

NEVADA STATE BOARD OF OPTOMETRY



CHEN K. YOUNG, O.D.
Board President

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CAREN C. JENKINS, ESQ.
Executive Director
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JEFFREY AUSTIN, O.D.
Board Member

DREW JOHNSON
Public Board Member

AGENDA & NOTICE OF PUBLIC MEETING

The Nevada State Board Of Optometry
will hold a **telephonic** meeting
Tuesday, March 26, 2019 at 12 Noon

The public is invited to attend telephonically, (712) 451-0223, Access code: 292304,
or may appear & participate at the Board's physical location at 937 Mica Dr. #17 in Carson City.

AGENDA

Pursuant to NRS 241.020(6) PLEASE TAKE NOTICE: (1) Items on the agenda may be taken out of order; (2) Two or more agenda items may be combined for consideration; and (3) At any time, items on the agenda may be removed from the agenda or discussion of the items may be delayed.

***INDICATES ACTION MAY BE TAKEN.**

* * * * *

1. **Welcome, Introductions and Public Comment.**

A time limit may be set for each individual wishing to address the Board. No action will be taken on any issue initially presented either in public comment or during the Board Meeting. In accordance with the Nevada Open Meeting Law, an issue requiring action may be placed on an agenda for a future Board Meeting.

2. **Call to Order, Roll Call.**

3. * **For Possible Action.** Consideration and approval of the minutes of Optometry Board meetings held January 29, 2019, February 7, 2019 and March 5, 2019.

4. * **For Possible Action.** Consideration of a proposed **Stipulated Settlement of Consolidated Complaints Nos. 19-11 & 19-05** regarding the conduct of **AMEL YOUSSEF, O.D., Lic. 449.** Timothy Elson, Esq. for Respondent, and Executive Director Caren C. Jenkins propose a jointly prepared resolution to the Consolidated Complaints.

(continued on next page)

5. **Board Update**

a. **AB77 Update:**

presented by Vice-President and Legislative Subcommittee Chairperson Mariah Smith, O.D. and Board Lobbyist Lucas Foletta, Esq.

b. **Optometry and Board-related measures Update:**

presented by Executive Director Caren C. Jenkins and Board Counsel Sarah Bradley, Esq.

c. **Executive Director's Report**

- Regulatory Reprieve and outreach efforts
- Licensing & renewals
- Staff guidance regarding clinic licenses and fictitious business name requirements
- ARBO appointments

6. Announcements and **requests for future Board consideration** (No action to be taken at this meeting).

NEXT BOARD MEETING scheduled for May 21, 2019 at noon, by telephone.

7. **Public Comment.**

A time limit may be set for each individual wishing to address the Board. No action will be taken on any issue initially presented either in public comment or during the Board Meeting. In accordance with the Nevada Open Meeting Law, an issue requiring action may be placed on an agenda for a future Board Meeting.

8.* **For Possible Action. Adjournment.**

The Board posted this notice at the board office, on the board website (nvoptometry.org), the State of Nevada Public Notices website (<https://notice.nv.gov>) and in the following locations:

Office of the Nevada Attorney General, 5420 Kietzke Lane, Reno & 555 E. Washington Ave. #3900, Las Vegas; and Douglas County Courthouse, 1616 8th Street, Minden.

The Board will take reasonable measures to accommodate persons with disabilities who wish to attend the meeting. please call Executive Director Caren C. Jenkins at (775) 883-8367 in advance to make arrangements.

MEETING MATERIALS: To view the materials provided to the Board in advance of this meeting, if any, visit www.nvoptometry.org, or request them in advance by email at admin@nvoptometry.org.

Nevada Board of Optometry
Meeting Materials for Agenda Item No. 3
March 26, 2019

Meeting minutes to be considered

NEVADA STATE BOARD OF OPTOMETRY



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MINUTES OF THE REGULAR MEETING OF THE THE NEVADA STATE BOARD OF OPTOMETRY Tuesday November 13, 2018, at 12:30 p.m.

Between 12:15 pm and 12:45 pm, the Board participated in a training prepared by the Board Counsel regarding Processing Complaints and Hearings, led initially by Executive Director Caren C. Jenkins, and later by Senior Deputy Attorney General/Board Counsel Sarah Bradley. The Board conducted no business during this time, and the training was made available to the public both telephonically and via screen sharing online.

* * * * *

1. Welcome and Public Comment. President Chen K. Young, O.D. welcomed all participants. No public comment was offered.
2. Call to Order, Roll Call. The meeting was called to order at 12:48 pm. Present were President Chen K. Young, O.D., Mariah Smith, O.D., and Jeffrey Austin, O.D. Public member Drew Johnson was absent. Also present were Caren C. Jenkins, Executive Director, Board Counsel Senior Deputy Attorney General Sarah Bradley, and Licensing Specialist Laura Adair.
- 3.* **For Possible Action. Consideration of minutes of October 16, 2018 meeting (materials attached).** The draft minutes were considered an approved on a motion by Dr. Smith, Seconded by Dr. Austin. Unanimous.
- 4.* **For Possible Action. Complaint Review**
 - a. Determination whether just and sufficient cause exists to investigate and hear complaints received (materials attached).

Ms. Jenkins reminded the Board that the two items were to be considered only for whether the face of the Complaints presented just and sufficient cause to investigate and bring the matters to hearing.

1. 19-09 No pupillary distance information on eyeglass Rx.

Ms. Jenkins offered an overview of the complaint and stated that she found no statutory or regulatory issues. She asked the Board to consider whether failing to include pupillary

distance measurements on an eyeglass prescription could be a violation of the professional conduct requirements of an optometrist. Ms. Jenkins recommended a finding of no just and sufficient cause to forward the matter for hearing.

Motion by Dr. Smith, seconded by Dr. Austin to dismiss the complaint for a lack of just and sufficient cause. Unanimous.

2. 19-11 Unprofessional conduct and improper insurance billing.

Ms. Jenkins introduced the complaint and related materials and recommended that the Board find sufficient cause to undertake an investigation and send this matter to a hearing due to the substantial information provided by the complainant.

Motion by Dr. Austin, seconded by Dr. Smith that just and sufficient cause was presented to send this matter for investigation and hearing. Unanimous vote in favor of the motion. Ms. Jenkins predicted that the hearing could take place on January 29, 2019 at the Las Vegas Board meeting.

b. Consideration of potential adjustments to current investigatory processes, funding, and reporting.

Ms. Jenkins proposed a blind assignment of a Board member to assist in the investigation of complex complaints forwarded for investigation and hearing. That member would be excluded from participating as an adjudicator at the hearing, but would provide witness testimony. In such an instance, only three Board members would be available to hear the matter.

Several smaller agencies use Board members in this manner, and the construct would alleviate the Board from incurring investigation costs that may not be reimbursable. Ms. Bradley added that several of the Boards that she has advised operate this way, and that the optometry statutes provide a mechanism for this practice.

Board members discussed the option and agreed that they would be willing to work with the staff on investigations. The Board agreed to consider implementing the system for future investigations as needed, and wished to continue the discussion as the new regulations are formulated after the upcoming legislative session.

c. Status of ongoing investigations (18-05, 18-12, 18-17, 18-19, 19-01, 19-02, 19-05), and a forecast of evidentiary hearings to be held at January 29, 2019 meeting.

Ms. Jenkins forecasted that many of the outstanding complaints will be ready for hearing at the next meeting of the Board in Las Vegas, and that the members should be prepared to be involved in a lengthy meeting that day.

5.* **For Possible Action.** Petition for Advisory Opinion or Declaratory Order, Thomas J. Gibbons, O.D., Lic. No. 121, requesting clarification whether an optometry practice may be sold to an ophthalmologist or ophthalmology group.

While the Board waited for Dr. Gibbons to join the meeting, Ms. Jenkins introduced his request for guidance whether selling his optometry practice to a non-optometrist, namely an ophthalmologist or ophthalmology group would place his license in jeopardy. The members considered the request and discussed that the current statutes do not address the sale of a practice, and that Dr. Gibbons would be responsible for the proper transfer, maintenance, and availability of his patient files under HIPAA. Dr. Young explained that another concern might arise if Dr. Gibbons intends to continue practicing after a transfer of his patients and practice to a non-optometrist, and cautioned that any optometrist working in that environment would need to be an independent contractor, free from the supervision and control of a non-optometry employer.

Motion by Dr. Austin, seconded by Dr. Smith to respond that the optometry laws do not restrict the sale of an optometry practice, but that Dr. Gibbons should be cautious not to become an employee should the practice transfer to a non-licensee ownership.

Note: Dr. Gibbons joined the meeting after this discussion, and thanked the members for their time and commended the Board and staff's diligence to assisting his and all optometrists' compliance with the laws.

6.* **For Possible Action.** Executive Director's report (materials attached).
a. Bill Draft Request & legislative planning.

Ms. Jenkins reported that she and Dr. Smith have received the initial draft of the Board's BDR, and are reviewing it, along with the office of the governor, for ministerial errors and changes. Any substantive changes will need to be requested by a legislator once the initial draft is approved. Once the final BDR becomes available, Ms. Jenkins intends to email an announcement to all licensees and post a notice on the website that copies of the BDR are available on request.

Dr. Smith commented on the BDR and the Board's request and complimented the clarity and simplicity the changes will provide if they pass the legislature. She and Ms. Jenkins are planning to call a meeting of stakeholders to discuss potential arguments for or against any provisions to attempt to resolve any conflicts before the matter is heard in committee and to make its introduction and consideration more efficient.

b. Preparation for 2019-2020 renewal season.

Ms. Jenkins showed the members a sample renewal/location card for the 2019/2020 renewal year and announced that the Board has received approximately 20 renewals already. The renewals will begin to be processed as of December 1, and Ms. Adair has done a great job of cleaning up the licensee database to make the process more efficient and

smooth. Ms. Jenkins reminded the Board that Ms. Adair will be working full-time January through the end of March 2019 per her employment offer.

c. Other reports/information. None were offered.

6. Announcements and requests for future Board consideration (No action to be taken).

The Board members asked that an agenda item be added to conduct election of officers for 2018-2019. In addition, an agenda item should be added to select a legislative liaison from among the members to represent the Board at legislative meetings.

7. Public Comment. TELEPHONIC ONLY - no public comment was offered.

- 8.* Adjournment. Dr. Austin moved to adjourn the meeting at 1:39 pm, seconded by Dr. Smith. Unanimous.

These minutes were approved as presented by the Board at its meeting on _____.

