

November 2, 2018

Board Room 3

10:30 a.m.

Call to Order – Helene Clayton-Jeter, O.D., Board President

- Welcome
- Emergency Egress Procedures

Ordering of Agenda – Dr. Clayton-Jeter

Introduction of New Staff – Dr. Clayton-Jeter

Public Comment – Dr. Clayton-Jeter

The Board will receive all public comment related to agenda items at this time. The Board will not receive comment on any regulatory process for which a public comment period has closed or any pending or closed complaint or disciplinary matter.

Approval of Minutes – Dr. Clayton-Jeter

Pages 3-10

- July 12, 2018 – Formal Hearing
- July 13, 2018 – Full Board Meeting

Director’s Report – Dr. Brown

Legislative/Regulatory Update – Elaine Yeatts

Pages 11-21

- Update on regulatory actions
 - Inactive licenses – Board action needed on proposed regulations
 - Periodic review
 - Prescribing of opioids
- Continuing Education (CE) Committee recommendations for regulations on CE providers

Discussion Items

Pages 22-31

- Continuing education audits –**Leslie Knachel**
 - Update on 2017 audit
 - Use of OE Tracker during CE audits
 - Updates to Guidance Document 150-12 Guidance for Continuing Education Audits and Sanctioning for Failure to Complete CE
- Updates to Guidance Document 105-14 Virginia Board of Optometry By-Laws

Board Member Training

Pages 32-46

- Health Practitioner’s Monitoring Program – **Peggy Wood**
- Confidentiality – **Kelli Moss/Leslie Knachel**
- FOIA – **Leslie Knachel**
- Virtru Encryption – **Anthony Morales**

Board Counsel Report – Charis Mitchell

President’s Report – Dr. Clayton-Jeter

Board of Health Professions Report – Dr. Clayton-Jeter

Staff Reports

Pages 47-48

- Executive Director’s Report – **Leslie Knachel**
- Discipline Report – **Kelli Moss**

New Business – Dr. Clayton-Jeter

Next Meeting – February 8, 2019

Meeting Adjournment – Dr. Clayton-Jeter

This information is in **DRAFT** form and is subject to change.

UNAPPROVED DRAFT
VIRGINIA BOARD OF OPTOMETRY
FORMAL HEARING MINUTES
DEPARTMENT OF HEALTH PROFESSIONS
TRAINING ROOM 2
HENRICO, VA
JULY 12, 2018

CALL TO ORDER: The meeting of the Virginia Board of Optometry (Board) was called to order at 3:10 p.m., on July 12, 2018, at the Department of Health Professions (DHP), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Training Room 2, Henrico, Virginia.

PRESIDING OFFICER: Helene Clayton-Jeter, O.D.

MEMBERS PRESENT: Devon B. Cabot, Citizen Member
Lisa G. Wallace-Davis, O.D.
Fred E. Goldberg, O.D.

MEMBERS EXCUSED: Steven A. Linas, O.D.
Clifford A. Roffis, O.D.

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

STAFF PRESENT: Leslie L. Knachel, Executive Director
Terri H. Behr, Discipline/Compliance Specialist

BOARD COUNSEL: Charis A. Mitchell, Assistant Attorney General

COURT REPORTER: Juan Ortega, Crane-Snead & Associates, Inc.

PARTIES ON BEHALF OF THE COMMONWEALTH: Emily E. Tatum, Adjudication Specialist

MATTER SCHEDULED: **Chisom Y. Iwuanyanwu, O.D. applicant**
License No.: n/a
Case No.: 183022

Dr. Iwuanyanwu did not appear before the Board in accordance with a Notice of Formal Hearing dated June 11, 2018. Dr. Iwuanyanwu was not represented by legal counsel. The Board received evidence from Ms. Tatum regarding Dr. Iwuanyanwu's absence from the hearing.

Ms. Tatum stated she learned today that Dr. Iwuanyanwu had moved and had not provided the Board with her new address. Dr. Iwuanyanwu requested a continuance as she had not received the Notice of Formal Hearing. Based on evidence from Ms. Tatum that the Notice of Formal Hearing was mailed to the address of record with the Board, Board Chair, Dr. Clayton-Jeter, denied Dr. Iwuanyanwu's request for a continuance and the hearing was held in her absence.

Ms. Tatum presented evidence that Dr. Iwuanyanwu did not meet the qualifications for licensure as stated in the Notice of Formal Hearing.

CLOSED SESSION:

Dr. Goldberg moved that the Board convene a closed meeting pursuant to § 2.2-3711(A)(27) of the Code of Virginia ("Code") for the purpose of deliberation to reach a decision in the matter of **Chisom Y. Iwuanyanwu, O.D.**, Additionally, she moved that Ms. Knachel and Ms. Mitchell attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Board in its deliberations. The motion was seconded and carried unanimously.

RECONVENE:

Dr. Goldberg moved that the Board certify that it heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened. The motion was seconded and carried unanimously.

The Board reconvened in open session pursuant to § 2.2-3712(D) of the Code.

DECISION:

Dr. Wallace-Davis moved to accept the Findings of Fact and Conclusions of Law as proposed by Ms. Tatum. The motion passed unanimously.

Ms. Cabot moved to deny the application for licensure of Chisom Y. Iwuanyanwu. The motion passed unanimously.

ADJOURNMENT:

The Formal Hearing adjourned at 3:50 p.m.

Helene Clayton-Jeter, O.D., Chairperson

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

DRAFT

**BOARD OF OPTOMETRY
FULL BOARD MEETING
July 13, 2018**

TIME AND PLACE: The Virginia Board of Optometry (Board) meeting was called to order at 9:00 a.m. at the Department of Health Professions (DHP), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 3, Henrico, Virginia 23233.

PRESIDING OFFICER: Steven A. Linas, O.D., Chair

MEMBERS PRESENT: Devon Cabot, Citizen Member
Helene Clayton-Jeter, O.D.
Fred E. Goldberg, O.D.
Clifford A. Roffis, O.D.
Lisa Wallace-Davis, O.D.

MEMBERS NOT PRESENT: All members were present.

STAFF PRESENT: David E. Brown, D.C., Director
Barbara Allison-Bryan, M.D., Chief Deputy Director
Leslie L. Knachel, Executive Director
Charis Mitchell, Assistant Attorney General, Counsel
Elaine Yeatts, Senior Policy Analyst
Elizabeth Carter, Ph.D., Healthcare Workforce Data Center
Carol Stamey, Operations Manager
Anthony C Morales, Operations Manager

OTHERS PRESENT: Laura McHale, Virginia Optometric Association (VOA)
Mark Hickman, Commonwealth Strategy Group/VA Society of Eye Physicians and Surgeons
Chris Nolan, McGuire Woods on behalf of the VOA.

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

ORDERING OF AGENDA Ms. Knachel noted that two items needed to be added to the agenda: Guidance Document 105-12 under "Discussion Items" and officer elections under "New Business."

Dr. Wallace-Davis moved to accept the agenda with the additions. The motion was seconded and carried.

PUBLIC COMMENT: On behalf of the VOA, Chris Nolan provided comments on the implementation of SB51. He stated the legislation underwent changes during the session. He indicated that the bill identified the optometrist as the person responsible for submitting the written evidence of completion of a didactic and clinical training course in administration of therapeutic drugs by injection.

APPROVAL OF MINUTES: Dr. Wallace-Davis moved to approve the meeting minutes for the following meetings as presented:

- March 2, 2018 – Full Meeting; and
- April 3, 2018 – Telephone Conference Call

The motion was seconded and carried.

DIRECTOR'S REPORT:

Dr. Brown reported on the following items:

- Business Operations and IT Department move to the first floor;
- Ongoing look at security in building;
- New badges with new Logo; and
- Legislation, Medicaid Expansion.

**LEGISLATIVE/REGULATORY
UPATE:**

2018 Legislative Update

- **Update on Regulatory Actions**

Ms. Yeatts provided an overview of the following 2018 legislation:

- Approval of NOIRA related to inactive licenses will be open for public comment on 8/6/18;
- Periodic review is at Governor's Office; and
- Prescribing of Opioids is at the Secretary's Office.

