



MEETING MATERIALS

AGENDA & NOTICE OF PUBLIC MEETING

The Nevada State Board of Optometry will hold a **telephonic** meeting
Thursday, May 19, 2020, at 12 Noon

The public is invited to attend telephonically, dial **(712) 451-0223**, Access code: **292304**,
AGENDA

TEAL indicates that meeting materials are available, and

GREEN indicates possible discussion if a Board member wishes to bring it up.

***INDICATES ACTION MAY BE TAKEN.**

1. Welcome, Introductions and Public Comment.
2. Call to Order, Roll Call.
3. ***For Possible Action.** Consideration and approval of the minutes of the March 19, 2020 and January 21, 2020 Optometry Board meetings.

A. Minutes of March 19, 2020

B. Minutes of January 21, 2020

4. *** For Possible Action.** Consideration whether Just and Sufficient Cause exists to move certain Complaints forward for investigation and hearing. The Executive Director seeks assistance with:

A. Complaint 20-10 – NRS 636.295 8. unethical or unprofessional conduct in the practice of optometry

B. Complaint 20-11 - NRS 636.295 8. unethical or unprofessional conduct in the practice of optometry

5. ***For Possible Action.** Consideration whether the Board wishes to undertake temporary regulations or other actions to provide protection or direction to licensees during the COVID-19

pandemic, including modification to CE, among other topics.

A. COPE revisions re: online classes

6. ***For Possible Action. Executive Director's Report and Request for Action**

- A. Request for ratification of temporary waiver to **fictitious name fees** for good cause, including possible refunds.
- B. Request for guidance regarding the **role of the Board in responding to State or National emergencies** – information resource, offeror of recommendations or policy maker?
- C. Report to Board regarding **staff working remotely** during COVID-19 pandemic – strengths and weaknesses of our systems.
- D. Request for Board discussion of **next fiscal year goals, objectives , programs and activities** to be considered when proposing year-end budget report and proposed budget plan for 2020-2021.

a few ideas **1. Legislative, regulatory or policy changes affecting budget?**

2. Staff configuration changes, reductions, enhancements?

3. Physical facilities and systems – considering 5-year lease?

4. Other topics? Travel, conference attendance, training, lobbyist?

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

Remaining FY 2019-2020 meeting scheduled for June 16, 2020.

Proposed FY 2020-2021 Regular meeting schedule Tuesdays at Noon by telephone:

August 11, October 13, December 15, 2020, February 9, April 13, June 8, 2021

Additional telephone and in-person “special” meetings may be scheduled as needed.

Legislative Session begins February 1, 2021.

8. **Public Comment.**

9. ***For Possible Action.** Adjournment.

* * * *

Proposed Minutes - March 19. 2020

Proposed Minutes - January 21, 2020

COMPLAINT 20-10

Complaints Form : Entry # 6549**Complainant(s)****Mailing Address****Daytime Phone**[com](#)**Optometrist/Subject of Investigation/ Respondent**

OD

Address**City**

Las Vegas

Phone

(

2020

What law(s) in NRS Chapter 636 or NAC 636, or others, do you believe were violated?

There has been a pattern of unprofessional behavior among Las Vegas ODs and another pattern of delay in payment to parties owed.

Summary of Issues: (Please attach additional pages as needed and a copy of any evidence supporting your claims)

Labor dispute. Pattern of past unprofessionalism and delay in payment.

Did you contact the Optometrist or the office they practice at regarding this complaint?

Yes

Did the Optometrist or the office respond?

Yes his lawyer is requiring me to sign documents before he will pay me the monies I am owed.

Complaints Form : Entry # 6549**Were there any witnesses**

Helen Knisley OD 7023218536
Visionworks Rainbow Blvd LV NV

What would you consider a satisfactory resolution to this Complaint?

To be paid the monies owed for my optometric services provided March 3,4,5,6 2020 totaling \$1750.

Name, address, and phone number of any consulting or subsequent Doctor treating the issue

N/a

If a formal charge is filed as a result of this Complaint, are you willing to testify under oath at a public hearing?

Yes.

I,

- By submitting this information and checking this box, I affirm that each document is complete and correct and that all information contained in this submission is true under the pains and penalties of perjury and the requirements of NRS Chapter 636 and NAC Chapter 636 and Nevada law generally. I also acknowledge that if I have directed or authorized a person to complete or submit this information on my behalf, I, the Complainant, am fully responsible for the content of the submission.

Name**Date**

03/26/2020

Comments

Supporting documentation sent via email to Caren Jenkins Esq.

- I have read all questions, answers and statements and know the contents thereof. I hereby certify, under penalty of perjury, that the information furnished in this Complaint is true, accurate and correct.

Notes**Admin Notification (ID: 586a04c69d269)**

added March 26, 2020 at 1:03 pm

WordPress successfully passed the notification email to the sending server.

**ED Notification (ID: 5b044f6b33c48)**

added March 26, 2020 at 1:03 pm

WordPress successfully passed the notification email to the sending server.



D

Hi good morning. Can you please send the money to my checking account with the numbers I provided again last night? It would be greatly appreciated.

6:25 AM

I am happy to do that, but It may be faster if you are able to swing by and get a check. If not let me know so i can try and get that done prior to starting clinic today

7:50 AM

D

No I can't. Please deposit money

8:20 AM

Okay.

8:22 AM

D

Hi I know you're busy





D

Hi I know you're busy but before it gets too late for patients to be informed, I need you to be clear about me not seeing patients on eastern ave 3/11 or 3/13. Please let me know you have received this message.

