

UNAPPROVED DRAFT
BOARD OF OPTOMETRY
CLOSED SESSION AND BRIEF BOARD MEETING
JANUARY 24, 2003

TIME AND PLACE: The meeting was called to order at 8:15 a.m. on Friday, January 24, 2003, at the Department of Health Professions, 6603 West Broad Street, 5th Floor, Room 3, Richmond, Virginia.

PRESIDING OFFICER: Samuel C. Smart, O.D.

MEMBERS PRESENT: Thomas R. Cheezum, O.D.
David H. Hettler, O.D.
Roxann L. Robinson, O.D.
Paula H. Boone, O.D.

MEMBERS NOT PRESENT: Jeff Smith, Citizen Member

STAFF PRESENT: Howard M. Casway, Assistant Attorney General, Board Counsel
Elaine Yeatts, Policy Analyst
Elizabeth A. Carter, Ph.D., Executive Director
Carol Stamey, Administrative Assistant

OTHERS PRESENT: Amy Tarker, McSweeney & Crump

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

CLOSED SESSION: On properly seconded motion by Dr. Cheezum, the Committee recessed Open Session and convened in Closed Session pursuant to § 2.2-3711.A.7 of the Code of Virginia for consultation with legal counsel regarding exparte' communications. Additionally, it moved that Dr. Elizabeth Carter and Carol Stamey attend the closed meeting because their presence will aid the Board in its consideration of this matter.

OPEN SESSION: On properly seconded motion by Dr. Cheezum, the Board moved to certify that only public business matters lawfully exempted from open meeting requirements and only such public business matters as were identified in the motion for Closed Session were heard, discussed or considered during the Closed Session.

The closed meeting adjourned at 8:50 a.m. and at the beginning of the open session the Board discussed the agenda item, Independent Practice as a Proprietor verses an Employee.

Howard Casway presented an overview of an opinion requested by Mr. John Hasty, Director of the Department of Health Professions, regarding mercantile practice dated July 28, 2000. Specifically, Mr. Casway discussed the employment of an optometrist by an ophthalmologist as it relates to §54.1-3205. Mr. Casway noted that an optometrist working in this type setting is governed by the statutes and regulations governing the practice of optometry; however, the statute itself contemplates that an optometrist practicing as an employee of an ophthalmologist cannot control certain kinds of advertising or a location of a practice. Mr. Casway noted that §54.1-3205 is a criminal statute strictly interpreted against the state, not bound by the express language. Further, that the language implies that an optometrist would have to lease directly from or practice in a commercial or mercantile establishment to be in violation of the statute. Mr. Casway noted that ophthalmologists are regulated by the Board of Medicine and the board has few restrictions governing how ophthalmologists conduct their business. With regard to §54.1-3205.1, Mr. Casway noted that this statute had more teeth with regard to indirect or direct control of an optometrist's license by unlicensed persons. Mr. Casway also overviewed §54.1-3215 as it may relate to the mercantile issue.

The Board adjourned its discussion at 9:20 a.m. and will resume the full Board meeting at 12:15 p.m.

ADJOURNMENT:

The Board concluded its brief meeting with Counsel at 9:20 a.m.

Samuel C. Smart, O.D., Chair

Elizabeth A. Carter, Ph.D., Executive Director for the Board