

Janice K. Brewer
Governor

Brian Mach, O.D.
President

Rick Krug, Public Member
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
APRIL 19, 2013 SCHEDULED TO COMMENCE AT 09:00 A.M.**

Board Members

Brian Mach, O.D., President
Rick Krug, Public Member, Vice-President
Marla Husz, O.D.
John Chrisagis, O.D.
Michael Lamb, O.D.
Mark Peller, O.D.
Vacant, Physician

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
Rick Krug, Public Member, Vice President
John Chrisagis, O.D.
Marla Husz, O.D. – arrived at 9:06 a.m.
Michael Lamb, O.D.
Mark Peller, O.D.

Legal Counsel Present:

Mona Baskin, Assistant Attorney General

Staff Present:

Margaret Whelan, Executive Director
Paula Hollins, Licensing Administrator

C. PRESIDENT'S REPORT:

Dr. Mach

No President's report at this time.

D. INFORMAL INTERVIEW: **9:00 a.m.**

1. R.B. vs. Barry Pasco, O.D. IR#201314

Allegation: Misdiagnosis of glaucoma; overcharging for services/goods

Dr. Pasco and all witnesses wishing to address the Board regarding this complaint were sworn in by a court reporter.

Dr. Mach led the informal interview as the Board had further questions for Dr. Pasco regarding possible issues with patient care, proper diagnosis of glaucoma, recordkeeping and completeness of patient exams/records in accordance with the accepted standard of care and professional conduct. The Board did not have any medical records from Dr. Pasco since he didn't respond to the initial complaint request. Dr. Pasco saw the patient on March 4, 2004, April 12, 2004, May 4, 2004, and August 9, 2004. During the exam, Dr. Pasco diagnosed and treated patient R.B. for glaucoma. Upon further review of the records, it appears that Dr. Pasco saw the patient only three times and that he referred the patient to another optometrist after that. The records show Dr. Pasco may have hastily treated the glaucoma when the patient may not have had glaucoma at all or had "severe enough" glaucoma to treat. On May 4, 2004, the doctor recorded pressures of 17 in the right eye and 21 and 20 in left eye with no Goldman tonometry findings. Dr. Pasco signed the record and transferred the patient to another optometrist on August 9, 2004. Dr. Pasco was present to address the Board. His counsel, Peter M. Wittekind addressed the Board on Dr. Pasco's behalf. Mr. Wittekind stated that Dr. Pasco did not treat this patient for glaucoma and that Dr. Pasco saw the patient for the initial eye exam and two follow up exams after that but was not involved in the continued care of the patient. Mr. Wittekind also stated that Dr. Pasco did not respond to the initial letter of complaint from the Board as Dr. Pasco had changed practices and did not inform the Board of the change. Dr. Husz felt that Dr. Pasco treated the patient properly in the event of irregular pressures and that he followed proper procedure according to the documentation in the record. Dr. Lamb disagreed that the patient was properly treated based on the ocular pressures and visual fields submitted in the records. Dr. Husz felt that Dr. Pasco was aggressive in his treatment plan but did nothing wrong and that CIGNA may have failed the patient in this case.

MOTION: Dr. Peller moved to accept the findings of fact and conclusions of law as Dr. Pasco failed to respond to notice of complaint and failed to give proper notice of change of address within ten (10) days pursuant to A.R.S. §32-1744. Dr. Husz seconded the motion.

VOTE: Motion passed 6-0.

MOTION: Mr. Krug moved to issue a Letter of Concern based on findings of fact and conclusions of law for failing to change practice address as required in statute and subsequently failing to respond to the complaint as a result. Dr. Husz seconded the motion.

VOTE: Motion passed 6-0.

2. J.P. vs. Nainesh Bhakta, O.D.

IR#201316

Allegation: Deceptive advertising; improper fit of contact lenses; issued prescription for trial lenses only without seeing lenses on patient's eyes

Dr. Bhakta and all witnesses wishing to address the Board regarding this complaint were sworn in by a court reporter.

