



*National Association of
Retail Optical Companies*
Professionalism Consumerism Education
www.narocvision.org

June 12, 2026

Nevada State Board of Dispensing Opticians
4790 Caughlin Parkway, Suite 241
Reno, NV 89159
info@nvopticians.org

RE: Comments of the National Association of Retail Optical Companies on Proposed Regulation LCB File No. R117-26I

Dear Members of the Board:

The National Association of Retail Optical Companies (“NAROC”) respectfully submits these comments on the regulation proposed by the Nevada State Board of Dispensing Opticians (“Board”) and submitted to the Nevada Legislative Counsel Bureau on May 26, 2026 (LCB File No. R117-26I) (“Proposed Regulation”). NAROC is a national trade association representing retail optical companies that together operate more than 10,000 locations nationwide, including multiple locations in Nevada.

NAROC submits these comments in a spirit of constructive engagement with the Board’s rulemaking process. We recognize that the Proposed Regulation addresses legitimate regulatory goals—including standards of professional practice, recordkeeping, and education program oversight—and we do not take issue with the Board’s authority to regulate these subjects generally. However, our review of the Proposed Regulation has identified specific provisions across Parts I, II, and V that, as currently drafted, exceed the Board’s delegated authority; conflict with existing Nevada statute, the Nevada Administrative Procedure Act, and federal law; and impose operational burdens on retail optical establishments and Nevada-based manufacturers that are not supported by evidence of consumer harm or consumer benefit. We address each of those provisions below.

I. MULTIPLE PROVISIONS IN PART I CONFLICT WITH NRS 637.026, FEDERAL LAW, OR BOTH

Part I of the Proposed Regulation contains several provisions that apply broadly to “any optical establishment, online vendor, or other employer” or “any business or platform that dispenses ophthalmic products through remote or electronic means”—without distinguishing between Nevada-licensed optical retail establishments and Nevada-based manufacturers shipping to out-of-state customers under the exemption framework established by NRS 637.026. Requirements that the legislature and the Board have determined are appropriate for Nevada-licensed optical retail establishments serving Nevada customers are not necessarily appropriate—and in some cases are directly contrary to statute—when applied to Nevada-based manufacturers whose customers are located outside Nevada and who operate under a specific legislative exemption. The Proposed Regulation’s broad definition of “online optical vendor” is also broad enough to reach Nevada-based fulfillment and warehouse centers that receive finished prescription eyewear and ship directly to out-of-state customers, regardless of whether they perform manufacturing functions. The failure to carve out Nevada-based businesses that operate under the NRS 637.026 framework from Part I’s broad applicability is the source of the legal problems we identify below. NAROC does not challenge Part I’s requirements as applied to Nevada-based optical establishments and Nevada-based online vendors serving Nevada customers, which are consistent with the Board’s existing regulatory framework under Section 8 of LCB File No. R067-23 and NRS 637.090.



A. Section 2(3) Final Inspection Requirement: Conflict with NRS 637.026

NAROC recommends that the Board strike or qualify Section 2(3) to exclude Nevada-based manufacturers and other businesses operating under the NRS 637.026 exemption framework. Part I, Section 2(3) provides that any optical establishment, online vendor, or other employer that directs an employee to dispense an ophthalmic product “that has not received a final inspection by a licensed optician” shall be deemed in violation of NRS 637.090. This provision applies on its face to all online vendors regardless of business model or customer location—including businesses operating under the NRS 637.026 exemption framework for whom final per-order physical inspection is not required. NRS 637.026(2) requires supervisory oversight and prescription conformance confirmation; it does not require per-order physical inspection. Section 2(3), applied to businesses operating under the NRS 637.026 exemption framework, imposes exactly the inspection requirement the legislature chose not to mandate and is a regulation that penalizes conduct the enabling statute does not prohibit. NAROC recommends that the Board strike or qualify Section 2(3) to exclude Nevada-based manufacturers and other businesses operating in compliance with NRS 637.026.