Date:

Caren C. Jenkins, Executive Director

Nevada Board of Optometry
Meeting Materials for Agenda Item No. 4
March 26, 2019

Proposed Stipulated Settlement

**BEFORE THE STATE OF NEVADA
BOARD OF OPTOMETRY**

CAREN C. JENKINS, Executive Director,
STATE OF NEVADA BOARD OF
OPTOMETRY,

Petitioner,

v.

AMEL YOUSSEF, O.D., License No. 449

Respondent.

**Consolidated Cases No.19-05 and 19-11
STIPULATION FOR SETTLEMENT**

This Agreement and Stipulation for Settlement of Complaint (“Stipulation”) is entered into by and between the Petitioner, the STATE OF NEVADA BOARD OF OPTOMETRY (“Board”), by and through its Executive Director, CAREN C. JENKINS, ESQ. (“Executive Director”) and the Board’s legal counsel, SARAH BRADLEY, ESQ., Deputy Attorney General; and the Respondent, AMEL YOUSSEF, O.D. (“Respondent”), by and through her attorney, TIMOTHY ELSON, ESQ., of THE LAW OFFICES OF TIMOTHY ELSON, LLC.

I. ALLEGED FACTS

A. GENERAL FACTS

1. On or about October 16, 2018, the Board mailed Respondent a Notice of Complaint (“Notice”) on Case No. 19-05. Therein, the Board alleged that, in April 2018, the Board had received a Complaint (“Complaint”) from a member of the public alleging certain violations of Optometry Laws, attaching a copy of the Complaint to the Notice. At the Board’s meeting on October 16, 2018, the Board found that the Complaint presented just and sufficient cause to conduct an investigation and bring the matter before the Board for consideration.

2. On or about November 15, 2018, the Board mailed Respondent a Notice of Complaint (“Notice”) on Case No. 19-11. Therein, the Board alleged that, in October 2018, the Board had received a Complaint alleging certain violations of Optometry Laws, attaching a copy of the Complaint to the Notice. At the Board’s meeting on November 13, 2018, the Board found that the Complaint presented just and sufficient cause to conduct an investigation and bring the matter before the Board for consideration.

3. Due to the similarity of allegations in both Complaints, the Board thereafter investigated and processed both Complaints as a consolidated case under Case No 19-11.

4. In response to the Complaints, Respondent cooperated with the Board to the best of her ability, discussing all allegations contained in the Complaints and providing certain documents related to the allegations therein. Given Respondent's cooperation, the Board did not move forward with a formal written Notice and Accusation ("Accusation"). As such, Respondent never filed a formal written Answer. Instead, the Executive Director and Respondent agreed to present this Stipulation as a Settlement to the Board

B. ALLEGATIONS RELATED TO CONSOLIDATED CASES

5. One of Respondent's employees complained of a number of issues with Respondent's practice and procedures in May 2017, which the employee believed to violate state and federal laws related to optometry, HIPAA and employment, including:

- a. a lack of protection of confidential patient information and records;
- b. performing exams and dispensing contact lenses that were not medically necessary or billing insurance for procedures not performed;
- c. delegating to assistants the application of drops into patients eyes without proper training;
- d. improperly withholding funds from employee pay;
- e. selling trial contact lenses and offering free Halloween cosmetic lenses; and
- f. hosting Botox parties in her optometry office for friends and patients.

The former employee neither provided nor was able to lead the Board to any evidence to support her allegations. Respondent also denied any wrongdoing as to these allegations.

6. Respondent had entered into a Network Doctor Agreement with Vision Service Plan ("VSP") and became a VSP Network Doctor well before the filing of the instant Complaint. In or around May 2018 through June 2018, VSP undertook an audit that analyzed certain billing records and requests for payment Respondent had submitted to VSP.

7. Following its audit, VSP made certain determinations, notifying Respondent of the same. Even though Respondent denied VSP's allegations, rather than engage in a lengthy appeal process with VSP, Respondent made certain business decisions not to appeal the audit and otherwise to address the issues with VSP. Respondent was unaware that her failure to file an appeal or otherwise address the audit findings would require VSP to comply with mandatory reporting requirements and submit its Complaint to the Board.

8. In its Complaint, VSP alleged certain billing irregularities. These billing irregularities included, *e.g.*: Respondent billing VSP for contact lenses following fittings when in fact the contact lenses had not been ordered; Respondent billing VSP for contact lenses following fittings when the patient did not pick up the contact lenses; and Respondent entering inaccurate billing codes for treatment.

9. Since undergoing the VSP audit, Respondent has taken substantial steps to improve protocols within her practice. Respondent started developing these steps before VSP reported this matter to the Board, *i.e.*, on her own initiative. These steps include, but are not limited to, the following: additional educational training on billing practices and procedures for both Respondent and her staff; improving protocol on billing; improving protocol on contact lens ordering and delivery; retaining an outside third-party billing company; and retaining an outside third-party bookkeeper.

10. Respondent also entered into a Confidential Settlement Agreement ("CSA"), made confidential at VSP's request, to resolve VSP's concerns. As part of the CSA, no party admitted any fault and the CSA should be viewed as a compromise between Respondent and VSP to resolve their contractual differences. Respondent agreed to satisfy any monetary obligations to VSP by March 2019, and Respondent will be permitted to reapply for inclusion in the VSP Doctor Network.

II. ALLEGED VIOLATIONS

11. Based upon the evidence available, the Executive Director alleges for this consolidated matter and not for any other purpose, including any subsequent civil action, Respondent has violated NRS 636.295(8) and (10), exhibiting conduct that falls below the standard of care, in light of the following:

- a. Respondent billed VSP for specialty contact lenses provided to a patient when the contact lenses had not been ordered,

b. Respondent billed VSP for specialty contact lenses provided to a patient when the patient did not pick up the contact lenses, and

c. Respondent billed for services and treatment erroneously or when the billed services and treatment had not been rendered.

12. Respondent denies any wrongdoing and further denies the allegations of the Executive Director, maintaining that she followed industry standards. However, for the purpose of resolving this matter and not for any other purpose, including any subsequent civil action if this matter were to proceed to a full Board hearing, Respondent acknowledges the Executive Director's representation that a sufficient quantity and/or quality of evidence could be proffered sufficient to meet a preponderance of the evidence standard of proof regarding the factual matters alleged.

III. JURISDICTION

13. The Respondent was, at all times relevant to this Stipulation, licensed as an optometrist by the Board under Nevada Optometry License Number 449, and is therefore subject to the jurisdiction of the Board and the provisions of NRS Chapter 636 and NAC Chapter 636.

IV. STIPULATED SETTLEMENT TERMS

14. The Board is prepared to put on a case based on the offenses alleged in the Complaint, and NRS 636.420 and NRS 636.325(1) authorizes and empowers the Board to issue administrative fines and other penalties.

15. Based upon the evidence available to date, the findings of the Executive Director, and the acknowledgement by Respondent contained in Paragraph 10 above, the parties have agreed to resolve the pending Complaint pursuant to the following disciplinary terms and conditions:

a. Respondent agrees to pay the Board One Thousand Five Hundred Dollars (\$1,500.00) in administrative fines within 60 days of the Board accepting this Stipulation. Should Respondent fail to pay the fines timely, late fees and additional penalties may be imposed.

b. Respondent agrees to retain and maintain a third-party billing company to ensure the accuracy of insurance and patient billing and recordkeeping in her optometry practice, for the duration of the probationary period imposed herein, including any

extension thereof.

c. Respondent shall abide by the terms of the CSA she entered with VSP, timely satisfying any monetary obligations to VSP. Respondent shall provide proof to the Board of her complete satisfaction of the terms of the CSA with VSP, verified by a representative of VSP, within 30 days of the same.

d. Respondent agrees to the imposition of probation on her licensure for a period of 2 years from the date the Board approves this Stipulation. The Probationary Period only covers act that occurred on or after March 26, 2019, as the provisions identified below specifically exclude any acts or violations that occurred prior to March 26, 2019. That is, it is the intent of the Probation Period to only cover wrongful conduct moving forward.

Should Respondent:

(1) during the probationary period, be found to have violated any provision of NRS Chapter 636, NAC Chapter 636, or any Board Policy for any act or conduct that occurred after March 26, 2019 through the end of the probationary period,

(2) be the subject of a complaint that the Board determined (the determination of which was made during the probationary period) that just and sufficient cause existed to hear the complaint, alleging activities (which occurred on or after March 26, 2019) similar to any alleged violation contained in Paragraph 11 or

(3) fail to pay the administrative fine or otherwise perform under the terms of this Stipulation within the deadlines provided, including her satisfaction of her agreement with VSP,

Then the Board may (a) rescind this Stipulation and hold a public hearing on proper notice, allowing Respondent to present any related defenses, (b) revise the agreed-upon penalties outlined herein and take additional action, and (c) impose additional penalties against Respondent's license, including possible revocation, as the Board deems appropriate.

16. Respondent and the Board agree that insufficient evidence likely exists to meet a

preponderance of the evidence standard that Respondent violated any other allegations in the Complaint not otherwise addressed herein, and, therefore, those allegations are dismissed.

17. The Board agrees not to impose on Respondent any other or greater remedies or fines in connection with the allegations referenced in the Complaint, except as provided in Paragraph 13 (d). of this Stipulation.

18. Respondent and the Board agree that by entering into this Stipulation, the Board does not concede any defense or mitigation the Respondent may assert, and that once this Stipulation is approved and fully performed, the Board will close its file in these matters.

19. The Respondent understands the public records law may require this Stipulation and related documents be made available for inspection. The Respondent also understands that the Board may share the contents of this Stipulation and related documents with any governmental or professional organization or member of the public, or publish its terms in the Board's newsletter.

V. INFORMED CONSENT

20. Respondent has read all of the provisions contained in this Stipulation and agrees with them in their entirety. Respondent recognizes and agrees this Stipulation is the result of voluntary settlement negotiations that involved give and take, and the final agreement, this Stipulation, is a voluntary compromise.

21. Respondent acknowledges and admits she has carefully read and understands the issues and allegations in the Complaint referenced and addressed herein. Respondent also acknowledges and admits she has carefully read and understands the effects of this Stipulation.

22. Respondent is fully aware of her legal rights in this matter, including the right to a formal hearing relative to the issues and allegations in the Complaint referenced and addressed herein. Respondent is also fully aware she has a right to retain counsel for this matter, the right to confront and cross-examine the witnesses against her, the right to present evidence and to testify on her own behalf, the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents, the right to reconsideration and court review of an adverse decision, and all other rights accorded by the Nevada Administrative Procedure Act and other applicable laws. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above, and as more fully set forth herein and

below.

