

NEVADA STATE BOARD OF OPTOMETRY



MINUTES OF PUBLIC MEETING

March 28, 2024

1. **Action Item 1. Roll Call, Call to Order, Welcome, Introductions.** President Mariah Smith, O.D. opened the live meeting at 12:05 p.m. President Smith and Board members Jeffrey Austin, O.D., Julieta Alamo-Leon, O.D, and Drew Johnson were present via Zoom. Executive Director Adam Schneider attended via Zoom. Deputy Attorney General (DAG) Todd Weiss, Esq. attended via Zoom. Pursuant to AB219, public telephonic access number 669-444-9171, meeting ID 837 2445 5896, Passcode 462735 were read into the record.
2. **Board Member Dr. Alamo-Leon introduction.** Dr. Alamo-Leon was introduced as a new member of the Board.
3. **Public Comment.** President Smith invited public comment. Dr. Girisgen read a statement into the record in opposition to proposed NAC 636.670(5). Dr. Kopolow read a statement into the record in opposition to proposed NAC 636.670(5). President Smith stated all prior-received public comments are already incorporated into the meeting minutes. Dr. Johndra McNeely of the American Optometric Association (AOA) read a statement into the record in opposition to proposed NAC 636.670(5) requesting to leave 636.670 as written and prescription lengths being at the discretion of the optometrist, emphasizing the doctor-patient relationship and prescription lengths factoring in knowledge of patient history, daily vision demands, amount of screen time and potential for vision changes without the need for additional documentation, that over 270 diseases can be discovered during a comprehensive eye examination by a doctor of optometry, that all optometrists have patients who do not present to primary care but do present yearly for an eye examination where hypertension, diabetes and sometimes cancer are diagnosed of asymptomatic patients, so the issue is one of patient protection, public health, and consumer protection should patients wait 23 months not knowing their prescription had changed. Terry Ogen of the Nevada Optometric Association (NOA) on behalf of Dr. John David read a statement into the record in opposition to proposed NAC 636.670(5), then stated the NOA itself is opposed to proposed NAC 636.670(5).

4. **Action Item- Consideration and approval of January 31, 2024 Board Meeting Minutes.** Dr. Smith confirmed all Board members had looked over the proposed Minutes. Public Member Johnson moved to accept as proposed. Dr. Smith seconded. Director Schneider sought DAG Weiss's counsel regarding procedural properness regarding Dr. Austin's ability to vote when he was not present for the January 31, 2024 meeting but privy to the meeting materials, that Dr. Alamo-Leon was not privy to the meeting, and that a member of the Board at the time is no longer on the Board who did attend the meeting. DAG Weiss advised there is no prohibition on Board members voting to approve meeting minutes when not present at the meeting, and recommended all current Board members cast votes regarding the Minutes. Motion passed unanimously.
5. **Action Item- January 31, 2024 Board meeting statutory stipend, proposed waiver of same.** Director Schneider stated NRS 636.175(5) allows for \$150 to each board member per meeting. A Board member had asked that this item be placed on the agenda in good faith to the membership that the Board members should waive \$150 for that meeting. President Smith moved to waive payment to all Board members for that meeting. Public Member Johnson seconded. Motion passed unanimously.
6. **Action Item- Consideration and approval of January 24, 2024 Board Meeting Minutes.** Dr. Smith confirmed all Board members had looked over the proposed Minutes. Public Member Johnson moved to accept as proposed. Dr. Austin seconded. Motion passed unanimously.
7. **Action Item- Consideration and approval of January 24, 2024 Workshop Meeting Minutes.** Dr. Smith confirmed all Board members had looked over the proposed Minutes. Public Member Johnson moved to accept as proposed. Dr. Austin seconded. Motion passed unanimously.
8. **Action Item- NAC 636 workshop results, NAC 636.670(5) discussion.** Director Schneider stated the results are in the meeting materials converted into a legislative format. Director Schneider addressed the next prong of this Item that public comments about 670(5) had been elicited and part of the meeting materials, and during the Public Comment portion of this meeting, and then opened the floor to the Board to discuss the intent and purpose of proposed 670(5).

