



STATE OF NEVADA

BOARD OF DISPENSING OPTICIANS

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Minutes of Board Meeting

October 10, 2012

The Regular Meeting of the Nevada Board of Dispensing Opticians was called to order by President Danny Harris at 5 p.m. on Wednesday, October 10, 2012, at the Hyatt Place Las Vegas, 4520 S. Paradise Road, Las Vegas, Nevada 89169

Members Present

Danny Harris, President
Josh Wasson, Vice President
Tamara Sternod, Treasurer
Cheryl Mosser, Secretary
Fred Lokken, Public Member

Others Present

Sarah Bradley, Deputy Attorney General, Board Counsel
Rose Marie Reynolds, Deputy Attorney General
Cindy Kimball, Executive Director

- 1. Call to Order:** President Danny Harris called the meeting to order at 5 p.m.
- 2. Public Comment:** Danny Harris stated that the Board encourages public input on any item on its agenda. He said written comments may be submitted before the meeting to the Board office via email, fax, or mail, and oral comments can be made during the Public Comment period of the meeting. He explained that the Public Comment period at the beginning and end of the meetings, was reserved for anyone in the audience to address the Board on matters on the agenda, or on any Board-related issue. He added the Board would not be taking public comments during the agenda items themselves. He said the Board had received written comments regarding agenda item 10 from the National Association of Optometrists and Opticians (NAOO), an industry group, and asked Patrick Phelan, Luxottica assistant general counsel, and NAOO representative, if he would like to provide oral comments. Phelan stated that NAOO believes the definition of ophthalmic dispensing is well established under Nevada law, and that any action by the Board to expand or modify the statutory definition of ophthalmic dispensing through the FAQs would constitute substantive rulemaking and require the Board follow the procedure to adopt regulations. He added that FAQs adopted in violation of those principles would be subject to legal challenge as invalid agency rules. He stated that the NAOO agreed with the Board that customer education was not dispensing. Regarding cashiering/data entry, he said NAOO also agreed that entering a customer's name and address could be done by an unlicensed individual, and recommended the Board include entering insurance information as an activity that doesn't require licensure. Phelan said NAOO would also submit that given the changes in technology, it was equally permissible for an unlicensed person to enter lens, frame, and prescription information, after which a licensed optician would take the measurements and confirm the accuracy of the data entered by the unlicensed person. He stated that the term "delivery" should be clarified, and that the NAOO's stance was that an associate may deliver finished ophthalmic products to consumers after all dispensing functions required of the licensed optician or apprentice have been completed. Danny Harris stated that the NAOO's written comments would be part of the meeting record. He then read aloud a written comment submitted by an individual who wished to remain anonymous, which requested the Board review the use of

Accufit, an electronic dispensing aid, and address such use in its Dispensing FAQs. Diane Burklow, licensed optician, asked who operated Accufit--a licensed or unlicensed person?

- 3. Disciplinary hearings:** Case No. 2012-003 Elton Optical dba Great Basin Optical Laboratories and Edgar Garcia, Owner. Respondent was present. Sarah Bradley presented the Board's case; Edgar Garcia represented himself. Danny Harris disclosed that he acted in the role of investigating Board member and would abstain from discussing or deciding the matter. Cindy Kimball, Danny Harris, and Heidi Johnson, Ally Investigations, testified and were cross-examined. Nine exhibits were received into evidence. A record of the proceeding was made by a court reporter and a transcript is available from Sunshine Reporting and Litigation Services, Inc., for the transcription fee. Tamara Sternod moved that the facts alleging the respondent had dispensed prescription lenses without a license in the Complaint and Notice of Hearing had been proven, with the exception of items 13 through 17, because the individual named in items 13 through 17 was not present to provide testimony. Fred Lokken seconded. Motion carried 4-0-1. Tamara moved that the respondent be found guilty of violating NRS 637.181 and of violating NRS 637.125 and/or NRS 637.183, by engaging in ophthalmic dispensing without an active and/or valid license and/or by employing unlicensed individuals to engage in ophthalmic dispensing. Cheryl Mosser seconded. Motion carried 4-0-1. Regarding the first violation, Tamara Sternod moved to fine the respondent \$2,000, payable in monthly payments, with the total amount due no later than 12 months from the date of the Board's Order. Fred Lokken seconded. Motion carried 4-0-1. Regarding the second violation, Fred Lokken moved to fine the respondent \$1,000, issue a Cease and Desist Order, and charge \$2,500 for legal and administrative costs, payable in monthly payments, with the total amount due no later than 12 months of the Board's Order. Cheryl Mosser seconded. Motion carried 4-0-1. Tamara Sternod moved to make a friendly amendment to charge the respondent actual legal and administrative costs, not to exceed \$2,500. Fred Lokken concurred. Cheryl Mosser seconded. Motion carried 4-0-1.
- 4. Approval of Board meeting minutes**
A. Board Meeting August 15, 2012: Fred Lokken moved to approve. Tamara Sternod seconded. Motion carried unanimously.
- 5. Executive director's report:**
A. Progress on FY13 Goals and Objectives: Cindy Kimball reviewed the progress made for the period of August 12 through October 5, 2012, including a partnership with the Nevada State Board of Cosmetology, which has alerted its inspectors and licensees that unlicensed cosmetic contact lenses sales are illegal, resulting in a new complaint within a week of notification. She stated that the Board had issued an informal letter of solicitation for lobbying services for the 2013 Nevada legislative session, and she was monitoring legislative bill draft requests for potential impact.
- 6. Financials:**
A. Review and approval of August and September financial statements: Tamara Sternod moved to approve. Cheryl Mosser seconded. Motion carried unanimously.
B. Review and decision on FY12/13 budget: Cindy Kimball requested the Board formally approve her current practice of crediting the costs reimbursed by respondents in disciplinary cases to the specific line items from which the costs were debited. Tamara Sternod moved to approve. Josh Wasson seconded. Motion carried unanimously.
- 7. Review and decision regarding issuing ophthalmic dispenser licenses to the September 29, 2012 examinees:**

