

TITLE 172 PROFESSIONAL AND OCCUPATIONAL LICENSURE

CHAPTER 120 LICENSURE OF OPTOMETRISTS

120-001 SCOPE AND AUTHORITY: These regulations govern the credentialing of optometry under Neb. Rev. Stat. §§ 38-2601 to 38-2623 and the Uniform Credentialing Act (UCA).

120-002 DEFINITIONS

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

Act means Neb. Rev. Stat. §§ 38-2601 to 38-2623, known as the Optometry Practice Act.

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

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

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

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

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

Board means the Board of Optometry.

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

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

Complete application means an application that contains all of the information requested on the application, with attestation to its truth and completeness, and that is submitted with the required fees and all required documentation.

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

Confidential information means information protected as privileged under applicable law.

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

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

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

Credential means a license, certificate, or registration.

Department means the Division of Public Health of the Department of Health and Human Services.

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

1. Tolerance as defined by either of the following:
  - a. A need for markedly increased amounts of alcohol or the substance to achieve intoxication or desired effect; or
  - b. A markedly diminished effect with continued use of the same amount of alcohol or the substance;

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

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

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

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

Inactive credential means a credential which the credential holder has voluntarily placed on inactive status and by which action has terminated the right to practice or represent him/herself as having an active credential.

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

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

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

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

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

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

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

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

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

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

Pharmaceutical agents for therapeutic purposes has the same meaning as in Neb. Rev. Stat. § 38-2604.

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

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

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

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

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

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

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

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

120-003 INITIAL CREDENTIAL

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

120-003.01A Optometrist Licensure by Examination:

1. Age and Good Character: Be at least 19 years old and of good character;
2. Citizenship/Lawful Presence: Be a citizen of the United States, an alien lawfully admitted into the United States who is eligible for a credential under the Uniform Credentialing Act, or a nonimmigrant lawfully present in the United States who is eligible for a credential under the Uniform Credentialing Act.
3. Education: Have graduated from an accredited school or college of Optometry;
4. Examination:
  - a. Pass Part I, Part II and Part III of the examination given by the National Board of Examiners in Optometry (NBEO); and
  - b. Pass a jurisprudence examination that relates to the statutes and regulations that govern optometry with a minimum score of 60% or above.

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

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

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

application from the Department or construct an application that must contain the following information:

1. Written Application:

a. Personal Information:

- (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
- (2) Date of birth (month, day, and year);
- (3) Place of birth (city and state or country if not born in the United States);
- (4) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
- (5) The applicant's:
  - (a) Social Security Number (SSN);
  - (b) Alien Registration Number ("A#"); or
  - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
- (6) The applicant's telephone number including area code (optional);
- (7) The applicant's e-mail address (optional);
- (8) The applicant's fax number (optional);

b. Practice Before Application: The applicant must state:

- (1) That s/he has not practiced optometry in Nebraska before submitting the application; or
- (2) If s/he has practiced optometry in Nebraska before submitting the application, the actual number of days practiced in Nebraska before submitting the application for a credential and the name and location of practice;

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

- (1) History of charges, complaints, disciplinary actions, adverse actions, or other actions against a professional license or permit in any state or jurisdiction including, but not limited to:
  - (a) Voluntary surrenders or voluntary limitations;
  - (b) Currently pending investigations or complaints;
  - (c) Prior refusals to issue, refusals to renew, or denials of a license or permit;
- (2) Information relating to fitness to practice including, but not limited to:
  - (a) Addiction, dependence upon or chronic impairment by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence;
  - (b) Physical, mental, or emotional conditions which impair the applicant's ability to practice the profession safely and competently;
- (3) History of any remedial or disciplinary actions during optometry school or postgraduate training including, but not limited to restrictions, suspensions, terminations, request for voluntary resignation, probation, counseling, and receipt of warnings;
- (4) Any employment disciplinary actions or non-renewal of an

- employment contract;
- (5) Criminal history, including convictions and charges, complaints or other actions that did not result in convictions;
  - (6) History of adverse actions by the Federal Drug Enforcement Administration (DEA) or a state controlled substances agency including, but not limited to:
    - (a) Denials of registration;
    - (b) Calls to come before a licensing agency or other lawful authority in relation to DEA controlled substances;
    - (c) Surrenders of a state or federal controlled substances registration;
    - (d) Restrictions or disciplinary actions of a state or federal controlled substances registration;
  - (7) History of professional liability claims, adverse judgments, settlements, or awards, including any pending professional liability claims.
- d. Attestation: The applicant must attest that:
- (1) S/he has read the application or has had the application read to him/her; and
  - (2) All statements on the application are true and complete.
2. Documentation: The applicant must submit the following documentation with the application:
- a. Evidence of age, such as:
    - (1) Driver's license;
    - (2) Birth certificate;
    - (3) Marriage license that provides date of birth;
    - (4) Transcript that provides date of birth;
    - (5) U.S. State identification card;
    - (6) Military identification; or
    - (7) Other similar documentation;
  - b. Evidence of:
    - (1) Other Credential: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed. The applicant must have the licensing agency submit to the Department a certification of his/her credential;
    - (2) Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;
    - (3) Denial: If the applicant was denied a credential or denied the right to take a credentialing examination, an explanation of the basis for the denial;
    - (4) Conviction Information: If the applicant has been convicted of a felony or misdemeanor, the applicant must submit to the Department:
      - (a) A list of any misdemeanor or felony convictions;
      - (b) A copy of the court record, which includes charges and

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



- i. Official documentation of examination scores sent directly to the Department from the entity that administered the examination (if applicable); and
3. Fee: The applicant must submit the required license fee along with the application and all required documentation.

