



STATE OF NEVADA
BOARD OF DISPENSING OPTICIANS

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BOARD MEMBERS

President
Daniel Harris

Vice President
Josh Wasson

Secretary
Cheryl Mosser

Treasurer
Tamara Sternod

Public Member
Fred Lokken

BOARD STAFF

Executive Director
Cindy Kimball

Minutes of Board Meeting

August 15, 2012

The Regular Meeting of the Nevada Board of Dispensing Opticians was called to order by President Danny Harris at 5:05 p.m. on Wednesday, August 15, 2012, at the Airport Plaza Hotel, Second Floor, 1981 Terminal Way, Reno, NV 89502

Members Present

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

Members Absent

Cheryl Mosser, Secretary

Others Present

Sarah Bradley, Deputy Attorney General, Board Counsel
Harry Ward, Deputy Attorney General
Cindy Kimball, Executive Director

1. **Call to Order:** President Danny Harris called the meeting to order at 5:05 p.m.
2. **Public Comment:** A moment of silence was observed in memory of the late Nevada Optician Gerald Cardwell and the late Nevada Apprentice Optician Cody Vance.
3. **Disciplinary hearings:** Case No. 2012-05 Fernley Liquor and Smoke. Respondent was not present. Sarah Bradley described, and requested the Board approve, a Stipulated Settlement Agreement in which the respondent agreed that Fernley Liquor and Smoke engaged in and/or allowed ophthalmic dispensing without an active and/or valid license, and/or employed unlicensed individuals to engage in ophthalmic dispensing, which are violations of NRS 637.181 and NRS 637.125, respectively. Ms. Bradley stated that if approved by the Board, the respondent agrees to a Cease and Desist Order; to reimburse the Board its costs of \$466.38 related to the matter, and to pay an administrative fine of \$500.00. Fred Lokken moved to approve the Stipulated Settlement Agreement in Case No. 2012-05, Jutla Corporation dba Fernley Liquor and Smoke, Gurmej Singh, Owner, and Kamle Davi, Owner. Josh Wasson seconded. Motion carried unanimously.
4. **Approval of Board meeting minutes**
 - A. Board Retreat Meeting June 13, 2012: Fred Lokken moved to approve. Josh Wasson seconded. Motion carried unanimously.
 - B. Board Meeting June 13, 2012: Fred Lokken moved to approve. Josh Wasson 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 July 1 through August 11, including establishing a new relationship with the Nevada Attorney General's tobacco enforcement office, which resulted in three new complaints. She

requested the Board approve the addition of an objective to continue establishing such partnerships under the Board's FY13 goal of continuing to increase public awareness of Board and its mission of protecting the public's health, safety, and welfare. Tamara Sternod moved to add the objective. Fred Lokken seconded. Motion carried unanimously.

6. Financials:

A. Review and approval of June and July financial statements: Tamara Sternod moved to approve. Josh Wasson seconded. Motion carried unanimously.

B. Review and decision on FY12/13 budget: Cindy Kimball requested the Board approve a revision to its FY13 Budget which would eliminate employer reimbursement of employee out-of-pocket medical costs and increase the employer's contribution to the Public Employees' Benefit Plan, for a net cost savings of \$160.72. Josh Wasson moved to approve the revision. Tamara Sternod seconded. Motion carried unanimously.

7. Review and decision regarding apprentice applications:

Ashley Beaudoin, Janet Bradshaw, Randall Daniels, Joshua Felicie, Christopher Galvan, Frankie Guerrero, Justin Luce, Phi Nguyen, Marven Nicolas, Christina Valladon, Sherita Wells, Mari Wooton, Ronald Wooton II, Shanna Young

