

**Douglas A. Ducey**  
Governor

**John Chrisagis, O.D.**  
President

**Marla Husz, O.D.**  
Vice President



*Arizona State Board of Optometry*

1740 West Adams St., Third Floor  
Phoenix, AZ 85007

**Margaret Whelan**  
Executive Director

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**FINAL MINUTES FOR REGULAR MEETING  
APRIL 20, 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.  
Brian Mach, 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 9:06 a.m.

**B. ROLL CALL:** **Ms. Hollins**

Members Present: John Chrisagis O.D., President  
Mark Peller, O.D.  
Marla Husz, O.D., Vice President  
Michael Lamb, O.D.  
George A. Evanoff, Public Member

Members Absent: Brian Mach, 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. Chrisagis**

None.

**D. INFORMAL INTERVIEWS:**

1. Larry Allgood, O.D. IR#201735

Dr. Chrisagis opened the informal interview and witnesses were sworn in.

Dr. Chrisagis asked Ms. Whelan to provide a summary of the case. Ms. Whelan summarized the case as in or around 2013 and/or 2014, requests were made from 1-800 Contacts for a copy of a prescription for the patients named in the above-referenced matter. Dr. Allgood's initial response to the Board was incomplete. Several other requests by the Board for more information were ignored and there was no documentation in the medical records of a response to a request from 1-800 Contacts. Dr. Allgood may have failed to follow the Fairness to Contact Lens Consumers Act, which is a possible violation of a provision of Chapter 16.

Dr. Chrisagis asked Dr. Allgood if he had any response to the summary presented. Dr. Allgood responded stating that he was hospitalized for a brief time and then switched to electronic medical records. He stated that some requests were sent one and a half years after the prescription expired. Dr. Sonia Chung was present to address the Board on Dr. Allgood's behalf. She stated there were 13 responses, one was not a patient of Dr. Allgood, and one, there was no contact lens prescription. Mr. Keith Call was present to address the Board on behalf of 1-800 Contacts. He stated there were 10 or 11 admitted violations by Dr. Allgood and that there is no dispute that the fax number is correct. He stated there is an issue with verification versus production of actual copy of prescription and the doctor should still respond to 1-800 Contacts to let them know that there is an issue. Dr. Chrisagis asked Mr. Call how 1-800 Contacts can tell if there is a response? Mr. Call stated he would have a copy of a prescription. Mr. Call asked the Board to act appropriately and find violation against Dr. Allgood.

Closing comments from Dr. Allgood: Dr. Allgood stated he complied with any request that was received and that if he did not know about a request, he could not respond.

Dr. Peller stated he sees complete documentation in Dr. Allgood's response to 1-800 Contacts and that the only real question is whether there was a failure to respond Board's request for information for this complaint.

**FINDINGS OF FACT:** (Allegation #1): Dr. Allgood did not initially respond to the requests for information from the Board however, did subsequently provide a response with medical records showing he responded to requests from 1-800 Contacts. Therefore, Dr. Allgood did not fail to respond to the Board or follow the Fairness to Contact Lens Consumers Act.

**CONCLUSIONS OF LAW:** Based on the Findings of Fact, the Board finds no violation of the Optometric Practice Act.

**MOTION:** Dr. Peller moved to accept the Findings of Fact and Conclusions of Law and dismiss the allegation of lack of response to the Board pursuant to A.R.S. §32-1743. Dr. Lamb seconded the motion.

<u>Vote</u>		John Chrisagis President	Mark Peller Optometrist	Marla Husz Optometrist Vice President	Brian Mach Optometrist	Michael Lamb Optometrist	George Evanoff Public Member	Vacant Public Member
YES	5	X	X	X		X	X	
NO	0							
ABSTAIN	0							
ABSENT	1				X			

**VOTE:** Motion passed 5-0.

**SECOND MOTION:** Dr. Peller moved to dismiss the allegation of violation of A.R.S. §32-1744(C). Dr. Husz seconded the motion.

<u>Vote</u>		John Chrisagis President	Mark Peller Optometrist	Marla Husz Optometrist Vice President	Brian Mach Optometrist	Michael Lamb Optometrist	George Evanoff Public Member	Vacant Public Member
YES	5	X	X	X		X	X	
NO	0							
ABSTAIN	0							
ABSENT	1				X			

**VOTE:** Motion passed 5-0.

2. David Anderson, O.D. IR#2017223

Dr. Anderson was formally invited to but did not appear for the Informal Interview. The Board remained in need of further information from Dr. Anderson regarding this case and moved the case to Formal Hearing for further action pursuant to A.R.S. §32-1744(D).

