



Board of Examiners in Optometry
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Wall, SD 57790
sdoptboard@goldenwest.net
Telephone: (605) 279-2244
Website: <http://optometry.sd.gov>

AGENDA

August 16, 2019
Tieszen Law Office Conference Room
306 East Capitol Ave, Ste 300
Pierre, SD 57501
8:00 a.m. (CST)

1. Attendance
2. Approval of Agenda
3. Board Member Request for Conflict Waiver
4. Approve minutes from the regular meeting on March 25, 2019, telephonic meeting on May 8, 2019, and telephonic meeting on June 13, 2019.
5. Treasurer's Report
 - ARBO Annual Meeting Report
 - DOH Executive Meeting Updates
6. Board review and approve CE courses
7. Old Business
 - a. National and State Issues Monitored
 - b. Pharmacy Board Database Integration
 - c. Administrative Rule and Statute Review
 - d. Law and Ethics Exam Applicant Protocol
8. New Business
 - a. Licensing
 - b. Procedural Codes
 - c. Administrative Rule/Legislative Updates
 - d. BPro Contract: \$70/hour to \$85/hour
9. Public Comment
10. Time and place of next meeting
11. 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 (605-279-2244) or sdoptboard@goldenwest.net at least 24 hours advance of the meeting to make any necessary arrangements.

CONFLICT WAIVER INSTRUCTIONS AND FORM

SDCL 5-18A-17 to 5-18A-17.6

INTRODUCTION

Generally, absent a waiver, current and certain former state officers and employees are prohibited from contracting with state agencies and from deriving benefits from contracts with outside entities when the state officer or employee had substantial involvement in recommending, awarding or administering the contract. These prohibitions also apply to persons who supervise state officers or employees who award and administer contracts. These laws however, will not affect all state officials and employees. These laws affect those state officers and employees who are involved with state contracts, which will be discussed later in this document.

The prohibition on conflicts of interest applies to persons currently serving as state officers and employees. A state officer is a person who is elected or appointed to serve a state agency. The prohibition on conflicts of interest in certain situations can also apply to persons who previously served as state officers and employees. The rules as they apply to former state officers and employees are described later in this document.

These instructions will assist the current and former executive branch state officer and employee with determining whether a prohibited conflict exists or might exist. These instructions will guide the current or former state officer and employee through the process established for requesting a waiver. These instructions will also guide the state officer acting on the waiver request.

The law applies to ALL state officers and employees. Employees of agencies and instrumentalities other than executive branch agencies under the control of the Governor should contact their supervisor for information about processes and procedures for waivers established for their agency.

SUMMARY OF THE LAW

Who the law applies to:

Generally speaking, the prohibitions apply to officers and employees who

- a. approve, award or administer a contract;
- b. recommend the approval or award of a contract; and
- c. supervise persons who approve, award or administer a contract.

“Administer a contract” means decision-making or substantive influence on decision-making concerning the manner, method or means of a contract’s performance or enforcement. “Administer a contract” does not include performing mere clerical tasks such as posting payments or communicating decisions made by others.

The prohibitions in the law also follow a former state officer or employee for a period of one year after they leave state employment.

What the law does:

1. A state officer or employee who recommends the award of a contract, or who approves, awards or administers a contract, can’t be interested in, or benefit from, a contract that is within the scope of his/her duties while in office. This means a state officer or employee can’t be a party to a contract with state government while he or she is in office, nor can they derive a benefit, as discussed further later in this document from contracts awarded to parties outside state government if the state officer recommends, approves, awards or administers the contract. This prohibition also applies to the supervisors or persons who approve, award or administer contracts.

2. A state officer or employee who recommends, approves, awards or administers a contract can’t derive a benefit from a contract for a period of one year after they leave office. This prohibition also applies to the supervisors of persons who approve, award or administer contracts.

3. A state officer or employee who recommends, approves, awards or administers contracts can’t enter into a contract with any state agency – except an employment contract – for a period of one year after they leave office. This prohibition also applies to the supervisors of persons who approve, award or administer a contract.

What does “derive a benefit” from a contract mean?

The state officer or employee and/or his or her spouse or any other person with whom the officer or employee lives and commingles, or combines assets cannot:

1. Have more than a five percent ownership or other interest in the contracting party;
2. Take a salary, commission or other compensation directly from the contract or from the contracting entity;
3. Acquire property under the contract; or
4. Serve on the board of a for-profit entity that derives income from the contract or acquires property under the contract.

How does the law affect former state officers and employees?

A state officer or employee who recommends, approves, awards or administers a contract can't derive a benefit from a contract for a period of one year after they leave their office or position. This prohibition also applies to the supervisors of persons who approve, award or administer contracts.

A state officer or employee who recommends, approves, awards or administers contracts can't enter into a contract with any state agency – except an employment contract – for a period of one year after they leave their office or position. This prohibition also applies to the supervisors of persons who approve, award or administer a contract.

EXAMPLES OF TRANSACTIONS PROHIBITED ABSENT A WAIVER

1. A current state employee enters into a seasonal contract to mow Game Fish and Park properties. This is a prohibited direct contract with the state for which a waiver must be requested.

2. Governor's Office of Economic Development (afterwards referred to as "GOED") finance employee reviews SD Works loan application and recommends approval. GOED Commissioner approves and the loan is made. The following persons are prohibited from having an interest in or benefiting from the loan: The recommending loan officer, persons on GOED staff who evaluate the borrower's performance (for example, maintaining the necessary debt coverage ratios), Deputy Commissioner (supervises GOED staff who evaluate the borrower's performance), GOED Commissioner (supervisor of GOED staff who evaluate borrower's performance and awarded the loan), the Governor and all their spouses and other persons with whom they live and commingle assets.

Examples of prohibited benefits: (i) a prohibited person may not work for the borrower while the officer or employee is in office or within one year thereafter; (ii) a prohibited person may not sit on the board of directors of a for-profit entity, such as a corporation or limited liability company that benefits from the loan.

3. Bureau of Administration (afterwards referred to as "BOA") advertises for bids for a new equipment storage shed. A staff engineer at Office of State Engineer (afterwards referred to as "OSE") reviews the bids, recommends an award and supervises construction. The BOA commissioner awards the contract. The following persons are prohibited from benefiting from the contract: the recommending staff engineer, the state engineer (supervises a person involved in administering the contract), the BOA commissioner (supervisor and awarded the contract), the Governor's Office of Economic Development member responsible for BOA (supervisor), the Governor (supervisor) and their spouses and other persons with whom they live and commingle assets.

Example of prohibited benefits: a prohibited person works for the construction company.

4. Department of Social Services (afterwards “DSS”) forms a committee to review proposals and recommend the award of a contract. The committee is made up of persons from divisions of DSS other than the one that will enter into the contract. The committee makes a proposal and the contract is awarded. The following persons are prohibited from benefiting from the contract: committee members (recommended the award), the division director who awarded the contract, the division director’s supervisor, the cabinet secretary, the GECO member responsible for DSS (supervisor), the Governor (supervisor) AND all their spouses and other persons with whom they live and commingle assets. NOTE that in this example the supervisors of the persons who sat on the committee making the recommendation are not covered because the law doesn’t include supervisors of persons who merely make recommendations.

Example of prohibited benefits: a member of the committee making the recommendation owns more than five percent of the stock of the contracting entity; the spouse of the cabinet secretary is a commissioned sales person for the contracting entity.