9:32 AM

You should of received payment for funds . I did it through your phone # so it was immediate (i covered the %45 fee) . Using the normal bank account transfer was gonna take 2 business Days so in the future can use that one .

9:48 AM

I am hoping you will





I am hoping you will reconsoder seeing patients this week. This is very little notice and will impact the clinic financially as it is all booked already. I spoke ro accountants and we can have check for last week for you friday .

9:50 AM

D

I got the message from PayPal. Thank you. I have a proposition for you regarding this week. I'd like a check Wednesday at end of day for \$1750 for 3/3, 3/4, 3/5, and 3/6. Friday at end of day I'd like a check for \$1000 for my work 3/10 and





Sorry I missed your call. I won't be able to talk on phone for a while so please text me your thoughts so we can make a decision.

1:26 PM

I really need to understand your committment moving forward. I will adjust schedule to cover you tomorrow and why dont we plan to meet thursday to discuss things , i will keep friday open for you. I think not having things laid out understanding of each others expectations has led to this situation

1:57 PM



View all





D

I am looking for trust/
reliability as well.
I don't believe you
were 100% honest
about the events that
happened in last seven
days. The over looked /
disappearing checking
data. Your ambivalence
toward my receiving
the money. The phone
you didn't have with you
but were responding to
regarding visi

[View all](#)

2:10 PM

Wow. Okay. I think why i
did not see checkng info
was you sent it with all
those photo's . Anyway
you have always been
paid and our performance





Me



2:46 PM, Mar 10

Wow. Okay. I think why i did not see checkng info was you sent it with all those photo's . Anyway you have always been paid and our performance had been no different . We have never attmpted anything of bad will toward you. I can tell you that you bailing on patients this week last minute hurt our clinic and it obviously intented so please consider that as well .



Copy text



Share





D

Don't treat your Drs that way and they won't bail. It's very simple.

2:48 PM

D

Honesty goes a long way.

2:52 PM

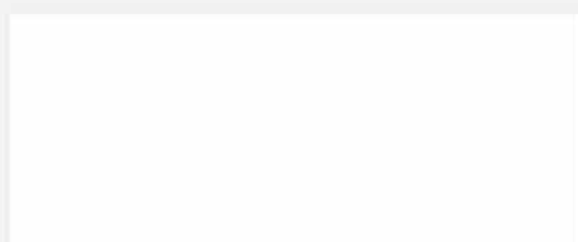
D

And that's pretty lame trying to blame your lack of attention, on my sharing my dry eye educational tools. Own that your mistakes and negligence have "hurt" your clinic this week. Not me.

3:01 PM

Whatever .. good luck to you. I apologized for anything on my end tried to fix any misscomuni-cations and still you have





Whatever .. good luck to you. I apologized for anything on my end tried to fix any misscomunnications and still you have continued to act with disrespect. There are no mistakes or neglect just your expectations that were not set or spelled out ahead of time. As independent contractor that is something you should do when a contract is not in place.



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LOLOL

I AM DISRESPECTING YOU NOW ? By asking to get paid? I'm perfectly willing to work this Wednesday and Friday, as i explained in the above chat thread. I just expect to be paid. Not a lot to ask and definitely within my legal right. You don't want to pay me so I won't work. You are being thoroughly unprofessional. Good luck to you too.



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I cant have a clinic dependent on you fluctuating if you will work or not. As medical director i had to make decision to cover your clinic which i did not want to have to do. I ask you to meet on thursday which, you refused and told me you would also not work friday. Not sure what is going on with you but i am certianly shocked and confused. I paid you as promised and told you would be paid again this week. Not sure what else to do on my end but glad this happend now before i invested more into expanding your work here. I honestly hope things work out for you and wish you all the best. No hard feelings.



Copy text



Share



D

Yes no hard feelings.
I would like to know
when you will mail the
check for last week's
days.

5:29 PM

Friday, March 20, 2020

D

Hi did you mail my
check for \$1750 yet bc
I have received nothing.
Please let me know
before I have to lodge
a complaint against
you to the Nevada
Optometry board (as
my LV OD colleagues
advised I do.)
Once again my address
is

[242 Star Cluster Circle](#)
[Las Vegas NV 89145](#)

7:30



**Me**

8:08 PM, Mar 20



All accounts payable were frozen due to covid 19 business shutdown. I am meeting with our board on Monday as there was incomplete work, billing and documentation from your days that we are reviewing. Also you are an independent contractor / vendor so there is no set pay date. I will remind you that you did sign a confidentiality agreement if you are speaking negatively to our colleagues that would be a breach. You abandoned our business without warning which was very damaging as we lost patients and it had negative consequences. I will be in touch next week after the board meets.



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Despite what you think i have signed I am completely within my rights to troubleshoot labor issues with my colleagues, according to the Nevada legal counsel I was forced to obtain. There has been a two month DOCUMENTED ongoing inquiry as to whether you have been paying me incorrectly. It started by politely asking for check numbers in February (Which you still never gave me)

My patience ended with your blatant disregard to my getting properly paid with a series of lies and brush offs. There was a problem with you paying me correctly way before corona. In my 21 years of independent contracting have I NEVER had a problem getting paid. Most ODs I know are respectful and honest.



Copy text



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D

Early February this was going on

"Forgot" to pay me was being tactful.

8:40 PM

D

So I waited 30 for you to rectify the situation and only after pulling teeth did I get you to deposit the \$1500 back pay.

