

# NEVADA STATE BOARD OF OPTOMETRY



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## MINUTES

### THE NEVADA STATE BOARD OF OPTOMETRY REGULAR MEETING Tuesday, January 29, 2019 at 9:00 a.m.

1. **Welcome, Introductions and Public Comment.**  
President Young confirmed that the video and audio recording between Las Vegas and Carson City was operating. No public comment was offered from the North or the South.
2. **Call to Order, Roll Call.**  
Dr. Young called the meeting to order at 9:05 a.m. at the Grant Sawyer State Office Bldg. in Las Vegas. All Board members were present, along with staff: Caren C. Jenkins, Executive Director, and Laura Adair, Licensing Specialist. Senior Deputy Attorney General Sarah Bradley, Board Counsel, participated via video teleconference from Carson City.  
  
Maria Nutile, Esq. representing Dr. Mark Peller, and Dr. Peller himself, Dr. Emilie Ritter, and several members of the NV Opticians Board and NV Optometric Association were present.
- 3.\* **For Possible Action. Consideration and approval of minutes of November 13, 2018 Board meeting. [\(materials available\)](#).**  
Dr. Austin moved to approve the minutes of 11/13/18 as presented, seconded by Dr. Smith. Approved unanimously.
- 4.\* **For Possible Action. Election and Appointment of Board Officers & Liaisons.**
  - a. Election of Board President and Board Vice-President/Financial Officer  
Dr. Smith moved, seconded by Dr. Austin. to nominate Dr. Young to continue as President of the Board. No other nominations were presented. All voted in favor, none opposed. Motion carried.

Dr. Austin nominated and Dr. Young seconded that Dr. Smith to continue as Board Vice-President/Financial Officer. No other nominations, all voted in favor, none opposed. Motion carried.

- b. Appointment of Board Legislative Liaison(s). Determination of scope of authority granted to Liaison(s) and Executive Director in furtherance of AB 77 and in response to other legislative action during the 2019 Legislative Session.

Dr. Austin moved, and Mr. Johnson seconded that Dr. Smith be appointed as the Board Legislative Liaison for the 2019 legislative session, and be granted Board authority to speak on behalf of the Board regarding changes to AB 77. The Legislative Liaison is encouraged, whenever possible, to seek input from one other Board member via telephone before agreeing to changes, but if not possible, has ultimate decision-making authority. Ms. Bradley requested this motion be revised to include authority to speak and make decisions regarding any legislative issues that come up during the session. Dr. Austin and Mr. Johnson agreed to modify the motion. All voted in favor of the revised motion, none opposed. Motion carried.

- c. Resolution in support of Dr. Smith's application for ARBO Founder's Scholarship.  
Dr. Young proposed and read a letter nominating Dr. Smith for a scholarship to attend the ARBO Annual Meeting in June 2019 through the John D. Robinson Founder's Award fund. Dr. Austin moved that the board approve the letter and send it to ARBO right away, Mr. Johnson seconded, all voted in favor, none opposed. Motion carried.

- 5.\* **For Possible Action. Board Consideration of Complaints.** Conduct hearings and consider evidence and/or settlement proposals to determine existence of any violations, impose sanctions as appropriate.

- a. Complaint No. 18-19, Helen Knisley, O.D., alleged employee misconduct.  
Director Jenkins noted that although the complaint named Dr. Knisley, she provided no services to the Complainant that day. Her colleague, Dr. Schore treated the Complainant. The complaint alleged that the optometrist was intoxicated, stumbled, bumped into the patient, and failed to treat the patient properly. The Executive Director determined from a site visit and interviews that no alcohol was involved, but Dr. Schore had been involved in an auto accident for which his treatment caused him to be unsteady at times, and that he may have stumbled or bumped into the patient.

Director Jenkins recommended that the complaint be dismissed for lack of substantial evidence to support the allegations of practicing optometry while intoxicated or unprofessional behavior. Dr. Smith moved to dismiss the complaint for insufficient evidence, and Mr. Johnson seconded. All voted in favor, none opposed. Motion carried.

Director Jenkins recommended that the board move to Item 5(d) because its outcome may affect Item 5(b).

d. Consolidated Complaint Nos. 19-01 & 19-12 **Erin O'Brien, O.D., Thuytien Mai, O.D., and Mark Peller, O.D.**, alleged optometrists co-mingled operations with Nationwide Vision Centers' corporate interest, other misconduct.

NOTE: Investigatory Board Member Drew Johnson was excluded from the deliberations and vote on this agenda item.

Director Jenkins presented an overview of the Accusation and Notice of Hearing and recommended that the board ask Respondents' counsel, Maria Nutile, Esq. and Respondent Peller to come to the table to assist its determination whether an evidentiary hearing will be required.

Dr. Young swore in the witnesses. Ms. Nutile stated that the laws vary in each state regarding professional health practices. She stated that in 2016 when Nationwide Optometry of Nevada was being formed, both she and Dr. Peller contacted the board for guidance, but neither received a response. Louis Ling, Esq., Board Counsel at that time offered some information about the structure and management of optometry practices.

