

# NEVADA STATE BOARD OF OPTOMETRY



## MINUTES OF PUBLIC MEETING

January 24, 2024

- Action Item 1. Roll Call, Call to Order, Welcome, Introductions.** President Mariah Smith, O.D. opened the live meeting at 8:00 a.m. President Smith and Board members Jeffrey Austin, O.D., Stephanie Lee, O.D., and Drew Johnson were present in-person. Executive Director Adam Schneider attended in-person. Deputy Attorney General Rosalie Bordelove, Esq. appeared by Zoom. Pursuant to AB219, public telephonic access number 669-444-9171, meeting ID 895 8378 3729, Passcode 13096 were read into the record.
- Item 2. Public Comment.** President Smith invited public comment. No public comment elicited.
- Action Item 3. Executive Director Jenkins payout amount.** Director Jenkins appeared by Zoom. Director Schneider referred the Board to Director Jenkins' letter dated December 20, 202 and reiterated that Director Jenkins has already agreed to refund the Board's entire overpayment of Sick pay in the amount of \$5087. The issue before the Board was the \$8,568 in possible overpayment of Vacation time. Discussion occurred about Director Jenkins' understanding of a cap of 400 hours in vacation time based upon her years' worth of service in the 1980s-1990s as a private government agency employee but that the cap had changed to a use-it-or-lose-it 240 hours without her knowledge. Dr. Austin noted that no state agency in his experience would allow infinite accumulation, and the state employee needs to ask such questions. Dr. Lee stated nobody on the Board had told Director Jenkins that the cap had changed for Director Jenkins to take additional vacation time before her retirement. Director Jenkins stated she would abide by the Board's decision. The Board agreed the maximum payout would be at 400 hours, and that the refund should be based upon the difference in the amount of hours over 400, i.e., 423 hours comprised of the 240 hour cap plus Director Jenkins' additional accumulated 183 hours. This equates to a refund of \$1271 in vacation time. President Smith moved to have the Board's auditor perform the formal math before the Board approved the final refund amount with a construct of \$5087 in Sick and \$1271 in Vacation. Dr. Austin amended the motion to add that if the difference was more than \$1,500 in Vacation time, then the final payout be revisited at the next Board meeting. Dr. Lee seconded. Motion as amended passed unanimously. Director Jenkins proposed that the Board can take a round number to not have the Board incur the additional auditor expense. Drs. Smith and Austin wanted the auditor involved to provide oversight on the revised calculations. Director Jenkins stated for the record that Niki Neilon is an extraordinary auditor but that after fiscal year

2024-2025 the Board needs a different auditor due to Ms. Neilon reaching the three-year maximum with the Board.

4. **Action Item 4. FY2022-2023 audit.** Director Schneider reminded the Board it approved a proposed audit report at the Board's prior meeting. Director Schneider referenced page 33 of the audit describing the circumstances of the overpayment to former Director Jenkins' final payout amount. Director Schneider stated he had discussed page 33 with President Smith and Member Johnson already. Dr. Lee moved for the Board to approve the audit as submitted in the Board Meeting materials with no need for adjustments. President Smith seconded. Motion passed unanimously.
  
