

Janice K. Brewer
Governor

Brian Mach, O.D.
President

Rick Krug, Public Member
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 SESSION MEETING: APRIL 20, 2012

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.
L. Markham McHenry, D.O.

Staff:

Margaret Whelan, Executive Director
Paula Hollins, Licensing Administrator

Legal Counsel:

Anne Froedge, 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. Whelan

Board Members Present: Brian Mach O.D., President
Rick Krug, Public Member, Vice President
Marla Husz, O.D.
Michael Lamb, O.D.
Mark Peller, O.D.

Board Members Absent: John Chrisagis, O.D.
L. Markham McHenry, D.O.

Legal Counsel Present: Anne Froedge, Assistant Attorney General

Staff Present: Margaret Whelan, Executive Director

Staff Absent: Paula Hollins, Licensing Administrator

C. PRESIDENT'S REPORT:

Dr. Mach

Dr. Mach asked Dr. Lamb to attend the 2012 ARBO annual conference on behalf of the Board.

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

1. B. O. vs. James Hooper, O.D. IR#201217

Allegation: Doctor refused to give copy of prescription w/o add'l fee; all charges not communicated to patient

Dr. Mach summarized the facts in the case as patient B.O. came in for her annual checkup. She thought the fee for the eye exam would be \$49 but was charged \$79 due to having a refraction and insurance coverage. Patient was unaware that there were additional charges and was not apprised of any changes in charges from the original quote of \$49.00.

MOTION: Dr. Lamb moved to dismiss. Dr. Husz seconded the motion.

VOTE: Motion failed 1-3. Dr. Lamb voted yes. Dr. Peller recused.

SECOND MOTION: Mr. Krug moved to issue a letter of concern as the doctor must ensure the patient is advised of costs prior to a procedure being done and the dollar amount to be charged, with written documentation in the patient file as such. Dr. Husz seconded the motion.

VOTE: Motion passed 3-1 Dr. Lamb voted no. Dr. Peller recused.

2. L.S. vs. John Riley, O.D. IR#201218

Allegation: Optometrist failed/refused to correct problem

Mr. Krug summarized the facts in the case as patient L.S. had an eye exam and eyeglasses were prescribed. Patient said the glasses did not work and wanted a refund. The patient's vision was not fixable with eyeglasses as patient has uncontrolled diabetes.

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

VOTE: Motion passed 5-0.

3. ASBOO vs. Mark Peller, O.D. IR#201219

Allegation: Improper referral of patients to Nationwide Surgical Center

Dr. Mach summarized the facts in the case as the Board received a copy of a memo from Nationwide Vision regarding referral of patients to the in-house surgical center versus outside doctors/surgery centers; and that if optometrists employed by Nationwide Vision referred patients outside the Nationwide Vision surgical center, they would possibly be terminated from employment. The Board

discussed whether this issue would be considered unprofessional conduct due to the fact that the doctors of the Nationwide Vision surgical center may not be the best fit for a patient. Dr. Peller addressed the board stating that there is no “surgery center” it's actually a “medical center”. The reason for memo regarding referrals is because patients were being referred out (for the purpose of remuneration) to do additional testing such as topography or scans etc. and then coming back to Nationwide Vision for treatment/co-management. Dr. Peller stated there are policies and guidelines within the company for referrals. There are also exceptions within the guidelines and procedures that optometrists employed by Nationwide Vision are fully aware of them. Also, if Nationwide Vision is not a provider of the patient's insurance then the patient would be referred outside to a company that takes their insurance.

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

VOTE: Motion passed 4-0. Dr. Peller recused.

4. ASBOO vs. Robert Mitchell, O.D. IR#201221

Allegation: Deceptive advertising (as a specialist)

Ms. Whelan summarized the facts in the case as the term was seen on Dr. Mitchell's website where he practices that he is “board certified” through the National Board of Examiners in Optometry. The language in rule specifically prohibits use of the term or any derivative of the term specialist. Ms. Whelan recommended the Board issue a letter concern for improper use of the term “board certified”.

MOTION: Dr. Husz moved to issue a letter of concern for improper use of the term “board certified”. Mr. Krug seconded the motion.

VOTE: Motion passed 5-0.

5. ASBOO vs. Brian Baird, O.D. IR#201222

Allegation: Deceptive advertising (as a specialist)

Ms. Whelan summarized the facts in the case as the term was seen on Dr. Baird’s website where he practices that he is “board certified” through the National Board of Examiners in Optometry. The language in rule specifically prohibits use of the term or any derivative of the term specialist. Ms. Whelan recommended the Board issue a letter concern for improper use of the term “board certified”.