James Armor, Patrick Atkinson, Gloria Comer, Eleanor Cristiano, Bryan Elliott, N'Gadi Foreman, Krista Gazzaway, Manuel Gonzalez Robles, Katelyn Gray, Eric Healey, Joyce Hodges, Kimberly Kekahuna-Lee, Jessica Kirkland, Roxanne Moore, Marc Okada, Neisy Pineda, Christy Porter, Amber Reyes, Nathalie Rosado, Michael Svitak, Kenneth Tregoning, Tyesha Zamora, Demler Zamora, Jr.

Danny Harris announced the names of the individuals who achieved a passing score on the September 29 2012 state optical examination. Josh Wasson moved to issue Nevada ophthalmic dispenser licenses to those individuals: Patrick Atkinson, Gloria Comer, Eleanor Cristiano, Bryan Elliott, N'Gadi Foreman, Krista Gazzaway, Manuel Gonzalez Robles, Roxanne Moore, Marc Okada, Neisy Pineda, Michael Svitak, Kenneth Tregoning, Tyesha Zamora, Demler Zamora, Jr. Fred Lokken seconded. Motion carried unanimously.

8. Review and decision regarding apprentice applications:

Samuel Madrid, Deoffrey Manila, Luis Moctezuma, Karen Riley, Blair Snell, Jeffrey Trussel, Denise Woodson

Samuel Madrid. Not present. Josh Wasson moved to approve. Fred Lokken seconded. Motion carried unanimously. Deoffrey Manila. Not present. Tamara Sternod moved to approve. Cheryl Mosser seconded. Motion carried unanimously. Luis Moctezuma. Not present. Josh Wasson moved to approve pending receipt of notarized letter from employer stating applicant has not dispensed prescription eyewear. Fred Lokken seconded. Motion carried unanimously. Karen Riley. Not present. Josh Wasson moved to approve. Tamara Sternod seconded. Motion carried unanimously. Blair Snell. Not present. Fred Lokken moved to approve. Josh Wasson seconded. Motion carried unanimously. Jeffrey Trussel. Not present. Josh Wasson moved to approve. Fred Lokken seconded. Motion carried unanimously. Tamara Sternod moved to approve granting request for three years' credit for previous apprenticeship and experience. Fred Lokken seconded. Josh Wasson opposed. Motion carried 4-1-0. Denise Woodson. Not present. Josh Wasson moved to approve. Cheryl Mosser seconded. Motion carried unanimously.

9. Review and decision regarding optician applications:

Wesley Deputy. Not present. Josh Wasson moved to approve. Cheryl Mosser seconded. Motion carried unanimously.

10. Review and decision regarding draft ophthalmic dispensing FAQ sheet: Danny Harris introduced the agenda item, stating the Board began a discussion of NRS 637.022 at its June meeting, continued its discussion at its August meeting, and is continuing the discussion at this meeting. He added the purpose of the discussion is to clarify for the Board and its licensees whether certain activities fall within the definition of ophthalmic dispensing. He said the Board decided at its June meeting that the form that clarification would take would be FAQs (posted on its website), rather than new regulations. Harris said the Board has yet to take any action or vote on the draft FAQs, copies of which were provided to the audience. Tamara Sternod read NRS 637.022 and NRS 637.125, stating that entering the frame, lenses, and prescription information was ophthalmic dispensing, and allowing an unlicensed person to perform the services of a licensed optician would be a violation NRS 637.022(2)(b) and NRS 637.125. Sarah Bradley recommended adding NRS 637.125(2) as a citation to the Q&A regarding entering the frame, prescription, lenses, and work order. Josh Wasson suggested adding NRS 637.022(2)(f) as a citation to the Q&A regarding delivery, so that it is very clear it applies to contact lenses. Tamara Sternod said she was surprised that the draft FAQs had drawn so much attention, as the Board was not attempting to make new laws, but instead, its purpose was to help licensees by giving examples of what falls within the current law. Sarah Bradley stated that every item in the draft FAQs are the status of the law, and

