



**STATE OF NEVADA
BOARD OF DISPENSING OPTICIANS**

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Minutes of Public Meeting

Wednesday December 10, 2014, 1:00 p.m.

College of Southern Nevada, Henderson Campus:

700 College Drive, Henderson, NV 89002 Building B, Room 207

Members Present

Joshua Wasson, President

Tamara Sternod, Vice President

Marilyn Brainard, Treasurer

Marsha Costuros, Secretary

Daniel Harris, Member

Others Present

Corinne Sedran, Executive Director

Sarah Bradly, Deputy Attorney General

1. Call to order

Board President Joshua Wasson called the meeting to order at 1:04 p.m.

2. Public comment

There was no public comment.

3. Approval of previous board meeting minutes (for possible action):

October 6, 2014 Regular Board Meeting

Tamara Sternod addressed agenda item 7a and asked if Executive Director, Corinne Sedran, had been working on coming up with a more comprehensive and clear form for CE credit approval. Sedran stated she was planning to use the current form through 2015 renewal time and would come up with a new form for the following year. Sternod asked about item 8b, which states the board has several open unlicensed dispensing complaints from 2012. Sedran confirmed the open complaints are on the agenda for the present meeting. Sternod asked about the board's discussion on adopting a 30-day policy for reviewing board exams and notifying examinees of their results (item 9b). Sedran confirmed she is working on drafting the policy as part of the board's policy handbook. She is also working on the policy for board member reviews of apprentice applications (item 9d). Sternod moved to approve the minutes with note of her comments. Brainard seconded the motion. The vote was unanimous.

4. Announcement of board member reappointments (for possible action)

Wasson announced that both Marilyn Brainard, Board Treasurer, and Marsha Costuros, Board Secretary, had been reappointed to their positions on the board by Governor Sandoval. Their new

terms began on November 10, 2014 and will run through October 31, 2017.

5. Review and decision on requests for previous experience credit (for possible action):

a. **Christopher Ceresola**

Harris moved to approve Ceresola's request for two years prior experience credit. Sternod seconded the motion. The vote was unanimous.

b. **Valdineia Freitas-Perkins**

Sternod noted Freitas-Perkins submitted a letter from the doctor for whom she had worked for two years prior to obtaining her apprentice license. The doctor did not list any job functions performed by Freitas-Perkins that would constitute dispensing. Sternod moved to approve her request for prior experience, but only for a single year. Harris seconded the motion. The vote was unanimous. Wasson reopened the agenda item when he noted Freitas-Perkins was originally apprenticed in February of 2012. Since she had already been apprenticed two-and-a-half years, if the board granted her one year prior experience, she would qualify to take the next board exam. The board let the motion stand.

c. **Christine Hachinski**

Sternod noted Hachinski is requesting one year prior experience credit and her ABO and NCLE certifications expired in 2012. Sternod stated the certifications must be current at the time the applicant takes the exam. Sarah Bradley explained NRS 637.100 requires an applicant to furnish proof of having passed the ABO and NCLE exams, but does not specify the certifications must be current. Sternod asked whether it is too late in the legislative session to add an amendment to the board's regulations to require the certifications be current. Bradley explained the law isn't explicit on the topic of ABO and NCLE certifications, so NAC 637.160 could potentially be altered. Because the current draft regulations would have to be re-reviewed by the LCB, the board may want to wait until July 1st to address this issue. Sternod moved to grant Hachinski's request for one year of credit. Harris seconded the motion. The vote was unanimous.

d. **Kimberly Upperman**

Upperman was present at the meeting. She stated she has obtained her ABO certification and will sit for the NCLE exam in February. She is enrolled in the CSN Ophthalmic Dispensing Program and will finish her education in either May or December of 2015, depending on whether the board grants her request for experience credit. She was originally apprenticed in 2013 and is requesting one year of credit so she can qualify to take the board exam in 2015. Harris moved to approve Upperman's request. Sternod seconded the motion. The vote was unanimous.

