



Board of Examiners in Optometry
PO Box 6
Langford, SD 57454
sdoptboard@venturecomm.net
Telephone: (605) 493-6504
Fax: (605) 493-6579
Website: <http://optometry.sd.gov>

AGENDA

April 4, 2017
Tieszen Law Office
Conference Room
Pierre, South Dakota
9:00 a.m. (CST)

1. Attendance
2. Approval of Agenda
3. Approve minutes from the regular meeting and public hearing on August 26, 2016, and telephonic meeting on November 17, 2016.
4. Treasurer's Report
5. Board review and approve CE courses
6. Old Business
 - a. Board Certification
 - b. Injections
 - c. Tele-Medicine
7. New Business
 - a. Licensing
 - b. Procedural Codes
 - c. Board Member Requests for Conflict Waiver
 - d. Administrative Rule/Legislative Updates
 - e. Healthcare Practitioner Assistance Program
 - f. National Healthcare Practitioner Databank
 - g. Board Member Training
 - h. Board Member Terms and Board Positions
 - i. Contracts
8. Time and place of next meeting
9. Adjournment

This meeting is being held in a physically accessible place. Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact the in Board of Examiners in Optometry (605-493-6504) or sdoptboard@venturecomm.net at least 24 hours advance of the meeting to make any necessary arrangements.

South Dakota Board of Examiners in Optometry

Meeting Minutes
August 26, 2016
Tieszen Law Office Conference Room
Pierre, South Dakota
9:00 AM (CST)

**DRAFT MINUTES
HAVE NOT BEEN
APPROVED BY
THE BOARD**

1. Attendance

Meeting called to order at 8:58 a.m. Board members present were Dr. Dockter, Dr. Haiar, Nancy Van Camp and Dr. Hart. Also present were Naomi Cromwell, Tieszen Law Office; Ann Meyer, Attorney General's Office; Deni Amundson, Board Executive Secretary; and Deb Mortenson, SDOS Executive Director.

2. Approval of Agenda

Dr. Hart moved to approve the agenda as presented, seconded by Nancy Van Camp. All in favor. Motion passed.

3. Approve Minutes from April 22, 2016, and June 8, 2016.

Nancy Van Camp moved to approve the minutes from the regular meeting on April 22, 2016, and the teleconference on June 8, 2016, seconded by Dr. Haiar. All in favor. Motion passed.

4. Treasurer's Report

Dr. Hart moved to accept the treasurer's report, seconded by Dr. Haiar. All in favor. Motion passed.

5. Board Review and Approve CE Courses

Deni Amundson inadvertently forgot to bring the CE courses for review. They will be considered at the next meeting. No action taken.

6. Old Business

- a. Board Certification- Will continue to closely monitor. Tabled until next meeting.
- b. Injections- Will continue to closely monitor. Tabled until next meeting.

7. New Business

- a. Licensing- No action taken.
- b. Procedural Codes- Discussion was had regarding the history of listing all the procedural codes in the administrative rules. No action taken.
- c. Administrative Rules Update- No action taken.
- d. Board Member Requests for Conflict Waiver- Dr. Kollis-Young's waiver request has been approved by the Department of Health. A waiver request was also submitted by Dr. Hart because she holds dual positions on the South Dakota Optometric Society as well as the Board of Optometry. The Department of Health legal counsel didn't feel that a waiver was necessary in this circumstance. The

Board of Optometry's legal counsel, Naomi Cromwell, spoke to them and they were going to consider the matter further. Discussion was also had on board member disclosure of any conflict of interest board members may have or which may arise going forward; no further waivers were requested at this time. No action taken.

- e. Legislative Update- No action taken.
- f. ARBO Meeting Update- Deni Amundson attended the Association of Regulatory Boards of Optometry meeting in Boston, MA, in June. She gave a summary of that meeting. Based on the discussion that resulted from this summary, she will revise the renewal application, military documents and find out more details about the possibility of this board utilizing the National Healthcare Practitioner Database for new applications and license renewals. She will report on all three of these items at the next meeting.
- g. Tele-Medicine- Discussion was had regarding emerging technology in optometry. Will continue to closely monitor this issue. Tabled until next meeting.
- h. COPE Requirements- Discussion was had regarding ARBO's changes to the COPE accreditation process. They are vetting providers to improve the quality of continuing education by removing industry influence, requiring reflections on outcomes and identifying practice gaps. No action taken.
- i. Office Inspection Form- A revised form was presented to the board. The content has not changed, but there were style updates. The board indicated that they may want to possibly update the laws on this form the next time we have other administrative rule changes. No action taken.
- j. Law and Ethics Exam- The board reviewed the current law and ethics exam and made suggestions for edits to three items on the exam. Dr. Hart moved to approve the exam with the three edits, seconded by Nancy Van Camp. All in favor. Motion passed.
- k. Nasal Lacrimal Stimulation Device- The American Optometric Association requested that the board review this device to make a determination as to whether or not it was within a South Dakota licensed optometrist's scope of practice to prescribe this device. Discussion was had regarding the lack of FDA approval and a formal procedural code. Since it does not have FDA approval or a procedural code, it would not be approved by the board for use by South Dakota optometrists. No action taken.

