FINAL

BOARD OF OPTOMETRY
PUBLIC HEARING
JULY 22, 2009

TIME AND PLACE: The meeting was held at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 1, at 9:00 a.m.

CHAIRMAN: David H. Hettler, O.D., Chair

MEMBERS PRESENT: Gregory P. Jellenek, O.D.

STAFF PRESENT: Elizabeth A. Carter, Ph.D.
Carol Stamey, Operations Manager

OTHERS PRESENT: Betty Gramlich, NAOO
Bruce Keeney, VOA

PUBLIC COMMENT:

Consideration of Proposed Amendments to Standards of Practice or Unprofessional Conduct

Consideration of Proposed Amendments to Changes to the Continuing Education Requirements

Bruce Keeney, Virginia Optometric Association, presented public and written comment regarding the Board's proposed regulatory amendments. The proposed amendments are incorporated into the minutes as Attachment 1, written comments by Mr. Keeney are incorporated into the minutes as Attachment 2 and the transcript of the public hearing is incorporated into the minutes as Attachment 3.

Dr. Hettler noted that the deadline to receive written comment is August 7, 2009.

ADJOURNMENT: The meeting adjourned at 9:15 a.m.

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David H. Hettler, O..D., Chair

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Elizabeth A. Carter, Ph.D., Executive

Standards of conduct

Attachment 1

including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

[1]Source: Department of Health Professions

[2]Source: Virginia Employment Commission

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget on proposed regulations for 18VAC105-20, Regulations Governing the Practice of Optometry, relating to standards of professional conduct.

Summary:

The proposed amendments to the board's standards of conduct and standards of practice provide authority to address unprofessional actions or substandard patient care by optometrists. The amendments specify policy on patient records, continuity of care, prescribing for self or family, boundary violations, and compliance with law and regulations. The standard for content of a record during an eye examination is updated and clarified, and the specific requirements of federal rule for contact lens and eyeglass prescriptions are referenced.

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~~ An optometrist shall provide a patient with a copy of the patient's contact lens prescription in accordance with the Federal Trade Commission Contact Lens Rule (16 CFR Part 315).

D. A licensed optometrist shall provide a written prescription for spectacle lenses ~~upon the request of the patient once all fees have been paid. 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).

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

Continuing education

destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality.

VA.R. Doc. No. R08-1098; Filed May 20, 2009, 11:16 a.m.

Proposed Regulation

Title of Regulation: **18VAC105-20. Regulations Governing the Practice of Optometry (amending 18VAC105-20-70).**

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public Hearing Information:

July 22, 2009 - 9 a.m. - Department of Health Professions, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comments: Public comments may be submitted until 5 p.m. on August 7, 2009.

Agency Contact: Elizabeth A. Carter, Ph.D., Executive Director, Board of Optometry, 9960 Mayland Drive, Suite 300, Richmond, VA 23233, telephone (804) 367-4426, FAX (804) 527-4466, or email elizabeth.carter@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Optometry the authority to promulgate regulations to administer the regulatory system.

There is a statutory mandate for the Board of Optometry to require continuing education for renewal of licensure provided in § 54.1-3219 of the Code of Virginia.

Purpose: Issues relating to the validity and value of continuing education for the optometrist have been apparent to the board through audits of continuing education, disciplinary cases and personal observation by members. For example, the current regulation allows courses that are primarily a sales pitch for a manufacturer product, so long as the course offers a miniscule segment relating to patient care. The board has determined that such courses should not be counted toward a practitioner's renewal requirement. Likewise, prescribing and treating with therapeutic pharmaceutical agents privileges has been expanded with many more classes of drugs available to optometrists, so the subject of required continuing education in treatment with pharmaceutical agents has been clarified. By adding value and substance to the continuing education requirements, the board intends to address the need to ensure continuing competency for the health and safety of consumers of optometric services.

Substance: The following substantive changes are proposed:

1. Affirmatively state in regulation that falsifying the attestation 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. Currently, falsifying an application is grounds for disciplinary action, so this change is a clarification that makes it clear that falsifying or failure to comply with requirements for a renewal application may provide grounds.

