

NEVADA STATE BOARD OF OPTOMETRY



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MARIAH L. SMITH, O.D.
Board Member

DREW JOHNSON
Public Board Member

MINUTES OF A REGULAR MEETING

THE NEVADA STATE BOARD OF OPTOMETRY MEETING

Thursday July 12, 2018, at 12:00 p.m.

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1. Public Comment. TELEPHONE ONLY - No public comment was offered.
2. Welcome and Call to Order, Roll Call
President Young called the meeting to order at 12:03 p.m., and all Board members attended telephonically or via internet or both. Executive Director Caren C. Jenkins and Board Counsel, Deputy Attorney General Peter Keegan and various members of the public attended as well.
- 3.* **For Possible Action. Consideration of minutes of April 27, 2018 meeting**
Motion by Dr. Smith, seconded by Mr. Johnson to approve the minutes as presented.
Approved unanimously.
- 4.* **For Possible Action. Consideration of Complaint 18- 04 re: Bela Svoboda, O.D. Remediation Period**
 - a. Report and review of compliance with Order.
Executive Director Jenkins provided a history of communications with Dr. Svoboda and his staff. She expressed that she has sent a follow-up letter to the Respondent outlining the Board's concerns after his interim report.

Mr. Miller, Dr. Svoboda's counsel reported, with testimony of Dr. Svoboda and his employee, Debbie, that a new website has been posted on the web, but that the old website still is available online. Dr. Svoboda offered the new webpage at nneyecare.com. The old business phone outgoing message announces the new phone number. Dr. Svoboda posted signs on the doors of the old offices in Lovelock and Winnemucca, but the property owner has removed them. He had his staff try to get into the computer but is still locked out. Staff has been photocopying the files and sending them to patients, not by certified mail. Many had been returned, so no longer are they sending them certified. Over 500 have been sent,

and up to 50 more are being sent. If patients call to request their patient files, staff pulls the returned mail and forwards it to the new address. Board member Johnson was concerned about non-certified mail being a violation of HIPAA laws. The Board expressed concern that the notification process employed by Respondent may have been convenient for him, but did not comply with the Order. Many board members expressed disappointment in Dr. Svoboda's efforts to comply with the previous Order, indicating that he had not done the bare minimum to meet the requirements.

Dr. Svoboda assured the Board that, if he is able to practice optometry again, he intends to have offsite backup of any future computer files, involve more than one employee in all systems implemented and that engage an IT company to create a network for management of patient files for his current and future optometry patients. He stated that without the ability to practice, his current financial situation would not provide for such contracted services. He requested reinstatement of his licensure.

b. Determination of next steps.

A motion was made by Dr. Austin, seconded by Dr. Smith, that:

1. Dr. Svoboda's license is reinstated immediately;
2. the license is placed on probation until August 31, 2018 to allow Dr. Svoboda to earn income to allow him to both institute changes in his practice to comply with the Board's Order and provide the Executive Director with evidence of his full compliance with the Order within that probationary period;
3. that a \$5,000 administrative penalty is imposed to reimburse the Board for costs related to the complaint, hearings, investigation and monitoring of Respondent's compliance and the deadline for payment of the penalty is postponed to December 31, 2018; and
4. should Respondent fail to either provide evidence of full compliance by August 15, or fail to pay the penalty by December 31, 2018, his license shall be revoked without further action of the Board. Should he comply fully, the probation on the license shall be lifted as of the date of the Board's receipt of his full payment of the penalty imposed.

The motion passed unanimously.

5.* **For Possible Action. Consideration of Application of Huyen Nguyen, O.D. for Licensure.**

Ms. Jenkins presented the application for licensure of Huyen Nguyen, O.D. Dr. Nguyen's California license has been revoked, and the E.D. felt that the Board should review the application. Ms. Jenkins presented the statutes regulating licensure, and indicated that she had not addressed a circumstance similar to that of Dr. Nguyen during her tenure.

Motion by Dr. Smith, seconded by Mr. Johnson, to accept Dr. Nguyen's application, and, if she meets the other licensing criteria, that she be licensed to practice optometry in Nevada. Unanimous.