5. On June 15, 2015, a Department of Transportation (afterwards “DOT”) employee, acting within the scope of the employee’s duties, recommends the award of a signage contract. The employee then retires. Six months after retirement, the employee decides he or she would like some seasonal work and takes a job with the signage contractor. Before taking the job, the former DOT employee must apply for a waiver because the DOT employee would be taking a salary from the contractor within one year after recommending the award of a contract to that contractor.

SMALL TRANSACTIONS

Effective July 1, 2015, the Governor granted a blanket waiver, for all transactions of \$200.00 or less. Therefore, it is not necessary to seek a waiver for otherwise covered transactions, as long as the amount is \$200.00 or less. Please be aware, however, that purchasing card and other small transactions are reviewed from time to time and a series or pattern of transactions that would otherwise be covered by the law may result in further inquiry and possible disciplinary action if found to be inappropriate.

CONTRACTS AWARDED PRIOR TO JULY 1, 2015

Persons who on and after July 1, 2015, derive a benefit from a state contract in which they played a role prior to July 1, 2015, should go through the waiver process. Similarly, the law applies to those who administrator contracts on and after July 1, 2015 even if the contract was awarded prior to July 1, 2015.

AGENCY-SPECIFIC CONFLICTS STATUTES

There may be more specific conflict of interest statutes relating to your agency. You are encouraged to ask your supervisor as to the existence of any such regulations. In the event the

general law described in these instructions and the regulations specific to your agency are different, the more restrictive laws will be applied.

PENALTIES FOR NON-COMPLIANCE

If a waiver is necessary but isn't sought or granted, the contract that was involved may be voided and the state officer or employee may be subject to disciplinary action. If the contract was the result of a quid pro quo, or a promise for something, such as a cash payment or promise of future employment, the current or former officer or employee may be removed from office and/or be subject to criminal prosecution. If the current or former state officer or employee failed to seek and obtain a waiver knowing one was likely required, the person could be removed from their office or position, and/or be subject to criminal prosecution.

WAIVERS

A waiver authorizing the state officer or employee to contract with state government or benefit from a contract may be granted if:

1. A waiver is requested in writing;
2. The relevant terms of the contract or transaction are provided in writing;
3. The officer reviewing the waiver has reviewed the essential terms of the contract or transaction;
4. The officer reviewing the waiver has reviewed the requesting party's role in the contract or transaction; and
5. The terms of the contract are fair, reasonable and not contrary to the public interest.

PROCESS TO OBTAIN A WAIVER

State officers and employees seeking a waiver must submit a request in writing. The form to be used to request a waiver titled "Request for Waiver" is provided with these instructions.

The Governor has given the authority to decide on waiver requests to cabinet secretaries and commissioners, subject to the right to appeal an adverse decision to the Office of the Governor. The written request for a waiver must be submitted to the cabinet secretary or commissioner with responsibility for your agency (or your former agency for former officers and employees). The secretary or commissioner will arrange a time to ask questions about the contract and why a waiver would not be contrary to the public interest. The secretary or commissioner will act on your request within five working days of receipt. If there is no action on your request within five working days, contact Bureau of Human Resources at (605) 773-3148 or Chris.Houlette@state.sd.us.

If the state officer or employee is not happy with the decision of the secretary or commissioner, the state officer or employee may submit a written appeal to the Office of the Governor by hand delivering or emailing the request form, the secretary's or commissioner's decision and a short statement of your reasons for disagreeing with the decision to Chris Houlette, Bureau of Human Resources, 500 East Capitol Avenue, Pierre, SD 57501-5070, Chris.Houlette@state.sd.us. The Governor will act on all appeals within five working days of receipt.

CAUTION: The failure to act on a request for a waiver does not mean the waiver will be allowed. The state officer or employee must be diligent to request and follow through on waiver requests as necessary.

The request for waiver form will be filed with the Bureau of Human Resources and is a public record. Once a year, the Bureau of Human Resources (afterwards "BHR") will put together all of the waivers granted in the previous year and provide them to the Legislature's Government Operations and Audit Committee.

State officers and employees are encouraged to contact BHR at (605) 773-3148 or Chris.Houlette@state.sd.us with questions about the applicability of the law and the process for requesting a waiver.

USEFUL LINKS

The law governing unlawful self-dealing, conflicts of interest and waivers will be found in South Dakota Codified Law (afterwards "SDCL") Section 5-18A-17 to SDCL 5-18A-17.6. Beginning July 1, 2015, they will be able to viewed at the South Dakota Legislative Research Council website (direct link the statutes will be available at this link:

http://legis.sd.gov/Statutes/Codified_Laws/default.aspx

INSTRUCTIONS FOR STATE OFFICERS AND EMPLOYEES SEEKING WAIVER

If the potential for a conflict exists, you should immediately prepare and submit the form Request for Waiver.

Briefly describe your relationship to the contract in question and why you believe it may be covered by the law, including how you, your spouse or anyone with whom you live and commingle, or combine assets (for example, a girlfriend or boyfriend, roommate or adult child) might benefit from the contract.

Also briefly describe why you believe a waiver would not be contrary to the public interest. For example, was the contract part of a competitive bidding process? Were others involved in the decision-making process? Are the terms consistent with other, similar contracts?

THE FORM IS A PUBLIC DOCUMENT THAT WILL BE OPEN TO PUBLIC INSPECTION.

Your supervisor will ask follow-up questions as necessary to help determine if there was any quid pro quo, or a promise for something for the contract, if the officer or employee is a covered person and/or might derive a benefit, and if a waiver would be contrary to the public interest. Some of these questions might include important details about the contract, including compensation received by the state officer or employee or his or her spouse.

INSTRUCTIONS FOR OFFICIAL ACTING ON REQUEST

Upon receipt of a written request for a waiver, you must promptly review it and if you deem it necessary, schedule an interview with the employee. Interviews are encouraged for anything other than the most basic waiver requests.

In the interest of fairness to officers and employees requesting waivers and persons with whom they may be dealing, and as directed by the Governor, all requests for waivers must be acted on by you within five (5) business days of receipt of the written request form. If you deem the form incomplete, you must address any questions during the interview; you may not use an incomplete request form as a reason to extend the review time.

You may delegate the responsibility to act on waiver requests in your absence to a deputy secretary or commissioner.

Employees have been instructed to contact BHR if action is not taken within five working days.

Anything other than the most basic request for a waiver will require probing questions from you concerning the requesting party's relationship to the contract (for example, why did you recommend approval; what was the process for determining the award of the contract); the requesting party's relationship to the outside contracting party (for example, what is your relationship with the principals of the company; have you or any family members worked for this company in the past; do you or any of your family members plan to work for them in the future; are the terms of this contract consistent with other, similar contracts with other parties); whether the contract terms are reasonable and in the public interest (for example, price, the contractor's experience, the process used to award the contract); and any other questions you believe will help establish the true facts and circumstances surrounding the award of the contract and the request for waiver.

Facts and circumstances that should raise red flags, lead to further questions and possibly result in the denial of a waiver include the lack of any meaningful competitive process before the

award of the contract, price or other terms that seem unusual, and a job or employment terms offered to someone leaving state government by the contractor that are not generally consistent with the person's prior experience and pay.

Any notes you take during the interview and as a part of your deliberative process should be on a separate sheet of paper and maintained in your files; they should not be attached to the Request for Waiver form.

