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Rick Krug, Public Member
Vice President



Arizona State Board of Optometry
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FINAL MINUTES FOR REGULAR SESSION MEETING: NOVEMBER 18, 2011

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, M.D.

Staff:

Margaret Whelan, Executive Director
Paula Hollins, Licensing Administrator

Legal Counsel:

Camila Alarcon, 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
Marla Husz, O.D.
John Chrisagis, O.D.
Michael Lamb, O.D.
Mark Peller, O.D.

Legal Counsel Present: Anne Froedge, Assistant Attorney General

Staff Present: Margaret Whelan, Executive Director
Paula Hollins, Licensing Administrator

C. PRESIDENT'S REPORT:

No President's report.

D. INFORMAL INTERVIEW:

1. J.D. vs. Nainesh Bhakta, O.D. IR#201123

Allegation: Improper correction/fit of eyeglasses; refusal to give copy of prescription; HIPAA violations regarding patient files; failure to update practice address

Dr. Mach led the informal interview. The issues in this case are that patient felt that contact lenses were not prescribed properly, patient had difficulty locating Dr. Bhakta and the patient's records; there were possible HIPAA violations by the doctor when the patient found boxes of records stored out in the lobby unsecured, available for anyone to view. The Board questioned Dr. Bhakta regarding these allegations. Dr. Bhakta stated that he has had control of his patient records at all times and that there were never any records unsecured for public viewing. Dr. Bhakta stated he gave the patient trial contact lenses of two different (brands) pairs of contact lenses to determine which lenses would work best. Patient chose a lens that was no longer in stock at his office so the doctor offered to order another trial pair of a different brand. Patient did not want to come back to see Dr. Bhakta so he wrote a prescription for the original contact lenses to finish the prescription. Dr. Bhakta said he would not be interested in refunding money to patient but would rather offer the patient two pairs of eyeglasses with the new prescription. Dr. Bhakta admitted he failed to update his address with the board as required in statute.

MOTION: Mr. Krug moved to issue a letter of concern to Dr. Bhakta for failure to update practice address as required in statute. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

2. C.U. vs. Michael Sachen, O.D. IR#201208

Allegation: Doctor acted insensitively towards patient; full eye exam not completed

Dr. Mach led the informal interview. The issues in this case are that a parent brought an autistic child in for eye exam. Patient's mother felt that Dr. Sachen made inappropriate suggestions on how to handle the child and that the doctor was not acting in a professional and caring manner for this special needs situation. The Board noted potential records issues as a complete eye exam was not done. The Board questioned Dr. Sachen regarding these allegations. Dr. Mach asked Dr. Sachen if he read the complaint. Dr. Sachen stated he had. Dr. Mach asked if Dr. Sachen felt it was accurate. Dr. Sachen did not, adding that "none of it was". Dr. Sachen admitted that in an effort to help the situation in the office, he made a comment to the patient's mother about his "dog being autistic". However he states he did not intend the comment to be a comparison of the mother's child to his dog. Dr. Mach inquired about the records of this patient and how they show that the patient had a comprehensive exam however, the records also state the patient was uncooperative and a complete exam was not possible. Also, the medical records do not accurately reflect what exactly happened during the exam of the patient. Visual fields and color vision would have been difficult to do on this patient yet they were marked completed on the exam record. What Dr. Sachen stated in his written response to the Board regarding the eye exam is not substantiated by the actual record submitted. Dr. Sachen feels he did a proper eye exam. Regarding his attitude towards the patient's mother, Dr. Sachen stated he speaks his mind with patients and he's not sorry about that. Mr. Krug felt that Dr. Sachen's written response regarding the treatment of the patient appeared condescending in a non-professional way. Dr. Sachen stated that if the patient's mother had come to him right away after the exam, she would have received an apology on the spot. Mr. Krug inquired as to why patient's mother would have

received an apology then and not now. Dr. Sachen said he didn't want to heighten the situation by confronting her about comments made during the exam. Dr. Mach felt that the Board is more concerned with Dr. Sachen's actions towards the parent than the patient.

MOTION: Mr. Krug moved to accept the finding of Unprofessional conduct pursuant to A.R.S. §32-1701(8)(o), conduct that discredits the profession due to insensitivity of the mother's concerns for care of minor patient. Dr. Chrisagis seconded the motion.