2. Specify that an approved continuing education sponsor must provide a certificate of attendance that shows the date, location, lecturer, content hours of the course, and contact information of the provider/sponsor. The certificate of attendance must 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 monitor. The proposal also adds a requirement for an approved continuing education provider/sponsor to maintain documentation about the course and attendance for at least three years following its completion. Specifying the provision and content of a certificate of attendance and the length of time that records must be maintained by a continuing education sponsor/provider is consistent with current expectations and practices and should not represent any change or increased burden.

Issues: The advantage to the public may be that optometrists will take continuing education more closely related to patient care and to the treatment of the eye with prescription drugs. Further specification of requirements for approved sponsors will necessitate closer monitoring of participation. Optometrists will benefit from assuring that sponsors are able to verify continuing education attendance during a board audit.

There are no disadvantages to the agency or the Commonwealth. Clarification of the board's intent and policies relating to continuing education should alleviate some misunderstanding by licensee relating to approval of sponsors and filing for extensions.

The Department of Planning and Budget's Economic Impact Analysis:

Summary of the Proposed Amendments to Regulation. The Board of Optometry (Board) proposes to make amendments to the regulations that include: (1) requiring that in order to maintain approval for continuing education courses, providers or sponsors 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, and maintain documentation about the course and attendance for at least three years following its completion, (2) requiring that requests for the extension or waiver for the fulfillment of continuing education hours must be received by the Continuing Education Committee prior to December 31 of each year, and 3) changing the requirement that optometrists who are certified in the use of therapeutic pharmaceutical agents have at least two hours of continuing education "directly related to the prescribing and administration of such drugs" to "directly related to the treatment of the human eye and its adnexa with pharmaceutical agents,"

course attendance by the licensee claiming continuing education credits.

Small Businesses: Alternative Method that Minimizes Adverse Impact. No alternative methods would reduce cost while still achieving the desired policy goals.

Real Estate Development Costs. The proposed amendments do not create additional costs related to the development of real estate for commercial or residential purposes.

Legal Mandate. The Department of Planning and Budget (DPB) has analyzed the economic impact of this proposed regulation in accordance with § 2.2-4007.04 of the Administrative Process Act and Executive Order Number 36 (06). Section 2.2-4007.04 requires that such economic impact analyses include, but need not be limited to, the projected number of businesses or other entities to whom the regulation would apply, the identity of any localities and types of businesses or other entities particularly affected, the projected number of persons and employment positions to be affected, the projected costs to affected businesses or entities to implement or comply with the regulation, and the impact on the use and value of private property. Further, if the proposed regulation has adverse effect on small businesses, § 2.2-4007.04 requires that such economic impact analyses include (i) an identification and estimate of the number of small businesses subject to the regulation; (ii) the projected reporting, recordkeeping, and other administrative costs required for small businesses to comply with the regulation, including the type of professional skills necessary for preparing required reports and other documents; (iii) a statement of the probable effect of the regulation on affected small businesses; and (iv) a description of any less intrusive or less costly alternative methods of achieving the purpose of the regulation. The analysis presented above represents DPB's best estimate of these economic impacts.

[1] Source: Department of Health Professions

[2] Source: Virginia Employment Commission

Agency's Response to the Department of Planning and Budget's Economic Impact Analysis: The Board of Optometry concurs with the analysis of the Department of Planning and Budget on proposed regulations for 18VAC105-20, Regulations Governing the Practice of Optometry, relating to continuing education requirements.

Summary:

The proposed amendments (i) require that, in order to maintain approval for continuing education courses, providers or sponsors 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, and maintain documentation about the course and attendance for at least three years following its completion; (ii) require that requests for the extension or waiver for the fulfillment of continuing education hours must be received by the Continuing Education Committee prior to December 31 of each year; and (iii) require that optometrists who are certified in the use of therapeutic pharmaceutical agents have at least two hours of continuing education "directly related to the treatment of the human eye and its adnexa with pharmaceutical agents."

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 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 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 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.).~~

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

~~10.~~ 9. 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.~~

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

~~13.~~ 11. 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 monitor.