Dr. Mach led the informal interview as the Board had further questions for Dr. Bhakta regarding possible issues with advertising; incorrect contact lens prescription; patient care, billing, recordkeeping and completeness of patient exams/records in accordance with the accepted standard of care and professional conduct. Patient J.P. went into Alex Optical for an eye exam and to purchase contact lenses based on the price advertised in a flyer. The patient was seen by Dr. Bhakta and was told after the exam that the cost was going to be more than originally quoted. The patient then requested a copy of the prescription. Dr. Bhakta released the prescription but wrote "trials only" on it. After several unsuccessful attempts to procure trial lenses from other optical establishments, the patient went back to Dr. Bhakta to get trial lenses and was told by Dr. Bhakta that Alex Optical did not permit trials to be released and that she would have to buy two boxes of contact lenses before she could get the trial lenses. The patient was upset, left the office and went to another optical for another eye exam to get contact lenses. The patient alleges this was a bait and switch as she did not get the services as quoted.

Dr. Bhakta was present to address the Board. He stated that he wasn't able to give trial lenses to a patient without purchase per the policy of Alex Optical. He told the patient because of that policy he had no choice and that his hands were tied and that he could not give her the trial lenses. The Board asked Dr. Bhakta about the fee schedule for the practice. Dr. Bhakta stated it's not his fee schedule but is the fee schedule set by Alex Optical. Dr. Bhakta also wrote the prescription for trials only without seeing the lenses on the patient as the Alex Optical policy does not allow trial lenses to be dispensed without purchase. Dr. Bhakta stated he has no control over his practice as he follows all Alex Optical policies and fee structures. The Board asked Dr. Bhakta why he did not refund the exam fee when services were not rendered. Dr. Bhakta stated he did not refund the money because the patient agreed to the terms of the exam, received a prescription even though it was for trials only and because the patient was rude to him.

MOTION: Mr. Krug moved to accept the findings of fact and conclusions of law as Dr. Bhakta failed to properly bill the patient for services rendered which is a violation of A.R.S. §32-1701(8)(B) based on the fact that Dr. Bhakta did not refund patient J.P. the \$30.00 for the incomplete portion of exam which was paid by the patient. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

MOTION: Mr. Krug moved to issue a Letter of Concern for possible violation of A.R.S. §32-1701(8)(B), charging for services not rendered. The Board acknowledges that Dr. Bhakta recognizes issues at hand and that Dr. Bhakta agrees to voluntarily refund monies to the patient. Dr. Husz seconded the motion.

VOTE: Motion passed 6-0.

3. V.R. vs. Yvonne Lee, O.D.

IR#201320

Allegation: Refused to give copy of prescription; wouldn't release records to patient when requested; improper billing of insurance

Dr. Lee and all witnesses wishing to address the Board regarding this complaint were sworn in by a court reporter.

Dr. Mach led the informal interview as the Board had further questions for Dr. Lee regarding possible issues with patient care, billing, recordkeeping and completeness of patient exams/records in accordance with the accepted standard of care and professional conduct. Patient V.R. saw Dr. Lee for what she thought was a routine eye exam. Dr. Lee's office billed the exam as a medical office visit and billed the visit through the patient's medical insurance. The patient felt that the exam was routine and should have been billed as such since there was a higher deductible on the insurance for a medical exam. Dr. Lee and her counsel Robert S. Chelle were present to address the Board. Mr. Chelle addressed the allegations in the informal interview notice stating that each allegation was unfounded as Dr. Lee complied with all statutes and rules regarding reproduction of records, prescriptions and her exam and billing of this patient. The Board addressed the billing issue with Dr. Lee in an attempt to find out how Dr. Lee determines if the exam is routine or medical. Dr. Lee stated that she contacted insurance representatives on two separate occasions to address the issue of the insurance billing. Both times, the representatives from the insurance company informed Dr. Lee that they believed she billed properly according to their fee/exam structure. Based on the records submitted, the Board felt that Dr. Lee did not meet all the requirements for a "level four" billing. Dr. Lee disagreed stating that the patient was a poor historian and that the findings were based on the exam; thereby causing the patient's insurance to be billed as she had a medical diagnosis of cataracts. The Board questioned the issue of the chief complaint by the patient only being that she needed eyeglasses. Dr. Lee stated that during the exam, a cataract was discovered, thereby changing the exam scheme at that time. The diagnosis included brunescence cataract versus yellowing in the lens.

Dr. Peller moved to go into executive session for legal advice and to review confidential medical records. Dr. Chrisagis seconded the motion. The Board went into executive session at 11:25 a.m.

The Board reconvened regular session at 11:45 a.m.

The Board discussed whether or not they could support a violation of allegation number two (#2-On November 6, 2012, Dr. Lee may have failed to properly diagnose patient V.R.) on the informal interview notice. Dr. Lamb felt strongly that there was a case for this allegation but the rest of the Board did not agree. They felt this was a simply a billing issue that was remedied through the proper channels of the insurance company and that in the end, Dr. Lee's billing for a medical exam based on the findings was appropriate.

