

Douglas A. Ducey
Governor

John Chrisagis, O.D.
President

Marla Husz, O.D.
Vice President



Arizona State Board of Optometry
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Margaret Whelan
Executive Director

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**FINAL MINUTES FOR REGULAR MEETING
NOVEMBER 18, 2016 SCHEDULED TO COMMENCE AT 9:00 A.M.**

Board Members

John Chrisagis, O.D., President
Marla Husz, O.D., Vice-President
Michael Lamb, O.D.
Brian Mach, O.D.
Mark Peller, O.D.
George A. Evanoff, Public Member
Blake Whiteman, Public Member

Staff:

Margaret Whelan, Executive Director
Paula Hollins, Licensing Administrator

Legal Counsel:

Mona Baskin, Assistant Attorney General

A. CALL TO ORDER: Dr. Chrisagis

Dr. Chrisagis called the meeting to order at 9:03 a.m.

B. ROLL CALL: Ms. Hollins

Members Present: John Chrisagis O.D., President
Marla Husz, O.D., Vice President
Mark Peller, O.D.
Brian Mach, O.D.
Michael Lamb, O.D.
George A. Evanoff, Public Member
Blake Whiteman, Public Member – arrived to meeting at 9:12 a.m.

Legal Counsel: Mona Baskin, Assistant Attorney General

Staff Present: Margaret Whelan, Executive Director
Paula Hollins, Licensing Administrator

C. PRESIDENT'S REPORT: Dr. Chrisagis

None

**D. REVIEW, DISCUSSION AND POSSIBLE ACTION ON INVESTIGATIVE
REVIEWS/COMPLAINTS:**

1. Michael Martin, O.D. IR#201701

Dr. Husz summarized the case as the patient came in for an eye exam. While waiting for the doctor, a technician came in and asked the patient if they wished to have their eyes dilated. The technician also performed the initial refraction at that time. The patient felt the doctor was dismissive towards him when he refused dilation and that the doctor did not do a refraction to check the technician's work.

MOTION: Dr. Husz moved to dismiss the case due to lack of violation of the optometric practice act. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0. Mr. Whiteman was absent from the discussion.

2. Eugene Shifrin, O.D. IR#201705

This case was continued from the September 16, 2016 Board meeting as the Board directed staff to request the medical records for the patient named in the malpractice claim in order to determine who the treating physician was. The records were requested and received by the Board. After review of the records submitted, it was determined that Dr. Shifrin never treated patient nor did he perform any type of surgery as suggested in the claim.

MOTION: Dr. Lamb moved to dismiss the case due to lack of violation of the optometric practice act. Dr. Mach seconded the motion.

VOTE: Motion passed 5-0. Dr. Peller recused. Mr. Whiteman was absent from discussion.

3. Matthew Campouris, O.D. IR#201707

Ms. Whelan reported that new information was submitted by 1-800 Contacts less than 24 hours prior to the scheduled Board meeting. Mr. Keith Call from 1-800 Contacts was present to address the Board. He stated the key issue is, "Are Arizona optometrists failing to produce copies of the prescription when requested?" Dr. Mach asked if this was for verification of the prescription or for an actual copy of the prescription. Mr. Call stated it was for an actual prescription. Mr. Call went on to state that the Fairness to Contact Lens Consumers Act gives 1-800 Contacts a "pass" from needing a signed consent from patients to request a copy of the prescription on their behalf. Mr. Whiteman expressed that this complaint might be better handled by the courts instead of the Board. He suggested that the Board give 1-800 Contacts seven (7) days to address any and all questions to the Board in writing, with the next set of affidavits submitted for review in 30 days and the rest in 60 days, etc.

MOTION: Dr. Chrisagis moved to go into executive session for legal advice. Dr. Lamb seconded the motion.

VOTE: Motion passed 7-0.

The Board went into executive session for legal advice at 9:46 a.m.
The Board reconvened regular session at 10:07 a.m.

Mr. Call again stated intent of the complaints was to force compliance with the law through well-written letters of concern and that 1-800 Contacts would be possibly willing to limit the number of doctors to around 20 of the most egregious offenders. As the Board received the 3261 complaints against 525 doctors, it must review them as submitted; and discussed reviewing them in batches at the next several meetings beginning in January of 2017.

The Board discussed that it might like to see the agency agreement or procedure followed by the agent to get to that agreement, as well as 1-800 Contacts' authority for bringing a complaint on behalf of the patient; authorization for the requester of the prescription and why 1-800 Contacts thinks the Board is required to interpret its own law.

MOTION: Dr. Peller moved to get all information on all 525 doctors by December 31, 2016 from 1-800 Contacts. No further information will be accepted after that time and the Board will move forward with whatever information has been submitted to date. Dr. Lamb seconded the motion.

