



STATE OF NEVADA

BOARD OF DISPENSING OPTICIANS

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Minutes of Public Meeting

Nevada Board of Dispensing Opticians

Wednesday April 8, 2015, 2:00 p.m.

Videoconference between:

9670 Gateway Drive, Ste 100; Reno, NV 89521, and
2310 Corporate Circle, Ste 200; Henderson, NV 89074

Members Present

Joshua Wasson, President
Tamara Sternod, Vice President
Marsha Costuros, Secretary
Marilyn Brainard, Treasurer
Tamara Williams, Member
Corinne Sedran, Executive Director
Louis Ling, Board Counsel

1. Call to order

Joshua Wasson called the meeting to order at 2:08 p.m.

2. Public comment

There was no public comment.

3. Announcement/welcome of new board member: **Tamara Williams**

Tamara Williams introduced herself and gave some general background information. She has been licensed by the board fourteen years and manages an optical department.

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

January 21, 2015 Exam Subcommittee Meeting

Sedran explained the January 21st meeting was mislabeled on the agenda as an exam subcommittee meeting. It had actually been an emergency meeting to discuss the board's new office lease and enrollment in PERS.

February 11, 2015 Regular Board Meeting

Marsha Costuros noted the minutes stated she was the supervisor of record for item 4a, Seyda Arellano. She clarified she is not the supervisor of record but had conversations with the supervisor pertaining to Arellano's application. Costuros moved approval of the February 11th meeting minutes. Tamara Sternod seconded the motion with an amendment to include approval of the January 21st meeting minutes. The vote was unanimous.

5. Announcement of newly licensed Ophthalmic Dispensers:

Joshua Wasson announced the ophthalmic dispenser license applicants who had passed the March 21st board exam, as follows:

- a. **Erlich, Paula**
- b. **Hanson, Brent**
- c. **Hendley, Sherri**
- d. **Miranda, Victoria**
- e. **Prescott, Ramon**
- f. **Ramirez Jr., Roberto**
- g. **Sibley, Rose**
- h. **Wair, Richard**
- i. **Whittaker, Aaron**

6. Review and decision on apprentice requests for prior experience credit (for possible action):

- a. **Deputy, Rachel**
Sedran stated this item would not be discussed.
- b. **Lantis, Michael**
Wasson stated he would abstain from voting on Lantis' request because he is Lantis' supervisor. Costuros moved approval of Lantis' request for two years' prior experience credit. Sternod seconded the motion. The vote was unanimous.
- c. **Yates, Lance**
Costuros moved to grant Yates one year experience credit towards his apprenticeship. Sternod seconded the motion. The vote was unanimous.

7. Review and decision on application to sit for September 2015 board exam (for possible action):
Sharon Pecinovsky

Sedran stated this item would not be discussed.

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

David Leonard, OD: Contact Lens Updates 5260 West 7th Street; Reno, NV 89523
Course Dates: April 16, 2015 and April 23, 2015
Credit Offerings: 6 live contact lens credits

Marilyn Brainard commented that the applicant did not include additional pages with all the information requested on the application. She suggested the form should be amended to include a second page with space to include all requisite information. Sedran agreed the form should be modified. Sternod moved to approve the application for six live contact lens credit offerings. Costuros seconded the motion. The vote was unanimous.

9. Review and decision on new **Career Progression Program** (for possible action): Decision on how to implement/apply new program towards career progression requirements

Wasson explained the board-approved Career Progression Program (sponsored by the National Academy of Opticianry) has been modified. The former three-volume course, which covered spectacle dispensing, is now a five-volume course with the fifth volume covering contact lens dispensing. The NAO is planning to further modify the program by adding a sixth volume in the near future. Wasson commented on the fifth volume of the new program, noting it offers a brief synopsis of contact lens dispensing but does not cover the breadth of material covered by the currently-approved contact lens course. He believes it would be a disservice to the board's licensed apprentices to allow them to take this course in lieu of a full contact lens training program. Sternod noted the new program does not include practice tests at the end of each chapter, as the old program had.

