

**BOARD OF OPTOMETRY  
REGULATORY LEGISLATIVE REVIEW COMMITTEE  
MAY 11, 2011  
DEPARTMENT OF HEALTH PROFESSIONS**

**TIME AND PLACE:** The Board of Optometry's (Board) Regulatory Legislative Review Committee (RLRC) meeting was called to order at 9:32 a.m. at the Department of Health Professions, 9960 Mayland Drive, 2<sup>nd</sup> Floor, Room 2, Henrico, Virginia.

**CHAIRMAN:** Jonathan R. Noble, O.D., Chair

**MEMBERS PRESENT:** Angela Tsai, O.D.  
M. E. Jackson, O.D.

**MEMBERS NOT PRESENT:** All members were present.

**STAFF PRESENT:** Leslie L. Knachel, Executive Director  
Howard Casway, Senior Assistant Attorney General, Board Counsel  
Elaine Yeatts, Senior Regulatory Analyst  
Carol Stamey, Operations Manager  
Asia Williams, Administrative Assistant

**OTHERS PRESENT:** Carole Stadfield, Citizen Member  
Ernest Schlabach, O.D.  
Gregory P. Jelleneck, O.D.  
Cal Whitehead, Virginia Society of Eye Physicians and Surgeons (VSEPS)  
Ralston King, VSEPS  
Edward Mullen, National Association of Optometrists and Opticians  
Bruce Keeney, Virginia Optometric Association

**QUORUM:** With all members present, a quorum was established.

**ORDERING OF THE AGENDA:** Dr. Tsai moved to approve the ordering of agenda. The motion was seconded and carried.

**PUBLIC COMMENT:** No public comment was presented.

**APPROVAL OF MINUTES:** Dr. Tsai moved to approve the minutes of the July 15, 2010, RLRC meeting. The motion was seconded and carried.

## **DISCUSSION ITEMS:**

### **Advertising Guidance Document**

As requested by the Board at the previous full board meeting, Ms. Knachel presented a second proposed draft guidance document to address advertising an “optometric specialty, credential or certification.” Drs. Tsai and Jackson noted concerns with the guidance document using but not defining what organizations are considered “nationally recognized.”

Dr. Jackson expressed that the examination process to become certified in therapeutic pharmaceutical agents (TPA) should define who can advertise as being “board certified.” Dr. Jackson presented the RLRC with a handout (Attachment 2A). Ms. Knachel reminded the RLRC that during the previous full board meeting, the Board discussed that there is no way to verify that one method for obtaining TPA certification was superior to another. TPA certification is a current baseline for initial licensure which can be obtained by taking the appropriate education/training and the TMOD or a state examination comparable to the national examination. Therefore, TPA certification does not meet the threshold for one optometrist to advertise “board certification” over another. Additionally, Ms. Yeatts pointed out that based on the language in § 54.1-3220 of the Code of Virginia, optometrists who obtained diagnostic pharmaceutical agents via a Board-approved examination could also advertise as “board certified.”

Ms. Yeatts explained that it may be helpful to the RLRC to collect board certification advertising language from the various boards within the agency for consideration and reference.

Dr. Jackson moved that board staff collect the regulatory language of other boards regarding the advertising of board certification. In addition, staff is to create a draft advertising guidance document to compare Dr. Jackson’s proposed amendments and the changes submitted in Draft # 2 for presentation at the next meeting. The motion was seconded and carried.

### **Vision Screening Guidance Document**

As requested by the Board at the previous full board meeting, Ms. Knachel provided a draft guidance document to address the issue of vision screenings. Upon review and amendments made by the RLRC, Dr. Tsai moved to approve the revised draft for presentation to the full Board for adoption. The motion was seconded and carried.

**NEW BUSINESS:**

No new business was presented.

**ADJOURNMENT:**

The board concluded its meeting at 10:12 a.m.

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Jonathan R. Noble, O.D., Chair

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Leslie L. Knachel, Executive Director

Draft 2A: (presented by Dr. Jackson 5/11/11)

~~DRAFT #2: Changes made based on discussion from 1/24/11 Full Board Meeting with additions suggested by Dr. Jackson.~~

**GUIDANCE DOCUMENT  
ADVERTISING OPTOMETRIC SPECIALTY, CREDENTIAL OR  
CERTIFICATION**

The Board of Optometry (Board) provides the following guidance on the interpretations of §§ 54.1-3204(6) and 54.1-3215(9) of the Code of Virginia (Code) which state:

**§ 54.1-3204. Prohibited acts.**

*It shall be unlawful for any person:*

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.*

**§ 54.1-3215. Reprimand, revocation and suspension.**

*The Board may revoke or suspend a license or reprimand the licensee for any of the following causes:*

9. *Advertising which directly or indirectly deceives, misleads or defrauds the public, claims professional superiority...*

These sections of the Code provide the Board with the authority to sanction a licensee for publishing an advertisement that deceives, misleads or defrauds the public. Advertising an optometric specialty, credential or certification to which a licensee is not entitled may be considered deceptive or misleading. An advertisement that is likely to cause an ordinarily prudent person to be deceived or misled could result in a finding of a violation and a sanction being imposed.

Entitlement to advertise or represent oneself as holding an optometric certification requires additional education, training and/or assessment of skills above and beyond the general educational requirements for initial licensure. The source providing the education, training and/or skill assessment must be an entity nationally recognized by the profession or approved by the Virginia State Board of Optometry. Please note that §54.1-3222(A) indicates that the Board certifies an optometrist to treat with therapeutic pharmaceutical agents (TPA) and 18VAC105-20-16 states that (A) An applicant for licensure shall meet the following requirements for TPA certification: (2) Take and pass the TMOD. TPA certification through TMOD is currently considered a baseline for initial licensure and does not meet the threshold for an optometrist to advertise as being "board certified." However, those optometrists satisfying 18VAC105-20-16 that states: (A) An applicant for licensure shall meet the following requirements for TPA certification: (1) Complete a full time, postgraduate or equivalent graduate level Optometric training program that is approved by the board and shall include a minimum

of 20 hours of clinical supervision by an Ophthalmologist, and (2) Provide evidence of comparability to the TMOD that is satisfactory to the board **shall** meet the threshold for an optometrist to advertise as being "board certified."

Complaints against an optometrist that allege false, misleading or deceptive advertising practices related to an optometric specialty, credential or certification will be investigated. Such investigation will include a request to provide evidence that the optometrist has completed the education, training and/or skills assessment necessary to achieve or maintain the respective optometric specialty, credential or certification.