

BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS

TENTATIVE AGENDA

Monday, February 27, 2023 – 9:30 a.m. - Board Room 2, 2nd Floor

Department of Professional and Occupational Regulation

Perimeter Center, 9960 Mayland Drive

Richmond, Virginia 23233

(804) 367-8590

- Materials contained in this agenda are proposed topics for discussion and are not to be construed as regulation or official Board position.*
- I. CALL TO ORDER**
 - II. APPROVAL OF AGENDA**
 1. Board for Hearing Aid Specialists and Opticians Meeting Agenda, February 27, 2023
 - III. APPROVAL OF MINUTES**
 2. Board for Hearing Aid Specialists and Opticians Minutes from December 14, 2022.
 3. Board for Hearing Aid Specialists and Opticians, Optician Regulatory Review Committee Minutes from December 14, 2022
 - IV. COMMUNICATIONS**
 - V. PUBLIC COMMENT PERIOD ***
 - VI. REPORTS**
 - A. Licensing Statistics
 - B. Examination Statistics
 - VII. REGULATORY ACTION AND BOARD GUIDANCE**
 - A. Regulatory Report
 - VIII. NEW BUSINESS**
 - A. Regulatory Action - Optician Lenses and Frame Standards – Conform to ANSI Standards
 - B. Notice of Intended Regulatory Action – Opticians Regulatory Review
 - C. Notice of Intended Regulatory Action – Hearing Aid Specialists Regulatory Review
 - D. Hearing Aid Specialist Practical Exam
 - IX. ADJOURN**

2023 MEETING DATES:

WEDNESDAY, AUGUST 16, 2023

WEDNESDAY, NOVEMBER 8, 2023

* 5-minute public comment period, per person, with the exception of any open disciplinary or application files. Persons desiring to attend the meeting and requiring special accommodations/interpretive services should contact the board office at 804-367-8590 at least 10 days prior to the meeting so that suitable arrangements can be made for appropriate accommodation. The Department fully complies with the Americans with Disabilities Act.

**BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS
MINUTES OF MEETING**

The Board for Hearing Aid Specialists and Opticians met on Wednesday, December 14, 2022, at the Offices of the Department of Professional and Occupational Regulation, Perimeter Center, Board Room 4, 2nd Floor, 9960 Mayland Drive, Richmond, Virginia 23233. The following members were present for the meeting:

Kristina Green, Chair
Debra Ogilvie, AuD, Vice Chair
Darla All
Kaytlyn Young
Pamela Chavis, MD
Bruce R. Wagner
Michael Armstrong, MD

The following members were not present:

Melissa Gill
Pamela Smith
Erik Meland
Stacey Brayboy
Laura Lee Thompson
Saman Aghaebrahim

DPOR staff present for all or part of the meeting included:

Kishore Thota, Chief Deputy Director
Stephen Kirschner, Executive Director
Tamika Rodriguez, Regulatory Operations Administrator
Heather Garnett, Administrative Coordinator

A representative from the Office of the Attorney General was not present for the meeting.

Ms. Green determined that there was a quorum present, and called the meeting to order at 9:36 a.m. **Call to Order**

Mr. Kirschner introduced ABO-NCLE President James Morris and new DPOR staff, Kerri O'Brien, Communications and Digital Media Manager.

Upon a motion by Ms. All and seconded by Ms. Young, the Board voted to approve the Agenda. **Approval of Agenda**

The members voting 'yes' were, Ms. Green, Dr. Ogilvie, Mr. Wagner, Dr. Chavis, Dr. Armstrong. There were no negative votes. The motion passed unanimously.

Upon a motion by Ms. Young and seconded by Dr. Ogilvie, the Board voted to approve the minutes of the August 17, 2022, Board for Hearing Aid Specialists and Opticians Meeting

Approval of Minutes:
August 17, 2022
Board for Hearing Aid Specialists and Opticians Meeting

The members voting 'yes' were Ms. All, Dr. Chavis, Ms. Green, Dr. Armstrong, and Mr. Wagner. There were no negative votes. The motion passed unanimously.

