

NEVADA STATE BOARD OF OPTOMETRY



WILLIAM F. HARVEY, O.D.
Board President

CHEN K. YOUNG, O.D.
Board Member

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CAREN C. JENKINS, ESQ.
Executive Director
cjenkins@nvoptometry.org

MARIAH L. SMITH, O.D.
Board Member

SHERESE SETTELMAYER
Public Board Member

MINUTES OF A TELEPHONIC MEETING Friday July 21, 2017, at 3:30 p.m.

*INDICATES ACTION.

1. **Public Comment.** No public comment was offered.
2. **Call to Order, Roll Call:** Board members present: President William F. Harvey, Board Members Chen Young, O.D., Mariah Smith, O.D. and Sherese Settelmeyer. Also present: Caren C. Jenkins, Executive Director and Peter Keegan, Esq., Deputy Attorney General and Board Counsel
- *3. **For Possible Action.** Consideration of **minutes** of June 15, 2017 Board meeting (CCJ). Motion by Dr. Smith, seconded by Ms. Settelmeyer, unanimous vote to approve as presented.
- *4. **For Possible Action.** Legislative/Regulatory Subcommittee Report (Dr. Smith). Dr. Smith has been contacting optometry schools regarding residents and internships or clinical programs to determine current practices. She also mentioned that residents at the VA work under a Federal license, but that a resident in any other capacity should hold an individual license. Interns working under a clinical program short-term may work under the clinic's license, if current. No action was taken on this agenda item.
- *5. **For Possible Action.** Executive Director's report (CCJ).
 - *A. Consideration of proposed stipulation to dispose of Complaint 17-01. Motion by Dr. Smith, seconded by Dr. Young to accept the proposed Order Dismissing Complaint. Counsel Keegan asked whether penalty goes to State or to Board, and Ms. Jenkins clarified that any discipline other than late fees or costs reimbursement is directed to the State Controller. Dr. Smith, Dr. Young Ms. Settelmeyer – Aye; Dr. Harvey – Nay. Motion passed.

B. Calendaring of public hearing on Complaints 17-03 and 17-05. Ms. Jenkins will poll the Board, staff and witnesses to find a convenient date.

C. Financial Status and Audit Report. Ms. Jenkins reported that Steele & Associates CPAs continues to work on the Board biennial audit. She also provided bank statements to Board members showing recent transactions and balances.

D. Licensee Military Service Report. Ms. Jenkins stated that the Board is required to collect information annually and report it in November of each year to the State. The new online systems make that data collection much simpler.

E. Consultant Report. Ms. Jenkins submitted the required Consultant Report to the Legislative Auditor.

F. Fines and Fees Reports. Ms. Jenkins submitted the required Fines and Fees Report to the Legislative Auditor and/or Budget Office.

G. Miscellaneous informational items . None.

6. **Announcements and requests for future Board consideration.** None

7. **Public Comment.** No public comment was offered.

8. **Adjournment.** Motion to adjourn at 4:05 pm by Dr. Young, seconded by Ms. Settlemeyer, passed unanimously.

Board Approval on _____

Caren C. Jenkins, Executive Director

Fax Cover Sheet

Riverview Vision and Laser Center
2215 Hualapai Mountain Rd #4
Kingman, AZ 86401
Phone: (928) 718-1009
Fax: (928) 718-1025

9/7/2017

TO Caren Jenkins, Esq

FROM: Kevin Wogalter, OD

RE: TPA certification application

Hi Caren,

Its been a pleasure talking with you!! Thank you for all your help and I hope for a good outcome.

If any questions, please call at 702-286-8534

Kevin Wogalter, OD

OPTOMETRIST CERTIFICATION OF COMPLIANCE WITH THERAPEUTIC PHARMACEUTIC AGENT STATUTE

STATE OF Arizona)
) ss.
COUNTY OF Mohave)

I, Kevin Wogalter, D.O., of lawful age and under penalty of perjury certify as follows:

- 1. I am a duly licensed and practicing optometrist in the State of Nevada;
- 2. I have successfully completed a comprehensive clinical training course of at least 40 hours, [proof of which is attached hereto] conducted by:

_____ , M.D.	_____ , M.D.
_____ , M.D.	_____ , M.D.
_____ , M.D.	_____ , M.D.

3. I have received a score of 75 or higher on the TMOD exam conducted by the National Board of Examiners in Optometry.

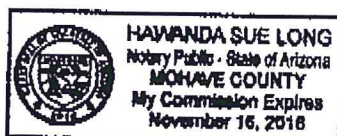
4. I have satisfied all the requirements of Chapter 636 of the Nevada Revised Statutes for certification to administer and prescribe therapeutic pharmaceutical agents. (except NRS 636.287.2)

DATED this 7 day of Sept 2017.