6. Review and decision on apprentice request for 2015 renewal sans required educational progress:

Denise Oset

Sedran explained Oset had not made adequate career progression under the law to qualify for license renewal. Oset submitted a letter to the board explaining she had encountered several hardships in the past year that had prevented her from making the required progress. Sedran stated Oset's license was issued January 11, 2011. Sternod moved to approve Oset's request for 2015 license renewal. Harris seconded the motion. The vote was unanimous.

7. Review and decision on request for Washington license reciprocity: **Samantha Lee**

Sternod asked whether Lee is moving due to a military transfer. Sedran stated Lee did not represent that to the board. Bradley explained the governor made an executive order to government agencies to make their best efforts to keep active-duty spouses employed. If the board's regular policies do not address difficulties that may be encountered by military spouses seeking licensure, it needs to make special provisions. The board's statute already addresses the issue with section 637.127, its Special License provision. That provision would require a military spouse to sit for the state board exam, but the benefit of the provision is the spouse would not have to complete an apprenticeship or prove his or her educational qualifications. Sternod moved to deny Lee's request, referring to the Special License provision of the board's statute. She stated Lee must meet the requirements for obtaining a Special License and submit a complete application. Harris seconded Sternod's motion. The vote was unanimous.

8. Discussion and decision on handling of apprentices who fail to enroll in continuing education – automatic relinquishment of license (for possible action):

Sedran stated apprentice licensees often decide to leave the profession fairly soon after obtaining their licenses. It can be difficult for the board office to track down those licensees to demand they relinquish their licenses. The board is forced to host hearings to revoke the licenses, which is both costly and time-consuming. Sedran stated those costs could be eliminated by making an "automatic relinquishment" of the license part of the application – an applicant would agree to automatically relinquish the license upon failure to enroll in the required educational program. Bradley explained such a policy may violate the due process required to revoke a government-issued license. She is uncomfortable with the idea making relinquishment automatic. Bradley recommends maintaining the current process, but terming it a "surrender" of the license, rather than a relinquishment.

9. Review and decision on continuing education course applications (for possible action):

SNAOD

Arizona Charlie's; 740 S. Decatur Blvd.; Las Vegas, NV 89107
October 26, 2014 (8 credits total offered)

Harris moved to approve the application. Costuros seconded the motion. The vote was unanimous.

Davis Optical Inc: Basic Gems for Contact Lens

5053 South McCarran Blvd.; Reno, NV 89502

December 16th and 23rd 2014 and January 13th, 20th, and 27th 2015 (9 contact lens credits total offered)

Sternod noted the application did not include all the requisite information. She moved to approve the application pending receipt of the missing information. Wasson noted the applicant had listed the course levels, prerequisites, and other required information on page 2 – the applicant had intended that information to apply to all nine courses included on the application. Harris seconded Sternod's motion. The vote was unanimous.

10. Review of new complaints; discussion and decision on closing prior complaints; assignment of complaint (for possible action):

a. New complaints: **2014-06, 2014-07**

Sedran stated these complaints had been submitted to the board office since the last meeting and both pertained to unlicensed cosmetic contact lens dispensing.

b. Decision on open unlicensed contact lens dispensing complaints: **2012-06, 2012-07, 2012-08, 2012-14, 2012-18, 2012-19, 2013-26, 2014-03**

Sedran stated these complaints had all been investigated since the last meeting and all respondents in question has ceased cosmetic contact lens sales. She requested the board vote to close the complaints. Sternod asked whether the board had performed random workplace inspections for the past month. Sedran stated the board's investigative budget for the past month had been applied to the follow-up investigations on these complaints. Workplace inspections could resume the following month. She is concerned the cost of workplace inspections is exceeding the board's expectation and believes the board may need to consider other options. Costuros moved to close the complaints. Wasson seconded the motion. The vote was unanimous.

c. Assignment of complaint **2014-04**

Sedran removed this item from the agenda because Bradley had advised complaint assignments could be done outside of meetings.

