

**BOARD OF OPTOMETRY
BOARD MEETING
JANUARY 26, 2010**

TIME AND PLACE: The Board of Optometry (Board) meeting was called to order at 10:30 a.m. on Tuesday, January 26, 2010, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Training Room 2, Henrico, Virginia.

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

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

MEMBERS NOT PRESENT: All members were present.

STAFF PRESENT: Eric A. Gregory, Assistant Attorney General, Board Counsel
Leslie L. Knachel, Executive Director for the Board
Elaine Yeatts, Senior Regulatory Analyst
Carol Stamey, Operations Manager
Peggy Wood, Monitoring Program Manager
Charles Giles, Budget Manager, Finance

OTHERS PRESENT: Thomas R. Cheezum, O.D., American Optometric Society (AOA)
Betty Gramlich, National Association of Optometrists and Opticians

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

PUBLIC COMMENT: Thomas R. Cheezum, O.D., AOA, expressed continued concern regarding the American Board of Optometry's (ABO) establishment of national continuing competency and certification. Specifically, Dr. Cheezum noted the potential issue of usurping the Board's authority and the potential claim of superiority. He requested that the Board reconsider issuing a formal letter to ABO expressing the Board's concerns about the establishment of a national certification.

AGENDA: The agenda was revised to include discussion of the CPT Code disclaimer, guidance documents and to receive an

update on OE Tracker. Additionally, the order of the discussion items was revised to accommodate staff attendance.

APPROVAL OF MINUTES:

Ms. Thomas moved to approve the minutes of the October 29, 2009, full Board meeting as amended. The motion was seconded and carried.

DIRECTOR'S REPORT:

Ms. Yeatts reported that Ms. Ryals was unable to be present at the Board meeting because she was attending the General Assembly session.

DHP LEGISLATIVE/REGULATORY UPDATE:

Ms. Yeatts informed the Board that the standards of conduct and the continuing education regulations would become final on March 17, 2010.

Ms. Yeatts presented an update of the 2010 proposed legislation that is relevant to the agency. The proposed legislation is incorporated into minutes as Attachment 1.

DISCUSSION ITEMS:

Notice of Intended Regulatory Action (NOIRA)

Ms. Yeatts and Charles Giles apprised the Board of a revenue shortage that will occur by the year 2013. Because of the two year regulatory process to increase fees, Ms. Yeatts advised the need for the Board to consider and approve a NOIRA to begin the process to increase the licensure fees.

Dr. Hettler moved to adopt a NOIRA to increase licensure fees. The motion was seconded and carried.

Health Practitioners' Monitoring Program (HPMP) Presentation

Ms. Wood briefly discussed the HPMP program to include an overview of participation contracts, revised function of compliance case managers and the various board participation statistics. Ms. Wood encouraged the Board to utilize the HPMP services as a resource relative to compliance issues.

Anonymous Complaints Made by Board Members

With regard to filing a complaint with the Department of Health Professions, Dr. Hettler requested that Board members include their name as the source rather than filing as an anonymous source. He noted that this protocol would eliminate the possibility of a complaint being assigned to a Board member who may be the source of the complaint.

Rewriting Orders Due to Compliance Issues

Ms. Knachel apprised the Board that due to staffing and cost, the compliance cases for Optometry and Veterinary Medicine would no longer be handled by pharmacy compliance staff. She reported that the operations managers, Terri Behr and Carol Stamey, would be processing all compliance cases. Ms. Knachel further explained that there was a need to rewrite a few of the existing orders to streamline and simplify compliance case processing. She noted that the amended Orders would be reviewed by a Special Conference Committee of the Board of Optometry prior to forwarding to licensees.

CPT Code Disclaimer

Ms. Knachel presented the proposed revised CPT Code Disclaimer language.

Dr. Noble moved to approve the disclaimer language as amended. The motion was seconded and carried.

Board of Optometry Guidance Documents

Ms. Knachel informed the Board that there were guidance documents located on the Board's webpage that were outdated and should be deleted.

Dr. Noble moved to remove the outdated guidance documents. The motion was seconded and carried.

