

# NEVADA STATE BOARD OF OPTOMETRY



## **NOTICE OF PUBLIC MEETING**

The Nevada State Board of Optometry will hold a Board meeting **via Zoom** on  
**Thursday, July 21, 2022, beginning at 9:00 am**

Click here to join the meeting: Join Zoom Meeting  
[https://us04web.zoom.us/j/2223183085?pwd=8vAUhyGDarmceXtJbdBslGaz\\_C-tG.1](https://us04web.zoom.us/j/2223183085?pwd=8vAUhyGDarmceXtJbdBslGaz_C-tG.1)

Meeting ID: 222 318 3085

Passcode: **TCqKr1**

**The public is invited to attend.**

## **AGENDA**

**NOTE: Items on this agenda may be taken out of order.**

1. Roll Call, **Call to Order**, welcome, introductions.
2. **Public Comment.** No action will be taken at this meeting on any issues presented in Public Comment.
3. **\*For Possible Action.** **Election** of Board President, Vice-President and Financial Officer for FY 2022-23.
4. **\*For Possible Action.** Consideration and approval of the proposed **minutes** of the March 24, 2022 (including its continuation on April 4, 2022) and May 19, 2022, Board meetings, as well as the June 21, 2022, meeting lacking a quorum followed by the Legislative Stakeholders' Meeting. **(materials pp. 5-15)**
5. **\*For Possible Action.** **ARBO Report.** Dr. Stephanie Lee will present relevant information gained from her attendance at the 2022 virtual ARBO meeting.
  - A. Discussions whether OPAC is required to prescribe medicated contact lenses
  - B. CELMO update
  - C. PEPS update
  - D. Telehealth
  - E. Review and adjust the questions on our applications for licensure
  - F. Statutory authority to perform background checks on our licensees
6. **\*For Possible Action.** Discussion of Board Resources and "Best Practices."
  - A. Create a policy to direct the processing of complaints - utilize the Office of the Attorney General to evaluate and determine next steps, including prosecution or dismissal, for any Complaints over which the Executive Director has determined that the Board has jurisdiction and for which an investigation is complete.
  - B. Develop checks and balances for Executive Director's discretion to dismiss complaints for jurisdiction or insufficient evidence
  - C. Implement a more effective system to create, distribute and maintain agendas, meeting dates, meeting materials, etc.

7. **\*For Possible Action.** Executive Director's Reports and requests for direction.
- A. Current Optometry Licensee Census
  - B. Review of application forms and OSLE questions - opportunity for changes
  - C. Licensing Loophole: Do not renew, but allow license to lapse, then submit a new application avoiding requirement for CE reporting, escaping late penalty related to renewal, and obtaining half-price license fee incentive for endorsement candidates. Savings to clever optometrists: cost of CE courses, \$500 late fee and \$375 licensure for 2 years = \$875.
  - D. Request to open reserves account at Chase Bank due to expected merger of CNB and NSB, and to transfer current reserves account to Chase due to an existing reserves account at NSB.
  - E. Update re: Thentia Cloud for Government – licensing and information systems, processing and database development.

8. **\*For Possible Action.** Possible acceptance of stipulation by licensees with deficiencies identified during 2022 renewal who agreed to late fees as authorized by the Board.

9. **\*For Possible Action.** Consideration of complaints presented to licensees with identified deficiencies at 2022 renewal. The following licensees have been notified and given an opportunity to respond to the allegations and were provided a notice of hearing at their email addresses of record. Each has either requested a hearing or failed to respond. ( table on next page and materials to be provided at a later time to Board)

| Name                    | License Number | Date Served | Email response received                                         | Signed Acknowledgment Received | Date Penalty Paid |
|-------------------------|----------------|-------------|-----------------------------------------------------------------|--------------------------------|-------------------|
| Bolenbaker, Jason       | 479            | 6/30/2022   | Responded 6/30/22- he registered the name in 2007. Req. hearing | none                           | none              |
| Catlett, Leslynn        | 297            | 6/8/2022    | None.                                                           | none                           | none              |
| Chang, Troy             | 410            | 6/30/2022   | none                                                            | none                           | none              |
| Cruz, Lawrence          | 958            | 6/7/2022    | none                                                            | none                           | none              |
| Kim, Vanessa            | 403            | 6/30/2022   | 7/1/2022 Requested hearing                                      | none                           | none              |
| Korman, Shana           | 584            | 6/30/2022   | 7/4/2022 Requested hearing                                      | none                           | none              |
| Licina, Tina            | 915            | 6/2/2002    | None. Requested hearing                                         | none                           | none              |
| Ng, Kant                | 503            | 6/30/2022   | Responded 6/30/22 -he registered in 2010. Requested hearing     | none                           | none              |
| Shih, Brian             | 878            | 6/7/2022    | none                                                            | none                           | none              |
| Cady, Lisa              | 259            | 6/8/2022    | 6/13/2022                                                       | None yet                       | 6/13/2022         |
| Celestino, Jessica      | 1091           | 6/2/2022    | 6/3/2022                                                        | 6/3/2022                       | 6/6/2022          |
| Chan, Fanny             | 319            | 6/30/2022   | 6/30/2022                                                       | 07/12/2022                     | 07/12/2022        |
| Davis, Lesa             | 418            | 7/6/2022    | 7/6/2022                                                        | 7/6/2022                       | 7/6/2022          |
| Dimit, Ryan             | 996            | 6/30/2022   | 6/30/2022                                                       | None yet                       | 6/30/2022         |
| Donahue, Jacqueline     | 622            | 6/7/2022    | Responded 6/12/22 - check mailed 6/12 and re-mailed 7/7.        | 6/12/2022                      | None yet          |
| Hemmer, Aaron & Melanie | 511,495        | 7/6/2022    | 7/7/2022                                                        | 7/7/2022                       | 7/7/2022          |
| Hernandez, Gabriel      | 557            | 6/30/2022   | 6/30/2022                                                       | 7/7/2022                       | 7/7/2022          |
| Hillstead, Robert       | 261            | 6/30/2022   | 7/5/2022                                                        | 7/5/2022                       | 7/7/2022          |
| Hsueh, Karen            | 536            | 6/30/2022   | 6/30/2022                                                       | 6/30/2022                      | 6/30/2022         |
| Langr, Kyle             | 1039           | 7/6/2022    | 7/6/2022                                                        | 7/6/2022                       | 7/6/2022          |
| Lee, Julianne           | 1107           | 6/30/2022   | 07/11/2022                                                      | 07/11/2022                     | 07/11/2022        |
| Moore, Timothy          | 811            | 6/30/2022   | 7/6/2022                                                        | 7/6/2022                       | 7/6/2022          |
| Nasser, Brian           | 1054           | 6/2/2022    | 6/6/2022                                                        | 6/6/2022                       | 6/6/2022          |
| Nguyen, Daniel          | 1061           | 6/2/2022    | 6/7/2022                                                        | 6/7/2022                       | 6/7/2022          |
| O'Saurus, Jeanine       | 1116           | 6/8/2022    | 6/10/2022                                                       | 6/10/2022                      | 6/13/2022         |
| Patterson, Laura        | 528            | 6/8/2022    | 6/9/2022                                                        | 6/9/2022                       | 6/9/2022          |
| So, Lillian             | 1069           | 6/2/2022    | 6/6/2022                                                        | 6/6/2022                       | 6/6/2022          |
| Steed, Cory             | 440            | 6/30/2022   | 7/6/2022                                                        | 7/6/2022                       | 7/6/2022          |
| Suk, Dong               | 800            | 6/7/2022    | 6/8/2022                                                        | 6/8/2022                       | 6/7/2022          |
| Tran, Jenny             | 886            | 6/7/2022    | 6/12/2022                                                       | 6/12/2022                      | 6/13/2022         |

**10. \*For Possible Action.** Request for Letter applying of Scope of Optometry to requirements of Athletic Commission and Boxing Commission for examination of participants in Combative Sports, requested by Eric Brooker, O.D.(materials at p. 16-18).

- 11. \*For Possible Action.** Final Consideration and approval of legislative proposals:
- A. Staff required to search the PMP to identify inappropriate prescribing by O.D.s biennially.
  - B. Require supervision of students and residents working in clinical optometry practices (materials p. 19).
  - C. Reduce initial licensing fees for veterans; Expedite process to license military spouses.
  - D. Require Executive Director to offer reasoning to complainant when rejecting a Complaint.
  - E. Make Substitute Optometrist fees more equitable.
  - F. Require owners of optometric entities to form "professional entities" such as PC, PLLC – must be licensed and in good standing to maintain entity status with NV Sec. of State.
  - G. Allow Optometrists to serve as the 'medical director' holding the CLIA waiver under NAC 652.155

- H. Eliminate potential barriers to diversity and inclusion in optometry, including migrants and refugees
  - I. Determine optometric telemedicine scope of practice (**materials provided pp 26-36 - only for ideas-not part of proposal**).
  - J. Add continuing requirement to update Board within 30 days if disciplined by any other jurisdiction after licensure in Nevada, change mailing address, practice location, designated email or primary telephone number.
  - K. Permit 1-year time frame to transfer practice ownership after OD passing
  - L. Authorize technician to operate devices, collect samples under CLIA
  - M. Define the practice of optometry more precisely
  - N. Other topics
- 12. \*For Possible Action.** Delegation of authority to the President of the Nevada State Board of Optometry to represent the Board at the 2023 Legislative Session or any subsequent special sessions called, including without limitation, confirmation of authority to direct staff on matters relating to the Board's proposed bill draft to amend NRS Chapter 636 and statutes and regulations related thereto.
- 13. \*For Possible Action.** Consideration and acceptance of Contracts for Audit and for Lobbying Services.
- 14. \*For Possible Action.** Litigation status regarding Petition for Judicial Review in Case No. 22-04.
- 15. \*For Possible Action.** Fiscal Year Review and Consideration of Proposed Biennial Budget for 2022-2024.
- A. 2021-22 Recap and 2022-23 Proposal (**materials pp. 45-46**)
  - B. July 1, 2022 COLA of 1% provided to State employees generally (**materials pp. 47-48**);
  - C. consideration of compensation enhancement for Board staff.
- 16. Public Comment.** No action will be taken at this meeting on any issues presented in Public Comment.
- 17. \*For Possible Action.** Adjournment.

**FY 2022-2023 Regular meeting schedule**

Thurs. September 8 – Regular Board meeting – Noon – phone or Zoom  
 Thurs. October 13 – Reg. Bd. meeting – Noon – phone or Zoom  
 Thurs. December 8 – Reg. Bd. meeting – Noon – phone or Zoom  
 Thurs. February 23 – 8:30 am **ALL DAY** Bd. Meeting in Las Vegas or by Zoom  
 Thurs. April 20 – Reg. Bd. meeting – Noon – phone or Zoom  
 Thurs. June 22 – 8:30 am **ALL DAY** in Reno or by Zoom

\* \* \* \* \*

❖ The Board is pleased to make reasonable accommodations for any member of the public who has a disability and wishes to attend the meeting. If special arrangements for the meeting are necessary, please notify the Nevada State Board of Optometry, in writing at P.O. Box 1824, Carson City, Nevada 89702; via email at [admin@nvoptometry.org](mailto:admin@nvoptometry.org) or call 775-883-8367 as far in advance as possible.

❖ To request an advance copy of the supporting materials for this meeting, contact [admin@nvoptometry.org](mailto:admin@nvoptometry.org) or call 775-883-8367.

This Notice of Public Meeting and Agenda was posted in compliance with NRS 241.020, before 9:00 a.m. on the third working day before the meeting at the following locations:

- Nevada State Board of Optometry office, Carson City, NV 89705
- Nevada State Board of Optometry website: <https://nvoptometry.org/>
- Nevada Public Notice website: <http://notice.nv.gov>

# NEVADA STATE BOARD OF OPTOMETRY



## **REVISED MINUTES OF LIVE AND TELEPHONIC PUBLIC MEETING**

at the Grant Sawyer State Office Building,  
555 E. Washington Street, Suite 2600/2450, Las Vegas, NV

**March 24, 2022**

and continued April 4, 2022

1. **Call to Order and Public Comment.** President Mariah Smith, O.D. opened the telephonic meeting at 9:41 a.m. and asked for public comment. No public comments were offered.
2. **Roll Call.** President Mariah Smith, O.D., Vice President, Jeff Austin, O.D., Stephanie Lee, O.D., and Drew Johnson were all in attendance. Also present were Executive Director Caren C. Jenkins, Board Counsel Senior Deputy Attorney General, Sophia Long, and Licensing Specialist, Nancy Padilla. Public attendees included NOA Executive Director Terri Ogden, and Spencer Quinton, O.D., among others.
3. **Consideration and approval of the proposed minutes of the January 27, 2022, Board meeting.** All members having had an opportunity to consider the proposed minutes, Mr. Drew Johnson moved, and Jeff Austin, O.D. seconded the motion to adopt the minutes without correction. Unanimous passage.
4. **Request for authority by Executive Director to stipulate to impose certain administrative penalties for violations, particularly those uncovered during 2022 renewal period:**
  - A. Failure to timely change practice address, propose \$100 penalty plus regular \$25 filing fee.
  - B. Failure to timely add a practice location, propose \$200 penalty plus regular \$200 filing fee.
  - C. Failure to timely register Fictitious Business Name, propose \$200 penalty plus regular \$75 filing fee.
  - D. Other violations uncovered at renewal.
  - E. Failure to respond to Board requests for information regarding in the above violations and/or to correct violation within a reasonable time after notice, propose additional

\$500 penalty.

\*At the May 19, 2022, meeting, the Board directed revisions to the already approved minutes of March 24, 2022 to provide more detail regarding changes to Board Policy #6. Those details, accepted by the Board on July 21, 2022, are incorporated as 4. A., B., C., and E above.

