

**Douglas A. Ducey**  
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  
JANUARY 16, 2015 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 9:02 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.  
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. Mach**

ARBO's annual meeting is coming up in June; Dr. Mach will not be able to attend; Dr. Lamb and Ms. Whelan will be attending with Dr. Lamb being the representative and voting delegate for Arizona.

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

1. K.K. vs. Nainesh Bhakta, O.D. IR#201503

Allegation: Optometrist failed to sign off on patient files after resigning from the position

Dr. Mach summarized the case as Dr. Bhakta was a contract employee with M.D. 24 Housecall. While employed there, he failed to complete or sign off on numerous medical records. Dr. Peller noticed that in June of 2014 all the charts were signed off on however in July of 2014, numerous the files were blank. Dr. Peller asked Dr. Bhakta if all of the records prior to June 2014 were signed off on. Dr. Bhakta was present to address the Board and stated that the records prior to June 2014 were completed by him.

Dr. Mach invited complainant K. K. forward to address the Board. Dr. Mach asked if there is some reason that she was aware of that the records were not signed by Dr. Bhakta. K.K. stated affirmatively that there were couple reasons. She stated that there is a requirement as part of the contract signed by Dr. Bhakta that the charts are signed off on by the treating physician within 48 hours. Approximately sometime in July of 2014, Dr. Bhakta was forming a competing practice and had stopped signing the records.

Dr. Peller asked what the standard protocol was when a practitioner goes into one of the nursing homes, an exam is scheduled to be performed and the patient isn't available or doesn't show. K.K. stated that the patient record should reflect that the patient is a no-show and the record is still signed off by the practitioner as an acknowledgment of the no-show. K.K. stated that at the time Dr. Bhakta resigned his position, he was the only optometrist employed with the company and was reminded that the company requires a 30-day notice of resignation in order to recruit another optometrist for the purpose of continuity of care. K.K. stated that Dr. Bhakta gave no notice of resignation and left immediately. K.K. stated Dr. Bhakta offered his resignation as of August 1, 2014 but asked to be given access until August 4, 2014 to sign and complete the records. K.K. stated that access to the records was granted until August 4, 2014, however Dr. Bhakta did not complete the records at that time. Dr. Husz asked K.K. what the consequence to her was if the charts were not signed off on by the doctor. K.K. stated that they wouldn't be able to file the claims with the insurance company and that the patient now has incomplete records for the purpose of continuity of care.

Dr. Mach invited Dr. Bhakta forward and asked him if there is some reason that he wouldn't sign off on the charts. Dr. Bhakta stated, "Absolutely" and that it was because he wasn't getting paid for those patients. Dr. Bhakta stated that blank records were for patients that he never saw or patients who had already had an eye exam and didn't require a signature from him. Dr. Bhakta stated it was the medical assistant's job to sign off on the records for those patients. Dr. Mach informed Dr. Bhakta that was not the case; it was the responsibility of Dr. Bhakta the practitioner. Dr. Lamb asked if all the unsigned records were patients who did not require an eye exam according to Dr. Bhakta. Dr. Bhakta stated he did not sign the records because he was not being paid appropriately by the company. Dr. Bhakta feels that there are a lot of "shady things" that MD24 Housecall has been doing. Dr. Mach did not feel that was relevant to the fact that Dr. Bhakta did not sign off on the medical records as required under our law. These are medical records that Dr. Bhakta is responsible for and should treat them accordingly

regardless of whether he is paid or not paid. Dr. Lamb asked Dr. Bhakta if he had access to the records until August 4, 2014 in order to sign complete the records. Dr. Bhakta stated he did not that he was kicked out of the system on August 1, 2014 when he gave his resignation. Dr. Lamb stated that the requirement for signing off on the records was within 48 hours from completion of the eye exam. Based on that, having additional access to the records wouldn't be relevant if Dr. Bhakta had signed off on the records as required within 24 to 48 hours. Dr. Peller emphasized that even if Dr. Bhakta didn't see the patient and it was recorded as a no-show, it's still a medical record and it would have been in Dr. Bhakta's best interest to sign off on the record acknowledging that he understood patient was a no-show. Dr. Bhakta informed the Board that none of their patients were "in jeopardy of anything" so there was no danger to the patient. Dr. Lamb stated that while it's true that none of those patients may have lost their eyesight, if they needed medication or eyeglasses they would not be able to get that based on the fact that Dr. Bhakta did not sign the records. Dr. Peller stated that by not signing the records Dr. Bhakta did not comply with the statutes or rules regarding recordkeeping. The Board felt that Dr. Bhakta not signing the medical records due to how he felt about the company was retaliatory. The Board felt based on this discussion that there is a possible violation of A.A.C. R4-21-305(A)13.