Ashley Beaudoin. Not present. Josh Wasson moved to approve. Tamara Sternod seconded. Motion carried unanimously. Janet Bradshaw. Present. Tamara Sternod moved to approve. Fred Lokken seconded. Motion carried unanimously. Tamara Sternod moved to amend her motion to grant request for two years' credit for prior experience. Fred Lokken seconded. Motion carried unanimously. Tamara Sternod moved to amend her motion to grant request for two years' credit for prior experience pending receipt of notarized letters from previous employers documenting her previous experience. Fred Lokken seconded. Motion carried unanimously. Randall Daniels. Not present. Josh Wasson moved to approve. Fred seconded. Motion carried unanimously. Joshua Felicie. Not present. Josh Wasson moved to approve. Fred Lokken seconded. Motion carried unanimously. Christopher Galvan. Not present. Tamara Sternod moved to approve. Josh Wasson seconded. Motion carried unanimously. Frankie Guerrero. Not present. Sarah Bradley read NRS 637.113. Tamara Sternod moved to approve proof of compliance with the child support order or a plan approved by the district attorney or other public agency charged with enforcing the order, per NRS 637.113 (4). Fred Lokken seconded. Motion carried unanimously. Justin Luce. Not present. Josh Wasson moved to approve. Fred Lokken seconded. Motion carried unanimously. Phi Nguyen. Not present. Josh Wasson moved to approve. Tamara Sternod seconded. Motion carried unanimously. Marven Nicolas. Not present. Tamara Sternod moved to approve. Josh Wasson seconded. Motion carried unanimously. Christina Valladon. Not present. Tamara Sternod moved to approve. Josh Wasson seconded. Motion carried unanimously. Sherita Wells. Not present. Tamara Sternod moved to approve. Josh Wasson seconded. Motion carried unanimously. Mari Wooton. Not present. Tamara Sternod moved to approve pending receipt of detailed list of responsibilities, dates and locations of employment as laboratory manager, and clarification of the terms "customer service" as it relates to laboratory manager duties. Fred Lokken seconded. Motion carried unanimously. Ronald Wooton II. Not present. Tamara Sternod moved to approve pending receipt of list of physical locations of past employers. Shanna Young. Not present. Tamara Sternod moved to approve. Fred Lokken seconded. Motion carried unanimously.

8. Review and decision regarding optician applications:

Patrick Atkinson, N'Gadi Foreman, Krista Gazzaway, Manuel Gonzalez Robles, Katelyn Gray, Eric Healey, Jessica Kirkland, Roxanne Moore, Marc Okada, Neisy Pineda, Michael Svitak, Kenneth Tregoning, Demler Zamora, Jr., Tyesha Zamora

Patrick Atkinson. Not present. Josh Wasson moved to approve. Tamara Sternod seconded. Motion carried unanimously. N’Gadi Foreman. Not present. Josh Wasson moved to approve. Fred Lokken seconded. Motion carried unanimously. Krista Gazzaway. Present. Tamara Sternod moved to approve. Josh Wasson seconded. Motion carried unanimously. Manuel Gonzalez Robles. Not present. Tamara Sternod moved to approve. Fred Lokken seconded. Motion carried unanimously. Katelyn Gray. Not present. Josh Wasson moved to approve. Fred Lokken seconded. Motion carried unanimously. Eric Healey. Not present. Josh Wasson moved to approve. Fred Lokken seconded. Motion carried unanimously. Jessica Kirkland. Not present. Josh Wasson moved to approve. Fred Lokken seconded. Motion carried unanimously. Roxanne Moore. Not present. Tamara Sternod moved to approve. Fred Lokken seconded. Motion carried unanimously. Marc Okada. Not present. Josh Wasson moved to approve. Fred Lokken seconded. Motion carried unanimously. Neisy Pineda. Not present. Josh Wasson moved to approve. Fred Lokken seconded. Motion carried unanimously. Michael Svitak. Not present. Tamara Sternod moved to approve. Josh Wasson seconded. Motion carried unanimously. Kenneth Tregoning. Not present. Fred Lokken moved to approve. Josh Wasson seconded. Motion carried unanimously. Demler Zamora, Jr. Not present. Tamara Sternod moved to approve. Josh Wasson seconded. Motion carried unanimously. Tyesha Zamora. Not present. Tamara Sternod moved to approve. Fred Lokken seconded. Motion carried unanimously.

9. Review and decision on continuing education classes:

2012-07—West Coast Optical Conference 2012, (5 spec, 4 cl) October 24-26, 2012, Grand Sierra Resort, Reno, Nevada

2012-08—International Vision Expo & Conference West 2012, (187 spec/cl), September 5-8, 2012, Sands Convention Center, Las Vegas, Nevada

2012-09—Wellish Vision Institute Continuing Education Seminars (2 spec), August 21, 2012 (2555 Box Canyon Drive) and August 22, 2012 (2110 E. Flamingo, Suite 210), Las Vegas, Nevada
Fred Lokken moved to approve continuing education classes 2012-07, 2012-08, and 2012-09.
Tamara Sternod seconded. Motion carried unanimously.

10. Review and decision regarding ophthalmic dispensing definition per NRS 637.022 and draft FAQ sheet: Danny Harris introduced the agenda item, stating the Board began a discussion of NRS 637.022 at its June meeting 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 the Board’s website. He explained the Board had achieved consensus on several items, and read the draft FAQ sheet aloud. He then took public comment.

