

NEVADA STATE BOARD OF OPTOMETRY



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MINUTES OF THE REGULAR MEETING OF THE THE NEVADA STATE BOARD OF OPTOMETRY Tuesday November 13, 2018, at 12:30 p.m.

Between 12:15 pm and 12:45 pm, the Board participated in a training prepared by the Board Counsel regarding Processing Complaints and Hearings, led initially by Executive Director Caren C. Jenkins, and later by Senior Deputy Attorney General/Board Counsel Sarah Bradley. The Board conducted no business during this time, and the training was made available to the public both telephonically and via screen sharing online.

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1. Welcome and Public Comment. President Chen K. Young, O.D. welcomed all participants. No public comment was offered.
2. Call to Order, Roll Call. The meeting was called to order at 12:48 pm. Present were President Chen K. Young, O.D., Mariah Smith, O.D., and Jeffrey Austin, O.D. Public member Drew Johnson was absent. Also present were Caren C. Jenkins, Executive Director, Board Counsel Senior Deputy Attorney General Sarah Bradley, and Licensing Specialist Laura Adair.
- 3.* **For Possible Action. Consideration of minutes of October 16, 2018 meeting (materials attached).** The draft minutes were considered an approved on a motion by Dr. Smith, Seconded by Dr. Austin. Unanimous.
- 4.* **For Possible Action. Complaint Review**
 - a. Determination whether just and sufficient cause exists to investigate and hear complaints received (materials attached).

Ms. Jenkins reminded the Board that the two items were to be considered only for whether the face of the Complaints presented just and sufficient cause to investigate and bring the matters to hearing.

1. 19-09 No pupillary distance information on eyeglass Rx.

Ms. Jenkins offered an overview of the complaint and stated that she found no statutory or regulatory issues. She asked the Board to consider whether failing to include pupillary

distance measurements on an eyeglass prescription could be a violation of the professional conduct requirements of an optometrist. Ms. Jenkins recommended a finding of no just and sufficient cause to forward the matter for hearing.

Motion by Dr. Smith, seconded by Dr. Austin to dismiss the complaint for a lack of just and sufficient cause. Unanimous.

2. 19-11 Unprofessional conduct and improper insurance billing.

Ms. Jenkins introduced the complaint and related materials and recommended that the Board find sufficient cause to undertake an investigation and send this matter to a hearing due to the substantial information provided by the complainant.

Motion by Dr. Austin, seconded by Dr. Smith that just and sufficient cause was presented to send this matter for investigation and hearing. Unanimous vote in favor of the motion. Ms. Jenkins predicted that the hearing could take place on January 29, 2019 at the Las Vegas Board meeting.

b. Consideration of potential adjustments to current investigatory processes, funding, and reporting.

Ms. Jenkins proposed a blind assignment of a Board member to assist in the investigation of complex complaints forwarded for investigation and hearing. That member would be excluded from participating as an adjudicator at the hearing, but would provide witness testimony. In such an instance, only three Board members would be available to hear the matter.

Several smaller agencies use Board members in this manner, and the construct would alleviate the Board from incurring investigation costs that may not be reimbursable. Ms. Bradley added that several of the Boards that she has advised operate this way, and that the optometry statutes provide a mechanism for this practice.

Board members discussed the option and agreed that they would be willing to work with the staff on investigations. The Board agreed to consider implementing the system for future investigations as needed, and wished to continue the discussion as the new regulations are formulated after the upcoming legislative session.

c. Status of ongoing investigations (18-05, 18-12, 18-17, 18-19, 19-01, 19-02, 19-05), and a forecast of evidentiary hearings to be held at January 29, 2019 meeting.

Ms. Jenkins forecasted that many of the outstanding complaints will be ready for hearing at the next meeting of the Board in Las Vegas, and that the members should be prepared to be involved in a lengthy meeting that day.

5.* **For Possible Action.** Petition for Advisory Opinion or Declaratory Order, Thomas J. Gibbons, O.D., Lic. No. 121, requesting clarification whether an optometry practice may be sold to an ophthalmologist or ophthalmology group.

While the Board waited for Dr. Gibbons to join the meeting, Ms. Jenkins introduced his request for guidance whether selling his optometry practice to a non-optometrist, namely an ophthalmologist or ophthalmology group would place his license in jeopardy. The members considered the request and discussed that the current statutes do not address the sale of a practice, and that Dr. Gibbons would be responsible for the proper transfer, maintenance, and availability of his patient files under HIPAA. Dr. Young explained that another concern might arise if Dr. Gibbons intends to continue practicing after a transfer of his patients and practice to a non-optometrist, and cautioned that any optometrist working in that environment would need to be an independent contractor, free from the supervision and control of a non-optometry employer.

Motion by Dr. Austin, seconded by Dr. Smith to respond that the optometry laws do not restrict the sale of an optometry practice, but that Dr. Gibbons should be cautious not to become an employee should the practice transfer to a non-licensee ownership.

Note: Dr. Gibbons joined the meeting after this discussion, and thanked the members for their time and commended the Board and staff's diligence to assisting his and all optometrists' compliance with the laws.

6.* **For Possible Action. Executive Director's report (materials attached).**
a. Bill Draft Request & legislative planning.

Ms. Jenkins reported that she and Dr. Smith have received the initial draft of the Board's BDR, and are reviewing it, along with the office of the governor, for ministerial errors and changes. Any substantive changes will need to be requested by a legislator once the initial draft is approved. Once the final BDR becomes available, Ms. Jenkins intends to email an announcement to all licensees and post a notice on the website that copies of the BDR are available on request.

Dr. Smith commented on the BDR and the Board's request and complimented the clarity and simplicity the changes will provide if they pass the legislature. She and Ms. Jenkins are planning to call a meeting of stakeholders to discuss potential arguments for or against any provisions to attempt to resolve any conflicts before the matter is heard in committee and to make its introduction and consideration more efficient.

b. Preparation for 2019-2020 renewal season.

Ms. Jenkins showed the members a sample renewal/location card for the 2019/2020 renewal year and announced that the Board has received approximately 20 renewals already. The renewals will begin to be processed as of December 1, and Ms. Adair has done a great job of cleaning up the licensee database to make the process more efficient and

smooth. Ms. Jenkins reminded the Board that Ms. Adair will be working full-time January through the end of March 2019 per her employment offer.

c. Other reports/information. None were offered.

6. Announcements and requests for future Board consideration (No action to be taken).

The Board members asked that an agenda item be added to conduct election of officers for 2018-2019. In addition, an agenda item should be added to select a legislative liaison from among the members to represent the Board at legislative meetings.

7. Public Comment. **TELEPHONIC ONLY - no public comment was offered.**

8.* Adjournment. Dr. Austin moved to adjourn the meeting at 1:39 pm, seconded by Dr. Smith. Unanimous.

These minutes were approved as presented by the Board at its meeting on January 29, 2019.

Date: January 29, 2019

/s/
Caren C. Jenkins, Executive Director