



Agenda
Virginia Board of Optometry
Full Board Meeting

June 5, 2017
Board Room 2
8:30 a.m.

Call to Order – Steven A. Linas, O.D., Board President

- Welcome
- Emergency Egress Procedures

Ordering of Agenda – Dr. Linas

Public Comment – Dr. Linas

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

Pages 1 – 6

- January 31, 2017, Full Board Meeting
- February 15, 2017, Special Session, Telephone Conference Call

2018 Proposed Legislation – Elaine Yeatts

Pages 7 – 12

Next Meeting – July 21, 2017

Meeting Adjournment – Dr. Linas

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

**BOARD OF OPTOMETRY
FULL BOARD MEETING
JANUARY 31, 2017**

TIME AND PLACE: The Board of Optometry (Board) meeting was called to order at 9:05 a.m. at the Department of Health Professions (DHP), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 4, Henrico, Virginia 23233.

PRESIDING OFFICER: Steven A. Linas, O.D., Chair

MEMBERS PRESENT: Helene Clayton-Jeter, O.D.
Fred E. Goldberg, O.D.
Clifford A. Roffis, O.D.
Lisa Wallace-Davis, O.D.

MEMBERS NOT PRESENT: Devon Cabot, Citizen Member

STAFF PRESENT: Lisa R. Hahn, MPA, Chief Deputy Director
Leslie L. Knachel, Executive Director
Charis Mitchell, Assistant Attorney General, Board Counsel
Amanda E. M. Blount, Deputy Executive Director
Elaine Yeatts, Senior Policy Analyst
Carol Stamey, Operations Manager
Tamara Farmer, Administrative Assistant

OTHERS PRESENT: Bo Keeney, Virginia Optometric Association

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

ORDERING OF AGENDA No changes were made to the agenda.

PUBLIC COMMENT: No public comment was presented.

DIRECTOR'S REPORT: Ms. Hahn welcomed the new board members and thanked all the board members for their service. Additionally, she requested feedback from board members who had recently attended the board member training and encouraged attendance at future training sessions.

APPROVAL OF MINUTES: Dr. Clayton-Jeter moved to approve the July 15, 2016, meeting minutes as presented. The motion was seconded and carried.

LEGISLATIVE/REGULATORY UPDATE: **2017 Legislative Update**
Ms. Yeatts provided an update on the 2017 legislation that is being followed to include:

- HB1497 – adding a section numbered 54.1-2400.01:2 to the *Code of Virginia* to define ophthalmic prescriptions and who may provide;
- SB1230 – requires that by 2020 any prescription for a controlled substance that contains an opiate to be issued as an electronic prescription; and
- SB1180 – Boards of Dentistry and Medicine to develop emergency regulations for prescribing opioids and buprenorphine.

2018 Legislative Update

Ms. Yeatts reported that optometry section of the *Code of Virginia* (Code) contains outdated language and recommends that the Board consider moving forward with 2018 legislation to amend the outdated sections. She commented that other Boards within DHP have taken similar action.

Ms. Yeatts, Ms. Knachel and Ms. Stamey reviewed with the Board the applicable sections of the Code that the staff recommends updating.

Dr. Linas requested that language be added to the Code that allowed for electronic notification to patients when transferring or closing a practice. Ms. Yeatts indicated that this request can be included in the draft. She added that § 54.1-2405 of the Code applies to all DHP regulatory boards and will be reviewed as a possible agency bill during the 2018 legislative session.

Dr. Goldberg moved to approve the recommendations as presented with circulation to the board members upon completion of the draft legislation for review. The motion was seconded and carried.

Ms. Yeatts indicated that the draft legislation will be provided at the Board's July meeting for approval.

Regulatory Update

Ms. Knachel reported that the following regulatory activities occurred since the last board meeting:

- Conforming to Code Changes in 2016 – updates to continuing education (CE) became effective on September 21, 2016;
- CE Credit for Volunteer Work – in public comment stage which closes on February 22, 2017;
- Periodic Review of Regulations – Ms. Knachel reported that no comments were received during the public comment period for the Notice of Periodic Review which closed on October 5, 2016.

