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Rick Krug, Public Member
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Arizona State Board of Optometry
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FINAL MINUTES FOR REGULAR SESSION MEETING: SEPTEMBER 16, 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.
Michael Lamb, O.D.
Mark Peller, O.D.

Board Members Absent: John Chrisagis, O.D.

Legal Counsel Present: Camila Alarcon, Assistant Attorney General

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

C. PRESIDENT'S REPORT:

Dr. Mach welcomed newest Board member Dr. Peller.

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

1. ASBOO vs. Aleta Doroudian, O.D. IR#200912

Allegation: Doctor is potentially unsafe to practice as she suffers from psychological stresses and failure to disclose an arrest

Dr. Mach summarized the facts in the case as a review of an ongoing issue with Dr. Doroudian's mental health. The treating psychiatrist has released Dr. Doroudian from care with no follow-up at this time. Dr. Mach recommends dismissal as there is no violation of the optometric practice act.

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

VOTE: Motion passed 5-0.

2. 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

Mr. Krug summarized the facts in the case as patient felt that there were HIPAA violations by the doctor when the patient found boxes of records stored out in the lobby, unsecured, available for anyone to view. There are also patient care issues however, without a response from Dr. Bhakta who did not respond to the complaint and has not updated his address pursuant to statute, Mr. Krug recommends an informal interview to discuss case further and consider possible disciplinary action.

MOTION: Mr. Krug moved to go to informal interview to discuss the matter further with Dr. Bhakta present. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0.

3. R.H. vs. Dawn Cooley-Staley IR#201126

Allegation: Patient paid for more expensive lenses than received

Dr. Husz summarized the facts in the case as R.H. brought in an outside prescription stating he was having trouble with peripheral distortions with his current polycarbonate lenses. The optician suggested a high-index 1.67 lens. The glasses were ordered and the patient states there was still peripheral distortion with the high-index lenses. Dr. Cooley-Staley re-evaluated the prescription at no charge to the patient and suggested patient go back to the poly-aspheric lenses. Patient still was not happy so Dr. Cooley-Staley evaluated the lenses a third time and made straight poly-carbonate lenses. Patient was happy with new lenses but felt he should be refunded the difference in cost between the different lenses. Dr. Cooley-Staley had not charged the patient for the previous upgrades in lenses so there would be no difference in cost to the patient.

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

VOTE: Motion passed 5-0.

4. E.C. vs. Lisa Reyes, O.D. IR#201201

Allegation: Optometrist failed to correct problem; eyesight not corrected

Dr. Lamb summarized the facts in the case as around November 3, 2010, Dr. Reyes attempted to fit patient with contact lenses. Dr. Reyes tried several contact lenses on patient. Patient did not return to Dr. Reyes for follow up on the contact lenses and then asked for the prescription to be transferred to another optical. Dr. Reyes saw patient four times from November 2010 to February 2011 and did not charge for the follow up visits. Pt. ordered six months-worth of contact lenses in April 2011 even though he felt he could not see properly out of the lenses. Patient wanted to have Dr. Reyes re-evaluate him a fifth time without charge. Dr. Reyes informed patient the prescription was the best-corrected vision for the patient and the she would charge the patient for a new exam at this time if he wanted another exam with prescription.

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

VOTE: Motion passed 5-0.

5. J.C. vs. Joseph Reitano, O.D. IR#201202

Allegation: Patient was charged excessive fees

Dr. Husz summarized the facts in the case as patient was seen in May 2010 for comprehensive eye exam. Pt. thought he was just getting pressures checked but since he was a new patient, Dr. Reitano performed a full and complete eye exam. Pt. was charged \$60 for refraction which is a non-covered fee through his insurance. Pt. left Dr. Reitano's office without paying. A few months later, Pt. received bill for services from Dr. Reitano and thought it was for sample of medication received when in fact it was for the eye exam. Patient later received a bill from another treating physician and thought it was from Dr. Reitano. Pt. later determined bill was not from Dr. Reitano and resolved his initial complaint with Dr. Reitano.

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

VOTE: Motion passed 5-0.