Ms. Nutile had been retained to appear at this hearing just three weeks before the meeting. She recently began working with Director Jenkins to address certain administrative issues. Ms. Nutile confirmed that Dr. Peller's leases, agreements, accounting funds, medical records, etc. are now all separate from Nationwide Vision Center in compliance with NV law. Business licenses are still pending, but all other overlapping authority has been brought into compliance and there has been no compromise in patient care.

Ms. Nutile also noted some other administrative irregularities in other practices, e.g., no O.D. name posted on the front door. She suggested that all optometrists periodically review their practices for administrative compliance regarding signs, agreements, advertising and separate spaces, as the laws and their application demand constant oversight.

Ms. Nutile requested the Board take no disciplinary action against Dr. Peller but suggested an amnesty or moratorium period on all discipline for 60-90 days until further information and education can be disseminated regarding ownership, separateness, and advertising requirements. She offered to assist in that effort for the benefit of all licensees.

Dr. Peller made a statement to the board, acknowledging that that mistakes were made in the establishment of his Nevada practice, however he did not intend to circumvent or avoid the rules, and at no time was patient care or his professional autonomy ever compromised. He supports the board's efforts to enforce its statutes and regulations. He already has made numerous corrections and will continue to work with the board on compliance issues. Dr. Peller asked that the allegations against his employees, Dr. O'Brien and Dr. Mai, be dismissed.

The Board, after discussion, tabled the complaints involving Dr. Peller's business and decided to delay holding a hearing for at least 4 months. The Board encouraged other O.D.s and the public to offer comment on this matter in the interim.

Dr. Steve Girisgen asked several questions about Dr. Peller's Administrative Support Agreement with Nationwide Vision (stated on Page 136/Section 3) - Whose employees are collecting the examination fees, and does this further blur the lines of separation of the two business entities? Nationwide Vision uses patient information forms bearing its own name and logo, not Peller P.C., causing confusion. Why is Peller PC listed under Refac Holdings on the organizational chart, as it is a separate business entity?

Ms. Jenkins commented that since the complaint was served, Dr. Peller and Nationwide have resolved many of the problems identified, however Dr. Peller's circumstances are not unique, and many practices have pervasive issues of which the Board may be unaware. Every licensee probably has some non-compliance issue.

In light of the Board's efforts to bring its statutes up to date, Director Jenkins suggested that the amnesty period be put into place during which the staff could reach out to educate licensees, and that the Board might not act on the complaints on today's agenda until May or June 2019. In the meanwhile, staff can reach out with an educational campaign, similar to how PMP compliance issue was handled.

Dr. Young stated that the board encourages efforts to offer access to optometry care to Nevada residents and applauded Dr. Peller's efforts to make improvements/corrections. He added that AB77 would be helpful in clarifying some of the requirements.

Dr. Austin moved to dismiss Complaint Nos. 19-01 and 19-12 and accept Ms. Nutile's offer to assist with education and administrative/operational compliance. Motion was seconded by Dr. Smith. Dr. Austin explained that after the reprieve period, the Board could investigate Dr. Peller to assure his compliance and bring a new complaint if necessary. Approved unanimously. (Investigatory Board Member Drew Johnson excluded from deliberations and vote.)

b. Complaint No. 19-02, Emilie Ritter, O.D., alleged optometrist co-mingling operations with U.S. Vision corporate interests, other misconduct.

Dr. Young swore in of Dr. Ritter, who appeared without counsel. Director Jenkins suggested that the board first consider only Dr. Ritter's exam practices and prescription pad issues, and then the operational issues.

Director Jenkins stated complainant is a dispensing optician who had worked at the optical next to Dr. Ritter's office, and who alleged multiple violations of NRS 636. Director Jenkins conducted an investigation, and engaged in discussions with the US Vision team Regional Manager. The visit confirmed that Dr. Ritter posted her name/office hours, erected office cubicle partitions to block views into the exam room from the store, and corrected her printed Rx pads, which are now in compliance and correct. The US Vision and JC Penney involvement in Dr. Ritter's practice remains questionable. The complaint alleged that Dr. Ritter had shortchanged eye exams, and had some issues with her eye exam practices.

Dr. Ritter stated she has been practicing since 1988 without any disciplinary actions. Dr. Ritter said she took an active role to rectify any issues in her practice. Dr. Ritter believes that Mr. Healy's complaint is malicious. She stressed that patient care was not compromised at any time.

Director Jenkins then called witness Mr. Eric Healy, who was sworn by Pres. Young. Mr. Healy stated that there were multiple complaints, up to 10 per month, that patients were not receiving tonometry readings or refractions, and that Dr. Ritter was only using the autorefractor. He was taking the patients' payments; they were upset and did not want to pay for their exams. In addition, because the pressures were not written on the exam forms, he assumed that the patient's pressures had not been read. He was instructed by the Regional Manager to pay any refunds out of Dr. Ritter's fees. He said that the patients who wished to keep the exam within JC Penney were referred to their other locations.