- **Discussion on Acceptable Written Evidence Referenced in 2018 Legislation (SB511)**

- **Policy Decision**

Ms. Yeatts reported that the legislation states that the optometrist shall provide written evidence to the Board of completion of didactic and clinical training provided by an accredited school or college of optometry. Ms. Yeatts and Ms. Knachel informed the Board that it needed to discuss the legislation to determine whether the written evidence can be submitted by the optometrist or whether it must be submitted directly from the accredited school that provided the training.

The Board discussed the issue.

Dr. Wallace-Davis moved that the Board's policy require continuing education (CE) sources to submit injection course documentation directly to the Board.

The motion was seconded and carried.

Dr. Goldberg moved to amend the motion as follows: that Board policy require accredited schools or colleges of optometry submit written evidence of completion of didactic and clinical training in injections directly to the Board.

The motion was seconded and carried.

- **Consideration of Regulatory Action**

It was determined during the discussion period of this issue that a regulatory action was not needed.

- **Review of Continuing Education Sponsors**

Ms. Yeatts reported that at the Board's previous meeting it had considered a Petition for Rulemaking related to the addition of a CE sponsor. The Board's motion was to take no action and

review the regulations related to the list of approved CE sponsors.

Ms. Knachel suggested that the CE Committee convene to review the approved CE Sponsor list in the regulations and submit recommendations to the full Board.

DISCUSSION ITEMS:

Healthcare Workforce Data Survey

Dr. Carter presented the most current Healthcare Workforce Data Survey information.

Update on CE Audit

Ms. Knachel reported that the upcoming CE audit will be the first audit after the regulatory change in 2016. She explained Guidance Document 105-12 provides the process used for conducting CE audits; however, due to the complexity of the new CE requirements, OE Tracker cannot be utilized as it was in the past. Ms. Knachel recommended that the CE Committee review Guidance Document 105-12 and submit recommendations to the Board.

Guidance Document Review

Ms. Yeatts informed the Board that its Guidance Documents required periodic review. The Board discussed the following specific guidance documents:

- 105-10 End of a Contact Lens Fitting
- 105-11 Expired Licenses;
- 105-13 Performing Free Eye Screenings;
- 105-17 Advertising;
- 105-26 Agency Subordinates; and
- 105-28 Sanction Reference Points Manual.

Dr. Clayton-Jeter moved to amend Guidance Document 105-10 to reflect the deletion of items 1 through 3 and insertion of the Federal Trade Commission's Language on contact lens fitting. The motion was seconded and carried.

Dr. Goldberg move to reaffirm Guidance Document 105-11. The motion was seconded and carried.

Dr. Clayton-Jeter moved to reaffirm Guidance Document 105-13. The motion was seconded and carried.

Dr. Wallace-Davis moved to repeal Guidance Document 105-17. The motion was seconded and carried.

Dr. Clayton-Jeter moved to reaffirm Guidance Document 105-26. The motion was seconded and carried.

Ms. Knachel provided information that the Sanctioning Reference Points Manuals for all DHP boards was undergoing a review.

MEETING, DR. CLAYTON-JETER:

Ms. Knachel noted that next year's meeting will be held in St. Louis.

COUNSEL REPORT:

Ms. Mitchell noted that there was no report to present.

PRESIDENT'S REPORT:

Dr. Linas had no report to present.

OF HEALTH PROFESSION'S REPORT:

Dr. Clayton-Jeter stated that the Board of Health Professions' activities had been covered in the Director's Report.

STAFF REPORTS:

Executive Director's Report – Ms. Knachel

Ms. Knachel reported that the Board's surplus money would be utilized to extend the license renewal to March 2020 when the licensees renewed in December 2018. She further reported that a mass email will go out regarding the change in licensure expiration date.

Discipline Report and Training – Ms. Knachel

Ms. Knachel provided an overview of the caseload statistics.

2019 Calendar and Roster – Ms. Knachel

The 2019 calendar and Board roster were submitted for the members' review. It was requested that if any changes were required to notify the Board office.

By-Laws Review – Ms. Knachel

Ms. Knachel noted that Guidance Document 105-14 would be placed on the Board's next agenda to review needed updates.

NEW BUSINESS:

Dr. Linas noted that Ms. Stamey will be retiring at the end of July and thanked her for her service.

Officer Elections

Dr. Linas made a motion which was properly seconded to nominate Dr. Clayton-Jeter for President. No other nominations were received. The Board voted and the motion carried.

Dr. Roffis made a motion which was properly seconded to nominate Dr. Goldberg as Vice President. The Board voted and the motion carried.

Dr. Linas requested that the Board members review the composition of the various committees of the Board and request any changes.

The members agreed to serve on the following committees:

Professional Designation Committee – Dr. Goldberg & Ms. Cabot

Continuing Education Committee – Dr. Roffis & Dr. Wallace-Davis.

NEW MEETING:

The next scheduled full board meeting is November 2, 2018.

ADJOURNMENT:

The meeting adjourned at 11:40 a.m.

Steven A. Linas, O.D.
Chair

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

Draft

**Agenda Item: Regulatory Actions - Chart of Regulatory Actions
(As of October 15, 2018)**

Board		Board of Optometry
Chapter	Action / Stage Information	
[18 VAC 105 - 20]	Regulations of the Virginia Board of Optometry	<u>Inactive licenses</u> [Action 5006] NOIRA - Register Date: 8/6/18 Board to adopt proposed regulations – 11/2/18
[18 VAC 105 - 20]	Regulations of the Virginia Board of Optometry	<u>Periodic review</u> [Action 4780] Proposed - Register Date: 10/29/18 Comment period: 10/29/18 to 12/28/18 Public hearing: 11/2/18
[18 VAC 105 - 20]	Regulations of the Virginia Board of Optometry	<u>Prescribing of opioids</u> [Action 4892] Proposed - At Governor's Office for 40 days

Agenda Item: Board Action on Proposed Regulations for Inactive License

Included in your agenda package are:

Copy of statutory authority for inactive licenses

Copy of Notice of Intended Regulatory Action (NOIRA) on Townhall – there were no comments on the NOIRA

Draft of proposed regulations

Board action:

- **Adoption of proposed regulation – may be a fast-track action if the Board determines that it will not be controversial**

Code of Virginia
Title 54.1. Professions and Occupations
Chapter 24. General Provisions

§ 54.1-2400. General powers and duties of health regulatory boards.

The general powers and duties of health regulatory boards shall be:

1. To establish the qualifications for registration, certification, licensure, permit, or the issuance of a multistate licensure privilege in accordance with the applicable law which are necessary to ensure competence and integrity to engage in the regulated professions.
2. To examine or cause to be examined applicants for certification, licensure, or registration. Unless otherwise required by law, examinations shall be administered in writing or shall be a demonstration of manual skills.
3. To register, certify, license, or issue a multistate licensure privilege to qualified applicants as practitioners of the particular profession or professions regulated by such board.
4. To establish schedules for renewals of registration, certification, licensure, permit, and the issuance of a multistate licensure privilege.
5. To levy and collect fees for application processing, examination, registration, certification, permitting, or licensure or the issuance of a multistate licensure privilege and renewal that are sufficient to cover all expenses for the administration and operation of the Department of Health Professions, the Board of Health Professions, and the health regulatory boards.
6. To promulgate regulations in accordance with the Administrative Process Act (§ 2.2-4000 et seq.) that are reasonable and necessary to administer effectively the regulatory system, which shall include provisions for the satisfaction of board-required continuing education for individuals registered, certified, licensed, or issued a multistate licensure privilege by a health regulatory board through delivery of health care services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those health services. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ 54.1-100 et seq.) and Chapter 25 (§ 54.1-2500 et seq.).
7. To revoke, suspend, restrict, or refuse to issue or renew a registration, certificate, license, permit, or multistate licensure privilege which such board has authority to issue for causes enumerated in applicable law and regulations.
8. To appoint designees from their membership or immediate staff to coordinate with the Director and the Health Practitioners' Monitoring Program Committee and to implement, as is necessary, the provisions of Chapter 25.1 (§ 54.1-2515 et seq.). Each health regulatory board shall appoint one such designee.

