

**BOARD OF OPTOMETRY
BOARD MEETING
JANUARY 29, 2009**

TIME AND PLACE: The meeting was called to order at 11:05 a.m. on Thursday, January 29, 2009 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 3, Henrico, VA.

PRESIDING OFFICER: David H. Hettler, O.D, President

MEMBERS PRESENT: Paula H. Boone, O.D.
Gregory P. Jellenek, O.D.
Jonathan R. Noble, O.D.
W. Ernest Schlabach, O.D.
Jacquelyn S. Thomas, Citizen Member

STAFF PRESENT: Eric A. Gregory, Assistant Attorney General, Board Counsel
Elizabeth A. Carter, Ph.D., Executive Director for the Board
Elaine Yeatts, Senior Regulatory Analyst
Carol Stamey, Operations Manager

OTHERS PRESENT: Betty Graumlich, Esquire, NAOO

QUORUM: With six members of the Board present, a quorum was established.

AGENDA: The agenda was revised to include the following items under "Discussion": OE Tracker and COPE.

PUBLIC COMMENT: No public comment was presented.

APPROVAL OF MINUTES: On properly seconded motion by Dr. Schlabach, the Board voted unanimously to approve the minutes of the August 6, 2008 meeting.

DEPARTMENT DIRECTOR'S REPORT: It was reported that Ms. Ryals was in attendance at the meeting of the General Assembly. Further, that the information of the Director will be conveyed in the following reports provided by Ms. Yeatts and Dr. Carter.

DHP LEGISLATIVE/REGULATORY UPDATE: **Legislation**
Ms. Yeatts presented an update of the 2009 proposed legislation that is relevant to the agency. The proposed legislation is incorporated into minutes as Attachment 1.

Regulatory Update

Ms. Yeatts apprised the Board that there were two optometry proposed regulatory actions in review at the Department of Planning and Budget: 18VAC 105-20-70 CE Regulations and 18VAC 105-20-40 and 45 Standards of Practice. Further, that she and Dr. Carter would be meeting by telephone conference tomorrow with the Department of Planning and Budget to discuss the proposed regulations.

COMMITTEE REPORTS:

Legislative/Regulatory Review Committee

Dr. Hettler reported that the Committee had met and proposed the following recommended regulatory changes to Chapter 20:

18VAC 105-20-20 Fees

- 1) increase licensure verification from \$10 to \$20
- 2) increase the professional designation (PD) application fee from \$100 to \$200

18 VAC 105-20-10 and 16 Licensure by Examination and Requirements for TPA Certification

- 1) add language to the regulations reflecting the changes to the National Board Examination, specifically, that the TMOD (Treatment and Management of Ocular Disease examination) will be embedded in Part II. Additionally, that effective 2010, the TMOD will no longer be a separate examination.

18VAC 105-20-40 and 45 Unprofessional Conduct and Standards of Practice

Dr. Hettler requested that the language in 18VAC 105-20-40.2 be revised as follows: "Disclose to the board any disciplinary action taken against licensee by a regulatory body in another jurisdiction."

Dr. Hettler requested that the language regarding a "one year expiration date" on contact lens and spectacle prescriptions be included in 18VAC 105-20-45.B

18VAC 105-20-50 Professional Designation

With regard to the Professional Designation Regulations, the Committee reported that due to the need for legal consultation, the review of these regulations will be placed on the Board's next agenda.

Ms. Yeatts informed the Board that revisions or additions could not be made until the NOIRA had been approved for publishing.

Dr. Hettler also reported that the Committee had requested that letters be forwarded to all non-TPA licensees informing them of the changes to the National Board Examination, specifically that TMOD will no longer be administered as a separate examination beginning in 2010.

On properly seconded motion by Dr. Jellenek, the Board voted unanimously to accept the recommendations of the Committee as presented.

Professional Designation Committee

Dr. Boone reported that the PD Committee had approved six applications since November 2008.

Expired Professional Designations

The Board requested that staff provide a listing of all expired PD locations.

Credentials Committee

Dr. Boone reported that two applications had been approved through the Credentials Committee since the Board's last meeting.

DISCUSSION ITEMS:

Approval of COPE Reviewer Candidates

It was the consensus of the Board to approve the COPE Reviewer Candidates: Lisa Bishop, O.D. and Daniel R. Eckermann, O.D.

