

Janice K. Brewer
Governor

Brian Mach, O.D.
President

Michael Lamb, O.D.
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 MEETING
JUNE 20, 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.
Michael Lamb, O.D.
George A. Evanoff, Public Member

Board Members Absent: John Chrisagis, 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

Dr. Mach deferred to Dr. Lilien Vogl to present the Sight Conservation award to the Board's Executive Director, Margaret Whelan. This award is given to a person the AzOA Board of Directors recognizes as an individual who has made a significant contribution to the preservation of sight through the promotion of projects and programs to eye care and related fields.

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

2. ASBOO vs. Sharon Peterson, O.D. IR#201416

Allegation: Failure to report a misdemeanor in a timely manner pursuant to A.R.S. §32-3208.

This case was continued from a previous meeting as the Board was awaiting the final disposition (from the court) of Dr. Peterson's completion of the terms set forth by the court in this matter. Dr. Mach summarized the case as there was a criminal complaint against Dr. Peterson that was not reported to the Board in a timely manner pursuant to A.R.S. §32-3208. Dr. Peterson has completed all the requirements set forth by the court and the complaint has since been dismissed by the court. Ms. Whelan informed the Board that since the criminal aspect was dismissed by the court, the issue they are considering at this point is the issue of not reporting to the Board a timely manner pursuant to statute.

MOTION: Dr. Lamb moved to issue a Letter of Concern for a failure to report a criminal matter in a timely manner pursuant to A.R.S. §32-3208(A). Dr. Peller seconded the motion.

VOTE: Motion passed 5-0.

3. Amanda Tran, O.D. vs. Douglas Miner, O.D. IR#201422

Allegation: Unauthorized possession of medical records

Dr. Mach summarized the case as Dr. Miner had vacated a practice and left medical records stored there. Dr. Tran took over the practice and took custody of the records left behind. Sometime later, Dr. Miner came back to retrieve the records without Dr. Tran's permission. The Board discussed the ownership of the records and maintenance of said medical records. Dr. Miner was present and addressed the Board. Dr. Miner stated he vacated the office in September of 2013 and did not take the records at that time as he expected to return back to the practice. He also stated he left the records for the incoming doctor as he thought they should remain there case patients were looking for them. When he found out the optical was closing, he felt responsible for the records which is why he went to retrieve them. Dr. Miner did not inform Dr. Tran of his intention to retrieve the records. Dr. Miner stated there was a miscommunication and he felt that Dr. Tran's office could have just called him to let him know there was a problem with him taking the records. Dr. Miner reached out to Dr. Tran to let her know he would return the records to her, which he did. Dr. Miner presented a contract for Dr. Tran the sign stating she would be responsible for the records as they were returned, but she refused to sign the statement. Dr. Miner expressed his concerns to the Board regarding his responsibility for the records since he turned them over to Dr. Tran. Dr. Mach indicated that since Dr. Miner has taken reasonable

measures to ensure that somebody has the records, Dr. Miner has fulfilled the obligation for custody of records at this time.

MOTION: Dr. Lamb moved to issue a Letter of Concern for possible violation of A.R.S. §32- 3211 for failure to have a written protocol regarding storage and maintenance of records. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0.

4. C.C. vs. Charles Kesner, O.D. IR#201423

Allegation: Deceptive advertising statements; defective or poor quality eyeglasses or contact lenses; optometrist failed or refuse to correct problem

Dr. Husz summarized the case as patient was seen for contact lens exam and patient felt that there was deceptive advertising as the contact lenses cost more than expected. The patient asked for a refund for the contact lens exam as she felt that she did not get what was advertised. The doctor refunded a portion of the amount but not the entire amount. Patient C.C. felt that was an improper refund and that the doctor also refused to follow up with the patient. Dr. Kesner stated the company policy is that the professional fees are not refundable which is why the patient only received a partial refund for the contact lenses and not the exam portion of the fee. The patient signed a document acknowledging this policy. Dr. Peller asked Dr. Kesner, who was present to address the Board, if he refused follow-up care for this patient. Dr. Kesner stated he did not refuse to see the patient again. Dr. Kesner stated he ordered new contact lenses of the exact same material that the patient had been wearing, however, the patient never came back to pick up the contact lenses.

