

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
JANUARY 15, 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 9:01 a.m.

B. ROLL CALL:

Ms. Hollins

Members Present:

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

Board Members Absent:

Blake Whiteman, Public Member

Legal Counsel:

Mona Baskin, Assistant Attorney General

Staff Present:

Margaret Whelan, Executive Director
Paula Hollins, Licensing Administrator

C. PRESIDENT'S REPORT:

Dr. Chrisagis thanked Ms. Whelan and the Board for the good discussion and work on the rules. He informed the Board that a bill has been drafted to consolidate all of the health regulatory boards. It is HB2501; no further information is available at this time.

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

1. David Anderson, O.D. IR#201525

Dr. Lamb summarized the case as a continuation from previous board meetings as the Board was waiting for final court records from Dr. Anderson. The records were received; the case is a misdemeanor but not of moral turpitude under the statutes. Dr. Anderson did not report this misdemeanor in a timely manner pursuant to A.R.S. §32-3208. This matter was resolved by the courts however the Board has continued concerns about Dr. Anderson's temperament. After further discussion of this potential issue, the Board didn't find that Dr. Anderson's ill-mannered behavior filtered into his business.

MOTION: Dr. Husz moved to issue a Letter of Concern for failure to report a misdemeanor of simple assault in a timely manner pursuant to A.R.S. § 32-3208 and for concerns regarding unprofessional conduct pursuant to A.R.S. 32-1701(8)(g)(o) and A.R.S. 32-1743(A)(4). Mr. Evanoff seconded the motion.

VOTE: Motion passed 6-0.

2. Todd Geiler, O.D. IR#201608

Dr. Husz summarized the case as patient saw Dr. Geiler for an eye exam for an eyeglass prescription. The patient had prism in the current glasses but Dr. Geiler gave the patient a prescription where the prism was omitted. The patient was unhappy with the new prescription glasses and wanted the prescription of his old glasses. Dr. Geiler provided a different prescription for the patient that the patient did not fill.

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

Dr. Peller had an issue with the fact that the patient presented for an eye exam but was billed for a medical exam--twice, and would like the Board to request further records from Dr. Geiler for the Board's review.

Dr. Husz withdrew her motion; Dr. Peller withdrew his second to the motion.

The case is continued to the next meeting; staff was directed to obtain further patient records from Dr. Geiler.

3. David Mallavia, O.D. IR#201609

Dr. Mach summarized the case as patient requested a copy of their prescription and a copy was not provided in a timely manner. After review of the records submitted, the Board determined that the prescription was provided in a timely manner pursuant to statutes. There was a secondary issue of the type of advertising that Dr. Mallavia uses for his practice in that he uses the term “optometric physician” which is not an acceptable designation under the current statutes or rules.

MOTION: Dr. Mach moved to issue a Letter of Concern for use of the term “optometric physician”; for false and misleading advertising pursuant to A.A.C. R4-21-302 and A.R.S. §32-3213. Dr. Husz seconded the motion.

VOTE: Motion passed 6-0.

4. Stuart Adams, O.D. IR#201610

Dr. Lamb summarized the case as this is a billing issue; the patient may have misinterpreted or is confused by the Medicare billing. There does not appear to be a violation of the Medicare billing by Dr. Adams. It appears that the patient unfortunately does not have a clear understanding of how Medicare works and assumed that the billing was fraudulent based on how the exam was coded and charged.

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.

5. Leslie Weintraub, O.D. IR#201611

Dr. Lamb summarized the case as Dr. Weintraub was following a patient for treatment of dry eye macular degeneration. She did an initial OCT and another one within two months from the date of the original visit. The patient did her own research on the condition and thought something was wrong with the diagnosis and/or treatment. The patient then went to see Dr. Mark Jaffe who diagnosed a different condition of the eye. Based on the second diagnosis by Dr. Jaffe, the patient felt that Dr. Weintraub made an error and missed a diagnosis. After reviewing the records the Board did not feel that Dr. Weintraub misdiagnosed the macular degeneration but that the patient has two separate conditions.

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 6-0.

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

6. Gish, Anthony
7. Gubler, Boyd

MOTION: Dr. Chrisagis moved to table item 6 for licensure to obtain more information from the applicant.

VOTE: Motion passed 6-0.

MOTION: Dr. Lamb moved to approve item 7 for licensure contingent upon receipt of negative DPS/FBI report. Dr. Peller 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 2016

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

G. REVIEW, DISCUSSION, AND POSSIBLE ACTION ON INCREASING, IN A.R.S. 32-1726, THE REQUIRED NUMBER OF HOURS OF CONTINUING EDUCATION FOR LICENSE RENEWAL:

- 8. Presentation by Brian Mach, O.D.