Public Comment: Patrick Phelan, assistant general counsel, Luxottica Group, had several comments and questions. He stated it should be clear that doctors of optometry or ophthalmology can employ unlicensed persons to dispense under their licenses; if it is acceptable to have unlicensed persons discuss lens selection, then the discussion should include frame characteristics; regarding computer entry/cashiering, entering insurance information is not critical to the dispensing role; regarding entering frame, lenses, and prescription, and preparing the work order, there must be a difference between the terms “entering” and “preparing” in regard to the data piece, e.g. can an optician do all the necessary work, write it on a piece of paper, then hand it to an unlicensed person to do the data entry? He added that the statute was written before computers, and asked if the data entry piece was essential. Mr. Phelan opined that instead of using FAQs, he would recommend the Board use the rulemaking process to further define dispensing. Mary Ruth stated that data entry is

essential to dispensing, because providing data to an unlicensed person who doesn't know what they're entering leaves room for error. John Schoenfeld stated that in this era of automation, preparing a work order involves scanning bar codes on frames, lenses, and other items, and asked if this type of data entry requires a license. He added that he appreciated the Board's efforts, but that as technology continued to change, the Board would have to continue to update its laws. Joyce Weiss stated her concerns that the Board was possibly redefining the law without changing statutes.

Board discussion continued. Sarah Bradley stated the Board was not redefining dispensing laws, but was working to clarify the meaning in existing statute. She added that one of the Board's functions is to help interpret the law that they're charged with enforcing and administering. She suggested that the draft FAQs reference the specific statutes in each answer. She encouraged all who had comments or input to submit them to the Board in writing. Tamara Sternod stated that this discussion was part of a process begun at the Board's last meeting, and that this work in progress was begun because the Board knew clarification of ophthalmic dispensing had been needed for some time. She added that the discussion today revolved around the first draft, and in no way was it a final draft. She stated the Board's purpose was to provide clarification within existing laws, and in the best interests of the public, fellow opticians, and apprentices. Ms. Sternod expressed her appreciation for the feedback received during Public Comment, and encouraged all who wished to comment on the issue to provide their written comments in advance of the Board's next meeting. Cindy Kimball stated that the Board was addressing the issue specifically due to input it had received—during previous meetings' Public Comment periods and via telephone calls and emails to the Board office—requesting the Board provide more specific guidance and interpretation regarding what type of activities constitute ophthalmic dispensing. She added that the Board's objective is not to make new laws or regulations, but to provide the requested guidance. Josh Wasson stated that the draft FAQ sheet under discussion is a first step of a work in progress, and there were issues about which the Board had still not agreed. Fred Lokken stated he was glad the Board was addressing what have been recurring questions throughout his years on the Board, and that addressing them was only fair to licensees. Tamara Sternod moved to add further discussion on the ophthalmic dispensing FAQs to the Board's meeting on October 10, but to change the meeting time from 7pm to 5pm. She added a time limit must be set for discussion on each subject. Fred Lokken seconded. Motion carried unanimously. Josh Wasson strongly encouraged all licensees to get involved in the process and to submit to the Board office examples about which they need clarification, so that the Board can consider them in its ongoing efforts to ensure public safety and the integrity of the profession.

11. **Review of complaints 2012-06, 2012-07, 2012-08, and 2012-09:** Cindy Kimball reviewed complaints 2012-06, 2012-07, 2012-08, and 2012-09, all of which alleged unlicensed dispensing of cosmetic contact lenses by various merchants not in the optical dispensing business, and that per the Board's policy, she had contacted each business and followed the telephone contact with formal letters that described the legal consequences if the unlicensed dispensing did not immediately cease. She said she made complaints to the Food and Drug Administration (FDA) regarding the wholesalers who sold the lenses to the merchants, and alerted the appropriate business license divisions in each jurisdiction.
12. **Review and decision on proposed revisions to Unlicensed Dispensing in an Unlicensed Establishment Policy:** Cindy Kimball reviewed the proposed revision, which clarifies that the Board's disciplinary action can include a Cease and Desist Order and an administrative fine of not more than \$10,000, in addition to any other penalty. Fred Lokken moved to approve. Josh Wasson seconded. Motion carried unanimously.

- 13. Future meetings and agenda items:** There was no business under this item.
- 14. Public Comment.** Temma Chaparro expressed her appreciation to the Board for starting the process to develop the dispensing FAQs, which she said were needed and would be very helpful.
- 15. Adjournment:** President Danny Harris adjourned the meeting at 6:47 p.m.