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

J. 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.

VA.R. Doc. No. R07-238; Filed May 20, 2009, 11:16 a.m.

BOARD OF PHARMACY

Proposed Regulation

Titles of Regulations: **18VAC110-20. Regulations Governing the Practice of Pharmacy (amending 18VAC110-20-20).**

18VAC110-50. Regulations Governing Wholesale Distributors, Manufacturers, and Warehousers (amending 18VAC110-50-20).

Statutory Authority: § 54.1-2400 of the Code of Virginia.

Public Hearing Information:

June 10, 2009 - 9 a.m. - Perimeter Center, 9960 Mayland Drive, 2nd Floor, Richmond, VA

Public Comments: Public comments may be submitted until August 7, 2009.

Agency Contact: Elizabeth Scott Russell, RPh, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, VA 23233-1463, telephone (804) 367-4456, FAX (804) 527-4472, or email scotti.russell@dhp.virginia.gov.

Basis: Section 54.1-2400 of the Code of Virginia provides the Board of Pharmacy the authority to promulgate regulations to administer the regulatory system.

The legal authority to promulgate regulations to set the renewal date for permitted and registered facilities is found in Chapter 330 of the 2008 Acts of Assembly.

Purpose: All licenses, permits and registrations have expired on December 31 of each year, which has created an exceptional workload for staff during one period of time. The board sought legislation to allow expiration dates for permitted or registered facilities to be set on dates different from those of licensed pharmacists or registered technicians. All facility permits or registrations that currently expire on

Attachment 2

Comments to Virginia Board of Optometry- Proposed Regulatory Revisions

Continuing Education (18VAC105-20-70)

A. **Page 2, new section H (regarding COPE)**

1. Board may wish to clarify difference between "qualified" vs "accredited"
   - terms have specific meaning by COPE and may not comply with intent as proposed
2. Need to specify that COPE or ACCME courses are NOT eligible for CE credit if in conflict with page 1, A.3.
   - otherwise, licensees will be falsely under impression that ANY course with COPE or ACCME approval is eligible for CE credit, including practice management courses

B. **Page 2, Section G in comparison with section H**

- Section G lists approved sponsors of approved CE courses and under Section I delineates in subsections 1 & 2 requirements of a sponsor (certificate of attendance, documentation, etc.)
- Section H indicates that ANY course accredited by COPE or ACCME is approved for CE credit. However, such would allow anybody not listed as an approved sponsor to offer CE for credit and NOT comply with Section I requirements of a sponsor.
- If approved sponsors are to meet requirements for certificate of attendance and to maintain documentation, such should be required for ALL courses for CE credit. Otherwise, a course offered by a non-approved sponsor is not held to the same standards as an approved sponsor.
- Suggestion would be to either eliminate automatic approval of a COPE or ACCME course or make them eligible ONLY if the non-approved sponsor meets the same requirements as an approved sponsor delineated in Section I, 1 and 2.
- Other suggestion recognizes the value of COPE approved courses but addresses this concern by stating that any accredited COPE or ACCME course offered by an approved sponsor shall be acceptable for CE credit.

C. Section H, page 2: Serious questions have been raised to **allow Category 2 ACCME** courses for CE credit. Talking to another by phone meets the criteria for Category 2.

- In that Virginia does not require any number of hours of "face to face" CE hours, allowing Category 2 ACCME courses would allow one to "talk by phone" to another provider for 16 hours to meet all of their CE requirements.
- Allowing Category 2 ACCME courses for credit has no opportunity to monitor or verify attendance.
- Suggestion is to eliminate allowing Category 2 ACCME courses for CE credit.

D. **Page 2, Section I, subsection #1**

- Subsection #1 requires either a post-test or an independent monitor

1. If a post-test is acceptable, some provisions should be included as to the credentials of the party preparing and grading the post-test. Such is necessary to validate the post-test.
2. Clarification is desired as to the meaning of an "independent monitor." Suggestion is to replace "independent" with having a "designated" monitor charged to monitor attendance. Use of a true "independent" monitor will significantly increase costs of CE and serves little purpose. Allowing a designated monitor specifically charged with monitoring attendance is cost effective and provides necessary assurance of attendance.

