

NEVADA STATE BOARD OF OPTOMETRY



CHEN K. YOUNG, O.D.
Board President

JEFFREY K. AUSTIN, O.D.
Board Member

Post Office Box 1824
Carson City, Nevada 89702
Telephone: (775) 883-8367
Facsimile: (775) 305-0105
E-Mail: admin@nvoptometry.org

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

MARIAH L. SMITH, O.D.
Board Member

DREW JOHNSON
Public Board Member

MINUTES THE NEVADA STATE BOARD OF OPTOMETRY REGULAR MEETING Tuesday, April 17, 2018, beginning at 8:30 a.m.

AGENDA

➤ **Welcome and Call to Order, Roll Call.**

President Young called the meeting to order at 8:30 am at the Hampton Inn and Suites in Las Vegas, Nevada.. All members present, along with staff: Caren C. Jenkins, Executive Director, Deputy Attorney General Mike Detmer, Board Counsel, and guests: Candace Herling, Esq. appearing for Dr. Youssef, Natalie Shaba, O.D., Mark Lee, O.D. and Cassandra Gyortios for Jeannette Belz & Associates..

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

- 1.* **For Possible Action. Consideration and adoption of minutes** of February 20, 2018 meeting
Dr. Smith moved to approve the minutes as presented, seconded by Dr. Austin. Approved unanimously.

2.* **For Possible Action. Evidentiary hearings, Petitions for Declaratory Orders & determinations on Complaints** (Materials may be available**).

*A. Complaint 18-03 – **Amel Youssef, O.D.**, Lic. 449 - Advertising - **Evidentiary Hearing**

For Respondent: Candace C. Herling, Esq., Alverson Taylor Mortensen & Sanders.

For Complainant/Board: Caren C. Jenkins, Esq., Executive Director, Nevada Board of Optometry.

Deputy Attorney General Sophia Long, Counsel to the Board

Executive Director Jenkins introduced Dr. Youssef's counsel, Candace Herling, Esq. of Alverson Taylor law firm, summarized the proposed stipulated settlement of Complaint No. 18-03 and recommended the Board adopt the settlement. Ms. Herling commented that she and Dr. Youssef had carefully reviewed the proposed stipulation, offered that her client already had pulled non-conforming advertising on the internet and had agreed to the terms of the stipulation, including the financial penalty and the additional education. Ms. Jenkins advised the Board that the stipulated settlement encompasses and resolves all current outstanding complaints received regarding Dr. Youssef.

Member Johnson asked for minor clarifications, Dr. Austin asked for information regarding the licensees efforts to correct the advertising, Dr. Young noted that even if a licensee hires an outside agency, the licensee is responsible for the message to the public, and Dr. Austin mentioned that future

complaints or information regarding non-compliance may cause the penalty imposed to increase substantially.

Motion by Drew Johnson, seconded by Dr. Austin to accept the stipulated settlement to resolve the complaint. Unanimous vote in favor of the motion.

***B. Complaint 18-04 – Bela Svoboda, Jr., O.D., Lic. 314 - Patient Records - Status Report after hearing**

The Board reviewed material received from Dr. Svoboda, and asked the Executive Director follow-up with the licensee to assist and clarify the requirements of the order. Member Johnson requested a copy of one of the certified letters that had been returned, bearing a postmark. Dr. Young expressed interest in the licensee's efforts to remove or change the information on his former website. Dr. Austin was perplexed why the licensee could not re-activate his telephone number. Ms. Jenkins agreed to reach out to Dr. Svoboda with a request for this information, and clarify the information the Board will need to find that Dr. Svoboda has complied with the Order.

***C. Complaint 18-16- Just & Sufficient Cause - office configuration and separation from optical**

Motion by Dr. Young, seconded by Dr. Austin that just and sufficient cause exists to forward this matter for investigation and hearing. Unanimous favorable vote.

***D. Complaint 18-17- Just & sufficient Cause - advertising and LASIK**

Motion by Dr. Austin, seconded by Dr. Smith that just and sufficient cause exists to forward this matter for investigation and hearing. Unanimous favorable vote.

***E. Petition for Declaratory Order** brought by Mark Lee, Lic. No 390 regarding propriety of prescribing and selling a new ophthalmic device.

Allergan Corporation asked the Nevada Optometric Association to request information from the Board related to optometrists prescribing and/or selling a new intra-nasal medical device known as TruTear, which claims to assist with dry eye. Dr. Lee asked the Board to clarify the statutes and regulations as they apply to such devices and others, like home monitors for intra-ocular pressure testing and other non-invasive items.

Dr. Austin stated that ophthalmic products are already addressed in statute, and are allowed. There is no potential for abuse of the TruTear device and NAC 636.55 and 636.150 allows optometrists to refer patients to similar items.

Dr. Smith moved to declare that medical devices that do not require a prescription that treat ophthalmic issues may be sold and/or prescribed by optometrists. Seconded by Dr. Austin. Approved unanimously.

3.* For Possible Action. Executive Director's report

***A.** Consideration of Mobile Optometry practice model for underserved Nevadans. Dr. Natalie Shaba presented her ideas regarding the issue, and, after significant discussion, the matter was tabled until after the Executive Director attends the ARBO conference.

***B.** Banking, Audit & Bookkeeping - acceptance of one-year audit report. Ms. Jenkins presented various materials, and members expressed concern regarding the increased operational costs of the board and other economic factors.

***C.** Proposed revised Board Policies for Board Approval - withdrawn

D. Miscellaneous reports - none

4.* **For Possible Action. Subcommittee on Statute and Regulation Review - Report and final Work Session** (by Dr. Smith and others, Materials may be available **)

*A. Review and adoption of statutory changes to be proposed to Legislative Drafters. Dr. Smith and Executive Director Jenkins went through each proposed change to NRS 636. Following the presentation and taking in all members' ideas and concerns, a final proposed statutory changes document was approved for drafting by the Legislative Counsel Bureau. Ms. Jenkins will provide reports on progress as it happens.

B. Discussion of bill introduction strategy, forming alliances with interested entities and legislator, lobbyist & community education efforts before the measure is heard. Agenda item withdrawn.

5. **Announcements and Board Member requests** for future Board consideration. None.

6.* **Adjournment.** President Young adjourned the meeting at 1:50 pm.

➤ **Public Comment.** None.

Approved by Board Vote on
July 12, 2018

/s/
Caren C. Jenkins, Executive Director