VOTE: Motion passed 7-0.

MOTION: Mr. Whiteman moved to require 1-800 Contacts to provide, by December 2, 2016, a memo to the Board with their intent for this complaint going forward. Dr. Lamb seconded the motion.

VOTE: Motion passed 7-0.

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

4. Doyle Holle, O.D. IR#201708

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Mach seconded the motion.

VOTE: Motion passed 7-0.

5. Larry Holle, O.D. IR#201709

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

6. Quintilio DiGiacomo, O.D. IR#201710

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

7. Tiffany Uelner, O.D. IR#201711

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

8. Richard Glonek, O.D. IR#201712

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

9. Peter Lehmann, O.D. IR#201714

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

10. Helen Paulin, O.D. IR#201715

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

11. Patricia Stamper, O.D. IR#201717

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

12. Roger Juarez, O.D. IR#201718

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

13. Lynne Noon, O.D. IR#201719

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

14. Sheila Willems, O.D. IR#201722

Dr. Willems was present with her attorney, Mr. Mark Romaneski, who cited a legal concern, as grounds for dismissal, the fact that as a doctor at the Veterans Administration, Dr. Willems does not write contact lens prescriptions. Mr. Call, attorney for 1-800 Contacts asked the Board to dismiss the complaint against Dr. Willems.

MOTION: Dr. Mach moved to dismiss this complaint at the request of Mr. Call from 1-800 Contacts. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

15. John Twelker, O.D. IR#201723

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

16. Sheryl Simms, O.D. IR#201724

Dr. Simms was present, with her attorney Mr. Christopher Dang, to address the Board stating that she only had one patient named in the complaint; she responded accordingly and requested that the Board dismiss the complaint.

MOTION: Dr. Chrisagis moved to go into executive session for legal advice. Dr. Lamb seconded the motion.

VOTE: Motion passed 7-0.

The Board went into executive session for legal advice at 10:59 a.m.
The Board reconvened regular session at 11:06 a.m.

The Board further discussed the issue of dismissal and determined that it would need to review the additional documentation prior to determining if a complaint was able to be dismissed.

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

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| 17. | Rita Bhakta, O.D. | IR#201725 |
| 18. | Rand Siekert, O.D. | IR#201726 |
| 19. | David Diaz, O.D. | IR#201727 |
| 20. | Elizabeth Madara, O.D. | IR#201728 |
| 21. | Frederic Weitz, O.D. | IR#201729 |
| 22. | Grace Yoon, O.D. | IR#201731 |
| 23. | Howard Rosner, O.D. | IR#201732 |
| 24. | Larry Allgood, O.D. | IR#201735 |
| 25. | Matthew Schroeder, O.D. | IR#201736 |
| 26. | Michele Whitacre, O.D. | IR#201737 |

Dr. Whitacre was present, with her attorney Mr. Kevin Whitacre, to address the Board. Dr. Whitacre addressed the Board stating she took this complaint very seriously by appearing before the Board and that she has not seen the patient in question in over two years as the complaint was from a different office. Mr. Whitacre addressed the Board stating that complaint contained inadequate factual basis, was weak at best and the names of the doctors and the patients were not spelled correctly so he wonders how accurate the complaint is, and requested that the Board dismiss this complaint.

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

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| 27. | Neville Dalal, O.D. | IR#201738 |
| 28. | Quan Nguyen, O.D. | IR#201739 |

Dr. Nguyen was present to address the Board stating he did not appreciate being named in this complaint from 1-800 Contacts as he feels he always complies with the law.

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

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| 29. | Raymond Sherban, O.D. | IR#201740 |
| 30. | Robert Sun, O.D. | IR#201741 |

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| 31. | Sonia Chung, O.D. | IR#201742 |
| 32. | Christine Bartoletti, O.D. | IR#201743 |
| 33. | Tanya Lewis Polec, O.D. | IR#201744 |
| 34. | Christopher Marmo, O.D. | IR#201746 |

Dr. Marmo was present to address the Board. He stated that patient submitted is not his and the forms that were sent by 1-800 Contacts were not patient release forms that he needed to submit the requested documentation.

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

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| 35. | Brent Wilson, O.D. | IR#201747 |
| 36. | Stacey Burson, O.D. | IR#201748 |
| 37. | Stephen Martin, O.D. | IR#201749 |
| 38. | Bethanie Deemer, O.D. | IR#201750 |
| 39. | Todd Smith, O.D. | IR#201751 |
| 40. | Paul Woolf, O.D. | IR#201752 |
| 41. | Stephen Spencer, O.D. | IR#201753 |
| 42. | Thomas Determan, O.D. | IR#201754 |

MOTION: Dr. Lamb moved to continue the complaint and request the final records/documents from 1-800 Contacts by December 2 and December 31, 2016 respectively for item numbers 17-25, 27, 29-33, 35-42. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

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| 43. | Eric Johansen, O.D. | IR#201799 |
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Dr. Mach summarized the case as the patient went to Walmart to have a prescription filled but Cochise Eye & Laser Center wouldn't release the prescription. Dr. Johansen stated in his response that the prescription was given to the patient at the time of service and that he would not get another one. No record of a phone call from Walmart was in the record however, Dr. Mach felt that if the patient made the request for another copy of the prescription, it should have been provided.

