

**BOARD OF OPTOMETRY  
BOARD MEETING  
DECEMBER 7, 2004**

**TIME AND PLACE:** The meeting was held at the Department of Health Professions, 6603 West Broad Street, Room 4, at 9:00 a.m.

**CHAIRMAN:** David H. Hettler, O.D., Chair

**MEMBERS PRESENT:** Paula H. Boone, O.D.  
Gregory P. Jellenek, O.D.  
W. Ernest Schlabach, Jr., O.D.  
William T. Tillar, O.D.

**MEMBERS NOT PRESENT:** Cathleen Burk, Citizen Member

**STAFF PRESENT:** Elizabeth A. Carter, Ph.D.  
Emily Wingfield, Assistant Attorney General, Board Counsel  
Robert Nebiker, Agency Director  
Elaine Yeatts, Senior Research Analyst  
Carol Stamey, Administrative Assistant

**OTHERS PRESENT:** Pat Jackson, O.D., VOA  
Bruce Keeney, VOA  
Marc Hudson, O.D.  
Cal Whitehead, VA Society of Ophthalmology  
Tom Lisk, LR  
Christy Tomlinson, DCI  
Jenny Vithoukias, DCI  
Charlie Davis, DCI  
Mary Fox, LR

**PUBLIC COMMENT:** Mr. Cal Whitehead, VA Society of Ophthalmology, addressed two issues regarding the proposed TPA regulations. He requested that the Board consider the definition of ocular adnexa and the definition and treatment guidelines for angle closure and narrow angle glaucoma. Mr. Whitehead submitted a copy of the VSO's recommended language. It is incorporated into the minutes as Attachment 1.

Mr. Whitehead also requested the Board's guidance on HB160 and SB272, involving prohibition of optometrists practicing in commercial or mercantile settings. Specifically, he requested the board's opinion on how the proposed legislation may impact an optometrist's ability to practice in an ophthalmology office that also houses an optical

shop.

**APPROVAL OF MINUTES:**

◆**Action** - On properly seconded motion by Dr. Schlabach, the Board voted unanimously to approve the minutes of the October 6, 2004 meeting.

**AGENDA REVIEW:**

Dr. Hettler noted the following additions to the agenda:

- closed session for review of a CE waiver;
- discussion of HB160 and SB272 by Ms. Yeatts.

**BOARD BUSINESS:**

**Infant See™ Program, Letter from the VOA**

Ms. Wingfield, Board Counsel, advised the Board that §54.1-3215.9 references fraudulent and deceptive *advertising*. The measure guards against "bait and switch" efforts whereby the consumer's acceptance of "free" services is somehow contingent upon other purchase. She advised that there is no Virginia statute that prohibits the provision of truly free optometric services, as long as a licensee practices in accordance with the statutes and regulations.

**Adoption of Amendment to the TPA Formulary and Treatment Guidelines**

Ms. Yeatts informed the board that the versions of the regulations in the agenda packet were incorrect. She presented the TPA formulary and treatment guidelines under the exemption of the APA for adoption by the board and they are incorporated into the minutes as Attachment 2.

◆**Action** – On properly seconded motion by Dr. Schlabach, the board voted unanimously to adopt the TPA formulary and treatment guidelines as proposed.

The public comment submitted by Mr. Cal Whitehead, VSO, was referred to the Legislative/Regulatory Review Committee for consideration at the January 21, 2005 meeting.

**Review of HB160 and SB272**

Ms. Yeatts presented an overview of HB160 and SB272. She noted that the legislation had been carried over from 2004 and a delayed and effective date of December 31, 2005 had been added. Mr. Nebiker informed the board that additional legislation will be introduced with amendments to §54.1-3205.

**CLOSED SESSION:**

◆**Action** – On properly seconded motion by Dr.

Boone, the Board convened a closed meeting pursuant to Section 2.2-3711.A.7 of the Code of Virginia for consultation with legal counsel in the matter of HB160 and SB272 legislation. Additionally, it was moved that Mr. Nebiker, Dr. Carter and Ms. Stamey remain in the closed meeting.

**OPEN SESSION:**

◆**Action** – On properly seconded motion by Dr. Boone, the Board certified that the matters lawfully exempted from open meeting requirements and only such public business matters as were identified in the motion for closed session were heard, discussed or considered during the closed session just concluded.

The Board took no action and moved to the next agenda item.

**COMMITTEE REPORTS:**

Dr. Schlabach reported that he had attended a meeting in St. Louis on the Association of Board of Optometry (ARBO) licensure mobility development program (i.e., CELMO). He presented a final copy of CELMO's application for licensees seeking registration with them. It will be presented at the SECO meeting in Atlanta. A copy of the CELMO application is incorporated into the minutes as Attachment 3.

**Credentials Committee**

Dr. Boone reported that the Committee had received one reinstatement application.

**Professional Designation Committee**

Dr. Boone reported that the Committee had received two applications for a professional designation title.

**PRESIDENT'S REPORT:**

Dr. Hettler appointed Dr. Schlabach as the Board representative to ARBO.

Dr. Hettler noted it appeared that Ms. Burk was resigning from the Board and wished to commend her for her service and efforts to the Board.

**EXECUTIVE DIRECTOR'S REPORT:**

Dr. Carter presented the statistics on licensure and case load. A copy of the statistics is incorporated into the minutes as Attachment 4.

Dr. Carter also presented a copy of a letter to be posted to the website detailing the changes to the statutes and regulations adopted today and e-mailed and mailed to all licensees and interested parties. The letter is incorporated into the minutes as

Attachment 5.

**NEW BUSINESS:**

Dr. Hettler reported that the Board had received a petition for rulemaking. Ms. Yeatts noted that the petition must be submitted to the registrar for a twenty-one day (21) comment and within ninety (90) days the board must respond to the petition.

Dr. Carter will request that the applicant submit his application and documentation for submission to the Credentials Committee for review.

Dr. Schlabach reported that a former member of the board, Charles Johnston, had passed away. The Board asked that a letter expressing condolences be sent to Ms. Johnston.

**REQUEST FOR CE WAIVER:**

A request for a waiver of the 2004 continuing education credits was received in the matter of Charles E. Cook, O.D.

**CLOSED SESSION:**

◆ **Action** – On properly seconded motion by Dr. Boone, the Board convened a closed meeting pursuant to Section 2.2-3711.A.15 of the Code of Virginia for the purpose of consideration and discussion of medical records of Charles E. Cook, O.D. that are excluded from the Freedom of Information Act by Virginia Code Section 2.2-3705. Additionally, it moved that Dr. Carter and Ms. Stamey remain in the closed meeting.

**OPEN SESSION:**

◆ **Action** – On properly seconded motion by Dr. Boone, the Board certified that the matters lawfully exempted from open meeting requirements and only such public business matters as were identified in the motion for closed session were heard, discussed or considered during the closed session just concluded.

◆ **Action** – On properly seconded motion by Dr. Tillar, the Board voted unanimously to grant a waiver of the 2004 continuing education requirements to Charles E. Cook, O.D.

**ADJOURNMENT:**

The meeting adjourned at 10:20 a.m.

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David H. Hettler, O.D., President

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Elizabeth A. Carter, Ph.D., Executive Director