

NEVADA STATE BOARD OF OPTOMETRY



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ADAM SCHNEIDER, ESQ.
Executive Director

JEFFREY AUSTIN, O.D.
Board Member

SALLY BALECHA
Public Board Member

Materials for

August 28, 2024

Board Meeting

Materials for Item No. 4 re

- Minutes for July 31, 2024 Board meeting

NEVADA STATE BOARD OF OPTOMETRY



MINUTES OF PUBLIC MEETING July 31, 2024

1. **Action Item 1. Roll Call, Call to Order,** President Mariah Smith, O.D. opened the live meeting at 3:00 p.m. Pursuant to AB219, Meeting ID: 889 4214 6264, Passcode: 420960 Telephone: 1 669 900 6833 were read into the record.
2. **Welcome, Introduction, and introductory comments from new public Board member.** President Smith and Board members Jeffrey Austin, O.D., Julieta Alamo-Leon, O.D, and Sally Balecha were present via Zoom. Executive Director Adam Schneider attended via Zoom. Deputy Attorney General (DAG) Todd Weiss, Esq. attended via Zoom. Public Member Balecha introduced herself to the membership and the Board.
3. **Public Comment.** President Smith invited public comment, acknowledging that later in the session public comment would be elicited for the workshop. No comments provided.
4. **Action Item. Election of Board President, Vice-President and Financial Officer re FY2024-25; changes to Board member access to Board bank accounts.** Director Schneider discussed the recent history of who on the Board was the financial officer, its purpose to demonstrate to the membership that there will be oversight over the Executive Director to ensure Board funds are being spent properly, and the duties of the financial officer. Dr. Smith moved for Dr. Alamo to be financial officer. Dr. Austin seconded. No other nominations. Motion passed unanimously. Dr. Smith moved for Dr. Austin to be vice-president. Dr. Alamo seconded. No other nominations. Motion passed unanimously. Dr. Austin moved for Dr. Smith to be president. Dr. Alamo seconded. No other nominations. Motion passed unanimously.
5. **Action Item. Consideration and approval of June 27, 2024 Board Meeting Minutes.** Dr. Austin moved to accept as drafted. Dr. Alamo seconded. Public Member Balecha abstained. Motion passed 3-0.
6. **Action Item. Presentation of proposed settlement terms regarding Complaints 22-4 and 24-11.** DAG Weiss stated the allegations as stated in the proposed Settlement Agreement (SA), then the list of settlement terms as stated in the proposed SA. Dr. Smith suggested an additional prohibition of asynchronous telehealth, retaking the Nevada law exam, full reimbursement (and not partial reimbursement) of DAG attorney fees, and probation. Dr. Austin agreed in full. Dr. Alamo agreed, stated she had not thought about the re-taking of the Nevada law exam, but agreed with that

too. Public Member Balecha agreed, but not as to re-taking the law exam. After two discussions off the record with only DAG Weiss and Respondent and/or Respondent's counsel, a colloquy that a term of probation would impact Respondent's ability to sell Respondent's practice, a rejection of an additional amount of Continuing Education classes in lieu of taking the law exam when it is an open book exam, a colloquy that the law exam does not presently incorporate the new optometric telemedicine laws recently codified into NRS 636 and will require three to four months to do so, and a discussion that incorporation of Complaint 22-4 being dismissed provides closure to the pending appeal, the following terms were modified and/or added to the SA's terms with a proffer from DAG Weiss that the Respondent will agree to accept in further details with the material terms being:

a. pay the Board the sum of Four Thousand Dollars (\$4,000), due within 1 year of the Board's approval of the Stipulation;

b. 2 year restriction on Respondent's Nevada Optometry license, from the date of the Board's approval of the Stipulation, prohibiting the practice of both synchronous and asynchronous optometric telemedicine during that period;

c. for a period of 2 years from the date of the Board's approval of the Stipulation, should the Board make a finding that Respondent has further violated any of Nevada's optometry statutes or regulations, the Board may take the present matter into consideration and increase the discipline imposed for that violation(s);

d. reimburse the Board's legal costs in prosecuting this matter in the amount of up to but not exceeding Five Thousand Dollars (\$5,000), due within One (1) year of the Board's approval of the Stipulation;

e. complete Twenty (20) hours of continuing education (CEs) in addition to the ones already required, due within One (1) year of the Board's approval of the Stipulation. The CEs must be from Board approved instructors and/or entities consistent with R066-19 Section 8(4)-(6) and Board Policy no. 5 section A-B, and must be in the areas of medical ethics, medical billing, medical office management, employee supervision, patient informed consent, medical record keeping and/or telehealth, as is reasonable.

f. retake the Nevada optometry law exam no more than six months after the test has been revised to include questions relating to Nevada telemedicine law, but no less than one year after the Board's approval of this stipulation.

g. accept as a public reprimand for her alleged conduct.

i. Complaint 22-4 will be withdrawn and closed without further action.

j. the matter currently pending in the Eighth Judicial District Court case no. A-22-853243-J will be dismissed with each party to bear their own costs and attorney fees.

k. National Practitioner Databank report.

Dr. Smith moved to accept. Dr. Austin seconded. Motion passed unanimously.

7. Executive Director report re licensing transactions since start of FY2025.

Director Schneider described a new portion of the Board's Agendas to provide more information to the public and the membership about the kinds of transactions and administrative work the Board performs. Director Schneider stated the below list:

New licenses: 4

Licenses by endorsement: 0

Glaucoma: 0

OPAC: 3

Fictitious Name: 0

Location changes: 3
Additional locations: 9
LOGS: 8
PRR: 4
Refunds: 0
Mobile: 0
Substitute location: 0
Public complaints: 5
2026-2028 CE Summaries: 1

As to the public complaints, Director Schneider summarized them as: 1) a licensee's dog allegedly defecating in the clinic's lobby and the patient wanting their money back; 2) one upon an ophthalmologist; 3) one for alleged unnecessary treatments resulting in exhaustion of Medicaid benefits; 4) one for an alleged untimely response to a medical records request; and 5) one for alleged failure/refusal to provide an add-power to a vision prescription.