Kevin Wogalter, D.O.

Subscribed and sworn to before me this 7 day of September, 2017.

Hawanda Sue Long
NOTARY PUBLIC [SEAL]



**Riverview Vision Center
2215 Hualapai Mtn Rd
Kingman, AZ 86401
(928) 718-1009**

September 6, 2017

To: The Nevada State Board of Optometry

From: Kevin Wogalter, O.D.

I have been practicing optometry using TPA's in the state Arizona since March 1, 2004. When I first passed the State Board to practice there it was brought to my attention that I would have needed to pass the TMOD after January 1, 1993 and as the timing worked out, I had passed the test August of 1992.

I had an attorney look up what was different on the test in the five months in between and it was determined that there were no significant changes. Arizona concluded that I had achieved all the standards necessary to treat and dispense TPA's in their state which I have done successfully for the past thirteen years.

I am asking for the same consideration regarding this brief lapse of time between when I passed the TMOD and the date on the application. I hope you will agree with Arizona and allow me to continue treating patients with TPA's.

I continue to take most of my continuing education on treatments of the anterior and posterior segments of the eyes.

I would greatly appreciate the State Board of Nevada in granting me this waiver and allow me to treat my patients accordingly.

Thank you in advance for your consideration.

Yours Truly,



Kevin Wogalter, OD



Confidential

To Nevada State Board of Optometry
Fax Number: (775) 305-0105
From: Lorne Schlecht, MD
Business Phone: (602) 955-1000
Pages: 2 including cover
Date: 9-18-17

The documents in this facsimile transmission may contain confidential health information that is privileged and legally protected from disclosure by federal law, the Health Insurance Portability and Accountability Act (HIPAA). This information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that reading, disseminating, disclosing, distributing, copying, acting upon or otherwise using the information contained in this facsimile is strictly prohibited. If you have received this information in error, please notify the BDPEC Administration Support team immediately at the number listed above and destroy this facsimile. Thank you.



ADMINISTRATIVE OFFICE:
4800 North 22nd Street · Phoenix, Arizona 85016
(602) 955-1000 · (800) 966-7000
www.goodeyes.com

September 14, 2017

Nevada State Board of Optometry
P.O. Box 1824
Carson City, Nevada 89702
Fax: (775)305-0105
Email: Admin@NVoptometry.org

RE: Kevin Wogalter, OD
Subject: Therapeutic Pharmaceutical Agent Certification

Dear Sir,

It is with great enthusiasm that I recommend Dr. Kevin Wogalter as candidate for certification in dispensing and treating TPAs in the State of Nevada. Dr. Wogalter has co-managed many of his cases with myself and my colleagues at Barnet Dulaney Perkins Eye Center in Arizona for decades, and I have no doubt in my mind regarding his competency and knowledge regarding these medications. To my knowledge, he has had no restrictions placed upon him and is a highly-regarded and well-respected Optometrist in Arizona.

I see absolutely no reason why Dr. Wogalter should not be able to continue practicing using TPAs in Nevada as he has, and continues to, for many years in Arizona.

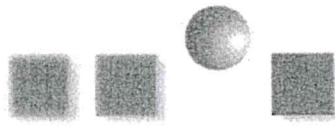
He will be a wonderful addition to the Optometric Community in your state. Please call if you have any questions.

Respectively,

A handwritten signature in dark ink, appearing to read "Lorne Schlecht MD", is written in a cursive style.

Lorne P. Schlecht, MD
Phone: (928)855-9477

LPS/cc
DD: 09/14/2017 DT: 09/14/2017



WELLISH VISION INSTITUTE
LASER & SURGERY CENTER

September 13, 2017

To: The Nevada State Board of Optometry

From: Dr. Kent Wellish, M.D.

Re: Dr. Kevin Wogalter, O.D. Therapeutic Pharmaceutical Agent Certification

I have the pleasure of knowing Dr. Kevin Wogalter for over 13 years. Within that time, I have worked closely in co-managing many of his patients. I feel he has all the technical skills necessary to treat all aspects of TPA's that are allowed in the state of Nevada.

