

**BOARD OF OPTOMETRY
BOARD MEETING
OCTOBER 29, 2009**

TIME AND PLACE: The meeting was called to order at 10:30 a.m. on Thursday, October 29, 2009, at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 3, Henrico, VA.

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

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

MEMBERS NOT PRESENT: All members were present.

STAFF PRESENT: Eric A. Gregory, Assistant Attorney General, Board Counsel
Leslie L. Knachel, M.P.H., Executive Director for the Board
Elizabeth A. Carter, Ph.D., Executive Director
Sandra Ryals, Director, Department of Health Professions
Elaine Yeatts, Senior Regulatory Analyst
Carol Stamey, Operations Manager
Terri Behr, Operations Manager

OTHERS PRESENT: Bruce Keeney, Virginia Optometric Association (VOA)
Betty Gramlich, National Association of Optometrists and Opticians
Bo Keeney, VOA
Cal Whitehead, Virginia Society of Eye Physicians and Surgeons

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

PUBLIC COMMENT: No public comment was presented.

AGENDA: The order of the agenda was revised. During the meeting Dr. Hettler added Dr. Schlabach's ARBO report and a closed session.

APPROVAL OF MINUTES: Dr. Jellenek moved to approve the minutes of the July 22, 2009, public hearing meeting. The motion was seconded and

carried.

Dr. Jellenek moved to approve the minutes of the July 22, 2009, full board meeting. The motion was seconded and carried.

DIRECTOR'S REPORT:

Introduction of Staff and Redeployment

Ms. Ryals introduced and welcomed Ms. Leslie Knachel as the new Executive Director for the Boards of Optometry, Audiology and Speech-Language Pathology, and Veterinary Medicine. Additionally, she informed the board of the creation of the Health Care Workforce Center initiated by Governor Kaine in 2008 and the need for improved efficiencies. Ms. Ryals reported that Dr. Carter will serve as the Executive Director of the Health Care Workforce Center and continue to serve as Executive Director of the Board of Health Professions.

DHP Performs

Ms. Ryals presented an update on the agency's performance in processing its disciplinary cases, licensure applications, and customer service. She reported that the Board of Optometry, as well as the overall agency, had met and exceeded its set goals. With regard to disciplinary cases, Ms. Ryals encouraged the board to continue to strive for a 100% clearance rate goal to prevent future backlog of cases. Also, Ms. Ryals reported that new target goals may be set as a result of improved efficiencies.

Budget

Ms. Ryals updated the board on the status of the state's revenues and budget bill for the January Legislative Session. She reported that the projected cash transfer from the agency is \$636,640 for FY 2010 and was based upon the number of licensees and personnel. Ms. Ryals reported that a detailed report will be provided by the Finance Department in the near future.

EXECUTIVE DIRECTOR'S REPORT:

Budget

Ms. Knachel reported that the board's current cash balance as of June 30, 2009, was \$175,870.

Statistics

Ms. Knachel presented a statistical analysis of the optometry open and closed disciplinary cases.

DISCUSSION ITEMS:

American Optometric Society (AOS), American Board of Optometry (ABO) Certification and Request for Clarification of Minimal Competency Relative to Formation of American Board of Optometry

The matter was briefly discussed and concern was expressed with regard to the usurping of the authority of the boards and a claim of licensure superiority.

Dr. Schlabach moved to table the matter until more specific information could be provided by the AOS. The motion was seconded and carried.

Continuing Education Audit and Contract Renewal

Dr. Noble moved that the continuing education contract be renewed. The motion was seconded and carried.

Draft Changes to Professional Designation Regulations

Dr. Jellenek moved that the issue of the professional designation regulations be tabled. The motion was seconded and carried.

2010 Calendar

The 2010 calendar was set as follows:

January 26 – full board/committees/hearings

March 4 – hearings

May 5 – full board/committees/hearings

July 16 – hearings

August 12 – full board/committees/hearings

October 5 – hearings

November 19 – full board/committees/hearings.

ARBO REPORT:

Dr. Schlabach reported that he and Dr. Hettler had attended the June meeting of the American Regulatory Boards of Optometry (ARBO). He noted that a Memorandum of Understanding had been issued by the AOA endorsing ABO certification. Further, Dr. Schlabach stated that the AOA's Memorandum of Understanding contained non-compete clauses that prevented ARBO from carrying out its duties to the state boards. With regard to CE tracking, he reported that the state of Kansas now incorporates the CE data obtained through OE Tracker into its licensee files resulting in a 100% audit of its licensees. Dr. Schlabach further reported that OE Tracker and COPE continued to expand with improved tracking ability.

COMMITTEE REPORTS:

Credentials Committee

Ms. Stamey reported that no licensure applications had been

received for processing to the committee.

