

**BOARD OF OPTOMETRY  
BOARD MEETING  
MAY 10, 2006**

**TIME AND PLACE:** The meeting was called to order at 10:35 a.m. on May 10, 2006 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.  
Gregory P. Jellenek, O.D.  
W. Ernest Schlabach, Jr., O.D.  
Jacquelyn S. Thomas, Citizen Member  
William T. Tillar, O.D.

**STAFF PRESENT:** Emily Wingfield, Assistant Attorney General, Board Counsel  
Elizabeth A. Carter, Ph.D., Executive Director for the Board  
Sandra W. Ryals, Chief Deputy Director  
Elaine Yeatts, Senior Regulatory Analyst  
Carol Stamey, Administrative Assistant

**MEMBERS ABSENT:** All board members were present.

**OTHERS PRESENT:** Betty Graumlich, NAOO  
Bill Ferguson, Board for Opticians

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

**ADOPTION OF AGENDA:** There were no additions or revisions made to the agenda.

**APPROVAL OF MINUTES:** ◆ Action On properly seconded motion by Dr. Tillar, the Board voted unanimously to approve the minutes of the February 7, 2006 meeting.

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

**LEGISLATIVE AND REGULATORY REPORT:** **2006 Legislation**  
Ms. Yeatts presented an abbreviated report of the relevant legislation passed in 2006 and also reminded the Board of the expansion of the Prescription Monitoring Program (PMP). Further, the expansion included the collection and entering of prescription data for Schedule II-IV drugs into a central database to allow for prescriber and dispenser queries. Before queries can be obtained, written consent from the patient must be received. Ms. Yeatts reported that Ralph Orr, Program Manager of PMP, is drafting a patient written

consent form for presentation to all the Boards for discussion in the fall.

#### **Clarification of NBEO**

Ms. Yeatts reported that sections 18 VAC 105-20-10, 18 VAC 105-20-15 and 18 VAC 105-20-16 of the regulations contained inconsistent language with regard to the term "National Board". The regulations were amended to add the definition of NBEO to section 18 VAC 105-20-5 and the term NBEO was consistently referenced in sections 18 VAC 105-20-10, 18 VAC 105-20-15 and 18 VAC 105-20-16 of the optometry regulations.

◆ **Action** On properly seconded motion by Dr. Boone, the Board voted unanimously to approve the regulatory amendments as presented.

#### **Optometry Licensure Application**

Ms. Yeatts apprised the Board that the licensure applications across all boards were being reviewed for consistency with the requirements of the regulations.

◆ **Action** On properly seconded motion by Dr. Tillar, the Board voted unanimously to the following revisions to the optometry licensure application:

- ◆ remove question number 2;
- ◆ clarify question number 3 by adding "For Endorsement Only, referencing the last 36 months out of 60", and
- ◆ clarify question 17(b) by adding the language "as relevant to the requirements for licensure".

◆ **Action** On properly seconded motion by Dr. Boone, the Board voted unanimously that Ms. Yeatts draft a Notice of Intended Regulatory Action to fast-track the consolidation of its requirements for licensure by examination and endorsement. The draft NOIRA will be presented at the next Board meeting in August.

#### **FAQ UPDATE:**

The review and discussion of the website's "Frequently Asked Questions (FAQ's)" was tabled until the next Board meeting in August.

#### **DISCUSSION ITEMS:**

**BHP Telehealth Regulatory Issues Update for Optometry**  
Dr. Carter reported that the Board of Health Professions had requested that each board review and submit feedback on telehealth issues affecting their respective practice that related to state regulation. The Board noted two items of concern: solicitation of contact lens prescriptions from out-of-state

firms and the promotion of the selling of expired contact lens prescriptions on the Internet.

#### **Advertising Case Processing Change**

Dr. Carter reported that the Board of Dentistry had approved new guidelines to speed up the processing of advertising complaints. Specifically, that the advertising cases are sent directly to the Board, prior to investigation, to determine if the advertising may be construed as false, deceptive or misleading. Cases that appear to be in compliance with the advertising statutes and regulations will be deemed non-jurisdictional and closed without further investigation. Dr. Carter noted that various Board members could be assigned the advertising cases for this initial review and guidance. The Board concurred with the Board of Dentistry's protocol for the processing of advertising complaints.