OE Tracker

Dr. Schlabach provided an update of the activities of the Association of Regulatory Boards of Optometry OE Tracker Committee and state statistics relative to membership and their continuing education requirements through the OE Tracker Program. Also, Dr. Schlabach provided a statistical update of the number of Virginia licensees participating in the OE Tracker Program. Dr. Schlabach again requested that Board staff research the possibility of developing a contract with OE Tracker as a primary source for tracking CE. He stated that issues of concern were privacy and conflict of interest relative to sponsorship of the OE Tracker Program.

EXECUTIVE DIRECTOR'S REPORT:

Statistics

Ms. Knachel presented a statistical analysis of the optometry licensees, including the number of licensees who did not renew.

COMMITTEE REPORTS:

Professional Designation Committee

Dr. Schlabach reported that the Board's Professional

Designation Committee (PDC) had met and requested additional information for consideration at its next meeting. Additionally, he reported that he and Dr. Noble would review the proposed regulations and independently draft recommendations for presentation at the next scheduled meeting of the professional designation committee.

PRESIDENT'S REPORT:

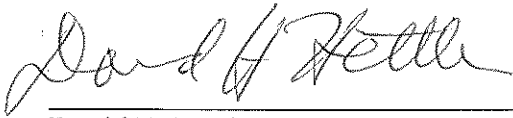
Dr. Hettler requested that a newsletter go out after the final approval of the amended regulations. He also requested that the Board members submit articles.

NEW BUSINESS:

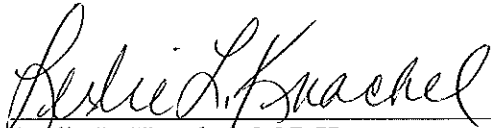
No new business was presented.

ADJOURNMENT:

The board concluded its meeting at 12:10 p.m.



David H. Hettler, O.D.
President



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

Board of Optometry Report of 2010 General Assembly

HB 87 Medical incident compensation; penalties.

Summary as introduced:

Medical incident compensation; penalties. Establishes a system for determining the liability of physicians and hospitals for medical injury caused by an unintended or unexpected adverse consequence or unanticipated outcome of (i) health care rendered or provided to the patient or (ii) the failure of a health care provider to render or provide health care to the patient. This system is the exclusive remedy for covered injuries; however, civil actions are permitted against a health care provider where there is clear and convincing evidence that the health care provider intentionally or willfully caused or intended to cause an injury. A claimant need not establish that the health care provider's negligence or breach of contract caused the injury. Determinations of liability and damages will be made by a three-member Medical Injury Compensation Board. Claims will be reviewed by a panel of three qualified and impartial physicians drawn from a specialty appropriate to the facts of a particular case which panel will prepare a report regarding whether the claimant's medical injury does or does not satisfy the criteria of a covered injury. Health care providers are required to insure the payment of compensation to injured patients through a policy of medical incident insurance. Failure to insure is punishable by civil and criminal penalties. The expenses of the Board will be paid from an administrative fund maintained by a premium tax levied on liability insurance carriers. An Uninsured Providers' Fund is established to pay awards against uninsured health care providers. The measure applies to all claims for covered injuries occurring in this Commonwealth on and after July 1, 2012.

Patron: Marshall, R.G.

01/04/10 House: Prefiled and ordered printed; offered 01/13/10 10100492D
01/04/10 House: Referred to Committee on Commerce and Labor
01/19/10 House: Referred from Commerce and Labor
01/19/10 House: Referred to Committee for Courts of Justice

HB 143 Practitioner self-referral; clarifies those that may make a referral.

Summary as introduced:

Practitioner self-referral. Clarifies when a health care practitioner may make a referral to an entity in which he or an immediate family member is an investor.

Patron: O'Bannon

01/19/10 House: Reported from Health, Welfare and Institutions (22-Y 0-N)
01/20/10 House: Read first time
01/21/10 House: Read second time and engrossed
01/22/10 House: Read third time and passed House BLOCK VOTE (99-Y 0-N)
01/22/10 House: VOTE: BLOCK VOTE PASSAGE (99-Y 0-N)

HB 654 Administrative Process Act; final decision reviewable by a de novo appeal.

Summary as introduced:

Administrative Process Act; review of agency decision. Makes a final decision under the Administrative Process Act reviewable by a de novo appeal.