Standards of Conduct (18VAC105-20-40)

A. **Specifically #5, #8, #9, #10 and #14**

- On each of these sections, one must appreciate that a licensee may not be fully aware of applicable Code citations. Suggestion is that for clarity, in lieu of a citing a Code section, a summary of the requirements set forth in the applicable Code sections be delineated as part of the regulations. This recommendation will enhance compliance. Additionally, specific reference to Code sections requires rewriting regulations each time the Code sections are revised or repealed.

B. **Section #4 (page 1) Signature of attending optometrist**

- With the increased use of electronic medical records, provisions should be incorporated to recognize that a doctor's electronic signature shall be acceptable in the records.

C. **Under #7 (page 1)**

- questions abound as to how one determines a "reasonable time" to obtain services of another practitioner. Clarification is suggested.

D. **Section #13 (page 2)**

- Perhaps though not intended, simple reading of #13 infers and has been interpreted by many that a professional designation is required of all licensees. Suggestion is to clarify wording such as "(A licensed optometrist shall) not practice with an expired professional designation after having such registered with the Board and that no optometrist shall practice under a name other than their own as it appears on their license unless registering with the Board a professional designation which shall include the optometrist's name.

Standards of Practice (18VAC105-20-45)

A. **On Section B (info on an Rx for ophthalmic goods) (page 3)**

- recommend inclusion of an additional provision, which represents an established policy of the Board, that any prescription for ophthalmic goods which has expired shall be considered invalid. Such addresses patient protection by assuring patient is not provided copy of an expired and no longer valid prescription and further prevents the filling of an expired prescription.

B. **On Section B, subsection 5 (page 3)**

- recommendation is to clarify that accepted standard of care is that expiration date is one year from date of examination but that such may be less in duration if medically appropriate. Such complies with accepted guidelines of an annual comprehensive eye exam.

C. **On Sections C and D (pages 3 and 4)**

- Opposition is significant to making a violation of the FTC Contact Lens Rule additionally a sanction of the Board of Optometry. Existing regulations requiring the availability of a contact lens prescription protect the patients right to a copy of a valid contact lens prescription. Making it a violation of Board regulations to not comply with this FTC Contact Lens Rule impose additionally penalties upon a Virginia optometrist which are not applicable to ophthalmologists. Additionally, such result in increased potential penalties, above and beyond that required by the FTC. Furthermore, there is little if any evidence that Virginia optometrists are in violation of the FTC Contact Lens Rule which would merit additional penalties.
- Opposition is significant to making a violation of the FTC Eyeglass Rule additionally a sanction of the Board of Optometry. Existing regulations requiring the availability of a spectacle prescription protect the patients right to a copy of a valid eyeglass prescription. Making it a violation of Board regulations to not comply with this FTC Eyeglass Rule impose additionally penalties upon a Virginia optometrist which are not applicable to ophthalmologists. Additionally, such result in increased potential penalties, above and beyond that required by the FTC. Furthermore, there is little if any evidence that Virginia optometrists are in violation of the FTC Eyeglass Rule which would merit additional penalties.
- Suggested is to reinstate existing regulatory language to assure patients have available a copy of their valid, unexpired spectacle prescription. And suggested is to reinstate existing regulatory language to assure patients are provided a copy of their written contact lens prescription at the request of the patient once all fees have been paid and the prescription has been completed and follow up care completed.

D. **Section E, regarding patient records (page 4)**

- In that the statute of limitations for adults is two years, it may be appropriate to consider a shorter period of time that records be maintained than the current 5 years. Maintaining records for patients whom have not obtained care for 5 years increases costs to the doctor and thus to patients. Suggestion is to consider changing the 5 years to either 2 or 3 years from last date of service.

(continued)

E. **Section F, regarding record retention and destruction (page 4)**

- Suggested is to add language indicating if the optometrist who has provided the care, by written agreement, transfers the maintenance of those records to another optometrist, the optometrist to whom those records are transferred shall be responsible for maintaining the records. This reflects standard practice when a doctor retires or sells his practice and has another doctor assume maintenance of patient records.
- Questioned is the need for an optometrist to "post" information or to inform ALL patients concerning how long records are maintained and the method for destruction. The profession is unaware of any problems which would necessitate this additional requirement.