8. **Public Comment.** President Smith invited public comment. No comment provided. Dr. Smith confirmed the hearing set for August 27, 2024 specific to Complaint 24-11's hearing is vacated.

9. **Action Item.** Dr. Smith moved to adjourn the regular meeting. Dr. Austin seconded. Motion passed unanimously. The regular meeting adjourned at 4:01 p.m.

41 persons attended, inclusive of Board members, Executive Director, and Deputy Attorney General.

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FY 2024-2025 Regular meeting schedule

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 August 28, 2024.

Adam Schneider, Executive Director

Materials for Item No. 5 re

- Minutes for July 31, 2024 Notice of Intent to Take Action on Regulation re R101-24

NEVADA STATE BOARD OF OPTOMETRY



MINUTES OF NOTICE OF INTENT TO TAKE ACTION ON REGULATION (R101-24) July 31, 2024

1. **Action Item 1. Roll Call, Call to Order,** President Mariah Smith, O.D. opened the live meeting at 4:02 p.m.¹
2. **Public Comment.** President Smith invited public comment. No comments provided.
3. **Action Item. Notice of Intent to Take Action Upon Regulation R101-24.** Director Schneider summarized the workshop process, reiterated that the two-year glasses prescription issue is not included and the original R101-24 has been revised to limit the scope of practice of optometry students and residents to that of an optometrist and not a supervising ophthalmologist. Director Schneider described the series of steps and legislation committee meetings to be performed should the Board approve R101-24 as-is. Dr. Smith moved to accept as-is. Dr. Austin seconded. Motion passed unanimously.

41 persons attended, inclusive of Board members, Executive Director, and Deputy Attorney General.

These minutes were considered and approved by majority vote of the Nevada State Board of Optometry at its meeting on August 28, 2024.

Adam Schneider, Executive Director

¹ Pursuant to AB219, Meeting ID: 889 4214 6264, Passcode: 420960 Telephone: 1 669 900 6833 were read into the record for the start of the Board's regular meeting at 3p.m. and is the identical information for this meeting.

Materials for Item No. 6 re

- Minutes for July 31, 2024 Workshop re R066-19(12)

NEVADA STATE BOARD OF OPTOMETRY



MINUTES OF WORKSHOP RE: R066-19 SECTION 12 July 31, 2024

1. **Action Item 1. Roll Call, Call to Order,** President Mariah Smith, O.D. opened the live meeting at 4:06 p.m.¹

2. **Public Comment.** President Smith invited public comment. Dr. Kopolow read a statement on behalf of the NOA, since posted on the Board's website and incorporated as if fully set forth herein. Dr. Christensen read a statement, since posted on the Board's website and incorporated as if fully set forth herein. Dr. Joe Fermin stated he has worked in Nevada since 2006, and with Clear Vision since 2008, and stated he has not experienced any private equity (PE) or Managed Services Organization (MSO) influence. Jennifer Letten, a licensed optician, spoke about her experiences working at Lenscrafters. She commented about a two-door policy, that Optometry law is messy, that Dr. Horner has been violating the law since he has been in Nevada, and wanted to know what the official two-door policy is for Nevada optometry laws. Dr. Girisgen read a statement on behalf of the NOA, since posted on the Board's website and incorporated as if fully set forth herein.

Dr. Kopolow stated that the law allows bad actors to come into Nevada, although not in Nevada right now. There are problems with the model of Clear Vision, but not Clear Vision per se. He is hurt and betrayed that the proposal in 2019 after the October 2019 meeting was removed from the final language.

Colloquy regarding Legislative Counsel Bureau's (LCB) process and procedures, and differences between 2019 proposed language versus post-LCB revisions.

Danny Thompson spoke about his experiences regarding the LCB, and has never before seen a regulation being 180 degrees different than that made known five years later.

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Dr. Chen Young stated he is a former Board member and the decisions made were not done to create any anti-competitive atmosphere. The questions posed at that time were do you work for yourself, are you the name on the check or is someone paying you to be the name on the check, and when selling the practice do you still own your practice or is there instead an employment contract. The laws at present are that a non-licensee cannot own an optometry practice, the rationale being that the Board wanted every licensee to have a fiduciary responsibility to the patient during the course of treating the patient. He suggested maybe it is time for the Board to evaluate the tax records and sales contracts of such corporations to find out who actually owns the practice.

Dr. Belaustegui spoke about the sale of her practice, and questioned who has the authority to oversee the corporations when the larger corporations overstep their bounds. An optometrist owning an MSO 100% makes no sense.

Dr. Christiansen stated it is the responsibility of the licensee to ensure his or her compliance with the law, which is the basis of his suggested language from other kinds of healthcare provider organizations in Nevada regarding this type of structure when it comes to exercising control and authority over professional judgments.

Dr. Young stated the focus needs to be on who owns the practice and who owns the charts, because if the MSO owns the charts then the doctor does not own the clinical side of the practice. Dr. Kopolow agreed.

Dr. Horner proposed a law about penalties for corporations, despite current laws that non-licensees cannot own optometry practices. Colloquy regarding without such a law the only recourse is for the optometrist to quit.

Dr. Girisgen stated current law does not allow for non-OD entities to own optometry clinics. Dr. Girisgen stated prior comments were contrary to law as to MSOs being allowed to partially own optometry clinics. Even when the licensee is 100% owner of the MSO, another corporation may own a fraction or portion of it or an aspect of it, that is where problems exist and becomes contrary to law.

Dr. Kopolow quoted NRS 636.240(2), and another law that upon the death of the licensee the family has to sell the practice in a year. This is strong evidence that non-licensees cannot own optometry practices. MSOs were proposed as outsourcing, but it really is ownership. Dr. Kopolow is fine with moving forward to find ways that works for Dr. Christensen's group and other groups, but the membership cannot just let it happen, and nothing in Dr. Christiansen's proposal prohibits a large optical retailer from forming an MSO and forcing its licensees to abide by the MSO.

