

NEVADA STATE BOARD OF OPTOMETRY



MINUTES OF PUBLIC MEETING December 11, 2024

1. **Call to Order.** Mariah Smith, O.D. opened the live meeting at 12:19p.m.
2. **Roll Call.** Deputy Attorney General (DAG) Todd Weiss, Esq., and Board members Sally Balecha, Mariah Smith, O.D., Jeffrey Austin, O.D., Julieta Alamo-Leon, O.D. were present via Zoom, Meeting ID: 817 7104 0189, Passcode: 154355, telephone 1 669 900 6833. Executive Director Adam Schneider attended in-person at Nevada Business Center, Tahoe Room, 3300 W. Sahara Ave., 4th Floor, Ste. 440, Las Vegas, NV 89102.
3. **Public Comment.** Dr. Smith invited public comment. No comments provided.
4. **Action Item. Complaint 24-12.** Director Schneider stated this public complaint is being presented in a double-blind manner, i.e., the Board is not being told who the complainant is or who the subject licensee is, and the materials associated with this agenda item are redacted to eliminate any identification of party identities.

The complaint is not about poor clinical care. Instead it regards alleged co-management by the OMD and the subject licensee for LASIK. The patient paid for lifetime revisions for free in January 2018, and the subject licensee would co-manage the patient with the OMD per the signed documentation by the patient yet not signed by the subject licensee. When the patient presented back to the OMD for that free revision in 2024, the patient was told the OMD's services were for free but that any facility and/or materials charges needed to be paid directly to the subject licensee.

From the patient's perspective, this was a bait-and-switch, of which the subject licensee was involved. But from the subject licensee's position, the only time the subject licensee ever met the patient was during a February 2024 examination, thus there was never any co-management relationship or doctor-patient relationship from 2018-2023, and the OMD's statement, the business attorney's statement, and the surgical coordinator's statements prove that lack of relationship.

The licensee denies any attempted collection of payment, and states that the surgical coordinator

is not the licensee's employee, but the materials do not show that necessarily to be true where per the text messages to the patient the surgeon's fees are being negotiated and/or brokered by the surgical coordination after discussing with the subject licensee. This in addition to the subject licensee during the pendency of the investigation cc'ing the surgical coordinator with the subject licensee's CEs.

Dr. Smith summarized the complaint of a patient being upset with unlisted surgery facility fees despite a lifetime LASIK guarantee, and commented in her experience that her co-management documents have clear delineation of whose role is what, but here there might be a blurring of the lines. An example is the licensee cc'ing the surgery scheduler about CEs, yet the licensee's response is that there is no relationship with the surgery scheduler. Dr. Smith asked rhetorically then why is the surgery scheduler being cc'ed multiple times by the licensee if there is no professional relationship. Dr. Smith remembered a case from 2018 where a licensee's LASIK advertisements were very ambiguous on whose role was what. It was strange that the patient is being told by the surgeon to ask the licensee what the surgeon's fees would be.

Dr. Austin requested for future redactions that the redacted names be re-labeled to, e.g., OMD1 or OD1 to make the review less confusing.

Director Schneider answered Dr. Austin's question that the only evidence of co-management is the form the patient signed in January 2018 at the OMD's office which lists the names of the OMD and subject licensee, and that the patient never saw the subject licensee until February 2024. Dr. Austin stated if the patient never saw the OD in the post-operative period, then no co-management relationship was established. But a follow-up question is did the licensee receive any co-management payment in 2018, which is so, establishes a financial relationship. Director Schneider stated that exact question was not asked in the inquiry letter, but the licensee's response includes only billing from February 2024. Dr. Smith added the follow-up question needs to include whether it was co-management fees to the OD, or fees to the surgery center which the OD might own a portion of the business. Dr. Austin commented that if the licensee received co-management money yet never performed any co-management services, that is probably an ethical violation. Dr. Austin asked if the OD has a relationship with the LASIK center. If so, that would be very unusual where the OD is the one making purchases for the LASIK surgery and suggests a co-mingling of funds which is not common at all. Dr. Austin requested additional information in order to make a decision.

Director Schneider presented multiple options available to the Board, which could be concurrent if the Board elects: 1) close it down with no further action; 2) ask any additional questions to the licensee before making a decision to involve the Attorney General's office or close it down based upon the additional information; 3) close it down as to this Board, but at the licensee's request, forward the complaint to the medical board to investigate the OMD; 4) put this investigation on a timeout, but at the licensee's request, forward the complaint to the medical board to investigate the OMD and await what the medical board's investigative committee finds out.

