Virginia Department of
Health Professions
Board of Optometry

# Agenda
## Virginia Board of Optometry
## Full Board Meeting

**June 28, 2019**
**Board Room 3**
**9:00 a.m.**

**Call to Order – Helene Clayton-Jeter, O.D., Board President**
- Welcome
- Emergency Egress Procedures

**9:05 a.m. Public Hearing – Dr. Clayton-Jeter** **Pages 3-8**

To receive public comments on the proposed changes to the *Regulations of the Virginia Board of Optometry* to authorize the Board to issue inactive licenses.

**Public Hearing Adjournment**

**Business Meeting of the Board**

**Ordering of Agenda – Dr. Clayton-Jeter**

**Public Comment – Dr. Clayton-Jeter**
The Board will receive all public comment related to agenda items at this time. The Board will not receive comment on any regulatory process for which a public comment period has closed or any pending or closed complaint or disciplinary matter.

**Approval of Minutes – Dr. Clayton-Jeter** **Pages 9-12**
- February 8, 2019 – Full Board Meeting (includes Public Hearing)

**Director's Report – Dr. Brown**

**Legislative/Regulatory Update – Elaine Yeatts** **Pages 13-30**
- Legislative update
- Regulatory update
  - Prescribing of opioids – Adoption of final regulations
  - Inactive licenses – Public comment period from 6/24/2019 – 8/23/2019
  - Periodic review

**Discussion Items** **Page 31**
- Revenue, Expenditures, and Cash Balance Analysis – **Ms. Knachel**
- Enforcement Presentation – **Michelle Schmitz**

**Board Member Training**
Use of electronic equipment in the discipline process – **Kelli Moss**

**Board Counsel Report – Charis Mitchell**

**President's Report – Dr. Clayton-Jeter**

**Board of Health Professions Report – Dr. Clayton-Jeter**

**Assocation of Regulatory Boards of Optometry Annual Meeting Report – Dr. Goldberg**

**Staff Reports** **Pages 32-33**
- Executive Director's Report – **Leslie Knachel**
- Discipline Report – **Kelli Moss**

**New Business – Dr. Clayton-Jeter**

**Next Meeting** – October 4, 2019

**Meeting Adjournment – Dr. Clayton-Jeter**

This information is in **DRAFT** form and is subject to change.

# Proposed Regulations for Public Hearing

# Inactive Licensure

***Proposed Regulations – Public Hearing 6/28/19***

***Public comment period: 6/24/19 to 8/23/19***

**BOARD OF OPTOMETRY**

**Inactive licenses**

**18VAC105-20-20. Fees.**

A. Required fees.

| | |
|---|---|
| Initial application and licensure (including TPA certification) | $250 |
| Application for TPA certification | $200 |
| Annual licensure renewal without TPA certification | $150 |
| Annual licensure renewal with TPA certification | $200 |
| Annual renewal of inactive license | $100 |
| Late renewal without TPA certification | $50 |
| Late renewal with TPA certification | $65 |
| Late renewal of inactive license | $35 |
| Returned check | $35 |
| Professional designation application | $100 |
| Annual professional designation renewal (per location) | $50 |
| Late renewal of professional designation | $20 |
| Reinstatement application fee (including renewal and late fees) | $400 |
| Reinstatement application after disciplinary action | $500 |
| Duplicate wall certificate | $25 |
| Duplicate license | $10 |
| Licensure verification | $10 |

B. Unless otherwise specified, all fees are nonrefundable.

C. From October 31, 2018, to December 31, 2018, the following fees shall be in effect:

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|---|---|
| Annual licensure renewal without TPA certification | $75 |
| Annual licensure renewal with TPA certification | $100 |

Annual professional designation renewal (per location) $25

**18VAC105-20-61. Inactive licensure; reactivation.**

A. An optometrist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain continuing education requirements and shall not perform any act requiring a license to practice optometry in Virginia.

B. A licensee whose license has been inactive and who requests reactivation of an active license shall file an application, pay the difference between the inactive and active renewal fees for the current year, and provide documentation of having completed continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed 40 contact hours.

**18VAC105-20-70. Requirements for continuing education.**

A. Each license renewal of an active license shall be conditioned upon submission of evidence to the board of 20 hours of continuing education taken by the applicant during the previous license period. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

1. The 20 hours may include up to two hours of recordkeeping for patient care, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products.

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 10 of the required continuing education hours shall be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa,

including treatment with new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures.

3. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.

4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).

5. Two hours of the 20 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to the renewal deadline unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to the renewal deadline each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection G of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board, which will require that

the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor or accrediting body as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.

2. Regional optometric organizations.

3. State optometric associations and their affiliate local societies.

4. Accredited colleges and universities providing optometric or medical courses.

5. The American Academy of Optometry and its affiliate organizations.

6. The American Academy of Ophthalmology and its affiliate organizations.

7. The Virginia Academy of Optometry.

8. Council on Optometric Practitioner Education (COPE).

9. State or federal governmental agencies.

10. College of Optometrists in Vision Development.

11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.

