

**BOARD OF OPTOMETRY
SUMMARY SUSPENSION/BOARD MEETING
MAY 9, 2008**

TIME AND PLACE: The meeting was called to order at 11:05 a.m. on Friday, May 9, 2008 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 1, Richmond, VA.

PRESIDING OFFICER: David H. Hettler, O.D, President

MEMBERS PRESENT: Paula H. Boone, O.D.
Gregory P. Jellenek, O.D.
Jonathan R. Noble, O.D.
W. Ernest Schlabach, O.D.
Jacquelyn S. Thomas, Citizen Member

STAFF PRESENT: Amy Marschean, Assistant Attorney General, Board Counsel
Wayne Halbleib, Assistant Attorney General
Mykl Egan, Senior Adjudication Analyst
Elizabeth A. Carter, Ph.D., Executive Director for the Board
Carol Stamey, Operations Manager

OTHERS PRESENT: Bo Keeney, VOA
Eric B. Martin, Reed Smith
Bill Ferguson, Board for Opticians

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

**SUMMARY SUSPENSION:
HARRY L. CLAYMAN, O.D.** Mr. Halbleib, Assistant Attorney General, presented evidence on behalf of the Commonwealth that the continued practice of optometry by Jeffrey C. Shelton, O.D., license number 0618000777 may present a substantial danger to the health and safety of the citizens of the Commonwealth and requested that the Board summarily suspend Dr. Shelton's license pursuant to § Va. Code 54.1-2408.1.

CLOSED SESSION: On properly seconded motion by Dr. Noble, the Board convened a closed meeting pursuant to Section 2.2-3711.A.28 of the Code of Virginia for the purpose of deliberation to reach a decision in the matter of Jeffrey C. Shelton, O.D.

OPEN SESSION: On properly seconded motion by Dr. Noble, the Board certified that the matters discussed in the preceding closed session met the requirements of Section 2.2-3711.A.28 of the Code, the Committee re-convened and announced its

decision.

◆ Action Upon properly seconded motion by Dr. Noble, the Board voted to summarily suspend the license of Jeffrey C. Shelton, O.D. and to offer a Consent Order that included the option for Dr. Shelton's license to be placed on INDEFINITE SUSPENSION. Further, absent Dr. Shelton's acceptance of the INDEFINITE SUSPENSION, a formal hearing is to be scheduled.

**ADJOURNMENT OF SUMMARY
SUSPENSION:**

The summary suspension meeting adjourned at 11:30 a.m.

REGULAR BOARD MEETING:

The regular board meeting was called to order.

AGENDA:

The following agenda items were moved as follows: "Update on Legislation and Regulations" and "Report/Recommendations on the "Legislative/Regulatory Review Committee" to be presented prior to the President's report.

**DEPARTMENT DIRECTOR'S
REPORT:**

Budget and Travel

Ms. Ryals reported that the agency's budget was good; however, restrictions on travel remain in effect for non-discretionary spending.

Key Performance Measures

Ms. Ryals apprised the Board that the agency was making progress in disciplinary case resolution. Additionally, she reported that Neal Kauder of Visual Research, Inc., had been contracted to obtain an independent analysis of case measures and process efficiencies regarding agency performance. Ms. Ryals reported that the agency had cleared a record number of old disciplinary cases and that the new cases were closing at a much faster rate. She further stated that the overall improvement was due to new methodologies, case tiering, systems improvement, board member assistance and reorganization. To enhance reporting of the agency's statistics, Ms. Ryals noted that an effort is being made to revise the agency's website and specific charts and graphs of these statistics would be available in for future reports to the various boards.

**REPORT/RECOMMENDATIONS
OF THE CPT CODE COMMITTEE:**

Dr. Jellenek reported that the CPT Code Committee had met to review CPT Codes 92235 and 92240. Further, that the Committee was recommending that the Board approve the codes with the modifier 26, professional component only.

On properly seconded motion by Dr. Boone, the Board voted unanimously to approve CPT Codes 92235 and 92240 as presented by the CPT Code Committee.

**EXECUTIVE DIRECTOR'S
REPORT:**

Budget

Dr. Carter reported that seventy-three percent (73%) of the board's budget had been spent. She noted that the fees for licensure renewal should be placed on the August agenda for review.

Statistics

Dr. Carter reported that the total number of licensees with TPA certification was at its highest rate, eighty-three percent (83%). Additionally, she stated that the number of in-state licensees with TPA certification had increased to seventy percent (70%). With regard to customer service on licensure applications, the positive rating was at ninety-nine percent (99%) with a one-hundred percent (100%) completion rate. Dr. Carter also reported that the Board had issued thirty (30) new professional designations for the period July 1, 2007 through April 30, 2008.