Expansion of Use of Agency Subordinates

Dr. Carter reported that due to the number of business practice cases and their complexity, the Board should consider expanding its use of agency subordinates. She noted that currently the Board contracts with an agency subordinate to review continuing education.

Dr. Carter apprised the Board of proposed legislation for the Board of Dentistry regarding the recovery of administrative costs associated with investigation and monitoring of a licensee. She stated that there will be an update on this item in the future.

Addition of Consumer Information to Frequently Asked

Questions

Ms. Stamey apprised the Board that the FAQ section of the Board's webpage did not include consumer frequently asked questions. Further, that adding a consumer section could greatly assist the public. Ms. Stamey presented several areas of consumer issues and requested that the Board members assist her addressing these issues.

On properly seconded motion by Dr. Noble, the Board voted unanimously to add a consumer FAQ section to the Board's website.

Placing "Probation with Terms" on Licensure Permits

With regard to licensees who have egregious standard of care disciplinary action taken against their licenses to practice, Dr. Carter reported that language could be added to the licensure permits reflecting the disciplinary status of the license. Dr. Carter requested the Board's opinion and on properly seconded motion by Ms. Thomas, the Board voted unanimously to approve the board's authority to add the language "probation with terms" to a licensure permit involving egregious standard of care.

OE Tracker

Dr. Schlabach presented an update on the status of the OE Tracker Program and the states who are participating in the program. He further stated that as a result of a survey of all states, an educational manual was being developed for posting on the ARBO webpage. Dr. Schlabach noted that it appeared that the cost per person to collect and disseminate data was estimated at \$20.00 per person.

COPE

Dr. Schlabach reported that the Committee continues to struggle with the new standards for commercial support. He further reported that the National Steering Committee comprised of representatives of the various optometric organizations was meeting in February/March. The Committee will be meeting to develop guidelines in continuing education, industry support, disclosure and advertising.

ARBO Annual Meeting

Dr. Schlabach noted that the annual meeting of ARBO has been set to meet in Maryland the dates of June 21st through the 23rd.

Joint Task Force

Dr. Schlabach reported that the Joint Board Certification Project Team had presented a draft model for board certification at the January 23rd President's Council in St. Louis. He stated that there will be continuous updates and the proposal will be discussed by the AOA House of Delegates Optometry Meeting in Washington, DC in June 2009.

PRESIDENT'S REPORT:

2009 Calendar

Dr. Hettler presented the proposed 2009 meeting calendar with revision. He requested that the May meeting be changed from May 22nd to May 18th. The 2009 calendar dates have been set as follows:

February 26, 2009 – Hearings

March 25, 2009 – Hearings

April 21, 2009 – Committees/Full Board/Hearings

May 18, 2009 – Hearings

July 22, 2009 – Committees/Full Board/Hearings

August 27, 2009 – Hearings

September 25, 2009 – Hearings

October 29, 2009 – Committees/Full Board/Hearings

December 8, 2009 – Hearings

Upcoming ARBO Meeting

Dr. Hettler ~~requested that Dr. Boone~~ reported that he will attend the annual meeting representing Virginia as well as Dr. Carter who serves as Co-Chair on the Judicial Council.

EXECUTIVE DIRECTOR'S REPORT:

Update on HPIP

Dr. Carter reported that legislation has been introduced to reflect the program's emphasis on monitoring rather than treatment. She reported that additional proposed changes included participation fees and that the program titling be revised to the Health Practitioner Monitoring Program.

VA Performs

Dr. Carter presented an update on the results of the Board's Key Performance Measures. Specifically, she noted that Optometry had met its 250 day closure rate regarding patient care cases. Dr. Carter also provided an update on the Agency's overall Key Performance Measures.

Budget

Dr. Carter reported that the Board had expended approximately forty-five (45) percent of its budget.

Statistics

Dr. Carter presented an overview of the Board's latest licensure statistics.

NBEO Examination Restructuring

As discussed earlier, Dr. Carter reported that the National Board of Examiners will begin implementing changes to its examinations in 2009 through 2010. Specifically, that the Section, "Patient Assessment and Management", will no longer be a component of Part III and will be incorporated into Part II. Dr. Carter further reported that the PAM section of Part II will be lengthened into two sessions to include TMOD. Effective 2010, the TMOD examination will no longer be a stand alone examination and any candidate or licensee seeking a TMOD score, must take the PAM examination.

Workforce Center

Dr. Carter apprised the Board of the formation of a Workforce Center to be housed within the agency. Further, that the Workforce Center will collect data to identify healthcare shortages in Virginia beginning its focus on Nursing and Medicine statistics.