23. Respondent is aware by entering into this Stipulation she is waiving certain valuable due process rights contained in, but not limited to, NRS 636, NAC 636, NRS 233B and NAC 233B.

24. Respondent and the Board agree any statements and/or documentation made or considered by the Board during any properly noticed open meeting (to which Respondent hereby specifically waives any and all notice requirements for same, whether required by NRS 241.033 or any other statute or regulation) to determine whether to adopt or reject this Stipulation are settlement negotiations and therefore such statements or documentation may not be used in any subsequent Board hearing or judicial review, whether or not judicial review is sought in either the State or Federal District Court.

25. Respondent acknowledges she has read this Stipulation. Respondent acknowledges she has been advised she has the right to have this matter reviewed by independent counsel and she has had ample opportunity to seek independent counsel. Respondent has been specifically informed she should seek independent counsel and that gaining the advice of independent counsel would be in Respondent's best interest. Having been advised of his right to independent counsel, as well as having the opportunity to seek independent counsel, Respondent has retained Timothy Elson, Esq., of The Law Offices of Timothy Elson, LLC, as her attorneys and has reviewed this Stipulation with her attorneys. Respondent specifically acknowledges she understands all of this Stipulation's terms and conditions and agrees with the same.

VI. OTHER TERMS

26. Respondent acknowledges no other promises in reference to the provisions contained in this Stipulation have been made by any agent, employee, counsel or person affiliated with the Board.

27. Respondent acknowledges the provisions in this Stipulation contain the entire agreement between Respondent and the Board and the provisions of this Stipulation can only be modified, in writing, with Board approval.

28. In the event the Board adopts this Stipulation, Respondent hereby waives any and all rights to seek judicial review or otherwise to challenge or contest the validity of the provisions contained herein.

29. Respondent and the Board agree none of the parties shall be deemed the drafter of this Stipulation. In the event this Stipulation is construed by a court of law or equity, such court shall not construe it or any provision hereof against any party as the drafter. The parties hereby acknowledge all

parties have contributed substantially and materially to the preparation of this Stipulation.

30. Respondent specifically acknowledges by her signature on this Stipulation she has read and understands its terms and acknowledges she has signed and initialed of her own free will and without undue influence, coercion, duress, or intimidation.

31. Respondent acknowledges in consideration of execution and adoption of this Stipulation, Respondent hereby releases, absolves and forever discharges the State of Nevada, the Board, and each of their members, agents, employees and legal counsel, in their individual and representative capacities, from any and all manner of actions, causes of action, suits, debts, judgments, executions, claims, and demands whatsoever, known and unknown, in law or equity, that Respondent ever had, now has, may have, or claim to have against any or all of the persons or entities named in this section, arising out the above-referenced Complaint, as well as the negotiation and completion of this Stipulation.

32. In the event the Board adopts this Stipulation, Respondent agrees it may be considered in any future Board proceeding(s) or judicial review, whether such judicial review is performed by either the State or Federal District Court(s).

32. This Stipulation was considered and adopted by the Board in an open meeting on March 26, 2019. This Stipulation is considered a final disposition of a contested case and will become a public record and may be reportable to the National Practitioner Data Bank.

IT IS SO STIPULATED.

FOR RESPONDENT:

By: _____ this ____ day of March 2019
Amel Youssef, O.D., Respondent

By: _____ this ____ day of March 2019
Timothy P. Elson, Esq., Law Offices of Timothy P. Elson
Counsel for Respondent

FOR THE NEVADA BOARD OF OPTOMETRY:

By: _____ this ____ day of March 2019
Chen Young, O.D., President
Nevada State Board of Optometry

(Signatures continued on next page)

By: _____ this ____ day of March 2019
Caren C. Jenkins, Esq., Executive Director
Nevada State Board of Optometry

By: _____ this ____ day of March 2019
Sarah Bradley, Esq., Deputy Attorney General
Counsel to the Nevada State Board of Optometry

* * * END OF DOCUMENT * * *

BOARD ACTION

This Stipulation for Settlement of Complaint in the matter of Amel Youssef, O.D., License No. 449, in Case No. 19-11 came before a properly noticed meeting the Nevada State Board of Optometry and was (initial appropriate action):

Approved: _____ Disapproved _____

by a majority vote of the Nevada State Board of Optometry on March 26, 2019.

VOTES:

Chen Young, O.D., Board President	Aye/Nay/Abstained
Mariah Smith, O.D.	Aye/Nay/Abstained
Jeffrey Austin, O.D.	Aye/Nay/Abstained
Drew Johnson (Public Member)	Aye/Nay/Abstained

DATED this ____ day of March 2019

By: Caren C. Jenkins, Executive Director
NEVADA STATE BOARD OF OPTOMETRY

Nevada Board of Optometry
Meeting Materials for Agenda Item 5(c)
March 26, 2019

Clinical licensure requirements

NRS 636.227 Licensing by Board; application for license; notice to Board of changes regarding facility.

1. The Board may grant a license to an accredited school or college of optometry to establish an extended clinical facility for the treatment of visual disorders and shall adopt reasonable regulations and establish procedures for such purpose. If a license is granted, it is effective for only 1 year unless renewed by the Board.

2. An accredited school or college of optometry which desires to establish an extended clinical facility for the treatment of visual disorders in this State must apply to the Board for a license, and the application must contain the following information:

- (a) The name and address of the proposed facility;
- (b) The date when the school or college desires to commence operation of the facility;
- (c) A brief description of the facility and of the equipment which will be available for use there;
- (d) The kinds of optometric services to be rendered; and
- (e) The name and address of each instructor or clinician to be employed at the facility, his or her academic qualifications and any licenses which entitle the instructor or clinician to practice optometry in this or any other state.

3. Every school or college of optometry which operates a licensed facility in this State shall notify the Board if the school or college changes its instructors or clinicians, the location of the facility or the content of a clinical program.

4. Nothing in this section authorizes a licensed optometrist to engage in any acts which are beyond the scope of his or her license issued in accordance with the provisions of this chapter.

5. For the purposes of this section, "extended clinical facility for the treatment of visual disorders" means a clinical facility which renders optometric services and is operated by an accredited school or college of optometry, but which is located beyond the boundaries of the principal campus of the school or college.

(Added to NRS by 1977, 613; A 1993, 2869)

NRS 636.028 Applicability of chapter: Inapplicability to certain students, clinicians or instructors.

1. Except as provided in subsection 2, a person is exempt from the provisions of this chapter regulating the practice of optometry if the person is engaged in a clinical program of a school or college of optometry accredited by the Board and if the person is:

- (a) A student who is enrolled in a clinical program of an undergraduate or graduate course of study in optometry at such a school or college; or
- (b) Licensed to practice optometry in another state and is employed as a clinician or instructor at such a school or college.

2. A person who is employed as a clinician or instructor and who engages in the practice of optometry in this State is required to be licensed by the Board.

(Added to NRS by 1977, 612) — (Substituted in revision for NRS 636.393)

Nevada Board of Optometry
Meeting Materials for Agenda Item No. 5a

March 26, 2019

Proposed Changes to
AB 77

Nevada Board of Optometry Proposed Changes to AB 77

Contact: Caren C. Jenkins, Executive Director
caren@nvoptometry.org or (775) 883-8367

I. Amendments Proposed to AB 77 (existing sections)

Sec. 1. NO CHANGE

Sec. 2.

- Limit pharmaceutical agents prescribed by optometrists to include only topical and oral agents used to address conditions of the eye and its appendages. Also, allow optometrists to prescribe less dangerous pain medications in schedule III, IV, V, and remove optometrists' ability to prescribe dangerous or highly addictive opioids in schedules I and II.

Rationale: Limiting to include only those agents that address eye and related appendages will ensure against over expansive prescribing. Currently, optometrists have the authority to prescribe highly addictive hydrocodone, but it is more appropriate to allow safer medications in schedules III, IV, and V.

Sec. 3.

- Remove the requirement for personal supervision for certain activities performed by assistants.

Rationale: "Personal supervision" was discussed at the Board's stakeholders meetings, and the Board determined that it was not necessary for the optometrist to be physically present.

- Delete "and nonsubjective" as limit to types of testing the assistant can perform.

Rationale: Certain testing may require subjective judgment of the patient or assistant.

- Add ability to use an ophthalmic device or oversee ocular exercises, visual training, vision therapy or visual rehabilitation as directed by an optometrist.

Rationale: These are tasks easily delegated to trained staff. The optometrist would still be performing the doctoral duties of refraction, examination, diagnosis, and management.

- Require assistant to be employed by the optometrist or employed by the medical provider or medical facility with which the optometrist is offering services.

Rationale: The assistant must not be supervised by a non-optometrist or his/her allegiance may be influenced to align with non-optometric goals. The assistant must be an employee of the optometrist, or of the medical provider or medical facility affiliated with the optometrist. If a problem were to arise, there needs to be clear delineation to know the matter is under the Board's jurisdiction. The assistant should not be the employee of an optical retailer from which the optometrist leases space, as this would tend to impair the optometrist's independent clinical judgment.

- **Require that the final eye exam must be performed by the optometrist in person.**

Rationale: This will prevent optometrists from providing eye exams solely based on data collected by an assistant without examining the eye and interacting with the patient.

Sec. 4.

- **Remove ability of non-profit or charitable organization, governmental agency or school to obtain a mobile optometry certificate so that only optometrists can obtain such certification, and limit mobile clinics to serving government agencies, patients with mobility impairments, underserved populations, underprivileged populations, or academic programs.**

Rationale: The mobile clinic must be optometrist owned and operated, so it is clear that there is not outside influence on the optometrist's independent judgment and control. If a problem were to arise, we would know it falls under our Board's jurisdiction. The limitation on populations is suggested for proper oversight of the licensees. The concern is for protection of public health, and being able to maintain consistent, quality care.

- **Remove personal supervision and require that the final eye examination must be provided by the optometrist in person.**

Rationale: Eye exams and final diagnosis depend on having a trained and licensed medical provider look into the patient's eye. Remove "personal supervision" with the same rationale previously provided.

Sec. 5. NO CHANGE

Sec. 6.

- **Change the examples list to include the Internet, brochure, business card, and add application of this section to an unlicensed person.**

Rationale: This will expand the scope of this definition to capture commonly used "advertise[ments]."

Sec. 7: NO CHANGE

Sec. 8.