Mr. Johnson moved to adopt the proposed stipulated administrative penalties listed and gave authority to the Executive Director to provide notice of the violation to the licensee and impose the penalty if the licensee doesn't remedy the violation within 30 days. Dr. Smith seconded the motion. Unanimous passage.

## **5. Discussion of Potential Changes to Legislation, Regulation and Policy.**

### **A. Legislative proposal 2023 – Discussion of Potential BDR and regulatory changes to optometry laws.**

The following proposed legislative changes were removed from BDR consideration:

- 2-year expiration date for eyeglasses in conjunction with prohibiting opticians' reproduction of glasses without valid Rx. The Dispensing Opticians Board voiced opposition. Public member Drew Johnson would still like to encourage optometrists to write glasses prescriptions with a 2-year expiration within a certain age range and without other health conditions.
- Temporary or provisional license while pending credentialing with insurance. This is an issue for the optometrist and the insurance company. This is not a public safety concern.
- Remove opioid continuing education requirement for renewals. This is a Board of Pharmacy law that we are unlikely to get exempt from.
- Rolling of Continuing Education taken to be accepted for following year's renewal. This is too difficult to track for Licensing Specialist. Need hard dates.
- Technicians refracting: The basis of the discussion was that the technician might be able to do a preliminary refraction with the final examination being performed in-person by the optometrist. No change in statute/regulation language needed.
- Optometrists allowed to be employed by Ophthalmologist: Independent contractor must pay fair market value to ophthalmologist for subletting space. Dr. Austin voiced concern about the autonomy of the optometrist in an employee-employer relationship, and the ability for the Board to follow up with complaints when the optometrist is being directed by the employment of an outside party. It was also discussed that an independent contractor must pay fair market value to ophthalmologist for subletting space.
- Reduced licensing renewal fees for veterans. The favor leaned towards reduced initial licensing fees (see below).
- Altering the language to include subcutaneous injections or be broader to allow for future medication developments: Dr. Austin felt that, given our recent statute overhaul, altering this language would elicit opposition from the Academy of Ophthalmology, and the Board decided to not pursue this at this time. After discussion, it was agreed that nasal sprays would still be permissible with our current language as they are topical to the nasal mucosa.
- Inclusion, diversity, and equity: sponsoring someone who graduated from non-

accredited optometry school to take the NBEO exam. The Board discussed this, and while there is interest in making it more accessible to get a license in the States after having extensive training abroad, we are certainly not the first to receive a request like this. The Board will consult the other state affiliates of ARBO to see if there is any other jurisdiction with alternative paths or ideas. The Board also agreed that students who graduated from an optometry school that was in the process of getting accredited, and the accreditation occurred after the candidate graduated, would still qualify as graduating from an accredited school as the accreditation applies retroactively to those students who were there during the accreditation process.

- Vision insurances limiting access to optical lab. The NOA will be pursuing this.
- Remove post Continuing Education exam requirement: COPE has been changing their guidelines with COVID, and they may continue to change in the future. If COPE decides to not require a post-CE test for non-live CE, then a test might not even be provided. We will hold on making this required by statute.

The following legislative changes were accepted for inclusion in the 2023 legislative BDR:

- Supervision of optometry school students working in clinical practice.
- Reduced initial licensing fees for veterans.
- Executive Director must provide reason to complainant when rejecting a Complaint.
- Make Substitute Optometrist fees more equitable.
- Require Optometrists to conform to Chapter 89.
- Consider Optometrists as 'medical director' holding CLIA waiver under NAC 652.155
- Reduce barriers to diversity/inclusion: expedited process to license military spouses.
- Define Telemedicine scope of practice and guidelines.
- Require Optometrists to report discipline to the Nevada Board after licensure.

#### **B. Proposed revision of Board Policies regarding approved CE, among others.**

Dr. Stephanie Lee made a motion to accept the proposed policy changes so the Board Policies will read as they appear below. Dr. Smith seconded the motion. Motion passed unanimously.

#### **CE PROVIDERS**

The Board reviews providers periodically to verify adherence to established standards and hours for reporting. The Board has established two categories of acceptable and approved continuing education:

- A. Pre-Approved Providers, and
- B. Other Providers.

Each renewal period, before any renewal is granted, the licensee must submit a CE Summary form and a signed or verified Continuing Education Attendance form for each course attended and/or an ARBO OE Tracker Summary for all education hours required for renewal, completed between March 1 of the preceding even-numbered year and February 28 of the renewal even-numbered year.

The OE Tracker validity for COPE coursework will be acceptable, and no certificate is required for COPE courses listed on that Summary. Certificates of attendance are required for any non-COPE courses, and must include, at a minimum, the licensee's name and Nevada license number, the COPE Course number (if

applicable) or an indication of the Pre-approved Provider, name of the presentation, instructor's name, number of credit hours attended, a stamp or signature verifying attendance, and, if it is a non-interactive online course, evidence that the licensee passed a post-course test that may be required with current COPE guidelines ~~with not less than a 70% score~~. Incomplete certificates will not be accepted.

The Board has limited the number of accepted CE hours completed to 10 in a single day.

#### A. PRE-APPROVED PROVIDERS

##### 1. ANY COPE-APPROVED (Council on Optometric Practitioner Education) COURSE.

2. Any CME Category 1 education specifically related to conditions or diseases of the eye or its appendages. Other category 1 CME is **not pre-approved**, except for 2 hours that may be applied only to the 2-hour Nevada opioid education requirements

##### 3. Educational Institutions

All schools and colleges of optometry or ophthalmology that are accredited in the US or Canada, but not their affiliates. (For example, alumni associations are affiliates and are not pre-approved providers). All ophthalmology training programs that are accredited in the US or Canada.

##### 4. State, Regional or National Associations:

Any state or national optometric or ophthalmologic society or association including, but not limited to:

- American Optometric Association and its member state associations
- State affiliated local societies as long as the education is co-sponsored or approved by the state association
- Armed Forces Optometric Association
- American Academy of Optometry
- Optometric Glaucoma Society
- Optometric Retina Society
- Optometric Extension Program Foundation
- College of Optometry and Vision Development
- American Academy of Ophthalmology
- American Society of Cataract and Refractive Surgery

Regional Optometric Associations listed below:

- Great Western Council of Optometry
- Heart of America Eye Care Congress
- North Central States Optometric Council
- Northern Rockies Optometric Conference
- Southern Council of Optometrists

##### 5. U.S. Government:

- Veterans Administration Optometry Service and Sections
- Indian Health Service Optometry
- Department of Defense - any branch of the US military optometry

## **B. OTHER PROVIDERS**

Programs offering non-pre-approved CE or CME may be submitted to the Board for review on an individual basis not later than 2 months before a license renewal deadline.

Providers or Licensees may request consideration by providing a course syllabus or program, reference materials and the presenter's curriculum vitae for consideration as acceptable CE. The Board will grant or decline the request within 30 days of receiving the required materials. In the best interest of the licensee, proposed CE should be submitted and approved by the Board **PRIOR** to registering and attending the educational program. Retroactive approval is possible but is not guaranteed.

## **C. Public Records Request response fee schedule.**

Dr. Austin moved to adopt the public records request response fee schedule. Dr. Stephanie Lee seconded the motion. Unanimous passage.

**The Nevada State Board of Optometry has adopted a policy regarding fees to be charged to provide a public record in response to a request for the same. The policy, fee schedule, and the waiver of fees, is outlined herein.**

### **FEES FOR PUBLIC RECORDS GENERALLY**

In response to a completed Public Records Request form submitted to the Board,

1. The requester's first \$10.00 in costs to reproduce requested public records in the format requested are waived. The \$10.00 represents approximately 67 black and white single sided pages or 50 double-sided pages. Once the reproduction cost reaches \$10.00, any remaining costs will be assessed to the requester.

2. Fees for reproduction of records:

A. Physical records on paper – After the initial \$10.00 threshold is met, the requester will be assessed \$0.15 per 8 ½" x 11" single-sided page or \$0.20 for 8 ½" x 11" double-sided pages. Color copies are \$0.50 per side.

B. Digital records on a CD - \$5 per CD, no fee for records.

C. Digital records on a USB drive - \$20 per Drive, no fee for records.

D. Digital records via an electronic medium (email, Dropbox, FAX, etc.) – no fee.

3. In addition, the Board's actual cost of mailing the records via USPS up to \$6.00 will be borne by the Board and waived to the requester. Any cost in excess of \$6.00 for mail or the cost of delivery via a third party, per the requester's instructions, must be paid along with the fees for reproduction before the records will be released to the delivery method chosen.

4. No fees will be assessed for staff time to respond to a request for public records.

### **COURT REPORTER TRANSCRIPTS**

In addition to the actual cost of the medium in which the copy of the court-reported transcript is provided, a fee for each page provided which is equal in amount to the fee per page charged by the court reporter for the copy of the transcript, as set forth in the contract between the governmental entity and the court reporter shall be assessed by the Board from the requester and the same shall be remitted to the Court Reporter.

### **POSTING OF FEE SCHEDULE AND POLICY**

**6. Petition for Declaratory Relief regarding BCBS Medicaid request to interpret retina photo emailed from a primary care physician's office and return a report.**

Dr. Jeff Austin made a motion that licensees may consult, review photos and recommend a future exam, or make no recommendation. No additional diagnostic conclusions may be made without conducting an exam. Dr. Smith seconded the motion. Motion passed unanimously.

**8. Executive Director's Reports. (This agenda item was taken out of order).**

- A. Executive Director Caren Jenkins reported that rebates were provided by the Board to qualified Licensees in the amount of \$149,625.00.
- B. Director Jenkins explained the requirement for the Board of Examiners consideration of the Thentia contract. Mr. Johnson made a motion to agree that the Board of Optometry may cancel or renew the Thentia contract each year on the contract renewal date. Dr. Mariah Smith seconded the motion. Motion carried without objection.
- C. E.D. Jenkins reported the current 2022 licensee census as of 3/31/2022: 539 total licensees
- D. Ms. Jenkins received a Notice of Intent of the Board of Pharmacy to **enforce PMP requirements** for Prescribers.
- E. Ms. Jenkins provided a status on the codification of regulation changes from 2019 legislative session and indicated that Sr. Deputy Council Asheesh Bhalla is working on this.

The meeting recessed for lunch at 12:00 p.m.

The Board reconvened at 1:00 p.m.

**7. Public Hearing on Complaint No. 22-04, regarding the actions of Respondent AMEL YOUSSEF, O.D., License No. 449. Potential imposition of discipline.** (Appearances: Glenn Truitt, Esq., for Respondent, Caren C. Jenkins, Esq., Executive Director, for the Board, Sophia Long, Esq., Counsel to the Board).

**9. Public Comment.** No public comments were provided.

**10. Adjournment.**

The Board hearing recessed at 4:50 p.m., to be continued on April 4, 2022.

**The meeting reconvened April 4, 2022, at 6:10 p.m.**

- 1. Call to Order.** President Mariah Smith, O.D. opened the video teleconference meeting at 6:10 p.m.
- 2. Public Comment.** President Mariah Smith, O.D. asked for public comment. No public comments were offered.
- 3. Roll Call.** President Mariah Smith, O.D., Vice President, Jeff Austin, O.D., Stephanie Lee, O.D., and Drew Johnson were all in attendance. Also present were Executive Director Caren C.

Jenkins, Board Counsel Deputy Attorney General Asheesh Bhalla, and Licensing Specialist, Nancy Padilla.

**4. Continued discussion of potential changes to Legislation, Regulation and Policy – Legislative proposal 2023 – BDR and regulatory changes to optometry laws.**

- President Smith, O.D. proposed a 1-year period to transfer an optometric practice upon the death of an owner.
- Specify what procedures may be delegated to a technician under supervision.

Dr. Jeff Austin moved to add these items to the legislative package. Dr. Stephanie Lee seconded the motion. During discussion Ms. Jenkins proposed adding the “definition of the practice of optometry” to the statute. Both Dr. Austin and Dr. Lee agreed to amend the motion. The motion passed unanimously.

**5. Continued the Public Hearing on Complaint No. 22-04, regarding the actions of Respondent AMEL YOUSSEF, O.D., License No. 449. Potential imposition of discipline.**

A continued hearing took place, followed by Board deliberations and a finding of 2 violations of NRS 636. A penalty of \$6000.00, 5 years’ probation and payment of the costs of hearing was imposed. Copies of the Accusation and Order After Hearing, and a recording of these proceedings is available upon request.

**6. Public Comment.** No public comments were provided.

**7. Adjournment.** Motion to adjourn at **11:10** p.m. by Dr. Austin, seconded by Dr. Lee. Unanimous motion carried.

\* \* \* \* \*

**FY 2022-2023 Regular meeting schedule** Tuesdays at Noon by telephone: May 19, 2022, July 21, 2022, September 8, 2022, October 13, 2022, December 8, 2022, February 23, 2023, April 20, 2023, and June 22, 2023. Additional meetings may be called on an as-needed basis.

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These minutes were considered and approved by majority vote of the Nevada State Board of Optometry at its meeting on July 21, 2022.

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Caren C. Jenkins, Executive Director

# NEVADA STATE BOARD OF OPTOMETRY



## **MINUTES OF PUBLIC MEETING**

**May 19, 2022**

**Preliminary Matters: Call to Order and Public Comment.** President Mariah Smith, O.D. opened the telephonic meeting at 12:01 p.m. and asked for public comment. No public comments were offered.

1. **Roll Call.** President Mariah Smith, O.D., Vice President Jeff Austin, O.D., Stephanie Lee, O.D., and Drew Johnson were all in attendance. Also present were Board Counsel Asheesh Bhalla, Esq., and Licensing Specialist, Nancy Padilla. Executive Director Caren C. Jenkins was not present.
2. **Consideration and approval of the proposed minutes of the March 24, 2022, Board meeting.** The following proposed changes were presented by President Mariah Smith, O.D. and Jeff Austin, O.D.