MOTION: Dr. Peller moved to dismiss the case due to lack of violation of the optometric practice act; with the recommendation that Dr. Lee do whatever is necessary to learn proper billing procedures regarding medical versus regular vision exam billing. Dr. Husz seconded the motion.

VOTE: Motion passed 6-0.

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

4. M.R. vs. Nainesh Bhakta, O.D. IR#201323

Allegation: Improper correction/fit of eyeglasses or contact lenses; defective or poor quality eyeglasses or contact lenses; optometrist failed or refused to correct problem; refused to refund money

Mr. Krug presented the complaint as patient M.R. feels he was improperly fit with eyeglasses and that the final prescription was incorrect. Dr. Bhakta was present to address the Board. He stated that he checked the eyeglasses to the prescription and the eyeglasses were made correctly. The patient went to another optometrist and received a different prescription. The Board asked Dr. Bhakta about the second prescription. Dr. Bhakta stated that the two prescriptions were very close in diagnosis and power. It appeared that there was a communication issue between the doctor and the patient regarding the patients changing vision and that the original prescription issued was correct.

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

VOTE: Motion passed 6-0.

5. ASBOO vs. Arthur Epstein, O.D. IR#201324

Allegation: Inappropriate advertising/information on professional website

Dr. Mach presented the complaint as the Board received notice that on his website, Dr. Epstein referred to himself as a specialist and that his wife, who is an optometrist, is a “notable glaucoma specialist”. He also has other terms listed on the website referring to himself as a specialist. Dr. Epstein's response to the Board intimates that the website is not open to the public and is meant for other professionals however, the website is available to the public.

MOTION: Dr. Husz moved to issue Letter of Concern for use of the term specialist on the website which is a possible violation of A.A.C. R4-21-302(B). Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

6. A.Z. vs. Steven Weisman, O.D. IR#201325

Allegation: Deceptive advertising statements; optometrist failed or refused to correct problem; will not refund money or deliver eyeglasses

Dr. Lamb presented the complaint as Dr. Weisman performed an exam on patient A.Z., whose insurance required him to use a specific lab for eyeglasses. The patient ordered glasses and waited for over three weeks to receive the glasses. The patient asked the doctor for refund when the glasses did not arrive after four weeks. After further research by Dr. Weisman, the lab admitted to making incorrect glasses at least three or four times which caused a delay in the delivery of the eyeglasses to Dr. Weisman for patient A.Z. Dr. Weisman does not own or control the lab where the glasses were made and could not determine when the glasses would be

arriving. The patient finally received the glasses but stated they are still made wrong and he cannot see out of them.

MOTION: Dr. Lamb 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.

7. ASBOO vs. Ruby Lew, O.D. IR#201326

Allegation: Doctor's name not printed on prescription; incomplete prescription

Dr. Peller presented the complaint as the Board received a copy of a prescription that did not have the doctor's name printed on it. The name of the doctor was a handwritten at the bottom but the printed name of the examining doctor was not on the prescription. Dr. Lew has shown by various prescriptions submitted with her response to the Board that she did write it right underneath her signature. Furthermore she states she took appropriate action to have a printed stamp which gives her full name and credentials for use on the prescription pad.

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 4-2. Dr. Husz and Mr. Krug voted no.

F. REVIEW, DISCUSSION AND POSSIBLE VOTE ON SELF REPORT PURSUANT TO A.R.S. §32-3208; CRIMINAL CHARGES; MANDATORY REPORTING REQUIREMENTS; CIVIL PENALTY:

8. Inning Chen, O.D.

Allegation: Failure to report to the Board in a timely manner

Dr. Mach presented the complaint as Dr. Chen was arrested and found guilty of a misdemeanor in 2010. She retained counsel at that time and states that at the advice of her attorney, she did not self-report as the attorney felt it was not necessary to report under A.R.S. §32-3208. In an unrelated discussion with another optometrist, Dr. Chen became aware that she did need to report this incident to the Board. Dr. Chen has now self-reported however the law requires that a doctor self-report within 10 days from the date of the incident or it constitutes unprofessional conduct.

