

NEVADA STATE BOARD OF OPTOMETRY



MINUTES OF WORKSHOP RE: R066-19 SECTION 12(3)-(4) August 28, 2024

1. **Welcome and introductions.** President Mariah Smith, O.D. opened the live meeting at 12:31p.m.¹ Deputy Attorney General (DAG) Todd Weiss, Esq., and Board members Mariah Smith, O.D., Jeffrey Austin, O.D., Julieta Alamo-Leon, O.D, and Sally Balecha were present via Zoom, Meeting ID: 829 5827 9665, Passcode: 089267, telephone 1 669 900 6833. Executive Director Adam Schneider attended in-person at Nevada Business Center, Red Rock Room, 3300 W. Sahara Ave., 4th Floor, Ste. 440, Las Vegas, NV 89102.

2. **Public Comment.** President Smith invited public comment. Dr. Christensen stated in his opinion that R066-19(12) is sufficient already, he has not heard a basis for the changes for what the current version does not address nor that the suggested changes do anything to protect optometric independence. Dr. Christensen described his suggested submitted revisions, including the concern that removing section 3 could be interpreted as the prohibition of the relationships listed in section 3. He questioned the intent of NOA's proposed section 4(e) and possible differing interpretations of it including possible prohibition of entering into franchise agreements based upon a percentage of retail sales.

Dr. Kopolow stated the problem that there is a website of a non-licensee that represents that it owns a Nevada optometric practice. Owning a practice by a non-licensee is illegal. There is a disconnect on what is happening, compared to what the law says. He had no objections to Dr. Christensen's proposed changes, but wanted clarification on sections 3 and 4.

Dr. Stephanie Lee stated when she was on the Board, licensees from practices other than Dr. Kopolow's or Dr. Christensen's were filing complaints themselves against their practice management regarding lack of access to records or being able to provide emergency patient care. The intent of these laws is to address those issues. The intent is not to pursue licensees who are practicing within the law.

In reviewing Dr. Christensen's proposal for a new section 3 which was section 4, Dr. Smith asked Drs. Kopolow and Girisgen if they had any objections. Dr. Girisgen responded NOA has no objections to that, so long as the NOA's proposed section (e) is included that a non-licensee cannot own or share in the profits of any Nevada optometric practice; reason being it aligns with other portions of Nevada optometry law, and avoids the licensee being manipulated by the non-licensee. Dr. Christensen asked the NOA to clarify its position on an arrangement where the franchise pays a portion of sales to the

¹¹ This Workshop occurred immediately after the Board's regular meeting on August 28, 2024 12pm.

franchisee. Dr. Kopolow responded that was not the intent of NOA's proposed section (e) because the franchisor has no ownership and it was not the sharing of profits and instead allows the licensee to use brand names. As far as sharing of revenues, that only has to do with sharing of materials, and the sharing of revenues is not new and is old law. Discussion between Dr. Christensen and Dr. Kopolow as to NOA's reference to lease prohibitions, and Dr. Kopolow stating that up until this point that was the only association that was expressly allowed.

Dr. Girisgen suggested the elimination of "or shares in profits" be removed from NOA's proposed section (e), as reinforcement of Nevada optometry law.

Dr. Austin stated it is okay that Nevada optometric laws reinforce themselves.

Dr. Kopolow asked why does a website state that a non-licensee owns a Nevada optometry practice, not as an accusation but why does it say so, bearing in mind the Board does not have any purview over what private equity does. He agrees with Dr. Girisgen's suggestions to remove "or shares in profits" from NOA's proposed section (e).

Dr. Chen Young stated he was on the Board when R066-19(12)(3) was drafted, and it was not intended to provide a loophole for non-licensee ownership of an optometric practice. If the Board votes to remove section 12(3), he could understand why it could be misinterpreted but the intent was not to create non-licensee organization loopholes for optometry practice ownership. Because the Board cannot discipline or investigate non-licensee organizations, this is why those non-licensee organizations cannot be allowed to own optometric practices. Non-licensee organization ownership does not increase access or availability of healthcare to the public. Dr. Young wondered if a licensee's contract with an MSO or PE to handle payroll and HR is a just workaround to the MSO or PE owning the practice.

Director Schneider summarized workshop law and the processes for regulation codification process, the Board's need to vote on proposed language, then the Board voting at its next regular meeting approving the proposed language. DAG Weiss agreed with Director Schneider's summary of the relevant law.

Director Schneider clarified from NOA's proposed revisions a strikethrough in (1)(b), adding three words in section 3, using section (e) but removing "or shares in profits" and not including NOA's proposed subsection (f).

Maria Nutile questioned Director Schneider about the workshop process and a deadline from August 12, 2024, and allowance for others to comment on Dr. Christensen's proposed revisions. Director Schneider explained the differences between a workshop process and regular meeting process. Director Schneider explained the sequence of events of a workshop on July 31, 2024, a possible agreement at the conclusion of that workshop, a second workshop presently being conducted, a Newsletter and public postings of the second workshop for commentary with a deadline for written submissions on August 21, 2024; the rationale being to allow enough time for the Board to analyze such materials to provide a more effectual workshop process. Ms. Nutile believed the process was not leading to any more clarity on what is already covered by the statute, and the Board not enforcing the statute is a different issue than what is already stated in the statute. Ms. Nutile questioned why the law needs to be repeated in another form which in her opinion could only lead to ambiguity.

Ms. Nutile sought clarification of the NOA's usage of "obfuscate" in its proposed section (e). Colloquy as to "obfuscate" versus "obviate," Director Schneider's suggestion of "abrogate" of which Ms. Nutile agreed, and Dr. Austin's suggestion of "eliminate" of which Dr. Girisgen agreed.

Dr. Young asked if Director Schneider stated that section 1(b) was going to be eliminated. Director Schneider clarified that only “other than the physician” would be eliminated in section 1(b), and in section 3 “business or entity” is being added. Dr. Young reiterated the need to protect the public.

Colloquy and agreement as to “eliminate” replacing “obfuscate” in proposed section (e).

Dr. Smith moved for Director Schneider to write a revised/proposed R066-19(12) consistent with the workshop discussions. Dr. Austin seconded. Motion passed unanimously.

Director Schneider stated the next regular meeting is September 26, 2024 12pm.

3. Action Item. Dr. Smith moved to adjourn. Dr. Austin seconded. Motion passed unanimously. Workshop adjourned at 1:09p.m.

26 persons attended virtually, inclusive of Board members and Deputy Attorney General. No role call conducted or sign-in sheets provided.

1 person attended in-person, inclusive of the Executive Director. No role call conducted or sign-in sheets provided.

These minutes were considered and approved by majority vote of the Nevada State Board of Optometry at its meeting on September 26, 2024.

/s/ Adam Schneider

Adam Schneider, Executive Director