

Douglas A. Ducey
Governor

John Chrisagis, O.D.
President

Marla Husz, O.D.
Vice President



Arizona State Board of Optometry
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**FINAL MINUTES FOR MEETING
SEPTEMBER 14, 2018 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.
Darcy Jones, O.D.
Mark Peller, O.D.
George A. Evanoff, Public Member
Vacant, 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 9:08 a.m.

B. ROLL CALL: Ms. Hollins

Members Present: John Chrisagis O.D., President
Marla Husz, O.D., Vice President
Mark Peller, O.D.
Michael Lamb, O.D.
Darcy Jones, O.D.

Members Absent: George A. Evanoff, Public Member

Legal Counsel Present: Mona Baskin, Assistant Attorney General

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

C. PRESIDENT'S REPORT:

Dr. Chrisagis

1. Presentation of Board Service plaque to Brian Mach, O.D.

Dr. Chrisagis and Ms. Whelan presented a Civil Service Award to Dr. Mach for his tenure on the Board. Dr. Mach served the citizens of Arizona for nine years; five of those as Board President.

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

2. Rhett Burgener, O.D. IR#2018154

Dr. Peller summarized the case as this complaint was filed by a dispensing optician who worked for Dr. Burgener at his Kingman office. The office lab was closed down which affected the employee's hours; he has made many accusations about decreased quality of care and hiring inexperienced people as well as the doctor seeing six patients per hour and challenging his professionalism. Dr. Burgener was present by phone to address the Board. He stated that he downsized the practice and closed the lab due to lack of business. He stated that he sees, at most, three patients per hour.

Other staff in Dr. Burgener's office have made allegations against the complainant for his own language and bad behavior. Dr. Burgener stated he talked to the employee about the situation and about his behavior and offered up some solutions to the hours of work but the employee never responded to Dr. Burgener and he has not heard anything from the employee since the discussion.

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 5-0.

3. Laksiri De Mel, O.D. IR#2018155

Dr. Jones summarized the case as the patient states the doctor refused to give him and his children copies of their prescriptions. Dr. DeMel refunded the fees for the contact lens exams and sent the prescriptions in the mail to the patients. Dr. Husz stated that she has an issue with Alex Optical and wanted to know if the Board could refer the complaint to the Board of Dispensing Opticians for review. Ms. Whelan stated it was appropriate to do so and would take that as direction from the Board.

MOTION: Dr. Lamb moved to dismiss the case due to lack of violation of the optometric practice act and refer the complaint to the Board of Dispensing Opticians. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0.

4. Shawn Giese, O.D. IR#2018156

Dr. Peller summarized the case as an there is an issue between Dr. Giese and several of the optical staff at the Sam's Club Optical. Dr. Giese States the two complainants are disgruntled employees who worked for him at the Sam's Club. He further states that K.D. was one of the "worst optical managers he's ever seen in the 12 years he worked there". K.D. makes a lot of references to things that the doctor is not doing such as not releasing prescriptions, falsifying records, not seeing patients for a substantial amount of time making them wait, refusing to do the follow-ups, throwing "temper tantrums" on optical employees and having a personal relationship with one of the opticians.

Dr. Peller stated his biggest concern is Dr. Giese's harassment of the optical staff and that he also had some serious concerns about the allegations of possible unprofessional conduct on behalf of Dr. Giese. It appears that the District Manager of Sam's Club Optical was notified of the issues at the store but there was no follow up included in the complaint. Dr. Peller stated he also had some concern that if Dr. Giese can treat employees like this, are patients being treating the same way. Dr. Chrisagis asked Ms. Baskin if the Board can do anything about what Dr. Giese says about his patients, the profession and the treatment of the staff at the optical shop. Ms. Baskin advised the Board that it most likely falls under employment law due to the fact that the issues in the complaint are staff related and not patient related. She also advised that if the Board wanted to ask any legal questions, they could go into executive session for legal advice.