Ms. Knachel indicated that the next step in the periodic review process is for the Board to consider the issuance of a Notice of Intended Regulatory Action (NOIRA). She indicated that a draft of proposed changes is not needed until the NOIRA stage is completed, but the sections the Board anticipates changing must be included in the NOIRA. Therefore, the current regulations must be reviewed by the Board to identify anticipated changes. Ms. Knachel reported that a draft of the proposed changes will be prepared for the meeting following the completion of the NOIRA stage.

Ms. Knachel and Ms. Stamey reviewed with the Board the applicable sections of the regulations that the staff recommends updating.

Dr. Goldberg moved to approve the recommendations as presented and to move forward with the NOIRA. The motion was seconded and carried.

Emergency Regulations for Prescribing Opioids

Ms. Knachel provided a brief summary of the opioid crisis in Virginia and the need to develop emergency regulations to address prescribing by optometrists. Ms. Knachel noted that optometrists may prescribe Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen.

The board requested staff to develop a draft of the emergency regulations to include the following for board member consideration at its next meeting:

- Limit the number of days for prescribing the Schedule II combination drug to four days;
- Include language regarding practitioner-patient relationship;
- Require patient record documentation;
- Require follow-up examinations; and
- Define acute pain.

DISCUSSION ITEMS:

Continuing Education

- **2015 Audit Status**

Ms. Stamey informed the board that 80 licensees had been audited for their 2015 CE and the audit resulted in seven disciplinary cases.

- **2016 Audit Status**

Ms. Knachel reported that due to the changes mid-year to the CE regulations, staff recommends that the board not audit the CE for 2016.

Dr. Goldberg moved that the board not conduct an audit of the 2016 CE. The motion was seconded and carried.

- **Revisions to Guidance Document 105-12: Guidance for Continuing Education Audits**

Ms. Knachel provided an overview of the revisions to Guidance Document 105-12 located in the agenda packet and requested the board's consideration for approval.

Dr. Goldberg moved to accept Guidance Document 105-12 as presented. The motion was seconded and carried.

- **C.O.P.E. Course Category Definitions**

Ms. Stamey reported that due to the CE regulatory changes, staff is requesting assistance from the board in establishing which categories of COPE CE meet the pharmacology requirements.

It was determined that the board members would review the C.O.P.E. CE categories and advise staff which categories meet the regulatory CE requirements.

- **Renewal Date Adjustment**

The item was discussed under "Periodic Review of the

Regulations.” Ms. Knachel indicated that the Board’s cash balance would likely require a renewal fee decrease for the upcoming renewal period. She commented during the discussion that the Board may wish to change the renewal date going forward to accommodate board staff resources and to move the renewal date away from the busy holiday season at the end of the year. This would require a regulatory change.

- **Attendance at Annual Meeting**

Ms. Knachel reported that the annual Association of Regulatory Boards of Optometry meeting was scheduled June 18-20, 2017, in Washington, DC. She requested responses from board members interested in attending the meeting.

**BOARD OF HEALTH
PROFESSIONS REPORT:**

Dr. Clayton-Jeter reported that the Board of Health Professions had not met.

PRESIDENT’S REPORT:

Dr. Linas reported that he serves on the OE Tracker Committee and had attended a recent meeting. He stated that the usage for OE Tracker had skyrocketed and he encouraged more efficiency through the use of OE Tracker.

**EXECUTIVE DIRECTOR’S
REPORT:**

Statistics

Ms. Knachel reported on licensure statistics.

Budget

Ms. Knachel reported that the budget information specific to the board had been included in the agenda packet.

Outreach Activities

Ms. Knachel reported on the outreach activities disseminated by the board.

