a specific task. Such recognition of skill is the responsibility of the licensee.

Section 6. Externships.

(a) An externship is when an optometric student is allowed to practice optometry in a clinical setting under the direct supervision of a licensee.

(b) The licensee shall comply with all necessary documentation and contracts to become an outreach facility with an optometric institution.

(i) The educational institution and the licensee bear liability for all acts and omissions of the extern.

(ii) Direct supervision means the licensee must be physically present in the office and immediately available to assist and direct throughout the performance of the procedure. It does not mean that the licensee must be present in the room when the procedure is being performed.

CHAPTER 6

**HANDLING OF COMPLAINTS AGAINST LICENSEES AND DEFICIENT
APPLICATIONS**

REPEALED

CHAPTER 7

PROCESS AND PROCEDURE FOR APPLICATION, LICENSURE, AND DISCIPLINE MATTERS

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to:

- (a) Conduct investigations, hearings, and proceedings concerning:
 - (i) Actions relating to an application for a license, including granting or denying; or
 - (ii) Alleged violations of the Act or Board Rules.
- (b) Determine and administer appropriate disciplinary action against an applicant or licensee.
- (c) For purposes of this chapter, "licensee" means an optometrist issued a license or certificate by the Board to practice optometry in Wyoming.

Section 2. Grounds for Disciplinary Action. The Board may take disciplinary action or refuse to issue or renew a license for one (1) or more of the following acts or conduct:

- (a) A violation of the Act or Board Rules, including:
 - (i) Denial of a license to practice optometry, or any disciplinary action against a licensee, by any other state, territory, or country;
 - (ii) Failing to report to the Board known or suspected violations of the laws and regulations governing the practice of optometry in Wyoming;
 - (iii) Submitting false information to the Board;
 - (iv) Failing to notify the Board of a malpractice final judgment or settlement within thirty days;
 - (v) Aiding or abetting the practice of optometry in Wyoming by any person not licensed to practice in Wyoming;
 - (vi) Fraudulent billing;
 - (vii) Using any term other than "optometrist" or "Doctor of Optometry" to reflect licensure;
 - (viii) Loaning of a license issued by the Board;

(ix) Accepting remuneration for professional services if a volunteer certificate holder.

(b) A conviction involving moral turpitude, including:

(i) A felony or misdemeanor involving a patient or adversely relating to the practice of optometry. A plea of nolo contendere shall be considered a conviction;

(ii) Violating professional boundaries by soliciting, encouraging, threatening, forcing, or engaging in any sexual act or relationship with or upon a patient, regardless of consent. A consensual sexual relationship shall not be deemed moral turpitude if the optometrist-patient relationship was terminated prior to the relationship;

(iii) Sexual harassment of a patient or staff member;

(c) Habitual intemperance or being habitually addicted includes the use of any drug, narcotic, chemical, alcohol or mind altering material that renders the licensee unfit or incompetent to:

(i) Practice optometry with reasonable skill and safety to patients; or

(ii) Conform to essential standards of acceptable optometry practice, in which case actual injury need not be established.

(d) Incompetence, malpractice, or unethical conduct includes:

(i) Practicing in a manner that is not in the best interest of the public and endangers public health, safety, and welfare;

(ii) Practicing optometry:

(A) In violation of any limitations or restrictions imposed on a license, or practicing optometry while a license is suspended or has expired;

(B) With a mental or physical impairment which renders the licensee incapable of practicing optometry with reasonable skill and safety; or

(iii) Performing any procedure in the course of a patient's care, which:

(A) Is beyond the licensee's training and competence;

(B) Deviates from the customary and accepted standard of care in the profession;

(iv) Failing to:

(A) Advise a patient to seek the attention of a physician or other health care provider for an eye disease or disorder discovered during an examination which, in the opinion of the licensee, requires additional diagnosis and medical treatment. Such advice shall not be required for any previously diagnosed disease or disorder;

(B) Provide patients with accurate and complete information regarding the extent and nature of services available to them;

(C) Maintain confidentiality of all information obtained in the course of the optometrist-patient relationship, except that disclosure of confidential information is permissible with the expressed written consent of the patient, or as required by law;

(D) Maintain the confidentiality of any examination related to obtaining a license to practice optometry;

(E) Ensure that a patient's welfare is not compromised in any experimentation or research involving that patient;

(F) Obtain informed written consent from the patient for any experimentation or research;

(G) Obtain approval from any regulatory entity, in which approval is customarily or lawfully required, in order to conduct experimentation or research;

(H) Comply with any regulatory standards customarily or lawfully required for the continuation of experimentation or research;

(I) Release a spectacle lens prescription to the patient in accordance with federal law;

(J) Release a contact lens prescription to the patient in accordance with federal law without all of the following information: expiration date, wearing schedule, care regimen, and all necessary parameters essential to fabricating a contact lens;

(v) Billing patients for services provided which are not justified and are not necessary for diagnostic or therapeutic purposes;

(vi) Administering, dispensing, or prescribing any controlled substance other than in the course of legitimate professional practice as authorized by law;

(vii) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of optometry, including falsifying entries on patient records;

(viii) Representing that a non-correctable condition can be permanently corrected;

- (ix) Interfering with the free choice of any patient when selecting a physician or other health care practitioner; and
- (x) Incurring any judgment against the licensee for malpractice or negligence.
- (e) Unprofessional and dishonest conduct includes:
 - (i) Advertising professional services through statements that are untruthful, improbable, misleading, or impossible;
 - (ii) Announcing services available in the licensee's practice that expresses or implies specialization;
 - (iii) Failing to display a license at all times in a conspicuous and readily accessible location to all patients at the optometrist's place of business;
 - (iv) Failing to comply with reasonable requests from the Board including, but not limited to:
 - (A) Answering an administrative complaint;
 - (B) Responding to a request for explanation for failure to disclose required information; or
 - (C) Cooperating in an investigation;
 - (v) Failure to comply with a term, condition or obligation of a Board order; or
 - (vi) Failure to appropriately supervise.

Section 3. Application Review and Investigation Process.

- (a) Application Review and Investigation. In application matters:
 - (i) Every applicant bears the burden of satisfying license requirements; and
 - (ii) Every application for licensure issued by the Board shall be subject to investigation to determine whether the requirements set forth in the Act and Board Rules are satisfied.
- (b) ARC Action. Following investigation, the ARC may recommend:
 - (i) A license be issued, renewed, relicensed, or reinstated;

(ii) A license be issued, renewed, relicensed, or reinstated subject to conditions, restrictions, or other disciplinary action;

(iii) Approval of a settlement agreement, which may include the issuance, renewal, relicensure, or reinstatement of a license with the imposition of a reprimand, conditions, restrictions, suspension, other discipline or a combination there of; or

(iv) Denial of licensure.

(c) Notice of Intent. The ARC shall notify the applicant of its intent to recommend approval subject to conditions, restrictions, other disciplinary action, or denial. Such notification shall contain:

(i) A brief description of the facts or conduct that warrant the approval subject to conditions, restrictions, other disciplinary action, or denial of licensure;

(ii) A statement of the nature of the actions which warrant the approval subject to conditions, restrictions, other disciplinary action, or denial, the facts upon which the action is based, the specific statutory provisions or the specific Board Rules involved; and

(iii) Notice of the right to a hearing if a written request is received in the Board office within thirty (30) days of the date of mailing the notice of intent.

(d) Applicant's Request for Hearing.

(i) The applicant may request a hearing if the ARC recommends:

(A) Approval of the license subject to conditions, restrictions, or other disciplinary action; or

(B) Denial of licensure.

(ii) The applicant shall submit a written request for hearing to the Board Office within thirty (30) days of the date of the Notice of Intent.

(iii) Failure of the applicant to pursue proceedings related to the application after requesting a hearing may result in dismissal.

Section 4. Complaint Review and Investigation Process.

(a) Complaint Review and Investigation.

(i) Complaints shall be submitted to the Board upon the form provided by the Board and contain the name, address, and signature of the person making the complaint. The Board may initiate complaints.

- (ii) Complaints shall be investigated by the IC or the Board staff.
- (iii) The IC may meet informally with the licensee.

(b) **Voluntary Surrender.** A licensee may petition the Board in writing to voluntarily surrender their license. The Board shall consider the petition at its earliest convenience. The Board may accept or reject the petition for voluntary surrender.

(c) **IC Action.** Following investigation, the IC may recommend:

- (i) Dismissal of the complaint;
- (ii) Issuance of an advisory letter;
- (iii) Approval of a settlement agreement, which may include a reprimand, conditions, restrictions, non-renewal, suspension, voluntary surrender, other discipline or a combination thereof;
- (iv) Disciplinary action which may include a reprimand, conditions, restrictions, non-renewal, suspension, revocation, other discipline or a combination thereof; or
- (v) Summary suspension.

Section 5. Summary Suspension.

(a) **Recommendation.** If the IC recommends summary suspension, the Board shall conduct an expedited proceeding to determine whether the licensee's continued practice presents a clear and imminent danger to public health, safety or welfare.

(b) **Notice of Intent to Recommend Summary Suspension.**

(i) The IC shall notify the licensee of its intent to recommend summary suspension.

(ii) The Notice of Intent shall contain:

(A) Copy of the complaint;

(B) Notice that a summary suspension proceeding shall be set for expedited proceeding at the earliest opportunity a quorum of Board members may be assembled; and

(c) **Notice of Expedited Proceeding.** Upon confirmation of the date and time of the expedited proceeding, the IC shall notify the licensee of the date and time of the proceeding.

Section 6. Formal Proceedings for Disciplinary Action.

- (a) Notice of Intent to Recommend Disciplinary Action.
 - (i) The IC shall notify the licensee of its intent to recommend disciplinary action.
 - (ii) The Notice of Intent shall:
 - (A) Include a brief description of the facts or conduct which warrant the intended action; and
 - (B) Provide the licensee an opportunity to show compliance or respond to allegations for disciplinary action within fifteen (15) days of the date of the mailing.
- (b) Informal Conference. The licensee may request an informal conference to provide any additional information or to resolve an administrative complaint without a hearing.

Section 7. Petition. The IC shall initiate formal proceedings for disciplinary action by serving a Petition to the last known address of the licensee by certified mail, by regular mail, by electronic mail to the e-mail address indicated to be the preferred method of communication, or by personal service at least thirty (30) days prior to the date set for hearing.

Section 8. Notice of Hearing.

- (a) Hearing. Upon receipt of a written request for hearing from an applicant or commencement of formal proceedings for disciplinary action against a licensee, the Board shall conduct a hearing. The Board shall serve a Notice of Hearing on the applicant or licensee.
- (b) Notice of Hearing. The Notice of Hearing shall contain:
 - (i) The name and last known address of the applicant or licensee;
 - (ii) A brief statement of the matters asserted relating to:
 - (A) The recommendation to deny licensure, the facts upon which the recommendation to deny is based, the statutory provisions and/or the Board Rules the applicant is alleged to have violated; or
 - (B) The nature of the Petition, the facts upon which the Petition is based, the statutory provisions and/or the Board Rules the licensee is alleged to have violated;
 - (iii) The time, place, and nature of the hearing;
 - (iv) The legal authority and jurisdiction; and
 - (v) A statement indicating:

(A) The applicant's failure to appear at the hearing or pursue proceedings may result in a dismissal; or

(B) The licensee's failure to answer the allegations contained in the Petition within twenty (20) days of the date of mailing and failure to appear at a noticed hearing may result in a default judgment.

Section 9. Lawful Service. There shall be a presumption of lawful service of a Notice of Intent, Petition, and Notice of Hearing or any other communication required by these Board Rules if sent to the last known address of the applicant or licensee by certified mail, by regular mail, by electronic mail to the e-mail address indicated to be the preferred method of communication, or by personal service.

Section 10. Dismissal and Default.

(a) Dismissal. The Board may enter an order of dismissal based on the allegations contained in the recommendation to deny in any case where the applicant or the applicant's representative has not appeared at a noticed hearing.

(b) Default. The Board may enter an order of default judgment based on the allegations contained in the Petition in any case where the licensee or the licensee's representative has not answered the allegations contained in the Petition and has not appeared at a noticed hearing.

Section 11. Contested Case Hearing. The hearing officer shall preside over the contested case hearing which shall be conducted pursuant to the WAPA and the Office of Administrative Hearings rules concerning contested case proceedings incorporated by reference in Chapter 1.

Section 12. Burden and Standard of Proof.

(a) Application/Licensure Matters. The applicant shall bear the burden to prove by a preponderance of evidence that they meet the qualifications for licensure. The burden shall shift to the ARC or IC to prove by clear and convincing evidence that the applicant should be denied a license. The burden shall shift to the applicant to persuade the Board that the ARC or IC's grounds for denial are insufficient.

(b) Discipline Matters. The IC shall bear the burden to prove by clear and convincing evidence that a licensee violated the Act or the Board's Rules.

Section 13. Board Decision and Order.

