

# NEVADA STATE BOARD OF OPTOMETRY



## MINUTES OF PUBLIC MEETING

July 21, 2022

1. **Roll Call, Call to Order, welcome, introductions.** President Mariah Smith, O.D. opened the Zoom meeting at 9:05 a.m. and asked for public comment. 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 Asheesh Bhalla, Esq., and Licensing Specialist, Nancy Padilla. Public attendees included Spencer Quinton, O.D., Executive Director Terri Ogden of the Nevada Optometric Association, and Steve Girisgen, O.D.
2. **Public Comment.** No public comments were offered.
3. **Election of Board President, Vice-President and Financial Officer for FY 2022-23.** President Mariah Smith, O.D. moved to elect Drew Johnson as the Board Financial Officer, Drew Johnson accepted the nomination. Stephanie Lee, O.D. seconded the motion. Motion passed unanimously. Mariah Smith, O.D. moved to elect Jeff Austin, O.D. as the Board Vice-President, and Jeff Austin, O.D. accepted the nomination. Stephanie Lee, O.D. seconded the motion. Motion carried unanimously. Jeff Austin, O.D. moved to elect Mariah Smith, O.D. as Board President. Mariah Smith, O.D. accepted the nomination. Drew Johnson seconded the motion. Motion carried unanimously.
4. **Consideration and approval of the proposed minutes of the March 24, 2022 (including its continuation on April 4, 2022) and May 19, 2022, Board meetings, as well as the June 21, 2022, meeting lacking a quorum followed by the Legislative Stakeholders' Meeting.** Drew Johnson made a motion to accept the minutes from both March 24, 2022, and May 19, 2022. President Mariah Smith, O.D. seconded the motion. The motion carried unanimously. President Mariah Smith, O.D. made a motion to accept the June 21, 2022, stakeholder meeting minutes. Vice-President Jeff Austin, O.D. seconded the motion. Motion carried unanimously. No minutes were presented for the June 21 scheduled meeting. Due to lack of a quorum, no meeting was held.
5. **ARBO Report.** Dr. Stephanie Lee will present relevant information gained from her attendance at the 2022 virtual ARBO meeting.
  - A. Stephanie Lee, O.D. reported whether an OPAC certified optometrist may

prescribe medicated contact lenses. She indicated that we may need to review our law.

- B. CELMO update: Dr. Lee reported that some states are changing their reciprocity laws to allow applicants in CELMO to be licensed in a way to move towards universal licensure requirements.
- C. PEPS update: Dr. Lee reported that NBEO is restructuring the Part III Clinical Skills Exam into the new Patient Encounters and Performance Skills (PEPS) Exam to address an evolving scope of practice and to incorporate important clinical thinking and decision-making. Dr. Lee indicated that the August 2023 completion date has been delayed.
- D. Telehealth: Dr. Lee reported that laws vary from state to state and gave examples of Texas and Wyoming's laws.
- E. Review and adjust the questions on our applications for licensure: Dr. Lee suggested that we review the last 2 sections of the application for licensure and adjust where needed to comply with federal requirements.
- F. Background checks on our licensees and applicants: Dr. Lee reported that we may need to change our statutes to authorize the Board to perform background checks and to review an applicant's social media for good moral character.

President Mariah Smith, O.D. recommended that we budget for an annual participant at the yearly ARBO meetings.

President Mariah Smith, O.D. made a motion to add Statutory authority to perform background checks on our applicants to our current legislative package. Stephanie Lee, O.D. seconded the motion. Motion passed unanimously.

## **6. Discussion of Board Resources and "Best Practices."**

- Create a policy to direct the processing of complaints - utilize the Office of the Attorney General to evaluate and determine next steps, including prosecution or dismissal, for any Complaints over which the Executive Director has determined that the Board has jurisdiction and for which an investigation is complete.

President Mariah Smith, O.D. proposed that, going forward, the Attorney General's will lead the Board hearings and the Executive Director will present evidence and information regarding the investigations. This change will increase the budget item for our Attorney General office resources. Executive Director Caren C. Jenkins estimated an increase of \$10,000.00 or more additional attorney's fees annually.