B. Section 3(1) Recordkeeping Requirement: Conflict with NRS 637.026

NAROC recommends that the Board revise Section 3(1) to exclude or qualify its application to Nevada-based manufacturers and other businesses operating under the NRS 637.026 exemption framework. Section 3(1) requires that every optical establishment or online optical vendor—regardless of business model—maintain records identifying the Nevada-licensed optician who created, verified, and dispensed each order. This requirement presupposes individual per-order optician involvement—accurate for retail establishments but directly inconsistent with NRS 637.026(2). A manufacturer operating in full compliance with NRS 637.026(2) may have no Nevada-licensed optician individually involved in any specific order and would therefore have no Nevada license number to record—deemed noncompliant despite violating no law. As with Section 2(3), the regulation eliminates the practical benefit of the statutory exemption through a recordkeeping mandate that the statute does not authorize. NAROC recommends that the Board revise Section 3(1) to include an express carveout for manufacturers and other businesses operating under the NRS 637.026 exemption framework.

C. Section 3(5) Recordkeeping and Product Storage Requirements: Conflict with HIPAA and NRS 637.022

NAROC recommends that the Board delete subparagraphs (a) and (b) of Section 3(5) in their entirety, as subparagraphs (c) and (d) already accomplish the Board’s legitimate patient protection goals without creating the legal conflicts described below. Section 3(5)(a) requires that patient records be “securely stored and accessibly only to licensed personnel authorized to dispense such products.” This restriction is narrower than—and in direct conflict with—the authorized access framework established by the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (“HIPAA”). HIPAA permits access to protected health information by a broad range of workforce members for treatment, payment, and healthcare operations purposes, including billing and administrative personnel who perform no dispensing function and hold no optician license. For NAROC members who are HIPAA-covered entities—as most retail optical companies are—Section 3(5)(a) as written would prohibit access by personnel who are lawfully authorized under their HIPAA compliance programs to access those records for routine billing, claims submission, and administrative purposes. A state regulation that restricts patient record access to a narrower class of personnel than federal law authorizes is preempted to the extent of that conflict. Subparagraph (c) already requires compliance with all applicable state and federal law, which encompasses HIPAA’s authorized access framework; subparagraph (a) is therefore not only legally problematic in isolation but redundant of—and inconsistent with—the broader standard subparagraph (c) correctly establishes.

Section 3(5)(b) requires that prepared and verified ophthalmic products be “securely stored and accessible only to licensed personnel authorized to dispense such products.” Under NRS 637.022, ophthalmic dispensing includes the final physical inspection, verification, and issuance of final authorization to deliver—but expressly excludes the completion of sales transactions. NRS 637.022(3)(b). Once a licensed optician has performed those professional functions and issued final authorization, the physical transfer of that completed product to the consumer is not



ophthalmic dispensing and requires no license. Section 3(5)(b) as drafted would prohibit an unlicensed optical sales associate from retrieving a completed, verified, licensed-optician-authorized product from will-call storage and transferring it to the waiting customer—a task containing no professional judgment, no measurement, and no fitting function—even when a licensed optician is present and directing the transaction. This routine will-call pickup practice is standard across retail optical settings, and Section 3(5)(b) as written would disrupt it without any basis in NRS 637.022.

NAROC recommends that the Board delete subparagraphs (a) and (b) of Section 3(5) in their entirety, on the basis that subparagraphs (c) and (d) already establish the correct and legally sound patient protection standard, and that (a) and (b) as drafted create preemption conflicts and exceed the Board’s statutory authority. If the Board believes that specific product security or record access standards beyond those in (c) and (d) are necessary, NAROC recommends that any such standards be drafted to align expressly with HIPAA’s authorized access framework and to clarify that the restriction on access to prepared and verified products applies to the professional dispensing functions defined in NRS 637.022—not to the physical transfer of a completed, authorized product to the correct patient pursuant to a licensed optician’s authorization.