(a) Board Action. The Board may resolve an application matter, complaint or Petition by:

- (i) Approving the recommendations of the ARC or IC;
 - (ii) Dismissing a complaint;
 - (iii) Issuing a notice of warning; or
 - (iv) Conducting a contested case hearing. Following the hearing and deliberation of all evidence admitted at a contested case hearing, the Board may:
 - (A) Issue, renew, relicense, or reinstate a license;
 - (B) Issue, renew, relicense, or reinstate a license with conditions, restrictions, or other disciplinary action;
 - (C) Deny a license;
 - (D) Dismiss the Petition due to lack of clear and convincing evidence;
 - (E) Issue a notice of warning; or
 - (F) Impose a reprimand, conditions, restrictions, suspension, revocation, other discipline or a combination thereof.
- (b) Board Order. The Board shall issue a written decision which shall be sent to the applicant, licensee, or their representative.

Section 14. Judicial Review.

- (a) Appeals from Board decisions are governed by the WAPA and Wyoming Rules of Appellate Procedure.
- (b) Costs of transcripts and any reasonable costs assessed by the Board regarding the record on appeal shall be borne by the party making the appeal.

CHAPTER 8
INFORMATION PRACTICES
REPEALED

APPENDIX A

STATE OF WYOMING BOARD OF EXAMINERS IN OPTOMETRY

Statutes 33-23-101 through 33-23-116

REPEALED

~~33-23-101. Definitions and exceptions.~~

~~(a) — The practice of optometry is the employment of any means other than surgery for diagnosing and treating ocular pathology and for the measurement of the powers or range of human vision or the determination of the accommodative and refractive status of the human eye or the scope of its functions in general or the adaptation of lenses or frames for the aid thereof.~~

~~(b) — The provisions of this chapter do not prevent a duly licensed physician and surgeon, from treating or fitting glasses to the human eye, or a duly licensed physician and surgeon, oculist, or optometrist from filling prescriptions or orders, nor do they prevent the replacing, duplicating or repairing of ophthalmic lenses or the frames or fittings thereof by persons qualified to write or fill prescriptions or orders under the provisions of this act, nor prevent the doing of the merely mechanical work upon such lenses or upon the frames or fittings thereof by an optical mechanic.~~

~~(c) — It is unlawful for any person to dispense, replace or duplicate an ophthalmic lens or ophthalmic lenses without a prescription or order from a duly licensed physician and surgeon, oculist or optometrist. Contact lenses may be sold or dispensed in a retail optical dispensary or other permanently established place of business with an optical department only when the prescription specifically states on its face that it is intended for contact lenses and includes the type and specification of the contact lens being prescribed.~~

~~(d) — The provisions of this chapter do not prohibit the sale of goggles, sunglasses, colored glasses or occupational eye protective devices if they do not have refractive values, nor do the provisions of this act prohibit the sale of complete ready to wear eyeglasses as merchandise by any person not holding himself out as competent to examine, test or prescribe for the human eye or its refractive errors.~~

~~(e) — Nothing in W.S. 33-23-101 through 33-23-116 shall prevent an optometrist from using assistants in his practice under his direct personal supervision in the office in which the optometrist practices his profession.~~

~~**33-23-102. Optometrist's use of certain drugs; limitation.** An optometrist licensed according to the statutes of the state of Wyoming shall be allowed to administer and prescribe pharmaceutical agents which are topically applied. A licensed optometrist who administers or prescribes pharmaceutical agents for examination or for treatment shall provide the same standard of care to patients as that provided by a physician licensed in this state utilizing the same pharmaceutical agents for examination or treatment.~~

33-23-103. Certificate of registration required; civil suit; damages.

(a) — It is unlawful for any person in the state of Wyoming to practice or attempt to practice optometry or to advertise, or hold himself out as qualified to fit or adjust any lenses or lens in any manner or form as an aid to human eyesight, without first obtaining a certificate to practice optometry.

(b) — A person who is damaged by another person who violates this section may in addition to other remedies provided by law, institute suit in the county where the violation occurred to require enforcement by injunctive procedures and to recover damages plus court costs and reasonable attorney's fees.

33-23-104. Board of examiners in optometry; created; composition; designation; duties generally; appointment; qualifications and terms of members; vacancies; oath. The Wyoming state board of examiners in optometry is created to carry out the purposes and enforce the provisions of this act. The board shall consist of three (3) members appointed by the governor for a term of two (2) years. Each member of the board shall be a resident of the state of Wyoming and shall have been engaged in the actual practice of optometry in the state for at least one (1) year prior to appointment. The governor shall make all appointments to fill vacancies caused by death, resignation or removal. The governor may remove any member as provided in W.S. 9-1-202. The members of the board, before entering upon their duties, shall take and subscribe to the oath required to be taken by state officers and shall file the oath in the office of the secretary of state.

33-23-105. Board of examiners in optometry; officers; powers of members; meetings; quorum; records. Said board shall choose at its first meeting, and annually thereafter, one (1) of its members as president, and one (1) as secretary and treasurer thereof. Each member of the board shall have the power, during his term of office to administer oaths and take affidavits, certifying thereto under his hand and seal provided and kept by the board. Said board shall meet at least once in each year at the state capitol, for the purpose of holding an examination, and in addition thereto, whenever and wherever the president or secretary, by order of the president, shall call a meeting. A majority of said board shall constitute a quorum. The secretary shall keep a complete record of the proceedings of the board, which record shall be open to public inspection at all reasonable times.

33-23-106. Board of examiners in optometry; per diem and expenses of members; disposition of funds.

(a) — Each member of the board may receive as compensation ten dollars (\$10.00) for each day actually engaged in the duties of his office, and per diem and mileage as is allowed state officers. Expenses shall be paid from the fees, fines and assessments received under the provisions of this act. All fees, fines, assessments and other moneys received under the provisions of this act, may be used for meeting the expenses of the board and in carrying out the provisions of this act. In no event shall any expenses be charged against the state.

(b) — All money shall be received and collected as provided by law. The state treasurer shall credit the money to an account within the earmarked revenue fund.

~~33-23-107. Board of examiners in optometry; report to governor.~~ The board shall, as required by W.S. 9-2-1014, report to the governor.

~~33-23-108. Board of examiners in optometry; seal.~~ The board shall provide a seal which shall contain the words, "Wyoming State Board of Examiners in Optometry, Official Seal".

~~33-23-109. Examinations required of applicants for certificates; qualifications; existing practitioners; passing grade; reexamination; fees; renewal of certificate; retirement.~~

(a) — Any applicant for registration under this act is required to pass an examination. The applicant shall be a graduate of an optometric school or college accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or the United States Commissioner of Education maintaining not less than a four (4) year course of not less than one thousand (1,000) hours each year covering the following subjects: general anatomy, general mathematics, general optics, theoretical optometry, practical optics, hygiene, optical laboratory work, general physiology, general physics, ocular pathology, theoretical optics, practical optometry, psychology and clinical work. Anyone desiring to commence the practice of optometry after May 22, 1987 shall in addition to these requirements, have satisfactorily completed courses in general and ocular, diagnostic and therapeutic pharmacology given by an institution accredited by a regional or professional accreditation organization, which is recognized or approved by the council on postsecondary accreditation or the United States Commissioner of Education and approved by the Wyoming Board of Examiners in Optometry. Examinations shall cover the above subjects, and other subjects designated by the board. Any currently licensed person intending to employ diagnostic or therapeutic pharmaceutical agents in his practice is required to complete a board approved course and pass the board examination pertaining to the use of those agents.

(b) — No applicant shall be passed by the board who fails to obtain an average of seventy five percent (75%) in every subject upon which he is examined. If any applicant fails to pass any examination, he shall be examined at the next or any succeeding examination only in the subject in which he failed to obtain an average of eighty five percent (85%). The applicant shall apply for his certificate of registration within six (6) months after he has satisfactorily passed the examination or the examination shall be of no effect. On all certificates awarded on examination, there shall be printed or stamped the words, "Awarded on Examinations". Before engaging in the practice of optometry, and after the certificate has been delivered to him, each registered optometrist shall notify the secretary of the board in writing of the place where he intends to begin practice and of any subsequent changes of his office location. Notices given to him by the board shall be given by mailing to that address.

(c) — The board of examiners, pursuant to W.S. 33-1-201, shall establish fees for the standard examination, initial registration and the annual renewal of the certificate of registration.

Every registered optometrist who desires to continue the practice of optometry shall annually, on or before April 1, pay to the secretary of the board the required renewal fee for a renewal of his certificate. The board shall revoke the certificate of a practitioner who fails or refuses to pay the renewal registration fee. No certificate shall be revoked without giving sixty (60) days' notice to the delinquent who within such period may renew the certificate on the payment of the renewal fee, with a penalty of ten dollars (\$10.00). If an optometrist notifies the board that he is retiring from practice in Wyoming, retirement from practice for a period of not exceeding three (3) years shall not deprive the holder of the certificate of the right to renew his certificate on payment of the elapsed fees, and ten dollars (\$10.00) penalty as provided. Upon retirement from active practice, the optometrist shall notify the secretary in writing.

33-23-110. Refusal, suspension or revocation of certificate.

(a) — The board of examiners in optometry shall refuse to issue the certificate of registration provided for in this act to any person who has been guilty of unprofessional and dishonest conduct or conduct of a character likely to deceive the public, and may suspend or revoke or refuse to renew such certificate for like reasons.

(b) — "Unprofessional and dishonest conduct" as used in this act is hereby declared to mean:

(i) — The loaning of his license by any licensed optometrist to any person; the employment of "cappers" or "steerers" to obtain business, "splitting" or dividing a fee with any person or persons, the advertising by any means whatsoever of optometric practice or treatment or advice in which untruthful, improbable, misleading or impossible statements are made;

(ii) — Continued practice by a person knowingly having a loathsome disease;

(iii) — Being guilty of offenses involving moral turpitude, habitual intemperance, or being habitually addicted to the use of morphine, opium, cocaine, or other drugs having a similar effect;

(iv) — The obtaining of any fee by intentional fraud or intentional misrepresentation or false pretenses;

(v) — The use of any other term by a person registered under this act except the term "optometrist" to designate his profession;

(vi) — Employing either directly or indirectly any suspended or unlicensed optometrist to perform any work covered by the practice of optometry;

(vii) — Gross incompetence and malpractice;

(viii) — Knowingly making any false statement of any material fact in any application or other instrument required by law to be filed with the board;

(ix) — The board, when necessary for administration of this act, may clarify the definitions stated in this subparagraph (b) by unanimous action of the board, provided that the meaning and effect of this law shall not thereby be added to or diminished.

(e) — Said board, after due notice and hearing, shall revoke the certificate issued to any optometrist whose certificate of registration was obtained or issued through error, fraud, or perjury, or who shall have been guilty of grossly unprofessional, unethical and dishonest conduct, or who shall be guilty of an offense involving moral turpitude when such offense shall have been established in a court of competent jurisdiction.

(d) — The board, before suspending or revoking or refusing to renew a certificate, shall notify the certificate holder in writing of the proposed action of the board, and if a written request for hearing shall be served on the board by the certificate holder within fifteen (15) days after such notice, the board shall set the matter for hearing within thirty (30) days; and at least twenty (20) days prior to the date set for the hearing, the board shall notify in writing the certificate holder of the charges against him. The board, within ten (10) days after the hearing, shall make its order in writing stating its decision. Appeal from such order may be made to the district court of the judicial district where the holder of the certificate has his place of business, or to the district court of Laramie county, by filing with the board within ten (10) days after the order a written notice of appeal and a demand in writing for the originals or certified copies of all papers offered in evidence at the hearing. Within thirty (30) days thereafter, the board shall certify and deliver to the court such original papers or true and certified copies thereof. The appellant shall have five (5) days thereafter to perfect his appeal by filing with the clerk of court and with the board the copy of the notice of appeal and petition stating the grounds for the appeal, and if appellant shall fail to do so, the appeal shall be dismissed. Trial before the district court shall be de novo and the judgment may be appealed to the supreme court in the manner now or hereafter provided by law for appeals of civil cases.

(e) — Whenever a certificate shall be suspended or revoked the secretary of said board shall notify the county clerk of each county in which the certificate is legally registered of such suspension or revocation and it shall be the duty of each such county clerk to make proper entry upon the records of his office.

~~33-23-111. Limitation on rights conferred by certificate; prohibited acts.~~

(a) — Nothing in this act shall be construed as conferring on the holder of any certificate of registration issued by the board, the title "doctor of medicine," "oculist" or "ophthalmologist," or any other word or abbreviation indicating that he is engaged in the practice of medicine or surgery.

(b) — It is unlawful:

(i) — For any person to canvass from house to house or at any place of employment either in person or through solicitors or agents for the purpose of selling glasses, eye examination or optometric service.

(ii) — For any person to advertise prescription eyeglasses or contact lenses, which correct visual deficiencies or defects, frames or their supporting accessories or professional services in a false, deceptive or misleading manner;

(iii) — For any person to make a sworn statement or affidavit in connection with any matter relating to this act proven to be false;

(iv) — For any person or persons not holding a certificate or any corporation, directly or indirectly, to practice optometry by employment of or contract with a person holding a certificate, or otherwise, provided that one holding a certificate may accept employment from a person, partnership, association or corporation to practice optometry with respect to the employees of such person, partnership, association or corporation.