CPT Code Committee

Dr. Jellenek reported that the committee had met and adopted the PQRI codes for incorporation into the current approved CPT Code listing. The board expressed concern with the exact wording to be included in the disclaimer notice currently in the CPT Code listing.

Dr. Noble moved that the matter be tabled until the next board meeting. Further, that staff develop proposed language for inclusion in the disclaimer notice for the board's review and approval. The motion was seconded and carried.

Newsletter Committee

Dr. Hettler requested that the newsletter be mailed out in mid-November and reminded the members who had not submitted their articles to do so.

DHP LEGISLATIVE/REGULATORY UPDATE:

Proposed Continuing Education and Standards of Conduct/Practice Regulations

Ms. Yeatts recommended that the board review and address public comment prior to adopting revisions to the proposed regulations.

18VAC105-20.70 Requirements for Continuing Education

Dr. Jellenek moved that the wording "or accrediting" be added to item G and that the Council on Optometric Practitioner Education (COPE) be moved from item H back into item G as number 8. The motion was seconded and carried.

Dr. Jellenek moved that item H (Accreditation Council for Continuing Medical Education (ACCME)) of the proposed regulations be added back to item G with the deletion of category 2. The motion was seconded and carried.

Dr. Schlabach moved to revise the wording "an independent" to "a designated" monitor in item I. The motion was seconded and carried.

Ms. Thomas moved to adopt the final regulations as amended. The motion was seconded and carried. The final regulations are incorporated into the minutes as Attachment 1.

18VAC105-20-40 Standards of Conduct (Code sites)

Ms. Yeatts informed the board, that the Commission does not recommend that Virginia Code sites be repeated in the regulations. To address the concern that licensees may not be aware of Code sites, Ms. Yeatts suggested that hyperlinks be added to the applicable Code sites on the optometry webpage.

Dr. Jellenek moved that hyperlinks be added to the Code sites on the webpage's regulations. The motion was seconded and carried.

18VAC105-20-40.4 (signature of OD)

Dr. Jellenek moved that no changes be made to the proposed regulation. The motion was seconded and carried.

18VAC105-20-40.5 (practice closure or move, patient notification)

Ms. Thomas moved that no changes be made to the proposed regulation. The motion was seconded and carried.

18VAC105-20-40.13 (expired license or professional designation)

Dr. Jellenek moved that no changes be made to the proposed regulation. The motion was seconded and carried.

18VAC105-20-45.A and B

Dr. Jellenek moved that the public comment submitted on items A and B were not relative to the board's proposed amendments and recommended no action. The motion was seconded and carried.

18VAC105-20-45.C and D

Dr. Noble moved to delete references to the FTC Contact Lens and Eyeglass Rules and to incorporate the basic requirements of the federal regulations to items C and D of the proposed regulations. The motion was seconded and carried.

18VAC105-20-45.E (maintenance of patient records)

Dr. Jellenek moved that no changes be made to the proposed regulations. The motion was seconded and carried.

18VAC105-20-45.F (records retention)

Ms. Thomas moved that the proposed regulations in item F remain as presented. The motion was seconded and carried.

Ms. Thomas moved to adopt the Standards of Conduct and Standards of Practice as discussed and amended. The motion was seconded and carried. The final regulations are incorporated into the minutes as Attachment 2.

CLOSED SESSION:

Dr. Jellenek moved that the Board convene a closed meeting pursuant to § 2.2-3711.A(7) of the Code of Virginia for consultation with legal counsel. Additionally, Dr. Jellenek moved that the Director, Ms. Ryals; board staff, Ms. Knachel, Dr. Carter, and Ms. Stamey; and board counsel, Mr. Gregory, attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the board in its deliberations.

OPEN SESSION:

Dr. Jellenek moved to certify that only public matters lawfully exempted from open meeting requirements under Virginia law were discussed in the closed meeting and only public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the board. The motion was seconded and passed.

DECISION:

Dr. Jellenek moved to form a special committee, decided by the President, to meet with the AG [Attorney General] or his deputy to discuss interpretation and information of board regulations and statutes to include the review of the disciplinary process and report back to the board. The motion was seconded. The board discussed issues related to the motion. The motion carried with Dr. Noble and Dr. Tsai opposing.

PRESIDENT'S REPORT:

No report was presented.

NEW BUSINESS:

No new business was presented.

ADJOURNMENT:

The board concluded its meeting at 1:00 p.m.

David H. Hettler, O.D.
President

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

Project 606 - Final

BOARD OF OPTOMETRY

Clarification of continuing education requirements

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

A. Each license renewal shall be conditioned upon submission of evidence to the board of 16 hours of continuing education taken by the applicant during the previous license period.

1. Fourteen of the 16 hours shall pertain directly to the care of the patient. The 16 hours may include up to two hours of recordkeeping for patient care and up to two hours of training in cardiopulmonary resuscitation (CPR).