Policy #6. CE Providers

Section B. Other Providers

- a. Add: "Cope and"
- b. Remove "the Nevada License number",
- c. Add: "(when applicable)"
- d. Add: "the date of the course"
- e. Add: "that may be required with current COPE guidelines"
- f. Remove: with not less than a 70% score
- g. Add: "The Board has placed a limit of 10-CE hours to be accepted within a 24-hour timeline."

The OE Tracker validity for COPE coursework will be acceptable, and no certificate is required for COPE courses listed on that Summary. Certificates of attendance are required for any COPE and non-COPE courses, and must include, at a minimum, the licensee's name ~~and Nevada license number~~, the COPE Course number (when applicable) or an indication of the Pre-approved Provider, name of the presentation, instructor's name, number of credit hours attended, a stamp or signature verifying attendance, the date of the course, and, if it is a non-interactive online course, evidence

that the licensee passed a post-course test that may be required with current COPE guidelines ~~with not less than a 70% score~~. Incomplete certificates will not be accepted.

Policy #6. CE Providers

Section A. Educational Institutions:

h. Remove: "or ophthalmology"

i. Add: "All ophthalmology training programs that are accredited in the US or Canada."

All schools and colleges of optometry ~~or ophthalmology~~ that are accredited in the US or Canada, but not their affiliates. (For example, alumni associations are affiliates and are not pre-approved providers). All ophthalmology training programs that are accredited in the US or Canada.

Item # 5 Potential Changes to 2023 Legislation:

j. Remove - " and administered by the patient."

k. Item #6 The following legislative changes were accepted for inclusion in the 2023 legislative BDR:

Add: Define Telemedicine scope of practice "and guidelines".

Dr. Jeff Austin proposed that the changes to the 3/24/2022 meeting minutes be incorporated, reviewed, and accepted at the next Board meeting.

### **3. Proposed action regarding legislative matters including potential bill sponsor, selecting a lobbyist and final content for stakeholders meeting in June.**

Regarding potential sponsors, Drew Johnson suggested Assemblyman Steve Yeager (Democrat) from the assembly with whom we have previously worked and Senator Fabian Donate (Democrat) (a fraternity brother of Drew's) who has a health policy background. The Board agreed generally and assigned Drew Johnson and Caren Jenkins to determine the next action required to officially secure a person as our bill sponsor.

As the Board's potential lobbyist, President Mariah Smith, O.D. asked Caren Jenkins to reach out to our previous lobbyist for the sake of familiarity. Dr. Lee and Dr. Austin both agreed to utilize our previous lobbyist if possible. Drew Johnson asked if this session, because our bill is significantly less complex, the cost of hiring our lobbyist would be reduced.

### **4. Executive Director's Reports**

**A.** A licensee sent in an email to all Board members, which could have caused Open Meeting Law issues. President Mariah Smith presented the Executive Director's report on behalf of Caren Jenkins. She discussed an email that was sent to all Board members directly from a licensee without going through Board staff. The email could have been seen as an open meeting law breach, even though there was no open discussion about the licensee's question. To abide by Open Meeting Laws, the licensee has since been redirected to submit any questions for decision by the Board to Board staff or the executive director. Asheesh Bhalla, Esq. reminded Board members that they should avoid serial communication. He also clarified that a discussion between two Board members (without a quorum) and the Executive Director is not considered a meeting, and isn't subject to the open meeting law, so long as no

action is taken. Drew Johnson suggested that the next Board newsletter should indicate that licensees are not to email Board members directly about policy issues or concerns about Board matters, and to please direct those inquiries to the Executive Director.

**Non-exempt staff overtime – ratification of Pres. Smith’s action approving payment.** On May 5, 2022, to comply with federal and state wage hour laws, President Smith authorized payment of overtime incurred during renewals in February 2022 to Nancy Padilla. The Board paid \$2700.00 for overtime, payroll taxes and retirement. President Smith asked that overtime expenses be included in future budgets. A nonexempt employee who works more 8 hours in a day and over 40 hours in a week must be paid time and half for those hours.

Dr. Stephanie Lee moved to ratify the approval of the payment of overtime to Nancy Padilla and to budget for overtime in the future. Dr. Jeff Austin seconded the motion. Motion passed unanimously.

5. **Public Comment.** No public comments were provided.
6. **Adjournment.** Motion to adjourn at **12:21** p.m. by Drew Johnson, seconded by Dr. Jeff Austin. Unanimous motion carried.

\* \* \* \* \*

**FY 2022-2023 Regular meeting schedule**

Thurs. September 8 – Regular Board meeting – Noon – phone  
Thurs. October 13 – Reg. Bd. meeting – Noon – phone  
Thurs. December 8 – Reg. Bd. meeting – Noon – phone  
Thurs. February 23 – 8:30 am **ALL DAY** in Las Vegas or by Zoom  
Thurs. April 20 – Reg. Bd. meeting – Noon – phone  
Thurs. June 22 – 8:30 am **ALL DAY** in Reno or by Zoom

\* \* \* \* \*

These minutes were considered and approved by majority vote of the Nevada State Board of Optometry at its meeting on July 21, 2022.

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Caren C. Jenkins, Executive Director

## LEGISLATIVE STAKEHOLDERS' MEETING – June 21, 2022 at 6 pm via Zoom

Vice-President Jeffrey Austin and President Mariah Smith were present at the meeting. No quorum existed, and so no meeting was called to order, and no open meeting took place.

Dr. Smith led the participants through the legislative proposals that had already been considered by the Board. Two licensees presented ideas based upon their experiences.

### **Notes of discussions:**

-For making substitute optometrist fees more equitable, Dr. Austin referenced a 'substitute optometrist' fee we had created to allow an optometrist to travel between different offices and not have to get a secondary license transferred between different locations. The optometrist who said this was burdensome might not have known this other part of our structure was available to him.

-The participants discussed NOT adding ODs to chapter 89 because it might have unforeseen consequences in the future if someone manipulates it and we are subject to the changes. I don't think anyone feels confident enough about what chapter 89 really is to feel comfortable adding ODs to it. We left at just "staying in our lane."

-Dr. Mathers suggested making law that the figurehead OD of a private equity owned operation needs to be Nevada licensed so they may fall under our laws and must have a Nevada registered location to find or contact them. He suggested the person who manages the doctors to not be a paid employee of the PE. To make sure his thoughts were represented correctly, Dr. Smith asked him to email the Board.

-Telemedicine: Drs. Girisgen & Kopolow were interested in this. They really needed to see the draft Dr. Smith had prepared to know what was being considered. After the meeting, Dr. Smith emailed them the draft and asked them to have feedback prepared by July 21.

-The definition of what constitutes optometry is in the first few sections of our statute. The docs present in the meeting wanted to make sure it included medical decision making, issuing prescriptions, binocularity assessments, and ocular health assessments.

-For the email from the doc who asked why ODs can't be employed by Ophthalmology, we loosely summarized and asked that he reference prior meeting minutes as it has been discussed heavily many times.

-For Dr. Khankhanian in Carson City, who asked about releasing scleral lens prescriptions, we referenced the federal law that regulates the release of prescriptions and NRS 636.387 which states what she must release.

To Whom It may concern,

Recently it has come to my attention that the Nevada State Athletic Commission is not accepting eye exam results from optometrists to examine athletes preparing for professional combative sporting events. In particular athletes participating in combative sports labeled as professional unarmed combatant athletes. Examples are athletes participating in boxing matches and UFC matches.

Evaluation of these athletes falls well within the scope of practice of an Optometrist that is board certified in Ocular Disease Management and has Therapeutic privileges regulated by the Nevada State Board of Optometry. This discrimination against optometrists that practice medical in the state of Nevada impinges on the legislative scope of the optometric profession and prevents optometrists practicing at the highest medical optometry from practicing their full legal scope of this state regulated profession.

I would like a letter certifying that evaluating these types of patients is fully legally within the scope of my profession, being not only licensed in the state of Nevada, but being certified in Ocular Disease Management and being Therapeutics Certified by the Nevada Board of Optometry.

I am attaching the exam form being used by the commission. The exam being required is a basic comprehensive dilated eye exam with evaluation of the peripheral retina using binocular indirect ophthalmoscope. These type of exams are conducted on a daily basis at my office and are fully within the scope of my profession.

Protecting the legislated profession of optometry that has worked so hard to expand the scope of practice is of the utmost importance. This is an instance that although these type of examinations of these athletes is well within the scope of the profession but discrimination against our profession is preventing me from practicing the legal scope of my profession. I perform these type of medical based comprehensive eye exams on a daily basis for multiple medical insurance panels including Medicare, Medicaid, Blue Cross, and AETNA to name a few. Additionally, I perform consults and evaluations for the Veterans Administration and am a Adjunct Professor for the Southern College of Optometry in order to train fourth year optometry students in medical based eye care. Additionally, I have traveled the globe on behalf of medical device and pharmacological companies training ophthalmologists. I am more than qualified to perform eye examinations for patient's and athletes competing in combative sports.

**OPHTHALMOLOGIC EXAM**  
**PROFESSIONAL UNARMED COMBATANT**  
**EXAMINATIONS DONE BY AN OPTOMETRIST WILL NOT BE ACCEPTED**  
**COMBATANTS CANNOT COMPETE WITH CONTACT LENSES OR GLASSES**

Full Name: First \_\_\_\_\_ Middle \_\_\_\_\_ Last \_\_\_\_\_ Ringname \_\_\_\_\_ (Telephone) \_\_\_\_\_ / /  
Date of Birth \_\_\_\_\_  
Address (street) \_\_\_\_\_ (city) \_\_\_\_\_ (state) \_\_\_\_\_ (zip code) \_\_\_\_\_

**HISTORY** - If possible provide the following information:

Name and hometown of physician in charge: \_\_\_\_\_

**Has applicant ever had any of the following conditions:**

- (1) Blurred vision ? ☐ Yes ☐ No
- (2) Surgical procedures done to his/her eye(s) or the tissues around the eye other than simple sutures of the skin around the eye ?  
☐ Yes ☐ No If yes, please explain: \_\_\_\_\_
- (3) Has applicant ever been informed by a physician that he/she had significant eye problems such as retinal detachment, retinal tear, primary or secondary glaucoma, aphakia, pseudophakia, dislocated lens, or cataract?  
☐ Yes ☐ No If yes, please explain: \_\_\_\_\_
- (4) Eye Disease? ☐ Yes ☐ No  
List nature of diseases or injuries: \_\_\_\_\_
- (5) Eye Injury? ☐ Yes ☐ No  
List nature of diseases or injuries: \_\_\_\_\_
- (6) Detached retina surgery on either eye? ☐ Yes ☐ No  
List which eye and when and where surgery was done: \_\_\_\_\_
- (7) Lasik Surgery on either eye? ☐ Yes ☐ No  
List which eye and when and where surgery was done: \_\_\_\_\_

**EXAMINATION: Uncorrected visual acuity MUST be at least 20/200 in EACH EYE.**

VISION: Without Correction

Right \_\_\_\_\_ Sph \_\_\_\_\_ Cyl x \_\_\_\_\_ Acuity \_\_\_\_\_  
Left \_\_\_\_\_ Sph \_\_\_\_\_ Cyl x \_\_\_\_\_ Acuity \_\_\_\_\_

Intraocular Right \_\_\_\_\_ mmHg  
Tension Left \_\_\_\_\_ mmHg  
Motility Normal \_\_\_\_\_ Abnormal \_\_\_\_\_  
Binocular Vision Normal \_\_\_\_\_ Abnormal \_\_\_\_\_  
Remarks: \_\_\_\_\_

**SLIT LAMP EXAM**

**NORMAL**  
Right/Left

**ABNORMAL**  
Right/Left

**SPECIFY ABNORMALITIES**

|             | NORMAL     | ABNORMAL   |  |
|-------------|------------|------------|--|
|             | Right/Left | Right/Left |  |
| Conjunctiva | /          | /          |  |
| Cornea      | /          | /          |  |
| Iris/Pupil  | /          | /          |  |
| Lens        | /          | /          |  |
| Eyelids     | /          | /          |  |

**INDIRECT OPHTHALMOSCOPY WITH SCLERAL DEPRESSION (Dilated Pupil)**

**NORMAL**  
Right/Left

**ABNORMAL**  
Right/Left

**SPECIFY ABNORMALITIES**

|                   | NORMAL     | ABNORMAL   |  |
|-------------------|------------|------------|--|
|                   | Right/Left | Right/Left |  |
| Disc              | /          | /          |  |
| Macula            | /          | /          |  |
| Vessels           | /          | /          |  |
| Peripheral Retina | /          | /          |  |

(PLEASE READ AND SIGN ON REVERSE SIDE OF EXAM)

## OPHTHALMOLOGIC EXAM - Page Two

REPORT OF EYE EXAMINATION FOR PROFESSIONAL UNARMED COMBATANT BY AN OPHTHALMOLOGIST

*The commission may deny, suspend, revoke, or place restrictions on the license of a professional unarmed combatant because of a medical or visual condition, including but not limited to one of the following:*

- 1) *A visual field of 60 degrees or less extending over one or more quadrants of the visual field;*
- 2) *Presence or history of retinal detachment or retinal tear unless treated by an ophthalmologist and then approved by an ophthalmologist specified by the commission who then assesses that the unarmed combatant is at no significant risk of further injury to the retina if boxing is resumed;*
- 3) *Presence of primary or secondary glaucoma, whether or not such condition has been treated;*
- 4) *Presence of aphakia, pseudophakia, dislocated lens or cataract in either eye;*
- 5) *Any other visual condition which the commission determines would prevent the applicant or licensee from safely engaging in unarmed combat.*

*The examining physician is requested to mail a copy of any report, directly to the commission of an applicant that has a condition that may preclude him/her from being licensed.*

PHYSICIAN'S REMARKS: \_\_\_\_\_

### PHYSICIAN:

I have read the above criteria and, in accordance with the vision requirements as stated therein, have examined the applicant named on the other side of this form and

I ☐ HAVE ☐ HAVE NOT medically cleared him/her to compete as a licensed unarmed combatant.

