

**VIRGINIA BOARD OF OPTOMETRY
SPECIAL CONFERENCE COMMITTEE
DECEMBER 13, 2006**

TIME & PLACE: December 13, 2006 at 2:00 p.m., at the Department of Health Professions, 6606 West Broad Street, 5th Floor, Room 4, Richmond, Virginia.

MEMBERS PRESENT: David H. Hettler, O.D.
Gregory P. Jellenek, O.D.

STAFF PRESENT: Elizabeth A. Carter, Ph.D., Executive Director
Anne Joseph, Adjudication Analyst, APD
Carol Stamey, Administrative Assistant

MATTER SCHEDULED: **Alan G. Toler, O.D., 0618-000188**
Case No.: 104239
Dr. Toler was present and not represented by Counsel.

PRELIMINARY MATTER: The conference was conducted to discuss allegations that he may have violated portions of the laws and regulations governing the practice of optometry in the Commonwealth of Virginia. The allegations are contained in a notice of informal conference and are incorporated into the minutes as Attachment 1.

After discussing the allegations in the Notice with Dr. Toler, the Committee convened in closed session for deliberations pursuant to Section 2.2-3711.A (15) of the Code of Virginia. Having certified that the matters discussed in the preceding closed session met the requirements of Section 2.1-3712 of the Code, the Committee reconvened and announced its decision.

DECISION: After consideration of the evidence and statements concerning the allegations, the Committee voted to adopt findings of fact and conclusions of law and issued an Order with a reprimand and a five-hundred dollar (\$500.00) monetary penalty.

As provided by law, this decision shall become a final Order thirty days after service of such Order on Dr. Toler unless a written request to the Board

for a formal hearing on the allegations made against him is received from Dr. Toler within such time. If service of the Order is made by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.

ADJOURNMENT:

The conference adjourned at 3:00 p.m.

David H. Hettler, O.D.
Chair

Elizabeth A. Carter, Ph.D.
Executive Director

November 21, 2006

Alan G. Toler, O.D.
1407 Westover Hills Boulevard
Richmond, Virginia 23225

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

RE: NOTICE OF INFORMAL CONFERENCE
License No.: 0618-000188
Case No.: 104239

Dear Dr. Toler:

This is an official notification that an Informal Conference will be held before a Special Conference Committee of the Board of Optometry on **December 13, 2006, at 2:00 p.m.**, at the Department of Health Professions, 6603 W. Broad St., 5th Floor, Richmond, Virginia, Conference Room 4 (directions enclosed). If you have any additional documents to be presented on your behalf, please bring five (5) copies with you.

The conference will be conducted pursuant to § 2.2-4019, § 2.2-4021 and § 54.1-2400(10) of the Code of Virginia (1950) as amended ("Code"), and is being held to review allegations that you may have violated certain laws and regulations governing the practice of optometry in the Commonwealth of Virginia. Specifically, you may have violated § 54.1-3215(8) of the Code in that between February, 2002, and September, 2004, during the course of your treatment of Patients A, B, C, D, E, F, G, and H, for vision therapy, you billed and were reimbursed by these patients' insurance provider using an improper billing code. More specifically, you used the code for an office visit (99213), which was covered by the insurance provider, rather than the code for vision therapy (92065), which was excluded from coverage.

The purpose of an informal conference is to allow the Special Conference Committee, which consists of not less than two members of the Virginia Board of Optometry, to inquire into, and discuss with you personally, these allegations. After reviewing the alleged violations with you, the Committee will make a recommendation of appropriate action. The Committee is authorized to take the following actions:

1. The Committee may exonerate you;
2. The Committee may place you on probation with such terms as it may deem appropriate;
3. The Committee may reprimand you;
4. The Committee may impose a monetary penalty pursuant to § 54.1-2401 of the Code; or
5. The Committee may refer the case to the Board of Optometry or a panel thereof for a formal hearing. If the Committee is of the opinion that a suspension or revocation of your

license may be justified, the Committee may offer you a consent order in lieu of a formal hearing.

In lieu of proceeding to the above-scheduled informal conference, the Board hereby offers to enter into the enclosed Consent Order with you to resolve this matter. Please review this document and should you consent to its terms, have it signed before a notary public. In order for it to become effective, you must return this original Consent Order, bearing your witnessed signature, to the Board office on or before December 1, 2006. You will receive a certified copy shortly thereafter. Should the Board not receive this Consent Order from you by 4:00 p.m. on December 1, 2006, the Board will proceed with the informal conference as described herein.

You have the right to information that will be relied upon by the Board in making a decision. Therefore, I have enclosed a copy of the documents, which will be distributed to the members of the Committee and will be considered by the Committee when discussing the allegations with you and when deliberating upon your case. These documents are enclosed only with the original notice sent by certified mail, and must be claimed at the post office. Also enclosed are copies of the relevant sections of the Administrative Process Act, which govern proceedings of this nature, as well as the laws and regulations relating to the practice of optometry in Virginia that are cited in this notice.

A request to continue this proceeding must be made in writing and directed to me at the address listed on this letter. Such request must be received by 5:00 p.m. on **December 1, 2006**. Only one such motion will be considered. Absent exigent circumstances, such as personal or family illness, a request for a continuance after **December 1, 2006**, will not be considered.

You may be represented by an attorney at the informal conference. If you obtain counsel, you should do so as soon as possible, as a motion for a continuance due to the unavailability of counsel will not be considered unless received by **December 1, 2006**. Further, it is your responsibility to provide the enclosed materials to your attorney.

Should you fail to appear at the informal conference the Board may proceed to a formal administrative hearing in order to impose sanctions. Should you have any questions regarding this notice, please contact me, at (804) 662-9910.

Sincerely,

Elizabeth A. Carter, Ph.D.
Executive Director
Virginia Board of Optometry

Enclosures

cc: Sandra Whitley Ryals, Director, Department of Health Professions
Members, Special Conference Committee
Anne G. Joseph, Deputy Director, Administrative Proceedings Division
Leith D. Ellis, Senior Investigator (104239)