5. **Action Item 5. Subpoena duces tecum for financial records upon optometry practices in possible violation of NRS 636.373(4)** Director Schneider commented this topic was essentially a continuation of the prior meeting regarding VSP corporate practices as represented to the Board by multiple licensees. Dr. Lee raised a concern from the prior meeting that Rowan Optometry PC licensees did not have control over their own patient schedules, charts, and access to their clinics, all of which has a direct affect to clinical care that the public receives. NAC 636.240 was discussed, which regards agreements between licensees and unlicensed persons must not include provisions for the unlicensed person to exercise control over the operation of the licensee's practice or blocking access to the schedules or equipment. Dr. Lee reiterated the purpose of this topic was assist these licensees in obtaining compliance with Nevada's two-door laws, and in order to aid in the compliance of these laws, the Board needs to review any agreements that are in place between these licensees and these unlicensed persons. Specific documents to be provided by subpoena would be 3 years tax returns along with all back up documentation for those returns for Rowan Optometry PC (years 2020-2022), all bank statements for all bank accounts for Rowan Optometry PC (years 2020-2023), monthly gross receipt reports for Rowan Optometry PC (years 2020-2023), and all agreements or contracts with Rowan Optometry PC and VSP Ventures. Dr. Lee surmised that it will not be a large jump to get Rowan Optometry PC compliant with the two-door laws, and the Board reviewing such documents will assist that process. Dr. Lee moved for the Executive Director to issue a subpoena upon Rowan Optometry PC for such documents. President Smith inquired if the scope of the subpoena should be expanded to other large private equity groups in the State of Nevada. Dr. Lee clarified the purpose of the topic was to help the licensees from the prior meeting who are having an issue and help operate their practices within the law. President Smith acknowledged her understanding. Dr. Lee moved for a subpoena upon Rowan Optometry PC for the prior listed documents. President Smith seconded. Motion passed unanimously.
  
6. **Action Item 6. Interpretation of NAC 636.080, NRS 636.150, NRS 626.155 re passing score for NBEO Part I.** Director Schneider sought guidance from the Board on its interpretation of "passing score" for part I of the NBEO and if an applicant could be deemed to have passed the section in the aggregate when the applicant received scores of 70 in part I's subsections over the course of several attempts. Director Schneider directed the Board to the applicant's NBEO test scores and discussed the applicant passed each subsection when combining the applicant's fifth and sixth attempts. Director Schneider reminded the Board that NAC 636.080 was repealed as unnecessary due to the Board adopting ARBO's position that the maximum amount is three times. The Board

interpreted NRS 636.190 stating “grade of 70 or higher for each area tested is required to pass the examination” means passing all subsections of part I in the same attempt. President Smith provided context that the law had to be vague when allowing for the possibility that the Board may NBEO in the future or a future test administrator may not organize such tests with “parts” or “subsections.” Member Johnson inquired into testing format and repeat questions, and how many times it is offered. Dr. Lee suggested ala the applicant’s email that the potential applicant work for the Indian Health Servies (IHS) which does not require a state-issued license. President Smith moved for Director Schneider to inform the potential applicant about the Board’s interpretation of NRS 636.190 and therefore would not qualify as an applicant for the State of Nevada. Member Johnson requested Director Schneider inform the applicant about the IHS. Dr. Lee seconded. Motion passed unanimously.

7. **Action Item 7. Interpretation of AB 432 Sections 12 and 19(5) re synchronous optometric telemedicine upon Nevada patients by non-Nevada licensed optometrists with preexisting/ongoing doctor-patient relationship.** Director Schneider noted the topic comes from an optometrist licensed in California but not in Nevada seeking information on optometry telemedicine. Director Schneider commented AB 432 Section 19’s only section that concerns non-Nevada optometrists is subsection five, and all subsections are silent as to preexisting doctor-patient relationship in allowing for synchronous telemedicine. Director Schneider requested the Board’s analysis bear in mind questions posed from a Nevada-licensed medical doctor about the telemedicine laws. The Board concluded that Section 19(1) precludes non-Nevada optometrists from providing synchronous telemedicine to patients in Nevada. The Board noted its duty to advise other states’ Boards of Optometry if non-Nevada optometrists are practicing optometry in Nevada without a Nevada license. Director Schneider reiterated the inquiring optometrist is not practicing telemedicine, but instead inquired into the Board for interpretation of the telemedicine laws before doing so. Dr. Lee recused herself due to knowing the inquiring optometrist, but suggested an application by endorsement. Dr. Austin suggested the inquiring optometrist apply for a Nevada license by endorsement. Member Johnson moved for Director Schneider to write the inquiring optometrist thanking her for the thoughtful letter, that without a Nevada license she would not be allowed to practice synchronous telemedicine under the laws of the State of Nevada, Dr. Austin seconded, adding to advise that application by endorsement is a simple process. Motion passed unanimously, notwithstanding Dr. Lee’s recusal. Director Schneider acknowledged understanding. Director Schneider inquired of the Board why AB 432’s Section 19, subsection 5 does not allow non-Nevada licensed optometrists to perform synchronous telemedicine yet allows non-Nevada licensed optometrists to perform asynchronous telemedicine. Dr. Austin explained the intent of subsection five was limited to consults only, e.g., situations where a Nevada licensee seeks a non-Nevada licensed optometrist’s interpretation of imaging with no care or treatment provided by the non-Nevada licensed optometrist.