Your decision on the request should be noted on the form and signed. If the officer or employee appeals to the Office of the Governor, you will be contacted for an explanation of your reason for denying the request.

REQUEST FOR WAIVER

SDCL 5-18A-17 to 5-18A-17.6

THIS IS A PUBLIC DOCUMENT

Date: _____

Employee Name: _____

Employee Signature: _____

Agency: _____

Position No: _____

Title: _____

Brief explanation of your potential conflict of interest:

Brief explanation of your role in the award, administration or supervision of a contract with an outside party or your current or anticipated business transaction with a state agency (other than a contract of employment):

Brief explanation of why you believe a waiver should be granted:

FOR AGENCY/BHR USE ONLY:

Date received by official acting on request:

Signature of Official acting on request: _____

Date of interview:

Date acted upon:

Waiver granted? Y/N

If waiver is conditional, so note here (Y/N), list conditions on separate sheet and attach to this document.

Appeal requested? Y/N

Appeal received in Governor's Office:

Date appeal acted upon:

Waiver granted on appeal? Y/N

Received by BHR:



South Dakota Board of Examiners in Optometry

Meeting Minutes

March 25, 2019
8:30AM (CST)

Tieszen Law Office Conference Room
Pierre, SD 57501

DRAFT MINUTES
HAVE NOT BEEN
APPROVED BY THE
BOARD

Board Members		Board Staff Present	
Craig Dockter, OD, President	Present	Deni Amundson, Executive Secretary	
Denette Eisnach, OD	Present	Naomi Cromwell, Board Attorney	
Allen Haiar, OD, Vice President	Present	Ann Meyer, Assistant Attorney General	
Scott Schirber, OD	Present		
Jamie Farmen, Consumer Member	Present		
		Guests	
		Deb Mortenson, South Dakota Optometric Society	

1. **Attendance:** President Dockter called the meeting to order at 8:30AM on March 25, 2019.

2. Approval of Agenda

Board Action: J Farmen moved to approve the agenda, seconded by A Haiar.

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiar	YES	5 YES, MOTION CARRIED	

3. **Board Member Requests for Conflict Waiver:** There were no requests for conflict waivers or action taken.

4. Board Minutes

Board Action: S Schirber moved to approve minutes from August 17, 2019, October 29, 2019 and February 21, 2019, seconded by D Eisnach.

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiar	YES	5 YES, MOTION CARRIED	

5. **Financial Reports:** D Amundson presented the financial report for fiscal year 2019 through March 2, 2019, and the multi-year comparison report on pages 14 of the agenda packet.

Board Action: D Eisnach moved to accept the financial report as presented, seconded by J Farmen.

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiar	YES	5 YES, MOTION CARRIED	

6. **Board Review and Approve CE Courses:** Continuing education courses, submitted since the last meeting on August 17, 2019, were reviewed and approved by individual signature vote.

7. Old Business: Discussion was had regarding the five agenda items that have been continued to be monitored on state and national levels. Board certification and lasers may be removed from this list for now. No further discussion. Continue to monitor and table until the next meeting.

7. New Business:

A. Licensing: No discussion or action taken.

B. Procedural Codes: No discussion or action taken.

C. Administrative Rule/Legislative Updates: Discussion was had regarding HB 1111, which is an act to provide professional or occupational licensure for certain active duty military personnel and spouses. All procedures and forms will be reviewed to maintain compliance with this new law. No action taken.

D. Contracts:

At 9:55am, S Schirber moved to go into executive session pursuant to SDCL 1-25-2 (1) to review the executive secretary contract.

At 10:05am, President Dockter declared the board out of executive session.

Board Action: J Farmen moved to increase the salary FY20 contract for Deni Amundson by 2.5%, for a total of \$1820 per month and increase the monthly rent to \$425 per month, seconded by A Haiar.

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiar	YES	5 YES, MOTION CARRIED	

Board Action: S Schirber moved to approve the FY20 contract for Tieszen Law Office using the same terms as FY19, seconded by D Eisnach.

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiar	YES	5 YES, MOTION CARRIED	

Board Action: D Eisnach moved to approve the FY20 contract for the South Dakota Optometric Society using the same terms as FY19, seconded by J Farmen.

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiar	YES	5 YES, MOTION CARRIED	

Board Action: S Schirber moved to approve the FY20 contracts for Lisa Kollis-Young and Scott Kennedy using the same terms as FY19, seconded by D Eisnach.

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiair	YES	5 YES, MOTION CARRIED	

Board Action: J Farmen moved to approve the FY20 contract for BPro using the same terms as FY19, seconded by A Haiair.

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiair	YES	5 YES, MOTION CARRIED	

E. Pharmacy Board Database Integration: The South Dakota Board of Pharmacy has made a request to the other health department boards to integrate license verification information into their database to assist them in increasing their efficiency in registering licensees into their Prescription Drug Monitoring Program (PDMP). Deni Amundson will continue to work with them to find out more about the technical requirements and expenses associated with complying with their request. Tabled until next meeting.

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiair	YES	5 YES, MOTION CARRIED	

F. Administrative Rule and Statute Review: The board reviewed and discussed numerous administrative rules and statutes. Naomi Cromwell and Deni Amundson will compile a new packet of potential amendments for review at the next board meeting. Administrative rules that will be included: 20:50:02: 03.01, 20:50:02:04.03, New Proposed Rules-20:50:02:07.01 et seq., 20:50:02:08, 20:50:04:06, 20:50:10:03, 20:50:08:02, 20:50:08:04, 20:50:11:02, and 20:50:08:02.01. Statutes under review will include: 37-7-14, 36-7-20.4, 36-7-21 and 36-7-24. The board members will also review the CPT codes and submit any potential amendments to Deni Amundson to be considered by the board at the next meeting. Tabled until next meeting.

G. Intense Pulsed Light: No action taken.

At 1:31, Scott Schirber left the meeting. A quorum of the board is still present.

H. Law and Ethics Exam Applicant Protocol: Discussion was had regarding the need to establish a security protocol for proctoring the law and ethics exam for applicants. Deni Amundson will create of draft of an official protocol for review at the next meeting. Tabled until next meeting.

I. Forms: There was previous board discussion about revising forms. Deni Amundson reported that, since this board is currently reviewing numerous administrative rules and statutes, she will hold off on making any changes until this review is complete. She will go through everything at that time. No action taken.

J. VOSH Request for Temporary Licensure & Special CE Consideration: Discussion was had regarding a letter submitted by Volunteer Optometric Services to Humanity regarding temporary licensure and special CE consideration. This board does not have the legislative authority to consider temporary licensure and board declined the request for special CE consideration. No action taken.

8. Public Comment: No public comment.

10. Time and Place of Next Meeting:

Next Meeting: Friday, August 16, 2019, 8:00AM (CST), Tieszen Law Office Conference Room, 306 East Capitol, Pierre, SD 57501

9. Adjournment:

Board Action: At 1:50pm, D Eismach moved to adjourn meeting, seconded by J Farnen.