D. Section 5(2) Dispense Upon Valid Prescription Requirement: Conflict with the Fairness to Contact Lens Consumers Act and the FTC Contact Lens Rule

Section 5(2) provides that an optician shall not dispense ophthalmic products through online or remote ordering systems “unless the optician has obtained a valid copy of the patient’s optical prescription,” and requires the optician to verify the authenticity, completeness, and validity of the prescription prior to dispensing, confirm the prescription is within its stated expiration date, confirm that it was issued by an authorized prescriber, take reasonable steps to ensure electronically received prescriptions have not been altered, and maintain a copy as part of the patient record.

NRS 637.022 explicitly permits licensed opticians to duplicate eyeglasses without a copy of the eyeglass prescription, if the patient has the actual eyewear. Additionally, the definition of a prescription in NRS 637.0235 does not require it to be written. Unless the Board has some evidence that counterfeit prescriptions are an issue, there is no reason that an optician should have to take extraordinary measures to verify further a prescription that on its face has the requisite information to prepare the eyeglass lenses. The proposed rule’s additional “confirmation” steps are not required for an in-person transaction, and there is no evidence that it is needed for online or remote ordering.

Further, the definition of “ophthalmic product” under R067-23, Section 2, expressly includes “all prescription and nonprescription contact lenses, including, without limitation, prepackaged contact lenses, individual contact lenses, cosmetic contact lenses and theatrical contact lenses.” Section 5(2) of the Proposed Regulation therefore applies to contact lens sales—and to the extent it does, it conflicts with the Fairness to Contact Lens Consumers Act, 15 U.S.C. § 7601 et seq. (“FCLCA”) and the Federal Trade Commission’s (FTC) Contact Lens Rule, 16 C.F.R. Part 315.

The FCLCA and the Contact Lens Rule establish a passive verification framework for contact lens prescription verification. Under that framework, a seller may dispense contact lenses upon presentation of a valid prescription or after submitting a verification request to the prescriber and receiving either confirmation or no response within eight business hours. 16 C.F.R. § 315.5. The prescriber’s failure to respond within that window constitutes verification by operation of law—the seller is not required to obtain affirmative confirmation of authenticity or validity before dispensing. Section 5(2)’s requirement that the optician affirmatively “verify the authenticity, completeness, and validity of the prescription prior to dispensing” and “confirm that the prescription was issued by an authorized prescriber” imposes an active verification standard that is inconsistent with—and more burdensome than—the passive verification framework Congress and the FTC have established for contact lens sales. To the extent Section 5(2) applies to contact lens transactions, it is preempted by federal law. 16 C.F.R. § 315.11(a).

NAROC recommends that the Board revise Section 5(2) to expressly exclude contact lens transactions from its scope, or to include a savings clause providing that nothing in Section 5(2) shall be construed to require verification practices



for contact lens prescriptions that are inconsistent with or more burdensome than the requirements of the FCLCA and the FTC Contact Lens Rule.

E. Sections 5(4) Physical Inspection Mandate for Online Sales to Out-of-State Customers: Conflict with NRS 637.026

As noted in Sections I(A) and I(B) above, the definition of “online optical vendor” is broad enough to encompass Nevada-based manufacturers that fabricate prescription eyewear and ship it directly to customers located outside Nevada. For this category of business, Section 5(1)(a)’s individual dispensing requirement and Section 5(4)’s physical inspection mandate conflict directly with NRS 637.026 for the same reasons Sections 2(3) and 3(1) do. A regulation that imposes requirements inconsistent with or more burdensome than the specific statutory exemption framework the legislature created exceeds the Board’s delegated rulemaking authority.