Meeting Schedule

Ms. Knachel noted that no changes were needed at this time.

Discipline Report

Ms. Blount provided an overview of the complaint case statistics.

NEW BUSINESS:

No new business was identified.

ADJOURNMENT:

The meeting adjourned at 11:25 a.m.

Steven A. Linas, O.D.
Chair

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

UNAPPROVED DRAFT
VIRGINIA BOARD OF OPTOMETRY
SPECIAL SESSION – TELEPHONE CONFERENCE CALL
MINUTES
FEBRUARY 15, 2017

CALL TO ORDER: Pursuant to § 54.1-2408.1(A) of the Code of Virginia, a telephone conference call of the Virginia Board of Optometry was held on February 15, 2017, at 2:05 p.m., at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 300, Henrico, VA 23233, to consider a possible summary suspension.

PRESIDING: Steven A. Linas, O.D., Chair

MEMBERS PRESENT: Fred E. Goldberg, O.D.
Clifford A. Roffis, O.D.
Lisa G. Wallace-Davis, O.D.

MEMBERS ABSENT: Devon B. Cabot
Helene Clayton-Jeter, O.D.

QUORUM: With four members present, a quorum was established.

STAFF PRESENT: Leslie L. Knachel, Executive Director
Amanda E. M. Blount, Deputy Executive Director
Terri H. Behr, Discipline/Compliance Specialist
Amy E. Weiss, Administrative Proceedings Division

OTHERS PRESENT: Charis A. Mitchell, Assistant Attorney General, Board Counsel
James E. Schliessmann, Senior Assistant Attorney General

POLL OF MEMBERS: The Board members were polled as to whether they were able to attend a regular meeting at the offices of the Board in a timely manner for the purpose of hearing evidence for a possible summary suspension. The majority of Board members stated that they would not have been able to attend.

Joseph Francis Rosana, O.D.
License No.: 0618-001577
Case No. 177304

James E. Schliessmann presented a summary of the evidence in this case and responded to questions.

CLOSED SESSION:

Upon a properly seconded motion by Dr. Wallace-Davis, the Board voted unanimously to convene a closed meeting pursuant to § 2.2-3711(A)(37) of the Code of Virginia for the purpose of deliberation to reach a decision in the matter regarding Case No. 177304. Additionally, she moved that Ms. Mitchell, Ms. Knachel, and Ms. Blount attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations.

RECONVENE:

Dr. Wallace-Davis 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 unanimously passed.

DECISION:

Dr. Wallace-Davis moved that the Board summarily suspend Dr. Rosana's license to practice optometry in the Commonwealth of Virginia and schedule him for a formal hearing; and to offer a consent order for the indefinite suspension of not less than one year in lieu of proceeding with a formal hearing. Following a second for the motion, a roll call vote was taken. The motion passed unanimously.

ADJOURNMENT:

With all business concluded, the Board adjourned at 2:38 p.m.

Steven A. Linas, O.D., Chair

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

Legislative Draft

Proposed Changes to Chapter 32. Optometry.

§ 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; 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.
3. Any student, intern or trainee in optometry, pursuing a course of study at an accredited university or college under the direct supervision of a licensed optometrist or ophthalmologist, from performing optometric services constituting a part of his supervised course of study.

§ 54.1-3211. Examination.

The Board shall set the necessary standards to be attained in the examinations to entitle the candidate to receive a license to practice optometry.

~~The examination shall be given at least semiannually if there are any candidates who have applied to the Board for examination at least 30 days before the date for the examination.~~

~~The examination shall include anatomy; physiology; pathology; general and ocular pharmacology designed to test knowledge of the proper use, characteristics, pharmacological effects, indications, contraindications and emergency care associated with the use of diagnostic pharmaceutical agents; and the use of the appropriate instruments.~~

The Board may determine a score that it considers satisfactory on any written examination of the National Board of Examiners in Optometry. ~~The Board may waive its examination for a person who achieves a satisfactory score on the examination of the National Board of Examiners in Optometry.~~

Those persons licensed on or before June 30, 1997, to practice optometry in this state but not certified to administer diagnostic pharmaceutical agents may continue to practice optometry but may not administer diagnostic pharmaceutical agents without satisfying the requirements of this section. Those persons licensed after June 30, 1997, shall be considered as certified to administer diagnostic pharmaceutical agents. After June 30, 2004, every person who is initially licensed to practice optometry in Virginia shall meet the qualifications for a TPA-certified optometrist.

