

NEVADA STATE BOARD OF OPTOMETRY



MARIAH SMITH, O.D.
Board President

JULIE C. ALAMO-LEON, O.D.
Board Member

Post Office Box 1824
Carson City, Nevada 89702
Telephone: (775) 883-8367
Facsimile: (775) 305-0105

ADAM SCHNEIDER, ESQ.
Executive Director

JEFFREY AUSTIN, O.D.
Board Member

SALLY BALECHA
Public Board Member

Materials for

July 31, 2024

Workshop

- Dr. Horner emails x 3 + R066-19(12) proposal
- Dr. Christensen email
- Daly letter
- NOA Letter
- NOA Exhibits 1, 2, and 3
- NOA R066-19(12) proposal

Executive Director Schneide,

Thank you for your email about the up coming Board meeting. I also agree that the wording needs to be listed out better.

My problem that I had, and it never did come about, was that the area director for Wal-Mart health and wellness, misunderstood what Wal-Mart was telling her. I never did need to use that latter. Wal-Mart never did anything about it. It now been about 1 & ½ yrs since we were told by her about this, and nothing has happed (in a nutshell, it was dropped).

So, during that meeting, it was explained to me that, ie Wal-Mart, was able to schedule our patients as long as they were not dictating to me: 1) what days a week I worked, 2) what hours and how may a day, 3) how many patients a day, 4) what kind of exams I was performing.

This type of wording needs to be put in the laws to make it clear. As it is right now, all of the contracts between optometrists and the corporate entities (Wal-Mart, Sam's Club, Sears, Costco, Lens Crafters, Vision Works, Eye Zone etc.) state in them how many and what day's we are to be open, and how many hours a day we are to be seeing patients. In some cases, we can be penalized if we closed down for any vacations without finding another optometrist to fill in.

Most of these companies use a generic contract that is used in all 50 states. My current contract with Wal-Mart states what days a week and how many hours a day I will be open for patients. This has been the cases ever since I started practice in Nevada in 2013. In fact, it is the same contract that was used when I practiced in Utah and Idaho. There is no way around this. If we object or point out that this is contrary to Nevada law, they will not let us sign the contract with them or discontinue our contract them. I have never really had a lot of problems with Wal-Mart on this. They tend to look the other way when I deviate from what is stated in the contract. But I have had problems with other places (Sears and Sam's Club) enforcing this. That is why I am no longer with them. I do know of several doctors who have had major problems recently with these companies coming down on them or dictating to them how many patients they will see in an hour (example: told that they need to do 6 exams an hour). The ones that I know of right now are, Costco, Lens Crafters, and all the companies that have contracts with VSP (Vision works, and Eyes Zone).

It would be nice to have a law stating that there cannot be any contract between optometrists and non-licensed companies telling them what days a week, and how many hours we will be open. In fact, the contract should be that the optometrist will provide optometric care at a specific location according to what the optometrist deems necessary. So, if the licensed feels that they should only be open 3 days a week and those days change every week, that is the licensed choosing, not the non- licensed decision. Meaning that there will not be any contract between the non-licensed and the licensed stating to the licensed that: a) what days a week they will be open, b) what hours and how may hours a day they will be open, c) how many exams a day and what kind of exams will be performed. It is important that the board understands that having the non- licensed entities do the physical schedule of your patients is extremely important. It helps us out. And helps them better plan their staffing for the upcoming day's when they can see how busy the doctor side will be.

I personally would like to see that wording stated as presented in the yellow highlighted. This would help clear things up:

R066-19 SEC. 12

4. An optometrist who forms an association or other business relationship with a person who is not licensed to practice optometry pursuant to subsection 3 shall:

(a) Comply with any applicable requirements of the Internal Revenue Service;

(b) Maintain organizational and financial independence from the person who is not licensed to practice optometry and ensure that the person who is not licensed to practice optometry is not involved in:

(1) Clinical decisions;

(2) Scheduling of patients;

Meaning that there will not be any contract between the non-licensed and the licensed stating to the licensed that: a) what days a week they will be open, b) what hours and how many hours a day they will be open, c) how many exams a day and what kind of exams will be performed.

The actual physically scheduling of patients under the direction of the licensed individual may be performed by a non- licensed individual as long as a clear separation of the patients' medical records are maintained between the licensed and the non- licensed. All scheduling decisions are to be under the control of the licensed individual.

(3) Any decision concerning scope of practice or use of facilities, equipment or drugs;

or

(4) Any other decision concerning the provision of care to a patient or the outcome of any treatment or other service provided to a patient; and

(c) Ensure that any advertising, marketing and promotional materials accurately portray the position of the optometrist within the association or business relationship, including, without limitation, whether the practice of the optometrist is included within any assumed or fictitious name used by the association or other business relationship.

