STATE OF NEVADA

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Executive Director

DEPARTMENT OF BUSINESS AND INDUSTRY
OFFICE OF NEVADA BOARDS, COMMISSIONS AND COUNCILS STANDARDS
NEVADA STATE BOARD OF OPTOMETRY

MINUTES
OF PUBLIC MEETING
May 28, 2026

1. Call to Order and statement of purpose to protect public health and safety, and the general welfare of the people of this State. Live meeting opened at 12:01p.m. and the following was read into the record for NRS 241.020(3)(d)(8) compliance- "Because this meeting is being held using a remote technology system pursuant to NRS 241.023 and does not have a physical location designated for the meeting where members of the general public are permitted to attend and participate, clear and complete instructions for a member of the general public to be able to call in to the meeting to provide public comment is the following- telephone number 669-900-6833, meeting ID 775 883 8367, Passcode 8367."

2. Roll Call. Executive Director Schneider present via Zoom. Board members Mariah Smith, O.D., Jeffrey Austin, O.D., Julie Alamo-Leon, O.D., Sally Balecha, and Dan Lyons, O.D. present via Zoom. Quorum established.

3. Public Comment. Public comment was invited with a reminder that no action will be taken at this meeting on any issues presented as public comment and the maximum time is three minutes. No public comment received.

4. <u>Action Item</u>. Consideration and approval of April 23, 2026 Regular Board Meeting Minutes. Director Schneider confirmed all present Board members had an opportunity to review the draft and if any changes were needed. Dr. Smith moved to accept the proposed Minutes as-is. Dr. Lyons seconded. Motion passed unanimously.

5. <u>Action Item</u>. Complaint 26-13 Director Schneider stated this 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.

Dr. Austin stated he recognized the charting, and in the abundance of caution he believed this could materially impact his independence of judgment and therefore recused, and abstained from any discussion and voting on this item.

The issue before the Board was Licensee 1's conduct unprofessional when Licensee 1 failed to recognize a BCL (aka bandage contact lens) during Licensee 1's outpatient examination post-op day 1? After being seen by an ophthalmologist several times over several months, Licensee 1 discovers the BCL but by then the eye is infected resulting in allegedly avoidable medical care, corneal ulcer,

vision loss, pain and suffering, etc.

Licensee 1 retained counsel and provided a 30+ page narrative. There is a statement that the allegations are vague and requires clarification. But in light of the specific allegations stated in the inquiry letter, this appears to be a stock template of Licensee 1's lawyer so as not to waive the argument if an appeal to the district court has to occur.

Director Schneider provided a chronology as follows:

June 2024- OMD 1 performs right eye cataract phacoemulsification with IOL. "BCL" handwritten on the operative report. BCL is documented in multiple places in surgery center's records.

Post-op day 1 Licensee 1 treats patient outpatient at a Practice Entity 1 location. Patient stated a foreign body sensation in the left eye, but no mention of the same complaint in the right eye. Patient was on antibiotics and a steroid. Seemingly standard post-op eval. No mention of any BCL.

From June through October 2024, OMD 2 treats the patient. No mention of BCL or looking for one.

Then on October 30, 2024, Licensee 1 treats patient due to right eye complaints and noted a corneal infection "likely secondary to retained bandage contact lens." Licensee 1 does not provide an explanation for why the BCL was seen here and yet not seen in June, other than implicitly Licensee 1 was now looking at the right eye closer in light of the patient's pain complaints.

For the remainder of November 2025 into March 2025, the original surgeon OMD 1 treats the patient multiple times.

The patient obtained a second opinion with OMD 6, who in May 2025 performs right eye superficial keratectomy of the right central cornea.