9. To take appropriate disciplinary action for violations of applicable law and regulations, and to accept, in their discretion, the surrender of a license, certificate, registration, permit, or multistate licensure privilege in lieu of disciplinary action.

10. To appoint a special conference committee, composed of not less than two members of a health regulatory board or, when required for special conference committees of the Board of Medicine, not less than two members of the Board and one member of the relevant advisory board, or, when required for special conference committees of the Board of Nursing, not less than one member of the Board and one member of the relevant advisory board, to act in accordance with § 2.2-4019 upon receipt of information that a practitioner or permit holder of the appropriate board may be subject to disciplinary action or to consider an application for a license, certification, registration, permit or multistate licensure privilege in nursing. The special conference committee may (i) exonerate; (ii) reinstate; (iii) place the practitioner or permit holder on probation with such terms as it may deem appropriate; (iv) reprimand; (v) modify a previous order; (vi) impose a monetary penalty pursuant to § 54.1-2401, (vii) deny or grant an application for licensure, certification, registration, permit, or multistate licensure privilege; and (viii) issue a restricted license, certification, registration, permit or multistate licensure privilege subject to terms and conditions. The order of the special conference committee shall become final 30 days after service of the order unless a written request to the board for a hearing is received within such time. If service of the decision to a party is accomplished by mail, three days shall be added to the 30-day period. Upon receiving a timely written request for a hearing, the board or a panel of the board shall then proceed with a hearing as provided in § 2.2-4020, and the action of the committee shall be vacated. This subdivision shall not be construed to limit the authority of a board to delegate to an appropriately qualified agency subordinate, as defined in § 2.2-4001, the authority to conduct informal fact-finding proceedings in accordance with § 2.2-4019, upon receipt of information that a practitioner may be subject to a disciplinary action. The recommendation of such subordinate may be considered by a panel consisting of at least five board members, or, if a quorum of the board is less than five members, consisting of a quorum of the members, convened for the purpose of issuing a case decision. Criteria for the appointment of an agency subordinate shall be set forth in regulations adopted by the board.

11. To convene, at their discretion, a panel consisting of at least five board members or, if a quorum of the board is less than five members, consisting of a quorum of the members to conduct formal proceedings pursuant to § 2.2-4020, decide the case, and issue a final agency case decision. Any decision rendered by majority vote of such panel shall have the same effect as if made by the full board and shall be subject to court review in accordance with the Administrative Process Act. No member who participates in an informal proceeding conducted in accordance with § 2.2-4019 shall serve on a panel conducting formal proceedings pursuant to § 2.2-4020 to consider the same matter.

* 12. To issue inactive licenses or certificates and promulgate regulations to carry out such purpose. Such regulations shall include, but not be limited to, the qualifications, renewal fees, and conditions for reactivation of licenses or certificates.

13. To meet by telephone conference call to consider settlement proposals in matters pending before special conference committees convened pursuant to this section, or matters referred for formal proceedings pursuant to § 2.2-4020 to a health regulatory board or a panel of the board or

to consider modifications of previously issued board orders when such considerations have been requested by either of the parties.

14. To request and accept from a certified, registered, or licensed practitioner; a facility holding a license, certification, registration, or permit; or a person holding a multistate licensure privilege to practice nursing, in lieu of disciplinary action, a confidential consent agreement. A confidential consent agreement shall be subject to the confidentiality provisions of § 54.1-2400.2 and shall not be disclosed by a practitioner or facility. A confidential consent agreement shall include findings of fact and may include an admission or a finding of a violation. A confidential consent agreement shall not be considered either a notice or order of any health regulatory board, but it may be considered by a board in future disciplinary proceedings. A confidential consent agreement shall be entered into only in cases involving minor misconduct where there is little or no injury to a patient or the public and little likelihood of repetition by the practitioner or facility. A board shall not enter into a confidential consent agreement if there is probable cause to believe the practitioner or facility has (i) demonstrated gross negligence or intentional misconduct in the care of patients or (ii) conducted his practice in such a manner as to be a danger to the health and welfare of his patients or the public. A certified, registered, or licensed practitioner, a facility holding a license, certification, registration, or permit, or a person holding a multistate licensure privilege to practice nursing who has entered into two confidential consent agreements involving a standard of care violation, within the 10-year period immediately preceding a board's receipt of the most recent report or complaint being considered, shall receive public discipline for any subsequent violation within the 10-year period unless the board finds there are sufficient facts and circumstances to rebut the presumption that the disciplinary action be made public.

15. When a board has probable cause to believe a practitioner is unable to practice with reasonable skill and safety to patients because of excessive use of alcohol or drugs or physical or mental illness, the board, after preliminary investigation by an informal fact-finding proceeding, may direct that the practitioner submit to a mental or physical examination. Failure to submit to the examination shall constitute grounds for disciplinary action. Any practitioner affected by this subsection shall be afforded reasonable opportunity to demonstrate that he is competent to practice with reasonable skill and safety to patients. For the purposes of this subdivision, "practitioner" shall include any person holding a multistate licensure privilege to practice nursing.

1988, c. 765; 1992, cc. 659, 890; 1997, cc. 439, 564; 1998, c. 469; 2002, cc. 455, 698; 2003, cc. 753, 762; 2004, cc. 49, 64; 2009, cc. 472, 534; 2010, c. 414; 2014, c. 426; 2016, c. 82; 2017, c. 423.

Virginia.gov Agencies | Governor



Logged in as

Elaine J. Yeatts

Agency Department of Health Professions

Board Board of Optometry

Chapter Regulations of the Virginia Board of Optometry [18 VAC 105 – 20]

Action: Inactive licenses

Action 5006 / Stage 8224

Notice of Intended Regulatory Action (NOIRA)

- [Edit Stage](#)
- [Withdraw Stage](#)
- [Go to RIS Project](#)

Documents		
Preliminary Draft Text	None submitted	Sync Text with RIS
<input checked="" type="checkbox"/> Agency Statement	3/6/2018	Upload / Replace
<input checked="" type="checkbox"/> Governor's Approval Memo	7/5/2018	
<input checked="" type="checkbox"/> Registrar Transmittal	7/5/2018	

Status	
Public Hearing	Will be held at the proposed stage
Exempt from APA	No, this stage/action is subject to article 2 of the <i>Administrative Process Act</i> and the standard executive branch review process.
DPB Review	Submitted on 3/6/2018 Policy Analyst: Jerry Gentile Review Completed: 3/16/2018 <i>DPB's policy memo is "Governor's Confidential Working Papers"</i>
Governor's Review	Review Completed: 7/5/2018 Result: Approved
Virginia Registrar	Submitted on 7/5/2018 The Virginia Register of Regulations Publication Date: 8/6/2018 <input checked="" type="checkbox"/> Volume: 34 Issue: 25
Comment Period	Ended 9/5/2018 0 comments

Contact Information	

Project 5434 - NOIRA

BOARD OF OPTOMETRY

Inactive licenses

18VAC105-20-20. Fees.

A. Required fees.

Initial application and licensure (including TPA certification)	\$250
Application for TPA certification	\$200
Annual licensure renewal without TPA certification	\$150
Annual licensure renewal with TPA certification	\$200
<u>Annual renewal of inactive license</u>	<u>\$100</u>
Late renewal without TPA certification	\$50
Late renewal with TPA certification	\$65
<u>Late renewal of inactive license</u>	<u>\$35</u>
Returned check	\$35
Professional designation application	\$100
Annual professional designation renewal (per location)	\$50
Late renewal of professional designation	\$20
Reinstatement application fee (including renewal and late fees)	\$400
Reinstatement application after disciplinary action	\$500
Duplicate wall certificate	\$25
Duplicate license	\$10
Licensure verification	\$10

B. Unless otherwise specified, all fees are nonrefundable.

C. From October 31, 2018, to December 31, 2018, the following fees shall be in effect:

Annual licensure renewal without TPA certification	\$75
Annual licensure renewal with TPA certification	\$100
Annual professional designation renewal (per location)	\$25

18VAC105-20-61. Inactive licensure; reactivation.