MOTION: Mr. Krug stated that it is the responsibility of the professional to know the law and moved to issue a Letter of Concern for unprofessional conduct due to failure to report the arrest in a timely manner under the law. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

G. REQUEST FOR WAIVER OF HOURS OR EXTENSION OF TIME TO COMPLETE CONTINUING EDUCATION PURSUANT TO A.A.C. R4-21-212.

9. Nimesh Patel, O.D.

Dr. Patel submitted a request for an extension of time to complete his continuing education due to a personal/medical issue. The board discussed the details of the issue and determined it meets the qualifications for an extension or waiver under A.A.C. R4-21-212.

MOTION: Dr. Lamb moved to grant an extension of time to December 31, 2013 to complete the required continuing education for the renewal application. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

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

- 10. Baker, Megan
- 11. Cheung, Yi Sen
- 12. Koetting, Cecelia
- 13. Lehmann, Peter
- 14. Ranjbar, Phdra
- 15. Reed, James

MOTION: Dr. Chrisagis moved to approve items 10, 11, 12, 13 and 15 for licensure. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

MOTION: Dr. Lamb moved to approve item 14 contingent for licensure upon negative DPS report. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

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

16. Johnson, Carol

MOTION: Dr. Chrisagis moved to approve item 16 for licensure. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

J. 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 2013

	Continuing Education	Date	No. of hours requested
a.	Treatment Options for Keratoconus/ BDPEC	05/01/2013 10/2/13	1 Regular 1 Regular
b.	Are we getting better outcomes combining LenSx & ORA?/ BDPEC	05/01/2013	1 Regular
c.	Bi-Annual Retina Review/ Bausch & Lomb	03/14/2013	2 Regular
d.	A Clinical Approach to Medical Coding & Compliance/Vision Source	05/11/2013	4 Regular
e.	HESLC Spring 2013 CE Event /Horizon Eye Specialists	03/27/2013	3 Regular

MOTION: Dr. Husz moved to approve items a-e. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0. Dr. Lamb recused due to conflict of interest.

K. REVIEW, DISCUSSION AND POSSIBLE VOTE ON USE OF THE TERMS AOS; ABO CERTIFIED; FELLOW; DIPLOMATE AND OTHER QUALIFIED DESIGNATIONS:

The Board discussed the use of educational designations other than O.D. The term "certified" may not be used at this time as it denotes or is understood to be "board certification" and there is no standardized certification in the profession of optometry. The Board is considering accepting certain terms/designations under fellowships and is looking at amending or adding a rule to clarify which terms/designations will be acceptable for use by profession in addition to the designation O.D. At this time, any term containing the word "certification" is not acceptable at this time and will not be acceptable under the new rule. The Board directed staff to research other designations in addition to the required designation of O.D. for use in a new or amended rule.

L. REVIEW, DISCUSSION AND POSSIBLE APPROVAL OF FUTURE BOARD MEETING TO BE HELD IN FLAGSTAFF, ARIZONA:

The Board and discussed the possibility of having a Board meeting in Flagstaff but determined it would be impractical at this time due to financial constraints, travel and time.

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

17. February 15, 2013 Regular Session Minutes

MOTION: Dr. Lamb moved to approve item 17 as written. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

N. EXECUTIVE DIRECTOR'S REPORT:

18. SB1023 and SB1433 update
19. Budget
20. Future Board meeting dates

Ms. Whelan reported that Senate Bill 1023 the Board's continuation was passed in the House and was sent back to the Senate for confirmation. Once it receives confirmation from the Senate, it will then be sent to the Governor's office for signature. Senate Bill 1433, the statutory changes requested by the Board, has passed through the Senate and the House and will go back to the Senate for the third and final reads and then be transmitted to the Governor. The budget is in good shape as we near the end of the fiscal year. We are currently at 75% of fiscal year elapsed with our spending at 72.59%. We are currently upgrading our online payment system for which we are using most of the remainder of our funds. Our beginning cash balance as of last month was \$115,658 with a current cash balance \$124,838. Ms. Whelan informed the Board of her intention to hold the June board meeting as a teleconference meeting on Friday, June 21, 2013 for applications, continuing education and minutes approval only. The next regularly scheduled meeting in person will be Friday, July 19, 2013. Subsequent meetings for the remainder of the year will (tentatively) be September 20 and November 15. No future agenda items were requested.

O. CALL TO PUBLIC:

Dr. Mach made a call to the public at 12:48 p.m. No one addressed the Board.

Dr. Peller moved to adjourn the meeting. Dr. Chrisagis seconded.

The meeting was adjourned at 12:48 p.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date