~~33-23-112. Copy of certificate to be filed in each county where practicing; failure to file; forfeiture; reissuance.~~ Recipients of certificates issued under this act, and all other persons holding certificates entitling them to practice optometry at the time of the passage of this act, shall file a certified copy thereof for record with the county clerk of the county in which they desire to practice, and any person practicing in two (2) or more counties in this state shall, before engaging in the practice of optometry in such other counties, file a certified copy of said certificate for record with the county clerks of said counties and pay the clerks thereof for the recording of the same in a book to be kept for that purpose. Provided, that any failure, neglect or refusal on the part of any person holding a certificate to practice optometry to present the first certified copy thereof which is required to be recorded, for recording, with the county clerk, as hereinbefore provided, for one (1) month after the issuance of his certificate, shall forfeit the certificate, and the board shall be entitled to a fee of one dollar (\$1.00) for issuing a certificate in lieu of the one (1) forfeited.

~~33-23-113. Certificate to be displayed; receipt for work not done in office.~~ Every person holding a certificate to practice optometry in the state of Wyoming shall display the said certificate, in its entirety, in a conspicuous place in his office, wherein the practice of optometry is conducted. He shall, also, deliver to each person fitted with glasses by him in case the work is not done in his permanent office, a receipt which shall contain his signature, the number of his certificate, and his home post office address.

~~33-23-114. Continuing education courses required.~~ All registered optometrists licensed in Wyoming shall take annual courses of study in subjects relating to the practice of the profession of optometry for the utilization and application of new techniques, scientific and clinical advances, and the achievements of research will assure expansive and comprehensive care to the public. The board shall prescribe the length of study which shall not be less than four (4) attendance hours nor exceed twenty five (25) attendance hours in any calendar year. Attendance shall be at a course or courses approved by the board. Attendance at any course or courses of study is to be certified to the board upon a form provided by the board and submitted by each registered optometrist at the time he makes application to the board for the renewal of his license and payment of his renewal fee. The board may use up to one half (1/2) of its annual renewal fees for the purposes of contracting with institutions of higher learning, professional organizations, or qualified individuals to provide educational programs that meet this

~~requirement. The board may also treat funds set aside for the purpose of continuing education as state funds for the purpose of accepting any funds made available under federal law on a matching basis for the programs of continuing education. In no instance may the board require a greater number of hours of study than are available at approved courses held within this state. The board may waive the requirements of this section in cases of certified illness or undue hardship.~~

~~33-23-115. Penalty; injunction; civil penalty; jury trial.~~

~~(a) — Any person who violates any provision of W.S. 33-23-101 through 33-23-116 is guilty of a misdemeanor and upon conviction shall be fined not more than seven hundred fifty dollars (\$750.00) or imprisoned not more than six (6) months in the county jail.~~

~~(b) — Any person aggrieved by a violation of W.S. 33-23-101 through 33-23-116, the Wyoming state board of examiners of optometry, the attorney general or the district or county attorney may institute suit in the county in which a violation of W.S. 33-23-101 through 33-23-116 occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed ten thousand dollars (\$10,000.00) per violation, plus costs.~~

~~(c) — Where a civil penalty is sought the defendant shall be entitled to a jury trial.~~

~~33-23-116. Rules and regulations.~~ ~~The board may make rules and regulations not inconsistent with law as may be reasonably necessary for the proper performance of its duties.~~

CHAPTER 1

GENERAL PROVISIONS

Section 1. Authority. ~~These Board Rules and Regulations, including all chapters are adopted and promulgated by the Wyoming Board of Examiners in Optometry pursuant to implement the Board's authority under the Act as it relates to the licensure and discipline of an optometrist and regulation of the practice of optometry in Wyoming W.S. § 33-23-101 et seq. and pursuant to the Wyoming Administrative Procedures Act W.S. § 16-3-101 et seq.~~

Section 2. Statement of Purpose. ~~These Board Rules are adopted of Examiners in Optometry adopts rules and regulations to interpret and implement the Board's authority to establish administrative procedures Act, provide for administration of the Act, provide for the licensure of optometrists and regulate the qualification standards of education and performance required for licensure and licensure renewal, provide for enforcement and penalties, and set fees.~~

Section 3. Definitions.

- (a) "Act" means Wyoming Statute §§ 33-23-101 through -117.
- (b) "AOA" means American Optometric Association.
- (c) "ARC" means Application Review Committee.
- (d) "ARBO" means Association of Regulatory Boards of Optometry.
- (e) "Board Rules" means the administrative rules promulgated by the Board.
- (f) "CE" means continuing education.
- (g) "COPE" means Council on Optometric Practitioner Education.
- (h) "IC" means Investigative Committee.
- (i) "Incompetence" means an act or omission that presents a danger to an individual's life, health, or safety and is likely to cause death or injury.
- (j) "NBEO" means National Board of Examiners in Optometry.
- (k) "OE Tracker" means an ARBO program that captures and stores CE information for optometrists.
- (l) "Permissible removal of foreign bodies" means removal of superficial ocular foreign bodies not penetrating the intraocular spaces or tissues.

(m) "Pharmaceutical Agents" means those Food and Drug Administration approved pharmaceutical agents related to the practice of optometry.

(n) "Surgery" means the penetration by manual operation into the intraocular tissues or spaces for healing diseases, deformations, or injuries.

(o) "WAPA" means the Wyoming Administrative Procedure Act, W.S. §§ 16-3-101 through -115.

~~Section 3. Severability. If any provision of these regulations or the application thereof to any person or circumstance is ruled invalid, such invalidity shall not affect those other provisions or applications which can be given effect without the invalid provision or application, and to this end the provisions of these regulations are declared to be severable.~~

Section 4. Board Office. The Board Office shall be located at 2001 Capitol Avenue, Cheyenne, Wyoming.

~~Section 4. Definitions. All definitions set forth in the Act are incorporated into these Rules in addition to the following:~~

~~(a) "Act" means W.S. § 33-23-101 through 33-23-117;~~

~~(b) "ARBO" means the Association of Regulatory Boards of Optometry;~~

~~(c) "Board" means the Wyoming State Board of Examiners in Optometry;~~

~~(d) "Capper" means anyone who acts as a decoy or lure for the purpose of swindling;~~

~~(e) "Contact lenses" shall include contact lenses with or without power;~~

~~(f) "Controlled substance" means any drug, substance or immediate precursor listed in schedules I through V of article III of the Wyoming Controlled Substances Act of 1971;~~

~~(g) "COPE" means Council on Optometric Practitioner Education;~~

~~(h) "Incompetence" means an act or omission which presents a danger to an individual's life, health, or safety and is likely to cause death or injury;~~

~~(i) "License" means a current license to practice optometry in this state issued by the board;~~

~~(j) "Licensee" means an optometrist who has been properly licensed to practice optometry in the State of Wyoming by the Board pursuant to the Act and these Rules;~~

~~(k) "OE Tracker" is an ARBO program which captures and stores continuing education course information and attendance dates for optometrists.~~

- ~~_____ (l) "Ophthalmic lenses" means any type of spectacle or contact lenses;~~
- ~~_____ (m) "Optometrist" or "doctor of optometry" means a person licensed by the board;~~
- ~~_____ (n) "Permissible removal of foreign bodies" means removal of superficial ocular foreign bodies not penetrating the intraocular spaces or tissues;~~
- ~~_____ (o) "Pharmaceutical Agents" means those FDA approved pharmaceutical agents that are valid to the practice of optometry;~~
- ~~_____ (p) "Physician" means a person holding a valid license issued by the Wyoming State Board of Medicine under the Medical Practice Act;~~
- ~~_____ (q) "State" means the State of Wyoming;~~
- ~~_____ (r) "Steerer" means anyone who in any manner directs a person to a place where he/she is to be swindled;~~
- ~~_____ (s) "Surgery" as prohibited in W.S. § 33-23-101 shall mean the penetration by manual operation into the intraocular tissues or spaces for healing diseases, deformations, or injuries;~~
- ~~_____ (t) "Swindle" means to cheat or defraud;~~

Section 5. Board Meetings. The Board shall establish a regular meeting by resolution. The Board may call special meetings as necessary.

- ~~_____ (a) The Board shall meet at least once (1) annually at a date, place and time established by the President with special meetings held as requested by the President or by a majority of the members.~~
- ~~_____ (b) The Board shall elect annually from its membership a president, vice president and secretary/treasurer.~~
- ~~_____ (c) Notice of Board meetings shall be given to any person who requests such notice as specified by the Wyoming Administrative Procedure Act. The notice shall specify the time and place of the meeting and the business to be transacted.~~
- ~~_____ (d) All meetings shall be open to the public; the Board may conduct executive sessions in accordance with W.S. § 16-4-404(a). In addition, the Board may hold closed sessions:~~
- ~~_____ (i) To approve and review examinations;~~
- ~~_____ (ii) Upon the request of an applicant who has failed the examination, in order to respond to the reasons for applicant's failure; or~~

~~_____ (iii) To consider allegations or investigations of possible violations of the Act or any of these Rules.~~

~~_____ (e) A majority of the Board members constitutes a quorum for conducting a Board meeting. The act of the majority of members present at a meeting, which includes a quorum, shall be the act of the Board.~~

~~_____ (f) A written record shall be kept of all meetings and such records shall be retained as the permanent record of the transactions of the Board.~~

Section 6. Reference by Incorporation. The Board hereby incorporates by reference the following uniform rules:

~~_____ (a) Each rule and code incorporated by reference is further identified as follows:~~

~~_____ (i) Chapter 2 - Uniform Procedures, Fees, Costs, and Charges for Inspection, Copying, and Producing Public Records, adopted by the Department of Administration and Information and effective on September 6, 2016, available on the Board's website at <http://optometry.wyo.gov/rules-and-regulations>.~~

~~_____ (ii) Chapter 2 - Uniform Rules for Contested Case Practice and Procedure, adopted by the Office of Administrative Hearings and effective on October 17, 2014, available on the Board's website at <http://optometry.wyo.gov/rules-and-regulations>.~~

~~_____ (b) For these rules incorporated by reference:~~

~~_____ (i) The Board has determined that incorporation of the full text in these rules would be cumbersome or inefficient given the length or nature of the rules;~~

~~_____ (ii) The incorporation by reference does not include any later amendments or editions of the incorporated matter beyond the applicable date identified in subsection (a) of this section; and~~

~~_____ (iii) The incorporated rules are maintained at the Board Office and are available for public inspection and copying at cost at the same location.~~

Section 7. Public Records Inspection. Public records inspections shall be conducted pursuant to the Department of Administration and Information's rules concerning public records.

Section 8. Change Name, Address, or Telephone Number. Each applicant and licensee shall notify the Board in writing of any change to their legal name, home address, business address, e-mail address, or telephone number within thirty (30) days of the change.

CHAPTER 2

LICENSURE REQUIREMENTS FOR LICENSURE & APPLICATION PROCESS

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to establish the requirements for licensure.

~~Section 1. Education Requirement.~~ Every applicant for licensure must be a graduate of a regularly established school or college of optometry requiring not less than four (4) years of instruction in the study of optometry. The institution must be accredited by:

~~(i) A regional or professional accreditation organization which is recognized and approved by the Council on Post-Secondary Accreditation; or~~

~~(ii) The United States Department of Education (USDE) or the Council on Higher Education Accreditation (CHEA), or their successor agencies.~~

Section 2. Application Status.

(a) For those applicants seeking licensure, competency shall be met during the timeframe identified immediately prior to submitting a completed application.

(b) Applications shall be deemed "complete" when all necessary documentation has been received by the Board office.

(c) Applications shall expire one year after submission. If an application expires, an applicant shall submit a new application, including payment of fee.

~~Section 2. Examination Requirement.~~ The Board requires the following to pass the examination requirement:

~~(a) Parts one (1), two (2), and three (3) of the Examination as administered by the National Board of Examiners in Optometry or their successor agencies;~~

~~(i) Re-examinations shall be in accordance with the requirements established by the National Board of Examiners in Optometry, or their successor agencies.~~

~~(b) The State of Wyoming, Board of Examiners in Optometry's examination with a passing grade of seventy five percent (75%) in each of the subjects involved.~~

~~(i) Successful completion of the State exam is required for all applicants.~~

~~(ii) The Board shall administer the State exam once (1) per year.~~

~~_____ (iii) Special arrangements may be made with the Board if there is substantial need for the applicant to be examined and/or licensed prior to the next scheduled administration of the exam. The applicant shall bear the cost of administration of a special exam.~~

~~_____ (iv) Applicants failing the State examination are entitled to re-take the next scheduled examination upon payment of the re-examination fee and shall be examined only in those subjects in which he/she failed to obtain a grade of eighty-five (85) percent or higher.~~

Section 3. ARC Review of Applications. An applicant for licensure or a volunteer certificate shall have committed no acts that are grounds for disciplinary action, or if the act was committed, the ARC has found after investigation that sufficient restitution has been made and the applicant no longer presents a threat to the public safety.