8. **Action Item 8. Licensee compliance with NAC 636.215(2) re ownership percentages of fictitious name businesses and corporate transparency.** Director Schneider commented that in 2019 the fictitious name reporting requirements added licensees' percentage of business ownership, but that the form which the Board provides to licensees had not changed since the law changed. Director Schneider noted he has since changed the Fictitious Name Application form plus the License Renewal form at Questions 13-15 to obtain such information. Director Schneider inquired into the Board if the Board wants the Executive Director's office to obtain such information from the preceding 4.5 years of Fictitious Name submissions. President Smith moved to adopt Director Schneider's changes to the Fictitious Name form and License Renewal form and not engage the Executive Director's office to obtain business ownership percentages from prior Fictitious Name forms of the past 4.5 years. Dr. Austin seconded, noting he was comfortable with receiving the information over the course of this renewal cycle and the next cycle. Motion passed unanimously.
9. **Action Item 9. Consideration of Agency Budget with review for transition to Administrative Collaborative office in Reno, NV, utility stipend to Board employees per June 2023 Board Meeting Minutes and termination of lease at present physical location.** Director Schneider reminded the Board at the prior meeting that the property manager terminated the lease in November 2023, and that he accepted the termination. Director Schneider updated the Board on the lease termination and the property manager's proposed Termination of Lease. Director Schneider stated that once complete, the Board's physical location will be in Reno, NV with the Administrative Collaborative. Director Schneider reminded the Board of its June 2023 Meeting for a \$300/month per employee utility stipend. Director Schneider reiterated the change in location will save the Board thousands of dollars. Discussion occurred about excess funds in the Board's operating budget, and Member Johnson inquired into the possibility of placing existing Board excess funds into interest-bearing accounts and/or certificates of deposit with the goal to reduce licensee renewal fees. Deputy Attorney General Bordelove stated she would research the issue, and that in her experience upon an audit noting excess reserves that the recommendation is typically to reduce licensee fees. President Smith moved for the Board to reestablish its physical location with the Administrative Collaborative's office and implement the utility stipend. Dr. Austin seconded. Motion passed unanimously.
10. **Action Item 10. Consideration and approval of November 28, 2023 Board Meeting Minutes.** Dr. Smith confirmed all Board members had looked over the proposed Minutes. Dr. Lee moved to accept as proposed. Dr. Austin seconded. Motion passed unanimously.
11. **Executive Director update re status of termination of Thentia purported contract and reimbursement.** Director Schneider reported that Thentia satisfied its obligation by reimbursing the Board \$6567.60.
12. **Executive Director update re licensee renewals.** Director Schneider updated the Board that of the approximately 600 licensees that could renew as active or inactive, approximately 175-185 have done so since the renewal process started. Director Schneider reminded the Board that Nancy Padilla will likely start incurring overtime in February 2024.
13. **Action Item 11. Public Comment.** No public comment was offered.

14. **Action Item 12. Adjournment.** Dr. Austin moved to adjourn the meeting. Dr. Lee seconded. Motion passed unanimously. The meeting adjourned at 9:10 a.m.

