

Janice K. Brewer
Governor

Brian Mach, O.D.
President

Michael Lamb, O.D.
Vice President



Arizona State Board of Optometry
1400 West Washington, Suite 230
Phoenix, AZ 85007

Margaret Whelan
Executive Director

Telephone (602) 542-8155 • Fax (602) 542-3093

**FINAL MINUTES FOR REGULAR MEETING
SEPTEMBER 26, 2014 SCHEDULED TO COMMENCE AT 9:00 A.M.**

Board Members

Brian Mach, O.D., President
Michael Lamb, O.D., Vice-President
Marla Husz, O.D.
John Chrisagis, 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. Mach

Dr. Mach called the meeting to order at 9:00 a.m.

B. ROLL CALL:

Ms. Hollins

Board Members Present: Brian Mach O.D., President
Michael Lamb O.D., Vice President
John Chrisagis, O.D.
Marla Husz, O.D.
Mark Peller, O.D.
Blake Whiteman, Public Member

Board Members Absent: George A. Evanoff, Public Member

Legal Counsel: Mona Baskin, Assistant Attorney General

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

A. PRESIDENT'S REPORT:

Dr. Mach

None.

B. INFORMAL INTERVIEW:

9:00 a.m.

1. C.C. vs. Robert Esposito, O.D.

IR#201429

Allegation: Optometrist failed or refused to correct problem; charged for goods and services not necessary for treatment

This case was continued from the June 20, 2014 and the August 15, 2014 meetings as the Board had requested patient C.C.'s medical records from Dr. Esposito and he had not yet appeared before the board to discuss this matter.

Dr. Mach began the informal interview. Dr. Esposito was present and represented by Steve Perlmutter, M.D., J.D. Dr. Perlmutter's opening comments were that he felt the two main issues in this case were the performance of extended ophthalmoscopy and the sensorimotor exams and their justification based on this patient's condition. The medical record shows Dr. Esposito did perform the tests as he felt they were medically necessary. Dr. Esposito keeps both electronic and handwritten medical records.

Dr. Perlmutter stated that in order to understand the entire record, one must look at both the handwritten and electronic records. Dr. Perlmutter stated he has done much research regarding the importance and justification of extended ophthalmoscopy and sensorimotor testing and that he believes that the patient's diagnoses are directly linked to the need for the additional testing and asked the Board to dismiss this case.

Dr. Lamb asked Dr. Esposito how and why he has two sets of medical records and how that works. Dr. Esposito stated he prefers to draw detailed diagrams and that the electronic medical record ("EMR") does not allow for that and also that he is not proficient in using the EMR. Dr. Peller followed up asking how the handwritten notes get added to the EMR as he did not interpretation of the testing on the EMR. Dr. Peller also inquired as to why Dr. Esposito was performing these tests when the patient's chief complaint was that she wanted new eyeglasses. Dr. Peller also asked Dr. Esposito if he was aware that the billing is driven by the chief complaint which in this case would not justify the need for the two additional tests that were performed. Dr. Esposito stated that upon examination of the patient he noted other conditions of the eye that would require the testing even though that is not what the patient came in for. The patient had a diagnosis of Posterior Vitreous Detachment ("PVD") in 2006, which was the last time the extended ophthalmoscopy was performed. In the records submitted by Dr. Esposito, there was no diagnosis of glaucoma suspect so Fundus photos were not warranted. Dr. Esposito states he models his records after a retinal specialist he works with. Dr. Mach asked if all patients were billed the same. Dr. Esposito stated they were not. Dr. Mach then asked if all Medicare patients are being billed for these extended exams. Dr. Esposito claims he does not know all of the billing codes and thought he was billing for routine eye exams. However the billing codes submitted do not match the chief complaint and no additional the testing would be necessary based on the nature of these complaints.

Patient C.C. was present and addressed the Board with concerns about her vision and the eyeglass prescription. She felt that Dr. Esposito turned her over to a technician to handle the rest of the eye exam.

Dr. Perlmutter made closing remarks saying he validates the Board's concerns regarding the billing and coding and would consider a letter of concern with continuing education at this time; and that he does not feel that Dr. Esposito is trying to deceive patients or the Board. Dr. Esposito also commented that patient C.C.'s issue was a materials issue and also felt that his exam records and coding were correct and appropriate. Dr. Mach stated he felt Dr. Esposito is aggressive in his billing and needs to look at his billing practices.

The Board accepts Allegation #2 (Upon reviewing the medical records for patient C.C., there does not appear to be sufficient evidence of a condition that would justify what tests are being conducted and billed to the patient/patient's insurance) as a finding of fact for violation of A.A.C. R4-21-304 and issues a letter of concern for billing and coding, with a nondisciplinary order for eight hours of continuing education ("CE") in billing and coding, to be completed within 120 days from the date of the order. The CE shall be in addition to regular CE required for renewal. Dr. Esposito must submit the proposed courses to the board for approval prior to taking the additional CE courses.