**MOTION:** Dr. Chrisagis moved to go to Formal Hearing with all information contained in the notice of Informal Interview included. Dr. Peller seconded the motion.

**VOTE:** Motion passed 5-0.

3. Sherri Horwitz, O.D. IR#201892

Dr. Chrisagis opened the informal interview and witnesses were sworn in.

Dr. Chrisagis asked Ms. Whelan to provide a summary of the case. Ms. Whelan summarized the case as in or around 2013 and/or 2014, requests were made from 1-800 Contacts for a copy of a prescription for the patients named in the above-referenced

matter. Dr. Horwitz's initial response to the Board was incomplete. Dr. Horwitz did not respond to the requests and there was no documentation in the medical records of a response to the request. Dr. Horwitz may have failed to follow the Fairness to Contact Lens Consumers Act, which is a possible violation of a provision of this chapter.

Dr. Chrisagis asked Dr. Horwitz if she had any response to the summary presented. Dr. Horwitz responded stating that she didn't respond initially as she got bad advice stating that if she "just responded" to the Board; that would be sufficient. She stated she always releases prescriptions when requested. Dr. Husz asked Dr. Horwitz why she didn't provide the records to 1-800 Contacts when requested. She stated that she gets a lot of requests for records that aren't her patients so she didn't think she needed to send them if they weren't her patients. Mr. Keith Call was present to address the board on behalf of 1-800 Contacts. He stated he agrees on the number of patients and the number of complaints and that there was admission this testimony that Dr. Horwitz did not respond to all requests for copies of prescriptions. He stated there were only seven responses to requests for 21 patients and that there is no dispute that the fax number for Dr. Horwitz is correct. Mr. Call stated that it is possible that the requests weren't received however, a response should be sent to 1-800 Contacts even if the patient is not the doctor's so that 1-800 Contacts knows there is an issue.

Closing comments from Dr. Horwitz: She stated again that there was no record of her receiving any requests for records from 1-800 Contacts at that time and that her office is now much more aware to keep everything the patient's record should a request arise.

Dr. Peller felt that this case was exactly like all the other cases the Board has seen previously where there were some requests received and those requests were responded to, while there were others that 1-800 Contacts alleges there were no responses when there may have been no requests. Dr. Chrisagis felt that the vast majority of licensees stated the requests were responded to and based on the Board's previous decisions and to keep consistent, he does not feel there is a lack of compliance with the federal Fairness to Contact Lens Consumers Act ("FCLCA").

**FINDINGS OF FACT:** (Allegation #1): Dr. Horwitz did not initially respond to the requests for information from the Board however, did subsequently provide a response with medical records showing she responded to requests from 1-800 Contacts. Therefore, Dr. Horwitz did not fail to respond to the Board or follow the Fairness to Contact Lens Consumers Act.

**CONCLUSIONS OF LAW:** Based on the Findings of Fact, the Board finds no violation of the Optometric Practice Act.

**MOTION:** Dr. Husz moved to accept the Findings of Fact and Conclusions of Law and dismiss the allegation of lack of response to the Board pursuant to A.R.S. §32-1771. Dr. Peller seconded the motion.

Dr. Husz stated that everything is similar in this case as in others and that if there is a record of the doctor having received the request, there is a response, but how does a

doctor know if they don't receive something? If that's the case, there would be no response and the doctor would not be at fault as they never received the request.

<u>Vote</u>		John Chrisagis President	Mark Peller Optometrist	Marla Husz Optometrist Vice President	Brian Mach Optometrist	Michael Lamb Optometrist	George Evanoff Public Member	Vacant Public Member
YES	4	X	X	X			X	
NO	0							
RECUSED	1					X		
ABSENT	1				X			

**VOTE:** Motion passed 4-0. Dr. Lamb recused.

**SECOND MOTION:** Dr. Husz moved to dismiss the allegation of violation of A.R.S. §32-1744(C) for lack of response to the Board. Dr. Peller seconded the motion.

<u>Vote</u>		John Chrisagis President	Mark Peller Optometrist	Marla Husz Optometrist Vice President	Brian Mach Optometrist	Michael Lamb Optometrist	George Evanoff Public Member	Vacant Public Member
YES	5	X	X	X			X	
NO	0							
RECUSED	1					X		
ABSENT	1				X			

**VOTE:** Motion passed 4-0. Dr. Lamb recused.

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

1. Clark Campbell, O.D. IR#2018147

Dr. Peller summarized the case as when doing the exam, Dr. Campbell got a prescription that was different than what another optometrist previously prescribed. The patient had ordered glasses from Dr. Campbell and told him he couldn't see out the glasses, Dr. Campbell offered to pay for the glasses made from his prescription, but the patient refused.