2. For optometrists who are certified in the use of therapeutic pharmaceutical agents, at least two of the required continuing education hours shall be directly related to the ~~prescribing and administration of such drugs~~ treatment of the human eye and its adnexa with pharmaceutical agents.

3. Courses ~~that are solely designed~~ for which the primary purpose is to promote the sale of specific instruments or products and courses offering instruction on augmenting income are excluded and will not receive credit by the board.

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 December 31 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 December 31 of each year.

C. All continuing education courses shall be offered by an approved sponsor [or accrediting body] listed in subsection G [or accredited as provided in subsection H] 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 [or accredited as provided in subsection H] 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 (C.O.P.E.)~~ [8. Council on Optometric Practitioner Education (COPE).]

~~9.~~ [8. 9.] State or federal governmental agencies.

~~10.~~ [9. 10.] College of Optometrists in Vision Development.

~~11. The Accreditation Council for Continuing Medical Education of the American Medical Association for Category 1 or Category 2 credit.~~ [11. The Accreditation Council for Continuing Medical Education (ACCME) of the American Medical Association for Category 1 credit.]

~~12.~~ [10. 12.] Providers of training in cardiopulmonary resuscitation (CPR).

~~13.~~ [11. 13.] Optometric Extension Program.

~~H. [Courses accredited by the Council on Optometric Practitioner Education (COPE) or the Accreditation Council for Continuing Medical Education (ACCME) of the American Medical Association for Category 1 or Category 2 credit shall be approved.]~~

I.] 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/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 [an independent 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.

Certification Statement:

I certify that this regulation is full, true, and correctly dated.

_____ (Signature of certifying official)

Name and title of certifying official: Leslie L. Knackel, Executive Director

Name of agency: Board of Optometry, Department of Health Professions

Date: _____

Project 1098 - Final

BOARD OF OPTOMETRY

Standards of conduct

18VAC105-20-40. Unprofessional Standards of conduct.

~~It shall be deemed unprofessional conduct for any licensed optometrist in the Commonwealth to violate any statute or regulation governing the practice of optometry or to fail to~~ The board has the authority to deny, suspend, revoke or otherwise discipline a licensee for a violation of the following standards of conduct. A licensed optometrist shall:

1. Use in connection with the optometrist's name wherever it appears relating to the practice of optometry one of the following: the word "optometrist," the abbreviation "O.D.," or the words "doctor of optometry."
2. ~~Maintain records on each patient for not less than five years from the date of the most recent service rendered~~ Disclose to the board any disciplinary action taken by a regulatory body in another jurisdiction.
3. Post in an area of the optometric office which is conspicuous to the public, a chart or directory listing the names of all optometrists practicing at that particular location.
4. Maintain patient records, perform procedures or make recommendations during any eye examination, contact lens examination or treatment as necessary to protect the health and welfare of the patient and consistent with requirements of 18VAC105-20-45.
5. Notify patients in the event the practice is to be terminated or relocated, giving a reasonable time period within which the patient or an authorized representative can request in writing that the records or copies be sent to any other like-regulated provider of the patient's choice or destroyed

in compliance with requirements of § 54.1-2405 of the Code of Virginia on the transfer of patient records in conjunction with closure, sale, or relocation of practice.

6. Ensure his access to the practice location during hours in which the practice is closed in order to be able to properly evaluate and treat a patient in an emergency.

7. Provide for continuity of care in the event of an absence from the practice or, in the event the optometrist chooses to terminate the practitioner-patient relationship or make his services unavailable, document notice to the patient that allows for a reasonable time to obtain the services of another practitioner.

8. Comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of patient records and related to the provision of patient records to another practitioner or to the patient or his personal representative.

9. Treat or prescribe based on a bona fide practitioner-patient relationship consistent with criteria set forth in § 54.1-3303 of the Code of Virginia. A licensee shall not prescribe a controlled substance to himself or a family member other than Schedule VI as defined in § 54.1-3455 of the Code of Virginia. When treating or prescribing for self or family, the practitioner shall maintain a patient record documenting compliance with statutory criteria for a bona fide practitioner-patient relationship.

10. Comply with provisions of statute or regulation, state or federal, relating to the diversion, distribution, dispensing, prescribing or administration of controlled substances as defined in § 54.1-3401 of the Code of Virginia.

11. Not enter into a relationship with a patient that constitutes a professional boundary violation in which the practitioner uses his professional position to take advantage of the vulnerability of a patient or his family to include, but not limited to, actions that result in personal gain at the expense of the patient, a nontherapeutic personal involvement, or sexual conduct with a patient.

The determination of when a person is a patient is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a patient does not change the nature of the conduct nor negate the prohibition.

12. Cooperate with the board or its representatives in providing information or records as requested or required pursuant to an investigation or the enforcement of a statute or regulation.