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

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

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

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

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

120-003.04 Denial of Initial Credential: If an applicant for an initial credential does not meet all of the requirements for a credential; the Department will deny issuance of a credential. If the applicant is found to have committed any act which would be grounds for denial of a credential as listed in 172 NAC 120-006, the Department may deny issuance of a credential.

To deny a credential, the Department will notify the applicant in writing of the denial and the reasons for the determination. The denial will become final 30 days after mailing the notice unless the applicant, within that 30-day period, requests a hearing in writing. The hearing will be conducted in accordance with the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

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

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

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

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

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

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

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

1. State and national meetings, e.g., a meeting of the Nebraska Optometric Association or American Optometric Association;
  - a. One hour credit for each hour of attendance, and only the portion of the meeting which meets the definition of continuing education can be accepted for credit.
2. Formal education courses which relate directly to the practice of optometry:

- a. One hour credit for each hour of attendance;
3. Optometric college-sponsored courses in continuing education in optometry:
  - a. One hour credit for each hour of attendance;
4. Home study with testing mechanism. Licensee may complete a maximum of eight hours of the continuing education requirements by home study during the 24 month renewal period. If there is not a testing mechanism or certificate of completion, the licensee must submit an abstract or resume of the material covered to the Board of Optometry. Said abstract or resume must be written by only the licensee and will be reviewed by members of the Board.
  - a. Examples of home study courses include, but are not limited to, professional journals articles, profession related Internet courses, CD-ROM courses, videotape courses, and audiotape courses.
  - b. One credit hour for each hour of study.
5. Initial Cardiopulmonary Resuscitation (CPR) certification or CPR re-certification.
  - a. One credit hour for each hour of CPR certification or CPR re-certification; no more than two credit hours of this type of continuing education may be counted within the 24-month renewal period.
6. Practice Management courses.
  - a. One credit hour for each hour of practice management; no more than four credit hours of this type of continuing education may be counted within the 24-month renewal period.
7. Examples of unacceptable subject matter include, but are not limited to, education provided by a business entity for the purpose of promotion of their products or services.

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

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

1. The type of credential;
2. The credential number;
3. The expiration date;
4. Continuing competency requirements for renewal;
5. The amount of the renewal fee; and

6. Information on how to request renewal and how to place a credential on inactive status.

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

1. Application: The applicant, on his/her application:
  - a. Must provide the following information:
    - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
    - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code, or country information);
    - (3) The applicant's:
      - (a) Social Security Number (SSN); or
      - (b) Alien Registration Number ("A#"); or
      - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both;
  - b. May provide the following information about him/herself:
    - (1) The applicant's telephone number including area code;
    - (2) The applicant's e-mail address; and
    - (3) The applicant's fax number; and
  - c. Must attest that s/he has met the continuing competency requirements specified in 172 NAC 120-004 or has requested a waiver if s/he meets the requirements of 172 NAC 120-005.03 and/or 120-005.04.
2. Documentation: The applicant must submit the following documentation with the application:
  - a. If the applicant is not a United States citizen, s/he must submit evidence of lawful admission or presence in the United States, which may include a copy of:
    - (1) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
    - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
    - (3) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or
    - (4) A Form I-94 (Arrival-Departure Record);
  - b. Other Credential: If the applicant holds a credential to provide health services, health-related services, or environmental services in Nebraska or in another jurisdiction, the applicant must submit the state, credential number, type of credential, date issued, and expiration date of each credential where the applicant has been or is currently credentialed;
  - c. Disciplinary Action: A list of any disciplinary actions taken against the applicant's credential and a copy of the disciplinary action(s), including charges and disposition;
  - d. Denial: If the applicant was denied a credential or denied the right to take a

- credentialed examination, an explanation of the basis for the denial;
- e. Conviction Information: If the applicant has been convicted of a felony or misdemeanor since his/her last renewal or during the time period since initial credentialing if such occurred within the previous two years, the applicant must submit to the Department:
- (1) A list of any misdemeanor or felony convictions;
  - (2) A copy of the court record, which includes charges and disposition;
  - (3) Explanation from the applicant of the events leading to the conviction (what, when, where, why) and a summary of actions the applicant has taken to address the behaviors/actions related to the convictions;
  - (4) All addiction/mental health evaluations and proof of treatment, if the conviction involved a drug and/or alcohol related offense and if treatment was obtained and/or required;
  - (5) A letter from the probation officer addressing probationary conditions and current status, if the applicant is currently on probation; and
  - (6) Any other information as requested by the Board/Department; and
4. The renewal fee according to 172 NAC 2.