8:43 PM

D

I promise you I won't stop until I am paid the money you owe me.

9:06 PM

Will be in touch next week. You will of course be paid any moneys owed. Are world is upside down and people





Will be in touch next week. You will of course be paid any moneys owed. Are world is upside down and people are dyying. i really dont need you threatening me at this time. Have a good night

9:30 PM



Yes and I don't need you withholding money

9:32 PM

Our business never has done that . I took time and sent you the log of all the payments which were all desposited and cleared our account. On our end there was never any confusion in our accounting as we provided



< Me
9:44 PM, Mar 20



(No subject)

Our business never has done that . I took time and sent you the log of all the payments which were all desposited and cleared our account. On our end there was never any confusion in our accounting as we provided all documenation. You have have always been paid within 2 weeks of any consulting services provided which is how our accounting system is set up to pay vendors. I am sorry that you did not clarify your expectations prior to committing to provide services to our office. You made several assumptions and i am trying to find solutions to assit you and hence why i tried to have a in person meeting to discuss and dispel assumptions,. You aggressively declined the meeting then abondoned your commitrments for the week. I also attempted to call you and you declined my call. I have been nothing but honest with you, but you continue to attack my character and my professionaliam. I have a very busy schedule and you have not made any attempts to have any meetings to resolve issues.



Copy text



Share





D

I don't work for people who don't pay me and lie about it. There's a paper trail.

9:45 PM

D

I did not take your call because I wanted it documented

9:47 PM

D

Just deposit the money into my account which I have given you numerous times. Don't make up pretenses about being the medical director and frozen accts payable.

If it's not in my Acct by tues I'm going to start the formal complaint process. NV optometry board, labor board, and eventually small clai



IDEAL BUSINESS PARTNERS

ATTORNEYS AT LAW

552 East Charleston Boulevard
Las Vegas, Nevada 89104
p. (702) 852-6601 | f. (702) 852-6614

Glenn H. Truitt, Esq.*

Managing Partner

Movses H. Shakarian, Esq.^σ

Casey C. Decker, Esq.^σ

Jeffery T. Cooper, Esq.^Δ

* Licensed in CA and NV

σ Licensed in CA

Δ Licensed in DC and MD

March 24, 2020

VIA ELECTRONIC MAIL (antoniasici@gmail.com)

Dr.

RE: TERMINATION OF INDEPENDENT CONTRACTOR AGREEMENT

Dear Dr. :

Please be advised that this office represents , **Professional Corporation** d/b/a , a Nevada professional corporation (“ ”) with respect to its business and corporate affairs, including but not limited to the management of existing contracts. This correspondence is being transmitted to you at Dr. ’s direction, regarding the termination of your independent contracting agreement with . To that end, if you are represented by counsel in the instant matter, please forward this correspondence to them, and provide us with contact information so that we might properly comport with Nevada Rule of Professional Conduct Rule 4.2. Further, we appreciate you directing all future correspondence in this matter to our attention.

NOTE: We are informed that you stated to Dr. via text message on March 20, 2020 that you “obtained” legal counsel for this dispute, but no further identifying information was provided, so no presumptions were made regarding whether you are represented in this matter.

Independent Contracting Agreement

We note that you have expressed some apparent confusion as to the nature of your engagement with , including the misplaced notion that *employed* you. They did not. Nevada law explicitly deals with the matter of whether or not an individual is an employee or an independent contractor in Nevada Revised Statute § 608.0155, which provides in relevant part:

NRS 608.0155 Persons presumed to be independent contractor.

1. Except as otherwise provided in subsection 2, for the purposes of this chapter, a person is conclusively presumed to be an independent contractor if:

(a) Unless the person is a foreign national who is legally present in the United States, the person possesses or has applied for an employer identification number or social security number or has filed an income tax return for a business or earnings from self-employment with the Internal Revenue Service in the previous year;

(b) The person is required by the contract with the principal to hold any necessary state business license or local business license and to maintain any necessary occupational license, insurance or bonding in order to operate in this State; and

(c) The person satisfies three or more of the following criteria:

(1) Notwithstanding the exercise of any control necessary to comply with any statutory, regulatory or contractual obligations, the person has control and discretion over the means and manner of the performance of any work and the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the principal in the contract.

(2) Except for an agreement with the principal relating to the completion schedule, range of work hours or, if the work contracted for is entertainment, the time such entertainment is to be presented, the person has control over the time the work is performed.

(3) The person is not required to work exclusively for one principal unless:

(I) A law, regulation or ordinance prohibits the person from providing services to more than one principal; or

(II) The person has entered into a written contract to provide services to only one principal for a limited period.

(4) The person is free to hire employees to assist with the work.

(5) The person contributes a substantial investment of capital in the business of the person, including, without limitation, the:

(I) Purchase or lease of ordinary tools, material and equipment regardless of source;

(II) Obtaining of a license or other permission from the principal to access any work space of the principal to perform the work for which the person was engaged; and

(III) Lease of any work space from the principal required to perform the work for which the person was engaged.

NRS § 608.0155 provides a “conclusive presumption” that an individual is an independent contractor provided they meet *all* of the criteria provided therein. In the instant matter, we are informed and therefore believe that you have a social security number, and that you were required by to be an Optometric Doctor, tolling subparts 1.(a) and 1.(b) of the statute. We are further informed that you have control over the “means or manner by which [your] work is performed” and that “the result of the work, rather than the means or manner by which the work is performed, is the primary element” pursuant to which you are paid. This results from the fact that were engaged to see optometric patients during a half day or full day of appointments, and you were paid for seeing those patients during their appointments. Additionally, you retained control over what days and times you wanted to see patients, and you were not required to *only* work for (as understood you were performing similar professional services for other optometric practices). With the elements necessary to obtain a conclusive presumption, you are invited to claim to the contrary, but you are unlikely to prevail with any claim that you were “employed” by .

