

**ABO & NCLE STANDARDS OF PROFESSIONAL PRACTICE
AND DISCIPLINARY GUIDELINES**

I. Scope and Purpose

The purpose of this Guideline is to establish standards of professional practice and conduct for ophthalmic dispensers holding Certificates [hereinafter “Certificants”], issued by the American Board of Opticians [hereinafter “ABO”] and/or the National Contact Lens Examiners [hereinafter “NCLE”]; procedures for the investigation and adjudication of complaints alleging violations of those standards; and grounds for disciplinary action against Certificants holding credentials issued by the Board of the ABO and/or NCLE.

II. Applicability to Certificants and Re-Certification

In applying for, obtaining, or maintaining certification under ABO and/or NCLE, a Certificant agrees to be subject to the ABO & NCLE Standards of Professional Practice and Disciplinary Guidelines, [hereinafter “Guidelines.”] These Guidelines, first adopted in February, 1993, modified as of February 4, 2012, apply to any professionally related conduct, or such other conduct, of a Certificant, which materially and directly bears upon the fitness of that individual to perform his or her professional functions. Each Certificant agrees, by virtue of their possession of such certification, that ABO and/or NCLE can impose sanctions under these procedures on any candidate or Certificant who is found to have (a) engaged in misrepresentation or misconduct in the application or examination process, or (b) violated the ABO & NCLE Standards of Professional Practice and Disciplinary Guidelines. Disciplinary Proceedings addressing potential and/or actual violations of these Guidelines shall be conducted in accordance with the ABO & NCLE Standards of Professional Practice and Disciplinary Guidelines. Each Certificant also understands and agrees to accept Certified Mail sent to the last-identified address provided by the Certificant to the Board for purposes of applying for, obtaining, or maintaining Certification by ABO and/or NCLE, as well as receipt of any formal Notices as required by these Guidelines.

III. Standards for Certificants Engaging in Dispensing of Contact Lenses or Eyeglasses

- A. A Certificant shall not prepare or dispense any ophthalmic lenses, spectacles, eyeglasses, contact lenses or appliances related thereto except in accordance with the terms of an eyeglass or contact lens prescription written or issued by a duly licensed physician or by an duly registered or licensed optometrist, and in accordance with any state law or statute that may govern.
- B. Before delivering or furnishing any ophthalmic lenses, spectacles, eyeglasses, or contact lenses to the intended wearer or user thereof, a Certificant shall:
 - 1. Verify that the ophthalmic lenses, spectacles, eyeglasses or contact lenses in question conform in all material respects to the terms and specifications contained in the prescription issued by the intended wearer’s physician or

optometrist;

2. Verify that the ophthalmic lenses, spectacles, eyeglasses or contact lenses in question fit the intended wearer or user properly, and make any and all adjustments in the fit of such items as may be reasonably necessary to ensure that they fit the intended wearer or user properly;
3. Provide the intended wearer or user with appropriate instruction in the handling, insertion, removal and care of such ophthalmic lenses, spectacles, eyeglasses or contact lenses; and
4. Document his or her performance of the procedures undertaken, in writing, in the written records pertaining to that intended wearer or user which are maintained by him or her, or by the optical goods establishment from which those items are dispensed. Such documentation shall bear the signature or initials of the Certificant, or any individual acting under the authority and/or control of the Certificant, who performed the procedures required under the prescription.

C. Record-keeping Requirements

1. A Certificant shall establish and maintain a separate, adequate, legible and accurate written service record for each person for whom he or she prepares or dispenses ophthalmic lenses, spectacles, eyeglasses, contact lenses, or appliances related thereto. The record shall be kept in chronological and alphabetical order in the office where the Certificant rendered such services, or in the office of the optical goods establishment from which such items were dispensed, if different. Record entries shall be made contemporaneously with the performance of the function or service being documented. Each such entry shall be signed by, or shall otherwise adequately identify, the Certificant who provided, or supervised the provision of, that function or service. Such records shall include, at a minimum, documentation of the following:
 - A. The name, address and telephone number of the person to whom the record pertains;
 - B. The date on which each function or service documented in the record was performed, and the name of the individual who provided or performed that function or service; and
 - C. All eyeglass and contact lens prescriptions presented to the Certificant at that location by or for the person to whom the record pertains.
2. Such service records and all information contained therein shall be kept

confidential to the extent provided by state or federal law.