Mr. Healy also expressed HIPAA concerns for JC Penney and Dr. Ritter. Mr. Healy testified that patient insurance information was left in unlocked drawers that the ones that are locked are with a decorative chain that can be easily broken and removable with a light tug. He stated much of the patient information was just tucked away in Tupperware-style drawers underneath desk; all of it very easy to access. The actual key to Dr. Ritter's office and patient files was kept in this drawer completely open to the public.

Director Jenkins asked Mr. Healy if he brought up these issues with JC Penney. Mr. Healy responded that he had; for two years.

Board Member Drew Johnson asked Mr. Healy if he knew how many patients Dr. Ritter referred to an M.D or ophthalmologist in a given month. Mr. Healy responded that depending on the patient, about 2-10. Dr. Austin asked if he directed any patients to bring their concerns to the Board of Optometry. Mr. Healy responded that he started asking patients about a year ago to bring up their complaints with the board. Director Jenkins confirmed that no complaints had been received.

Dr. Austin commented that it is important to note when the photos had been taken, and that the tonometry machines always look like they do on the photos after the exam and not before.

Dr. Young asked Mr. Healy if he complained to the manager and if so, did manager complain to corporate? Mr. Healy responded that he had multiple communications with the manager about patient complaints, and talked with regional manager nearly every day. He reminded Dr. Ritter to take her time with patients and go over everything. It was the staff's duty to remind Dr. Ritter to slow down and do thorough exams.

Mr. Healy responded that staff has open access to records. Mr. Healy was collecting both exam and dispensing fees. Typically, the patient checks in; the Dr. takes the patient to the exam room, conducts the eye exam, returns with clipboard with Rx, and hands Rx to staff.

Mr. Healy confirmed that he was terminated, stating that they cited insubordination for not getting along with the new manager who was there. Mr. Healy stated that the general manager has fielded many complaints regarding Dr. Ritter.

Dr. Ritter gave details on what she does during exam, including what instruments used, tests performed, and method of charting. She explained that exam files are always in a locked cabinet and the front office has no access; it is not true that they are in front office. She has personal laptop; billing and insurance separate. They take credit cards and she has a management fee arrangement with J.C. Penney. Most of the people use JC Penney card. She has always had a receipt pad. She had no knowledge that an insurance company had to refund any of her patients.

Dr. Ritter does not use EHR and handwrites her exam notes. She has had issues with hands from her prior work experience working in a fast-paced environment, but that she had been told to slow down. Most of the time she does the Goldmann because of patient preference, that most are HPN who are seen for medical reasons, do not wish to have the drops, and will often make a note that they see an M.D.

At the suggestion of Member Johnson, the board agreed to direct staff to investigate patient records to determine whether there is sufficient evidence to back up online reviews regarding incomplete exams. Dr. Ritter agreed to have a review of her records.

Director Jenkins provided

Handout regarding patient/payment agreement with JC Penney for services provided. Pg. 51 "Hand to the Dr. Of Optometry". Pay period calendar, remuneration from gross revenues. Pages 48-50 License Agreement with JC Penney Optical. AKA US Vision. - sublease of space, monthly fee, licensing of use of equipment and what used for, insurance providers/liability policy. One year terms for licensing agreement. Auto renewal unless notice of intent to terminate or modify.

Dr. Ritter made a closing statement. Director Jenkins recommended issue regarding physical separation/posting of signs issue be deferred. Dr. Smith commented the alleged HIPAA violations are difficult to determine as both parties voiced opposite opinions. Dr. Smith and Dr. Austin believe the burden of proof has not been met, that there is no preponderance of evidence regarding allegations.

Dr. Smith moved and Dr. Young seconded 1. and 2. below, all were in favor, none opposed. Motions carried.

1. Regarding violation #1, Motion to Dismiss for lack of evidence, with the option to review patient records.
2. Regarding violation #2, Rx pads; violation can be dismissed. Dr. Young confirmed that this did not compromise patient care and corrections have been made. In light of this, the Board proposed a \$100 fine and not more than \$200 in recouping fees for the hearing (\$300 total).

Board dismissed violations #3-7. Educational campaign will be done to inform licensees during amnesty period to ensure compliance.

c. Complaint No 18-17, Erik Brooker, O.D., alleged optometrist advertising as LASIK surgeon.

Director Jenkins gave summary regarding the complaint alleging that that Dr. Brooker is advertising as a Lasik surgeon and various other advertising violations of NRS 636.

As Dr. Brooker was not present, Ms. Bradley confirmed that per NRS 622A 350, in order for the board to proceed in Dr. Brooker's absence they need to prove proper legal notice before the board can make the determination that all findings have been proven.