12. Providers of training in cardiopulmonary resuscitation (CPR).

13. Optometric Extension Program.

H. In order to maintain approval for continuing education courses, providers or sponsors shall:

1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course and contact information of the provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.

2. Maintain documentation about the course and attendance for at least three years following its completion.

I. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.

**BOARD OF OPTOMETRY**
**FULL BOARD MEETING**
**February 8, 2019**

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| **TIME AND PLACE:** | The Virginia Board of Optometry (Board) meeting was called to order at 9:00 a.m. at the Department of Health Professions (DHP), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 3, Henrico, Virginia 23233. |
| **PRESIDING OFFICER:** | Helene Clayton-Jeter, O.D., President |
| **MEMBERS PRESENT:** | Fred E. Goldberg, O.D.<br>Steven A. Linas, O.D.<br>Clifford A. Roffis, O.D.<br>Lisa Wallace-Davis, O.D.<br>Devon Cabot – Citizen Member |
| **MEMBERS NOT PRESENT:** | All members were present. |
| **STAFF PRESENT:** | Barbara Allison-Bryan, M.D., Chief Deputy Director<br>Leslie L. Knachel, Executive Director<br>Kelli Moss, Deputy Executive Director<br>Charis Mitchell, Assistant Attorney General, Board Counsel<br>Elaine Yeatts, Senior Policy Analyst<br>Anthony C. Morales, Operations Manager |
| **OTHERS PRESENT:** | Bo Keeney, Virginia Optometric Association (VOA)<br>Bruce Keeney, VOA |
| **QUORUM:** | With six members of the Board present, a quorum was established. |
| **PUBLIC HEARING:** | Dr. Clayton-Jeter opened the public hearing at 9:05 a.m. to receive comments on changes to the *Regulations of the Virginia Board of Optometry* (18VAC105-20-05 et seq.) – prescribing opioids for acute and chronic pain. The only comment came in via an email from the VOA requesting its comments be read to the Board. Dr. Clayton-Jeter read the comments that included the statement "…our professional association supports these proposed regulations…"<br><br>Dr. Clayton-Jeter closed the hearing at 9:08 a.m. |
| **ORDERING OF AGENDA** | No changes or additions were made to the agenda. |
| **PUBLIC COMMENT:** | Bo Keeney thanked the Executive Director for quickly responding to an identified issue. |
| **APPROVAL OF MINUTES:** | Ms. Devon Cabot moved to approve the meeting minutes for the following meetings as presented:<br>• November 2, 2018 – Public Hearing<br>• November 2, 2018 – Continuing Education Meeting<br>• November 2, 2018 – Full Board Meeting<br><br>The motion was seconded and carried. |

**DIRECTOR'S REPORT:**

Dr. Allison-Bryan provided an update of future agency website changes.

**LEGISLATIVE/REGULATORY UPDATE:**

**Legislative Update**
Ms. Yeatts reviewed legislative bills of interest to the agency and the Board of Optometry.

**Update on Regulatory Actions**
Ms. Yeatts provided the following information on the Board's regulatory actions:

- Periodic Review: Report that no comments were received during the 60 public comment period.

  Dr. Linas moved to adopt the final regulations. The motion was seconded and carried.

- Prescribing of opioids – Extension of emergency regulations: The promulgation process for the final replacement regulations will not be complete before the emergency regulations expire. A request to extend the expiration date was requested.

- Inactive licenses: Awaiting approval from the Secretary's office.

- CE Committee recommendations: Recommendations from the Continuing Education (CE) Committee were presented for the Board's consideration. The Board discussed the draft regulatory changes. The Board did not take action on the draft and asked the CE Committee to reconvene to further evaluate the process for inclusion of the National Glaucoma Society and other organizations when requested.

**DISCUSSION ITEMS:**

**Continuing Education Audits**

- **Update of Guidance Document 150-12, Guidance for Continuing Education Audits (CE) and Sanctioning for Failure to Complete CE**

  Ms. Knachel explained the need to have additional actions for failure to respond to a CE audit notification until disciplinary action was initiated. She presented a draft to the Board for its consideration. She indicated that the Board would need to determine a fine amount for a second offense.

  Dr. Goldberg moved to accept the draft and levy a $500.00 fine. The motion was seconded and carried.

  Ms. Knachel requested that the Board determine whether a 2018 CE audit should occur.