Director Schneider summarized Licensee 1's defenses as follows:

1. OMD 1, nor anybody else, ever told Licensee 1 about the BCL;
2. Practice Entity 1 did not have the records from Surgery Center 1 for Licensee 1 to review on post-op day 1 where BCL is documented several times over in Surgery Center 1's records. (Director Schneider noted that unlike acute care hospital records, OMD 1's operative dictation does not contain any time stamp as to dictation time or transcription time. So there is no way to know when "BCL" was handwritten on the operative report or provided to Practice Entity 1);
3. Licensee 1's expert says in a perfect world Licensee 1 should have seen the BCL. But even if Licensee 1 saw the BCL, it would not change Licensee 1's short-term management;
4. OMD 2 saw the patient post-op multiple times into October 2024 yet did not see the BCL either; and
5. It was Licensee 1 in October 2024 who discovered the BCL.

Director Schneider asked does the information presented rise to the level of probable cause for involvement of the Attorney General for investigation into unprofessional conduct of Licensee 1?

Dr. Lyons noted this is unfortunate case. This occurs multiple times where the OD is drowning the patient with multiple drops, including anesthetics, which tends to soften the cornea. It is not uncommon for a BCL being used, and agrees in a perfect world it should have seen but it is not easy to be seen. He is not sure how much blame to place on Licensee 1 when OMD2 skipped over a one-week and one-month follow-up.

Dr. Smith asked Dr. Lyons, who does more post-op evaluations than her, in addressing Licensee 1's argument if it is true that the contact lens would not have been removed at the one-day post-op. Dr. Lyons replied it is very possible, whereas he would probably take it off to assess the eye and then if

an actual epi defect is seen to then put a new one back on. Another option is to remove it, but it is probably reasonable to say that it would have just stayed on.

Dr. Smith raised the issue of the surgery center's chart not being available on post-op day one, but regardless does it take away the optometrist's responsibility to at some point review the surgical note and sign off on it since they are doing the post-op care. Dr. Lyons responded he did not know the set-up, unlike his practice where the surgery center is across the hall and therefore he has the reports the next day.

Dr. Smith noted there is nothing in our laws that requires it. Licensee1 is low on the totem pole, but it does not take away blame completely.

Dr. Alamo noted this is a complicated case and where there were multiple ophthalmologists involved in this case, she agrees with Dr. Smith that Licensee 1 is the lowest on the totem poll to actually take blame. As far as when she does any co-management, she does not receive the report in her office at any time and not on day-one unless it is a one page report that was sent over which sometimes gets misplaced. It would be difficult to take further action with the optometrist being the center of the problem here whereas the ophthalmologist should take responsibility.

Public Member Balecha abstained and deferred to the licensees on the board to provide guidance based on their experience and professional standards. Director Schneider noted there would still be quorum, noted the abstention, and advised it was Public Member Balecha's responsibility as the public member to assess the complaints from a public member perspective for future complaints.

Based upon the Board's discussion, Director Schneider advised on a series of options: 1) close the investigation with no further action; 2) close the investigation with no further action but advise Licensee1 of the board's concerns; or 3) refer this matter to the Attorney General for potential prosecution of a formal complaint. Dr. Lyons indicated a preference to option 1 or 2, but not 3. Dr. Smith inquired, and Director Schneider confirmed, that Licensee 1 was a defendant in a lawsuit on this matter. Dr. Smith indicated her preference for option 3, even though Licensee 1 holds only a minority portion of the blame in her opinion. Dr. Alamo indicated her preference for option 2.

Based upon the Board's discussion, Director Schneider advised on proper voting procedures and sequence. Dr. Alamo inquired into possible CEs regarding co-management and surgical management or complications for Licensee1. Dr. Lyons suggested 6 hours to be completed by the end of the year.

Dr. Smith moved to refer the matter to the Attorney General. Dr. Smith voted Yes. Drs. Lyons and Alamo voted No. Motion did not pass 2-1.

Dr. Lyons moved to close the investigation but that Licensee 1 be advised of the Board's concerns and for Licensee 1 to take 6 hours of CEs in co-management and surgical management or complications to be completed by the end of the year. Dr. Alamo seconded. Drs. Lyons and Alamo voted Yes. Dr. Smith, ensuring her prior vote for referral to the Attorney General was reflected in the record, voted Yes. Motion passed 3-0.