A. An optometrist who holds a current, unrestricted license in Virginia may, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be required to maintain continuing education requirements and shall not be entitled to perform any act requiring a license to practice optometry in Virginia.

B. A licensee whose license has been inactive and who requests reactivation of an active license shall file an application, pay the difference between the inactive and active renewal fees for the current year, and provide documentation of having completed continuing education hours equal to the requirement for the number of years in which the license has been inactive, not to exceed 40 contact hours.

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal of an active license shall be conditioned upon submission of evidence to the board of 20 hours of continuing education taken by the applicant during the previous license period. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

1. The 20 hours may include up to two hours of recordkeeping for patient care, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products.

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 10 of the required continuing education hours shall be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa,

including treatment with new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures.

3. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.

4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).

5. Two hours of the 20 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to the renewal deadline unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to the renewal deadline each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection G of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board, which will require that

the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor or accrediting body as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.
2. Regional optometric organizations.
3. State optometric associations and their affiliate local societies.
4. Accredited colleges and universities providing optometric or medical courses.
5. The American Academy of Optometry and its affiliate organizations.
6. The American Academy of Ophthalmology and its affiliate organizations.
7. The Virginia Academy of Optometry.
8. Council on Optometric Practitioner Education (COPE).
9. State or federal governmental agencies.
10. College of Optometrists in Vision Development.

11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.

12. Providers of training in cardiopulmonary resuscitation (CPR).

13. Optometric Extension Program.

H. In order to maintain approval for continuing education courses, providers or sponsors shall:

1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course and contact information of the provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.

2. Maintain documentation about the course and attendance for at least three years following its completion.

I. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.

Virginia Board of Optometry

Guidance for Continuing Education (CE) Audits and Sanctioning for Failure to Complete CE

Applicable Law, Regulation and Guidance

Code of Virginia

§ 54.1-3219. Continuing education.

A. As a prerequisite to renewal of a license or reinstatement of a license, each optometrist shall be required to complete 20 hours of continuing education relating to optometry, as approved by the Board, each year. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle. The courses shall include, but need not be limited to, the utilization and application of new techniques, scientific and clinical advances, and new achievements of research. The Board shall prescribe criteria for approval of courses of study. The Board may approve alternative courses upon timely application of any licensee. Fulfillment of education requirements shall be certified to the Board upon a form provided by the Board and shall be submitted by each licensed optometrist at the time he applies to the Board for the renewal of his license. The Board may waive individual requirements in cases of certified illness or undue hardship.

B. Of the 20 hours of continuing education relating to optometry required pursuant to subsection A:

1. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another;
2. No more than two hours may consist of courses related to recordkeeping, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products; and
3. For TPA-certified optometrists, at least 10 hours shall be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures.

C. Nothing in this subsection shall prevent or limit the authority of the Board to require additional hours or types of continuing education as part or in lieu of disciplinary action.

Regulations of the Virginia Board of Optometry

18VAC105-20-60. Renewal of licensure; reinstatement; renewal fees.

A. Every person authorized by the board to practice optometry shall, on or before December 31 of 2018, submit a completed renewal form and pay the prescribed annual licensure fee. Beginning with calendar year 2020, the renewal of licensure deadline shall be March 31 of each year. For calendar year 2019, no renewal is required.

B. It shall be the duty and responsibility of each licensee to assure that the board has the licensee's current address of record and the public address, if different from the address of record. All changes of address or name shall be furnished to the board within 30 days after the change occurs. All notices required by law or by these rules and regulations are to be deemed to be validly tendered when mailed to the address of record given and shall not relieve the licensee of the obligation to comply.

C. The license of every person who does not complete the renewal form and submit the renewal fee each year may be renewed for up to one year by paying the prescribed renewal fee and late fee, provided the requirements of 18VAC105-20-70 have been met. After the renewal deadline, a license that has not been renewed is lapsed.

Practicing optometry in Virginia with a lapsed license may subject the licensee to disciplinary action and additional fines by the board.

D. An optometrist whose license has been lapsed for more than one year and who wishes to resume practice in Virginia shall apply for reinstatement. The executive director may grant reinstatement provided that:

- 1. The applicant can demonstrate continuing competence;*
- 2. The applicant has satisfied current requirements for continuing education for the period in which the license has been lapsed, not to exceed two years; and*
- 3. The applicant has paid the prescribed reinstatement application fee.*

E. The board may require an applicant who has allowed his license to expire and who cannot demonstrate continuing competency to pass all or parts of the board-approved examinations.

18VAC105-20-70. Requirements for continuing education.

A. Each license renewal shall be conditioned upon submission of evidence to the board of 20 hours of continuing education taken by the applicant during the previous license period. A licensee who completes more than 20 hours of continuing education in a year shall be allowed to carry forward up to 10 hours of continuing education for the next annual renewal cycle.

- 1. The 20 hours may include up to two hours of recordkeeping for patient care, including coding for diagnostic and treatment devices and procedures or the management of an optometry practice, provided that such courses are not primarily for the purpose of augmenting the licensee's income or promoting the sale of specific instruments or products.*
- 2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least 10 of the required continuing education hours shall be in the areas of ocular and general pharmacology, diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents, or new or advanced clinical devices, techniques, modalities, or procedures.*
- 3. At least 10 hours shall be obtained through real-time, interactive activities, including in-person or electronic presentations, provided that during the course of the presentation, the licensee and the lecturer may communicate with one another.*
- 4. A licensee may also include up to two hours of training in cardiopulmonary resuscitation (CPR).*
- 5. Two hours of the 20 hours required for annual renewal may be satisfied through delivery of professional services, without compensation, to low-income individuals receiving health services through a local health department or a free clinic organized in whole or primarily for the delivery of those services. One hour of continuing education may be credited for three hours of providing such volunteer services, as documented by the health department or free clinic.*

B. Each licensee shall attest to fulfillment of continuing education hours on the required annual renewal form. All continuing education shall be completed prior to the renewal deadline unless an extension or waiver has been granted by the Continuing Education Committee. A request for an extension or waiver shall be received prior to the renewal deadline each year.

C. All continuing education courses shall be offered by an approved sponsor or accrediting body listed in subsection G of this section. Courses that are not approved by a board-recognized sponsor in advance shall not be accepted for continuing education credit. For those courses that have a post-test requirement, credit will only be given if the optometrist receives a passing grade as indicated on the certificate.

D. Licensees shall maintain continuing education documentation for a period of not less than three years. A random audit of licensees may be conducted by the board, which will require that the licensee provide evidence substantiating participation in required continuing education courses within 14 days of the renewal date.

E. Documentation of hours shall clearly indicate the name of the continuing education provider and its affiliation with an approved sponsor or accrediting body as listed in subsection G of this section. Documents that do not have the required information shall not be accepted by the board for determining compliance. Correspondence courses

shall be credited according to the date on which the post-test was graded as indicated on the continuing education certificate.

F. A licensee shall be exempt from the continuing competency requirements for the first renewal following the date of initial licensure by examination in Virginia.

G. An approved continuing education course or program, whether offered by correspondence, electronically or in person, shall be sponsored, accredited, or approved by one of the following:

1. The American Optometric Association and its constituent organizations.
2. Regional optometric organizations.
3. State optometric associations and their affiliate local societies.
4. Accredited colleges and universities providing optometric or medical courses.
5. The American Academy of Optometry and its affiliate organizations.
6. The American Academy of Ophthalmology and its affiliate organizations.
7. The Virginia Academy of Optometry.
8. Council on Optometric Practitioner Education (COPE).
9. State or federal governmental agencies.
10. College of Optometrists in Vision Development.
11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 credit.
12. Providers of training in cardiopulmonary resuscitation (CPR)
13. Optometric Extension Program.