3. Upon the written request of the person receiving the services, that person's authorized legal representative, or, in the case of an unemancipated minor, the service recipient's parent or legal guardian, a Certificant shall furnish a complete copy of that person's service records, including all supporting documentation and reports, to the party authorized to receive it. A reasonable fee may be charged for this service.
4. A Certificant shall furnish to the ABO and/or NCLE Board or its duly authorized representative a complete copy of a service recipient's service record upon presentation of a HIPAA-compliant Release from the affected patient(s)/customer(s). No fee may be charged for this service.
5. No person shall be required to sign any release from liability or waiver as a condition for the receipt of his or her service record.
6. Service records shall be maintained for a period of not less than five (5) years from the date of the last client encounter or professional consultation with the client.
7. Violation of any of the above-identified provisions shall be considered sufficient grounds for disciplinary action by the Board as further set forth hereinbelow.

D. Identification of Dispensing Opticians

1. Every Certificant shall conspicuously display his or her ABO and/or NCLE Certificate in his or her place of business or employment. Every Certificant employed by a corporation or other business organization shall ensure that his or her own ABO and/or NCLE Certificate is displayed conspicuously in the offices of the corporation or organization where members of the public come to obtain opticianry services.

E. Notification of Changes in Name, Address, Employment or Office Location

1. Every ABO and/or NCLE Certificant shall notify the Board in writing of any change in his or her name, residence or business address, or place of employment within 30 days of such change. In the event that a Certificant fails to provide notification of such change of address, Certificant understands and agrees that formal notices sent to the previously-identified address will be deemed proper service upon Certificant for purposes of notification, disciplinary actions, or other formal action taken by the Board.

- F. Requirement to Cooperate with ABO and NCLE
 - 1. A Certificant shall respond to written communications sent by ABO or NCLE, or their designee(s), within thirty (30) days of receipt of such communications requesting information or documentation. ABO and NCLE shall send any such communications requiring responsive information by Certified Mail, return receipt requested. Upon request, the Certificant shall make available any relevant and authorized records with respect to any inquiry or complaint about a Certificant, or an individual who is acting as a Certificant without authority.

- G. Duty to Self-Report
 - 1. A Certificant shall self-report any activities which are identified hereinbelow as constituting grounds for disciplinary action. Such self-reporting will be taken into consideration by the Disciplinary Committee in determining an appropriate level of disciplinary action.

IV. Disciplinary Complaint Procedures

- A. A written, signed complaint or charge may be presented to ABO and/or NCLE, [hereinafter referred to, jointly, as “the Board”], by any interested person, or may be instituted, independently, by ABO and/or NCLE.

- B. Except in extraordinary circumstances, to be determined at the discretion of the Board or its designee, the complaint must be filed within two (2) years of the date of the last occurrence raising an alleged violation or incident.

- C. Upon the filing of a complaint or charge, the Disciplinary Committee, shall initially determine if there is a reasonable basis to proceed and whether the allegations, if proven, would constitute a violation of these Guidelines. If the Board determines, by a majority vote, that there is sufficient evidence to establish, if proven true, a violation of these Guidelines, it shall provide the Charged Certificant [hereinafter “Respondent”] with a written Complaint detailing the nature of the allegations, the Guidelines that are at issue, and shall enclose a copy of these Guidelines and Procedures, issued to the Respondent by Certified Mail, return receipt requested, sent to the Respondent’s current address on file with ABO and/or NCLE. A copy of the Complaint shall also be provided to the individual or individuals who initiated the written complaint or charge by Certified Mail, return receipt requested.

- D. Any misconduct subject to the Disciplinary Guidelines of ABO and/or NCLE may be considered and result in sanctions by one or both organizations. The organizations may communicate with each other about potential misconduct. Each body, however,

will make its own decision.

- E. The Respondent shall be given not less than thirty (30) days from receipt of the formal Complaint to submit a written Answer to the formal Complaint, to be sent to the Board at its current address, by Certified Mail, return receipt requested, with an additional copy being served, by Certified Mail, return receipt requested, upon each additional individual or entity identified in the formal Complaint as having received a copy thereof. The Respondent is entitled to a formal hearing on the allegations raised in the Complaint. Such a request for hearing, if sought, must be included in the Respondent's written Answer to the formal Complaint, and must be requested within thirty (30) days of receipt of the formal Complaint. In the event that Respondent refuses to accept the Certified Mail, or has failed to notify the Board of a new address, the Complaint will be deemed to have been served upon receipt, by the Board, of the return-receipt, or, in the event of a failed service, notification of the failed service.