8. Time and Place of Next Meeting

TBD
Tieszen Law Office Conference Room
Pierre, South Dakota
9:00 AM (CST)

9. Adjournment

Nancy Van Camp moved for adjournment, seconded by Dr. Hart. All in favor, motion passed. Meeting was adjourned at 11:31 a.m.

Respectfully submitted,
Deni Amundson, Executive Secretary
South Dakota Board of Examiners in Optometry

DRAFT

South Dakota Board of Examiners in Optometry

Teleconference Meeting Minutes
November 17, 2016
6:00 p.m. (CST)

DRAFT MINUTES
HAVE NOT BEEN
APPROVED BY THE
BOARD

The meeting was called to order at 6:00 p.m.

1. Attendance:

Board members present via telephone were Dr. Dockter, Dr. Schirber, Dr. Haiar, and Nancy Van Camp. A roll call was conducted to determine a quorum. Also present were Naomi Cromwell, via telephone, Dick Tieszen, in person, at the Tieszen Law Office, Pierre, SD, and Deni Amundson, Board Executive Secretary, in person at the Board of Optometry office, Langford, SD, both locations having been noticed as available for public access to listen to the meeting.

2. Approval of Agenda:

Nancy Van Camp moved to approve the agenda, seconded by Dr. Schirber. Motion passed by roll call vote.

3. New Business:

a. Complaint and Investigation Process: Dr. Haiar moved to authorize the board president, Dr. Dockter, to act on behalf of the board on consent agreement matters until June 30, 2017, seconded by Dr. Schirber. Motion passed by roll call vote.

4. Time and Place of Next Meeting:

April 7, 2017
Tieszen Law Office Conference Room
Pierre, SD
9:00a.m. (CST)

5. Adjournment:

At 6:15, Dr. Schirber moved to adjourn, seconded by Dr. Haiar. Motion passed by roll call vote.

Respectfully submitted,

Deni Amundson, Executive Secretary
SD Board of Examiners in Optometry

Subobject	Description	FY09 Actual	FY10 Actual	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Actual	FY15 Actual	FY16 Actual	FY17 3/4/2017
	Salaries									
5101030	Board & Comm Members	1,020	1,140	480	960	720	720	660	780	660
5102010	OASI-Employer's	82	92	41	76	56	55	51	61	50
5203010	Auto-State									
	Board Member Travel	1,744	1,824	826	1,004	1,268	996	855	1,229	573
	*Includes: Auto, Meals, Lodging									
5204020	Dues & Memberships	600	750	750	750	750	750	750	750	750
5204060	Ed & Training	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000
5204050	Computer Consultant (database)					3,799	2,813	406	1,595	175
5204100	Medical Consultant (investigator)					2,375	-	-	360	636
5204080	Legal Consultant	11,669	10,849	9,573	7,218	25,953	25,482	16,949	12,623	24,254
5204090	Management Consultant	19,266	20,516	21,573	24,390	28,974	25,960	28,588	31,703	26,228
5204180	Computer Services- State									154
5204200	Central Services	651	653	598	636	681	778	802	828	612
5204203	Central Services			8						
5204204	Central Services	118	139	113	128	199	261	233	192	144
5204207	Central Services	288	262	201	220	111	319	208	242	196
5204960	Other Contractual				88					
5205310	Printing-State	-	331	96			483		1048	0
5204590	Ins Premiums & Surety Bds	975	900	-	975	470	750	740	380	-
5205350	Postage				9				36	0
5207905	Computer		2593	-				1868	0	0
5207451	Office Furniture and Fixtures				850				0	0
	Total Expenses	40,413.00	44,049.00	38,259.00	41,304.00	69,356.00	63,367.00	56,110.00	55,827.00	58,432.00
	TOTAL REVENUE	50,166.18	49,661.00	50,824.22	53,104.77	52,660.58	54,109.40	54,491.16	71,403.85	70,992.43
		9,753.00	5,612.00	12,565.00	11,801.00	-16,695.00	-9,258.00	-1,618.84	15,576.85	12,560.43



Advocacy Talking Points

The Federation of Associations of Regulatory Boards (FARB) has developed a series of resource documents regarding the regulation of licensed professionals. These documents address common sense regulation and promote efficient and effective state licensing boards. These talking points will assist state licensing boards in their discussions with legislators and other stakeholders and are categorized as follows:

1. **Effective State Regulation** – Statements supporting the regulation of licensed professionals through a state Board responsible for administering the practice/title act and associated state laws.
2. **Board Composition** – Statements that identify the issues surrounding the composition of state licensing boards and the important role played by all volunteer board members, including active licensees and public representatives.
3. **Deregulation of Professions** – Statements outlining many of the issues that can arise when a profession is deregulated or monitored by a voluntary, private sector certification program.
4. **Active State Supervision** – Statements that identify some of the issues surrounding various proposed options to implement additional oversight over decisions made by state licensing boards.