H. In order to maintain approval for continuing education courses, providers or sponsors shall:

1. Provide a certificate of attendance that shows the date, location, presenter or lecturer, content hours of the course and contact information of the provider or sponsor for verification. The certificate of attendance shall be based on verification by the sponsor of the attendee's presence throughout the course, either provided by a post-test or by a designated monitor.
2. Maintain documentation about the course and attendance for at least three years following its completion.
 1. Falsifying the attestation of compliance with continuing education on a renewal form or failure to comply with continuing education requirements may subject a licensee to disciplinary action by the board, consistent with § 54.1-3215 of the Code of Virginia.

Guidance

Q: How many CE hours are required at renewal time?

A: The Regulations require the completion of 20 CE hours that meet the regulatory requirements per licensure year.

Q: Does the Board approve CE courses or programs?

A: No, the Board does not approve CE courses or programs. The Board accepts CE courses or programs sponsored, accredited, or approved by the list of entities found in 18VAC105-20-70(G).

Q: Does the Board require documentation of CE to be provided at renewal time?

A: No, CE documentation is not to be submitted at renewal. However, attestation regarding compliance with CE requirements is required at the time of renewal. A licensee will be notified if he/she is chosen for a CE audit. The directions for submission of documentation during an audit are provided in the notification.

Q: Are TPA certified optometrists required to have any specific type of CE?

A: Yes, the Code of Virginia and the Regulations require that at least 10 hours of the required 20 shall be in the following areas:

- Ocular and general pharmacology

- Diagnosis and treatment of the human eye and its adnexa, including treatment with new pharmaceutical agents
- New or advanced clinical devices, techniques, modalities, or procedure.

Q: Does the Board have a requirement for in-person CE attendance?

A: The Code of Virginia and the Regulations require that at least 10 hours of the required 20 hours be obtained through real-time, interactive activities that include in-person or electronic attendance provided that during the course of the presentation the licensee and the lecturer may communicate with one another.

Q: Will the Board accept attendance at a webinar that was recorded to satisfy the 10 hour of real-time CE requirement?

A: No, the Code of Virginia and the Regulations require that a real-time presentation be one at which the lecturer and the licensee are able to communicate with one another. However, a recorded webinar may be accepted if it is not being used to satisfy the 10 hour real-time requirement.

Q: Does the Board grant CE extensions or waivers?

A: Yes, the Board ~~does grants~~ CE extensions and waivers. Per the Regulations, requests must be received by the Board prior to ~~December 31~~ the renewal deadline of each year. A request for an extension or waiver will not be granted for requests received on or after the renewal deadline ~~December 31~~. Failure to complete required CE may subject a licensee to disciplinary action.

Q: Will the Board grant a CE waiver for a long-standing illness?

A: Yes, the Board may grant a long-term CE waiver on a case by case basis to licensees who have a verified long-standing illness and are not actively practicing. Long-term CE waiver requests must be accompanied by documentation of the illness. A licensee who has been granted a waiver for a long-standing illness must notify the Board if he/she resumes practice in which case the waiver may be reconsidered or withdrawn.

Q: What is the Board's process for conducting CE audits?

A: The following outlines the Board's procedures for conducting CE audits:

- After each renewal cycle, the Board may choose to conduct a CE audit the following licensees for compliance with CE requirements: A statistically valid audit sample is determined by a method that ensures randomness of those selected.
 - ~~Licensees who fail to respond or respond "no" to the CE renewal question on the annual license renewal form; and~~
 - ~~Licensees selected for random audit using a statistically valid audit sample and a method that ensures randomness of those selected.~~
- Board office notifies selected licensees.
- Once notified, licensee are to submit a completed Continuing Education Form with copies of certificates.
- Board reviews documentation for compliance with the Regulations.
- Board office notifies licensees when compliance is determined.
- Board office refers licensees determined to be non-compliant for possible disciplinary action.
 - ~~For those selected for the audit:~~
 - ~~Board staff will first query the Association of Regulatory Boards of Optometry's CE tracking database, OE Tracker, to determine if the licensee maintains an account.~~
 - ~~OE Tracker accounts will be reviewed to determine if the CE requirements have been met.~~

- ~~▪ If all CE requirements have been met, the licensee will be notified that he was audited and no further action on his part is required; or~~
- ~~▪ If partial or no CE requirements have been met or the licensee does not have an OE Tracker account, the licensee will be notified that he is being audited and to submit the necessary documentation to verify CE completion.~~
- o Must complete Continuing Education Reporting Form and submit certificates.
- ~~o Documentation submitted to verify CE completion will be reviewed for compliance with the regulations.~~
- ~~o Licensees who have not completed the required CE will be referred for possible disciplinary action.~~

The Board adopted the following guidelines for resolution of cases of non-compliance with CE requirements:

Cause	Possible Action
First offense; short 1 – 5 hours	Confidential Consent Agreement; 45 days to make up missing hours
First offense; short 6 – 20 hours	Consent Order; Monetary Penalty of \$500; 45 days to make up missing hours
Second offense; short 1 – 20 hours	Consent Order; Reprimand; Monetary Penalty of \$250 per missing hour; 45 days to make up missing hours
No response to audit notifications or <u>Three or more offenses</u>	Informal Fact-Finding Conference

Note: The Board may offer a pre-hearing consent order or hold an informal fact finding conference when probable cause is found that a licensee has falsely certified completion of the required CE for renewal of his license.

Draft

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~~ At the first regularly scheduled meeting ~~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 Board staff the authority to issue and renew licenses and registrations for which statutory and regulatory qualifications have been met.

B. The Board delegates to the Executive Director the authority to reinstate licenses and registrations when the reinstatement is due to the lapse of the license or registration rather than a disciplinary action and there is no basis upon which the Board could refuse to reinstate.

C. The Board delegates to the Executive Director the authority to grant long-term continuing education waivers on a case-by-case basis to licensees with a verified long-standing illness and an attestation of not practicing. The Executive Director shall inform the licensee of the appropriate statute and shall direct the licensee to notify the Board if their situation changes, in which case the waiver may be extended, reconsidered or withdrawn.

D. The Board delegates to the Executive Director authority to grant an extension for good cause of up to 90 days for the completion of continuing education requirements upon written request from the licensee prior to the renewal date.

E. The Board delegates authority to the Executive Director to close non-jurisdictional cases and fee dispute cases without review by a board member.

F. The Board delegates to the Executive Director the authority to review information regarding alleged violations of law or regulation with at least one board member on a rotating basis to make a determination as to whether probable cause exists to proceed with possible disciplinary action.

G. The Board delegates to the Executive Director the authority to conduct an annual continuing education audit and take action as prescribed in any guidance document adopted by the Board on continuing education audits.

H. The Board delegates to the Executive Director the authority to take action as prescribed in any guidance document adopted by the Board on practicing with an expired license.

I. The Board delegates to the Executive Director the authority to negotiate consent orders with the Chair of a Special Conference Committee or formal administrative hearing.

J. The Board delegates to Board staff the authority to develop and approve any and all forms used in the daily operations of Board business, to include, but not limited to, licensure applications, renewal forms and documents used in the disciplinary process.

K. The Board delegates to the Executive Director the authority to sign as entered any Order or Consent Order resulting from the disciplinary process or other administrative proceeding.

L. The Board delegates to the Executive Director, the authority to provide guidance to the agency's Enforcement Division in any situation in which a complaint is of questionable jurisdiction and an investigation may not be necessary. The Executive Director will provide a quarterly report on such situations, if any.

M. The Board delegates to the President the authority to represent the Board in instances where Board "consultation" or "review" may be requested where a vote of the Board is not required, and a meeting is not feasible.

N. Delegated tasks shall be summarized and reported to the board at each regularly scheduled meeting.

O. The Board delegates authority to the Executive Director to issue an Advisory Letter to the person who is the subject of a complaint pursuant to Va. Code § 54.1-2400.2(F), when a probable cause review indicates a disciplinary proceeding will not be instituted.

P. The Board delegates authority to the Executive Director to accept from a licensee or registrant, in lieu of disciplinary action, a Confidential Consent Agreement, pursuant to Va. Code § 54.1-2400(14), consistent with any guidance documents adopted by the Board.

Article V. Amendments.