Board of Health Professions Report

Dr. Carter reported that the Board of Health Professions is currently conducting four sunrise reviews: Central Sterile Technicians, Orthotists, Prosthetists and Pedorthists. She also reported that the Board had received a presentation from the Health Department on the CLAS Act Virginia (Culturally & Linguistically Appropriate Health Care Services). Additionally, Dr. Carter reported that Karen Rimley with the Department of Health had requested a collaborative effort to prevent and reduce HAI (Healthcare Associated Infections). Dr. Carter noted that the Executive Committee of the Board of Health Professions was assigned to research the matter along with Ms. Yeatts for regulatory review.

PUBLIC COMMENT:

No public comment was presented.

APPROVAL OF MINUTES:

On properly seconded motion by Dr. Boone, the Board voted unanimously to approve the minutes of the February 12, meeting.

**UPDATE ON BOARD
LEGISLATION AND
REGULATIONS AND
REPORT/RECOMMENDATIONS
OF THE**

Ms. Yeatts noted that there was no legislative update to report.

Ms. Yeatts presented a handout of the proposed amendments to Sections 18 VAC 105-20-40 and 18 VAC 105-20-45 of the

**LEGISLATIVE/REGULATORY
REVIEW COMMITTEE:**

Optometry Regulations as developed by the Legislative/Regulatory Review Committee. The proposed regulatory amendments are as follows:

Section 18 VAC 105-20-40 Optometry Regulations

18VAC105-20-40. Unprofessional Standards of Conduct

It shall be deemed unprofessional conduct for any licensed optometrist in the Commonwealth to violate any statute or regulation governing the practice of optometry or to fail to The board has the authority to deny, suspend, revoke or otherwise discipline a licensee for a violation of the following standards of conduct. A licensed optometrist shall:

1. Use in connection with the optometrist's name wherever it appears relating to the practice of optometry one of the following: the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry."
2. Maintain records on each patient for not less than five years from the date of the most recent service rendered. Disclose to the board any disciplinary action taken by a regulatory body in another jurisdiction.
3. Post in an area of the optometric office which is conspicuous to the public, a chart or directory listing the names of all optometrists practicing at that particular location.
4. Maintain patient records, perform procedures or make recommendations during any eye examination, contact lens examination or treatment as necessary to protect the health and welfare of the patient and consistent with requirements of 18VAC 105-20-45.
5. Notify patients in the event the practice is to be terminated or relocated, giving a reasonable time period within which the patient or an authorized representative can request in writing that the records or copies be sent to any other like-regulated provider of the patient's choice or destroyed in compliance with requirements of § 54.1-2405 on the transfer of patient records in conjunction with closure, sale, or relocation of practice.
6. Ensure his access to the practice location during hours in which the practice is closed in order to be able to properly evaluate and treat a patient in an emergency.
7. Provide for continuity of care in the event of an absence from the practice; or in the event the optometrist chooses to terminate the practitioner-patient relationship or make his services unavailable, document notice to the patient that allows for a reasonable time to obtain the services of another practitioner.
8. Comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and

disclosure of patient records and related to the provision of patient records to another practitioner or to the patient or his personal representative.

9. Treat or prescribe based on a bona fide practitioner-patient relationship consistent with criteria set forth in § 54.1-3303 of the Code of Virginia. A licensee shall not prescribe a controlled substance to himself or a family member, other than Schedule VI as defined in § 54.1-3455 of the Code of Virginia. When treating or prescribing for self or family, the practitioner shall maintain a patient record documenting compliance with statutory criteria for a bona fide practitioner-patient relationship.

10. Comply with provisions of statute or regulation, state or federal, relating to the diversion, distribution, dispensing, prescribing or administration of controlled substances as defined in § 54.1-3401 of the Code of Virginia.

11. Not enter into a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or his family, to include but not limited to actions that result in personal gain at the expense of the patient, a nontherapeutic personal involvement or sexual conduct with a patient. The determination of when a person is a patient is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. The consent to initiation of, or participation in sexual behavior or involvement with a practitioner by a patient does not change the nature of the conduct nor negate the prohibition.

12. Cooperate with the board or its representatives in providing information or records as requested or required pursuant to an investigation or the enforcement of a statute or regulation.

13. Not practice with an expired or unregistered professional designation.

14. Not violate or cooperate with others in violation any of the provisions of Chapters 1 (§ 54.1-100 et seq.) 24 (§ 54.1-2400 et seq.) or 32 (§54.1-3200 et seq.) or regulations of the board.