Director Jenkins confirmed that Notice of Complaint with Affidavit signed by Laura Adair had been sent to Dr. Brooker via U.S. mail to his mailing address on record on 10/22/2018 regarding hearing scheduled for decision on 1/29/2019. Those documents were provided in the meeting materials. The Board received no response from Dr. Brooker since that time and the mailing had not been returned.

Dr. Smith moved to proceed to hear the matter, Dr. Young seconded, all in favor, none opposed, motion carried, confirming that Dr. Brooker had been given proper notice.

Director Jenkins provided a photocopy of Advanced Vision Institutes' website, which included statements about Lasik surgery, Dr. Brooker's and other staff profiles, as well as "complete health checks" in their description of services performed.

Ms. Jenkins requested that the board note his absence and to act under NAC 636.570 and 622, regarding the violations alleged in the Notice of Complaint.

She stated that since the date the website was printed to be a part of the complaint, certain corrections were made, however the website now contains different misstatements and misrepresentations. Additionally, as listed in the initial website printout, Dr. Yu is no longer licensed in NV. The other two listed optometrists are licensed, but at least one no longer practices with Dr. Brooker.

Member Johnson asked if it is against regulations if an optometrist advertises but is no longer licensed in NV. Director Jenkins responded that there is no statute on point in that instance; however, the addition O.D. listings make Advanced Vision look like a more comprehensive operation than it is. Some revisions have been made to the website; however, the content on new website shows an ongoing and conscious disregard of the statute and regulations.

Dr. Austin moved to find four violations and to impose a \$2000.00 penalty/fine. Dr. Smith seconded, regarding the following violations by Dr. Brooker:

1. Respondent, through his website during the relevant time, directly or indirectly, claimed to be a doctor who specializes in advanced LASIK surgery treatments, advertised himself as a LASIK surgeon;

2. Respondent's website contains numerous references stating directly and indirectly that Respondent is qualified and licensed to perform and actually performs LASIK surgery at his Las Vegas locations, a task beyond the scope of any licensed Nevada optometrist's practice; and
3. Respondent violated NRS 636.302 (2) and (3), which prohibit circulating or publishing any misleading statement as to optometric services, method of practice or skill or that of another optometrist, as well as advertising in any manner that will tend to deceive, defraud or mislead the public. The statute establishes that such practices constitute unethical or unprofessional conduct; and,
4. Respondent violated NRS 636.295, which outlines the grounds for discipline of an optometrist, including (8) making false or misleading statements with respect to optometric services, and (10) perpetration of unethical or unprofessional conduct in the practice of optometry.

And to impose \$500 for each violation for a total penalty of \$2,000.00 according to NRS 636.420, plus recovery of costs. The Executive Director was instructed to confirm that the website issue has been resolved within 60 days.

**d. Complaints 18-05, 18-12, and 18-13** Staff recommendation to close investigation files. Director Jenkins stated that as these are complaints initiated almost a year and a half ago and recommended that they be closed/dismissed, or no longer pursued.

Member Drew Johnson moved that Complaints #18-05, 18-12, and 18-13 be closed. Dr. Smith seconded, all in favor, none opposed; motion carried.

The meeting was interrupted for a short break, reconvened per below.

- 6.\* **For Possible Action. [Assembly Bill 77](#)**. Presentation and consideration of public input and subcommittee recommendations for amendments to the agency's pre-filed bill.

Dr. Young reconvened the meeting for public comment at 1:50.

Dr. Sefir (Steve) Girisgen, optometrist, had two comments: (1) On materials page 207 on last comment regarding supervision section, he suggested that the assistant tasks be further defined and the board clarify whether the optometrist must be physically on the premises. (2) On page 2f of materials, Section 15-4 and 15-5 how can an optometrist be supervised but not be employed by physician?

Mr. Michael Grover, an optician, stated that the optician's ability to fit and neutralize lenses are necessary tasks that should remain unrestricted, and that removal of this would be a setback.

Ms. Jennifer Benavides, President of the NV Board of Dispensing Opticians, provided her written testimony and read her public comment opposing AB 77's requirement for a valid prescription for duplicating lenses, and requested that it be submitted into record. She also asked that in Section 10 – the entirety of Section 2 be stricken.

Dr. Spencer Quinton, an optometrist from Henderson, suggested language in Section 2 be simplified “any drug used for the examination” to allow for pharmaceutical agents that may come in different forms. Also he noted on Section 10, exclusions page #3 at bottom of page 207 (132), may be stricken as unnecessary.

Dr. Mark Meiers, an optometrist and previous optician and the current Secretary of the NV Board of Dispensing Opticians, read a statement and concluded that under proposed changes the board is creating a conflict.

Dr. Mark Lee noted incorrect reference in proposed amendments on Page 2, Item 1C, to NRS 636.024, which is confusing.

Jennifer Marie Seymour-Bruzven, an apprentice optician, stated the training and work hours involved in certification demand more than the board might realize. She stated that the best patient care requires a partnership between the optometrist and optical assistant or optician, but would like the ability to do the job without falling under the supervision of an optometrist.