The Federation of Associations of Regulatory Boards (FARB) promotes common sense regulation through efficient and effective state-based licensure of professions. FARB supports state licensing boards which provide essential health, safety, and welfare protections of the public through the enforcement of applicable statutes and regulations.

Effective State Regulation

- The constitutional rights of the states to regulate the professions in the interest of the protection of the health, safety, and welfare of the public should be recognized and respected.
- Common sense state regulation of the professions through legislatively enacted statutes that create and delegate authority to the state licensing board should be recognized and respected.
- State statutes should establish the standards and criteria necessary for licensure and enforcement.
- The state licensing board appointment process should include reasoned policies and procedures regarding the nomination, evaluation, appointment, and oversight of board members to ensure an understanding of their regulatory obligations.
- Recognition of the need for professional expertise on the licensing boards is essential to effectively and efficiently fulfill their mandate to protect the public.
- Comprehensive training ensures that board appointees clearly understand and adhere to their public protection roles and responsibilities in regulating the profession.



The Federation of Associations of Regulatory Boards (FARB) promotes common sense regulation through efficient and effective state-based licensure of professions. FARB supports state licensing boards which provide essential health, safety, and welfare protections of the public through the enforcement of applicable statutes and regulations.

Board Composition

- A well-structured state licensing board is comprised of active licensed practitioners, public members, experienced administrative staff, and legal counsel.
- Volunteer active licensed practitioners provide the board with subject matter expertise that contributes to the effectiveness and efficiencies in fulfilling the legislative mandates.
- Public members provide the balance of perspectives that contribute to the effectiveness and efficiencies in fulfilling the legislative mandates.
- This balance of representation provides much needed expertise and consumer perspectives and allows for informed decisions in the interest of the health, safety and welfare of the public.
- Informed, efficient decisions involve board operations and meetings, legislative interpretation, rulemaking, assessment of complaints and investigations, administrative proceedings, and defense of decisions.
- A well-structured state licensing board provides fiscal accountability and operational benefits by diminishing the need for paid subject matter experts necessary to conduct investigations, provide opinions, and assist in resolving practice-related questions.
- A well-structured state licensing board ensures that board decisions are consistent, fair, comply with applicable due process requirements, and promote deference to the board decisions by the judiciary when challenges and appeals are filed.



The Federation of Associations of Regulatory Boards (FARB) promotes common sense regulation through efficient and effective state-based licensure of professions. FARB supports state licensing boards which provide essential health, safety, and welfare protections of the public through the enforcement of applicable statutes and regulations.

Deregulation of Professions

- Regulation of the professions provides inherent fairness through a regulatory process for the benefit of consumers, applicants for licensure, licensees, and complainants by promulgation of and adherence to administrative procedures and due process principles.
- Regulation of the professions provides a mechanism for protection of the public as a whole, a benefit not realized by a “buyer beware” approach to consumer protection.
- A “buyer beware” approach to regulation only affects the parties to the dispute to the detriment of the public as a whole and does not deter future misconduct on the part of the licensee.
- Deregulation of the professions eliminates the abilities of government to act on behalf of the public and places enforcement and protection burdens on the consumers.
- Deregulation disadvantages consumers otherwise unable to protect themselves from unqualified practitioners based upon economic factors and lack of knowledge regarding the profession.
- Deregulation in deference to private sector certification programs displaces government involvement at the expense of due process and administrative procedures not mandated upon the private sector.
- Deregulation in deference to private sector certification may unlawfully empower a private sector organization to act on behalf of the state.
- Deregulation in deference to voluntary regulation of a profession creates a tiered licensure structure that may be applied inconsistently and will be confusing to the public.



The Federation of Associations of Regulatory Boards (FARB) promotes common sense regulation through efficient and effective state-based licensure of professions. FARB supports state licensing boards which provide essential health, safety, and welfare protections of the public through the enforcement of applicable statutes and regulations.

Active State Supervision

- To rely on the state action immunity doctrine defense as a shield to antitrust allegations, state boards comprised of active licensed practitioners must operate under active state supervision.
- Relatively few board activities, such as individual disciplinary actions, implicate the antitrust laws.
- Boards are represented by attorneys, usually from the attorney general's office, which consider and advise the board regarding activities and decision making.
- Active state supervision is a fact-specific determination and supervision can exist in numerous forms, such as attorney general representation, executive branch appointment, training of board members, and legislative mandates in statutes.
- Active state supervision through the creation of additional agencies removes the expertise necessary to assess and determine factual findings specific to the profession and may also result in decisions that are more likely susceptible to legal challenge on appeal.
- Active state supervision through the creation of additional agencies adds redundancy, slows the decision making process, and contributes to the inefficient use of government resources.
- Alternative options exist whereby the board can request legislative changes, promulgate regulations, and/or seek declaratory rulings from the judicial branch.