MOTION: Dr. Lamb moved to issue a Letter of Concern for unprofessional conduct regarding facts in this case. Dr. Husz seconded the motion.

AMENDED MOTION: Dr. Husz moved to amend Dr. Lamb's motion to include eight (8) hours of board approved continuing education in addition to the required 32 hours; appropriate to address human sensitivity issues. Mr. Krug seconded the motion.

VOTE: Motion passed 6-0

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

3. R.L. vs. Kenneth Jeffers, O.D. IR#201209

Allegation: Improper correction/fit of eyeglasses

Dr. Chrisagis summarized the facts in the case as patient was seen by Dr. Jeffers and received two eyeglass prescriptions. Patient went to an optical shop and had the prescriptions filled. Patient said he saw fine out of one pair, but not the other pair. He then went back to Dr. Jeffers who gave him another refraction without charge and generated a new prescription. The patient had it filled at the outside optical but still couldn't see. The patient returned to Dr. Jeffers a third time at which time Dr. Jeffers refracted patient again. Patient asked the doctor to take care of the charge for the eyeglasses. Dr. Jeffers told patient that was between him and optical where glasses were made. Dr. Chrisagis feels there is no violation of the optometric practice act and recommends dismissal.

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

VOTE: Motion passed 6-0.

4. W.W. vs. Brian Farquhar, O.D. IR#201210

Allegation: Optometrist failed/refused to correct billing issue

Mr. Krug summarized the facts in the case as the patient alleges that the doctor performed more procedures and exams than was originally requested by patient. Patient feels that she was over-billed for services as they were not requested. Dr. Farquhar was present at the meeting. He stated that he would be required to perform all parts of an exam in order to perform a complete eye exam as required by Arizona statutes and rules and the clinical guidelines of the American Optometric

Association. The patient records reflect proper examination of eyes and no ancillary billing. Mr. Krug recommends dismissal as there is no violation of the optometric practice act.

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

VOTE: Motion passed 6-0.

5. W.N. vs. David Toland, O.D. IR#201211

Allegation: Optometrist failed or refused to correct problem; improper billing/collection of co-pays

Dr. Husz summarized the facts in the case as patient felt that he and his insurance carriers were “double-billed” co-pays. Upon Dr. Husz’s review of the ledgers for the charges and refunds, she feels that the patient’s claim lacks merit. The charges appear to be refraction fees and are not covered by most insurances. Patient W.N. has SCAN long-term care insurance which may be billed as a secondary insurance but a second copay may not be collected by the doctor and a doctor cannot collect residuals from insurance not paid either. It appears, on the paperwork, that was the case however, Dr. Toland claims he is not charging a second copay or collecting residual payment. Dr. Husz recommends dismissal as there is no violation of the optometric practice act.

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

VOTE: Motion passed 6-0.

6. W.N. vs. David Toland, O.D. IR#201212

Allegation: Optometrist failed or refused to correct problem; selling sample to patient

Dr. Husz summarized the facts in the case as patient was seen for an office visit in April 2011. Vitamins and eye drops were recommended by Dr. Toland and purchased by patient. On April 19, 2011, patient returned the medication to the doctor as he thought they were samples that Dr. Toland had sold him. Dr. Toland refunded the money for the medication. Dr. Toland was present at the meeting. He stated that the medications were not samples but actual prescriptions. Dr. Husz recommends dismissal as there is no violation of the optometric practice act.

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

VOTE: Motion passed 6-0.

