

BEFORE THE BOARD OF OPTOMETRY

STATE OF NEVADA

In the Matter of Charges and Complaint
Against:

Case No. 24-11

AMEL YOUSSEF, O.D.,

Respondent.

STIPULATION FOR SETTLEMENT OF COMPLAINTS

This Stipulation for Settlement of Complaint Agreement (or "Stipulation") is entered into by and between the Petitioner, the STATE OF NEVADA BOARD OF OPTOMETRY ("Board"), by and through the Board's legal counsel, TODD M. WEISS, ESQ., Deputy Attorney General; and the Respondent, AMEL YOUSSEF, O.D. ("Respondent"), by and through her attorney, JESSICA GANDY, ESQ. of HUTCHISON & STEFFEN.

I. ALLEGED FACTS

A. ALLEGATIONS

1. On or about March 5, 2024, Complainant ("Complainant" or "Patient") presented for an eye examination to 7361 W. Lake Mead Blvd, Las Vegas, NV 89128, a previously registered practice location of Respondent.
2. The entirety of the Patient's comprehensive eye exam was conducted by a non-optometrist technician, only.
3. To the Patient's observation, the non-optometrist technician had continued difficulty in writing a full contact lenses prescription for the Patient.
4. After the technician completed his examination, the Patient asked the technician if the technician was Dr. Youssef. The technician responded that he is technician authorized to examine patients through what the technician referred to as a "tele-visit" or "tele-vision" examination.
5. Neither Respondent, nor any other licensed optometrist, examined the Patient in-person.
6. Neither Respondent, nor any other licensed optometrist, communicated with or exchanged information with the Patient in real time via telephone, video, a mobile application, or an online platform on an Internet website during the course of the presentation or any time prior to discharge.
7. The technician did not make any attempt to contact Respondent, or any other licensed optometrist, to perform any part of the Patient's examination, including the "final eye examination".
8. Neither Respondent, nor any other licensed optometrist, ever performed or finalized the Patient's examination in a manner consistent with the laws governing the practice of optometry in Nevada.
9. Prior to discharge, the technician provided the Patient with an optometric lenses prescription bearing Respondent's signature.
10. The technician did not represent to the Patient what time, place or manner in which the Respondent, or any other licensed optometrist, came to review and/or approve the prescription.
11. Respondent billed the Patient as a "new patient" and for a "comprehensive examination", billing code 92004.

B. GENERAL FACTS

12. On or about March 5, 2024, Complainant submitted a complaint by and through the Board's website. Pursuant to NRS Chapter 636.305 and 636.310, the Executive Director of the Board undertook an investigation and pursuant to NRS Chapter 636.141 and NRS Chapter 629.061(1)(g) issued a subpoena for documents upon the Respondent. Respondent timely provided a written response and various documents. Pursuant to NRS Chapter 636.310(3), the Executive Director of the Board presented such information, in a double-blind manner with all identifying information of Respondent redacted, to the Board on March 28, 2024.

13. Based upon the Board's vote to authorize issuance of a formal Complaint, the Board, by and through its counsel, a formal Complaint and Accusation was served on Respondent and her counsel on or about May 14, 2024.

14. This matter was set for a full hearing in front of the Board during the upcoming scheduled August 27, 2024 meeting.

II. ALLEGED VIOLATIONS

A. NRS 636.346(3)- Non-performance of final eye examination of the patient

15. The Board, by and through its' counsel, alleges that Respondent violated NRS Chapter 636.346 as follows:

16. NRS Chapter 636.346 states in full [with Emphasis Added]:

1. In any setting where optometry is practiced, an assistant may fit ophthalmic lenses or spectacle lenses if the assistant acts under the direct supervision of a licensed optometrist.

2. In addition to the provisions of subsection 1, an assistant in any setting where optometry is practiced may perform any of the following activities **under the direct supervision of a licensed optometrist:**

(a) Prepare a patient for examination.

(b) Collect preliminary data concerning a patient, including taking the medical history of the patient.

(c) Perform simple and noninvasive testing of a patient in preparation for any subjective refraction, testing, evaluation, interpretation, diagnosis or treatment of the patient by the licensed optometrist.

(d) For an ophthalmic purpose, administer any cycloplegic or mydriatic agent or topical anesthetic that is not a controlled substance.

(e) Use an ophthalmic device or oversee ocular exercises, visual training, visual therapy or visual rehabilitation as directed by a licensed optometrist.

3. If an assistant conducts any activities pursuant to subsection 2, **the licensed optometrist must conduct the final eye examination of the patient.**

4. As used in this section, "assistant" means a person employed by an optometrist or any medical provider or medical facility at which the optometrist provides or offers to provide his or her services as an optometrist.

17. As demonstrated by, but not limited to, the above-outlined facts, Respondent violated NRS Chapter 636.346(3) by: 1) Neither Respondent, nor any other licensed optometrist, providing direct supervision of the technician for any subjective refraction, testing, evaluation, interpretation, diagnosis or treatment of the patient by the licensed optometrist; and 2) Neither Respondent, nor any other licensed optometrist, conducting the final eye examination of the patient after the assisting technician conducted tests and activities pursuant to NRS 636.346(2).