  Dr. Roffis moved to conduct a CE audit for 2018. The motion was seconded and carried

**BOARD MEMBER TRAINING:**

**Administrative Hearings**
Ms. Moss provided on administrative hearings.

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| **COUNSEL REPORT:** | Ms. Mitchell stated that she did not have anything to report. |
| **PRESIDENT'S REPORT:** | Dr. Clayton-Jeter stated that she felt it was important to remind the Board at each meeting of its mission. |
| **BOARD OF HEALTH PROFESSION'S REPORT:** | Dr. Clayton-Jeter reported on activities of the Board of Health Professions. |
| **STAFF REPORTS:** | **Executive Director's Report – Ms. Knachel**<br>Ms. Knachel reported on licensure and budget statistics.<br><br>Ms. Knachel stated that the Association of Regulatory Boards of Optometry's 2019 Annual Meeting is in St. Louis. She asked that board members let her know if they are interested in attending.<br><br>**Discipline Report – Ms. Moss**<br>Ms. Moss provided an overview of the caseload statistics. |
| **NEW BUSINESS:** | No New Business was presented. |
| **NEW MEETING:** | The next scheduled full board meeting is June 28, 2019. |
| **CONSIDERATION OF POSSIBLE RESOLUTION OF CASE No.'s 183551 and 185376:** | Ms. Moss presented a Consent Order for possible resolution for Case Nos. 183551 and 185376 in lieu of a formal hearing. |
| **CLOSED SESSION:** | Dr. Goldberg moved that the Board convene a closed meeting pursuant to Virginia Code § 2.2-3711(A)(27) for the purpose of deliberation to reach a decision in the matter of Case Nos. 183551 and 185376. Additionally, he moved that Ms. Mitchell, Ms. Knachel and Ms. Moss attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The motion was seconded and carried unanimously. |
| **RECONVENE:** | Dr. Goldberg moved that the Board certify that it heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened. The motion was seconded and carried unanimously.<br><br>The Board reconvened in open session pursuant to Virginia Code § 2.2-3712(D). |
| **DECISION:** | Dr. Wallace-Davis moved that the Board accept the Consent Order for Case Nos. 183551 and 185376 in lieu of proceeding with a formal |

hearing. Following a second, a roll call vote was taken. The motion passed unanimously.

**ADJOURNMENT:** The meeting adjourned at 12:26 p.m.

Helene Clayton-Jeter, O.D.,
President

Leslie L. Knachel, M.P.H.
Executive Director

# Department of Health Professions
# Regulatory/Policy Actions – 2019 General Assembly

**EMERGENCY REGULATIONS:**

| Legislative source | Mandate | Promulgating agency | Board adoption date | Effective date Within 280 days of enactment |
|---|---|---|---|---|
| HB2559 | Waiver for electronic prescribing | Medicine<br>Nursing<br>Dentistry<br>Optometry | 6/13/19 or 8/2/19<br>7/16/19<br>6/21/19<br>6/28/19<br>(signed 3/21) | **12/24/19** |

**NON-REGULATORY ACTIONS**

| Legislative source | Affected agency | Action needed | Due date |
|---|---|---|---|
| HB2557 | All boards with prescribers and Pharmacy | Notice about rescheduling of gabapentin | 7/1/19 |
| HB1970 | Department | Review of telehealth; practice by adjacent physicians | 11/1/19 |
| HB1971 | Department – APD | Revision of procedures & policy for mandatory suspensions | 7/1/19 |
| SB1557 | Medicine/Pharmacy/Department | Inclusion of NPs and PAs for registration to issue certifications<br>Participation in workgroup to study oversight organization | 7/1/19 |
| SB1557 | Pharmacy/Department | Participation in workgroup to study oversight organization | 11/1/19 |

## Future Policy Actions:

**HB2559 (2019)** - requires the Secretary of Health and Human Resources to convene a work group to identify successes and challenges of the electronic prescription requirement and offer possible recommendations for increasing the electronic prescribing of controlled substances that contain an opioid and to report to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by **November 1, 2022.**

## CHAPTER 214

*An Act to amend and reenact §§ 54.1-3454 and 54.1-3456.1 of the Code of Virginia, relating to Drug Control Act; Schedule V; gabapentin.*

[H 2557]

Approved March 5, 2019

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 54.1-3454 and 54.1-3456.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 54.1-3454. Schedule V.**

The controlled substances listed in this section are included in Schedule V:

1. Any compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

Not more than 200 milligrams of codeine, or any of its salts, per 100 milliliters or per 100 grams;

Not more than 100 milligrams of dihydrocodeine, or any of its salts, per 100 milliliters or per 100 grams;

Not more than 100 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or per 100 grams;

Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

The Board may except by regulation any compound, mixture, or preparation containing any depressant substance listed in subdivision 1 from the application of all or any part of this chapter and such substances so excepted may be dispensed pursuant to § 54.1-3416.

2. Unless specifically excepted or listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

Pyrovalerone.

3. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts:

Brivaracetam ((2S)-2-[(4R)-2-oxo-4-propylpyrrolidin-1-yl] butanamide) (also referred to as BRV; UCB-34714; Briviact);

Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester]-2779;

*Gabapentin [1-(aminomethyl)cyclohexaneacetic acid];*

Lacosamide [(R)-2-acetoamido-N-benzyl-3-methoxy-propionamide];

Pregabalin [(S)-3-(aminomethyl)-5-methylhexanoic acid].

**§ 54.1-3456.1. Drugs of concern.**

~~A.~~ The Board may promulgate regulations designating specific drugs and substances, including any controlled substance or other drug or substance where there has been or there is the actual or relative potential for abuse, as drugs of concern. Drugs or substances designated as drugs of concern shall be reported to the Department of Health Professions and shall be subject to reporting requirements for the Prescription Monitoring Program established pursuant to Chapter 25.2 (§ 54.1-2519 et seq.).