Again, thank you for reaching out to me on this. If you have any questions about what I have written down, please feel free to contact me by email or my personal phone (_____). I hope that this email is helpful for the board on this matter.

I have planned my schedule so that I will be free for the board meeting.

Dr. Robert K. Horner

Executive Director Schneide,

I just noticed and read the letter to the board by a Jennifer Letten, and want to share with the board a few of my comments about her letter pertaining to Walmart scheduling appointments of the doctors (ie boards decision on 6/2023).

I have been here in Nevada since 2013 and have always had Walmart, Sam's Club, and Sears schedule my appointments with me paying the company a fee. Jennifer addresses some points about having "Walmart" scheduling an optometrist's appointments, that in my opinion do not apply.

1) **two-door configuration between an optometry practice and any adjacent optical retail**

business- With an adjacent optical retail scheduling the appointment in a separate system which the doctor owns, not a system that the optical retailer owns, is maintaining the two-door configuration. The systems are separate and divided. The doctor owns the system and controls it, where the optical retailer does not have any access to the system except to enter in the patient's appointment and demographics. This was addressed by the NBO in the 6/2023 meeting, and they did agree that this maintained the two-door stance. I have worked in this situation for over 10 yrs in Nevada, and over 10 years in other states. Most of the public do not understand what this term means, "two-door configuration". They are constantly calling the optical retailer directly to get their appointments scheduled asking to have their appointments at that location with that doctor. The optical retailer staff is not hunting down the patient for the doctor; the patients have already made the decision to come and see the doctor at that location.

2) **no co-mingling of the two establishments** - This statement is not accurate. Out of all the years I have been involved in the optical retail chains, there must be co-mingling with the optical staff and the doctor. Communication between the two needs to occur to provide the best product for the patient. I have had many occasions where the optical retail staff has come to me with a question on an Rx or more information where the patient had not given in the exam that turned out to be important for what was best for the patient. Communication between both of our professions is very important for the benefit of the patient.

3) **federal anti-kickback laws pertaining to healthcare businesses** – again, this is not in violation of the anti-kickback laws. The anti-kickback laws are there to prevent a monopoly of patient care. Allowing the patients to make the choice of who they want to see and to prevent favoritism between professionals. As I stated in #1, patients are calling or asking for an appointment with the doctor at that specific location. They have already made the decision themselves that they want to see the doctor at that location, they are not looking or asking for suggestions for doctors. The optical retailer staff has not convinced the patient to see the doctor at their location, the patient has already made the decision. If you really want to get nit-picky about this, one could make the argument that just having an independent optometrist there at the location is already showing favoritism to that doctor and therefore a violation of its own, to the anti-kickback laws. Therefore, in this argument, all side-by-side situations are in violation of the federal anti-kickback law, which is clearly not the case.

4) **when Walmart staff are asked to perform administrative functions for the doctor, the patient perception is that there is no division between the two businesses, and this violates the spirit of these anti-kickback law** - again, this is not in violation of the anti-kickback laws. As I stated in #1 the general public does not understand or know what the separation of two businesses means. I as a doctor have constantly been told how helpful and beneficial and hard-working my optical staff is. I am constantly explaining to them that I am not part of the optical retailer, and they still do not understand this. The optical staff at the two locations I am at are constantly having to explain to the public that we are separate businesses. Jennifer's comments here does not really stand, because the general public's perception is already that there is no division between the two businesses, that we are all the same business. They assume that just because there is a doctor's clinic, that we are all one business.

5) **As employees of Walmart & Sam's Club, Nevada opticians are directed not to hand out independent optometrist's business cards or advertise inside the store for the independent optometrist, because the doctor is not a Walmart associate** - This is an incorrect statement. Over the 20 yrs (10 yrs here in Nevada) that I have worked side by side with Walmart, Sam's Club, and other optical chain's (10yrs in Nevada with Walmart and Sam's Club) the optical staff has contently been encouraged to get the doctors scheduled filled and have been told to do walk through through the store to capture patients. This is where the optical staff goes around the store and finds people to offer to clean their glasses and talk to them about when they had their last eye exam. Explains to them the importance of a yearly exam. The staff is then instructed to tell them that they "can go to any doctor for their eye exams, but we do have an independent doctor here in our store." They are then encouraged to get an eye exam. This is all done to increase business. Just by the comment "we have an independent doctor here in our store", counters Jennifer's statement that they are not encouraged to get patients for the doctor. Another comment on this fact, this is a Walmart policy, not a Nevada Board of Optometry or a Nevada Optical Board law. If Walmart felt that providing administrative services for the doctors is in violation of the "federal anti-kickback law", than Walmart would not provide this option in their doctors contact. It appears that if Jennifer Letten has an issue with this as a violation to the law, then she needs to address this with the Walmart legal team to see why they are allowing it.