Dockter	YES	Schirber	YES
Eismach	YES	Farnen	YES
Haier	YES	5 YES, MOTION CARRIED	



South Dakota Board of Examiners in Optometry

Telephonic Meeting Minutes

May 8, 2019
 6:00 PM (CST)
 Tieszen Law Office Conference Room
 Pierre, SD 57501

DRAFT MINUTES
 HAVE NOT BEEN
 APPROVED BY THE
 BOARD

Board Members		Board Staff Present	
Craig Dockter, OD, President	Present	Deni Amundson, Executive Secretary	
Denette Eisnach, OD	Absent	Naomi Cromwell, Board Attorney	
Allen Haiar, OD, Vice President	Present		
Scott Schirber, OD	Present		
Jamie Farmen, Consumer Member	Present		
		Guests	
		Crystal Duneman	

*Naomi Cromwell was in person at the Tieszen Law Office, Pierre, SD. A call-in number was noticed as available for public access to listen to and participate in the meeting.

1. Attendance: President Dockter called the meeting to order at 6:01 PM on May 8, 2019.

2. Approval of Agenda

Board Action: S Schirber moved to approve the agenda, seconded by A Haiar. Roll call vote:

Dockter	YES	Schirber	YES
Eisnach	ABSENT	Farmen	YES
Haiar	YES	4 YES, MOTION CARRIED	

3. New Business

A. Licensing:

Board reviewed application 19-7.

Board Action: A Haiar moved to approved application 19-7, seconded by J Farmen. Roll call vote:

Dockter	YES	Schirber	YES
Eisnach	ABSENT	Farmen	YES
Haiar	YES	4 YES, MOTION CARRIED	

4. Public Comment: There was no public comment.

5. Time and Place of Next Regular Meeting:

Next Meeting: Friday, August 16, 2019, 8:00AM (CST), Tieszen Law Office Conference Room, 306 East Capitol, Pierre, SD 57501

6. Adjournment:

Board Action: At 6:08 PM, J Farmen moved to adjourn meeting, seconded by S Schirber. Roll call vote:

Dockter	YES	Schirber	YES
Eisnach	ABSENT	Farmen	YES
Haiar	YES	4 YES, MOTION CARRIED	



South Dakota Board of Examiners in Optometry

Telephonic Meeting Minutes

June 13, 2019
6:00 PM (CST)

Tieszen Law Office Conference Room
Pierre, SD 57501

DRAFT MINUTES
HAVE NOT BEEN
APPROVED BY THE
BOARD

Board Members		Board Staff Present	
Craig Dockter, OD, President	Present	Deni Amundson, Executive Secretary	
Denette Eisnach, OD	Present	Naomi Cromwell, Board Attorney	
Allen Haiar, OD, Vice President	Present		
Scott Schirber, OD	Present		
Jamie Farmen, Consumer Member	Present		
		Guests	
		None	

*Naomi Cromwell was in person at the Tieszen Law Office, Pierre, SD. A call-in number was noticed as available for public access to listen to and participate in the meeting.

1. Attendance: President Dockter called the meeting to order at 6:00 PM on June 13, 2019.

2. Approval of Agenda

Board Action: D Eisnach moved to approve the agenda, seconded by J Farmen. Roll call vote:

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiar	YES	5 YES, MOTION CARRIED	

3. Conflict of Interest: All board members reported no conflict with agenda items.

4. New Business

A. Licensing:

Board reviewed application 19-8.

Board Action: S Schirber moved to approved application 19-8, seconded by A Haiar. Roll call vote:

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiar	YES	5 YES, MOTION CARRIED	

Board reviewed application 19-9.

Board Action: J Farmen moved to approved application 19-9, seconded by D Eisnach. Roll call vote:

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiar	YES	5 YES, MOTION CARRIED	

Board reviewed application 19-10.

Board Action: D Eisnach moved to approved application 19-10, seconded by A Haiar. Roll call vote:

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiar	YES	5 YES, MOTION CARRIED	

New Licensees:

- Taylor Kneip
- Brett Lorenz
- Larae Zimprich

5. Public Comment: There was no public comment.

6. Time and Place of Next Regular Meeting:

Next Meeting: Friday, August 16, 2019, 8:00AM (CST), Tieszen Law Office Conference Room, 306 East Capitol, Pierre, SD 57501

7. Adjournment:

Board Action: At 6:07 PM, S Schirber moved to adjourn meeting, seconded by D Eisnach. Roll call vote:

Dockter	YES	Schirber	YES
Eisnach	YES	Farmen	YES
Haiar	YES	5 YES, MOTION CARRIED	

Subobject	Description	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Actual	FY15 Actual	FY16 Actual	FY17 Actual	FY18 Actual	FY19 Actual	FY20 Actual
	Salaries										
5101030	Board & Comm Members	480	960	720	720	660	780	900	660	600	
5102010	OASI-Employer's	41	76	56	55	51	61	69	50	46	
5203010	Auto-State										
	Board Member Travel	826	1,004	1,268	996	855	1,229	1,002	1,467	1,482	
	*Includes: Auto, Meals, Lodging										
5204020	Dues & Memberships	750	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	350	315	
5204100	Medical Consultant (investigator)			2,375	-	-	360	2,140	-	753	
5204080	Legal Consultant	9,573	7,218	25,953	25,482	16,949	12,623	30,665	26,376	15,388	
5204090	Management Consultant	21,573	24,390	28,974	25,960	28,588	31,703	33,924	34,541	35,214	
5204180	Computer Services- State							213	158	62	
5204200	Central Services	598	636	681	778	802	828	1,125	1,115	1,195	
5204203	Central Services	8									
5204204	Central Services	113	128	199	261	233	192	192	199	245	
5204207	Central Services	201	220	111	319	208	242	293	230	205	
5204960	Other Contractual		88							75	
5205310	Printing-State	96			483		1048	0	0	385	
5204590	Ins Premiums & Surety Bds	-	975	470	750	740	380	335	815	900	
5205350	Postage		9				36	0	0	9	
5207905	Computer	-				1868	0	0	0	0	
5207451	Office Furniture and Fixtures		850				0	0	0	0	
	TOTAL EXPENSES	38,259.00	41,304.00	69,356.00	63,367.00	56,110.00	55,827.00	75,783.00	70,711.00	61,624.00	0.00
	TOTAL REVENUE	50,824.22	53,104.77	52,660.58	54,109.40	54,491.16	71,403.85	72,734.74	73,801.78	75,524.55	
	REVENUE - EXPENSES	12,565.00	11,801.00	-16,695.00	-9,258.00	-1,618.84	15,576.85	-3,048.26	3,090.78	13,900.55	0.00
	CASH CENTER BALANCE	52,176.16	63,977.43	47,283.03	38,025.23	36,406.28	51,986.12	48,935.18	52,025.36	65,925.77	

FY19	NEW LICENSES	NON RENEWED LICENSES	Total FY19 Licenses
	Matthew Barnett, Rapid City, SD	Brady Betten, Yankton	236
	Cole Bruscher, Mitchell, SD	Michael Guilbert, Deadwood	
	Jarrell Freitag, Sioux Falls, SD	Dennis Murschel, Sioux Falls	
	Delaney Kent, Sioux Falls, SD	Paige Nielsen, Rapid City	
	Taylor Kneip, Brookings, SD		
	Krista Letzring, Sioux Falls, SD		
	Brett Lorenz, Sioux Falls, SD		
	Antwan Randolph, Spearfish, SD		
	Ryan Rudloff, Dakota Dunes, SD		
	Jordyn Stevens, Crawford, NE		
	Shon Weaver, Pierre, SD		
	Larae Zimprich, Sioux Falls, SD		

1 **20:50:02:03.01. Examination fees.** The nonrefundable application fee for taking the initial
2 examination, which includes the state law and ethics examination, is \$175. An additional amount
3 of \$25 shall be paid upon the issuance of a certificate.