I can personally vouch for Kevin as a competent and very capable optometrist. I feel Dr. Wogalter would be a wonderful asset to the Las Vegas Optometric Community. I hope you will allow him to treat his patients using therapeutic pharmaceutical agents here in Nevada as he has done for the past 13 years in the state of Arizona.

Thank you for your consideration,

Kent Wellish, M.D.

1 4. On or about July 17, 2017, the Board served Respondent with a Complaint and
2 Notice of a Hearing for consolidated Case Nos. 17-03 and 17-05 ("Complaint").

3 5. On or about August 21, 2017, Respondent timely submitted his Answer to the
4 Complaint ("Answer") to the Board.

5 **B. ALLEGATIONS RELATED TO CASE NO. 17-03**

6 6. On six (6) separate occasions between 2011 and 2017, Respondent prescribed
7 thirty (30) Ativan (lorazepam) 0.5 mg tablets to patient S.Y. as reported on the Nevada
8 Prescription Monitoring Program Prescriber Activity Report prepared on June 1, 2017 by
9 the Executive Director ("PMP Report") and provided to Respondent on or about June 1,
10 2017.

11 7. In 2015, Respondent prescribed twenty-four (24) Hydrocodone-Acetaminophen
12 10-325 tablets, a four (4)-day supply, on one (1) occasion to patient B.P. as reported on
13 the PMP Report.

14 8. In 2011, Respondent prescribed 60 Hydrocodone-Acetaminophen ~~405~~-325, an
15 analgesic therapeutic pharmaceutical agent, in an amount presumed to last more than
16 seventy-two (72) hours, on one (1) occasion to ~~one (1)~~ patient M.S., in violation of NRS
17 636.2882(2) as reported on the PMP Report.

18 9. In 2011, Respondent prescribed 90 Dextroamp-Amphetamin 10 mg. tablets, a
19 substance not typically used to treat ocular conditions, to a patient, as reported on the
20 PMP Report.

21 **C. ALLEGATIONS RELATED TO CASE NO. 17-05**

22 10. On or about February 4, 2015, Eric Pettit visited Respondent for an examination,
23 seeking to obtain a Nevada bioptic driver's license.

24 11. Upon completing a thorough examination including a visual field evaluation, and
25 determining that Mr. Pettit's bioptic was not properly fitted, Respondent recommended
26 Mr. Pettit consult with Respondent's wife, Sandy Yesnick, a Specialty Certified Low
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1 Vision occupational therapist for fitting and functional utilization of the bioptic for driving
2 purposes, as well as a functional driving assessment.

3 12. Mr. Pettit was not provided any-sufficient information about the cost of the
4 occupational therapy services, nor was he provided a list of other similar providers so
5 he could select one independently.

6 13. Mr. Pettit believed that, before Respondent would agree to sign Mr. Pettit's
7 Nevada DMV Application for Approval to Drive with Bioptic Lenses ("DMV Form"),
8 Respondent required him to obtain Mrs. Yesnick's services.

9 14. On or about February 6, 2015, Mr. Pettit returned to Respondent's practice for
10 an evaluation with Mrs. Yesnick, bioptic fitting, and assistance in scheduling his bioptic
11 driving test, which services were provided by Mrs. Yesnick and practice optician(s).

12 15. On or about February 6, 2015, after ~~Mrs. Yesnick fitted~~ Mr. Pettit's bioptic lens
13 was fitted and he was trained ~~him~~ in its use, ~~she~~ Mrs. Yesnick reported to Respondent
14 that, although Mr. Pettit sat in the passenger seat during the bioptic driving assessment,
15 he had provided her evidence of his functional visual ability using the bioptic.
16 Respondent signed Mr. Pettit's DMV Form.

17 16. For services provided by Respondent in February 2015, Mr. Pettit was billed a
18 total of \$393.00 for refraction (92015), new patient evaluation and management Level 4
19 (99204), and visual field testing (92083); a second confirmatory visual field test was
20 performed free of charge, for which Mr. Pettit's insurance reimbursed Yesnick Vision
21 Center \$40.00.
22

23 17. Upon insurance denial for OT services, Mr. Pettit was extended a \$70.00
24 courtesy discount and billed \$160.00 for the OT evaluation (97003) and three (3) units
25 of self-care management (97535) that Mrs. Yesnick provided.
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1 18. Approximately one year later, on or about February 1, 2016, Mr. Pettit again
2 visited Respondent for an examination seeking to renew his Nevada bioptic driver's
3 license.

