

**BOARD OF OPTOMETRY  
PROFESSIONAL DESIGNATION COMMITTEE  
AUGUST 27, 2009**

**TIME AND PLACE:** The meeting was called to order at 10:15 a.m. at the Department of Health Professions, 9960 Mayland Drive, 2<sup>nd</sup> Floor, Room 4, Henrico, Virginia.

**CHAIRMAN:** W. Ernest Schlabach, Jr., O.D., Chair

**MEMBERS PRESENT:** Jonathan R. Noble, O.D.  
David H. Hettler, O.D., Ex-officio

**STAFF PRESENT:** Elizabeth A. Carter, Ph.D.  
Eric Gregory, Assistant Attorney General, Board Counsel  
Elaine Yeatts, Senior Regulatory Analyst  
Carol Stamey, Administrative Assistant

**OTHERS PRESENT:** Bruce Keeney, VOA  
Bo Keeney, VOA

**PUBLIC COMMENT:** Mr. Keeney informed the Committee that he had solicited input from a wide range of optometrists on the issue of trade name regulation. He noted that a majority were opposed to elimination of professional designations because of concerns over awareness of who the practitioners are, especially when there are multiple practitioners in multiple locations.

With regard to specific professional designation titles, Mr. Keeney suggested that the principle owner of the practice be required to include his or her name in the titling. He noted that several professional designation titles do not currently contain the optometrist's name and that the agency's website's "License Lookup" does not list the registering optometrist.

**DISCUSSION OF PROFESSIONAL DESIGNATION REGULATIONS/STATUTES:** Dr. Carter informed the Committee that at the January Legislative/Regulatory Committee meeting Mr. Gregory apprised the Committee that the professional designation regulations may not have a clear statutory basis and that the issue should be placed on the Board's next meeting agenda. The Board subsequently delegated the issue to the Professional Designation Committee for further review.

Mr. Gregory provided a brief overview of the history of the establishment of the professional designation regulations. Additionally, he provided an explanation of the board's prior and current Counsel's interpretation of the § 54.1-3215(12) of

the *Code of Virginia*. Section 54.1-3215(12) provides that

*The Board may revoke or suspend a license or reprimand the licensee for any of the following causes:*

*. . . 12. Advertising, practicing or attempting to practice optometry under a name other than one's own name as set forth on the license.*

He noted that there is no direct statutory basis for the Board's formal Professional Designation program. However, the Board clearly has the authority to discipline for violations of subsection 9:

*. . . 9. Advertising which directly or indirectly deceives, misleads or defrauds the public, claims professional superiority, or offers free optometrical services or examinations.*

Beyond this, the authority to regulate commercial speech of licensees, which is entitled to a degree of protection under the U.S. and Virginia Constitutions, is limited. As such, if a professional designation titling application is denied, it could subject the Board to litigation.

It was noted that the Board of Dentistry and other boards historically had similar statutory prohibitions relating to trade names. Dentistry's issues have been addressed through § 54.1-2718 of the *Code of Virginia* which was provided as a potential model for future Optometry legislative proposal.

The Committee discussed multiple issues with regard to the repeal of the professional designation regulations and possible amendment to the statute mirroring the Board of Dentistry's statute. Concerns identified for further review were the level of priority of advertising disciplinary cases, appropriate cost reduction associated with professional designations, and how to better ensure clear identification of optometrist(s) as well as the implications for the changes relative to the Board.

Dr. Carter addressed the concern regarding disciplinary cases and stated that each complaints received is reviewed for probable cause. Those within the Board's jurisdiction are fully investigated and adjudicated appropriately. She noted that the relative overall length of time needed for non-patient care case processing has been improving as has the time to resolve patient care cases.

The Committee requested that Mr. Gregory and staff meet to develop a proposal to eliminate the regulations addressing

professional designation regulation. The next Committee meeting was scheduled for September 25, 2009 to review the proposed recommendations.

**NEW BUSINESS:**

No new business was presented.

**ADJOURNMENT:**

The meeting adjourned at 11:30 a.m.

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W. Ernest Schlabach, O.D., Chair

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Elizabeth A. Carter, Ph.D., Executive Director