

NEVADA STATE BOARD OF OPTOMETRY



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MINUTES

THE NEVADA STATE BOARD OF OPTOMETRY TELEPHONE MEETING Tuesday, May 21, 2019 at 12:00 Noon

1. Welcome, Introductions and Public Comment.
Dr. Young confirmed that there was no public comment.

2. **Call to Order**, Roll Call.
President Young called the meeting to order at 12:02 p.m. via teleconference.

All board members were present via teleconference along with staff: Caren C. Jenkins, Executive Director, Laura Adair, Licensing Specialist, and Senior Deputy Attorney General Sarah Bradley, Board Counsel.

Also present: Dr. Eric T. Brooker, Dr. Robert Pearson, Sagar Raich, Esq. of Raich Law PLLC regarding Complaint No. 19-16, and Jeanette Belz of JK Belz & Associates.

3. ***For Possible Action.** Consideration and approval of the **minutes** of January 29, 2019, February 7, 2019, March 5, 2019 and March 26, 2019 Optometry Board meetings.
(Materials provided)

Dr. Smith requested corrections of certain spelling errors to the following minutes from 1/29/19: In summary from January meeting page 18, Dr. Smith's asked to clarify comment

for No. 15 as it did not make sense, and on No. 16 regarding Rx forms; ophthalmologist or physicians can propose their language to mirror our language for contact lenses prescription. On Jan. 29 meeting minutes regarding 18-17 complaint, it stated affidavit was sent to Dr. Brooker on 10/22/19, but it should be 10/22/18.

Dr. Austin moved to accept meeting minutes as presented with changes/corrections proposed by Dr. Smith. Dr. Smith seconded, all in favor, none opposed, motion passed.

4. ***For Possible Action.** Discussion of optometry-related measures in the 2019 Nevada **Legislative Session**, and planning for implementation of the same and preparation for the review and modification of NAC Chapter 636. (Materials provided.)

Dr. Smith discussed the document presented to Assembly Commerce & Labor. Several changes were made to satisfy the legislative committee. The board agreed to drop NRS 89 and 602, which is professional entities and compliance with Fictitious Business names with counties.

Dr. Smith noted the other changes in the document including glaucoma certification by endorsement. The NPI database will be used to see whether the applicant had any action. The board agreed to allow opticians to carry out dispensing as they have been historically. The board was asked to remove changes to injunctions.

Dr. Young asked Ms. Jenkins whether the changes create any conflicts with other statutes or health professions.

Ms. Bradley responded that injunctions are not a common occurrence. If they are practicing without a license, it is presumed to cause damage. If person is not stopping with un-licensing activity, the board cannot take action.

Ms. Jenkins presented a spreadsheet of matters that are pending that may impact our practices. Dr. Smith stated that a Work Session is scheduled for 5/22.

5. ***For Possible Action.** Financial Reports and Budgeting. (Materials provided.)
 - A. Consideration and approval of **2018 Audit** Report.
 - B. Consideration and approval of **2018-2019 Budget** Report to date.
 - C. Consideration and approval of **proposed FY 2019-2020 Budget**.

Ms. Jenkins stated the draft audit report for last FY has finally been sent to us. One of the major noncompliance issues was that the audit was completed late. The main outcome is that auditors have not uncovered any issues such as improper spending, etc. Most of adjustments and corrections were very minor. As with last year, QuickBooks has made recordkeeping more transparent and easier to track and auditors can access anything they would like. There were no compliance issues under the government auditing standards as a result of their review. Their one area of finding was the period that it took the board to complete the audit. Ms. Jenkins recommended board to approve audit report for submission to the Legislative counsel for final reporting.

Dr. Young commented that board policy require as 13-month surplus but there is no law requiring this. He asked Ms. Bradley if other boards have this requirement and asked what the appropriate amount would be.

Ms. Bradley responded that the Executive Branch wants all boards to come up with their own policy for reserves on a case by case situation. Their concern is that licensees may be charged too much just to provide security for the agency. Also she stated the Dept. of Administration will provide some guidance on this.

Dr. Young added that we also need reserve in case there is any kind of litigation. Ms. Jenkins stated that the board had not been participating in the required state tort claim fund, but recently paid a very nominal annual premium to have general liability insurance through the fund. Ms. Bradley stated that complaints can take money and time and the board should review and come up with an appropriate reserve amount.

Dr. Austin moved to accept audit and refer it to the LCB. Dr. Smith seconded, all in favor, none opposed. Motion carried.

Ms. Jenkins summarized the Quickbooks management report handout as of May 13; there are still 8 weeks to operate in this FY. The board's income for the fiscal year has been \$217,061.76. We do not expect any significant additional income for this year. The board will have more than adequate income to pay for the expenditures for the remaining year. The report contained a list of vendors and payments. Ms. Jenkins summarized budget for next year.

Dr. Young commented that during the legislative session, perhaps the board should have a lobbyist on retainer to track optometry related bills.

Ms. Jenkins stated that while we are proposing changes, having an outside perspective is extremely valuable and having a lobbyist or person contracted to facilitate the movement of proposed legislation is not uncommon.

Dr. Young asked if a lobbyist will be required to do the upcoming regulations.

Ms. Bradley responded that many boards do have lobbyists who are paid a smaller fee year round to spread out the costs and can help with the board during the session if needed.

Mr. Johnson asked Ms. Jenkins to research two options for the next meeting: the cost of having a person on retainer throughout the year vs. during the session.

Ms. Jenkins asked the board to consider and approve the preliminary report of the 2018-19 budget for the year end. This will need to be provided with the documents to the auditors before 6/30.