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

VOTE: Motion passed 5-0.

5. C.C. vs. Roger Vesper, O.D. IR#201425

Allegation: Refusal to give copy of prescription; deceptive advertising statements; optometrist failed or refused to correct problem; fraudulent billing

Dr. Mach summarized the case as patient came in with a specific complaint and was charged for the exam. According to the patient, the doctor did not address the patient's concerns during the exam. Dr. Mach stated that looking over the records, it was difficult to see exactly what happened as there are two different points of view (patient and doctor), however, his main concern in this complaint was the medical records. The records show the exam started on November 8, 2013 but the records aren't signed until February 16th 2014. Dr. Vesper was present to address the Board. He stated his policy in the office is that anyone who wants a copy of their record gets it once he reviews it and signs it. Dr. Vesper stated every time he reviews the record, it changes the date to the date that he reviewed it. Dr. Peller interjected stating that he also uses the electronic medical records software and that it does date stamp on the original date of the exam and does not change when you go back and review the record on a future date.

Dr. Vesper explained how he thought his software worked and the process for finalizing records. It appears that Dr. Vesper does not completely understand the process for finalizing the record and using electronic signature. Dr. Lamb stated it appeared the records are not properly signed and that gives the improper appearance of alteration of the record with the delayed record finalization. Dr. Vesper articulated to the Board how he goes about working in the electronic medical records software and his process for finalizing them and that he may need to understand better how to utilize his electronic medical record software. Patient C.C. was present and addressed the Board. She stated she agreed with the Board's discussion regarding the delayed dating of the medical records but still feels that the doctor did not treat her condition appropriately. Dr. Lamb noted that it showed on the record that Dr. Vesper advised the patient to go for second opinion regarding her condition as it is a somewhat unusual condition not common to most patients.

MOTION: Dr. Husz moved to issue a Letter of Concern for improper dating of medical records and failing to finalize the record. Dr. Lamb seconded the motion.

DISCUSSION: Dr. Mach stated he did not feel the letter of concern was sufficient in this case as he felt Dr. Vesper did not adequately understand the recordkeeping aspect with regard to electronic medical records. Dr. Mach inquired to Board counsel whether the Board could audit Dr. Vesper's records. Ms. Baskin advised that the Board could continue the case to investigate further or move to an informal interview to consider disciplinary action or offer a consent agreement. Ms. Whelan offered that the Board could consider a letter of concern with a non-disciplinary order for continuing education in the area of electronic medical record-keeping.

AMENDED MOTION: Dr. Husz moved to issue a Letter of Concern for improper recordkeeping, documenting, dating and finalizing the record, including a non-disciplinary order for additional Continuing Education ("CE"), beyond the required 32 hours for renewal, in the area of electronic medical record-keeping directly related to Dr. Vesper's software system. The Board requires that Dr. Vesper find courses through his software provider and present them to the Board for approval prior to taking the courses. Dr. Lamb seconded the motion.

VOTE: Motion passed 5-0.

6. J.K. vs. Zuraida Zainalabidin, O.D. IR#201426

Allegation: Optometrist failed or refused to correct problem

Dr. Husz summarized the case as patient had taken a form to be filled out for MVD and was unhappy with the way the doctor filled out the form as she put a driving restriction on the form. Patient J.K. requested that the doctor change the way she filled out the form but the doctor refused. Patient J.K. feels that the form is not filled out correctly as it is not medically supported. The Board reviewed the patient records which show the visual acuity to be 20/40 which is well within the limits for a passing score on the visual field test through the MVD, and meets the

requirements for driving in the state of Arizona. The Board determined there was no evidence in the medical record to support such reporting by Dr. Zainalabidin and that she inappropriately or inaccurately reported the patient's vision to MVD.

MOTION: Dr. Husz moved to issue a Letter of Concern for inappropriate reporting of a condition to the Motor Vehicle Division (MVD) of The Arizona Department Transportation. Mr. Evanoff seconded the motion.

