



STATE OF NEVADA

BOARD OF DISPENSING OPTICIANS

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Minutes of Public Meeting

Nevada Board of Dispensing Opticians
Wednesday February 11, 2015 1:00 p.m.
TMCC Meadowood Campus, Room 315
5270 Neil Road - Reno, Nevada 89502

Members Present

Joshua Wasson, President
Tamara Sternod, Vice President
Marilyn Brainard, Treasurer
Marsha Costuros, Secretary
Corinne Sedran, Executive Director
Sarah Bradly, Deputy Attorney General

1. Call to order

Joshua Wasson called the meeting to order at 1:08 p.m.

2. Public comment

Licensee Cheryl Charbonneau (agenda item 7c) stated she forgot to submit her 2015 renewal paperwork due to difficulties in her personal life. She requested the board waive the \$300 delinquency fee for the renewal of her license.

Licensee Elvonda Cantrell asked how agenda item 12 (PERS) will affect licensed opticians. Sarah Bradley stated PERS stands for Public Employees Retirement System – the agenda item pertains to the board's employees and will not affect licensees.

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

December 10, 2014 Regular Board Meeting

Marilyn Brainard moved acceptance of the December minutes with the caveat she was not able to fully review them prior to the meeting. She moved provisional acceptance of the minutes with final acceptance to take place at the April meeting. Marsha Costuros seconded the motion. The vote was unanimous.

Wasson reopened agenda item 2, Public Comment. He stated Daniel Harris had resigned his position on the board at the December 2014 board meeting. The governor's office has been notified and the board will be going through the process of appointing a new member.

4. Review and decision on Apprentice License Renewal Applications: applications sent without adequate proof of progression and applications for a 5th + renewal (for possible action):
 - a. **Arellano, Seyda**

Sedran stated Arellano's license had already been renewed more than four times. She has completed every requirement to sit for the state board exam except passage of her GED exam. Sternod asked whether an applicant must furnish proof of a high school diploma or its equivalent at the time an apprentice license is issued. Bradley stated a person who does not hold a high school diploma or GED does not qualify for licensure as an apprentice. Sternod stated the board has been issuing licenses without requiring proof of a high school diploma since 2007; the apprentice application must be changed to require proof of a diploma. Wasson stated the requirement of a high school diploma was adopted in 2013. Arellano was licensed prior to the requirement and is grandfathered in under the old regulation. Sternod moved one final renewal of Arellano's license with the expectation she will take her GED exam again in 2015. Costuros abstained from the vote because she has had discussions with Arellano's supervisor re: her renewal application. Wasson seconded the motion. The motion passed by a quorum of the board.
 - b. **Berry-Pescatori, Tina**

Sternod moved denial of Berry-Pescatori's renewal application. She stated the board had renewed Berry-Pescatori's license for 2014 with certain expectations for the year, including taking the ABO exam, and she did not meet those requirements. Wasson agreed the board had already granted Berry-Pescatori additional renewals and she did not meet the requirements handed down by the board. Costuros seconded the motion. The vote was unanimous.
 - c. **Dehne, Hilda:** Removed from agenda
 - d. **Epperson-Davis, Laura**

Sternod stated Epperson-Davis has only been apprenticed since 2010 and has shown progress. She moved to renew her license for 2015. Costuros seconded the motion. The vote was unanimous.
 - e. **Ganski, Sandra**

Sedran stated Ganski had submitted an application to take the state board exam in March 2015, in addition to her renewal application. Sternod moved to renew her license because she made progress in 2014. Costuros seconded the motion. The vote was unanimous.
 - f. **Houseweart, Adrianna**

Wasson noted Houseweart had completed one volume of the NAO Career Progression Program in 2014. Sternod moved to renew her license with the

expectation she will take the ABO exam in spring 2015 and purchase both volumes of the Contact Lens Program in 2015. Costuros seconded the motion. The vote was unanimous.

g. **Jenkins-Deville, Marquette**

Costuros moved renewal of Jenkins-Deville's license with the expectation she will take the NCLE exam in May 2015. Sternod seconded the motion. The vote was unanimous.