Public Member Johnson stated 29 States have 2-year prescriptions, and 670(5) does not impact examination frequency. 670(5)'s intent is to help healthy patients with no massive vision changes from year to year, and does not impact children or seniors. The opposition to 670(5) does not have anything to do with public health but instead is to generate more business more frequently. The goal of the Board is not to create an economic protectionist cartel, and 670(5) helps achieve that goal.

Dr. Austin stated 670(5) allows doctors discretion based on a plain reading of the proposed language, and while not in the text of 670(5) does not require each doctor to document each prescription length. Instead the chart as a whole will justify the length, and therefore 670(5) does not provide an additional burden upon the prescriber. The opposition fails to differentiate glasses expiration date versus a recall date which could be in a month or six-weeks for dry eye or a medication change to treat glaucoma. Patients presenting back to the optometrist at the time of a scheduled annual exam does not always occur anyway with prescription lengths of 1-year. But patients do present back to the optometrist when they are not seeing well and get their glasses checked at that time anyway. Glasses themselves do not expire and some patients

wear their glasses for twenty years. Prescriptions are based upon refraction change, and not a medical issue with the patient. Patients with beginning phases of cataracts or keratoconus might be shorter expiration dates. Doctors need to better educate their patients on the differences between glasses expiration versus follow-up examinations.

Dr. Alamo-Leon stated in her experience optometrists are the first-line, primary care doctors for patients. A goal of the Board is safety of the community. Insurance companies consider glasses as a material and not a medical device whereas optometrists are trained that glasses with a prescription are a medical device. Analogy made to primary care physicians prescribing hypertension medication not being more than a year. Dr. Alamo-Leon agreed with Dr. Austin that some patients need to be seen more frequently than a year. If 670(5) is adopted for a two-year expiration, patient care may be worsened for patients who use their optometrists as their primary care with a medical necessity to be examined yearly. Further agreed with Dr. Austin when it comes to the need for increased patient education, and that glasses are a medical device.

Dr. Austin discussed the differences of medical conditions in that hypertension can kill a patient whereas glasses will not and that poor vision does not damage the eye. Dr. Austin emphasized 670(5) does not regard contact lenses which are placed directly onto the eye and could cause significant damage to the ocular surface of the eye.

Dr. Alamo-Leon commented that persons may not know that they have poor vision and incorrectly perceive that they see fine. In order for the patients of Nevada to be safe and treated as well as possible, a one-year expiration makes more sense.

Public Member Johnson explained the reason he became aware of this issue was the amount of persons who use online vision tests, which are not a substitute for an in-person examinations. Annual prescriptions for young and healthy patients results in patients not taking the prescription seriously, and 670(5) would avoid patients thinking they just had an exam and they want their next exam to be cheaper and do it via online vision tests instead. Public Member Johnson stated the AOA's study showed no specific evidence supporting annual exams.

President Smith sought Dr. McNeely's input. Director Schneider commented Dr. McNeely was signed-on, but no longer actively participating in the meeting.

Public Member Johnson answered Dr. Girigsen's chat question about what scientific studies does Public Member Johnson have to support his position. Public Member Johnson stated 29 other States do so, and there is no difference in early detection of diseases with a two-year glasses expiration.

President Smith stated the question she wanted to ask to Dr. McNeely was in the States who had gone to a 2-year glasses prescription expiration, has it changed the way that insurances allow for eye exams in frequency or coverage. President Smith stated 670(5) will likely not change the way she practices on a day-to-day basis when there is no additional requirement about the prescriber to chart a specific lesser time of expiration or to state that Nevada is a dry climate and might affect the ocular surface or tear film to support the expiration length.

Director Schneider asked for DAG Weiss's counsel on the procedural next steps now that there has been a workshop, public commentary, and this meeting. DAG Weiss described the process

with Legislative Counsel Bureau (LCB). Options included submitting to LCB as-is where persons in opposition will have another opportunity to oppose, or conduct a supplemental/secondary workshop before submission to LCB, or submit to LCB with changes based upon a majority vote to do so. President Smith expressed hesitancy on submitting 670(5) if insurance coverages were affected with a two-year expiration.