13. Not practice with an expired or unregistered professional designation.

14. Not violate or cooperate with others in violating any of the provisions of Chapters 1 (§ 54.1-100 et seq.), 24 (§ 54.1-2400 et seq.) or 32 (§ 54.1-3200 et seq.) of Title 54.1 of the Code of Virginia or regulations of the board.

18VAC105-20-45. Standards of practice.

A. ~~A complete record of all examinations made of a patient shall include a diagnosis and any treatment and shall also include but not be limited to~~ An optometrist shall legibly document in a patient record the following:

1. During a ~~comprehensive~~ routine or medical eye examination:
 - a. ~~Case~~ An adequate case history, including the patient's chief complaint;
 - b. ~~Acuity measure~~ The performance of appropriate testing;
 - c. ~~Internal health evaluation~~ The establishment of an assessment or diagnosis; and
 - d. ~~External health evaluation; and~~

~~e. Recommendations and directions to the patients, including prescriptions~~ d. A recommendation for an appropriate treatment or management plan, including any necessary follow up.

2. During an initial contact lens examination:

a. The requirements of a ~~comprehensive~~ routine or medical eye examination as prescribed in subdivision 1 of this subsection;

b. Assessment of corneal curvature;

c. ~~Assessment of corneal/contact lens relationship~~ Evaluation of contact lens fitting;

d. Acuity through the lens; and

e. Directions for the wear, care, and handling of lenses ~~and an explanation of the implications of contact lenses with regard to eye health and vision.~~

3. During a follow-up contact lens examination:

a. ~~Assessment~~ Evaluation of ~~corneal/contact~~ contact lens relationship fitting and anterior segment health;

b. Acuity through the lens; and

c. Such further instructions as ~~in subdivision 2 of this subsection,~~ as necessary for the individual patient.

4. In addition, the record of any examination shall include the signature of the attending optometrist and, if indicated, refraction of the patient.

B. The following information shall appear on a prescription for ophthalmic goods:

1. The printed name of the prescribing optometrist;

2. The address and telephone number at which the patient's records are maintained and the optometrist can be reached for consultation;

3. The name of the patient;
4. The signature of the optometrist;
5. The date of the examination and an expiration date, if medically appropriate; and
6. Any special instructions.

C. ~~Sufficient information for complete and accurate filling of an established contact lens prescription shall include but not be limited to the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and medically appropriate expiration date.~~

[Contact lens.

1. Sufficient information for complete and accurate filling of an established contact lens prescription shall include but not be limited to the power, the material or manufacturer or both, the base curve or appropriate designation, the diameter when appropriate, and medically appropriate expiration date.

2.] An optometrist shall provide a patient with a copy of the patient's contact lens prescription [in accordance with the Fairness to Contact Lens Consumers Act (16 CFR Part 315) at the end of the contact lens fitting, even if the patient doesn't ask for it. He may first require all fees to be paid, but only if he requires immediate payment from patients whose eye examinations reveal no need for corrective eye products.

3. An optometrist shall provide or verify the prescription to anyone who is designated to act on behalf of the patient, including contact lens sellers.

4. An optometrist shall not require patients to buy contact lens, pay additional fees or sign a waiver or release in exchange for a copy of the contact lens prescription.

5. An optometrist shall not disclaim liability or responsibility for the accuracy of an eye examination.]

D. [Spectacle lens.

1.] A licensed optometrist shall provide a written prescription for spectacle lenses upon the request of the patient once all fees have been paid [immediately after the eye examination is completed. He may first require all fees to be paid, but only if he requires immediate payment from patients whose eye examinations reveal no need for corrective eye products.] In addition, he shall provide a written prescription for contact lenses upon the request of the patient once all fees have been paid and the prescription has been established and the follow-up care completed. Follow-up care will be presumed to have been completed if no reappointment is recommended within 60 days after the last visit [in accordance with the Federal Trade Commission Eyeglass Rule (16 CFR Part 456).

2. An optometrist shall not require patients to buy ophthalmic goods, pay additional fees or sign a waiver or release in exchange for a copy of the spectacle prescription.

3. An optometrist shall not disclaim liability or responsibility for the accuracy of an eye examination.]

E. Practitioners shall maintain a patient record for a minimum of five years following the last patient encounter with the following exceptions:

1. Records that have previously been transferred to another practitioner or health care provider or provided to the patient or his personal representative; or

2. Records that are required by contractual obligation or federal law to be maintained for a longer period of time.

F. From (one year after the effective date of this regulation), practitioners shall post information or in some manner inform all patients concerning the time frame for record retention and destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality.

Certification Statement:

I certify that this regulation is full, true, and correctly dated.

_____ (Signature of certifying official)

Name and title of certifying official: Leslie L. Knackel, Executive Director

Name of agency: Board of Optometry, Department of Health Professions

Date: _____