Doctor Husz moved to go to Executive Session for legal advice and review of confidential records. Dr. Jones seconded the motion.

The Board went in to Executive Session at 9:51 a.m.
The Board reconvened Regular Session at 10:12 a.m.

Dr. Husz asked if the letter of dismissal that goes to the doctor states what the discussion of the meeting was. Ms. Whelan advised that it does not but the discussion will be in the minutes.

Dr. Jones felt that Dr. Giese's response to the Board was abrasive and flippant. Dr. Peller feels the issue at hand at least rises to the level of a Letter of Concern for unprofessional conduct. Dr. Chrisagis stated that that the Board should let Dr. Giese know that there is a potential issue regarding his conduct. Dr. Husz questioned which conduct, as Dr. Giese was in a relationship with a staff member which ended and the complaint was subsequently filed. Dr. Husz referred back to the fact that this may be an employment issue and not a Board issue as there were no patients harmed.

In general, the Board did not appreciate the fact that Dr. Giese appears to have no respect for the profession and used very hostile words to describe his colleagues, the profession and his work place. Dr. Peller recommended a Letter of Concern based on e-mail comments about the profession; about patients being losers and disparaging remarks about other staff during the course of employment at Sam's Club Optical. Ms. Baskin asked the Board if they felt Dr. Giese's comments were made during his work hours versus during his private time where he may have any opinion he wishes to have as they

would need to consider that when reviewing the facts of the case for any violation of the Optometric Practice Act.

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

VOTE: Motion passed 4-1. Dr. Peller voted no.

5. Steven Labroff, O.D. IR#2018157

Dr. Lamb summarized the case as the patient was seen for an eye exam. She had a topography test and stated she was severely affected by the bright light in the machine. Prior to the exam, she expressed that she didn't want pictures taken of her by either the topography or the auto refractor. About three days after the exam, the patient called the office and told them that the light had irritated her eye and that it has been an ongoing problem. She did not return for a follow-up visit as instructed by the doctor and feels that her eyes are still sensitive to light to this day. Dr. Peller noted the patient records stated the patient had no light sensitivity previously however; the patient is concerned that the flash from the topography damaged her eyes. After review of the record there appears to be no issues or damage to the eyes. The doctor responded to the patient and provided her information on the machine.

The patient was present to address the Board. She stated her husband is a witness to her telling the doctor's office that she did not want pictures of the eye. She states that when she went in to the doctor for the exam, she felt her eyes were healthy and did not want the topography, especially since she only went in for an eyeglass prescription and a regular check-up. The patient stated she immediately felt something was wrong after having the topography test as it made her dizzy, she saw a ring of light and she felt anxiety from the test. She stated she now has flashes and her eyes and that the doctor does not care that she may have been injured by the test. The patient felt the doctor/office staff disregarded her explicit request not to have the test.

Dr. Peller asked the patient how the issues are affecting her now. The patient stated she still has sensitivity to bright lights and high sensitivity to any light, it hurts her eyes and she sees glares. She feels her quality of life is not the same since this visit. Dr. Chrisagis stated that this is a regular exam tool used on a regular basis and there is no evidence of any ongoing problems in patients with this type of test. The patient vehemently disagreed.

Dr. Chrisagis stated he had a potential problem with Dr. Labroff's records as it didn't show that a fundus exam was performed and some of the details of the exam may have been missing from the record.

Dr. Lamb explained to the patient how the topography test works and that no photograph was taken; it just puts light on the eye so the doctor can better view the inside of the eye. The patient proceeded to argue with the Board about the test being done altogether when she specifically requested it not be done. Dr. Husz moved to dismiss the complaint due to lack of violation of the optometry practice act stating that she was sorry that the patient

had this experience with the test but that she did not believe the light caused any issues for the patient. The patient asked Dr. Husz how she could possibly know that and that she “knew that the Board was biased and she should not have come here”.