### **COMMITTEE REPORTS:**

#### **Professional Designation Committee**

Dr. Boone reported that it was the Committee's recommendation that staff conduct a survey of all states to determine what is required relating to the use of professional designation titles or trade names, especially whether the respective board registers them. Dr. Boone also reported that the Sanction Reference Study is being scheduled for Optometry early next year and will provide an updated summary of sanctions for the various case types and the rationale behind them. She also advised that the Committee requested that the existing disciplinary matrix be updated prior to the Committee meeting again. The Committee will meet upon completion of all reports and studies.

#### **CPT Code Committee**

Ms. Wingfield advised the Board that the approval of CPT codes was not within the jurisdiction of the Board and that the guidance document should be withdrawn. It was noted that the CPT Code guidance document had been initiated over twenty years ago at the request of Medicare staff for identification of procedures that fall within the scope of practice of an optometrist in Virginia. They had suggested the use of CPT codes as universally understood "language" to reference procedures.

◆ **Action** On properly seconded motion by Dr. Tillar, the Board voted unanimously that CPT Codes 99304 and 99310 fell within an optometrist's scope of practice. Additionally, he moved that the CPT Code guidance document be revised to delete the word "approved" and to include a disclaimer reflecting Virginia optometric scope of practice.

### **Request from Betty Sanchez**

Staff was requested to draft a response to Ms. Sanchez informing her to consult with a coding specialist regarding the deletion of old CPT codes.

### **Newsletter Committee**

The Committee had not met since the last meeting. However, the President has drafted a letter for dissemination to the licensees to remind them of upcoming legislative changes, the expansion of the prescription monitoring program, and other items of general interest. On properly seconded motion by Dr. Jellenek, the Board approved dissemination of the letter.

### **Credentials Committee**

Dr. Boone reported that the Committee had reviewed six (6) applications for licensure by endorsement.

### **Legislative/Regulatory Review Committee**

Dr. Hettler reported that there were no actions to report from the Committee.

### **TPA Formulary Committee**

Dr. Tillar reported that the Committee will be meeting in August.

### **Continuing Education Committee**

Ms. Yeatts and Dr. Jellenek reported that the Continuing Education Committee had met and reviewed the CE audit results, received an overview of the OETracker Program and recommended proposed amendments to 18 VAC 105-20-70 of the regulations for clarification via a Notice of Intended Regulatory Action (NOIRA). A copy of the NOIRA is incorporated into the minutes as Attachment 1.

◆ **Action** On properly seconded motion by Dr. Jellenek, the Board voted unanimously to accept the NOIRA with correction to the spelling of "Essilor".

## **EXECUTIVE DIRECTOR'S REPORT:**

### **Case Agency Standards and Other Statistics**

Dr. Carter presented a brief summary of the agency's disciplinary performance standards and a statistical analysis of the licensee and case counts.

### **Budget**

Dr. Carter informed the Board that due to a surplus in monies, it appeared that a one-time licensure fee reduction was in

order to align the budget. Finance will provide options for their consideration at the next Board meeting. Fee reductions regulatory amendments are exempt so a fee reduction could be in effect for the December renewal.

**BHP Report**

Dr. Carter apprised the Board that the Board of Health Professions was conducting a Fall Issues Forum to be held in conjunction with the Citizen Advocacy Center (CAC) national meeting in Williamsburg. Agenda topics include board member training, education policies and procedures and confidentiality issues. An agenda will be forwarded to all interested parties upon finalization.

Additionally, the Department will be conducting a study into the need for criminal background checks of licensure applicants and licensees. The Board of Health Professions will provide comment. Also, this issue will be a topic for a roundtable discussion lead by Dr. Carter and the Board of Medicine's Deputy Executive Director, Kate Nosbisch at the upcoming CLEAR Conference in Alexandria.

**PRESIDENT'S REPORT:**

Dr. Hettler introduced Sandra Ryals, Chief Deputy Director for the Agency.

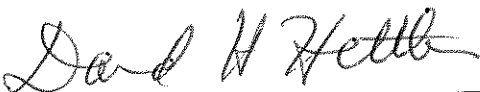
Dr. Hettler requested that written summary reports be submitted by Board members who have been appointed to travel to conferences.