MIDWEST HEALTH MANAGEMENT SERVICES, LLC
3130 West 57th Street, Suite 111
Sioux Falls, SD 57108



**Midwest Health
Management Services**

SD Health Professionals
Assistance Program

MIDWEST HEALTH MANAGEMENT SERVICES, LLC

- MWHMS can assist organizations and professionals by facilitating the early identification, intervention, referral, treatment and monitored recovery for professionals who may be affected by mental health or substance use disorders.
- Any professional who is experiencing a mental health and/or substance use disorder may seek monitored recovery support with MWHMS.
- MWHMS referrals may come from any source including: peers, self, physicians, colleagues, attorneys, treatment centers, family or friends.
- Clients often present in a profoundly negative state of mind and with significant fears. It is our job to assure the client of the process, give them hope, inspire them to participate and be successful in the recovery process.

**Seek Help
Find Hope
Recovery is a Realistic
Expectation**

605-275-4711
Fax: 605-275-4715
www.mwhms.com

Helping Professionals Stay on Track

Midwest Health Management Services, LLC (MWHMS)

Employees who abuse substances (compared to employees who do not):

- Are late to work three times more often
- Use sick leave three times more often
- Are five times more likely to file a worker's compensation claim
- Are almost four times more likely to have an accident at work

For those who do receive treatment, research indicates only 24% have maintained sobriety after one year.

How to reach a 78% recovery rate:

Dupont study of Physician Health Program's (PHP) revealed that 78% of the physicians enrolled in PHP's did not have a single positive test for any drug or alcohol use for over 5 years of testing. Of the 22% who did have at least one positive test, 65% did not have a second positive test.

MWHMS monitored recovery support is based on PHP best practices.

Strengths of this model include:

- Early intervention
- Appropriate level of care
- Support in adhering to treatment goals
- Accountability

Why refer? Potential benefit for employers:

- MWHMS offers expert intervention by caring licensed professionals
- May improve safety
- May lead to improved productivity
- May lead to improved work quality
- Cost benefit: employees who have been trained are an asset, in recovery they can continue to contribute to their organization



South Dakota Health Professionals Assistance Program (HPAP)

Since 1996, the South Dakota Health Professionals Assistance Program (HPAP) has assisted with the recovery and safe return to practice for hundreds of SD healthcare professionals. HPAP recognizes that health professionals who are experiencing mental health or substance use illnesses are individuals who have dedicated their lives to helping others, and are now in need of care themselves. If left untreated or if undertreated, these illnesses can put even the finest clinicians and their patients at risk. Many professionals do not get the help they need due to social stigma, fear of exposure, or lack of awareness. HPAP can help.

"So grateful, many thanks to you!! Think about so many health care workers that still struggle and suffer. Solution is not easy, needs lot of self-sacrifice, but doable if one wants it bad enough. Doing well, one day at a time with gratitude and humility."
- a physician

How do you get started?

Health professionals may self-refer, or be referred by treatment providers, colleagues, family or friends- anyone concerned enough to help.
Regulatory boards may make referrals or require enrollment as part of disciplinary sanctions or in lieu of loss of licensure.

Eligibility

HPAP is available to any individual who, at the time of application, is eligible for licensure by a participating SD Department of Health regulatory board.

What does monitoring include?

Monitored recovery requirements are based on individual illness history and risk to practice. Monitored recovery may include initial intake, coordination of appropriate effective treatment services, monitoring of continued recovery via toxicology, worksite monitoring and/or other agreed upon requirements.

What are the advantages of monitoring by HPAP?

- Compassion and dignity throughout the process.
- HPAP acknowledges a primary concern for public safety. We believe a vibrant assistance program will enhance public safety by reducing risk associated with potentially impairing health conditions, and early intervention and referrals may over time, decrease licensing board discipline.
- HPAP promotes early intervention, which increases the likelihood of successful treatment and decreases the likelihood of clinical skills being compromised.
- HPAP assists health professionals in obtaining the appropriate level of treatment and continued care.
- Intervention and monitoring can save a career, a reputation, or even a life.

"It is nice to be able to be calm. Appreciative of all the help so many of you are providing myself and others." - a nurse



South Dakota Board Examiners in Optometry Board Member Introduction Training

Welcome

- ▶ Congratulations on your selection to serve the people of South Dakota.
- ▶ This is a brief introduction to:
 - Provide general information the South Dakota Board of Examiners in Optometry
 - Explain the role of the Board and the Board Members

Mission

- ▶ The mission of the South Dakota Board of Examiners in Optometry is to protect the public by ensuring competent visual care, licensure of qualified applicants, inspection of optometric offices and enforcing updated statutes, rules and regulation, including consumer complaint review and processing.