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**FY 2023-2024 Regular meeting schedule**

Thursday 3/28/2024 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom  
Thursday 4/25/2024 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom  
Thursday 5/30/2024 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom  
Thursday 6/27/2024 12:00p.m (pst) Reg. Bd. Meeting- phone or Zoom

**FY 2024-2025 Regular meeting schedule**

Wednesday 7/31/2024 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom  
Wednesday 8/28/2024 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom

These minutes were considered and approved by majority vote of the Nevada State Board of Optometry at its meeting on March 28, 2024.

/s/ Adam Schneider  
Adam Schneider, Executive Director

# NEVADA STATE BOARD OF OPTOMETRY



## MINUTES OF NAC WORKSHOP MEETING

January 24, 2024

1. **Call to Order.** President Mariah Smith, O.D. opened the live meeting at 9:25 a.m.<sup>1</sup> President Smith and Board members Jeffrey Austin, O.D., Stephanie Lee, O.D., and Drew Johnson were present in-person. Executive Director Adam Schneider attended in-person. Deputy Attorney General (herein DAG) Rosalie Bordelove, Esq. appeared by Zoom.
2. **Action Item 1- NAC 636 Workshop.** President Smith stated the need to discuss possible elimination of NAC subsections consistent with the Governor’s prior Orders (identified post hoc herein as Executive Order 003-2023). Director Schneider stated he reviewed AB 432, pre-AB 432 NRS 636, and NAC 636 bearing in mind the pending codification of 2019 amendments (identified post hoc herein as R066-19).
3. **Public Comment-** none provided. No attendees in-person or Zoom or telephonically.

### As to AB 432

**Section 3** defines comprehensive examination. Its subsection 2 says “the term.” Dr. Austin clarified “the term” refers to “comprehensive examination(s),” and not a period of time. Board stated no clarifying changes needed.

**Section 4-10** discussed. No clarifications elicited.

**Section 11** regards remote patient monitoring and uses the phrase “from a patient of the licensee.” Section 6 defines “licensee.” Colloquy as to include or not licensees of the licensee’s practice group. Board stated no clarifying changes needed.

**Sections 12-13** discussed. No clarifications elicited.

**Section 14** regards the surviving members of deceased licensee who is the sole owner of an optometry practice and uses the phrase “after the death.” Colloquy as whether it should include “permanent incapacitation” or “vegetative state” and if so, then “surviving member of the licensee’s family” should include the “incapacitated licensee’s durable power of attorney, or legal guardian as appointed pursuant to NRS 159 – Guardianship of Adults.” DAG Bordelove commented about the

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<sup>1</sup> Pursuant to AB219, public telephonic access number 669-444-9171, meeting ID 895 8378 3729, Passcode 13096 were read into the record for the Board meeting at 8:00a.m. and is the identical information for this Workshop.

process LCB undergoes when a NAC attempts to expand a statute beyond the express language versus capturing the statute's legislative intent. DAG Bordelove suggested reaching out to the LCB drafter to discuss the process. President Smith discussed possible need for next legislative session to include definition of "permanent incapacitation." DAG Bordelove commented that for an AB of AB 432's size, it is common to have a clean-up bill in the next session. Director Schneider sought clarification as to "do not exempt" and "a person." Drs. Smith and Austin clarified its purpose was that merely because a surviving family member owned the optometry business upon death, the surviving family member cannot practice optometry without a license. Colloquy and agreement that the intent of this section is to also address a licensee's permanent incapacitation, and the permanently incapacitated licensee's durable power of attorney, legal guardian as appointed pursuant to NRS 159- Guardianship of Adults.

**Section 15** regards the personal mailing address, telephone number, and electronic mail address of the licensee provided to the Board. Colloquy and agreement to clarify that such information will be kept confidential within the Board's internal files absent such information being the licensee's publicly known mailing address, telephone number or electronic mail address.