Dr. Jonathan Mather questioned the law and its lack of penalties for fining the corporations.

Dr. Smith questioned if a non-licensee can be penalized by the Board. DAG Weiss stated the jurisdiction is upon licensees, and no others, and such a change of an expansion of jurisdiction can occur only through the legislative process.

Dr. Christiansen expressed concern that there is a misunderstanding of an MSO. Dr. Kopolow discussed his review of the Kelpr website.

Dr. Spencer Quinton stated it is incumbent upon the licensee to know the law and not enter into agreements contrary to the law.

Maria Nutile, Esq. stated she represents Dr. Christiansen and Clear Vision and Pritchard Eye Care, and not Keplr-corporate, and that Dr. Christiansen owns the charts and the practice. She is disappointed in the Workshop thus far, when she provided over 3000 documents to Caren Jenkins in 2008 when Caren Jenkins wanted to investigate Pritchard Eye Care's business practices, and requested that the attacks upon Dr. Christiansen stop.

Dr. Horner stated he went through the same thing with Sears and Sam's Club. His only recourse to maintain good standing in the law was to leave the contract. No law is effective without enforcement.

Dr. Smith posed the question to the group on their perspective as to whether the law should be revised to allow ODs to work for ophthalmologists (OMDs), so long as the OMD works at the same site as the OD regularly. Colloquy on how "regularly" would be defined. Dr. Smith suggested removal of section (c) in the NOA's proposal from the June 27, 2024 meeting.

Dr. Kopolow commented about Dr. Abrams' job posting for an independent contractor relationship, which creates a competitive disadvantage when benefits are offered as if it were an employment agreement. A known tactic is to pay the doctor with a 1099, then with other compensation classified as administration. Dr. Austin stated he saw the advertisement as well and if the optometrist is not an independent contractor then the optometrist should not be accepting any benefits except for what they actually bill. Dr. Kopolow expressed concern about the comingling of money and he does not recall where the proposals in R066-19 occurred regarding OD and OMDs although he might have missed one meeting. President Smith stated the topic will be agendized for its next meeting.

Dr. Smith discussed the California laws, section 655 of Business and Professions Code, and the California Board's litigation with Stanton Optical.

Dr. Christiansen noted other States have OD-OMD working relationships, and has no problems with making that available here.

Dr. Kopolow got his contacts from 1-800 Contacts after a substandard exam, and his prescription was from a provider in Illinois. Therefore there are businesses that will take advantage of the holes in the law.

Dr. Adlington agreed that ODs should be able to work for OMDs and MDs, and it is not upon the Board to look at where ODs get their paycheck but instead on the ODs' professionalism. Dr. Austin commented that this fight has been fought for years, but maybe it is time to make a change. The focus needs to be on the OD following OD law, then it should not matter where the paycheck comes from to a certain extent, and if the employer forces the OD to do something they do not want to do or should not do, then the OD needs to quit. Dr. Kopolow disagreed, and discussed the pharmacist industry where many pharmacists used to be independent and now many work for CVS or Walgreens. Dr. Austin commented his about familiarity with the pharmacy industry as well.

Attorney Nutile stated in 1995, a senate bill 557 was introduced for ODs to work with OMDs and was not passed. But should it be passed, then NRS 89 needs to be considered. In 2019, NRS 89 was changed for chiropractors (DCs) and MDs and DOs can now own a corporation together. Therefore if ODs get to the point that they can be employed OMDs, they should be able to own a corporation with OMDs as well.

Dr. Quinton spoke about his experience being approached to go into business with OMDs.

Dr. Girisgen interpreted NRS 89 that non-ODs can own optometry practices. Attorney Nutile disagreed, and invited a conversation outside of the workshop with Dr. Girisgen because she was not familiar with what language Dr. Girisgen was referencing.

Colloquy regarding NOA's proposal regarding R066-19 section (12)(3). Dr. Girisgen stated in 2019, the Board voted to remove R066-19 section 12(3), and asked if it could be removed again. Dr. Christiansen questioned the removal of section 12(3) which at present expressly allows MSO structure. He discussed the regulation being written that specifically does not disallow it. He stated in his research looking across the United States, that is the pattern in most States that it is not specifically prohibited, and questioned what removing section 12(3) accomplishes. Dr. Girisgen reiterated to keep section 12(4) which speaks to organizational independence, and with that in place the removal of section 12(3) would not prohibit any licensee from outsourcing the items listed in section 12(3) to a non-licensee.

Dr. Christiansen again questioned what the removal of section 12(3) accomplished to further the goal of keeping out bad actors. Dr. Kopolow responded that putting any private equity language would open a can of worms. But if the OD is the sole owner of the practice, and physically and financially separated from any non-licensee then there should be no issue.

Dr. Christiansen questioned that the removal of section 12(3), which does nothing other than engaging in a service and does not change anything, when what is agreed is important is maintaining organizational and financial independence whether the section is there or not. Dr. Girisgen responded that section 12(3) may allude to the erosion of organizational independence because it allows to enter into certain agreements for an organization to handle certain duties and therefore the organization makes decisions for all those duties and not the owning optometrist. The concern is when that happens, that impacts the practice of optometry and the care model. So by removing section 12(3), the law that remains is organizational and financial independence which is all that is being asked for.

Dr. Mather commented that the removal of section 12(3) allows the Board to move forward to address the bad actors without them having an exclusion. So by neither saying the organizations can do certain things or cannot do other things, should the situation arise then the Board can deal with individual situations without having to say what you can do and what you cannot do over and over again.