7. S.C. vs. Robert Pinkert, O.D.

IR#201213

Allegation: Doctor was rude/dismissive; unprofessional

Dr. Peller summarized the facts in the case as patient was seen at BDPEC in June 2011 for cataracts and had eye surgery in both eyes (at different times). S.C. developed post-operative problems in right eye which was defined as central scotoma. Patient saw Dr. Pinkert at that time to follow up on the post-op problems. Dr. Pinkert pursued complaints with visual field OCT with no findings. Dr. Pinkert then referred to retinal specialist Dr. Sipperley for a retinal exam. Dr. Sipperley performed tests on the right eye however, in the documentation, he had written CME in left eye and not the right eye. Pt. was given prednisolone drops to put in right eye (documented left eye). Patient came back a month later with similar complaints for the left eye. At that time, Dr. Pinkert looked at the records from Dr. Sipperley who had documented the left eye so Dr. Pinkert thought that the left eye was already being treated and did not attempt to treat the left eye at that time. BDPEC call log shows communication from patient to Dr. Pinkert regarding issues with left eye. Patient was present at the meeting and addressed the Board. Patient states that when she went to Dr. Pinkert with the issues in the left eye, she felt confused and dismissed as Dr. Pinkert became agitated with her as he thought he was already treating the left eye (due to the documentation error). Patient states Dr. Pinkert left the room while she was still speaking to him and that he was rude to her prior to exiting the room. Dr. Mach feels that this situation revolved around an error in the records and not a blatant patient care issue and recommends dismissal as there is no violation of the optometric practice act.

MOTION: Dr. Husz moved to dismiss complaint for lack of violation of the optometric practice act. Dr. Peller seconded the motion. Motion withdrawn by Dr. Husz.

MOTION: Dr. Chrisagis moved to issue a letter of concern to Dr. Pinkert for unprofessional conduct regarding interaction and attitude towards patient. Motion withdrawn by Dr. Chrisagis.

MOTION: Dr. Peller moved to dismiss the complaint due to lack of violation of the optometric practice act. Mr. Krug seconded the motion.

VOTE: Motion passed 6-0.

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

8. Fernandez-Johnson, Emily
9. Simopoulos, Chris
10. Solen, Aaron

MOTION: Dr. Lamb moved to approve items 8 thru 10 for licensure. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

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

- 11. Indovina, Kelly
- 12. Morgan, Claudia
- 13. Ochiltree, Andrew
- 14. Prchal, Gerard

MOTION: Dr. Chrisagis moved to approve items 11 and 12 for licensure contingent upon negative DPS report. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

MOTION: Dr. Lamb moved to approve item 13 for licensure. Dr. Husz seconded the motion.

VOTE: Motion passed 6-0.

MOTION: Dr. Peller moved to deny item 14 for licensure as Dr. Prchal failed to show “good moral character” due to past findings of dishonesty and exploitation of financial gain from patients that would constitute unprofessional conduct under Arizona State Board of Optometry statutes and rules. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

H. REVIEW, DISCUSSION AND POSSIBLE VOTE ON PENDING LICENSE RENEWAL APPLICATION:

- 15. Myles Jaffe

The Board took no action and directed staff to send denial letter to Dr. Jaffe regarding CE courses, because they are not Board or COPE approved. He may submit courses to COPE for approval before his timeframe expires in order to reinstate his license.

I. 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 2012

	Continuing Education	Date	No. of hours requested
a.	VRATE (Vision Rehabilitation & Assistive Technology Expo)	12/2/11	5 Regular
b.	HESLC Fall CE Event	10/27/11	3 Regular
c.	Eye to Eye with BDPEC	11/1/11	2 Regular

MOTION: Dr. Lamb moved to approve items a. and b. Dr. Husz seconded the motion.

VOTE: Motion passed 6-0.

MOTION: Dr. Husz moved to approve item c. Dr. Chrisagis seconded the motion. Dr. Lamb abstained.

VOTE: Motion passed 5-0. 1 abstention.

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

16. September 16, 2011 Regular Session Minutes

MOTION: Dr. Lamb moved to approve item 16 with amendments. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

K. EXECUTIVE DIRECTOR'S REPORT:

- 17. Budget
- 18. Rules moratorium
- 19. 2012 Board meetings
- 20. Future agenda items

Ms. Whelan reported on the FY12 budget. The Board budget is in its second quarter of the fiscal year having finished almost 50% of the budget year with 43% spending and a cash balance of \$132,371. The rules moratorium now excludes regulatory boards pursuant to Executive Order 2011-05. Therefore, the Board would not need to request an exception to promulgate rules should the need arise. Meetings for the 2012 calendar year remain on the third Friday of the month. No future agenda items were requested.

L. CALL TO PUBLIC:

Dr. Mach made a call to the public at 12:02 p.m. No one addressed the Board.

Dr. Lamb moved to adjourn the meeting at 12:03 p.m. Dr. Mach seconded the motion.

Meeting adjourned at 12:03 p.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date