

**BOARD OF OPTOMETRY
FULL BOARD MEETING
FEBRUARY 8, 2012**

TIME AND PLACE: The Board of Optometry (Board) meeting was called to order at 11:17 a.m. at the Department of Health Professions (DHP), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 3, Henrico, Virginia.

PRESIDING OFFICER: Gregory P. Jellenek, O.D., Chair

MEMBERS PRESENT: Jonathan R. Noble, O.D.
W. Ernest Schlabach, Jr., O.D.
Angela Tsai, O.D.
M. E. Jackson, O.D.

MEMBERS NOT PRESENT: Shandon C. Phan, Esquire, Citizen Member

STAFF PRESENT: Leslie L. Knachel, Executive Director
Charis Mitchell, Assistant Attorney General, Board Counsel
Arne Owens, Chief Deputy Director
Elaine Yeatts, Senior Policy Analyst
Carol Stamey, Operations Manager
Tamara Farmer, Administrative Assistant

OTHERS PRESENT: Betty Graumlich, National Association of Optometrists and Opticians

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

INTRODUCTIONS: Ms. Mitchell and Ms. Farmer were introduced to the Board.

ORDERING OF AGENDA Requests for revision of the agenda included the following:

- Addition of “Guidance Document 105-27” under Guidance Documents;
- Removal of “as requested by Dr. Jackson” under Guidance Documents;
- Move Legal Recap/Update to follow New Business;
- Addition of letter from ARBO to be added under the Executive Director’s Report; and
- Addition of Virginia Optometric Association’s (VOA) Report on Current Procedural Terminology Codes to be added under the Executive Director’s Report.

Dr. Jackson moved to approve the order of the agenda as requested. The motion was seconded and carried.

PUBLIC COMMENT: No public comment was presented.

DIRECTOR'S REPORT:

Mr. Owens reported that the agency is involved with the General Assembly and following 70 bills. He informed the Board that the agency continues to look for improvements and efficiencies in the operations of the agency. Mr. Owens noted that the DHP Disciplinary Committee continues to review the disciplinary case process for improved efficiencies.

Dr. Schlabach requested that Mr. Owens review the issue of board member per diem.

APPROVAL OF MINUTES:

Dr. Jackson moved to revise the July 20, 2011, full board minutes under Advertising Guidance Document as follows:

Dr. Schlabach moved to send the draft guidance document back to the RLRC for review ~~and re-draft prior to the Board's next meeting~~ until the Committee thinks it is ready for presentation to the full board.

The motion was seconded and carried.

Ms. Knachel requested that the Board consider adding as an attachment under the Vision Source section the statement that was read during the July 20, 2011, full board meeting. She provided the written statement for inclusion. Dr. Noble moved to accept the inclusion of the written statement of response as an attachment to the July 20, 2011, minutes. The motion was seconded and carried.

Dr. Jackson moved to strike the following paragraph from the July 20, 2011, full board minutes:

Dr. Schlabach moved to delegate authority to the Executive Director to close non-standard of care cases only after consultation with at least one board member. The motion was seconded. However, upon further evaluation and discussion by the Board, Dr. Schlabach amended his motion to state that all non-standard of care cases must be reviewed by at least one board member prior to closure by the Executive Director. The motion was seconded and carried.

Board counsel and board staff advised that the motion to strike a vote from the minutes was improper. The motion was seconded and carried.

Dr. Schlabach moved to approve the minutes of the July 20, 2011, full board meeting with amendments. The motion was seconded and carried.

**LEGISLATIVE/REGULATORY
UPDATE:**

Ms. Yeatts presented an overview of the 2012 legislative bills of interest to the Board.

DISCUSSION ITEMS:

Professional Designation Committee (PDC)

Dr. Schlabach reported that the PDC had met, reviewed an application and requested staff to develop a guidance document relative to professional designations.

Regulatory Legislative Review Committee (RLRC)

Dr. Noble reported that the RLRC had met and requested that staff re-draft a board certification guidance document and develop an electronic prescription guidance document for presentation at the next committee meeting.

