

NEVADA STATE BOARD OF OPTOMETRY



REVISED MINUTES OF LIVE AND TELEPHONIC PUBLIC MEETING

**at the Grant Sawyer State Office Building,
555 E. Washington Street, Suite 2600/2450, Las Vegas, NV**

March 24, 2022

and continued April 4, 2022

- 1. Call to Order and Public Comment.** President Mariah Smith, O.D. opened the telephonic meeting at 9:41 a.m. and asked for public comment. No public comments were offered.
- 2. Roll Call.** President Mariah Smith, O.D., Vice President, Jeff Austin, O.D., Stephanie Lee, O.D., and Drew Johnson were all in attendance. Also present were Executive Director Caren C. Jenkins, Board Counsel Senior Deputy Attorney General, Sophia Long, and Licensing Specialist, Nancy Padilla. Public attendees included NOA Executive Director Terri Ogden, and Spencer Quinton, O.D., among others.
- 3. Consideration and approval of the proposed minutes of the January 27, 2022, Board meeting.** All members having had an opportunity to consider the proposed minutes, Mr. Drew Johnson moved, and Jeff Austin, O.D. seconded the motion to adopt the minutes without correction. Unanimous passage.
- 4. Request for authority by Executive Director to stipulate to impose certain administrative penalties for violations, particularly those uncovered during 2022 renewal period:**
 - A. Failure to timely change practice address, propose \$100 penalty plus regular \$25 filing fee.
 - B. Failure to timely add a practice location, propose \$200 penalty plus regular \$200 filing fee.
 - C. Failure to timely register Fictitious Business Name, propose \$200 penalty plus regular \$75 filing fee.
 - D. Other violations uncovered at renewal.
 - E. Failure to respond to Board requests for information regarding in the above violations and/or to correct violation within a reasonable time after notice, propose additional

\$500 penalty.

*At the May 19, 2022, meeting, the Board directed revisions to the already approved minutes of March 24, 2022 to provide more detail regarding changes to Board Policy #6. Those details, accepted by the Board on July 21, 2022, are incorporated as 4. A., B., C., and E above.

Mr. Johnson moved to adopt the proposed stipulated administrative penalties listed and gave authority to the Executive Director to provide notice of the violation to the licensee and impose the penalty if the licensee doesn't remedy the violation within 30 days. Dr. Smith seconded the motion. Unanimous passage.

5. Discussion of Potential Changes to Legislation, Regulation and Policy.

A. Legislative proposal 2023 – Discussion of Potential BDR and regulatory changes to optometry laws.

The following proposed legislative changes were removed from BDR consideration:

- 2-year expiration date for eyeglasses in conjunction with prohibiting opticians' reproduction of glasses without valid Rx. The Dispensing Opticians Board voiced opposition. Public member Drew Johnson would still like to encourage optometrists to write glasses prescriptions with a 2-year expiration within a certain age range and without other health conditions.
- Temporary or provisional license while pending credentialing with insurance. This is an issue for the optometrist and the insurance company. This is not a public safety concern.
- Remove opioid continuing education requirement for renewals. This is a Board of Pharmacy law that we are unlikely to get exempt from.
- Rolling of Continuing Education taken to be accepted for following year's renewal. This is too difficult to track for Licensing Specialist. Need hard dates.
- Technicians refracting: The basis of the discussion was that the technician might be able to do a preliminary refraction with the final examination being performed in-person by the optometrist. No change in statute/regulation language needed.
- Optometrists allowed to be employed by Ophthalmologist: Independent contractor must pay fair market value to ophthalmologist for subletting space. Dr. Austin voiced concern about the autonomy of the optometrist in an employee-employer relationship, and the ability for the Board to follow up with complaints when the optometrist is being directed by the employment of an outside party. It was also discussed that an independent contractor must pay fair market value to ophthalmologist for subletting space.
- Reduced licensing renewal fees for veterans. The favor leaned towards reduced initial licensing fees (see below).
- Altering the language to include subcutaneous injections or be broader to allow for future medication developments: Dr. Austin felt that, given our recent statute overhaul, altering this language would elicit opposition from the Academy of Ophthalmology, and the Board decided to not pursue this at this time. After discussion, it was agreed that nasal sprays would still be permissible with our current language as they are topical to the nasal mucosa.
- Inclusion, diversity, and equity: sponsoring someone who graduated from non-

accredited optometry school to take the NBEO exam. The Board discussed this, and while there is interest in making it more accessible to get a license in the States after having extensive training abroad, we are certainly not the first to receive a request like this. The Board will consult the other state affiliates of ARBO to see if there is any other jurisdiction with alternative paths or ideas. The Board also agreed that students who graduated from an optometry school that was in the process of getting accredited, and the accreditation occurred after the candidate graduated, would still qualify as graduating from an accredited school as the accreditation applies retroactively to those students who were there during the accreditation process.

- Vision insurances limiting access to optical lab. The NOA will be pursuing this.
- Remove post Continuing Education exam requirement: COPE has been changing their guidelines with COVID, and they may continue to change in the future. If COPE decides to not require a post-CE test for non-live CE, then a test might not even be provided. We will hold on making this required by statute.