**MOTION:** Dr. Husz moved to issue a Letter of Concern for poor record-keeping pursuant to R4-21-305(A)(13) for not finalizing or signing the record, with an Order for non-disciplinary Continuing Education for an additional six (6) hours of Continuing Education in recordkeeping. Dr. Chrisagis seconded the motion.

Dr. Mach's apprehension with a Letter of Concern is that it's not substantial enough as he feels that Dr. Bhakta compromised patient care out of spite for the company that he was unhappy with during his employ.

**VOTE:** Motion failed 0-6.

**SECOND MOTION:** Dr. Lamb moved to issue a Consent Agreement for violation of A.A.C. R4-21-305(A)(13) and A.R.S. §32-1743(A)(11). The Consent Agreement shall include a probationary period of six (6) months to include an Order to obtain an additional six (6) hours of COPE or Board approved Continuing Education in the area of recordkeeping; and is in addition to the 32 hours required for license renewal. Upon completion of the Order, Dr. Bhakta may ask the Board for termination of probationary period. If the Consent Agreement is not signed by Dr. Bhakta the matter automatically moves to informal interview for further discussion and action. Dr. Chrisagis seconded the motion.

**VOTE:** Motion passed 6-0.

2. A.G. vs. Zuraida Zainalabidin, O.D. IR#201508

**Allegation:** Improper correction/fit of eyeglasses/contact lenses; defective or poor quality eyeglasses/contact lenses; refusal to give copy of prescription

Dr. Peller has recused from discussion of this case. Dr. Chrisagis summarized the case as patient was an employee the practice and was receiving a discounted exam fee. The patient and the doctor had a disagreement regarding the cost of contact lenses and exam portions. The patient

felt that she was charged fees that were not charged in the past being employee of the practice. As the Board does not regulate practice management or the practice of offering discounted eye exams, there appears to be no violation of the statutes or rules.

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

**VOTE:** Motion passed 5-0. Dr. Peller recused.

3. P.R. vs. Lynne Noon, O.D. IR#201509

Allegation: Improper use of CPT code for billing

Dr. Mach summarized the case as this was an issue of coding and billing where that the Occupational Therapist in the office doesn't feel that the optometrist should be using certain codes that are specific to occupational therapists. Dr. Chrisagis questioned whether optometrists could bill using the codes submitted. Dr. Mach read the passage from the 2014 CPT codes; specifically the definition of the 9700X series of codes. P.R. was present to address the Board stating that 97003 is specific to occupational therapists only and may not be used by any other profession. Dr. Husz clarified that P.R. is concerned that Dr. Noon is inappropriately using code 97003. Dr. Lamb stated that that code is not specific to occupational therapists however; P.R. who is occupational therapist felt that that code is for an initial therapy evaluation and as such would not be used by anyone other than an occupational therapist. Dr. Mach stated that the problem with the code is that it doesn't specify scope of practice and is usually interpreted at face value based on the definition provided in the CPT code book and that the insurance companies are using the NPI numbers which identify a doctor as an optometrist and if they felt the CPT code did not fall under the optometry scope of practice it would not be reimbursable code for optometrists. Dr. Husz questioned whether there was a delineation between billing for the code based on the optometry scope of practice meeting the requirements of the code or whether or not Dr. Noon is practicing occupational therapy and subsequently billing for it. Dr. Peller stated if Centers for Medicare and Medicaid Services ("CMS") accepts this code submitted by optometrists and pays it, what purview would the Board have to discuss it further as it is deemed acceptable based on that information.