A board member or staff personnel may propose an amendment to these bylaws by presenting the amendment in writing to the Executive Director for distribution to all Board members, the Board's legal counsel and staff personnel prior to any regularly scheduled meeting of the Board. An amendment to the bylaws shall be adopted, upon favorable vote of at least two-thirds of the Board members present at said meeting.

§ 54.1-108. Disclosure of official records

Official records of the Department of Professional and Occupational Regulation or the Department of Health Professions or any board named in this title shall be subject to the disclosure provisions of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except for the following:

1. Examination questions, papers, booklets, and answer sheets, which may be disclosed at the discretion of the board administering or causing to be administered such examinations.
2. Applications for admission to examinations or for licensure, certification, registration, or permitting and the scoring records maintained by any board or by the Departments on individuals or applicants. However, this material may be made available during normal working hours for copying by the subject individual or applicant at his expense at the office of the Department or board that possesses the material.
3. Records of active investigations being conducted by the Departments or any board.

1979, c. 408, § 54-1.41; 1982, c. 207; 1988, c. 765; 1993, c. 499; 2017, c. 423.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

§ 54.1-2400.2. Confidentiality of information obtained during an investigation or disciplinary proceeding; penalty

A. Any reports, information or records received and maintained by the Department of Health Professions or any health regulatory board in connection with possible disciplinary proceedings, including any material received or developed by a board during an investigation or proceeding, shall be strictly confidential. The Department of Health Professions or a board may only disclose such confidential information:

1. In a disciplinary proceeding before a board or in any subsequent trial or appeal of an action or order, or to the respondent in entering into a confidential consent agreement under § 54.1-2400;
2. To regulatory authorities concerned with granting, limiting or denying licenses, certificates or registrations to practice a health profession, including the coordinated licensure information system, as defined in § 54.1-3040.2;
3. To hospital committees concerned with granting, limiting or denying hospital privileges if a final determination regarding a violation has been made;
4. Pursuant to an order of a court of competent jurisdiction for good cause arising from extraordinary circumstances being shown;
5. To qualified personnel for bona fide research or educational purposes, if personally identifiable information relating to any person is first deleted. Such release shall be made pursuant to a written agreement to ensure compliance with this section; or
6. To the Health Practitioners' Monitoring Program within the Department of Health Professions in connection with health practitioners who apply to or participate in the Program.

B. In no event shall confidential information received, maintained or developed by the Department of Health Professions or any board, or disclosed by the Department of Health Professions or a board to others, pursuant to this section, be available for discovery or court subpoena or introduced into evidence in any civil action. This section shall not, however, be construed to inhibit an investigation or prosecution under Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2.

C. Any claim of a physician-patient or practitioner-patient privilege shall not prevail in any investigation or proceeding by any health regulatory board acting within the scope of its authority. The disclosure, however, of any information pursuant to this provision shall not be deemed a waiver of such privilege in any other proceeding.

D. This section shall not prohibit the Director of the Department of Health Professions, after consultation with the relevant health regulatory board president or his designee, from disclosing to the Attorney General, or the appropriate attorney for the Commonwealth, investigatory information which indicates a possible violation of any provision of criminal law, including the laws relating to the manufacture, distribution, dispensing, prescribing or administration of drugs, other than drugs classified as Schedule VI drugs and devices, by any individual regulated

by any health regulatory board.

E. This section shall not prohibit the Director of the Department of Health Professions from disclosing matters listed in subdivision A 1, A 2, or A 3 of § 54.1-2909; from making the reports of aggregate information and summaries required by § 54.1-2400.3; or from disclosing the information required to be made available to the public pursuant to § 54.1-2910.1.

F. This section shall not prohibit the Director of the Department of Health Professions, following consultation with the relevant health regulatory board president or his designee, from disclosing information about a suspected violation of state or federal law or regulation to other agencies within the Health and Human Resources Secretariat or to federal law-enforcement agencies having jurisdiction over the suspected violation or requesting an inspection or investigation of a licensee by such state or federal agency when the Director has reason to believe that a possible violation of federal or state law has occurred. Such disclosure shall not exceed the minimum information necessary to permit the state or federal agency having jurisdiction over the suspected violation of state or federal law to conduct an inspection or investigation. Disclosures by the Director pursuant to this subsection shall not be limited to requests for inspections or investigations of licensees. Nothing in this subsection shall require the Director to make any disclosure. Nothing in this section shall permit any agency to which the Director makes a disclosure pursuant to this section to re-disclose any information, reports, records, or materials received from the Department.

G. Whenever a complaint or report has been filed about a person licensed, certified, or registered by a health regulatory board, the source and the subject of a complaint or report shall be provided information about the investigative and disciplinary procedures at the Department of Health Professions. Prior to interviewing a licensee who is the subject of a complaint or report, or at the time that the licensee is first notified in writing of the complaint or report, whichever shall occur first, the licensee shall be provided with a copy of the complaint or report and any records or supporting documentation, unless such provision would materially obstruct a criminal or regulatory investigation. If the relevant board concludes that a disciplinary proceeding will not be instituted, the board may send an advisory letter to the person who was the subject of the complaint or report. The relevant board may also inform the source of the complaint or report (i) that an investigation has been conducted, (ii) that the matter was concluded without a disciplinary proceeding, (iii) of the process the board followed in making its determination, and (iv), if appropriate, that an advisory letter from the board has been communicated to the person who was the subject of the complaint or report. In providing such information, the board shall inform the source of the complaint or report that he is subject to the requirements of this section relating to confidentiality and discovery.

H. Orders and notices of the health regulatory boards relating to disciplinary actions, other than confidential exhibits described in subsection K, shall be disclosed. Information on the date and location of any disciplinary proceeding, allegations against the respondent, and the list of statutes and regulations the respondent is alleged to have violated shall be provided to the source of the complaint or report by the relevant board prior to the proceeding. The source shall be notified of the disposition of a disciplinary case.

I. This section shall not prohibit investigative staff authorized under § 54.1-2506 from interviewing fact witnesses, disclosing to fact witnesses the identity of the subject of the complaint or report, or reviewing with fact witnesses any portion of records or other supporting documentation necessary to refresh the fact witnesses' recollection.

J. Any person found guilty of the unlawful disclosure of confidential information possessed by a health regulatory board shall be guilty of a Class 1 misdemeanor.

K. In disciplinary actions in which a practitioner is or may be unable to practice with reasonable skill and safety to patients and the public because of a mental or physical disability, a health regulatory board shall consider whether to disclose and may decide not to disclose in its notice or order the practitioner's health records, as defined in § 32.1-127.1:03, or his health services, as defined in § 32.1-127.1:03. Such information may be considered by the relevant board in a closed hearing in accordance with subdivision A 16 of § 2.2-3711 and included in a confidential exhibit to a notice or order. The public notice or order shall identify, if known, the practitioner's mental or physical disability that is the basis for its determination. In the event that the relevant board, in its discretion, determines that this subsection should apply, information contained in the confidential exhibit shall remain part of the confidential record before the relevant board and is subject to court review under the Administrative Process Act (§ 2.2-4000 et seq.) and to release in accordance with this section.

1997, c. 698;1998, c. 744;1999, c. 888;2003, cc. 753, 762;2004, c. 49;2006, cc. 155, 184;2007, c. 395;2009, cc. 342, 472;2015, c. 114;2016, c. 222;2017, c. 616.

The chapters of the acts of assembly referenced in the historical citation at the end of this section may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

Code of Virginia
Title 54.1. Professions and Occupations
Chapter 25. Department of Health Professions

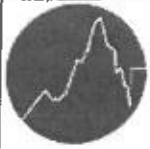
§ 54.1-2506. Enforcement of laws by Director and investigative personnel; authority of investigative personnel and Director.