Dr. Alamo-Leon stated that this Board is the only Board that can regulate optometrists, and many physician groups are owned by private equity. So by allowing an MD or an OMD or other entity to be able to own optometry practices, the Board's ability to regulate optometrists would be compromised because those private equity firms are now changing the structure of the OMD groups. Therefore doing a comingling is not allowing the Board to do what it is intended to do which is to regulate optometrists for the good of the public. Optometrists not being allowed to be employees of any physician or any non-licensee entity makes sense at this point. Dr. Kopolow does not disagree, but is not prepared to give up autonomy. Dr. Alamo-Leon discussed non-compete agreements. Dr. Kopolow noted the Board has no jurisdiction over employment advertisements.

Jennifer Letten stated that the Board cannot allow the optical staff members adjacent to the optometrist to do any of the administrative work, and there needs to be clear delineation between the two businesses.

Dr. Quentin stated clinical decisions should be covered in section 12(3)-(4).

Colloquy on the phrase “without limitation” in section 12(3). Dr. Smith confirmed that section 12(3) was being removed. Dr. Christiansen stated the “without limitation” phrase is used when the person drafting it cannot possibly entertain all of the ways in which a person might enter into a business arrangement. He suggested language for what constitutes exercise or authority or control over professional judgment, and how to define exerting control. Colloquy that section 12’s section 4(1)-(3) states the OD is in charge of their schedule and that non-licensees are not involved in scheduling or directing or dictating of patient scheduling.

Dr. Kopolow discussed Dr. Christiansen’s proposal at its section 2, and stressed the importance of ownership and a separate scheduling system. Dr. Christiansen responded it came from the Dental Board’s laws and he adopted it into optometry law, and stressed the need to avoid law that is anti-competitive.

Dr. Girisgen suggested using the phrase “not dictating” in section 12(4).

Jennifer Letten stated what is being missed is that opticians are licensees, practice ophthalmic dispensing separately, and are a separate business, and the doctors are subleasing. When the optical staff is allowed to administrative work, how are they not getting involved in the optometrist’s business? She summarized NAC 636.250 regarding the separation of between the office of the optometrist and other businesses are required and its section (b) says to maintain a separate reception area and scheduling system and computerized system, and physical space from those of a business of a person who is not licensed. Dr. Smith questioned why couldn’t the opticians decline to do the work asked by the optometrist. Ms. Letten described her experiences with other optometrists where the opticians are not asked to do the optometrists’ administrative work.

Dr. Hubbard stated in VSP, it is very blurred where VSP owns the Eyefinity software for scheduling and the like. It is one practice, but not a two-door system. In Reno, half of the practices are private equity so the OD would be leaving more private equity and encountering the same issues at another private equity.

Jennifer Letten stated her hope for language about separation between the businesses, and the only real way to protect optometrists is to make sure that the optical staff has nothing to do with their scheduling, therefore no interference with the MSOs. Dr. Smith invited Ms. Letten to provide specific words and the specific placement of the proposed words in the regulation. Ms. Letten was not prepared to do so, would need time to review the laws, and could provide suggestions after the workshop.

Dr. Evan Marchant stated he has been associated with VSP Ventures, and would like to see something about scheduling in the regulation and that “not dictating” solves that issue.

Discussion between Dr. Kopolow and Dr. Christiansen regarding Dr. Christiansen’s suggestion of subsection (k) regarding being hired and fired, and the definition of “advice.”

Dr. Smith brought up the California code regarding the Board’s access to the commercial lease, and a potential goal for the next legislative session.

Dr. Troy Ogden discussed the need to include in the contracts that the corporation will not manipulate the way the optometrists see patients. Ultimately this is not a Board of Optometry issue, but probably a Nevada Optometric Association issue to help doctors negotiate better contracts.

Colloquy as to the phrase “not dictate or control.”

Agreement to remove section 12(3), then under 12(4)(b) provide a phrase to the effect of “shall not dictate or control.” Board will await Jennifer Letten suggestions.

Dr. Quinton asked in addition to the Board seeking authority to obtaining lease agreements that business agreements also be added.

Meeting adjourned at 6:48p.m.

41 persons attended, inclusive of Board members, Executive Director, and Deputy Attorney General.

These minutes were considered and approved by majority vote of the Nevada State Board of Optometry at its meeting on August 28, 2024.

Adam Schneider, Executive Director

Materials for Item No. 8 re

- Dr. Abrams' job posting



Optometrist - Las Vegas, NV

Abrams Eye Institute

Details

Posted: 04-Jun-24

Location: Las Vegas, Nevada

Type: Full Time

Salary: commensurate with experience

Categories:

Optometrist

Optometry

Required Education:

Doctorate

Additional Information:

Employer will assist with relocation costs.

Internal Number: 123456789

Abrams Eye Institute has been providing the most advanced, comprehensive ophthalmologic services in Southern Nevada for almost 20 years and has an amazing opportunity for an Optometrist to join our elite multispecialty ophthalmology and optometry practice. The team includes 2 surgeons, 1 optometrist, & dedicated technicians, scribes, and front office staff that treat a wide variety of eye disease and offer expansive optical resources.

ABOUT THE PRACTICE:

Abrams Eye Institute (AEI) has a team of premier providers of ophthalmologic services, including LASIK surgery, cataract replacement, and treatment of all common eye disorders. Its esteemed founder and pioneer in the field, Dr. Jack Abrams, was Nevada's first doctor to offer laser-assisted cataract surgery.

AEI's three nationally-recognized locations, Las Vegas, Henderson, and Pahrump, are dedicated to impeccable quality of care, a passionate love of their work, and a commitment to their patients.

ABOUT THE LOCATION:

Las Vegas really does have something for everyone, more than the entertainment, restaurants and shopping of the strip, it also has amazing communities to raise a family. With tight knit neighborhoods, a strong education system, and ample parks for outdoor activities and relaxation. Venture just a short drive away from the strip and you'll discover hot springs, snowy mountains, red rock canyons, and plenty of jaw-dropping hiking trails. With no state income tax and a large international airport, Las Vegas is truly a western gem.