6) **The fee is received by the corporation, not the personnel performing these additional tasks for the doctor, and the doctor has no authority to discipline or dismiss the personnel, as they are not employees of the doctor. This arrangement blurs the lines between the businesses. To keep the establishments separate, the doctors should hire a call center or other third-party entity outside of the corporation from which they are leasing space** – This is an incurred comment too. There is no difference of having Walmart provide the scheduling services compered to a 3rd party (as was determined by the NOB in 6/2023). In both cases, the doctor does not control the employees, has any way to fire or discipline the employees as was Jennifers comment. In a 3rd party, the employee does not answer the doctor, just like Walmart. If I have a problem with and of the optical employees for any reason, scheduling or any other, I address it with the optical manager, or the director of health and wellness as instructed to us doctors by Walmart. This would be no different than with a 3rd party.

As I recall, this was all addressed in the June 2023 meeting and the Board feel that it did not violate any of the state laws.

Again, if you have any question, feel free to contact me.

Dr. Robert Horner

Executive Director Schneide,

Here is my email in response to your request of evaluate and give you my thoughts pertaining to Dr.s' Kopolow & Girisgen letter dated May 22, 2024. It appears to me that they are addressing the same general topic that I was in June 2023, just over other administrative areas. As they pointed out and I do agree with, current Nevada optometry laws that describe the division between the functioning of a Licensed "optometrist" and a non-licensed business "optical retailer" are on well defined. In our state, we have had a large ingrowth in the number of these side-by-side chains. Just in the last 5 years, several companies have come in and bought up privet practices. Some examples in Northern Nevada area are, Eye Zone (by VSP), Pritchett, and Family Eye Care Ass. in Sparks (by VSP). I do see that this is going to be the current trend. Also, as is apparent in Jennifer Letten's letter, there is a lot of ambiguity in the wording of these laws which results in the interpretation

With these side-by-side chains increasing in our state, our laws need to have an allowance for some level of a "symbiotic relationship" to exist between the "independent optometrist" and the "optical retailer" to conduct business for the benefit of the general public. This addressed in Dr.'s Kopolow & Girisgens letter dated May 22, 2024. At the same time, the laws need to protect the "independent optometrist's" business from being controlled and over ran by the "optical retailer". Allowing the independence of the optometrist to exist and control is own business and clinical functions. Or as Dr.'s Kopolow & Girisgen's stated reduce abuse by the non-licensed business.

This is in the best interest of both the general public and the optometrist. Our current laws are very vague in spelling out the division between these two. If you really go with the strictest interpretation, then you can argue that the whole "side-by-side" contract is in violation of the law itself because the "optical retailer" will always have a "monetary stake in the performance of the licensee" just by the fact that they rent the space to the "independent optometrist". If you use an all or none concept to this "symbiotic relationship", then the extremes of both is devastating.

Example one: if you allow the "optical retailer" to have control, then the "independent optometrist" becomes just like an employee; having the "optical retailer making all the decisions, which is not in the general public's interest. Example two: If you have the strictest separation between the "independent optometrist" and the "optical retailer", then you are in a since stating that the two cannot function and support each other. When this happens, both businesses suffer dramatically. I have seen this occurred when there is no doctor next to or if the "independent optometrist" and the "optical retailer" do not get along. So, we must have the laws set and the wording in such a way that this symbiotic relationship can exist and at the same time protect the "independent optometrist" for any the "bad players" who may want to distort this independence of the optometrist. The current laws do not do this, which is why the board heard from me in June 2023 about the scheduling, and now, we are again revisiting this, but over other administrative services. As stated in Dr.'s Kopolow & Girisgen's letter to the board, there are many area's that need to be addressed. Examples are:

- 1) Billing, to what extent do we allow optical retailer collect doctor fees and keep them for dictating to the doctor what their fees should be.
- 2) Scheduling which was addressed prior and in my earlier letter to the board.
- 3) Physical separation. Are we to have a separate outside door, or just a wall. Does that wall also imply to the virtual world, i.e. can we shar websites – are the counted as advertisement of information sites, or classifieds.
- 4) Sharing of employees.
- 5) Is our space sacred, and the optical retailer not allowed to enter the doctors space when the independent doctor is not here, even for cleaning and maintenance.

6) What defines something as a medical record? Are all correspondence between doctors medical records, and are written glasses and contact lens prescriptions medical records?

These and more need to be addressed and evaluated. This is far more complex and extensive to be answered at a board meeting.

My recommendation to the board is to keep the current decision of Board in their June 2023 meeting stand. Then, the board can commission a committee of about 3 or so optometrists (mostly ones who work beside these "optical retailer" chains) to draft recommendations for changes and rewording to the Nevada optometry laws for the board to consider bring to the 2025 legislative session. This will help to make our laws more precise and spell out with is allowed and not allowed in these symbiotic relationships between the "independent optometrist" and the "optical retailer".

