

STATE OF NEVADA



Board of Dispensing Opticians

Draft Minutes of Public Meeting and Hearing for the Adoption of Proposed Regulation R106-14:

August 10, 2016 at 1 p.m.

Meeting took place at:
Legislative Counsel Bureau
555 E. Washington Avenue, Suite 4412
Las Vegas, Nevada 89101

Board Members in Attendance:

Marsha Costuros, President
Tammy Williams, Vice President
Jennifer Benavides, Secretary
Marilyn Brainard, Treasurer
Michael Grover, Member

Board Staff and Guests in Attendance:

Corinne Sedran, Executive Director
Louis Ling, Board Attorney
Jim Morris, representing the American Board of Opticianry
Luke Hermann, representing inLumon

1. Call to order
Board President Marsha Costuros called the meeting to order at 1:10 p.m.

2. Public comment
There was no public comment.

3. Approval of previous board meeting minutes (for possible action):
June 14, 2016 Regular Board Meeting
Motion: Marilyn Brainard, moved to approve the minutes as presented.
Second: Tammy Williams
Vote: Passed, unanimous

4. Presentation by inLumon representatives of online database and licensing software and decision on selection of inLumon as Board's licensing software:

This item was discussed after Item 7 on the agenda. InLumon representative Luke Hermann gave a demonstration of the online database and licensing software that would be provided to the Board under Item 9c: inLumon database/web application proposal.

5. Presentation by Jim Morris of the American Board of Opticianry of electronic competency exams:

This item was discussed prior to item 4 on the agenda. Jim Morris, General Counsel and Executive Director of the American Board of Opticianry, gave a presentation of the electronic exams the Board adopted as its licensing exams at its October 20, 2015 meeting. He also supplied information on how the exam was developed and analyzed for applicability to the field, accuracy, and potential bias against particular examinees. He explained the Board spent an entire day at the October 2015 meeting comparing the ABO exams to the Board's current licensing exam in detail and ensuring each subject matter was covered thoroughly. Mr. Morris then addressed questions from the audience.

6. Hearing for the adoption of Proposed Regulation R106-14:

Board attorney Louis Ling explained the regulation hearing is the final step in making changes to the Board's regulations. The version of the proposed regulations presented to the Board at this meeting was supplied by the Legislative Counsel Bureau. The Board may review the presented version and make minor changes, but may not substantially alter the document at this meeting. The decision the Board makes at this meeting regarding adoption of the proposed regulations will be final. Once the Board votes, the regulations will be sent to the Legislative Commission for review; if the Commission approves the regulations, they become law.

President Costuros opened the hearing for public comment and stated the Board had received and reviewed five written comments prior to the meeting:

Temma Chaparro, License #464, said she has been licensed almost nine years and is responsible for several apprentices. The current Board exam is a rigorous test and she is confident it assures the public is being served by opticians who are experienced and knowledgeable. There is a noticeable difference in the skills between those opticians in licensed states and those in unlicensed states. The proposed regulation change will remove the rigor necessary to obtain a license. A computer cannot simulate all required elements and the electronic version does not offer a good test of lensometry skills. The proposed changes are too loose and will allow the next set of Board members to adopt any exam it chooses. The testing of practical skills on a computer is not appropriate.

Mary Ruth, License #529, addressed Section 2 of the proposed regulations. She asked why the Board is removing the differentiation between the written and practical portions of the exam. Board Attorney Ling explained the removal of the division between the written and practical exam subjects was necessary in order to adopt an up-to-date exam that reflects the subject matter currently encountered in the field. The Board is not removing any of the individual elements to be tested, nor is it adopting any particular exam with these regulations. Ms. Ruth stated the Board can decide to eliminate a practical exam under the proposed regulations. She asked if there will be a process by which licensees can obtain continuing education credit for community service and said the language pertaining to orderly progress of apprentices is too vague.

Elizabeth Guariglia, License #545, stated the new exam will require memorizing information from books but using physical machinery is entirely different. There is no substitute for having the exact instrument to examine an applicant's skills.

Carole Neel, License #490, directed the Board's attention to Section 9 of the proposed regulations. She likes the proposed allowance of 6 months for apprentices to enroll in their ophthalmic education program of choice, but has concerns about the requirement that apprentices finish their training within 40 months. Those that do not finish within 40 months may not be able to obtain a license for a full year. President Costuros stated the Board's intent is to be consistent. Apprentices give different reasons and excuses to the Board for why they do not meet their requirements, pay their fees, etc. on time. Those apprentices who lose their licenses still have the option of working in the lab while they wait to apply for another license. Secretary Benavides stated 40 months is a sufficient amount of time to finish the requirements and a person who does not finish in time may still take the qualifying exams while unlicensed.

