

Douglas A. Ducey
Governor

John Chrisagis, O.D.
President

Marla Husz, O.D.
Vice President



Arizona State Board of Optometry
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Executive Director

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**FINAL MINUTES FOR REGULAR MEETING
MARCH 17, 2017 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.
Blake Whiteman, Public Member
George A. Evanoff, Public Member

Legal Counsel: Mona Baskin, Assistant Attorney General

Staff Present: Margaret Whelan, Executive Director

Staff Absent: Paula Hollins, Licensing Administrator

C. PRESIDENT’S REPORT:

Dr. Chrisagis

Dr. Chrisagis thanked staff for the excellent preparation of the voluminous materials for this meeting.

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

The Board may hold an executive session to discuss records exempt by law from public inspection pursuant to A.R.S. §38-431.03(A)(2). In addition, the board may hold an executive session to discuss or consult with its attorney and to receive legal advice pursuant to A.R.S. §38-431.03(A)(3).

1. Brian Baird, O.D. IR#201756

Dr. Chrisagis summarized that there were six complaints against six patients. Dr. Baird shows notes in his records that these were phone requests; all were sent back with one form returned with an expired prescription.

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

VOTE: Motion passed 7-0.

2. Amy Crump, O.D. IR#201759

Dr. Peller summarized the case as 1-800 Contacts alleges that Dr. Crump failed to release a copy of the contact lens prescription when requested. There were 17 complaints; some were duplicate and triplicate requests. Some of the requests were the same patient but the name was misspelled so it appeared to be a different patient. Most of the patients there was no request made; some of the patients had the same name with no other identifying information. Dr. Peller felt Dr. Crump substantially complied with all requests from 1-800 Contacts.

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.

3. James Liston, O.D. IR#201761

Dr. Peller summarized the case as 1-800 Contacts alleges that Dr. Liston failed to release a copy of the contact lens prescription when requested. There were 12 complaints against nine patients. Dr. Lamb stated that Dr. Liston responded that there were no records found for these patients. Dr. Chrisagis stated that Dr. Liston’s response stated that none of the patients corresponded to the RXCaptureID number provided by 1-800 Contacts and that they wouldn’t because that is an internal control to 1-800 Contacts and not Dr. Liston. Dr. Chrisagis felt that Dr. Liston needs to look at the patient names and attempt to get the records even if they are from a previous practice. Dr. Mach asked Dr. Chrisagis to table the complaint for further information. Dr. Chrisagis directed staff to solicit Dr. Liston for a supplemental response with named patient records if obtainable.

4. Karen Walker, O.D. IR#201762

Dr. Chrisagis summarized the case as 1-800 Contacts alleges that Dr. Walker failed to release a copy of the contact lens prescription when requested. A request for a copy of a patient's contact lens prescription was submitted by 1-800 Contacts; Dr. Walker responded to the request, giving a copy of the prescription to 1-800 Contacts for the one patient.

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

Dr. Walker was present to address the Board. She stated that after going through the first three pages of the complaint, she finally found the actual complaint which was on page 4, line 6; "failed to respond to request". One of the prescriptions was not finalized as of the date of the request from 1-800 Contacts. Dr. Walker spoke with the patient named in the complaint; the patient did not know about the complaint nor did she agree with the complaint being filed on her behalf and that she was not harmed by the prescription not being released until the prescription was finalized. On counts 2 and 3 of the complaint, Dr. Walker states she did not violate any statutes or rules of the practice of optometry in Arizona. Dr. Walker states that 1-800 Contacts violated A.R.S. §32-1771(C) which states, "Contact lenses may not be sold or dispensed except pursuant to a prescription order that conforms to state and federal regulations governing prescriptions" and also violated 15 USC section 7603(a) which states, "A seller may sell contact lenses only in accordance with a contact lens prescription for the patient that is (1) presented to the seller by the patient or prescriber directly or by facsimile; or (2) verified by direct communication. Dr. Walker stated that to say that she engaged in unprofessional conduct and did not comply with the law is "over the top character assassination" and that it is shocking in light of 1-800 Contacts' own violation of the federal and state laws.

Thomas Galvin, attorney for Rose Law Group was present on behalf of 1-800 Contacts. He had advised the Board he had no comment at this time other than to state that he would take all comments from the licensees back to his client for consideration for this and each complaint.

Mr. Whiteman stated he had issues with this complaint being filed with the Board in the form of a civil complaint with counts, and not in the form of a factual narrative.

