

**BOARD OF OPTOMETRY
BOARD MEETING
MARCH 8, 2005**

TIME AND PLACE:

The meeting was called to order at 10:05 a.m. on Tuesday, March 8, 2005 at the Department of Health Professions, Conference Room 3, 6603 W. Broad St., Richmond, VA.

PRESIDING OFFICER:

David H. Hettler, O.D, President

MEMBERS PRESENT:

Paula H. Boone, O.D.
Martha Gilbert
Gregory P. Jellenek, O.D.
W. Ernest Schlabach, Jr., O.D.
William T. Tiller, O.D.

STAFF PRESENT:

Emily Wingfield, Assistant Attorney General, Board Counsel
Elizabeth A. Carter, Ph.D., Executive Director for the Board
Elaine Yeatts, Senior Regulatory Analyst
Carol Stamey, Administrative Assistant
Sammy Johnson, Enforcement Division

OTHERS PRESENT:

C. Cannaday, VSO
Betty Graumlich, NAOO
Zelda Dugger, DPOR

QUORUM:

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

PUBLIC COMMENT:

No public comment was presented.

REVIEW AND APPROVAL OF AGENDA:

The agenda was revised to include the reports of the Professional Designation and Newsletter Committees.

APPROVAL OF MINUTES:

◆ Action On properly seconded motion by Dr. Tillar, the Board voted unanimously to approve the minutes of the January 21, 2005 meeting.

DISCUSSION ITEMS:

Special Psychological Services Group

◆ Action On properly seconded motion by Dr. Schlabach, the board voted unanimously that Dr. Carter draft a letter informing Dr. Hibler that color vision testing is allowable by his company's staff provided that they include a protocol to refer patients with abnormal findings.

CELMO

Dr. Schlabach reported that he had attended a SECO meeting and that four (4) states had now accepted CELMO as a

credentialing mechanism for licensure through endorsement. Dr. Carter informed the board that before it accepted the CELMO program, the board needed an official certificate from CELMO attesting that original transcripts, licensure verification/disciplinary actions and national board scores are obtained directly from the schools, states and NBEO (original sourcing). Dr. Carter reported that she would draft a letter informing CELMO that the board took no position at this time; however, the concept appears endorsable and to continue the development of the program. Dr. Carter noted that clarification of outsourcing should be completed for review and approval for the June 8, 2005 meeting.

REGULATORY ACTION:

Adoption of Final Regulations for Delegation of Informal Fact-Finding to an Agency Subordinate

Ms. Yeatts reported that no public comment had been received and adoption of the emergency regulations is required.

◆ Action On properly seconded motion by Dr. Tillar, the board voted unanimously to adopt the final regulations replacing the emergency regulations.

The board agreed that a list of approved agency subordinates should consist of a current board member or past board member with disciplinary experience.

Response to Petition for Rulemaking, Paul E. Webb, O.D.
Ms. Yeatts reported that Dr. Webb had petitioned the board to revise section 18 VAC 105-20-15 to accept any examination accepted by another state.

◆ Action On properly seconded motion by Dr. Schlabach, the board voted unanimously to deny the petition for rulemaking.

REVIEW OF LEGISLATION:

Ms. Yeatts presented an overview of the 2005 legislation that directly related to optometry. A copy of the legislative bills is incorporated into the minutes as Attachment 1.

DISCUSSION ITEMS CONTINUED:

CE Audit Requirements for New Disciplinary Cases

◆ Action On properly seconded motion by Dr. Boone, the board voted unanimously to add to the random audit of five percent of all licensees those individuals who had complaints resulting in at least a probable cause determination. Additionally, the random audit should not include licensees audited the previous year and that names of licensees who requested CE extensions be given to Enforcement for subsequent auditing.

COMMITTEE REPORTS:

Newsletter

Dr. Carter informed the board that the newsletter requires the board's approval prior to mass mailing. The board recommended the following changes to the current proposed newsletter: revise the February date to March and eliminate the March board meeting date.

Dr. Hettler requested that the Committee begin work on the next newsletter anticipated in October. Suggested articles were expanded prescription monitoring, CELMO, HB160, the website, renewal and an address/e-mail address update reminder.

Professional Designation

Dr. Boone reported that the committee had received eight (8) applications for review and approval. Additionally, the committee had met today and had recommended revisions to the application instruction letter to further explain the regulations regarding renewals and advertising the registered professional designation title in its entirety.

Credentials

Dr. Boone reported that the committee had received five (5) applications for review and approval with no issues before the committee.

Legislative/Regulatory Review

Dr. Hettler reported that the committee had met on January 21st to review a request from Cal Whitehead, VSO, regarding amendments to the TPA formulary and treatment guidelines. The committee requested additional information regarding VSO's proposed amendments. Dr. Hettler noted that the committee is to meet after the full board meeting to review the additional information.

EXECUTIVE DIRECTOR'S REPORT:

Dr. Carter presented a handout of an updated section of the website, "frequently asked questions." Ms. Stamey provided a brief overview of the revisions. The board approved the update and requested that questions and answers be added under the topic of "professional designations."

