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**FINAL MINUTES FOR REGULAR MEETING
APRIL 18, 2014 SCHEDULED TO COMMENCE AT 9:00 A.M.**

Board Members

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

Legal Counsel Present:

Mona Baskin, Assistant Attorney General

Staff Present:

Margaret Whelan, Executive Director
Paula Hollins, Licensing Administrator

C. PRESIDENT'S REPORT:

Dr. Mach

Dr. Mach and Ms. Whelan will attend the ARBO Conference in Philadelphia in June. Welcome to new public member, Mr. George Evanoff.

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

1. ASBOO vs. Stephen Stahl, O.D. IR#201417

Dr. Mach summarized the case as this case is a continuation from the previous meeting where the Board is investigating the possibility of failure to diagnose steroid induced glaucoma. A summary of the original discussion can be found in the February 21, 2014 regular meeting minutes. Ms. Whelan reminded the Board that they wanted to continue this discussion with Dr. Stahl regarding the course of events as to why he continued to treat (or not treat) the patient in a certain manner and how the potential diagnosis came about. The issue came up because the patient was on long-term steroid use in the right eye and Dr. Stahl did not take IOPs on this patient. Dr. Mach asked Dr. Stahl if there was a reason that he did not take IOP's. Dr. Stahl responded that he began treating the patient long after the patient had been on steroids however, the first measurements taken by Dr. Stahl were normal so he did not take IOPs on the patient's return visits. Dr. Stahl stated there was no good reason as to why he did not take IOPs on this patient in subsequent visits. Dr. Stahl informed the Board that he has already taken 15 hours of continuing education in glaucoma management as result of the malpractice claim. Dr. Mach asked if the other doctors who treated the patient were involved in the malpractice claim or was it just Dr. Stahl. Dr. Stahl replied he was the only doctor named in the complaint.

MOTION: Dr. Husz moved to offer a Consent Agreement for a Letter of Reprimand for failing to take IOPs in May 2012 on a patient who is using a long-term steroid. The Board accepts the fifteen (15) hours of continuing education ("CE") proactively taken by Dr. Stahl. The CE hours will be in addition to the regular required 32 hours of continuing education required for renewal. The letter of reprimand is to be signed by Dr. Stahl within 30 days from date of service or the matter shall be referred to informal interview. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

2. R.C. vs. Stephen Cohen, O.D. IR#201420

Dr. Lamb summarized the case as R.C. is a long-term patient of Dr. Cohen. Pressures have always been recorded as normal or very low in this patient; 12 with a cup disc ratio of .25 in 2009. In Dr. Cohen's response he said there was a visual screening field done however there is no presence of the visual screening field in the records. In October of 2010 there were similar findings in cup disc ratio with pressures of 13 in both eyes. In November 2011; similar findings; no change in cup disc ratio; pressures of 12 and 13. There is an inconsistency in the timeline of the records submitted. Dr. Peller said that on October 18, 2010 Goldman Tonometry was 18 and cup disc ratio was .25. On January 9, 2011, Dr. Cohen referred the patient out to another optometrist. At that referral exam, the optometrist determined that the patient was strong glaucoma suspect based on the cupping. The cupping at that exam was .7 x 65 in the right eye and .5 by 55 in the left eye. Regarding the medical records submitted; on October 18, 2010, there was handwriting on the electronic medical records where it appeared that Dr. Cohen had written something over the cup disc ratios. The entry is not discernible as the handwriting is covering the numbers of the cup disc ratio. On the examination on February 1, 2011, the pressures were noted as 22 which is the highest they've ever been and the bottom half of the record is missing. There are no assessments or plans. There is no mention of starting this patient on Travitan at any point except in Dr. Cohen's explanation to the Board in response to the complaint. The record is incomplete but the visual fields are present and on September 13, 2011 it is noted that the patient is on Travitan and pressures are