B. AB 432 Section 19(2) - Improper optometric telemedicine

18. The Board, by and through its' counsel, alleges that Respondent violated AB 432 section 19 as follows:

19. AB 432 Section 19(2) states in relevant part "a licensee may engage in synchronous or asynchronous optometric telemedicine to provide health only **if the licensee has completed a comprehensive examination on the patient within the immediately preceding 2 years.**" [Emphasis Added]

20. As demonstrated by, but not limited to, the above-outlined facts, Respondent violated AB 432 Section 19(2) by: 1) Performing, or attempting to perform, or allowing to be performed, optometric telemedicine upon the Complainant without Respondent first having performed a comprehensive examination upon the Complainant within the immediately preceding 2 years, and 2) Performing, or attempting to perform, or allowing to be performed, a comprehensive eye examination

upon the Complainant through purely telemedicine means.

III. JURISDICTION

21. The Respondent was, at all times relevant to this Stipulation, licensed as an optometrist by the Board under License Number 449, and is therefore subject to the jurisdiction of the Board and the provisions of NRS Chapter 636 and NAC Chapter 636.

IV. STIPULATED SETTLEMENT TERMS

22. The Board is prepared to put on a case based on the offenses alleged in the Complaint, and the Board is authorized and empowered under NRS 636.420 and NRS 636.325(1) to impose administrative fines between \$100 and \$5,000 for each violation and/or suspend, revoke, or place conditions on the license of Respondent for any violations.

23. Based upon the evidence available to date, the findings of the Executive Director, and the Respondent's acknowledgement of and Stipulation to plead to the violations contained in paragraphs 15-20 above, the parties have agreed to resolve the pending Complaint pursuant to the following disciplinary terms and conditions:

a. Respondent agrees to pay the Board the sum of Five Thousand Dollars (\$4,000) in administrative fines for the stipulated violations of NRS 636.346 and AB 432 Section 19 as outlined above. The payment is due within One (1) year of the Board's approval of this Stipulation. If the Respondent fails to pay the fine in the time provided, the Board shall issue a Notice to Appear for Respondent and may impose additional discipline.

b. Respondent agrees to a Two (2) year restriction on her Nevada Optometry license, from the date of the Board's approval of this Stipulation, prohibiting her from the practice of both synchronous and asynchronous optometric telemedicine during that period. If Respondent fails to comply with this restriction on her Nevada optometric license during the applicable period, the Board shall issue a Notice to Appear for Respondent and may impose additional discipline.

c. Respondent agrees that, for a period of Two (2) years from the date of the Board's approval of this Stipulation, should the Board make a finding that Respondent has further violated any of Nevada's optometry statutes or regulations, the Board may take the present matter into consideration and increase the discipline imposed for that violation(s).

d. Respondent agrees to reimburse the Board's legal costs in prosecuting this matter in the amount of Four Thousand Dollars (\$5,000). The reimbursement is due within One (1) year of the Board's approval of this Stipulation. If the Respondent fails to pay the reimbursement in the time provided, the Board shall issue a Notice of Appear for Respondent and may impose additional discipline.

e. Respondent agrees that she will complete Twenty (20) hours of continuing education. These continuing education credits will be in addition to the credits Respondent is already required to complete for her Nevada optometry license and must be completed within One (1) year of the Board's approval of this Stipulation. The additional Twenty (20) hours of credits must be from Board approved instructors and/or entities consistent with R066-19 Section 8(4)-(6) and Board Policy no. 5 section A-B, and must be in the areas of medical ethics, medical billing, medical office management, employee supervision, patient informed consent, medical record keeping and/or telehealth, as is reasonable. Failure of Respondent to complete and submit evidence of the completed additional continuing education credits during the applicable period to the Board could result in the issuance of a Notice to Appear by the Board and the imposition of additional discipline.

f. Respondent agrees to retake the Nevada optometry law exam no more than six months after the test has been revised to include questions relating to Nevada telemedicine law, but no less than one year after the Board's approval of this stipulation.

g. Respondent agrees that the present Stipulation shall be accepted as a public reprimand for her alleged conduct.

h. The Board agrees that, upon Board approval of the present Stipulation and completion of all terms and conditions of the present Stipulation, complaint 24-11 will be fully resolved and the Board shall close its file on the matter.

i. The Board agrees that, upon Board approval of the present Stipulation, that previously issued Findings of Fact and Conclusions of Law in complaint 22-4 will be withdrawn and that complaint 22-4 will be closed without further action.

j. Respondent and the Board jointly agree and stipulate that, upon Board approval of the present Stipulation, the matter currently pending in the Eighth Judicial District Court case no. A-22-853243-J will be dismissed with each party to bear their own costs and attorney fees.

k. Respondent agrees that the present Stipulation, once approved by the Board, will be duly reported to the National Practitioner Databank, as is required.

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V. INFORMED CONSENT

24. Respondent acknowledges that she has read all of the provisions contained in this Stipulation and agrees with them in their entirety. Respondent recognizes and agrees this Stipulation is the result of voluntary settlement negotiations which involved give and take, and the final agreement (i.e., this Stipulation) is a voluntary compromise.