Dr. Smith defined the term neutralizing as reading/determining a prescription from previously made glasses.

Dr. Young recognized no additional public comment regarding AB77.

Director Jenkins requested that Dr. Smith detail and harmonize the legislative changes subcommittee ideas and input received through public meetings/conversations, and provide the board the changes on which it must agree or disagree. She confirmed that the AB77 document already was approved by the board and Office of the Governor, and those changes do not need to be reheard.

Dr. Smith presented the following recommendations for discussion/input:

Section 1 regarding pharmaceutical agents, topical and oral was added at the recommendation of the Academy of Ophthalmology. Schedule II is being removed.

Section 2 – remove S, (pharmaceutical agent) typo in body. (title OK).

Section 3 – 1B – what we are calling an optical mechanic is not an optician. The intention is to allow somebody who does not have an optician license. Director Jenkins asked regarding Paragraph 3-10B where it states “without an Rx by practitioner”; was this added or is this existing language?

Dr. Smith clarified that every provision that does not have a strikethrough is as AB77 was presented. Opticians currently duplicate without valid Rx. AB77 is attempting to require a valid Rx for duplication.

Ms. Bradley commented that it is in the scope of dispensing optician to do this. Because their scope allows this, they are allowed to copy lenses without having the Rx.

Director Jenkins - does not prevent licensed optician from dispensing if valid Rx (this is AB77 add); only under extraordinary or exigent circumstances. Dr. Smith added that the current statute was interpreted to mean there is a risk to public health without a valid Rx.

Dr. Smith responded to J. Benavides, stating that the original intention was to duplicate only in exigent circumstances. In the proposed amendments, the optician's board would receive patient information and periodically report it to the Optometry board. A suggested alternative would require optician to report to Optometry Board, since the doctor has a stake in patient care. Regarding issue with warranty period, most problems are frame-based or scratches. Online retailers are supposed to be requiring a valid Rx.

Dr. Young, in response to opposition by the opticians, reiterated that the board's primary responsibility is to protect the public; AB77 cleans up language in order to match the current practice & modernize. We need to work together to assure patient's eye health & public is protected; to do that, exigent circumstances need to be reported by the optician. Dr. Young noted that half of the people in the nation with glaucoma are undetected, and 1 out of 7 is diabetic. The consumer does not know they need to have their eyes checked - they only think of convenience. We do not want to sacrifice convenience for safety. The eye exam is the least expensive part of the process, and optical facilities are now within most rural communities. Optometrists are typically nearby.

Director Jenkins noted Last line of Paragraph B on second page is typo, wil , also words prescribing within 7 days...should also be gone.

Jennifer Marie Seymour-Bruzven offered examples of extenuating circumstances that are "I want to close the sale" versus taking care of the patient. There are situations where someone who has a high Rx or during weekends, after hours needs glasses made. She has encountered these situations where either they drive off even though they cannot see well or they make a pair of glasses so they can see until an exam can be done. The opticians need to be able to make a judgment call to protect the public. It is in the opticians and the patient's interest to ensure that an exam is done, rather than neutralization. Dr. Smith stated some opticians that do not have these intentions.

Dr. Young stated it is more common now to see an optometrist office open 7 days a week even in smaller communities.

Director Jenkins stated that the term extraordinary or exigent circumstances can be made broad or narrow in the regulatory process; the Board needs hear from the opticians about what sorts of circumstances should be included in exception to the rule. Also, the mobile optometry option should put more optometrists in rural areas, making exams more accessible. Dr. Austin sees a broad definition; if glasses are broken and they need to work, this is an exigent circumstance.

Dr. Young suggested minimal language to state opticians can re-make glasses that were initially prescribed and are still under warranty. Ms. Seymour-Brusven confirmed that in her situation the warranty must be completed within 30 days; though some warranties vary.

Dr. Young stated at least half of the time there is clinical pathology, but the patient is asymptomatic. Often they do not realize they have ulcers or other problem.

Dr. Smith commented that the changes to statute set the general policies, and then regulations later define the specific, defining circumstances. Optometrists and opticians need to work closely together on this.

Dr. Smith continued:

Section – 1E – Rx of contact lenses – leave for now.

Caren noted in Section F – regarding qualifications/fitting. Initial fitting is a statutorily defined term but fitting is not. Language of fitting of contacts is contrary to what opticians are saying and currently certified to do - need to distinguish optometrist and optician's duties. Suggested that fitting could be changed to as defined in NRS 636.

Sections I-L - removing the word surgical, removing section on superficial lesions, pretty broad and optometrists are not trained. Additions/exclusions are proposed by Academy of Ophthalmology. Optometrists probably should not be doing these things anyway. Suggested we add "scrape" for cultures, lesions, etc.