16 and 17. The GDx performed shows significant glaucoma. There's a gap in the timeline with the missing end of the chart showing the patient is on medication when there was no indication of the prescribed medication earlier. In the record on February 7, 2011 pressures are 12; "everything is normal". On June 20, 2011 patient is on Travitan and pressures are 13 and 14. There is not a lot of supporting documentation there and Dr. Lamb was questioning why the records became handwritten and EMR was not used. Dr. Lamb would like to see the start date documented by Dr. Cohen as to when he started the patient Travitan. Dr. Peller states that looks like the patient was seen by Dr. Cohen on October 18, 2010 and then went to another optometrist on January 9, 2011 when pressures measured were 25 and 24 with inferior notching and a much different cup disc ratio. Dr. Lamb stated he felt the GDx in the visual fields are in perfect agreement as far as loss of rim tissue visual field loss superiorly in one eye and inferiorly on the other eye. There is a missing piece of the record that is concerning because the patient with this much visual field loss in a three month timeframe needs further evaluation. The medical record dated February 1, 2011 no assessment or plan which does not meet the standard of care. The GDx date was February 1, 2011 which is the same day and the visual field was soon after. This was all after the other optometrist noted the patient should be checked. The visual field loss is significant; patient was referred to an ophthalmologist who was then referred to a specialist for glaucoma. According to the specialist's records, the damage in the left eye is significant and damage in the right is verging on fixation. Dr. Lamb felt the disease progression does not match the timeline the patient records. Dr. Peller stated that on January 11, 2011 the problem was identified however no mention in the diagnosis of pathology. Dr. Lamb asked Dr. Cohen where the rest the records were and why they were handwritten. Dr. Cohen responded saying that it's possible that it's just the copy and that he has the original record that shows he asked the patient return to the office February 24, 2011 to retake IOPs. Dr. Cohen submitted two pages of a medical record that may not have been included in the response to the Board. Dr. Lamb also noted that the patient's father has a history of glaucoma. Dr. Lamb asked Dr. Cohen who performed the visual field tests on February 1, 2011 that show bilateral fields were found to be full in all quadrants but the record notes they were normal when later the patient lost the top half of their vision. Dr. Cohen said it was a confrontation field but did not recall about the default setting or if he performed that field test. Dr. Cohen did not appear to perform any additional testing for glaucoma suspect even though patient has a family history of glaucoma.

MOTION: Dr. Peller moved to go to informal interview for discussion of unprofessional conduct, possible failure to diagnose glaucoma, standard of care, recordkeeping, and failure to refer to a specialist. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0

3. B.B. vs. Barry Herndon, O.D. IR#201421

Dr. Lamb summarized the case as patient came in to get contact lenses. Dr. Herndon fit patient with spherical lenses but patient insisted on toric lenses. Dr. Herndon informed the patient he does not need toric lenses. Patient left the office and saw another optometrist for second opinion. The second optometrist did not prescribe toric lenses either as he felt the patient did not need them.

MOTION: Dr. Peller 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.

4. David Anderson, O.D. vs. Kerry Pearson, O.D. IR#201424

Prior to discussion Ms. Baskin advised the board that she will not be providing legal advice in this matter due to conflict of interest.

Dr. Mach summarized the case as Dr. Anderson moved to a new practice location. Dr. Pearson took over the location where Dr. Anderson had been practicing. Dr. Anderson expects Dr. Pearson to continue to refer his patients to him at his new practice address. The Board felt that the burden of notification was on Dr. Anderson to let all his patients know of his relocation and his new office information.

MOTION: Dr. Peller 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 VOTE REGARDING COMPLIANCE AND REVISION OR TERMINATION OF PROBATIONARY ORDER:

The Board may hold an executive session to discuss records exempt by law from public inspection pursuant to A.R.S. §38-431.03(A)(2). In addition, the board may hold an executive session to discuss or consult with its attorney and to receive legal advice pursuant to A.R.S. §38-431.03(A)(3).

5. Brenda Binder, O.D.

Ms. Whelan presented the continuing education submitted by Dr. Binder in order to satisfy the terms of probation and Order set forth by the Board at its October 18, 2013 Board meeting.

MOTION: Dr. Lamb moved to accept the continuing education, lift the probationary terms and terminate the Order effective immediately. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0. Dr. Peller recused due to conflict of interest.

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

6. Anspaugh, Melanie

MOTION: Dr. Mach moved to approve item 6 for licensure. Dr. Husz seconded the motion.