\_\_\_\_\_  
LICENSED PHYSICIAN'S NAME AND LICENSE NUMBER (please print)

\_\_\_\_\_  
PHYSICIAN'S SIGNATURE

\_\_\_\_\_  
STREET ADDRESS

\_\_\_\_\_  
DATE

\_\_\_\_\_  
CITY

\_\_\_\_\_  
STATE

\_\_\_\_\_  
ZIP CODE

\_\_\_\_\_  
( ) ( )  
TELEPHONE AND FAX NUMBER INCLUDING AREA CODE

### APPLICANT:

I declare under penalty of perjury under the laws of the State of Nevada, that the foregoing information is true & correct; further I realize that any intentional misrepresentation may result in disciplinary action against my license.

**I understand I CANNOT wear glasses or contact lenses during competition.**

I hereby AUTHORIZE the Athletic Commission of the Department of Business and Industry of the State of Nevada (the "Commission"), pursuant to the provisions of NRS/NAC Chapter 467, to RELEASE any and all medical information and/or personal information with respect to my status and licensure as a professional unarmed combatant which may be contained in any of the Commission's records. I further authorize the Commission to release this information to any person whom the Commission determines has a need to know. I agree that I will fully cooperate with the Commission in making my medical history available including, but not limited to, giving oral or written reports to the Commission regarding my medical condition, care and/or treatment.

I further RELEASE, PROMISE TO HOLD HARMLESS, and COVENANT NOT TO SUE the Commission on the basis of its attempts to obtain any of the foregoing information, and I further RELEASE, PROMISE TO HOLD HARMLESS, and COVENANT NOT TO SUE any persons, firms, institutions or agencies providing such information to representatives of the Commission on the basis of its disclosures. I have signed this Release voluntarily and of my own free will.

I further agree that a photographic copy of this Authorization shall be valid as the original.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Location

\_\_\_\_\_  
Name Printed

## STUDENT AND RESIDENT SUPERVISION

An optometric student participating in an optometric externship organized through a US accredited school or college of optometry may perform optometric procedures within the scope of practice of the Nevada-licensed supervising optometrist. If the optometric student extern is supervised by an ophthalmologist, the student is limited to activities within the scope of optometric practice as defined in NRS 636. The supervising doctor must be physically present in the clinic where the care is being provided at all times and must personally examine the patient prior to discharge.

An optometric resident who is not licensed in Nevada may examine and manage patients independently, without supervision but may only practice within the scope of the supervising NV licensed optometrist. If the optometric resident is supervised by an ophthalmologist, the resident must practice within the scope of optometry as defined in NRS 636. The supervising NV licensed optometrist or ophthalmologist must be physically present in the clinic at all times when the resident is providing care. An optometric resident may provide care on an emergency basis without a supervising OD or MD in the clinic but must communicate and consult with the supervising OD or MD to establish proper care and management of the patient.

Modified from the American Optometric Association's Position Statement (full version available upon request)

## KEY TERMINOLOGY

Many definitions of telehealth, telemedicine and related concepts exist. The following terms and definitions are accepted for the purposes of this document:

**Asynchronous telemedicine:** This type of care is not provided in real time. This type of care refers to the "store-and-forward" technique. Clinical data is collected at the site of service and transmitted for review by a doctor of optometry. In turn, the doctor of optometry provides a *consultative* report back to the referring clinicians or patient at the site of service.

**Care Team:** A doctor-led group of health care practitioners who collectively take responsibility for a patient or set of patients. Care teams blend multidisciplinary skills and involve the efficient delegation of responsibilities such that no team members perform duties that do not require their skills.

**Doctor-Patient Relationship:** A consensual relationship in which the patient knowingly seeks the doctor's assistance and in which the doctor knowingly accepts the person as a patient. The doctor-patient relationship represents a fiduciary relationship in which, by entering into the relationship, the doctor agrees to respect the patient's autonomy, maintain confidentiality, explain treatment options, obtain informed consent, adhere to the standard of care, and commit not to abandon the patient without giving him or her adequate time to find a new doctor.

**Originating site:** The location where a patient receives health care services through a telecommunications system.

**Remote patient monitoring:** This type of care refers to personal health and medical data collected within the context of an existing doctor-patient relationship from an individual in one location via electronic collection technologies, which is transmitted to a doctor in a different location for use in continued care coordination and related support.

**Remote Site:** The location where a doctor provides health care services through a telecommunications system.

**Synchronous telemedicine in optometry:** This type of care uses videoconferencing as a core technology. Participants are separated by distance but interact in real-time.

**Telehealth:** The Health Resources Services Administration (HRSA) defines telehealth as "the use of electronic information and telecommunications technologies to support long-distance clinical health care, patient and professional health-related education, public health and health administration. Technologies include videoconferencing, the internet, store-and-forward imaging, streaming media, and terrestrial and wireless communications."

**Telemedicine:** The Office of the National Coordinator for Health Information Technology notes, "telemedicine refers specifically to remote clinical services, telehealth can refer to remote non-clinical services, such as clinician training, administrative meetings, and continuing medical education, in addition to clinical services."

The Board supports the appropriate use of telemedicine in optometry to access high-value, high-quality eye, health and vision care. Telemedicine in optometry can serve to expand patient access to care, improve coordination of care, and enhance communication among all health care practitioners involved in the care of a patient.

#### CRITERIA FOR ENSURING HIGH QUALITY TELEMEDICINE IN OPTOMETRY

Important criteria must be met to ensure that telemedicine in optometry meets the existing standard of care, is of high-quality, contributes to care coordination, protects and promotes the doctor-patient relationship, complies with state licensure and other legal requirements, maintains patient choice and transparency, and protects patient privacy.

- The standard of care for eye, health, and vision services must remain the same regardless of whether services are provided in-person, remotely via telehealth, or through any combination thereof. Doctors may not waive this obligation or require patients to waive their right to receive the standard of care. Further, a payor may not require either the doctor or patient waive the right to receive the standard of care. Treatment, including issuing a prescription based solely on an online questionnaire, lensometry, and/or auto-refraction, does not constitute an acceptable standard of care.
- Fundamental elements of the doctor-patient relationship must be established and maintained. Physicians must act as advocates on behalf of the patient and are obligated to discuss necessary and appropriate treatment alternatives, and in good faith to fully inform the patient of all treatment options.
- Physicians must ensure all protected health and other personal information is held in confidence.
- Patients consent to receive telemedicine in optometry and understand their right to choose (at any point in the care continuum) in-person eye, health, and vision services provided by a doctor of optometry. Telemedicine in optometry must be provided consistent with and in compliance with existing laws and regulations of practice in the respective jurisdiction.
- In-person care, provided by a doctor of optometry, is the gold standard for the delivery of a comprehensive eye exam and for the prescription of glasses or contact lenses.
- In an asynchronous telemedicine, 'store-and-forward' practice where a history and a set of images are collected at the point of service and are transmitted for review by an eye doctor. In turn, the eye doctor provides a consultative report back to the referring provider or patient at the point of service. The Board advises licensees to make or not make a recommendation to seek a comprehensive eye examination without making a diagnosis based on consultative examinations. For Asynchronous, store-and-forward eye and vision telehealth services where a referring provider ultimately manages the patient (including prescriptions), the consulting eye doctor is not required to have a pre-existing, valid doctor-patient relationship.
- The use of remote patient monitoring may be appropriate for data acquisition, patient communication, confirmation of expected therapeutic results, confirmation of stability/or homeostasis, and assessing changes in previously diagnosed chronic conditions.
- The use of telemedicine in optometry may in certain circumstances be appropriate for establishing a doctor-patient relationship for an initial diagnosis. Telemedicine in optometry should not be used to replace partial or entire categories of care available in-person where the doctor-patient relationship is strengthened through personal face-to-face interactions.
- Doctors of optometry delivering telemedicine in optometry must be licensed in the state in which the patient receives care and must abide by that state's licensure laws and regulations. Exception would be where a prior optometrist-patient relationship was created with an in-person examination within the last 2 years.

- Patients must be made aware of the limitations of telemedicine in optometry. Doctors of optometry delivering eye, health, and vision services via telemedicine in optometry must, when clinically appropriate, promptly provide in-person care or refer the patient for an in-person visit with a doctor of optometry or refer to another qualified physician for diagnosis and/or care. Referrals must adhere to the same standard of care with regard to the timeframe for appropriate referral.
- The patient's relevant health history must be collected as part of telemedicine in optometry. Appropriate health records should be available to the doctor of optometry prior to or at the time of the telehealth encounter. Doctors of optometry should have a good understanding of the culture, health care infrastructure, and patient resources available at the originating site. The provision of eye, health, and vision services delivered by telemedicine in optometry must be properly documented. These health records should, when appropriate, be available at the remote site and at the originating site and electronically or physically available to the patient.
- The provision of eye, health, and vision services delivered via telemedicine in optometry should adhere to the in-person standard of care with regard to care coordination with the patient's additional health care practitioners. This coordination is especially important to ensure that information regarding diagnoses, test results, and medication changes are available to the care team, when one exists.
- In the absence of an existing doctor-patient relationship, services which, remote or otherwise, offer a prescription for glasses or contact lenses without a comprehensive eye exam, including all the elements of a comprehensive exam would not meet the current standard of care and as such cannot be delivered independently by telemedicine in optometry. Any doctor of optometry who offers a prescription under such circumstances would be in violation of their ethical obligations and duty of care.

## ORGANIZATION, TRAINING, AND IMPLEMENTATION

Patients or referring practitioners seeking telemedicine in optometry must have a choice of doctor of optometry, if possible, and must have access, in advance, to the licensure and qualifications of the clinician providing services. The delivery of telemedicine in optometry must be consistent with state scope of practice laws in the state in which the patient is located at the time of the encounter.

Organizations and clinicians providing telemedicine in optometry should have a current list of required criteria for both the distant and receiving sites as outlined in this section. In addition, these programs using telemedicine in optometry should have documentation of their training programs and proof of competency for any technician who is capturing clinical data and for any clinician who is providing telemedicine in optometry. Each organization should also maintain documentation on how the program protects patient privacy, assesses patient satisfaction and safety, promotes continuity of care, and facilitates care coordination for patients who may request or require subsequent in-person evaluations or procedures.

While monitoring patients remotely, the regular interaction between clinical care coordination staff, patients, and their doctor of optometry and other primary care practitioners is critically important for successful outcomes. Practitioners who offer remote monitoring services are responsible to assure devices are being utilized in the manner for which they were designed and are appropriate to be used to monitor patients remotely. The risks and benefits of medical devices should be properly and thoroughly weighed through science and evidence to ensure efficacy and quality and to protect the public health.

Organizations and clinicians providing telemedicine in optometry must have protocols for local referrals (in the patient's geographic area) for urgent and emergency services. Mechanisms to facilitate continuity of care, follow-up care, and referrals for urgent and emergency services in the patient's geographic area must be in place. Any new prescriptions must be communicated to the patient's care

team. When creating directories for establishing network adequacy, an insurer may not consider access to telemedicine in optometry as a substitute for locally available doctors of optometry, who can offer a wider range of eye health and vision services.

#### THE DOCTOR-PATIENT RELATIONSHIP AND THE USE OF DIRECT-TO-PATIENT TECHNOLOGY

Use of direct-to-patient eye and vision health-related applications (including online vision tests and other mobile eye and vision-related applications) does not constitute telemedicine in optometry unless used under the direction of a doctor of optometry. In such cases the supervising doctor of optometry must either:

- Have an existing doctor-patient relationship (having previously seen the patient in-person); or
- Before providing services, establish communication with the patient's existing care team, including the patient's doctor of optometry, if applicable, in order to document eye, vision, and systemic history, past comprehensive eye and other examinations, and any related patient diagnosis; or
- Be a part of an integrated health delivery system where the patient already receives care, in which the consulting doctor of optometry has access to the patient's existing medical record and can coordinate follow-up care.

The use of direct-to-patient eye and vision-related applications, including online vision tests and other mobile eye and vision-related applications, raises several additional issues (and all of the above criteria still apply):

- Direct-to-patient eye and vision-related applications, based on current technologies and uses, cannot replace or replicate a comprehensive eye exam provided by a doctor of optometry.
- Direct-to-patient eye and vision-related applications may provide data related to elements of a comprehensive eye exam but do not constitute patient care and fragmentation of a comprehensive eye exam into components delivered independently is deleterious and deceptive to patients. A prescription for glasses or contact lenses can only be derived through the completion of a comprehensive eye examination.
- The eye and patient health portion of a comprehensive eye examination or the refractive portion of a comprehensive eye exam, based on current technologies and uses, cannot be replaced or replicated by direct-to-patient eye and vision-related applications.
- Screening for ~~specific or groups of~~ eye health issues using technology for direct-to-patient eye and vision-related applications, based on current technologies and uses, should not be used to diagnose eye, health, and vision conditions or as a replacement or replication for a comprehensive dilated eye exam. Screenings with high sensitivity and specificity may help identify risk, which is a risk that only an in-person comprehensive eye examination can begin to valuate, mitigate, and/or address.
- Photographs obtained by patients, their family members, or their friends outside of a clinical setting may not be of adequate quality or may not include the information needed to make an accurate diagnosis.

#### ADMINISTRATIVE AND LEGAL CONSIDERATIONS

**Credentialing and Privileging:** The Joint Commission (TJC) has implemented standards for telehealth/telemedicine. Under the TJC telemedicine standards, practitioners who render care using live interactive systems are subject to credentialing and privileging at the distant site when providing direct care to the patient. The originating site may use the credentialing and privileging information from the distant site when certain requirements are met. Doctors who render services using store-and-forward systems are viewed by TJC as "consultants" and might not be required to be credentialed at the originating site.

