

NEVADA STATE BOARD OF OPTOMETRY



NOTICE OF PUBLIC MEETING

The Nevada State Board of Optometry will hold a Board meeting **via Zoom** on **Thursday, December 8, 2022, beginning at 12:00 Noon PST**

Click here to join the meeting:

<https://us06web.zoom.us/j/87415091323?pwd=V1IMMWJOMGIHSFRMbVAwYTgrbnhWUT09>

Meeting ID: 874 1509 1323

Passcode: 525968

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The public is invited to attend.

AGENDA

NOTE: Items on this agenda may be taken out of order.

1. **Call to Order**, Roll Call, welcome, introductions.
2. **Public Comment**. No action will be taken at this meeting on any issues presented in Public Comment.
3. ***For Possible Action**. Consideration and approval of the proposed **minutes** of the September 8, 2022, Board meeting. (materials)
4. ***For Possible Action**. Presentation of annual **agency Audit report**, Board consideration and acceptance of the report, ratification of approval granted by President Mariah Smith on November 22, 2022. (materials)
5. ***For Possible Action**. Update on intended **2023 Optometry BDR**; discussion of tele-optometry provisions to be proposed; refinement of “direct-to-patient” application. (materials)
6. Executive Director’s Report.
 - A. Status report regarding development of Thentia Cloud and Thentia Payments implementation.
 - B. Other reports/information.

Agenda continues on next page . . .

7. **Public Comment.** No action will be taken at this meeting on any issue presented in Public Comment.
8. ***For Possible Action.** Adjournment.

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FY 2022-2023 remaining Regular meeting schedule

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

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

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

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❖ The Board is pleased to make reasonable accommodations for any member of the public who has a disability and wishes to attend the meeting. If special arrangements for the meeting are necessary, please notify the Nevada State Board of Optometry: in writing at P.O. Box 1824, Carson City, Nevada 89702; via email at admin@nvoptometry.org; or call 775-883-8367 as far in advance as possible.

❖ To request an advance copy of the supporting materials for this meeting, contact admin@nvoptometry.org or call 775-883-8367.

This Notice of Public Meeting and Agenda was posted in compliance with NRS 241.020, before 9:00 a.m. on the third working day before the meeting at the following locations:

- Nevada State Board of Optometry office, Carson City, NV 89705
- Nevada State Board of Optometry website: <https://nvoptometry.org/>
- Nevada Public Notice website: <http://notice.nv.gov>

AGENDA ITEM NO. 3 – Draft Minutes of July 21, 2022, Board Meeting

AGENDA ITEM NO. 4 – Proposed Settlement Case No. 22-09

SEE ATTACHMENT.

AGENDA ITEM NO. 5B – Confirming Licensure Status in other Jurisdictions for Endorsement and other Applicants

As the internet continues to evolve, certain jurisdictions have modified their methods of confirming the license status of current and former licensees. In a handful of states, the boards no longer issue letters of good standing. Therefore, staff requests the Board approve the following. These methods are simply procedural and historic. No changes need be made to statute, regulation or policy.

Information required for verification:

Name, license number, date first issued, dates valid, certifications, history of discipline imposed, any investigations/complaints pending.

Permissible methods of confirmation, in preferred order:

1. Official letter of good standing issued within previous 14 days, sent from licensing agency
2. Email or FAX received directly from licensing agency
3. Only if the applicant is unable to request and/or obtain either of the above, staff may obtain and rely upon available internet-based Primary Source Verification from a licensing agency, posted within previous 14 days

AGENDA ITEM NO. 5C – Processing Complaints

SUMMARY OVERVIEW

On Receipt of Complaint – Reviewed by ED, assigned Case #, informal review, determination of validity. If no evidence or No Jurisdiction (NJ) – referral to proper agency or internal dismissal with notice to complainant. If jurisdiction and possible merit, issue "soft" informative email/letter to licensee and ask for or subpoena docs/info.

Investigation – assign to outside investigator if necessary or contact witnesses, review documents, seek out info sources. Receive info, continue investigation or make determination to dismiss. Upon investigation completion, consult with DAG, make recommendation for dismissal or if recommend that sufficient evidence exists, send investigative report and file to DAG. If respondent or counsel desire substantive communication and correspondence, consider forwarding to DAG.

Upon DAG determination of sufficiency - Formal Complaint/Accusation issued with 233B letter or dismissal. No stipulations or settlements before this point.

Stipulations or Settlement - If respondent wants to settle or stip, notify DAG to prepare agreement. Possible to stipulate to facts, accept admissions, full settlements, terms and conditions. Propose settlement to Board or proceed to hearing.

Formal Hearing – Board counsel is prosecutor. Another DAG assigned as Board counsel for Hearing. Executive Director, investigator, complainant and other corroborating persons participate as witnesses at hearing.

DETAILED PROCESS AND EXPLANATIONS

Formal Complaint/Accusation

A formal complaint is an allegation against an individual optometrist for violation of Nevada optometry law and/or regulations.

A complaint may be filed by anyone who believes a licensed optometrist or other individual, agency or organization has or is engaged in illegal or unethical activities involving the practice of optometry. Complaints may result in dismissal, referral to a more appropriate agency, formal hearing and/or disciplinary action.

Complaints, supporting evidence, documentation and investigative files are confidential until an Accusation is filed in the matter.

