

**BOARD OF OPTOMETRY
BOARD MEETING
JULY 15, 2010**

- TIME AND PLACE:** The Board of Optometry (Board) meeting was called to order at 1:05 p.m. on Thursday, July 15, 2010, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Training Room 1, Henrico, Virginia.
- PRESIDING OFFICER:** Gregory P. Jellenek, O.D., Vice-Chair
- MEMBERS PRESENT:** Jonathan R. Noble, O.D.
W. Ernest Schlabach, O.D.
Angela Tsai, O.D.
- MEMBERS NOT PRESENT:** David H. Hettler, O.D.
Jacquelyn S. Thomas, Citizen Member
- STAFF PRESENT:** Leslie L. Knachel, Executive Director for the Board
Eric A. Gregory, Assistant Attorney General, Board Counsel
Dianne Reynolds-Cane, Director
Arne Owens, Chief Deputy Director
Elaine Yeatts, Senior Regulatory Analyst
Carol Stamey, Operations Manager
- OTHERS PRESENT:** Bruce Keeney, Virginia Optometric Association (VOA)
Bo Keeney, VOA
Edward Mullen, National Association of Optometrists and Opticians
Cal Whitehead, Virginia Society of Eye Physicians and Surgeons
- QUORUM:** With four members of the Board present, a quorum was established.
- PUBLIC COMMENT:** Bruce Keeney, representing the VOA, provided comment regarding the processing and tracking of disciplinary cases classified as priority “D” (non-patient care). He stated that because it takes eighteen (18) to twenty four (24) months to process these type cases, it gives the appearance that the cases are not being enforced.
- APPROVAL OF AGENDA:** The agenda was revised to add the consideration of guidance documents under Regulatory Update and include the election

of officers under New Business.

Dr. Schlabach moved to approve the agenda as amended. The motion was seconded and carried.

DIRECTOR'S REPORT:

Dr. Reynolds-Cane, Director, provided a brief summary of the activities of the HealthCare Workforce Data Center (HWDC). Additionally, she reported that the HWDC will be releasing the results of the data collection and measurement of the physician statistics next month.

Dr. Reynolds-Cane also reported that the Board of Pharmacy had implemented its new inspection process. She reported that the new inspection process allows for immediate ticketing of a pharmacy in cases of non-compliance.

APPROVAL OF MINUTES:

Dr. Noble moved to approve the minutes of the May 5, 2010, meeting. The motion was seconded and carried.

REGULATORY UPDATE:

Proposed Regulations

Ms. Yeatts informed the Board that the proposed regulations regarding increased fees remains at the Secretary of Health and Human Resources' office for consideration. Additionally, she presented a brief summary of Executive Order Fourteen (14), Development and Review of Regulations Proposed by State Agencies.

Guidance Documents 105-17 and 105-18

Ms. Yeatts informed the Board that the specific information in guidance documents 105-17 and 105-18 was difficult to locate because it was imbedded in a larger document. She recommended that the information be reformatted, but should be reviewed first to determine if it needed updating or repealing.

Dr. Noble moved that the guidance document 105-17 be reformatted and continued. The motion was seconded and carried.

The review of guidance document 105-18 was delayed until after the Continuing Education Committee (CEE) report.

DISCUSSION ITEMS:

Ordering Medical Lab Tests

Ms. Knachel reported that an inquiry had been received by the board office requesting information on what medical labs

tests an optometrist could order. It was the consensus of the Board that optometrists could order medical lab tests consistent with the optometry statutory scope of practice and requested that staff respond to the inquiry accordingly.

Newsletter Articles

Ms. Knachel requested that the board members submit articles or ideas for the upcoming newsletter. She noted that the board members could submit bullet points to her and she would draft an article for them to review. The Board provided the following topics for articles: update on Board certification, COPE approved courses, OETracker, continuing education (CE) audit, clarification of changes in the regulations, ophthalmic prescription expirations, records destruction and participation with Town Hall or Public Participation Guidelines to receive updates on Board activities.

Sanction Reference Points (SRP) Training Date

The Board set the SRP training date for November 19, 2010.

COMMITTEE REPORTS:

Continuing Education Committee (CEC)

Dr. Jellenek reported that the CEC had reviewed CE coding classes to determine if the courses met the requirement of the optometry CE regulations. He also informed the Board that the CEC had received comment from Jim Banning with the Administrative Proceedings Division regarding the proper use of Confidential Consent Agreements and issues of non-compliance and monitoring. Dr. Jellenek requested that Ms. Stamey read the motion that was voted on by the CEC. The motion was read as follows:

To revise the sanctioning reference points worksheet to reflect that a CCA will be offered if the missing number of CE hours is three (3) hours or less and will require, making up the missing CE hours within 45 days, remove the audit requirement and include a "1st" offense sanction.

Dr. Noble moved that the Board accept the motion as read by Ms. Stamey. The motion was seconded and carried.

Guidance Document 105-18

The Board considered the guidance document 105-18 after receiving the report of the CEC.

Dr. Schlabach moved to repeal the guidance document 105-18. The motion was seconded and carried.

Professional Designation Committee (PDC)

Dr. Schlabach reported that the PDC had met and reviewed a second draft (Attachment 1) of the proposed legislation providing for statutory authority to require registration of professional designations. He reported that the PDC voted to present the second draft of the proposed legislation to the full board for review and discussion.