VOTE: Motion passed 3-1. Dr. Lamb voted no. Dr. Peller recused due to conflict of interest.

7. ASBOO vs. Alicia Feis, O.D. IR#201427

Allegation: Unprofessional conduct

Dr. Mach summarized the case as an anonymous complaint was received by the Board from students that the Midwestern University School of Optometry regarding Dr. Feis's conduct/relationship with a former student of the program. Dr. Feis was present to address the Board accompanied by her counsel Sara Agne.

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

Dr. Mach disagrees with the motion stating the Board has an obligation to at least investigate the allegation. Dr. Husz felt strongly about the dismissal as it didn't concern a patient but was an internal issue at the college optometry regarding their faculty. In Dr. Feis's response she noted that the relationship did not begin with the student until after the student graduated. Dr. Husz does not feel that it is a violation to have a relationship between two consenting adults. Dr. Mach disagreed saying that that is unprofessional conduct even though the person is not a patient as he felt that the actions are actions that may discredit the profession. The Board members asked whether not the University was aware of the situation and if they took any action internally. Ms. Agne, counsel to Dr. Feis commented to the Board that in Dr. Feis's response, she did detail that the Arizona College of Optometry and the Midwestern University is fully aware of her personal relationship with the other optometrist. Dr. Peller noted that in the complaint it states that Dr. Feis was cited on several occasions for her actions and questioned her as to who cited her. Dr. Feis responded that she doesn't know as she has never been disciplined by the University. The Board directed staff to contact the Human Resources Department at the Midwestern University College of optometry to determine if they could provide records regarding this incident as reported by Dr. Feis. Mr. Evanoff stated that he didn't feel that the Human Resources Department would provide those as they are protected under law as confidential. Dr. Lamb recommended the Board request records from the University. If there is no complaint or disciplinary action from the University or nobody else steps up to substantiate the complaint, the Board may dismiss at that time. Ms. Agne reiterated to the Board that Dr. Feis's relationship began with the student after he graduated and not while he was a current student. Dr. Lamb asked the Board if they felt that dismissing this is prudent. Dr. Mach stated he felt that the Board's job is to protect the public and outright dismissal without at least finding out additional information from University wouldn't be prudent. Dr. Lamb agreed.

VOTE: Motion failed 2-3. Mr. Evanoff, Dr. Mach and Dr. Lamb voted no.

The Board tabled this complaint to the next meeting and instructed you staff to get a statement and request records from Midwestern University School of Optometry and from the Dean of the College of Optometry.

8. C.C. vs. Robert Esposito, O.D. IR#201429

Allegation: Optometrist failed or refused to correct problem; overcharged for goods and services

Before summarizing the case, Dr. Mach noted that the medical records were missing from Dr. Esposito's response; he did not include them as requested. Dr. Mach wanted to table this complaint to obtain medical records for discussion. However, patient C. C. was present to address the Board. Based on information received, Dr. Lamb has some questions regarding the billing and upgrading of products. Dr. Mach said he wants to know how Dr. Esposito is justifying what he is billing and without the medical records, the Board cannot determine that at this time. Before tabling the complaint, Patient C. C. addressed the Board stating that there is an issue with the way the patient is treated by Dr. Esposito. Patient C.C. filled the eyeglass prescription at Dr. Esposito's office out of convenience. In the past, eyeglasses were filled by another optical establishment. The patient felt Dr. Esposito had a negative attitude towards her and overcharged her for the eyeglasses. The patient waited two weeks for the first pair of eyeglasses and another two weeks for the second pair of eyeglasses to come in, which she felt was too long to wait. Dr. Esposito did not look at the eyeglasses on her nor did he follow up with her.

The Board tabled this complaint to the next meeting in order to obtain, from Dr. Esposito, all medical records pertaining to this patient. Staff was directed to make the written request of Dr. Esposito for the patient's medical file.