4 **Source:** 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1,
5 1986; 13 SDR 44, effective October 20, 1986; 31 SDR 101, effective January 19, 2005; 39 SDR
6 127, effective January 21, 2013.

7 **General Authority:** SDCL 36-7-12.

8 **Law Implemented:** SDCL 36-7-12.

9

10 **20:50:02:04.03. Endorsement certification** An applicant for licensure by endorsement must
11 submit the application form and nonrefundable fee of \$175 and meet all of the following
12 conditions:

13 (1) Be licensed in good standing to practice optometry in a state or territory under U.S.
14 jurisdiction that required passage of a written, entry-level examination at the time of initial
15 licensure;

16 (2) Be licensed at ~~the highest~~ a level of prescriptive authority that, in the judgment of the
17 board, is equal to or higher than the requirement in this state as provided in SDCL 36-7-15.3 for
18 therapeutic drugs possible level in that jurisdiction;

19 (3) Have been actively and routinely engaged in the practice of optometry, including the
20 use of therapeutic pharmaceutical agents, for at least five consecutive years immediately
21 preceding making application under this section;

22 (4) Have submitted directly to the board all transcripts, reports, or other information the
23 board requires; and

1 (5) Pass the written examination regarding the optometry laws and administrative rules
2 governing optometrists in the state.

3 The candidate must request any optometry licensing agency of any U.S. jurisdiction in
4 which the applicant is licensed or has ever been licensed to practice optometry to provide reports
5 directly to the board describing current standing and any past or pending actions taken with
6 respect to the applicant's authority to practice optometry in those jurisdictions, including such
7 actions as investigations, entering into consent agreements, suspensions, revocations, and
8 refusals to issue or renew a license. Any application received from an optometrist who has been
9 sanctioned by revocation of license by another optometric licensing jurisdiction shall be
10 reviewed on a case by case basis by the board.

11 The board retains the authority to require additional education, testing, or training prior to
12 granting licensure under SDCL 36-7-13 when the competency of any applicant is in question.
13 Any applicant who has previously been denied a license by the board shall apply for and meet all
14 initial licensure requirements.

15 **Source:** 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective November 10, 1985; 12
16 SDR 151, 12 SDR 155, effective July 1, 1986; 21 SDR 35, effective August 30, 1994; 31 SDR
17 101, effective January 19, 2005; 32 SDR 225, effective July 5, 2006; 34 SDR 323, effective July
18 2, 2008.

19 **General Authority:** SDCL 36-7-13, 36-7-15(3), 36-7-15.1, 36-7-15.2, 36-7-15.3, 36-7-31.

20 **Law Implemented:** SDCL 36-7-13, 36-7-15.1, 36-7-15.2, 36-7-15.3, 36-7-31.

21 **Cross-Reference:** Passing grade, § 20:50:02:06.01.

22

1 **CHAPTER 20:50:02**

2 **EXAMINATIONS OF CANDIDATES**

3 Section

- 4 20:50:02:01 Time of examinations.
- 5 20:50:02:02 Filing of applications for examination.
- 6 20:50:02:03 Repealed.
- 7 20:50:02:03.01 Examination fees.
- 8 20:50:02:04 Examination subjects -- Admission to practice.
- 9 20:50:02:04.01 Repealed.
- 10 20:50:02:04.02 Repealed.
- 11 20:50:02:04.03 Endorsement certification.
- 12 20:50:02:04.04 Minimum educational requirements -- Pharmaceutical agents.
- 13 20:50:02:04.05 Repealed.
- 14 20:50:02:04.06 Repealed.
- 15 20:50:02:05 Transferred.
- 16 20:50:02:06 National ~~Board of Examiners~~board test required.
- 17 20:50:02:06.01 Passing grade.
- 18 20:50:02:07 Certificate of registration.
- 19 20:50:02:07.01 Initial review.
- 20 20:50:02:07.02 Processing applications.
- 21 20:50:02:07.03 Investigation of application.
- 22 20:50:02:08 Annual renewal fees.

1 **20:50:02:06. National Board of Examiners board test required.** Satisfactory passing of
2 examinations as certified by the National Board of Examiners in Optometry or other national
3 board exam approved by the board in any of the subjects required by § 20:50:02:04 and
4 satisfactory passing of the national pharmacology test is required. The board may require all
5 candidates to take additional tests on any subjects listed in § 20:50:02:04, including the National
6 Board of Clinical Skills examination. Candidates' applications shall show when they took the
7 national board examinations and the subjects covered. The examinations must have been passed
8 within the five years before the date of South Dakota licensure.

9 **Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective
10 November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 17 SDR 199, effective
11 June 30, 1991.

12 **General Authority:** SDCL [36-7-15](#).

13 **Law Implemented:** SDCL [36-7-12](#), [36-7-12.1](#).

14

15 **20:50:02:07.01. Initial review.** Upon receipt of an application for an initial certificate of
16 registration or for endorsement, the executive secretary shall review to determine if the applicant
17 has submitted all required documents, information, non-refundable fees, and other materials.
18 The executive secretary shall notify the applicant of any materials missing from the application.
19 The applicant has 180 days from the date of notice to provide the information intended to
20 complete the application. If an applicant fails to submit required materials within 180 days of
21 notice that materials are missing from the application, the executive secretary may designate the
22 application as withdrawn. The executive secretary shall notify the applicant if an application is
23 designated as withdrawn. The applicant is not precluded from reapplying at the expiration of the

1 180 day period, but all required documents, information, non-refundable fees, and other
2 materials must be resubmitted with such reapplication.

3 **Source:**

4 **General Authority:** SDCL 36-7-15(1),(3).

5 **Law Implemented:** SDCL 36-7-11, 36-7-12 ,36-7-12.1, 36-7-12.2, 36-7-13, 36-7-24, 36-7-25.

6

7 **20:50:02:07.02. Processing applications.** The executive secretary shall initiate processing of
8 complete applications after receiving documentation from primary sources to verify that the
9 applicant has met the requirements of applicable statutes and regulations.

10 **Source:**

11 **General Authority:** SDCL 36-7-15(1), (3).

12 **Law Implemented:** SDCL 36-7-11, 36-7-12 ,36-7-12.1, 36-7-12.2, 36-7-13, 36-7-24, 36-7-25.

13

14 **20:50:02:07.03. Investigation of application.** The executive secretary may determine that the
15 information disclosed in an application or primary source documentation requires investigation
16 to determine whether the applicant meets the qualifications or standards for issuance of a license.
17 The executive secretary may conduct that investigation, or may provide the matter to the board
18 investigator for investigation. The executive secretary shall notify the applicant of any issues the
19 executive secretary has determined require investigation.

20 **Source:**

21 **General Authority:** SDCL 36-7-15(1), (3).

22 **Law Implemented:** SDCL 36-7-11, 36-7-12 ,36-7-12.1, 36-7-12.2, 36-7-13, 36-7-24, 36-7-25.

23

1 **20:50:02:08. Annual renewal fees.** The annual renewal fee for licensed optometrists is \$300 if
2 paid by the first day of October of each year. The additional fee for reinstatement after a default,
3 pursuant to SDCL 36-7-20, is \$100 for each calendar month the fee is late, up to a maximum of
4 twelve months, after which a licensee may be renewed only where, in the discretion of the board,
5 good cause is shown for the delinquency.