**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 6-0.

4. P.R. vs. Corona Hoang, O.D. IR#201510

Allegation: Improper use of CPT code for billing

Dr. Peller has recused himself from this discussion. Dr. Mach summarized the case as this is an issue of whether the optometrist is providing the service of occupational therapy related treatment and subsequently billing the code for it. Dr. Hoang was present to address the Board. She stated that P.R. was employed by the practice beginning in September 2014 and has never had any vision rehabilitation jobs. Dr. Husz asked Dr. Hoang if this coding was from a subsequent visit from a low vision therapy exam. Dr. Hoang stated that she saw the patient for a

low vision evaluation. The patient was prescribed bioptic lenses and the low vision exam is coded as a 9900X series. The Board asked what specifically is the doctor doing to be able to bill the 9700X series of codes. Dr. Hoang stated she dispenses the bioptic lenses, trains the patient on how to use the device and determines what they can see when using the lenses. Dr. Hoang tests to see if the vision rehabilitation is successful and determines how many times the patient is going to need to see her for check-up an adjustment of the bioptic lens. The patient is required to do at-home work and training regarding the use of the lens and after 30 days, follows up with the doctor which time the codes are billed.

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

**VOTE:** Motion passed 5-0. Dr. Peller recused.

5. A.C. vs. Erik Ornstein, O.D. IR#201511

**Allegation:** Optometrist failed or refused to correct problem; medication refill

Dr. Lamb summarized the case as a refill of glaucoma medication was requested by the patient however the pharmacy said there were no refills left on the prescription and proceeded to contact Dr. Ornstein for authorization. The pharmacy attempted to contact Dr. Ornstein on several occasions with no response. It appears there were some telephone issues at Dr. Ornstein's office but as soon as he found out there was a prescription waiting for a refill, he immediately approved the refill. Dr. Husz stated that Dr. Ornstein has either a staffing issue or phone issue based on the fact that neither the patient nor the pharmacy could get a hold of the doctor. Dr. Peller asked Dr. Ornstein, who was present to address the Board, if he had received the communication via phone from the pharmacy. Dr. Ornstein stated he had not. Dr. Lamb asked Dr. Ornstein how long he had been seeing patient A.C. Dr. Ornstein responded that he has been a patient for four years. Dr. Lamb asked Dr. Ornstein why his office did not respond the faxed request by the pharmacy. Dr. Ornstein responded that he has new office staff up front and had remedied the problem once he found out there was an issue.

**MOTION:** Dr. Lamb 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.

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

6. Gilbuena, Joseph

**MOTION:** Dr. Lamb moved to approve item 6 for licensure. Dr. Peller seconded the motion.

**VOTE:** Motion passed 6-0.

7. Kho, Jewearly

**MOTION:** Dr. Lamb moved to approve item 7 for licensure contingent upon a negative DPS/FBI report. Dr. Peller seconded the motion.

**VOTE:** Motion passed 6-0.

8. Kitzerow, Alison

**MOTION:** Dr. Lamb moved to approve item 8 for licensure. Dr. Peller seconded the motion.

**VOTE:** Motion passed 6-0.

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

9. Robert McEwan, O.D.

**MOTION:** Dr. Chrisagis moved to approve item 9 for PA Certification. Dr. Lamb seconded the motion.

**VOTE:** Motion passed 6-0.

**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:**

**Fiscal Year 2015**

	<b>Continuing Education</b>	<b>Date</b>	<b>No. of hours requested</b>
a.	Barnet Dulaney Perkins Eye Center, "Rational Approach to choice of Anti-VEGF Wet Macular Degeneration & Ocular Manifestations of Plaquenil Toxicity"	2/18/15	1 Regular
b.	Barnet Dulaney Perkins Eye Center, "Update on Angle Closure and Angle Closure Glaucoma"	1/21/15 2/18/15	1 Regular 1 Regular
c.	Barnet Dulaney Perkins Eye Center, "Nutrition & Eye Disease and Optical Coherence Tomography"	1/21/15	1 Regular
d.	Central Arizona Optometric Society,	2/23/15	3 Regular
e.	Central Arizona Optometric Society,	3/17/15	3 Regular

**MOTION:** Dr. Husz moved to deny items a thru c for approval as no substantial outline was provided and the Board was unable to determine exactly what the course entailed. Dr. Chrisagis seconded the motion.