Optometry Board: A Triad of Functions for Public Protection

Licensure

- ▶ Evaluate applicant's fitness to practice.
- ▶ Assure that applicant has met basic requirements regarding education, training, and testing and continues to fulfill all requirements of licensure.

Discipline

- ▶ Take appropriate action against individual licensee's licensure for unprofessional, incompetent or unlawful practice.

Regulation

- ▶ Establish standards for licensure and practice.
- ▶ Adopt administrative rules to strengthen licensee practice.

South Dakota Board of Examiners in Optometry

- ▶ Board Composition
 - 5 volunteer members appointed by the Governor
 - 4 OD
 - 1 Non-Optometrist or Lay Person
 - 3 year terms with limit of 2 reappointments (3 full terms)
- ▶ Legal Counsel and Administration
 - 1 General Counsel
 - 1 Counsel Provided by the Attorney General
 - 1 Executive Secretary
 - 1 Board Investigator and 1 Back-Up Investigator

Anti-Trust Background

The Sherman Act, 15 U.S.C. §§ 1 – 7, prohibits business activities that are anti-competitive or restrain trade.

Anti-competitive restraints that are imposed by states are an act of the government, and are exempt.

Landmark decision issued by U.S. Supreme Court in 2015, *North Carolina Dental vs. Federal Trade Commission* - Dental board of N.C. directed non-dentists to cease teeth whitening in competition with licensed dentists; the FTC challenged this as anti-competitive; the Supreme Court agreed with the FTC.

States themselves are sovereign and immune, but a state board comprised of privately employed dentist, or "market participants," is not.

"Active Market Participants" – a licensee providing services subject to the regulatory authority of the board.

Thus, a state board controlled by market participants is a private actor, and might not be entitled to state sovereignty.

There is a risk of self-dealing with state boards controlled by active market participants; anti-competitive motives may exist even if unintentional.

Concern that board members may act because of their self-interests, not based on state policy or the public interest.

To be entitled to state immunity when a board's action restricts competition, two requirements must be met:

1. The restraint of trade must be "clearly articulated" in the law and expressed as state policy
2. The policy must be "actively supervised" by the state

Anti-Trust Background Continued....

"A state board on which a controlling number of decision makers are active market participants in the occupation the board regulates must satisfy [the] active supervision requirement in order to invoke state-action antitrust immunity."

"Active supervision" requires that state officials have and exercise power to review anticompetitive acts, with authority to disapprove any acts that don't meet the state policy.

As many as 25 boards in South Dakota are subject to the *N.C. Dental* decision – examples: electricians, accountants, dentists, doctors, optometrists

Concern is with actions that "restrict market entry or restrain rivalry" – examples: restricting non-dentists from teeth whitening, determining that only a limited number of licenses will be issued.

How does this impact board members?

- Be mindful of decisions/acts that could be construed as anti-competitive.
- Ensure a solid basis exists in the law for actions ("clear articulation").
- Ensure there is "active supervision" of decisions even possibly involving anticompetitive action.

Roles:

REGULATOR

VS

ACTIVE MARKET PARTICIPANT

- ▶ Board members are responsible for protecting the public.
- ▶ Need to keep responsibilities clear when it comes to public perceptions.
- ▶ If you are attending a function as an optometrist, you are not attending as a board member.
- ▶ Be mindful of whether you are speaking as a board member or as an active market participant.
- ▶ Advertising that you are a board member on your business website crosses the roles. Please avoid this.

Responsibilities of the Board

Regulatory Boards exercise regulatory authority, such as the power to issue licenses and impose penalties in accordance with various sections of the state law.

The main purpose of regulating healthcare professions is to protect the public.

The SDBEO authority is established in South Dakota Codified Law 36-7 and 47-11B and administrative rules 20:50.

An Effective Board Member...

- ▶ Attends board meetings.
- ▶ Recognizes that serving the public interest is the top priority.
- ▶ Is aware that authority to act is granted to the board as a whole, not to individual members.
- ▶ Recognizes that the board must operate in an open and public manner.

An Effective Board Member...

- ▶ Is knowledgeable about the rule-making and legislative processes and issues affecting the board.
- ▶ Examines all available evidence before making a judgment.
- ▶ Communicates well and participates in group discussions.
- ▶ Exhibits a willingness to work with the group in making decisions.
- ▶ Recognizes that compromise may be necessary to reach consensus.
- ▶ Does not let personal feelings toward others interfere with their decision.

Board Meetings:

- ▶ Are public and are usually held twice per year in Pierre. (Telephonic meetings are scheduled on an as-needed basis.)
 - ▶ Telephonic meetings, if called, are public and subject to all meeting requirements for public agencies, including open meeting laws.
 - ▶ Agendas, meeting materials and minutes are published and public
- *Minutes from past meetings can be found:
<http://doh.sd.gov/boards/optometry/minutes/>
- Please take a few minutes to review these minutes prior to the next board meeting.