**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 5-0

2. Vincent Piraino, O.D. IR#2018148

Dr. Peller summarized case as the patient was upset about a \$10 co-pay through his insurance and not being able to combine insurance and a discount offered by the office. Dr. Piraino was present to address the Board stating there were four exams done for the patient and his family and the patient was highly agitated about the costs/payments and raised his voice at the front desk. Dr. Piraino stated he felt there was no reason for him to reverse the benefits or refund the money as the patient and his family had complete eye exams.

**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 5-0

3. Michael Sellers, O.D. IR#2018149

Dr. Husz summarized case as this was a contact lens evaluation and exam. The patient didn't pay as they want to their insurance billed, however, Dr. Sellers does not accept insurance for contact lens fittings and the patient was notified up front that they would be required to pay for services and that the insurance would not be billed.

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

**VOTE:** Motion passed 5-0

4. Danielle Lanzer, O.D. IR#2018150

Dr. Peller summarized case as patient claims there was a \$45 fee assessed to see if eyeglasses were needed and for a copy of the prescription. The patient was present to address the Board stating the doctor insisted the fee was for the prescription. The patient states she signed a statement saying she refused to pay for the prescription. The patient call the FTC who said the doctor cannot charge for a prescription. The patient states she was told by the doctor that she cannot get a PD reading unless she purchases eyeglasses at the office. Dr. Chrisagis explained to the patient that the fee was for the refraction and not for the prescription and was billed as code 92105 in the record.

**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

5. Todd Geiler, O.D. IR#2018151

Dr. Husz summarized case as the patient came in with an outside eyeglass prescription and asked Dr. Geiler to check it. The doctor checked the prescription and ended up changing the prism. After the patient was unhappy as they felt he could not see out of the

eyeglasses with the change made by Dr. Geiler, the doctor refunded the money and sent the original prescription to the patient.

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

**VOTE:** Motion passed 5-0

6. Jacqueline Lucas, O.D. IR#2018152

Dr. Peller summarized case as patient's eyeglasses order was cancelled by Dr. Lucas after patient made a call to their insurance to find out what was charged by Dr. Lucas. The office attempted to reach patient by phone but could not leave a message as voicemail box was full. The patient was subsequently dismissed from practice. The patient was present via phone to address the Board. The patient states he waited for the office to call to let him know the glasses were in but did not hear from the doctor's office for almost three weeks. He called the doctor's office and was told that his insurance cancelled the order for the eyeglasses. The patient states he was told glasses were going to be \$85 but were \$91 when he got the bill. The patient states he attempted to get in touch with Dr. Lucas but was not able to do so. He stated there was a miscommunication between he and the doctor and that his voicemail was full. He states he didn't understand why the doctor was angry with him for checking the prices of the glasses. The patient feels there is an integrity issue with the doctor and how she treats her patients. Dr. Lucas returned \$85 of the \$91 to the patient. Dr. Peller felt there was a communication issue but saw no violation of the Statutes or Rules. Dr. Lamb asked the patient if he received copies of his prescriptions to which the patient replied that he had. Dr. Chrisagis felt Dr. Lucas did not abandon the patient.

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

**VOTE:** Motion passed 5-0

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

7. None

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

8. None

**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 2018**

	<b>Continuing Education</b>	<b>Date</b>	<b>No. of hours requested</b>
a.	Retinal Vein Occlusions-When to Refer and Missed Diagnoses, Assoc. Retina Consultants	4/25/18	1 Regular
b.	Observation/Grand Rounds, Cleveland Eye Clinic	Ongoing until 12/31/18	Up to 8 Regular

**MOTION:** Dr. Lamb moved to approve item a. for continuing education. Dr. Peller seconded the motion.

**VOTE:** Motion passed 5-0.

**MOTION:** Dr. Peller moved to deny item b. due to not meeting the requirements of R4-21-210(A). Dr. Lamb seconded the motion.