**Section 16** regards disciplinary action. Director Schneider discussed possible differentiation between a bona fide "disciplinary action" requiring reporting to National Practitioner's Databank versus an administrative action such as being "disciplined" for not timely reporting Continuing Education credits. Director Schneider cited to California Board of Optometry having such differentiation. President Smith discussed prior Board discussions on same, and scenarios of non-Nevada optometrists seeking application by endorsement whom are repeatedly being disciplined for administrative issues and if the Board wanted to know that conduct during the application process. Director Schneider discussed possible inclusion of "crimes of moral turpitude" not inclusive of driving under the influence. Director Schneider described the license application process and sections specific to other States' discipline. DAG Bordelove stated that alcohol abuse is mentioned in NRS 636 (identified herein post hoc as NRS 636.295(3) (grounds for disciplinary action "alcohol or other substance abuse.)) Colloquy and agreement that as used in this section, "disciplinary action" means an action resulting in a report to the National Practitioner's Databank regarding patient care, or a finding of unprofessional conduct as defined in NRS 636.295.

**Section 17** regards optometry students and residents, and their supervision. Director Schneider discussed section (1)(b) that an OD or ophthalmologist (herein OMD) "examines the person on whom the student performed any procedure before the person is discharged." Director Schneider asked if it should include that the OD or OMD must pre-operatively authorize the procedure. Board stated no clarifying changes needed. Dr. Austin discussed limitations on a student because they are not licensed, and can only practice up to the scope of practice as the student's supervising licensee. Colloquy and agreement that as used in sections 1 and 2, within the scope of license means up to the scope of practice as the supervising licensee. Section 3 describes care provided in an emergency. Colloquy as to "emergency" and reasonable time limits on same. Colloquy and agreement that as used in section 3, the person may provide care up to 10 hours of informing the supervising licensee. Section 4 defines "clinic" and uses the term "provides services." Colloquy and agreement that the intent of section 4 includes the providing of prescriptions.

**Section 18** regards the unlawful act to duplicate or extend a prescription if the licensee has not performed a comprehensive exam or does not have access to the complete results of comprehensive exam within 2 years. Colloquy as to limitations and prohibition of online vision test technology. Colloquy and agreement that the intent of this section allows the originating licensee or licensee within the originating licensee's practice group in extenuating circumstances to issue, offer to issue, duplicate, or extend a prescription for the patient of the originating licensee or the originating licensee's practice group within the immediately preceding two years.

**Section 19** regards telehealth. Clarification that section 1 does not allow for non-Nevada licensed optometrists to practice telehealth in Nevada, even with pre-existing doctor-patient relationships. Dr. Smith provided context that the intent of Section 2 is meant to be specific to the OD who has seen the patient in the prior two years, and the intent of Section 3 is for new patients with no established doctor-patient relationship. Dr. Austin described scenarios where an incomplete prescription would then require a direct call to the patient personally in order to qualify as synchronous, and an OD within the practice group has the records of his or her partner or their practice to allow for asynchronous. Dr. Lee discussed section 9 and that prescriptions cannot occur solely through autorefraction, compared to section 3 allowing for synchronous examinations. Discussion as to 2025 session for NRS 636 that “the licensee” could be changed to “a licensee” as long as the treating licensee has access to and reviews the medical records of the prior two years. Dr. Lee re-raised section 9 as to the usage of autorefractors and impact on synchronous versus asynchronous. Dr. Smith reminded the Board that already existing in NRS 636 (identified post hoc herein as NRS 636.346(3)) requires the licensee to perform the final examination on the patient before discharge. Discussion as to Section 2 changing “the” to “a” and when it says “the licensee completing a comprehensive examination on the patient in the immediately preceding two years” to then add “or has access to such records and has reviewed such records.” Section 3 regards synchronous optometric telemedicine of a non-comprehensive examination of new patients so long as the licensee has access to comprehensive examination information from an optometrist or ophthalmologist within preceding two years. Colloquy on the licensee actually reviewing the medical records versus mere “access” after the examination, and that “information obtained” is not intended to be a replacement for the licensee’s review of the medical records. Colloquy and agreement that as used in Section 3, no synchronous non-comprehensive examination can be conducted unless the licensee has access to the patient’s records and contemporaneously reviews such records. Colloquy and agreement that as used in this section, “access” includes the act of reviewing such information prior to or contemporaneous with the examination. Nothing in this section is meant to prevent a licensee from providing care to a patient whom is already an existing patient within the licensee’s practice group of the immediately preceding two years. Dr. Smith confirmed that “synchronous,” “new,” and “non-comprehensive” will remain in Section 3. Colloquy and agreement that as used in this section (9)(a), the issuance of a prescription for an ophthalmic lens cannot occur without the licensee performing a synchronous manifest refraction. Colloquy that section 2 is the broad overview, whereas sections 3 and 4 are the specific scenarios and the necessity of sections 3 and 4 to exist because section 2 on its own could allow for abuse and compromise ocular health of the community. Director Schneider re-raised that section 2 can be augmented with access to and review of records. Discussion of the desire of the statutes to allow good doctors to provide good care while preventing abuses of telehealth laws’ intent. Director Schneider discussed section 4(b) and what was meant by “prescription,” e.g., drugs or glasses or contacts or treatment plan or vision therapy. Dr. Smith discussed that NRS 636.022 defines prescription. Board stated no clarifying changes needed, but for LCB to reference NRS 636.022 when codifying section 4(b).