h. **Kerr-Medlin, Darcy**

Sternod stated she was very impressed by the letter sent by Kerr-Medlin's supervisor. She thanked him for taking the time to write a letter on his apprentice's behalf explaining her circumstances and for taking an active interest in her progression. Sternod moved renewal of Kerr-Medlin's license with the expectation she makes required progress in 2015. Costuros seconded the motion. The vote was unanimous.

i. **Kirby, Reyanna:** Removed from agenda

j. **McIntosh, Savoy**

Sternod moved to renew McIntosh's license with the expectation she will retake the NCLE exam and purchase her CLSA contact lens volumes in 2015. Costuros seconded the motion. The vote was unanimous.

k. **Minjares, Jessica:** Removed from agenda

l. **Yates, Lance**

Sedran stated Yates had taken the exam for his career progression course but did not achieve a passing score. Bradley explained the NAC requires successful completion of a course for career progression. Sternod noted apprentices will make their best efforts to pass their course exams as it costs money to take each exam. Wasson explained the regulations were changed with the intent of preventing apprentices from turning the Career Progression Program into a several year program. Sternod moved denial of Yate's renewal application. The vote was unanimous.

5. Review and decision on reinstating delinquent Apprentice Ophthalmic Dispenser Licenses (for possible action):

a. **Adeseye, Adetaye:** Removed from agenda

b. **Brandow, Skye:** Removed from agenda

c. **Bravo, Bobby:** Removed from agenda

d. **Caballero, Silvia:** Removed from agenda

e. **Canchola, Joshua:** Removed from agenda

f. **Chester, Mary:** Removed from agenda

g. **Clark, Steven:** Removed from agenda

h. **Darling, Denise:** Removed from agenda

i. **Davidson, Lydia**

Sternod stated Davidson did not show adequate progress for 2014 – she did not pass her Volume I Career Progression Exam. Bradley stated a renewal is not timely if the application is not complete when submitted. If a complete renewal application is not submitted by January 31st, the applicant should know she must

cease dispensing; she does not have reason to believe her license has been renewed. Sternod moved to deny renewal of Davidson's license because she did not pass at least one volume of the Career Progression Program. If she wants to continue dispensing, she must submit an application for a new apprentice license. Costuros seconded the motion. The vote was unanimous.

Wasson stated the board should consider moving its deadline for completion of yearly progress/continuing education to December 31st of each year. The deadline for renewal would remain the 31st of January, but courses would need to be completed by the end of December. This would prevent many of the problems the board encounters with licensees not receiving their proof of completion by the renewal deadline. Bradley stated she will look into how this deadline could be changed legislatively.

j. **Dehne, Hilda:** Removed from agenda

k. **Dominguez, Joshua**

Sternod stated the board must be consistent with respect to its yearly progression requirements. Dominguez did not meet the regulatory requirements for progression so the board must deny his renewal application. Costuros seconded the motion. The vote was unanimous.

l. **Dry, Courtenay**

Costuros moved to deny renewal of Dry's license due to lack of required yearly progression. Sternod moved to amend Costuros' motion to include reference to NAC 637.287: Demonstration of orderly progress toward completion of apprenticeship, and notice that Dry must cease and desist any ophthalmic dispensing immediately. The vote was unanimous.

m. **Dunn, Crystol:** Removed from agenda

n. **Echeverria, Zulma:** Removed from agenda

o. **Fadel, Beshara:** Removed from agenda

p. **Felicie, Joshua**

Wasson noted Felicie took and failed his CPP exam in November; he retook the exam, however, proof of progress was not included with his renewal application because he had not yet received results from the NAO. Sternod moved renewal of Felicie's license, however, he must submit the \$100 delinquency fee because the board did not receive his proof of progress until after the January 31st deadline. Costuros seconded the motion. Wasson opposed. The motion passed by a quorum of the board. Wasson amended his vote to support the motion – he believed the motion was to deny the renewal, rather than to assess a delinquency fee.

q. **Funderburk, Kelly:** Removed from agenda

r. **Garcia, Cheryl:** Removed from agenda

s. **Godinez, Luis:** Removed from agenda

t. **Hamann, Alissa:** Removed from agenda

u. **Hewitt, Jason:** Removed from agenda

v. **Koliske, Naomi**

Sternod moved renewal of Koliske's license upon payment of the delinquency fee. Costuros seconded the motion. The vote was unanimous.

