

**BOARD OF OPTOMETRY
BOARD MEETING
APRIL 25, 2003**

TIME AND PLACE: The meeting was called to order at 9:10 a.m. on Friday, April 25, 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.

MEMBERS NOT PRESENT: Jeff Smith, Citizen Member (Resigned)
Paula H. Boone, O.D.

STAFF PRESENT: Robert A. Nebiker, Agency Director
Howard Casway, Assistant Attorney General, Board Counsel
Carol Stamey, Administrative Assistant

OTHERS PRESENT: Betty Graumlich, McSweeney & Crump
Zelda Dugger, Board for Opticians

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

PUBLIC COMMENT: No public comment was presented.

REVIEW AND APPROVAL OF AGENDA: The agenda was accepted as presented.

APPROVAL OF MINUTES:

January 24, 2003 Public Hearing
On properly seconded motion by Dr. Cheezum, the Board voted unanimously to approve the minutes for the January 24, 2003 Public Hearing.

January 24, 2003 Brief Board Meeting
On properly seconded motion by Dr. Cheezum, the Board voted unanimously to approve the minutes of the January 24, 2003 brief meeting.

January 24, 2003 Full Board
On properly seconded motion by Dr. Cheezum, the Board voted unanimously to approve the minutes of the January 24, 2003 full board meeting.

BOARD DISCUSSION:

Letter from VOA Regarding Release of Expired Prescriptions
On properly seconded motion by Dr. Robinson, the Board voted unanimously that expired prescriptions do not have to be released

but copies of patient records can be requested with the information with the appropriate fee or may request a copy of the expired prescription if it is part of the record.

Mr. Nebiker requested that § 8.01-413 of the Code of Virginia be referenced in the letter of response to the Virginia Optometric Association.

Letter from Dr. Milburn Regarding National Contact Lens Enforcement Petition

The Board reviewed the request of Dr. Milburn regarding support of a petition requesting that the FDA enforce the current contact lens laws.

On properly seconded motion by Dr. Hettler, the Board voted unanimously to support the issue and forward a letter of endorsement to Dr. Milburn.

Final Approval of Voluntary Practice Regulations

On properly seconded motion by Dr. Cheezum, the Board voted unanimously to adopt the final regulations for voluntary practice.

Response to Implementation of HB1441

Mr. Nebiker provided a brief summary of HB1441. He stated that the bill was in response to a number of articles published in the Virginia Beach Pilot and other news media regarding a medical doctor who had a series of complaints over a number of years. Further, a number of years passed before the doctor's skills became questionable and when he lost his license due in part to leaving one hospital and obtaining hospital privileges in another hospital. As a result of various news media articles, it revived interests in the JLARC report of 1999 that was critical of the disciplinary process by the Department and Boards; specifically targeting the Board of Medicine.

HB 1441 requires hospitals and healthcare institutions to report violations within a specified timeframe. Mr. Nebiker stated that he believes this will increase the number of complaints. The bill also provides for a Confidential Consent Agreement (CCA) to be used in cases where there is minor misconduct with little or no injury to patients. Specifically for the Board of Optometry, this device can be utilized in cases resulting from continuing education, advertising and professional designation violations. Individual boards will determine which types of violations meet the criteria for issuance of a CCA. The CCA's are excluded from HIPDB and Freedom of the Information Act requests.

Mr. Nebiker reported that a guidance document is being drafted to clarify for hospitals and other healthcare institutions applicable laws and regulations and examples of reportable offenses. In addition, an adjudication manual is being drafted for completion by

early June and a training event is being setup for board and investigative staff on June 11, 2003.

HB1441 requires a mandatory minimum of a three-year period before a licensee with a revoked license may apply for reinstatement.

HB1441 provides for an increase in fines from \$1000 to \$5000 per violation and also provides the Department Director the authority to fine healthcare institutions for failure to report. It also provides for the Department to issue summons for unlicensed activity.

Mr. Nebiker stated that HB1441 requires boards to adopt emergency regulations to increase their fees to cover the costs of implementation. Currently it is anticipated that the Boards of Medicine and Nursing would be most affected.

HB1441 amends the standard by which the Board of Medicine takes action against its licensees. It allows the Board of Medicine to consider simple acts of misconduct rather than gross negligence in taking action against a licensee. This amendment is expected to significantly increase the number of cases that are currently investigated and reported to the Board of Medicine requiring additional resources. The implementation cost of this bill is estimated at \$1.7 million, primarily affecting the Boards of Medicine and Nursing. The Department will add approximately 28 additional positions to include more complaint intake analysts, investigators and adjudication analysts, as well as more assistance from the Attorney Generals Office. The Board of Nursing is proposing that staff be delegated the authority to conduct informal conferences to include reports to the Board that it can utilize to impose sanctions without the Board hearing the cases.

Proposed Legislation

The Board proposed the following items for legislation:

- Amend the Therapeutic Pharmaceutical Agents (TPA) formulary to include Diagnostic Pharmaceutical Agents (DPA).
- Expand §54.1-3222 to include oral schedule VI drugs and
- The requirement of TPA certification for licensure.

Mr. Casway will draft proposed language for the Board's review at its next meeting in July.

The Need for Mercantile Regulations

On properly seconded motion by Dr. Cheezum, the Board recessed Open Session and convened in Closed Session pursuant to § 2.2-3711.A.7 of the Code of Virginia for the purpose of consultation with legal counsel in the matter of mercantile regulations.

CLOSED SESSION:

Additionally, it was moved that Mr. Nebiker 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.

On properly seconded motion by Dr. Cheezum, the Board voted with Dr. Hettler abstaining that at this time we do not investigate any further clarification of the commercial and mercantile regulations as they presently exist with the Board of Optometry.

COMMITTEE REPORTS:

Professional Designation Committee

Dr. Cheezum reported that there had been an issue with licensees not advertising their professional designation titles as registered. Staff is currently reviewing the matter and will advise the Professional Designation Committee of continued issues and possible complaints.

Dr. Cheezum revisited the issue of a licensee using the name, Vision Source even though the licensee has an existing professional designation titling. For internal marketing purposes, it was agreed that the titling "affiliate of or affiliated with Vision Source" would not constitute a professional designation title.

PRESIDENT'S REPORT:

Dr. Smart reported that the ARBO Committee had met at SECO and was well received by all. The next phone meeting is scheduled for Monday night for further consolidation of proposals and implementation.

EXECUTIVE DIRECTOR'S REPORT:

Mr. Nebiker stated that Executive Order 21 (2002) had not greatly changed from the previous Executive Order.

Mr. Nebiker reviewed the statistical reports, specifically, noting the percentage that the Board is closing its cases on time. In reference to case category statistics, he stated that it appeared that eighty percent of the cases could be resolved through CCA's.

Dr. Cheezum requested that the guidelines for the CCA be presented at the next Board meeting on July 18, 2003.

NEW BUSINESS:

Dr. Cheezum, on behalf of the Board, thanked Dr. Smart for his service to the Board of Optometry and presented him with a service award.

ADJOURNMENT:

The Board concluded its meeting at noon.

Samuel C. Smart, O.D., President

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