Letter Forwarded by Dr. Robinson

Ms. Knachel informed the Board that a letter from Dr. Robinson, Executive Director for the NC Board of Optometry was included in the packet for their review. The Board took no action.

Vision Source (Additional Correspondence from Dr. Finley)

Ms. Knachel referred the Board to the additional correspondence from Dr. Finley regarding Vision Source. She provided a suggested response based on the Board's action taken during the last board meeting regarding the Vision Source issue.

Dr. Noble moved that staff forward a letter of response to Dr. Finley advising him that the decision remained the same as noted in the minutes of the July 20, 2011, meeting.

Guidance Documents

Lapsed License

Ms. Knachel reported that she had conducted research of the various boards' guidance documents regarding practice on an expired license and presented a draft guidance document for the Board's review. Ms. Knachel noted that the Sanction Reference Points worksheet did not address unlicensed practice and adjustments would be required if the Board approved the guidance document on practicing on an expired license. The Board revised the draft guidance document as provided on Attachment 1.

Dr. Noble moved to accept the guidance document as amended. The motion was seconded and carried.

Guidance Document 105-27

Ms. Knachel informed the Board that Guidance Document 105-27, Prescribing for Self and Family, contained inaccurate information regarding prescribing scheduled drugs to immediate

family. Ms. Knachel requested approval to remove the document and prepare a re-drafted guidance document for the Board's consideration. Dr. Noble moved to remove the current guidance document for amendment. The motion was seconded and carried.

Amendments for Bylaws

Ms. Knachel discussed proposed changes to the bylaws reflected in Attachment 2 that had been distributed to the Board members in the agenda package prior to the meeting. The proposed changes consolidated the executive director's delegated authority tasks. She pointed out several tasks that had not yet been delegated, but could be considered by the Board.

Ms. Knachel stated that on 1/24/2011, the Board delegated authority to the executive director to issue long-term continuing education (CE) waivers in accordance with the guidance document. She said that when preparing the submitted changes for the bylaws this was overlooked. She will add to the bylaws for consideration at the next board meeting.

The Board discussed areas related to the proposed bylaws that included the following (Attachment 2):

- Remove strike through of item previously labeled as "F" and re-letter as item "B" under Article IV. Dr. Noble moved to leave in "F" and re-letter as Item "B". The motion was seconded and carried.
- In reference to the proposed strike out in Attachment 2 Article III, number 3, Ms. Knachel stated the Board does not approve CE programs and that the regulations identify approved sponsors. Additional discussion occurred about possible future issues related to the American Council on Optometric Education approving CE providers.
- Dr. Jackson moved to accept the amendment (Attachment 3) that he distributed prior to the Board meeting. The motion was seconded. Dr. Noble made a motion to amend the 30 day notification requirement to 10 days. No second was made and the motion failed. The board voted on Dr. Jackson's amendment and the motion was carried.

The Board requested that future proposed bylaws be sent with a return email receipt request.

- Delegation of authority included the following motions:
 - Dr. Schlabach moved to delegate authority to the executive director to close non-standard of care and non-jurisdictional cases after review by one board member. The motion was seconded. The

motion was amended by Dr. Jackson and seconded to add “on a rotating basis” to the delegation. The amendment to the motion carried and the motion for delegation carried.

- Dr. Tsai moved to delegate authority to the executive director to conduct an annual CE audit and issue disciplinary actions as prescribed in any guidance document adopted by the Board on CE audits and sanction for failure to complete CE. The motion was seconded. Dr. Jackson moved to amend the delegation of authority to include the requirement of the executive director to complete a report on this topic. It was pointed out that the bylaws already contain a reporting element. Dr. Jackson withdrew his motion. The motion to delegate authority regarding annual CE audits carried.
- Dr. Tsai moved to approve the bylaws as amended. The motion was seconded. Dr. Jackson moved to eliminate the delegated authority for the executive director to approve forms. Staff noted that the elimination of this task would negatively affect the efficiency of the Board’s operations. The motion was not seconded and failed. Dr. Schlabach made a motion to table the approval of the bylaws. The motion was seconded and carried. Dr. Tsai withdrew the motion to approve the bylaws.