However, standards can vary by state and [organization](#). [All provisions regarding licensing and business relationships between medical organizations and ophthalmological physicians and optometrists already established in NRS 636 would still apply to any care, service, or consultation provided by the optometrist.](#)

**Privacy and Confidentiality:** Practitioners who provide eye and vision telehealth services should ensure compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended, and its implementing regulations. The handling of records, faxes, and communications is subject to the same HIPAA standards as those that apply in a standard office environment. For asynchronous telehealth uses, HIPAA compliance largely relies on the originating site informing patients that their information will be traveling by electronic means to another site for consultation. This should be noted in the consent form at the point of service, and the HIPAA notice of privacy practices. In addition, all electronic transmissions should be encrypted and reasonable care should be taken to authenticate those clinicians who have electronic access to the records.

**Licensing:** Interactive telehealth requires the equivalent of direct patient contact. In the U.S., telehealth using interactive technologies is generally restricted to jurisdictions where the doctor is permitted, by law, to practice. In other words, the clinician using interactive technologies is typically required to be licensed to practice in the jurisdiction in which the patient is located. For store-and-forward applications, most states require telehealth clinicians to be licensed in the same state in which the patient resides, even when he or she acts only as a consultant. Doctors of optometry and other appropriate, licensed [9](#) clinicians who wish to provide store-and-forward consultations across state lines should limit such consultations to originating states in which they are permitted, by law, to provide care.

**Remove?: [ Responsibility/Liability:** If direct services (doctor-to-patient) are provided (no assistance at the referring site), the consulting doctor bears full responsibility (and potential liability) for the patient's care. The diagnostic and therapeutic recommendations rendered are based solely on information provided by the patient. Therefore, any liability should be based on the information available at the time the consult was answered. In a consultative model (doctor-to-doctor), liability may be shared; however, the allocation of responsibilities will vary on a case-by-case and state-by-state basis. Doctors of optometry and other appropriate, licensed clinicians should verify that their liability insurance policy covers telehealth/telemedicine services, including those services provided across state lines, if applicable, prior to the delivery of any such [service](#). ]

ORIGINAL HOUSE  
BILL NO. HB0039

ENROLLED ACT NO. 36, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING  
2021 GENERAL SESSION

AN ACT relating to optometry; amending optometrists' scope of practice; prohibiting an optometrist from performing specified procedures; amending optometrists' drug prescribing authority; directing the application of optometry related fees and assessments; directing the board of examiners in optometry to determine continuing education requirements; amending membership on the board of examiners in optometry; repealing provisions that define unlawful conduct; repealing obsolete provisions related to volunteer licensing; requiring rulemaking; and providing for effective dates.

*Be It Enacted by the Legislature of the State of Wyoming:*

**Section 1.** W.S. 33-23-101(a)(ix), (b), by creating a new subsection (c) and by renumbering (c) through (f) as (d) through (g), 33-23-102, 33-23-104, 33-23-106(a), 33-23-109(a) and (c), 33-23-113, 33-23-114, 33-23-115(a) and (b) and 35-17-106(a)(iii) are amended to read:

**33-23-101. Definitions; authorized scope of practice; prohibited procedures; exceptions.**

(a) As used in this act:

(ix) "This act" means W.S. 33-23-101 through ~~33-23-117~~ 33-23-116.

(b) The practice of optometry ~~is the employment of any means other than the use of therapeutic lasers or surgery for diagnosing and treating ocular pathology and for the measurement of the powers or range of human vision or the determination of the accommodative and refractive status of the human eye or the scope of its functions in general or the adaptation of lenses or frames for the aid~~

ORIGINAL HOUSE  
BILL NO. HB0039

ENROLLED ACT NO. 36, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING  
2021 GENERAL SESSION

thereof occurs when a person employs primary human eye care procedures, including:

(i) The examination, diagnosis and treatment of abnormal conditions and diseases of the eye, its adnexa and visual system;

(ii) Measuring the powers and range of vision of the eye to determine the accommodative and refractive state and general function of the eye;

(iii) The adaptation, sale, prescribing and dispensing of frames and ophthalmic lenses in all their forms;

(iv) Ordering and performance of diagnostic laboratory or imaging tests;

(v) The prescribing and administration of pharmaceutical agents, as provided in W.S. 33-23-102;

(vi) Preoperative and postoperative care for those procedures excluded from the practice of optometry under subsection (c) of this section;

(vii) Any laser procedure as set forth by the board's rules and not excluded under subsection (c) of this section.

(c) The following ophthalmic procedures shall be excluded from the authorized practice of optometry:

(i) The following general procedures:

(A) Administration of general anesthesia;

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(B) Surgery performed with general anesthesia.

(ii) The following laser procedures:

(A) Corneal procedures;

(B) Procedures of the vitreous chamber of the eye for the purpose of treating any retinal or macular disease;

(C) Retinal procedures.

(iii) The following nonlaser procedures:

(A) Surgery related to removal of an eye from a living person;

(B) Surgery of the bony orbit, including orbital implants;

(C) Incisional or excisional surgery of the extraocular muscles;

(D) Surgery of the eyelid for suspected malignancies or for incisional cosmetic or mechanical repair of blepharochalasis, ptosis or tarsorrhaphy;

(E) Incisional or excisional surgery of the lacrimal system other than probing or related procedures;

(F) Surgery requiring full thickness conjunctivoplasty with graft or flap;

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(G) Pterygium surgery;

(H) Surgery requiring full thickness incision or excision of the cornea or sclera, other than paracentesis, in an emergency requiring immediate reduction of pressure inside the eye;

(J) Corneal transplants;

(K) Surgery requiring incision of the iris or ciliary body, including diathermy or cryotherapy;

(M) Surgical extraction of the crystalline lens;

(N) Surgical intraocular implants;

(O) Surgery requiring removal of the vitreous;

(P) Procedures of the vitreous chamber of the eye for the purpose of treating any retinal or macular disease, including intra-vitreous injection;

(Q) Surgery requiring manipulation of the retina;

(R) Intravenous injections.

~~(c)~~(d) The provisions of this chapter do not prevent a physician from treating or fitting glasses to the human eye, or a physician or optometrist from filling prescriptions or orders. Nor do the provisions of this chapter prevent the replacing, duplicating or repairing of ophthalmic lenses or the frames or fittings thereof by

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persons qualified to write or fill prescriptions or orders under the provisions of this act, nor prevent the doing of the merely mechanical work upon such lenses or upon the frames or fittings thereof.

~~(d)~~(e) It is unlawful for any person to dispense, replace or duplicate ophthalmic lenses or any contact lenses without a prescription or order from a physician or optometrist. A contact lens prescription shall specifically state that it is intended for contact lenses and include the type and specification of the contact lenses being prescribed. An optometrist shall provide, at no additional cost to the patient, a written copy of his contact lens prescription. The prescription shall only be released after the contact lenses have been adequately fitted and no more follow-up visits are necessary to assure the contact lenses fit the patient. The essential information necessary to duplicate the prescription shall be defined by rules adopted by the board. All contact lens prescriptions shall have an expiration date after which it shall be unlawful to fill such prescription. The prescribing optometrist shall not be liable for any injury or condition to a patient resulting from negligence in packaging, manufacturing or dispensing lenses by anyone other than the prescribing optometrist. Any person may file a complaint with the board seeking disciplinary action concerning any violation of this subsection. The board shall investigate or cause to be investigated and shall resolve a complaint on its own motion or upon receipt of a written complaint as provided by W.S. 33-23-110. No person shall improperly fill a contact lens prescription or fill an expired prescription.

~~(e)~~(f) The provisions of this chapter do not prohibit the sale of goggles, sunglasses, colored glasses or occupational eye-protective devices if they do not have

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refractive values, nor do the provisions of this act prohibit the sale of complete ready-to-wear eyeglasses as merchandise by any person not holding himself out as competent to examine, test or prescribe for the human eye or its refractive errors.

~~(f)~~(g) Nothing in this act shall prevent an optometrist from using assistants in his practice under his general supervision as defined in board rule.

**33-23-102. Optometrist's use of certain drugs; limitation.**

An optometrist shall be allowed to administer and prescribe pharmaceutical agents related to the practice of optometry for the treatment of ocular disease, excluding ~~the following categories of oral medications: immunosuppressives, steroids, anti-fungals, sedative-hypnotics, and schedule I and II narcotics.~~ No medication shall be given by injection. Oral anti-glaucoma medications may be administered for a period not to exceed forty-eight (48) hours. An optometrist who administers or prescribes pharmaceutical agents for examination or for treatment shall provide the same standard of care to patients as that provided by a physician utilizing the same pharmaceutical agents for examination or treatment but allowing for the prescribing of hydrocodone or hydrocodone containing pharmaceutical agents regardless of schedule.

**33-23-104. Board of examiners in optometry; created; composition; designation; duties generally; appointment; qualifications and terms of members; vacancies; oath.**

The Wyoming state board of examiners in optometry is created to carry out the purposes and enforce the

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provisions of this act. The board shall consist of ~~three (3)~~ five (5) members appointed by the governor. ~~In 2005, one (1) board member shall be appointed for a term of three (3) years, one (1) board member shall be appointed for a term of two (2) years and one (1) board member shall be appointed for a term of one (1) year. Thereafter,~~ and shall include three (3) licensed optometrists, one (1) member of the public and one (1) licensed health care professional other than a licensed optometrist. The terms of the office of the members appointed shall be three (3) years or until their successors have qualified. Each member of the board shall be a resident of the state of Wyoming and each optometrist member of the board shall have been engaged in the actual practice of optometry in the state for at least one (1) year prior to appointment. The governor shall make all appointments to fill vacancies caused by death, resignation or removal. The governor may remove any member as provided in W.S. 9-1-202. The members of the board, before entering upon their duties, shall take and subscribe to the oath required to be taken by state officers and shall file the oath in the office of the secretary of state.

**33-23-106. Board of examiners in optometry; compensation of members; disposition of funds.**

(a) Each member of the board may receive as compensation the sum paid each day to members of the state legislature for each day spent in board meetings and per diem and mileage as provided in W.S. 33-1-302(a)(vii). Expenses shall be paid from the fees, ~~fin~~es and assessments received under the provisions of this act. All fees, ~~fin~~es, assessments and other monies, except fines and penalties, received under the provisions of this act, may be used for meeting the expenses of the board and in carrying out the

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provisions of this act. In no event shall any expenses be charged against the state.

**33-23-109. Examinations; licensure; qualifications; reciprocity.**

(a) Any applicant for licensure under this act is required to pass the examination series administered by the National Board of Examiners in Optometry, or its successor agency, ~~and or~~ any other examination specified by the board in rule. The applicant shall be a graduate of an optometric school or college accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation or the United States Department of Education (USDE) or the Council on Higher Education Accreditation (CHEA), or their successor agencies. Examinations shall cover subjects designated by the board. ~~Any currently licensed person intending to employ diagnostic or therapeutic pharmaceutical agents in his practice is required to complete and pass a board approved course pertaining to the use of those agents.~~

(c) In addition to ~~subsections (a) and (b)~~ satisfying the requirements under subsection (a) of this section, an applicant for licensure under this act shall provide the board fingerprints and other information necessary for a criminal history record background check as provided under W.S. 7-19-201.

**33-23-113. Advertising and display of license requirements.**

(a) An advertisement for the practice of optometry shall identify the license held pursuant to this act. The

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advertisement shall be free from deceptive or misleading information.

(b) To communicate to the patient the license held pursuant to this act, a licensee shall:

(i) Wear a photo identification name tag during patient encounters. The photo identification name tag shall include a photograph of the licensee, the licensee's name, and the license held pursuant to this act. The name tag shall be of a sufficient size for a patient to read the contents of the tag and shall be worn in a manner so as to be visible and apparent to the patient;

(ii) Every person holding a license to practice optometry in the state of Wyoming shall Display the license certificate issued by the board, in its entirety, in a conspicuous place in his office, wherein the practice of optometry is conducted;;

(iii) Comply with these requirements in each practice setting.

(c) A licensee who enters into a collaborative practice agreement with a medical doctor or doctor of osteopathy shall conspicuously post in each office the regularly scheduled hours the medical doctor or doctor of osteopathy intends to be physically present in the office.

**33-23-114. Continuing education courses required.**

All optometrists shall take courses of study in subjects relating to the practice of the profession of optometry for the utilization and application of new techniques, scientific and clinical advances, and achievements of

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research which will assure expansive and comprehensive care to the public. The board shall ~~prescribe the length of study. Attendance shall be at a course or courses approved by the board. Attendance at any course or courses of study is to be certified to the board upon a form provided by the board and submitted by each optometrist to~~ determine the requirements for continuing education pursuant to rules promulgated by the board. The board may use up to one-half (1/2) of its annual renewal fees for the purposes of contracting with institutions of higher learning, professional organizations, or qualified individuals to provide educational programs that meet this requirement. The board may also treat funds set aside for the purpose of continuing education as state funds for the purpose of accepting any funds made available under federal law on a matching basis for the programs of continuing education. ~~In no instance may the board require a greater number of hours of study than are available at approved courses held within this state. The board shall require three (3) hours of continuing education related to the responsible prescribing of controlled substances every two (2) years. The board may waive the requirements of this section in cases of certified illness or undue hardship.~~

**33-23-115. Penalty; injunction; civil penalty; jury trial.**

(a) Any person who violates any provision of ~~W.S. 33-23-101 through 33-23-117~~ this act is guilty of a misdemeanor and upon conviction shall be fined not more than seven hundred fifty dollars (\$750.00) or imprisoned not more than six (6) months in the county jail, or both.