The discussion escalated, at which time, the patient stated she was leaving. The patient then proceeded to sit in the back of the Board Room to listen to the rest of the discussion. Dr. Jones pointed out that if this was an issue with the machine, there would be a high number of people filing complaints about it on a regular basis.

As there was no second to the motion to dismiss, Dr. Husz withdrew her motion. Dr. Lamb stated that he realizes that the patient may be having trouble but there must be another issue not caused by the light that appeared coincidentally when the test was performed. He stated that the patient would need to go get assessed by a different doctor to see what it may be about this patient that made only her react to the machine.

Dr. Chrisagis stated that the fact that the patient has a complaint is important but the Board is charged with determining whether or not there is a violation of the optometric practice act, of which there is no evidence at this time. Dr. Chrisagis felt that a Letter of Concern would be appropriate for Dr. Labroff to work on how he conveys or communicates messages to his patients. Ms. Baskin advised the Board of the legal requirement for a Letter of Concern and that the Board could issue one if they felt it was warranted.

Dr. Chrisagis thanked the complainant for coming to the Board meeting today and bringing this issue to the Boards attention.

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

VOTE: Motion passed 5-0.

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

6. Co, Johnson
7. De Souza, Tyler
8. Janousek, Elliott
9. Keeney, Jordan
10. Lee, Young Hee
11. Leech, Morgan
12. Liu, Jenny
13. Morrison, Caitlin
14. Nirenberg, Jillian
15. Nolander, Leah
16. Sawai, Yumiko
17. Shao, Serena
18. Tran, Yuan
19. Woo, Eric

- 20. Wood, Christopher
- 21. Yousuf, Nimo

MOTION: Dr. Lamb moved to approve items 6-18, 20 and 21 for licensure. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0.

MOTION: Dr. Lamb moved to approve item 19 for licensure, contingent upon negative DPS/FBI report. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0.

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

- 22. Burke, Jeffrey
- 23. Davidson, Sandra
- 24. Bereketab, Elilta

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

VOTE: Motion passed 5-0.

MOTION: Dr. Peller moved to approve item 22 for licensure, contingent upon negative DPS/FBI report. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0.

G. REVIEW, DISCUSSION AND POSSIBLE VOTE ON PHARMACEUTICAL AGENT CERTIFICATE APPLICATION:

- 25. Kevin Russell, O.D.

MOTION: Dr. Husz moved to approve item 25 for Pharmaceutical Agent Certificate. Dr. Lamb seconded the motion.

VOTE: Motion passed 5-0.

H. 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 2019

	Continuing Education	Date	No. of hours requested
a.	“Tackling the Opioid Crisis: A Practical Approach to Understanding And Addressing the Problem”-AZ Chapter of American College of Physicians	8/25/18	3 Regular

b.	"2018 Retina Update"-Associated Retina Consultants	10/3/18	3 Regular
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Item a. was withdrawn from consideration as the application for approval was incomplete.

MOTION: Dr. Lamb moved to approve item b. for three (3) regular hours of continuing education. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0.

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

- 26. March 30, 2018 Special meeting
- 27. June 27, 2018 Regular meeting
- 28. July 13, 2018 Regular meeting

MOTION: Dr. Husz moved to approve item 26 as written. Dr. Lamb seconded the motion.

VOTE: Motion passed 5-0.

MOTION: Dr. Chrisagis moved to approve item 27 as written. Dr. Lamb seconded the motion.

VOTE: Motion passed 4-1. Dr. Husz abstained from the vote due to absence from the June 27, 2018 meeting.

MOTION: Dr. Peller moved to approve item 28 as written. Dr. Jones seconded the motion.

VOTE: Motion passed 5-0.