~~B. Drugs and substances designated as drugs of concern shall include any material, compound, mixture, or preparation that contains any quantity of the substance tramadol or gabapentin, including its salts. Drugs and substances designated as drugs of concern shall not include any nonnarcotic drug that may be lawfully sold over the counter or behind the counter without a prescription.~~

**2. That notwithstanding the provisions of this act or any other provision of law, any wholesale drug distributor licensed and regulated by the Board of Pharmacy and registered with and regulated by the U.S. Drug Enforcement Administration shall have until July 1, 2020, or within 6 months of final approval of compliance from the Board of Pharmacy and the U.S. Drug Enforcement Administration, whichever is earlier, to comply with the storage requirements for Schedule V controlled substances containing gabapentin.**

# 18VAC105-20-47. Therapeutic Pharmaceutical Agents.

A. A TPA-certified optometrist, acting within the scope of his practice, may procure, administer and prescribe medically appropriate therapeutic pharmaceutical agents (or any therapeutically appropriate combination thereof) to treat diseases and abnormal conditions of the human eye and its adnexa within the following categories:

1. Oral analgesics - Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedule III, IV and VI narcotic and nonnarcotic agents.

2. Topically administered Schedule VI agents:

a. Alpha-adrenergic blocking agents;

b. Anesthetic (including esters and amides);

c. Anti-allergy (including antihistamines and mast cell stabilizers);

d. Anti-fungal;

e. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);

f. Anti-infective (including antibiotics and antivirals);

g. Anti-inflammatory;

h. Cycloplegics and mydriatics;

i. Decongestants; and

j. Immunosuppressive agents.

3. Orally administered Schedule VI agents:

a. Aminocaproic acids (including antifibrinolytic agents);

b. Anti-allergy (including antihistamines and leukotriene inhibitors);

c. Anti-fungal;

d. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);

e. Anti-infective (including antibiotics and antivirals);

f. Anti-inflammatory (including steroidal and nonsteroidal);

g. Decongestants; and

h. Immunosuppressive agents.

B. Schedule I, II and V drugs are excluded from the list of therapeutic pharmaceutical agents.

C. Over-the-counter topical and oral medications for the treatment of the eye and its adnexa may be procured for administration, administered, prescribed or dispensed.

Statutory Authority

§§ 54.1-2400 and 54.1-3223 of the Code of Virginia.

Historical Notes

Derived from Volume 21, Issue 08, eff. December 8, 2004; amended, Virginia Register Volume 31, Issue 26, eff. September 23, 2015.

## CHAPTER 664

*An Act to amend and reenact §§ 54.1-3408.02, as it shall become effective, and 54.1-3410 of the Code of Virginia, relating to electronic transmission of certain prescriptions; exceptions.*

[H 2559]

Approved March 21, 2019

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 54.1-3408.02, as it shall become effective, and 54.1-3410 of the Code of Virginia are amended and reenacted as follows:**

**§ 54.1-3408.02. (Effective July 1, 2020) Transmission of prescriptions.**

A. Consistent with federal law and in accordance with regulations promulgated by the Board, prescriptions may be transmitted to a pharmacy as an electronic prescription or by facsimile machine and shall be treated as valid original prescriptions.

B. Any prescription for a controlled substance that contains an ~~opiate~~ *opioid* shall be issued as an electronic prescription.

*C. The requirements of subsection B shall not apply if:*

*1. The prescriber dispenses the controlled substance that contains an opioid directly to the patient or the patient's agent;*

*2. The prescription is for an individual who is residing in a hospital, assisted living facility, nursing home, or residential health care facility or is receiving services from a hospice provider or outpatient dialysis facility;*

*3. The prescriber experiences temporary technological or electrical failure or other temporary extenuating circumstance that prevents the prescription from being transmitted electronically, provided that the prescriber documents the reason for this exception in the patient's medical record;*

*4. The prescriber issues a prescription to be dispensed by a pharmacy located on federal property, provided that the prescriber documents the reason for this exception in the patient's medical record;*

*5. The prescription is issued by a licensed veterinarian for the treatment of an animal;*

*6. The FDA requires the prescription to contain elements that are not able to be included in an electronic prescription;*

*7. The prescription is for an opioid under a research protocol;*

*8. The prescription is issued in accordance with an executive order of the Governor of a declared emergency;*

*9. The prescription cannot be issued electronically in a timely manner and the patient's condition is at risk, provided that the prescriber documents the reason for this exception in the patient's medical record; or*

*10. The prescriber has been issued a waiver pursuant to subsection D.*

*D. The licensing health regulatory board of a prescriber may grant such prescriber, in accordance with regulations adopted by such board, a waiver of the requirements of subsection B, for a period not to exceed one year, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.*

**§ 54.1-3410. When pharmacist may sell and dispense drugs.**

A. A pharmacist, acting in good faith, may sell and dispense drugs and devices to any person pursuant to a prescription of a prescriber as follows:

1. A drug listed in Schedule II shall be dispensed only upon receipt of a written prescription that is properly executed, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address, and registry number under the federal laws of the person prescribing, if he is required by those laws to be so registered. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed;

2. In emergency situations, Schedule II drugs may be dispensed pursuant to an oral prescription in accordance with the Board's regulations;

3. Whenever a pharmacist dispenses any drug listed within Schedule II on a prescription issued by a prescriber, he shall affix to the container in which such drug is dispensed, a label showing the prescription serial number or name of the drug; the date of initial filling; his name and address, or the name and address of the pharmacy; the name of the patient or, if the patient is an animal, the name of the owner of the animal and the species of the animal; the name of the prescriber by whom the prescription was written, except for those drugs dispensed to a patient in a hospital pursuant to a chart order; and such directions as may be stated on the prescription.

B. A drug controlled by Schedules III through VI or a device controlled by Schedule VI shall be dispensed upon receipt of a written or oral prescription as follows:

1. If the prescription is written, it shall be properly executed, dated and signed by the person prescribing on the day when issued and bear the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name and address of the person prescribing. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed.

2. If the prescription is oral, the prescriber shall furnish the pharmacist with the same information as is required by law in the case of a written prescription for drugs and devices, except for the signature of the prescriber.

A pharmacist who dispenses a Schedule III through VI drug or device shall label the drug or device as required in subdivision A 3 of this section.

C. A drug controlled by Schedule VI may be refilled without authorization from the prescriber if, after reasonable effort has been made to contact him, the pharmacist ascertains that he is not available and the patient's health would be in imminent danger without the benefits of the drug. The refill shall be made in compliance with the provisions of § 54.1-3411.

If the written or oral prescription is for a Schedule VI drug or device and does not contain the address or registry number of the prescriber, or the address of the patient, the pharmacist need not reduce such information to writing if such information is readily retrievable within the pharmacy.

D. Pursuant to authorization of the prescriber, an agent of the prescriber on his behalf may orally transmit a prescription for a drug classified in Schedules III through VI if, in such cases, the written record of the prescription required by this subsection specifies the full name of the agent of the prescriber transmitting the prescription.

E. (Effective July 1, 2020) ~~No pharmacist shall dispense a controlled substance that contains an opiate unless the prescription for such controlled substance is issued as an electronic prescription.~~ *A dispenser who receives a non-electronic prescription for a controlled substance containing an opioid is not required to verify that one of the exceptions set forth in § 54.1-3408.02 applies and may dispense such controlled substance pursuant to such prescription and applicable law.*

**2. That the Board of Medicine, the Board of Nursing, the Board of Dentistry, and the Board of Optometry shall promulgate regulations to implement the provisions of this act regarding prescriber waivers to be effective within 280 days of its enactment.**

**3. That the Secretary of Health and Human Resources shall convene a work group of interested stakeholders, including the Medical Society of Virginia, the Virginia Hospital and Healthcare Association, the Virginia Dental Association, the Virginia Association of Health Plans, and the Virginia Pharmacists Association, to evaluate the implementation of the electronic prescription requirement for controlled substances and shall report to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by November 1, 2022. The work group's report shall identify the successes and challenges of implementing the electronic prescription requirement and offer possible recommendations for increasing the electronic prescribing of controlled substances that contain an opioid.**

**Agenda Item:** **Regulatory Actions - Chart of Regulatory Actions**
**(As of June 14, 2019)**

| Board | Board of Optometry | |
|---|---|---|
| Chapter | | Action / Stage Information |
| [18 VAC 105 - 20] | Regulations of the Virginia Board of Optometry | Prescribing of opioids [Action 4892]<br>Proposed - *Register Date: 2/4/19*<br>*Comment closed: 2/8/19*<br>*Board to adopt final regulations: 6/28/19* |
| [18 VAC 105 - 20] | Regulations of the Virginia Board of Optometry | Inactive licenses [Action 5006]<br>Proposed - *Register Date: 6/24/19*<br>*Comment period: 6/24/19 to 8/23/19*<br>*Public hearing: 6/28/19* |
| [18 VAC 105 - 20] | Regulations of the Virginia Board of Optometry | Periodic review [Action 4780]<br>Final - *At Secretary's Office for 104 days* |

**Agenda Item: Regulations for Opioid Prescribing**

**Included in your agenda package:**

Draft minutes of public hearing on 2/8/29

Proposed regulations as published

**Staff Note:**

At the public hearing conducted on 2/8/19, Dr. Clayton-Jeter read an email from the Virginia Optometric Association in support of the proposed regulations. There were no other public comments during the 60-day comment period.

**Board action:**

Adoption of final regulations as proposed and published; or

Adoption of final regulations with amendment(s)

**BOARD OF OPTOMETRY**
**FULL BOARD MEETING**
**February 8, 2019**

**TIME AND PLACE:** The Virginia Board of Optometry (Board) meeting was called to order at 9:00 a.m. at the Department of Health Professions (DHP), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 3, Henrico, Virginia 23233.