Please let me know if there is anything more that I can assist to help make our optometry laws better and easier to understand.

Dr. Robert Horner O.D.

From: [Jonathan Christiansen](#)
To: [Director](#)
Cc: mike@argentumnv.com
Subject: Upcoming Legislative Period
Date: Friday, June 21, 2024 12:25:34 PM
Attachments: [Nevada proposed reg.pdf](#)

Good afternoon Mr. Schneider,

I am writing in response to the topics discussed at the most recent state board of optometry meeting regarding suggestions on the introduction of language for the upcoming legislative session. A licensee raised the topic to consider an adjustment of the current language regarding managed service organizations and services they may provide to a practice. A particular note by the licensee concerned the scheduling of patients by a third-party entity. At the conclusion of that segment, it was suggested that licensees and members of the public submit suggestions prior to the upcoming board meeting on June 27th.

Related questions came up during the previous legislative session concerning changes to the current language. The suggested changes were found to be legally problematic by legislative counsel. The language was removed from the bill because of the concerns. I have reviewed this issue nationally to determine how it is addressed and managed elsewhere, and to suggest some alternatives. In reaching out to a colleague I received an opinion in the form of a letter from Mr. Thomas Daly, a healthcare and regulatory attorney well versed in healthcare, optometry, and this specific issue. He expressed concern that the suggested amendments may potentially create federal antitrust implications. I have included his opinion for your review. It seems this type of language is both unusual nationally and likely problematic legally.

Given the current uncodified language currently contains provisions which require that non licensed persons may not influence professional judgement and clinical decisions it appears that appropriate measures are in place to safeguard patients and the practice of optometry in Nevada. Efforts to mandate how a licensee manages a practice outside this regard appear to be anticompetitive in nature and not truly founded in patient care and safety. I request that the state board not move forward with previously discussed changes. Those changes do not aid in patient care and/or safety and could walk Nevada into territory that may bring federal antitrust concerns. I am hopeful that this opinion helps the board and licensees on current and future policy.

Thank you for your time and consideration,

Jon Christiansen, OD

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LAW OFFICE OF
THOMAS R. DALY
1550 Wilson Boulevard, Suite 700
Arlington, VA 22209
(703) 351-5034
Mobile (571) 236-5209
FAX (703) 351-9292

Admitted to DC and VA Bars

June 10, 2024

David A. Cockrell, O.D.
1711 West Sixth Avenue
Stillwater, OK. 74074

re: R066-19 Sec. 12 (4)(b)(2)
Scheduling of patients

Dear Dr. Cockrell,

This is in response to your question pertaining to the above proposed Nevada State Board of Optometry regulation and the application of antitrust scrutiny under the precedent set in *North Carolina State Board of Dental Examiners v. Federal Trade Commission*, 574 U.S. 494 (2015) ("*North Carolina case*").

The controlling state law, as cited in the proposal, is NRS 636.373 prohibits interference with the professional judgement of an optometrist as follows:

"NRS 636.373 Associations or other business relationships with physicians; prohibition on supervision or control or influence over professional judgment of optometrist unless licensed to practice optometry.

1. An optometrist may form an association or other business relationship with a physician to provide their respective services to patients.

2. If such an association or business relationship is formed, the optometrist may:

(a) Locate his or her office in the same place of business as the physician without a physical separation between the office and the place of business.

(b) Authorize the physician to have access to any medical records in the possession of the optometrist relating to a patient who is being treated by both the optometrist and the physician.

(c) Advertise and promote the services provided by the association or business consistent with the restrictions on advertising set forth in NRS 636.302.

3. A person shall not directly or indirectly supervise an optometrist within the scope of his or her practice of optometry unless the person is licensed to practice optometry pursuant to this chapter.

4. A person, including an officer, employee or agent of any commercial or mercantile establishment, shall not directly or indirectly control, dictate or influence the professional judgment of the practice of optometry by a licensed optometrist, unless the person is licensed to practice optometry pursuant to this chapter.

5. This section does not authorize an optometrist to employ or be employed by a physician.

(Added to NRS by 1995, 2564; A 2019, 3653) (emphasis added)”

The proposed regulation, as it pertains to the administrative and clerical process of “Scheduling of patients”, would establish procedures, requirements and limitations not related to the “professional judgment” of an optometrist and therefore is beyond the scope of NRS 636.373. As such, it also raises potential federal antitrust implications.

