

**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  
JUNE 8, 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 9:05 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 INTERVIEW:**

1. Amy Thomas, O.D. IR#201803

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 this patient was referred by a friend to Dr. Thomas for a “myopia cure”. Testing needed to be done, was started but was halted during examination of the patient who was subsequently charged for the exam. The patient stated she was told there would be no fee and then was charged causing some confusion. The patient stated she didn't know there would be a charge as she thought the first visit was a consultation. She felt Dr. Thomas gave her inaccurate information regarding vision therapy and a treatment plan. There was some concern that Dr. Thomas may be advertising that myopia can be cured and that there was an issue with the standard of care as no refraction was done on this patient. There was also an inquiry by the Board of the initial discussion on October 13, 2017 as to how Dr. Thomas was going to prevent myopia and a child without performing an exam. The case was moved, by Dr. Mach, to go to informal interview to discuss issues with the fact that testing doesn't support the diagnosis, there was no record of an exam, no refraction was done, statements were made regarding curing myopia and incomplete recordkeeping pursuant to statute as well as unprofessional conduct.

Dr. Chrisagis asked Dr. Thomas if she had any response to the summary presented. Dr. Thomas responded stating she would like to establish her background. Dr. Thomas has been working with binocular vision and development for 10 years. She became a fellow in vision development from COVD in 2014 and averages around 30 to 40 patients of this kind per week. She stated she knows her experience with binocular cases and what they look like. This patient is about 8.5 years old; came in for vision screening with technology called “RightEye” program which is an infrared tracker that shows how the eyes move and where they land on a target. Dr. Thomas stated the screening shows that the patient's eyes didn't have a lot of ability to control the gaze or the ability to jump or land on the target as well. The patient was scheduled for visual skills exam which is a 33 point test to figure out exactly what is going on and how to treat it. When the patient did the reading test, his eyes landed in the correct places but he took a very long time to do so and he had to guess answers to the questions. Dr. Thomas stated she could tell there was a lot of stress on his system due to this. The patient appeared to be a basic vision therapy case so she proceeded to another exam room to begin the process. The parents started asking questions as to whether or not this was necessary. Dr. Thomas offered to discuss it with the parents and see if they were comfortable with the process. She stated during the conversation that on three separate occasions, she gave them an “out” to not continue the vision therapy and they did not take it. Dr. Thomas stated she never told them she could cure myopia but that she could help it by getting it down a diopter if they could decrease the stress on the visual system. Dr. Thomas stated she and the parents have completely different philosophies on vision therapy. The parents asked to start the testing protocol and about 5 to 8 minutes later, she had to go get something from another room in the office and when she came back the entire family had left the office and took the questionnaire form with them leaving her with no contact information. Dr. Thomas was finally able to contact the parents through the information that was put into the

“RightEye” screener. Dr. Thomas stated she charted everything she could remember from the exam itself. Dr. Thomas asked the parents where they were noticing the vision problems with their son. They stated that he was unable to see clearly at a distance. Dr. Thomas asked about reading struggles in answering questions and the parents said that he did not have a problem doing that. Dr. Thomas stated the patient's eyes were closer to a five or six-year-old's eyes relating to the tracking. She told the parents he needs to be able to read proficiently without a lot of effort and at his age level. The patient kept rubbing his eyes during the “RightEye” exam and there was a lot of visual stress. Dr. Thomas stated she coded the visit as a 99202 for 20 minutes and 92065 which is the sensorimotor exam. She did not charge the patient's insurance for the visit.

Dr. Husz asked Dr. Thomas if there was one visit or two. Dr. Thomas responded saying there was one visit as she couldn't get the patient to come back. Dr. Husz asked Dr. Thomas about billing for 99202; there was never a comprehensive eye exam? Dr. Thomas responded no. Dr. Chrisagis asked if the exam had gone to completion would there have been an eye exam before or would she have gone straight into therapy. Dr. Thomas stated there's a health check, acuity check and refraction which she would have performed. Dr. Chrisagis asked if the mother wanted a test for herself and she said yes, so Dr. Thomas ran the test on the mother. Dr. Thomas noted that the mother postured behind the target as well. Dr. Chrisagis asked about the referral noted at the bottom of the medical record. Dr. Thomas stated that she was prepared to refer the patient to another vision therapist in town.