§ 54.1-3213. Issuance of license; fee; renewal.

Every candidate successfully passing the examination shall be licensed by the Board as possessing if such candidate possesses the qualifications required by law and regulation to practice optometry.

~~The fee for examination and licensure shall be prescribed by the Board and shall be paid to the executive director of the Board by the applicant upon filing his application.~~

Every license to practice optometry granted under the provisions of this chapter shall be renewed at such time, in such manner and upon payment of such fees as the Board may prescribe.

§ 54.1-3215. Reprimand, revocation and suspension.

The Board may ~~revoke or suspend a license or reprimand the licensee~~ refuse to admit an applicant to any examination; refuse to grant or renew a license or certificate; or reprimand, impose a monetary penalty, place on probation, impose such terms as it may designate, suspend for a stated period of time or indefinitely, or revoke any license or certificate for any of the following causes:

1. Fraud or deceit in his practice;
2. Conviction of any felony under the laws of the Commonwealth, another state, the District of Columbia or any United States possession or territory or of any misdemeanor under such laws involving moral turpitude;
3. Conducting his practice in such a manner as to endanger the health and welfare of his patients or the public;
4. Use of alcohol or drugs to the extent such use renders him unsafe to practice optometry or mental or physical illness rendering him unsafe to practice optometry;
5. Knowingly and willfully employing an unlicensed person to do anything for which a license to practice optometry is required;

- ~~6. Practicing optometry while suffering from any infectious or contagious disease;~~
- ~~7. Neglecting or refusing to display his license and the renewal receipt for the current year;~~
- ~~8.7. Obtaining of any fee by fraud or misrepresentation or the practice of deception or fraud upon any patient;~~
- ~~9.8. Advertising which directly or indirectly deceives, misleads or defrauds the public, claims professional superiority, or offers free optometrical services or examinations;~~
- ~~10.9. Employing, procuring, or inducing a person not licensed to practice optometry to so practice;~~
- ~~11.10. Aiding or abetting in the practice of optometry any person not duly licensed to practice in this Commonwealth;~~
- ~~12.11. Advertising, practicing or attempting to practice optometry under a name other than one's own name as set forth on the license;~~
- ~~13.12. Lending, leasing, renting or in any other manner placing his license at the disposal or in the service of any person not licensed to practice optometry in this Commonwealth;~~
- ~~14.13. Splitting or dividing a fee with any person or persons other than with a licensed optometrist who is a legal partner or comember of a professional limited liability company formed to engage in the practice of optometry;~~
- ~~15.14. Practicing optometry where any officer, employee, or agent of a commercial or mercantile establishment, as defined in subsection C of § 54.1-3205, who is not licensed in Virginia to practice optometry or medicine directly or indirectly controls, dictates, or influences the professional judgment, including but not limited to the level or type of care or services rendered, of the licensed optometrist;~~
- ~~16.15. Violating other standards of conduct as adopted by the Board;~~
- ~~17.16. Violating, assisting, inducing or cooperating with others in violating any provisions of law relating to the practice of optometry, including the provisions of this chapter, or of any regulation of the Board.~~

§ 54.1-3220. Certification for administration of diagnostic pharmaceutical agents.
(Repealed).