ABOUT THE BENEFITS:

- Immediate high volumes with competitive productivity incentives.
- Strong referral networks & support staff.
- State-of-the-art technology.
- Medical, dental, vision, legal, pet, and childcare benefits.
- Traditional and Roth 401(k) retirement options.
- Equity buy-in opportunities.
- Continuing education, state licensure and medical malpractice coverage.
- Relocation assistance available.

ABOUT AVP:

American Vision Partners was formed through an investment by H.I.G. Capital, a leading P.E. firm specializing in acquisition and recapitalizations of privately held businesses. Through this investment, combined with decades of relevant industry experience, American Vision Partners is able to extend our partners the tools and expertise they need to operate with continued success.

FOR MORE INFORMATION, please contact Brian O. Donovan, Sr. Physician Recruiter, at 603-661-0477 (cell/text) or brian.donovan@americanvisionpartners....



About Abrams Eye Institute

American Vision Partners was formed through an investment by H.I.G. Capital, a leading P.E. firm specializing in acquisition and recapitalizations of privately held businesses. Through this investment,

combined with decades of relevant industry experience, AVP is able to extend our partners the tools and expertise they need to operate with continued success.

<https://careers.aoaexcelcareercenter.com/jobs/20168237/optometrist-las-vegas-nv>

Materials for Item No. 9 re

- Complaint 25-05:

Inquiry letter (redacted);

Relevant law

Licensee response (redacted), supplemental response (redacted)

Emails (redacted)

Senior Care Plus (redacted)

Medical records (redacted)

NEVADA STATE BOARD OF OPTOMETRY



MARIAH SMITH, O.D.
Board President

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

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ADAM SCHNEIDER, ESQ.
Executive Director

JEFFREY AUSTIN, O.D.
Board Member

SALLY BALECHA
Public Board Member

via email only

Re: NSBO Complaint# 25-05
Patient:

Dear Dr. -

This office has received information and a complaint alleging your care and treatment of the above-referenced patient may have been unprofessional as defined in Nevada Revised Statute (NRS) 636.295 and Nevada Administrative Code (NAC) 636.230. It is alleged:

1. On or about April 24, 2024, the patient presented to you at _____ for optometric care.
2. The patient underwent an eye exam and was given a prescription.
3. The patient was not given an add power because she needed to purchase eye glasses from your office.
4. The patient was never informed of the above before agreeing to present to your office for optometric care or agreeing to undergo the examination.
5. The patient called your office, and it was confirmed your office would not provide the patient's add power unless the patient bought glasses there. Your receptionist did not offer any information about this issue other than "I really don't know. It's what we've been told."

Pursuant to NRS 636.305(3), in order to determine whether or not there has been a violation of NRS/NAC 636, please provide a written response to each allegation noted above, as well as a full and complete copy of your healthcare records, billing, invoices, and communications to and from the aforesaid patient. Please include any further information you believe would be useful for the Board to make a determination in this matter.

Your reply to director@nvoptometry.org is due on or by the close of business **August 16, 2024**. Should the records be voluminous, usage of Dropbox or ShareFile or the like is encouraged.

Please return the healthcare records and billing with the signed Custodian of Records Declaration, enclosed herewith. If you are not the custodian of records, please indicate where the healthcare records can be obtained.

The Nevada State Board of Optometry investigates all information received concerning possible violations of NRS/NAC 636. This letter is not to be construed as a determination as to whether or not there has been a violation of such laws until a thorough investigation is completed. This correspondence is sent pursuant to NRS 636.305(2) and NRS 636.310(3), and the accompanying subpoena is sent pursuant to NRS 636.141 and NRS 629.061(1)(g). As a licensee subject to an investigation, you are required by law to timely provide the requested information.

Please be advised that if any particular allegations referenced above did occur, and depending on the facts and circumstances, then you may have violated the law, specifically including but not limited to NRS 636.295(6) (making false or misleading representations with respect to optometric materials or services), (8) (unethical or unprofessional conduct in the practice of optometry), (9) (any violation of NRS 636 or NAC 636), 13(d)(fraud), and/or 16 CFR part 456 (aka Eyeglass Rule, declaring it an unfair practice for an optometrist to fail to provide a patient with a copy of the patient's eyeglass prescription immediately after an eye examination is completed).

Respectfully,

/s/ Adam Schneider
Adam Schneider, Esq.
Executive Director

.....
NRS 636.295(13) ("The following acts . . . constitute sufficient cause for disciplinary action: . . . (13) Any violation of a . . . federal law or regulation relating to or involving the practice of optometry")

NAC 636.670 Contents ("1. A prescription for spectacle lenses must specify the refractive power necessary for best vision.")

16 CFR § 456.1(g) ("A prescription is the written specifications for lenses for eyeglasses which are derived from an eye examination, including all of the information specified by state law, if any, necessary to obtain lenses for eyeglasses.")

16 CFR § 456.2 Separation of examination and dispensing It is an unfair act or practice for an ophthalmologist or optometrist to:

(a) Fail to provide to the patient one copy of the patient's prescription immediately after the eye examination is completed. Provided: An ophthalmologist or optometrist may refuse to

give the patient a copy of the patient's prescription until the patient has paid for the eye examination, but only if that ophthalmologist or optometrist would have required immediate payment from that patient had the examination revealed that no ophthalmic goods were required;

(b) Condition the availability of an eye examination to any person on a requirement that the patient agree to purchase any ophthalmic goods from the ophthalmologist or optometrist;

(c) Charge the patient any fee in addition to the ophthalmologist's or optometrist's examination fee as a condition to releasing the prescription to the patient. Provided: An ophthalmologist or optometrist may charge an additional fee for verifying ophthalmic goods dispensed by another seller when the additional fee is imposed at the time the verification is performed; or

(d) Place on the prescription, or require the patient to sign, or deliver to the patient a form or notice waiving or disclaiming the liability or responsibility of the ophthalmologist or optometrist for the accuracy of the eye examination or the accuracy of the ophthalmic goods and services dispensed by another seller.

