

DRAFT
BOARD OF OPTOMETRY
PROFESSIONAL DESIGNATION COMMITTEE
JUNE 7, 2010

TIME AND PLACE: The Board of Optometry's (Board) Professional Designation Committee (PDC) meeting was called to order at 11:15 a.m. at the Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Training Room 2, Henrico, Virginia.

CHAIRMAN: W. Ernest Schlabach, Jr., O.D., Chair

MEMBERS PRESENT: Jonathan R. Noble, O.D.

MEMBERS NOT PRESENT: All members of the PDC were present.

STAFF PRESENT: Leslie L. Knachel, Executive Director
Eric Gregory, Assistant Attorney General, Board Counsel
Elaine Yeatts, Senior Regulatory Analyst
Carol Stamey, Operations Manager

OTHERS PRESENT: Gregory P. Jellenek, O.D., Board
Bruce Keeney, Virginia Optometric Association (VOA)
Bo Keeney, VOA

PUBLIC COMMENT: Bruce Keeney, representing the VOA, presented comment regarding the proposed draft professional designation (PD) statute. Mr. Keeney's comment is incorporated into the minutes as Attachment 1.

APPROVAL OF MINUTES: Dr. Noble moved to approve the minutes of the May 5, 2010, PDC meeting. The motion was seconded and carried.

DISCUSSION ITEMS: **Proposed Trade Name Statute**
The PDC discussed the proposed statute drafted by staff and board counsel. The proposed draft is incorporated into the minutes as Attachment 2. The PDC recommended amendments and the revised proposed draft is incorporated into the minutes as Attachment 3.

Dr. Noble moved to accept the proposed redraft as discussed, to schedule an additional PDC meeting in July 2010 and to solicit public comment from interested parties. The motion was seconded and carried.

NEW BUSINESS:

No new business was presented.

ADJOURNMENT:

The meeting adjourned at 12:40 p.m.

W. Ernest Schlabach, O.D., Chair

Leslie L. Knachel, Executive Director

VOA very concerned with the absence to attention to detail in the draft proposed legislation.

Concerned that many of Dr. Schlabach's recommendations, as Chair of this Committee, appear not to have been incorporated.

Concern that there appears to be an absence of research to ascertain from the Va Dental Association as to any problems they've encountered.

Previous legal counsel to this Board indicated the concept for the existing PD regulations were legal and not in conflict with other provisions of Virginia law. Current counsel to the Board indicates otherwise. Yet there is no apparent research which took place as to the impact of those alleged court cases and how those states may have responded, perhaps by new laws or regulations.

At first glance, it appears the draft fails to reflect an understanding of the practice of optometry in Virginia and existing statutes governing the profession.

It appears the draft fails to amend existing, conflicting statutes which prohibits

- 1) impersonating an optometrist of a like or different name,
- 2) prohibits advertising, practicing or attempting to practice under a name other than one's own name as set forth on the license, and
- 3) lending, leasing, renting or in any other manner placing his license at the disposal or in the service of any "person" not licensed to practice.

We have serious concerns and suggest careful scrutiny should take place regarding sections A (and B) of the draft. Use of the terms “partnership under a firm name” or “practicing under a firm name” or an “employee of a professional corporation” etc. appears to open the door to allow doctors of optometry to be employed by or a partner with a commercial or mercantile establishment.

Currently the Board has 287 registered Professional Designations. As drafted, a PD would have to incorporate either a geographic location or a derivative of the optometrist’s name. A quick review of the information online from the Optometry Board indicates 50% of more would fail to meet those criteria. These are small businesses and change of signage and marketing new names are expense many will not be able to afford.

The VOA questions the need for the Board to proceed on a fast track to proposed legislation. It remains unclear that legislation is needed. It also appears the draft fails to reflect an understanding of Virginia optometry and existing statutes governing the profession.

In brief, we are very concerned that proposing legislation for this issue is premature. Proposed legislation merits a careful, well thought out process and we fail to see evidence of that in this draft. For these reasons, we request the Board not proceed with legislation on this issue for the 2011 session and perhaps establish a working Board Task Force which could include Board members and interested parties to thoroughly address this issue.