6 An optometrist who has not actively and routinely practiced for a period of greater than
7 one year, but no more than three years, may at the discretion of the board be reinstated upon a
8 showing of good cause, payment of the renewal fee for each year of absence, and upon providing
9 proof of being current on all continuing education requirements.

10 **Source:** 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1,
11 1986; 13 SDR 44, effective October 20, 1986; 31 SDR 101, effective January 19, 2005; 32 SDR
12 225, effective July 5, 2006; 41 SDR 109, effective January 12, 2015.

13 **General Authority:** SDCL 36-7-20.

14 **Law Implemented:** SDCL 1-26-6.9, 36-7-20.
15

16 **20:50:04:06. Optometrist to write and release prescription -- Requests for medical**
17 **records.** If a patient for whom an optometrist has prescribed spectacle lenses so requests, the
18 optometrist shall write out the prescription and deliver a copy of it to the patient. A spectacle lens
19 prescription expires on the date specified by the prescriber, based upon the medical judgment of
20 the prescriber with respect to the ocular health of the patient. If a prescription expires in less than
21 one year, the reasons for the expiration date must be documented in the patient's medical record.
22 No prescriber may specify a prescription expiration date that is earlier than the date a
23 reexamination of the patient that occurs prior to the time recommended by the prescriber for a

1 ~~ree~~examination of the patient that is medically necessary. Requests for medical records are
2 governed by SDCL 36-2-16.

3 **Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 78, effective
4 November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1, 1986; 44 SDR 99, effective
5 December 11, 2017.

6 **General Authority:** SDCL 36-7-15.

7 **Law Implemented:** SDCL 36-7-1, 36-7-15(3).

8

9 **20:50:08:02. Acceptable courses of study.** The board shall determine acceptable continuing
10 education courses ~~approve, at each annual meeting, a list of acceptable out-of-state courses of~~
11 ~~study that may be taken in lieu of courses provided within the state. In addition, other meetings~~
12 ~~and seminars either within or without the state may be approved in advance by the board. A~~
13 ~~request for approval must be made at least 15 days before the meeting or seminar. The board~~
14 ~~may approve out-of-state courses if they are substantially equivalent to those offered in the state.~~
15 The board may approve courses on the following subjects or similar suitable subjects as
16 determined by the board;

17 (1) Binocular vision and perception;

18 (2) Pathology;

19 (3) Contact lenses;

20 (4) Pharmacology;

21 (5) Low vision;

22 (6) Vision training or vision therapy;

23 (7) Pediatric vision care;

24 (8) Geriatric vision care;

- 1 (9) New instrumentation and techniques;
- 2 (10) Public health and optometric care;
- 3 (11) Optometric examinations, diagnosis, and treatment; and
- 4 (12) Patient protection and compliance issues.

5 **Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155,
6 effective July 1, 1986; 24 SDR 91, effective January 6, 1998; 43 SDR 61, effective October 24,
7 2016.

8 **General Authority:** SDCL 36-7-15(4).

9 **Law Implemented:** SDCL 36-7-20.1, 36-7-20.2.

10

11 **20:50:08:02.01. Limits on self-directed learning.** No more than nine hours of self-directed
12 learning may be credited to a licensee in a three-year period to fulfill continuing education
13 requirements. The number of credit hours is limited for each self-directed learning category as
14 follows:

15 (1) Surgical/ophthalmologist observation -- one hour credit for every two hours of
16 observation, up to four hours credit. If the location of the observation being submitted for credit
17 is the optometrist's regular office, evidence must be provided to the board that the subject of the
18 observation is other than the optometrist's regular practice area. The board must be provided
19 documentation signed by the ophthalmologist evidencing the observation which must include a
20 summary detailing the type of observation and the educational goal and outcome of such
21 observation;

22 (2) Video, recorded webinars, and teleconferences -- up to two hours credit. The course
23 must be proctored to receive credit;

1 (3) Correspondence courses from colleges or occupational journals -- up to four hours
2 credit. The course must have self-testing to receive credit;

3 (4) Live webinars -- up to four hours credit. A certificate of attendance stating it is a live
4 webinar must be provided to the board in order to receive live webinar credit.

5 In the event of an emergency or situation not within the control of the licensee, and for
6 good cause shown, a live stream presentation may receive credit as a live presentation.

7 **Source:** 24 SDR 91, effective January 6, 1998; 37 SDR 133, effective January 18, 2011; 44 SDR
8 99, effective December 11, 2017.

9 **General Authority:** SDCL 36-7-15(4).

10 **Law Implemented:** SDCL 36-7-20.1, 36-7-20.2.

11

12 **20:50:08:04. Obtaining evidence of compliance.** To show compliance with educational
13 requirements each registered optometrist shall obtain evidence of attendance or completion from
14 the sponsoring organization for each course. Documentation must show the date of attendance or
15 completion of the course, the ~~speaker or instructor~~ title of the course, the COPE identification
16 number, if applicable, the location of the course or the medium used for instruction, and the
17 hours in attendance or required for completion. The evidence of compliance must accompany the
18 registrant's application for renewal of license.

19 **Source:** SL 1975, ch 16, § 1; 6 SDR 66, effective January 8, 1980; 12 SDR 151, 12 SDR 155,
20 effective July 1, 1986; 24 SDR 91, effective January 6, 1998; 43 SDR 61, effective October 24,
21 2016.

22 **General Authority:** SDCL 36-7-15(4).

23 **Law Implemented:** SDCL 36-7-20.1, 36-7-20.2.

24

1 **20:50:10:03. Expiration of contact lens prescription.** A contact lens prescription expires:

2 (1) Not less than one year after the issue date of the prescription; or

3 (2) On the date specified by the prescriber, based upon the medical judgment of
4 the prescriber with respect to the ocular health of the patient.

5 If a prescription expires in less than one year, the prescriber shall document the reasons
6 for that expiration date in the patient's medical record. No prescriber may specify a prescription
7 expiration date that is earlier than the date a reexamination of the patient occurs prior to the time
8 ~~recommended by the prescriber for a reexamination of the patient that~~ is medically necessary.

9 **Source:** 44 SDR 99, effective December 11, 2017.

10 **General Authority:** SDCL 36-7-15(3).

11 **Law Implemented:** SDCL 36-7-1.

12

13 **20:50:11:02. Professional corporation -- Admitting shareholder.** ~~At least~~ No later than 30

14 days ~~before admitting a new shareholder or member~~ after a change in membership or

15 shareholders, the corporation shall notify the board in writing of ~~its intention~~ the change,

16 indicating the identity, licensure status, and residence address of ~~the~~ any new shareholder or
17 member.

18 **Source:** 12 SDR 78, effective November 10, 1985; 12 SDR 151, 12 SDR 155, effective July 1,
19 1986.

20 **General Authority:** SDCL 47-11B-23.

21 **Law Implemented:** SDCL 47-11B-3.

1 **36-7-1.2. Prohibitions on use of oral therapeutics and oral steroids.** No optometrist may
2 prescribe, administer, or dispense any oral therapeutic agent to any child under twelve years of
3 age, or any oral steroid to any person, without prior consultation with a physician licensed
4 pursuant to chapter 36-4.

5 **Source:** SL 2003, ch 201, § 3.

6

7 **36-7-14. Recording of certificate of registration.** Before any certificate of registration is
8 issued it shall be numbered and recorded in a book kept in the office of the board and its number
9 shall be noted upon the certificate.