.....

August 9, 2024
Adam Schneider, Esq., Executive Director
Nevada State Board of Optometry
Post Office Box 1824 Carson City, Nevada 89702
Telephone: (775) 883-8367 Facsimile: (775) 305-0105
director@nvoptometry.org

Re:
Patient: [Complainant]

Dear Mr. Schneider,

The following is my response to the complaint received pertaining to the care of a patient while practicing at [practice location] in 2024.

I had the pleasure of providing eye care to [Complainant] in April. During this examination, I performed a refraction for vision correction and obtained all necessary components of an eyeglasses prescription, including spherical, cylindrical, and add powers. [Complainant] requested a single vision near prescription only. As per this request, I finalized a spectacle prescription for near which incorporated all of the measurements taken. I did not at any time indicate that a multifocal prescription would not be made available, and did not discuss any policy of requirements to have glasses purchased at the practice.

At a later date, while working at a separate location, I received a request via message for a complete multifocal prescription for [Complainant], which I immediately finalized and forwarded to the front office of that location. I trust that this prescription was made available to

the patient. (Please note that the date on this prescription was auto populated by the electronic record system to the date I received and responded to this current request for multifocal). I am unaware of any policy, past or present, that would prevent any practice where I work from delivering a patient his or her valid, updated spectacle prescription. Further, I am unaware of staff declining to deliver a patient's legal prescription. Finally, I am unaware of any policy, past or present, that indicates where a patient may purchase his or her spectacles with a current valid prescription.

It is regrettable that there seems to be a misunderstanding of the matter, and even more so for me personally that my patient feels she was not given all that she is entitled to receive. I do hope that this concern has been fully addressed to the satisfaction of all parties involved, and that I can provide [Complainant] care in the future.

Respectfully,

[Licensee] , OD NV Optometric License [redacted]

.....

[Licensee]- I have reviewed your response and submitted documents. Your answers to the below will further assist in the Board's evaluation. Please respond by 12pm 8/22/2024:

Please provide an explanation for why the Rx was not changed to a multifocal until 8/1/2024, bearing in mind you received the Board's inquiry letter on 7/17/2024 and you acknowledged its receipt on 7/23/2024.

Your response states "I trust that this [8/1/2024] prescription was made available to the patient." Please provide any documentation or EMR data showing that the prescription was ever provided to the patient, and on what date.

I see a lengthy Patient Notes entry by Cassandra Michelle M., dated 8/9/2024. Please confirm your office has no other Patient Notes entries or similar messages from April-July 2024 relevant to the allegations, given the Communications pdf you provided has no entries at all between 5/16/2024 and 8/8/2024.

.....

Good Morning,

I understand the question and how it can be confusing. Please forgive my lengthy response, I want to be sure I'm being thorough.

When I saw the notice of the complaint, I began working with the team at the practice to understand the situation better. In my mind, if the patient wanted a multifocal prescription, of course I would provide that for her. That said, I hadn't actually received a request, I received a complaint and began focusing on how the complaint came about.

For context; I was not working at the [practice location] when the patient states that she called to request an 'add,' and was not aware there was such a request. Upon investigation of the complaint, I was told that what was requested was a PD, which we did not have, and this is why I was not notified of a request for a multifocal prescription at the time. When I was alerted by the Board of the complaint, I became focused on what had happened and it honestly did not occur to me to just finalize a multifocal prescription and send it to the patient. Later, when I received a request from staff (while working at a different location) for a prescription for [Complainant's name], I simply opened that patient's chart, finalized it, and asked my staff to get it to her as I always do when a patient requests any of their record. It didn't register to me that it was the same patient or that I hadn't already finalized that particular Rx until I was back reviewing the chart again. This is my mistake, and I've made a personal resolution to be more diligent. The practice as a whole recognizes the need for better communication, and has put systems in place to better connect patient requests with the providing doctor. The most important thing is always patient care and I never want to jeopardize the trust my patients have for receiving that care.

Because I am not working at that location currently, the only access I have to patient notes is through the system we have online and through direct communication with the team there. I believe you have a complete record of all of those documents. I have reached out to the practice administrators for verification to ensure nothing is missing, and will forward their response to you as soon as I receive it. I am also asking if there are notes or documentation showing that the patient received that multifocal prescription. I do work with patients all morning, but will try to find time between patients to respond with any further information I receive.

Thank you for your time and consideration.

Sincerely,

[Licensee], OD

Medications

Reviewed April 26, 2024.
OPHTHALMIC MEDICATIONS
NONE

NON OPHTHALMIC MEDICATIONS

Other: Cholestid, Losartan,
Penicillin[Allergic], Zolof, Lumify, No
known ocular medication
allergies.[Allergic]

Ocular History

Reviewed and changes noted April
26, 2024.
Other: No ocular history exists
except,
RK SX 20+years ago

Ocular Surgery

Other: RK

Social History

Reviewed and no changes noted April
26, 2024.
Other
Other: No reported use of tobacco,
alcohol or narcotics., No tobacco use
reported.-Alcohol, infrequent, social
use only.-No reported use of
narcotics.
Smoking status - Unspecified

Allergies

Reviewed April 26, 2024.

ROS

Provider reviewed on Apr 26, 2024.

A focused review of systems was
performed including Cardiovascular
and Eyes and was notable for
redness.

No Eye Pain, No Loss Of Vision, And
No Tearing.

Medical History

Reviewed and no changes noted April
26, 2024.
Other: No pertinent medical history
exists

Surgical History

Reviewed and no changes noted April
26, 2024.
Other: No pertinent surgical history
exists

Chief Complaint: Blurred Vision

HPI: This is a 67 year old female who is being seen for a chief complaint of blurred vision involving the right eye and left eye. The blurred vision is at near and associated with wearing glasses. The blurred vision is mild in severity, right eye and left are equal. The patient is being treated with pushing near items further away .

