

**BOARD OF OPTOMETRY
FULL BOARD MEETING
JULY 20, 2011
DEPARTMENT OF HEALTH PROFESSIONS
HENRICO, VIRGINIA**

TIME AND PLACE: The Board of Optometry (Board) meeting was called to order at 9:36 a.m. at the Department of Health Professions (DHP), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Training Room 2, 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.
Carole Stadfield, Citizen Member

MEMBERS NOT PRESENT: All members were present.

STAFF PRESENT: Leslie L. Knachel, Executive Director
Amy Marschean, Senior Assistant Attorney General, Board Counsel
Dianne L. Reynolds-Cane, M.D., Director of DHP
Arne Owens, Chief Deputy Director
Elaine Yeatts, Senior Policy Analyst
Carol Stamey, Operations Manager
Asia Williams, Administrative Assistant

OTHERS PRESENT: Aimee Peron Seibert, Virginia Society of Eye Physicians and Surgeons (VSEPS)
Ralston King, VSEPS
Tristen MacDonald, VSEPS
Edward Mullen, National Association of Optometrists and Opticians (NAOO)
Alex Cuft, NAOO
Bruce Keeney, Virginia Optometric Association (VOA)
Bo Keeney, VOA

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

ORDERING OF AGENDA Dr. Jellenek requested that the order of the agenda be revised to include "2012 Calendar" as a discussion item following "Officer Election." Dr. Noble moved to approve the order of the agenda as amended. The motion was seconded and carried.

PUBLIC COMMENT: On behalf of the VOA, Mr. Bruce Keeney expressed appreciation to the Board for maintaining the list of Current

Procedural Terminology (CPT) Codes.

DIRECTOR'S REPORT:

Sanctioning Reference Points (SRP) Program

Dr. Reynolds-Cane informed the Board that DHP was the recipient of the 2011 Council on Licensure, Enforcement and Regulatory (CLEAR) Excellence Award for the development of the SRP Program. She stated that the award would be presented on September 9, 2011, at a CLEAR presentation held in Pittsburgh, Pennsylvania. Dr. Reynolds-Cane commended the Boards and DHP staffs for their hard work in implementing the SRP process.

CPT Codes

Dr. Reynolds-Cane provided information that the American Medical Association (AMA) holds the copyright for CPT Codes and prohibits their reproduction in whole or in part unless given permission by the AMA. CPT Codes are not posted on the Board's website or reproduced in any manner due to the AMA copyright. Dr. Jackson inquired whether a link on the Board's website to another website authorized to display CPT codes would be possible. The Board requested Mr. Bruce Keeney, Executive Director of the VOA, to provide the Board with information about other organizations with web listings of CPT Codes, for the Board's purpose of establishing a web-link. Mr. Keeney kindly agreed to the Board's request and will report his findings at a future board meeting.

With regard to the inquiry requesting the Board approve additional CPT Codes for optometrists to use, the Board directed Ms. Knachel to inform the inquirer of the Board's decision to delay approval at this time pending the receipt of information from the VOA.

APPROVAL OF MINUTES:

Dr. Jackson moved to have a portion of the Regulatory/Legislative Review Committee Report (RLRC) stricken from the minutes of the May 11, 2011, full board meeting because he did not believe the minutes were an accurate account of the discussion. The motion was not seconded and failed.

Dr. Tsai moved to approve the minutes of the May 11, 2011, full board meeting. The motion was seconded and carried by a vote of five yea and one nay.

LEGISLATIVE/REGULATORY UPDATE:

Ms. Yeatts reported that there were no regulations or draft bills in progress for the Board at this time. She informed the Board that the legislative package for the 2012 General Assembly was being prepared for proposal to the Governor's office in August. Ms. Yeatts stated that modification bills for the Board of Health Professions and the Prescription Monitoring Program had no

affect on the Board.

DISCUSSION ITEMS:

Continuing Education (CE) Audit Sanction Guidance Document

Ms. Knachel requested that the Board review the amended draft CE guidance document titled *Guidance for Continuing Education (CE) Audits and Sanctioning for Failure to Complete CE* which incorporates the recommended changes from the last full board meeting prior to reviewing the revisions to the SRP manual. The Board concurred and upon review, Dr. Noble moved to adopt the guidance document as revised. The motion was seconded and carried.

Revision of Sanctioning Reference Points

Following the adoption of the CE guidance document, Ms. Knachel presented the proposed revisions to the SRP manual as discussed at the previous full board meeting. Upon review by the Board, Ms. Stadfield moved to approve the draft SRP manual as presented. The motion was seconded and carried.

Advertising Guidance Document

As requested by the Board during its previous meeting, Ms. Knachel presented a revised draft of a guidance document that addresses advertising board certification. The revised draft incorporates changes suggested by Dr. Jackson that relate to the method used by an optometrist to be certified to administer therapeutic pharmaceutical agents (TPA). Ms. Knachel noted that there are two paths to TPA certification and both are equally recognized by the Board's regulations. Dr. Jackson expressed concern that the guidance document was not yet ready to be presented to the full Board and recommended that it be returned to the committee until such time it is deemed ready. Dr. Schlabach moved to send the draft guidance document back to the RLRC for review until the committee thinks it is ready for presentation to the full board. The motion was seconded and carried.