10 **Source:** SDC 1939, § 27.0705; revised pursuant to SL 1972, ch 15, § 3.

11

12 **36-7-20.4. Certificate of compliance with continuing education requirements--**

13 **Exemptions.** Each licensed optometrist residing in or in active practice within the State of South
14 Dakota shall, on or before September first in the third year after his initial licensure, and every
15 third year thereafter, certify on forms provided by the Board of Examiners in Optometry that he
16 has complied with §§ 36-7-20.1 and 36-7-20.2. This provision shall not apply to any licensee
17 serving in the armed forces during any part of the thirty-six months preceding the certification
18 nor to any licensee submitting proof that he was suffering from a serious or disabling illness or
19 physical disability which prevented his attendance at any qualified educational program within
20 the State of South Dakota during the thirty-six months immediately preceding the certification.

21

22 **Source:** SL 1979, ch 252, § 3.

23

24 **36-7-21. Remission of annual fee while in military service.** The Board of Examiners shall
25 have power to remit the license fee of all registrants while on active duty in the armed forces of
26 the United States.

27 **Source:** SDC 1939, § 27.0709 as added by SL 1951, ch 131, § 5; SL 1967, ch 99.

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36-7-24. Grounds for revocation of certificate. The Board of Examiners, in compliance with chapter 1-26, may revoke the certificate of any registrant for any one, or any combination, of the following causes:

- (1) Conviction of a felony, as shown by a certified copy of the record of the court of conviction;
- (2) Obtaining, or attempting to obtain, a certificate of registration by fraudulent misrepresentation;
- (3) Malpractice;
- (4) Continued practice by a person knowingly having an infectious or contagious disease;
- (5) Habitual drunkenness or habitual addiction to the use of morphine, cocaine, or other habit-forming drugs;
- (6) Unprofessional conduct;
- (7) Failure to submit to or cooperate with the criminal background investigation requested by the board.

Source: SDC 1939, § 27.0707; SL 1951, ch 131, § 4; revised pursuant to SL 1972, ch 15, § 4; SL 2005, ch 199, § 19; SL 2009, ch 179, § 2; SL 2013, ch 173, § 4.



Board of Examiners in Optometry
PO Box 513
Wall, SD 57790
sdoptboard@goldenwest.net
Telephone: (605) 279-2244
Website: <http://optometry.sd.gov>

LAW AND ETHICS EXAM PROTOCOL

- Executive secretary will communicate with applicant to find out which city he or she wishes to take the exam and will mail law booklet to applicant.
- Executive secretary will contact board member in the city of which the applicant wishes to take the exam. He/she will send the board member the cell phone number and email address of applicant.
- The board member will contact the applicant to arrange a date and time that is mutually convenient.
- Upon arrival for the exam, the board member will check the ID of the applicant offer a quiet location to complete the exam.
- Applicant will be asked to leave his/her cell phone and personal belongings in another room. The only items he/she will be allowed is the law booklet and pen/pencils.
- He or she will have 45 minutes to complete the open book exam.

PROCEDURE CODES FOR REVIEW AT 8/16 BOARD MEETING

LipiFlow / iLux / MiboFlow:	0207T – Evacuation of meibomian glands, automated, using heat and intermittent pressure, unilateral
Maskin probing:	67999 – Unlisted procedure, eyelids
Intense Pulsed Light:	17999 - Other procedures on the integumentary system
Ocular Allergy testing:	95004 - Percutaneous tests with allergenic extracts, immediate type reactions
Ellman treatment for trichiasis:	67850 – Excision and destruction procedures on the eyelids
Ellman treatment for conj chalasis:	68330 – Conjunctivoplasty Procedures

STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
BETWEEN

BPRO Inc.
124 West Dakota
Pierre, SD 57501
Referred to as "Consultant"

SD Department of Health
SD Board of Optometry Examiners
P.O. Box 513
Wall, SD 57790
Referred to as "State"

State and Consultant hereby enter into a contract for Professional Services.

I. CONSULTANT

- A. The term of this Contract shall begin June 1, 2018 and end May 31, 2019.
- B. Consultant is not a full or part-time employee of State or any agency of the state of South Dakota.
- C. Consultant, as an independent contractor, is solely responsible for the withholding and payment of applicable income and Social Security taxes due and owing from money received under this contract.
- D. Consultant will not use equipment, supplies or facilities owned by the state of South Dakota.
- E. Consultant will not purchase capital assets or equipment using State funds.
- F. Consultant agrees to: (add an addendum if needed)
 - 1. Provide resources for maintaining systems owned by South Dakota Board of Optometry Examiners. Maintaining systems includes the following functions: support, client service and minor enhancements. This contract covers specific deliverables related to enhancements of systems.
 - 2. The functions of support, client service and enhancements are defined as follows:
 - Support
 - Fix System errors.
 - Client Service
 - Client Facilitation (Example: Answer general client questions, phone calls, e-mails).

- System Facilitation (Example: Working with clients on questions, training clients on the use of a system).
- Adhoc reporting.

Enhancements (Enhancements as described in the system table below)

- Analysis, Design or Coding with intent to add value to an existing system. (Example: add a new permanent report, modify an existing report or screen, add a new field).
3. Before work is done on systems included within this contract, approval must be obtained from the system authorization contact noted in Attachment A. If the vendor receives a request for work from anyone other than the system authorization contact, the vendor shall verify the request and obtain approval from the system authorization contact before the work is started.
 4. The systems and deliverables of this contract are as described in Attachment A.

G. **INSURANCE:** Consultant agrees, at its sole cost and expense, to maintain the following insurance:

1. Commercial General Liability Insurance:

Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this contract or be no less than two times the occurrence limit.

2. Professional Liability Insurance:

Consultant shall procure and maintain professional liability insurance with a limit of not less than one million dollars.

3. Business Automobile Liability Insurance:

Consultant shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000 each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.

4. Worker's Compensation Insurance:

Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

5. Certificates of Insurance:

Before beginning work under this Contract, Consultant shall furnish State with properly executed Certificates of Insurance which shall clearly evidence all

insurance required in this Contract. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by State.

- H. Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of performing services hereunder. This section does not require Consultant to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents or employees.
- I. This contract does not require Consultant to engage in a function or activity involving the use or disclosure of State's Protected Health Information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR § 160.103.

II. STATE

- A. State will pay, upon State's satisfaction that services have been completed, up to \$1,500.00.
- B. State will not pay the Consultant expenses as a separate item.
- C. TOTAL CONTRACT AMOUNT (Not to Exceed) \$1,500.00. Payment will be made upon receipt of itemized invoices, and consistent with SDCL Ch. 5-26.
- D. State will not be held liable for reimbursement of amounts shown on an itemized billing if not received within 30 calendar days from the close of the month being reported. However, the final invoice of the State of South Dakota fiscal year, ending every year on June 30th, shall be submitted no later than June 9th so payment may be made in the same Fiscal Year as the services are provided.
- E. State agrees to:
 - 1. Payment on this contract will be made upon satisfactory completion of work, receipt of an invoice, and an allowable processing time. Terms of payment are as follows:
 - a. The consultant shall submit invoices detailing time of the South Dakota Board of Optometry Examiners, PO 513, Wall, SD 57790 and will be paid the invoice amount within thirty (30) days of receipt of said invoice, subject to ordinary State of South Dakota voucher clearance requirements.

