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Brian Mach, O.D.
President

Rick Krug, Public Member
Vice President



Arizona State Board of Optometry
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**FINAL MINUTES FOR REGULAR MEETING
JANUARY 18, 2013 SCHEDULED TO COMMENCE AT 09:00 A.M.**

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, Physician

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
Rick Krug, Public Member, Vice President
John Chrisagis, O.D. – arrived at 9:03 a.m.
Marla Husz, O.D.
Michael Lamb, O.D.
Mark Peller, 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. Mach

None

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

1. R.B. vs. Barry Pasco, O.D. IR#201314

Allegation: Misdiagnosis of glaucoma; overcharging for services/goods

Dr. Husz presented the complaint from patient R.B., however, the Board had no response and no medical records from Dr. Pasco. The board directed staff to subpoena medical records from Dr. Pasco and any other treating physician to discuss at the next regular meeting.

MOTION: Dr. Husz moved to subpoena records and send case to informal interview for the purposes of acquiring further information from the doctor and to review records and co-management of patient R.B. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

2. T.M. vs. Jerry Burger, O.D. IR#201315

Allegation: Possible misdiagnosis of condition in left eye; lack of communication regarding care

Dr. Peller summarized the facts in the case as patient T.M. saw Dr. Burger on October 31, 2012. After reviewing the records submitted, it appears that Dr. Burger may not have diagnosed a condition of the optic nerve in the left eye but referred patient T.M. to an ophthalmologist for follow up on his concerns. Dr. Burger also wanted to dilate the patient but the patient refused and there was no further discussion of the issue. The board felt it was important for Dr. Burger to communicate the importance of dilation in this case as the patient has a family history of eye disease. Even though Dr. Burger made a referral to an ophthalmologist, there was a serious miscommunication regarding treatment of patient T.M. Patient T.M. was present to address the Board. She stated she did not know that it was important to be dilated and that Dr. Burger did not push the issue. Dr. Burger was present and addressed the Board. He stated that he did try to dilate the patient and when she refused he just let it go. Patient T.M. did not sign a consent/acknowledgement form for the dilation.

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

VOTE: Motion fails 1 to 5. Dr.'s Mach, Chrisagis, Lamb, Peller and Mr. Krug voted no.

SECOND MOTION: Dr. Peller moved to issue a Letter of Concern for failure to maintain accurate and complete records. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

3. J.P. vs. Nainesh Bhakta, O.D. IR#201316

Allegation: Deceptive advertising; improper fit of contact lenses; issued prescription for “trial lenses only” without seeing any lenses on patient's eyes.

Mr. Krug summarized the facts in the case as patient J.P. made an appointment based on an advertisement for services. Patient J.P. saw Dr. Bhakta for contact lenses. Patient J.P. found out after the exam that the advertised price for services was not what she received. Patient J.P. also felt that the prescription was incorrect but wanted trial contact lenses. The optical refused to give trials without a purchase. Patient J.P. was charged more money than what was on the advertisement. Dr. Bhakta did not put any contact lenses on patient J.P. to check the fit nor did he provide lenses for the trial prescription that he gave her.

MOTION: Mr. Krug moved to send case to informal interview for the purpose of acquiring further information from Dr. Bhakta regarding the advertisement for services and also to discuss the contact lens fitting and subsequent prescription for trial lenses. Dr. Lamb seconded the motion.

VOTE: Motion passed 5-0. Dr. Peller recused.

4. D.P. vs. Guy McDougal, O.D. IR#201317

Allegation: Patient had routine eye exam but was charged medical exam fee and insurance was billed

Dr. Chrisagis summarized the facts in the case as patient D.P. came in to see Dr. McDougal for a routine eye exam and to look at purchasing eyeglasses. Patient D.P. did not purchase eyeglasses from Dr. McDougal and subsequently went to another optical to look at glasses. While at the second optical establishment, patient D.P. was told that she couldn't get any glasses using her insurance because her benefits were not authorized for further use. Patient D.P. went back to Dr. McDougal's office and found out that the insurance was billed. Dr. McDougal's office reverted back the unused insurance and patient D.P. eventually got the release of benefits to fill her prescription. Patient D.B. states that there was a HIPAA violation as well as a violation of using her benefits without her permission. Dr. Chrisagis felt that it was standard procedure for the doctor to pull the insurance for patient D.P. to see with the coverage is and to prepare for use for payment and purchase of goods and that after the patient leaves the office, the insurance would have been reinstated if it was not used. Dr. McDougal was present but did not address the Board.