6. <u>Action Item</u>. Complaint 26-20

Dr. Austin noted he has never recused from any point in his entire board existence, but stated he recognized the facts, and in the abundance of caution he believed this could materially impact his independence of judgment and therefore recused, and abstained from any discussion and voting on this item.

Director Schneider directed the Board to the inquiry letter which explains the issue, the chronology, and all relevant laws evolving over the years.

Director Schneider noted that per Licensee 1's response, Licensee 1 called the Executive Director Jenkins in 2019-2020 and was told because the Board approved his business structure in 2005 that means his businesses were compliant with the then-new 2019-2020 laws. Director Schneider did not dispute that call one way or another, but there is no email to or from Licensee1 to or from Director Jenkins memorializing Director Jenkin's opinion of compliance.

Director Schneider noted he did not see any need for this kind of I.T. enhancement, but Licensee 1 seems to place blame on the Board's website for not having double-authentication to allow Licensee 1's employee to submit the application without Licensee 1's approval. Director Schneider noted Licensee 1 never says the employee was reprimanded for stealing the credit card and/or having unauthorized access to the credit card in order to do so.

If the Board is satisfied that Licensee 1 having a holding company with OMD 1 is not in violation of Nevada law, the other question begged is whether the renewal application with mistaken/false information which Licensee 1 blames his employee for, is likewise without consequence. The meeting materials contains some relevant law in this respect, albeit the intent of the law very likely is for patient care and not mistaken submissions to the Board.

Dr. Lyons noted he worked for an OMD practice for 20 years and the issues of this complaint have always been an issue and what constitutes a true independent contractor when he is not an employee or partner of that group. As to first issue, Licensee1 reached out to the board to do the right thing so no fault should be assessed but as to the second issue Dr. Lyons analogized the board's prior meeting regarding EMRs and the OD having the ultimate responsibility for it and therefore the lowest level administrative fee should be assessed upon Licensee1.

Dr. Smith discussed her perspective of the administrative fines which in the past were paperwork-based which this too could be considered a paperwork-based issue. Dr. Smith agreed with Dr. Lyons that Licensee1 tried to be in compliance where the law does not really give the board a great way of having co-management doctors perform within their scope. Dr. Smith agreed with Dr. Lyons for an administrative penalty so long as consistent with past practices of the board.

Colloquy on administrative fines history and tiers of penalties.

Dr. Alamo's main concern was Licensee1 allowing someone else to submit the application when the application is sworn to under penalty of perjury where this is a legally binding contract with Licensee1's board and not an insurance company.

Public Member Balecha commented that she has to renew her real estate license, and Licensee 1 would technically still be responsible for it even if Licensee1 is depending on an employee to do it, so an administrative fee is something to impose upon Licensee 1.

Dr. Smith commented that a tier one penalty is acceptable, but noted that past administrative fines are different than this situation which could be categorized as unprofessional conduct.

Dr. Smith moved to issue a tier-one administrative fee of $200 with an warning to the Licensee1 to not do so again and that repeat offenses have higher penalties, and Licensee1 should be the one ultimately responsible for the attestation under oath that any submission to the board is correct. Dr. Alamo seconded. Motion passed unanimously.

7. **Action Item**. AI scribes for EMRs. Director Schneider described the basis for the topic and him receiving calls about it; hence needing the Board's attention. Revolution is a common OD EMR, which is now offering AI as a scribe. Per Revolution's prompt and apparently a box where the licensee checks the box that the patient provided verbal consent for it, licensees are calling the Board to ask about restrictions or permissions with using AI as a scribe and any potential PHI violations. Director Schneider suspects other EMRs will soon have that feature, and therefore other licensees calling the Board about it.

Director Schneider asked other States' executive directors if they had any laws on this and the answer was none. Director Schneider directed the Board to a proposed written response, presuming the Board does not want to seek a statute or regulation for it.