(b) Any person aggrieved by a violation of ~~W.S. 33-23-101 through 33-23-117~~ this act, the Wyoming state

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board of examiners of optometry, the attorney general or the district or county attorney may institute suit in the county in which a violation of ~~W.S. 33-23-101 through 33-23-117~~ this act occurred to require enforcement by injunctive procedures and to recover a civil penalty not to exceed ten thousand dollars (\$10,000.00) per violation, plus costs.

**35-17-106. Election to be covered by federal immunity.**

(a) The state of Wyoming elects to be immediately covered by the immunity granted by the Health Care Quality Improvement Act of 1986, P.L. 99-660, Title IV adopted by Congress in 1986, to the extent authorized, as of the effective date of this section for all health care professional review bodies as defined in the act, for the applicable division of the department of health in its duties under W.S. 33-36-101 through 33-36-115 related to emergency medical services and for:

(iii) The state board of examiners in optometry, W.S. 33-23-101 through ~~33-23-117~~ 33-23-116;

**Section 2.** W.S. 33-23-109(b), 33-23-111(b) and 33-23-117 are repealed.

**Section 3.** The Wyoming state board of examiners in optometry shall promulgate any rules necessary to implement this act.

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**Section 4.**

(a) Except as provided in subsection (b) of this section, this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(b) Sections 1 and 2 of this act are effective July 1, 2021.

(END)

\_\_\_\_\_  
Speaker of the House

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Governor

TIME APPROVED: \_\_\_\_\_

DATE APPROVED: \_\_\_\_\_

I hereby certify that this act originated in the House.

\_\_\_\_\_  
Chief Clerk

**Lucas Foletta**  
[lfoletta@mcdonaldcarano.com](mailto:lfoletta@mcdonaldcarano.com)

**Reply to: Reno**

June 9, 2022

**Via Email**

Ms. Caren Jenkins, Executive Director  
Nevada State Board of Optometry  
P. O. Box 1824  
Carson City, NV 89702  
[cjenkins@nvoptometry.org](mailto:cjenkins@nvoptometry.org)

**Re: Engagement for Services**

Dear Ms. Jenkins:

We are pleased that Nevada State Board of Optometry (“NSBO” or “Client”) has decided to engage McDonald Carano LLP (“the Firm”) to provide representation. Experience has shown that the attorney client relationship works best when there is a formal, mutual understanding about fees, payment terms and the scope of services to be provided. This letter (“Agreement”) constitutes the agreement relating to the services our firm has agreed to provide. The terms and conditions of our engagement are as follows:

**I. Scope of Engagement**

The scope of the Firm’s engagement (the “Engagement”) will be 2023 legislative session lobbying support.

**II. Personnel**

I will be the primary person responsible for this matter. Additional lawyers or paralegals may be involved as needed. Whenever appropriate and consistent with the proper representation of our clients, we use paralegals, investigators, junior attorneys and staff members in order to minimize the impact of the hourly rates of more senior attorneys. We believe the utilization of junior attorneys, paralegals or staff members, in consultation with and under supervision of more experienced attorneys in the firm as appropriate, enables us to maintain economically and efficiently the high quality of our legal representation, while permitting us to avoid sacrificing the quality of our work for lower fees and to avoid assigning senior attorneys to tasks which can be performed proficiently by junior attorneys, paralegals or staff members.

### **III. Fees and Expenses**

The legal fees for this matter will be on a flat fee basis, payable in four (4) equal monthly installments of \$4,500.00 to be billed in the months of February, March, April, and May 2023. The total flat fee is \$18,000.00.

We are waiving any request for an initial retainer. We reserve the right to request a retainer in the future, if the scope of the Engagement increases. Any retainer will be held in our client trust account for application towards fees and costs billed by the Firm in connection with our work.

Our firm has always operated on the basis that we will deliver the best possible legal services in a timely fashion and at a reasonable price; in return, we request that upon receipt of our statements, Client review the statements at that time to determine if you have any questions or comments regarding them. If so, please call us.

### **IV. Conflict Waivers and Related Matters.**

Attorneys owe duties of loyalty and of confidentiality to their clients. It is unavoidable that, from time to time, conflicts of interest develop between or among our clients, or between clients, or former clients, and prospective clients we wish to represent. In these circumstances, we are required, to disclose the conflicts to our clients, former clients and prospective clients and consult with them and to obtain the clients' or former clients' consents before we may proceed.

#### **A. Waiver For "Permitted Adverse Representations"**

The Firm represents a broad base of clients on a variety of matters. Absent an effective conflicts waiver, conflicts of interest may arise that could adversely affect Client's ability and the ability of other clients to choose the Firm as its counsel and preclude the Firm from representing Client or other clients in pending or future matters. Given that possibility, and desiring to be fair both to Client and other clients, this letter will confirm our mutual agreement that the Firm may represent other present or future clients on matters other than those for which it had been or is then engaged by Client, whether or not on a basis adverse to Client or any affiliate, including litigation, legal or other proceedings or matters so long as such is not prohibited by law or involves claims against Client in the same litigation or proceeding as the Engagement (referred to as "Permitted Adverse Representation"). Client agrees that it will not assert the Firm's representation of Client as a basis for disqualifying the Firm from representing another party in any Permitted Adverse Representation and agree that any Permitted Adverse Representation does not constitute a breach of duty.

#### **B. Affiliates and Related Parties**

Unless otherwise agreed to in writing, the Firm is only representing the Client named in this Letter, and not the Client's relatives, other affiliates, subsidiaries, partners, joint venturers, employees, directors, officers, shareholders, members, owners, agencies, departments, or divisions. Accordingly, the Firm may be adverse to these related parties or their legal interests, unless precluded by reason of the Rules of Professional Conduct. We anticipate, however, that in

the course of our representation of the Client in this Engagement we may provide information or advice to the Client's directors, officers or employees in their corporate capacities.

Based upon the disclosure of the names of persons and entities potentially involved in this matter, we have not discovered any conflict which requires further action before undertaking our representation. Please advise us, at or before the time you return the signed copy of this letter, if you know of any other individuals or entities which may be involved in this matter. In addition, please inform us at once if you learn in the future of other persons or entities who may be involved so we can make a conflict of interest search with respect to them.

**V. Other Terms.**

The general terms and conditions of our representation are set forth in the attached schedule of General Terms and Conditions, which are incorporated into this agreement by reference.

If this letter is satisfactory, please confirm Your agreement to the terms of this engagement letter and attached schedule by signing this letter and returning it to us. A copy is also provided for Your records. If this letter does not accurately reflect Your understanding of the terms of our agreement, please call me promptly so that we may discuss it further.

We recognize that You have the opportunity to obtain services from other firms, and very much appreciate that You have chosen our Firm. We will endeavor to represent You promptly and efficiently, and look forward to the opportunity of working with You.

Sincerely yours,

McDonald Carano LLP



Lucas Foletta  
Partner

**CLIENT'S AGREEMENT TO  
TERMS AND CONDITIONS OF REPRESENTATION**

I hereby acknowledge that I have had an adequate opportunity to review and understand the above **engagement letter and accompanying schedule of terms and conditions**, and that I am duly authorized by Nevada State Board of Optometry to bind it and execute this Agreement on its behalf. I further acknowledge that I have had the opportunity to consult with counsel of my own choosing prior to executing it. Therefore, on behalf of, Nevada State Board of Optometry, I agree to be legally bound by the terms, limitations and conditions, including without limitation the conflict waivers and dispute resolution procedures, set forth therein.

Date: \_\_\_\_\_, 2022. Nevada State Board of Optometry

By: \_\_\_\_\_

Its: \_\_\_\_\_

## GENERAL TERMS AND CONDITIONS OF ENGAGEMENT

1. Engagement: 2023 legislative session lobbying support.
2. Flat Fee. \$18,000.00.
3. Costs and Expenses.

|                             |                     |
|-----------------------------|---------------------|
| In-office photocopying      | \$ 0.25 per page    |
| Mileage                     | \$ Current IRS Rate |
| Computerized legal research | \$ 5.00 per minute  |

Clerical staff overtime necessary for extraordinary matters will be charged at 1.5 times the base hourly rate. The base hourly rates for clerical personnel presently range between \$15.00 and \$25.00.

4. Billing Statements; Carrying Charges. Billing statements will normally be rendered to Client on a monthly basis. Fees will generally be billed within thirty (30) days following the month in which the services are rendered, and disbursements and other charges will generally be billed within thirty (30) to sixty (60) days after they are incurred by us. Payment is within thirty (30) days of receipt of our statement, and is not contingent upon the outcome or completion of a matter for which the firm has been engaged. The Firm does not extend credit to clients. We will waive carrying charges for this engagement. Payments will be accepted by cash, check, money order, bank draft, wire transfer and credit card.

5. No Guarantees. We must emphasize that it is impossible to provide any promise or guarantee about the outcome of Your representation. Nothing in this Agreement or any statements by our staff or attorneys constitutes a promise or guarantee. Any comments about the outcome of Your matter are expressions of opinion only.

6. Communication. During the course of our representation, we will endeavor to keep You fully advised as to the status and progress of this matter and our recommendations as to an appropriate course of action in view of the facts, circumstances and issues involved. We will send copies of all material documents generated in connection with our representation, and I ask that You call the firm, at any time, should You wish to discuss the matter, our invoices or bills, or any other aspect of this representation. If, for some reason, I am not available, another attorney in this office will generally be available and familiar with the matter sufficiently to consult with You as desired. You agree that all means of communication are, to some degree, susceptible to misdirection, delay or interception, and E-mail, facsimile transmissions and cellular telephone communications present special risks of inadvertent disclosure. However, in order to maximize speed, efficiency, and convenience of these methods of communication in this matter, you consent to our use of E-mail, cellular phones, and facsimile transmissions communications in representing You in this matter.

7. Fees Disputes. Under Nevada law, there is the right to request arbitration of any fee dispute before a committee selected by the State Bar known as a "fee dispute" committee. By signing this Agreement, and unless otherwise agreed in writing by You and the firm, or unless otherwise

decided by a Nevada court of competent jurisdiction on a motion for the award of fees, any dispute about the amount or payment of legal fees or costs in this Engagement shall be submitted for final and binding arbitration before the Fee Dispute Committee of the State Bar of Nevada (“Bar Arbitration”). Such Bar Arbitration shall determine only the issue of the amount of fees and charges properly chargeable to You, and such Bar Arbitration shall have no effect on any claims for affirmative relief based on alleged professional malpractice, errors or omissions, breach of contract, breach of fiduciary duty, fraud or violation of any statute, which such claims shall be solely determined in a binding arbitration proceeding by a retired judge or justice without regard to the result of any Bar Arbitration.

8. Records and File Retention. All records and files will be retained and disposed of in compliance with our policy in effect from time to time. Subject to future changes, it is our current policy not to retain records for more than seven (7) years from the date the matter is closed. Upon prior written request, we will return records to You prior to destruction. As it is not administratively feasible to advise You of record disposal, we recommend that You maintain Your own files for reference. If You have any questions concerning record retention, please contact us.

9. Your Responsibilities. You agree to cooperate with us, to keep us informed of all developments material to the Engagement (especially communication to or from other legal counsel, material undertakings, and agreements), to communicate and disclose fully all relevant matters relating to our Engagement, to abide by this agreement, and to advise the firm concerning any disputed fee or cost charged in this matter. Our firm will rely upon materials and matters provided and communicated to us by You, Your agents, and other representatives, as well as Your representations to us that arise during the course of our representation of You in this matter. The firm undertakes no obligation or duty of independent inquiry to confirm or verify such representations and matters. It is extremely important that You provide us with complete and accurate information on a timely basis since our representation; analysis and advice to You will be based upon such information and could change if factual circumstances are different.

10. Termination. You have a right at any time to terminate our services and representation upon written notice to the firm, and we may also terminate our services upon written notice at any time for any reason. You remain liable for all unpaid charges for services provided and expenses advanced or incurred prior to the date of termination or withdrawal. If You do not meet its obligation of timely payments or deposits under this engagement letter, we reserve the right to suspend services and/or withdraw from representation on that basis alone, subject to any required judicial, administrative, or other approvals. In the event of termination, you agree to take all steps necessary to free us of any obligation to perform further, including the execution of any documents (including forms for substitution of counsel) necessary to complete our withdrawal. In addition, our representation will end at the earliest of (a) Your termination of our representation; (b) our withdrawal or termination; or (c) unless we are engaged to represent You in other matters, upon substantial completion of our work on the Engagement whether or not we send a letter to You to confirm the termination of our representation. Unless subsequently re-engaged, we undertake no further responsibility to advise You concerning developments which may impact Your matter and the legal representation we provided to You. From time to time, we may provide You with general topical information concerning recent legal developments as a courtesy. These communications do not create an attorney client relationship nor should it be construed as legal advice or an opinion

on specific situations. If You do not wish to receive future law updates and alerts, please contact the firm asking to be removed from the mailing list.

11. Miscellaneous. This Agreement is governed by Nevada law and sets forth our entire agreement for rendering professional services. It can be amended or modified only in writing. Each party signing this Agreement is jointly and severally responsible for all obligations due us and represents that each has full authority to execute this Agreement so that it is binding. This Agreement may be signed in one or more counterparts and binds each party signing it whether or not any other proposed signatory ever executes it. If any provision of this Agreement or the application thereof is held invalid or unenforceable, the invalidity or unenforceability shall not affect other provisions or applications of this Agreement which can be given effect without such provisions or application, and to this end the provisions of this Agreement are declared to be severable. We are not advising You with respect to this Agreement because we would have a conflict of interest in doing so. If You wish advice, you should consult independent counsel of Your choice.