- w. **Larson, Alyda:** Removed from agenda
- x. **Lorton, Michael:** Removed from agenda
- y. **Masco, Charles:** Removed from agenda
- z. **McCullin, Michael:** Removed from agenda
- aa. **Miele, Patti:** Removed from agenda
- bb. **Mitchell, Kaynett:** Removed from agenda

Wasson called for a break at 2:41 p.m.

cc. **Munguia, Monica**

Sternod moved renewal of Munguia's license upon payment of the delinquency fee. Costuros seconde the motion. The vote was unanimous.

dd. **Nguyen, Phi**

Costuros moved renewal of Nguyen's license upon payment of the delinquency fee. Sternod seconded the motion. The vote was unanimous.

ee. **Noel, Krystal:** Removed from agenda

ff. **O'Connell, Ashley:** Removed from agenda

gg. **Perez, Isela:** Removed from agenda

hh. **Redding, Janell:** Removed from agenda

ii. **Reyes, Justin:** Removed from agenda

jj. **Snell, Blair:** Removed from agenda

kk. **Speers, Jodie**

Sternod moved renewal of Speers' license upon payment of the delinquency fee. Costuros seconded the motion. The vote was unanimous.

ll. **Sylvester, Zachary**

Sternod moved renewal of Sylvester's license upon payment of the delinquency fee. Costuros seconded the motion. The vote was unanimous.

mm. **Trussel, Jeffrey:** Removed from agenda

nn. **Valdez, Michelle:** Removed from agenda

oo. **Vance, Kassity:** Removed from agenda

pp. **Wolf, Steven**

Sternod moved renewal of Wolf's license upon payment of the delinquency fee. Costuros seconded the motion. Wasson abstained from the vote because he is Wolf's supervisor of recored. The motion passed by a quorum of the board.

qq. **Wooten, Mari**

Sternod moved denial of Wooten's renewal application due to no proof of progress. If she wants to continue dispensing, she must apply for a new apprentice license. Costuros seconded the motion. The vote was unanimous.

rr. **Young, Shanna:** Removed from agenda

6. Review and decision on new Apprentice Ophthalmic Dispenser Applications (for possible action):

a. **Arellano, Seyda:** Removed from agenda due to renewal of current license

b. **Berry-Pescatori, Tina**

Costuros moved approval of Berry-Pescatori's application for a new apprentice license. Sternod seconded the motion. The vote was unanimous.

- c. **Dehne, Hilda:** Removed from agenda
- d. **Epperson-Davis, Laura:** Removed from agenda due to renewal of current license
- e. **Ganski, Sandra:** Removed from agenda due to renewal of current license
- f. **Houseweart, Adrianna:** Removed from agenda due to renewal of current license
- g. **Jenkins-Deville, Marquette:** Removed from agenda due to renewal of current license
- h. **Kerr-Medlin, Darcy:** Removed from agenda due to renewal of current license
- i. **Koliske, Naomi:** Removed from agenda due to renewal of current license
- j. **Kirby, Reyanna:** Removed from agenda
- k. **McIntosh, Savoy:** Removed from agenda
- l. **Minjares, Jessica:** Removed from agenda
- m. **Yates, Lance:** Removed from agenda

7. Review and decision on reinstating delinquent Ophthalmic Dispenser Licenses (for possible action):

- a. **Buswell, Linda:** Removed from agenda
- b. **Cardwell, Dennis**

Sedran stated Cardwell had not renewed his license for 2014 and asked whether he must submit two renewal fees (one for 2014 and another for 2015) in addition to the delinquency fee. Bradley stated a delinquent licensee must pay each applicable renewal fee in addition to the annual delinquency fee in order to reinstate his license, therefore Cardwell must submit another \$300 renewal fee (for 2014) in addition to the \$600 renewal/delinquency he already submitted. Bradley will review the board's regulations to determine whether he must also submit an additional 14 continuing education credits to cover his 2014 renewal requirement. Wasson read the NAC provision for reinstatement of a delinquent license; the provision requires the licensee to submit proof of continuing education, but does not specify whether credits must be provided for each year the license is delinquent. Sternod moved Cardwell must pay an additional \$300 fee to reinstate his license but does not need to submit another year's worth of continuing education credits. Costuros seconded the motion. The vote was unanimous. Cardwell was in attendance and asked why he must pay a \$300 fee for a year he did not/was not able to use the license. Bradley stated the NRS does not grant the board leeway with respect to the assessment of delinquency fees – he must submit all required fees in order to reinstate his license.