Dr. Chavis noted that the minutes should reflect that she requested a printout of the 2015 ANCI Standards. Upon a motion by Dr. Chavis and seconded by Ms. All, the Board voted to approve the minutes of the November 1, 2022, Optician Regulatory Review Committee Meeting as amended.

Approval of Minutes:
November 1, 2022
Board for Hearing Aid Specialists and Opticians Meeting

The members voting 'yes' were Ms. Green, Ms. Young, Dr. Ogilvie, Mr. Armstrong, and Mr. Wagner. There were no negative votes. The motion passed unanimously.

Upon a motion by Mr. Wagner and seconded by Dr. Ogilvie, the Board voted to approve the minutes of the November 3, 2022, Hearing Aid Specialist Regulatory Review Committee Meeting.

Approval of Minutes:
November 3, 2022
Board for Hearing Aid Specialists and Opticians Meeting

The members voting 'yes' were Ms. All, Dr. Chavis, Ms. Green, Ms. Young, Dr. Armstrong. There were no negative votes. The motion passed unanimously.

There were no communications.

Communications

James Morris, President of ABO-NCLE, addressed the board regarding the written and practical exam.

Public Comment

There were no licensing or disciplinary cases to be heard.

CASES

REPORTS

Mr. Kirschner reviewed Hearing Aid Specialists and Opticians licensing statistics with the Board.

Licensing Statistics

Ms. Garnett reviewed the Hearing Aid Specialist's and Opticians examination statistics for all exams administered between December 2021 and December 2022. The Board discussed the exam pass rates.

**Examination
Statistics**

Ms. Rodriguez reported to the Board on the need to increase the optician fees in addition to the pending hearing aid specialist fee increase. She reported that the Board is currently operating at a loss, and fee increases were needed. She provided a chart showing several fee options proposed by the DPOR Finance Section. The Board discussed the different fee proposals.

**Notice of Intended
Regulatory Action -
Optician Licensing
Fees**

Upon a motion by Ms. All and seconded by Dr. Armstrong, the Board voted to initiate a regulatory action to adopt fee proposal B.

The members voting 'yes' were Dr. Chavis, Ms. Green, Dr. Ogilvie, Mr. Wagner and Ms. Young. There were no negative votes. The motion passed unanimously.

Mr. Kirschner reported to the Board that the ILE covers interpretation of tympanometry results but does not test on the actual procedure. The Board discussed this topic. Dr. Armstrong suggested that this procedure could be safely conducted by hearing aid specialists with proper training, were it included in their scope of practice. In response to staff inquiry, the Board members did not express any concerns with the tympanometry content on the ILE exam.

**Tympanometry on
ILE**

Mr. Kirschner presented on the necessary changes to the hearing aid specialist regulations to bring it into compliance with the federal OTC Hearing Aid regulations. He stated that Board Regulation 18 VAC 80-20-270.1.c should be amended as follows to imposed discipline for "Employing to fit or sell prescription hearing aids a person who does not hold a valid license or a temporary permit as required by law, or whose license or temporary permit is suspended;..." Mr. Kirschner report that this would likely be an exempt regulatory action due to the change in federal law.

**Over the Counter
Hearing Aid Act**

Upon a motion by Ms. Young and seconded by Mr. Wagner the Board voted to approve the proposed change to the regulation.

Materials contained in this agenda are proposed for discussion and are not to be construed as regulation or official Board position.

The members voting 'yes' were Ms. All, Dr. Chavis, Ms. Green, Dr. Ogilvie, and Dr. Armstrong. There were no negative votes. The motion passed unanimously.

NEW BUSINESS

Mr. Kirschner reported to the Board regarding the use of analog audiometers on the exam. The Board discussed whether to begin using digital audiometers on the exams. The board consensus was that applicants should be tested on the equipment they will use in the clinical setting.

