



STATE OF NEVADA

BOARD OF DISPENSING OPTICIANS

5565 Wedgewood Circle, Sparks, NV 89436-3716 • Telephone 775 / 853-1421 • Fax 775 / 853-1408
Email: nvbdo@govmail.state.nv.us • Website: www.opticalboard.state.nv.us

Minutes of Board Meeting

June 12, 2013

The Regular Meeting of the Nevada Board of Dispensing Opticians was called to order by President Joshua Wasson at 5:08 p.m. on Wednesday, June 12, 2013, at Hyatt Place Las Vegas, 4520 S. Paradise Rd., Las Vegas, NV 89169

Members Present

Josh Wasson, President
Tamara Sternod, Vice President
Danny Harris, Member
Marilyn Brainard, Public Member

Members Absent

None

Others Present

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

1. **Call to Order:** President Josh Wasson called the meeting to order at 5:08 p.m.
2. **Public Comment:** There was no public comment.
3. **Approval of Board meeting minutes:**
 - A. Public Workshop, March 15, 2013: Tamara Sternod moved to approve. Marilyn Brainard seconded. Motion carried unanimously.
 - B. Board Meeting and Public Hearing, April 10, 2013: Tamara Sternod moved to approve. Marilyn Brainard seconded. Motion carried unanimously.
4. **Executive director's report:**
 - A. Progress on FY13 Goals and Objectives: Cindy Kimball reviewed the progress made for the period of February 14, 2013 through June 4, 2013, including the compilation and submittal to the Nevada Legislative Counsel Bureau (LCB) the Board's adopted regulation packet, which included a comprehensive, detailed informational statement and hearing minutes. She added that the adopted regulations were approved by the Nevada Legislative Commission with no changes, and were in effect on June 4, 2013. Kimball reported the LCB regulation file would be available on the Board's website and she was working with the state's information technology representatives to develop a bulk email service that once in effect, she would use to email all licensees a summary and link to the newly adopted regulations. Other accomplishments included developing and uploading to the Board's website FAQ section a fact sheet on licensed optician education, training, knowledge, skills, and ability; and adding information regarding optician licensure to state's SilverFLume business portal.
 - B. Proposed FY 13/14 Goals and Objectives: Cindy Kimball reviewed the proposed goals, including objectives under five major goals: (1) Continue to ensure Board is carrying out its mission effectively and in compliance with all relevant statutes and regulations; (2) Continue to increase licensee awareness of and compliance with laws and regulations; (3) Continue to increase public awareness of Board and its mission of protecting the public's health, safety, and welfare; (4)

Continue to keep abreast of local, state, and national issues relating to the regulation and field of opticianry; and (5) Work to ensure Board's interests are protected during legislative interim.

Marilyn Brainard moved to approve. Danny Harris seconded. Motion carried unanimously.

C. Annual Licensee Report: Cindy Kimball stated that the written report provided to the Board members documented the oral report she gave at the Board's April 10, 2013 meeting.

D. Legislative Update: Cindy Kimball stated that President Josh Wasson, Board lobbyist Neena Laxalt, and she were successful in their efforts to effectively communicate the Board's position on various bills and issues under consideration during the 2013 legislature, and that the Board's current statutory authority regarding unlicensed practice was held up as a model for some of the provisions of SB220, a law granting most occupational licensing boards similar authority.

E. Review and decision regarding effective methods of communicating with Board members and licensees: Cindy Kimball stated that as she described under agenda item 4.A., due to issues with bulk emailing, she was working with state information technology representatives to develop a bulk emailing service which should ensure all Board members and licensees receive emails sent from the Board office.

5. **Discussion and decision on executive director's performance evaluation and annual merit and cost of living increases:** Josh Wasson stated that Cindy Kimball exceeded expectations in almost every category of her performance evaluation. He elaborated on her accomplishments and added that the position of executive director and its responsibilities had changed much over the past few years. He recommended the Board approve the proposed 11.5% merit and cost-of-living increase, which in addition to recognizing Kimball's performance, would also bring the Board's personnel costs in line with similar positions. Wasson pointed out that during Kimball's tenure the Board's reserves had increased by \$32,000, and the proposed increase in personnel costs was well within the proposed FY13/14 budget. Marilyn Brainard said she agreed Kimball's performance was exemplary, that the salary for position needed to be adjusted to align better with the marketplace, and that she supported the proposed increase. Tamara Sternod stated that while she agreed Kimball had done an excellent job, she felt the proposed increase was excessive, especially in light of the fact that the Board had previously granted the executive director an excellent benefit package and the governor had only recently decided to end pay cuts for regular state employees. Kimball said that the starting salary for a comparable position with the same benefits within state government paid \$15,000 more than the proposed salary for the Board's executive director. Danny Harris said that in the past, he had supported the granting of benefits to the executive director, but that he believed the proposed increase was excessive. Harris moved to grant the executive director a three percent salary increase. Sternod seconded. Wasson and Marilyn Brainard opposed. Motion failed 2-2. Wasson stated that he believed a three percent increase was excessively low, and proposed the Board reach a middle ground. Wasson asked if the Board thought Kimball's performance was worth an increase to \$23 per hour, which would represent a 5.75 percent increase. Harris stated he supported the increase in benefits over the last two years, but could not continue to support large increases. Brainard moved to grant the executive director a five percent salary increase. Sternod seconded. Harris opposed. Motion carried 3-1.

