

**BOARD OF OPTOMETRY  
BOARD MEETING  
JULY 22, 2009**

**TIME AND PLACE:** The meeting was called to order at 10:30 a.m. on Wednesday, July 22, 2009 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2<sup>nd</sup> Floor, Room 1, Henrico, VA.

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

**MEMBERS PRESENT:** Gregory P. Jellenek, O.D.  
Jonathan R. Noble, O.D.  
Angela Tsai, O.D.

**MEMBERS NOT PRESENT:** W. Ernest Schlabach, O.D.  
Jacquelyn S. Thomas, Citizen Member

**STAFF PRESENT:** Eric A. Gregory, Assistant Attorney General, Board Counsel  
Elizabeth A. Carter, Ph.D., Executive Director for the Board  
Sandra Ryals, Director, Department of Health Professions  
Elaine Yeatts, Senior Regulatory Analyst  
Carol Stamey, Operations Manager

**OTHERS PRESENT:** Bruce Keeney, VOA  
Betty Gramlich, NAOO

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

**PUBLIC COMMENT:** Bruce Keeney, Virginia Optometric Association, welcomed the newest board member appointee, Dr. Tsai. Additionally, he recognized and expressed his appreciation to Dr. Carter for her service as Executive Director for the Board and to the optometric profession.

**APPROVAL OF MINUTES:** On properly seconded motion by Dr. Jellenek, the Board voted unanimously to approve the minutes of the April 21, 2009 meeting.

**WELCOME:** Dr. Hettler welcomed the newest board member appointee, Dr. Angela Tsai. He also congratulated Dr. Noble on his appointment to serve on the Board of Health Professions.

## **DISCUSSION ITEMS:**

### **Briefing on Annual ARBO Meeting**

Dr. Hettler presented a brief summary of the activities of the meeting of the Association of Regulatory Boards of Optometry (ARBO) in June 2009. Specifically, he reported on two items: Board Certification and Independent Continuing Education (ICE). Dr. Hettler stated that the new program, Board Certification, had slightly passed; however, it continues to be a future agenda item. With regard to ICE, he reported that the Committee continues to develop guidelines to address commercial support of continuing education.

### **Licensee Disciplinary Compliance Review**

Ms. Stamey reported that a statistical review of the last ten years of disciplinary orders had been conducted to determine the rate of recidivism. The results revealed that a total of 120 licensees who had been issued Orders, 12 (10%) were disciplined at least one additional time.

### **CPT Code 96116**

The Board reviewed a request for approval of CPT Code 96116, Neurobehavioral Status Exam. Dr. Carter informed the Board that Cal Whitehead, Psychiatric Society of Virginia, had contacted her with concerns that the code is outside the scope of practice of optometry.

On properly seconded motion by Dr. Jellenek, the Board voted unanimously to approve CPT code 96116.

## **DIRECTOR'S REPORT:**

Ms. Ryals presented an update on the following issues:

### **Key Performance Measures**

Ms. Ryals reported that each of the boards had accomplished a 100% rate in licensing applicants within the 30 day deadline. With regard to the 250 day deadline to close patient care cases, Ms. Ryals informed the Board that the Agency's overall clearance rate was 90%, meeting the goal in advance of the 2010 deadline. Ms. Ryals further reported that the DHP Performs reports with individual Board performance were now posted on the Agency's webpage. Dr. Hettler requested future disciplinary statistical analysis reports to include the number of cases in addition to the percentage.

### **Prescription Monitoring Program/Security Breach**

Ms. Ryals informed the Board that as of June 2009, 39 states had enacted legislation permitting Prescription Monitoring

Programs. With regard to the security breach, Ms. Ryals reported that PMP had been accessed by an unauthorized user and that Federal and State Law Enforcement had been notified of the breach. Ms. Ryals reported that all computer systems have been restored with the exception of PMP and that the criminal investigation is ongoing. She further reported that news releases were posted to the agency's webpage and letters were mailed to all individuals who had registered with the program and potentially included their social security numbers. Ms. Ryals informed the Board that PMP should be up and running by the end of the month with enhanced security measures.

### **Health Practitioners Information**

Ms. Ryals reported that the former Health Practitioners Intervention Program has been renamed the Health Practitioners Monitoring Program, effective July 1, 2009. This is in keeping with legislation passed this year and better reflects the program's real purpose. She stated that a Joint Committee had been established to lower cost, enhance efficiencies and remove unnecessary burdens. Ms. Ryals advised that participants in the program were being notified by letter of the name change.