Patron: Armstrong

01/12/10 House: Prefiled and ordered printed; offered 01/13/10 10103511D

01/12/10 House: Referred to Committee on General Laws

01/19/10 House: Assigned GL sub: #4 Professions/Occupations and Administrative Process

HB 662 Health professions; disciplinary actions

Summary as introduced:

Health professions; disciplinary actions. Amends the disciplinary authority of the Department of Health Professions and its regulatory boards to (i) authorize the boards to accept the surrender of a license in lieu of disciplinary action, (ii) authorize a panel of a board to consider the recommendation of an agency subordinate, (iii) conform the prohibition on licensure reinstatement to the Nurse Licensure Compact, and (iv) allow the Department to immediately suspend a license in response to disciplinary action or felony convictions in any jurisdiction, or in response to license surrender in lieu of disciplinary action.

Patron: Morrissey

01/12/10 House: Prefiled and ordered printed; offered 01/13/10 10103626D

01/12/10 House: Referred to Committee on Health, Welfare and Institutions

01/20/10 House: Assigned HWI sub: #1

01/21/10 House: Subcommittee recommends reporting (7-Y 0-N)

01/24/10 House: Impact statement from DPB (HB662)

HB 1166 Controlled substances; unlawfully obtaining or attempting to obtain, report required.

Summary as introduced:

Unlawfully obtaining or attempting to obtain controlled substances; report required. Provides that it shall be a Class 1 misdemeanor for any person to knowingly or intentionally deceive a prescriber in order to obtain a controlled substance or prescription for a controlled substance, or to fail to disclose to a prescriber from whom the person obtains or attempts to obtain a controlled substance or prescription for a controlled substance that the person has received the same or a similar controlled substance or a prescription for the same or a similar controlled substance within the previous 30 days. The bill requires any person authorized to prescribe, dispense, or administer controlled substances, who has reason to believe that a person has failed to make the required report, to report the incident to the local law-enforcement agency within three business days, and provides that persons making a report to a law-enforcement agency shall be immune from civil liability.

Patrons: Phillips; Senator: Puckett

01/13/10 House: Prefiled and ordered printed; offered 01/13/10 10101222D

01/13/10 House: Referred to Committee for Courts of Justice

01/19/10 House: Assigned Courts sub: Criminal

HB 1167 Schedule II, III, or IV controlled substances; request and review information about patient.

Summary as introduced:

Prescribing Schedule II, Schedule III, or Schedule IV controlled substances. Requires any prescriber who prescribes a controlled substance included in Schedule II, Schedule III, or Schedule IV of the Drug Control Act to request and review information about that patient from the Prescription Monitoring Program, and to continue to do so at least annually for so long as the prescriber continues to prescribe the controlled substance to the patient.

Patrons: Phillips; Senator: Puckett

01/13/10 House: Prefiled and ordered printed; offered 01/13/10 10101225D

01/13/10 House: Referred to Committee on Health, Welfare and Institutions

01/20/10 House: Assigned HWI sub: #4

01/25/10 House: Impact statement from DPB (HB1167)

HB 1169 Education, continuing; on substance abuse, addiction, & related pain management for those licensed.

Summary as introduced:

Continuing education for prescribers; substance abuse, addiction, and related pain management and prescribing practices. Requires the Board of Dentistry, Board of Medicine, and Board of Optometry to require continuing education on the topics of substance abuse, addiction, and related pain management and prescribing practices for practitioners licensed by the Board who are authorized to prescribe controlled substances.

Patrons: Phillips; Senator: Puckett

01/13/10 House: Prefiled and ordered printed; offered 01/13/10 10101221D

01/13/10 House: Referred to Committee on Health, Welfare and Institutions

01/20/10 House: Assigned HWI sub: #1

SB 639 Health records; penalty for delay.

Summary as introduced:

Health records; penalty for delay. Provides that any health care entity that fails to respond to a request for copies of health records within 15 days, as required by law, shall be subject to a fine, as set by the Board of Health.

Patron: McEachin

01/19/10 Senate: Presented and ordered printed 10103580D

01/19/10 Senate: Referred to Committee on Education and Health