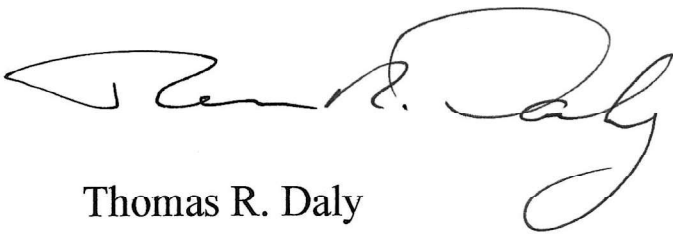
The Northern Carolina case stands for the proposition that a state regulatory board is not immune from antitrust liability for anticompetitive actions which do have the “clear articulation” of policy established by the state. That is, licensing board members are protected from federal antitrust liability only if there is “clear articulation” of a state policy to displace or adversely affect competition, and “active supervision” by the state.

The above regulation has the potential to limit competition since, as I understand it, it is aimed at prohibiting the ability to contract between licensed and non-licensed individuals. This may or may not be a worthy goal, but it should be a policy set by the Nevada legislature and not by members of the state licensing board.

It is also my understanding that the current proposal would adversely affect 10 to 20% of the 500-560 licensed Nevada optometrists. That only underscores the proposal's potential anticompetitive effect and the need for articulation of policy by the state in order to avoid federal antitrust liability.

Please let me know if I can be of any other assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas R. Daly". The signature is fluid and cursive, with a large loop at the end of the last name.

Thomas R. Daly



June 11, 2024

Adam Schneider, Esq.
Executive Director
Nevada State Board of Optometry
P.O. Box 1824
Carson City, NV 89702

Dear Mr. Schneider,

The Nevada Optometric Association (NOA) is pleased to have an opportunity to comment on several topics discussed during the Nevada State Board of Optometry (NSBO) meeting on May 30, 2024. Also, please find copies of pertinent sections of the meeting minutes from October 1, 2019, and R066-19.

Regarding The Board's response to Dr. Horner's letter inquiring about Walmart staff scheduling patients during the doctor and/or the staff's absence. As you may recall, a Walmart associate and officer of the Nevada State Board of Dispensing Opticians asked NSBO to clarify the statutes pertaining to maintaining separation between retail optical stores and licensees. Members of the NOA found the circumstances addressed by the Board's letter and the Walmart associate's description of what was happening to be inconsistent. While the NOA has no issue with the Board's response per se, it appeared to be working from inaccurate representations made by Dr. Horner in his original inquiry. NSBO's letter clearly outlined the lawful payment arrangement and employee/employer relationship between the Walmart associate and the adjacent independent doctor. The NOA is of the opinion that the arrangement, as described by the Walmart associate, violates multiple statutes and remains adjudicated.

Regarding R066-19 and its relationship to Dr. Tonya Hubbard's letter submitted to the NSBO, your research on this matter was invaluable in helping the NOA identify its concerns with the changes made to Section 12-3 and Section 12-4 of R066-19. A review of the minutes of the October 1, 2019, NSBO meeting memorialized a conversation between Dr. Chen Young, Dr. Mariah Smith, and Dr. Ken Kopolow involving relationships with licensees and private equity groups. During that exchange, Dr. Young expressed his confidence that the then-current law was sufficient to prevent private equity firms from exerting extraordinary control over a licensee. The Board moved to strike the passage. The problem, however, is that only the second paragraph was stricken, while paragraph (a) was modified into its present form and not stricken. (See attached section of R066-19 with paragraph (b) removed). The NOA is of the opinion that paragraph (b) was a critical counterpart to paragraph (a) and served to describe what such conduct of a business associate would look like in practice. Combining striking paragraph (b) AND keeping paragraph (a) increases ambiguity and sacrifices necessary "checks and balances," especially when the business associate has an equity interest in the greater enterprise. Dr. Kopolow's recollection of the exchange was that the entire "Private Equity" section was to be stricken, which would have preserved clarity of then-current law. (See *Dr. Smith's recommendation on page 39/95 of the minutes draft from the October 1, 2019, Regulatory Workshop*).

The NOA believes Dr. Hubbard's predicament results from a private equity partner creating an entity that appears to be owned by a licensee but may not. Over time, the business associate systematically takes more control of the licensee's practice methods through financial incentives, financial disincentives, and other means. Dr. Hubbard's NSBO inquiry raises several important concerns. The NOA found it unusual for a practice owner to leave their practice. Such behavior creates suspicion about who is the actual owner.

Further, who has taken custodianship of the patient files? As you know, the owner is responsible for those files. Thirdly, the NOA found it clear that Dr. Hubbard does not understand for whom she works. The arrangement between the two business associates appears anything but traditional or even lawful.