4 19. Upon completing a thorough examination including a visual field evaluation,
5 Respondent declined to sign Mr. Pettit's DMV Form without additional information to
6 reasonably ensure Mr. Pettit's vision and adaptive equipment would allow him to drive
7 safely.

8 20. Respondent again recommended Mr. Pettit undergo a functional driving
9 assessment and training with Mrs. Yesnick, which had not been fully completed in 2015.

10 21. Mr. Pettit declined the additional services with Mrs. Yesnick and did not return to
11 Respondent's practice.

12 22. For his February 2016 visit with Respondent, Mr. Pettit was charged \$353.00 for
13 a Level 3 established patient visit (99213), refraction (92015), and visual field testing
14 (92083) and a second confirmatory visual field test was performed at no charge.

15 23. Respondent failed to note his findings regarding Mr. Pettit's visual condition in
16 his patient records, charged unreasonable fees, and had an understanding or
17 arrangement with a person who is not an optometrist, namely the referral and billing
18 arrangements he had with his spouse to provide OT services to patients at Yesnick
19 Vision Center.
20

21 II. ALLEGED VIOLATIONS

22 A. First Claim for Relief - Therapeutic Pharmaceutical Agents

23 24. Based upon the evidence available to date, the Executive Director alleged^{ed}, for
24 this matter and not for any other purpose, including any subsequent civil action,
25 Respondent has violated NRS 636.2882 by exceeding the authority granted under his
26 certificate to administer therapeutic pharmaceutical agents as follows:
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- 1 a. Between 2011 and 2017, on six (6) occasions, Respondent prescribed thirty
2 (30) Ativan (lorazepam) 0.5 mg tablets, a substance that is not a therapeutic
3 pharmaceutical agent as defined in NRS 636.024, in violation of NRS
4 636.2882(1) and (2), constituting 12 independent violations.
- 5 b. In 2015, Respondent prescribed 24 Hydrocodone-Acetaminophen 10-325, an
6 analgesic therapeutic pharmaceutical agent, in an amount presumed to last
7 more than seventy-two (72) hours, on one (1) occasion to one (1) patient, in
8 violation of NRS 636.2882(2).
- 9 c. In 2011, Respondent prescribed 60 Hydrocodone-Acetaminophen ~~405~~-325,
10 an analgesic therapeutic pharmaceutical agent, in an amount presumed to
11 last more than seventy-two (72) hours, on one (1) occasion to one (1) patient,
12 in violation of NRS 636.2882(2).
- 13 d. In 2011, Respondent prescribed 90 Dextroamp-Amphetamin 10 mg. tablets, a
14 substance not typically used to treat ocular conditions, to a patient, as
15 reported on the PMP Report, in violation of NRS 636.2882.

16
17 25. Respondent acknowledges that a sufficient quantity and/or quality of evidence
18 could be proffered sufficient to meet a preponderance of the evidence standard
19 of proof regarding the factual matters related to the violations alleged Paragraph
20 24(a) and (b) and demonstrating Respondent violated the statutory provisions
21 noted above in Paragraph 24 (a) and (b), but not Paragraph 24 (c) or (d).
22 Respondent and Executive Director acknowledge that, despite their attempts to
23 retrieve the same, the pharmacies' records to corroborate the alleged
24 prescriptions in Paragraph 24 (c) and (d) are no longer available, and
25 Respondent denies having patient records for either of the patients at the time of
26 the prescription or for the prescriptions referenced in the PMP Report.

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28 **B. Second Claim for Relief – Gross Incompetency and Unprofessional Conduct**

1 26. Based upon the evidence available to date, the Executive Director finds for this
2 matter and not for any other purpose, including any subsequent civil action, Respondent
3 has violated NRS 636.295(6) and (10), exhibiting gross incompetency and
4 unprofessional conduct, in light of the following:

- 5 a. refusing a patient's request for his signature on the DMV Form unless the
6 patient completed an examination with Respondent's wife, an specialty
7 occupational therapist certified in low vision;
- 8 b. failing to disclose fees associated with occupational therapy services
9 recommended and provided through Respondent's practice.
- 10 c. failing to note his findings regarding Mr. Pettit's visual condition in his patient
11 records, charging unreasonable fees, and having an understanding or
12 arrangement with a person who is not an optometrist, namely the referral and
13 billing arrangements he had with his spouse to provide OT services to
14 patients at Yesnick Vision Center.