Dr. Austin stated the Board has an obligation to do a complete investigation upon the OD, but to still refer the complaint to the medical board. Dr. Austin would like additional information on the relationship between the OD and the surgery center in 2018, the relationship between the OD and the OMD in 2018, the relationship between the OD and OMD in 2024, and the relationship between the OD and surgery center in 2024. If there is a financial relationship, then perhaps the

OD bears responsibility. If there is no professional responsibility or financial responsibility, then perhaps the OD does not bear responsibility.

Dr. Smith remembered a prior complaint where an OD was referring patients to his wife for occupational therapy, and was considered an inappropriate referral due to them being married. Thus Dr. Smith would like to know if there were private-life relationships between the OD and OMD, or are colleagues in any other respect. Dr. Austin agreed.

Dr. Alamo-Leon commented about the OMD's written response that the OD did not establish any monetary benefit with the patient, and agreed additional information is needed.

Dr. Smith noted the response discussed 1099 status, but was unclear from the redactions if that was the surgical coordinator or the OMD. Director Schneider stated the text messages to the patient mentioned the OMD as an independent contractor but did not mention as to what entity or what person. Dr. Smith would like to know the employment status before the change of status to independent contractor based upon the text message implying the OMD recently became an independent contractor meaning the status may have been different in 2018.

Public Member Balecha, based upon a review of the documentation that the patient initialed, questioned whether the conditions for the lifetime guarantee were even met. Dr. Smith discussed the difference between a recommendation for yearly examinations versus required yearly examinations in order to not void the contract. Dr. Austin noted the OMD's written response that the patient violated the lifetime guarantee when the patient chose distance correction for both eyes in 2018, but then in 2024 wanted correction for monovision. From Dr. Austin's perspective, the patient would have to pay for at least one eye regardless, and the lifetime guarantee is off the table.

Director Schneider commented we do not know if the patient presented to the OMD from 2018-2023 because the custodian of those records is the OMD, whom is not a licensee of the Board. This makes the licensee's suggestion, and Dr. Austin's suggestion, of forwarding the complaint to the medical board even more appropriate.

Dr. Smith would like additional information of why did the OD, through the surgical coordinator, attempt to negotiate the fee if there was never any co-management relationship in the first place.

Dr. Alamo-Leon commented that the patient should have known based upon the co-management documentation that there is more than one doctor involved, and that it was a team effort. But how that care was delivered and how the money was dispersed is very vague.

Dr. Austin stated in his experience that it is not uncommon for a patient to sign co-management documentation but the patient decides to only treat with the OMD. But here, we do not know if the patient did so. Director Schneider re-represented that the co-management documentation lists only the OMD and the subject licensee, and re-stated Dr. Smith's question of then why is a deal being brokered on behalf of the OMD, the surgery center, and the OD, if there is no bona fide co-management relationship or any doctor-patient relationship which predated February 2024.

Dr. Smith moved for Director Schneider to ask for the additional information as discussed in the meeting, and to forward to the medical board. Dr. Alamo-Leon seconded. Motion passed

unanimously.

5. Action Item. Consideration and approval of Minutes for October 30, 2024 regular Board Meeting. Dr. Smith confirmed all present Board members had an opportunity to review the draft. Dr. Smith moved to accept as proposed. Dr. Austin seconded. Motion passed unanimously.

6. Action Item. Consideration and approval of Minutes for October 30, 2024 Workshop. Dr. Smith confirmed all present Board members had an opportunity to review the draft. Dr. Smith moved to accept as proposed. Dr. Alamo-Leon seconded. Motion passed unanimously.

7. Action Item. Consideration and approval of FY2023-2024 Audit and possible expenditure for supplemental accounting services. Director Schneider reminded the Board that the prior executive director's retirement payouts had to be revised in the months after completion of the FY2022-2023 audit. So in part, that resulted in the Auditor's report and the deficiencies discussed at pages 36-40 of the 43 page report.

Director Schneider explained his recommendation for supplemental accounting services, and the Board had approved increased bookkeeping services around this time last year, and recommended supplemental accounting services to help avoid any deficiencies for FY2024-2025 audit. This would be a continuum of that process from last year.

Director Schneider recommended supplemental accounting services of 10-15 hours at \$100-\$200/hours for end of fiscal year projects and reconciliations, so minimum \$1000 and maximum of \$3000.

Director Schneider has been in contact with the Auditor who stated other Boards utilize outside accounting services for end of fiscal year balances and budgets, such as Engineering and Marriage and Family Therapists, and with Carson Tahoe Tax Services who advised they do this kind of work for other governmental clients and their rate is \$100 an hour to \$200 an hour with most of them being in the \$200 an hour rate. Those services include advisory services for accounting standards, year end account reconciliations, and calculation and recording of year end adjusting journal entries including accrued payroll, compensated absences, prepaid expense, discipline payables, deferred revenue, and post-employment benefits.

Dr. Smith moved to authorize supplemental accounting services up to \$3,000, and should the fees exceed that amount for Director Schneider to present to the Board. Public Member Balecha seconded. Motion passed unanimously.