120-005.03 Waivers for Military Service: A credential holder who has served in the regular armed forces of the United States during part of the credentialing period immediately preceding the renewal date, or is actively engaged in military service as defined in 172 NAC 120-002, is not required to pay the renewal fee or to meet the continuing competency requirements if acceptable documentation is submitted to the Department. The individual must document his/her military service by submitting to the Department:

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

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

120-005.04 Waiver of Continuing Competency Requirements

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

120-005.05 Audit of Continuing Competency Requirements: The Department or the Board

may biennially select, in a random manner, a sample of the renewal applications for audit of continuing competency requirements. Each credential holder selected for audit must produce documentation of the continuing competency activities.

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

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

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

120-005.05D The Department/Board will review the submitted documentation to determine if the credential holder has met the requirements for continuing competency activities for renewal of the credential. Only documented activities/hours that meet the continuing competency requirements will be counted toward the total requirements for renewal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

120-006 DISCIPLINARY ACTIONS

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

1. Misrepresentation of material facts in procuring or attempting to procure a credential;
2. Immoral or dishonorable conduct evidencing unfitness to practice the profession in this state;
3. Abuse of, dependence on, or active addiction to alcohol, any controlled substance, or any mind-altering substance;
4. Failure to comply with a treatment program or an aftercare program, including, but not limited to, a program entered into under the Licensee Assistance Program established pursuant to Neb. Rev. Stat. § 38-175;
5. Conviction of:
  - a. A misdemeanor or felony under Nebraska law or federal law, or
  - b. A crime in any jurisdiction which, if committed within this state, would have constituted a misdemeanor or felony under Nebraska law and which has a rational connection with the fitness or capacity of the applicant or credential holder to practice the profession;
6. Practice of the profession:
  - a. Fraudulently,
  - b. Beyond its authorized scope,
  - c. With gross incompetence or gross negligence, or
  - d. In a pattern of incompetent or negligent conduct;
7. Practice of the profession while the ability to practice is impaired by alcohol, controlled substances, drugs, mind-altering substances, physical disability, mental disability, or emotional disability;
8. Physical or mental incapacity to practice the profession as evidenced by a legal judgment or a determination by other lawful means;
9. Illness, deterioration, or disability that impairs the ability to practice the profession;
10. Permitting, aiding, or abetting the practice of a profession or the performance of activities requiring a credential by a person not credentialed to do so;
11. Having had his/her credential denied, refused renewal, limited, suspended, revoked, or disciplined in any manner similar to 172 NAC 120-006.05 by another state or jurisdiction based upon acts by the applicant or credential holder similar to acts described in this part;
12. Use of untruthful, deceptive, or misleading statements in advertisements;
13. Conviction of fraudulent or misleading advertising or conviction of a violation of the Uniform Deceptive Trade Practices Act;
14. Distribution of intoxicating liquors, controlled substances, or drugs for any other than lawful purposes;
15. Violations of the Uniform Credentialing Act or the rules and regulations relating to the particular profession;
16. Unlawful invasion of the field of practice of any profession regulated by the Uniform Credentialing Act which the credential holder is not credentialed to practice;
17. Violation of the Uniform Controlled Substances Act or any rules and regulations



- adopted pursuant to the act;
18. Failure to file a report required by Neb. Rev. Stat. §§ 38-1,124 or 38-1,125;
  19. Failure to maintain the requirements necessary to obtain a credential;
  20. Violation of an order issued by the Department;
  21. Violation of an assurance of compliance entered into under Neb. Rev. Stat. § 38-1,108;
  22. Failure to pay an administrative penalty;
  23. Unprofessional conduct as defined in 172 NAC 120-006.02; or
  24. Violation of the Automated Medication Systems Act.

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

1. Receipt of fees on the assurance that an incurable disease can be permanently cured;
2. Division of fees, or agreeing to split or divide the fees, received for professional services with any person for bringing or referring a consumer other than:
  - a. With a partner or employee of the applicant or credential holder or his/her office or clinic;
  - b. With a landlord of the applicant or credential holder pursuant to a written agreement that provides for payment of rent based on gross receipts; or
  - c. With a former partner or employee of the applicant or credential holder based on a retirement plan or separation agreement;
3. Obtaining any fee for professional services by fraud, deceit, or misrepresentation, including, but not limited to, falsification of third-party claim documents;
4. Cheating on or attempting to subvert the credentialing examination;
5. Assisting in the care or treatment of a consumer without the consent of the consumer or his/her legal representative;
6. Use of any letters, words, or terms, either as a prefix, affix, or suffix, on stationery, in advertisements, or otherwise, indicating that the person is entitled to practice a profession for which s/he is not credentialed;
7. Performing, procuring, or aiding and abetting in the performance or procurement of a criminal abortion;
8. Knowingly disclosing confidential information except as otherwise permitted by law;
9. Commission of any act of sexual abuse, misconduct, or exploitation related to the practice of the profession of the applicant or credential holder;
10. Failure to keep and maintain adequate records of treatment or service;
11. Prescribing, administering, distributing, dispensing, giving, or selling any controlled substance or other drug recognized as addictive or dangerous for other than a medically accepted therapeutic purpose;
12. Prescribing any controlled substance to:
  - a. Oneself; or
  - b. Except in the case of a medical emergency:
    - (1) One's spouse;

