

NEVADA STATE BOARD OF OPTOMETRY



MINUTES OF PUBLIC MEETING

June 27, 2024

1. **Action Item 1. Roll Call, Call to Order.** President Mariah Smith, O.D. opened the live meeting at 12:04 p.m. Pursuant to AB219, public telephonic access number 669-444-9171, meeting ID 859 9215 3067, Passcode 199312 were read into the record.
2. **Welcome, Introductions.** President Smith and Board members Jeffrey Austin, O.D., Julieta Alamo-Leon, O.D, and Drew Johnson were present via Zoom. Executive Director Adam Schneider attended via Zoom. Deputy Attorney General (DAG) Todd Weiss, Esq. attended via Zoom.
3. **Public Comment.** President Smith invited public comment. Dr. Bolenbaker read a statement on behalf of approximately 40 optometrists advocating for usage of IPL or RF or LLLT per manufacturer guidelines and standard of care, and that NRS 636.025(1)(c) does not specify that treatments can only be applied locally to the tissues of the eye and appendage, and is written in a way to accept advances in treatment so long as they do not violate the surgical restrictions placed upon optometrists in NRS 636.025(2)(a). Director Schneider expressed knowledge of recent misinformation about the Board and the office of the Executive Director. The Board's dissemination of information about Board business occurs through two sources only- newsletters to the membership, and what is posted on the Board's website. The Board itself nor its Executive Director have social media accounts, nor hire or contract or ask individual members of the optometry community to post items on social media. Confusion has occurred where optometrists have posted social media saying things to the effect that Adam Schneider individually wants to hear from the membership as a pseudo call to action against Board members or past Board votes. Members of the optometry community reflexively believe the post, and the Board has a relationship with an optometrist as the Board's agent or proxy, yet when any such posts are not authorized or vetted or approved by the Board or the Executive Director and such misrepresentations are inappropriate and need to stop. The Board's office will continue to accept membership commentary on Board-related issues or concerns, but they have to be done through proper channels.
4. **Action Item- Re-discussion of Board's 8/29/2023 letter to Dr. Horner.** Dr. Smith commented about historical precedence and a strict delineation that optometrists and their employee have to remain separate from the retailer when there are different levels of HIPAA training and unauthorized access to medical records by employees of non-optometrists. Dr. Smith does not see a problem with the optometrist having a platform or website where the patients can schedule appointments, and the historical precedence is that optometrists control

their own schedule without outside corporate influence of, e.g., being directed to see patients every ten minutes. Dr. Alamo agreed that outside entities should not be practicing optometry for optometrists.

Dr. Smith invited Dr. Horner to speak. Dr. Horner discussed the difference between scheduling and booking, and agreed that the retail entity should not dictate to the optometrist how many patients are seen, or how long the appointments are, or what types of exams are performed. Dr. Horner explained he pays Walmart to fill his schedule just like if he were to pay an outside scheduling company to do so. Dr. Smith posed the question to the Board if there is a conflict of interest if the optometrist pays the retailer to fill the schedule. Dr. Austin did not see a conflict when the optometrist is in control of the schedule. Public Member Johnson stated as a consumer there does not appear to be any impact on the quality of the service and therefore saw no problem with it. Upon Dr. Alamo asking about who does the scheduling and their HIPAA regulations, Dr. Horner explained that there is a health and wellness department at Walmart inclusive of pharmacy, audiology, and optical, and the scheduling is then delegated to Walmart opticians who are HIPAA-certified where the optometrist is located and have access to only a scheduling program and no other access to medical records or private information. Dr. Smith moved to uphold the Board's prior decision that Dr. Horner be allowed to pay Walmart to fill the schedule that he created and such a process and business relationship is compliant with the current law. Dr. Austin amended to include that no other person or entity besides the licensee be allowed to change the schedule. Dr. Smith so amended. Dr. Austin seconded. Motion passed unanimously.