Public Member Johnson discussed a proposed motion to submit the workshop results to LCB with the understanding 670(5) is subject to possible revision based upon subsequently obtained information regarding insurance coverage. Dr. Austin stated if insurance coverage was being reduced with 2-year expirations then he would not endorse 670(5) but to his knowledge insurance coverage is not being impacted. DAG Weiss commented any board can inform LCB informally about a possible change, but that LCB controls its own process so there is no guarantee that LCB will listen to the Board. DAG Weiss advised to move onto another matter while awaiting Dr. McNeely to come back. Director Schneider later stated he would attempt to contact Dr. McNeely directly to answer President Smith's question. Discussion as to special-set meeting if information from Dr. McNeely provided sooner than the Board's next meeting.

Dr. Austin requested removal of the proposed edit to NAC 636.210(1)(b) about specialists, and to instead make those proposed edits a policy. The NAC already provides authority to the Board to approve specialties (identified post hoc herein as "unless he or she or has been certified by a board for certifying specialties approved by the Nevada State Board of Optometry.") Doing so will allow the Board to keep pace with professional society and organizations' changes such as the newest one from the American Academy of Optometry for diplomate status for comprehensive eye care. NSBO has authority to approve to certify any specialty per 210(1)(b) itself. President Smith agreed, but noted the board policy are not enforceable in the same way NACs or NRSs are.

Public Member Johnson left the meeting at 1258pm, and that he would return in approximately 15-20 minutes.

Dr. Austin asked for DAG Weiss's counsel. DAG Weiss, based upon this being the will of the Board, advised it was appropriate to make the workshop proposal into a Board policy.

DAG Weiss advised on foregoing Items that needed a vote until Public Member Johnson returned.

9. **Executive Director update re license renewals for 3/1/2024- 2/28/2026.** Director Schneider reported 554 total licensees comprised of 511 active and 43 inactive, 7 new licensees since March 1, 2024, and 806 practice location transactions.
10. **Board of Dispensing Opticians cross-over issues.** Director Schneider discussed that he and the Board of Dispensing Opticians' Executive Director are encountering similar issues and public complaints. Therefore the Board of Dispensing Opticians would be providing a list of questions for the Board of Optometry to discuss its position on such topics.
11. **Action Item- Website maintenance package.** DAG Weiss first provided approval for votes to take place on administrative and non-controversial Items. The Board spent approximately \$2600 on website maintenance in the prior year, and therefore the proposal would be cheaper and provided needed maintenance and security, and doing so would help avoid another

website crash. Dr. Smith moved to approve the expense. Dr. Alamo-Leon seconded. Public Member Johnson not present. Motion passed unanimously (3-0).

12. **Action Item- ED CEs re telehealth and ophthalmology/vision loss litigation.** Director Schneider requested the Board authorize \$197 per class for legal education related to his job duties. Dr. Smith moved to approve the expense. Dr. Alamo-Leon seconded. Public Member Johnson not present. Motion passed unanimously (3-0).
13. **Action Item- Foreign ophthalmologist eligibility for Nevada optometry license.** Director Schneider stated an ophthalmologist (OMD) in South Korea was seeking admission to the Nevada State Board of Optometry. Director Schneider informed the Board of passing NBEO scores and ECFMG (Educational Commission for Foreign Medical Graduates). Director Schneider brought up the statutes that as a condition precedent, the applicant has to be an optometry school graduate, and that there are no exceptions within the statutes as to OMD internship, residency, or fellowship in the United States, let alone in a foreign country. There are no preceptorships or sponsoring licensee programs as an alternative to admission discussed in the statute. Director Schneider discussed the possibility of an Application by Endorsement if admitted to another State's OD Board. Director Schneider asked for the Board's position. Dr. Austin stated the applicant is an OMD, and not an OD, and therefore is not eligible. President Smith agreed, but stated society is global and mobile, and asked that Director Schneider ask ARBO on what other States do in similar situations but that there is no statutory flexibility for the Board at present. Dr. Alamo-Leon stated OMD schooling is not the same as OD schooling. Dr. Austin agreed. Dr. Smith moved to tell the OMD of the Board's position, and for Director Schneider to ask for ARBO's knowledge on the topic. Dr. Austin seconded. Public Member Johnson not present. Motion passed unanimously (3-0). Later discussion as to possible school in Boston offering foreign-trained medical doctors from certain countries a 2-year program for an optometry degree.
14. **Action Item- Commercial surveillance/security cameras in leased optometry practice.** Director Schneider explained the meeting materials of the licensee's inquiry, Director Schneider's response to the licensee, and that the licensee did not submit the commercial lease for the Board's review. Director Schneider speculated this was a private business dispute, but needed the Board's position on the issue to advise the licensee. Drs. Smith and Austin agreed with Director Schneider's assessment, and that the Board does not have jurisdiction over the issue. Dr. Austin discussed possible HIPAA violations. Dr. Austin moved for Director Schedule to tell the licensee the Board's position. Dr. Smith seconded. Public Member Johnson not present. Public Member Johnson not present. Motion passed unanimously (3-0).
15. **Action Item- Tax Commission proposed legislation re frames/lenses sales tax.** Director Schneider explained the meeting materials of NRS 372 stating optometrists are not retailers for certain products, but the proposed NAC potentially impacts that status and is worthwhile for the membership to know if their businesses are in compliance with relevant tax codes. Director Schneider stated a meeting with the Tax Commission's Executive Director or DAG is in the process of being scheduled. President Smith stated her understanding that taxes are paid by the optometrist before sold to the patient where the patient does not pay sales tax, but that in a retail setting the same would not be true and therefore the change in the code may not necessarily be impacting optometrists. President Smith moved for Director Schneider to explore the issue and report back on his results. Dr. Alamo-Leon seconded. Public Member Johnson not present. Motion passed unanimously (3-0).