Sedran asked whether the board would still accept completion of a single volume of the new program as proof of progression for renewal purposes. Wasson stated the board should reevaluate its policies on career progression when the new sixth volume of the program comes available. Brainard asked whether there might be better alternatives to the currently approved program. Costuros asked whether those apprentices currently enrolled in the program will be grandfathered in under the three-volume program, or if they will be transitioned over to the new program. Wasson stated the board should table this discussion for now and reassess the program at a future meeting.

10. Update on transition to electronic licensing exams (for possible action): Report by Vice President Tamara Sternod:

a. Costs, price quotes

Sternod stated she has been working on getting the written portion of the board's licensing exam converted to an electronic format. She has researched both public (NV System of Higher Education) and private (independent software developers) alternatives and obtained price quotes for each. A private software development company with headquarters in both Las Vegas and Reno could develop an exam that would be taken over the internet. The program would allow for email notification, or downloading and printing of scores, or access to exam results could be restricted to one master user. The estimate given is \$30,000 to get the test up and running, with yearly hosting and exam maintenance fees of \$600 each. Alternatively, a representative for the Extended Studies Department at the University of Nevada, Reno indicated initial test development for an exam with 250 questions would run about \$10,000. There would be additional yearly fees to host and monitor the exam of about \$1000 and there would be a per test day fee of about \$500. There would also be costs associated with training exam proctors to administer the exam.

b. Timeline, process

The representative for UNR estimated it would take about three months to develop the exam. One potential downside of hosting exams through the NSHE is scheduling conflicts. The board would have to schedule its exams subject to computer lab availability at UNR or one of its affiliates (TMCC and CSN). Also, UNR, TMCC, and CSN are independent programs and do not have computer networks that communicate with one another, which could make using exam software and uploading results difficult.

Sternod stated her vision is to allow examinees to take the written portion of the board's licensing exam prior to the practical portion. Examinees would only need to travel to Las Vegas for the practical portion upon passing the written portion. She would like to find a way to get the written portion set up as an electronic exam without having the board relinquish its rights to the exam.

Costuros agreed the board needs to get its exam set up electronically. She stated this is necessary for the progress of the board and the profession in Nevada. Wasson stated Sternod and Sedran should put a plan together for polling other Nevada boards regarding their own transitions to electronic exams. Louis Ling indicated other state boards are looking to update their exams at this time; various vendors specialize in converting exams to an electronic format and arranging for proctors to administer the exams at testing centers. A vendor that specializes in the process has already done the necessary research on the best way to proceed. Ling will also compile a list of boards that could be contacted for input.

11. Board Counsel's Report (for possible action):

a. Discussion of North Carolina Supreme Court Decision – possible impact

Louis Ling introduced himself as counsel for the board and stated he represents seven other licensing boards in the state of Nevada. He indicated the North Carolina Supreme Court decision will have a direct effect on licensing boards in this state. Supreme Court decisions pertaining to state boards are not handed down very often and the licensing community has been waiting for the results of this case.

Case background: The North Carolina Dental board had been receiving complaints from dentists regarding the teeth whitening kiosks in shopping malls. The dentists claimed teeth-whitening services fell under the practice of dentistry; dentists could not compete with the prices offered at the kiosks. The board issued cease-and-desist orders to local businesses and shopping malls offering the services. These businesses made complaints to the Federal Trade Commission, claiming the board was abusing its powers of state to hinder the free market. The FTC offered the board the opportunity to withdraw its cease-and-desist orders, which the board declined to do. The board argued teeth-whitening constituted the practice of dentistry, therefore the state should be immune to anti-trust laws.

The North Carolina Dental board lost its case at the FTC level and all appellate levels, eventually making it to the Supreme Court. The Supreme Court ruled the board is not the state and is not exempt from anti-trust laws. Those serving on the board are privately practicing dentists and therefore active participants in the market. The use of their power on the state board to hinder sales of teeth-whitening services is inherently anti-competitive. If a board is to hinder sales in this manner, it must have a very clear policy it is aiming to enforce. Additionally, the board must be actively supervised by the state and that supervision must include authority to prohibit board

actions that are anti-competitive.