As Dr. Young correctly stated during the October 2019 NSBO meeting, NRS 636.373 describes the manner in which optical retailers co-exist with licensees by way of fair leases, separation of space, separation of finances, etc. R066-19, without including paragraph (b), causes the proposed NAC section to run contrary to the safeguards created by NRS. To avoid ambiguity in the future, the NOA respectfully requests changes be made to NAC 636.373 to align more closely with its NRS counterparts. Specifically, eliminate paragraph (a) of R066-19 section 12-3 or reinsert the previously stricken paragraph (b). The NOA is of the opinion that private equity arrangements with optometrists represent fundamental conflicts of interest and should be closely regulated or eliminated.

The NOA stands ready to participate with NSBO in working toward a stronger optometric community that provides the best possible care to our patients.

Sincerely,



Steve Girisgen, OD
President



Troy Ogden, OD
President-Elect



H. Kenneth Kopolow, OD
Secretary/Treasurer



Spencer Quinton, OD
Immediate Past President

designation used in advertising, marketing, or promotion.

If such an association or business relationship is formed, the optometrist may:

(a) Locate his or her office in the same place of business as the physician without a physical separation between the office and the place of business, so long as the primary activity of the host physician is the practice of ophthalmology and the Principal owner(s) of the host ophthalmology are primarily engaged in the clinical practice of ophthalmology onsite.

(b) Authorize the physician to have access to any medical records in the possession of the optometrist relating to a patient who is being treated by both the optometrist and the physician.

(c) Advertise and promote the services provided by the association or business consistent with the restrictions on advertising set forth in NRS 636.302.

This section prohibits an optometrist from employing or being employed by a physician. This section does not prohibit a Licensee from entering a partnership, joint venture, or other equity arrangement with a Nevada licensed ophthalmologist, so long as such arrangements do not diminish the Licensee's operational control of the optometric portion of the joint venture.

Associations or other business relationships with physicians (Private Equity).

An optometrist may form an association or other business relationship with a Private Equity firm to benefit from economies of scale and increased equity value. If such an association or business relationship is formed, the Licensee and the contractual relationship must:

(a) Limit Equity Partner's role to business operational management duties including payroll, human resources, real estate, non-health care related regulatory matters (business licensing, sales/use tax and permitting), banking, accounting, benefits administration, marketing, merchandising, occupancy, accounts payable & receivable, supply chain management, business development, administration, labor, compliance, purchasing, and medical billing.

(b) Expressly exclude Equity Partner's involvement with clinical decision making, patient scheduling, office flow management, pace, scope of practice, medical facilities, medical equipment acquisition and utilization, pharmaceutical utilization, and any other decision involving the patient health care experience and the outcome of any treatment or other encounter.

NAC 636.380 Service upon attorney. ([NRS 636.125](#)) Pursuant to NRS 636.375, following the entry of an appearance by an attorney for a party, all notices, pleadings and orders must be served upon the attorney and such service is effective for all purposes upon the party represented by the attorney.

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CHEN K. YOUNG, O.D.
Board President

MARIAH SMITH, O.D.
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Post Office Box 1824
Carson City, Nevada 89702
Telephone: (775) 883-8367
Facsimile: (775) 305-0105

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

JEFFREY AUSTIN, O.D.
Board Member

DREW JOHNSON
Public Board Member

MINUTES - DRAFT

Nevada State Board of Optometry telephonic meeting Regulatory Workshop October 1, 2019 at 11 a.m.

1. **Call to Order** by Optometry Board Vice-President Mariah L. Smith, O.D., Chair, Subcommittee on Legislative and Regulatory Changes.

Dr. Smith called the workshop to order at 11:01 p.m. via telephone conference. Board members Young and Johnson were in attendance, along with staff: Caren C. Jenkins, Executive Director, Laura Adair, Licensing Specialist. Also in attendance were Senior Deputy Attorney General Sophia, Jeannette Belz, Lobbyist, and Terri Ogden of NOA, Kenneth Kopolow, O.D., Steve Girisgen, O.D., Shannon Chandler, O.D. Spencer Quinton, O.D., Tim Elson, Esq. and Chaz Hernandez.

2. **Public Comment.** There was no public comment.
3. **Open Public Workshop** to discuss proposed changes to NAC 636 to implement various provisions of NRS Ch. 636 and consideration of the Small Business Impact of proposed regulations.

Dr. Young stated that because current law permits an optometrist to work either for themselves or another optometrist, the proposed section regarding private entities may not be applicable or necessary. Dr. Young referred to and read a comment submitted to the board that the section on private equity would allow entities not licensed to practice in NV to employ NV optometrists. Because of the intense commercial competition the private equity involvement would create, solo practices may not be able to survive.

Dr. Kopolow agreed with Dr. Young that no changes are necessary if the current

regulations are left intact. Dr. Kopolow asked how the statute has held up in its current form to the pressure that has already come about, and asked whether any complaints have been filed to challenge this.

Dr. Young responded that the Board would treat any injury just like any other complaint, and the matter would be investigated to determine if there is a violation.