11. Discussion/Decision on 2014 Meeting and Exam Dates (for possible action):

Sedran distributed a list of tentative 2015 meeting and exam dates to the board. Sternod requested the proposed September 26th exam date be changed to the 19th because she would not be available on the 26th. Costuros moved to approve the proposed dates with the date of the fall 2015 board exam being moved to September 19th. The application deadline for the March exam will be January 20th and the deadline for the September exam will be July 21st. Harris seconded the motion. The vote was unanimous.

The board discussed the deadlines for hosting a legislative workshop and hearing to approve its proposed regulation changes. Bradley explained the board has two years from the time it submits the changes to the LCB to submit a Small Business Impact Statement and host its workshop and hearing. She stated the proposed regulations present a potential negative impact on small businesses due to the increased apprentice renewal fee, however, the impact may not be "direct and significant." The board may want to consider hiring a consultant to prepare its impact statement. Sedran stated the board should wait until it has more information on the time and costs of preparing the statement before scheduling its workshop.

12. Executive Director's Report (for possible action):

a. Renewal updates

i. Decision on making January a "float month"

Sternod asked this item be placed on the agenda because she wants the board's policy clarified on the record. Bradley stated the regulations do not specify continuing education courses must be completed by December 31st of each year. Sedran stated the board's informal policy has been to accept January credits towards either the present or following year's renewal. Bradley recommended NAC 637.190 be referenced in the board's policy book; that regulation states continuing education credits must be submitted at the time of license renewal, but does not specify a prior cut-off date for their completion.

- ii. Renewal applicants to be reviewed at February meeting: lack of progression and 5th-year renewals

Sedran explained apprentices applying for license renewal who do not demonstrate adequate progression for the year or who have already had their licenses renewed four or more times will need to have their applications reviewed at the February 11th board meeting. Those individuals should not plan to work between the dates of February 1st and February 11th, as their licenses renewals will not be valid without board approval.

b. Discussion/decision on adding service fees

- i. Duplicate receipts
- ii. License verifications

Sedran stated sub-items (i) and (ii) are her suggestions for ways the board can increase revenues and also hold licensees responsible for keeping track of documents (such as receipts) issued by the board. Licensees often request duplicate copies of fee receipts because they lose the ones they have already been issued. This costs the board time and money for which it should be compensated.

Bradley stated the board does not seem to have the authority to issue these fees in its statute, which at present provides only for renewal fees and delinquency fees. The board may need to add this authority; this would require a new section be added to the NRS which covers fees for both apprentices and options; section 637.060 would be the proper place to add the new section.

c. Update on hiring of lobbyist

Sedran announced that Neena Laxalt had agreed to represent the board for the upcoming legislative session. She presented Laxalt's proposed contract for services to the board for its review. Bradley suggested page two of the proposed contract should specify the entire value of the contract not exceed \$5000. Wasson requested Sedran keep the board apprised of proposed legislation that may affect the board by sending out a chart of legislative actions periodically.

Wasson called for a break at 2:15 p.m. He called the meeting back to order at 2:25 p.m.

d. Changes to apprentice supervision policy/new form; supervisor-to-apprentice ratio to remain the same

Sedran stated the purpose of the new form is to streamline the process of reporting apprentice supervision to the board. The Workplace Supervision Charts, Temporary Change of Supervision Forms, and Workplace Supervision Logs will be retired. Every apprentice will need to submit the new form to the board office with this year's renewal application and anytime thereafter when there is a *permanent* change to their workplace supervision. The new supervision policy/form will not affect the law regarding the ratio of supervisors to apprentices: a supervisor may not supervise more than two apprentices at any one time.

Wasson read an excerpt from "A Note Regarding Temporary Supervision" – a notice that will be distributed to licensees along with the updated form. He clarified that a "primary supervisor" assumes responsibility for the actions of his or her apprentice, even when the apprentice works under the direction of a "temporary supervisor." Harris stated he does not stand behind the new form/policy because he believes it may be abused. Wasson explained the new form does not change the official policy of the board: each apprentice has only one supervisor of record who assumes responsibility for the apprentice. The board has been discussing ways to enforce this policy for the past several meetings.

