

NEVADA STATE BOARD OF OPTOMETRY



CHEN K. YOUNG, O.D.
Board President

JEFFREY K. AUSTIN, O.D.
Board Member

Post Office Box 1824
Carson City, Nevada 89702
Telephone: (775) 883-8367
Facsimile: (775) 305-0105
E-Mail: admin@nvoptometry.org

CAREN C. JENKINS, ESQ.
Executive Director
cjenkins@nvoptometry.org

MARIAH L. SMITH, O.D.
Board Member

DREW JOHNSON
Public Board Member

MINUTES OF THE **THE NEVADA STATE BOARD OF OPTOMETRY** **REGULAR MEETING on** **Tuesday, FEBRUARY 20, 2018 at 9:00 a.m.**

This meeting was held at the University of Nevada School of Medicine in **RENO** in the Whittemore-Peterson Building, Rm. CMM-113, then at 1 pm, at the Pennington Health Sciences Building, Room PHS-233), and **via Video Tele-conference** at University of Nevada School of Medicine in **LAS VEGAS**, 1701 W. Charleston Blvd., Rm S670 (Computer Lab Room).

➤ **Welcome and Call to Order, Roll Call.**

President Chen Young called the meeting to order at 9:05 am. All members present. Also present were Shelly Capurro, Lea Cartwright, Denis Humphreys, O.D., Executive Director Caren C. Jenkins, and Licensing Specialist Krystie Manke.

➤ **Public Comment.**

No public comment was offered. President Young welcomed Public Member Drew Johnson to his first Board meeting and asked Mr. Johnson to introduce himself.

REGULAR MEETING OF THE BOARD

1.* **For Possible Action.** **Consideration of minutes** of December 5, 2017 meeting.

Draft minutes circulated by Executive Director Jenkins were reviewed, and the proposed new paragraph explained. Motion to approve as presented by Dr. Smith, seconded by Dr. Austin, passed unanimously.

2.* **For Possible Action.** **Petition for Advisory Opinion or Declaratory Order** regarding delegation of tasks to technicians, submitted by Denis Humphreys, O.D.

Dr. Humphreys introduced his petition and his concerns about the current optometry practices. The practices are reasonable, but the law is behind. The statutes adopted in 1961 as they currently stand impede licensees' ability to work to the full scope of their licenses, help patients access efficient patient care and keep optometrists in compliance with the law. Only the optometrist should have the ability to assess information collected by unlicensed personnel, create treatment plans, and perform the subjective refractions. Medical assistants are permitted under NRS 630.0129, so why not allow optometric assistants similar authority?

After a thorough discussion of the need for legislative and regulatory changes to NRS 636 relating to assistants, Dr. Smith moved and Dr. Austin seconded a motion to include proposed revisions to the statutes allowing optometrists to delegate certain types of tasks to technicians. Factors include efficiency, public protection, automation of testing and data collection equipment, among others, but the diagnosis and treatment of patients must remain an optometrist task and cannot be delegated. These changes should be included in the 2019 legislative proposals. Passed unanimously.

3.* **For Possible Action. Evidentiary hearings & determinations on Complaints**

A. Complaint 18-03 – Amel Youssef, O.D., Lic. No. 449 - Advertising

The parties have agreed to propose an Amended Complaint and continue this matter to an in-person evidentiary hearing in Las Vegas on April 17 at 9 am. Motion by Drs. Smith & Austin to accept the continuance and the Amended Complaint as proposed. Unanimous.

B. Complaint 18-04 – Bela Svoboda, O.D., Lic. No. 314 - Patient Records

Dr. Svoboda appeared before the Board and was sworn by President Young. He admitted the Complaint's allegations that his patients (through his practice known as Northern Nevada Eyecare) health records, glasses, and contact lens deliveries have been greatly delayed since he closed his Winnemucca practice in June 2017 and his Lovelock practice in November 2017. He explained his attempts to correct the matter from a home-based office. He stated that he had addressed the issues raised and reported by several complainants, but still has had delays in notifying former patients and delivering materials and records to the various parties. After significant discussion, the Board commented that:

- Ultimate responsibility for his actions lies with Dr. Svoboda regardless of the circumstances and the individuals to whom he delegated tasks.
- Imposition of a financial penalty would likely create a hardship on the licensee, and
- An equitable remedy would be more appropriate in this instance.

Motion by Dr. Smith and seconded by Dr. Austin finding violations of NRS 636.295 and imposing discipline requiring Dr. Svoboda to:

1. Within 7 days of entry of the Board's Order, post signs on office doors, change outgoing voicemail message at office phone numbers, change website and make all reasonable efforts to provide valid contact information directly to patients.
2. Within 30 days of the Board's Order, mail a notification, by first-class mail or postcard to his entire patient list/callback list informing them that the offices are closed, providing current mail, phone and e-mail contact information and notifying them that they may obtain their patient records within the next 30 days, and notifying them of the method to request patient records after that time.
3. Within 60 days of the Board's Order, notify all patients who have not requested their records, by certified mail, return requested, of the manner in which patient records may be obtained - even if those records are turned over to a custodian other than Dr. Svoboda. In the alternative, Dr. Svoboda may mail the records directly to the patients by certified mail, following up on any returned mail with a reasonable effort to obtain a forwarding address.
4. Accept license suspension for 90 days from the date of the Board's Order, within which he must perform 1, 2, and 3 above and report progress to the Board in writing.
5. If the requirements imposed in paragraphs 1 through 4 above are not satisfied, on the 91st day, a \$5,000 penalty will attach to this disciplinary action, and Dr. Svoboda must come

before the Board to request any future reinstatement of his license. If the requirements are met in a satisfactory manner, the license will be automatically reinstated.