~~In order to become certified to administer diagnostic pharmaceutical agents for the purpose of examining and determining abnormal or diseased conditions of the human eye or related structures, an optometrist shall:~~

~~1. Complete successfully a Board-approved course in general and ocular pharmacology as it relates to the practice of optometry which shall consist of at least fifty-five classroom hours including a minimum of fifteen classroom hours in general pharmacology, twenty classroom hours in ocular pharmacology and twenty classroom hours of clinical laboratory presented by a college or university accredited by a regional or professional accreditation organization which is recognized or approved by the Council on Post Secondary Accreditation or by the United States Department of Education.~~

~~2. Pass a Board-approved, performance-based examination on general and ocular pharmacology designed to test knowledge of the proper use, characteristics, pharmacological effects, indications, contraindications and emergency care associated with the use of diagnostic pharmaceutical agents as defined in this article.~~

§ 54.1-3222. TPA certification; certification for treatment of diseases or abnormal conditions with therapeutic pharmaceutical agents (TPAs).

A. The Board shall certify an optometrist to prescribe for and treat diseases or abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents (TPAs), if the optometrist files a written application, accompanied by the fee required by the Board and satisfactory proof that the applicant:

~~1. Is licensed qualified for licensure by the Board as an optometrist and certified to administer diagnostic pharmaceutical agents pursuant to Article 4 (§ 54.1-3220 et seq.)~~;

2. Has satisfactorily completed such didactic and clinical training programs for the treatment of diseases and abnormal conditions of the eye and its adnexa as are determined, after consultation with a school or college of optometry and a school of medicine, to be reasonable and necessary by the Board to ensure an appropriate standard of medical care for patients; and

3. Passes such examinations as are determined to be reasonable and necessary by the Board to ensure an appropriate standard of medical care for patients.

B. TPA certification shall enable an optometrist to prescribe and administer, within his scope of practice, Schedule II controlled substances consisting of hydrocodone in combination with acetaminophen and Schedules III through VI controlled substances and devices as set forth in the Drug Control Act (§ 54.1-3400 et seq.) to treat diseases and abnormal conditions of the human eye and its adnexa as determined by the Board, within the following conditions:

1. Treatment with oral therapeutic pharmaceutical agents shall be limited to (i) analgesics included on Schedule II controlled substances as defined in § 54.1-3448 of the Drug Control Act (§ 54.1-3400 et seq.) consisting of hydrocodone in combination with acetaminophen, and analgesics included on Schedules III through VI, as defined in §§ 54.1-3450 and 54.1-3455 of the Drug Control Act, which are appropriate to alleviate ocular pain and (ii) other Schedule VI controlled substances as defined in § 54.1-3455 of the Drug Control Act appropriate to treat diseases and abnormal conditions of the human eye and its adnexa.

2. Therapeutic pharmaceutical agents shall include topically applied Schedule VI drugs as defined in § 54.1-3455 of the Drug Control Act (§ 54.1-3400 et seq.).
3. Treatment of angle closure glaucoma shall be limited to initiation of immediate emergency care.
4. Treatment of infantile or congenital glaucoma shall be prohibited.
5. Treatment through surgery or other invasive modalities shall not be permitted, except for treatment of emergency cases of anaphylactic shock with intramuscular epinephrine.
6. Entities permitted or licensed by the Board of Pharmacy to distribute or dispense drugs, including, but not limited to, wholesale distributors and pharmacists, shall be authorized to supply TPA-certified optometrists with those therapeutic pharmaceutical agents specified by the Board on the TPA-Formulary.

§ 54.1-3223. Regulations relating to instruction and training, examination, and therapeutic pharmaceutical agents.

A. The Board shall promulgate such regulations governing the treatment of diseases and abnormal conditions of the human eye and its adnexa with therapeutic pharmaceutical agents by TPA-certified optometrists as are reasonable and necessary to ensure an appropriate standard of medical care for patients, including, but not limited to, determinations of the diseases and abnormal conditions of the human eye and its adnexa that may be treated by TPA-certified optometrists, treatment guidelines, and the drugs specified on the TPA-Formulary.