- F. In the event that a Respondent requests a formal hearing, ABO and/or NCLE, as applicable, shall set a time for a hearing before the Disciplinary Committee, which shall be comprised of at least three Directors appointed by the Chairs of the Disciplinary Committees. The hearing shall consist of no more than two (2) hours, unless, in the sole discretion of the Committee, extraordinary circumstances require additional time within which to present the allegations and allow for response by the Respondent. Both the Respondent and the Committee may be represented by counsel at any such formal hearing, and may present documents and witnesses. However, formal legal rules of evidence will not be applied, and the Committee will determine which evidence will be considered for purposes of reaching a determination. The hearing shall be digitally recorded. If the Respondent and Committee agree, the formal hearing may be conducted by telephone conference call. In the event that the Respondent requires an in-person hearing, such a hearing shall take place at the headquarters of ABO & NCLE. Any determination by the Disciplinary Committee shall be by majority vote. In the event that a majority vote cannot be reached, the matter shall be presented to the full Board of Directors of ABO and/or NCLE, as applicable, for a determination as to the allegations and disciplinary action, if any. In the event that a majority still cannot be reached, the charges set forth in the Complaint shall be deemed to have not been proven, and the Complaint shall be Dismissed, with the Certificant cleared of any charges made therein.

- G. ABO and/or NCLE may also seek information from any other source in order to properly investigate the allegations, and to reach a proper determination related thereto. Any non-charged Certificant with relevant information is required to provide all responsive information that would assist the Board in reaching its determination. A copy of any such information received by the Board shall be provided to the Respondent at least ten (10) days prior to the hearing or decision, so that the Respondent can review the information obtained, provide any additional information

and/or explanation, and otherwise defend him or herself against the allegations raised in the Complaint.

- H. All complaints, reports, records, documents or other information received or kept by ABO and/or NCLE in connection with any investigation conducted by the Board shall remain confidential until such time as the Board has disposed of the matter by dismissing the complaint, issuing an Order to Show Cause, or taking other final action on said complaint. Notwithstanding the foregoing:
 - 1. Certain records or information received or kept by the Board in connection with any investigation conducted pursuant to this section shall remain confidential even after final action on the complaint has been taken by the Board, to the extent that disclosure of such information is restricted by other applicable state or federal law, including, but not limited to, patient data or information, specific treatment information, and identification of patients, victims (if applicable), HIPAA or other privacy-related data and information; and
 - 2. The requirement that investigative records or information shall be kept confidential shall not apply to requests for such information received from the person under investigation or the complainant, unless such data or information would impermissibly require production of information protected from disclosure under any federal, state, or local law.
- I. The Board will review written requests for investigative records or other confidential information from, and may furnish such information to federal, state and/or local regulatory and law enforcement agencies, in the event that the Board believes that actions taken by the Certificant require additional investigation by such governmental authorities.
- J. Except as set forth otherwise herein, all recipients of confidential information pertaining to a complaint, charge, investigation of a charge, issuance of a formal Complaint, or subsequent hearing pertaining thereto, shall preserve the confidentiality of such data.

V. Grounds for Disciplinary Action by the Board

The Disciplinary Committee shall, by majority vote after reviewing the applicable evidence, or, in the event of a request for a formal hearing, after the evidence has been received, take disciplinary action against any Certificant, or any individual claiming to maintain Certification by ABO and/or NCLE (such person shall be included in the definition of “Certificant” for purposes of these Guidelines). Grounds for such disciplinary action shall include, but shall not be limited to:

- A. Engaging in, authorizing, or aiding or abetting fraud, deceit, misrepresentation of

material facts, the provision of false or forged evidence, or bribery in connection with any application for, or continuation of, an ABO and/or NCLE Certificate;

- B. Procuring, or attempting to procure, ABO and/or NCLE certification or state licensure, if applicable, by misrepresentation, bribery, fraud, or deception;
- C. Failing to adhere to the mandates of Section III above, Standards for Contact Lens Dispensers and Opticians;
- D. Disclosure of confidential patient, customer, and/or student records and/or information without properly-documented authorization;
- E. Altering patient and/or customer records without proper notation on the records as to the basis for any such modification;
- F. Engaging in, authorizing, or aiding or abetting theft or tampering with any ABO and/or NCLE examinations;
- G. Representing to the general public, in any manner, that the individual is practicing opticianry or as a contact lens dispenser as a Certificant, without appropriate Certification, including, but not limited to, practicing on a revoked, suspended, or inactive Certificate, or license, in those states where licensing is required;
- H. Violating any provision of any state or federal law or regulation relating to the authorized opticianry and/or contact lens dispenser practice, or the performance of contact lens dispensing and/or opticianry-related functions or services;
- I. Engaging in willful and/or gross misconduct in the practice of his or her profession as a Certificant, or engaging in such other conduct which is determined by ABO and/or NCLE to be unethical or constitutes a deviation from the professional standards of care associated with the professions of contact lens dispensing and/or opticianry, or that creates a serious risk of harm to or deception of patients, customers and/or students;
- J. Engaging in practice which is fraudulent or beyond the authorized scope of practice for the level of ABO and/or NCLE Certificate held by the Certificant;
- K. Advertising goods and/or services in a manner which is, or is intended to be, misleading, deceptive, false, or fraudulent;
- L. Engaging in, authorizing, or aiding or abetting attempts to intimidate, coerce, or deceive anyone from reporting possible misconduct by a Certificant to ABO and/or NCLE, or interfering with an ongoing investigation commenced by ABO and/or NCLE;