Audiometer Use on Exams – Digital vs. Analog

Upon a motion by Dr. Ogilvie and seconded by Mr. Wagner the Board voted to authorize the department to begin exploring what steps are needed to begin testing with digital audiometers, including the formation of an examination committee if changes are needed on the exam.

The members voting 'yes' were Ms. All, Dr. Chavis, Ms. Green, Ms. Young, and Dr. Armstrong. There were no negative votes. The motion passed unanimously.

The Board recessed the meeting at 11:00am.

Recess

Dr. Armstrong left the meeting at 11:01am.

Dr. Armstrong Leaves

There no longer being a quorum of the Board, Ms. Green adjourned the meeting at 11:10 a.m.

Adjourn

Kristina Green, Chair

Demetrios J. Melis. Board Secretary

**Board for Hearing Aid Specialists and Opticians
Analysis of Fee Structure and Financial Position**

Date of Last Fee Increase: 8/1/2005
Date of Last Fee Decrease: 10/1/2003

Fee Structure

<u>Fee Type</u>		<u>Current Fees</u>	<u>Proposal A</u>	<u>Proposal B</u>	<u>Proposal C</u>	<u>Proposal D</u>
New Applicant	Hearing Aid Specialist	30	125	125	150	125
New Applicant	Hearing Aid Specialist by Reciprocity	140	125	125	150	125
New Applicant	Specialist Temporary Permit	30	125	125	150	125
Renewal	Hearing Aid Specialist	20	125	125	150	125
Reinstatement	Hearing Aid Specialist	30	125	125	150	125
Exam	Hearing Aid Specialist	125	125	125	125	125
Re-exam	Hearing Aid Specialist	125	125	125	125	125
New Applicant	Optician	100	100	125	150	140
Renewal	Optician	100	100	125	150	140
Late Renewal	Optician	25	35	35	35	25
Reinstatement	Optician	100	100	125	150	140
Duplicate Wall Certificate		35	35	35	35	35
Certificate of Licensure		35	35	35	35	35
Bad Check Fee		50	50	50	50	50

Financial Position

	<u>Actual 2020-22 Biennium</u>	<u>Projected 2022-24 Current Fees</u>	<u>Projected 2024-26 Current Fees</u>	<u>Projected 2024-26 Proposal A</u>	<u>Projected 2024-26 Proposal B</u>	<u>Projected 2024-26 Proposal C</u>	<u>Projected 2024-26 Proposal D</u>
Cash Carryforward	-866	-45,402	-124,046	-124,046	-124,046	-124,046	-124,046
Revenues	226,725	239,229	239,068	344,487	391,993	464,829	419,101
Expenditures	271,261	317,873	327,374	327,374	327,374	327,374	327,374
Balance	-45,402	-124,046	-212,353	-106,934	-59,427	13,408	-32,319
The year the board's cash position recovers from the deficit			Never	Never	FY2028	FY2026	FY2027

NOTES:

Per the Callahan Act, the maximum cash balance is \$100,000

Proposal A - Keeps the Hearing Aid Specialist fees moving forward at the \$125 and makes no changes to the Opticians fees, does not recover from the deficit

Proposal B - Keeps the Hearing Aid Specialists at the approved amount of \$125 and increases Opticians to an equal fee of \$125., recovers from the deficit in FY28.

Proposal C - Raises both professions' fees to \$150 to rapidly recover from the deficit in FY2026 but would require a fee reduction action in FY2027.

Proposal D - Keeps the Hearing Aid Specialists proposed fees at \$125 and raises the Opticians fees to \$140. Recovers from the deficit in FY2027. May need a fee reduction action in FY2029.

Proposal B is the most equitable to the professions, keeps the cash balance in good position for years into the future, but takes the longest to recover from the deficit.