Further, as I’m certain you’re aware, a written agreement is not necessary for the formation of a binding legal contract in the State of Nevada. While the terms of an “express” (i.e. written) contract are stated

in the words thereof, the terms of an “implied” (e.g. verbal) contract are “manifested by conduct.”¹ We are informed, and therefore believe, that you did *not* execute a written agreement with [redacted] with respect to your work on behalf of [redacted]. As a result, we turn to the conduct of you and [redacted] during this period to determine the terms of the agreement.

Terms

As for the terms of your agreement with [redacted], they were quite simple. It was agreed that you would work approximately once per week, at your direction, and be paid in either half-day or full-day increments, with payment for a half-day being TWO HUNDRED FIFTY DOLLARS (\$250) and for a full day being FIVE HUNDRED DOLLARS (\$500). As I’m certain you’re aware, there were no other terms set at the time the agreement was made.

The additional terms of your payment are set “by conduct” including the terms of payment.

According to our records the following payments were made:

Date of Work	Payment Amount	Payment Date	Check Clearance Date
December 18, 2019 ²	\$500	January 10, 2020	January 13, 2020
January 10, 2020 ³	\$750	January 27, 2020	January 28, 2020
January 17, 2020			
January 24, 2020			
January 31, 2020	\$750	February 7, 2020	February 7, 2020
February 7, 2020			
February 14, 2020			
February 21, 2020	\$1,500	March 9, 2020	
February 28, 2020			
March 4, 2020			
March 5, 2020	\$1,500		
March 6, 2020			

In each of these instances your payment date was *after* your work performance, which advises that your agreement was to a payment in arrears, not in advance. Further, the payment terms include periods of 23, 17, 14, 12 and 24 days, respectively. The maximum current arrearage for your work is *twenty (20) days*, which wouldn’t even qualify as the *second* longest term of your agreement with [redacted].

We note, additionally, that ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) remains outstanding from these work assignments (the “Outstanding Payment”).

We are advised that you stated to Dr. [redacted] via text message, on March 20, 2020 that “There has been a two month DOCUMENTED ongoing inquiry as to whether [redacted] has] been paying [you] incorrectly.” We would appreciate the opportunity to see a copy of your documentation, if you have a dispute with the foregoing accounting.

¹ See *Smith v. Recrion Corp.*, 91 Nev. 666, 541 P.2d 663 (Nev. 1975)

² Trial/Training Day

³ Start Date

Dr.
March 24, 2020
Page 4 of 4

We are further advised of a training period in which you participated over which there was some dispute regarding your entitlement to payment in the amount of TWO HUNDRED FIFTY DOLLARS (\$250) (the "Disputed Payment")

Proposed Settlement

We have reviewed the balance of your recent correspondence with Dr. _____ and understand your allegations as you have made them. We note that a complaint to the Nevada State Board of Optometry includes your specific allegations against provisions of either Nevada Revised Statutes ("NRS") Chapter 639 or the Nevada Annotated Code ("NAC") Chapter 639. Our review of the facts and allegations fails to give rise to a single violation of which we are aware.

We believe that a dispute in contract would determine that you were, in fact, an independent contractor and the terms of your payment were set by the course of conduct between you wherein you accepted payment at intervals up to twenty four (24) days following your completion of work. The current interval from your earliest uncompensated performance is materially shorter.

However, our client prefers to settle this matter without the need for expansive adversarial action which will ultimately benefit no one other than the attorneys (though we take no offense). In light of this, we have been authorized to propose the following:

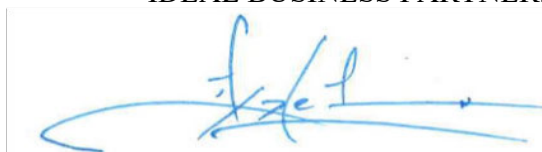
- **Settlement Payment.** ONE THOUSAND SEVEN HUNDRED FIFTY DOLLARS (\$1,750), payable within three (3) days of execution of the Mutual Settlement and Release Agreement;
- **Mutual Settlement and Release Agreement.** A copy of this proposed agreement is enclosed herewith.

Following the mutual execution of the foregoing agreement, my client will arrange for payment to be made directly into your account information as it is on file on the terms set forth, above.

We look forward to your reply.

Sincerely,

IDEAL BUSINESS PARTNERS



GLENN H. TRUITT, ESQ.

Cc: Dr.

Enclosure

MUTUAL SETTLEMENT AND RELEASE AGREEMENT

This Mutual Settlement and Release Agreement (the "Agreement") is made and entered into as of _____ (the "Effective Date"), by and between **Dr. _____**, **Professional Corporation** d/b/a _____, a Nevada professional corporation ("_____"), and **Dr. _____**, an individual ("Dr. _____"). _____ and DR. _____ are sometimes hereinafter, collectively, referred to as the "Parties" and each of them, in the singular, as a "Party".