ELECTIONS/COMMITTEE ASSIGNMENTS:

Dr. Schlabach moved that Dr. Hettler and Dr. Boone continue to serve in their current positions. The motion was seconded and carried unanimously.

Dr. Hettler called for any requests to serve on different Committees; there were no requests for changes.

NEW BUSINESS:

Dr. Carter reported that the Board of Optometry was the only Board that did not have formal bylaws. The Board requested that samples of other board's bylaws be forwarded to the members for review at the next meeting.

ADJOURNMENT:

The Board concluded its meeting at 12:25 p.m.

David H. Hettler, O.D.
President

Elizabeth A. Carter, Ph.D.
Executive Director

Legislation in 2009 General Assembly

Board of Optometry

HB 1852 Health Professions, Department of; confidentiality of investigations.

Summary as introduced:

Department of Health Professions; investigations. Clarifies that confidentiality provisions do not prevent Department of Health Professions' investigators from (i) providing the subject of a complaint with a copy of the complaint and supporting documentation or (ii) interviewing witnesses and disclosing to them information necessary to conduct the investigation.

Patrons: Morrissey, BaCote, Eisenberg, Hall and Ward

01/12/09 House: Referred to Committee on Health, Welfare and Institutions

01/16/09 House: Assigned HWI sub: Institutions

01/27/09 House: Subcommittee recommends reporting with amendment(s)

HB 1943 Optometrists; those licensed may sell contact lenses & allowed to dispense ophthalmic devices.

Summary as introduced:

Optometrists; contact lenses and ophthalmic devices. Specifies that only licensed optometrists and ophthalmologists, or licensed opticians with a contact lens endorsement may sell contact lenses, and allows licensed optometrists and ophthalmologists to dispense ophthalmic devices that contain medication.

Patrons: Peace, Amundson, Armstrong, Caputo, Crockett-Stark, Hall, Hamilton, Hargrove, Hugo, Janis, Loupassi, Mathieson, Merricks, Nutter, Phillips, Pogge, Shannon, Shuler, Sickles, Spruill and Vanderhye

01/22/09 House: Reported from Health, Welfare and Institutions with substitute (22-Y 0-N)

01/22/09 House: Committee substitute printed 093264676-H1

01/23/09 House: Read first time

01/26/09 House: Passed by for the day

01/27/09 House: Passed by for the day

HB 2211 Prescription Monitoring Program; disclosure of information.

Summary as introduced:

Prescription Monitoring Program; disclosure of information. Removes requirement that a prescriber obtain written consent from the recipient of a prescription before requesting information on that recipient for the purpose of establishing his treatment history. However, requires that notice be given to patients that information may be requested by the prescriber from the Prescription Monitoring Program.

Patron: Jones

01/14/09 House: Referred to Committee on Health, Welfare and Institutions

B 2405 Health Professions, Department of; expands requirement to submit information thereto.

Summary as introduced:

Department of Health Professions; submission of information. Expands the requirement to submit certain information to the Department of Health Professions to anyone licensed, certified, registered, or holding a multistate licensure privilege issued by a health regulatory board. Also allows the Department, and the Board of Nursing, to release any information for the purpose of bona fide research or education to qualified personnel, provided data elements that could reasonably identify a specific individual shall be deleted or redacted from such information prior to disclosure. Further, the release of such information shall only be made pursuant to a written agreement.

Patrons: Tyler and Amundson

01/14/09 House: Referred to Committee on Health, Welfare and Institutions

01/27/09 House: Reported from Health, Welfare and Institutions with substitute (22-Y 0-N)

01/27/09 House: Committee substitute printed 093270820-H1

HB 2407 Health Practitioners' Intervention Program; revisions, changes name.

Summary as introduced:

Health Practitioners' Intervention Program; revisions. Changes the name of the Health Practitioners' Intervention Program to the Health Practitioners' Monitoring Program. Also, clarifies that the purpose of the Program is to monitor impaired health professionals, rather than to intervene or treat them. The bill also ensures that the Director of the Department of Health Professions has primary responsibility for establishing the requirements for the Program, and that the Health Practitioners' Monitoring Program Committee (currently the Intervention Program Committee) will only assist the Director in implementing the Program.

Patron: Hall

01/14/09 House: Referred to Committee on Health, Welfare and Institutions

HB 2453 Electronic prescribing; Secretary of Health and Human Services, etc. to establish a website.