VOTE: Motion passed 7-0.

5. Donald Siegel, O.D. IR#201765

Dr. Peller summarized the case as 1-800 Contacts alleges that Dr. Siegel failed to release a copy of the contact lens prescription when requested. There were requests for two patient prescriptions; both were faxed back to 1-800 Contacts to comply with the request.

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.

6. Ryan Stuart, O.D. IR#201766

Dr. Husz summarized the case as 1-800 Contacts alleges that Dr. Stuart failed to release a copy of the contact lens prescription when requested. There were requests for three patient prescriptions; Dr. Stuart showed no record of a request for two of the patients and the third patient had no valid prescription.

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 7-0.

7. Taylor Hutchins, O.D. IR#201770

Dr. Husz summarized the case as 1-800 Contacts alleges that Dr. Hutchins failed to release a copy of the contact lens prescription when requested. There were three separate requests for one patient prescription; Dr. Hutchins faxed back responses on three separate occasions to 1-800 Contacts to comply with the request.

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 7-0.

8. Jesse Dominguez, O.D. IR#201780

Dr. Peller summarized the case as 1-800 Contacts alleges that Dr. Dominguez failed to release a copy of the contact lens prescription when requested. A request for a copy of a contact lens prescription for two patients was submitted by 1-800 Contacts. Dr. Dominguez responded that there was no evidence in his records of a records request by 1-800 Contacts for either patient.

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

Dr. Dominguez was present to address the Board. He stated that he called the patients to inquire about the complaint. Both patients were never informed by 1-800 Contacts of the complaint even though the compliant states that they are representing the patient. Dr. Dominguez stated his number one concern is the safety of his patients and that they are suffering by not being seen this morning from him having to appear before the Board for a complaint that has no merit.

VOTE: Motion passed 7-0.

9. Richard Baim, O.D. IR#201781

Dr. Chrisagis summarized the case as 1-800 Contacts alleges that Dr. Baim failed to release a copy of the contact lens prescription when requested. There were 15 complaints for 10 patients; two had files been purged pursuant to the records retention law as they were from 2010, five were never received by the doctor and three showed responses to 1-800 Contacts to comply with the request.

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

VOTE: Motion passed 7-0.

10. Christopher Carpenter, O.D. IR#201785

Dr. Peller summarized the case as 1-800 Contacts alleges that Dr. Carpenter failed to release a copy of the contact lens prescription when requested. There were two complaints; one patient was never seen in the practice and there was no copy of a request from 1-800 Contacts in the record for the other patient.

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 7-0.

11. Serge Wright, O.D. IR#201786

Dr. Peller summarized the case as 1-800 Contacts alleges that Dr. Wright failed to release a copy of the contact lens prescription when requested. There was one patient/complaint; patient was never seen in the practice.

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.

12. Steven Labroff, O.D. IR#201788

Dr. Peller summarized the case as 1-800 Contacts alleges that Dr. Labroff failed to release a copy of the contact lens prescription when requested. There were five complaints; three had no requests from 1-800 Contacts in the records, one patient request was sent back to 1-800 Contacts four times, one prescription was an eyeglass only prescription.

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.

13. Jonathan Wold, O.D. IR#201789

Dr. Husz summarized the case as 1-800 Contacts alleges that Dr. Wold failed to release a copy of the contact lens prescription when requested. There were four patients; two responses were sent back to 1-800 Contacts, one patient there was no record of a request, one patient's prescription was sent back to 1-800 Contacts on four separate occasions.

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

VOTE: Motion passed 7-0.

14. Jack Hostetler, O.D. IR#201790

Dr. Husz summarized the case as 1-800 Contacts alleges that Dr. Hostetler failed to release a copy of the contact lens prescription when requested. There were two patients; one patient there was no record of a request and the second patient, a response was provided to 1-800 Contacts to comply with the request.

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 7-0.

15. Libbi Tracy, O.D. IR#201793

Dr. Peller summarized the case as 1-800 Contacts alleges that Dr. Tracy failed to release a copy of the contact lens prescription when requested. There was one patient; a response was provided to 1-800 Contacts to comply with the request.

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.

16. Rhett Burgener, O.D. IR#201794

Dr. Peller summarized the case as 1-800 Contacts alleges that Dr. Burgener failed to release a copy of the contact lens prescription when requested. There were 12 complaints; some patients were listed two or three times with the names spelled differently. Three patients were seen in a different office, some of the prescriptions were expired but the doctor faxed them back to 1-800 Contacts to comply with the request.