WHEREAS, On January 10, 2020, _____ and DR. _____ entered into a verbal independent contracting agreement, pursuant to which DR. _____ would provide professional services to _____ (the "IC Agreement");

WHEREAS, On March 10, 2020, DR. _____ provided correspondence to terminating the Agreement, pursuant to the terms of which there remains an outstanding balance due to DR. _____ thereunder in an amount equal to ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500) (the "Outstanding Balance");

WHEREAS, the Parties dispute the payments attendant to the IC Agreement, including a disputed payment in the amount of TWO HUNDRED FIFTY DOLLARS (\$250) (the "Disputed Balance");

WHEREAS, the Parties deem it in their best interests to enter into this Agreement to avoid any further disagreement, uncertainties, trouble, risk, and the expense and risk of litigation.

NOW, THEREFORE, in consideration of the promises, undertakings, payments and releases stated herein, the sufficiency of which consideration is hereby acknowledged; the Parties agree, each with the other, as follows:

1. **Settlement Payment.** As an essential covenant and condition to this Agreement, within three (3) days of the execution hereof, _____ shall make a payment to Dr. _____ in amount equal to the Outstanding Balance *and* the Disputed Balance (the "Settlement Payment").

2. **Release of All Claims against _____** Upon the successful negotiation and execution of this Agreement, DR. _____ in consideration therefor, for itself and its successors and assigns, hereby release and discharge _____ and its affiliates, parents, subsidiaries, employees, officers, directors, managers, members, successors, assigns, and attorneys from any and all Claims (as defined hereinafter), causes of action, damages, personal or economic injuries, rights or liabilities whatsoever; including, attorney's fees, costs and litigation expenses, whether grounded in contract, tort, equity or regulatory violation which DR. _____ may have against _____ that in any way relates to the IC Agreement.

The term "Claims" is intended to be broadly and comprehensively defined as including any and all manner of civil or resulting fault or liability whatsoever, whether or not presently asserted, and whether predating this instrument or arising or discovered in the future, based upon, in connection with, or arising out of _____'s business dealings and the IC Agreement, including claims that are not accrued or suspected to exist which if known would have materially affected the decision to settle the dispute that is the subject of this Agreement. The Parties acknowledge that (i) settlement

has been negotiated and this Agreement is being executed with conscious appreciation that unknown, unanticipated and unsuspected Claims are being released, and (ii) the decision to settle may be based upon incomplete or inaccurate information, the risk of which is being expressly assumed.

3. **Release of All Claims against DR.** . Upon the successful negotiation and execution of this Agreement, including but not limited to the completion of the Settlement Payment, in consideration therefor, for itself and its successors and assigns, hereby releases and discharges DR. and its affiliates, parents, subsidiaries, employees, officers, directors, managers, members, successors, assigns, and attorneys, from any and all Claims, causes of action, damages, personal or economic injuries, rights or liabilities whatsoever; including, attorney's fees, costs and litigation expenses, whether grounded in contract, tort, equity or regulatory violation which may have against DR. that in anyway relates to the IC Agreement.

The term "Claims" is intended to be broadly and comprehensively defined as including any and all manner of civil or resulting fault or liability whatsoever, whether or not presently asserted, and whether predating this instrument or arising or discovered in the future, based upon, in connection with, or arising out of DR. 's business dealings and the IC Agreement, including claims that are not accrued or suspected to exist which if known would have materially affected the decision to settle the dispute that is the subject of this Agreement. The Parties acknowledge that (i) settlement has been negotiated and this Agreement is being executed with conscious appreciation that unknown, unanticipated and unsuspected Claims are being released, and (ii) the decision to settle may be based upon incomplete or inaccurate information, the risk of which is being expressly assumed.

4. **No Admission of Liability.** The Parties each acknowledge and agree that the matters set forth in this Agreement constitute the settlement and compromise of disputed claims, and that this Agreement is not an admission or evidence of liability by any of them regarding any fault or claim.

5. **Execution in Counterparts.** This Agreement shall not be binding on either Party until signed and delivered by all Parties; provided, however, it may be executed in one or more counterparts and delivered by facsimile or email, and each such counterpart, upon execution and delivery, shall be deemed a complete original, binding the Party subscribed thereto upon execution by all Parties to this Agreement. Such counterparts when so executed shall together constitute the final Agreement. Photocopies and/or facsimile and/or email transmissions of original signatures shall be considered in all respects equivalent to original signatures. On the date of execution of this Agreement, absent all Parties being physically present for the execution of this document, all Parties shall provide notice of their execution of this Agreement to the other Party by sending or arranging to be sent an e-mail attaching a copy of the signed Agreement to the email address of such Party, or such Party's representative.

6. **Binding Effect.** The Parties represent and warrant that they are a Party hereto or are authorized to sign this Agreement on behalf of such Party and that they have the full power and authority to bind such Party to each and every provision of this Agreement. This Agreement

shall be binding upon and inure to the benefit of the undersigned Parties and their respective successors and assigns.

7. **Choice of Law/Submission to Jurisdiction.** This Agreement shall be governed by and shall be construed, interpreted, and enforced in accordance with the laws of the State of Nevada. The Parties hereby submit to the exclusive jurisdiction of the Eighth Judicial District Court in Las Vegas, Clark County, Nevada, for any dispute arising under or in connection with the Agreement or related to any matter which is subject of the Agreement.

8. **Entire Agreement and Amendments.** This Agreement constitutes the entire agreement and understanding between the Parties concerning the matters set forth herein. This Agreement may not be amended or modified except by another written instrument signed by the Parties, or by their respective authorized attorney(s) or other representative(s).