### **As to existing NRS 636**

**NRS 636.025** regards scope of practice. Board stated section (1)(b) does not need to be changed. Section (1)(i) regards removing of a foreign object from the surface or epithelium of the eye, and foreign object is already defined.

**NRS 636.145** regards hearings. Director Schneider discussed a more detailed hearings statute for the Board of Medical Examiners. DAG Bordelove reminded the Board that exemptions were lifted on multiple Boards in 2017, and therefore NRSs 233B, 622A, and 622 inclusive of 622.370 control, but that nothing prohibits the Board from placing those statutes into NRS 636. DAG Bordelove stated if that occurs for the Board to ensure statutory harmony with the controlling chapters.



Discussion of NRS 630.346(3) that in a disciplinary hearing, proof of actual injury need not be established, and is worthwhile for this Board as an NAC.

**NRS 636.206** regards applications by endorsement. Section (2)(a) regards discipline. Dr. Smith stated for the definition to be consistent with previously discussed AB 432 Section 16, i.e., “disciplinary action” means an action resulting in a report to the National Practitioner’s Databank regarding patient care, or a finding of unprofessional conduct as defined in NRS 636.295. Section (2)(a)(6) states “malpractice,” but should be inclusive of “professional negligence” to align with the actual recognized cause of action in Nevada and that a license by endorsement is a revocable privilege.

**NRS 636.215** regards licenses. NAC should be used to state “1. The purpose of licensing optometrists is to protect the public health and safety and the general welfare of the people of this State. 2. Any license issued pursuant to this chapter is a revocable privilege.” Dr. Austin commented NRS 636 allows for the Board to suspend a licensee’s license.

**NRS 636.287** regards OPAC training of the successful completion of not fewer than 40 hours of clinical training in administering and prescribing pharmaceutical agents in a training program which is conducted by an ophthalmologist and approved by the Board. Consistent with Board policy, NAC should be used to state “In the event a licensee allows their license to expire and wishes to reapply, the licensee’s prior approved OPAC training is valid for the life of the licensee, therefore, the applicant is not required to retake the 40-hour training to recertify.” Dr. Smith commented this could be a 2025 legislative goal to remove that restriction upon licensees to allow to practice to the full scope of their optometry school education and training.