- **Make changes to specify that the diagnostic agent used to diagnose conditions of the eye or adnexa may be oral or topical and must be an agent used to diagnose conditions of the eye or adnexa.**

Rationale:: Requested by the Academy of Ophthalmology

Sec. 9 NO CHANGE

Sec. 10:

- In section 1(b), remove the language that would imply an optician or optical mechanic cannot repair glasses without a valid prescription, but that there must be confirmation of a valid prescription to create the ophthalmic lenses themselves.

Rationale: This change is offered in response to testimony by Dispensing Opticians.

- In section 1(b), remove the language allowing an optician to duplicate lenses without a valid prescription in exigent circumstances.

Rationale: The duplication of lenses without a valid prescription should only happen in extraordinary or exigent circumstances, however this would be better addressed in the Board of Dispensing Opticianry statute, as proposed at the end of this document.

- In section 1(c), elaborate on the duties assigned to the optometrist to include evaluation, diagnosis and treatment of the human eye and adnexa and remove “personal supervision” for the same rationale provided previously.

Rationale: This provides a more comprehensive description of the duties an optometrist performs beyond “examination”.

- In section 1(f), clarify that the optometrists are responsible for the INITIAL fitting of contact lenses as defined in NRS 636.387 and remove personal supervision requirement.

Rationale: This change is offered in response to testimony by Dispensing Opticians, with the removal of “personal supervision” for the same rationale provided previously.

- In section 1(h), capture the fact that the practice of optometry includes the prescription and use of devices.

Rationale: Making this change more accurately reflects the current practice of optometry.

- In sections 1(i) through 1(l), remove “surgically” as a limitation to certain optometry actions and remove entirely reference to surgically removing any superficial lesion of the eye or adnexa.

Rationale: These changes were proposed by the Nevada Academy of Ophthalmology.

- In section 1(m), add ability to order or perform available diagnostic lab tests.

Rationale: There are lab tests that an optometrist or their assistant can easily perform in office that need to be allowed for in statute.

- In section 2, add restriction for any procedure using an instrument, including a laser, scalpel or needle, in which human tissue is cut, burned, vaporized, by incision, injection, ultrasound, laser, infusion, cryotherapy, radiation, or by other means. The term includes a procedure using an instrument which requires closure of human tissue by suture, clamp, or other such device.

Rationale: These changes were proposed by the Nevada Academy of Ophthalmology, and are more encompassing than 2(a) or 2(b). These two items may be removed and replaced with the above restriction.

Sec. 11 through 15: NO CHANGES

Sec. 16.

- Remove AB77 amendments to this section.

Rationale: These amendments are not necessary. The executive director does not need authority to invest Board money in Treasury bills or notes of the United States.

Sec. 17. NO CHANGE

Sec. 18.

- Delete “rules” from current language.

Rationale: Policies are non-binding direction and cannot be used as the basis for disciplinary action. Rather, they provide suggestions and guidance to licensees. “Rules” are not defined in statute, and not something the Board uses.

Sec. 19 NO CHANGE

Sec. 20.

- Establish maximum fees in statute as follows:
 1. Examination related to licensure, a fee of not more than \$250;
 2. Application for the issuance or reinstatement of a license, a fee of not more than \$1200;
 3. Issuance or renewal of a license, pro-rated quarterly for the remaining period of licensure, a fee of not more than \$1200;
 4. Application for the issuance or renewal of a certification to prescribe pharmaceutical agents; treat patients diagnosed with glaucoma; own, operate or practice in a mobile optometry clinic; or obtain other special certifications as established by this chapter, and its related regulations, a fee of not more than \$1000;

5. Issuance or renewal of a license for additional practice locations other than the licensee's primary practice location, a fee of not more than \$500;
6. Individually verifying licensure or disciplinary status of a licensee in writing and by mail in response to a request, replacing a license or certificate previously issued, or responding to another special request, for individual services, a fee of not more than \$100;
7. In addition to any other fee or penalty, the Board may impose a late fee not more than \$1000 for a licensee's failure timely to comply with any act required under this chapter.

Rationale: With the passage of AB77 as amended, the Board will renew optometry licenses every two years, rather than the current annual renewal. The proposed maximum fees reflect the doubling of many of the current fee ceilings with a small increase to allow the flexibility to set fees as needed within those parameters without additional statutory changes. The Board recommends the addition of the above, and the deletion of the corresponding AB77 Sec. 20 language, in response to suggestions from members of the Assembly Committee on Commerce and Labor.

Sec. 21 through 29: NO CHANGE

Sec. 30.

- Change "mail a notice of renewal" to "provide notice of the renewal deadline"

Rationale: Electronic and other forms of reliable communication need to be permitted. This is a necessary update to conform to practices that are more efficient.

Sec. 31.

- In section 2, change the maximum continuing education requirement to 40 hours and, in section 3, change the minimum biennial requirement for optometrists authorized to prescribe to 50 hours.

Rationale: Nevada is among the most demanding states in the nation for optometry CE hours. Neighboring states impose a much lower hour requirement.

Sec. 32 through 34 NO CHANGE

Sec. 35.

- Allow administration of pharmaceutical agents for diagnostic purposes without a certificate.
-

Rationale: Diagnostic pharmaceutical agents are low risk and do not need special certification or increased continuing education for the doctor to be able to use them. This falls in line with AB 77 section 56 modification of NRS 636.382.

Sec. 36 through Sec. 39 NO CHANGE

(With the changes proposed in AB 77 Section 62, and the changes in these proposed amendments for Section 2, optometrists will no longer be prescribing 'dangerous drugs' in schedules I and II. With that, Section 38 may be removed if these amendments are adopted).

Sec. 40.

- Remove the language AB77 proposed to add to section 1 and 2 of Section 40 and insert that the certificate to treat glaucoma may be obtained per NRS 636.2893 and NRS 636.2895, or per the new proposed 'glaucoma certification by endorsement'. The new glaucoma certification by endorsement is proposed at the end of this document.

Rationale: After discussion with various stakeholders, we narrowed down the concern. There are many optometrists, who have been treating glaucoma for many years, who have moved to our state but are being required to re-certify under our statute. The 'glaucoma certification by endorsement' language was proposed by the Academy of Ophthalmology, and will allow these well trained optometrists to manage glaucoma in our state, providing more access to care and attracting more practitioners to our state.

- Change what ophthalmologist referrals are necessary: remove item 3(b), and replace with "any glaucoma other than open angle glaucoma" and add to section 3(c) that the appropriate emergency treatment must be "non-surgical".

Rationale: This change was recommended by the Academy of Ophthalmology.

Sec. 41.

- Insert section 3 of the language deleted in AB 77

Rationale: Current licensed optometrists need an avenue to obtain glaucoma certification.

Sec. 42.

- In terms of what constitutes cause for disciplinary action, add failure to comply with the provisions of NRS chapter 89 as it relates to professional entities and associations that offer optometric services and any violation of a provision of state or federal law or regulation related to or involving the practice of optometry, including but not limited to:
 - (a) organizational structure or control of an optometric practice or entity,
 - (b) the maintenance, availability or distribution of patient medical records,
 - (c) improper disclosure of protected patient information, or
 - (d) fraud.

Rationale: The Board and the profession nationally have experienced a growing trend of corporate entities influencing greatly, and in some instances owning, part or all of optometry practices. A prohibition on non-optometrist ownership currently exists

in NRS 636, but the Board is unable to discover such ownership in many entities due to protections of the identity of shareholders, members and other owners of corporations and Limited Liability Companies (LLCs). Professional Corporations laws currently exist in statute (Chapter 89) to tie the existence of an entity and all of its owners to valid professional licensure in Nevada. Non-licensed individuals are prohibited from owning any portion of a Professional Corporation, Professional Partnership or Professional LLC. Additionally, the Board has intervened in a variety of instances when, on the disability, retirement or death of a licensee, the patient records held by the licensee become unavailable to the patients. This severely impedes a patient's ability to obtain continued care. Non-compliance with federal law regulating medical records and patient information by Nevada licensees, as they relate to optometrists, should be matters under the Board's jurisdiction and included as acts subjecting licensees to potential disciplinary action.

Sec. 43 through Sec. 48 NO CHANGES (see changes proposed by AG below)

Sec. 49.

- Require the name of any optometrist who regularly provides optometric services at a specific location to be listed on the identification of optometrists near the entrance of the business (section 3(b)). In addition, regarding the definition of "assumed or fictitious name" in section 5, specify that it is "a name other than the name of the optometrist printed on his or her optometry license."

Rationale: These changes ensure transparency.

Sec. 50 through Sec. 56 NO CHANGE

Sec. 57.

- In relation to the requirements for the form of prescriptions, add a prohibition on a spectacle prescription being construed to be approved for or converted to a prescription for contact lenses unless contact lenses are explicitly approved in writing by the optometrist on the spectacle prescription.

Rationale: This change is recommended after optician testimony at the January Board of Optometry meeting, saying that some opticians might take advantage of the removal of the check-box requirement to say that ANY spectacle prescription could be converted to one for contact lenses.

Sec. 58 through Sec. 62 NO CHANGE

Sec. 63 through Sec. 64

- Requires conforming changes to reflect the amendments proposed throughout this document.

Sec. 65. NO CHANGE

Repealed Sections.

NRS 636.296 should be left in statute.

Rationale: The Board needs authority to investigate a complaint.

II. Amendments proposed to AB 77 (new sections)

- Allow the Board to exercise its jurisdiction over the unlicensed practice of optometry (NRS 636.027).

Rationale: This will ensure jurisdiction extends to those individuals or entities practicing optometry without a license.

- Provide glaucoma certification by endorsement process with the following elements:
 1. The Board may issue a certificate to treat persons diagnosed with glaucoma by endorsement to an applicant who meets the requirements set forth in this section.
 2. An applicant for a certificate by endorsement pursuant to this section must submit to the Executive Director an application in the form prescribed by the Board and:
 - (a) Proof satisfactory to the Board that:
 - (i) The applicant holds a valid and unrestricted certificate or other credential to engage the treatment of persons with glaucoma issued in any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any other territory or possession of the United States;
 - (ii) Has not ever been held civilly or criminally liable for malpractice related to his or her certificate or other credential to treat persons with glaucoma;
 - (b) An affidavit stating that the information contained in the application and any accompanying material is true and correct; and
 - (c) Any other information or fee required by the Board.
 3. Not later than 15 business days after receiving an application for a certificate to treat persons diagnosed with glaucoma by endorsement pursuant to this section, the Executive Director shall provide written notice to the applicant if additional information is required to consider the application. Unless the application is denied for good cause, the Board shall approve the application and issue a certificate to treat persons diagnosed with glaucoma within 45 days after receiving the application.