No. 3 - Because opticians can be employed by ophthalmologists in other modalities such as Indian Health or other government agencies, we need to word the section to allow. Medical techs can do some things as well. "Or the affiliated medical facility" may be too broad. Dr. Mark Lee suggested as current statute allows for HMO employment, may want to consider revising language. Dr. Austin suggested "Assistant employed by an optometrist or employed by a facility or an affiliated medical provider and that a corporation is not a medical provider.

Dr. Smith - What if person who works for Lens Crafter and Dr.; they are employed by both but cannot be. Optical is not a medical facility. The language can further specify in the regulations what the intention is.

Dr. Kopolow commented that the provisions do not necessarily state that assistant has to be employed; it just says if employed by optometrist, they may perform these duties. There are two points for clarification. One could state "Any assistant should be employed by a medical provider or affiliated, etc. We do not want a person who is acting on behalf of the optometrist to be employed by just anyone. The second part would be duties to clarify.

Director Jenkins suggested wording could be "An assistant may perform these tasks when A. they are employed by either an optometrist, or B. Employed by an HMO, affiliated medical provider or affiliated medical facility providing assistance to an optometrist". You must be one of the two.

Dr. Girishgen referred to section regarding laser/Optomap is one item, has to be used in a specific context.

Dr. Smith - For Item C under #3, some have argued that there are subjective tests the patient should be able to do with the technician such as Goldmann, etc. Getting rid of noninvasive takes care of that problem. It touches the eye. Dr. Smith believes this is broad enough that we can further define it later.

Dr. Smith stated in further defining supervision it is important to define, but how can we modify the statute. Dr. Smith referred to language from the dental board.

Ms. Bradley commented she has seen other boards where they talk about direct/indirect, struggle with the term on-site. With regard to interns, is it ok by phone, etc.; it needs to be defined, needs to follow the spirit of the NRS.

Director Jenkins regarding definition of personal supervision, it clearly understood that practicing optometry via Skype would not be appropriate supervision of an optician or assistant. Telemedicine, with an assistant present would not be within of our chapter.

Dr. Mark Lee suggested just removing the word personal (under supervision). There are benefits to telemedicine and there are times when it is appropriate. The optometrist must be able to intervene in an emergency; supervision should not be able to be done from the beach. Ms. Bradley stated that the board needs to specify/define supervision under emergency. More common language could be direct versus indirect.

Dr. Mark Lee commented that personal supervision is mostly referring to teaching facilities.

Ms. Bradley stated that in telehealth section, legislature thinks it is important; however services should be of same quality/level. Most common language - direct supervision is generally on the premises, however what if doctor is not on premises. This could be defined as indirect. It helps with complaints and it makes clear that technician is trained. The board must decide if they are required to be in the room or not. If they can be somewhere they can be anywhere.

Dr. Austin suggested wording can be "Direct responsibility and control of a licensed optometrist" and define, instead of "supervision." An optometrist cannot be on the premises at all times, as it would be inefficient.

Dr. Spencer Quinton referred to NRS 630, which defines medical assistant as "person who performs clinical tasks under the supervision of .....and does not hold licensed certificate or registration.....maybe this language is too broad but could help define. Director Jenkins stated that board needs to decide if optometrist must be on the premises or not. Dr. Smith suggested we can take out physically present but can further define in regulations. Director Jenkins stated definition of emergency could be defined as within ten minutes driving distance, etc.

Dr. Young suggested that perhaps we do not need them on premises to do prep/collect data and noninvasive procedure, they just cannot perform complete/final exam without optometrist on premises, in person.

Dr. Smith - In #3, under the direct responsibility is still OK. Language will be simplified to state, "The optometrist must perform the final examination of the patient in person."

In Section 3C 636.024, section that defines optometry. Proposed addition 3E, that technician can do vision therapy/rehabilitation under optometrist.

Director Jenkins stated in Section 5, it is important to note fees the board is able to retain versus penalties/fees that need to be passed through state general fund. An automatic penalty would allow the board to impose a late fee and keep the money if a licensee fails to timely comply. Issues regarding willful intent could be addressed by the board.

Dr. Smith – Section 6 – Board needs to make sure mobile optometry clinic is owned and operated by the licensee. The personal supervision language should mirror our assistant language. Renewal needs to be done for mobile clinic as well.

Dr. Young asked if this will clarify concerns from licensees about mobile optometry, van in parking lot issue. If they are serving an underserved population, they are permitted. We will add that renewal for mobile optometry needs to be done as well.

Dr. Smith – Section 8 – changes CE requirements to be in line with other states with 2 year renewal. We are one of the highest in the country. All were in agreement with 25 CE hours.

No. 9 – to add diagnostic pharmaceutical agent.

No 10 – No changes.

No. 11 – Academy of Ophthalmology recommends that we don't grant new licensees glaucoma without certification. There were concerns and they proposed language that grants certification by endorsement. New grads would still need to get NV certification.

From same area, A-B-C – Certain ophthalmologists would like to add "anything other than open angle glaucoma to replace the language in B. This is suggested by Dr. Havins of the AMA and Academy of Ophthalmology. Dr. Austin commented that this would not limit an optometrist. Glaucoma is defined as either closed or open angle. Item C – Director Jenkins suggested we remove word appropriate and put in nonsurgical.