Open Meetings Laws

- ▶ The SDBEO conducts its business in accordance with South Dakota's Open Meetings Laws SDCL 1-25.

As a Board Member, you should know:

- ▶ Open meeting laws apply at casual events, such as a lunch or conferences, if a quorum is present and Board business is discussed.
- ▶ Email with a quorum of members can be considered a meeting.

Open Meetings Laws...cont.

1-25-1. Official meetings open to the public--Exceptions--Teleconferences--Violation as misdemeanor. The official meetings of the state, its political subdivisions, and any public body of the state or its political subdivisions are open to the public unless a specific law is cited by the state, the political subdivision, or the public body to close the official meeting to the public. For the purposes of this section, a political subdivision or a public body of a political subdivision means any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, or other agency of the state, which is created or appointed by statute, ordinance, or resolution and is vested with the authority to exercise any sovereign power derived from state law. For the purposes of this section, an official meeting is any meeting of a quorum of a public body at which official business of that public body is discussed or decided, or public policy is formulated, whether in person or by means of teleconference.

It is not an official meeting of one political subdivision or public body if its members provide information or attend the official meeting of another political subdivision or public body for which the notice requirements of § 1-25-1.1 have been met.

Any official meeting may be conducted by teleconference as defined in § 1-25-1.2. A teleconference may be used to conduct a hearing or take final disposition regarding an administrative rule pursuant to § 1-26-4. A member is deemed present if the member answers present to the roll call conducted by teleconference for the purpose of determining a quorum. Each vote at an official meeting held by teleconference shall be taken by roll call.

If the state, a political subdivision, or a public body conducts an official meeting by teleconference, the state, the political subdivision, or public body shall provide one or more places at which the public may listen to and participate in the teleconference meeting. For any official meeting held by teleconference, which has less than a quorum of the members of the public body participating in the meeting who are present at the location open to the public, arrangements shall be provided for the public to listen to the meeting via telephone or internet. The requirement to provide one or more places for the public to listen to the teleconference does not apply to an executive or closed meeting.

If a quorum of township supervisors, road district trustees, or trustees for a municipality of the third class meet solely for purposes of implementing previously publicly-adopted policy, carrying out ministerial functions of that township, district, or municipality, or undertaking a factual investigation of conditions related to public safety, the meeting is not subject to the provisions of this chapter.

A violation of this section is a Class 2 misdemeanor.

Open Meetings Laws...cont.

1-25-1.1. Notice of meetings of public bodies other than the state and its boards, commissions, and departments--Violation as misdemeanor. All public bodies, except the state and each state board, commission, or department as provided in § 1-25-1.3, shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any meeting, by posting a copy of the notice, visible to the public, at the principal office of the public body holding the meeting. The proposed agenda shall include the date, time, and location of the meeting. The notice shall also be posted on the public body's website upon dissemination of the notice, if such a website exists. For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice. For any special or rescheduled meeting, each public body shall also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit. A violation of this section is a Class 2 misdemeanor.

Open Meetings Laws...cont.

1-25-1.3. Notice of meetings of the state and its boards, commissions, and departments--Violation as misdemeanor. The state and each state board, commission, or department shall provide public notice, with proposed agenda, that is visible, readable, and accessible to the public for at least two continuous days, as that time period is computed pursuant to § 15-6-6(a), immediately preceding any meeting, by posting a copy of the notice at the principal office of the public body holding the meeting. The proposed agenda shall include the date, time, and location of the meeting. The notice shall also be posted on the public body's website upon dissemination of the notice, if such a website exists. For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice. For any special or rescheduled meeting, each public body shall also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit. A violation of this section is a Class 2 misdemeanor.

Executive Session

1-25-2. Executive or closed meetings--Purposes--Authorization--Violation as misdemeanor. Executive or closed meetings may be held for the sole purposes of:

- (1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term "employee" does not include any independent contractor;
 - (2) Discussing the expulsion, suspension, discipline, assignment of or the educational program of a student or the eligibility of a student to participate in interscholastic activities provided by the South Dakota High School Activities Association;
 - (3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;
 - (4) Preparing for contract negotiations or negotiating with employees or employee representatives;
 - (5) Discussing marketing or pricing strategies by a board or commission of a business owned by the state or any of its political subdivisions, when public discussion may be harmful to the competitive position of the business.
- However, any official action concerning such matters shall be made at an open official meeting. An executive or closed meeting shall be held only upon a majority vote of the members of such body present and voting, and discussion during the closed meeting is restricted to the purpose specified in the closure motion. Nothing in § 1-25-1 or this section may be construed to prevent an executive or closed meeting if the federal or state Constitution or the federal or state statutes require or permit it. A violation of this section is a Class 2 misdemeanor.