**PRESIDING OFFICER:** Helene Clayton-Jeter, O.D., President

**MEMBERS PRESENT:**
Fred E. Goldberg, O.D.
Steven A. Linas, O.D.
Clifford A. Roffis, O.D.
Lisa Wallace-Davis, O.D.
Devon Cabot – Citizen Member

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

**STAFF PRESENT:**
Barbara Allison-Bryan, M.D., Chief Deputy Director
Leslie L. Knachel, Executive Director
Kelli Moss, Deputy Executive Director
Chris Mitchell, Assistant Attorney General, Board Counsel
Elaine Yeatts, Senior Policy Analyst
Anthony C. Morales, Operations Manager

**OTHERS PRESENT:**
Bo Keeney, Virginia Optometric Association (VOA)
Bruce Keeney, VOA

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

**PUBLIC HEARING:** Dr. Clayton-Jeter opened the public hearing at 9:05 a.m. to receive comments on changes to the *Regulations of the Virginia Board of Optometry* (18VAC105-20-05 et seq.) – prescribing opioids for acute and chronic pain. The only comment came in via an email from the VOA requesting its comments be read to the Board. Dr. Clayton-Jeter read the comments that included the statement "…our professional association supports these proposed regulations…"

Dr. Clayton-Jeter closed the hearing at 9:08 a.m.

**ORDERING OF AGENDA** No changes or additions were made to the agenda.

**PUBLIC COMMENT:** Bo Keeney thanked the Executive Director for quickly responding to an identified issue.

**APPROVAL OF MINUTES:** Ms. Devon Cabot moved to approve the meeting minutes for the following meetings as presented:

- November 2, 2018 – Public Hearing
- November 2, 2018 – Continuing Education Meeting
- November 2, 2018 – Full Board Meeting

The motion was seconded and carried.

**DIRECTOR'S REPORT:**

Dr. Allison-Bryan provided an update of future agency website changes.

**LEGISLATIVE/REGULATORY UPDATE:**

**Legislative Update**
Ms. Yeatts reviewed legislative bills of interest to the agency and the Board of Optometry.

**Update on Regulatory Actions**
Ms. Yeatts provided the following information on the Board's regulatory actions:

- Periodic Review: Report that no comments were received during the 60 public comment period.

  Dr. Linas moved to adopt the final regulations. The motion was seconded and carried.

- Prescribing of opioids – Extension of emergency regulations: The promulgation process for the final replacement regulations will not be complete before the emergency regulations expire. A request to extend the expiration date was requested.

- Inactive licenses: Awaiting approval from the Secretary's office.

- CE Committee recommendations: Recommendations from the Continuing Education (CE) Committee were presented for the Board's consideration. The Board discussed the draft regulatory changes. The Board did not take action on the draft and asked the CE Committee to reconvene to further evaluate the process for inclusion of the National Glaucoma Society and other organizations when requested.

**DISCUSSION ITEMS:**

**Continuing Education Audits**

- **Update of Guidance Document 150-12, Guidance for Continuing Education Audits (CE) and Sanctioning for Failure to Complete CE**

  Ms. Knachel explained the need to have additional actions for failure to respond to a CE audit notification until disciplinary action was initiated. She presented a draft to the Board for its consideration. She indicated that the Board would need to determine a fine amount for a second offense.

  Dr. Goldberg moved to accept the draft and levy a $500.00 fine. The motion was seconded and carried.

  Ms. Knachel requested that the Board determine whether a 2018 CE audit should occur.

  Dr. Roffis moved to conduct a CE audit for 2018. The motion was seconded and carried

**BOARD MEMBER TRAINING:**

**Administrative Hearings**
Ms. Moss provided on administrative hearings.

| | |
|---|---|
| **COUNSEL REPORT:** | Ms. Mitchell stated that she did not have anything to report. |
| **PRESIDENT'S REPORT:** | Dr. Clayton-Jeter stated that she felt it was important to remind the Board at each meeting of its mission. |
| **BOARD OF HEALTH PROFESSION'S REPORT:** | Dr. Clayton-Jeter reported on activities of the Board of Health Professions. |
| **STAFF REPORTS:** | **Executive Director's Report – Ms. Knachel**<br>Ms. Knachel reported on licensure and budget statistics.<br><br>Ms. Knachel stated that the Association of Regulatory Boards of Optometry's 2019 Annual Meeting is in St. Louis. She asked that board members let her know if they are interested in attending.<br><br>**Discipline Report – Ms. Moss**<br>Ms. Moss provided an overview of the caseload statistics. |
| **NEW BUSINESS:** | No New Business was presented. |
| **NEW MEETING:** | The next scheduled full board meeting is June 28, 2019. |
| **CONSIDERATION OF POSSIBLE RESOLUTION OF CASE No.'s 183551 and 185376:** | Ms. Moss presented a Consent Order for possible resolution for Case Nos. 183551 and 185376 in lieu of a formal hearing. |
| **CLOSED SESSION:** | Dr. Goldberg moved that the Board convene a closed meeting pursuant to Virginia Code § 2.2-3711(A)(27) for the purpose of deliberation to reach a decision in the matter of Case Nos. 183551 and 185376. Additionally, he moved that Ms. Mitchell, Ms. Knachel and Ms. Moss attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The motion was seconded and carried unanimously. |
| **RECONVENE:** | Dr. Goldberg moved that the Board certify that it heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened. The motion was seconded and carried unanimously.<br><br>The Board reconvened in open session pursuant to Virginia Code § 2.2-3712(D). |
| **DECISION:** | Dr. Wallace-Davis moved that the Board accept the Consent Order for Case Nos. 183551 and 185376 in lieu of proceeding with a formal |

hearing. Following a second, a roll call vote was taken. The motion passed unanimously.