Dr. Smith stated that we still want our older optometrists to be certified. New proposed section regarding glaucoma is well written.

Item 12 – Provision allows board for timely notice regarding retirement/office closure. This allows board to take action regarding on any violations, even after they have closed their practice. Ms. Bradley asked if this is creating a statute of limitations.

She advises if someone was licensed 5 years ago, we can take action, we still have jurisdiction. You can report to the National Practitioner databank and any future board would have access

to discipline info; this discipline will follow them. If they are retired they still have a record of the problem. Director Jenkins stated the board needs to remind licensees just because you give up your license does not mean you are done with records responsibility.

Language should be clear “Regardless of their license status...”

No. 13 – Director Jenkins suggested the addition of paragraph allows us to deal with the enforcement of chapter 89 – HIPAA, other laws that may apply.

Director Jenkins stated violations related to optometrists including corporate formation, HIPAA, disclosure of info or org/professional entity laws is a reminder, putting in statute, even if it is outside of 636, the board still has jurisdiction.

Director Jenkins suggested wording can include “but not limited to, or related to or involving the practice of optometry, etc. Board revise/possibly add if needed.

Chapter 89 – Regarding professional entities law PLLCs and PCs, which requires license to create and limits ownership of entity to licensees. If an optometrist fails to comply this would be a violation of No 14. This is about ownership/control of corporation. separate from fictitious business licensing; We are keeping this.

No. 14, No. 1 with addition. Fictitious business cert. In reference to issue with Dr. Peller, Director Jenkins would like owner of fictitious business license to inform board of location and employees authorized to work there; otherwise she has no idea. If there is a complaint, they will remember the business. When you apply for new location, can location name/status employed/owner be added? Director Jenkins would like to make it a required field.

Dr. Austin asked why knowing practice locations and fill-ins is necessary. Director Jenkins said if a complaint is received, who would know what optometrists provided services.

Ms. Bradley stated if this is required by statute, they must provide this info. However, some doctors may not be aware of business name and may unintentionally give incorrect info. Director Jenkins stated that this simply states that if you are using a fictitious name, you must tell us what it is and where you are using it.

Dr. Smith on No. 15 – Optometrists Dr. Doug Clark and Dr. Steve Girisgen had voiced some concerns on the language regarding employment, so the board will revise to remove “or a physician in #4 and #5; otherwise language is good.

Dr. Smith on No. 16 in response to comment by Ms. Benavides regarding Rx forms, an ophthalmologist or physician can propose their language to mirror our language for a contact lens prescription.

Director Jenkins stated we can suggest to the legislative committee that all Rx for contact lenses and glasses be consistent throughout statutes, or ophthalmologists can have their separate requirements.

Ms. Bradley asked for clarification on 4-5 by removing the word physician - Does this mean an ophthalmologist cannot supervise an optometrist but they can be in a practice together? Dr. Austin – Dr. Smith – Yes, but optometry practice is separate, medical judgement is their own.

Dr. Smith on No. 16 regarding initial fitting definition - Contact Rx includes specifics that make it a contact lens Rx... EHRs do not allow O.D. to specify. Oftentimes we don't have a checkbox. We suggested to remove that language since it does not make sense for a spectacle Rx.

Director Jenkins asked if AB77 deals with the conversion of a spectacle Rx lens to a contact lens. Dr. Smith – No, we never addressed this in our statute. By law it cannot be converted without valid Rx. In looking at hands-on training areas by NLCE, they still do not have specifics for hard contacts or scleral lenses.

J. Benavides – We typically work in most cases with ophthalmologists who refer to the optometrist to have the contact lenses fitted with the optician. We have a lot of time with our GPs. Jim Morrison has testing reference info he can forward.

Dr. Smith stated the optician's website does not provide the requirement for the number of hours/training on hard contacts or scleral lenses. Ms. Benavides stated that opticians perform 100 hours including specific number of hours with understanding on multiple levels of contact lenses. Opticians do have malpractice insurance. Most of the opticians work in big box operations. Licensed opticians dispense boxes of contacts and doing the production of spectacles. She works in a practice that is a major retail organization and only has 2 doctors per week. We do have specified keratometry training with hard contact lenses, and will provide CE info on specifics of training.

Dr. Young asked how they determine when patient needs an exam if the Rx is expired.

Ms. Benavides responded that opticians have been operating in NV since 1951 and there have been no issues. She does not understand why we need to report to the optometry board when they operate separately.

Dr. Smith asked if anybody opposes getting rid of approved or not approved contact lenses.