~~_____ **Section 3. Fingerprinting**~~

~~_____ (a) All persons applying for licensure or volunteer certificate after July 1, 2005 shall be required to submit fingerprinting cards along with their application for the purpose of obtaining state and national criminal history record information.~~

~~_____ (b) No applicant for licensure or a volunteer certificate shall have been convicted of an offense involving moral turpitude or controlled substances which may impair the applicant's ability to provide competent health care or which could pose a threat to the safety of the consumer public. A plea of nolo contendere shall establish guilt to the underlying criminal charge(s).~~

Section 4. Jurisprudence Examination.

_____ (a) The ARC shall recommend eligibility to sit for the jurisprudence examination.

_____ (b) To successfully pass the jurisprudence examination, the applicant shall score at least 75%.

~~_____ **Section 4. Licensure by Examination.** All applicants for licensure must insure the following documents are received by the Board thirty (30) days prior to the next scheduled examination:~~

~~_____ (a) A complete and legible application with a recent, un-mounted, full-face photograph;~~

~~_____ (b) The required fee in the form of a money order or cashier's check;~~

~~_____ (c) An official transcript which reflects the award of a degree in optometry, mailed directly from the school to the Board;~~

~~_____ (d) _____ Passing score verification for parts one (1), two (2), and three (3) of the examination from the National Board of Examiners in Optometry or their successor agencies mailed directly to the Board;~~

~~_____ (e) _____ Three (3) letters of professional recommendation mailed directly to the Board from reputable practitioners of optometry attesting to the applicant's good reputation for honesty, trustworthiness, integrity and competence in the practice of optometry;~~

~~_____ (f) _____ Individuals requesting special accommodations must notify the Board in writing in advance of the examination so that appropriate arrangements can be made;~~

~~_____ (g) _____ Applications expire one (1) year from receipt.~~

Section 5. Licensure by Examination.

_____ (a) Eligibility. An applicant may seek licensure by examination if the applicant graduated from a school or college accredited by the Accreditation Council on Optometric Education and has never been licensed to practice as an optometrist in any state or is unable to apply by endorsement.

_____ (b) Applicant Requirements. Applicant shall:

_____ (i) Submit a completed application and payment of fee;

_____ (ii) Submit acceptable fingerprint cards;

_____ (iii) Request an official transcript from the optometry college or university to be sent directly to the Board Office;

_____ (iv) Request a verification of successful passage of parts one (1), two (2) including passage of Treatment and Management of Ocular Disease, and three (3) of the examination administered by NBEO taken within five (5) years to be sent directly to the Board Office; and

_____ (v) Successfully pass the jurisprudence examination.

~~_____ **Section 5. Licensure by Endorsement.** The Board may license by endorsement, without examination, an Optometrist who holds a license that was obtained by examination from another state or territory of the United States subject to the following conditions:~~

~~_____ (a) _____ An applicant for licensure by endorsement must have been engaged in the active practice of Optometry for at least five (5) of the seven (7) years immediately preceding his/her application; _____~~

~~_____ (b) _____ An applicant will not be considered for licensure by endorsement in the State of Wyoming if he/she has failed the Wyoming Examination within the ten (10) years preceding the date on which the application for endorsement is filed;~~

~~_____ (c) The applicant must not have committed any act that would constitute a violation of the Wyoming State Board of Optometry Laws and Rules & Regulations. Furthermore, he/she must not be the subject of any pending or unresolved board action or malpractice suit in this or any other state or territory;~~

~~_____ (d) An applicant for licensure by endorsement must meet all qualifications for regular state licensure and must meet or exceed the requirement set forth in Sections 1, 2 and 3 of Chapter 2, except that the applicant shall not be required to sit for any portion of the written examination other than the jurisprudence portion required by subparagraph 5 (e) of this rule.~~

~~_____ (i) The Board may accept examinations other than those required in Chapter 2 Section 2 (a) as meeting this requirement.~~

~~_____ (ii) The Board may require an applicant for licensure by endorsement to undertake further coursework and/or the written state examination if the applicant does not meet the requirements of Sections 1, 2 and 3 of Chapter 2.~~

~~_____ (e) As part of the licensure process, the applicant shall complete an application for licensure by endorsement and shall:~~

~~_____ (i) Submit all applicable fees as required by Chapter 4, Section 1.~~

~~_____ (ii) License verification(s) must be submitted directly from the Boards of all state(s) in which the applicant holds or has ever held a license to practice Optometry certifying his/her good standing. To be considered for licensure by endorsement, an applicant licensed in another state or territory of the United States having the same or similar licensing requirements of the State of Wyoming, must be in good standing in that state or territory;~~

~~_____ (iii) Submit official proof documenting his/her compliance with continuing education requirements imposed by states or territories in which a license to practice optometry is held;~~

~~_____ (iv) Submit fingerprints; and~~

~~_____ (v) Submit proof that he/she has taken and passed the jurisprudence portion of the licensing examination of the Wyoming State Board of Optometry.~~

Section 6. Licensure by Endorsement.

(a) Eligibility. An applicant may seek licensure by endorsement if the applicant has an active license in another jurisdiction.

(b) Application Requirements. An applicant shall:

(i) Submit a completed application and payment of fee.

- (ii) Submit acceptable fingerprint cards;
- (iii) Successfully pass the jurisprudence examination; and
- (iv) Submit evidence that demonstrates competency including:
 - (A) Verification of licensure where the applicant holds an active license in another jurisdiction with licensure requirements as stringent as Wyoming; or
 - (B) Completion of twenty (20) hours of CE each year that meets the criteria in Chapter 3, Section 3 for the last five (5) years.

~~———— **Section 6. — Licensure by Endorsement: Federal Service:** In the case of any applicant for licensure by endorsement who has practiced optometry while in any branch of federal service, such applicant shall:~~

~~———— (a) — Cause his/her commanding officer to provide the Board with official documentation of the applicant’s credentialing and quality assurance review to satisfy the requirements of Section 5 of this Chapter.~~

Section 7. License Type Designation.

~~———— (a) — All licenses issued by the Board will contain the letter “T” following the license number to designate the holder as being qualified and authorized to use diagnostic and therapeutic pharmaceutical agents in his/her practice.~~

~~———— (b) — Any person licensed by the Board prior to May 22, 1987 who intends to employ diagnostic and therapeutic pharmaceutical agents is required to complete a one hundred (100) hour course in ocular therapeutics and pass a nationally recognized examination in ocular therapeutics prior to the issuance of a therapeutically designated license.~~

~~———— **Section 8. — Notification of Applicants and Right of Appeal.** If the Board application is approved, the applicant will be provided written notification along with information and instruction for sitting for the state examination. If the application is denied the reasons for the denial shall be communicated to the applicant in writing. The applicant shall have the right to submit new information and/or the right to appear before the Board to demonstrate that the licensure requirements have been met.~~

Section 8.~~Section 9.~~ **Volunteer’s Certificate.** Any applicant that meets the qualifications under Wyoming Statute § 33-23-117 shall submit a completed application.

~~(a) — Scope. A Volunteer’s Certificate issued to a retired optometrist shall be used only for volunteer services and not for compensation.~~

~~———— (b) — Qualifications. To qualify for a Volunteer’s Certificate, an optometrist shall:~~

~~_____ (i) For at least ten (10) years immediately prior to retirement, either have maintained full licensure in good standing in any jurisdiction in the United States that licenses persons to practice as an optometrist or have practiced in good standing as an optometrist in one (1) or more branches of the United States armed services;~~

~~_____ (ii) Otherwise qualify for an active general license, except that the clinical board examination requirement is waived;~~

~~_____ (iii) Provide proof of completion of required continuing education.~~

~~_____ (c) Application for a Volunteer's Certificate. To apply for a Volunteer's Certificate an optometrist shall:~~

~~_____ (i) Submit a completed application form provided by the Board and attach:~~

~~_____ (A) A copy of the applicant's optometry degree from an accredited optometric school;~~

~~_____ (B) One of the following, as applicable:~~

~~_____ (I) A copy of the applicant's most recent license authorizing the practice of optometry; or~~

~~_____ (II) A copy of the applicant's most recent license, or a license equivalent to practice optometry in one (1) or more branches of the United States armed services issued by the United States government.~~

~~_____ (C) Evidence of one (1) of the following, as applicable:~~

~~_____ (I) That the applicant has maintained, for at least ten (10) years immediately prior to retirement, full licensure in good standing in any jurisdiction in the United States that licenses persons to practice as an optometrist; or~~

~~_____ (II) That the applicant has practiced for at least ten (10) years immediately prior to retirement in good standing as an optometrist in one (1) or more of the branches of the United States armed services; and~~

~~_____ (D) A notarized statement from the applicant, on a form prescribed by the Board, that the applicant;~~

~~_____ (I) Will not accept any form of remuneration for any optometric services rendered while in possession of a Volunteer's Certificate;~~

~~_____ (II) Will devote his/her practice exclusively and totally to providing optometry services to low income, uninsured persons at a non-profit health care facility in this state; and~~

~~_____ (III) Will provide any other documentation that the Board may reasonably require.~~

~~_____ (d) Expiration Date of Certificate. A Volunteer's Certificate to practice optometry shall expire on December 31 of the year of the effective date of Certificate.~~

~~_____ (e) Renewal of Certificate. A Volunteer's Certificate to practice optometry may be renewed if:~~

~~_____ (i) A completed renewal form provided by the Board is submitted;~~

~~_____ (ii) Continuing education requirements for an active general license to practice optometry in the state have been completed; and~~

~~_____ (iii) The applicant has conformed to the standards set forth in Chapter 5, Section 1.~~

~~_____ (f) Violations. Violations of this Chapter pertaining to a Volunteer's Certificate shall constitute unprofessional conduct and may result in a suspension or revocation of the Certificate.~~

CHAPTER 3

LICENSE ISSUANCE AND RENEWAL AND RELICENSURE

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to establish the requirements for renewal, reinstatement, relicensure, and reinstatement subject to discipline.

~~Section 1. Issuance of License.~~ The Board shall issue a successful applicant a license bearing the full name of the Licensee, date of issuance, license number and appropriate seal.

~~(a) A Licensee shall notify the Board in writing of his/her business address prior to engaging in the practice of optometry.~~

~~(b) A Licensee shall provide the Board written notice of retirement from active practice.~~

~~(c) A Licensee shall notify the Board if a license is lost, stolen or destroyed.~~

~~(d) Duplicate wall certificates may be issued by the Board. All requests for duplicate certificates must be in writing and accompanied by the appropriate fee.~~

Section 2. Annual Licensure License Renewal.

~~(a) The Board shall mail a renewal notice to active licensees and volunteer certificate holders at their address of record no later than forty five (45) days prior to the license or certificate expiration date.~~

(a) Notice. Failure to receive notice for renewal of a license or certificate shall not excuse a licensee from the requirement for renewal under the Act and these Board Rules.

~~(b) License renewal application and fees shall be postmarked no later than the expiration date. Renewal applications postmarked after the expiration date or the next business day in cases when the expiration date falls on a weekend or holiday, will not be accepted.~~

(b) Expiration.

(i) All licenses and certificates shall expire on April 1 of each year. License renewal applications and fees shall be postmarked no later than April 1 to be timely.

(ii) Unless a licensee timely renews their license, the licensee shall not practice after April 1.

~~(c) Renewal applications shall not be accepted more than forty five (45) days prior to the expiration date.~~

(c) Renewal Application. A licensee seeking renewal shall:

(i) Submit a completed renewal application and payment of fee; and

(ii) Submit documentation verifying completion of CE identified in Section 3.

~~(d) Failure to receive notice for renewal of license or certificate shall not excuse a licensee from the requirement for renewal under the Act and these rules.~~

Section 3. Continuing Education for Active Licensees Requirements. ~~As a condition for renewal, each Licensee is required to complete a total of forty (40) hours of continuing education over a period of two (2) calendar years ending on December 31 of each odd numbered year. Continuing education shall relate to the practice of the profession of optometry.~~

(a) CE Requirements for Renewal. As a condition for renewal, each licensee shall complete a total of forty (40) hours of CE.

~~(a) Continuing education hours shall be completed by attending courses which are COPE (Council on Optometric Practitioner Education) qualified or sponsored by COPE, AOA (American Optometric Association), AOA recognized state associations, AAO (American Academy of Optometry), schools and colleges of optometry, COVD (College of Visual Development), OEP (Optometric Extension Program) and clinical facilities specializing in eye care that are staffed by professors or adjunct professors of optometry or ophthalmology at accredited optometry or medical schools. Other courses may be submitted to the Board for pre-approval by the Education Committee.~~

(b) Timeframe for Earning CE for Renewal.

(i) The first renewal period begins on January 1st following the date their license was issued. Following the first renewal period, if the license was issued in an even year the licensee shall submit twenty (20) hours of CE. If the license was issued in an odd year the licensee shall submit forty (40) hours of CE.