Rationale: This section is proposed by the Academy of Ophthalmology. It allows for the certification of well-qualified optometrists to monitor and treat patients with glaucoma and create more access to care in our state.

- Specify in NRS 636.290 that a person licensed to practice optometry in this State shall be subject to the jurisdiction of the Board for acts enumerated in this chapter regardless of license expiration, suspension or revocation. Also specific that the Board is authorized to impose discipline on a licensee for a violation of this chapter or its related regulations in one or more of the following ways, with or without the imposition of a related financial penalty:
 - a. Letter of Public Reprimand
 - b. Order to Cease and Desist
 - c. Order of Probation for a specified term, with or without conditions
 - d. Order of Suspension for a specified term, with or without conditions
 - e. Order of Revocation, with or without permission to apply for licensure at a future date

Rationale: This will provide more clarity around disciplinary actions.

- Specify in NRS 636.373 that no optometrist shall be supervised, directly or indirectly, within the scope of the practice of optometry by any person who is not a Nevada-licensed optometrist. Also specify that no person, including an officer, employee, or agent of a commercial or mercantile establishment, who is not a Nevada-licensed optometrist, shall directly or indirectly control, dictate, or influence the professional judgment of the practice of optometry by a licensed optometrist, including but not limited to the level or type of care or services rendered.

Rationale: Keeps the independent practice of optometry in the hands of the professional optometrist rather than allowing corporate or business bottom line interests to influence the standards of care provided to patients.

- Specify in NRS 637.200 that it is unlawful for a dispensing optician to produce or deliver a prescription spectacle lens without a valid prescription or in violation of the expiration date specified by the prescription. However, provide a safe harbor as follows:

(a) A licensed dispensing optician may replace an ophthalmic lens without a valid prescription:

(1) under extraordinary or exigent circumstances as defined by the Board in regulation if the licensee, within 7 business days of such replacement or duplication, notifies the Board of Dispensing Opticians in writing of the replacement or duplication and the exigent circumstances under which the replacement or duplication was undertaken.

(2) if the prescription spectacle lenses are covered by a warranty, become damaged and are presented to the licensee for replacement or repair within the period of warranty, not to exceed one year from the date they were originally dispensed.

Rationale: Duplicating or replacing a lens that could be many years old, without any assessment of the patient's vision status or ocular health poses a public safety issue. These changes are proposed as a compromise to address input from opticians to previously suggested language. The Board understands the balance between convenience and health, but it is important that certain duplication be reported, should a problem arise that needs to follow up. Since this should happen infrequently, we feel that reporting it would not pose a large burden. If the Board of Dispensing Opticians prefers not to collect such reports, the statute could require reporting to the original prescribing doctor, who has a stake in that patient's eye health.

End of Optometry Board's requested changes.

Additional proposed revisions are presented on the remaining 7 pages of this document, **as proposed by the Board's Counsel and the Office of the Attorney General.**

The AG's office provided the suggested revisions appearing below. The changes are recommended to NRS 636.107, 636.145, 636.290, 636.373, 636.305, 636.310, 636.320, 636.325, 636.337, 636.375, 636.407 and 636.420 to bring the Board and its chapter up-to-date and into line with statutes regulating other Professional Licensing Boards, the Administrative Procedures Act, and requirements regarding Public Records and the Open Meeting Law.

New and ~~deleted~~ statutory language from AB77
Optometry Board explanations and Rationale
New and ~~deleted~~ suggestions from the Office of the Attorney General

- Clarify the confidentiality associated with investigatory documents.

Rationale; This language will ensure proper treatment of certain confidential materials without compromising the Board's ability to communicate appropriately with other investigative entities and licensing boards.

NRS 636.107 Certain records relating to complaint or investigation deemed confidential; certain records relating to disciplinary action deemed public records.

1. Except as otherwise provided in this section *and NRS 239.0115*, a complaint filed with the Board, all documents and other information filed with the complaint and all documents

and other information compiled as a result of an investigation conducted to determine whether to initiate disciplinary action are confidential, *unless the person submits a written statement to the Board requesting that such documents and information be made public records.*

2. ~~[The] A complaint or other~~ The charging document ~~filed by~~ with the Board to initiate disciplinary action pursuant to chapter 622A of NRS and all documents and information considered by the Board when determining whether to impose discipline are public records.

3. Subsections 1 and 2 do not prohibit the Board from communicating or cooperating with or providing any documents or other information in the Board's possession regarding a licensee or pending investigation to any other licensing board or any other agency that is investigating a person, including, without limitation, a law enforcement agency, a federal government agency, or a licensing board in this State or another state or territory of the United States. If information regarding an investigation is provided to another agency pursuant to this section, it retains its confidential status and may not be provided to other persons and the other agency shall treat it as confidential information inasmuch as practicable.

- Clarify the ability of the Board to investigate the unlicensed practice of optometry.

Rationale: Clarifies the Board's authority to ensure it has jurisdiction to act against the practice of optometry by an unlicensed person.

NRS 636.145 Unlawful practice of optometry; penalties.

1. A person shall not engage in the practice of optometry in this State unless:

(a) The person has obtained a license pursuant to the provisions of this chapter; and

(b) Except for the year in which such license was issued, the person holds a current renewal card for the license.

2. *The Board shall conduct an investigation of each complaint which sets forth reason to believe that a person has engaged in the practice of optometry in this state without a license.*

3. In addition to any other penalty prescribed by law, if the Board, *after an investigation and hearing held pursuant to NRS Chapter 622, NRS Chapter 622A, and NRS Chapter 233B,* determines that a person has committed any act described in subsection 1, the Board may:

(a) Issue and serve on the person an order to cease and desist *from the practice of optometry* until the person obtains *the proper license* from the Board ~~the proper license or otherwise demonstrates that he or she is no longer in violation of subsection 1. An order to cease and desist must include a telephone number with which the person may contact the Board.~~

(b) Issue a citation to the person. ~~A citation issued pursuant to this paragraph must be in writing, describe with particularity the nature of the violation and inform the person of the provisions of this paragraph. Each activity in which the person is engaged constitutes a separate offense for which a separate citation may be issued. To appeal a citation, the person must submit a written request for a hearing to the Board not later than 30 days after the date of issuance of the citation.~~

~~(c) Assess against the person an administrative fine as provided in NRS 636.420.~~

~~(d) Impose any combination of the penalties set forth in paragraphs (a), (b) and (c).~~

4. *Unless the Board determines that extenuating circumstances exist, the Board shall forward to the appropriate law enforcement agency any substantiated information submitted*

to the Board concerning a person who practices or offers to practice optometry without the appropriate license issued pursuant to the provisions of this chapter.

5. Each instance of unlicensed activity constitutes a separate offense for which a separate citation may be issued.

- Clarify the way complaints are taken in by the Board

Rationale: These changes ensure clear and transparent procedures for the acceptance of complaints.

NRS 636.305 Complaint against licensee: Persons authorized to make complaint; particularity of charges.

1. A complaint may be made against a licensee by:

- ~~1.~~ a. An ~~[agent]~~ *employee* or ~~[inspector employed by]~~ *contractor* of the Board;
- ~~2.~~ b. Any ~~[other]~~ licensee~~[-];~~ or
- ~~[3. Any aggrieved] other person;~~

~~A charging one or more of the causes for disciplinary action with such particularity as to enable the defendant licensee to prepare a defense—~~*alleging one or more grounds for disciplinary action set forth in NRS 636.295.*

2. *When a complaint is filed with the Board, the Executive Director or his or her designee shall review the complaint. If after this review, the Executive Director or his or her designee determines that the complaint is not frivolous and alleges one or more grounds for disciplinary action set forth in NRS 636.295, the Board, through its Executive Director or his or her designee, shall cause the complaint to be investigated.*

3. *The Board shall retain all complaints received by the Board pursuant to this section for at least 10 years, including, without limitation, any complaints not acted upon.*

Note: The defense only is an issue when a charging document is filed. Until then, complaints should be received, reviewed, and investigated.

- Clarify the process for referring complaints to the appropriate regulatory body.

Rationale: This clarification allows the Board to refer matters to more appropriate regulatory entities but does not cause any reduction in the Board's own jurisdiction or authority.

NRS 636.310 Form and filing of complaint. A complaint ~~[must]:~~

1. *Must* be made in writing~~[-]. The original complaint and two copies must be filed with the Executive Director. A complaint may] and be signed and verified by the person making it.~~

2. *May not* be filed anonymously. ~~[If a complaint is filed anonymously, the Board may accept the complaint but may refuse to consider the complaint if anonymity of the complainant makes processing the complaint impossible or unfair to the person who is the subject of the complaint.]~~

BOARD SUGGESTION: Insert “sworn” rather than “verified” in response to a concern expressed by the Assembly Committee on Commerce & Labor, although “verified” appears in other Board’s statutes regarding complaints.

3. *If the Executive Director or his or her designee determines that a complaint filed with the Board concerns a matter within the jurisdiction of another regulatory body in title 54 of the NRS or NRS Chapter 437, the Executive Director or his or her designee shall refer the complaint to the other regulatory body.*

4. *Subsection 3 does not prevent the Executive Director or his or her designee from investigating a complaint which concerns a matter within the jurisdiction of the Board, and bringing that matter forward to the Board for further consideration if deemed warranted after an investigation, regardless whether the Executive Director or his or her designee refers the complaint to another regulatory body pursuant to subsection 3.*

5. *Any member of the Board, employee of the Board, contractor of the Board, or an officer of the Board is immune from any civil liability for any decision or action taken in good faith and without malicious intent in carrying out the provisions of this section.*

~~NRS 636.315 Procedure following filing of complaint; retention of complaints.~~

~~1. Except as otherwise provided in NRS 636.338, as soon as practicable after the filing of a complaint, the Board shall notify the licensee against whom the complaint is filed and fix a date for its initial review of the complaint. If the Board receives a report pursuant to subsection 5 of NRS 228.420, a hearing must be held within 30 days after receiving the report. [The licensee must be allowed a reasonable amount of time to respond to the allegations of the complaint.] The Executive Director shall notify the licensee of the time, date and place fixed for the Board's initial review of the complaint.~~

~~2. After reviewing the complaint, the Board shall dismiss the complaint or file a formal charge against the licensee. If a formal charge is filed, the Executive Director shall prepare the charge in accordance with the Board's regulations and send a copy to the licensee. The licensee must be allowed a reasonable amount of time to file a response to the charge.~~

~~3. Within a reasonable time after the Executive Director sends a copy of the charge to the licensee, the Board shall fix the time, date and place for a hearing and the Executive Director shall notify the licensee thereof. The licensee must be allowed a reasonable amount of time to respond to the complaint.~~

~~4. The Board shall retain all complaints received by the Board pursuant to this section for at least 10 years, including, without limitation, any complaints not acted upon.~~

- **Clarify hearing procedures in disciplinary actions.**

Rationale: **Ensure clear and transparent procedures for disciplinary hearings.**

NRS 636.320 Public hearing of formal charge; rights of licensee. *The disciplinary hearing of a formal charge regarding an alleged ground for disciplinary action pursuant to NRS 636.295 must be conducted pursuant to the requirements of NRS Chapter 622A, NRS Chapter 622, and NRS Chapter 233B.* ~~publicly by the Board. The licensee against whom the charge is filed must be accorded the right to appear in person and by legal counsel, and given adequate opportunity to confront the witnesses against him or her, to testify and introduce the testimony of witnesses in his or her behalf, and to submit argument and brief in person or by counsel.~~

- Clarify Board's authority in the event of a finding justifying a disciplinary action and ensure it has the flexibility to take necessary disciplinary actions.