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.

17. Kevin Wogalter, O.D. IR#201795

Dr. Chrisagis summarized the case as 1-800 Contacts alleges that Dr. Wogalter failed to release a copy of the contact lens prescription when requested. There were two complaints against two patients, neither was seen by Dr. Wogalter.

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

VOTE: Motion passed 7-0.

18. James Richardson, O.D. IR#201796

Dr. Peller summarized the case as 1-800 Contacts alleges that Dr. Richardson failed to release a copy of the contact lens prescription when requested. There were four complaints; one patient was last seen in 2008, no records available due to records retention law, one patient was last seen in 2004, one patient was seen in a different office with a different doctor and one patient request was faxed back to 1-800 Contacts to comply with the request.

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.

19. Eric Jones, O.D. IR#201797

Dr. Husz summarized the case as 1-800 Contacts alleges that Dr. Jones failed to release a copy of the contact lens prescription when requested. There were five requests for two patients; one patient was never seen in the practice and the second patient, a response was provided to 1-800 Contacts to comply with the request.

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.

20. Melody Young, O.D. IR#2017107

The Board discussed this case and IR#2017108 together.

Dr. Husz summarized the case as an advertisement from Blue Cross/Blue Shield where doctors Young and Watkins practice, states that the company offers free eye exams but if a patient doesn't buy ophthalmic goods at the location, they will be charged \$20 for a copy of their prescription. This is in direct violation of A.R.S. §§32-1771(B), 32-1701(8)(u) and A.A.C. R4-21-306(E). Dr. Lamb stated that it is appropriate to charge for a refraction; not the prescription. Dr. Watkins was present to address the Board. He stated he agreed with the Board in that the wording was misleading, that it should have read

differently and that the BCBS legal department should have specified that there is a \$25 charge for an eye exam and if a patient purchases goods, the exam fee is waived. He stated that the wording has been changed since the complaint came in and the ad on the website has been changed so that there is no charge for a copy of a prescription.

MOTION: Dr. Mach moved to issue a Letter of Concern for improper advertising pursuant to A.R.S. §§32-1771(B), 32-1701(8)(u) and A.A.C. R4-21-306(E) for charging for a copy of a prescription. Dr. Peller seconded the motion.

VOTE: Motion passed 7-0.

21. Torrence Watkins, O.D. IR#2017108

Dr. Husz summarized the case as an advertisement from Blue Cross/Blue Shield where doctors Young and Watkins practice, states that the company offers free eye exams but if a patient doesn't buy ophthalmic goods at the location, they will be charged \$20 for a copy of their prescription. This is in direct violation of A.R.S. §§32-1771(B), 32-1701(8)(u) and A.A.C. R4-21-306(E). Dr. Lamb stated that it is appropriate to charge for a refraction; not the prescription. Dr. Watkins was present to address the Board. He stated he agreed with the Board in that the wording was misleading that it should have read differently and that the BCBS legal department should have specified that there is a \$25 charge for an eye exam and if a patient purchases goods, the exam fee is waived. He stated that the wording has been changed since the complaint came in and the ad on the website has been changed so that there is no charge for a copy of a prescription.

MOTION: Dr. Mach moved to issue a Letter of Concern for improper advertising pursuant to A.R.S. §§32-1771(B), 32-1701(8)(u) and A.A.C. R4-21-306(E) for charging for a copy of a prescription. Dr. Lamb seconded the motion.

VOTE: Motion passed 7-0.

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

The Board may hold an executive session to discuss records exempt by law from public inspection pursuant to A.R.S. §38-431.03(A)(2). In addition, the board may hold an executive session to discuss or consult with its attorney and to receive legal advice pursuant to A.R.S. §38-431.03(A)(3).

22. Powell, Kay

MOTION: Dr. Peller moved to accept item 22 for licensure. Dr. Lamb seconded the motion.

VOTE: Motion passed 7-0.

F. REVIEW, DISCUSSION AND POSSIBLE ACTION ON PENDING ENDORSEMENT APPLICATIONS:

The Board may hold an executive session to discuss records exempt by law from public inspection pursuant to A.R.S. §38-431.03(A)(2). In addition, the board may hold an executive session to discuss or consult with its attorney and to receive legal advice pursuant to A.R.S. §38-431.03(A)(3).