- (2) One's child;
  - (3) One's parent;
  - (4) One's sibling; or
  - (5) Any other person living in the same household as the prescriber;
13. Failure to comply with any federal, state, or municipal law, ordinance, rule, or regulation that pertains to the applicable profession;
  14. Conduct by an optometrist that is likely to deceive, defraud, or harm the public;
  15. Making a false or misleading statement regarding his/her skill as an optometrist or the efficacy or value of the medicine, device, treatment, or remedy prescribed by him/her or used at his/her direction in the practice of optometry;
  16. Gross negligence in the practice of optometry;
  17. Practice or other behavior that demonstrates a willful rendering of substandard care, either individually or as a part of a third-party reimbursement agreement or other agreement;
  18. The use of any false, fraudulent, deceptive or misleading statement in any document pertaining to the practice of optometry;
  19. Prescribing, selling, administering, or distributing, any drug legally classified as a prescription drug, other than with proper certification to prescribe topical ocular pharmaceutical agents which treat eye infection, inflammation and superficial abrasions;
  20. Knowingly giving to a habitue or addict any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug;
  21. Prescribing, selling, administering, distributing, or giving a drug legally classified as a controlled substance or recognized as an addictive or dangerous drug to a family member or himself/herself;
  22. Conviction of any state or federal law or regulation relating to a drug legally classified as a controlled substance;
  23. Failure to report to the Department the relocation of any or all of his/her office(s) or place(s) of practice, in or out of the jurisdiction, within 90 days of the relocation;
  24. Failure to furnish the Board, its investigators or representatives, information legally requested by the Board;
  25. Willful or repeated violation of any provision(s) of Neb. Rev. Stat. §§ 38-2601 to 38-2623 or any Rules and Regulations promulgated thereto;
  26. To advertise in a manner that deceives, misleads, or defrauds the public. The following advertising practices will be considered to be deceptive:
    - a. To advertise or promote any optometric service as free or below the advertiser's or promoter's own cost without revealing in the advertising or promotion the minimum expenditure the consumer must incur in order to receive the service. If the consumer need not incur any expense to obtain the service, then the advertising or promotion must state that there is no minimum purchase required;
    - b. To fail to advertise the names of all licensed optometrists who are providing optometric service who are addressed by the advertisement;
    - c. To fail to place in any advertisement either the word Optometrist, the abbreviation O.D., or Doctor of Optometry behind one's name when it appears in an advertisement;
    - d. To place in any advertisement a name that is different than the name that appears on the optometrist's license;

- e. To fail to inform the patient of any time schedule within which a fee is to be effective, if the fee applies to a particular service for a given time;
  - f. To fail to charge the same fee for a service as that which is advertised;
  - g. To advertise that in exchange for a particular fee, a manifestly incurable disease can be permanently cured;
  - h. To fail to specify the full name of the professional body from which board certification was received when referring to certificates from professional certifying bodies;
  - i. To advertise or promote any optometric service with statements that cannot be verified, substantiated or measured; and
  - j. To advertise or promote any optometric service in violation of Neb. Rev. Stat. §§ 87-301 through 87-306, the Uniform Deceptive Trade Practices Act.
27. Failing to include in any identification of an individual licensed under Neb. Rev. Stat. § 38-2601 the term Optometrist, O.D, or Doctor of Optometry;
28. Practicing optometry without the licensee's credential available in each place of practice. Failure to show his/her credential upon request. Failure to use the designation of Optometrist, O.D., or Doctor of Optometry on all signs, announcements, stationery, and advertisements of licensee's services pursuant to Neb. Rev. Stat. § 38-124;
29. Failure to report to the Department the name of every person without a license or certificate that s/he has reason to believe is engaging in the practice of any profession for which a license or certificate is required pursuant to the Uniform Credentialing Act Neb. Rev. Stat. § 38-1,124;
30. Receiving or giving fees for professional services to any person in exchange for referring patients; and
31. Failure of a licensed optometrist who administers or prescribes pharmaceutical agents for examination or for treatment to provide the same standard of care to patients as that provided by a physician licensed in this state to practice medicine and surgery utilizing the same pharmaceutical agents for examination or treatment.
32. Any departure from or failure to conform to the ethics of the optometric profession, which ethics are found in the American Optometric Association's An Optometrist's Guide to Clinical Ethics;
33. Misrepresentation of material facts in applying for or procuring a renewal of a license or certification;
34. Misrepresenting one's credentials in an application submitted to a healthcare facility, insurance company, or prospective employer;
35. Providing treatment or consultation recommendations via electronic or other means, including issuing a prescription, unless the optometrist has obtained a history and evaluation of the patient adequate to establish diagnosis and identify underlying conditions and/or contraindications to the treatment recommended/provided and that arrangements exist to insure availability of the optometrist or optometrist coverage for follow-up patient care;
37. Disruptive behavior, whether verbal or physical, as manifested by an optometrist's aberrant behavior which interferes with patient care or could reasonably be expected to interfere with patient care, including, but not limited to, the following:
- a. Outbursts of rage or violent behavior;
  - b. Throwing of instruments, records, or objects;