F. Recommended Revisions for Part I

NAROC recommends that the Board revise Part I to:

- (1) Add a general savings clause at the outset of Part I clarifying that nothing in Part I shall be construed to impose requirements on Nevada-based manufacturers that exceed or conflict with the exemption framework established by NRS 637.026;
- (2) Strike or qualify Sections 2(3) and 5(4) to exclude Nevada-based businesses operating under the NRS 637.026 exemption framework, on the basis that NRS 637.026(2) already establishes the applicable standard for that category of business and the Board has no authority to impose a more burdensome standard by regulation.
- (3) Delete subparagraphs (a) and (b) of Section 3(5) or revise them as described above; and
- (4) Revise Section 5(2) to eliminate any reference to the need to take additional steps to verify or confirm an eyeglass prescription that on its face is complete, or to have a prescription when duplicating eyeglasses. The Board also should exclude contact lens transactions from its scope or add a savings clause preserving compliance with the FCLCA and FTC Contact Lens Rule.

II. THE MANAGER LICENSING FRAMEWORK IN PART II CREATES DISPROPORTIONATE ENFORCEMENT EXPOSURE AND CONFLICTS WITH THE NEVADA ADMINISTRATIVE PROCEDURE ACT

NAROC does not dispute that the manager of an optical establishment must hold a valid Nevada optician license—that is the statutory requirement under NRS 637.090. Nor do we object to the core provisions already adopted in NAC Section 9 via R067-23. Our concerns are directed specifically to the new enforcement architecture proposed in Part II, Sections 9(7) through 9(11).

A. Section 9(7) Rebuttable Presumption: Provision is Overbroad and Conflicts with Ordinary Business Practices

The Proposed Regulation creates a rebuttable presumption that an unlicensed individual is performing prohibited managerial duties if he or she, among other things, “routinely opens or closes the optical business, sets work schedules, or assigns tasks to staff,” “communicates with regulatory authorities, vendors, or third parties on behalf of the optical establishment,” or “manages the optical establishment during any period when the licensed manager is absent, off-site, or not readily available.” These activities describe ordinary retail operations performed by hourly shift supervisors, compliance and legal professionals, corporate buyers, and other general business managers throughout the industry. The presumption sweeps in routine supervisory conduct and corporate management functions that bears no relationship to the practice of ophthalmic dispensing—the professional activity NRS Chapter 637 was enacted to regulate. The regulation as drafted provides no meaningful safe harbor for ordinary coverage arrangements during breaks, shift transitions, or short-term absences for non-dispensing related managerial functions.



B. Section 9(8) Burden-Shifting and Evidentiary Standard: Provisions Conflict with NRS 233B.121(9) and NRS 233B.125

Section 9(8) shifts the burden to the optical establishment to disprove a violation “by clear and convincing evidence.” This provision conflicts with two independent provisions of the Nevada Administrative Procedure Act, both of which expressly establish the preponderance of the evidence as the applicable evidentiary standard in administrative contested cases. NRS 233B.121(9) provides that findings of fact in a contested case “must be based exclusively on a preponderance of the evidence and on matters officially noticed.” NRS 233B.125 independently provides that findings of fact and decisions in contested cases “must be based upon a preponderance of the evidence.” Together, these provisions establish preponderance as the evidentiary standard at every stage of a contested case proceeding—from the hearing itself through the final decision and order.

Clear and convincing evidence is a materially higher standard, one that Nevada courts apply in specific contexts where the legislature has expressly required it. Neither NRS Chapter 637 nor any other provision of which NAROC is aware authorizes the Board to depart from the APA’s preponderance standard by regulation. The Board cannot impose a clear-and-convincing evidentiary burden—or shift the burden of proof to the respondent at that standard—in contested case proceedings where the legislature has established the applicable standard by statute. NAROC respectfully requests that the Board direct its legal counsel to assess Section 9(8) for consistency with NRS 233B.121(9) and NRS 233B.125; at a minimum, any retained presumption provision must conform to the preponderance standard the APA requires.

C. The Per-Day Fine Schedule Creates Undue Exposure

The proposed fine schedule—\$100 to \$500 per day for unlicensed management, with each day constituting a separate violation, and \$1,000 to \$5,000 per uninspected product—would expose large multi-location retailers to substantial liability for operational gaps that may arise without willful intent, particularly during periods of manager absence or turnover. Fines of this magnitude are appropriate for willful or repeated violations; applied to first-time or inadvertent violations, they are disproportionate to the harm the regulation is designed to prevent.