9. **No Prior Transfer of Claims.** Each Party warrants and represents that such Party has not assigned, sold, or otherwise transferred or disposed of, and will not assign, sell or otherwise transfer or dispose of, any interest in the claims settled and/or released pursuant to this Agreement.

10. **Reasonable Cooperation.** The Parties agree to cooperate in good faith to effectuate all the terms and conditions of this Agreement, including doing or causing their agents and attorneys to do whatever is reasonably necessary to effectuate the signing, delivery, execution, filing, recording, and entry of any documents necessary to perform the terms of this Agreement.

11. **Advice of Counsel.** The Parties hereby acknowledge that each Party has had the opportunity, and option, at their discretion to consult with and obtain the advice of counsel prior to executing this Agreement, and that this Agreement has been explained to that Party by his, her or its counsel. Furthermore, the Parties agree, after consultation with their attorneys, or the voluntary and knowing waiver of such option, that reasonable and prudent parties in their position would enter into this Agreement to avoid the risks and uncertainty of any further dispute and/or litigation.

12. **Preparation of Agreement.** The Parties represent and warrant that they have had the unfettered opportunity to fully consult with an attorney of their own choice. This Agreement shall, therefore, be construed without regard to the authorship of the language and without any presumption or interpretation or construction in favor of any person, entity or Party.

13. **Costs and Expenses.** All costs and expenses incurred in closing and carrying out the transactions contemplated by this Agreement shall be borne by the respective Party incurring such cost and expenses.

14. **Survival.** All representations and warranties made herein shall continue and survive the execution of this Agreement and remain binding upon the person or persons making the representation or warranty, even after this Agreement is executed.

15. **Severability.** **This Agreement is a binding agreement and is intended as a full and final settlement of this dispute.** In the event that any provision of this Agreement is declared

invalid or deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining portions of this Agreement.

16. **Nondisclosure.** If any Parties to this Agreement perform in accordance with the agreed upon terms and conditions herein, the terms and conditions of this Agreement, and the Agreement itself shall remain confidential and shall not be construed as an admission of liability by any Party.

17. **Mutual Non-Disparagement.** DR. _____ and _____ mutually agree to forbear from making, causing to be made, publishing, ratifying or endorsing any and all disparaging remarks, derogatory statements or comments made to any party with respect to either of them or their attorneys. Further, the Parties hereto agree to forbear from making any public or non-confidential statement with respect to any claim or complaint made against either Party or their attorneys without the mutual consent of each of them, to be given in advance of any such statement.

The Parties agree and acknowledge that this non-disparagement provision is a material term of this Agreement, the absence of which would have resulted in all Parties refusing to enter into this Agreement.

18. **Attorney's Fees.** If any lawsuit is brought to enforce any term or provision of this Agreement, or in connection with any dispute arising from or relating to this Agreement or to the alleged breach of this Agreement, the prevailing party shall be entitled to recover its reasonable and necessary attorney's fees and costs incurred in connection with any such lawsuit or proceeding throughout trial and upon appeal.

IN WITNESS WHEREOF, this Agreement is entered into as of the Effective Date by the Parties hereto:

Dr. _____, Professional
Corporation d/b/a _____
_____, a Nevada professional corporation

Dr.

_____, President

Dr.

COMPLAINT 20-11

NEVADA STATE BOARD OF OPTOMETRY



CHEN K. YOUNG, O.D.
Board President

MARIAH L. SMITH, O.D.
Board Vice President

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

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

JEFFREY AUSTIN, O.D.
Board Member

DREW JOHNSON
Public Board Member

COMPLAINT AGAINST A NEVADA LICENSED OPTOMETRIST

Complainant(s): _____

Mailing Address: _____

Email: _____

Optometrist/Subject of Investigation/
Respondent: _____, O.D.

Address: _____

City: _____

Phone: _____

D/B/A: _____, O.D.

Date(s) of Incident: 9/13/19, 10/22/19

11/5/19

You must state the facts underlying your complaint with particularity and offer a relevant Nevada Optometry statute or regulation that you feel has been violated. These laws may be found at www.nvoptometry.org. You must also provide a minimum level of credible evidence to support your claims, or they will be rejected as having failed to meet the minimal standard of proof.

What law(s) in NRS Chapter 636 or NAC 636, or others, do you believe were violated? _____

NRS 636.295 Unethical or unprofessional conduct
and inaccurate diagnosis and prescription

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A. SUMMARY OF ISSUES INCLUDING THE SPECIFIC CONDUCT OF THE LICENSEE:

1. Initial eye exam by Dr. [redacted] Diagnosis:
 - a. Left eye not as weak as prior exam in January 2018.
 - b. Cataracts both eyes, cataract surgery not required for at least a year or longer. No mention of previously diagnoses of branch retinal occlusion in right eye.
 - c. Given prescription for new glasses. Glasses ordered. Paid 1/2 of cost of exam and glasses. Not billed to insurance. Paid \$376.00, check #133.
2. 9/23/19 picked up new glasses. Paid remaining balance of \$376.00, check #147.
 - a. Advised assistant glasses were blurry when fitted for them. Could not see clearly. Advised to try for two weeks to adjust to prescription change. Tried for approximately three weeks. Vision impaired considerably. Distance vision was very bad. Had to revert to using old glasses to drive.

B. HAVE YOU CONTACTED THE LICENSEE REGARDING THIS COMPLAINT? IF SO, PLEASE STATE THE DATE AND TIME AND DESCRIBE:

1. YES. Called Dr. [redacted] office approximately October 10, 2019 for another visit. Staff advised me doctor would re-examine my eyes. I explained new glasses were not effective.