(ii) CE will be required following the first renewal period and each two (2) calendar years thereafter.

(iii) Only those CE acquired during the CE reporting period will be considered. Duplicate courses taken during a CE reporting period will not be accepted.

~~(b) Continuing education hours will be required following the first renewal period and each two (2) calendar years thereafter. The first renewal period for new licensees begins on January 1st following the date their license was issued.~~

~~(i) New licensees issued a license in an odd year will be required to have forty (40) hours of continuing education, and those issued a license in an even year will be~~

~~required to have twenty (20) hours of continuing education for their first continuing education reporting period.~~

~~_____ (ii) Only those continuing education hours acquired during the continuing education reporting period will be considered. Duplicate courses taken during a continuing education reporting period will not be accepted.~~

_____ (c) The Board shall approve courses related to the practice of optometry offered by the following:

_____ (i) COPE qualified or COPE sponsored;

_____ (ii) AOA;

_____ (iii) AOA recognized state associations;

_____ (iv) American Academy of Optometry;

_____ (v) Schools and colleges of optometry;

_____ (vi) College of Visual Development; and

_____ (vii) Optometric Extension Program and clinical facilities specializing in eye care that are staffed by professors or adjunct professors of optometry or ophthalmology at accredited optometry or medical schools.

_____ (viii) Other courses may be submitted to the Board Office for pre-approval.

~~_____ (c) Licensees authorized to prescribe therapeutic pharmaceuticals shall obtain fifteen (15) hours of the required forty (40) hours of continuing education in topics addressing ocular systemic therapeutics.~~

_____ (d) Composition of CE.

_____ (i) Licensees authorized to prescribe therapeutic pharmaceuticals shall obtain fifteen (15) hours of the required forty (40) hours of CE in topics addressing ocular systemic therapeutics.

_____ (ii) A maximum of six (6) hours of CE in the area of practice management may be applied towards the required forty (40) hours.

_____ (iii) A combined maximum of ten (10) hours of COPE qualified CE through the Internet or correspondence may be applied towards the required forty (40) hours.

_____ (iv) One (1) CE may be earned during each renewal period for passing the Board's jurisprudence examination.

~~_____ (d) _____ A maximum of six (6) hours of continuing education in the area of Practice Management may be applied towards the required forty (40) hours.~~

_____ (e) Reporting Requirements.

_____ (i) Licensees shall report their CE through the OE Tracker program.

_____ (ii) Licensees shall be able to furnish copies of any certificates of attendance, letters certifying attendance, transcripts, or any other official documents that serve as proof of CE participation or attendance for at least two (2) years from the date submitted for renewal.

_____ (iii) Proof of attendance shall contain the activity title, date(s), contact hours attended, sponsor, presenter, name of licensee and be signed by the sponsor or the presenter.

_____ (iv) All CE must be posted on the OE Tracker website no later than December 31 of the renewing biennium year. CE posted after December 31 will be assessed a late fee.

~~_____ (e) _____ A combined maximum of six (6) hours of COPE (Council on Optometric Practitioner Education) qualified continuing education through the Internet or correspondence may be applied towards the required forty (40) hours. Documentation of continuing education shall consist of registration receipt and examination results.~~

_____ (f) Auditing.

_____ (i) CE may be audited by the Board for verification of compliance with these requirements and the Board may disallow any course not meeting the intended CE criteria.

_____ (ii) If the Board disallows any CE hours as a result of an audit, the licensee shall have until March 31 following the CE period to:

_____ (A) Provide further evidence that the disallowed CE hours meet the criteria established by these rules;

_____ (B) Provide evidence of having completed appropriate CE during the required time frame, which may substitute for the disallowance; or

_____ (C) Remedy the disallowance by completing the number of additional CE hours necessary to fulfill the requirements. These additional CE hours shall not be reported on subsequent applications for license renewal.

_____ (iii) Failure to provide the documents requested for audit within thirty (30) days of the date of the request may subject the licensee to disciplinary action.

~~_____ (f) _____ Licensees shall report their continuing education through the ARBO OE Tracker program.~~

~~_____ (i) _____ Licensees shall maintain copies of any certificates of attendance, letters certifying attendance, transcripts, or any other official documents which serve as proof of continuing education participation or attendance for at least two (2) years from the date submitted for renewal.~~

~~_____ (ii) _____ Proof of attendance shall contain the activity title, dates, contact hours attended, sponsor, presenter, name of licensee and be signed by the sponsor or the presenter.~~

(g) Waiver. The Board may grant a waiver for CE requirements for licensees who have petitioned and demonstrated just cause based on extenuating circumstances.

~~_____ g) _____ Continuing education may be audited by the Board for verification of compliance with these requirements and the Board may disallow any course not meeting the intended continuing education criteria.~~

~~_____ (i) _____ If the Board disallows any continuing education hours as a result of an audit, the licensee shall have three (3) months from notice of such disallowance to;~~

~~_____ (A) _____ Provide further evidence that the disallowed continuing education hours meet the criteria established by these rules, or~~

~~_____ (B) _____ Provide evidence of having completed appropriate continuing education during the required time frame which may substitute for the disallowance, or~~

~~_____ (C) _____ Remedy the disallowance by completing the number of additional continuing education hours necessary to fulfill the requirements. These additional continuing education hours shall not be reported on subsequent applications for license renewal.~~

(h) Volunteer Certificate Holders shall complete twenty (20) hours of CE per year. If the Volunteer Certificate Holder is therapeutically authorized eight (8) hours shall address systemic ocular therapeutics.

~~_____ (h) _____ Failure to provide the documents requested for audit within thirty (30) days of the date of the request may subject the licensee to disciplinary action.~~

~~_____ (i) _____ All continuing education must be posted on the ARBO OE Tracker website no later than December 31 of the renewing biennium year. Continuing education posted after December 31 will be assessed a late fee.~~

~~_____ (j) _____ The Board may, upon application, waive the continuing education requirements in cases involving illness or unusual circumstances interfering with the optometrist's ability to practice.~~

~~_____ **Section 4. Continuing Education for Volunteer Certificate Holders.**~~

~~_____ (a) _____ Continuing education requirements shall consist of twenty (20) hours per year. If therapeutically authorized then eight (8) hours shall be systemic ocular therapeusis.~~

Section 4. Reinstatement.

~~_____ (a) _____ Failure to timely renew may subject the licensee to disciplinary action for unlicensed practice.~~

~~_____ (b) _____ Reinstatement.~~

~~_____ (i) _____ Licensees that failed to timely renew may apply for reinstatement from April 2 to June 30. However, licensees shall not practice until the Board approves their request.~~

~~_____ (ii) _____ Licensees applying for reinstatement shall comply with the requirements in Section 3.~~

~~_____ (iii) _____ If an expired license is not reinstated by June 30, an applicant may seek relicensure.~~

~~_____ **Section 5. Failure to Renew.** All licenses expire at midnight on April 1. Licensees who have not submitted a complete renewal application, proof of continuing education, and all required fees prior to the expiration date may not continue to practice optometry as provided in W.S. 33-23-103.~~

~~_____ (a) _____ An expired license may be reinstated by submitting a request for reinstatement, a complete renewal application, proof of continuing education, the required renewal fee, and the Late/Reinstatement Fee which must be received in the Board office no later than June 30 of the year in which the license expired.~~

~~_____ (b) _____ The provisions of this section do not apply to those license holders who have properly notified the Board of their retirement from active practice.~~

Section 5. Relicensure.

~~_____ (a) _____ Eligibility. An applicant may seek relicensure if the applicant has been licensed in Wyoming and either failed to reinstate or is seeking to return to active clinical practice.~~

~~_____ (b) _____ Application Requirements. Applicant shall:~~

~~_____ (i) _____ Submit a completed relicensure application and payment of fee;~~

~~_____ (ii) _____ Demonstrate competency by:~~

~~_____ (A) _____ Submitting verification showing completion of twenty (20) hours of CE for every year the license has been lapsed, not to exceed five (5) years; or~~

(B) Submitting verification showing successful completion of parts one (1), two (2), and three (3) of the examination administered by NBEO within the last five (5) years, if not actively practicing within the last five (5) years; and

(iii) Successfully pass the jurisprudence examination.

~~Section 6. — **Renewal Following Retirement.** Any optometrist who has properly notified the Board of retirement from active practice as required in Section 1(b) of this Chapter, may renew his/her license to practice optometry within (3) years of the retirement date reported to the Board. Payment of the renewal fee for each year the license was in lapse, as well as payment of a reinstatement/late fee. In addition to the renewal fees, an optometrist must submit verification of attendance of no less than twenty (20) hours at approved continuing education for each year of his/her retirement.~~

Section 6. Reinstatement Subject to Discipline.

(a) Eligibility. An applicant may seek reinstatement subject to discipline if that license has been revoked, surrendered, suspended, conditioned, or restricted.

(b) Application Reinstatement Requirements. The applicant shall:

(i) Submit a completed reinstatement subject to discipline application and payment of fee;

(ii) Submit evidence of complying with the requirements of a previous Board order;

(iii) Submit evidence of applicant's ability to safely and competently practice; and

(iv) Submit evidence demonstrating just cause for reinstatement subject to discipline.

CHAPTER 4

FEES

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to determine and collect reasonable fees.

Section 2. General Information.

(a) Fees shall be payable in the exact amount and shall be paid in advance of the services rendered.

(b) All fees collected by the Board are non-refundable.

(c) Fees related to public records requests shall be assessed pursuant to the Department of Administration and Information's rules concerning public records.

~~Section 1~~**Section 3. Fees are: Fees.** Services for which the Board charges a fee shall include, but is not limited to, the following fee schedule.

(a)	<u>License by Examination Application Fee</u>	\$250.00
(a)	<u>Examination Fee</u>	\$200.00
(c)	<u>Special Examination Fee</u>	\$1,700.00
(d)	<u>Re-Examination Fee</u>	\$250.00
(e) (b)	<u>License by Endorsement Fee</u>	\$800.00
(c)	<u>Jurisprudence Re-Examination Fee</u>	\$250.00
(f) (d)	<u>License Renewal Fee</u>	\$175.00
(g) (e)	<u>Reinstatement Fee</u>	\$350.00
(h) (f)	<u>Continuing Education Late Fee</u>	\$175.00
(g)	<u>Relicensure Fee</u>	\$500.00
(h)	<u>Reinstatement Subject to Discipline Fee</u>	\$500.00
(i)	<u>Duplicate Certificate Document Fee</u>	\$25.00
(j)	<u>License Verification Fee</u>	\$25.00

~~_____ (k) Application Packet/Administration Fee\$25.00~~

~~_____ (k) Roster Fee\$150.00~~

~~_____ (l) Fees for renewal of licensure may be paid by personal check. All other fees shall be payable in the exact amount by money order or cashier's check and shall be paid in advance of the services rendered.~~

~~_____ (i) All fees collected by the Board are non-refundable.~~

~~_____ (l) Non-Sufficient Fund Fee.....\$30.00~~

CHAPTER 5

STANDARDS OF PRACTICE

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to define standards of practice of optometry.