Eye Exam

Vision

Distance Test Type: Snellen Chart Near Test Type: Snellen

Dsc OD 20/40
OS 20/30
OU 20/30 -1

Wearing

Glasses

Eyeglass: Single Vision Near

Eye Measurement

OD +2.25 -1.00 x 076
OS +2.75 -1.50 x 176

Auto Refraction

Auto Refraction Type: Non-Dilated AR

Eye Measurement

OD +0.75 -1.50 x 087
OS +1.25 -1.50 x 177

Keratometry

	Flat	Axis	Steep	Axis	Mires Quality	Method
OD	44.50		44.25	065		
OS	45.50		43.50	085		

Manifest Refraction

Eye Measurement

OD Plano -1.25 x 085
Add: +2.50
OS +0.75 -1.25 x 168
Add: +2.50

OU

Pupils: Normal

	Light (mm)	Dark (mm)	Near (mm)
OD			
OS			

OD
OS

IOP

OD 13

OS 12

Motility: Full OU

Visual Field Test Type: FDT

Visual Field Test Result: Visual Field Normal

Exam:

An examination was performed

DCC

NCC

DCC

NCC

DCC

NCC

20/40

20/25 -1

20/25 -1

J1+

Reacts

APD

RAPD

Other

Regular

Regular

Regular

Reacts Well

No APD

Reacts Well

No APD

04/26/2024 10:35 AM PDT

Icare tonometer
Reliable

04/26/2024 10:35 AM PDT

Icare tonometer
Reliable

OD External: normal lid position, nasolacrimal and orbital exam
OD Lid Margin: quiet and normal
Slit lamp examination OD:
OD Conjunctiva: white and quiet
OD Cornea: clear cornea
OD Anterior Chamber: deep and quiet anterior chamber
OD Iris: normal iris without rubeosis
OD Lens: trace nuclear sclerosis trace nuclear sclerosis

A dilated exam of the optic disc was performed OD.

Ophthalmoscopic examination of optic disc OD:

OD: CD ratio 0.3

OD Optic Disc: Myopic

A dilated fundus exam was performed OD.

Ophthalmoscopic examination of retina and vessels OD:
OD Vitreous: vitreous clear without hemorrhage, cells or pigment

OD Vessels: vessels with normal contour, caliber without neovascularization

OD Macula: macula normal contour without heme, edema, drusen or exudate

OD Periphery: periphery normal appearance without retinal tears, breaks, holes or mass

General Appearance of the patient is well nourished.

Orientation: alert and oriented x 3.

Mood and affect: no acute distress.

OS External: normal lid position, nasolacrimal and orbital exam

OS Lid Margin: quiet and normal

Slit lamp examination OS:

OS Conjunctiva: white and quiet

OS Cornea: clear cornea

OS Anterior Chamber: deep and quiet anterior chamber

OS Iris: normal iris without rubeosis

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OS Macula: macula normal contour without heme, edema, drusen or exudate

OS Periphery: periphery normal appearance without retinal tears, breaks, holes or mass

Impression/Plan:

1. Astigmatism OU
regular (H52.223)

Plan: Counseling - Astigmatism.

I counseled the patient regarding the following:

Eye care: Astigmatism can be corrected with eyeglasses or contact lenses.

Expectations: Astigmatism causes blurred vision due to either an irregularly shaped cornea or the curvature of the lens. Small amounts of astigmatism do not need to be treated, but larger amounts can cause visual distortion, blurred vision, eye strain and headaches.

Contact Office if: eye strain, headaches, or blurred vision persist despite corrective eye wear or refractive surgery.

After counseling the patient, we decided on the following plan for the right eye: Glasses

After counseling the patient, we decided on the following plan for the left eye: Glasses

Plan: F/U for Next Visit Refractive.

The patient should be scheduled for the following in 12 Months:

Plan: Refraction.

Manifest Refraction was performed OU.

Indication: Astigmatism OU

2. Hyperopia OU
(H52.03)

Plan: Counseling - Hyperopia.

I counseled the patient regarding the following:

Eye care: Hyperopia can be treated with corrective eye wear, such as contacts or eyeglasses.

Expectations: Hyperopia or farsightedness is when distant objects can be seen clearly, but close objects do not come into focus. Hyperopia results if the eyeball is too short, or if there is too little curvature of the cornea.

Contact Office if: Despite corrective therapy, you still have difficult viewing near objects, or develop headache or eye strain.

After counseling the patient, we decided on the following plan for the right eye: Glasses

After counseling the patient, we decided on the following plan for the left eye: Glasses

Plan: F/U for Next Visit Refractive.

The patient should be scheduled for the following in 12 Months:

Plan: Refraction.

Manifest Refraction was performed OU.

Indication: Hyperopia OU

**3. Presbyopia OU
(H52.4)****Plan: Counseling - Presbyopia.**

I counseled the patient regarding the following:

Eye care: Reading glasses, prism glasses, bifocals, trifocals or contact lenses can be helpful.

Expectations: Presbyopia is the inability to focus on objects (ie: accommodate) due to the loss of flexibility of your natural lens. Presbyopia occurs as we get older.

Contact Office if: Difficulty in focusing persists despite corrective eyewear.

After counseling the patient, we decided on the following plan for the right eye: Glasses

After counseling the patient, we decided on the following plan for the left eye: Glasses

Plan: F/U for Next Visit Refractive.

The patient should be scheduled for the following in 12 Months:

Plan: Refraction.

Manifest Refraction was performed OU.

Indication: Presbyopia OU

**4. Nuclear Cataract OU
(H25.13)****Plan: Counseling - Cataracts.**

I counseled the patient regarding the following:

Contact the office if: You experience progressive loss of vision, increasing glare, and problems with activities of daily living.