- c. **Charbonneau, Cheryl**
Sternod moved to renew Charbonneau's license upon payment of the delinquency fee. Costuros seconded the motion. The vote was unanimous.
- d. **Comer, Alvis:** Removed from agenda
- e. **Eden, Roger:** Removed from agenda
- f. **Ewalt, Sherry:** Removed from agenda
- g. **Graves, Kira:** Removed from agenda

- h. **Grover, Michael:** Removed from agenda
- i. **Gustafson, Tonya:** Removed from agenda
- j. **Hall, Jeanie:** Removed from agenda
- k. **Healey, Eric**
Costuros moved renewal of Healey's license upon payment of the delinquency fee. Sternod seconded the motion. The vote was unanimous.
- l. **Leaverton, Thomas:** Removed from agenda
- m. **Mayden, Tarsha:** Removed from agenda
- n. **Nguyen, Don:** Removed from agenda
- o. **Sandoval, Ann:** Removed from agenda
- p. **Schoenfeld, John:** Removed from agenda
- q. **Tate, Matthew:** Removed from agenda
- r. **Zamora, Virginia:** Removed from agenda

8. Review and decision on applications to sit for March 21, 2015 state board exam (for possible action):
- a. **Monique Adair**
Sternod moved approval of Adair's application. Costuros seconded the motion. The vote was unanimous.
 - b. **Crystal Donnelly**
Costuros moved approval of Donnelly's application. Sternod seconded the motion. The vote was unanimous.
 - c. **Paula Erlich**
Sternod moved approval of Erlich's application. Costuros seconded the motion. The vote was unanimous.
 - d. **Valdineia Freitas-Perkins**
Sternod moved approval of Freitas-Perkins' application and thanked her for including all dates on her Contact Lens Training Record. Costuros seconded the motion. The vote was unanimous.
 - e. **Sandra Ganski**
Costuros moved approval of Ganski's application pending receipt of an official transcript from CSN prior to the exam. Sternod moved amendment of Costuros' motion; the transcript should demonstrate the contact lens portion of Ganski's education was completed prior to the January 20th application deadline. Costuros seconded the amendment. The vote was unanimous.
 - f. **Brent Hanson**
Sternod moved approval of Hanson's application and thanked him for his complete Contact Lens Training Record. Costuros seconded the motion. The vote was unanimous.
 - g. **Ramon Prescott**
Sternod moved approval of Prescott's application pending receipt of his high school transcript. Costuros seconded the motion. The vote was unanimous.
 - h. **Katherine Schank**

Costuros moved approval of Schank's application. Sternod seconded the motion. The vote was unanimous.

i. **Lee Worley**

Sternod asked if Worley needs to submit a letter in addition to holding an equivalent license for five years. Bradley recommended the board request Worley's licensure history from the state of Washington. Sternod moved approval of Worley's application pending license verification from Washington. Costuros seconded the motion. The vote was unanimous.

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

International Vision Expo and Conference East

Javits Convention Center; 655 W. 3rd St.; New York, NY

March 19th-22nd, 2015

165 continuing education credits offered

Sedran stated Vision Expo had submitted a packet with course descriptions for their Spring 2015 conferences for board approval. Vision Expo courses are not always approved for credit by the ABO or NCLE prior to the conferences and licensees are hesitant to enroll in the courses before they are approved. Sedran suggested approving the courses for credit with the board to alleviate these concerns. Sternod stated the board does not offer credit for the COPE courses offered at Vision Expo, so the licensee assumes the risk when enrolling in courses not yet approved by the ABO/NCLE. For courses that do not qualify for ABO/NCLE approval, licensees must submit an approval request form to the board. Sedran stated the board could disregard this agenda item.