Ling indicated this decision will take years to develop, as an administrative matter, and does not apply to issues of disciplining licensees. Rather, it pertains only to the board's ability to regulate unlicensed persons and businesses. The Nevada Attorney General's office has submitted a letter to the Governor asking how to come into compliance with the requirement for state supervision; there has not been a ruling yet. Ling is hoping the Governor will assign someone in his office to field questions as they arise.

Ling stated every board deals with various issues of unlicensed behavior; one of the most common for this board is the sale of cosmetic contact lenses by unlicensed businesses. Because there is a very clear regulation that defines these sales as dispensing, the board should not run into an anti-competition issue when prohibiting these sales. In contrast, the North Carolina Dental Board did not have a statute or regulation in place that defined teeth-whitening as a dental practice. This board may find it needs to write more regulations defining dispensing than were necessary prior to the decision. The state legislature may find it needs to write veto legislation, which would allow it to determine whether a particular practice should fall under the definition of dispensing. In any case, the board should prepare for the state legislature reaching for more control over state licensing boards; the FTC interpreted the Supreme Court decision as an indication the states need to practice more oversight of their licensing boards. The consequences of this decision are something the board should monitor, however no legislation has been introduced this session that will affect the board's autonomy. The state licensing boards will continue working with AG's office to craft the required state supervision.

b. Review and discussion of board meeting procedures

Ling would like the board to consider whether there are ways to streamline some of the more mechanical functions of the board (such as licensing) so more meeting time can be devoted to important issues. The first meeting of the board attended by Ling lasted six hours, with many of the meeting items being very repetitive. He suggested the board make use of a consent agenda: all routine board actions that simply need approval can be added to the list and approved as one item. The first several items on consent agenda generally include approval of prior meeting minutes and time requests. Ling explained the board would set up various criteria for each type of request, and the executive director would verify the requirements had been met prior to the meeting. Wasson asked whether there would still be room for discussion on each topic included in the consent agenda – i.e. whether items could be pulled from the agenda for discussion. Ling confirmed the board could still discuss individual items as necessary. Wasson stated he would exchange emails with Sedran to determine which procedures could be streamlined.

12. Review, decision on draft regulations; scheduling of workshop (for possible action)

Ling stated the purpose of the board's regulations is to make specific certain items in its statutes. The regulations cover how the board intends to implement its laws; they are the nuts and bolts of the board's policies, while the laws are a more general outline. This board has done a good job of using its regulations to fill out its statutes.

Sternod stated the regulations should be modified to require ABO/NCLE certifications to be current at the time an applicant applies to take the exam. The regulations require this of currently-licensed Nevada apprentices, but do not specify the same for those transferring from out of state or previously licensed with the board. Ling stated the board would need to add section 637.150(2) to its NAC to make this a requirement. Brainard referenced page 11 of the proposed regulations and stated she would like to keep the portions pertaining to a permanent change of apprentice supervision. Ling and the board discussed the changes that have taken place with regards to the board's apprentice supervision policy. Wasson indicated the proposed regulations need to be reworded to reflect the new policy of a single supervisor of record for each apprentice. Ling suggested section 8 should be removed from the proposed regulations and section 6 simplified. He will work on coming up with new language.

Ling explained there are three steps in the approval of proposed regulations: 1) a workshop must be held – this may take place at a regularly scheduled meeting; the intent of the workshop is to gather input from the public; the time and place of the workshop can be noticed out via listserv, 2) a formal hearing must be held – this must take place at a board meeting; the board must vote to approve the proposed regulations, and 3) the Legislative Commission must approve the regulations. Once these steps are completed, the regulations are law. Ling recommends at least one board member be present at the legislative workshop, though this is not a requirement. The workshop may be scheduled between meetings as it only requires fifteen days' notice. Wasson stated the board should move forward with the regulations changes and Ling and Sedran should send a final version to a board member for review prior to scheduling the workshop. Ling stated the board must also complete a business impact statement prior to scheduling its hearing – the board must notify its licensees of a potential financial impact on their practices. Wasson believes the proposed changes will have only a positive financial impact. Ling asked that a board member be appointed to review the revised regulations. Sternod was appointed to review the edited version, Ling and Sedran will discuss the timing of the workshop and hearing, and Costuros will be available to host the workshop at a Las Vegas location.