**NRS 636.305** regards Board complaints. Consistent with other healthcare boards, NAC should be used to add “The voluntary surrender of a license, the failure to renew a license or the retirement of a licensee does not preclude the Board from causing a complaint to be investigated, issuing a formal complaint against the licensee, or conducting a disciplinary hearing of a formal charge relating to an alleged ground for disciplinary action set forth in NRS 636.295 conducted in accordance with the provisions of chapters 233B, 622, and 622A of NRS.” Discussion for 2025 legislative session to the effect that: 1) the investigation may include but is not limited to, compelling a licensee to appear before the Board; 2) “The proceedings of an investigative committee are confidential and are not subject to the requirements of NRS 241 and such proceedings are confidential between the licensee and the investigative committee members until such time as the investigative committee finds sufficient cause to recommend a formal complaint to the Board.” Discussion that adding an investigative committee is another basis to increase the Board to five members which is a 2025 legislature goal. Public Member Johnson suggested that the fifth member ideally have a background in insurance or another non-ocular field of healthcare.

**NRS 636.373** regards prohibition on supervision or control or influence over professional judgment of optometrist unless licensed to practice optometry. Discussion on what is professional judgment. Director Schneider speculated the Nevada Supreme Court has defined the term in past holdings. Board stated no clarifying changes needed.

**NRS 636.420** regards administrative fines that the Board “may impose an administrative fine” and AB 432 Section 28. Director Schneider referred the Board to page 11 of AB 432. Discussion as to citation versus disciplinary action requiring a complaint. Board stated no clarifying changes needed when administrative is administrative, separate from reportable discipline as discussed earlier in the workshop.

### **As to existing NAC 636**

**NAC 636.220** regards a licensee cannot employ an unlicensed person to perform any services for which an optometrist license is required by law. NRS 636.346 regards supervision of authorized activities of assistants. Discussion as to the profession of orthoptists and schooling of vision therapy, esotropia, exotropia, strabismus. Should a licensee hire an orthoptist, the orthoptist is considered an assistant and does not need to display their professional certificate. Reference to AB 432 Section 19 in NRS 636.346 will help clarify proper employee or technician or assistant supervision to the licensees. Discussion as to NAC 636.210(4) being specific to the OD-employer possibly being subject to discipline for the OD-employee's unprofessional conduct during the performance of services pursuant to the employment. An additional subsection, with reference to NRS 636.346, should include the licensee has the ultimate responsibility over any conduct, treatment, act, or omission by the licensee's employee, technician, or assistant, and all responsibility for all care provided to the licensee's patients. Dr. Lee re-raised this NAC and its impact on attempted digital optometrics.

**NAC 636.xxx** regards licensee reporting requirements. Section (1)(c) regards the licensee must report within 30 days- "A civil action relating to the practice of optometry is filed against the licensee" to be change to "upon service of process of a civil action related to the practice of optometry against the licensee, or the licensee's optometry business as registered with the Board, or the licensee's business practicing under an assumed or fictitious name as registered with the Board."

**NAC 636.xxx** regards licensee fees. Section (q) regards a name change for \$100. The name change fee applies during non-renewal applications.

### **As to existing NAC 636 for proposed elimination**

**NAC 636.110** ("Do not meet the specifications of the American National Standards Institute" defined.). Discussion and agreement for removal.

**NAC 636.130** (Posting of signs). Discussion and agreement for removal.

**NAC 636.150(1)(b)** (Ophthalmic products "Does not meet the specifications of the American National Standards Institute"). Discussion and agreement for removal.

**NAC 636.160(2)-(3)** (Spectacle lenses). Discussion and agreement for removal.

### **As to existing NAC 636 for proposed edits**

**NAC 636.142(1)** Broadcast advertisements- removal of "oral" Discussion and agreement for selected edit.

**NAC 636.160(3)** Spectacle lenses- change to "trifocal progressive" and removal of "and if the lenses are." Discussion and agreement for selected edit.

**NAC 636.170(2)** Contact lenses- add at the last part of the sentence "in a different replacement schedule as indicated by the Federal Drug Administration or the contact lens manufacturer." Discussion and agreement for selected edit.