Closing comments from Dr. Thomas: Dr. Thomas stated she did not say she was going to cure myopia.

Dr. Lamb stated it appears the patient did not complete the eye exam. Also, the patient is a “straight A student” who is not the usual candidate for vision therapy with a -2.50 Myope. He also felt that it may have been “apples to oranges” comparison as to what the parents thought they were getting versus what the doctor was offering. Dr. Chrisagis felt that this complaint may be about charges and not the actual part of “curing myopia”. Dr. Chrisagis said he saw some problems with vision exam standards and recordkeeping not directly related to this patient. Dr. Peller stated that for the areas that were completed versus the discontinuation of the exam, it should be stated in the record for clarification, i.e., The patient refuses a procedure or exam portion it should be noted that the patient refused it.

**FINDINGS OF FACT:** Dr. Thomas did not keep copious or exemplary records and there may have been miscommunication between the doctor and patient's parents, but the exam itself was proper as was the billing.

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

<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	1					X		
ABSTAIN	0							
ABSENT	1				X			

**MOTION:** Dr. Husz moved to accept the Findings of Fact and Conclusions of Law and dismiss due to lack of violation of the optometric practice act. Dr. Chrisagis seconded the motion.

**VOTE:** Motion passed 4-1. Dr. Lamb voted no.

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

2. Lynn Gabe, O.D. IR#201890

Dr. Peller summarized the case as there were 19 patients for 31 complaints. Dr. Gabe states that he responded to all of the requests from 1-800 Contacts. Thomas Galvin was present on behalf of 1-800 Contacts to address the Board. He stated he shows proof that Dr. Gabe responded to most but not all the requests; the records were not found for one patient and some of the medical records were not on electronic medical records and were not provided. Dr. Gabe responded to Mr. Galvin's comments stating he made every effort to comply with all requests. Dr. Husz asked Dr. Gabe how his office response to request for information or prescriptions. Dr. Gabe stated he responds immediately; if the patient is not his, he informs requestor that the patient is not a patient of his.

**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.

3. Robert Esposito, O.D. IR#2018153

Dr. Peller summarized the case as the patient states that Dr. Esposito advertised himself as a "dyslexia expert". The patient claims that Dr. Esposito stated he was an ophthalmologist, there was no clarity on costs or charges from room to room and that Dr. Esposito was verbally and physically abusive toward him. Dr. Peller stated he looked at the advertisements for Dr. Esposito and it does not state anywhere that he is an ophthalmologist nor does he claim to be a dyslexia expert. Dr. Lamb stated that it appeared the patient was deliberately coercive by being belligerent and disobeying rules in order to interfere with the exam. Attorney Steve Perlmutter, M.D., was present representing Dr. Esposito. He stated that in his practice there are three types of complaints: complaints with merit, complaints without merit and complaints that are so egregious that should never be filed. Dr. Perlmutter states parents brought their eight-

year-old daughter for an eye exam and 15 minutes later, the father began screaming obscenities at Dr. Esposito and walked out of the office, slamming the glass entry door. The staff was concerned for their personal safety. Dr. Perlmutter stated the father left without perpetrating any physical violence and the police were contacted. He stated the father had the “unmitigated gall” to file a complaint against Dr. Esposito, and the complainant is a doctor himself, licensed as a Naturopathic Medical Doctor in Arizona. Dr. Perlmutter stated the information presented by Dr. Esposito, his office staff and his patients demonstrates beyond a doubt that there is no merit to this complaint and respectfully asked the Board to dismiss this complaint. Dr. Peller states he felt that was a meritless case and recommended dismissal.