J. EXECUTIVE DIRECTOR'S REPORT:

- 29. Budget update
- 30. eLicensing-update
- 31. Arizona Dental Board Interagency Service Agreement with Dept. Health Services-update
- 32. Board Members; terms, appointments, reappointments
- 33. Future agenda items
- 34. Future Board meeting dates

Budget update:

As of August 31, 2018, 16.67% of FY elapsed with Board's spending at 17.73%; beginning cash balance of \$287,827.51 and an ending cash balance of \$299,966.47. Prior year administrative adjustments have not been processed as of yet.

eLicensing update:

The eLicensing system continues to be plagued with programming issues which the involved agencies are working on getting fixed. There has been substantial pushback from Deloitte, the eLicensing company contracted to build the system. The Optometry Board is functioning at about 85% accuracy with the system. Some of the issues include: Unsuccessful sign in for first time users, SSN being removed by the user, initial

license expiration dates being calculated incorrectly, user document upload problems, initial license prorated CE being incorrectly calculated and letters not being able to generate or generate incorrectly, as well as the language in the letter being incorrect. The Board staff has worked diligently with Deloitte to remedy these issues which, to date; have been mostly fixed with a few outstanding tickets for the rest of the items. There is a critical need for ongoing support which the agencies continue to negotiate for with Deloitte.

Dental Board update:

The Dental Board established a committee to discuss the request by Governor Ducey as to whether they can continue to function as an independent Board with an Executive Director or if they wanted to go under the Arizona Department of Health Services.

The committee, at its September 5, 2018 meeting met with Emily Rajakovich from the Governor's office of Boards and Commissions and Christina Corieri, Senior Policy Advisor to Governor Ducey to discuss their vision for this Board. They discussed an ISA and the benefits of using a contract to get the Board back on track with ancillary services to ease the administrative burden on staff. The ISA would be a temporary agreement that may be cancelled at any time with a 60-day notice. The Dental Board would be the first board to take on such a contract and relinquish their function as an independent Board. The ISA scenario was discussed with other dental boards nationally to find out from those who have a similar set-up to find out the effectiveness/efficiency such a process.

In concept, there is support of the ISA scenario but not as a permanent resolution. There were some questions about finances by a committee member who wanted to know if the Board would retain its funds. Ms. Rajakovich and Dr. Cara Christ, Director of DHS were present at the meeting to address the Board's concerns. Ms. Rajakovich addressed their Board stating that the partnership with DHS is intended to be innovative in public protection with the oversight of DHS while the Board continues to maintain its independence and autonomy in all of its decisions under the agreement. She stated the Board members will continue to have complete authority and autonomy, continue to vote and take action and have all decision-making authority while in contract under DHS. She reiterated that DHS will not serve as decision maker for any statutory authority assigned to the Board and that no statutes will be changed by DHS.

The ISA with DHS is limited in time and scope negotiated by the Board and is administrative only. The proposed agreement would ensure that the Board materials presented for review by DHS will be prepared and vetted using most rigorous and viable processes available. DHS will use the Arizona Management System which helps public sector leaders focus on leadership customer service, transparency and accountability to the public.

Bottom line; under the agreement, DHS is in the Executive Director role and will not "absorb" the Dental Board. There will be no additional cost to the Board; just outsourcing the processes that are considered laborious or inhibitive to staff properly completing their daily duties.

Board Members; term, appointments, reappointments:

The Governor's office has made progress with reappointments to this Board. Dr. Husz has been replaced by Kelly Moffat, O.D.; the vacant public member remains unfilled at this time.

Future agenda items:

Dr. Chrisagis requested a performance and salary review of the Executive Director; research on CDC course on opioids for possible Continuing Education hours

Future Board meeting dates:

December 14, 2018, February 8, 2019

K. CALL TO PUBLIC:


Dr. Chrisagis made a call to the public at 10:42 a.m. No one addressed the Board at this time.

L. MOTION TO ADJOURN:

Dr. Peller moved to adjourn the meeting at 10:43 a.m. Dr. Husz seconded the motion.

The meeting was adjourned at 10:43 a.m.

END OF MINUTES:



Margaret Whelan, Executive Director



Date