C. Complaint 18-07 - Mark Ohriner, O.D., Lic. No. 249 - Prescribing

A proposed Stipulation for Settlement of the Complaint was discussed, and a motion by Dr. Smith, seconded by Dr. Austin, passed unanimously to accept the settlement.

D. Complaint 18-11 - Just & Sufficient Cause - Location & Fill-in Reporting

After discussion a motion by Dr. Smith, seconded by Dr. Austin, that just and sufficient cause exists to move the matter to a hearing; however, the Board will accept a \$500 penalty if the Respondent agrees to stipulate to forego a hearing. Motion passed with Drs. Young, Smith, and Austin voting Aye and Mr. Johnson voting Nay due to the penalty being imposed being too high.

E. Complaint 18-05 - Request to reconsider and revise December 12, 2017 Order

Ms. Jenkins and Counsel Keegan presented the matter, and after Board discussion, a motion by Dr. Smith, seconded by Dr. Austin, passed unanimously to issue the revised Order presented.

F. Complaint 18-05 - Petition for Rehearing based upon 12/22/17 letter from counsel.

This item was removed from the agenda based on the outcome of Agenda item 3.F.

4.* For Possible Action. Executive Director's report

A. Financial Report/Audit Reports - Ms. Jenkins responded to an Audit request from PERS regarding October 2017 and commented that the one-year audit of FY 2017 remains in process.

B. Licensing & Renewal Report - Ms. Jenkins reported that As of January 1, 2018, Nevada had 501 licensed optometrists, including 449 active and 52 inactive licensees. We're growing. In 2017-18, the Board revoked 14 licenses for non-renewal, and added 53 new optometric licensees. Of the current 501 licensees, 74 hold a DPA certificate, 348 hold both DPA & TPA certifications, and 78 have DPA, TPA and Glaucoma certifications. No discipline resulted in revocation or suspension of an optometry license in 2017-18, but the Board revoked one TPA certificate and imposed approx. \$28,000 in disciplinary penalties among three disciplined licensees. It also imposed certain additional CE requirements and other agreed-upon remedies as discipline. Only one licensee's discipline was reported to the National Practitioner Databank.

C. Request for 1/23/2018 Board CE to be accepted in 2018-19 renewal period - A motion was made by Dr. Austin, seconded by Dr. Smith, to allow the AB 474 compliance CE offered jointly by the Board and the Nevada Optometric Association on January 23, 2018 to be accepted for the March 1, 2018 through February 28, 2019 CE year if it was not already applied to the licensee in license year 2018. Passed unanimously.

D. Request for direction regarding endorsement application with no NBEO score - Ms. Jenkins asked for guidance regarding NBEO scores obtained before 1993 and endorsement applicants who have been practicing in jurisdictions that do not require NBEO passage for licensure. She presented the example of applicant Roberto Lucca, a practitioner in Puerto Rico for years who wishes to gain Nevada licensure, but has not taken the NBEO.

Motion by Dr. Smith, seconded by Dr. Austin to deny licensure to any applicant who either has not taken the NBEO or took the exam before the required date. Unanimous passage. Dr. Young

commented that he hopes to review the statutory and regulatory framework related to this topic and to endorsement requirements generally in the upcoming session.

- E. Request for performance review of Executive Director - Ms. Jenkins requested a formal performance review annually. Ms. Jenkins waived notice of her performance review for purposes of the agenda and this meeting.

President Young expressed gratitude to Ms. Jenkins for her vision and accomplishments at the Board since joining as Executive Director in July 2016, offered constructive suggestions regarding her accessibility and deadlines, and invited each member to share other feedback on the record. All offered positive comments. President Young then moved to provide Ms. Jenkins with a bonus of \$5,500, and to authorize Board reimbursement for her monthly cellphone expenses. Motion seconded by Dr. Smith, passed unanimously.

- 5.* **For Possible Action. Board Policies** - proposed revision regarding 3-day opioid measurement and adding AMA category 1 CME hours as acceptable CE. Dr Austin recommended a change to the Board Policies regarding measurement of the 3-day limit on prescribing opioids. He suggested the 3-day limit be measured as being not greater than 90 MME per day (or 270 MME for 3 days) rather than a set number of pills. Motion by Smith, seconded by Mr. Johnson to approve the change, passed unanimously.

Dr. Austin also recommended accepting relevant AMA Category 1 CME to the coursework acceptable for the annual required two opioid prescribing, misuse or abuse education hours. However CME should not be accepted to meet the remaining general CE requirements. Dr. Austin moved to change the policy recommended, seconded by Dr. Smith, passed unanimously.

- 6.* **For Possible Action. Subcommittee on Statute and Regulation Review Report and Work Session** - Dr. Smith led the Board through all statutes suggested to be updated, and additional ideas were added. This work session will continue at the next Board meeting, with the hope to conclude the process and send the proposal for preparation of a bill draft.

7. **Adjournment** moved by Dr. Smith, seconded by Mr. Johnson at 3:38 pm.

- **Public Comment.** None offered.
- **Announcements and Member requests** for future Board consideration. None.

THESE MINUTES WERE APPROVED BY BOARD ACTION ON:

NEVADA STATE BOARD OF OPTOMETRY

DATE

by Caren C. Jenkins, Executive Director