A. The Director and investigative personnel appointed by him shall be sworn to enforce the statutes and regulations pertaining to the Department, the Board, and the health regulatory boards and shall have the authority to investigate any violations of those statutes and regulations and to the extent otherwise authorized by law inspect any office or facility operated, owned or employing individuals regulated by any health regulatory board. The Director or his designee shall have the power to subpoena witnesses and to request and obtain patient records, business records, papers, and physical or other evidence in the course of any investigation or to issue subpoenas requiring the production of such evidence. A subpoena issued pursuant to this section may be served by (i) any person authorized to serve process under § 8.01-293, (ii) investigative personnel appointed by the Director, (iii) registered or certified mail or by equivalent commercial parcel delivery service, or (iv) email or facsimile if requested to do so by the recipient. Upon failure of any person to comply with a subpoena duly served, the Director may, pursuant to § 54.1-111, request that the Attorney General or the attorney for the Commonwealth for the jurisdiction in which the recipient of the subpoena resides, is found, or transacts business seek enforcement of the subpoena in such jurisdiction.

B. All investigative personnel shall be vested with the authority to (i) administer oaths or affirmations for the purpose of receiving complaints of violations of this subtitle, (ii) serve and execute any warrant, paper or process issued by any court or magistrate, the Board, the Director or in his absence a designated subordinate, or by any regulatory board under the authority of the Director, (iii) request and receive criminal history information under the provisions of § 19.2-389, and (iv) request and receive social security numbers from practitioners or federal employee identification numbers from facilities.

C. The Director shall have the authority to issue summonses for violations of statutes and regulations governing the unlicensed practice of professions regulated by the Department. The Director may delegate such authority to investigators appointed by him. In the event a person issued such a summons fails or refuses to discontinue the unlawful acts or refuses to give a written promise to appear at the time and place specified in the summons, the investigator may appear before a magistrate or other issuing authority having jurisdiction to obtain a criminal warrant pursuant to § 19.2-72.

1980, c. 678, § 54-960; 1986, c. 564; 1988, c. 765; 1993, c. 869; 2003, cc. 753, 762; 2008, c. 37; 2011, c. 50; 2018, c. 466.



Department of Health Professions

Communications and Disclosure of Information(76-20)
 Disclosure of non-investigative information(76-20.4)
 Adopted Date: 5/1/2017
 Approved By: *David E. Brown*

Policy Name	Disclosure of non-investigative information		Policy Number	76-20.4
Section Title	Communications and Disclosure of Information	Section Number	76-20	Former Policy No.
Approval Authority	Agency Director		Effective Date	4/26/2017
Responsible Executive	Chief Deputy Director		Revised Date	4/26/2017
Responsible Office	Director's Office		Last Reviewed	4/26/2017
Responsible Reviewer	Yeatts, Elaine			

Purpose:

To ensure compliance with the Freedom of Information Act, the Virginia Privacy Protection Act and provisions of Title 54.1 of the Code of Virginia related to disclosure and confidentiality of non-investigative information in the possession of the Department.

Policy:

Each custodian of records shall be knowledgeable of the law and apply it in accordance with the following procedures in compliance with law.

Authority:

Virginia Freedom of Information Act (2.2-3700 et seq.) and Chapter 24 of Title 54.1

Procedures:

- 1) The following information regarding licensees[1] shall be made available upon request and may be published.
 - A. Name
 - B. Public address or address of record if no public (alternative) address has been provided
 - C. License Number
 - D. Date of initial licensure
 - E. Dates of licensure expiration, withdrawal, restriction, suspension, surrender or revocation
 - F. Date of license renewal, reinstatement, or reactivation
 - G. Any conditions, limitations or restrictions on the licensee's practice
 - H. Notice of any disciplinary proceeding
 - I. All orders (or similar documents including decisional or closure letters that dispose of an informal



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conference), which result from a disciplinary proceeding not vacated

J. Owner of a licensed facility and designated person-in-charge or responsible party

2) Information contained in applications for licensure may not be disclosed, except to the applicant, unless specified above or unless a specific decision has been made by the custodian of the record, documented in the record of the applicant or minutes of the Board that such disclosure is authorized.

3) In accordance with § 2.2-3705.1, electronic mail addresses, furnished to a board for the purpose of receiving electronic mail, is exempt from disclosure, provided that the electronic mail recipient has requested that the board not disclose such information.

4) All agenda material shall be clearly segregated by public and confidential information.

5) The following information may be shared with specified entities as follows without further documentation:

A. Social Security Number or Department of Motor Vehicles Numbers to the following:

1. The Department of Medical Assistance Services, its agents or contractors
2. The Neurological Birth Related Injury Fund
3. The Secretary of the Commonwealth
4. Department of Social Services
5. Department of Motor Vehicles
6. Medical College of Virginia Hospital Authority

7. Other state licensing authorities, or associations thereof, for the purpose of identification of disciplined practitioners, providing such numbers are not further released for other purpose.

B. Information for the Coordinated Licensure Information System pursuant to §54.1-3036 of the *Code of Virginia*.

C. Email addresses, telephone numbers and facsimile numbers to the Department of Health for the purpose of expediting the dissemination of public health information or information about health emergencies or serving during a public health emergency pursuant to § 54.1-2506.1 of the *Code of Virginia*.

D. Email addresses, telephone numbers and facsimile numbers of licensed veterinarians to the State Veterinarian for the purpose of disseminating information about an animal health emergency pursuant to § 54.1-2506 of the *Code of Virginia*.



Department of Health Professions

Communications and Disclosure of Information(76-20)

Disclosure of non-investigative information(76-20.4)

Adopted Date: 5/1/2017

Approved By: _____

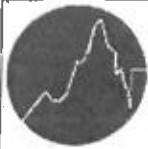
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6) Nothing contained herein shall inhibit disclosure of information to duly authorized personnel within the Office of the Attorney General.

7) Nothing in this policy shall be construed to compel or otherwise prohibit release where specific state or federal law requires or permits otherwise.

[1] Where this policy uses “license” the term includes “certificate” or “registration.”

2 Pursuant to §54.1-2400.02 of the *Code of Virginia*, the street address of any licensee shall not be posted on the Department’s “License Look-up”



Department of Health Professions

Case Decision and Discipline(76-10)
 Publication of Notices and Orders(76-10.17)
 Adopted Date: 12/27/2017
 Approved By: David E. Moore

Policy Name	Publication of Notices and Orders			Policy Number	76-10.17
Section Title	Case Decision and Discipline	Section Number	76-10	Former Policy No.	76-1.17
Approval Authority	Agency Director			Effective Date	10/19/2017
Responsible Executive	Chief Deputy Director			Revised Date	10/19/2017
Responsible Office	Director's Office			Last Reviewed	10/19/2017
Responsible Reviewer	Yeatts, Elaine				

Purpose:

To post Notices and Orders in compliance with statutes and in accordance with the Department's mission to protect the public.

Policy:

The Department shall post on DHP websites available to the public all final orders, together with any associated notices, which impose disciplinary action against licensees of the health regulatory boards. The Department will not post final orders, together with any associated notices, which do not result in a finding of a violation and/or disciplinary action. The Department also will not post notices that have not been adjudicated. Notices and orders entered prior to the date of June 17, 2008, that did not result in a finding of a violation and/or disciplinary action may be removed upon written request by the licensee to the Custodian of Records of the appropriate health regulatory board.

The criteria and conditions for publication are as follows:

1. Notices[1]together with final orders[2]which impose or dismiss any disciplinary action[3]upon the final order becoming effective reflecting that case decision;
2. Notices together withfinal orders which grant or deny modification of a previous order imposing a term, condition,suspension or revocation upon the final order becoming effective reflecting that case decision;
3. Notices together with final orders which grant or deny eligibility for a license, certificate registration or other right or benefit upon the final order becoming effective reflecting that case decision;
4. Orders together with its accompanying statement of particulars which reflect a summary suspension made pursuant to § 54.1-2408.1 of the *Code* upon entry;[4]
5. Orders with incorporated documents which reflect mandatory suspension made pursuant § 54.1-2409 of the *Code* upon entry; and
6. Orders which reflect a suspension of a license pursuant to § 54.1-104 of the *Code* upon entry.

When a final Order is appealed to court, the notice of appeal shall be published pending resolution of the



Department of Health Professions

Case Decision and Discipline(76-10)

Publication of Notices and Orders(76-10.17)

Adopted Date: 12/27/2017

Approved By: _____

David E. Moore

appeal, along with any relevant court orders. Once the appeal is final, the website should be updated to reflect the appropriate documents.