10. Discussion and decision on hiring **Louis Ling** as counsel to represent the board (for possible action):

Sedran stated she sought the advice of independent counselor Louis Ling on issues the board has encountered with PERS and the state leasing department; she has concerns the advice given by the Attorney General's (AG's) office is contrary to the board's best interests. Bradley distributed to the board members packets she had prepared with information pertaining to agenda items 11 and 12; she asked the board take into account the advice of the AG's Office on these issues. She does not believe the advice of the AG's office is in conflict with the board's interests.

Sternod asked whether the board is considering hiring Ling in lieu of being represented by the AG's Office. It is her understanding the AG's office bills a minimum of six hours per month. Bradley confirmed there is a memorandum of understanding that includes a six-hour minimum monthly billing, but her office has only billed the board actual hours provided. Sternod asked why Sedran felt the need

to contact an independent counselor re: PERS. Sedran stated she had received an email from the AG's office in January instructing her to comply with PERS' request to submit back payments. She responded she needed the board's consent prior to making payments. The AG's office advised her she did not need board consent, and should comply immediately. Sedran believed it was prudent to obtain an outside opinion. Bradley stated the AG's office is not trying to force board action, but is advising the board what should be done to avoid legal difficulties.

Ling introduced himself to the board and recounted his experience representing state licensing boards. He worked as a deputy attorney general for ten years and has represented twenty one of the state's Title 54 Boards as an independent counselor. He is currently representing seven licensing boards in various capacities; some employ him as general counsel. The AG's office will always represent the board in certain legal matters.

Brainard moved to hire Ling as general counsel for the board. There was no second; the motion failed. Wasson proposed hiring Ling to represent the board on a trial basis and continuing the board's relationship with the Attorney General's Office. The board would employ Ling to aid the executive director during legislative session and advise her on the PERS issue and other similar issues. Brainard seconded the motion. The vote was unanimous.

11. Discussion and decision on classifying board staff as independent contractors (for possible action)

Ling recommended combining items 11 and 12. Bradley agreed.

Wasson called for a break at 4:37 p.m.

Wasson called the meeting back to order at 4:50 p.m.

12. Discussion and decision on how to proceed with board's PERS enrollment (for possible action)

Bradley explained DETR employs an ABC test when determining whether a worker is an independent contractor or employee. In the case of an independent contractor, the body contracting services does not maintain control over how the contractor performs work. The contractor is a private, independent business. It is the Attorney General's opinion an independent contract will not work in the present scenario. Bradley referenced the opinion of the Supreme Court in a case pertaining to the classification of exotic dancers as independent contractors. In that case, the Court reviewed profit/loss potential, investment in equipment and materials, whether the services rendered required a special skill set, and the permanence of the working relationship in determining that the dancers did not qualify as independent contractors. It is the opinion of both Bradley and her supervisor that independent

contractor would not be an appropriate designation for a board staff member.

Sternod noted the previous executive director had initially been hired as an independent contractor. She had requested to be designated an employee as part of her raise so she could obtain state benefits. Bradley stated a similar independent contractor scenario would not work today. Sternod stated the board's original director had worked out of her home as an independent contractor for twenty years and the succeeding director was also a designated contractor working out of her home. She asked whether the law has changed since that time. Bradley explained it was always contrary to the advice of the AG's office to have board staff working out of their homes. The board has made the transition to having an employee incrementally. Sternod agrees the board should not have its staff working out of their homes but would like to know if an independent contractor situation is the only way to opt out of the PERS system. Bradley read an opinion letter from PERS outlining the statutes requiring state employees to belong to the system and defining "public money".

Ling explained the opinion from PERS hinges on whether the board functions as a public employer; if it does, Sedran would be classified as an employee if she has worked more than twenty hours per week for three months. The board has three options: 1) it can hire two people who each work less than twenty hours per week – the practical reality of this option would be awkward, 2) Sedran can be classified as an employee and must pay into the PERS system, or 3) Sedran can be classified as an independent contractor and would not be required to participate in PERS.

Ling disagrees with the AG's opinion that the position of executive director could not be structured as that of an independent contractor. The board, as a state agency, is specifically exempt from NRS Chapter 608 – the chapter under which the exotic dancers in the above-referenced case fall. If the board classifies its executive director as an independent contractor, the classification must be real: the board would measure performance by output (the completion of tasks) and a contract would need to be drafted. The downsides of this arrangement are a contract for a set amount of time would need to be negotiated and must be approved by the Board of Examiners. Also, state employees have statutory protections – if board is sued, board members and employees are protected. An independent contractor would lose those protections and the board would need to purchase errors and omissions insurance. If the board decides to classify the executive director as an employee rather than an independent contractor, the next step would be to minimize the financial impact to the board of paying into PERS.