**ADJOURNMENT:** The meeting adjourned at 12:26 p.m.

Helene Clayton-Jeter, O.D.,
President

Leslie L. Knachel, M.P.H.
Executive Director

## FINAL REGULATIONS

## BOARD OF OPTOMETRY

## Prescribing of opioids

**18VAC105-20-5. Definitions.**

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Acute pain" means pain that occurs within the normal course of a disease or condition for which controlled substances may be prescribed for no more than three months.

"Board" means the Virginia Board of Optometry.

"Chronic pain" means nonmalignant pain that goes beyond the normal course of a disease or condition for which controlled substances may be prescribed for a period greater than three months.

"Controlled substance" means drugs listed in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia) in Schedules II through V.

"MME" means morphine milligram equivalent.

"NBEO" means the National Board of Examiners in Optometry.

"Prescription Monitoring Program" means the electronic system within the Department of Health Professions that monitors the dispensing of certain controlled substances.

"TPA" means therapeutic pharmaceutical agents.

"TPA certification" means authorization by the Virginia Board of Optometry for an optometrist to treat diseases and abnormal conditions of the human eye and its adnexa and to prescribe and administer certain therapeutic pharmaceutical agents.

**18VAC105-20-48. Prescribing an opioid for acute pain.**

A. Nonpharmacologic and non-opioid treatment for pain shall be given consideration prior to treatment with opioids. If an opioid is considered necessary for the treatment of acute pain, a TPA-certified optometrist shall follow the regulations for prescribing and treating with opioids.

B. Prior to initiating treatment with a controlled substance containing an opioid for a complaint of acute pain, a TPA-certified optometrist shall perform a health history and physical examination appropriate to the complaint, query the Prescription Monitoring Program as set forth in § 54.1-2522.1 of the Code of Virginia, and conduct an assessment of the patient's history and risk of substance abuse.

C. Initiation of opioid treatment for all patients with acute pain shall include the following:

1. A prescription for an opioid shall be a short-acting opioid in the lowest effective dose for the fewest number of days, not to exceed seven days as determined by the manufacturer's directions for use, unless extenuating circumstances are clearly documented in the patient record.

2. A TPA-certified optometrist shall carefully consider and document in the patient record the reasons to exceed 50 MME per day.

3. A prescription for naloxone should be considered for any patient when any risk factor of prior overdose, substance misuse, or concomitant use of benzodiazepine is present.

D. If another prescription for an opioid is to be written beyond seven days, a TPA-certified optometrist shall:

1. Reevaluate the patient and document in the patient record the continued need for an opioid prescription; and

2. Check the patient's prescription history in the Prescription Monitoring Program.

E. The patient record shall include a description of the pain, a presumptive diagnosis for the origin of the pain, an examination appropriate to the complaint, a treatment plan, and the medication prescribed (including date, type, dosage, strength, and quantity prescribed).

F. Due to a higher risk of fatal overdose when opioids are prescribed for a patient also taking benzodiazepines, sedative hypnotics, tramadol, or carisoprodol, a TPA-certified optometrist shall only co-prescribe these substances when there are extenuating circumstances and shall document in the patient record a tapering plan to achieve the lowest possible effective doses if these medications are prescribed.

**18VAC105-20-49. Prescribing an opioid for chronic pain.**

If a TPA-certified optometrist treats a patient for whom an opioid prescription is necessary for chronic pain, he shall either:

1. Refer the patient to a doctor of medicine or osteopathic medicine who is a pain management specialist; or

2. Comply with regulations of the Board of Medicine, 18VAC85-21-60 through 18VAC85-21-120, if he chooses to manage the chronic pain with an opioid prescription.

**18VAC105-20-70. Requirements for continuing education.**

A. Each license renewal shall be conditioned upon submission of evidence to the board of 20 hours of continuing education taken by the applicant during the previous license period. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

1. The 20 hours may include up to two hours of recordkeeping for patient care, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of

augmenting the licensee's income or promoting the sale of specific instruments or products.

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 10 of the required continuing education hours shall be in the areas of ocular and general pharmacology~~,~~; diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents~~, or~~; new or advanced clinical devices, techniques, modalities, or procedures; or pain management.

3. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.

4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).

5. Two hours of the 20 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to the renewal deadline unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to the renewal deadline of each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection G of this section. Courses that are not approved by a board-recognized

sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor or accrediting body as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically, or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.