Executive Director Jenkins gave an overview of the Complaint process. The first step is the Executive Director's jurisdictional review, the next step is an investigation to determine if there is a preponderance of the evidence that we could bring forward in a hearing that could result in a finding of a violation. If there is not a 51% likelihood that the prosecution will prevail then the matter is not pursued. Ms. Jenkins proposed that once the investigation is completed and it has been determined that there is sufficient evidence, the file would be turned over to the Attorney General's (A.G.'s) office for an evaluation of the sufficiency of evidence and decide whether we would go forward to hearing or dismiss the matter. Ms. Jenkins suggested that having the A.G.'s office review everything that is investigated is unnecessary. Jeff Austin, O.D. agreed to only send those files to the A.G.'s office where the E.D. has determined that there is sufficient evidence that could result in a find of violation.

Stephanie Lee, O.D. also agreed that this proposal would be more time efficient and cost effective. Drew Johnson asked if the executive director position was held by someone without a legal background, how would the process differ? Ms. Jenkins suggested that the investigator role could be completed by a non-lawyer E.D. or farmed out to a contractor. President Mariah Smith, O.D. recommended that all Complaints filed against Board members should go directly to the A.G.'s office for evaluation and investigation to avoid any bias and asked if other Boards follow the same guidelines. Board Counsel Asheesh Bhalla, Esq. said that he also agrees with the proposal provided by the Executive Director, and in the case of a Board member Complaint the A.G.'s office would assign another Deputy Attorney General (other than Asheesh Bhalla, Esq.) to investigate and review. Ms. Jenkins will add a section to the procedure manual about processing Complaints when received, and at what point should staff hand them over to the A.G.'s office.

- **Develop checks and balances for Executive Director's discretion to dismiss complaints for jurisdiction or insufficient evidence**

Executive Director Caren C. Jenkins suggested that she send copies of all Complaints to a Board member for review. Board Council Asheesh Bhalla, Esq. suggested that process may cause disqualification during a hearing. However, he suggests a Compliance Report where the types and number of dismissed cases are presented at each meeting. This avoids a Board member having a conflict of interest or being recused for being a part of the investigation in a case that results in a hearing. If the A.G.'s office proceeds to a formal Complaint the Board counsel would act as the prosecutor and another attorney from the A.G.'s office would act as Board counsel during those hearings. Executive Director Jenkins indicated that the Compliance report would exclude names and include only general allegations and complaints. Stephanie Lee, O.D. asked if practitioners are made aware of Complaints against them. E.D. Jenkins indicated that licensees are notified only about those that involve investigation. Drew Johnson agreed with the Compliance Report suggestion and that it resolves the problem of a Board member recusal.

- **Implement a more effective system to create, distribute and maintain agendas, meeting dates, meeting materials, etc.**

Executive Director Caren C. Jenkins indicated that moving forward we would do our best to distribute the agenda and meeting materials one week before the Board meeting, and supplement as needed or delete agenda items that cannot be addressed.

## **7. Executive Director's Reports and requests for direction.**

### **A. Current Optometry Licensee Census:**

Executive Director Caren C. Jenkins indicated that we must report our yearly census to our new software vendor (Thentia for Government) in March, because we are charged based on how many records we have in the database. Director Jenkins reported that we have 555 total licensees, with 782 locations. Of those reported, 512 have an Active status (meaning they are currently able to practice), and 42 are Inactive status.

### **B. Review of application forms and OSLE questions - opportunity for changes:**

Executive Director Caren C. Jenkins reported that all applications will be reviewed and updated as we transition to the new software system. Additionally, the On-line State Law Exam (OSLE) questions will be reviewed for relevance. Jeff Austin, O.D. and Stephanie Lee,

O.D. volunteered to help with formulating new questions. President Mariah Smith asked if we should consider reducing the number of questions.