Dr. Carter reported that the board had improved its standards for case closure from last year.

PRESIDENT'S REPORT:

Dr. Hettler noted that the January 12th Board of Health Professions report was presented at the board's January 21st meeting. He stated that the next meeting for the Board of

Health Professions is April 13th.

NEW BUSINESS:

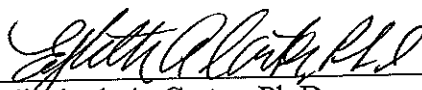
No new business was presented.

ADJOURNMENT:

The Board concluded its meeting at 11:30 a.m.



David H. Hettler, O.D.
President



Elizabeth A. Carter, Ph.D.
Executive Director

Board of Optometry
2005 Legislation

Lobbyist-in-a-Box: (Optometry) created on 12/10 at 13:54

HB 160 Optometrists; classification of practicing in a commercial or mercantile establishment.

Summary as passed House:

Practice of optometry in commercial or mercantile establishments. Provides that an optometrist shall be deemed to be practicing in a commercial or mercantile establishment if he practices in any location that provides direct access to or from such an establishment. The bill defines "direct access," and stipulates that certain optometric and ophthalmologic practices are not commercial or mercantile establishments. It remains unlawful under this bill for optometrists to practice in commercial and mercantile establishments. The bill contains a delayed enactment clause (December 31, 2005).

Patrons: Reid and McDonnell

02/16/05 Senate: Passed by temporarily
02/16/05 Senate: Passed Senate (38-Y 1-N 1-A)
02/16/05 Senate: VOTE: PASSAGE (38-Y 1-N 1-A)
03/01/05 House: Bill text as passed House and Senate (HB160ER)
03/02/05 House: Fiscal impact statement from DPB (HB160ER)

HB 2237 Practitioner Self-Referral Act; exemption.

Summary as introduced:

Practitioner Self-Referral Act; exemption. Exempts from prohibited practitioner self-referrals law (i) the health services to be received by a patient referred by a practitioner to that practitioner's immediate family member's office or group practice when the referral is within the scope of practice and the treating practitioner to whom the patient is referred is duly qualified and licensed to provide the health services to be received and (ii) the primary purpose of the referral is to obtain the appropriate professional health services for the patient being referred and the primary purpose of the referral is not for the provision of certain designated health services.

Patron: O'Bannon

02/18/05 Senate: VOTE: CONST. RDG. DISPENSED R (38-Y 0-N)
02/21/05 Senate: Read third time
02/21/05 Senate: Passed Senate (40-Y 0-N)

02/21/05 Senate: VOTE: PASSAGE R (40-Y 0-N)
03/07/05 House: Bill text as passed House and Senate (HB2237ER)

HB 2429 Prescription Monitoring Program; includes reporting by out-of-state dispensers.

Summary as passed House:

Prescription Monitoring Program. Expands the Prescription Monitoring Program to include reporting by out-of-state dispensers (nonresident pharmacies) and to cover the entire Commonwealth. To assist in verifying the validity of a prescription, the bill extends the authority to query the system to prescribers licensed in other states and to pharmacists. The fourth and fifth enactment clauses of Chapter 481 of the 2002 Acts of Assembly are repealed to remove the funding contingencies and the restriction on the application of the program to a pilot project covering the southwestern region of Virginia. The program requires the reporting of "covered substances," that, pursuant to this bill, will include all controlled substances in Schedules II, III, and IV of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1. Emergency regulations must be promulgated by the Director. Although the bill will be effective in due course, i.e., July 1, 2005, its provisions will not be implemented or enforced until the date on which the emergency regulations become effective. The Director is required to notify all out-of-state and Virginia dispensers who will be newly subject to the reporting requirements of the Prescription Monitoring Program prior to the date on which the provisions of this act will be implemented and enforced. This bill is identical to SB1098.

Patrons: Hamilton, Johnson and Athey

02/24/05 House: Bill text as passed House and Senate (HB2429ER)
02/24/05 House: Fiscal impact statement from DPB (HB2429ER)
02/24/05 House: Enrolled
02/24/05 House: Signed by Speaker
02/25/05 Senate: Signed by President

HB 2515 Medical records; charge for copies distinguished between patient request & subpoenaed records.

Summary as introduced:

Charge for copying health records. Distinguishes between the charges that may be levied by a health care provider (also referred to as "health care entity") for copies of health records when the patient requests his own health records and the records are subpoenaed or otherwise requested by a third party. The patient (individual who is the subject of the record) will be charged "a reasonable cost-based fee" that will only include costs of supplies and labor, postage, and preparation of any summary of the information. Current charges authorized for copies in anticipation of litigation or in the course of litigation will not apply to patients requesting their own records.

Patrons: O'Bannon, Athey and Landes; Senators: Blevins and Rerras

02/14/05 Senate: VOTE: (40-Y 0-N)
02/24/05 House: Bill text as passed House and Senate (HB2515ER)
02/24/05 House: Enrolled
02/24/05 House: Signed by Speaker
02/25/05 Senate: Signed by President

HB 2516 Health records; revises certain provisions for privacy of minors.