Bradley referenced NAC 637.280 which states a supervisor who is a licensed Nevada optician

must be on the premises at all times an apprentice optician is dispensing; any time the supervisor is unavailable, a temporary supervisor who is a licensed Nevada optician must be obtained to supervise the apprentice. When a permanent change of supervisor is made, the supervisor and apprentice must notify the board in writing. There is no authority in the board's laws or regulations for requiring licensees to notify the board of the temporary supervision of an apprentice.

- e. Review/acceptance of board resolution re: leasing office space/allowing executive director to enter lease

Sedran explained the board does not currently have a formal lease for the space it is occupying – it has an informal agreement with the NV Board of Psychological Examiners (NBOP) for subletting the space. She believes the previous Executive Director of the board and NBOP had a misunderstanding regarding what the terms of the agreement would be. NBOP has been paying a large majority of the rent for the space and is currently allowing the board to use more square footage originally anticipated. The board regularly issues new licenses which requires the board to store new files; more filing cabinets are needed at this point and some of the board's cabinets are already intruding on NBOP's portion of the space.

According to the space justification form available on the NV Buildings and Grounds website, the board is justified for more than twice the square footage it currently occupies. Sedran requested the board pass a resolution granting her the authority to enter into a lease agreement for a larger space. She has located a space with two adjoining rooms that leases for \$700/month with a twelve-month lease. This amount is comparable to or less than what other similarly-sized boards pay each month.

Sternod asked whether board treasurer, Brainard, or Sedran had reviewed the potential impact of the move on the board's budget. Sedran stated she had conducted a review: the increased rent would only impact the board's budget for the second half of the current fiscal year, which ends in June. The board's proposed regulation change to increase the apprentice renewal fee for the following year to \$100 would more than cover the increase in rent. Wasson added the board has also been saving significant costs by hosting its meetings as videoconferences, rather than flying board members back and forth between Reno and Las Vegas for meetings.

Sternod asked how soon the office move would take place. Sedran hopes the board can be in the new space by the beginning of January, prior to the board's busy renewal time. She is waiting on Leasing Services (Buildings and Grounds) to execute the lease. Bradley stated, under Nevada Statute, Leasing Services must negotiate the terms of the lease; the department utilizes standard terms and pricing in all of the leases it drafts.

Brainard agreed the current space is very cramped and not adequate for the needs of the board. The board had entered into the current agreement for shared space as an experiment – the previous executive director had worked out of her home and the board did not know how much space it would need. The new office space is nicely situated in a small business park and this would be a positive move for the board; she highly recommends moving the office to the new location. Brainard moved to approve the proposed board resolution. Costuros seconded the motion. The vote was unanimous.

13. Discussion on transitioning to online licensing exams (for possible action):

Sternod stated she would like to speak with representatives at the University of Nevada, Reno about

having the written portion of the board's licensing exam administered electronically. She believes this is a necessary update, as the board's written exam is currently administered via scantron, and it can be difficult to locate a scoring apparatus. Many similar organizations have already developed online exams. She is hoping working with the UNR will save the board significant costs on exam development. Brainard suggested Truckee Meadows Community College might also be a good resource. Sternod agreed and stated she intends to contact both schools' IT departments. She stated an electronic exam would also be more secure than a written version. She would like to gather information on available options and report back to the board at the February meeting. Wasson moved to grant Sternod authority to gather information on electronic testing options on behalf of the board. Costuros seconded the motion. The vote was unanimous.

14. Discussion/decision on providing examinees who pass the state board exam with a breakdown of their exam scores (for possible action):

Sedran has received requests from licensees who passed the last board exam for a breakdown of their scores by percentages. The law states the board must provide licensees who fail the exam with a breakdown of their scores, but the board has been providing those who pass with only an overall percentage score. Sedran would like direction as to whether she may provide a more detailed breakdown by percentages to those who pass the exam. Bradley stated the wording in the current law was changed to disallow a review of the exam by those who fail; it was not intended to preclude the board from providing a more detailed score to those who pass the exam. There is no reason the board cannot provide all examinees with a score by percentages; the board may wish to clarify this by amending NAC 637.160 to state *all examinees* will receive a breakdown of their exam scores by percentages. Sedran suggested the board wait until proposed electronic updates are made to the exam before making any official policy changes. The manner in which electronic scores are administered may affect the board's policy on this issue. Bradley stated the policy should be reworded once the board's new exam is in place so future board members and executive directors understand the intent of the policy.