~~Section 1. Code of Ethics.~~

~~(a) The protection of the public health, safety, welfare and best interest of the public shall be the primary guide in determining the appropriate professional conduct of all persons whose activities are regulated by the Board.~~

~~(b) The failure of a person to conform to the subsections of WYO. STAT. § 33-23-110(b)(ix) or to any ethical standard set forth in or incorporated by the Board's Rules and Regulations all constitute "unprofessional and dishonest conduct or conduct of a character likely to deceive the public" as provided by WYO. STAT. § 33-23-110(a).~~

~~(c) Pursuant to the Board's statutory authority as set forth in WYO. STAT. § 33-23-10(b), the Board further clarifies the meaning "unprofessional and dishonest conduct" to include the following conduct and definitions:~~

~~(i) The conduct set forth below constitutes "incompetence, malpractice or unethical conduct" as referenced in WYO. STAT. § 33-23-110(b):~~

~~(A) Practicing in a manner that is not in the best interest of the public and endangers public health, safety and welfare;~~

~~(B) Performance of any procedure in the course of a patient's care beyond the optometrist's training and competence;~~

~~(C) Performance of any procedure in the course of a patient's care which is not a customary and accepted standard of care in the profession, or otherwise deviate from the customary and accepted standard of care in the profession;~~

~~(D) Failure to advise a patient to seek the attention of a physician or other health care provider for an eye disease or disorder discovered during an examination which, in the opinion of the optometrist, requires additional diagnosis and medical treatment. Such advice shall not be required for any previously diagnosed disease or disorder.~~

~~(E) Billing patients for services provided which are not justified and are not necessary for diagnostic or therapeutic purposes;~~

~~(F) Failure to provide patients with accurate and complete information regarding the extent and nature of services available to them;~~

~~_____ (G) Failure to maintain confidentiality of all information obtained in the course of the optometrist-patient relationship, except that disclosure of confidential information is permissible with the expressed written consent of the patient, or as required by law;~~

~~_____ (H) Failure to ensure that a patient's welfare is not compromised in any experimentation or research involving that patient;~~

~~_____ (I) Failure to obtain informed written consent from the patient for any experimentation or research;~~

~~_____ (J) Failure to obtain approval from any regulatory entity, in which approval is customarily or lawfully required, in order to conduct experimentation or research;~~

~~_____ (K) Failure to comply with any regulatory standards customarily or lawfully required for the continuation of experimentation or research;~~

~~_____ (L) Practicing, facilitating, or condoning discrimination of a patient based on race, sex, sexual orientation, age, religion, national origin, marital status, political belief, or mental or physical handicap;~~

~~_____ (M) Administering, dispensing, or prescribing any controlled substance other than in the course of legitimate professional practice as authorized by law;~~

~~_____ (N) Failure to release a spectacle lens prescription to the patient in accordance with Federal Law;~~

~~_____ (O) Failure to release a contact lens prescription to the patient in accordance with Federal Law without all of the following information: expiration date, wearing schedule, care regimen, and all necessary parameters essential to fabricating a contact lens;~~

~~_____ (P) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of optometry, including falsifying or making incorrect essential entries on patient records or failing to make essential entries on patient records;~~

~~_____ (Q) Representing that a non-correctable condition can be permanently corrected;~~

~~_____ (R) Interfering with the free choice of any patient when selecting a physician or other health care practitioner;~~

~~_____ (S) Practicing optometry in violation of any limitations or restrictions imposed on a license, or practicing optometry while a license is suspended or has lapsed;~~

~~_____ (T) Issuance of any judgment against the licensee for malpractice or negligence;~~

~~_____ (U) Practicing optometry with a mental or physical impairment which renders the licensee incapable of practicing optometry with reasonable skill and safety;~~

~~_____ (V) Practicing optometry by a licensee with a communicable life-threatening disease;~~

~~_____ (W) Failure to maintain the confidentiality of any examination related to obtaining a license to practice optometry.~~

~~_____ (ii) The conduct set forth below constitutes "moral turpitude":~~

~~_____ (A) Committing any act which results in a felony or misdemeanor conviction and involves a patient or adversely relates to the practice of optometry. A plea of nolo contendere shall be considered a conviction;~~

~~_____ (B) Violating professional boundaries by soliciting, encouraging, threatening, forcing, or engaging in any sexual act or relationship with or upon a patient, regardless of consent. A consensual sexual relationship shall not be deemed "moral turpitude" if the optometrist-patient relationship was terminated prior to the relationship;~~

~~_____ (C) Sexual harassment of a patient or staff member;~~

~~_____ (D) Denial of a license to practice optometry, or any disciplinary action against a licensee, by any other state, territory, or country;~~

~~_____ (E) Failure to report to the Board known or suspected violations of the laws and regulations governing the practice of optometry in Wyoming;~~

~~_____ (F) Submission of false information to the Board;~~

~~_____ (G) Failure to notify the Board of a malpractice final judgment or settlement within thirty days;~~

~~_____ (H) Aiding or abetting the practice of optometry in Wyoming by any person not licensed to practice in Wyoming;~~

~~_____ (I) Abuse of health insurance;~~

~~_____ (J) Using any term other than "optometrist" or "Doctor of Optometry" to reflect licensure;~~

~~_____ (K) Loaning of a license issued by the Board;~~

~~_____ (L) — Employing, either directly or indirectly, any licensee under suspension or revocation, or any person not licensed to practice optometry, to perform any task requiring licensure;~~

~~_____ (M) — Accepting remuneration for professional services if a volunteer possessing a volunteer certificate limiting the scope of practice to the act of volunteering services.~~

~~_____ (iii) — The conduct set forth below constitutes "habitual intemperance" or "being habitually addicted" to practice impairing substances:~~

~~_____ (A) — Use of any drug, narcotic, chemical, alcohol or mind altering material which renders the licensee unfit or incompetent to:~~

~~_____ (I) — Practice optometry with reasonable skill and safety to patients; or~~

~~_____ (II) — Conform to essential standards of acceptable optometry practice, in which case actual injury need not be established.~~

~~_____ (iv) — In addition to the aforementioned definitions in this chapter, as well as the conduct referenced in WYO. STAT. § 33-23-110(b), the following acts constitute "unprofessional and dishonest conduct":~~

~~_____ (A) — Advertising professional services through statements that are untruthful, improbable, misleading or impossible;~~

~~_____ (I) — Optometrists who wish to announce the services available in their practices are permitted to announce those services so long as they avoid any communication that expresses or implies specialization.~~

~~_____ (B) — Failure to display a license at all times in a conspicuous location and readily accessible to all patients at the optometrist's place of business;~~

~~_____ (C) — Failure to cooperate with any investigation by the Board, which includes:~~

~~_____ (I) — Failure to respond to any request for information;~~

~~_____ (II) — Failure to provide any documents or records upon request;~~

~~_____ (III) — Deceiving or attempting to deceive the Board or its agents with reference to any matter under investigation by the Board;~~

~~_____ (D) Failure to comply with prevailing ethical standards promulgated in accordance with WYO. STATS § 33-23-101 through 33-23-117, attached hereto, and incorporated herein by reference, as Appendix A.~~

Section 2. Practice of Optometry.

~~_____ (a) The practice of optometry occurs where the patient is located or receives services regardless of means, in person or electronic.~~

~~_____ (b) Furnishing or providing a contact or ophthalmic lens prescription is the practice of optometry.~~

Section 3. Prescriptions.

~~_____ (a) Expiration of Prescriptions.~~

~~_____ (i) Contact lens prescriptions shall expire one (1) year from the date of issuance.~~

~~_____ (ii) Ophthalmic lens prescriptions shall expire two (2) years from the date of issuance.~~

~~_____ (iii) A licensee may set an expiration date of earlier than one (1) or two (2) year expiration periods identified above only if that date is based on the licensee's medical judgment about the patient's eye health. In these cases, the licensee shall document the medical reason for the shorter expiration date with enough detail to allow for review by a qualified medical professional. The licensee shall also maintain these records for at least three (3) years.~~

~~_____ (b) Providing Prescriptions. Licensees shall:~~

~~_____ (i) Provide the contact lens prescription to the patient at the end of the contact lens fitting.~~

~~_____ (ii) Provide or verify the contact lens prescription to anyone who is designated to act on behalf of the patient.~~

Section 4. Records Retention.

~~_____ (a) Licensees shall not withhold records if a patient owes an outstanding balance.~~

~~_____ (b) Patient records shall be:~~

~~_____ (i) Maintained for a minimum of seven (7) years from the date of the last patient clinical encounter;~~

~~_____ (ii) Maintained in a physically secure and confidential manner; and~~

(iii) Accessible to the patient and treating doctor within a reasonable period.

Section 5. Section 2 Use of Optometry Assistants. A licensee may employ an optometry assistant(s). All optometry assistants shall practice under the licensee's general supervision.

(a) General ~~§~~supervision means the procedures are ~~furnished~~performed under a licensee's ~~optometrists'~~ overall direction and control. The licensee's ~~optometrists'~~ physical presence is not required during the performance of the procedures. The training of assistants who actually perform the diagnostic procedure and ~~maintain~~maintenance of the necessary equipment and supplies is the continuing responsibility of the ~~licensee~~optometrist.

~~(i) All orders written by the licenseeoptometrist require that the patient be examined by the licenseeoptometrist first.~~

(i) Assistants shall not write orders.

(ii) The testing of patients can only be performed upon the verbal or written direction of the ~~licensee~~optometrist.

(iii) The physical presence of the licensee is not required if the assistant can easily contact the licensee. Treatment plans, however, can only be directed once the licensee physically reviews test results.

~~(iii) Telephone communication between the assistant and optometrist is allowed. Treatment plans, however, can only be directed once the optometrist physically reviews test results. The physical presence of the supervising optometrist is not required if the supervising optometrist and the assistant are or can easily be in contact with each other.~~

(b) (iv) An assistant~~Assistant~~ cannot, in any manner, practice optometry.

(c) (A) The Board does not recognize nor bestow any level of competency upon an assistant to carry out a specific task. Such recognition of skill is the responsibility of the licensee~~supervising optometrist.~~

Section 6. Section 3. Externships.

(a) An externship is when an optometric student is allowed to practice optometry in a clinical setting under the direct supervision of a ~~licensee~~licensed Wyoming optometrist.

(b) The ~~licensee~~supervising optometrist shall comply with all necessary documentation and contracts to become an outreach facility with an optometric institution.

(i) The educational institution and the licensee bear liability for all acts and omissions of the extern.

~~_____ (i) _____ Liability for acts or omissions of the extern shall fall under the auspices of the institution and the optometrist.~~

~~_____ (A) _____ The optometrist shall obtain all necessary documentation and insurance coverage necessary to allow the program to operate.~~

~~_____ (c) _____ Direct supervision of the optometric student shall require the optometrist to review all findings before any treatment plan can be instituted.~~

(ii)(i) Direct supervision means the licenseeoptometrist must be physically present in the office and immediately available to assistfurnish assistance and directdirection throughout the performance of the procedure. It does not mean that the licenseeoptometrist must be present in the room when the procedure is being performed.

CHAPTER 6

HANDLING OF COMPLAINTS AGAINST LICENSEES AND DEFICIENT APPLICATIONS

REPEALED

~~Section 1. Complaints.~~

~~(a) Any complaint made against a licensee shall be made in writing on a complaint form provided by the Board, signed by the complainant, and should include the following information:~~

~~(i) Name, address, place of employment and position of the individual believed to have violated the Board's Practice Act or its rules and regulations;~~

~~(ii) The nature of the complaint and a description of the incident(s) involved, including date(s), time(s), and location(s) and any other relevant information which substantiates an infraction of the Board's Practice Act or its rules and regulations;~~

~~(iii) The names, addresses and phone numbers of other witnesses, if available;~~

~~(iv) The written and verbal statements of other witnesses, if available.~~

~~(v) The signature, address and phone number of the person making the complaint.~~

~~(b) Any member of the public or the profession, or any federal, state, or local official, may file a complaint with the Board.~~

~~(c) Each complaint received shall be acknowledged in writing by the Board's staff and the Board's staff shall notify the complainant of the ultimate disposition of the complaint.~~

~~Section 2. Investigations of Complaints.~~

~~(a) The Board President shall assign a complaint to an investigative committee which shall consist of one Board member who shall investigate the allegations in the complaint and determine if the allegations are substantiated.~~

~~(b) Upon completion of the investigation, the investigative committee may:~~

~~(i) File a formal Petition and Complaint and Notice of Hearing, in conjunction with the prosecuting attorney assigned by the Attorney General's Office.~~

~~(ii) Recommend the Board dismiss the complaint; or~~

~~_____ (iii) Recommend the Board approve a settlement agreement between the licensee and the investigative committee.~~

~~_____ **Section 3. Disposition of Complaints.**~~

~~_____ (a) The Board may resolve a complaint by any of the following actions:~~

~~_____ (i) Hearing the matter in a contested case proceeding;~~

~~_____ (ii) Dismissing the complaint;~~

~~_____ (iii) Approving any settlement agreement reached between the licensee and the investigative committee.~~

~~_____ **Section 4. Investigations of Applicants.**~~

~~_____ (a) The Board President shall assign any application which appears deficient or problematic to an application review committee, which shall consist of one Board member who shall investigate the problems or deficiencies with the application and determine if the problems or deficiencies are substantiated and if so, whether they should preclude licensure.~~

~~_____ (b) Upon completion of the investigation, the application review committee may:~~

~~_____ (i) Recommend the Board deny the application;~~

~~_____ (ii) Recommend the Board issue a license; or~~

~~_____ (iii) Recommend the Board approve a settlement agreement between the applicant and the application review committee.~~

~~_____ (A) If the Board denies the application, notice of the denial shall be sent by letter to the applicant's last known address, certified, return receipt requested. The applicant shall have thirty (30) days to request, in writing, a formal contested case proceeding before the Board on the denial of his/her application. If no such request is made, the denial will be final.~~

~~_____ **Section 5. Disposition of Deficient or Problematic Applications.**~~

~~_____ (a) The Board may resolve a deficient or problematic application by any of the following actions:~~

~~_____ (i) Denying the application and providing the applicant notice that he/she has thirty (30) days in which to submit a written request, in writing, for a contested case hearing on the denial;~~

~~_____ (ii) Hearing the matter in a contested case proceeding;~~

~~_____ (iii) Issuing the license;~~

~~_____ (iv) Approving a settlement agreement between the applicant and the application review committee.~~

CHAPTER 7

**PROCESS AND CONTESTED CASE PROCEDURE FOR APPLICATION,
LICENSURE, AND DISCIPLINE MATTERS**
**DISCIPLINARY ACTION
AND APPLICATION DENIALS**

Section 1. Statement of Purpose. These Board Rules are adopted to implement the Board's authority to:

- (a) Conduct investigations, hearings, and proceedings concerning:
 - (i) Actions relating to an application for a license, including granting or denying; or
 - (ii) Alleged violations of the Act or Board Rules.
- (b) Determine and administer appropriate disciplinary action against an applicant or licensee.
- (c) For purposes of this chapter, "licensee" means an optometrist issued a license or certificate by the Board to practice optometry in Wyoming.