6. ASBOO vs. Brian Courtright, O.D. IR#201203

Allegation: Misleading/False Advertising

Dr. Mach summarized the facts in the case as Dr. Courtright had an advertisement where the ad stated he was a "contact lens specialist". The issue regarding the language in the ad is that the

Board does not allow advertising using the term “specialist” or any derivative of the word pursuant to rule.

MOTION: Dr. Mach moved to issue a Letter of Concern for Dr. Courtright holding himself out to be a specialist, which in this case appeared in a marketing advertisement under the term “contact lens specialist” which is potentially misleading to the public. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0.

7. ASBOO vs. Vincent Pennipede, O.D. IR#201204

Allegation: Prescribing medication outside scope of practice

Dr. Mach summarized the facts in the case as The Arizona State Board of Optometry (“Board”) received written notice in Dr. Penneipede’s renewal application of his disciplinary action Case No. 2009-03 from the Board of Examiners in Optometry in the State of Kansas for prescribing a drug outside the scope of practice.

MOTION: Mr. Krug moved to issue a Letter of Concern for a possible violation of A.R.S. §32-1701(6)(a); practicing outside the parameters of the definition of the practice of the profession of optometry. Dr. Lamb seconded the motion.

VOTE: Motion passed 5-0.

8. L.T. vs. Jeffrey Gallen, O.D. IR#201205

Allegation: Practicing outside scope; misdiagnosis

Dr. Lamb summarized the facts in the case as patient presented with vertical imbalance as well as horizontal imbalance. Patient is seen by Dr. Gallen who generates an eyeglasses prescription with appropriate prisms. Patient complained she couldn’t see so Dr. Gallen rechecked the eyeglasses and found it was just the fit and not the prescription that was the problem. The patient then goes to another doctor and gets three different eyeglass prescriptions, each with different prisms. Dr. Lamb did not feel that Dr. Gallen’s initial prescription was incorrect and that he did due diligence in getting the patient in a proper pair of eyeglasses.

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

VOTE: Motion passed 5-0.

9. J.B. vs. Amanda Misinco, O.D. IR#201206

Allegation: Improper fit/correction of eyeglasses or contact lenses.

Dr. Husz summarized the facts in the case as patient J.B. was seen on March 5, 2011 for an eye exam. Pt. has history of retinal detachment in right eye since 2001 and complaints were blurred

vision and distance and near. Dr. Misinco prescribed a diopter less minus in both eyes with approximately same acuity in the glasses. There was one diopter less of horizontal prism prescribed over the previous glasses but with the same vertical prism and it wasn't necessarily split between the two eyes. His cylinder increased over previous glasses since last prescription because of change in prescription. Dr. Misinco originally prescribed poly-carbonate lenses but changed to high index after patient was having trouble. Pt. was then seen by another doctor and had glasses made someplace else. Due to the patient's history of retinal detachment and subjectivity of prisms and the original change in prescription in response to the patient's chief complaint, Dr. Husz feels that the glasses were properly fit and recommends dismissal.

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

VOTE: Motion passed 5-0.

10. J.B. vs. Zuraida Zainalabidin, O.D. IR#201207

Allegation: Charged for medical exam instead of regular comprehensive eye exam

Dr. Mach summarized the facts in the case as patient saw Dr. Zainalabidin in July of 2011 for a routine eye exam. Patient was upset because they were billed for a medical eye exam when they asked for a refill on a pharmaceutical drug. Chief complaint was blurred vision so initial complaint would not justify a medical exam however, later when the patient needed cleaning, care and medicated drops for a prosthetic eye, the exam became a medical exam. Patient signed informed consent for treatment prior to the exam stating "vision plan will only pay for exam if there is nothing wrong with the health of your eye". Therefore, patient was informed there was a possibility for his medical insurance to be billed.

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

VOTE: Motion passed 4-0. Dr. Peller recused from the discussion and vote

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

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

Dr. Mach summarized the facts in the case as patient brought autistic child in for eye exam. Parents spoke to Dr. Sachen prior to exam to let him know how to handle the exam with their child. Patient 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. Dr. Mach felt Dr. Sachen's response to the complaint is concerning as it appears flippant and possibly supportive of the patient's complaint. The parents notified staff in advance when making the appointment that the child would need special attention so this was not or should not have been a "surprise" to the doctor. Dr. Mach also noted potential records issues as a complete eye exam was not done.