OTHER

As the Board undergoes its "periodic review" of regulations, the Board may wish to consider

- national acceptance of having a minimal number of "face to face" continuing education credit hours required.
  - face to face CE hours are readily available and accessible throughout Virginia, often at no cost to the licensee
  - Virginia may be the only state in which no face to face CE hours are required of optometrists
  - All health care professions with Board Certification available to them recognize the value of face to face CE credits by requiring same as a condition to renew Board Certification.

- clarification of professional designation regulations that registered professional designations must include the name of the optometrist (majority owner(s) who practice at that location) and clarification or designation that he/she is an optometrist be included as part of the professional designation:

  ie- Your Vision Center of Dr. John Doe, Optometrist

  Such will allow continued use of professional designations but assure compliance with Virginia law which requires an optometrist to practice under their name as it appears on their license.

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Attachment 3

BOARD OF OPTOMETRY
LEGISLATIVE/REGULATORY REVIEW COMMITTEE

PUBLIC HEARING IN RE:

PROPOSED AMENDMENTS TO STANDARDS OF PRACTICE OR UNPROFESSIONAL CONDUCT AND ON CHANGES TO THE CONTINUING EDUCATION REQUIREMENTS

9960 Mayland Drive
Board Room 1
Richmond, Virginia

July 22, 2009
9:00 a.m.

CAPITOL REPORTING, INC.
P.O. Box 959
Mechanicsville, Virginia 23111
Tel. No. (804) 788-4917

APPEARANCES:

David H. Hettler, O.D. - Chairman

Elizabeth A. Carter, PhD. - Executive Director for Board

Eric Gregory - Assistant Attorney General

Gregory P. Jellenek, O.D.

Elaine Yeatts - Senior Policy Analyst

Carol Stamey - Operations Manager

S P E A K E R S:

Bruce Keeney

DR. HETTLER: We are going to open the public comments on the proposed regulations for the Virginia Board of Optometry. I'm Dr. David Hettler, president of the Board of Optometry.

This is a public hearing to receive comments on 2 sets of proposed amendments to the regulations. The first proposal will amend standards of conduct and standards for patient records, second will amend and clarify regulations relating to continuing education. Copies of the proposed amendments may be found in the agenda package and are available on the back table.

First I'd call on persons who have signed up to comment on the standards of conduct regulations. As I call your name, please come forward. Would you tell us your name and where you are from.

DR. CARTER: I'd like to state in the event of an emergency where we have to leave the building (Dr. Carter gives emergency exit instructions).

DR. HETTLER: We may take a recess in between some of these because it's going to go on for a while.

Okay, Mr. Bruce Keeney from VOA, we'll

hear your comments on the standards of conduct.

MR. KEENEY: Dr. Hettler, if it's permissible, I'd like to go ahead and just do them all at one time.

DR. HETTLER: I think that's fine.

MR. KEENEY: Okay. What I want to do, try to make things a little bit easier, and believe me, I'm not going to go over all of these today. I appreciate the opportunity. I'm Bruce Keeney representing the Virginia Optometric Association.

Let me say this, that due to some time restraints, first of all, personally I always appreciate the opportunity to revisit and have enjoyable reading of all the rules and regulations of this fine profession and your licensing board, but I did want you to know that due to time restraints, the association has not had an opportunity to develop a, quote, formal position on anything in particular, but what I did to assist the board in its, and the committee in the beginning of this process is I widely distributed the proposed changes, the draft changes particularly to about 30 of the leadership throughout the state of the association, and what I'd like, what I have essentially presented to you is an overview of a variety of comments that have been presented, and they

are essentially recommendations that I would submit to you representing, and there's widespread consensus on those.

I do in general because the document that I gave you does not specifically address it. I did want to go on record that there seems to be widespread support of the attempt and the concept in this draft to recognize things have changed and to create a different understanding between a medical examination and a routine vision exam versus the contact lens examination.