12. Wire Transfer Information.

Nevada State Bank  
1 West Liberty  
Reno, NV 89502

Routing # 122400779  
Acct # 54201 7994  
Reference: Nevada State Board of Optometry

## Exhibit A

### McDonald Carano Ediscovery Schedule of Costs

| E-Discovery Service                                                                                                                                                 | Unit               | Price  |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|--------|
| <b>PROCESSING</b>                                                                                                                                                   |                    |        |
| ESI (Electronically Stored Information) Processing<br>(includes metadata extraction, optical character recognition, image generation, deduplication, and analytics) | Per GB             | \$100* |
| <b>STORAGE</b>                                                                                                                                                      |                    |        |
| Monthly hosting (for cases from 0–5 GB)                                                                                                                             | Flat fee per month | \$100  |
| Monthly hosting (for cases from 5–99 GB)                                                                                                                            | Per GB per month   | \$20   |
| Monthly hosting (for cases from 100–499 GB)                                                                                                                         | Per GB per month   | \$18   |
| Monthly hosting (for cases larger than 500 GB)                                                                                                                      | Per GB per month   | \$15   |
| <b>PRODUCTIONS</b>                                                                                                                                                  |                    |        |
| TIFF or PDF export<br>(includes redactions and endorsements)                                                                                                        | Per GB             | \$250* |
| Optical media, flash drives, secure transfer                                                                                                                        | Per item           | \$0    |
| External hard drive (for productions larger than 32 GB)                                                                                                             | Per item           | \$75   |

\* For Processing and Production jobs, the Firm charges based on a 1 GB project minimum.

**Nevada State Board of Optometry**  
**Profit and Loss Comparison**  
July 2021 - June 2022

|                                                 | Proposed<br>Budget Jul<br>2022-Jun 2023 | Jul 2021-<br>Jun 2022 (PY) | Jul 2020 -<br>Jun 2021 (PY) |                                                      |
|-------------------------------------------------|-----------------------------------------|----------------------------|-----------------------------|------------------------------------------------------|
| <b>Income</b>                                   |                                         |                            |                             |                                                      |
| Endorsement Application                         |                                         |                            | \$ 3,784.75                 |                                                      |
| Fees- Applications                              | \$ 20,500.00                            | \$ 35,081.79               | \$ 16,694.50                |                                                      |
| Fees- Certs/Add'l Location/Addr. Chg./Fict Name | \$ 50,000.00                            | \$ 70,612.26               | \$ 47,402.77                |                                                      |
| Fees- License Renewals                          | \$ 195,000.00                           | \$ 255,712.73              | \$ 194,715.63               |                                                      |
| Merchant Fee Income                             | \$ 950.00                               | \$ 919.16                  | \$ 1,804.91                 |                                                      |
| Miscellaneous Income                            | \$ 4,000.00                             |                            | \$ 4,000.00                 | late fees, court costs, reimbursements               |
| Penalties- Admin                                | \$ 6,000.00                             | \$ 1,500.00                |                             |                                                      |
| Refunds received                                |                                         |                            | \$ 903.07                   |                                                      |
| Interest Earned                                 | \$ 200.00                               | \$ 145.62                  | \$ 328.28                   |                                                      |
| <b>Total Income</b>                             | <b>\$ 276,650.00</b>                    | <b>\$ 363,971.56</b>       | <b>\$ 269,305.63</b>        |                                                      |
| <b>Expenses</b>                                 |                                         |                            |                             |                                                      |
| Accounting & Bookkeeping                        | \$ 7,200.00                             | \$ 7,164.20                | \$ 6,657.23                 |                                                      |
| Bank Charges                                    | \$ 100.00                               | \$ 303.34                  | \$ 87.07                    |                                                      |
| Board Pay, Travel & Per Diem                    | \$ 4,600.00                             | \$ 2,400.00                | \$ 2,850.00                 | includes \$2000 for ARBO + extra meetings due to Leg |
| Computer purchase incl. Software                | \$ 10,000.00                            | \$ 1,051.90                | \$ 719.76                   | Thentia is software + one computer upgrade           |
| Dues & Subscriptions                            | \$ 1,250.00                             | \$ 8,049.46                | \$ 1,000.00                 | Thentia erroneously included here 21-22              |
| Insurance- Liability                            | \$ 600.00                               | \$ 594.00                  | \$ 5.29                     |                                                      |
| Legal, Lobbying & Professional Fees             | \$ 60,000.00                            | \$ 23,895.14               | \$ 4,849.44                 | \$40k lobbying, \$11k audit, \$9k AG rep             |
| Office Equipment                                |                                         |                            | \$ 162.86                   |                                                      |
| Office Expense                                  | \$ 1,650.00                             | \$ 1,610.08                | \$ 1,647.17                 |                                                      |
| Other General and Admin Expenses                | \$ -                                    | \$ 2.50                    | \$ 2,965.64                 |                                                      |
| Other Miscellaneous Service Cost                | \$ 115.00                               | \$ 113.25                  | \$ 603.50                   |                                                      |
| Payroll Expenses                                | \$ 100.00                               | \$ 100.19                  | \$ 1.22                     |                                                      |
| Retirement- Employer Paid                       | \$ 25,000.00                            | \$ 25,000.00               | \$ 23,977.00                |                                                      |
| Insurance- Workers Comp                         | \$ 575.00                               | \$ 575.00                  | \$ 1,281.00                 |                                                      |
| Payroll Taxes                                   |                                         |                            | \$ 1,757.00                 |                                                      |
| Payroll- Health Ins, Medicare & PERS            | \$ 2,500.00                             | \$ 2,429.89                | \$ 17,527.67                |                                                      |
| Taxes                                           |                                         |                            | \$ 101.41                   |                                                      |
| Vol Life & Dep Life Insurance                   |                                         | \$ (45.86)                 | \$ 0.05                     |                                                      |
| Wages                                           | \$ 151,228.00                           | \$ 151,227.61              | \$ 147,386.12               | no adjustment - includes \$7,000 EOY bonuses 2021    |
| PEBP Expense                                    |                                         |                            | \$ 6,166.00                 |                                                      |
| Postage and delivery costs                      | \$ 500.00                               | \$ 907.87                  | \$ 716.88                   |                                                      |
| Printing & Copying (incl leased copier)         | \$ 300.00                               | \$ 275.41                  | \$ 257.88                   |                                                      |
| Purchases                                       |                                         | \$ 35.00                   |                             |                                                      |
| QuickBooks Payments Fees                        | \$ 2,200.00                             | \$ 18,673.22               | \$ 2,103.54                 | \$900/yr + approx 3% of transactions                 |

|                                            |                       |                      |                       |                                                          |
|--------------------------------------------|-----------------------|----------------------|-----------------------|----------------------------------------------------------|
| Reimbursements                             |                       | \$ 10,936.70         |                       | Rebates to Licensees paid from operating account 2022    |
| Rent or Lease                              | \$ 14,500.00          | \$ 14,163.51         | \$ 14,524.35          |                                                          |
| Retirement Benefits                        |                       |                      | \$ 34,222.00          |                                                          |
| Travel- in State (Staff & Board)           | \$ 3,500.00           | \$ 2,451.60          | \$ 232.86             | Additional travel due to Leg. Session and extra meetings |
| Utilities- Phone, Internet, Gas & Electric | \$ 5,400.00           | \$ 5,381.77          | \$ 5,114.51           |                                                          |
| Website development & upkeep               | \$ 4,225.00           | \$ 8,854.40          | \$ 4,016.18           | Should be nominal after Thentia implementation in 12/22  |
| <b>Total Expenses</b>                      | <b>\$ 295,543.00</b>  | <b>\$ 286,150.18</b> | <b>\$ 280,933.63</b>  |                                                          |
| <b>Net Income</b>                          | <b>\$ (18,893.00)</b> | <b>\$ 77,821.38</b>  | <b>\$ (11,628.00)</b> |                                                          |

07/01/2021 Beginning Assets: \$571,884.00

6/30/2022 Bank Balances (approx.)

\$ 6,977.18 Bank of America Operating Account

\$221,910.11 CNB Operating Reserves(includes licensure carryover 7/22-2/24)

\$193,588.60 NSB Reserves

\$200,341.49 Heritage Bank Reserves

\$622,817.38 CURRENT TOTAL ASSETS

\$295,543.00 Proposed Expenses 2022-23

\$327,274.38 Proposed EOY Reserves (Not < 1 yr operating)



**STATE OF NEVADA**  
**DEPARTMENT OF ADMINISTRATION**  
***Division of Human Resource Management***  
209 E. Musser Street, Suite 101 | Carson City, Nevada 89701  
Phone: (775) 684-0150 | <http://hr.nv.gov> | Fax: (775) 684-0122

**MEMORANDUM**  
**HR# 34-22**

June 20, 2022

**TO:** Agency Personnel Liaisons

**FROM:** Frank Richardson, Administrator *Frank Richardson*  
Division of Human Resource Management

**SUBJECT:** FISCAL YEAR 2023 COMPENSATION CHANGES

Assembly Bill 493 (AB 493) of the 2021 Legislative Session approved a 1% cost-of-living adjustment (COLA) for eligible classified, unclassified, and non-classified State employees not covered under a collective bargaining agreement (CBA) effective July 1, 2022.

AB 493 also approved a 3% COLA for eligible employees in bargaining units A, E, F, H, I, and K effective July 1, 2022. The Office of Project Management and the Division of Human Resource Management have created new Compensation Schedules and Pay Policy codes. SuccessFactors will automatically apply the new pay policies to employees in the bargaining units listed above. Below is a crosswalk of the new pay policies:

| PAY POLICY EFFECTIVE 7/1/22 |                                                 | CBA PAY POLICY EFFECTIVE 7/1/22 |                                                                 |
|-----------------------------|-------------------------------------------------|---------------------------------|-----------------------------------------------------------------|
| PP01                        | Classified EE/ER Pay Plan                       | PP01A                           | Classified EE/ER Pay Plan CBA                                   |
| PP02                        | Classified ER Pay Plan                          | PP02A                           | Classified ER Pay Plan CBA                                      |
| PP03                        | Classified Police/Fire ER Pay Plan              | PP03A                           | Classified Police/Fire ER Pay Plan CBA                          |
| PP08                        | Classified 24-Hr Firefighter P/F EE/ER Pay Plan | PP08                            | (No Change) Classified 24-Hr Firefighter P/F EE/ER Pay Plan CBA |
| PP09                        | Classified 24-Hr Firefighter P/F ER Pay Plan    | PP09                            | (No Change) Classified 24-Hr Firefighter P/F ER Pay Plan CBA    |
| XPP01                       | Classified Exempt EE/ER Pay Plan                | XP01A                           | Classified Exempt EE/ER Pay Plan CBA                            |
| XPP02                       | Classified Exempt ER Pay Plan                   | XP02A                           | Classified Exempt ER Pay Plan CBA                               |

**NOTE:** Agencies and employees will not have access to SuccessFactors from June 29, 2022,

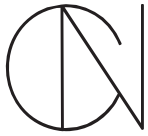
**to July 5, 2022.** This will allow Central Records time to approve personnel actions effective prior to July 1, 2022, and the Office of Project Management time to update employee records for the cost-of-living increases mentioned above.

Also approved in AB 493, employees in bargaining unit H with continuous State service as of July 1, 2022, of more than 5 years but less than 15 years will receive a one-time bonus payment of \$500.00. Employees in bargaining unit H with continuous State service as of July 1, 2022, of more than 15 years will receive a one-time bonus payment of \$1,000.00. Eligible employees will receive these payments in pay period 03 (7/11/22 to 7/24/22; check date 8/5/22). Central Payroll will process these payments; employees will see the payment with the pay code of "PADJX".

Fiscal year 2023 Compensation Schedules will be posted in July to the DHRM website.

The DHRM Central Records Manager will be supplying information about end of year, beginning of year personnel actions and organizational changes via email to your Agency HR Technicians. For questions related to processing, please contact [DHRM-CentralRecordsProcessing@admin.nv.gov](mailto:DHRM-CentralRecordsProcessing@admin.nv.gov)

The DHRM State Payroll Manager will be supplying information about the CBA one-time bonus payments via email to your Agency Payroll Clerks. For questions related to the one-time bonus payments, please contact [DHRM-CentralPayrollProcessing@admin.nv.gov](mailto:DHRM-CentralPayrollProcessing@admin.nv.gov) or [LaborRelations@admin.nv.gov](mailto:LaborRelations@admin.nv.gov).



CASEY NEILON

July 5, 2022

To Members of the Board and Executive Director  
Nevada State Board of Optometry  
P.O. Box 1824  
Carson City NV 89702

We are pleased to confirm our understanding of the services we are to provide the Nevada State Board of Optometry ("the Board") for the year ended June 30, 2022.

### **Audit Scope and Objectives**

We will audit the financial statements of the governmental type activities, general fund and the disclosures, which collectively comprise the basic financial statements of the Board as of and for the year ended June 30, 2022. Accounting standards generally accepted in the United States of America (GAAP) provide for certain required supplementary information (RSI), such as management's discussion and analysis (MD&A), to supplement the Board's basic financial statements. Such information, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. As part of our engagement, we will apply certain limited procedures to the Board's RSI in accordance with auditing standards generally accepted in the United States of America (GAAS). These limited procedures will consist of inquiries of management regarding the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We will not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient appropriate evidence to express an opinion or provide any assurance. The following RSI is required by GAAP and will be subjected to certain limited procedures, but will not be audited:

- 1) Management's Discussion and Analysis.
- 2) Statement of Revenue and Expenditures – Budget and Actual
- 3) Supplementary Pension Information
- 4) Supplementary Other Post Employment Benefit Information

The objectives of our audit are to obtain reasonable assurance as to whether the financial statements as a whole are free from material misstatement, whether due to fraud or error; issue an auditor's report that includes our opinion about whether your financial statements are fairly presented, in all material respects, in conformity with GAAP; and report on the fairness of the supplementary information referred to in the second paragraph when considered in relation to the financial statements as a whole. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS and *Government Auditing Standards* will always detect a material misstatement when it exists. Misstatements, including omissions, can arise from fraud or error and are

503 N. Division St. • Carson City, NV • 89703  
6770 S. McCarran Blvd, Ste. 200 • Reno, NV • 89509  
775 . 283 . 5555



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considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment of a reasonable user made based on the financial statements.