15
16 27. Respondent denies any wrongdoing and further denies the findings of the
17 Executive Director contained in Paragraph 26; however, for the purpose of resolving this
18 matter and not for any other purpose, including any subsequent civil action if this matter
19 were to proceed to a full board hearing, Respondent acknowledges that a sufficient
20 quantity and/or quality of evidence could be proffered sufficient to meet a
21 preponderance of the evidence standard of proof regarding the factual matters related
22 to the violations alleged in Paragraph 26 (a) and (b), but not Paragraph 26 (c), and
23 demonstrating Respondent violated the statutory provisions noted above in Paragraph
24 26 (a) and (b), but not Paragraph 26 (c).

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26 27.

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III. JURISDICTION

28. The Respondent was, at all times relevant to this Stipulation, licensed as an optometrist by the Board under License Number 335, and is therefore subject to the jurisdiction of the Board and the provisions of NRS Chapter 636 and NAC Chapter 636.

IV. STIPULATED SETTLEMENT TERMS

29. The Board is prepared to put on a case based on the offenses alleged in the Complaint, and the Board is authorized and empowered under NRS 636.420 and NRS 636.325(1) to impose administrative fines between \$100 and \$5,000 for each violation and/or suspend, revoke, or place conditions on the license of Respondent for any violations.

30. Based upon the evidence available to date, the findings of the Executive Director, and the acknowledgements by Respondent contained in Paragraphs 25 and 27 above, the parties have agreed to resolve the pending Complaint pursuant to the following disciplinary terms and conditions:

- a. Pursuant to NRS 622.400, Respondent shall reimburse the Board for the cost and fees of the investigation as of September 15, 2017, in the amount of ~~One hundred Fifty-four dollarstwo hundred sixty-eight dollars and 36 cents~~ (\$~~154.36~~268.36). Payment shall be due within ninety (90) days of adoption of this Agreement by the Board. All payments in satisfaction of this Stipulation shall be made payable to the Nevada State Board of Optometry and mailed directly to the Board at P.O. Box 1824, Carson City, NV 89702.
- b. Respondent agrees to pay the Board the sum of ~~Two~~One Thousand Dollars (\$~~2~~4,000) in administrative fines for each of thirteen (13) stipulated violations of NRS 636.2882(1) and (2) as outlined in Paragraph 24 (a) and (b), for a total administrative fine of ~~Thirteen-Twenty-Six~~ Thousand Dollars

1 (\$~~1326~~,000.00) in resolution of the First Claim of Relief herein. The first
2 payment of \$~~5,200.00~~~~6,500.00~~~~2,600.00~~ is due fifteen (15) days after the
3 effective date of the Board's approval of this Stipulation, with the four (4)
4 remaining payments of \$~~5,200.00~~~~2,600.00~~~~6,500.00~~ to be postmarked or
5 transmitted no later than the 15th day of each month for the four
6 consecutive months thereafter. If the Respondent misses a payment
7 deadline, his license will be immediately suspended, the remaining
8 balance of the administrative fine will become due in full, and the Board
9 may initiate a collection action against the Respondent to collect the
10 remainder of the administrative fine.

11 c. Due to the unreliable history of PMP reporting prior to 2012, and the lack
12 of corroborating evidence due to the dispensing pharmacies' inability to
13 produce copies of the prescriptions, insufficient evidence exists to meet a
14 preponderance of the evidence standard that, in 2011, Respondent (i)
15 prescribed 60 Hydrocodone-Acetaminophen 5-325 on one (1) occasion to
16 one (1) patient in an amount presumed to last more than seventy-two (72)
17 hours; and (ii) prescribed ninety (90) Dextroamp-Amphetamin 10 mg
18 tablets on one (1) occasion to one (1) patient. Therefore, the allegations in
19 Paragraph 24 (c) and (d) related to these two prescriptions are dismissed.

20 d. For the violations outlined in Paragraph 26 (a) and (b), in addition to
21 completing continuing education required for the annual renewal of his
22 license to practice optometry, Respondent agrees to complete no less
23 than ten (10) additional hours of supplemental Council on Professional
24 Education ("COPE") approved education related to optometric
25 prescribing/pharmacology, and no less than five (5) additional hours of
26 COPE approved optometric ethics and/or practice management education
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1 related to the practice of optometry, all generally related to the actions and
2 behaviors alleged in Complaint Nos. 17-03 and 17-05, within six (6)
3 months of the effective date of this Stipulation. Information, documents,
4 and/or descriptions for the proposed supplemental education must be
5 submitted in writing to the Executive Director for approval prior to
6 attendance. The Executive Director shall notify Respondent in writing
7 within five (5) business days of receipt of Respondent's request(s)
8 whether the supplemental education is approved. Should the Executive
9 Director reject a proposed course, Respondent may appeal her decision to
10 the Board at its next Regular Meeting. Within 7 days of the expiration of
11 the 6-month period, Respondent shall submit proof of completion of all
12 supplemental education required herein to the Executive Director. Any
13 costs related to this supplemental education shall be paid by Respondent.