Election of Officers

Dr. Jackson noted that the Board did not follow the requirements of the bylaws during the last election of officers. Ms. Knachel reported that she had discussed Dr. Jackson’s concerns with board counsel. The guidance received was that how the elections were conducted did not necessarily void the elections unless the Board chose to do so. In addition, she stated research of the minutes from the past 10 years indicated that the Board conducted its elections in the same manner. She indicated that if it was the Board’s desire, the bylaws could be changed to reflect the Board’s preference for conducting elections. Dr. Jackson moved to elect Dr. Jellenek as President. The Board discussed that they should wait until all members were present. Dr. Jackson withdrew his motion.

Contact Lens (CL) Fitting

Ms. Knachel reported that staff has received inquiries as to what is considered the “end” of a CL fitting. Dr. Noble addressed the issue stating that the regulations mimic the position of the Federal Trade Commission. The Board requested that Ms. Knachel develop for presentation at the next board meeting a

guidance document to address the issue to include the following:

- Medically necessary;
- Willing to sell; and
- Does not need to see the patient prior to 90 days.

CE Update

Recordkeeping Course Outline

Ms. Knachel presented a recordkeeping course outline for the Board's review and approval. The outline was in response to the Board's request from the July 20, 2011, full board meeting. Dr. Jackson moved to accept the course outline and forward to the VOA. The motion was seconded and carried.

Audit

Ms. Knachel reported that 75 licensees had been selected for audit and notification to these licensees would go out next week.

PRESIDENT'S REPORT:

Dr. Jellenek noted there was no report to present.

EXECUTIVE DIRECTOR'S REPORT:

Statistics/Budget

Ms. Knachel reported that only 44 licensure e-renewal notifications had been returned this year and the Board continues its efforts in Going Green.

Ms. Knachel provided an update on the disciplinary case statistics and noted that the statistics on licensure and information regarding the budget had been included in the agenda packet. A request was made by the Board to include in future reports the previous years' licensure statistics for comparison.

Association of Regulatory Boards of Optometry (ARBO) Annual Meeting

Ms. Knachel reported that the next annual meeting of ARBO will be held June 24-26, 2012, in Chicago. She noted that travel has not been generally approved for reimbursement by the agency; however, board members wishing to go could request a stipend from ARBO to assist with travel expenses.

VOA's Report on CPT Codes

Ms. Knachel reported that Mr. Keeney's report that the Board requested at the last board meeting will be on the next meeting agenda as he was not able to attend today's meeting.

Board Member Appreciation

A plaque was presented to Dr. Jellenek in honor of his eight years of service to the Board by Mr. Owens.

Newsletter

Ms. Knachel presented a draft of a newsletter and requested that

the Board members submit any changes or additions within the next two weeks prior to the planned publication.

NEW BUSINESS:

No new business was presented.

**LEGAL RECAP/UPDATE
(CLOSED SESSION):**

On properly seconded motion by Dr. Noble, the Board recessed Open Session and convened in Closed Session pursuant to §2.2-3711(A)(7) of the Code of Virginia (Code) for consultation with and the provision of legal advice by the Assistant Attorney General in the matter of receiving a legal recap/update. Additionally, it was moved that Leslie Knachel, Carol Stamey, Tamara Farmer, Ms. Mitchell, Dr. Jellenek, Dr. Noble, Dr. Jackson and Dr. Tsai attend the closed session because their presence in the closed meeting was deemed necessary and would aid the full board in its deliberations.

OPEN SESSION:

Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3712 of the Code, the Board reconvened in open session.

ADJOURNMENT:

The board concluded its meeting at 2:42 p.m.