Conflict of Interest

- ▶ SDCL 3-23-1. State authority, board, and commission members prohibited from having interest in or deriving direct benefit from contract. No elected or appointed member of a state authority, board, or commission may have an interest in any contract or derive a direct benefit from any contract with the state which is within the jurisdiction or relates to the subject matter of the state authority, board or commission or with a political subdivision of the state if the political subdivision administers or executes similar subject matter programs as the state authority, board or commission, nor may the member have an interest in any contract or derive a direct benefit from any contract for one year after the end of the member's term on the authority, board, or commission except as provided in §§ 3-23-3 and 3-23-4.
- ▶ SDCL 3-23-5. Removal of authority, board, or commission member for violation--Misdemeanor--Forfeiture--Voidable contract. Any elected or appointed authority, board, or commission member who knowingly violates §§ 3-23-1 to 3-23-4, inclusive, shall be removed from the authority, board, or commission and is guilty of a Class 1 misdemeanor. Any benefit to the authority, board, or commission member in violation of §§ 3-23-1 and 3-23-2 is subject to forfeiture and any contract made in violation of this chapter is voidable by the authority, board, or commission.
- ▶ Please contact the board Executive Secretary to request a waiver to formally disclose any potential conflicts of interest you may have.

5-18A-17. Self-dealing by state officer or employee in award or terms of agency contract prohibited. No state officer or employee who approves, awards, or administers a contract on behalf of a state agency, may have an interest in a contract or derive a direct benefit from a contract that is within the scope of the officer's or employee's official duties, nor for a one-year period following the end of their employment or position as a state officer or employee may the officer or employee derive a direct benefit as a result of such contract except as provided in § 5-18A-17.2. In addition, no such officer or employee may enter into any contract, other than a contract of employment, with any state agency for a period of one year following their leaving office or employment except as provided in § 5-18A-17.3. This prohibition includes any state officer or employee who, in his or her official capacity, recommends the approval or award of the contract or who supervises a person who approves, awards, or administers the contract. This prohibition does not include any state officer who serves without compensation or who may be paid per diem pursuant to § 4-7-10.4.

5-18A-17.1. Direct benefit from contract. A state officer or employee derives a direct benefit from a contract if the state officer or employee, the officer's or employee's spouse, or other persons with whom the state officer or employee lives and commingles assets:

- (1) Has more than a five percent ownership or other interest in an entity that is a party to the contract;
- (2) Derives income, compensation, or commission directly from the contract or from the entity that is a party to the contract;
- (3) Acquires property under the contract; or
- (4) Serves on the board of directors of a for-profit entity that derives income or commission directly from the contract or acquires property under the contract.

A state officer or employee does not derive a direct benefit from a contract based solely on the value associated with the officer's or employee's investments or holdings, or the investments or holdings of other persons with whom the state officer or employee lives and commingles assets.

General Matters

- ▶ As a state regulatory board, the SDBEO is within the Department of Health (DOH).
- ▶ Each Board member is paid a per diem for each day that they are attending meetings. (\$60 per meeting)
- ▶ The Board does not receive funding from the state general fund, but is self supporting by deriving its revenues from fees charged.
- ▶ Board members may be asked to perform office inspections. They are paid travel expenses and per diem for these inspections.
- ▶ Board members will also be asked to proctor law and ethics exams to new licensees.
- ▶ You may be emailed potentially sensitive information. Please do not download or save this information to your work or personal computers.

State Rates

- ▶ The State has established a rate that it will reimburse state employees and Board members when they travel.
- ▶ The executive secretary will arrange your hotel reservations, if needed, prior to board meetings in Pierre. You will need to submit a credit card upon arrival and bring your receipt to the board meeting.
- ▶ The executive secretary will have a travel voucher prepared for you to sign at the board meeting.
- ▶ State Rates:
 - Hotel: September 1–June 1 \$55.00 plus tax
June 1–September 1 \$70.00 plus tax
 - Meals: Breakfast– \$6.00
Lunch– \$11.00
Dinner– \$15.00
 - Mileage: \$0.42 per mile

Board Staff

- ▶ The board staff has administrative functions:
 - to carry out the rules, policies and programs developed by the board
 - arrange meetings, prepare meeting materials, compile background information and conduct research
 - serve as a liaison to other boards and agencies, legal counsel and the public

Ex Parte Contact SDCL 1:26:26

- ▶ "*Ex parte*" is a Latin phrase meaning "on one side only; by or for one party"
- ▶ An *ex parte* communication occurs when a party to a case, or someone involved with a party, talks or writes to or otherwise communicates directly with the judge about the issues in the case without the other parties' knowledge
- ▶ Under South Dakota Law, regulatory board members are considered judges in contested cases

Ex Parte Contact SDCL 1–26–26

- ▶ Board members shall not engage in *ex parte* communication or they may be excluded from participating in the final decision for a contested case.
- ▶ "*ex parte* communications" may not be considered in deciding a case.