9. A.B. vs. Barry Herndon, O.D. IR#201430

Allegation: Unprofessional conduct; refused to return paperwork to patient

Dr. Mach summarized the case as patient A.B. came in to see Dr. Herndon for an exam and was filling out some forms at the lobby window. Dr. Herndon came up to the lobby window and asked patient A.B. to get off her cell phone. Patient A.B. then left the office to finish her phone call and when she came back she did not want to see Dr. Herndon and asked that he give her all her paperwork back. Dr. Herndon refused to get the paperwork back to the patient. Patient A.B. was present to address the Board and stated she went to see Dr. Herndon to get new glasses. She states she did not receive care, didn't pay any money and did not finish filling out the paperwork. Patient A.B. considers her medical information private and since she did not see Dr. Herndon he does not have a right to withhold the records. Patient A.B. states that she did not see a policy posted in Dr. Herndon's lobby regarding the use of cell phones and that she was on the cell phone consulting a family member regarding a portion of her family history for use during the exam. She felt Dr. Herndon became hostile regarding the use of the cell phone. Dr. Mach and Dr. Lamb discussed the issue of whether or not an actual medical record was generated or whether not the forms that patient partially filled out constituted a medical record and would be

required by Dr. Herndon to maintain. Dr. Mach initially stated that since the patient did not complete or sign the paperwork, Dr. Herndon is not obligated to maintain the paperwork and should return it to the patient or shred it. Dr. Peller felt there was no doctor patient relationship established and at that time the records do not belong to Dr. Herndon. Dr. Husz felt that once the patient handed the forms over to Dr. Herndon it becomes a medical record that the doctor is responsible to maintain them.

The Board moved to go into executive session for legal advice at 10:14 a.m.
The Board reconvened regular session at 10:19 a.m.

The Board discussed further what constitutes a medical record and determined that once the forms or documents are handed back to the doctor, it constitutes a medical record and should therefore be maintained under the medical records retention law. The Board also further discussed taking action regarding Dr. Herndon's conduct towards the patient.

MOTION: Dr. Mach moved to issue a Letter of Concern regarding unprofessional conduct for his personal interaction with patient A.B. Dr. Peller seconded the motion.

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

B. REVIEW, DISCUSSION AND POSSIBLE VOTE REGARDING ACCEPTANCE/ADOPTION OF CONSENT AGREEMENT AND ORDER FOR WRITTEN REPRIMAND:

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

Ms. Whelan asked the Board to determine if they want to accept and adopt the consent agreement as written and signed by Dr. Stahl.

MOTION: Dr. Husz moved to accept Consent Agreement as written and signed by Dr. Stahl. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0.

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

11. Addy, Laura
12. Berg, Parker
13. Burnett, Erik
14. Cain, Chelsea
15. Chokshi, Reema
16. Cox, Misty
17. Dase, Mackenzie
18. Desai, Zeelane
19. Dhott, Guranritpal
20. Gless, Jeffrey
21. Gudenkauf, Laura
22. Hardy, Mary

23. Johnson, Christopher
24. Johnson, Kimberly
25. Jung, Kurt
26. Lajubutu, Damilola
27. Lewis, Vance
28. Lowe, Christopher
29. Macklin, Justin
30. Newell, Darah
31. Passa, Rebecca
32. Podrebarac, Jacqueline
33. Sullenger, Anthony
34. Sultani, Kaiser
35. Tetrault, Kyle
36. Thakker-Macwan, Rima
37. Thimesch, Renee
38. Turk, Nolan
39. Weston, Jonathan

MOTION: Dr. Lamb moved to approve items 11-22, 24-32, and 34-39 for licensure. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0.

MOTION: Dr. Lamb moved to approve item 23 for licensure. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0.

MOTION: Dr. Lamb moved to approve item 33 for licensure contingent upon a negative FBI/DPS report. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0.

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

40. Nunemaker, Eric
41. Odle, Sam

MOTION: Dr. Lamb moved to approve item 41 for licensure. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0.

MOTION: Dr. Lamb moved to approve item 40 for licensure contingent upon a negative FBI/DPS report. Dr. Peller seconded the motion.

VOTE: Motion passed 5-0.