MOTION: Dr. Husz moved to go to Informal interview for the purposes of obtaining information from the Dr. Sachen regarding possible unprofessional conduct and recordkeeping. Mr. Krug seconded the motion.

VOTE: Motion passed 4-0. Dr. Peller recused from the discussion and vote.

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

12. Feis, Alicia
13. Harrison, Wendy
14. Ratra, Shilpi
15. Snyder, Elliott
16. Yanof, Laurel

MOTION: Dr. Lamb moved to approve item 12 for licensure contingent upon negative DPS report. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0.

MOTION: Dr. Lamb moved to approve items 13, 14, 15, and 16 for licensure. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0.

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

17. Binder, Brenda
18. Bodley, Jennifer
19. Healy, Sharyn
20. Muncey, Willis
21. Ochiltree, Andrew
22. Smilen, Fredric
23. Sommer, Darry

MOTION: Dr. Lamb moved to approve items 17, 18, 19, 20, 22, and 23 for licensure. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0.

MOTION: Dr. Lamb moved to table item 21 until the application is complete. Dr. Husz 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.	“Uveitis Diagnosis & Treatment in the 21 st Century”	Unknown	1 Regular

MOTION: Dr. Husz moved to deny item a. for incomplete details on CE application (no date listed).
 Dr. Lamb seconded the motion.

VOTE: Motion passed 5-0.

H. REVIEW, DISCUSSION AND POSSIBLE VOTE ON PHARMACEUTICAL AGENT CERTIFICATE APPLICATIONS:

- 24. Clark Campbell, O.D.
- 25. Dale Young, O.D.
- 26. Nicholas Shashati, O.D.

MOTION: Dr. Lamb moved to approve items 24, 25, and 26 for a Pharmaceutical Agent Certificate.
 Dr. Husz seconded the motion.

VOTE: Motion passed 4-0. Dr. Peller recused from the discussion and vote

I. REVIEW, CONSIDERATION AND POSSIBLE APPROVAL OF COURSE REVIEWERS FOR THE COUNCIL ON OPTOMETRIC PRACTITIONER EDUCATION (COPE):

- 27. Letter from the Council on Optometric Practitioner Education

MOTION: Dr. Peller moved to approve Dr. Lindsay Sicks as a COPE reviewer. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0.

J. REVIEW, CONSIDERATION AND POSSIBLE APPROVAL OF USE OF CAROTID INTIMA MEDIA THICKNESS (CIMT) SCREENINGS FOR AT-RISK PATIENTS:

- 28. Letter from Jeffrey Martin, O.D.

The Board reviewed the submitted materials and took no action.

K. REVIEW, DISCUSSION, AND POSSIBLE ACTION ON USE OF TERMS/DESIGNATIONS IN PRACTICE:

- 29. Review and discussion of rules concerning use of, but not limited to, the terms “medical optometrist”, “optometric physician”, “board certified”, “medically certified optometrist”, etc. in practice name.

The Board discussed the various terms and use thereof but took no action at this time as the Board feels it would require a revision in the Arizona Administrative Code. This matter may be considered in the future when the Governor's moratorium on rulemaking is lifted.

L. REVIEW, DISCUSSION AND POSSIBLE VOTE ON "REFRACTION ONLY" EYE EXAMS:

The Board discussed this issue and determined that it would be considered an incomplete eye exam under the clinical guidelines of the American Optometric Association and the current standard of care in the industry.

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

30. July 15, 2011 Regular Session Minutes

MOTION: Dr. Husz moved to approve item 30 as written. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0.

N. EXECUTIVE DIRECTOR'S REPORT:

- 31. Budget
- 32. Remaining 2011 Board meetings
- 33. Future agenda items

Ms. Whelan reported on the FY12 budget. The Board budget is in its first quarter of the fiscal year having finished 25% of the budget year with a cash balance of \$129,937. There is only one remaining Board meeting for the year on Friday, November 18, 2011. No future agenda items were requested.

O. CALL TO PUBLIC:

Dr. Mach made a call to the public at 9:40 a.m. No one addressed the Board.

Dr. Mach moved to adjourn the meeting at 9:41 a.m. Mr. Krug seconded the motion.

Meeting adjourned at 9:41 a.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date