14
15 e. Respondent's Certificate to Administer Therapeutic Pharmaceutical
16 Agents (TPA) is hereby revoked. Respondent may not re-apply for a TPA
17 certificate before October 1, 2020, and must provide the Board with
18 evidence that he has re-taken and passed both the "TMOD" examination
19 offered by the National Board of Examiners in Optometry and the Nevada
20 Law Exam not earlier than October 1, 2017. He must also complete the
21 required 40-hour training program with an ophthalmologist not earlier than
22 October 1, 2017, and submit the documents required to obtain a TPA
23 Certificate to the Board and pay the required fee.

24
25 f. Respondent must institute a permanent practice protocol change to make
26 his patients aware that the Occupational Therapy (OT) services for low
27 vision which he recommends are optional, and are not required for
28 Respondent to complete the Nevada Department of Motor Vehicles form

1 regarding patients' driver's license suitability. Prior to each appointment,
2 Respondent must provide his low vision patients with a schedule of OT
3 services offered with the cost of each service disclosed. Respondent
4 must provide this information in a single independent document to each
5 patient. Each such patient must sign an acknowledgment that he or she
6 has read and/or understands the OT services and cost disclosure, and
7 has had an opportunity to ask questions and receive answers from Dr.
8 Yesnick directly regarding such services, the desired benefit of the OT
9 services, and the cost of the same. This acknowledgment shall be
10 maintained as a part of the patient's records. Respondent shall prepare
11 the schedule of services and costs and the acknowledgment for the
12 patient to sign, and propose the same for the Executive Director's
13 approval within 30 days of the entry of this Stipulation.

14
15 ge. Respondent agrees to offer and deliver the following refunds and restitution to

16 Mr. Pettit, as amenable to Mr. Pettit, in good faith:

- 17 i. Sincere apologies from both Respondent and Mrs. Yesnick for Mr.
18 Pettit's distress and inconvenience.
- 19 ii. A full refund for all services provided to him by Yesnick Vision
20 Center, in the total amount of \$906.00.
- 21 iii. For safety, appropriate driving telescopes for both of his eyes, at no
22 charge.
- 23 iv. To fill blind spots while driving, a "Broadview" driving mirror, at no
24 charge.
- 25 v. To see his speedometer, a "Heads Up Display", at no charge.
- 26 vi. One (1) hour of supervised drivers training on Yesnick Vision
27 Center's computerized safe driving simulator, at no charge, or
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1 reimbursement for a comparable service obtained by Mr. Pettit in or
2 near his city of residence, upon provision of receipts, within six (6)
3 months of the effective date of this Stipulation.

4 vii. One (1) hour of DMV-certified professional, behind-the-wheel, safe
5 driver's training, at no charge, or reimbursement for a comparable
6 service obtained by Mr. Pettit in or near his city of residence, upon
7 provision of receipts, within six (6) months of the effective date of
8 this Stipulation.

9 fn. Respondent shall be issued a public letter of reprimand with regard to the
10 stipulated violations and penalties or requirements contained herein.

11 31. Respondent and the Board agree that insufficient evidence likely exists to meet a
12 preponderance of the evidence standard that Respondent violated any allegations in the
13 Complaint not otherwise addressed herein, and, therefore, those allegations are
14 dismissed.

15 32. The Board agrees not to impose any other or greater remedies or fines in
16 connection with the allegations referenced in the Complaint.

17 33. The Respondent and the Board agree that by entering into this Stipulation, the
18 Board does not concede any defense or mitigation the Respondent may assert, and that
19 once this Stipulation is approved and fully performed, the Board will close its file in
20 these matters.

21 34. The Respondent understands the public records law may require this Stipulation
22 and related documents be made available for inspection. The Respondent also
23 understands that the Board may share the contents of this Stipulation and related
24 documents with any governmental or professional organization or member of the public,
25 or publish its terms in the Board's newsletter.
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1 35. The Respondent agrees that if he fails to pay the administrative fine or complete
2 the required education in the time allowed above, the Board may rescind this Stipulation
3 and proceed with a properly noticed hearing on the Complaint.

