

STATE OF NEVADA



Board of Dispensing Opticians

Minutes of Public Meeting: April 18, 2024

Board Members Present:

Jennifer Letten, President
Jennifer Brusven, Vice President
Mark Myers, Secretary

Board Staff Present:

Corinne Sedran, Executive Director
Michael Cabrera, Board Counsel

1. Call to order

Ms. Letten called the meeting to order and called roll at 5:03 p.m. Board members Cristobal Esparza and Priscilla Acosta were not present.

2. Public comment

Ms. Letten said the Board had received a letter from the Opticians Association of Nevada (OAN), which the board members had reviewed prior to the meeting. The board members did not have any concerns or questions regarding the letter from the OAN. Ms. Letten submitted the letter into public comment.

There were no further public comments.

3. FOR POSSIBLE ACTION: Approval of previous board meeting minutes
February 8, 2024 Board Meeting

Ms. Sedran said she needs to amend the title of the document to indicate it is the minutes for the last meeting.

Motion: Ms. Letten moved to approve the minutes with the amended title.

Vote: The motion passed unanimously.

4. FOR POSSIBLE ACTION: Confirmation of newly licensed Dispensing Opticians
808 Brandie Pratt

Motion: Ms. Brusven moved to confirm the newly issued license.

Vote: The motion passed unanimously.

5. FOR POSSIBLE ACTION: Updates on the Office of Nevada Boards, Commissions and Councils, created pursuant to SB 431

Ms. Sedran said the Office of Nevada Boards is moving forward with collecting information about the occupational licensing boards. Nikki Haag, the newly appointed director of the Office, sent out a survey with questions regarding the boards' bylaws, procedures, reports, and financial records. There are no further updates as to what the Office plans do with the information or whether there will be forthcoming changes to the administration of the boards.

6. FOR POSSIBLE ACTION: Discussion and decision on R043-24I (proposed by NV Dept. of Taxation)

Ms. Sedran said the Board of Optometry notified her of this proposed regulation, which would amend NAC 372.320, relating to oculists, optometrists, and dispensing opticians. The proposed language states that sales tax must be applied to the entire sale by an optician of eyeglasses and related products furnished in filling a prescription *whether the dispensing optician is licensed or not*. This language creates a discrepancy with the Board's statute, which prohibits unlicensed persons from presenting themselves as opticians to the public. She has not yet received any clarification from the Tax Commission regarding the intent of the proposed regulation.

The current (unamended) language also applies the tax differently to optometrists and oculists than to opticians, stating the optometrists are the "users" of the products and must pay the tax at the time they purchase the goods for resale, whereas opticians must charge consumers the tax at the time of resale. The current regulation has been in effect since 1968.

Ms. Letten said she is concerned about these tax laws because eyeglasses and contact lenses are classed as medical devices by the federal government, and sales taxes are not applied to them in most other states. Mr. Cabrera clarified that glasses and contacts are specifically excluded from the list of exempted medical devices in the statute pertaining to sales and use taxes (NRS 372.283), so the Tax Commission would be unable to remove the taxes via the proposed regulation. Removal would require the passing of a bill during the next legislative session.

Mr. Myers said the Tax Commission may be trying to target private optometrists' offices that are not charging consumers taxes on eyeglass sales. Ms. Letten agreed with Mr. Myer's interpretation and said the optometrists and oculists are likely paying a use tax at the time they purchase the products for resale, and therefore, not charging a sales tax to their consumers. The intent of the proposed regulation is to ensure the items are taxed equally to all consumers at the time of resale, regardless of whether they are purchased from a doctor or a retail location. However, she believes these items should be classed as medical devices, and therefore not taxed either for use by the doctor or at the time of resale. She is in favor of the Board sponsoring a bill to remove the exclusion of glasses and contacts from the list of nontaxable medical devices.

7. FOR POSSIBLE ACTION: Discussion and decision on sending correspondence to NV Board of Optometry pertaining to laws and regulations and/or crossover complaints

Ms. Sedran reviewed a list of proposed questions to submit to the Optometry Board. Opticians need clarification on best optometry practices now that telemedicine is legal for Nevada optometrists. Specifically, they need to know whether prescriptions issued via telemedicine are valid before filling them. They also need information on how to proceed when they see a potential violation of optometry law.

Ms. Brusven asked for clarification on questions pertaining to autorefracton. Ms. Letten explained that the Optometry Board's Assembly Bill 432, enacted last October, prohibits optometrists from issuing prescriptions based solely upon the performance of autorefractons. She is concerned optometrists are having their technicians perform autorefractons upon patients and issuing prescriptions based upon the results, rather than performing the required subsequent subjective refractons. Patients believe they are receiving comprehensive eye exams from a doctor when they are only seeing a technician for an autorefracton.

The Board reviewed questions pertaining to doctors' staff members performing various tasks for the doctors and whether the doctors must be onsite to provide direct supervision to their staff. Ms. Letten said the biggest concern is with respect to asynchronous medicine. She wants to ensure the doctors' staff members are not issuing prescriptions in real time without the doctor ever interacting with the patient. She is also concerned about optometrists trying to obtain prior eyeglass work orders from adjacent optical retail businesses for patients they have never seen in person, then duplicating the patients' prescriptions based upon the work orders.

The Board reviewed questions pertaining to optometrists' duties to inform their patients. Specifically, whether they must inform their patients when they are only being seen by staff for an exam, rather than the doctor, and/or if they are receiving something less than a full, comprehensive eye exam.

The Board reviewed questions related to the "two-door" requirement in Nevada optometry law, which prohibits co-mingling between the businesses of a private optometry practice and an adjacent optical retail establishment. Specifically, the Board discussed how to address violations committed by the companies leasing space to optometrists, rather than by the optometrists themselves, and whether the two boards might be able to work jointly on enforcement.

8. FOR POSSIBLE ACTION: Discussion and updates with representative for the American Board of Opticianry
The representative was not in attendance.
9. FOR POSSIBLE ACTION: Discussion and decision on allowing executive director to enter into new contracts relating to IT and web services
Ms. Sedran said the Board office needs additional IT services for its website and online applications. She is working with a new company that offers more reliability and additional features. The Board will need to work with more than one company because no one IT service offers everything needed to maintain the site. She would like the Board to make a blanket motion to allow her to execute the necessary contracts to get the system running smoothly.

Motion: Ms. Letten moved to grant Ms. Sedran authority to enter any new IT contracts as necessary.
Vote: The motion passed unanimously.

10. FOR POSSIBLE ACTION: Executive Director's report
 - a. Financial report
Ms. Sedran said she is no longer looking to change banks, as discussed at a previous meeting, as many of them do not offer the same rate on investments to government agencies as they do to commercial entities. The best rates are still available through the Board's current bank, and most of the smaller boards maintain their accounts at the same bank. There have not been any big changes to the Board's finances since the last meeting, but she will update the budget to reflect

any new IT contracts.

b. Licensing updates

The Board issued 5 new optician licenses and 15 new apprentice licenses since the last meeting.

c. Office and general updates

The Board's workplace inspector will begin reviewing complaints to ensure there is no conflict of interest between the board members and either the complainants or respondents, as they may work for the same company. The Board's DAG also advised the Board to have an internal investigator review complaints before they are sent to the AG's Office.

The California Society of Opticians sent notice their program has been approved by the Nevada Apprenticeship Division. Mr. Myers was assigned to review the program at the last meeting, so Ms. Sedran will send him any new information on the program as it is available.

11. Public comment

There was no public comment.

Ms. Letten thanked everyone for attending and closed the meeting at 5:59 p.m.