8. Executive Director report re meeting with Administrative Collaborative and BDR 18-301. Director Schneider stated executive directors of similar boards convened to discuss BDR 18-301. Different EDs contributed to the meeting from their own perspective:

- B&I's target implementation date of July 2026 with a six-month notice and employee shifting;
- B&I wants to retain expertise, but is unknown if that means EDs or licensing specialists;
- the possible need for a 2027 legislative session;

- Board positions are voluntary, and the meetings might be all day long given the amount of Boards consolidated into a super board;
- possible process of sub-boards, with their proposals to then go to the superboard for rubber-stamping;
- Boards of Healing Arts and Homeopathic Medicine were possibly going to be eliminated, so there was some positivity that the superboards weren't eliminating their chapter whole cloth;
- Some EDs researched Iowa's model, yet Iowa's model does not consolidate the way that this bill would;
- Board funds would be accounted for individually, but consolidated, with individual bank accounts would be eliminated. A concern was that Boards operate as if being in the private sector versus how State-controlled governmental plans;
- B&I's goal is to have uniform licensee renewal fees and times of renewal;
- Concerns included lack of customer service to research issues for the public or the membership, and that superboards will not have any expertise regarding complaints and investigations.

Dr. Smith summarized her meeting with B&I leadership, including there being two members of each Board except for Audiology, not all executive directors being retained in their current position, and consolidation of investigative personnel and processes. A concern was raised to B&I personnel about the lack of subject matter expertise when non-optometry issues are discussed. B&I's response was there would be a panel of optometrists who would not be Board members but who would assist in subject matter expertise.

9. Executive Director report re BDR 151 and possible expenditure for lobbyist services.

Director Schneider directed the Board to the meeting materials for the proposed retainer agreement and of a similar nature of what the Board used for the 2023 session. Director Schneider has been in contact with legislative support specialist, whose services would include monitoring BDR 18-301 and what the Board wants for that, in addition to Dr. Koenig's bill of BDR 151. Director Schneider recommended the expenditure of \$20,000 for such services.

Dr. Smith stated this was already part of budget, and for Director Schneider to proceed with retention of the legislative support consultant.

10. Executive Director report re licensing transactions since start of FY2025. Director Schneider listed the following numbers as stated in the Agenda:

10/24/2024 - 12/4/2024	FY2025 cumulative
New licenses: 1	9
Licenses by endorsement: 0	5
Glaucoma: 1	3
OPAC: 5	15
Fictitious Name: 6	18
Location changes: 4	22
Additional locations: 4	32
LOGS: 2	33
PRR: 10	19
Refunds: 0	3
Mobile: 1	1

Substitute location: 1	4
Public complaints: 0	7
2026-2028 CE review: 1	2

11. Action Item. NRS 636.206 (Expedited license by endorsement) clarification and for possible inclusion into BDR 151. Director Schneider stated the Kentucky Board will be allowing students to take the Canadian exam in the event they fail NBEO part I the maximum amount of times. So nationally, the concern is a newer batch of Kentucky licensees will not have passed NBEO part I, which is the basic science portion of the NBEO. So with States that have license by endorsement statutes, those Kentucky licensees could obtain non-Kentucky licenses without having ever passed the basic science portion. So the concern is not addressing that issue violates the mission of protecting the public.

Director Schneider directed the Board to the meeting materials and that in NRS 636.206, passing all phases of the NBEO is not an express requirement. The proposed revision to NRS 636.206 closes that loophole. Should the Board want to add it to BDR 151, Director Schneider stated he is already in touch with LCB and adding it to BDR 151 as a supplement is allowable upon communication with Dr. Koenig.

Dr. Austin agreed with everything in Director Schneider’s position, and moved for Director Schneider’s proposed revisions to NRS 636.206 be incorporated into BDR 151, and that all licensees in Nevada be it as an initial application or by endorsement, pass all phases of the NBEO. Dr. Alamo agreed, and seconded. Dr. Smith talked about NBEO and its successor organizations. Director Schneider stated the proposed revisions to NRS 636.206 in the meeting materials incorporates that language. Motion passed unanimously.

12. Public Comment. Dr. Smith invited public comment. No comments provided.

13. Action Item. Dr. Smith moved to adjourn the regular meeting. Dr. Austin seconded. Motion passed unanimously. Meeting adjourned at 1:20p.m.

8 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.

* * * * *

FY 2024-2025 Regular meeting schedule

Wednesday 12/11/2024 12:15p.m. (pst) Reg. Bd. Meeting- phone or Zoom

Thursday 1/23/2025 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom

Tuesday 2/18/2025 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 January 23, 2025.

/s/ Adam Schneider

Adam Schneider, Executive Director