DRAFT – Professional Designation Legislation

§ 54.1-3205.2. Practicing under a professional designation.

A. No person shall practice, offer to practice, or hold himself out as practicing optometry, under a name other than his own. This section shall not prohibit the practice of optometry by a partnership under a firm name, or a licensed optometrist from practicing optometry as the employee of a licensed optometrist, practicing under his own name or under a firm name, or as the employee of a professional corporation, or as a member, manager, employee, or agent of a professional limited liability company.

B. An optometrist, partnership, professional corporation, or professional limited liability company that owns an optometric practice may adopt a professional designation for that practice so long as the name meets the following requirements:

1. The professional designation incorporates one or more of the following: (i) a geographic location, e.g., to include, but not be limited to, a street name, shopping center, neighborhood, city, or county location or (ii) a derivative of the optometrist's name. Names which are false, misleading, or deceptive are prohibited. Professional designations registered with the Virginia Board of Optometry prior to July 1, 2011, shall be deemed to meet this requirement.

2. The professional designation is used in conjunction with either (i) the name of the optometrist or (ii) the name of the partnership, professional corporation, or professional limited liability company that owns the practice. The owner's name shall be conspicuously displayed along with the professional designation used for the practice in all advertisements in any medium.

3. All advertisements of a professional designation, including but not limited to signs, printed advertisements, and letterheads, shall contain the word "optometry" or the name of the optometrist with the O.D. designation, Doctor of Optometry or optometrist.

4. An optometrist may use a professional designation which contains the name of an inactive, retired, removed, or deceased optometrist for a period of no more than one year from the date of succession to a practice and so long as he does so in conjunction with his own name, together with the words, "succeeded by," "succeeding," or "successor to."

C. In the entrance or reception area of the optometric office, a chart or directory listing the names of all optometrists practicing at that particular location shall be kept at all times prominently and conspicuously displayed. The names of all optometrists who practice under the professional designation shall be maintained in the records of the optometric office for five years following their departure from the practice. The name of the licensed optometrist providing care shall appear on all statements of charges and receipts given to patients.

Draft- Optometric practice

54.1-3205.2 Optometric practice

Optometric practice shall be under one of the following circumstances

- A. No person shall practice, offer to practice, or hold themselves out as practicing optometry under any name other than their own.
- B. A professional designation may be used by an optometrist, partnership, professional corporation, or professional limited liability company that owns an optometric practice.
 - 1. The name of the professional designation must meet the requirements as stipulated by the Virginia Board of Optometry and a fee paid.
 - 2. The professional designation shall have a geographic location and a derivative of the optometrist's name.
 - 3. Names which are false, misleading, deceptive, imply superiority, or imply corporate sponsorship will be denied.
 - 4. An optometrist may use a professional designation of an inactive, retired, removed, or deceased optometrist for a period of one year.
 - 5. In the optometric office, a chart or directory of all optometrist's practicing at that location shall be displayed at all times prominently and conspicuously.
 - 6. The names of all optometrists who practice under this professional designation shall be maintained at that location for five years following their termination at that location.
 - 7. The name of the optometrist that provides patient care at that location shall appear on all statements of fees(charges) and receipts given to the patient.
 - 8. All professional designations registered and in use prior to July 1,2011 shall be deemed in compliance and valid until the owner ceases to practice.
- C. Advertising.
 - 1. All advertising by an optometrist or professional designation including signs, printed and electronic advertisements, letterheads, stationary, appointment cards, bills, flyers etc. shall contain the word "optometry" and the name of the optometrist with the O.D. designation, or Doctor of Optometry.
 - 2. Any advertising that is false, misleading, and deceptive or implies free services shall be grounds for board disciplinary action.
 - 3. The Virginia Board of Optometry shall have the authority to issue cease and desist orders to any optometrist, partnership, corporate group or other entity found in violation of or attempting to violate this statute.