6. **Financials:**

A. Review and approval of January through May financial statements: Danny Harris moved to approve. Tamara Sternod seconded. Motion carried unanimously.

B. Review and decision on FY12/13 budget: Board members briefly reviewed the budget and end-of-year projections and Cindy Kimball responded to questions about individual line items.

C. Review and decision on proposed FY13/14 budget: Board members briefly reviewed the proposed budget and Cindy Kimball responded to questions about individual line items. Marilyn

Brainard moved to approve the proposed FY13/14 budget with recalculations in the personnel budget category to reflect the Board's decision to grant the executive director a five percent salary increase. Tamara Sternod seconded. Motion carried unanimously.

7. Disciplinary hearings

A. Case 2012-22 Sherita Wells, former apprentice license #1160: Not present. Sarah Bradley presented the Board's case which alleged violation of NAC 637.235 failure to provide proof of enrollment in an educational program of ophthalmic dispensing within 90 days of licensure, NAC 637.230 failure to notify the Board of a change in home/business address in a timely manner, and NRS 637.150(1)(l) unethical or unprofessional conduct. Bradley stated that per NRS 622A.350, if the Board finds that the respondent was properly served notice of the complaint and hearing, it may proceed and consider all factual allegations and alleged violations have been proven. Marilyn Brainard moved that Sherita Wells was given proper legal notice. Danny Harris seconded. Motion carried unanimously. Tamara Sternod moved that per NRS 622A.350, all factual allegations and alleged violations in the Complaint and Notice of Hearing had been proven. Danny Harris seconded. Motion carried unanimously. Harris moved to revoke respondent's apprentice license for a period of two years and order respondent to pay legal costs of \$300 within six months of the date of the Board Order. Tamara Sternod seconded. Motion carried unanimously.

B. Case 2013-02 Dorothea Lopez-Rivera, apprentice license #921. Present. Sarah Bradley presented the Board's case. Dorothea Lopez-Rivera represented herself. Cindy Kimball, Dorothea Lopez-Rivera, and Ariel Ladanga, ophthalmic and general manager of Visionworks, Meadows Mall, Las Vegas, testified and were cross-examined. Seven 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. Danny Harris moved that all factual allegations in the complaint (1-22) had been proven. Marilyn Brainard seconded. Tamara Sternod opposed. Motion carried 3-1. Harris moved all three violations in the complaint had been proven, and that the respondent be found guilty of violating for violating NRS 637.090, NAC 637.140, and NRS 637.150(1)(l) by engaging in ophthalmic dispensing without an active and/or valid license. Brainard seconded. Sternod opposed. Motion carried 3-1. Harris moved to order the respondent receive a public reprimand, take and pass the Board's law and ethics exam, and pay \$300 in shared legal costs within six months from the date of the Board's order. Brainard seconded. Sternod opposed. Motion carried 3-1.

C. Case 2013-02A Visionworks. Sarah Bradley stated that counsel for the respondent requested a continuance until the October 9, 2013 Board meeting and that she had no objection to the request. Josh Wasson moved to continue Case 2013-02A to the October 9, 2013 Board meeting. Marilyn Brainard seconded. Motion carried unanimously.

D. Case 2013-03 Amy Kurzak, apprentice license #1134: Respondent was present with counsel. Sarah Bradley described, and requested the Board approve, a Stipulated Settlement Agreement in which Amy Kurzak agreed that she practiced ophthalmic dispensing without an active and/or valid apprentice license, which is a violation of NRS 637.090 and NAC 637.140 practicing without active license, and NRS 637.150(1)(l) unethical or unprofessional conduct. Bradley stated that if approved by the Board, Kurzak agrees to a Public Reprimand; passing the Board's Law and Ethics examination; and to reimburse the Board \$150 in legal costs related to the matter. Marilyn Brainard moved to approve the Stipulated Settlement Agreement in Case #2013-03. Danny Harris seconded. Motion carried unanimously.