- C. Licensing Loophole: Do not renew, but allow license to lapse, then submit a new application avoiding requirement for CE reporting, escaping late penalty related to renewal, and obtaining half-price license fee incentive for endorsement candidates. Savings to clever optometrists: cost of CE courses, \$500 late fee and \$375 licensure for 2 years = \$875.**

Executive director Caren C. Jenkins recommended that we close the Endorsement application (Endorsement concept was introduced in 2017 with Senate Bill 69) loophole by changing the rule so that Endorsement is unavailable if your last 5 continuous years of licensure were in Nevada. Caren C. Jenkins suggested changing the rule to require 5 continuous years in another jurisdiction with Active status and no discipline. Vice President Jeff Austin, O.D. suggested that we also add a continuing education requirement for Endorsement applications.

- D. Request to open reserves account at Chase Bank due to expected merger of CNB and NSB, and to transfer current reserves account to Chase due to an existing reserves account at NSB.**

Executive Director Caren C. Jenkins requested the authority to open a new account at Chase Bank for our operating reserves to insure the Board account is below the FDIC protected amount once City National Bank and Nevada State Bank merge. Stephanie Lee, O.D. made a motion to open an account at Chase Bank for our operating reserves and to authorize Executive Director Caren C. Jenkins to complete and sign related paperwork. President Mariah Smith, O.D. seconded the motion. Motion passed unanimously.

- E. Update re: Thentia Cloud for Government – licensing and information systems, processing and database development.**

Executive Director Caren C. Jenkins reported that there was a delay in the project, and we were put on hold for several weeks. Director Jenkins complained and then we were assigned a new project manager and additional resources. She expects a soft go-live in October or November, with public operations active by December 2022.

- 8. Possible acceptance of stipulation by licensees with deficiencies identified during 2022 renewal who agreed to late fees as authorized by the Board.** Executive Director Caren C. Jenkins recommended that the Board accept the stipulations with respondents who have signed the acknowledgements and have provided the administrative penalties. Everyone on the list except for three have acknowledged their deficiencies and paid the administrative penalty. For the record they are: Leslyn Catlett, O.D., Troy Chang, O.D., Lawrence Cruz, O.D., Vanessa Kim, O.D., Shana Korman, O.D., Brian Shih, O.D., Lisa Cady, O.D., Jessica Celestino, O.D., Fanny Chan, O.D., Lesa Davis, O.D., Ryan Dimit, O.D., Jacqueline Donahue, O.D., Aaron Hemmer, O.D., Melanie Hemmer, O.D., Gabriel Hernandez, O.D., Robert Hillstead, O.D., Karen Hsueh, O.D., Kyle Langr, O.D., Juliane Lee, O.D., Timothy Moore, O.D., Brian Nasser, O.D., Daniel Nguyen, O.D., Jeanine O’Saurus, O.D., Laura Patterson, O.D., Lilian So, O.D., Cory Steed, O.D., Dong Suk, O.D., and Jenny Tran, O.D. President Mariah Smith, O.D. made a motion to accept the stipulated resolutions. Stephanie Lee, O.D. seconded the motion. Motion passed unanimously.

**10. Request for Letter applying of Scope of Optometry to requirements of Athletic Commission and Boxing Commission for examination of participants in Combative Sports, requested by Eric Brooker, O.D.** This item was taken out of order. Vice President Jeff Austin, O.D. recommended that the Board send a letter to the Athletic Commission and Boxing Commission, indicating that the scope of optometry is within the examination requirements for participants in combative sports and would they consider changing the policy that requires an ophthalmologist to perform the eye exam. President Mariah Smith, O.D. made a motion to send a letter to the Athletic Commission and Boxing Commission. Vice President Jeff Austin, O.D. seconded the motion. Motion carried unanimously.