- c. Insulting comments to a patient, patient's family, staff or other healthcare professionals;
  - d. Striking or assaulting a patient, patient's family, staff or other healthcare professionals; or
  - e. Poor hygiene; and
38. Refusal to cooperate or failure to furnish requested information during a licensing or discipline investigation by the Department.

120-006.03 Temporary Suspension or Limitation

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

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

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

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

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

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

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

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

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

1. Personal Information:
  - a. First, middle and last name;
  - b. Mailing address (street, rural route, or post office address), city, state, and zip code;
  - c. Telephone number (optional); and
  - d. Fax number (optional).
2. Information Regarding the Credential Being Offered for Surrender or Limitation:
  - a. List credential(s) and credential number(s) that would be surrendered or limited;
  - b. Indicate the desired time frame for offered surrender or limitation:
    - (1) Permanently;
    - (2) Indefinitely; or
    - (3) Definite period of time (specify);
  - c. Specify reason for offered surrender or limit of credential; and
  - d. Specify any terms and conditions that the credential holder wishes to have the Department consider and apply to the offer.
3. Attestation: The credential holder must:
  - a. Attest that all the information on the offer is true and complete; and
  - b. Provide the credential holder's signature and date.

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

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

4. A decision by the legal counsel of the Department to negotiate a voluntary surrender or limitation in response to a notice of disciplinary action.

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

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

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

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

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

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

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

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

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

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

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

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

1. Application: The applicant, on his/her application:
  - a. Must provide the following information:
    - (1) The legal name of the applicant, maiden name (if applicable), and any other names by which the applicant is known;
    - (2) Mailing address (street, rural route, or post office address; and city, state, and zip code or country information);
    - (3) The applicant's:
      - (a) Social Security Number (SSN); or
      - (b) Alien Registration Number ("A#"); or
      - (c) Form I-94 (Arrival-Departure Record) number.Certain applicants may have both a SSN and an A# or I-94 number, and if so, must report both.
    - (4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
    - (5) The applicant must also provide information related to the following, as requested on the application of the Department:
      - (a) History of charges, complaints, disciplinary actions, adverse actions, or other actions against a professional license or permit in any state or jurisdiction including, but not limited to:
        - (i) Voluntary surrenders or voluntary limitations;
        - (ii) Currently pending investigations or complaints;
        - (iii) Prior refusals to issue, refusals to renew, or denials of a license or permit;
      - (b) Information relating to fitness to practice including, but not limited to:
        - (i) Addiction, dependence upon or chronic impairment by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence;
        - (ii) Physical, mental, or emotional conditions which impair the applicant's ability to practice the profession safely and competently;
      - (c) History of any remedial or disciplinary actions during optometry school or postgraduate training including, but not limited to restrictions, suspensions, terminations, request for voluntary resignation, probation, counseling, and receipt of warnings;

- (d) Any employment disciplinary actions or non-renewal of an employment contract;
  - (e) Criminal history, including convictions and charges, complaints or other actions that did not result in convictions;
  - (f) History of adverse actions by the Federal Drug Enforcement Administration (DEA) or a state controlled substances agency including, but not limited to:
    - (i) Denials of registration;
    - (ii) Calls to come before a licensing agency or other lawful authority in relation to DEA controlled substances;
    - (iii) Surrenders of a state or federal controlled substances registration;
    - (iv) Restrictions or disciplinary actions of a state or federal controlled substances registration;
  - (g) History of professional liability claims, adverse judgments, settlements, or awards, including any pending professional liability claims.
- b. If the applicant is not a United States citizen, s/he must submit evidence of lawful admission or presence in the United States, which may include a copy of:
- (1) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
  - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
  - (3) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or
  - (4) A Form I-94 (Arrival-Departure Record);
- c. May provide the following information about him/herself:
- (1) Telephone number including area code;
  - (2) E-mail address;
  - (3) Fax number; and
- d. Must attest that s/he:
- (1) Has met the continuing competency requirements specified in 172 NAC 120-004 within the 24 months immediately preceding submission of the application;
  - (2) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant practiced in Nebraska since s/he last held an active credential, the actual number of days practiced;
  - (3) Has not committed any act which would be grounds for action against a credential as specified in 172 NAC 120-006 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts; and
2. Fee: The following fee(s):
- a. If the credential is expired or inactive, the reinstatement and renewal



- fees; or
- b. If the credential was voluntarily surrendered, the renewal fee.