2. Regional optometric organizations.

3. State optometric associations and their affiliate local societies.

4. Accredited colleges and universities providing optometric or medical courses.

5. The American Academy of Optometry and its affiliate organizations.

6. The American Academy of Ophthalmology and its affiliate organizations.

7. The Virginia Academy of Optometry.

8. Council on Optometric Practitioner Education (COPE).

9. State or federal governmental agencies.

10. College of Optometrists in Vision Development.

11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.

12. Providers of training in cardiopulmonary resuscitation (CPR).

13. Optometric Extension Program.

H. In order to maintain approval for continuing education courses, providers or sponsors shall:

1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course, and contact information of the provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.

2. Maintain documentation about the course and attendance for at least three years following its completion.

I. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.

# COMMONWEALTH of VIRGINIA

David E. Brown, D.C.
Director

*Department of Health Professions*
Perimeter Center
9960 Mayland Drive, Suite 300
Henrico, Virginia 23233-1463

www.dhp.virginia.gov
TEL (804) 367-4400
FAX (804) 527-4475


MEMORANDUM

TO: Members, Board of Optometry

FROM: David E. Brown, D.C.

DATE: May 13, 2019

SUBJECT: Revenue, Expenditures, & Cash Balance Analysis

Virginia law requires that an analysis of revenues and expenditures of each regulatory board be conducted at least biennially. If revenues and expenditures for a given board are more than 10% apart, the Board is required by law to adjust fees so that the fees are sufficient, but not excessive, to cover expenses. The action by the Board can be a fee increase, a fee decrease, or it can maintain the current fees.

The Board of Optometry ended the 2016 - 2018 biennium (July 1, 2016, through June 30, 2018) with a cash balance of $505,645. Current projections indicate that expenditures for the 2018 - 2020 biennium (July 1, 2017, through June 30, 2020) will exceed revenue by approximately $236,284. When combined with the Board's $505,645 cash balance as of June 30, 2018, the Board of Optometry projected cash balance on June 30, 2020, is $269,361.

We recommend no action to change license fees be taken at this time. Please note that these projections are based on internal agency assumptions and are, subject to change based on actions by the Governor, the General Assembly and other state agencies.

We are grateful for continued support and cooperation as we work together to manage the fiscal affairs of the Board and the Department.

Please do not hesitate to call me if you have questions.

CC: Leslie Knachel, Executive Director
Lisa R. Hahn, Chief Operating Officer
Charles E. Giles, Budget Manager
Elaine Yeatts, Senior Policy Analyst

Virginia Department of Health Professions
Cash Balance
As of May 31, 2019

| | 105- Optometry |
|---|---|
| **Board Cash Balance as June 30, 2018** | $ 505,645 |
| **YTD FY19 Revenue** | 201,200 |
| **Less: YTD FY19 Direct and Allocated Expenditures** | 345,137 |
| **Board Cash Balance as May 31, 2019** | 361,708 |

**Criteria for this report:**
License Status = Current Active, Current Inactive, Probation - Current Active, Adverse Findings - Current Active, Current Active-RN Privilege and Expiration Date >= Today or is null.

## License Count Report for Optometry

| Board | Occupation | State | License Status | License Count |
|---|---|---|---|---|
| Optometry | | | | |
| | **Optometrist** | | | |
| | Optometrist | Virginia | Current Active | 18 |
| | Optometrist | Out of state | Current Active | 78 |
| | Total for Optometrist | | | 96 |
| | **Optometrist - Volunteer Registration** | | | |
| | Optometrist - Volunteer Registration | Virginia | Current Active | 1 |
| | Optometrist - Volunteer Registration | Out of state | Current Active | 10 |
| | Total for Optometrist - Volunteer Registration | | | 11 |
| | **Professional Designation** | | | |
| | Professional Designation | Virginia | Current Active | 262 |
| | Professional Designation | Out of state | Current Active | 1 |
| | Total for Professional Designation | | | 263 |
| | **TPA Certified Optometrist** | | | |
| | TPA Certified Optometrist | Virginia | Current Active | 1,188 |
| | TPA Certified Optometrist | Virginia | Probation - Curre | 2 |
| | TPA Certified Optometrist | Out of state | Current Active | 415 |
| | Total for TPA Certified Optometrist | | | 1,605 |
| Total for Optometry | | | | 1,975 |

| License Type | FY2013 | FY2014 | FY2015 | 2016 | FY2017 | FY2018 | 2019 |
|---|---|---|---|---|---|---|---|
| Optometrist | 150 | 143 | 131 | 124 | 117 | 104 | 96 |
| Optometrist - Volunteer | 0 | 0 | 0 | 0 | 0 | 0 | 11 |
| Profession Designation | 245 | 251 | 250 | 247 | 266 | 257 | 263 |
| TPA Certified Optometrist | 1480 | 1512 | 1527 | 1486 | 1538 | 1552 | 1605 |
| Total | 1875 | 1906 | 1908 | 1857 | 1921 | 1913 | 1975 |