- M. Engaging in, authorizing, or aiding or abetting exploitation, abuse, assault, or battery of a patient, customer, student, colleague, or charge;
- N. Failing to adequately supervise staff, students, apprentices, and dispensing opticians within your supervision, to the extent that a patient/customer's health, welfare, or safety may be at risk;
- O. Engaging in, authorizing, or aiding or abetting attempts to offer to pay rebates, commissions, compensation, or any other tangible asset of any value to a licensed physician, licensed optometrist, or any other person, for the purpose of referring a patient and/or customer to the Certificant;
- P. Engaging in, authorizing, or aiding or abetting, in those states where licensing is required, any person under your supervision who is not licensed (or participating in a state-recognized student or apprenticeship program), to fit or dispense contact lenses, spectacles, or other optical devices which are part of the practice of contact lens dispensing or opticianry;
- Q. Practicing with gross incompetence or gross negligence on a particular occasion, or with negligence on repeated occasions;
- R. Knowingly practicing in a manner involving contact with patients and/or customers of a type or nature that could create a serious and material health risk to such patients and/or customer while suffering from a contagious and/or infectious disease;
- S. Practicing while his or her ability to practice is substantially impaired by physical disability that cannot be remedied by a reasonable accommodation, to such an extent that a patient/customer's health, welfare, or safety may be at risk, or while he or she has been adjudged mentally ill or mentally incompetent by a court of competent jurisdiction;
- T. Engaging in the use of, alcohol, narcotics, barbiturates, amphetamines, hallucinogens or other drugs having similar effects to an extent which impairs his or her ability to practice;
- U. Engaging in discrimination in the provision of services to patients, customers, and/or students on the basis of that individual's age, race, color, national origin, disability, gender, or any other basis proscribed by Federal law.
- V. Knowingly permitting, or aiding or abetting, an uncertified ABO and/or NCLE person to perform activities which require a ABO and/or NCLE Certificate;
- W. Having been convicted of or entered any guilty plea (including a "no-contest," *nolo contendere*, or "Alford Plea") for any criminal offense which involves moral

turpitude or which reasonably calls into question his or her fitness or ability to practice as a contact lens dispenser or an optician; or having been convicted of, or entered any guilty plea (including a “no-contest,” *nolo contendere*, or “Alford Plea”), in any state or federal court, including the District of Columbia, for any crime related to the Certificant’s optical-related practice;

- X. Having been denied or refused issuance of any practice as an optician or contact lens dispenser by an applicable governmental licensing authority of any state, territory or political subdivision of the United States;
- Y. Having had a license to practice opticianry and/or as a contact lens dispenser suspended, revoked, placed on probation, or otherwise subject to disciplinary action by the applicable governmental licensing authority of any state, territory or political subdivision of the United States. For purposes of this Section, the term “disciplinary action” shall include, but shall not be limited to: denial, revocation or suspension of a full certificate, license, or other identifying credential pertaining to opticianry and/or contact lens dispenser; refusal to renew a certificate, license, or other identifying credential pertaining to opticianry and/or contact lens dispenser; issuance of a letter of censure; issuance of a written reprimand; or placing on probation of a certificate, license, or other identifying credential pertaining to opticianry and/or contact lens dispenser.
- Z. Having failed to self-report any violations of any provision of these Guidelines within thirty (30) days of the occurrence of any such violation. In the event the Disciplinary Committee determines that a Certificant has willfully withheld information pertaining to actions taken by that Certificant, or their knowledge pertaining to such actions taken by any other Certificant, the Board shall take such willful misconduct into consideration in assessing an appropriate punishment. It is the intent of these Guidelines to encourage self-reporting of violations and, as such, any failure to do so shall result in substantially stiffer punishment associated with the Certificant’s misconduct.