**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.

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

4. Brown, Todd
5. Eby, Cara
6. Eisley, Corom
7. Escobedo, Elizabeth
8. Finch, Curtis
9. Freese, Kelly
10. Ibrahim, Ahmad
11. VanAusdal, Eric
12. Vass, Kaitlin
13. Wells, Rachel
14. White, Kelsey
15. Wilson, Kyle
16. Zembower, Brian

**MOTION:** Dr. Lamb moved to approve items 4, 5, 7, 8, 9, 10, 12, 13, 14, and 16 for licensure. Dr. Mach seconded the motion.

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

**MOTION:** Dr. Lamb moved to approve items 6, 11, and 15 for licensure contingent upon receipt of a negative DPS/FBI report. Dr. Mach seconded the motion.

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

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

17. Cunegin, Kendra
18. Gilford, Kacey

- 19. Hearn, Elizabeth
- 20. Heene, Julienne
- 21. Kwak, Angela
- 22. Miller, Mary

**MOTION:** Dr. Lamb moved to approve items 20 and 21 for licensure. Dr. Mach seconded the motion.

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

**MOTION:** Dr. Lamb moved to approve items 17, 18, 19, and 22 contingent upon negative DPS report for licensure. Dr. Mach seconded the motion.

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

**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.	Treating Inflammation in DME and Macular Edema following RVO-Associated Retina Consultants	6/11/18	1 Regular

The Board tabled approval of this course to obtain further information such as a detailed syllabus, including such documents as a PowerPoint or detailed outline. The Board also instructed staff to add the term “slides” in the application for continuing education.

**I. ELECTION OF OFFICERS PURSUANT TO THE PROVISIONS OF A.R.S. §32-1703(A):**

**MOTION:** Dr. Lamb moved keep Dr. Chrisagis as President. Dr. Peller seconded the motion.

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

**MOTION:** Dr. Peller moved to keep Dr. Husz as Vice-President until she is replaced as a member, at which time, the Board will elect a new Vice-President. Dr. Lamb seconded the motion.

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

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

- 23. None.

**K. EXECUTIVE DIRECTOR’S REPORT:**

- 24. Budget update

25. eLicensing update
26. Legislation wrap-up
27. Board Members-terms, appointments, reappointments
28. Future agenda items
29. Future Board meeting dates

Budget update:

As of May 31, 2018, 91.67% of FY elapsed with Board's spending at 84.81%; beginning cash balance of \$292,420.66 and an ending cash balance of \$267,317.96.

eLicensing update:

System rolled out on May 12, 2018.

Legislation:

The 53rd Legislature - 2nd Regular Session adjourned sine die on Friday, May 4 at 12:26 a.m. On Day 116, last day of the session, 1,206 bills posted; 369 passed; 285 signed; 16 vetoed; 122 Memorials or Resolutions posted; 28 passed. Following adjournment, the Governor has 10 days to sign or allow a bill to become law without a signature.

As of April 20<sup>th</sup> meeting, bills still not passed or were signed were:

- **HB2062**-permits; licenses; denials; agency hearings      **Status: Vetoed by Gov. on 5/16/18**
- **HB2129**-DHS; radiation regulatory boards; repeal.      **Status: Second read in House only on 1/18**
- **HB2197**- health professionals; workforce data.      **Status: Signed by Gov. on 5/16/18**

Board Members update:

No news since the April 20, 2018 Board meeting.

Future agenda items:

None requested.

Future Board meeting dates:

Future Board meeting dates are July 13, 2018.

**L. CALL TO PUBLIC:**

Dr. Peller moved to adjourn the meeting at 10:39 a.m. Mr. Evanoff seconded the motion.

The meeting was adjourned at 10:39 a.m.

**M. MOTION TO ADJOURN:**

**END OF MINUTES:**

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Margaret Whelan, Executive Director

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Date