MOTION: Dr. Peller moved to dismiss the case due to lack of violation of the optometric practice act. Dr. Mach seconded the motion.

Motion and second were withdrawn due to further discussion regarding the rule requiring release of a prescription when requested.

SECOND MOTION: Dr. Mach moved to issue a Letter of Concern for failure to release a prescription pursuant to A.A.C. R4-21-306(e)(c).

VOTE: Motion passed 5-1. Dr. Husz voted no. Mr. Whiteman was absent from the discussion.

44. David Kaplan, O.D. IR#2017100

Dr. Peller summarized the case as patient went in to see Dr. Kaplan for an eye exam however Dr. Kaplan was not on the patient's insurance. There was a physician in the office who was listed as a medical provider on the patient's insurance; just not the optometrist.

MOTION: Dr. Peller moved to dismiss the case due to lack of violation of the optometric practice act. Dr. Husz seconded the motion.

VOTE: Motion passed 7-0.

E. REVIEW, DISCUSSION AND POSSIBLE ACTION ON PENDING REGULAR LICENSE APPLICATIONS:

45. Uppal, Jasandeep
 46. Vachhani, Amy

MOTION: Dr. Lamb moved to approve item 45. for licensure. Dr. Husz seconded the motion.

VOTE: Motion passed 7-0.

MOTION: Dr. Lamb moved to approve item 46. For licensure contingent upon negative FBI/DPS report. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

F. REVIEW, DISCUSSION, AND POSSIBLE ACTION ON APPROVAL OF CONTINUING EDUCATION AS PROVIDED BY A.R.S. §32-1704(D) and A.A.C. R4-21-210:

Fiscal Year 2017

	Continuing Education	Date	No. of hours requested
a.	NVision-Femtosecond Lasers Roundtable & Ten Myths of LASIK	10/20/16	2 Regular
b.	AZ Retina Assoc.-Does cataract surgery accelerate the progression of Macular Degeneration & Optical coherence tomography & Vitreomacular Interface	11/29/16	2 Regular

MOTION: Dr. Husz moved to deny item a. for continuing education as it did not meet the requirements for submission. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

MOTION: Dr. Peller moved to approve item b. for continuing education. Dr. Mach seconded the motion.

VOTE: Motion passed 6-0. Dr. Lamb recused.

G. REVIEW, DISCUSSION, AND POSSIBLE ACTION ON APPROVAL OF TESTING CENTER FOR PROCTORING OF JURISPRUDENCE EXAM PURSUANT TO A.A.C. R4-21-203(C):

47. Sedalia State Fair Community College, Sedalia, MO

MOTION: Dr. Peller moved to approve item 47. as a testing center for proctoring of the Board's Jurisprudence exam. Dr. Husz seconded the motion.

VOTE: Motion passed 7-0.

H. REVIEW, DISCUSSION AND POSSIBLE APPROVAL OF BOARD MEETING MINUTES:

48. September 16, 2016 Regular Session Minutes

49. October 3, 2016 (Teleconference) Regular Session Minutes

MOTION: Dr. Husz moved to approve items 48 and 49 as submitted. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0. Mr. Whiteman abstained.

I. EXECUTIVE DIRECTOR'S REPORT:

50. Budget update

51. Future agenda items

52. Future Board meeting dates

Ms. Whelan reported that 33.33% of FY has elapsed. Board spending is at 26.09% with a beginning cash balance of \$240,236.14 and an ending cash balance of \$228,987.50 and that a supplemental increase to the Board's appropriation may need to be requested to cover the cost of the complaint filed by 1-800 Contacts.

No future agenda items were requested.

Future Board meeting dates are January 20, 2017, February 17, 2017 and March 17, 2017.

J. CALL TO PUBLIC:

Dr. Chrisagis made a call to the public at 11:26 a.m.

Mr. Keith Call, counsel for 1-800 Contacts addressed the Board. He thanked the Board for their time and efforts in processing this complaint. Mr. Call stated they would like to see the responses provided by the doctors so they may prepare a response for the next meeting and that fairness dictates that they are entitled to that.

K. MOTION TO ADJOURN:

Mr. Evanoff moved to adjourn the meeting at 11:28 a.m. Dr. Lamb seconded the motion.

The meeting was adjourned at 11:28 a.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date