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

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

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

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

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

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

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

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

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

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

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

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

- (4) If the applicant holds a professional credential in another state, a list of the state(s) and type of credential;
  - (5) A statement of the reason the applicant believes his/her credential should be reinstated;
  - (6) The applicant must also provide information related to the following, as requested on the application of the Department:
    - (a) History of charges, complaints, disciplinary actions, adverse actions, or other actions against a professional license or permit in any state or jurisdiction including, but not limited to:
      - (i) Voluntary surrenders or voluntary limitations;
      - (ii) Currently pending investigations or complaints;
      - (iii) Prior refusals to issue, refusals to renew, or denials of a license or permit;
    - (b) Information relating to fitness to practice including, but not limited to:
      - (i) Addiction, dependence upon or chronic impairment by alcohol, narcotics, barbiturates, or other drugs which may cause physical and/or psychological dependence;
      - (ii) Physical, mental, or emotional conditions which impair the applicant's ability to practice the profession safely and competently;
    - (c) History of any remedial or disciplinary actions during optometry school or postgraduate training including, but not limited to restrictions, suspensions, terminations, request for voluntary resignation, probation, counseling, and receipt of warnings;
    - (d) Any employment disciplinary actions or non-renewal of an employment contract;
    - (e) Criminal history, including convictions and charges, complaints or other actions that did not result in convictions;
    - (f) History of adverse actions by the Federal Drug Enforcement Administration (DEA) or a state controlled substances agency including, but not limited to:
      - (i) Denials of registration;
      - (ii) Calls to come before a licensing agency or other lawful authority in relation to DEA controlled substances;
      - (iii) Surrenders of a state or federal controlled substances registration;
      - (iv) Restrictions or disciplinary actions of a state or federal controlled substances registration;
    - (g) History of professional liability claims, adverse judgments, settlements, or awards, including any pending professional liability claims.
- b. If the applicant is not a United States citizen, s/he must submit evidence of lawful admission or presence in the United States, which may include a

- copy of:
- (1) A Green Card, otherwise known as a Permanent Resident Card (Form I-551), both front and back of the card;
  - (2) An unexpired foreign passport with an unexpired Temporary I-551 stamp bearing the same name as the passport;
  - (3) A document showing an Alien Registration Number ("A#"). An Employment Authorization Card/Document is not acceptable; or
  - (4) A Form I-94 (Arrival-Departure Record);
- c. May provide the following information about him/herself:
- (1) Telephone number including area code;
  - (2) E-mail address;
  - (3) Fax number; and
- d. Must attest that s/he:
- (1) Has met the continuing competency requirements specified in 172 NAC 120-004 within the 24 months immediately preceding submission of the application;
  - (2) Has not practiced in Nebraska since s/he last held an active credential, or if the applicant practiced in Nebraska since s/he last held an active credential, the actual number of days practiced;
  - (3) Has not committed any act which would be grounds for action against a credential as specified in 172 NAC 120-006 since the last renewal or issuance of the credential (whichever is later), or if an act(s) was committed, provide an explanation of all such acts; and

2. Fee: The renewal fee.

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

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

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

120-008.03C On the basis of the written application, materials submitted by the

applicant, and the information obtained under 172 NAC 120-008.03B, the Board may:

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

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

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

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

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

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

1. The initial decision or recommendation of the Board will become final 30 days after the decision or recommendation is mailed to the applicant unless the applicant requests a hearing within that 30-day period.
  - a. If the applicant requests a hearing before the Board, the Department will mail a notice of the date, time, and location of the hearing. The notice will be sent by certified mail at least 30 days before the hearing.
  - b. Following the hearing, the Board may deny the reinstatement or recommend full reinstatement of the credential, or recommend modification of the suspension or limitation, or recommend reinstatement of the credential subject to limitations or probation with

terms and conditions.

2. If the applicant has been afforded a hearing or an opportunity for a hearing on an application for reinstatement within two years before filing the current application, the Department may grant or deny the application without another hearing before the Board.

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

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

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

120-008.03I Director's Review: The Director, upon receipt of the Board's recommendation for full reinstatement, modification, or probation, will review the application and other documents and make a decision within 150 days of receipt of the Board's recommendation and accompanying documents. The Director will enter an order setting forth the decision. The Director may:

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

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

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

120-009.01 Certification to Use Pharmaceutical Agents for Diagnostic Purposes

120-009.01A Applicants for certification to use pharmaceutical agents for diagnostic purposes must:

1. Have a current Nebraska license to practice optometry and meet the following criteria:
  - a. Satisfactorily complete an approved course in pharmacology provided by an accredited school or college of optometry;
    - (1) An approved course in pharmacology for a certification to use pharmaceutical agents for diagnostic purposes must meet the following criteria:
      - (a) Include a study of ocular anesthetics, mydriatics, cycloplegics, ocular toxicity of pharmaceutical agents, ocular allergies of ocular agents, and pharmacologic effects of ocular drug substances;
      - (b) Include the consideration of the mechanism of action of anesthetics, cycloplegics, and mydriatics in human beings and the uses of the substances in the diagnosis of occurring ocular disorders; and
      - (c) Correlate the utilization of pharmaceutical agents and optical instrumentation and procedures; and
  - b. Meet one of the following:
    - (1) Pass an approved examination which covers ocular pharmacology for the use of pharmaceutical agents for diagnostic purposes pursuant to 172 NAC 120-009.01A item 1 administered by the National Board of Examiners in Optometry (NBEO) with a passing score, or
    - (2) Pass an examination which covers ocular pharmacology pursuant to 172 NAC-120-009.01A item 1 administered by an accredited school or college of optometry with a passing score; or
    - (3) Be credentialed in another U.S. jurisdiction at the highest level required for optometrist licensure in the U.S. jurisdiction where the applicant is currently licensed and such level is determined by the Board to be at least equivalent to the current scope of practice in Nebraska; and

- c. Submit to the Department:
  - (1) A complete application on a form provided by the Department or on an alternate format. The application must include the following information:
    - (a) Name;
    - (b) Address, including city, state and zip code;
    - (c) Telephone number (optional);
    - (d) Nebraska optometry license number (if applicable);
    - (e) Name of accredited optometry college attended;
    - (f) Location of accredited optometry college attended;
    - (g) Date of graduation from accredited optometry college;
  - (2) One of the following:
    - (a) Official documentation:
      - [1] From an accredited school or college of optometry of successful completion of the course of study for use of pharmaceutical agents for diagnostic purposes completed by the applicant which meets the requirements of 172 NAC 120-009.01A item 1; and
      - [2] Of passing the approved examination; or
      - [3] Of being credentialed in another U.S. jurisdiction at the highest level required to practice optometry in the U.S. jurisdiction where the applicant is currently credentialed; and
  - (3) The required certification fee.

120-009.01B The Department will:

- 1. Act within 150 days upon all completed applications for certification; and
- 2. Issue to each person who meets the requirements of 172 NAC 120-009.01A, a certificate to use pharmaceutical agents for diagnostic purposes.

120-009.02 Certification to Use Pharmaceutical Agents for Therapeutic Purposes

120-009.02A Applicants for certification to use pharmaceutical agents for therapeutic purposes must:

- 1. Have been certified by the Department upon the recommendation of the Board to use pharmaceutical agents for diagnostic purposes and meet the following criteria:
  - a. Satisfactorily complete the following educational requirements:
    - (1) Classroom didactic education concerning the use of pharmaceutical agents for therapeutic purposes provided by an accredited school or college of optometry; and

- (2) Clinical training as it applies to optometry with particular emphasis on the examination, diagnosis and treatment of the eye, ocular adnexa, and visual system provided by an accredited school or college of optometry that includes, but is not limited to, case histories, diagnosis, treatment and management regimens, special instrumentation and grand rounds; and
- b. Meet one of the following:
- (1) Pass an approved examination which covers the treatment and management of ocular disease administered by the National Board of Examiners in Optometry (NBEO) with a passing score; or
  - (2) Pass Part II of the examination administered by the NBEO after 1992 with a passing score; or
  - (3) Pass an examination that is approved by the Board as equivalent to the examination given by the NBEO; or
  - (4) Be credentialed in another U.S. jurisdiction at the highest level required for optometrist licensure in the U.S. jurisdiction where the applicant is currently licensed and such level is determined by the Board to be at least equivalent to the current scope of practice in Nebraska; and
- c. Submit to the Department:
- (1) A complete application on a form provided by the Department or on an alternate format. The application must include the following information:
    - (a) Name;
    - (b) Address, including city, state and zip code;
    - (c) Nebraska optometry license number;
    - (d) Name of accredited optometry college attended;
    - (e) Location of accredited optometry college attended;
    - (f) Date of graduation from accredited optometry college;
    - (g) Whether the applicant requested the entity that administered his/her examination to send his/her examination score in the treatment and management of ocular disease;
    - (h) Date the applicant sat for the examination;
  - (2) One of the following:
    - (a) Official documentation:



- [1] From an accredited school or college of optometry of successful completion of the didactic education and clinical training completed by the applicant; and
- [2] Of passing the approved examination; or
- [3] Of being credentialed in another U.S. jurisdiction at the highest level required to practice optometry in the U.S. jurisdiction where the applicant is currently credentialed; and

(3) The required certification fee.

120-009.02B The Department will:

- 1. Act within 150 days upon all completed applications for certification; and
- 2. Issue to each person who meets the requirements in 172 NAC 120-010.02A item 1, a certificate to use pharmaceutical agents for therapeutic purposes.