The objectives also include reporting on internal control over financial reporting and compliance with provisions of laws, regulations, contracts, and award agreements, noncompliance with which could have a material effect on the financial statements in accordance with *Government Auditing Standards*.

### **Auditor's Responsibilities for the Audit of the Financial Statements**

We will conduct our audit in accordance with GAAS and the standards for financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States, and will include tests of your accounting records of the Board and other procedures we consider necessary to enable us to express such opinions. As part of an audit in accordance with GAAS and *Government Auditing Standards*, we exercise professional judgment and maintain professional skepticism throughout the audit.

We will evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management. We will also evaluate the overall presentation of the financial statements, including the disclosures, and determine whether the financial statements represent the underlying transactions and events in a manner that achieves fair presentation. We will plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement, whether from (1) errors, (2) fraudulent financial reporting, (3) misappropriation of assets, or (4) violations of laws or governmental regulations that are attributable to the government or to acts by management or employees acting on behalf of the government. Because the determination of waste and abuse is subjective, *Government Auditing Standards* do not expect auditors to perform specific procedures to detect waste or abuse in financial audits nor do they expect auditors to provide reasonable assurance of detecting waste or abuse.

Because of the inherent limitations of an audit, combined with the inherent limitations of internal control, and because we will not perform a detailed examination of all transactions, there is an unavoidable risk that some material misstatements may not be detected by us, even though the audit is properly planned and performed in accordance with GAAS and *Government Auditing Standards*. In addition, an audit is not designed to detect immaterial misstatements or violations of laws or governmental regulations that do not have a direct and material effect on the financial statements. However, we will inform the appropriate level of management of any material errors, fraudulent financial reporting, or misappropriation of assets that comes to our attention. We will also inform the appropriate level of management of any violations of laws or governmental regulations that come to our attention, unless clearly inconsequential. Our responsibility as auditors is limited to the period covered by our audit and does not extend to any later periods for which we are not engaged as auditors.

We will also conclude, based on the audit evidence obtained, whether there are conditions or events, considered in the aggregate, that raise substantial doubt about the government's ability to continue as a going concern for a reasonable period of time.

Our procedures will include tests of documentary evidence supporting the transactions recorded in the accounts, tests of the physical existence of inventories, and direct confirmation of receivables and certain assets and liabilities by correspondence with selected customers, creditors, and financial institutions. We will also request written representations from your attorneys as part of the engagement.

We may, from time to time and depending on the circumstances, use third-party service providers in serving your account. We may share confidential information about you with these service providers but remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures, and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality agreements with all service providers to maintain the confidentiality of your information and we will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure an appropriate confidentiality agreement, you will be asked to provide

your consent prior to the sharing of your confidential information with the third-party service provider. Furthermore, we will remain responsible for the work provided by any such third-party service providers.

Our audit of financial statements does not relieve you of your responsibilities.

#### **Audit Procedures—Internal Control**

We will obtain an understanding of the government and its environment, including internal control relevant to the audit, sufficient to identify and assess the risks of material misstatement of the financial statements, whether due to error or fraud, and to design and perform audit procedures responsive to those risks and obtain evidence that is sufficient and appropriate to provide a basis for our opinion. Tests of controls may be performed to test the effectiveness of certain controls that we consider relevant to preventing and detecting errors and fraud that are material to the financial statements and to preventing and detecting misstatements resulting from illegal acts and other noncompliance matters that have a direct and material effect on the financial statements. Our tests, if performed, will be less in scope than would be necessary to render an opinion on internal control and, accordingly, no opinion will be expressed in our report on internal control issued pursuant to *Government Auditing Standards*. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentation, or the override of internal control. An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. Accordingly, we will express no such opinion. However, during the audit, we will communicate to management and those charged with governance internal control related matters that are required to be communicated under AICPA professional standards and *Government Auditing Standards*.

#### **Audit Procedures—Compliance**

As part of obtaining reasonable assurance about whether the financial statements are free of material misstatement, we will perform tests of the Board's compliance with the provisions of applicable laws, regulations, contracts, agreements, and grants. However, the objective of our audit will not be to provide an opinion on overall compliance and we will not express such an opinion in our report on compliance issued pursuant to *Government Auditing Standards*.

#### **Other Services**

We will also assist in preparing the financial statements and related notes of the Board in conformity with accounting principles generally accepted in the United States of America based on information provided by you. These nonaudit services do not constitute an audit under *Government Auditing Standards* and such services will not be conducted in accordance with *Government Auditing Standards*. We will perform the services in accordance with applicable professional standards. The other services are limited to the financial statement services previously defined. We, in our sole professional judgment, reserve the right to refuse to perform any procedure or take any action that could be construed as assuming management responsibilities.

You agree to assume all management responsibilities relating to the financial statements and related notes and any other nonaudit services we provide. You will be required to acknowledge in the management representation letter our assistance with preparation of the financial statements and related notes and that you have reviewed and approved the financial statements and related notes prior to their issuance and have accepted responsibility for them. Further, you agree to oversee the nonaudit services by designating an individual, preferably from senior management, with suitable skill, knowledge, or experience; evaluate the adequacy and results of those services; and accept responsibility for them.

## **Responsibilities of Management for the Financial Statements**

Our audit will be conducted on the basis that you acknowledge and understand your responsibility for designing, implementing, establishing, and maintaining effective internal controls relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error, and for evaluating and monitoring ongoing activities to help ensure that appropriate goals and objectives are met; following laws and regulations; and ensuring that management and financial information is reliable and properly reported. Management is also responsible for implementing systems designed to achieve compliance with applicable laws, regulations, contracts, and grant agreements. You are also responsible for the selection and application of accounting principles, for the preparation and fair presentation of the financial statements and all accompanying information in conformity with accounting principles generally accepted in the United States of America, and for compliance with applicable laws and regulations and the provisions of contracts and grant agreements.

Management is responsible for making drafts of financial statements, all financial records, and related information available to us and for the accuracy and completeness of that information (including information from outside of the general and subsidiary ledgers). You are also responsible for providing us with (1) access to all information of which you are aware that is relevant to the preparation and fair presentation of the financial statements, such as records, documentation, identification of all related parties and all related-party relationships and transactions, and other matters; (2) additional information that we may request for the purpose of the audit; and (3) unrestricted access to persons within the government from whom we determine it necessary to obtain audit evidence. At the conclusion of our audit, we will require certain written representations from you about your responsibilities for the financial statements; compliance with laws, regulations, contracts, and grant agreements; and other responsibilities required by GAAS and *Government Auditing Standards*.

Your responsibilities include adjusting the financial statements to correct material misstatements and for confirming to us in the written representation letter that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the financial statements of each opinion unit taken as a whole.

You are responsible for the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the government involving (1) management, (2) employees who have significant roles in internal control, and (3) others where the fraud could have a material effect on the financial statements. Your responsibilities include informing us of your knowledge of any allegations of fraud or suspected fraud affecting the government received in communications from employees, former employees, grantors, regulators, or others. In addition, you are responsible for identifying and ensuring that the government complies with applicable laws, regulations, contracts, agreements, and grants and for taking timely and appropriate steps to remedy fraud and noncompliance with provisions of laws, regulations, or contracts or grant agreements that we report.

Management is responsible for establishing and maintaining a process for tracking the status of audit findings and recommendations. Management is also responsible for identifying and providing report copies of previous financial audits, attestation engagements, performance audits or other studies related to the objectives discussed in the Audit Scope and Objectives section of this letter. This responsibility includes relaying to us corrective actions taken to address significant findings and recommendations resulting from those audits, attestation engagements, performance audits, or other studies. You are also responsible for providing management's views on our current findings, conclusions, and recommendations, as well as your planned corrective actions, for the report, and for the timing and format for providing that information.

### **Engagement Administration, Fees, and Other**

We understand that your employees will prepare all cash, accounts receivable, or other confirmations we request and will locate any documents selected by us for testing.

We will provide copies of our reports to the Board; however, management is responsible for distribution of the reports and the financial statements. Unless restricted by law or regulation, or containing privileged and confidential information, copies of our reports are to be made available for public inspection.

The audit documentation for this engagement is the property of Casey Neilon, Inc. and constitutes confidential information. However, subject to applicable laws and regulations, audit documentation and appropriate individuals will be made available upon request and in a timely manner to the State of Nevada or its designee, a federal agency providing direct or indirect funding, or the U.S. Government Accountability Office for the purposes of a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities. We will notify you of any such request. If requested, access to such audit documentation will be provided under the supervision of Casey Neilon, Inc. personnel. Furthermore, upon request, we may provide copies of selected audit documentation to the aforementioned parties. These parties may intend or decide to distribute the copies or information contained therein to others, including other governmental agencies.

The audit documentation for this engagement will be retained for a minimum of five years after the report release date or for any additional period requested by the State of Nevada. If we are aware that a federal awarding agency or auditee is contesting an audit finding, we will contact the party(ies) contesting the audit finding for guidance prior to destroying the audit documentation.

Niki Neilon is the engagement partner and is responsible for supervising the engagement and signing the reports or authorizing another individual to sign them. We expect to begin our audit in July 2022 and to issue our reports no later than November 30, 2022.

Our fee for services will be at our standard hourly rates plus out-of-pocket costs (such as report reproduction, word processing, postage, travel, copies, telephone, etc.) except that we agree that our gross fee, including expenses, will not exceed \$11,300. Our standard hourly rates vary according to the degree of responsibility involved and the experience level of the personnel assigned to your audit. Our invoices for these fees will be rendered each month as work progresses and are payable on presentation. In accordance with our firm policies, work may be suspended if your account becomes 30 days or more overdue and may not be resumed until your account is paid in full. If we elect to terminate our services for nonpayment, our engagement will be deemed to have been completed upon written notification of termination, even if we have not completed our report. You will be obligated to compensate us for all time expended and to reimburse us for all out-of-pocket costs through the date of termination. The above fee is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during the audit. If significant additional time is necessary, we will discuss it with you and arrive at a new fee estimate before we incur the additional costs.

We may from time to time and depending on the circumstances and nature of the services we are providing, share your confidential information with third-party service providers, some of whom may be cloud-based, but we remain committed to maintaining the confidentiality and security of your information. Accordingly, we maintain internal policies, procedures and safeguards to protect the confidentiality of your personal information. In addition, we will secure confidentiality terms with all service providers to maintain the confidentiality of your information and will take reasonable precautions to determine that they have appropriate procedures in place to prevent the unauthorized release of your confidential information to others. In the event that we are unable to secure appropriate confidentiality terms with a third-party service provider, you will be asked to provide your consent prior to the sharing of your confidential information with the third-party service provider. Although we will use our best efforts to make the sharing of your information with such third parties secure from unauthorized access, no completely secure system for electronic data transfer exists. As such, by your signature below, you understand that the firm makes no warranty, expressed

or implied, on the security of electronic data transfers.

#### International Alliance Membership

Casey Neilon, Inc. is an independent member firm of Allriott Global Alliance, which is an international alliance of independent accounting, law and specialist firms. Allriott Global Alliance and its member firms are legally distinct and separate entities. These entities are not and shall not be construed to be in the relationship of a parent firm, subsidiary, partner, joint venture, agent or a network. No Allriott Global Alliance member firm has any authority (actual, apparent, implied or otherwise) to obligate or bind Allriott Global Alliance or any other Allriott Global Alliance member firm in any manner whatsoever. Equally, neither Allriott Global Alliance nor any other member firm has any authority to obligate or bind the Firm or any other member firm. All Allriott Global Alliance members are independent firms, and as such, they each render their services entirely on their own account (including benefit and risk). In connection with the engagement contemplated by this letter or any other services from time to time provided by the Firm, the Firm may seek advice from or may recommend the retention of an Allriott Global Alliance member firm. Allriott Global Alliance and its other member firms shall have no liability for advice rendered by the Firm or such consulted or retained Allriott Global Alliance member firm. Nor shall the Firm have liability for advice rendered by any of the other Allriott Global Alliance member firms, even if consulted or recommended to you by the Firm.

#### Reporting

We will issue a written report upon completion of our audit of the Board's financial statements. Our report will be addressed to the Board. Circumstances may arise in which our report may differ from its expected form and content based on the results of our audit. Depending on the nature of these circumstances, it may be necessary for us to modify our opinions, add a separate section, or add an emphasis-of-matter or other-matter paragraph to our auditor's report, or if necessary, withdraw from this engagement. If our opinions are other than unmodified, we will discuss the reasons with you in advance. If, for any reason, we are unable to complete the audit or are unable to form or have not formed opinions, we may decline to express opinions or issue reports, or we may withdraw from this engagement.

We will also provide a report (that does not include an opinion) on internal control related to the financial statements and compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*. The report on internal control and on compliance and other matters will state (1) that the purpose of the report is solely to describe the scope of testing of internal control and compliance, and the results of that testing, and not to provide an opinion on the effectiveness of the entity's internal control on compliance, and (2) that the report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the entity's internal control and compliance. The report will also state that the report is not suitable for any other purpose. If during our audit we become aware that the Board is subject to an audit requirement that is not encompassed in the terms of this engagement, we will communicate to management and those charged with governance that an audit in accordance with U.S. generally accepted auditing standards and the standards for financial audits contained in *Government Auditing Standards* may not satisfy the relevant legal, regulatory, or contractual requirements.

We appreciate the opportunity to be of service to the Board and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign the attached copy and return it to us.

Very truly yours,



Casey Neilon, Inc.

RESPONSE:

This letter correctly sets forth the understanding of the Board.

Management signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Governance signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_