- b. The State will make payment for services upon satisfactory completion of services performed.
- c. The State will make payment for satisfactory services at a rate of \$70.00 an hour.

III. OTHER PROVISIONS

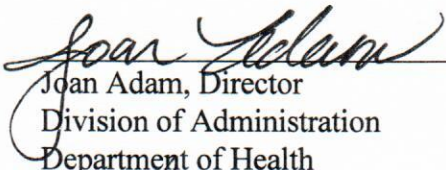
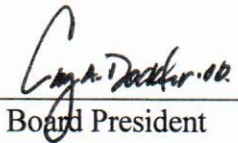
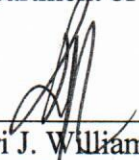
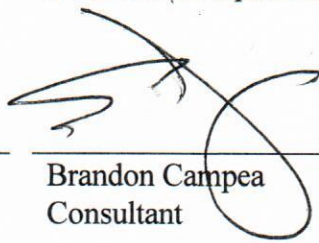
- A. CHOICE OF LAW AND FORUM. The terms and conditions of this contract are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract, which cannot be resolved by mutual agreement, will be tried in the Sixth Judicial Circuit Court, Hughes County, South Dakota.
- B. INTEGRATION. This contract is a complete version of the entire agreement between the parties with respect to the subject matter within this contract and supersedes all prior or contemporaneous written or oral understandings, agreements and communications between them with respect to such subject matter. This contract may be modified or amended only by a writing signed by both parties.
- C. TERMINATION: This contract may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by State for cause at any time, with or without notice.
- D. NOTICE: Any notice or other communication required under this contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Consultant Contact Person on behalf of Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.
- E. ASSURANCES: The Consultant agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Byrd Anti Lobbying Amendment (31 USC 1352), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013, American Recovery and Reinvestment Act of 2009, and Section 106 (g) of the Trafficking Victims Protection Act of 2002, as amended (22 U.S.C. 7104) as applicable.
- F. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION: Consultant agrees that neither Consultant, nor any of Consultant's principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency. Consultant will provide immediate written notice to the Department of Health, Division of Administration (600 East Capitol Avenue, Pierre, SD 57501 (605) 773-3361), if Consultant, or any of Consultant's principals, becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions involving Federal funding. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with all applicable regulations pursuant to Executive Order 12549, including Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. § 98.510 (1990).
- G. FUNDING TERMINATION: This contract depends upon the continued availability of appropriated funds and expenditure authority from Congress, the Legislature or the Executive Branch for this purpose. This contract will be terminated for cause by State if Congress, the Legislature or Executive Branch fails to appropriate funds, terminates funding or does not grant expenditure authority. Funding termination is not a default by State nor does it give rise to a claim against State.
- H. NONASSIGNMENT/SUBCONTRACTING: Consultant shall not assign this contract, or any portion thereof, without the prior written consent of State. Consultant's assignment or attempted assignment of this contract, or any portion thereof, without State's prior written consent constitutes a material breach of contract. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of State. Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage in a manner consistent with this Agreement. Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances,

guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.

- I. **FEDERAL AND STATE LAWS:** Consultant agrees that it will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract, including the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213, and any amendment thereto, Section 306 of the Clean Air Act, and Section 508 of the Clean Water Act. Both parties further agree to provide services covered by this contract without regard to race, color, national origin, sex, age or disability as prohibited by state or federal law.
- J. **OWNERSHIP:** All reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses, or other products produced as a result of the services rendered under this contract, excluding medical records kept in the normal course of Consultant's business, will become the sole property of State. State hereby grants Consultant the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of Consultant's business for any lawful purpose. Either the originals, or reproducible copies satisfactory to State, of all technical data, evaluations, reports and other work product of Consultant shall be delivered to State upon completion or termination of services under this contract.
- K. **REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE:** Consultant agrees to report promptly to State any event encountered in the course of performance of this contract which results in injury to the person or property of third parties, or which may otherwise subject Consultant or State to liability. Reporting to State under this section does not satisfy Consultant's obligation to report any event to law enforcement or other entities as required by law.
- L. **SEVERABILITY:** In the event that any term or provision of this contract shall violate any applicable law, such provision does not invalidate any other provision hereof.
- M. **AUDIT REQUIREMENTS:**
(EXPENDING \$750,000 OR MORE)
A nonprofit subrecipient, (as well as profit hospitals) (Consultant), expending \$750,000 or more in one year in Federal awards, must have an annual audit made in accordance with 2 CFR Chapter I, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General's approval should be obtained annually. The auditor must follow the Auditor General's guidelines when conducting the audit. The draft audit report must be submitted to the Auditor General for approval prior to issuing the final report. The auditor must file the requested copies of the final audit report with the Auditor General. Audits shall be completed and filed with granting agencies by the end of the ninth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. If it appears that a required audit cannot be completed by the end of the ninth month following your fiscal year, you must request an extension from the federal agency for which the majority of federal expenditures relates.
- Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.
- N. **FORCE MAJEURE:** Neither Consultant nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this contract, "force majeure" means acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.
- O. **CONTRACT ORIGINAL AND COPIES:** An original of this contract will be retained by the State Auditor's Office. A photocopy will be on file with the South Dakota Department of Health and a second original will be sent to Consultant.
- P. **RECORD RETENTION/EXAMINATION:** Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of three years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.
- Q. **LICENSING AND COMPLIANCE:** The Consultant agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. The Consultant will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Consultant's failure to ensure the safety of all individuals served is assumed entirely by the Consultant.

- R. **CONFIDENTIALITY OF INFORMATION:** For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Consultant by the State. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Consultant is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Consultant shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Consultant; (ii) was known to Consultant without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Consultant without the benefit or influence of the State's information; (v) becomes known to Consultant without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Consultant understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the contract except as required by applicable law or as necessary to carry out the terms of the contract or to enforce that party's rights under this contract. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this contract for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.
- S. **CONFLICT OF INTEREST:** Consultant agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal organizational conflict of interest, or personal gain. Any potential conflict of interest must be disclosed in writing.
- T. **RECYCLING.** State strongly encourages Consultant to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.

The parties signify their agreement by signing below.

 _____ Joan Adam, Director Division of Administration Department of Health	5/29/18 _____ Date	 _____ Board President SD Board of Optometry Examiners	5-13-18 _____ Date
 _____ Kari J. Williams Administrator, Financial Management Department of Health	5-30-18 _____ Date	 _____ Brandon Campea Consultant	5-24-18 _____ Date

State Contact Person: Denise Amundson Phone: (605) 493-6504

Consultant Contact Person: Brandon Campea Phone: (605) 224-8114

The following shall be completed by the Consultant:

Nonprofit Profit
 Consultant fiscal year beginning Jan. and ending Dec.

The following shall be completed by the State:

MSA Account code 5204 _____

Fund Source Name:	Fund Source Name:	Fund Source Name:
CFDA No:	CFDA No:	CFDA No:
Program: SD Board of	Program: SD Board of	Program: SD Board of
CO: 6503-Other	CO: 6503-Other	CO: 6503-Other

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor's policy handbook.

Attachment A

Agency	Sys ID	System Name	Contract Max Hrs.	Maint Hrs.	Enhnc Hrs.	Dev Function	Description of Work	System Contact Person
DOH - SDBOE	PH OPTO	Board of Optometry Examiners	30	30			Routine maintenance during the contract period.	Denise Amundson
Total			30	30				