120-010 ADMINISTRATIVE PENALTY: The Department may assess an administrative penalty when evidence exists of practice without a credential to practice a profession. Practice without a credential for the purpose of this regulation means practice:

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

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

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

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

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

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

120-010.03 Administrative Hearing: When a person contests the administrative penalty and requests a hearing, the Department will hold a hearing pursuant to the Administrative Procedure Act and 184 NAC 1, the Department's Rules of Practice and Procedure for Administrative Hearings.

120-011 PRESCRIBING AND APPLICATION OF CONTACT LENSES: Pursuant to Neb. Rev. Stat. §§ 38-2601 and 38-2607, only optometrists and persons licensed to practice medicine and surgery are authorized to prescribe and apply (fit) contact lenses. Each contact lens prescription is valid for the duration of the prescription as indicated by the optometrist or physician or for a period of twelve months from the date of issuance, whichever period expires first. Merchants or dealers may sell contact lenses from a prescription but are not authorized to prescribe, apply or fit the lenses. The prescribing and application (fitting) of contact lenses includes, but is not limited to, the following:

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

120-012 DISPENSING MEDICATED CONTACT LENSES

120-012.01 A prescription label is required. Prior to dispensing a contact lens containing a pharmaceutical agent, the optometrist must assure that a legible prescription label is affixed to the container. Such prescription label shall contain the following information:

1. Name, address, and telephone number of the doctor's office;
2. Serial number of the prescription;
3. Name of the pharmaceutical agent contained in the contact lens;
4. Strength of the pharmaceutical agent contained in the contact lens, if applicable;
5. Directions for use;
6. Quantity of contact lens containing a pharmaceutical agent in the container;
7. Any cautionary statements contained in the prescription;
8. Name of the patient;
9. Name of the prescriber; and
10. Dosage form of the pharmaceutical agent.

120-012.02 Storage

120-012.02A The optometrist shall provide equipment for the storage of contact lenses containing a pharmaceutical agent at the proper temperature.

1. Those requiring a freezer must be stored between -4 and +14 degrees Fahrenheit.
2. Those requiring refrigeration must be stored between 36 and 46 degrees Fahrenheit.
3. Those requiring storage in a cool place must be stored between 46 and 59 degrees Fahrenheit, or under refrigeration, between 36 and 46 degrees Fahrenheit, unless otherwise specified.
4. Those requiring storage at controlled room temperature must be stored between 59 and 86 degrees Fahrenheit.
5. Other labeled storage instruction for contact lenses containing a pharmaceutical agent must be followed.

120-012.02B Contact lenses containing a pharmaceutical agent stored in a refrigerator must be kept in a separate compartment from food.

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

120-012.02D The optometrist must not have in his/her dispensable inventory any contact lenses containing a pharmaceutical agent which are misbranded or adulterated.

120-012.03 Recordkeeping

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

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

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

1. Patient's name;
2. Date of the order;
3. Name of the pharmaceutical agent contained in the contact lens;
4. Strength of the pharmaceutical agent contained in the contact lens, if applicable,
5. Directions for administration to the patient, including the dose to be given, and the number of authorized refills; and
6. Prescriber's name.

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

1. Be filed, in numeric order, in a file system that excludes, as per statute, any prescription filled for Schedule II-V controlled substances or other prescription drug product that are not within Nebraska scope of practice to be dispensed in the optometrists office.
2. Include the following information:
  - a. All information required for prescriptions as set forth in 120-013.03C;
  - b. Prescription serial number;
  - c. Date of initial filling; and
  - d. Quantity dispensed;
3. Be maintained by the optometrist for five years from the date of dispensing.

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

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

1. The contact lens containing a pharmaceutical agent is being administered by a health care professional credentialed by the Department to a resident of a hospital or a long-term care facility;
2. Patient or caregiver refuses to be counseled; or

3. Optometrist, in his/her professional judgment, determines that counseling could harm or injure the patient.

120-013 DELEGATION TO OPTOMETRIC ASSISTANTS: Pursuant to Neb. Rev. Stat. §§ 38-2607 and 38-2618, any licensed optometrist may employ optometric assistants and may delegate the performance of certain duties to optometric assistants under supervision.

120-013.01 Definitions

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

120-013.02 Optometrist Responsibilities: A licensed optometrist who chooses to delegate duties to optometric assistants must:

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

120-013.03 Authorized Duties: Optometric assistants, under the supervision or direct supervision of a licensed optometrist, may perform the following duties:

120-013.03A Under Supervision:

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

120-013.03B Under Direct Supervision:

1. Perform Goldmann contact tonometry; and
2. Instill medication as instructed by the supervising optometrist.

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

120-013.04 Prohibited Duties: A licensed optometrist may not delegate the following:

1. Ophthalmoscopy;
2. Gonioscopy;

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3. Biomicroscopy for the purpose of ocular health assessment;
4. Final refraction;
5. Final nervous system assessment;
6. Determination of any prescription, education or treatment plans;
7. Removal of superficial eyelid, conjunctival, and corneal foreign bodies; and
8. Ordering procedures and laboratory tests rational to the diagnosis of conditions or diseases of the human eye, ocular adnexa, or visual system.

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