Gregory P. Jellenek, O.D.
Chair

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

VIRGINIA BOARD OF OPTOMETRY

GUIDANCE DOCUMENT

DISPOSITION OF DISCIPLINARY CASES FOR OPTOMETRISTS

The Board of Optometry (Board) voted on XXX XX, XXXX, to delegate to the Executive Director for the Board the authority to offer a prehearing consent order to resolve disciplinary cases in which an Optometrist has been found to be practicing with an expired license.

Disciplinary Action for Practicing with an Expired License

The Board adopted the following guidelines for resolution of cases of practicing with an expired license:

Cause	Possible Action
First offense; 90 days or less	Confidential Consent Agreement
First offense; 91 days to two <u>one</u> years	Consent Order; Monetary Penalty of \$ 500 1000
First offense; more than two <u>one</u> years	Consent Order; Monetary Penalty of \$ 1000 1500
Second offense	Consent Order; Monetary Penalty of \$ 1500 2000

**VIRGINIA BOARD OF OPTOMETRY
BY-LAWS**

Article I. Officers of the Board

A. Election of officers.

1. The officers of the Board of Optometry (Board) shall be a President and a Vice-President.
2. At the first meeting of the organizational year, the Board shall elect its officers. Nominations for office shall be selected by open ballot. Voting will be by roll-call ballot and require a majority.
3. The organizational year for the Board shall be from July 1st through June 30th. During the first quarter of the organizational year, the Board shall elect its officers with an effective date of the next regularly scheduled board meeting. The term of office shall be one year.
4. A vacancy occurring in any office shall be filled during the next meeting of the Board.

B. Duties of the Officers

1. President.

The President shall preside at all meetings and formal administrative hearings in accordance with parliamentary rules and the Administrative Process Act, and requires adherence of it on the part of the Board members. The President shall appoint all committees unless otherwise ordered by the Board.

2. Vice-President.

The Vice-President shall, in the absence or incapacity of the President, perform pro tempore all of the duties of the President.

3. In the absence of the President and Vice-President, the President shall appoint another board member to preside at the meeting and/or formal administrative hearing.

4. The Executive Director shall be the custodian of all Board records and all papers of value. She/He shall preserve a correct list of all applicants and licensees. She/He shall manage the

correspondence of the Board and shall perform all such other duties as naturally pertain to this position.

Article II. Meetings

A. Number and organization of meetings.

1. For purposes of these bylaws, the Board schedules full board meetings to take place during each quarter, with the right to change the date or cancel any board meeting; with the exception that one meeting shall take place annually.
2. A majority of the members of the Board shall constitute a quorum for the transaction of business. The current edition of Robert's Rules of Order, revised, shall apply unless overruled by these bylaws or when otherwise agreed.

B. Attendance of board members.

Members shall attend all scheduled meetings of the Board and committee to which they serve. In the event of two consecutive unexcused absences at any meeting of the Board or its committees, the President shall make a recommendation about the Board member's continued service to the Director of the Department of Health Professions for referral to the Secretary of Health and Human Resources and Secretary of the Commonwealth.

C. Order of Business.

The order of the business shall be as follows:

1. Call to order with statement made for the record of how many and which board members are present and that it constitutes a quorum.
2. Public Comment.
3. Approval of minutes.
4. The Executive Director and the President shall collaborate on the remainder of the agenda.

Article III. Committees

A. Standing committees.

1. Special Conference Committee.

This committee shall consist of two Board members who shall review information regarding alleged violations of the optometry laws and regulations and determine if probable cause exists to proceed with possible disciplinary action. The President shall also designate another Board member as an alternate on this committee in the event one of the standing committee members

becomes ill or is unable to attend a scheduled conference date. Further, should the caseload increase to the level that additional special conference committees are needed, the President may appoint additional committees.

2. Credentials Committee.

The committee shall consist of two or more Board members. The members of the committee shall review non-routine licensure applications to determine the credentials of the applicant and the applicability of the statutes and regulations.