### **Fee Increase**

Ms. Ryals addressed the Board regarding an analysis of the Board's revenues and expenditures as required by the Callahan Act. She reported that the Board's projected expenditures for the next biennium will exceed revenue resulting in a cash shortfall. Ms. Ryals advised that details of the proposed budget with projections will be presented at the Board's next meeting. She noted that the Board will need to adopt a NOIRA to begin the process of raising licensure fees.

### **Organizational Changes**

Ms. Ryals informed the Board that there was a need for an in-house healthcare workforce data center and that Dr. Carter was being redeployed to serve as its Director. Additionally, she reported that the new Executive Director would be responsible for the Boards of Optometry, Veterinary Medicine, and Audiology and Speech-Language Pathology. Ms. Ryals noted that interviews would be conducted in August and that board members may participate on an interview panel.

**DHP LEGISLATIVE/REGULATORY  
UPDATE:**

**Regulatory Update**

Ms. Yeatts reported that the two proposed regulatory actions, 18VAC 105-20-70 CE Regulations and 18VAC 105-20-40 and 45 Standards of Practice, were at the sixty day comment period. Additionally, she stated that public comment will be reviewed at the next quarterly board meeting.

**COMMITTEE REPORTS:**

**Legislative/Regulatory Review Committee**

Dr. Hettler reported that the Committee had met and received public comment from Mr. Keeney on the proposed regulatory actions: Continuing Education and Unprofessional Conduct. Specifically, he noted that Mr. Keeney expressed opposition for the allowance of Category 2 CE and the proposed regulation to allow the Board to sanction a licensee for violation of the Federal Trade Commission Contact Lens Rule.

Dr. Hettler also presented the Committee's proposed Bylaws for review and adoption.

On properly seconded motion by Dr. Noble, the Board voted unanimously to adopt the proposed Bylaws with minor amendment.

**Credentials Committee**

Dr. Jellenek reported that two applications had been approved through the Credentials Committee since the Board's last meeting in April.

**Professional Designation Committee**

Dr. Hettler reported that the committee will be meeting on August 27, 2009, to meet with Board Counsel to discuss the professional designation regulations.

**PRESIDENT'S REPORT:**

**Committee Assignments**

Dr. Hettler appointed new committee members as follows:

Credentials Committee – Dr. Tsai to replace Dr. Boone,  
Professional Designation Committee – Dr. Noble to replace  
Dr. Boone,  
CPT Code Committee – Dr. Tsai to replace Dr. Hettler.

**Administration of State Law Examination**

Dr. Hettler reported the Board had received a notification

from ARBO/National Board that it could provide the service of administering state law examinations. Dr. Carter noted that Virginia does not administer a state law examination and has not done so in many years because of the lack of empirical relationship between passage of the examination and discipline. Further, she reported that the Virginia licensure application requires that licensees attest to reading, understanding and abiding by the Virginia Optometric Laws and Regulations.

#### **Newsletter Articles**

Dr. Hettler assigned the following news articles for the fall newsletter:

Alternative address – Dr. Noble

Board Certification – Dr. Tsai

Announcement of Executive Director Change – Dr. Hettler

Renewal/CE – Dr. Jellenek

ARBO Report – Dr. Schlabach

Transparency – Ms. Thomas.

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

##### **Statistics**

Dr. Carter reported that the number of open disciplinary cases was down to eighteen (18) with only two (2) of the cases classified as standard of care. She noted that the remaining sixteen (16) cases were classified as business practice issues.

Dr. Carter reported that there had been a four percent increase in the number of new licensees with TPA certification. She also reported that there were 223 non-TPA certified optometrists.

#### **NEW BUSINESS:**

##### **PQRI Measures**

Dr. Noble requested that the CPT Code Committee consider the review of PQRI measures. Dr. Hettler requested that the CPT Code Committee meet prior to the full board meeting in October 2009 to consider the PQRI measures.

##### **Elections**

On properly seconded motion by Dr. Noble, the Board voted unanimously that Dr. Hettler continue as President and that Dr. Jellenek serve as Vice-President.

##### **Board Certification**

Dr. Jellenek requested that the Board review the issue of board certification offered by recognized organizations which may include residencies. The matter was placed on the

board's October agenda.

**ADJOURNMENT:**

The board concluded its meeting at 11:50 a.m.

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David H. Hettler, O.D.  
President

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Elizabeth A. Carter, Ph.D.  
Executive Director