**NEW BUSINESS:**

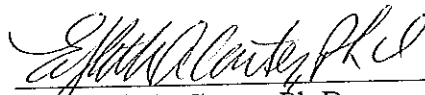
No new business was presented.

**ADJOURNMENT:**

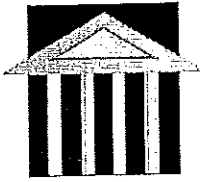
The Board concluded its meeting at 12:35 p.m.



David H. Hettler, O.D.  
President



Elizabeth A. Carter, Ph.D.  
Executive Director



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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

Agency name	Board of Optometry, Department of Health Professions
Virginia Administrative Code (VAC) citation	18VAC105-20-10 et seq.
Regulation title	Regulations Governing the Practice of Optometry
Action title	Continuing education requirements
Document preparation date	5/10/06

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 21 (2002) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

In its proposed regulatory action, the Board intends to clarify certain provisions of section 70, the continuing education requirements as stated in Chapter 20 and will consider some amendment to the number of hours that may be obtained through correspondence or by electronic means.

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system:

*§ 54.1-2400 -General powers and duties of health regulatory boards*

that is 99% a sales pitch and 1% relating to patient care. The Board intends to amend that provision to make it clearer that the principal purpose of an acceptable course cannot be to sell goods or augment income.

Subsection B needs to be amended to specifically state that any request for an extension or a waiver of CE requirements must be made prior to date the renewal form is due, which is December 31<sup>st</sup>.

Subsection G needs to be amended to distinguish between those entities that are providers or sponsors of continuing education and those that offer approval for courses (Council on Optometric Practitioner Education (COPE) and the Accreditation Council for Continuing Medical Education of the American Medical Association).

3. The current regulation, as stated in subsection G, allows an approved course or program to be offered by correspondence, electronically or in person. In amending this section, the Board may consider some limitation on the number of hours that can be obtained from courses that are not face-to-face; that is typical of CE requirements in other states. Face-to-face courses or programs have the benefit of an exchange of ideas and experiences with other practitioners that reading a journal article does not offer. Since many optometrists practice in solo or small practices, the Board believes there may be a benefit to interaction at professional meetings and a positive impact on health and safety of patient in their care.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action.*

The review of continuing education requirements in section 70 of the regulations was initiated to consider utilization of OE Tracker, a system recently established the Association of Regulatory Boards of Optometry (ARBO) for the purpose of tracking and maintaining information about CE compliance with requirements for state licensure. The tracking system posts hours of approved CE and allows optometrists to view the status of their continuing education. A committee of the Board was appointed to consider OE Tracker and other issues relating to continuing education.

The Committee reviewing the continuing education regulations did not recommend an amendment to require all licensees to participate. As the market evolves for OETracker's service, it may become possible to use OETracker, as optometrists have voluntarily agreed to record their continuing education credits through the system. Currently, many national continuing education vendors already require a tracker number to record participation, so a large portion of optometric continuing education is already being recorded by OETracker. Five states have mandated their licensees to participate. For them, ARBO provides tailored reports to the board office on all licensees or only those that do not have sufficient hours.

In addition to philosophical objections over the state compelling licensees to participate in OETracker, the Committee has concerns over its funding. Historically, ARBO has funded its

## Regulations for Continuing Education – Board of Optometry

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

A. Each license renewal shall be conditioned upon submission of evidence to the board of 16 hours of continuing education taken by the applicant during the previous license period.

1. Fourteen of the 16 hours shall pertain directly to the care of the patient. The 16 hours may include up to two hours of recordkeeping for patient care and up to two hours of training in cardiopulmonary resuscitation (CPR).

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least two of the required continuing education hours shall be directly related to the prescribing and administration of such drugs.

3. Courses that are solely designed to promote the sale of specific instruments or products and courses offering instruction on augmenting income are excluded and will not receive credit by the board.

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 December 31 unless an extension or waiver has been granted by the Continuing Education Committee.

C. All continuing education courses shall be offered by an approved sponsor 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 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 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 (C.O.P.E.).
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 or Category 2 credit.
12. Providers of training in cardiopulmonary resuscitation (CPR).
13. Optometric Extension Program.