~~In establishing standards of instruction and training, the Board shall consult with a school or college of optometry and a school or college of medicine and shall set a minimum number of hours of clinical training to be supervised by an ophthalmologist. The didactic and clinical training programs may include, but need not be limited to, programs offered or designed either by schools of medicine or schools or colleges of optometry or both or some combination thereof.~~

~~The Board may prepare, administer, and grade appropriate examinations for the certification of optometrists to administer therapeutic pharmaceutical agents or may contract with a school of medicine, school or college of optometry, or other institution or entity to develop, administer, and grade the examinations.~~

In order to maintain a current and appropriate list of therapeutic pharmaceuticals on the TPA-Formulary, current and appropriate treatment guidelines, and current and appropriate determinations of diseases and abnormal conditions of the eye and its adnexa that may be treated by TPA-certified optometrists, the Board may, from time to time, amend such regulations. Such regulations shall be exempt from the requirements of the Administrative Process Act (§ 2.2-4000 et seq.), except to any extent that they may be specifically made subject to §§ 2.2-4024, 2.2-4030, and 2.2-4031; the Board's regulations shall, however, comply with § 2.2-4103 of the Virginia Register Act (§ 2.2-4100 et seq.). The Board shall, however, conduct a public hearing prior to making amendments to the TPA-Formulary, the treatment guidelines or the

determinations of diseases and abnormal conditions of the eye and its adnexa that may be treated by TPA-certified optometrists. Thirty days prior to conducting such hearing, the Board shall give written notice by mail or electronic means of the date, time, and place of the hearing to all currently TPA-certified optometrists and any other persons requesting to be notified of the hearings and publish notice of its intention to amend the list in the Virginia Register of Regulations. During the public hearing, interested parties shall be given reasonable opportunity to be heard and present information prior to final adoption of any TPA-Formulary amendments. Proposed and final amendments of the list shall also be published, pursuant to § 2.2-4031, in the Virginia Register of Regulations. Final amendments to the TPA-Formulary shall become effective upon filing with the Registrar of Regulations. The TPA-Formulary shall be the inclusive list of the therapeutic pharmaceutical agents that a TPA-certified optometrist may prescribe.

B. To assist in the specification of the TPA-Formulary, there shall be a seven-member TPA-Formulary Committee, as follows: three Virginia TPA-certified optometrists to be appointed by the Board of Optometry, one pharmacist appointed by the Board of Pharmacy from among its licensees, two ophthalmologists appointed by the Board of Medicine from among its licensees, and the chairman who shall be appointed by the Board of Optometry from among its members. The ophthalmologists appointed by the Board of Medicine shall have demonstrated, through professional experience, knowledge of the optometric profession. In the event the Board of Pharmacy or the Board of Medicine fails to make appointments to the TPA-Formulary Committee within 30 days following the Board of Optometry's requesting such appointments, or within 30 days following any subsequent vacancy, the Board of Optometry shall appoint such members.

The TPA-Formulary Committee shall recommend to the Board those therapeutic pharmaceutical agents to be included on the TPA-Formulary for the treatment of diseases and abnormal conditions of the eye and its adnexa by TPA-certified optometrists.

~~§ 54.1-3224. Denial, etc., of TPA certification; disciplinary actions; summary suspension under certain circumstances. (Repealed).~~

~~A. The Board of Optometry may deny, refuse to renew, revoke, or suspend any TPA-certificate issued to a TPA-certified optometrist, or applied for by a licensed optometrist in accordance with the provisions of this article, or may discipline or reprimand any certificate holder for violations of this chapter or the Board's regulations.~~

~~B. The Board may take action summarily to suspend a TPA-certified optometrist's certification under this section by means of a telephone conference call if, in the opinion of a majority of the Board, (i) a good faith effort to convene a regular meeting of the Board has failed and (ii) there is an imminent danger to the public health or safety which warrants this action.~~