Ms. Yeatts requested additional information that would specifically address what concerns the Board had with the second draft. Dr. Jellenek asked the public in attendance if they would like to provide any additional comment. Mr. Keeney, representing the VOA, expressed the need for additional time to review the second draft due to complexities, sensitive issues, current registration and conflict with existing statute. He stated that the VOA would not support the legislation at this time. He further stated that he would like the following issues addressed: how are licensees affected, are the existing regulations weakened, are all the issues addressed and is there a better approach. Mr. Keeney requested due diligence of the Board and that the matter be deferred.

The Board drafted amended language as a replacement for proposed language in the second draft under the proposed statute, §54.1-3204.1 of the *Code of Virginia*, to read as follows: The Board shall promulgate regulations regarding the practice of optometry under professional designations.

Dr. Noble moved to approve the second draft with the amendment. The motion was seconded. The vote was taken by roll call and the motion failed with Dr. Schlabach voting “no”, Dr. Tsai voting “no”, Dr. Jellenek ”no” and Dr. Noble voted “yes”.

Legislative/Regulatory Review Committee (LRRC)

The LRRC assigned its agenda items to the full board for review and discussion.

ARBO REPORT:

Dr. Noble presented a brief report of the activities of the meeting of the annual Association of Regulatory Boards of Optometry (ARBO) in June. Additionally, Dr. Noble noted

that the following issues will continue to be agenda items for discussion: board certification and the role of ARBO, continuing competency, distance learning, lack of authority over out-of-state advertising and COPE approval of CE courses. Dr. Noble also apprised the Board that Dr. Schlabach had been appointed as Secretary/Treasurer of ARBO.

PRESIDENT’S REPORT:

Ms. Knachel informed the Board that Dr. Hettler had attended the VOA meeting in June and had presented a report on the Board’s activities.

EXECUTIVE DIRECTOR’S REPORT:

Statistics

Ms. Knachel presented a statistical analysis of the optometry licensees and disciplinary cases as follows:

licensees
204 (non-TPA)
217 (PD)
1325 (TPA)
1746 Total

open cases
18 in investigation
14 in process
32 Total

Budget

Ms. Knachel reported that the current cash balance on hand was \$219,083.

NEW BUSINESS:

Election of Officers

Dr. Schlabach moved to nominate Dr. Jellenek as Chair and Dr. Tsai as Vice-Chair. The motion was seconded and carried.

ADJOURNMENT:

The board concluded its meeting at 2:55 p.m.

Gregory P. Jellenek, O.D.
Vice-Chair

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

Virginia Board of Optometry

Department of Health Professions

DRAFT #2 – Professional Designation Legislation

§ 54.1-3215. ~~Reprimand, revocation and suspension~~ Unprofessional conduct; grounds for refusal or disciplinary action.

The Board may revoke or suspend a license or reprimand the licensee for any of the following causes: refuse to admit a candidate to any examination; refuse to issue a license or registration to any applicant; reprimand any person; place any person on probation for such time and terms as it may designate; impose a monetary penalty; suspend any license for a stated period of time or indefinitely; or revoke any license or registration for any of the following acts of unprofessional conduct:

1. Fraud or deceit in his practice;
2. Conviction of any felony under the laws of the Commonwealth, another state, the District of Columbia or any United States possession or territory or of any misdemeanor under such laws involving moral turpitude;
3. Conducting his practice in such a manner as to endanger the health and welfare of his patients or the public;
4. Use of alcohol or drugs to the extent such use renders him unsafe to practice optometry or mental or physical illness rendering him unsafe to practice optometry;
5. Knowingly and willfully employing an unlicensed person to do anything for which a license to practice optometry is required;
6. Practicing optometry while suffering from any infectious or contagious disease;
7. Neglecting or refusing to display his license and the renewal receipt for the current year;
8. Obtaining of any fee by fraud or misrepresentation or the practice of deception or fraud upon any patient;
9. Advertising which directly or indirectly deceives, misleads or defrauds the public, claims professional superiority, or offers free optometrical services or examinations;

10. Employing, procuring, or inducing a person not licensed to practice optometry to so practice;
11. Aiding or abetting in the practice of optometry any person not duly licensed to practice in this Commonwealth;
12. Advertising, practicing or attempting to practice optometry under a name other than one's own name as set forth on the license or with a professional designation not registered in accordance with regulations promulgated by the Board;
13. Lending, leasing, renting or in any other manner placing his license at the disposal or in the service of any person not licensed to practice optometry in this Commonwealth;
14. Splitting or dividing a fee with any person or persons other than with a licensed optometrist who is a legal partner or comember of a professional limited liability company formed to engage in the practice of optometry;
15. Practicing optometry where any officer, employee, or agent of a commercial or mercantile establishment, as defined in subsection C of § 54.1-3205, who is not licensed in Virginia to practice optometry or medicine directly or indirectly controls, dictates, or influences the professional judgment, including but not limited to the level or type of care or services rendered, of the licensed optometrist;
16. Violating other standards of conduct as adopted by the Board;
17. Violating, assisting, inducing or cooperating with others in violating any provisions of law relating to the practice of optometry, including the provisions of this chapter, or of any regulation of the Board.

§ 54.1-3204.1. Professional designations.

No person shall use a professional designation in the practice of optometry without first registering with the Board. The Board shall promulgate regulations for a professional designation in the practice of optometry to include criteria for use of a designation and other requirements necessary to provide accountability for optometric services rendered at the location identified.