Ed Jiongco, License # 588, stated he is very happy and proud to serve the community as a licensed optician. He commended the ABO for its work on creating up-to-date qualifying exams and encouraged the organization to keep pushing to develop a set of national standards. He had questioned the Board's decision to change its exams until recently but the presentation of the exam has alleviated some of his concerns. It would be preferable for the Board to specifically state the exams it plans to use for licensure in the regulations so people know what to expect. The Board should still administer a physical practical exam because simulation does not allow the examinee to make or correct mistakes. If the Board goes to more standardized testing, reducing number of training hours for apprentices is a problem, especially for the practical portion of the exam. Vice

President Williams stated she reviewed every single question on the exam and a person will not be able to pass without extensive education in the field.

Treasurer and Public Member Brainard stated she appreciates the audience's passion for their profession. The Governor's Office conducts a careful review of the background and experience of each appointed Board Member and each is a committed member of the field. The board needs to be allowed to function and do the business of bringing the whole field of opticianry up to a higher level.

Tina Sanchez, License #346, stated there is value in the practical portion of the exam, however, she really enjoyed the presentation by the ABO and it put a lot of her concerns to rest; she especially liked the troubleshooting portion of the exam. The ABO exam could be given in addition to the current practical exam. The field of opticianry is unique in that it is half medical and half retail; apprentices need to keep customers happy and do not always have much time to focus on the practical applications of the profession. The examinees will not get the same experience from a computer simulation as they do from a hands-on practical exam.

Kyler Lund, Apprentice License #1217, asked whether the practical portion of the electronic exam will require the examinees to neutralize lenses. Mr. Morris of the ABO confirmed that yes, examinees will be required to neutralize a pair of glasses.

Discussion: President Costuros called for Board discussion on the adoption of the proposed regulations:

Board Member Michael Grover stated that in light of what was seen during the ABO's presentation, moving to the ABO advanced exams not a bad idea, however his main concern is the abandonment of a hands-on practical exam; the Board should still require a hands-on practical portion. Board Attorney Ling stated the regulation does not touch on whether the ABO or another exam will be used; the regulation change simply allows for more exam possibilities. Vice President Williams asked Mr. Morris how much it would cost the Board to conduct a psychometric analysis of its current exam to ensure accuracy and non-bias. Mr. Morris stated the ABO spends approximately one million dollars on exam development every 5 to 6 years. After that length of time, the test must be retired due to changes in the industry and the potential for the exam being compromised. Williams pointed out the Board cannot afford to develop its own legally-defensible exam.

Mr. Grover stated the removal of the subject matter percentages from the regulations should be reexamined. Mr. Morris stated the Board was making the right decision in leaving out specific subject matter percentages; the percentages should be based upon what subject matter experts discover after administering questionnaires as part of the exam development process. The experts perform job task analyses to determine which tasks are being performed most often in the field; from this information they determine how many questions should be devoted to each subject. Secretary Benavides asked whether the ABO would defend its own exam in a court of law if it were to be contested by an examinee. Mr. Morris confirmed the ABO would be responsible for defending the exam should it be contested. Board Attorney Ling stated this is the reason most boards adopt a national exam when one becomes available; it protects the Board from liability.

Motion: Secretary Benavides moved to amend the present version of the proposed regulations to require licensees to keep their proof of continuing education for three years rather than two years and to adopt the remainder of the regulations as presented.

Second: Marilyn Brainard

Vote: Michael Grover opposed the motion; the remainder of the Board favored the motion; motion carried

7. Review and decision on exam applications/requests for prior experience credit

These items were postponed until a future meeting date.

- a. Kekahuna-Lee, Kimberly
- b. Madrid, Samuel
- c. Romero-Mendoza, Zayra
- d. Tabaoda, Israel
- e. Yi, Evan Joon

8. Financials:

These items were postponed until a future meeting date.

- a. Review and acceptance of **June and July 2016** financial statements
- b. Review and acceptance of FY 2016-17 proposed budget; review of special use expenditures
- c. Budget: review and decision on inLumon database/web application proposal

9. Executive Director's Report

These items were postponed until a future meeting date.

- a. Discussion and decision on FAQs updates regarding online contact lens sales
- b. Scheduling of remainder of 2016 Board meetings
- c. Scheduling of disciplinary hearing(s)
- d. Setting of board policy on exam deferments/refunds
- e. FY 2016-17 legislative audit update; retention of Strong, McPherson, & Co. as accounting firm

10. Board Counsel's Report

This item was postponed until a future meeting date.

11. Public Comment

Temma Chaparro stated she would like the Board to have a serious conversation about its decision to adopt a new exam; there should be another opportunity to talk about it at a public meeting.

President Costuros closed the meeting at 4:43 p.m.