MOTION: Dr. Chrisagis moved to issue a Letter of Concern for violation of A.A.C. R4-21-304, including a nondisciplinary order for eight (8) hours of additional CE on coding and billing, to be approved by the Board. The additional CE courses must be taken within 120 days from the date of the order. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

C. REVIEW, DISCUSSION AND VOTE ON INVESTIGATIVE REVIEWS/COMPLAINTS:

2. J.C. vs. Phdra Ranjbar Shaba, O.D. IR#201431

Allegation: Optometrist failed or refused to correct problem

This case was continued from the August 15, 2014 Board meeting as the Board requested medical records from patient J.C.'s treating ophthalmologist. The Board received the medical records. After reviewing the records, the Board had questions for Dr. Shaba regarding whether or not patient J. C. self-referred to a specialist or if Dr. Shaba referred him. Dr. Lamb questioned as to whether the retinal tear was there when Dr. Shaba saw patient J.C. or if it showed up when patient went to the ophthalmologist. Dr. Chrisagis had some questions about Dr. Shaba's records as he felt there was a discrepancy in the medical records regarding the time of entry and a diagnosis change. As Dr. Shaba was not present to address the Board, it discussed going to informal interview to require Dr. Shaba to appear to further discuss this matter.

MOTION: Mr. Whiteman moved to go to informal interview to discuss possible violation of A.R.S. §32-1740(A)(11) and A.A.C. R4-21-305 with regards to possibly changing the record after finding out about the retinal tear and a potential discrepancy in the medical records regarding the time of entry and diagnosis change after the fact. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

3. David Anderson, O.D. vs. Kerry Pearson, O.D. IR#201501

Assistant Attorney General Ms. Baskin recused from this discussion due to conflict of interest.

Mr. Whiteman summarized the case as Dr. Anderson feels that Dr. Pearson is poaching patients based on patient recall correspondence that has been sent out from Dr. Pearson's office. However, the correspondence being sent out is from the corporate office and not directly from Dr. Pearson's office. Dr. Pearson informed the Board that he has notified the corporate office asking them to please remove Dr. Anderson's name from the mailings as he is no longer with the company.

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

VOTE: Motion passed 6-0.

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

4. Benitez, Melody
5. Gates, Khrystopher

MOTION: Dr. Lamb moved to approve items 4 and 5 for licensure contingent upon a negative DPS/FBI report. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

6. Kim, Rachel

MOTION: Dr. Peller moved to approve item 6 for licensure. Mr. Whiteman seconded the motion.

VOTE: Motion passed 6-0.

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

7. Drew, Anthony
8. Genos, Jeffrey
9. Stone, Thomas

MOTION: Dr. Lamb moved to approve items 7 thru 9 for licensure. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

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 2015

	Continuing Education	Date	No. of hours requested
a.	AREDS 2 update & Optical Coherence Tonography (BDPEC)	10/15/14	1 Regular
b.	Cerebrospinal Fluid Pressure & Glaucoma (BDPEC)	10/15/14	1 Regular

MOTION: Dr. Peller moved to accept items a. and b. for approval. Dr. Husz seconded the motion. Dr Lamb recused due to conflict of interest.

VOTE: Motion passed 5-0.

G. REVIEW, DISCUSSION AND VOTE ON INCREASING LICENSE AND RENEWAL FEES :

10. History of fees

Ms. Whelan reported that at the last Board meeting, the Board discussed a possible change to the license and renewal fees in rule. The Board wishes to increase the fees by \$50 each. The Board directed staff to research when the fees changed last. Ms. Whelan went to the Senate Research Center to research when the statutes changed regarding these fees. The fees last changed in 1985 from \$200 up to \$400. Fee change history: in 1983 the license fee was \$100 in the even years and \$200 in odd years; the renewal fee was \$150. In 1985, the licensee fee was \$200 in even years and \$400 in odd years; the renewal fee was \$400. In 2001 there was no change in fee however the statute was changed to read “fees as established by the board” and the fees were then set in rule. There has been no change in the dollar amount of the fees since 1985.

MOTION: Dr. Peller moved to approve an increase to license and renewal fees to \$450 each. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

H. REVIEW, DISCUSSION AND POSSIBLE VOTE ON PROPOSED RULES CHANGES FOR SUBMISSION TO THE GOVERNOR’S REGULATORY REVIEW COUNCIL (“GRRC”):

11. Proposed Rules package

Ms. Whelan informed the Board that the Board’s analyst at GRRC performed a courtesy review of the rules and those potential changes were incorporated by staff. The Board reviewed the rules package submitted by Ms. Whelan and discussed a few other minor changes to the package prior to submitting a final package to GRRC. Staff was directed to incorporate the changes and present to the Board for approval at a teleconference meeting in October.

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

12. August 15, 2014 Regular Session Minutes

MOTION: Dr. Lamb moved to approve item 12 as written. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

J. EXECUTIVE DIRECTOR'S REPORT:

13. Budget

14. Board Member Training required pursuant to HB2087

15. Future Board meeting dates

Ms. Whelan reported that the beginning cash balance is \$170,806 with an ending cash balance of \$172,459. Currently, 16.67% of the budget year has elapsed with the Board's spending at 12.37%. Regarding the board member training, that is still in the works. ADOA involved themselves attempting to create a training program for the boards affected by the bill. Collectively, the Boards affected are looking at FARB and CLEAR which are very expensive programs, however, the potential costs were put into the budget for to cover the cost of the perpetual board member training. Future Board meeting dates are an October Board meeting to approve the rules package the next regularly scheduled board meeting after that is Friday, November 21, 2014. That is expected to be the last Board meeting of this year unless business dictates otherwise.

K. CALL TO PUBLIC:

Dr. Mach made a call to the public at 11:35 a.m. No one was present to address the Board.

L. MOTION TO ADJOURN

Dr. Peller moved to adjourn the meeting at 11:36 a.m. Dr. Chrisagis seconded the motion.

The meeting was adjourned at 11:36 a.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date