4 **V. INFORMED CONSENT**

5 36. Respondent has read all of the provisions contained in this Stipulation and
6 agrees with them in their entirety. Respondent recognizes and agrees this Stipulation is
7 the result of voluntary settlement negotiations which involved give and take, and the
8 final agreement (i.e., this Stipulation) is a voluntary compromise.

9 37. Respondent acknowledges and admits he has carefully read and understands
10 the issues and allegations in the Complaint referenced and addressed herein.
11 Respondent also acknowledges and admits he has carefully read and understands the
12 effects of this Stipulation.

13 38. Respondent is fully aware of his legal rights in this matter, including the right to a
14 formal hearing relative to the issues and allegations in the Complaint referenced and
15 addressed herein. Respondent is also fully aware he has a right to retain counsel for
16 this matter, the right to confront and cross-examine the witnesses against him, the right
17 to present evidence and to testify on his own behalf, the right to the issuance of
18 subpoenas to compel the attendance of witnesses and the production of documents, the
19 right to reconsideration and court review of an adverse decision, and all other rights
20 accorded by the Nevada Administrative Procedure Act and other applicable laws.
21 Respondent voluntarily, knowingly, and intelligently waives and gives up each and every
22 right set forth above, and as more fully set forth herein and below.

23 39. Respondent is aware by entering into this Stipulation he is waiving certain
24 valuable due process rights contained in, but not limited to, NRS 636, NAC 636, NRS
25 233B and NAC 233B.
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1 40. Respondent and the Board agree any statements and/or documentation made
2 or considered by the Board during any properly noticed open meeting (to which
3 Respondent hereby specifically waives any and all notice requirements for same,
4 whether required by NRS 241.033 or any other statute or regulation) to determine
5 whether to adopt or reject this Stipulation are settlement negotiations and therefore
6 such statements or documentation may not be used in any subsequent Board hearing
7 or judicial review, whether or not judicial review is sought in either the State or Federal
8 District Court.

9 41. Respondent acknowledges he has read this Stipulation. Respondent
10 acknowledges he has been advised he has the right to have this matter reviewed by
11 independent counsel and he has had ample opportunity to seek independent counsel.
12 Respondent has been specifically informed he should seek independent counsel and
13 that gaining the advice of independent counsel would be in Respondent's best interest.
14 Having been advised of his right to independent counsel, as well as having the
15 opportunity to seek independent counsel, Respondent has retained MARIA NUTILE,
16 ESQ. and BRIDGET KELLY, ESQ. of the law firm NUTILE LAW as his attorneys and
17 has reviewed this Stipulation with his attorneys. Respondent specifically acknowledges
18 he understands all of this Stipulation's terms and conditions and agrees with the same.
19

20 **VII. OTHER TERMS**

21 42. Respondent acknowledges no other promises in reference to the provisions
22 contained in this Stipulation have been made by any agent, employee, counsel or
23 person affiliated with the Board.
24

25 43. Respondent acknowledges the provisions in this Stipulation contain the entire
26 agreement between Respondent and the Board and the provisions of this Stipulation
27 can only be modified, in writing, with Board approval.
28

1 44. In the event the Board adopts this Stipulation, Respondent hereby waives any
2 and all rights to seek judicial review or otherwise to challenge or contest the validity of
3 the provisions contained herein.

4 45. Respondent and the Board agree none of the parties shall be deemed the
5 drafter of this Stipulation. In the event this Stipulation is construed by a court of law or
6 equity, such court shall not construe it or any provision hereof against any party as the
7 drafter. The parties hereby acknowledge all parties have contributed substantially and
8 materially to the preparation of this Stipulation.

9 46. Respondent specifically acknowledges by his signature on this Stipulation he
10 has read and understands its terms and acknowledges he has signed and initialed of
11 his own free will and without undue influence, coercion, duress, or intimidation.

12 47. Respondent acknowledges in consideration of execution and adoption of this
13 Stipulation, Respondent hereby releases, absolves and forever discharges the State of
14 Nevada, the Board, and each of their members, agents, employees and legal counsel,
15 in their individual and representative capacities, from any and all manner of actions,
16 causes of action, suits, debts, judgments, executions, claims, and demands
17 whatsoever, known and unknown, in law or equity, that Respondent ever had, now has,
18 may have, or claim to have against any or all of the persons or entities named in this
19 section, arising out the above-referenced Complaint, as well as the negotiation and
20 completion of this Stipulation.
21

22 48. In the event the Board adopts this Stipulation, Respondent agrees it may be
23 considered in any future Board proceeding(s) or judicial review, whether such judicial
24 review is performed by either the State or Federal District Court(s).