The following legislative changes were accepted for inclusion in the 2023 legislative BDR:

- Supervision of optometry school students working in clinical practice.
- Reduced initial licensing fees for veterans.
- Executive Director must provide reason to complainant when rejecting a Complaint.
- Make Substitute Optometrist fees more equitable.
- Require Optometrists to conform to Chapter 89.
- Consider Optometrists as 'medical director' holding CLIA waiver under NAC 652.155
- Reduce barriers to diversity/inclusion: expedited process to license military spouses.
- Define Telemedicine scope of practice and guidelines.
- Require Optometrists to report discipline to the Nevada Board after licensure.

B. Proposed revision of Board Policies regarding approved CE, among others.

Dr. Stephanie Lee made a motion to accept the proposed policy changes so the Board Policies will read as they appear below. Dr. Smith seconded the motion. Motion passed unanimously.

CE PROVIDERS

The Board reviews providers periodically to verify adherence to established standards and hours for reporting. The Board has established two categories of acceptable and approved continuing education:

- A. Pre-Approved Providers, and
- B. Other Providers.

Each renewal period, before any renewal is granted, the licensee must submit a CE Summary form and a signed or verified Continuing Education Attendance form for each course attended and/or an ARBO OE Tracker Summary for all education hours required for renewal, completed between March 1 of the preceding even-numbered year and February 28 of the renewal even-numbered year.

The OE Tracker validity for COPE coursework will be acceptable, and no certificate is required for COPE courses listed on that Summary. Certificates of attendance are required for any non-COPE courses, and must include, at a minimum, the licensee's name and Nevada license number, the COPE Course number (if

applicable) or an indication of the Pre-approved Provider, name of the presentation, instructor's name, number of credit hours attended, a stamp or signature verifying attendance, and, if it is a non-interactive online course, evidence that the licensee passed a post-course test that may be required with current COPE guidelines ~~with not less than a 70% score~~. Incomplete certificates will not be accepted.

The Board has limited the number of accepted CE hours completed to 10 in a single day.

A. PRE-APPROVED PROVIDERS

1. ANY COPE-APPROVED (Council on Optometric Practitioner Education) COURSE.

2. Any CME Category 1 education specifically related to conditions or diseases of the eye or its appendages. Other category 1 CME is **not pre-approved**, except for 2 hours that may be applied only to the 2-hour Nevada opioid education requirements

3. Educational Institutions

All schools and colleges of optometry or ophthalmology that are accredited in the US or Canada, but not their affiliates. (For example, alumni associations are affiliates and are not pre-approved providers). All ophthalmology training programs that are accredited in the US or Canada.

4. State, Regional or National Associations:

Any state or national optometric or ophthalmologic society or association including, but not limited to:

- American Optometric Association and its member state associations
- State affiliated local societies as long as the education is co-sponsored or approved by the state association
- Armed Forces Optometric Association
- American Academy of Optometry
- Optometric Glaucoma Society
- Optometric Retina Society
- Optometric Extension Program Foundation
- College of Optometry and Vision Development
- American Academy of Ophthalmology
- American Society of Cataract and Refractive Surgery

Regional Optometric Associations listed below:

- Great Western Council of Optometry
- Heart of America Eye Care Congress
- North Central States Optometric Council
- Northern Rockies Optometric Conference
- Southern Council of Optometrists

5. U.S. Government:

- Veterans Administration Optometry Service and Sections
- Indian Health Service Optometry
- Department of Defense - any branch of the US military optometry

B. OTHER PROVIDERS

Programs offering non-pre-approved CE or CME may be submitted to the Board for review on an individual basis not later than 2 months before a license renewal deadline.

Providers or Licensees may request consideration by providing a course syllabus or program, reference materials and the presenter's curriculum vitae for consideration as acceptable CE. The Board will grant or decline the request within 30 days of receiving the required materials. In the best interest of the licensee, proposed CE should be submitted and approved by the Board **PRIOR** to registering and attending the educational program. Retroactive approval is possible but is not guaranteed.

C. Public Records Request response fee schedule.

Dr. Austin moved to adopt the public records request response fee schedule. Dr. Stephanie Lee seconded the motion. Unanimous passage.

The Nevada State Board of Optometry has adopted a policy regarding fees to be charged to provide a public record in response to a request for the same. The policy, fee schedule, and the waiver of fees, is outlined herein.

FEES FOR PUBLIC RECORDS GENERALLY

In response to a completed Public Records Request form submitted to the Board,

1. The requester's first \$10.00 in costs to reproduce requested public records in the format requested are waived. The \$10.00 represents approximately 67 black and white single sided pages or 50 double-sided pages. Once the reproduction cost reaches \$10.00, any remaining costs will be assessed to the requester.

2. Fees for reproduction of records:

- A. Physical records on paper – After the initial \$10.00 threshold is met, the requester will be assessed \$0.15 per 8 ½" x 11" single-sided page or \$0.20 for 8 ½" x 11" double-sided pages. Color copies are \$0.50 per side.
- B. Digital records on a CD - \$5 per CD, no fee for records.
- C. Digital records on a USB drive - \$20 per Drive, no fee for records.
- D. Digital records via an electronic medium (email, Dropbox, FAX, etc.) – no fee.