**NAC 636.190** Optometric examinations disclaimer of the following services not included for an eye examination will add AB 432 Section 3's definition of a comprehensive examination. Discussion and agreement for selected edit.

**NAC 636.210(1)(b)** representation as specialist- add "unless he or she is an American Academy of

Optometry diplomate, Optometric Glaucoma Society fellow, Optometric Retina Society fellow, Scleral Lens Education Society fellow, or . . .” Discussion and agreement for selected edit.

**NAC 636.210(2)** display of license- removal of “in a conspicuous manner” replace with “available upon request” Discussion and agreement for selected edit.

**NAC 636.215(5)** change “10 working” to “90 calendar” Discussion as to burdens upon the licensee during the course of ownership change or practice sale and 10 working days being too burdensome. Discussion and agreement for selected edit.

**NAC 636.xxx(3)(q)** Licensee fees- add legal name change for \$100 for anytime besides at the time of a license renewal. Discussion as to limited frequency of this occurring, disproportional impact on women, applicability to domestic partnerships. Discussion and agreement for selected edit.

**NAC 636.xxx(6)(d)** Continuing Education to include “Category 1 ophthalmology-specific” Discussion and agreement for selected edit.

**NAC 636.xxx(6)(e)** Continuing Education to include “Any ophthalmology residency program that is affiliated with an accredited medical school.” Discussion and agreement for selected edit.

**NAC 636.670(2)** Contents- removal of “with their ability to transmit oxygen” Discussion and agreement for selected edit.

**NAC 636.670(4)(b)(2)** Contents- removal of “with their percentage of water content and thickness” Discussion and agreement for selected edit.

**NAC 636.670(5)** add “For spectacle lenses, a prescription shall be valid for a period of 24 months for patients age 18-65 years old unless the prescriber documents a reason for the shorter period of time.” Discussion on other laws allowing for an expiration date of 2 year prescription, and optician board laws that if there is no expiration date on the prescription the optician deems it to be 2 years from the date of prescription (identified post hoc herein as NRS 637.175 (“A prescription received by a dispensing optician shall be deemed to have an expiration date of 2 years after the date the prescription was issued unless the practitioner who wrote the prescription includes on the prescription a different period.”) Public Member Johnson discussed most states allow for two year contacts prescriptions. Dr. Smith noted her experience of younger patients not following contact prescriptions. Drs. Smith and Lee discussed patient complaints with prescriptions occur regardless if one-year or two-year. Public Member Johnson discussed that a two-year expiration may encourage better eye health and patients presenting to an optometrist while discouraging patients from seeking incomplete online vision services. Drs. Smith and Lee agree this NAC needs to not place an additional burden on the prescriber of stating an express sentence in the medical records for the basis for the prescription length, but that medical record taken as a whole must support the reason for the shorter period of time. Patients will still be advised to present for annual eye health examinations, or sooner eye health examinations within the licensee’s discretion.

Board discussed a January 21, 2024 letter from Luis Moreno, M.D. inquiring into optometry telehealth law and requesting confirmation of his understanding of such laws for purposes of his optometric scribe business. Board noted no stated affiliation with any licensees or being asked by any licensee to submit such questions. Board authorized Director Schneider to respond to Dr. Moreno consistent with the workshop and to explain that AB 432 exists as Nevada law and the Legislative Counsel Bureau has final approval on any changes to the language which are pending by virtue of the workshop.

4. **Public Comment-** none provided. No attendees in-person or Zoom or telephonically.

5. **Action Item 3. Adjournment.** Workshop adjourned at 2:54 a.m.

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**FY 2023-2024 Regular meeting schedule**

Thursday 3/28/2024 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom

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**FY 2024-2025 Regular meeting schedule**

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Wednesday 8/28/2024 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom

These minutes were considered and approved by majority vote of the Nevada State Board of Optometry at its meeting on March 28, 2024.

/s/ Adam Schneider

Adam Schneider, Executive Director