25. Respondent acknowledges and admits she has carefully read and understands the issues and allegations in the Complaint referenced and addressed herein. Respondent also acknowledges and admits she has carefully read and understands the effects of this Stipulation.

26. Respondent acknowledges that she is fully aware of her legal rights in this matter, including the right to a formal hearing relative to the issues and allegations in the Complaint referenced and addressed herein. Respondent is also fully aware she has a right to retain counsel for this matter, the right to confront and cross-examine the witnesses against her, the right to present evidence and to testify on her own behalf, the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, the right to reconsideration and court review of an adverse decision, and all other rights accorded by the Nevada Administrative Procedure Act and other applicable laws. **By executing this Agreement, and upon Board approval of the present Stipulation, Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above, and as more fully set forth herein and below**

27. Respondent acknowledges that she is aware that, by executing the present Stipulation along with Board approval, she is waiving certain valuable due process rights contained in, but not limited to, NRS 636, NAC 636, NRS 233B and NAC 233B.

28. Respondent and the Board jointly agree that any statements and/or documentation made or considered by Respondent and/or the Board during any properly noticed open meeting to determine whether to adopt or reject the present Stipulation are part of good faith settlement negotiations and, therefore, shall not be used for any other purpose.

29. Respondent acknowledges she has carefully and thoughtfully read and considered this Stipulation. Respondent acknowledges she has been advised she has the right to have this matter reviewed by independent counsel and she has had ample opportunity to seek independent counsel. Having been advised of her right to independent counsel, as well as having the opportunity to seek independent counsel, Respondent has retained JESSICA GANDY, ESQ. of HUTCHISON & STEFFEN as her attorneys and has reviewed this Stipulation with her attorneys. Respondent specifically acknowledges she understands all of this Stipulation's terms and conditions and agrees with the same.

VI. OTHER TERMS

30. Respondent acknowledges that no other promises in reference to the provisions contained in the present Stipulation have been made by any agent, employee, counsel or person affiliated with the Board.

31. Respondent acknowledges that the provisions in the present Stipulation contain the entire agreement between Respondent and the Board, and that the provisions of this Stipulation can only be modified with express Board approval.

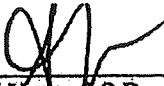
32. Respondent acknowledges that the present Stipulation applies only to the above outlined allegations concerning this specific Complainant and does not foreclose the Board from potentially initiating future investigations and/or disciplinary action for similar, alleged conduct involving other patients.


33. In the event the Board adopts the present Stipulation, Respondent hereby waives any and all rights to seek judicial review or otherwise to challenge or contest the validity of the provisions contained herein.

34. Respondent and the Board jointly agree neither party shall be deemed the drafter of the present Stipulation. In the event the present Stipulation is construed by a court of law or equity, such court shall not construe it or any provision hereof against either party as the drafter. The parties hereby acknowledge all parties have contributed substantially and materially to the preparation of the present Stipulation.

35. The present Stipulation has been considered by the Board in an open meeting on July 31, 2024. The present Stipulation is considered a final disposition of a contested case and will become a public record and will be reportable to the National Practitioner Data Bank.

IT IS SO STIPULATED.

By  this 7th day of August 2024
Amel Zousser, O.D.
Respondent

By  this 17th day of August 2024
Mariah Smith, O.D.
President, Nevada State Board of Optometry

APPROVED AS TO FORM AND CONTENT

By Col Jessica Gandy this 8th day of August 2024
Jessica Gandy, Esq.
Hutchison & Steffen
Counsel for Respondent

By _____ this _____ day of August 2024
Todd M. Weiss, Esq.
Senior Deputy Attorney General, Nevada Attorney General
Counsel for Board

By _____ this _____ day of August 2024
Adam Schneider, Esq.
Executive Director, Nevada State Board of Optometry

By _____ this _____ day of August 2024
Amel Youssef, O.D.
Respondent

By _____ this _____ day of August 2024
Mariah Smith, O.D.
President, Nevada State Board of Optometry

APPROVED AS TO FORM AND CONTENT

By _____ this _____ day of August 2024
Jessica Gandy, Esq.
Hutchison & Steffen
Counsel for Respondent

By /s/ Todd Weiss this 19th day of August 2024
Todd M. Weiss, Esq.
Senior Deputy Attorney General, Nevada Attorney General
Counsel for Board

By /s/ Adam Schneider this 19th day of August 2024
Adam Schneider, Esq.
Executive Director, Nevada State Board of Optometry

BOARD ACTION

This Stipulation for Settlement of Complaint in the matter of AMEL YOUSSEF, O.D., Case No. 24-11 was (initial appropriate action): Approved: X Disapproved by a majority vote of the Nevada State Board of Optometry at a properly noticed meeting on July 31, 2024

Mariah Smith, O.D., President /s/Mariah Smith

Jeffrey Austin, O.D., Vice President /s/ Jeffrey Austin

Julie Alamo-Leon, O.D., Board Member /s/ Julie Alamo-Leon

Sally Balecha (Public Member) /s/ Sally Balecha