Summary as introduced:

Electronic prescribing. Requires the Secretary of Health and Human Services, in consultation with the Secretary of Technology, to establish a website to disseminate information about electronic prescribing to health practitioners, including information about low-cost and no-cost electronic prescribing products, and information about federal, state, and private sector electronic prescribing initiatives. The bill also would require the Department of Health Professions to collect information regarding electronic prescribing from practitioners. Beginning in 2010, any health practitioner who contracts with the Commonwealth for the provision of health services would be required to utilize electronic prescribing, and the Department of Medical Assistance Services is directed to develop programs and incentives to encourage the adoption of electronic prescribing by Medicaid providers.

Patron: Sickles

01/14/09 House: Referred to Committee on Health, Welfare and Institutions

SB 843 Medical malpractice limit; raises total amount recoverable in certain.

Summary as introduced:

Medical malpractice limit. Raises the total amount recoverable in certain medical malpractice actions to \$2,750,000 on July 1, 2009. Such amount recoverable increases on July 1 each year by the annual percent change in the medical care component of the most recent publication of the Consumer Price Index for All Urban Consumers published by the United States Department of Labor, Bureau of Labor Statistics, or by any replacement index adopted by the Department of Labor for medical costs.

Patron: Marsh

2/22/08 Senate: Referred to Committee for Courts of Justice

1/13/09 Senate: Assigned Courts sub: Civil

SB 1075 Optometrists; those licensed may sell contact lenses & allowed to dispense ophthalmic devices.

Summary as introduced:

Optometrists; contact lenses and ophthalmic devices. Specifies that only licensed optometrists and ophthalmologists, or licensed opticians with a contact lens endorsement may sell contact lenses, and allows licensed optometrists and ophthalmologists to dispense ophthalmic devices that contain medication.

Patrons: Howell, Barker, Edwards, Martin, Miller, J.C., Puckett, Quayle and Ruff

01/13/09 Senate: Referred to Committee on Education and Health

01/19/09 Senate: Assigned Education sub: Health Licensing

SB 1154 Copies of medical bills and charges; no cost.

Summary as introduced:

Copies of medical bills and charges; no cost. Provides that a patient, patient's attorney, or insurance provider may obtain a list of charges or an account balance pertaining to that patient at no cost.

Patron: McDougle

1/13/09 Senate: Referred to Committee for Courts of Justice

1/14/09 Senate: Assigned Courts sub: Civil

SB 1389 Medical malpractice; judgment in excess of \$2 million to be paid from Patient's Compensation Fund.

Summary as introduced:

Medical malpractice; Patients' Compensation Fund. Provides that on and after July 1, 2009, a health care provider's personal liability is limited to \$2 million for any injury to, or death of, a patient, and any amount due from a judgment or verdict in excess of \$2 million shall be paid from the Patient's Compensation Fund. The bill provides that the Fund is financed through fees levied upon health care providers and collected by the health regulatory boards. The assets of the fund shall be used solely to pay that portion of the amount due from a malpractice judgment, settlement, or verdict in excess of \$2 million and to administer the Patients' Compensation Program, which is governed by a board of directors whose appointments are prescribed in the bill and who manage and operate the Fund.

Patron: Stolle

01/22/09 Senate: Reported from Education and Health (14-Y 0-N)

01/22/09 Senate: Rereferred to Courts of Justice

01/27/09 Senate: Assigned Courts sub: Civil

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HOUSE BILL NO. 1943

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare, and Institutions)

(Patron Prior to Substitute—Delegate Peace)

House Amendments in []—January 28, 2009

A BILL to amend and reenact §§ 54.1-3202, 54.1-3204, and 54.1-3301 of the Code of Virginia, relating to the practice of optometry.

Be it enacted by the General Assembly of Virginia:

1. That §§ 54.1-3202, 54.1-3204, and 54.1-3301 of the Code of Virginia are amended and reenacted as follows:

§ 54.1-3202. Exemptions.