5. **Action Item- Re-discussion of NRS 636.025(2) application to IPL.** Dr. Smith summarized the prior meeting about the definition of eye and adnexa, that the Board members agreed in the last meeting that IPL should be permissible with licensees' training and the intention of the statute was to make it broader to provide allowance when new treatments become available within an optometrist's skillset so as to avoid re-writing the law each time. In 2019, the Board ruled that the True Tear intranasal tear neurostimulator was permissible. Dr. Austin noted IPL is within the optometrist's scope, but the question is what does the law allow. Colloquy as to the definition of eye appendage. Dr. Alamo discussed possible parameters such as continuing education or proof of training upon the advent of new technology. Public Member Johnson noted the discussed technologies seemed safe, and patients can avail themselves to litigation if aggrieved.

DAG Weiss provided options for the Board as to statutory interpretation versus joint submission of temporary and permanent regulations. Colloquy on such options.

Dr. Smith moved for IPL and RF and similar devices are acceptable for treatment with the law as written and no need for having defined training. Public Member Johnson seconded.

Dr. Austin inquired into DAG Weiss's advice for the propriety of this vote versus the legislation process. DAG Weiss advised the vote is permissible and within the authority of the Board to do so. Motion passed unanimously.

6. **Action Item- Re-discussion of 2025 legislation goals** Dr. Smith spoke with Dr. Koenig about him wanting a fifth member, and it be an optometrist, and the preference for a rural optometrist but understands the difficulties in that kind of mandate. Public Member Johnson noted an additional member should be a public member. Director Schneider talked about knowledge obtained at ARBO Annual Meeting and the different ways different Boards

comprise their Board members including some jurisdictions that have no members in the field being regulated which provided pros and cons. Dr. Smith agreed to relay Public Member Johnson's concerns to Dr. Koenig. Dr. Austin sees advantages and disadvantages of a fifth member, and sees no problem with an additional optometrist as the fifth member. Public Member Johnson pointed out that the governor's office appoints board members. Dr. Smith commented about her efforts to think of the public and not the protection of the profession in her capacity as a board member. Dr. Alamo believes that if a fifth member is created, it should be an optometrist.

Given her lack of background with leasing space with an optical business, Dr. Smith proposed a Workshop specific to R066-19(12) with persons who work in that practice modality for input. Dr. Austin agreed. Dr. Alamo agreed. Workshop scheduled for 7/31/2024 3pm.

As to the proposed list in the meeting materials, Dr. Smith moved to strike the first entry as to the definition of eye appendage due to the earlier vote, not adopt R066-19(12) changes due to a future Workshop, and to add a fifth member as an optometrist. Dr. Alamo seconded. Public Member Johnson opposed. Motion passed.

7. **Action Item- Complaint 24-11 status** DAG Weiss summarized ongoing negotiations with licensee's counsel for possible settlement terms to propose to the Board at the next meeting. Presently scheduled trial/hearing for 7/31/2024 rescheduled to 8/27/2024, if necessary. Regular Board Meeting moved from 7/31/2024 12pm to 3pm.
8. **Action Item- Complaint 24-21** Director Schneider stated the Board of Pharmacy's Prescription Monitoring Program noted the licensee's prescription for testosterone. Upon an inquiry letter, the licensee's custodian of records supplied a response and that the medical records showed prescriptions of topical testosterone. The question before the Board was can a licensee prescribe topical testosterone based upon Nevada law as written. Colloquy on the statutory definition of pharmaceutical agent, inclusive of Dr. Smith reading the statute. Dr. Austin noted the intent behind the statute in working with the ophthalmologists did not include testosterone. Colloquy and agreement that "topical non-analgesics" be added to the statutory definition for 2025 legislative goals. Dr. Smith moved for a letter be issued to the licensee to cease and desist with no penalties. DAG Weiss commented about differences between past and future conduct. Dr. Smith amended the motion for a letter to cease and desist, and no penalties for the past prescriptions but any future violations could be subject to a complaint and discipline. Dr. Austin seconded. Motion passed unanimously.
9. **Action Item- Consideration and approval of Petition for Advisory Opinion to Department of Taxation** Director Schneider reminded the Board of the sales tax issue from the Board's prior meeting, and explained the draft letter's research, DAG Weiss's approval, and the letter's compliance with the code governing the Department of Taxation's petition for advisory opinions. Dr. Smith moved to accept the draft as-is, and to submit to the Department of Taxation. Dr. Austin seconded. Motion passed unanimously.
10. **Action Item- Consideration and approval of FY2024-2025 budget; Review of 2021-24 Income and Expenditures; Consideration and decisions regarding proposed budget and factors for 2024-2025, including COLA** Director Schneider described: 1) the process compiling the figures and that each entry has corroborative information; 2) his research into the differences in COLA depending upon the type of State employee; 3) the differences in FY2025's budget when the Board no longer has certain entries such as rent and utilities, and is a legislation year whereas FY2024 was a license renewal year. Dr. Smith asked Public Member Johnson to comment in his role as the