D. Recommended Revisions for Part II

NAROC recommends that the Board:

- (1) Narrow the rebuttable presumption in Section 9(7) to conduct that directly involves supervision of ophthalmic dispensing activities, rather than general business management;
- (2) Revise Section 9(8) to conform to the preponderance of the evidence standard required by NRS 233B.121(9) and NRS 233B.125, and eliminate or narrow the burden-shifting mechanism accordingly; and
- (3) Include a notice-and-cure period for first-time violations before the daily fine accrual begins.

III. THE PROPOSED FEE INCREASE IN PART V SHOULD BE SUPPORTED BY A TRANSPARENT FINANCIAL ANALYSIS

Part V proposes to increase the annual dispensing optician renewal fee from \$350 to \$500—a 43% increase. NAROC does not dispute that the Board has authority to adjust fees within the statutory ceiling, nor does it take issue with the Board’s need to maintain adequate operating reserves. Our objection is to the proposed fee level itself, which is disproportionate when measured against the renewal fees charged to other licensed professionals in Nevada, and against the educational requirements and earning capacity of the professionals who will bear it.

Nevada licenses a broad range of healthcare and professional practitioners, and the renewal fees charged to those practitioners provide a useful benchmark for assessing whether the proposed optician fee is proportionate and reasonable. The table below summarizes the current renewal fees, renewal cycles, and annualized fee amounts for a cross-section of Nevada-licensed professionals:



Licensed Professional	Renewal Fee	Renewal Cycle	Amount Per Year
Advanced Practice Registered Nurse (APRN)	\$200 (or \$300 with simultaneous RN renewal)	2 years	\$100 (or \$150 with simultaneous RN renewal)
Attorney (JD)	\$250 to \$450 (depending on years of admission)	1 year	\$250 to \$450 (depending on years of admission)
Allopathic Medical Doctor (MD)	\$800	2 years	\$400
Certified Nursing Assistant (CNA)	\$50	2 years	\$25
Dispensing Optician (LDO)	Proposed = \$500	1 year	Proposed = \$500
Licensed Practical Nurse (LPN)	\$100	2 years	\$50
Optometrist (OD)	\$900 (license renewal and one practice location)	2 years	\$450 (license renewal and one practice location)
Osteopathic Doctor (DO)	\$350	1 year	\$350
Pharmacist (RPh)	\$200	2 years	\$100
Pharmacy Technician (PT)	\$50	2 years	\$25
Physician Assistant (PA)	\$400	2 years	\$200
Registered Nurse (RN)	\$100	2 years	\$50

As the table illustrates, the proposed \$500 annual renewal fee for dispensing opticians is strikingly disproportionate when viewed against the fees charged to other Nevada-licensed practitioners—particularly when considered alongside the educational requirements and earning potential for each profession.

Nevada-licensed physicians hold doctoral degrees, complete residency training of three to seven years beyond medical school and earn median annual incomes well above \$200,000—yet pay \$400 per year on an annualized basis for their license renewal fees. Nevada-licensed optometrists hold doctoral degrees in optometry, are practitioners who examine patients and write the prescriptions that dispensing opticians fill, and earn an annual mean wage of \$122,610 in Nevada according to the U.S. Bureau of Labor Statistics (“BLS”) Occupational Employment and Wage Statistics for Nevada (May 2023)—yet pay \$450 per year on an annualized basis, less than the proposed dispensing optician fee. Nevada-licensed pharmacists hold doctoral degrees in pharmacy and earn an annual mean wage of \$131,820 in Nevada. Nevada-licensed attorneys complete three years of post-graduate law school and earn an annual mean wage of \$159,840 in Nevada. Nevada-licensed registered nurses complete two to four years of nursing education and earn an annual mean wage of \$97,700 in Nevada. Every one of these professions pays less than the proposed \$500 annual renewal fee on an annualized basis—in some cases, substantially less.