Proposal D is a viable option but is slightly inequitable to Opticians and recovers from the deficit one year sooner than B.

**BOARD FOR HEARING AID SPECIALIST AND OPTICIANS
OPTICIAN REGULATORY REVIEW COMMITTEE**

MINUTES OF MEETING

The Board for Hearing Aid Specialist and Opticians, Optician Regulatory Review Committee met on Wednesday, December 14, 2022, at the Offices of the Department of Professional and Occupational Regulation, 9960 Mayland Drive, 2nd Floor, Board Room 4, Richmond, Virginia. The following board members were present:

Kristina Green
Darla All
Dr. Pamela Chavis
Kaytlyn Young

The following board members were not present:

Stacey Brayboy
Erik Meland

DPOR staff present for all, or part of the meeting included:

Steve Kirschner, Deputy Director, Licensing & Regulatory Programs
Tamika Rodriguez, Regulatory Operations Administrator
Heather Garnett, Administrative Coordinator

There was no representative from the Office of the Attorney General present for the meeting.

Kristina Green, Chair, called the Board for Hearing Aid Specialist and Opticians, Optician Regulatory Review Committee meeting to order at 11:37 a.m.

Call to Order

There was no public comment.

Public Comment

The Committee continued its line-by-line review of the Opticians Regulations to determine if the regulation is necessary to protect the health, welfare, and safety of the public.

**Review of the
Opticians
Regulations**

The committee completed reviewed the Optician Regulations and by consensus referred the recommended changes to the Board.

There being no further business, the meeting adjourned at 12:40 p.m.

Adjourn

Kristina Green, Board Chair

Demetrios J. Melis, Board Secretary

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DRAFT AGENDA

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TO: VIRGINIA BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS
FROM: KELLEY PALMATIER, EXECUTIVE DIRECTOR
SUBJECT: OPTICIAN LENSES AND FRAME STANDARDS - REGULATORY ACTION TO CONFORM TO ANSI STANDARDS
DATE: FEBRUARY 16, 2023

Attached you will find the draft revisions to the Optician Lenses and Frame. The Board for Hearing Aid Specialists and Opticians seeks to revise the existing regulations for lenses and frames to conform to the American National Standard Institute (ANSI) practices. The amended language was initiated on November 1, 2022, by the Opticians Regulatory Review Committee and adopted by the Board for Hearing Aid Specialists and Opticians on December 14, 2022. The regulatory amendment modifies the lenses and frames specifications to the ANSI Z80.1 and Z87.7 prescription ophthalmic lens standards. The Occupational Safety and Health Administration (OSHA) has made the ANSI standards a regulatory requirement. The regulatory change will eliminate outdated specifications and will align the regulations with the national standards and OSHA regulatory requirements. The

If the Board wishes to proceed with this change, it can do so with a motion to “to adopt the proposed non-controversial regulatory change.”

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18VAC80-30-120. Lenses and frames standards.

A. Licensees shall follow ANSI Z80.1 and Z87.1 standards for dress and safety eyewear.

~~A. Power Tolerance (diopters):~~

Sphere: Plano to ± 6.50	± 13 diopter
Above ± 6.50	$\pm 2\%$
Cylinder: Plano -2.00	± 13 diopter
-2.12 to -4.50	± 15 diopter
above -4.50	$\pm 4\%$

~~B. Cylinder Axis:~~

Cyl. Power Diopters	Degrees \pm
0.12 $-$ 0.37	7°
0.50 $-$ 0.75	6°
0.87 $-$ 1.50	3°
1.62 and above	2°

~~C. Distance Optical Center. Contribution to net horizontal prism from processing should not exceed $2/3$ prism diopter. A maximum of ± 2.5 mm variation from the specified distance optical center is permissible in higher power lens combinations.~~

~~D. Prism Tolerances (Vertical). Contribution to imbalance from processing should not exceed $1/3$ prism diopters. A maximum of 1.0mm difference in vertical level is permissible in higher power lens combinations.~~