Deputy Attorney General Sophia Long, Esq. stated for clarification that any complaint that may have already been filed with the board would need to remain confidential.

Dr. Smith recommended, in light of this discussion, that the new section regarding private equity be removed at the board meeting to follow.

Dr. Smith stated that the board received written comments regarding co-management fees with multifocal contacts. There is an optometrist who argues that premium IOL's require optometrists to invest additional time and therefore should be allowed more reimbursement, which is still below what Medicare allows. Also if a patient requires Lasik or PRK after cataract surgery, this additional co-management would fall on the optometrist without any available additional compensation beyond the initial agreement.

Dr. Young noted that the board may have already established that optometrists could not charge more for certain types of cataract surgery several years ago. However, he noted, in terms of follow up for patients if they need PRK or Lasik after cataract surgery for example, co-management fees only cover a 90 day period. If postop care is required long after after surgery, it should be a completely separate fee.

Dr. Smith commented that an ophthalmologist may view this postop period differently than an optometrist.

Dr. Kopolow asked if there are any Federal statutes or laws that prohibit or reinforce this new section on co-management and asked what the intent is on this section.

Dr. Smith responded that the only law she is aware of is through Medicare. She noted that Dr. Austin proposed this as he believes optometrists are getting lured to certain ophthalmologists for co-management due to higher reimbursement for the upgraded implants; that the optometrist would be paid a higher co-management fee due to the higher cost for upgrades that the patient commits to.

Ms. Jenkins stated if the board took action at a prior meeting regarding a specific set of facts and circumstances, it is not precedential as a general rule, and that this is an opportunity to incorporate this policy into regulation. If the board wishes to make this policy enforceable to all rather than only as it applies to a particular set of circumstances, it needs to be placed into regulations or statutes.

Dr. Young stated he recalls at least a couple years ago the board had discussion that the optometrist would have to prove he or she undertook extra procedures to justify the

6. Except as otherwise provided in NRS 636.372, authorizes or requires the amount of rent to be determined on any basis other than the fair rental value of the premises to be leased and any equipment to be leased.
7. Violates any provision of NRS or NAC which relates to the practice of optometry.

NAC 636.250 Separation between office of optometry and other businesses required. ([NRS 636.125](#), [636.300](#))

1. A licensee who locates his or her office in a part of a building where a person who is not licensed pursuant to the provisions of chapter 636 of NRS conducts business shall:
 - (a) Construct and maintain a partition or wall in such a manner as to ensure a clear separation between his or her office and the business of the person who is not licensed; and
 - (b) Maintain a separate reception area, cash drawer, scheduling system, staff, computerized system and physical space from those of the business of the person who is not licensed.
2. A licensee shall not:
 - (a) Use legal representation paid for or arranged by a person who is not licensed pursuant to the provisions of chapter 636 of NRS in any proceeding before the Board concerning the business relationship between the licensee and other person; or
 - (b) Except as otherwise authorized by NRS 636.347, serve as an employee or independent contractor of any person who is not licensed to practice optometry.

NAC 636.xxx Business relationships between optometrists and non-optometrists.

1. If an optometrist forms an association or other business relationship with a physician pursuant to NRS 636.373, the optometrist must:
 - (a) Comply with any applicable requirements of the Internal Revenue Service;
 - (b) Maintain financial and organizational independence from any person who is not licensed to practice optometry, other than the physician; and
 - (c) Ensure that any advertising, marketing and promotional materials accurately portray the position of the optometrist within the association or business relationship, including, without limitation, whether the practice of the optometrist is included within any assumed or fictitious name used by the association or other business relationship.
2. An optometrist shall not employ or be employed by a physician.
3. An optometrist may form an association or other business relationship with a person, other than a physician, who is not licensed to practice optometry to perform duties concerning the operation of the business. Such duties must be limited to duties concerning the operation of the business and may include, without limitation, performing services related to payroll, human resources, real estate, regulatory matters not related to health care, banking, accounting, administration of benefits, marketing, merchandising, occupancy, accounts payable, accounts receivable, supply chain management, business development, business administration, labor, compliance with applicable laws and regulations, purchasing and medical billing.
4. An optometrist who forms an association or other business relationship with a person who is not licensed to practice optometry pursuant to subsection 3 shall:
 - (a) Comply with any applicable requirements of the Internal Revenue Service;
 - (b) Maintain organizational and financial independence from the person who is not licensed to practice optometry and ensure that the person who is not licensed to practice optometry is not involved in:
 - (1) Clinical decisions;
 - (2) Scheduling of patients;
 - (3) Any decision concerning scope of practice or use of facilities, equipment or drugs; or
 - (4) Any other decision concerning the provision of care to a patient or the outcome of any treatment or other service provided to a patient; and

UNOFFICIAL DOCUMENT

This is an unofficial document integrating R066-19 (2019 amendments to Nevada Administrative Code (NAC) 636) into then-existing NAC 636. The "xxx" represents a presently unknown official citation of a new section in NAC 636 found in R066-19. The titles associated with each "xxx" are provided for guidance only, and are subject to change. The present location/sequence of any new section into NAC 636 are subject to change.