Board's CFO. Public Member Johnson approved as consistent with prior years' budgets. Colloquy on COLA varying from year to year and as to type of State employee. Public Member Johnson moved to accept the proposed budget inclusive of the 4% COLA, while allowing the Board to revisit based upon new information. Dr. Smith seconded. Motion passed unanimously.

11. **Action Item- Consideration and approval of May 30, 2024 Board Meeting Minutes** Dr. Smith moved to accept as drafted. Dr. Austin seconded. Motion passed unanimously.
12. **Executive Director report re R066-19, R101-24, AB 432 codification statuses-** Director Schneider stated: 1) R066-19 is in LCB's queue but had not been codified yet because it was not correctly submitted in 2019-2020 and when correctly submitted in 2022 it was placed at the back of the queue; 2) R101-24 will be discussed at the 7/31/2024 meeting where on 7/1/2024 a Notice of Intent to Act Upon Regulation will be posted to comply with statute; and 3) AB 432 per LCB is anticipated to be codified by end of month, and that R101-24 cites to new statutes stemming from AB 432 so the Board can be assured their chapters are being processed.
13. **Executive Director report re ARBO Annual Meeting** Director Schneider stated that he obtained a scholarship so no costs were incurred by the Board, and even if the Board had to pay, it was worth the expense given the Board regulates optometry and ARBO is dedicated to that. Director Schneider recommended a Board member or ED attend yearly. Dr. Smith agreed.
14. **Public Comment.** Dr. Kopolow commented about the earlier discussion of Walmart being allowed to make appointments for the optometrist's schedule, but a concern is that future iterations of the lease requiring Walmart to do it which could be problematic. As to R066-19, there are disparate goals to be discussed at the Workshop, and it is appropriate for NAC and not NRS. Drew Johnson announced his resignation as the public member of the Board and willing to serve at the July meeting if not replaced by then. Because he won a primary election, he wants to step away from the Board to not put the Board in a position of having a public member not fully prepared and focused on preparing for the meetings. His words for the incoming public member is that the public member is the only public member on the Board and the only one who does not make money on the practice of optometry, and their role is to increase competition, increase access, lower costs, and hopes that the lobbyists and associations in the profession do not issue personal attacks upon the public member for acting in the best interests of the public, and should be free to stand up for patients without fear of threats or retribution. Having served on three board of commission, this is the most professional, best prepared Board he has been on. Public Member Johnson thanked past and current Directors and past and current Board Members. All Board Members thanked Public Member Johnson for his service.
15. **Action Item- Adjournment.** Dr. Smith moved to adjourn the meeting. Public Member Johnson seconded. Motion passed unanimously. The meeting adjourned at 1:43 p.m.

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FY 2024-2025 Regular meeting schedule

Wednesday 7/31/2024 3:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom
Wednesday 8/28/2024 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom
Thursday 9/26/2024 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom
Wednesday 10/30/2024 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom
Wednesday 12/11/2024 12:00p.m. (pst) Reg. Bd. Meeting- phone or Zoom

These minutes were considered and approved by majority vote of the Nevada State Board of Optometry at its meeting on July 31, 2024.

/s/ Adam Schneider

Adam Schneider, Executive Director