~~E. Segment Location:~~

Vertical	± 1.0 mm
Horizontal	± 2.5 mm

~~Tilt or twist in the case of a flat top segment, the tilt of its horizontal axis should be less than 1/2 mm in differential elevation between the segment edges.~~

~~F. Multifocal Additions:~~

~~Plane + 8.00 ±.13 diopter~~

~~Above + 8.00 ±.18 diopter~~

~~G. Base Curve. When specified, the base curve should be supplied within ±0.75 diopter.~~

~~H. Warpage. The cylindrical surface power induced in the base curve of a lens should not exceed 1 diopter. This recommendation need not apply within 6mm of the mounting eyewire.~~

~~I. Localized errors (aberration). Areas outside a 20mm radius from the specified major reference point or optical center need not be tested for aberration. Progressive lenses are exempt from this requirement.~~

Statutory Authority

§ 54.1-201 of the Code of Virginia.

Historical Notes

Former 18VAC100-20-85 derived from Virginia Register Volume 17, Issue 9, eff. March 1, 2001; amended and renumbered as 18VAC80-30-120, Virginia Register Volume 28, Issue 23, eff. August 15, 2012.

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TO: VIRGINIA BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS
FROM: KELLEY PALMATIER, EXECUTIVE DIRECTOR
SUBJECT: OPTICIANS REGULATORY REDUCTION REVIEW
DATE: FEBRUARY 16, 2023

At the February 27, 2023, meeting, the Board will need to approve a Notice of Intended Regulatory Action (NOIRA) to initiate these regulatory changes. Please note that you will not be voting on these specific changes, but rather, you are only voting on starting a regulatory action. At the board meeting, the draft changes will be provided only for reference purposes.

The Board can initiate the NOIRA with a motion to “initiate a Notice of Intended Regulatory Action regarding regulatory reduction.”

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TO: VIRGINIA BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS
FROM: KELLEY PALMATIER, EXECUTIVE DIRECTOR
SUBJECT: HEARING AID SPECIALIST REGULATORY REVIEW
DATE: FEBRUARY 16, 2023

At the February 27, 2023, meeting, the Board will need to approve a Notice of Intended Regulatory Action (NOIRA) to initiate these regulatory changes. Please note that you will not be voting on these specific changes, but rather, you are only voting on starting a regulatory action. At the board meeting, the draft changes will be provided only for reference purposes.

The Board can initiate the NOIRA with a motion to “initiate a Notice of Intended Regulatory Action regarding regulatory reduction.”

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TO: VIRGINIA BOARD FOR HEARING AID SPECIALISTS AND OPTICIANS
FROM: KELLEY PALMATIER, EXECUTIVE DIRECTOR
SUBJECT: FINANCIAL STATEMENTS
DATE: FEBRUARY 2, 2023

Attached you will find the most recent Statement of Financial Activity and the Supporting Statement of Year-to-Date Activity for the Board. Additionally, you will find the Agency Statement of Financial Activity.

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**Department of Professional and Occupational Regulation
Statement of Financial Activity**

**Board for Hearing Aid Specialists and Opticians
954240**

2022-2024 Biennium

December 2022

	December 2022 Activity	Biennium-to-Date Comparison	
		July 2020 - December 2020	July 2022 - December 2022
Cash/Revenue Balance Brought Forward			0
Revenues	57,860	107,415	105,635
Cumulative Revenues			105,635
Cost Categories:			
Board Expenditures	5,927	11,988	14,440
Board Administration	5,557	20,191	22,425
Administration of Exams	194	11,317	798
Enforcement	63	224	269
Legal Services	0	190	0
Information Systems	1,819	13,379	10,287
Facilities and Support Services	2,039	8,237	5,044
Agency Administration	3,271	9,257	15,211
Other / Transfers	0	0	0
Total Expenses	18,871	74,783	68,475
Transfer To/(From) Cash Reserves	0	0	(15,292)
Ending Cash/Revenue Balance			52,452