25 49. This Stipulation will be considered by the Board in an open meeting
26 (Respondent hereby specifically waives any and all notice requirements for same,
27 whether required by NRS 241.033 or any other statute or regulation). It is understood
28

1 and stipulated the Board is free to accept or reject this Stipulation and if it is rejected by
2 the Board, the Board may take other and/or further action as allowed by statute,
3 regulation, and/or appropriate authority. This Stipulation will only become effective when
4 the Board has approved the same in an open meeting. Should the Board adopt this
5 Stipulation, such adoption shall be considered a final disposition of a contested case
6 and will become a public record and will be reportable to the National Practitioner Data
7 Bank.

8 **IT IS SO STIPULATED.**

9 DATED this ____ day of September, 2017.

10
11 By _____
12 David P. Yesnick, OD
13 Respondent

14 By _____ this ____ day of September, 2017
15 William F. Harvey, O.D.
16 President, Nevada State Board of Optometry

17 **APPROVED AS TO FORM AND CONTENT**

18 By _____ this ____ day of September, 2017.
19 Maria Nutile, Esq.
20 Nutile Law
21 Respondent's Counsel

22 **APPROVED AS TO FORM AND CONTENT**

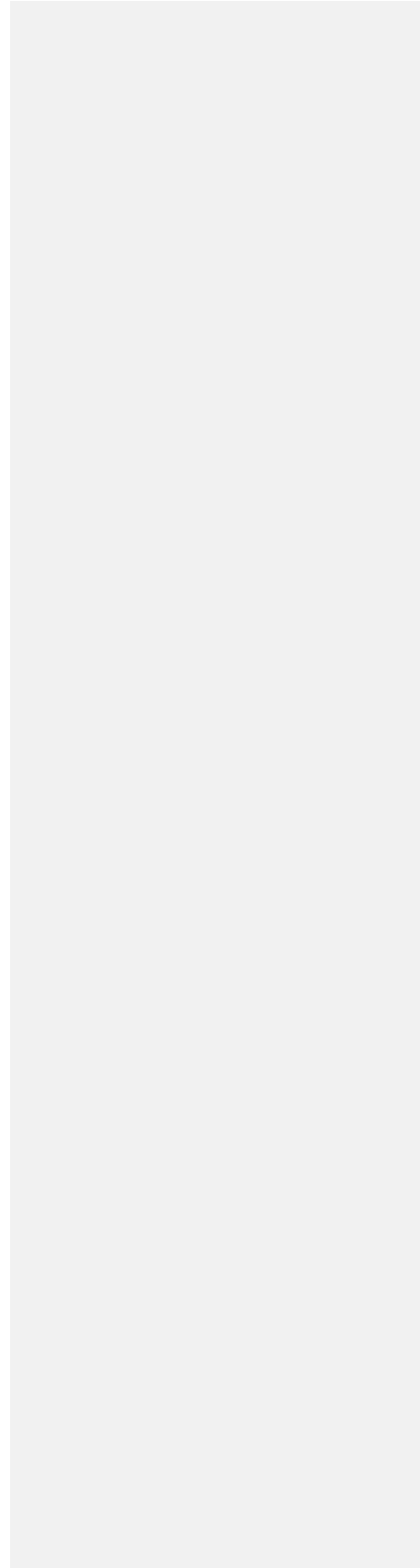
23 By _____ this ____ day of September, 2017.
24 Caren C. Jenkins, Esq.
25 Executive Director, Nevada State Board of Optometry

26 **APPROVED AS TO FORM AND CONTENT**

27 By _____ this ____ day of September, 2017.
28 Peter K. Keegan, Esq.
Deputy Attorney General
Counsel, Nevada State Board of Optometry

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DRAFT



BOARD ACTION

This Stipulation for Settlement of Complaint in the matter of David P. Yesnick,
O.D., Case Nos. 17-03 and 17-05 (consolidated) was (initial appropriate action):

Approved _____ Disapproved _____

by a majority vote of the Nevada State Board of Optometry at a properly noticed
meeting on September 15, 2017.

William F. Harvey, O.D., President _____

Chen Young, O.D. _____

Mariah Smith, O.D. _____

Sherese Settlemeyer(Public Member) _____

DATED this ____ day of September 2017.

By: Caren C. Jenkins, Executive Director
NEVADA STATE BOARD OF OPTOMETRY