Wasson stated the executive director currently functions as an employee and the board has made great strides over the years to establish itself as a professional agency. The laws have changed since the previous directors worked as independent contractors and the board can back out of its enrollment in PERS at this point. The executive director would not be afforded sufficient legal protections working as an

independent contractor. Brainard stated Ling should at least make a call to PERS to determine whether the agency would honor an independent contractor designation. Sternod stated it would not be beneficial to the board for Sedran to be classified as an independent contractor. The board should work with PERS and try to negotiate having late fees removed. Sternod moved to classify the executive director as an employee and have Ling contact PERS about having late fees waived. Sedran should keep the board apprised of progress on the issue. Costuros seconded the motion. The vote was unanimous.

Bradley clarified the motion and decision applied to both agenda items 11 and 12.

13. Discussion and decision on closing complaint; updates on open complaints; updates on workplace inspections (for possible action):
 - a. Decision on closing unlicensed contact lens dispensing complaint: **2014-02**
Sedran stated a cease and desist letter had been sent to the establishment named in the complaint and a follow-up inspection done. Wasson moved to close the complaint. Brainard seconded the motion. The vote was unanimous.
 - b. Discussion/updates on new complaints: **2014-06, 2014-07**
Sedran stated these are complaints against establishments for unlicensed sales of cosmetic contact lenses. Letters have been sent and follow-up inspections will be done.
 - c. Discussion/updates on workplace inspections
Sedran stated she plans to resume workplace inspections once renewals are over.

14. Executive Director's Report (for possible action):
 - a. Legislative session updates
 - i. **Discussion on regulation changes submitted to LCB**
Sedran needs assistance from Ling to finalize the board's proposed regulation changes and prepare a small business impact statement. A workshop and hearing must be scheduled. Wasson asked about the deadline for completing those steps. Bradley stated the board has two years from when the LCB submits an R&R to the board. Ling stated changes would be made to the regulations after the public workshop. Sternod agreed Sedran should have Ling help her move the process forward.
 - ii. **Proposed regulation change:** apprentices must be enrolled in educational program as prerequisite for licensure
Sedran stated it would not be appropriate to add this alteration to the current R&R as the board requires more time to discuss the issue.
 - b. March exam updates
Sedran stated an exam subcommittee meeting had taken place in January and the exam would take place as scheduled. Wasson stated he would like to have changes made to the exam during the February 10th subcommittee meeting

reviewed by a second board member and have the keys double-checked. Sternod stated she would check the master test and master key and ensure they are accurate.

c. Office lease updates

Sedran stated the lease had been approved by the new landlord and the Leasing Department and the board would be able to move to the new office in March.

15. Financials (for possible action):

Review and decision on **December 2014** and **January 2015** financial statements

Sternod asked whether the current budget reflects the increased costs of the new office space. Sedran stated the current budget printout only displays profit and loss through January. She will print a profit and loss report for the entire year for the board to review at the next meeting. Sternod stated PERS costs will also need to be added to the budget. Sternod asked whether NSCORB had reimbursed the board for the travel costs of Sternod attending its fall 2014 conference. Sedran confirmed it had. Brainard moved to accept the financial statements subject to budget adjustments Sedran will make. Wasson seconded the motion. The vote was unanimous.

16. Public Comment

Wasson stated the board needs to evaluate the new Career Progression Program at the next meeting. A contact lens portion has been added to the program and the board will need to evaluate whether this will satisfy the board's educational requirements.

Licensee Cheryl Charbonneau stated the board should include updates on the issue of PERS at its next meeting. The board should also consider bringing back "forever apprentices" – apprentices who do not proceed to become licensed opticians. There are a large number of apprentices leaving the field because they are unable to complete their educational requirements or pass the state board exam. The board should allow for career apprentices.

Sternod stated the board's proposed regulations should include a change to require apprentices to have current ABO/NCLE certifications at the time they sit for the state board exam.