Rationale: Offer the Board the required flexibility to impose sanctions appropriate for any finding of misconduct.

NRS 636.325 Decision of Board; authorized disciplinary action; private reprimands prohibited; orders imposing discipline deemed public records.

1. ~~Upon conclusion of the hearing, or waiver thereof by the person against whom the charge is filed, the Board shall make and announce its decision. If the Board determines that the allegations included in the charge are true~~ *If the Board finds by a preponderance of evidence that a person has engaged in one or more grounds for disciplinary action specified in NRS 636.295, it may take any one or more of the following actions:*

- (a) Publicly reprimand the licensee *and imposing any terms or conditions deemed necessary by the Board;*
- (b) Place the licensee on probation for a specified or unspecified period *and imposing any terms or conditions deemed necessary by the Board;*
- (c) Suspend the person's license ~~licensee from practice for a specified or unspecified period not more than one year~~ *and imposing any terms or conditions deemed necessary by the Board;*
- (d) Revoke the person's ~~licensee's~~ license *and imposing any terms or conditions for reinstatement deemed necessary by the Board;* ~~or~~
- (e) Impose an administrative fine pursuant to the provisions of NRS 636.420;
- (f) *Limit the person's practice;*
- (g) *Suspend the enforcement of any penalty by placing the person on probation. The Board may revoke the probation if the person does not follow any conditions imposed;*
- (h) *Require the person to submit to the supervision of or counseling or treatment by a person designated by the Board. The person named in the complaint is responsible for any expense incurred for such services;*
- (i) *Impose and modify any conditions of probation for the protection of the public or the rehabilitation of the probationer;*
- (j) *Require the person to pay for the costs of remediation or restitution; or*
- (k) *Take any combination of the actions specified in (a) through (j).*

~~Δ The Board may, in connection with a reprimand, probation or suspension, impose such other terms or conditions as it deems necessary.~~

2. ~~If the Board determines that the allegations included in the charge are false or do not warrant disciplinary action, it shall dismiss the charge.~~

~~3.—~~The Board shall not issue a private reprimand.

43. An order that imposes discipline and the findings of fact and conclusions of law supporting that order are public records.

- Eliminate unnecessary and duplicative procedural provisions.

~~NRS 636.330 Application for rehearing.~~ If the Board makes a decision which is adverse to the licensee, the licensee may apply for a rehearing within 15 days after the Board announces its decision. The Board shall grant or deny the application within a reasonable time thereafter.

Note: Stricken language is not needed. This is in NRS 622A.

~~NRS 636.335 Rehearing: Notice to licensee; conduct; decision.~~ If the Board grants a rehearing, the Executive Director shall, as soon as is reasonably possible, notify the licensee of the time, date and place of the rehearing. The rehearing must be conducted in the same manner as the former hearing. Upon conclusion of the rehearing, or as soon as is reasonably possible, the Board shall make and announce its decision.

Note: Stricken language is not needed. This is in NRS 622A.

~~NRS 636.336 Board to cooperate with other agencies investigating persons.~~ The Board shall, to the extent feasible, communicate or cooperate with or provide any documents or other information to any other licensing board or any other agency that is investigating a person, including a law enforcement agency.

NRS 636.337 Disciplinary action by hearing officer or panel: Procedural requirements; powers and duties of officer or panel; appeals.

1. Any disciplinary action taken by a hearing officer or panel pursuant to NRS 636.110 is subject to the same procedural requirements which apply to disciplinary actions taken by the Board, and the officer or panel has those powers and duties given to the Board in relation thereto.

2. A decision of the hearing officer or panel relating to the imposition of an administrative fine or penalty is a final decision in a contested case. Any party aggrieved by a decision of the officer or panel to revoke or suspend a license may appeal that decision to the Board.

~~NRS 636.341 Practicing or offering to practice without license: Reporting requirements of Board.~~ Unless the Board determines that extenuating circumstances exist, the Board shall forward to the appropriate law enforcement agency any substantiated information submitted to the Board concerning a person who practices or offers to practice optometry without a license issued pursuant to the provisions of this chapter.

- **Clarify manner of giving notice to licensees, issuing injunctive relief and administrative fines.**

Rationale: Transparency, fairness and openness so the Board can carry out its functions.

NRS 636.375 Manner of giving notices to licensees.

1. *Service of process made under this chapter shall be made by one of the following methods:*
 - (a) *Sending the document to be served to the person by certified mail at his or her last known address as indicated in the records of the Board, or*
 - (b) *Personal delivery of the document to be served upon the person.*

2. *Service of process made under this chapter shall be deemed complete when a true and correct copy of the document, properly addressed and stamped is deposited in the United States mail, pursuant to subsection (1)(a) or when personal delivery is achieved, pursuant to subsection (1)(b).*

3. Any notice *not* required to be served pursuant to subsection 1 and 2 ~~given by the Board or the Executive Director to a licensee~~ may be transmitted by ~~[ordinary]~~:

~~1. Ordinary;~~ *a. First-class, certified or registered mail, postage prepaid, addressed to the licensee at the location listed by the [Executive Director for that] licensee[,] on his or her most recent change of address form or application for the renewal of his or her license or the last known address as indicated in the records of the Board for any other person;*

~~2. b. Electronic mail to the address for electronic mail most recently provided by the licensee person to the Board; or~~

~~3. c. Facsimile machine to the number most recently provided by the licensee person to the Board.~~

NRS 636.407 Injunctive relief. The Board may cause appropriate legal action to be taken in the district court of any county to secure an injunction or order restraining the unauthorized practice of optometry. *Such an injunction may be issued without proof of actual damage sustained by any person, this provision being a preventive as well as punitive measure and does not relieve any person from criminal prosecution for practicing without a license.*

NRS 636.420 Administrative fines. *After notice and hearing pursuant to NRS Chapter 622A, the Board may assess an administrative fine of not more than \$5,000 for each violation, against [A]any person licensed under this chapter who engages in conduct constituting grounds for disciplinary action as specified in NRS 636.295* ~~violates any provision of this chapter or any regulation of the Board [relating to the practice of optometry] is liable to the Board for an administrative fine of not [less than \$100 or] more than \$5,000[.]~~

*** END OF DOCUMENT ***

Nevada Board of Optometry
Meeting Materials for Agenda Item No. 5b

March 26, 2019

*Current Bills affecting
Optometry Board*

AB49	Controlled substances
AB70	Open meeting law
AB77	OPTOMETRY BOARD BILL
AB94	Controlled substances
AB151	Mandatory reporting of child sexual exploitation
AB319	Processing denied licenses based on criminal history
AB275	Citizenship of licensees
AB319	Criminal history check for applicants
AB353	Recycling
AB357	License by Endorsement for service members & spouses
AB371	Public Records
BDR 18-372	Assist immigrants to gain licensure
BDR 54-523	Controlled substances
SB14	Board member as Civil Officer
SB63	Provisional licenses
SB69	Cybersecurity
SB128	Credit card fee recovery
SB129	Ethics Laws
SB162	Electronic records for agencies
SB170	Controlled substances
SB183	Open Meeting Law Revisions

SB219	Withdrawals from financial accounts, credit card fees
SB228	Medical marijuana recommendation to patients
SB234	Check with Insurance Commissioner before license issued
SB268	Diversity representation on Board
SB287	Public Records

Nevada Board of Optometry

Meeting Materials for Agenda Item 5(c)

March 26, 2019

Clinical licensure requirements

NRS 636.227 Licensing by Board; application for license; notice to Board of changes regarding facility.

1. The Board may grant a license to an accredited school or college of optometry to establish an extended clinical facility for the treatment of visual disorders and shall adopt reasonable regulations and establish procedures for such purpose. If a license is granted, it is effective for only 1 year unless renewed by the Board.

2. An accredited school or college of optometry which desires to establish an extended clinical facility for the treatment of visual disorders in this State must apply to the Board for a license, and the application must contain the following information:

- (a) The name and address of the proposed facility;
- (b) The date when the school or college desires to commence operation of the facility;
- (c) A brief description of the facility and of the equipment which will be available for use there;
- (d) The kinds of optometric services to be rendered; and
- (e) The name and address of each instructor or clinician to be employed at the facility, his or her academic qualifications and any licenses which entitle the instructor or clinician to practice optometry in this or any other state.

3. Every school or college of optometry which operates a licensed facility in this State shall notify the Board if the school or college changes its instructors or clinicians, the location of the facility or the content of a clinical program.

4. Nothing in this section authorizes a licensed optometrist to engage in any acts which are beyond the scope of his or her license issued in accordance with the provisions of this chapter.

5. For the purposes of this section, "extended clinical facility for the treatment of visual disorders" means a clinical facility which renders optometric services and is operated by an accredited school or college of optometry, but which is located beyond the boundaries of the principal campus of the school or college.

(Added to NRS by 1977, 613; A 1993, 2869)

NRS 636.028 Applicability of chapter: Inapplicability to certain students, clinicians or instructors.

1. Except as provided in subsection 2, a person is exempt from the provisions of this chapter regulating the practice of optometry if the person is engaged in a clinical program of a school or college of optometry accredited by the Board and if the person is:

- (a) A student who is enrolled in a clinical program of an undergraduate or graduate course of study in optometry at such a school or college; or
- (b) Licensed to practice optometry in another state and is employed as a clinician or instructor at such a school or college.