Orders of suspension and/or revocation of a license that has not been reinstated will be accessible to the public on the DHP website under "License Lookup" for 50 years.

Nothing in this Policy shall prohibit the inspection and copying of records of disciplinary actions to the extent permitted under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) and § 54.1-2400.2 of the *Code*.

Nothing contained in the Policy shall modify the requirements for Boards to maintain original copies of all notices and disposition documents.

[1] Notices are not to be published until such time as the order becomes final which disposes of matters contained in that notice.

[2] An order is considered "final" when the next avenue of recourse for the aggrieved party rests with a court pursuant to § 2.2-4026 of the *Code*. A letter that communicates a dismissal which disposes of an allegation contained in a notice shall be considered a final order.

[3] For the purposes of this Policy, "disciplinary action" means any action of a board finding a violation of statute or regulation and/or imposing terms and conditions upon the licensee, whether by formal probation or otherwise.

[4] An order of summary suspension or restriction is to be posted, even if such order may not be the final decision in the matter.

Procedures:

Publication of Notices and Orders:

Each Board Executive Director or his designee shall identify any documents meeting the criteria set forth in this Policy. Any social security number, patient names, or other confidential information appearing on any document shall be redacted prior to delivery for scanning.

The Executive Director or his designee shall forward to the Director of Information Technology those documents to be scanned for publication on the agency web sites within one business day of entry or less.

The Director of Information Technology shall scan such documents within one business day of receipt and assure publication associated with "License Lookup," "Recent Case Decisions," and the "Physician Information Project" (Physician Profile).

Removal of Notices and Orders:

A licensee requesting removal of a notice and order that did not impose disciplinary action shall submit a written request to the Board.



Department of Health Professions

Case Decision and Discipline(76-10)

Publication of Notices and Orders(76-10.17)

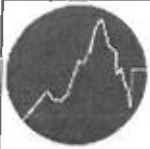
Adopted Date: 12/27/2017

Approved By: _____

David E. Brown

If the Executive Director or designee determines that no disciplinary action was imposed by the Order, the written request for removal shall be forwarded to the Director of Information Technology.

The Director of Information Technology or designee shall remove the Notice and Order from DHP websites available to the public.



Department of Health Professions

Policy Implementation(76-90)
 Custodian of the record(76-90.2)
 Adopted Date: 5/1/2017
 Approved By: _____

David E. Brown

Policy Name	Custodian of the record		Policy Number	76-90.2
Section Title	Policy Implementation	Section Number	76-90	Former Policy No.
Approval Authority	Agency Director		Effective Date	4/27/2017
Responsible Executive	Agency Director		Revised Date	4/27/2017
Responsible Office	Director's Office		Last Reviewed	4/28/2017
Responsible Reviewer	Yeatts, Elaine			

Purpose:

To ensure agency compliance with § 2.2-3700 et seq. and § 42.1-76 of the Code of Virginia which set forth requirements for the Virginia Freedom of Information Act and the Virginia Public Records Act.

Policy:

To delegate authority and designate responsible staff for the purpose of compliance with law and appropriate records management.

Authority:

§ 2.2-3704. Public records to be open to inspection; procedure for requesting records and responding to request; charges; transfer of records for storage, etc.

Procedures:

Agency Records Manager - The Director for Business, Planning and Research is designated as the Records Officer of the Department of Health Professions in accordance with § 42.1-76 of the Code of Virginia. As such, he/she is responsible for implementing a records management program.

Custodians of Records - The following individuals are designated as custodians of records for the purpose of records management as established by the agency's records manager and responding to requests under § 2.2-3704 of the Virginia Freedom of Information Act.

<u>Custodian</u>	<u>Records</u>
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Department of Health Professions

Policy Implementation(76-90)
Custodian of the record(76-90.2)
Adopted Date: 5/1/2017
Approved By: _____

David E. Brown

Executive Director for the Board of Medicine (Position #00076)	All records associated with the Board of Medicine
Executive Director for the Board of Pharmacy (Position #00005)	All records associated with the Board of Pharmacy
Executive Director for the Board of Nursing (Position #00009)	All records associated with the Board of Board of Nursing
Executive Director for the Board of Health Professions and Director of the DHP Healthcare Workforce Data Center (Position #00003)	All records associated with the Board of Health Professions and the DHP Healthcare Workforce Data Center
Executive Director for the Behavioral Science Boards (Position #00068)	All records associated with the Boards of Psychology, Social Work, and Counseling
Executive Director for the Board of Dentistry (Position #00006)	All records associated with the Board of Dentistry
Executive Director for the Boards of Long Term Care Administrators, Physical Therapy, and Funeral Directors and Embalmers (Position #00265)	All records associated with the Boards of Long Term Care Administrators, Physical Therapy, and Funeral Directors and Embalmers
Executive Director for the Boards of Optometry, Veterinary Medicine, Audiology and Speech-Language Pathology	All records associated with the Boards of Optometry, Veterinary Medicine, Audiology, and Speech-Language Pathology



Department of Health Professions

Policy Implementation(76-90)
Custodian of the record(76-90.2)

Adopted Date: 5/1/2017

Approved By: _____

David E. Brown

(Position #00301)	
Deputy Director for Administration (#00061)	All fiscal records not part of an application or licensee record
Department of Human Resource Management/Shared Services (#00027)	All personnel records, time sheets, & leave records
Director of Enforcement (Position- #00106)	All administrative records associated with management of investigations and reports of investigations prior to being filed with the appropriate board. All reports of unlicensed activity shall remain with this custodian or sent to the custodian of the applicable board. All administrative records associated with management of the inspections division and reports of inspections, audits and investigations prior to being filed with a Board
Senior Policy Analyst (Position #00157)	All records of the Agency Regulatory Coordinator and all studies
Director of Information Technology (Position #00140)	All records not associated with a regulatory board, with information technology and not otherwise specified in this Policy
Director of Administrative Proceedings (Position #00031)	All records associated with the Proceedings Administrative Proceedings Division and not otherwise specified in this Policy



Department of Health Professions

Policy Implementation(76-90)

Custodian of the record(76-90.2)

Adopted Date: 5/1/2017

Approved By: _____

David E. Brown

Program Manager Health Practitioners' Monitoring Program (Position # 00228)	All records associated with the Health Practitioners' Monitoring Program
Program Manager Prescription Monitoring Program (Position #00164)	All records associated with the Prescription Monitoring Program
Director (Position #00001)	All records associated with the Director's Office and not otherwise specified in this Policy

Criteria for this report:

License Status = Current Active, Current Inactive, Probation - Current Active, Adverse Findings - Current Active, Current Active-RN Privilege and Expiration Date >= Today or is null.

License Count Report for Optometry

Board	Occupation	State	License Status	License Count
Optometry				
Optometrist				
	Optometrist	Virginia	Current Active	21
	Optometrist	Out of state	Current Active	84
	Total for Optometrist			105
Professional Designation				
	Professional Designation	Virginia	Current Active	256
	Professional Designation	Out of state	Current Active	1
	Total for Professional Designation			257
TPA Certified Optometrist				
	TPA Certified Optometrist	Virginia	Current Active	1,173
	TPA Certified Optometrist	Virginia	Probation - Curren	2
	TPA Certified Optometrist	Out of state	Current Active	404
	Total for TPA Certified Optometrist			1,579
Total for Optometry				1,941

License Type	FY2011	FY2012	FY2013	FY2014	FY2015	2016	FY2017	FY2018
Optometrist	185	163	150	143	131	124	117	105
Profession Designation	225	230	245	251	250	247	266	257
TPA Certified Optometrist	1384	1434	1480	1512	1527	1486	1538	1579
Total	1794	1827	1875	1906	1908	1857	1921	1941

Virginia Department of Health Professions
Cash Balance
As of September 30, 2018

	<u>105- Optometry</u>
Board Cash Balance as June 30, 2018	\$ 505,645
YTD FY19 Revenue	6,310
Less: YTD FY19 Direct and Allocated Expenditures	101,735
Board Cash Balance as September 30, 2018	<u>410,220</u>