**11. Final Consideration and approval of legislative proposals:**

- A. Staff required to search the PMP to identify inappropriate prescribing by O.D.s biennially. Vice President Jeff Austin, O.D. made a motion that we request annually at the first of every year a PMP account report from the State Board of Pharmacy (for the prior year) for all optometrists of their prescribing activities. No action was taken on this motion. After discussion Vice President Jeff Austin, O.D. made a motion to remove this item from the legislative proposal package and to request a PMP report annually from the Nevada State Board of Pharmacy. President Mariah Smith, O.D. seconded the motion. Motion carried unanimously.
- B. Require supervision of students and residents working in clinical optometry practices.
- C. Reduce initial licensing fees for veterans; Expedite process to license military spouses.
- D. Require Executive Director to offer reasoning to complainant when rejecting a Complaint. Vice President Jeff Austin, O.D. moved to remove this item from our legislative package and make it a Board policy. Drew Johnson seconded the motion. Motion carried unanimously.
- E. Make Substitute Optometrist fees more equitable. Vice President Jeff Austin, O.D. made a motion to remove this item from the legislative package. No action was taken on the motion. After discussion, President Mariah Smith, O.D. made a motion to remove this item from the legislative package. Vice President Jeff Austin, O.D. seconded the motion. Motion carried unanimously.
- F. Require owners of optometric entities to form "professional entities" such as PC, PLLC – so that they must be licensed and in good standing as optometrists to maintain entity status with NV Sec. of State. President Mariah Smith, O.D. made a motion that we replace this item with the requirement that the optometrist must refile fictitious business names with the Board every five years with a list of the owners if there is no change, and with a change they must refile a fictitious business name within 10 days of the change, and all owners must be registered Nevada licensed optometrist. Vice President Jeff Austin, O.D. seconded the motion. Motion carried unanimously.
- G. Allow Optometrists to serve as the 'medical director' holding the CLIA waiver under NAC 652.155.
- H. Eliminate potential barriers to diversity and inclusion in optometry, including migrants and refugees. President Mariah Smith, O.D. made a motion to remove this item from the legislative package. Vice President Jeff Austin, O.D. seconded the motion. Motion carried unanimously.

- J. Add continuing requirement to update Board within 30 days if disciplined by any other jurisdiction after becoming licensed in Nevada, or if there are changes to mailing address, practice locations, designated email or primary telephone numbers.
- K. Permit 1-year time frame to transfer practice ownership after O.D. death
- L. Authorize technician to operate devices, collect samples under CLIA
- M. Define the practice of optometry more precisely.
- N. Other topics: This agenda item was reopened later in the meeting.
- I. Determine optometric telemedicine scope of practice. (This item was taken out of order).

President Mariah Smith, O.D. made a motion to approve our final legislative package as items B, C, F (as amended), G, I, J, K, L, and our new items, closing the Endorsement loophole by having an Active license in another jurisdiction and compliance with our continuing education requirements, and allowing for background check on licensees. Vice President Jeff Austin, O.D. seconded the motion. Motion carried unanimously.

**12. Delegation of authority to the President of the Nevada State Board of Optometry to represent the Board at the 2023 Legislative Session or any subsequent special sessions called, including without limitation, confirmation of authority to direct staff on matters relating to the Board's proposed bill draft to amend NRS Chapter 636 and statutes and regulations related thereto.** Stephanie Lee, O.D. made a motion to permit President Mariah Smith, O.D. to represent the Board through the 2023 legislative session and make any amendments that we need moving forward. Drew Johnson seconded the motion. Motion carried unanimously.

**13. Consideration and acceptance of both Contracts for Audit and for Lobbying Services.** President Mariah Smith, O.D. made a motion to accept the Audit and Lobbying service contracts. Stephanie Lee, O.D. seconded the motion. Motion carried unanimously.

**14. Litigation status regarding Petition for Judicial Review in Case No. 22-04.** Executive Director Caren C. Jenkins reported that a petition for judicial review was received and filed in Clark County and assigned to Department 11. Dr. Youssef's counsel did an ex parte filing for an extension of time without giving us an opportunity to respond. Joel Becker from the Attorney General's office will be representing the Board in that appeal. As the appeal goes forward, Director Jenkins will provide a status update.

**15. Fiscal Year Review and Consideration of Proposed Biennial Budget for 2022-2024.**  
 A. 2021-22 Budget Recap and 2022-23 Budget Proposal.  
 Executive Director Caren C. Jenkins reported on the proposed budget with two additions suggested by President Mariah Smith, O.D. (1) Add travel expenses for a yearly participant to attend the ARBO meeting, and (2) include a sum for increased Attorney General costs. Director Jenkins also added back the per diem and travel costs for two additional meetings. Drew Johnson made a motion to accept the budget as Executive

Director Caren C. Jenkins recommended. President Mariah Smith, O.D. seconded the motion. Motion passed unanimously.