Dr. Smith moved to accept the current year budget report, Mr. Johnson seconded, all in favor, none opposed. Motion carried.

Ms. Jenkins asked the board to review proposed budget projections for next fiscal year. If renewals are done every two years as of February 28, 2020, our income numbers will be significantly higher, but this can't be presumed as the session is not yet over. Fees cannot yet be set until AB77 is approved. Wages assumed a 3% cost of living adjustment granted by the Gov. to state employees. A 5% step increase for Exec. Dir. And Lic Specialist are proposed and Licensing Specialist position would be to enlarged to 30 hours per week throughout the year., All licensing related duties will need to be updated and modified. We are projecting \$20,000 net income next FY even with change in wages.

Mr. Johnson commented that if the board went with a two year license renewal cycle, it will only be better as some of the costs may decrease slightly and fees could be increased such as with mobile optometry and glaucoma license by endorsement certificate fees. Dr. Smith stated that it was brought up during the session that some boards with two year renewal cycles have had budgeting issues. Dr. Smith asked Ms. Bradley how COLA is handled with Executive Director. Ms. Bradley responded that it is generally up to the board to accept recommendation and update the budget to reflect that.

Dr. Young asked if the surplus is a positive or negative thing. Dr. Austin thought it was a reasonable amount. Ms. Bradley stated that she does not think the surplus is excessive.

Dr. Austin moved to approve proposed FY 2019-2020 budget, to have a review of the budget at the July board meeting after session is over and to make adjustments accordingly. Dr. Smith seconded, none opposed, all in favor. Motion carried.

6. ***For Possible Action.** Consideration of **Complaints.**(Materials provided)

A. Complaint No. 19-16 - Proposed Stipulated Settlement and Order.

Ms. Jenkins stated that Dr. Pearson is a long time practitioner and has no record of discipline. As he is not an email user, he has routinely faxed his fill-in dates on or after the date the fill in has occurred. The board recommended a minor administrative penalty of \$250 and no record of discipline to address Dr. Pearson's practice.

Mr. Raich, Dr. Pearson's attorney, had no comments, stating that Dr. Pearson has agreed and understands the NRS requirement 636.420 and agrees to pay the fee and continue to practice in good faith.

Ms. Bradley expressed concerns about board imposing a penalty but no record of discipline. It should be either dismissed with no action or you take action and it is then public discipline.

Dr. Young stated that as there has been no previous discipline and he has self reported, the complaint could be dismissed without action. A reminder could be sent as part of the education.

Ms. Jenkins suggested that the board revise administrative action regulations in the future.

Dr. Austin made a motion to dismiss Complaint 19-16 without action. Dr. Smith seconded, all in favor, none opposed. Motion carried.

A letter will be sent to confirm the complaint was dismissed, with a reminder in the letter and perhaps newsletter regarding fill-in requirements.

B. Complaint No. 19-18 - Just and Sufficient Cause Determination.

Ms. Jenkins summarized the complaint regarding patient's eyeglass prescription. She recommended the board consider whether there was a violation of professional conduct/competence when a single cataract was detected and the patient was giving an Rx for glasses, when another optometrist found cataracts in both eyes and recommended surgery vs. glasses. Dr. Austin stated it is common practice to offer glasses if cataract is not too severe. He thinks the first optometrist's actions were appropriate. He added if that is not adequate then you can proceed with other treatment. Dr. Smith agreed and added that a cataract condition can change within a matter of weeks.

Dr. Smith made motion to dismiss regarding Complaint 19-18, that there was not just and sufficient cause to proceed to an investigation and hearing. Dr. Austin seconded the motion, all in favor, none opposed, motion carried.

C. Case No. 18-17 - Petition for Rehearing, followed by Rehearing, if Petition granted.

Ms. Jenkins summarized Case 18-17, decided at the last board meeting, which held Dr. Brooker in violation of various statutes. Dr. Brooker did not formally respond to the complaint and did not appear at the hearing at last board meeting. He requested appeal and Ms. Jenkins deferred to the board to make the determination. Ms. Jenkins clarified that a letter from the web developer, which stated an employee had posted the website and in learning that Dr. Brooker was not happy with the unauthorized revisions, the employee was terminated. This letter was received and presented at the first board consideration, but no evidence or statements were provided at last meeting.

Mr. Johnson stated that Dr. Brooker was given plenty of time to respond, but did not seem interested in defending his case.

Dr. Brooker, in response to his request for a rehearing, stated he responded to the complaint early on and thought this matter had been resolved. He stated he misunderstood the process and did not realize he was supposed to present evidence. He asked for some additional time to present his case, as he has not had any prior violations.

Dr. Smith made a motion to offer Dr. Brooker a rehearing, seconded by Dr. Austin. Mr. Johnson opposed; motion carried.

Ms. Jenkins suggested that the board place a hearing on next meeting agenda for 6/25 and offer Dr. Brooker the ability to appear telephonically or by videoconference. Ms. Bradley suggested to Dr. Brooker that he submit evidence prior to the meeting. Dr. Brooker stated that he will make himself available on that day.

Ms. Jenkins will conduct a Doodle poll regarding the meeting dates for the next fiscal year.

7. Announcements and requests for **future Board consideration** (No action to be taken at this meeting). **NEXT BOARD MEETING is scheduled for June 25, 2019 in person in Reno or Carson City.**
8. **Public Comment.** There was no public comment.
9. **For Possible Action.** Adjournment.

Dr. Smith made motion to adjourn at 1:34 p.m., seconded by Dr. Austin.

These minutes were approved by majority vote at the Board meeting on June 25, 2019

_____/s/_____
By Caren C. Jenkins, Esq., Executive Director