3. In addition, the Board's actual cost of mailing the records via USPS up to \$6.00 will be borne by the Board and waived to the requester. Any cost in excess of \$6.00 for mail or the cost of delivery via a third party, per the requester's instructions, must be paid along with the fees for reproduction before the records will be released to the delivery method chosen.

4. No fees will be assessed for staff time to respond to a request for public records.

COURT REPORTER TRANSCRIPTS

In addition to the actual cost of the medium in which the copy of the court-reported transcript is provided, a fee for each page provided which is equal in amount to the fee per page charged by the court reporter for the copy of the transcript, as set forth in the contract between the governmental entity and the court reporter shall be assessed by the Board from the requester and the same shall be remitted to the Court Reporter.

POSTING OF FEE SCHEDULE AND POLICY

This policy and fee schedule shall be made available to the public on request and shall be posted at the Board's principal office.

6. Petition for Declaratory Relief regarding BCBS Medicaid request to interpret retina photo emailed from a primary care physician's office and return a report.

Dr. Jeff Austin made a motion that licensees may consult, review photos and recommend a future exam, or make no recommendation. No additional diagnostic conclusions may be made without conducting an exam. Dr. Smith seconded the motion. Motion passed unanimously.

8. Executive Director's Reports. (This agenda item was taken out of order).

- A. Executive Director Caren Jenkins reported that rebates were provided by the Board to qualified Licensees in the amount of \$149,625.00.
- B. Director Jenkins explained the requirement for the Board of Examiners consideration of the Thentia contract. Mr. Johnson made a motion to agree that the Board of Optometry may cancel or renew the Thentia contract each year on the contract renewal date. Dr. Mariah Smith seconded the motion. Motion carried without objection.
- C. E.D. Jenkins reported the current 2022 licensee census as of 3/31/2022: 539 total licensees
- D. Ms. Jenkins received a Notice of Intent of the Board of Pharmacy to **enforce PMP requirements** for Prescribers.
- E. Ms. Jenkins provided a status on the codification of regulation changes from 2019 legislative session and indicated that Sr. Deputy Council Asheesh Bhalla is working on this.

The meeting recessed for lunch at 12:00 p.m.

The Board reconvened at 1:00 p.m.

7. Public Hearing on Complaint No. 22-04, regarding the actions of Respondent AMEL YOUSSEF, O.D., License No. 449. Potential imposition of discipline. (Appearances: Glenn Truitt, Esq., for Respondent, Caren C. Jenkins, Esq., Executive Director, for the Board, Sophia Long, Esq., Counsel to the Board).

9. Public Comment. No public comments were provided.

10. Adjournment.

The Board hearing recessed at 4:50 p.m., to be continued on April 4, 2022.

The meeting reconvened April 4, 2022, at 6:10 p.m.

- 1. Call to Order.** President Mariah Smith, O.D. opened the video teleconference meeting at 6:10 p.m.
- 2. Public Comment.** President Mariah Smith, O.D. asked for public comment. No public comments were offered.
- 3. Roll Call.** President Mariah Smith, O.D., Vice President, Jeff Austin, O.D., Stephanie Lee, O.D., and Drew Johnson were all in attendance. Also present were Executive Director Caren C.

Jenkins, Board Counsel Deputy Attorney General Asheesh Bhalla, and Licensing Specialist, Nancy Padilla.

4. Continued discussion of potential changes to Legislation, Regulation and Policy – Legislative proposal 2023 – BDR and regulatory changes to optometry laws.

- President Smith, O.D. proposed a 1-year period to transfer an optometric practice upon the death of an owner.
- Specify what procedures may be delegated to a technician under supervision.

Dr. Jeff Austin moved to add these items to the legislative package. Dr. Stephanie Lee seconded the motion. During discussion Ms. Jenkins proposed adding the “definition of the practice of optometry” to the statute. Both Dr. Austin and Dr. Lee agreed to amend the motion. The motion passed unanimously.

5. Continued the Public Hearing on Complaint No. 22-04, regarding the actions of Respondent AMEL YOUSSEF, O.D., License No. 449. Potential imposition of discipline.

A continued hearing took place, followed by Board deliberations and a finding of 2 violations of NRS 636. A penalty of \$6000.00, 5 years’ probation and payment of the costs of hearing was imposed. Copies of the Accusation and Order After Hearing, and a recording of these proceedings is available upon request.

6. Public Comment. No public comments were provided.

7. Adjournment. Motion to adjourn at **11:10** p.m. by Dr. Austin, seconded by Dr. Lee. Unanimous motion carried.

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FY 2022-2023 Regular meeting schedule Tuesdays at Noon by telephone: May 19, 2022, July 21, 2022, September 8, 2022, October 13, 2022, December 8, 2022, February 23, 2023, April 20, 2023, and June 22, 2023. Additional meetings may be called on an as-needed basis.

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These minutes were considered and approved by majority vote of the Nevada State Board of Optometry at its meeting on July 21, 2022.



Caren C. Jenkins, Executive Director