E. 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.	Please Don't Call It Dry Eyes- BDPEC	08/13/14	1 Regular
b.	Management of Macular Diseases & Uveal Melanoma-Madhavi Kurli, M.D. (Same course offered on two separate dates)	06/25/14 08/14/14	1 Regular
c.	Evolution of Micro Incision Vitreoretinal Surgery (MIVS)- BDPEC	06/04/14	1 Regular
d.	Strabismus: Evaluation & Management- BDPEC	06/05/14	1 Regular
e.	Nutrition & Eye Disease- BDPEC	07/23/14	1 Regular
f.	Identification & Treatment of Common Eyelid Lesions-Stuart Bark, O.D.	07/19/14	1 Regular
g.	Blue Light-Stuart Bark, O.D.	07/19/14	1 Regular
h.	Blue Light & AMD-Stuart Bark, O.D.	07/19/14	1 Regular

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

Dr. Mach stated he would like separate these out for the vote. He would like to vote on a-e and then f-h.

AMENDED MOTION: Dr. Mach moved to approve items a thru e. Dr. Peller seconded the motion.

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

Dr. Mach has issues with items f-h as the only way the optometrists are notified of the continuing education is through the Arizona optometric Association e-mail and not all optometrist have the opportunity to hear about the continuing education. Dr. Husz reminded Dr. Mach that the requirement is no longer in our rules or statutes regarding CE being open to "all" optometrists and is therefore not pertinent to the discussion. Ms. Whelan informed the Board that pursuant to R4-21-210, the requirement for obtaining approval for CE is that the application be submitted prior to the date the CE is being offered and that the provider of the CE fill out the application and submit it to the Board. The other requirement under that rule is the manner in which optometrists are notified; not that it has to be disseminated to all optometrists. Dr. Mach feels strongly that it is exclusionary to not advertise continuing education hours available to all licensed optometrists, however, Ms. Whelan again reminded the Board that it is not in statute or rule and therefore cannot be considered as a stipulation for approval in this matter.

MOTION: Dr. Mach moved to deny items f-h. Dr. Lamb seconded the motion.

VOTE: Motion passed 1-3. Drs. Husz, Peller and Lamb voted no. Mr. Evanoff abstained.

MOTION: Dr. Peller moved to approve items f-h. Dr. Husz seconded the motion.

VOTE: Motion passed 3-1. Dr. Mach voted no. Mr. Evanoff abstained.

F. ELECTION OF OFFICERS PURSUANT TO THE PROVISIONS OF A.R.S. §32-1703(A):

MOTION: Dr. Husz moved to reelect Dr. Mach as President of the Board. Dr. Lamb seconded the motion.

VOTE: Motion passed 5-0.

MOTION: Dr. Mach moved to elect Dr. Lamb as Vice President of the Board. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0.

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

42. April 18, 2014 Regular Session Minutes

MOTION: Dr. Peller moved to approve item 42 as written. Dr. Husz seconded the motion.

VOTE: Motion passed 5-0.

H. EXECUTIVE DIRECTOR'S REPORT:

- 43. Budget
- 44. Legislation
- 45. Future agenda items

Ms. Whelan reported that as of May 31, 2014, the budget is at 91.67% of fiscal year elapsed with the Board spending at 83.60%. The beginning cash balance was \$128,671 with an ending cash balance of \$167,477. Ms. Whelan informed the Board that she is asking JLBC for an increase in appropriations of \$8,000-\$10,000 to cover rising costs of operations expenses and potential salary increases over the next 3 to 5 years. The Board has cash but not the appropriation to utilize the cash. The Board has not increased or asked to increase appropriations in at least 10 to 15 years nor has its fees gone up in the last 15 to 20 years.

Legislation passed during the last legislative session will be effective July 24, 2014. Legislation passed (HB2380) expands the scope of practice to oral medications for the treatment of angle-closure glaucoma, including carbonic anhydrase inhibitors, as well as oral steroids.

No future agenda items were requested.

I. CALL TO PUBLIC:

Dr. Mach made a call to the public at 11:14 a.m. No one was present to address the Board.

Dr. Mach moved to adjourn the meeting at 11:14 a.m. Dr. Peller seconded the motion. The meeting was adjourned at 11:14 a.m.

END OF MINUTES:

Margaret Whelan, Executive Director

Date