



South Dakota Board of Examiners in Optometry

Meeting Minutes

August 16, 2019

8:00 AM (CST)

Tieszen Law Office Conference Room

Pierre, SD 57501

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

1. Attendance: President Dockter called the meeting to order at 8:00 AM on August 16, 2019.

2. Approval of Agenda:

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

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

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

4. Approval Minutes:

Board Action: Jamie Farmen moved to approve the minutes from the regular meeting on March 25, 2019, and the telephonic meetings on May 8, 2019, and June 13, 2019, seconded by A Haiar. Roll call vote:

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

5. Financial Reports:

Deni Amundson presented the treasurer's report found on page 18 of the agenda packet. She also provided updates from the Association of Regulatory Board's annual meeting and the Department of Health board executive meeting. She also reported that she will begin including a cross reference of child support delinquencies as part of the license renewal process.

6. Board Review and Approve CE Courses:

Continuing education courses, submitted since the last regular meeting on March 25, 2019, were reviewed and approved by individual signature vote.

7. Old Business

A. National and State Issues Monitored: No new information or action taken.

B. Pharmacy Board Database Integration: Deni Amundson reported that progress that has been made with integrating the optometry board’s database with the pharmacy board to create a more efficient process for the DEA applications. The process should be complete this fall.

C. Administrative Rule and Statute Review: No new information or action taken.

D. Law and Ethics Exam Applicant Protocol: Deni Amundson presented a draft protocol that can be found on page 31 of the agenda packet.

Board Action: A Hase moved to approve the protocol as drafted, seconded by A Haiar. Roll call vote:

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

8. New Business:

A. Licensing:

Board reviewed application 20-1.

Board Action: S Schirber moved to approved application 20-1, seconded by J Farmen. Roll call vote:

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

New Licensee:

- Jacob Deitrich

B. Procedural Codes:

Six procedure codes were presented to the board for consideration for inclusion as amendments to ARSD 20:50:04 Appendix A in the administrative rule amendment packet:

CPT Code 0207T: LipiFlow/ILux/MiboFlow

Board Action: S Schirber moved to approved CPT Code 0207T, seconded by A Hase. Roll call vote:

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

CPT Code 67999: Maskin Probing

Board Action: J Farmen moved to approved CPT Code 67999, seconded by A Hase. Roll call vote:

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

CPT Code 17999: Intense Pulsed Light

Board Action: S Schirber moved to approved CPT Code 17999, seconded by J Farmen. Roll call vote:

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

CPT Code 95004: Ocular Allergy Testing

Board Action: S Schirber moved to approved CPT Code 95004, motion failed to receive a second. The board requested more information regarding how many other states approve of ocular allergy testing. Tabled until next meeting.

CPT Code 67850: Ellman Treatment for Trichiasis

Board Action: Tabled until next meeting.

CPT Code 68330: Ellman Treatment for Conj Chalasis

Board Action: Tabled until next meeting.

C. Administrative Rule and Statute Review:

Several statutes were discussed, but no changes were recommended for the 2020 Legislative Session.

The following administrative rules were discussed and recommended for amendment:

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

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

General Authority: SDCL 36-7-12.

Law Implemented: SDCL 36-7-12.

Board Action: A Hase moved to amend 20:50:02:03.01 as drafted above, seconded by A Haiar. Roll call vote:

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

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

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

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

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

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

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

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

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

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

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.

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

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

Board Action: S Schirber moved to amend 20:50:02:04.03 as drafted above, seconded by A Hase. Roll call vote:

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

20:50:02:06. National Board of Examiners board test required. Satisfactory passing of examinations as certified by the National Board of Examiners in Optometry or other national board exam approved by the board in any of the subjects required by § 20:50:02:04 and satisfactory passing of ~~the national pharmacology test~~ Part I (Applied Basic Science), Part II (Patient Assessment and Management), Part III (Clinical Skills), and the Treatment and Management of Ocular Disease (TMOD) is required. The board may require all candidates to take additional tests on any subjects listed in § 20:50:02:04, including the National Board of Clinical Skills examination. Candidates' applications shall show when they took the national board examinations and the subjects covered. The examinations must have been passed within the five years before the date of South Dakota licensure.

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

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

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

Board Action: J Farmen moved to amend 20:50:02:06 as drafted above, seconded by A Hase. Roll call vote:

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

20:50:02:07.01. Initial review. Upon receipt of an application for an initial certificate of registration or for endorsement, the executive secretary shall review to determine if the applicant has submitted all required documents, information, non-refundable fees, and other materials. The executive secretary shall notify the applicant of any materials missing from the application. The applicant has 180 days from the date of notice to provide the information intended to complete the application. If an applicant fails to submit required materials within 180 days of notice that materials are missing from the application, the application will be deemed withdrawn. The executive secretary shall notify the applicant if an application is designated as withdrawn. The applicant is not precluded from reapplying at the expiration of the 180 day period, but all required documents, information, non-refundable fees, and other materials must be resubmitted with such reapplication.

Source:

General Authority: SDCL [36-7-15\(1\),\(3\)](#).

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](#).

