

CHAPTER 1

GENERAL PROVISIONS

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

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

Section 3. Definitions.

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

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

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

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

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

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

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

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

(b) For these rules incorporated by reference:

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

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

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

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

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

CHAPTER 2

REQUIREMENTS FOR LICENSURE

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

Section 2. Application Status.

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

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

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

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

Section 4. Jurisprudence Examination.

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

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

Section 5. Licensure by Examination.

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

(b) Applicant Requirements. Applicant shall:

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

(ii) Submit acceptable fingerprint cards;

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

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

(v) Successfully pass the jurisprudence examination.

Section 6. Licensure by Endorsement.

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

(b) Application Requirements. An applicant shall:

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

(ii) Submit acceptable fingerprint cards;

(iii) Successfully pass the jurisprudence examination; and

(iv) Submit evidence that demonstrates competency including:

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

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

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

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

CHAPTER 3

RENEWAL AND RELICENSURE

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

Section 2. Annual Licensure Renewal.

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

(b) Expiration.

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

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

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

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

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

Section 3. Requirements.

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

(b) Timeframe for Earning CE for Renewal.

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

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

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

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

(i) COPE qualified or COPE sponsored;

(ii) AOA;

(iii) AOA recognized state associations;

(iv) American Academy of Optometry;

(v) Schools and colleges of optometry;

(vi) College of Visual Development; and

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

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

(d) Composition of CE.

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

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

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

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

(e) Reporting Requirements.

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

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

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

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

(f) Auditing.

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

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

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

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

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

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

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

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

Section 4. Reinstatement.

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

(b) Reinstatement.

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

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

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

Section 5. Relicensure.

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

(b) Application Requirements. Applicant shall:

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

(ii) Demonstrate competency by:

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

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

(iii) Successfully pass the jurisprudence examination.

Section 6. Reinstatement Subject to Discipline.

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

(b) Application Reinstatement Requirements. The applicant shall:

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

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

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

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

CHAPTER 4

FEES

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

Section 2. General Information.

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

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

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

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

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

CHAPTER 5

STANDARDS OF PRACTICE

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

Section 2. Practice of Optometry.

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

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

Section 3. Prescriptions.

(a) Expiration of Prescriptions.

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

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

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

(b) Providing Prescriptions. Licensees shall:

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

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

Section 4. Records Retention.

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

(b) Patient records shall be:

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

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

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

- (i) Assistants shall not write orders.
 - (ii) The testing of patients can only be performed upon the verbal or written direction of the licensee.
 - (iii) The physical presence of the licensee is not required if the assistant can easily contact the licensee. Treatment plans, however, can only be directed once the licensee physically reviews test results.
- (b) An assistant cannot, in any manner, practice optometry.
- (c) The Board does not recognize nor bestow any level of competency upon an assistant to carry out a specific task. Such recognition of skill is the responsibility of the licensee.

Section 6. Externships.

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

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

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

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

CHAPTER 6

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

REPEALED

CHAPTER 7

PROCESS AND PROCEDURE FOR APPLICATION, LICENSURE, AND DISCIPLINE MATTERS

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

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

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

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

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

(b) A conviction involving moral turpitude, including:

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

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

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

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

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

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

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

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

(ii) Practicing optometry:

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

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

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

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

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

(iv) Failing to:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 3. Application Review and Investigation Process.

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

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

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

(iv) Denial of licensure.

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

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

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

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

(d) Applicant's Request for Hearing.

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

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

(B) Denial of licensure.

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

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

Section 4. Complaint Review and Investigation Process.

(a) Complaint Review and Investigation.

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

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

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

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

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

Section 5. Summary Suspension.

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

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

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

(ii) The Notice of Intent shall contain:

(A) Copy of the complaint;

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

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

Section 6. Formal Proceedings for Disciplinary Action.

(a) Notice of Intent to Recommend Disciplinary Action.

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

(ii) The Notice of Intent shall:

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

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

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

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

Section 8. Notice of Hearing.

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

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

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

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

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

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

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

(iv) The legal authority and jurisdiction; and

(v) A statement indicating:

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

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

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

Section 10. Dismissal and Default.

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

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

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

Section 12. Burden and Standard of Proof.

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

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

Section 13. Board Decision and Order.

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

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

Section 14. Judicial Review.

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

CHAPTER 8
INFORMATION PRACTICES
REPEALED

APPENDIX A

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

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

REPEALED