B. Ms. Jenkins reported that, as of July 1, 2022, COLA of 1% provided to State employees generally;

C. consideration of compensation enhancement for Board staff.

Drew Johnson recommended that we continue with our policy to accept the State cost of living adjustment and consider a performance bonus for staff in December.

The meeting went into lunch recess, and reconvened at 1:00 p.m.

**9. (This item was taken out of order) Consideration of complaints presented to licensees with identified deficiencies at 2022 renewal.** The following licensees have been notified and given an opportunity to respond to the allegations and were provided a notice of hearing at their email addresses of record. Each has either requested a hearing or failed to respond.

The Board heard from Jason Bolenbaker, O.D. regarding Complaint 22-101. His understanding of the regulation changes did not require him to re-register his fictitious name, due to no changes in ownership or location. After discussion, the Board found that there was a miscommunication, and the allegation was recommended for dismissal. Vice President Jeff Austin, O.D. moved that the Board vacate the administrative fines received for fictitious name registration filings. Board Counsel Asheesh Bhalla, Esq. agreed and recommended potentially refunding those fees because he indicated that there is no statutory or regulatory basis for the fines imposed. The motion was not acted upon. Executive Director Caren C. Jenkins suggested that the Board review the statutes and regulations about how they apply to Dr. Bolenbaker. President Mariah Smith, O.D. made a motion that Dr. Bolenbaker file his fictitious name with the Board and pay the \$50.00 applicable filing fee within 30 days, with no fine imposed. Vice President Jeff Austin, O.D. seconded the motion. Motion passed unanimously.

The Board heard from Tina Licina, O.D. regarding Complaint 22-101. Dr. Licina indicated that she had never practiced at the Maryland Parkway location in question, although she was required by her employer to add it as a practice location. After discussion Vice President Jeff Austin, O.D. moved that the Board dismiss the fine. Drew Johnson seconded the motion. Motion passed unanimously.

Executive Director Caren C. Jenkins, Esq asked for direction from the Board on how to proceed with the Complaint alleged against Kant Ng, O.D. Stephanie Lee, O.D. made a motion that Kant Ng, O.D. would be required to re-file his fictitious name filing with the Board and pay the applicable \$50.00 filing fee. Vice President Jeff Austin, O.D. seconded the motion. Motion passed unanimously.

**11. Final Consideration and approval of legislative proposals:**

N. Other topics: This agenda item was reopened from earlier in the meeting.

President Mariah Smith, O.D. made a motion to add citation authority to our legislative package. Drew Johnson seconded the motion. Motion carried unanimously.

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

17. **Adjournment.** Vice President Jeff Austin, O.D. moved to adjourn the meeting at 1:54 p.m.. Stephanie Lee, O.D. seconded the motion. Motion carried unanimously.

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**FY 2022-2023 Regular meeting schedule**

Thurs. September 8 – Regular Board meeting – Noon – Zoom or telephone

Thurs. October 13 – Reg. Bd. meeting – Noon – Zoom or telephone

Thurs. December 8 – Reg. Bd. meeting – Noon – Zoom or telephone

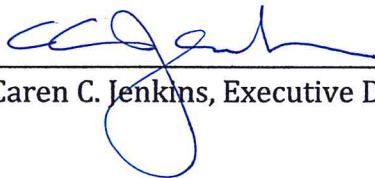
Thurs. February 23 – 8:30 am **ALL DAY** in Las Vegas or by Zoom

Thurs. April 20 - – Reg. Bd. meeting – Noon – Zoom or telephone

Thurs. June 22 – 8:30 am **ALL DAY** in Reno or by Zoom

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These minutes were considered and approved by majority vote of the Nevada State Board of Optometry at its meeting on September 8, 2022.



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Caren C. Jenkins, Executive Director