MOTION: Dr. Husz moved to issue a letter of concern for improper use of the term “board certified”. Mr. Krug seconded the motion.

VOTE: Motion passed 5-0.

6. ASBOO vs. Lynette Lui, O.D. IR#201223

Allegation: Deceptive advertising (as a specialist)

Ms. Whelan summarized the facts in the case as the term was seen on Dr. Lui's website where she practices that she is "board certified" through the National Board of Examiners in Optometry. The language in rule specifically prohibits use of the term or any derivative of the term specialist. Ms. Whelan recommended the Board issue a letter concern for improper use of the term "board certified".

MOTION: Dr. Husz moved to issue a letter of concern for improper use of the term "board certified". Mr. Krug seconded the motion.

VOTE: Motion passed 5-0.

7. ASBOO vs. Jeffrey Horst, O.D. IR#201224

Allegation: Deceptive advertising (as a specialist)

Ms. Whelan summarized the facts in the case as the term was seen on Dr. Horst's website where he practices that he is "board certified" through the National Board of Examiners in Optometry. The language in rule specifically prohibits use of the term or any derivative of the term specialist. Ms. Whelan recommended the Board issue a letter concern for improper use of the term "board certified".

MOTION: Dr. Husz moved to issue a letter of concern for improper use of the term "board certified". Dr. Lamb seconded the motion.

VOTE: Motion passed 5-0.

8. ASBOO vs. Lars Carlson IR#201225

Allegation: Incomplete eyeglass prescription

Dr. Husz summarized the facts in the case as a prescription was submitted to the board without the interpupillary distance on it as required in rule.

MOTION: Dr. Husz moved to issue a letter of concern for the absence of the PD on the prescription. Dr. Lamb seconded the motion.

VOTE: Motion passed 4-1. Dr. Mach voted no.

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

9. Le, Eric

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

VOTE: Motion passed 5-0.

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

10. DeMordaunt, Wade

11. Villar-Romaguera, Yamile

MOTION: Dr. Lamb moved to approve items 10 and 11 for licensure contingent upon receipt of a negative DPS/FBI fingerprint report. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0.

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 2012

	Continuing Education	Date	No. of hours requested
a.	Mini Glaucoma Shunt-Barnet Dulaney Perkins Eye Center	05/24/12	1 Regular
b.	HESLC-Spring 2012	05/03/12	3 Regular

MOTION: Dr. Peller moved to approve item a. Dr. Husz seconded the motion.

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

MOTION: Dr. Peller moved to approve item b. Dr. Lamb seconded the motion.

VOTE: Motion passed 5-0.

H. REVIEW, DISCUSSION AND POSSIBLE APPROVAL OF SUBSTANTIVE POLICY REGARDING CONTACT LENS PRESCRIPTIONS; TIME-FRAME; EXPIRATION:

The Board discussed and does not approve any substantive policy regarding this issue at this time.

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

12. March 16, 2011 Regular Session Minutes

Item 12 was not approved at this time as a clerical error states the agenda was for March 16, 2011 when in fact it is March 16, 2012. The March 16, 2012 minutes will be placed on the June board meeting agenda for approval.

J. EXECUTIVE DIRECTOR'S REPORT:

- 13. Budget
- 14. Legislation
- 15. Sunset review process
- 16. Future agenda items

As of March 31, 2012, 75% of the fiscal year for revenue and spending is elapsed. The current cash balance \$126,727. HB2132 is dead; this was the unfair practices in insurance bill. SB1189 allows a practitioner licensed in any state to practice in Arizona without a license in a free clinic for up to 14 days. The Board may want to take a position on this; possible opposition. SB1224 is in the Senate rules committee. This is the eye care services Bill related to HB2132. Pertaining to State employees, HB 2264 is the ASRS appropriations and cash returned the agency from the 53/47 split that was enacted the last legislative session. The board has received notice of the audit for the Sunset review but no date has been set up yet and no one has contacted the board specifically. I will update the board once I hear from the auditor general's office regarding our sunset review. No future agenda items were requested.

K. CALL TO PUBLIC:

Dr. Mach made a call to the public at 10:36 a.m. No one was present to address the board.

The meeting was adjourned at 10:37 a.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date