Board Action: A Haiar moved to add 20:50:02:07.01 as drafted above, seconded by S Schirber. Roll call vote:

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

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

Source:

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

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.

Board Action: A Hase moved to add 20:50:02:07.02 as drafted above, seconded by S Schirber. Roll call vote:

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

20:50:02:07.03. Investigation of application. The executive secretary may determine that the information disclosed in an application or primary source documentation requires inquiry to determine whether the applicant meets the qualifications or standards for issuance of a license. The executive secretary may conduct that inquiry, or may provide the matter to the board investigator for investigation.

Source:

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

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.

Board Action: A Hase moved to add 20:50:02:07.03 as drafted above, seconded by J Farmen. Roll call vote:

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

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

An optometrist who has not actively and routinely practiced for a period of greater than one year, but no more than three years, may at the discretion of the board be reinstated upon a showing of good cause, payment of the annual renewal fee for each year of absence, and

payment of the late fee for each month of absence, late fees not to exceed \$1200, and upon providing proof of being current on all continuing education requirements.

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

General Authority: SDCL 36-7-20.

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

Board Action: S Schirber moved to amend 20:50:02:08 as drafted above, seconded by A Hase. Roll call vote:

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

20:50:04:06. Optometrist to write and release prescription -- Requests for medical records. If a patient for whom an optometrist has prescribed spectacle lenses so requests, the optometrist shall write out the prescription and deliver a copy of it to the patient. A spectacle lens prescription expires on the date specified by the prescriber, based upon the medical judgment of the prescriber with respect to the ocular health of the patient. If a prescription expires in less than one year, the reasons for the expiration date must be documented in the patient's medical record. No prescriber may specify a prescription expiration date that is earlier than the date a reexamination of the patient that occurs prior to the time recommended by the prescriber for a reexamination of the patient that is medically necessary. Requests for medical records are governed by SDCL 36-2-16.

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

General Authority: SDCL 36-7-15.

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

Board Action: J Farmen moved to amend 20:50:02:08 as drafted above, seconded by A Haiar. Roll call vote:

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

20:50:08:02. Acceptable courses of study. The board shall determine acceptable continuing education courses ~~approve, at each annual meeting, a list of acceptable out-of-state courses of study that may be taken in lieu of courses provided within the state. In addition, other meetings and seminars either within or without the state may be approved in advance by the board. A request for approval must be made at least 15 days before the meeting or seminar. The board may approve out-of-state courses if they are substantially~~

equivalent to those offered in the state. The board may approve courses on the following subjects or similar suitable subjects as determined by the board;

- (1) Binocular vision and perception;
- (2) Pathology;
- (3) Contact lenses;
- (4) Pharmacology;
- (5) Low vision;
- (6) Vision training or vision therapy;
- (7) Pediatric vision care;
- (8) Geriatric vision care;
- (9) New instrumentation and techniques;
- (10) Public health and optometric care;
- (11) Optometric examinations, diagnosis, and treatment; and
- (12) Patient protection and compliance issues.

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

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

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

Board Action: A Hase moved to amend 20:50:08:02 as drafted above, seconded by S Schirber. Roll call vote:

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

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

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

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

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

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

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

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

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

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

Board Action: S Schirber moved to amend 20:50:08:02.01 as drafted above, seconded by J Farmen. Roll call vote:

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

*Deni Amundson will also draft the form to be used for observation and bring to the next meeting for approval.

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

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

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

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

Board Action: A Haiar moved to amend 20:50:08:04 as drafted above, seconded by A Hase. Roll call vote:

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

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

- (1) Not less than one year after the issue date of the prescription; or
- (2) On the date specified by the prescriber, based upon the medical judgment of the prescriber with respect to the ocular health of the patient.

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

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

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

Law Implemented: SDCL 36-7-1.

Board Action: S Schirber moved to amend 20:50:10:03 as drafted above, seconded by J Farmen. Roll call vote:

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

20:50:11:02. Professional corporation -- Admitting shareholder. ~~At least~~ No later than 30 days before admitting a new shareholder or member after a change in membership or shareholders, the corporation shall notify the board in writing of ~~its intention~~ the change, indicating the identity, licensure status, and residence address of ~~the~~ any new shareholder or member.

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

General Authority: SDCL 47-11B-23.

Law Implemented: SDCL 47-11B-3.

Board Action: S Schirber moved to amend 20:50:11:02 as drafted above, seconded by A Hase. Roll call vote:

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

D. B-Pro Contract:

Board Action: A Haiar moved to approve the FY20 B-Pro contract with an rate of \$85/hour and a not to exceed amount of \$4000, seconded by J Farmen. Roll call vote:

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

9. Public Comment: Deb Mortenson, Executive Director, South Dakota Optometric Society reported that they have committees looking at the scope of practice for optometrists in South Dakota. She will have further updates for this board at the April 2020 meeting.

10. Time and Place of Next Regular Meeting:

Next Meeting: Friday, April 24, 8:00AM (CST), Tieszen Law Office Conference Room, 306 East Capitol, Pierre, SD 57501

11. Adjournment:

Board Action: At 11:35, S Schirber moved to adjourn meeting, seconded by A Hase. Roll call vote:

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