2. A person who is employed as a clinician or instructor and who engages in the practice of optometry in this State is required to be licensed by the Board.

(Added to NRS by 1977, 612) — (Substituted in revision for NRS 636.393)

Nevada Board of Optometry
Meeting Materials for Agenda Item No. 5(c)

March 26, 2019

Fictitious Name Query

NRS 636.350 Certificate of registration required to practice under assumed or fictitious name; regulations.

1. An optometrist shall not practice optometry under an assumed or fictitious name unless the optometrist has been issued a certificate of registration by the Board to practice optometry under an assumed or fictitious name.
2. An optometrist who applies for a certificate of registration to practice optometry under an assumed or fictitious name must submit to the Board an application on a form provided by the Board.
3. Each optometrist who is issued a certificate of registration pursuant to this section shall:
 - (a) Comply with the provisions of chapter 602 of NRS; and
 - (b) Display or cause to be displayed near the entrance of his or her business the full name of the optometrist and the words or letters that designate him or her as an optometrist.
4. The Board shall adopt regulations that prescribe the requirements for the issuance of a certificate of registration to practice optometry under an assumed or fictitious name.
5. As used in this section, "assumed or fictitious name" means a name that is not the real name of each person who owns an interest in a business.

[82:208:1955] — (NRS A 1999, 1915)

From: Dr. Y
To: Caren Jenkins
Subject: fictitious name certificate
Date: Monday, March 4, 2019 7:37:48 PM
Attachments: ABC fictitious name.pdf

Hello Caren!

I hope you're doing well. Today I submitted an application online for use of a fictitious name and included the city business license. The attached county certificate was required for the city and I realized after I'd submitted my application that the board may want to see this as well. Dr. X and I are in the process of forming a business partnership and purchasing the practice of Dr. A with this entity being the end result. A will continue as an employee for as long as he'd like. X and A will of course be applying for certificates of fictitious names with the board also before we actually use the fictitious name. Do you know whether A needs to file with the county since he will have no ownership in the LLC?

Thank you,

Dr. Y

Dr. Y, OD
Office: 702-
Cell: 702-



Office of the Clark County Clerk
Lynn Marie Goya

Please Select One:

- ☒ New Application
☐ Renewal of existing Fictitious Firm Name

Certificate of Business: Fictitious Firm Name

Please Print or Type

The expiration date for such certificates shall expire after five years from the date of filing.

The undersigned do/does hereby certify that they are conducting business in Clark County, Nevada, under the

Fictitious Firm Name. ABC, LLC

Mailing Address: 123 Main St

(Mailing Address for notification of renewal)

Mailing Address

City, State, Zip

Owner (Sole Proprietor or
Registered Legal Entity): ABC e, LLC.

(Must print name exactly as it is registered with the Nevada Secretary of State)

and that said firm is composed of the following person(s) whose name(s) and address(es) are as follows:

Signed By: Dr. Y

Full Name of Authorized Signer

Signature

12/12/18
Date

123 Main St
Street Address of Business or Residence

City, State, Zip

Signed By: N/A

(Use if needed) Full Name of Authorized Signer

Signature

Date

Street Address of Business or Residence

City, State, Zip

By signing above, I declare (or affirm), under penalty of perjury, that all statements made in this document are true, and that I have authority to sign on behalf of and to bind the above named business/legal entity to a contract.

For additional signatures, please use additional pages

STATE OF Nevada

COUNTY OF Clark

SS:

This instrument was acknowledged before me on December 12th, 2018

(Date)

by Dr Y

Name of individual(s) whose signature(s) is/are being notarized



NOTARY PUBLIC
STATE OF NEVADA
COUNTY OF CLARK
My Comm. Expires: 12-01-2020
Certificate No: 16-4084-1

Signature of Notary Public/Deputy Clerk

RECEIVED

DEC 17 2018

Mail to: Lynn Marie Goya, County Clerk, Attn. FFN, Box 551604, Las Vegas NV 89155-1604

Include: Filing Fee of \$20.00 payable to County Clerk, completed certificate and a self-addressed stamped envelope.

COUNTY CLERK

Rev 11/2018

Nevada Board of Optometry
Meeting Materials for Agenda Item No. 5c

March 26, 2019

ARBO & FARB



FARB Regulatory Board Membership Application

_____ hereby requests a **FARB Regulatory Board Membership**.

Regulatory Board Members of FARB shall be governmental regulatory boards involved in the regulation of a licensed profession or occupation. Regulatory Board member benefits extend to all regulatory member board staff, current serving board members, and representative board attorney(s). Annual rate: \$175.00

☐ **FARB Regulatory Board Membership \$175.00** *(see payment information below)*

Please complete information below. ALL fields are required (see also page 2):

Full Name of Organization: _____

Main Contact Person: _____

General Phone#: _____

Direct Phone#: _____

Street Address/PO Box: _____

Suite/Dept./Other: _____

City/State/Zip/Country: _____

Website: _____

Email: _____

Please complete PAYMENT information below.

☐ Check enclosed (# _____) **OR** ☐ Pay by credit card (please call FARB to process)

Please return this form along with your payment to:

Federation of Associations of Regulatory Boards
1466 Techny Road
Northbrook, IL 60062
Ph: 847-559-FARB (3272)
Fax: 847-714-9796
MEMBERSUPPORT@FARB.org

SIGNATURE _____

(Individual or Agency/Organization Representative)



FARB Regulatory Board Membership Application (cont.)

Please indicate any individuals in your organization that may have access to the membership benefits (i.e., Staff, Attorneys, Current Board Members, etc.):

Name	Title	Email

MODEL POLICY FOR THE APPROPRIATE USE OF TELEMEDICINE TECHNOLOGIES IN THE PRACTICE OF OPTOMETRY

MODEL POLICY FOR THE APPROPRIATE USE OF TELEMEDICINE TECHNOLOGIES IN THE PRACTICE OF OPTOMETRY

Adapted from the Federation of State Medical Boards

¹ The policy on the Appropriate Use of Telemedicine Technologies in the Practice of Medicine supersedes the Model Guidelines for the Appropriate Use of the Internet in Medical Practice (HOD 2002).

² The policy does not apply to the use of telemedicine when solely providing consulting services to another physician who maintains the physician-patient relationship with the patient, the subject of the consultation.

Model Guidelines for State Optometry Boards' Appropriate Regulation of Telemedicine

Section One. Introduction and Overview

The advancements and continued development of healthcare and communications technology have had a profound impact on the practice of optometry and offer opportunities for improving the delivery and accessibility of health care, particularly in the area of telehealth, which is the practice of optometry using electronic communication, information technology or other means of interaction between a licensee in one location and a patient in another location with or without an intervening healthcare provider.³ However, state optometry boards, in fulfilling their duty to protect the public, face complex regulatory challenges and patient safety concerns in adapting regulations and standards historically intended for the in-person provision of optometric care to new delivery models involving telemedicine technologies, including but not limited to: 1) determining when a physician-patient relationship is established; 2) assuring privacy of patient data; 3) guaranteeing proper evaluation and treatment of the patient; and 4) limiting the prescribing and dispensing of certain medications and ophthalmic materials.

The [Name of Board] recognizes that using telehealth technologies in the delivery of optometric services offers potential benefits in the provision of optometric care. The appropriate application of these technologies can enhance eye care by facilitating communication with optometrists and their patients or other health care providers, including prescribing ophthalmic products, medications, obtaining laboratory results, scheduling appointments, monitoring chronic conditions, providing vision and health care information, and clarifying eye care advice.⁴

These guidelines should not be construed to alter the scope of practice of any optometric provider or authorize the delivery of optometric services in a setting, or in a manner, not otherwise authorized by law. In fact, these guidelines support a consistent standard of care and scope of practice notwithstanding the delivery tool or business method in enabling Doctor of Optometry-to-Patient communications. For clarity, an optometrist using telehealth technologies in the provision of optometric services, ophthalmic prescribing and medical eye care services to a patient (whether existing or new) must take appropriate steps to establish the doctor-patient relationship and conduct all appropriate evaluations and history of the patient consistent with traditional standards of care for the particular patient presentation. As such, some situations and patient presentations are appropriate for the utilization of telehealth technologies as a component of, or in lieu of, in-person provision of medical care, while others are not.⁵

MODEL POLICY FOR THE APPROPRIATE USE OF TELEMEDICINE TECHNOLOGIES IN THE PRACTICE OF OPTOMETRY

The [Name of Board] has developed these guidelines to educate licensees as to the appropriate use of telehealth technologies in the practice of optometry. The [Name of Board] is committed to assuring patient access to the convenience and benefits afforded by telehealth technologies, while promoting the responsible practice of optometry by optometrists.

It is the expectation of the Board that optometrists who provide eye care services, electronically or otherwise, maintain the highest degree of professionalism and should:

- Place the welfare of patients first;
- Maintain acceptable and appropriate standards of practice;
- Adhere to recognized ethical codes governing the profession of optometry;
- Properly supervise non-physician clinicians; and
- Protect patient confidentiality.

³ See Center for Telehealth and eHealth Law (Ctel), <http://ctel.org/> (last visited Dec. 17, 2013).

⁴ *Id.*

⁵ See Cal. Bus. & Prof. Code § 2290.5(d).

Section Two. Establishing the Optometrist -Patient Relationship

The health and well-being of patients depends upon a collaborative effort between the optometrist and patient.⁶

(From T.C.A 63-2-155(b))

An optometrist-patient relationship with respect to telehealth is created by mutual consent and mutual communication, except in an emergency, between the patient and the optometrist. The consent by the patient may be expressed or implied consent; however, the optometrist-patient relationship is not created simply by the receipt of patient health information by a provider unless a prior optometrist-patient relationship exists.

The duties and obligations created by the relationship do not arise until the optometrist:

1. Affirmatively undertakes to diagnose and treat the patient; or
2. Affirmatively participates in the diagnosis and treatment.

The optometrist-patient relationship is fundamental to the provision of acceptable optometric and medical eye care services. It is the expectation of the Board that optometrists recognize the obligations, responsibilities, and patient rights associated with establishing and maintaining a doctor-patient relationship. An optometrist is discouraged from rendering optometric services, ophthalmic prescribing and medical eye services advice and/or care using telehealth technologies without (1) fully verifying and authenticating the location and, to the extent possible, identifying the requesting patient; (2) disclosing and validating the provider's identity and applicable credential(s); and (3) obtaining appropriate consents from requesting patients after disclosures regarding the delivery models and treatment methods or limitations, including any special informed consents regarding the use of telehealth technologies. An appropriate doctor-patient relationship has not been established when the identity of the optometrist may be unknown to the patient.