A formal complaint must be submitted in writing. A Complaint Form is available on the Board website or upon request from the Board office.

In addition to identifying the violative conduct and the statute or regulation violated, some credible evidence, information and/or documentation must be provided to determine the validity of the allegations.

Anonymous Complaints

Complaints may be submitted anonymously and will be accepted but will not be processed with insufficient evidence or documentation of an alleged violation of law or regulation. Anonymity may make it impossible to process a complaint.

Complaint Review

Complaints are reviewed by the Executive Director upon receipt for jurisdiction and a determination of potential violations. All complaints received are assigned a complaint case number. The Complainant is contacted if additional information or clarification is needed to make a determination of validity. Based upon the severity of the allegations and nature of the complaint, the DAG may be consulted.

Determination of Validity

Administrative Dismissal - The complaint may be dismissed without further processing if:

- it is incomplete or unsubstantiated and no credible documentation or evidence is available from the Complainant, or
- the Board has no authority over the alleged actions; or
- referral to another regulatory agency is not appropriate.

The Complainant will be notified by letter and the case will be closed.

Referral

If the complaint is clearly not under the authority of the Board but appears to be within the authority of another regulatory body, the complaint will be referred, and the Complainant notified.

The Respondent may obtain legal counsel for representation in the matter

Formal Investigation

No information on an active investigation will be released to anyone other than those with a need to know. The Investigator will issue a report upon conclusion of the investigation with findings. The Executive Director will make recommendations to the DAG for further action or resolution based upon the investigative report.

Response to Complaint

Once the DAG determines that the matter will move forward, communication and correspondence will be initiated through the Board's legal counsel in consultation with the Executive Director during the duration of the Complaint process.

Settlements and Stipulations

The Respondent may agree with the allegations in the Complaint in full or in part and may propose that the parties enter into a stipulation during any phase of the complaint process, after a formal complaint is filed by the DAG. The stipulation is negotiated by the Board legal counsel in consultation with the Executive Director. A stipulation must be considered by the Board at a public hearing or meeting of the Board. A stipulated settlement is an agreed-to disciplinary action and becomes a public record.

Formal Hearing

If sufficient evidence is determined to substantiate a violation of law and/or regulations, an Accusation and Notice of Formal Hearing will be undertaken by the DAG. Between the time the Accusation is served and the hearing takes place, staff may be contacted, but all communications should be forwarded to the DAG prosecuting the matter.

The Formal Hearing is held before the Board and the Board Chair presides. The Board's legal counsel will advise the Board and the Board's regular assigned DAG will serve as prosecuting attorney for the Complaint. Testimony will be heard from all parties, both sides may provide witness testimony and present evidence to support their case.

Board members may ask questions and request additional clarification during the Formal Hearing.

Disciplinary Determination

The Board may take any combination of the following actions upon conclusion of the legal presentation and consideration of the evidence presented:

- Dismiss
- Impose discipline and penalties per statute and as determined by the Board
- Suspend a License for a period of up to 1 year
- Revoke a License for a period of up to 5 years
- Deny a License in a case of practicing without a license

The Board may recover reasonable attorney fees and costs relating to the complaint process.

Reporting of Disciplinary Action

All formal disciplinary actions are reported to:

- National Practitioners Data Bank;
- Nevada Legislative Counsel Bureau Disciplinary Action reporting system

AGENDA ITEM NO. 6 – Citation Authority – proposed language

NRS 636.290 Authority of Board; authorized actions by Board.

1. Any person licensed pursuant to the provisions of this chapter or engaged in the unlawful practice of optometry without a license may be disciplined by the Board for cause in the manner specified in this chapter. A person licensed to practice optometry in this State is subject to the jurisdiction of the Board for any act specified in this chapter, regardless of whether the license is expired, suspended or revoked.

2. Unless the Board takes action pursuant to [NRS 636.325](#), the Board may discipline a licensee for a violation of any provision of this chapter or regulation adopted pursuant to this chapter in one or more of the following ways, with or without the imposition by the Board of a monetary penalty:

- (a) Issuing a letter of public reprimand;
- ~~(b) Issuing an order to cease and desist;~~
- (c) Issuing an order of probation for a specified period, with or without conditions;
- (d) Issuing an order of suspension for a specified period, with or without conditions; or
- (e) Issuing an order of revocation, with or without permission to apply for licensure at a future date.

3. In addition to any other penalty prescribed by law, if the Board determines that a person has violated any provision of this chapter, the Board may:

(a) Issue and serve on the person an order to cease and desist until the person obtains from the Board the proper license or otherwise demonstrates that he or she is no longer in violation of this chapter. An order to cease and desist must include information with which the person may contact the Board.

(b) Issue a citation to the person. A citation issued pursuant to this paragraph must be in writing, describe with particularity the nature of the violation and inform the person of the provisions of this paragraph. Each activity in which the person is engaged constitutes a separate offense for which a separate citation may be issued. To appeal a citation, the person must submit a written request for a hearing to the Board not later than 30 days after the date of issuance of the citation.

(c) Assess against the person an administrative fine of not more than \$5,000 per violation.

(d) Impose any combination of the penalties set forth in paragraphs (a), (b) and (c).

[66:208:1955]—(NRS A [1985, 155](#); [1993, 2871](#); [2019, 3647](#))