C. DID LICENSEE RESPOND? IF SO, DESCRIBE RESPONSE:

1. Responded but did not complete transaction as he stated he would. See below.
2. 10/20/19 Office Visit. Doctor gave a cursory look at my eyes thru his equipment. He advised me that my problem was cataracts. The doctor's attitude and manner was very unprofessional. He clearly stated he would refund my money if I was not satisfied with the new glasses and his service. I tried wearing the new glasses again for approximately ten days. My eyesight did not improve.
3. 11/5/19 I called Dr. [redacted] office again. Advised staff that I had lost confidence in the doctor and to please have him return my call. Approximately 20 minutes later the doctor returned my call. Immediately he started almost yelling at me. He was belligerent and told me he was incensed that I had told staff that I had lost confidence in him. I apologized to him. He was very condescending. He stated again, as he had previously on 10/20/19, "I told you I would refund your money and I will". He then hung up on me. I could not believe his demeaning attitude. I am 81 years old and have never been treated like that by a medical professional.

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Nevada State Board of Optometry

and asked if it was an accurate prescription for my eye conditions.
Dr. Faulkner stated it was NOT. He stated it was inaccurate.

- b. I requested Dr. Faulkner's help in finding a doctor in Carson City. Dr Faulkner referred me to Dr. Wolff. He stated he did not know Dr. Wolff but that his credentials and background looked exemplary. He spent approximately 20 minutes on line checking doctors in Carson City for an appropriate referral.
 - c. Cost of this exam was charged to Medicare and AARP, which I had tried to avoid.
2. 1/3/20 Examined by Dr. Wolff. Dr Wolff, his associate Dr. Gibbons and the entire staff at the Eye Center and Surgery Center are incredibly patient oriented, knowledgeable, professional, and caring.
 - a. Diagnosis: (1) Cataracts both eyes. Prior to getting new glasses. (2) Referred to Nevada Retina Associates (Dr. Elena Geraymovch, M.D., FACS, for exam of right eye for branch retinal occlusion, originally diagnosed in 2002.
 - b. The occlusion was swollen and bleeding. Cataract surgery could not be performed on right eye until occlusion closed up.
3. 1/17/20 Dr. Gereymovch examined right eye and injected eye to stop bleeding and swelling. Doctor Gereymovch and staff, professional, explained procedure and patient oriented. 2/12/20 follow up right eye – occlusion closed at this time.
4. 1/21/20 Dr. Wolff performed cataract surgery on left eye. Post op exams performed by Dr. Gibbons. Results: Incredible. I had not had distance vision like this in many years. Successful surgery. Left eye vision improved tremendously.
5. 2/4/20 Dr. Wolff performed cataract surgery on right eye. Results: Again fantastic. Post op exam performed by Dr. Gibbons on 2/5/20.

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6. Upcoming eye appointments:

- a. 3/4/20 – Dr. Gibbons – Post op exams of right and left eye.
- b. 3/4/20 – Eye exam and refraction by Dr. Katrina Van Patten, O.D.
- c. 3/27/20 – Follow up on right eye occlusion, Dr. Geraymovch, M.D.

H. IF A FORMAL CHARGE IS FILED AS A RESULT OF THIS COMPLAINT, ARE YOU WILLING TO TESTIFY UNDER OATH AT A PUBLIC HEARING?

- 1. Absolutely. Please help me resolve this matter without further time and stress on me and subsequent legal action. Thank you.

I Authorize the Nevada State Board of optometry to provide a copy of this complaint to the subject and to obtain a copy of my patient records in the optometrist's possession.

Sonja A. Blow

Signature of Patient

Attachments –

- a) Billing statement of Dr. 9/3/19.
- b) Prescription of eye exam 9/30/18. Dr Byron Faulkner.
- c) Prescription of eye exam 9/3/19. Dr
- d) Letter mailed to Dr. November 19, 2019.

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I agree to pay for all services and materials rendered to me by

Eyes

Patient Signature

Patient ID 139390	Last Name Blow	First Name Sonja	Account Responsibility Blow, Sonja	Fee Slip # 125370
-----------------------------	--------------------------	----------------------------	--	-----------------------------

Superbill Description	Provider	Service Date 9/3/2019	Transaction Date 9/3/2019
-----------------------	----------	---------------------------------	-------------------------------------

Referring Physician (Last, First)	UPIN	Facility Name
-----------------------------------	------	---------------

Diagnosis Codes				Patient Amount Owning (This Bill) 0.00	Next Exam
A	B	C	D		Tax ID Number 880236990
E	F	G	H		Prior Auth. #
I	J	K	L		

Short Cut	Cat	Services & Procedures	ID	CPT Code	Mod	Charge /Units	Units	Patient Discount	Tx	Tax	Patient Owes
92015	1	Refraction	1	92015		35.00	1	0.00	☐	0.00	35.00
92014	1	Comprehensive Exam Est. Pt	1	92014		94.00	1	0.00	☐	0.00	0.00
FR	2	Frame	1	V2020		215.00	1	0.00	☐	0.00	215.00
BF	3p	Bifocal Lenses	1	V2200		139.00	1	0.00	☐	0.00	139.00
POLY	5	Polycarbonate	1	V2784		82.00	1	0.00	☐	0.00	82.00
TRANS	5	Transition	1	V2744		130.00	1	0.00	☐	0.00	130.00
AR			1			151.00	1	0.00	☐	0.00	151.00
									☐		
									☐		
									☐		
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									☐		

Late Fee

Total Charges **752.00**

Initial Payment, Refund or Credit

Entered By	Other Card	Cash	Check	Adjustmt.	Ins. Adj.	Patient Refund	Reverse Adjustmt.	Patient Credit	Pat. Appl. Credit	Payment Note
ADM			376.00							

Attachment (a)

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NEVADA State Board of Optometry

, O.D.