**VOTE:** Motion passed 5-0. Dr. Lamb recused from review and discussion on items a, b, and c.

**MOTION:** Dr. Husz moved to deny items d and e for approval as no substantial outline was provided and the Board was unable to determine exactly what the course entailed. Dr. Chrisagis seconded the motion.

**VOTE:** Motion passed 4-2. Dr. Mach and Dr. Lamb voted no.

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

10. David Burgett, O.D.

The Board discussed this request and determined that it does not have the authority to grant an exception to and extend the number of correspondence hours as the rule does not allow for such an exemption. However, the Board may be able to grant an exception to the total number of required CE hours should the need arise after the doctor has attempted to complete all of the CE hours required for renewal.

Prior to renewal, if the doctor knows he is short CE credit hours, he may submit to the Board, a request for a waiver of the remaining CE hours for "good cause" pursuant to A.A.C. R4-21-212(B).

**I. REVIEW, DISCUSSION AND POSSIBLE VOTE ON SUPPORT OF POTENTIAL LEGISLATION FROM 1-800 CONTACTS:**

Dr. Mach summarized the legislation as a pricing issue fighting the minimum sales price to include price-fixing. The Board took no position at this time due to the fact that there is no bill and legislature to amend our law.

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

11. November 21, 2014 Regular Session Minutes

**MOTION:** Dr. Lamb moved to approve item 11 as written. Dr. Chrisagis seconded the motion.

**VOTE:** Motion passed 6-0.

**K. EXECUTIVE DIRECTOR'S REPORT:**

12. Budget
13. Proposed Rules package submission
14. State Boards Office rearrangement
15. Future agenda items
16. Future Board meeting dates

Ms. Whelan reported that the beginning cash balance is \$170,806 with an ending cash balance of \$173,364. Currently, 50% of the budget year has elapsed with the Board's spending at 46.68%.

Rules package: The proposed rules package was submitted to the Secretary of State's office with the docket opening published in the November 14, 2014 Administrative Register.

The final rules package was approved by the Board at the October 16, 2014 Board meeting and the Notice of Proposed Rulemaking and was published in the December 19, 2014 Administrative Register. Originally, no oral proceeding was scheduled however, a formal request was made by Karen Walker, O.D. as she did not agree with the proposed changes to the rules and wished to hold an oral proceeding. While the Board discussed, in great detail, the proposed changes to the rules at the open public Board meetings on April 18, 2014, September 26, 2014, October 16, 2014 and November 21, 2014, statute requires that if a formal request is made for an oral proceeding, the Agency

must fulfill the request. Therefore, the Notice of Oral Proceeding was submitted to the Secretary of State office in December 2014 and published in the January 2, 2015 administrative register. The oral proceeding is scheduled for Wednesday, February 18, 2015 at 2 p.m. at 1400 W. Washington St. in Phoenix. However; Governor Ducey has put a moratorium on all rulemaking with a few exceptions. EO2015-01 includes non-appointed agency heads in the exceptions however; it is unclear as to what the definition of an "Agency Head" is and whether Directors of the regulatory boards fall under the exemption. Ms. Baskin has been asked to research this issue to determine how the Board can move forward with its rules package.

The SBO is reorganizing again; merging CSB and SBO to manage the accounting needs of the agencies already in the ISA. New staff has been added and the services should remain the same. The Agency was not notified in advance of any changes nor was it included in the decision but joint office costs are expected to increase again. More on this issue as it becomes available.

Future Board meeting dates are Friday, March 20, 2015 and April 17, 2015.

**L. CALL TO PUBLIC:**

Dr. Mach made a call to the public at 10:45 a.m.

Karen Walker O.D. addressed the Board stating she was here as an observer today and that America is a wonderful place where she can ask questions; and she just wanted to attend the meeting and observe the proceedings. She, along with several other people, looks forward to being able to explain her concerns regarding the Board's proposed rules changes.

**M. MOTION TO ADJOURN:**

Dr. Mach moved to adjourn the meeting at 10:47 a.m. Dr. Chrisagis seconded the motion.

The meeting was adjourned at 10:47 a.m.

**END OF MINUTES:**

---

Margaret Whelan, Executive Director

---

Date