that if the Board received a complaint that an unlicensed person engaged in one of the described dispensing activities--for example, preparing a work order-- it would investigate, and if proven, the Attorney General's Office would pursue a case based on the status of the law. Bradley added that she and the Board had done a very careful review of each example, and the current draft FAQs clearly tie each example to one or more of the definitions under NRS 637.022. She stated that the Board's interpretation of NRS 637.022 is simply the standard definition of the words in the law, and the FAQs are simply practical guidance. Bradley added that technology may have changed since the law was written, but the definitions are still valid and applicable. Regarding the actions of unlicensed persons, Tamara Sternod said she was concerned on behalf of consumers who assume the individual who is dispensing is a licensed optician. Josh Wasson said he agreed with the recommended deletion of the longer examples from the FAQs, which would help make it easier to understand. He added that in his 18 years of dispensing eyewear, the focus has always been on making sure the patient walks out with exactly what is needed. He said that NAOO's written assertion that sales associates can deliver prescription eyewear would remove the responsibility for patient care from the licensed optician. Wasson stated he was concerned that the Board's effort to provide clarity for its licensees was being met by an effort to create more gray areas that may harm consumers. He stated that the Board would continue to consider other viewpoints, but added that the whole purpose of the FAQs was to provide clarification of, not a change in, what has clearly been the accepted and standard interpretation of the law. Fred Lokken said that the Board's efforts to draft the FAQs was intended to be a courtesy, and was undertaken at the request of its licensees. He recommended reorganizing the draft FAQs to put the legal citations at the end of the document, and to rewrite the introduction to ensure it contained the proper disclaimers. Cheryl Mosser said that while many opticians have been dispensing for quite some time, the Board's objective in developing the FAQs was to ensure that all licensees, including newly licensed opticians and apprentices, had the guidance they needed to make sure the public is safely taken care of. Danny Harris summarized the comments of the Board members and Sarah Bradley. Fred Lokken moved to direct Cindy Kimball to make the recommended changes for the Board's review at its next regularly scheduled meeting. Cheryl Mosser seconded. Motion carried unanimously.

11. Review and decision on continuing education classes:

2012-10—Contact Lens Updates (6 cl), David Leonard, O.D., 12-6-12 from 6pm to 9pm, and 12-13-12 from 6pm to 9pm, 5260 W. 7th St., Reno, Nevada. Tamara Sternod moved to approve. Fred Lokken seconded. Motion carried unanimously.

2012-11 Northern Nevada Association of Ophthalmic Dispensers Annual Convention, (10 spec/cl, 1 spec) 10-14-12, 7am to 7pm, Peppermill Hotel and Casino, 2702 S. Virginia St., Reno, Nevada. Josh Wasson moved to approve, with the exception of Opticians Check List approved for spectacle credit only. Fred Lokken seconded. Motion carried unanimously.

2012-12 Filing A Complaint (1 spec/cl), Vision Function for Primates (1 cl), Prism Part one (1 spec/cl), Low Vision Seminar 2 – Telescopic Devices (1 spec/cl), Optic Fusion, 10-21-12, Arizona Charlie's Diamond Mae's Ballroom, 740 S. Decatur Boulevard, Las Vegas, Nevada. Tamara Sternod moved to approve. Fred Lokken seconded. Motion carried unanimously.

12. Review and decision on complaints 2012-10 through 2013-12: Cindy Kimball reviewed the complaints, all of which allege unlicensed ophthalmic dispensing.

13. Review and decision on proposed revisions to Apprentice Lack of Progress Policy: Cindy Kimball explained the proposed revisions were made to clarify that the provisions of NRS 233B apply to the disciplinary process undertaken when an apprentice fails to make progress as required

by Chapter 637 of NRS and NAC. Josh Wasson moved to approve. Fred Lokken seconded. Motion carried unanimously.

- 14. Election of officers:** The Board elected these officers: President: Josh Wasson. Vice President: Tamara Sternod. Secretary: Cheryl Mosser. Treasurer: Fred Lokken.
- 15. Review and decision on 2013 Board meeting and exam dates:** The Board discussed the proposed meeting dates, times, and locations, and directed Cindy Kimball to research other meeting locations for the Las Vegas dates to accommodate an earlier start time. It also requested that the future licensee survey include a question regarding preferred meeting days and times.
- 16. Future meetings and agenda items:** Danny Harris stated the Board had received an anonymous written request for the Board to agendaize an item regarding whether advertisements stating that a digital measurement system is “5X more precise” is a violation of NRS 637.200(1) and 637.200(2), and also if an employer who requires an optician to use a digital measurement system is in violation of NAC 637.237. Fred Lokken said he would like those issues addressed in a future agenda item, perhaps involving other agencies. Josh Wasson said both issues address the use of technology, specifically electronic dispensing aids, and moved to add a discussion of digital technology to a future retreat meeting agenda. Fred Lokken seconded. Motion carried unanimously.
- 17. Public Comment:** Cap Comer, licensed optician, said that the way the advertising issue was addressed in the past was it was legal to make a statement to the effect of: “We feel we have the best instrument,” but not a statement to the effect of: “We have the best instrument.”
- 18. Adjournment:** President Danny Harris adjourned the meeting at 8:53 p.m.