UV protection is advised

After counseling the patient, we decided on the following plan for the right eye: Not visually significant and Observation

After counseling the patient, we decided on the following plan for the left eye: Not visually significant and Observation

GLASSES RX DETAILS

	SPHERE	CYLINDER	AXIS	ADD	START	EXP. DATE
OD	+2.50	-1.25	085		04/26/24	04/26/25
OS	+3.25	-1.25	168		04/26/24	04/26/25

VISUAL ACUITY

	Dist VA	Near VA	Dist PH	Underlying condition
OD	20/40			
OS	20/25 -1			
OU	20/25 -1	20/20		

ADDITIONAL INFORMATION

**Active
Usage**

**Yes
Reading single vision**

Staff:

[REDACTED] OD (Primary Provider) (Bill Under)

Electronically Signed By: [REDACTED] OD, 04/26/2024 11:09 AM PDT

GLASSES RX DETAILS

	SPHERE	CYLINDER	AXIS	ADD	START	EXP. DATE
OD	Plano	-1.25	085	+2.50	08/01/24	08/01/25
OS	+0.75	-1.25	168	+2.50	08/01/24	08/01/25

VISUAL ACUITY

	Dist VA	Near VA	Dist PH	Underlying condition
OD	20/40			
OS	20/25 -1			
OU	20/25 -1	20/20		

ADDITIONAL INFORMATION

Active Yes

Usage Multifocal

Electronically Signed By: [Licensee], OD 08/01/2024 @ 08:09 AM

Date	Time	Employee	Notes
8/9/24	11:39 am	Cassandra Michelle Moor	The patient's husband Glen was in the office on 8/6/24 and yelled at one of my opticians, Alyssa, for not having a PD on file for his wife. I was not aware of this at the time. After lunch my tech, Vivian, grabbed me and told me there was a patient on the phone who wanted to speak to a manager and the tech and optician let me know it was someone who had asked about a PD measurement to earlier today. He told me his name was Glen and I gave him my name. He asked about our policy on giving out PDs and implied that we make someone purchase glasses in order to receive their PDs. I let him know that it is our policy not to give PD measurements directly to a patient for liability reasons and that it makes no difference if a patient purchases glasses here or not. We aren't supposed to give a patient their PD measurement regardless. He asked if the PD was part of his prescription and I told him it was not considered part of the prescription. He asked if that was a measurement that a doctor took and I told him that, no, it was only something the dispensing optician would measure if he was being fitted for glasses from our office. Glen asked me if I was familiar with the Eyeglass Rule from the Federal Trade Commission and told me to look it up. I let him know that I was familiar with the rule and asked him if he was in need of a copy of his prescription. He stated that he already had that and was just looking for his PDs. I clarified that the PDs are not a part of the prescription, but that I could look him up and see if we had that on file from a previous glasses order. That's when he told me that he was actually looking for his wife and gave me her name: [REDACTED]. Upon pulling up her profile, I stated that she had only been seen for an exam and did not have a glasses purchase on file, therefore did not have a PD measurement on file. I was about to ask if [REDACTED] wanted to come in and have that taken by myself or an optician, but before I could, Glen started screaming at me stating that he has already filed a complaint about our office with the NV Board of Optometry and said that he would "blow us up" on every social media platform out there and make sure no one will ever want to come into our office. Then he hung up the call.

From: [Licensee email address]

The email below was just sent to my vsp email from the manager of [practice location] in [city located in Nevada] in response to request for further documentation.

Attached copy of the note I added to pt profile and the rec rel from SCP I scanned into the pt's chart. After speaking with [a practice location], it would have been Julie the PC that sent that new RX to the pt via email, but she is no longer employed and we cannot access her old email account.

Thank you,
[Name]
Practice Manager



STAT REQUEST

Enrollee Name: [Complainant name]

DOB: XX/XX/XXXX

Enrollee ID# C000XXXXX

Enrollee Address:

[Address]

[City] Nevada [zipcode]

Provider:

[Practice Location]

Date(s) of Service:

Reason for request:

 X Review of Medical Records for Benefit Determination

 Other:

Information requested:

☒ Medical Records - Current prescription with ADD measurements

☐ History and Physical

☐ Discharge Summary (If applicable)

☐ ER report (If applicable)

☐ Consultant Report(s)

☐ Patient Questionnaire

☐ Other:

Requested By: Amber G.

Date: 08/20/2024

Fax medical records to:

Hometown Health Fax #:

(775)982-3741

Attention: Amber G

Reno, NV 89521

10315 Professional Cir.

Reno, NV 89521

Mail medical records to:

Hometown Health

Attention: Amber G.

Senior Care Plus

10315 Professional Cir
Reno, Nevada 89521
(775) 982-3202
FAX COVER SHEET
STAT REQUEST

Date: 08/20/2024

Email #: cmoore1@vspventures.com

Attn: Medical Records Department

RE: CRM [XXXXXX]

Number of pages being faxed, including this sheet: 3

If you have a problem receiving this fax, please contact:

Name: Amber G

Department: Hometown Health/Senior Care Plus, Appeals & Grievances

Phone: (775) 982-1154

Fax: (775) 982-3741

Message:

At this time, Hometown Health is requesting medical records. Please see the next page for details. Please fax the requested records to (775)982-3741 or email at Amber.Garcia@hometownhealth.com. Attn: Amber G. Please feel free to contact me at (775)982-1154 with any further questions or concerns.

Thank you,

Hometown Health/Senior Care Plus Appeals & Grievances

The documents accompanying this transmission contain confidential health information that is legally privileged and protected by law. This information is intended only for the use of the individual or entity named above. The authorized recipient of this information is prohibited from disclosing this information to any other party unless required to do so by law or regulation and is required to destroy the information after its stated need has been fulfilled.

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REQUEST FOR MEDICAL RECORDS

All_LOB_Request for Medical Records_2019

Patient Notes

Date	Time	Employee	Notes
8/22/24	10:29 am	Cassandra Michelle M	On 8/20/2024, Senior Care Plus called asking if the patient had an RX including add power. They emailed me a record release (scanned) and I sent all records including both glasses RXs to Amber Garcia at Senior Care Plus who forwarded the information to the patient.