1. If an optometrist forms an association or other business relationship with a physician pursuant to NRS 636.373, the optometrist must:

- (a) Comply with any applicable requirements of the Internal Revenue Service;
- (b) Maintain financial and organizational independence from any person who is not licensed to practice optometry; and
- (c) Ensure that any advertising, marketing, and promotional materials accurately portray the position of the optometrist within the association or business relationship, including, without limitation, whether the practice of the optometrist is included within any assumed or fictitious name used by the association or other business relationship.

2. If an optometrist forms an association or other business relationship with a physician pursuant to NRS 636.373, the optometrist may:

- (a) Utilize mutual clinical staff members to deliver clinical care to patients receiving both optometric and ophthalmological care at the same facility, so long as an appropriate and commensurate amount of the optometrist's revenues are apportioned to those clinical staff members supporting both optometric and ophthalmological services; and
- (b) Utilize mutual billing staff members to prepare and file insurance claims under the optometrist's NPI, so long as an appropriate and commensurate amount of the optometrist's revenues are apportioned to those billing staff members supporting both optometric and ophthalmological billing services.

3. An optometrist shall not employ or be employed by a physician (M.D. or D.O.).

4. An optometrist may form an association or ~~other~~ a business relationship with a person, other than a physician, who is not licensed to practice optometry to perform duties ~~concerning the operation of the business~~ **that may provide operational support to the licensee and their business.** ~~Such duties must be limited to duties concerning the operation of the business and may include, without limitation, performing services related to payroll, human resources, real estate, regulatory matters not related to health care, banking, accounting, administration of benefits, marketing, merchandising, occupancy, accounts payable, accounts receivable, supply chain management, business development, business administration, labor, compliance with applicable laws and regulations, purchasing and medical billing.~~ **Such a relationship shall not be intended or designed to obfuscate any provisions pursuant to NRS 636 that involve the practice of optometry as defined in NRS 636.025, optometric practice ownership, medical records custodianship, co-habitation with optical retailers, or financial and organizational independence, even if such a business associate operates within the private equity or venture capital industry. Such supportive duties must be limited to the operation of the business. They may include performing services related to payroll, so long as the licensee's payroll remains financially separated from the business associate's payroll, including the use of separate Federal Tax ID numbers, medical and vision plan billing, so long as claims filed on behalf of the licensee are not combined or bundled with those of the business associate's claims resulting in bulk payments that require subsequent separation of funds. Management of a licensee's insurance accounts receivable may be included in such services, pursuant to 12(1)(b) above. Since submitting claims using a common Servicing Provider NPI number indicates joint ownership, claims submitted on behalf of each business associate must remain independent of one another, rent, pursuant to NRS 636.372. A business associate may provide bookkeeping services, pursuant to 12(1)(b) above, and human resources for regulatory and compliance support and not for the purpose of employing a licensee's staff, banking, pursuant to 12(1)(b) above, accounting, pursuant to 12(1)(b) above, administration of benefits, pursuant to 12(1)(b) above, marketing, in accordance with 12(1)(c) above, merchandising, supply chain management, and business development, all pursuant to 12(1)(b) and 12(1)(c) above, purchasing, pursuant to 12(1)(b) above.**

5. An optometrist who forms an association or other business relationship with a person who is not licensed to practice optometry pursuant to subsection 3 shall **not associate with any business associate entity created to deliver optometric services, as defined in NRS 636.025 of which 100% of its shareholders are not a Nevada optometric licensee, even if a licensee is a named officer, director, or has any other affiliation with that entity.**

6. An optometrist who forms an association or other business relationship with a person who is not licensed to practice optometry pursuant to subsection 3 shall:

(a) Comply with any applicable requirements of the Internal Revenue Service **and Federal Trade Commission;**

(b) Maintain organizational and financial independence from the person who is not licensed to practice optometry and ensure that the person who is not licensed to practice optometry is not involved in:

(1) Clinical decisions **and medical decision-making.**

(2) Scheduling of patients **and/or office flow;**

(3) Any decision concerning the scope of practice or use of facilities, equipment ~~or drugs,~~
pharmaceuticals, nutraceuticals, functional vision therapy, or

(4) Any other decision concerning the provision of care to a patient or the outcome of any treatment or other service provided to a patient; and

(c) Ensure that any advertising, marketing, and promotional materials accurately portray the position of the optometrist within the association or business relationship, including, without limitation, whether the practice of the optometrist is included within any assumed or fictitious name used by the association or other business relationship.