

NEVADA STATE BOARD OF OPTOMETRY



MINUTES OF PUBLIC MEETING

November 28, 2023

- Action Item 1. Roll Call, Call to Order, Welcome, Introductions.** President Mariah Smith, O.D. opened the live meeting at 6:33 p.m. Board members, Jeffrey Austin, O.D., Stephanie Lee, O.D., and Drew Johnson were present. Also attending were Executive Director Adam Schneider, Deputy Attorney General Ziwei Zhang, Esq. Pursuant to AB219, public telephonic access number 669-444-9171, meeting ID 853 6850 3196, Passcode 958274 were read into the record.
- Item 2. Public Comment.** President Smith invited public comment. Director Schneider requested clarification if public comment can occur with specific Items. President Smith clarified such comment could occur, if invited. No public comment was elicited.
- Action Item 3. NRS/NAC clarification re ownership of records per R066-19 Section 10.** Dr. Daniel Rowan, OD requested clarification regarding custodial ownership of records in statutes. Dr. Rowan questioned if a professional entity or larger corporation could claim ownership of patient medical records. Discussion about R066-19 Section 10 was held. Dr. Rowan wanted to know about any remedy for lack of records access. Dr. Austin stated the Board has no jurisdiction over these issues, and is instead a business dispute. Member Johnson suggested either President Smith or Director Schneider to write a letter, if it helps patients. Director Schneider discussed Board Policy no. 2 and the most recent Board Policy which discusses steps an OD can take upon sudden incapacitation or retirement. Dr. Lee questioned if the Custodian of Records is an OD, and more specifically a Nevada-licensed OD. Dr. Amber Belaustegui commented about the lack of patient records access, and described rural patients' lack of access to optometry care. Of the approximately 100 patients charts Dr. Belaustegui requested in September 2023 from the Custodian of Records, she has only received approximately 10. Dr. Smith authorized Director Schneider to place the applicable statutes and laws in a letter for Dr. Rowan. Drs. Lee and Austin agreed.
- Action Item 4. Complaint 23-01 investigation status, NRS/NAC clarification re prohibition on influence over professional judgment of optometrist unless licensed to practice optometry per NRS 636.373(4), R066-19 Section 12(4)**

Director Schneider prefaced that the Board is not a panel of contract lawyers, or employment lawyers, or free mediation service, or labor union. Dr. Marchant spoke in furtherance of his Complaint submitted before Director Schneider's employment with the Board. Director Schneider stated that both Dr. Marchant and Dr. Michitsch were receptive to the idea of placing the issue with the Board. Documents were identified of Transitional Management Services Agreement, Employee Lease Agreement, and Appointment Schedule standard operating procedure where on its page 6 there is leeway to the optometrists to manage their own schedules with a comment that the document is meant to be illustrative. Director Schneider stated the Board's jurisdiction does not extend to non-optometry corporations but does extend to optometrist employers of optometrists, here being Rowan Optometry, PC. Dr. Marchant echoed his Complaint about patient scheduling and seeking a letter about the Board's interpretation of the statutes at issue. Dr. Marchant summarized his conversation with the Ventures corporation, and professional judgment is part of managing your patients. Dr. Marchant and his practice just got turned over to a new electronic medical records system called OTX where Dr. Marchant cannot change his appointment types or control his own schedule. Dr. Lee talked about a two-door State, and the corporation should not have access to the schedule. Dr. Smith stated the laws are clear, and noted federal law compliance for access to records within 30 days of a request. Dr. Marchant reiterated he was not seeking a penalty, but instead control of his schedule. Dr. Lee raised the concern that Dr. Marchant's employer is Dr. Michitsch, which both Drs. Marchant and Dr. Michitsch agreed. Review of the documents shows a structure where the OD is the owner, yet per Dr. Marchant, he does not have control of his schedule. Dr. Austin commented that if the employer is an OD, the OD-employer has the right to tell the OD-employee to work pursuant to the terms of employment. And if the OD-employee does not like the working conditions, then the OD-employee should end the employment relationship. But where the controlling party is a non-optometrist, then Board has no jurisdiction and the instead the OD should hire counsel. Dr. Michitsch commented about paychecks coming from Rowan Optometry PC. Discussion occurred of who is the actual owner. Dr. Michitsch was told if he is the sole owner, then he has complete control. Dr. Lee expressed concern of a non-OD paying ODs, yet by and through Rowan Optometry PC, and the records are the property of the OD and not VSP which is not an OD. The only exception is an HMO, which VSP is not. Dr. Lee expressed her goal is to get Dr. Michitsch and Rowan Optometry PC into compliance with two-door State laws. Dr. Lee stated VSP can own the optical side but not the optometric practice. Dr. Michitsch stated he would attempt to reach out to VSP counsel about any legal violations and this meeting. Dr. Belaustegui commented that her father is an attorney. Dr. Smith suggested information be sought from Rowan Optometry PC and to confirm ownership, and requested tax documentation. Dr. Rowan commented that access to patient records is the most important issue to him. Dr. Lee reminded the group that the Board's purpose is to protect the public, and that Nevada is a two-door State. A break was taken at 7:32 p.m.

The meeting reconvened at 7:37 p.m. Dr. Smith authorized Director Schneider to place the applicable statutes and laws in a letter for Dr. Marchant. Drs. Lee and

Austin agreed. Dr. Austin reiterated the Board does not have jurisdiction over this issue.