Office (775) 882-3937

Fax (775) 882-4006

Name Sonja Blaw

	Sph	Cyl	Axis	Prism	Base
Distance OD	-0.75	-0.75	85		
OS	-0.75	-1.00	92		

ATTACHMENT

A ~~ADD~~ +2.50

A ~~approve~~ Contact Lenses
Not A ~~approve~~ Contact Lenses X

	B / C	Sph	Cyl	A xis	Dia
Contact OD					
Lenses OS					

Remarks

Date 9.3.19

Exp. Date 9.3.20

20.



**Eye Surgeons
of Springfield, Inc.**

C. Byron Faulkner, M.D.
Judd L. McNaughton, M.D.

ATTACHMENT

130 E. Kingsley • Springfield, Missouri 65804 • 417-887-1965

FOR Sonja Blaw

DATE 1-30-18

ADDRESS

		SPHERICAL	CYLINDRICAL	AXIS	PRISM	BASE
D.V.	O.D.	-1.00	+0.75	020		
	O.S.	-1.75	+0.50	010		
N.V.	O.D.	+2.50				
	O.S.	+2.50				

REMARKS

DR

Byron Faulkner

#GRX

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Attachments (H) + (C)

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November 19, 2019

Dr.

This letter is to confirm our conversation in your office on October 22, 2019 and by phone on November 5, 2019, regarding a refund to me of \$752.00 for glasses I am unable to wear.

You stated on both occasions that a check for the above amount would be mailed to me. As explained to you on both occasions I am unable to wear the new glasses as the prescription is too weak.

I have had to return to wearing my old glasses as my eyesight is much clearer with them.

We discussed an issue of cataracts on my initial visit with you in early September, 2019 and also on my third visit in October, 2019. Your recommendation to me regarding cataracts was different on the above two occasions.

On November 5, 2019, on a phone call from you to me, you stated for a second time that a refund would be mailed to me. To date, I have not received the check.

I hope this is an oversight as I must have my eyes reexamined & new glasses + cataract surgery done with another optometrist.

Please send the check as soon as possible in order that I may proceed with another eye exam.

I will return the glasses you prescribed when I receive my refund.

Thank you -

Sojour Blow
1371 Laughing St Road
Dayton, ND 585403

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Attachment (c)

STATE OF NevadaCOUNTY OF Lyon

I, Sonja A. Blow, being first duly sworn, deposes and states: I have read the foregoing Complaint and know the contents thereof; that the contents are true of my own knowledge, except as to those matters stated upon information and belief, and as to those matters I believe them to be true.

Date: 2/26/2020

Sonja A. Blow
Signature of Complainant

Subscribed and sworn to before me this 26th day of February, 2020.

(Seal)



Maria D. Vega
NOTARY PUBLIC

Please include or describe any additional, documents, items or testimony you have to support the allegations in your Complaint, and mail them with this form to:

NV State Board of Optometry
P.O. Box 1824
Carson City, NV 89702

We must receive your **original** notarized signature above to proceed. Alternatively, an un-notarized Complaint may be submitted via our website at www.nvoptometry.org.

Optometry Complaint Form Page 4

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COPE ON COVID

Caren,

I light of the shutdown and its effect on CE programs, I think we may see more use of webinars and the like for CE credit. It might be a good idea to remind all licensees that courses MUST be COPE approved and if they are COPE approved, they must have a test that is administered by a college of optometry, medicine, etc. We should probably let the NOA know that they should also meet these guidelines for any remote CE that they provide. I'm the education chair for the NOA and I'm pretty sure that the leadership isn't aware of the need for this. I'll be happy to address it with them if you would like me to. Here's the COPE info on "Distance Learning": Just let me know.

Thanks.

Jeff

From COPE:

Distance Learning/Multimedia Policy NOTE:

A course qualifies as Distance Learning/Multimedia if it is presented in any of the following formats where the instructor is not physically present: • Interactive Distance Learning—Examples: Webinar, video conference, teleconference, or other format that allows for immediate interaction and feedback between the audience and the instructor. Once the event has taken place, learners may no longer participate in that activity. • Enduring Distance Learning—Examples: Webcast, podcast, video, journal, website, written or other format that provides one-way content to the audience without immediate interaction with the instructor. There is not just one time on one day to participate in the activity, rather, the participant determines when he/she participates. Courses presented for COPE review under any of the Distance Learning/Multimedia COPE Course Qualification Manual Rev. 2.2017 Page 24 formats must comply with the following requirements: A. Courses must include a post-course test to verify learning. B. Post-course tests and answer keys must be reviewed by an accredited school of optometry, medicine, pharmacy or osteopathy. C. Tests must be in multiple-choice question (MCQ) and should conform to the National Board of Examiners in Optometry's (NBEO) Item Writer's Manual. D. Post Course tests must receive a score of at least 70% or better in order for a certificate of completion to be issued.

Jeffrey Austin, O.D., FAAO, FORS
President, Optometric Retina Society
702-485-5000