~~**Section 1. Letter of Intent and Opportunity to Show Compliance**~~

- ~~(a) Prior to filing a Petition and Complaint seeking disciplinary action against a licensee, the investigative committee, in conjunction with the prosecuting attorney assigned by the Attorney General's Office, shall mail the licensee a Letter of Intent setting forth the facts or conduct which warrant the intended disciplinary action.~~
- ~~(b) The Letter of Intent shall provide the licensee an opportunity to demonstrate compliance with the lawful requirements for retention of his/her license. The licensee shall have ten (10) days from receipt of the Letter of Intent to provide a written response.~~
- ~~(c) The Letter of Intent shall be mailed to the licensee's last known address.~~

Section 2. Grounds for Disciplinary Action. The Board may take disciplinary action or refuse to issue or renew a license for one (1) or more of the following acts or conduct:

- (a) A violation of the Act or Board Rules, including:
 - (i) Denial of a license to practice optometry, or any disciplinary action against a licensee, by any other state, territory, or country;
 - (ii) Failing to report to the Board known or suspected violations of the laws and regulations governing the practice of optometry in Wyoming;

- (iii) Submitting false information to the Board;
- (iv) Failing to notify the Board of a malpractice final judgment or settlement within thirty days;
- (v) Aiding or abetting the practice of optometry in Wyoming by any person not licensed to practice in Wyoming;
- (vi) Fraudulent billing;
- (vii) Using any term other than “optometrist” or “Doctor of Optometry” to reflect licensure;
- (viii) Loaning of a license issued by the Board;
- (ix) Accepting remuneration for professional services if a volunteer certificate holder.
- (b) A conviction involving moral turpitude, including:
 - (i) A felony or misdemeanor involving a patient or adversely relating to the practice of optometry. A plea of nolo contendere shall be considered a conviction;
 - (ii) Violating professional boundaries by soliciting, encouraging, threatening, forcing, or engaging in any sexual act or relationship with or upon a patient, regardless of consent. A consensual sexual relationship shall not be deemed moral turpitude if the optometrist-patient relationship was terminated prior to the relationship;
 - (iii) Sexual harassment of a patient or staff member;
- (c) Habitual intemperance or being habitually addicted includes the use of any drug, narcotic, chemical, alcohol or mind altering material that renders the licensee unfit or incompetent to:
 - (i) Practice optometry with reasonable skill and safety to patients; or
 - (ii) Conform to essential standards of acceptable optometry practice, in which case actual injury need not be established.
- (d) Incompetence, malpractice, or unethical conduct includes:
 - (i) Practicing in a manner that is not in the best interest of the public and endangers public health, safety, and welfare;
 - (ii) Practicing optometry;

(A) In violation of any limitations or restrictions imposed on a license, or practicing optometry while a license is suspended or has expired;

(B) With a mental or physical impairment which renders the licensee incapable of practicing optometry with reasonable skill and safety; or

(iii) Performing any procedure in the course of a patient's care, which:

(A) Is beyond the licensee's training and competence;

(B) Deviates from the customary and accepted standard of care in the profession;

(iv) Failing to:

(A) Advise a patient to seek the attention of a physician or other health care provider for an eye disease or disorder discovered during an examination which, in the opinion of the licensee, requires additional diagnosis and medical treatment. Such advice shall not be required for any previously diagnosed disease or disorder;

(B) Provide patients with accurate and complete information regarding the extent and nature of services available to them;

(C) Maintain confidentiality of all information obtained in the course of the optometrist-patient relationship, except that disclosure of confidential information is permissible with the expressed written consent of the patient, or as required by law;

(D) Maintain the confidentiality of any examination related to obtaining a license to practice optometry;

(E) Ensure that a patient's welfare is not compromised in any experimentation or research involving that patient;

(F) Obtain informed written consent from the patient for any experimentation or research;

(G) Obtain approval from any regulatory entity, in which approval is customarily or lawfully required, in order to conduct experimentation or research;

(H) Comply with any regulatory standards customarily or lawfully required for the continuation of experimentation or research;

(I) Release a spectacle lens prescription to the patient in accordance with federal law;

(J) Release a contact lens prescription to the patient in accordance with federal law without all of the following information: expiration date, wearing schedule, care regimen, and all necessary parameters essential to fabricating a contact lens;

(v) Billing patients for services provided which are not justified and are not necessary for diagnostic or therapeutic purposes;

(vi) Administering, dispensing, or prescribing any controlled substance other than in the course of legitimate professional practice as authorized by law;

(vii) Knowingly making any false or fraudulent statement, written or oral, in connection with the practice of optometry, including falsifying entries on patient records;

(viii) Representing that a non-correctable condition can be permanently corrected;

(ix) Interfering with the free choice of any patient when selecting a physician or other health care practitioner; and

(x) Incurring any judgment against the licensee for malpractice or negligence.

(e) Unprofessional and dishonest conduct includes:

(i) Advertising professional services through statements that are untruthful, improbable, misleading, or impossible;

(ii) Announcing services available in the licensee's practice that expresses or implies specialization;

(iii) Failing to display a license at all times in a conspicuous and readily accessible location to all patients at the optometrist's place of business;

(iv) Failing to comply with reasonable requests from the Board including, but not limited to:

(A) Answering an administrative complaint;

(B) Responding to a request for explanation for failure to disclose required information; or

(C) Cooperating in an investigation;

(v) Failure to comply with a term, condition or obligation of a Board order; or

(vi) Failure to appropriately supervise.

~~Section 2. Service of Notice and Formal Complaint~~

~~(a) Notice of Hearing and the Petition and Complaint shall be served by mail or personal service at least twenty (20) days prior to the date set for hearing.~~

~~(b) There shall be a presumption of lawful service when the Notice of Hearing and Petition and Complaint are:~~

~~(i) Sent to the last known address of the licensee by certified mail return receipt requested; and~~

~~(ii) Returned, marked undelivered, unclaimed or refused.~~

Section 3. Application Review and Investigation Process.

(a) Application Review and Investigation. In application matters:

(i) Every applicant bears the burden of satisfying license requirements; and

(ii) Every application for licensure issued by the Board shall be subject to investigation to determine whether the requirements set forth in the Act and Board Rules are satisfied.

(b) ARC Action. Following investigation, the ARC may recommend:

(i) A license be issued, renewed, relicensed, or reinstated;

(ii) A license be issued, renewed, relicensed, or reinstated subject to conditions, restrictions, or other disciplinary action;

(iii) Approval of a settlement agreement, which may include the issuance, renewal, relicensure, or reinstatement of a license with the imposition of a reprimand, conditions, restrictions, suspension, other discipline or a combination thereof; or

(iv) Denial of the application.

(c) Notice of Intent. The ARC shall notify the applicant of its intent to recommend approval subject to conditions, restrictions, other disciplinary action, or denial. Such notification shall contain:

(i) A brief description of the facts or conduct that warrant the approval subject to conditions, restrictions, other disciplinary action, or denial of licensure;

(ii) A statement of the nature of the actions which warrant the approval subject to conditions, restrictions, other disciplinary action, or denial, the facts upon which the action is based, the specific statutory provisions or the specific Board Rules involved; and

(iii) Notice of the right to a hearing if a written request is received in the Board office within thirty (30) days of the date of mailing the notice of intent.

(d) Applicant's Request for Hearing.

(i) The applicant may request a hearing if the ARC recommends:

(A) Approval of the license subject to conditions, restrictions, or other disciplinary action; or

(B) Denial of licensure.

(ii) The applicant shall submit a written request for hearing to the Board Office within thirty (30) days of the date of the Notice of Intent.

(iii) Failure of the applicant to pursue proceedings related to the application after requesting a hearing may result in dismissal.

Section 3. Filing of Hearing Notice and Formal Complaint

~~(a) Formal proceedings for board disciplinary action against a licensee shall be commenced by the filing of a Petition and Complaint and Notice of Hearing signed by the investigative committee, board staff or prosecuting attorney assigned by the Attorney General's Office.~~

~~(b) The Notice of Hearing shall contain the following information:~~

~~(i) Date, time and address for the hearing;~~

~~(ii) The nature of the hearing with a concise and ordinary statement setting for the facts upon which the underlying complaint is based as well as the applicable statutory and regulatory provision(s) involved;~~

~~(iii) The board's jurisdictional authority to hear the case;~~

~~(iv) Failure to respond to the Petition and Complaint within twenty (20) days may result in the entry of a default judgment;~~

~~(v) The licensee may represent himself/herself at the hearing or be represented by any attorney authorized to practice law in the state of Wyoming.~~

Section 4. Complaint Review and Investigation Process.

(a) Complaint Review and Investigation.

(i) Complaints shall be submitted to the Board upon the form provided by the Board and contain the name, address, and signature of the person making the complaint. The Board may initiate complaints.

(ii) Complaints shall be investigated by the IC or the Board staff.

(iii) The IC may meet informally with the licensee.

(b) Voluntary Surrender. A licensee may petition the Board in writing to voluntarily surrender their license. The Board shall consider the petition at its earliest convenience. The Board may accept or reject the petition for voluntary surrender.

(c) IC Action. Following investigation, the IC may recommend:

(i) Dismissal of the complaint;

(ii) Issuance of an advisory letter;

(iii) Approval of a settlement agreement, which may include a reprimand, conditions, restrictions, non-renewal, suspension, voluntary surrender, other discipline or a combination thereof;

(iv) Disciplinary action which may include a reprimand, conditions, restrictions, non-renewal, suspension, revocation, other discipline or a combination thereof; or

(v) Summary suspension.

~~**Section 4. Petition and Complaint.**~~

~~(a) The Petition and Complaint filed in any disciplinary matter shall include the factual basis for which disciplinary action is sought and specific citations to the statutory and regulatory provisions deemed applicable by the investigative committee and the prosecuting attorney assigned by the Wyoming Attorney General's office.~~

Section 5. Summary Suspension.

(a) Recommendation. If the IC recommends summary suspension, the Board shall conduct an expedited proceeding to determine whether the licensee's continued practice presents a clear and imminent danger to public health, safety or welfare.

(b) Notice of Intent to Recommend Summary Suspension.

(i) The IC shall notify the licensee of its intent to recommend summary suspension.

(ii) The Notice of Intent shall contain:

(A) Copy of the complaint;

(B) Notice that a summary suspension proceeding shall be set for expedited proceeding at the earliest opportunity a quorum of Board members may be assembled; and

(c) Notice of Expedited Proceeding. Upon confirmation of the date and time of the expedited proceeding, the IC shall notify the licensee of the date and time of the proceeding.

~~Section 5. Default.~~

~~(a) The board may enter an order based on the allegations in a complaint in any case where the licensee has not responded no later than five (5) days prior to hearing, or in which the licensee or the licensee's representative does not appear at a scheduled hearing for which notice had been provided.~~

Section 6. Formal Proceedings for Disciplinary Action.

(a) Notice of Intent to Recommend Disciplinary Action.

(i) The IC shall notify the licensee of its intent to recommend disciplinary action.

(ii) The Notice of Intent shall:

(A) Include a brief description of the facts or conduct which warrant the intended action; and

(B) Provide the licensee an opportunity to show compliance or respond to allegations for disciplinary action within fifteen (15) days of the date of the mailing.

(b) Informal Conference. The licensee may request an informal conference to provide any additional information or to resolve an administrative complaint without a hearing.

~~Section 6. Motions.~~

~~(a) All pre-trial motions shall be filed in writing no later than ten (10) days prior to the date set for hearing.~~

~~(i) The board or hearing officer may, for good cause shown, allow a motion to be filed at any time.~~

Section 7. Petition. The IC shall initiate formal proceedings for disciplinary action by serving a Petition to the last known address of the licensee by certified mail, by regular mail,

by electronic mail to the e-mail address indicated to be the preferred method of communication, or by personal service at least thirty (30) days prior to the date set for hearing.

~~Section 7. Discovery.~~

~~(a) In all formal proceedings before the board, discovery shall be afforded in accordance with the Wyoming Administrative Procedure Act.~~

Section 8. Notice of Hearing.

(a) Hearing. Upon receipt of a written request for hearing from an applicant or commencement of formal proceedings for disciplinary action against a licensee, the Board shall conduct a hearing. The Board shall serve a Notice of Hearing on the applicant or licensee.

(b) Notice of Hearing. The Notice of Hearing shall contain:

(i) The name and last known address of the applicant or licensee;

(ii) A brief statement of the matters asserted relating to:

(A) The recommendation to deny licensure, the facts upon which the recommendation to deny is based, the statutory provisions and/or the Board Rules the applicant is alleged to have violated; or

(B) The nature of the Petition, the facts upon which the Petition is based, the statutory provisions and/or the Board Rules the licensee is alleged to have violated;

(iii) The time, place, and nature of the hearing;

(iv) The legal authority and jurisdiction; and

(v) A statement indicating:

(A) The applicant's failure to appear at the hearing or pursue proceedings may result in a dismissal; or

(B) The licensee's failure to answer the allegations contained in the Petition within twenty (20) days of the date of mailing and failure to appear at a noticed hearing may result in a default judgment.