How to Respond to Ex Parte Contact

- ▶ Contact the Executive Secretary with your questions.
- ▶ Direct all communication to Board office.

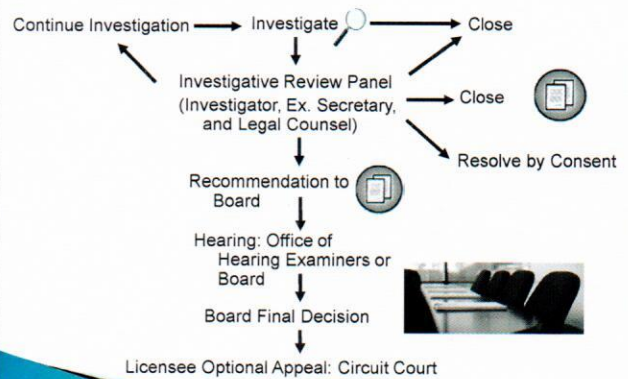
Media Inquiries

- ▶ When contacted by the media:
 - Refer all inquiries to the Board office.
 - An individual board member may only offer an opinion as an individual, not as the entire board unless the board has reached a final public decision. Individual responses to the media should be avoided.

Brief Complaint & Investigation Process



Brief Disciplinary Process & Due Process



Complaints & Investigations

20:50:12:01. Complaints. Upon receipt of a written complaint, the board may initiate an investigation. Any person filing a complaint shall submit the complaint in writing to the executive secretary, on a form provided by the executive secretary. A complaint is not a public record. Any complaint that concerns matters over which the board does not have jurisdiction will be dismissed, and the complainant will be notified of that action. An investigation may also be initiated upon receipt by the executive secretary of information sufficient to create a reasonable suspicion that a licensee is in violation of any applicable standard for professional conduct, or that the health or welfare of the public is endangered.

20:50:12:02. Investigations. If the complaint alleges a violation of a matter within the board's authority or compliance with licensing standards and requirements, the executive secretary shall promptly investigate the complaint or provide the complaint to the board investigator for investigation. The executive secretary shall give written notice to the licensee, permit, or certificate holder of the complaint, along with a statement that the licensee is entitled to due process rights, including the right to notice and an opportunity to be heard and to be represented by counsel. The licensee will be requested to provide a written response to the complaint, which the licensee must provide to the executive secretary within twenty days of receipt of the request, and will be notified that a copy of that response may be provided to the complainant. Upon completion of a complaint investigation, the investigator shall prepare a report to present to the executive secretary of the investigator's findings and conclusions for review. Upon review of the investigator's report, the executive secretary may direct further investigation of the matter.

Completion of Complaint Investigation

20:50:12:03. Completion of complaint investigation. Upon completion of a complaint investigation, the following sanctions may be imposed after a determination by the board that a violation exists:

- (1) A letter of concern, which shall be placed in the licensee's permanent records; a letter of concern is not a public record;
- (2) Formal reprimand;
- (3) Require that the licensee comply with specified terms and conditions;
- (4) Probation of license to practice optometry in the state of South Dakota;
- (5) Suspension of license to practice optometry in the state of South Dakota;
- (6) Revocation of license to practice optometry in the state of South Dakota; or
- (7) Restitution and payment of all costs and expenses of the investigation and proceedings, including attorney fees.

If the licensee disputes the determination, a contested case hearing shall be held pursuant to SDCL ch. 1-26. Pursuant to SDCL 1-26-20, informal disposition may be made by stipulation, agreed settlement, consent order, or default. A final action taken in disposition of a complaint matter is public unless otherwise provided for by law.

SDBEO Contact Information

- ▶ PO Box 133
- ▶ Langford, SD 57454
- ▶ General Email: sdoptboard@venturecomm.net
- ▶ Phone: 605-493-6504
- ▶ Board's website:
<http://doh.sd.gov/boards/optometry/>

<u>NAME</u>	<u>APPOINTMENT</u>	<u>EFFECTIVE</u>	<u>EXPIRATION</u>
Nancy Van Camp 117 Shimrose Street Ft. Pierre, SD 57532 223-9378- Home	8-13-2008 7-1-2009 (reappt) 8-7-2012 (reappt) 7/16/2015		6-30-2012 6/30/2015 6/30/2018
Dr. Craig Dockter 1702 3 rd Avenue West Mobridge, SD 57601	8-6-2012 7-15-2015		6-30-2015 6-30-2018
Dr. Allen Haiar 2416 South Grinnell Avenue Sioux Falls, SD 57106 271-2227- Home 201-5980- Mobile	12/1/2015		6/30/2018
Dr. Scott Schirber 2800 Third Street Rapid City, SD 57701 341-2000- Office 787-3420- Home	9/19/2016		6/30/2019
Dr. Denette Eisnach 640 East Sioux Ave. #3 Pierre, SD 57501 224-6128- Office 224-2639- Home	11/14/2016		6/30/2019