Summary as introduced:

Health records privacy; minors' records. Revises certain provisions relating to minors' health records to provide a measure of consistency with the federal regulations that were promulgated by the federal Secretary of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act concerning access to and authority to disclose protected health information.

Patrons: O'Bannon and Landes; Senator: Blevins

02/16/05 House: VOTE: ADOPTION (95-Y 0-N)
02/25/05 House: Bill text as passed House and Senate (HB2516ER)
02/26/05 House: Enrolled
02/26/05 House: Signed by Speaker
02/26/05 Senate: Signed by President

HB 2804 Health care practitioners; immunity for making voluntary report regarding conduct or competency.

Summary as passed:

Civil immunity; persons making voluntary reports regarding health care practitioners. Immunizes from civil liability any person who makes a voluntary report to the appropriate regulatory board or to the Department of Health Professions regarding the unprofessional conduct or competency of any practitioner licensed, certified, or registered by that health regulatory board, unless he acts maliciously or in bad faith. Current law immunizes those persons making reports required by law or pursuant to an investigation or testimony in a judicial or administrative proceeding.

Patron: Van Yahres

02/22/05 House: Placed on Calendar
02/23/05 House: Senate amendment agreed to by House (96-Y 2-N)
02/23/05 House: VOTE: ADOPTION (96-Y 2-N)
03/07/05 House: Bill text as passed House and Senate (HB2804ER)
03/07/05 House: Fiscal impact statement from DPB (HB2804ER)

SB 272 Optometrists; classification of practicing in a commercial or mercantile establishment.

Summary as passed:

Practice of optometry in commercial or mercantile establishments. Provides that an optometrist shall be deemed to be practicing in a commercial or mercantile establishment if he practices in any location that provides direct access to or from such an establishment. The bill defines "direct access," and stipulates that certain optometric and ophthalmologic practices are not commercial or mercantile establishments. It remains unlawful under this bill for optometrists to practice in commercial and mercantile establishments. The bill contains a delayed effective date clause (December 31, 2005). This bill is identical to HB 160.

Patron: Quayle

02/14/05 House: Read third time

02/14/05 House: Passed House (83-Y 12-N)

02/14/05 House: VOTE: PASSAGE (83-Y 12-N)

03/01/05 Senate: Bill text as passed Senate and House (SB272ER)

03/02/05 Senate: Fiscal impact statement from DPB (SB272ER)

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 54.1-3205 of the Code of Virginia, relating to the practice of optometry*
 3 *in commercial or mercantile establishments.*

[H 160]

4 Approved

5
6
7 Be it enacted by the General Assembly of Virginia:

8 1. That § 54.1-3205 of the Code of Virginia is amended and reenacted as follows:

9 § 54.1-3205. Practicing in a commercial or mercantile establishment.

10 A. It shall be unlawful for any optometrist to practice his profession as a lessee of or in a
 11 commercial or mercantile establishment, or to advertise, either in person or through any commercial or
 12 mercantile establishment, that he is a licensed practitioner and is practicing or will practice optometry as
 13 a lessee of or in the commercial or mercantile establishment.

14 B. No licensed optometrist shall practice optometry as an employee, directly or indirectly, of a
 15 commercial or mercantile establishment, unless such commercial or mercantile establishment was
 16 employing a full-time licensed optometrist in its established place of business on June 21, 1938.

17 C. For the purposes of this section, the term "commercial or mercantile establishment" means a
 18 business enterprise engaged in the selling of commodities.

19 D. For the purposes of this section, an optometrist shall be deemed to be practicing in a commercial
 20 or mercantile establishment if he practices, whether directly or indirectly, as an officer, employee, lessee
 21 or agent of any person or entity in any location that provides direct access to or from a commercial or
 22 mercantile establishment. Direct access includes any entrance or exit, except an entrance or exit closed
 23 to the public and used solely for emergency egress pursuant to applicable state and local building and
 24 fire safety codes, that prohibits a person from exiting the building or structure occupied by such
 25 practice or establishment (i) onto an exterior sidewalk or public way or (ii) into a common area that is
 26 not under the control of either the optometry practice or the commercial or mercantile establishment,
 27 such as into the common areas of an enclosed shopping mall. For the purposes of this section, neither
 28 an optometric practice nor an ophthalmologic practice which sells eyeglasses or contact lenses ancillary
 29 to its practice shall be deemed a commercial or mercantile establishment. Further, any entity that is
 30 engaged in the sale of eyeglasses or contact lenses, the majority of the beneficial ownership of which is
 31 owned by an ophthalmologic practice and/or one or more ophthalmologists, shall not be deemed a
 32 commercial or mercantile establishment.

33 D E. This section shall not be construed to prohibit the rendering of professional services to the
 34 officers and employees of any person, firm or corporation by an optometrist, whether or not the
 35 compensation for such service is paid by the officers and employees, or by the employer, or jointly by
 36 all or any of them.

37 2. That the provisions of this act shall become effective on December 31, 2005.

ENROLLED

HB160ER