VOTE: Motion passed 6-0.

7. Chung, Kenneth

MOTION: Dr. Peller moved to approve item 5 for licensure with a Letter of Concern for failure to report a DUI conviction on the application for licensure. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

8. Lam, Phu Huynh Minh

MOTION: Dr. Mach moved to approve item 8 for licensure. Dr. Husz seconded the motion.

VOTE: Motion passed 6-0.

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

9. Bratt, Richard

MOTION: Dr. Peller moved to approve item 9 for licensure contingent upon a negative FBI/DPS report. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

10. Offoha, Emmanuella

MOTION: Dr. Peller moved to approve item 10 for licensure. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

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 2014

	Continuing Education	Date	No. of hours requested
a.	Advances in Retina-Associated Retina Consultants, LTD.	5/6/14	3 Regular
b.	43 rd Congress of the ISCLS-International Society of Contact Lens Specialist	5/18/14 thru 05/23/14	18 Regular
c.	Refractive Options-Hodges Eye Care and Surgical Center	04/25/14	2 Regular

MOTION: Dr. Husz moved to approve items a thru c. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

I. REVIEW, DISCUSSION AND POSSIBLE VOTE ON ALLOWING THE NBEO TO OFFER/PROCTOR ARIZONA JURISPRUDENCE EXAM AT THE NBEO OFFICES:

Ms. Whelan reminded the Board that at the previous meeting, the Board tabled this item due to the fact that there was a \$25 fee required by the NBEO in order to take the exam. Board Counsel has researched the issue and found there to be no violation of our statutes or rules regarding the NBEO charging the \$25 fee.

The second issue regarding allowing the NBEO to proctor our jurisprudence exam is that our statutes require that there be an active application in order for the applicant to be eligible to sit for the exam. This creates a challenge for the applicants who are new graduates to meet the time frames for the application. Ms. Whelan

asked the Board to consider either changing the time frames in order for applicants to meet the deficiency time frame requirement or allowing them to take the jurisprudence without having active application.

Dr. Mach stated that he would like to remove the application requirements for eligibility to take the jurisprudence exam. Dr. Lamb directed staff to come up with some solutions to a rules change that would allow the Board to accept the NBEO proctoring the jurisprudence exam.

MOTION: Dr. Lamb moved to accept the NBEO offices proctoring the Arizona state jurisprudence exam as long as it complies with current statutes and rules. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

J. REVIEW, DISCUSSION AND POSSIBLE VOTE ON PROPOSED RULES CHANGES FOR SUBMISSION TO THE GOVERNOR’S REGULATORY REVIEW COUNCIL (“GRRC”):

- 11. Rules package

Dr. Chrisagis directed staff to research how many other states require PDs on their prescriptions as he feels that pursuant to previous discussions about removing the PD requirement, in the interest of public protection, the Board may want to keep the requirement to record them on a prescription.

MOTION: Dr. Peller moved to table item 11 until June meeting. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

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

- 12. February 21, 2014 Regular Session Minutes
- 13. March 14, 2014 Regular Session Minutes

MOTION: Dr. Lamb moved to approve items 12 and 13 with amendments submitted by Dr. Husz. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

L. EXECUTIVE DIRECTOR’S REPORT:

- 14. Budget
- 15. Legislation
- 16. Future agenda items

Ms. Whelan reported that the budget is at 75% of fiscal year elapsed our spending 65.78%. The beginning cash balance was \$128,671 with an ending cash balance of \$168,485. The original bill for the scope of practice change failed in the House Health Committee and was essentially finished, however it was heard at the Senate Finance Committee and was passed as a striker under House Bill 2380. The bill went to the Senate Committee of the Whole on April 15, 2014 and is due to go to the Senate floor on April 21, 2014. Future agenda items

requested were annual Board officer elections, NBEO Board Certification process, possible increase to application fees; Dr. Mach would like to discuss that both these fees be the same amount.

M. CALL TO PUBLIC:

Dr. Mach made a call to the public at 10:30 a.m. No one was present to address the Board.

Dr. Mach moved to adjourn the meeting at 10:31 a.m. Dr. Peller seconded the motion. The meeting was adjourned at 10:31 a.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date