- 23. Stein, Eric
- 24. Wachter, James

MOTION: Dr. Peller moved to accept items 23 and 24 for licensure. Dr. Lamb seconded the motion.

VOTE: Motion passed 7-0.

G. 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:

The Board may hold an executive session to discuss records exempt by law from public inspection pursuant to A.R.S. §38-431.03(A)(2). In addition, the board may hold an executive session to discuss or consult with its attorney and to receive legal advice pursuant to A.R.S. §38-431.03(A)(3).

Fiscal Year 2017

	Continuing Education	Date	No. of hours requested
a.	None	n/a	n/a

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

The Board may hold an executive session to discuss records exempt by law from public inspection pursuant to A.R.S. §38-431.03(A)(2). In addition, the board may hold an executive session to discuss or consult with its attorney and to receive legal advice pursuant to A.R.S. §38-431.03(A)(3).

- 25. Pearson Professional Centers
 - United States
 - Canada

MOTION: Dr. Peller moved to accept Pearson Professional Centers listed in item 25 as approved testing centers for the jurisprudence exam. Dr. Lamb seconded the motion.

VOTE: Motion passed 7-0.

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

The Board may hold an executive session to discuss records exempt by law from public inspection pursuant to A.R.S. §38-431.03(A)(2). In addition, the board may hold an executive session to discuss or consult with its attorney and to receive legal advice pursuant to A.R.S. §38-431.03(A)(3).

- 26. February 17 2017 Executive Session Minutes

MOTION: Mr. Whiteman moved to accept the minutes as amended. Dr. Lamb seconded the motion.

VOTE: Motion passed 7-0.

J. EXECUTIVE DIRECTOR'S REPORT:

The Board may review and discuss the listed items. The Board may hold an executive session to discuss records exempt by law from public inspection pursuant to A.R.S. §38-431.03(A)(2). In addition, the board may hold an executive session to discuss or consult with its attorney and to receive legal advice pursuant to A.R.S. §38-431.03(A)(3).

27. Budget update
28. Legislative update HB2378; HB2271; HB2290/SB1071; HB2307; HB2341; HB2515
SB1123; SB1437; SB1452
29. Future agenda items
30. Future Board meeting dates

Budget:

As of February 28, 2017, 66.67% of FY elapsed; Board spending at 51.78% with a beginning cash balance of \$207,051 and an ending cash balance of \$266,634. The total cost of processing the 1-800 Contacts complaint is not yet included in the Board's spending.

Legislation:

HB2378; Bill dissolving Dispensing Opticians Board; died in Commerce Committee

HB2271; Occupational Licensure; certification and registration of military members; transmitted to Governor for signature on March 15, 2017

HB2290/SB1071; Provisional licenses; criminal convictions; passed Senate, second read in House on March 6, 2017; 2290 is on Senate Commerce and Public Safety agenda on March 20, 2017

HB2307; CSPMP updates; passed House, transmitted to Senate on February 22, 2017. Passed Majority and Minority Caucus on March 14, 2017

HB2341; National Guard; deployment; professional licenses. Passed House, transmitted to Senate on February 17, 2017. Passed Majority and Minority Caucus on March 7, 2017

HB2515; Criminal Records checks for Governor appointees. Passed House, transmitted to Senate on February 23, 2017. Passed Majority and Minority Caucus on March 14, 2017.

SB1123; State contracts; lobbyists; Passed Senate, transmitted to House on February 23, 2017. Second read in House on March 7, 2017.

SB1437; GRRC; Occupational regulation; Passed Senate, transmitted to House on February 27, 2017. Second read in House on March 9, 2017.

SB1452; Health Regulatory Boards; Passed Senate, transmitted to House on March 6, 2017. Second read in House on March 9, 2017.

No future agenda items were requested.

Future Board meeting dates are May 19, 2017 and June 16, 2017. No April Board meeting due to lack of quorum.

K. CALL TO PUBLIC:

Pursuant to A.R.S. §38-431.01(G), Board members are not allowed to discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action. Members may ask staff to review a matter or may ask that a matter be placed on a future agenda.

Dr. Chrisagis made a call to the public at 9:50 a.m.

No one addressed the Board.

L. MOTION TO ADJOURN:

Dr. Peller moved to adjourn the meeting at 9:51 a.m. Dr. Mach seconded the motion.

The meeting was adjourned at 9:51 a.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date