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.

5. J.S. vs. Siena, O.D.

IR#201318

Allegation: Deceptive advertising; incorrect diagnosis/fit of eyeglasses and contact lenses

Dr. Mach summarized the facts in the case patient felt that Dr. Siena “created” an incorrect prescription which he feels was done in order to charge more money for eyeglasses. Patient J.S wears bifocal lenses and ordered glasses online, but claimed he could not see properly out of the lenses and that Dr. Siena was responsible for this problem. After reviewing the records Dr. Mach felt that the prescription was correct based on patient J.S.’s direction to Dr. Siena during the exam.

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

VOTE: Motion passed 6-0.

6. A.S. vs. Siena, O.D.

IR#201319

Allegation: Deceptive advertising; incorrect diagnosis/fit of eyeglasses and contact lenses; optometrist failed or refused to correct problem

Dr. Mach summarized the facts in the case as patient A.S. received reading glasses and a monovision contact lens prescription. Dr. Siena stated in her response to the Board that the prescription A.S. received was appropriate for the vision exam performed. In reviewing the records submitted, Dr. Mach stated that the prescription appeared to be correct and that Dr. Siena had given the proper prescription for the reading glasses and contact lenses to patient A.S. In addition to the complaint to the Board, the Arizona Department of Health and Human Services (ADHHS) received a complaint and grievance from patients J.S. and A.S. regarding this matter. ADHHS investigated and subsequently closed with no findings.

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

VOTE: Motion passed 6-0.

7. V.R. vs. Yvonne Lee, O.D.

IR#201320

Allegation: Refused to give copy of prescription; wouldn't release records to patient when requested; misdiagnosis/fraudulent billing

Dr. Lamb summarized the facts in the case as patient V.R. came in for a routine eye exam. Dr. Lee examined patient V.R. and diagnosed beginning cataracts and subsequently documented “blurred vision” and billed the patient’s medical insurance. Patient V.R. requested records from Dr. Lee and had not received records as requested. The patient also felt that the exam was improperly billed to medical insurance.

MOTION: Dr. Husz moved to send the case to informal interview for the purpose of discussing Dr. Lee's diagnosis of cataracts, potential billing issues and why she may not have responded to the records request by patient V.R. Dr. Lamb seconded the motion.

VOTE: Motion passed 6-0.

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

None

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

8. Artman, Dennis

MOTION: Dr. Lamb moved to approve item 8 for licensure contingent upon receipt of a negative FBI/DPS report. Dr. Peller seconded the motion.

VOTE: Motion passed 6-0.

9. Baker, Joshua

10. Habener, Paul

MOTION: Dr. Lamb moved to approve items 9 and 10 for licensure. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

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 2013

	Continuing Education	Date	No. of hours requested
a.	New & Emerging Treatments and Advances in Retina	12/14/12	1 Regular
b.	Bi-Annual Retina Review	12/13/12	2 Regular

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

VOTE: Motion passed 6-0.

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

11. November 16, 2012 Regular Session Minutes

MOTION: Dr. Peller moved to approve item 11 as written. Dr. Chrisagis seconded the motion.

VOTE: Motion passed 6-0.

I. EXECUTIVE DIRECTOR'S REPORT:

12. Budget
13. Sunset review/proposed amendments to statutes
14. 2013 Board meetings
15. Future agenda items

Ms. Whelan reported that the budget remains in good shape. The Board is currently at 50% of the budget year with expenditures at only 47.82 %. The ending cash balance as of December 31, 2012 is \$107,790. The Board's continuation bill with proposed amendments to our current statutes is ready to go for the session. Once the bill number is assigned I will distribute to the board members and the Association so that we can follow the progress and make appearances before committee as necessary. One future agenda item was requested. Dr. Mach would like to have a discussion of the terms "board certification", "Diplomate" and "Fellow". What types of additional education is required for each of these and which terms of the board able to accept under its current statutes.

J. CALL TO PUBLIC:

Dr. Mach made a call to the public at 10:28 a.m. No one addressed the Board.

Dr. Peller moved to adjourn the meeting. Dr. Mach seconded. The meeting was adjourned at 10:28 a.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date