MODEL POLICY FOR THE APPROPRIATE USE OF TELEMEDICINE TECHNOLOGIES IN THE PRACTICE OF OPTOMETRY

Section Three. Definitions

For the purpose of these guidelines, the following definitions apply:

“Telemedicine” means the practice of medicine using electronic communications, information technology or other means between a licensee in one location, and a patient in another location with or without an intervening healthcare provider. Generally, telemedicine is not an audio-only, telephone conversation, e-mail/instant messaging conversation, or fax. It typically involves the application of secure videoconferencing or store and forward technology to provide or support healthcare delivery by replicating the interaction of a traditional, encounter in person between a provider and a patient.⁷

“Telehealth” means the use of real-time, interactive audio, video telecommunications or electronic technology, or store-and-forward telemedicine services by a healthcare services provider when:

1. Such provider is at a qualified sit other than the site where the patient is located; and
2. The patient is at a qualified site, at a school clinic staffed by a healthcare services provider and equipped to engage in the telecommunications described in this section or at a public elementary or secondary school staffed by a healthcare services provider and equipped to engage in the telecommunications described in this sections; and
3. Does not include:
 - a. An audio-only conversation;
 - b. An electronic mail message; or
 - c. A facsimile transmission.

⁶ American Medical Association, Council on Ethical and Judicial Affairs, *Fundamental Elements of the Patient-Physician Relationship* (1990), available at <http://www.ama-assn.org/resources/doc/code-medical-ethics/1001a.pdf>.

⁷ See Ctel.

MODEL POLICY FOR THE APPROPRIATE USE OF TELEMEDICINE TECHNOLOGIES IN THE PRACTICE OF OPTOMETRY

Section Four. Guidelines for the Appropriate Use of Telehealth Technologies in Optometric Practice

The [Name of Board] has adopted the following guidelines for optometrists utilizing telehealth technologies in the delivery of patient care, regardless of an existing doctor-patient relationship prior to an encounter:

Licensure:

An optometrist must be licensed, or under the jurisdiction, of the optometry board of the state where the patient is located. The practice of optometry occurs where the patient is located at the time telehealth technologies are used. Optometrists who treat or prescribe through online services sites are practicing optometry and must possess appropriate licensure in all jurisdictions where patients receive care.⁸

"Healthcare services provider" means an individual acting within the scope of a valid license issues pursuant to Tennessee Title 63 or any state-contracted crisis service provider employed by a facility license under Tennessee Title 33."

Evaluation and Treatment of the Patient:

A documented optometric evaluation and collection of relevant clinical history commensurate with the presentation of the patient to establish diagnoses and identify underlying conditions and/or contra-indications to the treatment recommended/provided must be obtained prior to providing treatment, including issuing prescriptions, electronically or otherwise. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of practice as those in traditional (encounter in person) settings. Treatment, including issuing a prescription based solely on an online questionnaire or auto-refraction, does not constitute an acceptable standard of care.

A healthcare provider who delivers services using telehealth shall be held to the same standard of professional practice as a similar licensee of the same practice area or specialty that is providing the same healthcare services through in-person encounters and nothing in this section is intended to create any new standards of care.

Informed Consent:

Evidence documenting appropriate patient informed consent for the use of telehealth technologies must be obtained and maintained. Appropriate informed consent should, as a baseline, include the following terms:

- Identification of the patient, the optometrist and the optometrist's credentials;
- Types of transmissions permitted using telehealth technologies (e.g. examinations consistent with the same standards of practice as those in traditional face-to-face settings, prescription refills, appointment scheduling, patient education, etc.);
- The patient agrees that the optometrist determines whether or not the condition being diagnosed and/or treated is appropriate for a telehealth encounter;
- Details on security measures taken with the use of telehealth technologies, such as encrypting data, password protected screen savers and data files, or utilizing other reliable authentication techniques, as well as potential risks to privacy notwithstanding such measures;
- Hold harmless clause for information lost due to technical failures; and
- Requirement for express patient consent to forward patient-identifiable information to a third party.

⁸ Federation of State Medical Boards, *A Model Act to Regulate the Practice of Medicine Across State Lines* (April 1996), available at http://www.fsmb.org/pdf/1996_grpol_telemedicine.pdf.

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Continuity of Care:

Patients should be able to seek, with relative ease, follow-up care or information from the optometrist] who conducts an encounter using telehealth technologies. Optometrists solely providing services using telehealth technologies with no existing doctor-patient relationship prior to the encounter must make documentation of the encounter using telehealth technologies easily available to the patient, and subject to the patient's consent, any identified care provider of the patient immediately after the encounter.

Referrals for Emergency Services:

An emergency plan is required and must be provided by the optometrist to the patient when the care provided using telemedicine technologies indicates that a referral to an ophthalmic surgery center, an acute care facility or Emergency Department for treatment is necessary for the safety of the patient. The emergency plan should include a formal, written protocol appropriate to the services being rendered via telehealth technologies.

Medical Records:

The medical record should include, if applicable, copies of all patient-related electronic communications, including doctor-physician communication, prescriptions, laboratory and test results, evaluations and consultations, records of past care, and instructions obtained or produced in connection with the utilization of telehealth technologies. Informed consents obtained in connection with an encounter involving telehealth technologies should also be filed in the patient's examination record. The patient record established during the use of telehealth technologies must be accessible and documented for both the optometrist and the patient, consistent with all established laws and regulations governing patient healthcare records.

Privacy and Security of Patient Records & Exchange of Information:

Optometrists should meet or exceed applicable federal and state legal requirements of optometric examination/health information privacy, including compliance with the Health Insurance Portability and Accountability Act (HIPAA) and state privacy, confidentiality, security, and medical retention rules. Optometrists are referred to "Standards for Privacy of Individually Identifiable Health Information," issued by the Department of Health and Human Services (HHS).⁹ Guidance documents are available on the HHS Office for Civil Rights Web site at: www.hhs.gov/ocr/hipaa.

Written policies and procedures should be maintained at the same standard as traditional face-to-face encounters for documentation, maintenance, and transmission of the records of the encounter using telehealth technologies. Such policies and procedures should address (1) privacy, (2) health-care personnel (in addition to the optometrist addressee) who will process messages, (3) hours of operation, (4) types of transactions that will be permitted electronically, (5) required patient information to be included in the communication, such as patient name, identification number and type of transaction, (6) archival and retrieval, and (7) quality oversight mechanisms. Policies and procedures should be periodically evaluated for currency and be maintained in an accessible and readily available manner for review.

Sufficient privacy and security measures must be in place and documented to assure confidentiality and integrity of patient-identifiable information. Transmissions, including patient e-mail, prescriptions, and laboratory

⁹ 45 C.F.R. § 160, 164 (2000).

MODEL POLICY FOR THE APPROPRIATE USE OF TELEMEDICINE TECHNOLOGIES IN THE PRACTICE OF OPTOMETRY

results must be secure within existing technology (i.e. password protected, encrypted electronic prescriptions, or other reliable authentication techniques). All patient-physician e-mail, as well as other patient-related electronic communications, should be stored and filed in the patient's medical record, consistent with traditional record-keeping policies and procedures.

Disclosures and Functionality on Online Services Making Available Telehealth Technologies:

Online services used by optometrists providing optometric services using telemedicine technologies should clearly disclose:

- Specific services provided;
- Contact information for optometrist;
- Licensure and qualifications of optometrist(s) and associated optometrists;
- Fees for services and how payment is to be made;
- Appropriate uses and limitations of the site, including emergency health situations;
- Uses and response times for e-mails, electronic messages and other communications transmitted via telehealth technologies;
- To whom patient health information may be disclosed and for what purpose;
- Rights of patients with respect to patient health information; and
- Information collected and any passive tracking mechanisms utilized.

Online services used by optometrists providing vision and medical eye care services using telemedicine technologies should provide patients a clear mechanism to:

- Access, supplement and amend patient-provided personal health information;
- Provide feedback regarding the site and the quality of information and services; and
- Register complaints, including information regarding filing a complaint with the applicable state optometry board(s).

Online services must have accurate and transparent information about the website owner/operator, location, and contact information, including a domain name that accurately reflects the identity.

The maintenance of preferred relationships with outside third party site(s) or any pharmacy is prohibited. Optometrists shall not transmit prescriptions to a recommended pharmacy, or online ophthalmic materials portal, in exchange for any type of consideration or benefit except when required by patient's insurance or third party payer.

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Prescribing:

Telehealth technologies, where prescribing medications and ophthalmic materials may be contemplated, must implement measures to uphold patient safety in the absence of traditional physical examination. Such measures should guarantee that the identity of the patient and provider is clearly established and that detailed documentation for the clinical evaluation and resulting prescription is both enforced and independently kept. Measures to assure informed, accurate, and error prevention prescribing practices (e.g. integration with e-Prescription systems) are encouraged.

Prescribing medications, in-person or via telehealth, is at the professional discretion of the optometrist, based on licensure. The indication, appropriateness, and safety considerations for each telehealth visit prescription must be evaluated by the optometrist in accordance with current standards of practice and consequently carry the same professional accountability as prescriptions delivered during an encounter in person. However, where such measures are upheld, and the appropriate clinical consideration is carried out and documented, optometrists may exercise their judgment and prescribe medications as part of telehealth encounters.

All prescriptions written by an optometrist must meet the specific requirements of the state that issued the license to practice.

Section Five. Parity of Professional and Ethical Standards

Optometrists are encouraged to comply with nationally recognized health online service standards and codes of ethics, such as those promulgated by the American Optometric Association Standards of Professional Conduct. There should be parity of ethical and professional standards applied to all aspects of an optometrist's practice.

An optometrist's professional discretion as to the diagnoses, scope of care, or treatment should not be limited or influenced by non-clinical considerations of telehealth technologies, and an optometrist's remuneration or treatment recommendations should not be materially based on the delivery of patient-desired outcomes (i.e. a prescription or referral) or the utilization of telehealth technologies.

MODEL POLICY FOR THE APPROPRIATE USE OF TELEMEDICINE TECHNOLOGIES IN THE PRACTICE OF OPTOMETRY

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MODEL POLICY FOR THE APPROPRIATE USE OF TELEMEDICINE
TECHNOLOGIES IN THE PRACTICE OF OPTOMETRY

LIST ARBO's CONTEMPORARY ISSUES COMMITTEE HERE

DRAFT