There were 2 particular areas that I wanted to comment on that raised the significant and largest amount of concerns in opposition. Dealing with continuing education, there's, there seems to be a perhaps unintended conflict particularly dealing with COPE and ACCME language in relationship to approved sponsors.

One of the things, as an aside I'll mention, is that this particular board does not require any face to face continuing education, and it is my understanding, I have been advised that as it's worded, ACCME category 2 can in fact constitute a simple phone conversation with another party, and as such you could be allowing, and I don't believe it's the desire and

intent, nor do we think it's appropriate, to get on the phone to talk with colleague 16 hours over the phone and receive all of their CE requirements for the year.

But more particularly, and if I can explain this, you seem to have a little bit of a double standard, approved sponsors continuing education. Approved providers will now have spelled out delineated certain requirements that the association fully supports. Monitoring of attendance, certificate of attendance, clarification of what's on that certificate, maintenance of records should there be a question about that, all of that is great, we have no problem with that whatsoever.

The problem though is that you then turn around and say if a course is approved by COPE or ACCME, that it's automatically approved. Well, there are courses that are approved by COPE and ACCME that are not, in essence, you would then allow a course under that auspices to skirt all of the requirements of certification of attendance, verification, maintenance of records, et cetera. We believe it's very appropriate to have those requirements to maintain the integrity of the process for approved sponsors.

Essentially we would recommend one of two approaches, and that is that you either stipulate -- I

mean the easy way out would be just don't turn around and say a COPE or ACCME course is automatically approved because they are widely used anyway. However, one approach to be considered would be is that they are only approved if in fact presented by an approved sponsor which then ties in your standards of quality tied to it or in fact you could require that if it is presented by somebody who's not an approved sponsor, then they have to meet those things. That last one has a little bit of a problem because you don't know who they are.

The other very strong objection as a matter of policy and principle is that, and perhaps philosophy, is that this proposal has provisions set for the first time a violation of 1 of 2 FTC trade rule regulations, one being the eyeglass rule and the second the contact lens release rule would now become a specific potential sanction and disciplinary action by this board. There are some serious concerns about the appropriateness of that. There is no apparent evidence to our knowledge that there's been widespread abuse, in fact very little abuse in Virginia in those 2 areas.

The concern that we have is that with that situation you create a scenario whereby the optometrists are subject to greater disciplinary

sanctions than the opthamologists are in the same state, and additionally you create a situation that penalties for optometrists in Virginia are greater than those throughout the nation.

Simply put, the Federal Trade Commission rules are well known. If there's violations, there's an easy reporting process to do that. They address those, but they have their own penalties and provisions, some of which are fairly stiff, but we see no, we see it's inappropriate and there's no demonstrated need to turn around and a violation of those rules would then become yet an additional piggyback sanction on a Virginia licensee.

The other things I have gone over. I won't bore you with all the variety of technical things. They are there for your consideration. Some of them are questions for clarification.

The, I do wish to reiterate there seems to be a lack of appreciation historically that before, as an example, all these FTC rules, the Virginia Board of Optometry demonstrated a commitment to patient welfare by, and they are still in place, establishing regulations that assured a patient had a right to their spectacle and contact lens prescription. Those things were well established, well understood in advance to

any federal regulatory or legislative action, and I want to compliment the association's support of that, but I want to compliment the board as an entity for recognizing that and being leaders in those areas.

That's it.

DR. HETTLER: Thank you very much.

Is there any other public comment on these matters? Seeing none, I think we are adjourned.

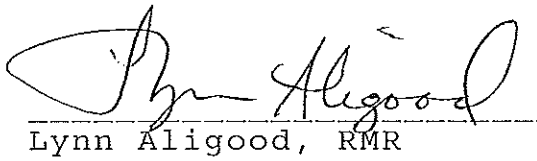
---Conclusion---

CERTIFICATE OF COURT REPORTER

I, Lynn Aligood, hereby certify that I was the Court Reporter for the public hearing conducted by the Board of Optometry Legislative/Regulatory Review Committee re proposed amendments.

I further certify that the foregoing transcript is a true and accurate record of the hearing to the best of my ability.

Given under my hand this 23rd day of July 2008.



Lynn Aligood, RMR