Dr. Mach presented to the Board that he researched the issue of Continuing Education (“CE”) hours based on prior rules discussions. He contacted ARBO to get numbers of CE requirements for all state optometry boards. He called the boards that were very low or very high to find out why they have the requirement they have. Dr. Mach is recommending the CE hours required for renewal be increased to 50 hours per renewal period. The increase in hours is to quell or satisfy ophthalmology from stating that optometrists don't have enough education for scope expansion. As the rules have just been changed, Dr. Mach would like the Board to consider this issue at its July or September meeting for possible change at that time.

H. REVIEW, DISCUSSION AND POSSIBLE VOTE ON DEFINITION AND USE OF QUALIFIED DESIGNATIONS OTHER THAN O.D.:

- 9. Discussion of use of the terms “Board Certified” or “Board Certification” and review of prior discussion from the April 19, 2013 Board meeting minutes regarding these terms.

The Board discussed the use of the term Board Certified and once again determined that ABO certification is not the same as Board Certified or Board Certification. In order for the Board to allow use of such a term, it would need title protection for the use of certain terms as they relate to optometrists or the practice of optometry. No action was taken at this time.

I. REVIEW, DISCUSSION AND POSSIBLE VOTE ON DISMISSED COMPLAINTS BEING REMOVED FROM THE PUBLIC RECORD:

- 10. Discussion of the State and Agency records retention schedule regarding record and maintenance of complaints on a practitioner.

The Board discussed that there have been requests by licensees to have dismissed complaints removed from their public record. Pursuant to A.R.S. §32-3214 and A.R.S. §39-121, “public records and other matters...shall be open to inspection by any person at all times...”. Therefore, records that are available to the public as complaints may not be expunged from a licensee's record. No other action was taken at this time.

J. BOARD MEMBER TRAINING PRESENTATION AND DISCUSSION:

11. Dean Wright, Arizona Board of Pharmacy
 - a. Controlled Substance Prescription Monitoring Program
12. Mona Baskin, Assistant Attorney General
 - a. Board Complaint Resolution
 - b. Chapter 32; Health Professionals
 - c. Practical Tips for New (and Veteran) Board Members: Conducting More Effective Board Meetings

Mr. Wright came before the board to present interactive training on the controlled substance prescription monitoring program. The duration of the training was approximately 60 minutes with both presentation and questions from the Board.

Ms. Baskin presented interactive training on items a., b. and c. Under item number 12 on this agenda. The duration of the training was approximately 60 minutes with presentation and questions from the Board, with 2-3 hours of review of materials prior to the meeting.

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

13. November 20, 2015 Regular Session Minutes

MOTION: Dr. Lamb moved to approve item 13 as written. Dr. Mach seconded the motion.

VOTE: Motion passed 6-0.

L. EXECUTIVE DIRECTOR'S REPORT:

14. Budget
15. Rules update
16. Future agenda items
17. Future Board meeting dates

Ms. Whelan reported that as of December 31, 2015, 50% of the fiscal year has elapsed with the Board spending at 39.92%. The beginning cash balance was \$225,647 with an ending cash balance of \$227,760. Ms. Whelan reported that the rules were heard before the Governor's Regulatory Review Council ("GRRC") on January 5, 2016 and were unanimously passed by the Council. Future agenda items requested were a discussion on Opternative as it relates to the practice of the profession in Arizona. Future board meeting dates are March and June with the meeting in between if a quorum can be obtained.

M. REVIEW, DISCUSSION AND VOTE ON PERSONNEL ISSUES PERTAINING TO EVALUATION OF EXECUTIVE DIRECTOR:

- 18. Evaluation Forms
- 19. Performance review from April 2014 to June 2015
- 20. Possible salary adjustment

The Board submitted completed evaluation forms for the executive director to Dr. Chrisagis. The Board reviewed and discussed Ms. Whelan's performance from April of 2014 to June 2015. The Board discussed the current salary options for a potential increase. Ms. Whelan provided the Board several options for percentage increases including its potential impact to the budget. The last salary increase for Board staff was August 17, 2012.

MOTION: Dr. Husz moved to increase the Executive Director's salary by 3% of the base salary.
Dr. Lamb seconded the motion

VOTE: Motion passed 6-0.

N. CALL TO PUBLIC:

Dr. Chrisagis made a call to the public at 11:50 a.m. No one addressed the Board.

O. MOTION TO ADJOURN:

Dr. Peller moved to adjourn the meeting at 11:51 a.m. Dr. Chrisagis seconded the motion.

The meeting was adjourned at 11:51 a.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date