Cash Reserve Beginning Balance	(60,694)	0	(45,402)
Change in Cash Reserve	0	0	(15,292)
Ending Cash Reserve Balance	(60,694)	0	(60,694)

Number of Regulants	
Current Month	2,702
Previous Biennium-to-Date	2,711

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**Department of Professional and Occupational Regulation
Supporting Statement of Year-to-Date Activity**

**Agency Total
Fiscal Year 2023**

	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Fiscal YTD Charges	Planned Annual Charges	Current Balance	Projected Charges at 6/30	Projected Variance Favorable (Unfavorable)	
																	Amount	%
Board Expenditures	240,785	135,356	115,811	155,623	171,445	229,739	0	0	0	0	0	0	1,048,759	2,346,967	1,298,208	2,008,920	338,047	14.4%
Board Administration	581,962	397,550	386,885	206,213	374,175	637,198	0	0	0	0	0	0	2,583,983	6,091,507	3,507,524	4,685,930	1,405,577	23.1%
Administration of Exams	39,210	27,084	28,416	13,874	27,042	43,638	0	0	0	0	0	0	179,264	376,174	196,910	328,039	48,135	12.8%
Enforcement	939,715	669,917	661,520	319,077	328,847	1,018,842	0	0	0	0	0	0	3,937,920	9,180,232	5,242,312	7,197,040	1,983,193	21.6%
Legal Services	0	0	25,540	10,492	50	200	0	0	0	0	0	0	36,281	131,046	94,765	72,563	58,483	44.6%
Information Systems	162,794	258,278	199,371	143,010	237,968	213,873	0	0	0	0	0	0	1,215,295	3,316,730	2,101,435	2,378,300	938,430	28.3%
Facilities / Support Svcs	108,265	178,693	150,000	128,795	169,087	179,095	0	0	0	0	0	0	913,934	2,311,417	1,397,483	1,765,650	545,767	23.6%
Agency Administration	297,208	210,026	420,127	207,803	277,270	384,521	0	0	0	0	0	0	1,796,955	3,706,699	1,909,744	3,356,564	350,135	9.4%
Other / Transfers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Charges	2,369,938	1,876,905	1,987,671	1,184,886	1,585,885	2,707,106	0	0	0	0	0	0	11,712,391	27,460,772	15,748,381	21,793,005	5,667,767	20.6%

**Department of Professional and Occupational Regulation
Statement of Financial Activity**

Agency Total

2022-2024 Biennium

December 2022

	December 2022 Activity	Biennium-to-Date Comparison	
		July 2020 - December 2020	July 2022 - December 2022
Cash/Revenue Balance Brought Forward			3,453,476
Revenues	1,713,532	9,673,644	9,560,885
Cumulative Revenues			13,014,361
Cost Categories:			
Board Expenditures	229,739	876,640	1,048,759
Board Administration	637,198	2,250,807	2,583,983
Administration of Exams	43,638	151,738	179,264
Enforcement	1,018,842	3,325,358	3,937,920
Legal Services	200	106,852	36,281
Information Systems	213,873	1,527,706	1,215,295
Facilities and Support Services	179,095	978,299	913,934
Agency Administration	384,521	1,057,817	1,796,955
Other / Transfers	0	0	0
Total Expenses	2,707,106	10,275,217	11,712,391
Transfer To/(From) Cash Reserves	(213,780)	0	(1,184,697)
Ending Cash/Revenue Balance			2,486,667

Cash Reserve Beginning Balance	17,023,033	0	17,993,950
Change in Cash Reserve	(213,780)	0	(1,184,697)
Ending Cash Reserve Balance	16,809,253	0	16,809,253

Number of Regulators

Current Month	320,722
Previous Biennium-to-Date	308,696

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