~~Section 8. Subpoenas.~~

~~(a) The issuance and enforcement of subpoenas is governed by the Wyoming Administrative Procedure Act.~~

~~_____ (b) _____ Subpoenas for appearance or to produce books, papers, documents, or exhibits shall be issued by the executive director or the presiding officer designated to hear the case, upon receipt of the written application for same by any party to the case:~~

~~_____ (i) _____ Written requests for subpoenas shall describe with particularity, the materials requested for production.~~

~~_____ (ii) _____ The party requesting the issuance of a subpoena shall bear the costs of such issuance to the extent and in the same manner as those fees are paid in the District court of the State of Wyoming.~~

Section 9. Lawful Service. There shall be a presumption of lawful service of a Notice of Intent, Petition, and Notice of Hearing or any other communication required by these Board Rules if sent to the last known address of the applicant or licensee by certified mail, by regular mail, by electronic mail to the e-mail address indicated to be the preferred method of communication, or by personal service.

~~_____ **Section 9. Witnesses.**~~

~~_____ (a) _____ All persons testifying at a hearing before the board shall be administered a standard oath.~~

~~_____ (b) _____ No testimony will be received from a witness except under oath or affirmation.~~

~~_____ (c) _____ The party calling a witness shall bear the costs associated with the witness's appearance.~~

Section 10. Dismissal and Default.

(a) Dismissal. The Board may enter an order of dismissal based on the allegations contained in the recommendation to deny in any case where the applicant or the applicant's representative has not appeared at a noticed hearing.

(b) Default. The Board may enter an order of default judgment based on the allegations contained in the Petition in any case where the licensee or the licensee's representative has not answered the allegations contained in the Petition and has not appeared at a noticed hearing.

~~_____ **Section 10. Representation.**~~

~~_____ (a) _____ A licensee may represent himself/herself or be represented by counsel authorized to practice law in the state of Wyoming.~~

~~_____ (b) _____ An appearance in person or the filing of an answer or other pleadings shall constitute an appearance by an attorney.~~

~~_____ (c) _____ A representative of the Attorney General's Office, designated the prosecuting attorney, shall present evidence, on behalf of the investigative committee, all matters enumerated and described in the Notice of Hearing and Petition and Complaint.~~

~~_____ (d) _____ A representative of the Attorney General's Office, designated as the advisory attorney, shall be present at a hearing, if requested, for the purpose of providing legal counsel to the board.~~

Section 11. Contested Case Hearing. The hearing officer shall preside over the contested case hearing which shall be conducted pursuant to the WAPA and the Office of Administrative Hearings rules concerning contested case proceedings incorporated by reference in Chapter 1.

~~_____ Section 11. Order of Procedure.~~

~~_____ (a) _____ As nearly as practicable, the order of procedure at any hearing before the board shall be as follows:~~

~~_____ (i) _____ The hearing officer shall announce that the hearing is convened upon the call of the docket number and title of the matter and case to be heard.~~

~~_____ (ii) _____ Opening statements may be made by each of the parties. The hearing officer may limit the duration of opening statement at his/her or the board's discretion.~~

~~_____ (iii) _____ The party who bears the burden of proof shall thereupon proceed to present the evidence related to the matters set forth in the Notice of Hearing, as well as the Petition and Complaint, when applicable. Witnesses may be cross-examined by the opposing party, and exhibits may be received into evidence in accordance with the Wyoming Administrative Procedure Act and the Wyoming Rules of Evidence. Redirect examination may be allowed following cross-examination or as follow-up to examination by the board or hearing officer.~~

~~_____ (iv) _____ The responding party may then present evidence, including witness testimony and exhibits as referenced in subsection (iii) above.~~

~~_____ (v) _____ Rebuttal evidence may be allowed at the discretion of the hearing officer.~~

~~_____ (vi) _____ The board and hearing officer shall have the right and opportunity to examine any witness upon the conclusion of his/her testimony.~~

~~_____ (vii) _____ Closing arguments may be made by each party. The party bearing the burden of proof shall proceed first, and shall be provided a rebuttal argument, if requested. The hearing officer may limit the duration of any closing argument at his/her or the board's discretion.~~

~~_____ (viii) _____ After all proceedings have been concluded, the hearing officer shall dismiss and excuse all witnesses, and declare the hearing closed. Any party wishing to present~~

~~written briefs of law may do so, and the presiding officer may request written briefs of law. The Board shall take the case under advisement and shall inform the licensee that the decision shall be announced within due and proper time following consideration of all matters presented at the hearing and any briefs.~~

Section 12. Burden and Standard of Proof.

~~(a) Application/Licensure Matters. The applicant shall bear the burden to prove by a preponderance of evidence that they meet the qualifications for licensure. The burden shall shift to the ARC or IC to prove by clear and convincing evidence that the applicant should be denied a license. The burden shall shift to the applicant to persuade the Board that the ARC or IC's grounds for denial are insufficient.~~

~~(b) Discipline Matters. The IC shall bear the burden to prove by clear and convincing evidence that a licensee violated the Act or the Board's Rules.~~

~~**Section 12. Decision and Order.**~~

~~(a) The board shall make and enter a written decision and order containing findings of fact and conclusions of law, stated separately.~~

~~(b) The decision and order shall be sent by certified mail to the licensee's last known address and to the licensee's attorneys of record by U.S. Mail.~~

~~(i) All decisions of the board shall be effective as of the time of the filing of the written decision and order.~~

~~(ii) No board member, staff member or agent of the Board who participated or advised in the investigation or presentation of evidence at the hearing shall participate or advise in the Board deliberations or decisions of the board.~~

Section 13. Board Decision and Order.

~~(a) Board Action. The Board may resolve an application matter, complaint or Petition by:~~

~~(i) Approving the recommendations of the ARC or IC;~~

~~(ii) Dismissing a complaint;~~

~~(iii) Issuing a notice of warning; or~~

~~(iv) Conducting a contested case hearing. Following the hearing and deliberation of all evidence admitted at a contested case hearing, the Board may:~~

~~(A) Issue, renew, relicense, or reinstate a license;~~

(B) Issue, renew, relicense, or reinstate a license with conditions, restrictions, or other disciplinary action;

(C) Deny a license renewal, reinstatement, reissuance, return to practice, or relicensure;

(D) Dismiss the Petition due to lack of clear and convincing evidence;

(E) Issue a notice of warning; or

(F) Impose a reprimand, conditions, restrictions, suspension, revocation, other discipline or a combination thereof.

(b) Board Order. The Board shall issue a written decision which shall be sent to the applicant, licensee, or their representative.

~~Section 13. Record of Proceedings.~~

~~(a) In a contested case, the proceedings, including all testimony, shall be reported verbatim by a competent court reporter or by other methods deemed sufficient by the board. Such other methods may include the use of tape recorders. In the case of an appeal to the district court, the appellant shall pay and arrange for a transcript of the testimony.~~

Section 14. Judicial Review.

(a) Appeals from Board decisions are governed by the WAPA and Wyoming Rules of Appellate Procedure.

(b) Costs of transcripts and any reasonable costs assessed by the Board regarding the record on appeal shall be borne by the party making the appeal.

~~Section 14. Surrender of License.~~

~~(a) In the event a license is suspended or revoked by the Board, surrendered for discipline or otherwise restricted as a result of a settlement agreement, the licensee shall surrender his/her current license to the Board office.~~

~~Section 15. Appeals.~~

~~(a) Appeals from decisions of the board are governed by the Wyoming Administrative Procedure Act and the Wyoming Rules of Appellate Procedure.~~

~~(b) Costs of transcripts and any reasonable costs assessed by the Board regarding the record on appeal shall be borne by the party making the appeal.~~

~~Section 16. Application Denials.~~

~~_____ (a) _____ Contested case proceedings requested by an applicant following denial of an application by a designated application review committee of the board, shall conform to the procedures above. The term "licensee" used above will be replaced by the term, "applicant".~~

~~_____ (b) _____ Prior to a hearing on the denial of an application, the designated application review committee, in conjunction with the assigned prosecuting attorney, shall serve a Notice of Hearing upon the applicant in accordance with Sections 2 and 3 of this Chapter. The Notice of Hearing shall contain:~~

~~_____ (i) _____ Date, time and address for the contested case proceeding.~~

~~_____ (ii) _____ The nature of the hearing with a concise and ordinary statement setting for the reasons for the application being denied and the applicable statutory and regulatory provision(s) involved.~~

~~_____ (iii) _____ The board's jurisdictional authority to hear the case.~~

~~_____ (iv) _____ Failure to appear at the proceeding will result in the entry of a default judgment.~~

~~_____ (v) _____ The applicant may represent himself/herself in the contested case proceeding or be represented by an attorney authorized to practice law in the state of Wyoming.~~

~~_____ **Section 17. Petition for Reinstatement.**~~

~~_____ (a) _____ A person whose license has been revoked may petition the Board for reinstatement of his/her license no sooner than two (2) years after the date of the Order revoking his/her license.~~

~~_____ (b) _____ A petition for reinstatement shall be accompanied by at least two (2) verified recommendations from licensed optometrists and by at least two (2) recommendations from citizens each having personal knowledge of the activities of the petitioner since the revocation was imposed. In addition, the petition must be accompanied by an application for licensure, proof of requisite continuing education, and an application fee.~~

~~_____ (c) _____ The petition for reinstatement and all materials set forth in subsection (b) above shall be assigned to an application review committee for recommendations to the Board. If the reinstatement is denied by the board, notice of the denial shall be sent to the applicant's last known address, certified mail, return receipt requested, and shall provide the applicant thirty (30) days to submit a written request for a hearing on the denial.~~

~~_____ (d) _____ If the applicant requests a hearing on the denial, the procedure for the hearing shall conform to the procedure set forth above for all applicants.~~

~~———— (e) ——— Any applicant for reinstatement is required to successfully pass the jurisprudence examination given by the Board. The applicant may be required to successfully pass the clinical portion of the National Board of Examiners in Optometry Examination and any additional examinations deemed appropriate ensuring the applicant is competent to return to practice.~~

~~———— **Section 18. Wyoming Rules of Civil Procedure.**~~

~~———— (a) ——— The Wyoming Rules of Civil Procedure shall apply, insofar as they are applicable, and not inconsistent with the Wyoming Administrative Procedure Act or the Rules & Regulations of the Board.~~

CHAPTER 8

INFORMATION PRACTICES

REPEALED

~~Section 1. Disclosure.~~

~~(a) The personal information compiled by the Board concerning each Applicant or Licensee is confidential and shall be released only to the person to whom the record pertains, or to others upon presenting written consent of the licensee, subpoena or court order.~~

~~(b) Disclosure of confidential records and public records shall also be governed by W.S. § 16-4-201 et. seq.~~

~~Section 2. Access.~~

~~(a) An Applicant or Licensee, or others with the Applicant's or Licensee's notarized written consent may personally inspect the contents of the applicable Board file with the following exceptions:~~

~~(i) Personal and professional recommendations.~~

~~(ii) Unofficial complaints.~~

~~(b) Record inspection will be allowed as follows:~~

~~(i) An appointment shall be made to review the file between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday at the Board's office.~~

~~(ii) Record inspection shall take place in the presence of a Board member or a representative of its administrative staff.~~

~~(iii) Original documents shall remain with the Board, but may be copied at the Board's office for a reasonable fee.~~

~~**Section 3. Correction and Amendment.** An Applicant or Licensee may clarify or correct erroneous, inaccurate or misleading information in the License file by submitting a written statement which shall be placed in the file.~~

~~Section 4. Change of Name and/or Address.~~

~~(a) A Licensee shall notify the Board in writing of any change in legal name within thirty (30) days of the change.~~

~~(b) A licensee shall notify the Board in writing of any change of home and/or professional mailing addresses and telephone numbers within thirty (30) days of the change.~~

~~Section 5. Verification of Licensure to Another Jurisdiction.~~ Upon receipt of a written request for verification of licensure and the required administrative fee, the Board shall provide the requested information to the jurisdiction(s) specified by the Licensee.

~~Section 6. Requests for Roster of Licensees.~~

~~(a) The roster shall be made available to state agencies and Licensees upon written request. The roster is available, if requested, by e-mail.~~

~~(b) Any other organization may obtain a roster in the following manner:~~

~~(i) A money order or cashiers check in the amount of \$100.00 must accompany a "Release of List of Licensee" form for a printed copy.~~

~~(ii) A money order or cashiers check in the amount of \$200.00 and a standard personal computer diskette must accompany a "Release of List of Licensee" form for an electronic copy of the roster. The data will be presented in the software format currently used by the Board. The roster is also available by e-mail.~~