15. Financials (for possible action):

a. Review and decision on **September, October, and November 2014** financial statements

Sternod noted the board seems to be on budget for the year in every category save for Computer/Electronics. Sedran confirmed the board had gone about \$50 over budget in that category due to necessary software purchases, however, she does not anticipate the board will need to make any more electronic purchases for the year. Sternod asked why the board had not spent more of its investigations funds. Sedran stated she had not yet paid the last two invoices she received from their private investigator because she was not in agreement with some of the charges. She is working with the investigative firm to come to an understanding on invoicing. Sternod moved to approve the September, October, and November 2014 financial statements. Brainard seconded the motion. The vote was unanimous.

b. Discussion/decision on health insurance stipend for executive director

Sedran explained the agreement she and the board had entered upon her hiring included monthly health insurance reimbursements. The board's accountant has informed her the board must pay health insurance costs in the form of taxable stipends, rather than reimbursements. The accountant's suggestion was the board increase the amount of the monthly stipend to cover the tax liabilities that would be incurred by the executive director. This would cost the board far less than the alternative of enrolling the executive director in the state's health insurance plan or

setting up its own group health plan. Brainard moved to increase the current health insurance budget by \$600 to offset tax costs to the executive director. Wasson seconded the motion. Harris opposed the motion. The motion carried by a vote of four to one.

c. Discussion/decision on PERS enrollment

Bradley explained the board's previous executive director had enrolled the board as a participating employer in the NV Public Employees Retirement Program (PERS). At the time of enrollment, the board believed the director was enrolling herself in the program as an employee, rather than the board as an employer. Since the new director, Sedran, was hired by the board, she has been paying into Social Security. PERS representatives contacted Sedran regarding payments due, however, she informed them she was not enrolled in the program. She contacted Bradley about the payment notices and Bradley advised her PERS representatives did not realize the previous director had retired and was no longer enrolled in the program. Bradley later discovered the board had actually been enrolled as an employer and does not have the ability to opt out of the program. PERS is now stating the board owes interest and late fees on top of the amount it owes in contributions.

Brainard noted other boards are not being forced to pay into the PERS system. Bradley stated the law requires all state employers to belong to PERS, however, state boards and agencies have not yet been targeted for compliance; only about half of the boards currently belong to the program. She noted the law is clear an employee cannot pay into both Social Security and PERS, so the board may have an argument for not making retroactive payments to PERS. Brainard stated she is concerned PERS may be targeted in the upcoming legislative session, and as a result, may force employees to pay a larger percentage of their retirement contributions. She would like the board and its employee to remain independent of the program, as it was not the intent of the board to enroll itself as an employer.

Bradley stated if the board is not able to sever its enrollment in PERS, it may need to act to recover its payments into Social Security. Her understanding is the payments are recoverable for a given time period. Alternatively, she is hoping the board can avoid retroactive payments to PERS on the basis of having paid into Social Security. Brainard suggested contacting an attorney who specializes in employment law; she will work on finding an attorney who can advise the board on this matter. Bradley stated she would like to speak to her chief and the PERS representative again and determine the board's next step. Wasson directed Sedran and Bradley to continue working on this issue and update the board on their progress.

d. Review/acceptance of final audit

Brainard moved to accept the board's final audit for fiscal year 2013-14. Sternod seconded the motion with a note the board should heed the recommendations given by the auditor with respect to altering its budget accounts. The vote was unanimous.

16. Public Comment

Jesse Lucero recommended the board revise its policy of providing exam score breakdowns to those who fail the exam because it would be more beneficial for them to study all areas (rather than just those in which they score poorly) in their efforts to pass the exam. Sternod requested the board amend its regulations to require that ABO/NCLE certifications be current at the time an applicant takes the exam and to allow for various service fees.

Wasson adjourned the meeting at 3:34 p.m.