This chapter shall not apply to:

1. Physicians licensed to practice medicine by the Board of Medicine or to prohibit the sale of nonprescription eyeglasses and sunglasses. Contact lenses shall not be sold as merchandise from a retail business other than one operated by a physician, an optometrist or an optician; or

2. Any optometrist rendering free health care to an underserved population in Virginia who (i) does not regularly practice optometry in Virginia, (ii) holds a current valid license or certificate to practice optometry in another state, territory, district or possession of the United States, (iii) volunteers to provide free health care in an underserved area of this Commonwealth under the auspices of a publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to populations of underserved people, (iv) files a copy of his license or certification in such other jurisdiction with the Board, (v) notifies the Board at least five business days prior to the voluntary provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that such licensure exemption shall only be valid, in compliance with the Board's regulations, during the limited period that such free health care is made available through the volunteer, nonprofit organization on the dates and at the location filed with the Board. The Board may deny the right to practice in Virginia to any optometrist whose license or certificate has been previously suspended or revoked, who has been convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations. However, the Board shall allow an optometrist who meets the above criteria to provide volunteer services without prior notice for a period of up to three days, provided the nonprofit organization verifies that the practitioner has a valid, unrestricted license in another state.

§ 54.1-3204. Prohibited acts.

It shall be unlawful for any person:

1. To practice optometry in this Commonwealth without holding a license issued by the Board. Practicing or offering to practice optometry, or the public representation of being qualified to practice the same by any person not authorized to practice optometry, shall be sufficient evidence of a violation of the law.

2. To impersonate a licensed optometrist of like or different name.

3. To buy or sell or fraudulently obtain a diploma or license.

4. To do any act for which if he were an optometrist his license could be revoked as provided by this chapter.

5. To possess any trial lenses, trial frames, graduated test cards, appliances or instruments used in the practice of optometry, self-testing devices or eyeglass vending machines for the purpose of fitting or prescribing glasses in the practice of optometry, unless he is or unless he regularly employs on the premises a licensed optometrist or a licensed physician.

6. To publish or cause to be published in any manner an advertisement that is false, deceptive or misleading, contains a claim of professional superiority or violates regulations of the Board governing advertising by optometrists.

7. To sell, provide, furnish, supply or duplicate eyeglasses, or lenses for the correction of vision without the prescription of a licensed physician or licensed optometrist, unless he is the holder of a license to practice optometry or a license to practice medicine under the laws of this Commonwealth.

8. To sell or dispense contact lenses, including plano or cosmetic lenses, without holding a license issued by the Board. This subdivision shall not apply to a licensed optician [issued a contact lens endorsement pursuant to regulations of the Board of Opticians in effect on January 1, 2009 operating or working in a retail establishment, when selling or dispensing contact lenses, including plano or cosmetic lenses, upon the valid written prescription of an individual licensed to practice medicine or osteopathy, or a licensed optometrist] .

9. To dispense, administer, or sell an ophthalmic device containing Schedule III, IV, or VI controlled substances or an over-the-counter medication without holding a license issued by the Board, including

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122 11. Interfere with any legally qualified practitioner of medicine or osteopathy from providing
123 controlled substances to his own patients in a free clinic without charge when such controlled substances
124 are donated by an entity other than a pharmaceutical manufacturer as authorized by subdivision 10. The
125 practitioner shall first obtain a controlled substances registration from the Board and shall comply with
126 the labeling and packaging requirements of this chapter and the Board's regulations; or

127 12. Prevent any pharmacist from providing free health care to an underserved population in Virginia
128 who (i) does not regularly practice pharmacy in Virginia, (ii) holds a current valid license or certificate
129 to practice pharmacy in another state, territory, district or possession of the United States, (iii) volunteers
130 to provide free health care to an underserved area of this Commonwealth under the auspices of a
131 publicly supported all volunteer, nonprofit organization that sponsors the provision of health care to
132 populations of underserved people, (iv) files a copy of the license or certificate issued in such other
133 jurisdiction with the Board, (v) notifies the Board at least five business days prior to the voluntary
134 provision of services of the dates and location of such service, and (vi) acknowledges, in writing, that
135 such licensure exemption shall only be valid, in compliance with the Board's regulations, during the
136 limited period that such free health care is made available through the volunteer, nonprofit organization
137 on the dates and at the location filed with the Board. The Board may deny the right to practice in
138 Virginia to any pharmacist whose license has been previously suspended or revoked, who has been
139 convicted of a felony or who is otherwise found to be in violation of applicable laws or regulations.
140 However, the Board shall allow a pharmacist who meets the above criteria to provide volunteer services
141 without prior notice for a period of up to three days, provided the nonprofit organization verifies that the
142 practitioner has a valid, unrestricted license in another state.

143 This section shall not be construed as exempting any person from the licensure, registration,
144 permitting and record keeping requirements of this chapter or Chapter 34 of this title.

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