16. **ARBO Model Practice Act.** Director Schneider explained that ARBO was seeking all executive directors of all State Boards to obtain commentary from their respective Boards. Director Schneider stated there has been nothing provided from ARBO that it was ARBO's intent to force all States to rewrite entire optometry legislative sections. President Smith talked about the Model Practice Act being a good template when starting from scratch and providing insight when Boards were thinking about adding different sections. Director Schneider commented his review of NRS 636, NAC 636 and its workshop, and AB 432 showed many commonalities already. Dr. Austin stated in some instances that Nevada law was more detailed than ARBO's.
17. **Action Item- ARBO ED Scholarship for June 2024 convention.** Director Schneider requested approval of a letter to ARBO for a scholarship to ARBO's June 2024 convention. Doing so would save the membership money if accepted. President Smith proposed a budget item for the Director or a Board member to attend yearly. President Smith moved to approve the letter and to pay for Director Schneider to attend should he not receive the scholarship. Dr. Austin seconded. Public Member Johnson not present. Motion passed unanimously (3-0).
18. **Action Item 16. Complaint 24-11.** Public Member Johnson reentered the meeting. Director Schneider read a statement in the record:

NRS 636.310(3) authorizes the Executive Director to notify the Board of an investigation for further consideration by the Board if deemed necessary by the Board after an investigation.

This public complaint submitted on or about March 5, 2024 is being presented in a double-blind manner, i.e., the Board is not being told during the course of this agenda item who the complainant is or who the subject licensee is.

The materials associated with this agenda item are redacted to eliminate any identification of party identities, gender, locality, whether the practice is commercial or private, or whether the licensee is new to Nevada or not.

I am requesting the Board not ask any questions of me about such information as this is immaterial to the Board's evaluation of the allegations, the licensee's response and the licensee's submitted documents in support of the response. As I have made the licensee aware telephonically on March 20th and in writing on March 27th, the purpose of this double-blind presentation is to afford the licensee due process and avoid any undue influence upon the Board by mere virtue of who the complainant may or may not be or who the licensee may or may not be, and in order to balance the statutory directives of protecting the public while balancing the licensee's due process rights.

The allegations regard a presentation on March 5, 2024. The complainant-patient's allegations are contained in the redacted inquiry letter that are part of this meeting's materials.

The core aspect of the allegations is the lack of notice to the patient that the examination would be performed by a non-licensee technician and only upon the patient asking did the technician state he is only a technician and not a doctor. The licensee's records and response dispute this, stating quote "Patient is aware the telemedicine visit is by a technician."