E. Case 2013-04 Luis Moctezuma, apprentice license #1166: Respondent was present. Sarah Bradley presented the Board's case. Luis Moctezuma represented himself. Cindy Kimball and Luis Moctezuma testified and were cross-examined. Three 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. Danny Harris moved that the factual allegations in the complaint had not been proven. Harris withdrew motion. Tamara Sternod moved that allegations 1-4, 6, 7, 9, 10, and the second part of 8 were proven true, and that the allegations 5 and the first part of 8 had not been proven true. Marilyn Brainard seconded. Motion carried unanimously. Brainard moved that the claims for relief for violation of NRS 637.090 and NAC 637.140 practicing without active license, and NRS 637.150(1)(l) unethical or unprofessional conduct had not been adequately substantiated. Harris seconded. Motion carried unanimously.

F. Case 2013-19 Melinda Johns, apprentice license #1222: Respondent was not present. Sarah Bradley presented the Board's case. Las Vegas Metropolitan Police Detective Jason Hanshew, Dr. Kenneth McCandless, and William Koot testified. One exhibit was received into evidence. Bradley stated that per NRS 622A.350, if the Board finds that the respondent was properly served notice of the complaint and hearing, it may proceed and consider all factual allegations and alleged violations have been proven. Danny Harris moved that per NRS 622A.350, Melinda Johns was given proper legal notice and that all factual allegations in the Complaint and Notice of Hearing had been proven. Marilyn Brainard seconded. Motion carried unanimously. Harris moved that the first and second claims for relief for violating NRS 637.150(1)(l) unethical or unprofessional conduct and NRS 637.150(1)(n) fraudulent or deceptive practice had been proven. Brainard seconded. Motion carried unanimously. Harris moved to revoke respondent's apprentice license for a period of ten years and order respondent to pay legal costs not to exceed \$1,000 within six months of the date of the Board Order. Brainard seconded. Motion carried unanimously.

8. Review and decision regarding apprentice applications

Lydia Davidson, Werner Gruber, Stephanie Moody, Jocelyn Nova, Natasha Puckdee, Karen Wilken Lydia Davidson. Not present. Danny Harris moved to approve. Tamara Sternod seconded. Motion carried unanimously. Werner Gruber. Present. Harris moved to deny the application, with the option of submitting a new application and fee which the Board would consider only if the screening question regarding previous disciplinary action was answered truthfully. Tamara Sternod seconded. Motion carried unanimously. Stephanie Moody. Not present. Danny Harris moved to approve. Tamara Sternod seconded. Motion carried unanimously. Jocelyn Nova. Present. Tamara Sternod moved to approve. Danny Harris seconded. Motion carried unanimously. Natasha Puckdee. Not present. Danny Harris moved to approve. Tamara Sternod seconded. Motion carried unanimously. Karen Wilken. Not present. Danny Harris moved to approve. Tamara Sternod seconded. Motion carried unanimously.

9. Review and decision on continuing education classes

2013-05 Contact Lens Fitting and Evaluation Workshop, Dale Roveri, open dates, 2208 South Rainbow, Las Vegas, NV 89146, (4 cl): Danny Harris moved to approve. Tamara Sternod seconded. Harris amended his motion to request Board office be notified within 15 days of the date of a workshop. Sternod accepted the amendment. Motion carried unanimously.

10. Review of complaints 2012-13 and 2013-19 through 2013-22:

Cindy Kimball requested the Board close complaint 2012-13 because the investigation did not provide sufficient evidence of a violation. Marilyn Brainard moved to close complaint 2012-13. Danny Harris seconded. Motion carried unanimously. Kimball stated the Board under agenda item 7.F. had imposed discipline in

the case of complaint 2013-19. She stated complaints 2013-20 and 2013-21 allege failure to enroll in an educational program of ophthalmic dispensing within 90 days of apprentice licensure, and complaint 2013-22 alleges unlicensed ophthalmic dispensing.

- 11. Election of secretary:** The Board deferred this item until such time as the governor appoints a Board member to fill the current vacancy.
- 12. Review, discussion, and decision regarding optical examination:** Danny Harris moved to add nonscientific calculators and #2 pencils to the list of materials examinees must bring to the state optical examination. Tamara Sternod seconded. Motion carried unanimously.
- 13. Future meetings and agenda items:** Josh Wasson requested that the executive director develop a travel policy for the Board's consideration at its August 14, 2013 meeting. Cindy Kimball suggested, and the Board agreed, to have its October 9, 2013 meeting at 7 p.m. at the Hyatt Place Las Vegas, with a request for an earlier meeting time per the Hyatt's policy.
- 14. Public Comment:** There was no public comment.
- 15. Adjournment:** President Josh Wasson adjourned the meeting at 9:33 p.m.