Dr. Jackson requested that Board staff inform him of all inquiries made to the Board regarding advertising issues.

Probable Cause (PC) Review Process

During the last full board meeting, the Board requested that the issue related to having one board member review a case with the option of review by a second board member, if necessary, be tabled until the next meeting. Ms. Knachel brought the issue back before the Board. In addition, she provided information that the current bylaws permit the executive director to decide non-jurisdictional cases. She asked the Board to consider providing guidance on how jurisdictional and non-jurisdictional cases are to be reviewed and closed.

The discussion by the Board included comments from Dr. Jackson who raised concerns regarding the costs associated with investigating cases and sending cases to Board members for review when staff has commented on the PC review sheet that there appears to be no violation. He suggested that a board member be involved when the complaint is received to determine whether the complaint should even be investigated. Dr. Jellenek noted that in order to be fair to the respondent and complainant, information must be collected for review by board members. Ms. Yeatts commented that statute requires the agency to investigate all complaints. Ms. Knachel indicated that she works closely with the Enforcement Division to ensure that an appropriate level of investigation occurs. Dr. Reynolds-Cane noted that the agency is currently reviewing additional streamlining measures for processing cases.

Following the Board's discussion, Dr. Noble moved to maintain the current PC review process for standard of care cases which requires two board members review a case. The motion was seconded and carried.

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.

Vision Source

Ms. Knachel informed the Board of recent inquiries received from licensees who hold professional designations and wish to advertise "Vision Source" as part of their Professional Designations. Ms. Knachel, in consultation with board counsel, presented a proposed draft response to the recent inquiries that an optometrist can practice under his/her own name without registering a professional designation noting that they are a member or affiliate of "Vision Source." Upon review of the draft response, Dr. Tsai moved to accept the response to the Vision Source inquiries as drafted. The motion was seconded and carried. Additionally, the Board directed Ms. Knachel to research internet advertisements for optometrists affiliated with Vision Source.

Officer Election

Dr. Schlabach moved to retain the current slate of officers for the next year: Dr. Jellenek as President and Dr. Tsai as Vice-President. The motion was seconded and carried.

PRESIDENT'S REPORT:

Dr. Jellenek noted there was no report to present.

EXECUTIVE DIRECTOR'S REPORT:

Statistics/Budget

Ms. Knachel noted that the statistics on licensure and information regarding the budget had been included in the agenda packet. She provided the disciplinary case statistics as follows: five cases are in the investigative stage, four cases are in the probable cause review stage, nine cases are in the Administrative Proceedings Division stage and one case is in the compliance stage for a total of 19 cases.

Newsletter

Ms. Knachel suggested that the newsletter be mailed out in November instead of December to avoid the holiday season and that it be in the format of a news brief. Ms. Knachel provided the following suggestions for articles for inclusion in the fall news brief: CE Guidance Document, Board Calendar, Regulatory Notification, information on record keeping and a note from the President.

Ms. Knachel mentioned that recordkeeping CE for optometrists is hard to find. The Board discussed the possibility of a recordkeeping course being presented at an upcoming VOA meeting. Ms. Knachel indicated that she could prepare a suggested recordkeeping CE course outline based on the Board's regulations that could then be sent to the association. She commented that she had done a similar outline for another board. The Board requested that an outline be prepared for their review.

2012 Calendar

The Board scheduled full board meetings and informal conferences/formal hearings (as necessary) for the following dates in 2012:

February 8, 2012 at 9:30 a.m.

May 9, 2012 at 9:30 a.m.

August 8, 2012 at 9:30 a.m.

November 7, 2012 at 9:30 a.m.

NEW BUSINESS:

Association of Regulatory Boards of Optometry (ARBO) Report

Dr. Schlabach stated that he attended ARBO's annual meeting held in June. He reported on the following highlights from the meeting: Ms. Knachel gave a presentation via conference call on the SRP process; the ARBO office will be moving within their current office building to share offices, while remaining separate entities, with the National Board of Examiners in Optometry (NBEO); the single site testing for the clinical skills portion of the national exam will begin in August 2011; a recommendation

was made that all states have "cease and desist" language and authority over non-jurisdictional issues; and a resolution passed recommending all state boards to consider auditing 100% of

their licensees for CE compliance.

**CONFLICT OF INTEREST
TRAINING:**

Ms. Stamey informed the Board that conflict of interest training would begin following adjournment of the full board meeting.

ADJOURNMENT:

The board concluded its meeting at 11:57 a.m.

Gregory P. Jellenek, O.D.
Chair

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

Attachment 1

The Regulations Governing the Practice of Optometry, 18 VAC 105-20-50, require that an optometrist practice under his/her own name or under a registered professional designation. A professional designation that is false, misleading or deceptive is prohibited. Vision Source advertises themselves as a network of private practice optometrists. There is no affiliation between the different offices that participate in the network. If multiple practices use the name Vision Source, a member of the public could reasonably believe that each office operates similarly. As a network, the private practices may or may not operate similarly. Therefore, the name Vision Source would be considered misleading to the public.

With that said, an optometrist can practice under his/her own name without registering a professional designation by using one of the following:

Dr. XYZ, Optometrist (or use OD or Doctor of Optometry) affiliated with Vision Source
Dr. XYZ, Optometrist (or use OD or Doctor of Optometry) Member of Vision Source