6.* **For Possible Action. Consideration whether just and sufficient cause exists to hear complaints.**

- a. Complaint 18-12, 18-13- Corporate structure
Motion by Dr. Austin, seconded by Dr. Smith, to direct the Executive Director to continue the investigation and bring the matter back to the Board. Approved unanimously.
- b. Complaint 18-14, 18-15- Corporate structure
Motion by Dr. Austin, seconded by Dr. Smith, to direct the Executive Director to continue the investigation and bring the matter back to the Board. Approved unanimously.
- c. Complaint 18-18- Office conditions
Motion by Dr. Smith, seconded by Mr. Johnson, to dismiss the Complaint for lack of just and sufficient cause to move it to a hearing. Approved unanimously.
- d. Complaint 18-19- O.D. behavior
Motion by Dr. Austin, seconded by Dr. Smith, that just and sufficient cause exists to move this matter forward to investigation and hearing. Approved unanimously.
- e. Complaint 18-20- Technician prescribing
Motion by Dr. Smith, seconded by Dr. Austin that just and sufficient cause exists to move this matter forward to hearing. Approved unanimously. Direction given to E.D. to recommend settlement with a \$1,000 penalty and suggest a letter of caution to technician.
- f. Complaint 18-21- Advertising
Motion by Dr. Austin, seconded by Dr. Smith, that just and sufficient cause exists to move this matter forward to hearing. Approved unanimously. Direction given to E.D. to recommend settlement with a \$1,000 penalty.

7.* **For Possible Action. Agency Financial Review and FY 2019 Budget**

- a. **Presentation of FY 2018 Financial Report (see meeting materials).**
 - b. **FY 2019 Budget for consideration, modification, and approval.**
- Motion by Mr. Johnson, seconded by Dr. Austin, to accept the FY 2018 financial report as presented by the Executive Director and to approve and adopt the proposed FY 2019 Budget. Approved unanimously.

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

A. Licensing report

	<u>Fiscal year ending 6/30/2018</u>
Active Licenses-	446
Inactive Licenses-	43
Current total licensees	488
Total Primary Locations	488
Total Additional Practice Locations	249
Total location cards	737
New licensees	44
Suspended licenses due to non-renewal	-17
Expired, previously suspended	-24
Net gain	3

COMPLAINTS

Dismissal	19	
Penalty	5	
Pending		11
Complaints acted upon (includes previously pending cases)		31

B. Bill Draft Request status

Policy Analyst in Office of the Governor has processed our BDR for drafting. We should see a first draft within 30 days. Propose that Dr. Smith and E.D. review to be certain content reflects our request, offer feedback to bill drafters, and then circulate among Board members. At next meeting, review with the public.

C. June 2018 ARBO Conference Insights

E.D. attended ARBO conference in Denver for 3 ½ days in June. She received Founder’s Scholarship and a very nice plaque. Cost to the Board was under \$125. The opportunity to learn about and discuss other states’ approaches was interesting and helpful - we do a reasonably good job! Many other states have umbrella agencies for professional licensing & enforcement, administered by executive branch with blend of general fund and contributions from Boards licensing revenues. Fewer have stand-alone agencies.

No real insights for mobile optometry other than the survey of states that we conducted. Board approved adding mobile optometry language to the BDR. Until the legislature agrees, no mobile practices may be licensed. The Board must address how to license multiple locations/mobile activity until the statutes allow for it.

D. Other reports/information.

The E.D. needs detail on how to license clinical practices adjunct to Optometry schools (application, fees) before March 1, 2019. SCCO is the only clinical program that is in compliance. All other education-related clinical locations must be issued cease and desist letters.

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

Dr. Smith requested the office’s physical location and business hours be posted on the Board website, in addition to the Board’s mailing address.

10. Public Comment.

Dr. Spencer Quinton, O.D. thanked the members for their service to the Optometry Board and to the profession.

Dr. Chen Young expressed gratitude for the services of Krystie Manke while she served the Board office as Licensing Specialist. Krystie helped to implement a number of positive changes in that position. He wished her well in her new endeavor.

11. Adjournment.

Dr. Smith moved to adjourn the meeting at 2:28 pm. Seconded by Dr. Austin. Unanimous.

These Minutes were approved by a vote of the Nevada State Board of Optometry at its meeting on October 16, 2018.

 /s/ Caren C. Jenkins
Caren C. Jenkins, Executive Director