Dr. Smith felt the proposed statement was pretty obvious that usage of AI in charting needs to be HIPAA compliant and that AI can assist but should not be making the final diagnosis and treatment. Colloquy on Director Schneider going to attend ARBO where AI will likely be an agenda topic and use any information learned at the ARBO convention towards a position statement. Drs. Lyons and Alamo and Public Member Balecha agreed.

Dr. Austin commented that his practice's EMR is being beta-tested which begged the questions to him especially when there is no guarantee of how is the patient data being protected, is the conversation recorded or just incorporated into the chart in real time as if a scribe actually typing it into the chart. Plus the licensee needs to obtain confirmation from the patient when no one knows where AI is going in the 5, 10, 15, 20 years. For example, newer OCTs state what the diagnosis is such as with glaucoma or diabetic retinopathy, so perhaps the proposed statement's last sentence needs to be massaged with AI is already making diagnoses and diagnostic suggestions for the licensees.

Dr. Smith moved for Director Schneider to incorporate the board's discussion and any information obtained from the ARBO convention into a letter for any future licensee that inquires about this issue. Dr. Lyons seconded. Motion passed unanimously.

8. **Executive Director report re R074-25.** Director Schneider summarized that the Notice of Intent to Act on Regulation meeting on 5/11/2026 resulted in the proposed regulations been adopted with none of any of the boards' suggestions being incorporated or accounted for. Now the Legislative Commission has to approve the regulations, at the earliest on June 30, 2026. Director Schneider is in contact with other executive directors on next steps.

9. **Executive Director report re proposed amendment to NAC 372.072 sales tax on optician sales of optometric products.** Director Schneider reminded the Board about its efforts in August 2024 and communications with the Department of Taxation, and that he has been keeping tabs on this regulation. Director Schneider surmised the regulation most likely impacts only opticians, whether licensed or not, but he wanted the membership aware in light of the time spent on the topic two years ago.

10. **Executive Director report re Q2 2026 ARBO update.** Director Schneider summarized the update of the upcoming national meeting in Phoenix, and new features for OE Tracker CE.

11. **For Board Discussion and Possible Action.** Proposed items for future Board meetings. Dr. Lyons re-raised the issue of the OD-OMD relationship and if the Board would like to discuss at a future meeting to clean up any areas of the regulation. Director Schneider educated the Board on two ways to do so: 1) a regular meeting agenda item with no force or effect on the regulation change process; or 2) a formal process starting with a public workshop (post hac identified as NRS 233B).

Dr. Lyons was unsure if he wanted a workshop process or not. Colloquy on the Board's past attempts over the years to refine or perfect the regulation but with frustrating results. Drs. Smith and Austin invited Dr. Lyons to advise or draft his own version of the regulation in the event this topic be agendized for later in light of the Board's multiple past open forums and discussions.

12. Public Comment. Public comment was invited with a reminder that no action will be taken at this meeting on any issues presented as public comment and the maximum time is three minutes.

Director Schneider noted the next meeting will involve the budget for FY2026-2027 and that the Board's accountant Lesley Berg will be present.

Director Schneider advised all of the licensees that were issued administrative fines in April 2026 have been timely complied.

13. Action Item. **Adjournment.** President Smith moved to adjourn. Dr. Austin seconded. Motion passed unanimously. Adjournment occurred at 1:11p.m.

10 persons attended virtually, inclusive of five Board members and Executive Director. No role call conducted or sign-in sheets provided.

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FY 2025-2026 Regular meeting schedule

Thursday 5/28/2026 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom
Thursday 6/25/2026 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom

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FY 2026-2027 Regular meeting schedule

Thursday 8/6/2026 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom
Thursday 10/1/2026 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom
Thursday 11/5/2026 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom
Thursday 12/10/2026 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 June 25, 2026.

/s/ Adam Schneider
Adam Schneider, Executive Director