5. **Action Item 5. NRS/NAC clarification re leasing/subleasing/separation of businesses per NRS 636.372, NAC 636.240, NAC 636.250.** Dr. Smith commented from her perspective no changes are needed to the submitted text message appointment-reminders. Dr. Lee agreed, noting it is not as if the OD's fictitious name was VisionWorks which would prompt a change. Dr. Austin agreed, noting the OD does not work for VisionWorks and instead works for herself at Aloha Vision which is where the appointment occurs. Director Schneider will inform the OD about the Board's approval.
6. **Action Item 6. Complaint 22-09 investigation status, possible adjudication.** Director Schneider noted this is a continuation of an investigation discussed in the September 2023 Board meeting. Dr. Smith commented no action was needed on the part of the Board, and to advise the complainant-patient that upon review of the records that services were rendered. Dr. Austin agreed, noting the services were rendered within the standard of care, the charges were appropriate and there is nothing more the Board can do, but can seek legal counsel. Dr. Austin commented about the records dated as contemporaneous with the presentation, and most EMRs cannot be altered without an Addendum. Member Johnson noted this was a financial matter. Dr. Smith moved to close the complaint and for Director Schneider to advise the complainant-patient. Dr. Austin seconded. Motion passed unanimously.
7. **Action Item 7. FY2022-2023 Audit.** Director Schneider presented the draft Financial Statements to the Board for approval, emphasizing two findings for the auditor: 1) an overpayment to the prior Director for the lumpsum retirement calculation, which per the auditor was not fraudulent, not malicious but instead due to being a complex and rarely performed calculation without any resources to vet the calculation. Director Schneider commented that the prior Director agreed to give back to the Board any overpayment by end of January 2024; and 2) auditor's recommendations for best practices of increased bookkeeping services and documented payment and proof of payment per transaction. Director Schneider's preliminary quote from the accountants was no more than \$200/month extra. Member Johnson commented other State Boards do so in the same manner as Director Schneider suggested per the auditor's recommendations for best practices. Dr. Austin commented the increased costs to the bookkeepers will offset any increased amounts to the auditors for next year's audit. Dr. Smith moved to authorize Director Schneider to hire the bookkeepers at the increased amount on a weekly basis. Dr. Austin seconded. Motion passed unanimously. Dr. Lee moved to accept the Financial Statement as presented. Dr. Austin seconded. Motion passed unanimously.
8. **Item 8. Status of termination of Thentia purported contract.** Director Schneider reported as of November 15, 2023 in discussions with Thentia's Chief Legal Officer (CLO), that Thentia will terminate its and its related entities' contract with the Board and issue a refund for approximately \$6,300. Director Schneider is awaiting a Release for his review. Attorney Zheng will follow-up with the CLO about the lack of proposed Release thus far.

9. **Action Item 10. Consideration of Agency Budget, with review for transition to Administrative Collaborative office in Reno, NV and termination of lease at present physical location.** Director Schneider reported that the property manager terminated the lease for November 30, 2023, and that he accepted the termination, and that Ms. Padilla has dedicated her days to clearing out the office to make that deadline. Director Schneider reported that since the posting of the Agenda, the prospective tenant no longer was moving into Unit 19A, and the property manager requested rent for December 2023. Discussion was held that the lease was terminated. Director Schneider discussed that the utilities paid by the Board were actually for the entire unit, and not just Unit 19A which the Board occupies. Board agreed to seek recoupment and discuss with the property manager to terminate the lease. Dr. Smith moved to provide Director Schneider with full authority and flexibility to terminate the lease and vacating of the space per Director Schneider's written acceptance to the property manager. Dr. Austin seconded. Motion passed unanimously.

Further consideration of the agency budget regarded Board licensing manager Nancy Padilla's pay increase. Dr. Lee suggested to make Ms. Padilla an exempt employee as of 7/1/2023, resulting in back pay owed to present which would equate to approximately \$1000/month for six months. Member Johnson expressed concern that such an action could be seen as a bonus, government should not be giving bonuses, and that Ms. Padilla is paid in line with other State workers at other State agencies, and will receive a 4% COLA when that occurs for all other State workers, plus can make overtime. Member Johnson commented as aspect of the Board is as the overseer of funds from its optometrist members. Member Johnson suggested possible shared employment with another State agency if Ms. Padilla needed additional money. Member Johnson moved to increase Ms. Padilla's pay by \$2.50/hour starting on next payroll check, while maintaining the ability for overtime pay at or after 40 hours per week. Dr. Smith seconds. Motion approved unanimously.

10. **Action Item 11. Consideration and approval of September 20, 2023 Board Meeting Minutes.** Dr. Smith confirmed all Board members had looked over the proposed Minutes. Dr. Austin moved to accept as proposed. Dr. Smith seconded. Motion passed unanimously.
11. **Action Item 12. Consideration and approval of October 26, 2023 Board Meeting Minutes.** Dr. Smith confirmed all Board members had looked over the proposed Minutes. Dr. Austin moved to accept as proposed. Dr. Smith seconded. Motion passed unanimously.
12. **Item 13. Public Comment.** No public comment was offered.
13. **Action Item 14. Adjournment.** Dr. Austin moved to adjourn the meeting. Dr. Lee seconded. Motion passed unanimously. The meeting adjourned at 8:43 p.m.

FY 2023-2024 Regular meeting schedule

Thurs. January 24, 2024, 8:00 a.m.- NAC 636 Workshop in-person at Nevada State Business Center 3300 W. Sahara Ave., Red Rock Room, 4th Floor, Suite 440, Las Vegas, NV. 89102

Nevada State Board of Optometry, P.O. Box 1824, Carson City, NV 89702 775-883-8367

These minutes were considered and approved by majority vote of the Nevada State Board of Optometry at its meeting on January 24, 2024.



Adam Schneider, Executive Director