**VOTE:** Motion passed 5-0.

**I. REVIEW, DISCUSSION, AND POSSIBLE ACTION ON APPROVAL OF TESTING CENTER FOR PROCTORING OF JURISPRUDENCE EXAM PURSUANT TO A.A.C. R4-21-203(C):**

9. Testing Center at St. Cloud State University, St. Cloud, MN
  - a. <https://www.stcloudstate.edu/online/proctor/default.aspx>
10. Dayton Metro Library Test Proctoring Center, Dayton, OH
  - a. <http://www.daytonmetrolibrary.org/about-us/72-other/2024-proctoring>
11. SUNY College of Optometry-Continuing Professional Education Dept., New York, NY
  - a. [https://www.sunyopt.edu/education/academics/continuing\\_professional\\_education](https://www.sunyopt.edu/education/academics/continuing_professional_education)
12. Ferris State University-Michigan College of Optometry Clinical Education Office, Big Rapids, MI
  - a. <https://ferris.edu/HTMLS/administration/academicaffairs/extendedinternational/elearning/facultyresources/>
13. Santa Fe Community College Testing Center, Santa Fe, NM
  - a. <https://www.sfcc.edu/offices/testing-center/>

**MOTION:** Dr. Husz moved to approve items 9, 11, 12 and 13 for testing centers for proctoring of Jurisprudence exam. Dr. Peller seconded the motion.

**VOTE:** Motion passed 5-0.

**MOTION:** Dr. Husz moved to deny item 10 for testing centers for proctoring of Jurisprudence exam as there is no person proctoring the exam or monitoring the exam area. Dr. Peller seconded the motion.

**VOTE:** Motion passed 5-0.

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

14. October 13, 2017 Regular Session Minutes
15. December 8, 2017 Regular Session Minutes
16. February 9, 2018 Regular Session Minutes
17. March 30, 2018 Special Session Minutes

**MOTION:** Dr. Peller moved to approve items 14 thru 17 as written. Dr. Lamb seconded the motion.

**VOTE:** Motion passed 5-0.

**K. REVIEW, DISCUSSION AND POSSIBLE VOTE ON PROPOSED RULES CHANGES FOR SUBMISSION TO THE GOVERNOR'S REGULATORY REVIEW COUNCIL ("GRRC"):**

18. Rules update for Continuing Education and compliance with SB1001
19. Amend A.A.C. R4-21-101
20. Amend A.A.C. R4-21-209
21. Amend A.A.C. R4-21-211
22. Other minor technical and conforming corrections as needed

Ms. Whelan went over the proposed changes to the rules line by line with the Board. The Board noted changes to grammar and some content to be made prior to submission to the Secretary of State and the Governors Regulatory Review Council. The proposed rules will be posted for review in the Administrative Register at the Secretary of State office.

**MOTION:** Dr. Lamb moved to approve items 18 thru 22 as amended by the discussion. Dr. Peller seconded the motion.

**VOTE:** Motion passed 5-0.

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

23. Budget update
24. eLicensing update
25. Legislation-HB2062, HB2065, HB2129, HB2197, HB2207, HB2238, HB2290, HB2407, HB2411, SB1031, SB1034, SB1184, SB1273, SB1287, SB1451, SB1436, SB1470, SB1517
26. Board Members; terms, appointments, reappointments
27. Future agenda items
28. Future Board meeting dates

Budget update:

As of March 31, 2018, 66.67% of FY elapsed with Board's spending at 56.73%; beginning cash balance of \$265,142 and an ending cash balance of \$265,112.

eLicensing update:

ADOA-ASET is having issues with data uploads/migration. Project is behind schedule for the rollout; no date for now except possibly the end of April.

Legislation:

In the 53rd Legislature - 2nd Regular Session, as of Day 99 of the session, 1,166 bills posted; 264 passed; 226 signed; 5 vetoed; 119 Memorials or Resolutions posted; 22 passed. April 17<sup>th</sup> was day 100 of session.

Board Members update:

There are still no reappointments or new members appointed by the Governor. Contact has been made to the Office of Boards and Commissions to inquire about a time frame for appointment/reappointment. The Boards and Commissions Office is receiving applications and conducting interviews of Board Member candidates.

Future agenda items:

None requested.

Future Board meeting dates:

Future Board meeting dates at this time are June 8, 2018.

**M. CALL TO PUBLIC:**

Dr. Chrisagis made a call to the public at 11:58 a.m.

No one addressed the Board.

**N. MOTION TO ADJOURN:**

Dr. Peller moved to adjourn the meeting at 11:59 a.m. Mr. Evanoff seconded the motion.

The meeting was adjourned at 11:59 a.m.

**END OF MINUTES:**

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Margaret Whelan, Executive Director

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Date