There are disputed issues of fact when it comes to the education given to the patient, particularly when the prescription was appx a -8. The complainant alleges no education was

provided, let alone any mention of risks of retinal detachment or signs and symptoms of retinal detachment. The licensee's records dispute this, stating quote "RD precautions given- flashes, floater, veil, loss of vision RTO ASAP." No date or time-stamps appear on the licensee's records. Therefore it is unknown if the records were prepared contemporaneous or upon receipt of the inquiry letter. It is also unknown if those chart quotations are a function of EMR auto-population.

The patient alleges no doctor-patient communications occurred, be it in-person or via remote technology or telephone.

The licensee's response is that information and diagnoses from the technician came from the licensee to the technician to convey to the patient. The licensee's response also asserts that the licensee performed the final examination of the patient before discharge.

The licensee's office billed the visit in question as a comprehensive examination for a new patient.

The licensee's response does not address the question of what kind of exams they believe are allowed to be performed via telehealth. Their response asserts that they both directly supervised the non-optometrist technician during the exam and that the licensee performed the final eye exam, but there was no further information or explanation provided as to how that was done.

After discharge, the patient looked up the licensee and/or the licensee's practice location and discovered factually similar reviews of other patients likewise not being told the examination and prescriptions were being performed by a non-optometrist technician. These online reviews were provided to the licensee for a response, with the inquiry letter placing the licensee on notice of possible systemic violations of telehealth law. The licensee's response to these was that the reviews are hard for the licensee to believe. The licensee did not refute the online reviews, or describe the licensee's business model, or state the licensee's belief on how or why the licensee's practice was specifically adherent to any specific portion of AB 432 Section 19, other than to say the licensee is in compliance with the laws listed in the inquiry letter in a summary fashion.

One of the licensee's submitted materials included photographs of an exam room. Pages 2, 7 and 8 of that exhibit show two pieces of paper on the wall or in picture frames. On March 26, 2024 at 456pm, 725pm, and on March 27, 2024 732am., the licensee was requested the licensee to send those documents to show the Board what is being displayed in the licensee's exam room. At the time of this meeting, the licensee has not submitted any such documents.

The Order to Produce Records upon the licensee specifically requested "Any text messages or phone records to and from your technician on or about March 5, 2024 regarding the examination and prescription provided to patient" and "Any metadata of your electronic medical records system showing your access on or about March 5, 2024 into the electronic chart of patient." The licensee's response did not include any responsive information to these two subpoena items.

I will now ask the Board to deliberate and discuss what it wants to do next in this matter. Options available to the Board include closure of the investigation, issuance of a letter

of concern then closing the investigation, authorization of the Executive Director to issue additional subpoenas and/or request a supplemental response from the licensee, or request that the Attorney General's office pursue a formal complaint against the licensee and prosecute the matter as provided under NRS 636.325. If the Board votes for authorizing a formal complaint, which the Executive Director is not advocating for one way or another, it will be up to the Attorney General's Office to apply laws to facts and decide what specific charges should be included in the formal complaint.

Dr. Smith stated the facts show a disregard for how telehealth laws are written, and the licensee's responses to the allegations were non-useful and indirect. Dr. Smith requested a formal complaint and hearing by motion. Dr. Austin seconded. Dr. Alamo-Leon agreed. Motion passed unanimously.

19. **Public Comment.** Dispensing Optician NGadi Foreman, license no. 557, sought the Board's position on dispensing opticians employed by a corporate retailer subleased to an independent doctor of optometry who has no previous records of the patients, are being asked to print work orders for the technicians to work off of to perform asynchronous exams, and that the technicians are purporting to be the doctor and not advising the patients they are technicians with no eye doctor on site, and the technicians are making medical recommendations. Director Schneider requested going to the Board website and under the For the Public tab is a Submit Complaint option. Dr. Austin implored that she do so and thanked Ms. Foreman for making the Board aware.
20. **Action Item- Adjournment.** Dr. Austin moved to adjourn the meeting. Public Member Johnson seconded. Motion passed unanimously. The meeting adjourned at 1:36 p.m.

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FY 2023-2024 Regular meeting schedule

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 April 25, 2024.

/s/ Adam Schneider

Adam Schneider, Executive Director