Dr. Kopolow commented that he has a certain perspective, having been an optician, with initial fitting. What happens after that? Is that considered a re-fit or a new initial fitting? Does a change in the type of contact lens considered an optician area or an optometry area? Concerned with fitting vs. dispensing. There should be a cooperative effort, but his recommendation would be to define where fitting ends and dispensing begins. Dr. Smith stated the language does not specify if it is the 2<sup>nd</sup> or 3<sup>rd</sup> time. Dr. Young asked Ms. Benevides how the opticians define. Ms. Benavides responded only a very small percentage of licensed opticians able to have all the instruments in their practice to determine fit; They base it on the expiration date, typically 2 years. Within that validity and if they have the capability, they will take the spectacle Rx and create a contact lens for the individual. But it is not the general optician; it is someone who specializes in contacts.

Dr. Austin stated that the safeguard was that the optometrist determined if Rx is OK for optician to fit for contacts, or not. There is some disconnect on what an optician thinks is a fitting versus what an optometrist defines it as. Ms. Benavides responded that if patient is approved for contact lenses there should be a checkbox.

Dr. Young commented that there are a lot of gray areas here; some patients we write Rx for glasses because they have medical reason not to wear contact lenses. We see many contact lens complications all the time. Statutes need to specify an optometrist needs to write a separate contact lens Rx. Dr. Austin commented some opticians will convert without a directive that they cannot.

Dr. Smith suggested we word the statute as eyeglass Rx shall not be construed as approved for contact lenses unless specifically stated, so we can determine on a case-by-case basis. The EHR cannot be modified.

Dr. Mark Lee stated his instructor at Pacific was an optician. Fitting really has to do with how a lens fits on the eye, measuring the correct curve, etc. The Rx is an ongoing coordinated effort between optometrist and optician. Dr. Smith stated wording will be changed to clarify/eliminate the whole check box thing.

Dr. Austin stated when an optometrist writes a glasses Rx it specifies for glasses only, or OK for contact lenses. Ms. Benavides would like to work with board on this language. Dr. Smith would like to have further discussion with opticians board, however as this our last meeting before the legislative session, we need to make a motion on how to move forward. Opticians - NRS 637.245 has several requirements for contact lens fitting. Regarding exigent circumstances, if there is a complaint by the public it would go to the proper board. Is there a reason for a licensed optician to report to optometrist? Dr. Smith - if patients Rx has been duplicated for many years there needs to be documentation of that. Ms. Benavides suggested working on a compromise. Optician's board should regulate opticians.

Dr. Young stated optometry laws still have loophole for them to duplicate lenses. He learned early in his career that close to 50% of eyeglass lenses were being duplicated. Patients could not see because of health issues but they were still being made. J. Benavides commented that LensCrafters does not allow duplicating. Dr. Austin suggested that if the optometrist has concerns they can contact optician's board. Ms. Benavides stated law needs to make compromise regarding reproducing but they do not want to report to optometry board; Exigent circumstances happen often. Dr. Young - Dr. Austin - We can take out requirement that Opticians Board reports to Optometry Board. We can work on record keeping requirements, but still cannot accept allowing opticians to duplicate without valid Rx.

Dr. Smith summarized the main changes that were agreed to be made and moved to accept agreed upon amendments to AB77, and Dr. Austin seconded the motion. All voted in favor, none opposed. Motion carried.

- 7.\* **For Possible Action. Annual Review of Executive Director.** Consideration of employee performance, and possible adjustment to salary or other compensation of Executive Director Caren C. Jenkins. Proper Notice to employee provided.

Dr. Young thanked Director Jenkins for elevating the board's level of professionalism as well as the ability to hold licensees to follow the statutes, and complimented her great job of getting the legislative affairs effort going. Dr. Smith added that the statute revision proposals would have never happened without Director Jenkins.

The board discussed what the bonus/salary increases have been in the past and what the most appropriate options are regarding the Executive Director position. In light of the budgeted negative cash flow in the current fiscal year, the Board deferred adjustments to staff salaries until the new fiscal year budgeting when the Board can be better informed of its financial position.

Dr. Smith moved and Dr. Austin seconded a motion that the board adopt and apply whatever COLA adjustment for state employees generally is approved for July 2019 by the Governor and Legislature to Executive Director and Licensing Specialist positions, in addition to any other change in benefits approved for other state employees. Salary adjustments will be addressed in next year's budgeting considerations.

- 8.\* **For Possible Action. Executive Director's Report.** This agenda item moved to next meeting.
9. Announcements and requests for future Board consideration (No action to be taken). ***NEXT BOARD MEETING scheduled for March 26, 2019 at noon, by telephone.*** Agenda items for future meetings: consider lifting Regulatory Reprieve after public education after May; perform record review with Dr. Ritter and report back.
10. Public Comment. Dr. Young confirmed that there was no further comment from either the North or South.
- 11.\* **Adjournment.** Dr. Smith moved to adjourn the meeting, seconded by Dr. Austin. All voted in favor, motion carries. President Young adjourned the meeting at 4:25 p.m.

These minutes were approved by majority vote at the Nevada State Board of Optometry meeting on May 21, 2019.

Dated 05/21/2019

/s/  
By Caren C. Jenkins, Executive Director