Section 18 VAC 105-20-45 Optometry Regulations

~~A. A complete record of all examinations made of a patient shall include a diagnosis and any treatment and shall also include but not be limited to:~~ An optometrist shall legibly

document in a patient record the following:

1. During a ~~comprehensive~~ routine or medical eye examination:
 - a. ~~Case~~ An adequate case history, including the patient's chief complaint;
 - b. ~~Acuity measure;~~ The performance of appropriate testing;
 - c. ~~Internal health evaluation;~~ The establishment of an assessment or diagnosis; and
 - d. ~~External health evaluation;~~ and
 - e. ~~Recommendations and directions to the patients, including prescriptions.~~ A recommendation for an appropriate treatment or management plan, including any necessary follow-up.
2. During an initial contact lens examination:
 - a. The requirements of a ~~comprehensive~~ routine or medical eye examination; as prescribed in subdivision 1;
 - b. ~~Assessment of corneal curvature;~~
 - c. ~~Assessment of corneal/contact lens relationship;~~ Evaluation of contact lens fitting;
 - d. Acuity through the lens; and
 - e. Directions for the wear, care and handling of lenses and an explanation of the implications of ~~contact lenses with regard to eye health and vision.~~
3. During a follow-up contact lens examination:
 - a. ~~Assessment~~ Evaluation of ~~corneal/contact lens relationship~~ fitting and anterior segment health;
 - b. Acuity through the lens; and
 - c. Such further instructions as ~~in subdivision 2 of this subsection,~~ as necessary for the individual patient.
4. In addition, the record of any examination shall include the signature of the attending optometrist and, if indicated, refraction of the patient.

B. The following information shall appear on a prescription for ophthalmic goods:

1. The printed name of the prescribing optometrist;
2. The address and telephone number at which the patient's records are maintained and the optometrist can be reached for consultation;
3. The name of the patient;
4. The signature of the optometrist;
5. The date of the examination and an expiration date, if medically appropriate; and
6. Any special instructions.

C. ~~Sufficient information for complete and accurate filling of an established contact lens prescription shall include but not~~

~~be limited to the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and medically appropriate expiration date. An optometrist shall provide a patient with a copy of the patients contact lens prescription in accordance with the Federal Trade Commission Contact Lens Rule (16 C.F.R. Part 315).~~

~~D. A licensed optometrist shall provide a written prescription for spectacle lenses upon the request of the patient once all fees have been paid. In addition, he shall provide a written prescription for contact lenses upon the request of the patient once all fees have been paid and the prescription has been established and the follow-up care completed. Follow-up care will be presumed to have been completed if no reappointment is recommended within 60 days after the last visit. In accordance with the Federal Trade Commission Eyeglass Rule (16 C.F.R. Part 456).~~

E. Maintenance of patient records. Practitioners shall maintain a patient record for a minimum of five years following the last patient encounter with the following exceptions:

1. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or
2. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

F. Record destruction. From (one year after the effective date of this regulation), Practitioners shall post information or in some manner inform all patients concerning the time frame for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality.

On properly seconded motion by Dr. Jellenek, the Board voted unanimously to approve the proposed amendments for publishing and sixty (60) day comment.

18 VAC 105-20-50 Optometry Regulations

The Committee reported that the review of Section 18 VAC 105-20-50 had been tabled.

18 VAC 105-20-75 Optometry Regulations

Ms. Yeatts reported that the Committee had received proposed amendments to Section 18 VAC 105-20-75 as an exempt action. The proposed amendments are as follows:

Registration for voluntary practice by out-of-state licensees.

Any optometrist who does not hold a license to practice in Virginia and who seeks registration to practice on

a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization ~~with no paid employees~~ that sponsors the provision of health care to populations of underserved people ~~throughout the world~~ shall:

1. File a complete application for registration on a form provided by the board at least ~~45~~ five days prior to engaging in such practice. An incomplete application will not be considered;

2. Provide a complete list of professional licensure in each state in which he has held a license and a copy of any current license;

3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;

4. Pay a registration fee of \$10; and

5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 2 of [§54.1-3202](#) of the Code of Virginia.

On properly seconded motion by Dr. Noble, the Board voted unanimously to accept the proposed amendments as presented by Ms. Yeatts.

PRESIDENT'S REPORT:

Dr. Hettler requested newsletter articles for assignment at the next board meeting for the upcoming fall newsletter.

NEW BUSINESS:

Dr. Jellenek requested that the Board consider amending §54.1-3223.B to eliminate the requirement for a TPA Formulary Committee. The matter was remanded to the Legislative/Regulatory Review Committee for consideration.

ADJOURNMENT:

The Board concluded its meeting at 12:40 p.m.

David H. Hettler, O.D.
President

Elizabeth A. Carter, Ph.D.
Executive Director