Perhaps the most telling comparison is to Nevada-licensed pharmacy technicians, who occupy a role in the pharmacy setting that is structurally analogous to that of dispensing opticians in the optical setting: both handle prescription products in a direct patient-facing retail healthcare environment, and both are required to complete training programs and pass a certification examination to obtain licensure, without a degree requirement beyond the certificate or associate’s level. According to the same BLS data, pharmacy technicians earn an annual mean wage of \$44,850 in Nevada—making them near wage peers of dispensing opticians—yet pay \$25 on an annualized basis under Nevada’s current \$50 biennial registration fee structure. That is a 20-to-1 fee differential between two professions at broadly comparable levels of credential, training, and earning capacity, with no apparent justification rooted in the cost of regulating either profession, the complexity of the licensed activity, or the practitioner’s ability to pay.

According to BLS data for Nevada, dispensing opticians earn a median hourly wage of \$22.00 and an annual mean wage of \$52,900. NAROC acknowledges that the BLS occupation code for dispensing opticians captures all workers performing that job function regardless of licensure status—including apprentice opticians and NRS 637.025 exempt



*National Association of
Retail Optical Companies*

Professionalism Consumerism Education

www.narocvision.org

practitioners—and that fully licensed dispensing opticians likely earn somewhat above the reported mean. Even so, a fully licensed dispensing optician earning meaningfully above the BLS mean would still pay a higher annual renewal fee than a Nevada optometrist earning \$122,610, a Nevada pharmacist earning \$131,820, or a Nevada attorney nearing \$159,840. The disproportion is structural and persists across a wide range of plausible earning assumptions.

The size of the Board’s active licensee population is itself relevant context. According to the Board’s own published roster, current as of February 2026, there are approximately 428 active licensed dispensing opticians in Nevada—including both standard and limited licenses. The 2023 BLS data classifies approximately 1,170 workers statewide under the dispensing optician occupation code, a figure that includes individuals exempt from Board licensure under NRS 637.025. The practical effect of this exemption is that a substantial portion of the people performing ophthalmic dispensing in Nevada have never been subject to Chapter 637 licensure requirements and have never contributed to the Board’s fee base—a deliberate legislative choice that limits the Board’s jurisdiction to retail optical establishments and online vendors rather than the full universe of practitioners performing ophthalmic dispensing in the state.

That structural limitation is not a problem the Board can solve through its fee schedule. Asking the licensed population—approximately 428 active licensees earning a median hourly wage around \$22.00 to \$26.00—to bear renewal fees that exceed those paid by more extensively credentialed and more highly compensated licensed professionals across Nevada does not address the underlying jurisdictional constraint. If the Board cannot maintain financial viability within a fee structure that is proportionate to its licensee’s earning capacity, that is a structural question the legislature—not the Board’s fee schedule—is the appropriate body to address.

NAROC recommends that the Board revise the proposed fee ceiling downward to a level that is proportionate to the earning capacity of dispensing opticians and consistent with the fee structure Nevada applies to comparable licensed professionals—and that the Board provide a documented basis for whatever fee level it adopts, including an explanation of how that level was benchmarked against the fees charged to other Nevada-licensed professionals, other states that license or credential opticians, and the earning capacity of the optician workforce the Board regulates.

CONCLUSION

NAROC appreciates the Board’s efforts to modernize Chapter 637 and to address standards of practice for both brick-and-mortar and online dispensing. The provisions addressed above, however, warrant revision—both to address their legal vulnerabilities and to avoid imposing burdens on Nevada optical establishments and Nevada-based manufacturers that exceed what the legislature has authorized and that are not supported by evidence of consumer harm.

Thank you for the opportunity to share our concerns and recommendations with the Board on this Proposed Rulemaking.

Respectfully submitted,

Jennifer Sommer

Jennifer Sommer

Executive Director, National Association of Retail Optical Companies

director@narocvision.org