3. Continuing Education Committee.

This committee shall consist of two or more Board members who shall meet as required to review matters related to continuing education.

4. Regulatory/Legislative Committee.

The committee shall consist of two or more board members. The Board delegates to the Regulatory/Legislative Committee to recommend actions to petitions for rulemaking. This committee is responsible for the development of proposals for new regulations or amendments to existing regulations with all required accompanying documentation; the drafting of responses to public comment as required in conjunction with rulemaking; conducting the required review of all existing regulations as required by the Board's Public Participation Guidelines and any Executive Order of the Governor; and any other tasks related to regulations. In accordance with the Administrative Process Act, any proposed draft regulation and response to public comment shall be reviewed and approved by the full board prior to publication. The Board delegates the authority to develop proposals for legislative initiatives of the Board. Any proposed draft legislation and response to public comment shall be reviewed and approved by the full Board prior to publication.

5. Professional Designation (PD) Committee.

The committee shall consist of two or more Board members. The members of the committee shall review PD applications to determine if the requested PD name complies with the regulations.

6. Current Procedural Terminology (CPT) Codes Committee.

The committee shall consist of two or more Board members. The members of the committee shall review changes to the CPT codes to determine if new guidance information is needed.

B. Ad Hoc Committees.

There may be Ad Hoc Committees, appointed as needed and shall consist of two or more persons appointed by the Board who are knowledgeable in the particular area of practice or education under consideration by the Board. The committee shall review matters as requested by the Board and advise the Board relative to the matters or make recommendations for consideration by the Board.

Article IV. General Delegation of Authority

- A. The Board delegates to the Executive Director the authority to:
- Issue and renew licenses, registrations and certificates where minimum qualifications have been met.
 - Develop and approve any and all forms used in the daily operations of the Board business, to include, but not limited to, licensure applications, renewal forms and documents used in the disciplinary process.
 - Reinstate licenses, registrations and certificates when the reinstatement is due to the lapse of the license, registration or certificate and not due to previous Board disciplinary action unless specified in the Board order.
 - Negotiate pre-hearing consent orders with the Chair of a Special Conference Committee or formal administrative hearing.
 - Sign as entered any Order or Board-approved Consent Order resulting from the disciplinary process.
 - Provide guidance to the agency's Enforcement Division in situations where a complaint is of questionable jurisdiction and an investigation may not be necessary.
 - Close non-standard of care and non-jurisdictional cases after review by one board member.
 - Conduct an annual continuing education audit and issue disciplinary actions as prescribed in any guidance document adopted by the Board on continuing education audits and sanctions for failure to complete continuing education.
 - Issue disciplinary actions as prescribed in any guidance document adopted by the Board on practicing with an expired license.
- B. Delegated tasks should be summarized and reported to the board at each regularly scheduled meeting.

Article V. Amendments.

A board member or staff personnel may propose amendments to these bylaws by presenting the amendment in writing to all Board members prior to any regularly scheduled meeting of the Board. Such proposed amendment shall be adopted, upon favorable vote of at least two-thirds of the Board members present at said meeting.

Our by-laws under Article V. Amendments state

“A board member or staff personnel may propose amendments to these bylaws by presenting the amendment in writing to all Board members prior to any regularly scheduled meeting of the Board. Such proposed amendment shall be adopted, upon favorable vote of at least two-third of the Board members present at said meeting.”

Discussion-

Changing bylaws is a serious undertaking. Bylaws changes need to be thought over so rash mistakes are not made. Therefore I propose we change our bylaws to read:

"A Board member or staff personnel may propose amendments to these bylaws by presenting the amendment, in writing, to all Board members 30 days prior to any regularly scheduled meeting of the Board. Such proposed amendment shall be adopted upon favorable vote of at least two-thirds of the Board members present at said meeting."

(In writing may be via e-mail, return receipt of receiving the e-mail requested to show date of receipt. U.S. mail will be signature requested to show date of delivery.)