13. Review of open complaints/workplace inspections (for possible action):

a. Open complaints: 2014-04; 2013 complaints

Sedran stated complaint 2014-04 pertains to apprentices dispensing while unsupervised. The board conducted an investigation and now Sedran needs Ling's direction on how to proceed with the complaint and whether any laws were broken. Ling has review both of the 2013 complaints and suggested each complaint be assigned to an investigating board member; he will work with each board member on processing the complaints. Ling and Sedran will discuss the complaint assignments.

b. Workplace inspections

Sternod asked whether random workplace inspections could be done by geographic location to save on board costs. Ling stated the board could divide Reno and Las Vegas into regions and inspect all the facilities in a given region in a single day or week. He noted that most boards that perform workplace inspections as a matter of routine are considerably larger than the Board of Dispensing Opticians. Those boards employ persons who do nothing but workplace inspections. This board is not in a position to hire a full-time inspector yet, but could consider hiring a former board member/retired optician to perform its inspections. Sedran believes this would be preferable to having a private investigator conduct inspections because a former licensee would

know what to look for during an inspection and would be familiar with the board's laws and regulations.

14. Legislative Update – review and discussion (for possible action)

Ling stated the only piece of legislation that could have had significant negative impact on the board was AB 269, which sought to remove the licensing boards' authority to regulate their respective professions; the bill died. SB 59, which exempts the boards from having to have their office leases approved by Buildings and Grounds, should pass. There is also an open meeting law bill and a public records bill which will not have significant impacts.

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

a. Office move

Sedran stated the board has finally moved into its new office space. Due to the leasing process with Buildings and Grounds, the board is now committed to a three-year lease, however, the space is working very well and is large enough to accommodate all of the board's records. There have been some issues with mail forwarding which should be worked out soon. In the meantime, the board's phone and fax lines are up and running.

b. Review and approval of new Apprentice Application form

Sedran stated the Apprentice License Application had been modified to require proof of a high school diploma or GED, however, she suggested further modifying the form to remove the question pertaining to current workplace responsibilities. She indicated applicants often state they currently perform dispensing duties because they misunderstand the question. Also, current workplace responsibilities do not pertain to the applicants' qualification for licensure. Costuros agreed the question is confusing and should be removed. The assumption of the applicant is the board is asking about their roles in their new position as an apprentice dispenser. Sternod agreed the question causes problems and should be removed from the application.

16. Review and decision on **February and March 2015** financial statements

a. Costuros moved to accept the February and March 2015 financial statements. Brainard seconded the motion. The motion passed unanimously.

b. Review of PERS correspondence; decision on payment

Wasson stated when Sedran was hired the board had offered her a lump yearly sum as a retirement contribution and she has yet to be paid anything towards that contribution. The amount in retirement contributions required by PERS is far in excess of the original offering, however, the board does not have the option of un-enrolling from the program. Ling explained Sedran has the option of an employee/employer plan, wherein the board and Sedran would each pay half of the contributions, or a full employer plan, wherein the board would pay all contributions. Wasson

stated the board should cover the costs of back payments into PERS regardless of which option Sedran chooses; neither she nor the board knew enrollment in PERS was mandatory until long after her hire date. Costuros stated the board should grant Sedran the authority to make the back payments to PERS and allow her to choose which plan she would prefer. Sternod stated if Sedran chooses the employee/employer plan, the board should consider giving her a raise to compensate her for payments she must make to PERS; she asked to add this item to the June agenda. Brainard moved that the board should pay PERS the amount due in back payments and Sedran should choose her preferred retirement plan. Costuros seconded the motion. The motion passed unanimously.

Wasson stated the remaining meeting items will be placed on the next agenda due to time constraints.

- c. Review and decision on transferring/investing surplus funds

Item tabled until next meeting.

- d. Review and decision on changes to FY 2015-15 budget

Item tabled until next meeting.

- 17. Discussion/Decision on 2015 Meeting Dates/Times (for possible action): Rescheduling of October, December meeting dates

The board determined the October 7th meeting date would be moved to October 14th and the December 7th meeting date would be moved to December 9th.

- 18. Public Comment

There was no public comment.

Wasson adjourned the meeting at 4:54 p.m.