

**VIRGINIA BOARD OF OPTOMETRY
MINUTES
OCTOBER 24, 2003**

TIME AND PLACE: The meeting was called to order at 11:10 a.m. on Friday, October 24, 2003 at the Department of Health Professions, Conference Room 3, 6603 W. Broad St., Richmond, VA

PRESIDING OFFICER: Thomas R. Cheezum, O.D., President

MEMBERS PRESENT: Roxann L. Robinson, O.D.
Paula H. Boone, O.D.
David H. Hettler, O.D.
William T. Tillar, O.D.
Cathleen Burk

STAFF PRESENT: Elizabeth A. Carter, Ph.D., Executive Director
Terri H. Behr, Administrative Assistant
Howard Casway, Assistant Attorney General

OTHERS PRESENT: Bill Ferguson, Board for Opticians
Betty Graumlich, NAOO
Bruce Keeney, Virginia Optometric Association
Stefan Cox

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

WELCOME TO NEW MEMBERS: Dr. Cheezum welcomed Dr. Tillar and Ms. Burk to the Board.

APPROVAL OF AGENDA: There were no changes or additions to the agenda.

APPROVAL OF MINUTES: On properly seconded motion by Dr. Robinson, the board voted unanimously to approve the minutes of the meeting of July 18, 2003 as presented.

PUBLIC COMMENT: Bruce Keeney, with the Virginia Optometric Assoc., addressed the Board regarding two issues for consideration. The first issue was one of problems with certain sponsors of continuing education programs that are only offering their courses to a select group of optometrists and turning others away. He stated that this seems to be prevalent among COPE approved courses. Mr. Keeney said that they have some vendors

telling optometrists that a course is COPE approved, but the course may have been submitted but not approved yet. Mr. Keeney stated that all CE programs should be available to all licensees and the process should be open to inspection. He believes that there is abuse in the system and wanted to bring these issues to the Board's attention. Dr. Carter stated that COPE needs to know about these problems and they should be reported directly to COPE and to the Board. Specific problems can be addressed, individually. If problems persist, then it becomes a matter for Virginia to bring to the Association of Regulatory Boards of Optometry.

The other issue that Mr. Keeney addressed is that certain third party insurance plans, as a condition of participating on the provider panel, are mandating that the participating provider purchase a certain dollar amount of ophthalmic materials from a company that manufactures that product which is owned and operated by or affiliated with that managed care company. He stated that there is a growing concern that this is a clear situation of fee splitting.

ELECTION OF OFFICERS:

The following slate of officers was nominated:

Chair – Dr. Cheezum
Vice-Chair – Dr. Robinson
Secretary/Treasurer – Dr. Boone

On properly seconded motion by Dr. Tillar, the Board voted unanimously to close the nominations.

On properly seconded motion by Dr. Hettler, the Board voted unanimously to approve the nominations.

The following appointments were made to the Board's standing committees:

C.E. Committee – Dr. Tillar, Dr. Robinson
CPT Codes – Dr. Hettler, Dr. Robinson
Legislative/Regulatory Review – Dr. Cheezum, Ms. Burk, Dr. Hettler
TPA Formulary – Dr. Tillar replaced Dr. Smart

BOARD DISCUSSIONS:

Third Party Vision Plans

The Board discussed a letter from Bruce Keeney of the VOA regarding Third Party Vision Plans.

CLOSED SESSION:

On properly seconded motion by Dr. Hettler, The Board voted unanimously to recess open session and immediately reconvene in closed session pursuant to §2.1-344(A)(7) of the Code of Virginia (1950), as amended, for the purpose of consultation with counsel regarding third party vision plans. It was also moved that Elizabeth Carter, Howard Casway and Terri Behr remain in closed session as their presence was deemed necessary and would aid the Board in its discussion.

OPEN SESSION:

On properly seconded motion by Dr. Hettler, the Board recessed closed session and reconvened in open session and unanimously voted to certify that, to the best of each member's knowledge, (1) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the previous closed meeting and (2) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board of Optometry, as required by §2.1-344.1 of the Code of Virginia.

On properly seconded motion by Dr. Hettler, the Board voted unanimously that this matter be referred to the Bureau of Insurance, the Consumer Affairs Division of the Attorney General's Office and the Federal Trade Commission for review and possible action.

VACATED ORDERS:

Mr. Casway explained that there was a Board of Medicine case disciplinary case that was appealed to the Circuit Court and to the Court of Appeals (i.e., *Goad v. Virginia Board of Medicine*). Because of the outcome of this case, there is now a change in what is considered public information. The department will no longer divulge Vacated Orders as the judge has interpreted that they do not exist relative to FOIA

requests.

CHANGES TO CPT CODES:

Dr. Cheezum addressed several changes that need to be made to the CPT Codes. They are as follows:

- There are now two codes for pachymetry, which is the determination of corneal thickness, bilateral. They are 0025T and 76514 which will eventually replace 0025T.
- Two DME codes which are not recognized any longer are A4262 for Collagen Punctal Plugs and A4263 for Silicone Punctal Plugs

APPLICANT REQUESTS:

Howard Ossen, O.D. sent an email to Ms. Stamey asking for clarification on what constitutes a regional optometric organization and specifically, if Eye Care Associates, Inc., a Virginia non-stock corporation that is a regional optometric organization meets the criteria. The Board agrees that an optometric organization should have open membership with the business of eyecare not being a primary reason for its existence and would deny that Eye Care Associates meets the criteria.

Dr. Carter explained that an applicant had applied over a year ago for licensure. Ms. Stamey had notified the applicant by email of the documents that were still missing from her file. The applicant claims she did not receive the email, but the Board office has evidence of it being sent. The applicant is now withdrawing her application and is requesting a refund of the monies paid.

On properly seconded motion by Dr. Boone, the Board voted unanimously that a refund is not in order because it took staff time to process the application and the application package has a list of all the documents needed to complete the file in order to become licensed.

2004 CALENDAR:

The Board set the 2004 calendar as follows:

January 20, 2004
March 26, 2004
June 30, 2004
October 1, 2004

The Board also set the third Friday in January 2005, which is January 21, 2005, as a meeting date.

COMMITTEE REPORTS

CREDENTIALS COMMITTEE: Dr. Boone reported that between July 1, 2002 and June 30, 2003 that 11 endorsement applications had been approved. She also stated that we currently have 124 Professional Designations.

CE COMMITTEE: Dr. Robinson had nothing new to report for this committee.

CPT CODES: Dr. Hettler had nothing new to report for this committee.

TPA FORMULARY: Dr. Cheezum had nothing new to report for this committee.

NEWSLETTER: Dr. Cheezum reported that the latest mini newsletter had just been sent out. The topics included were the renewal in December, continuing education requirements, information about website addresses and the new Confidential Consent Agreements. It has been e-mailed to those licensees requesting e-mail delivery. It is also on the agency website. Dr. Carter reported that we currently have about 780 e-mail addresses filed for this purpose. This is over half of the licensees.

The Board discussed continuing education auditing. For COPE approved courses to be credited, they agreed that the licensees' certificates must contain the COPE number.

LEGISLATIVE/REGULATORY: Dr. Carter reported that we will not know whether any of the Board's legislative proposals will be included in the Governor's package until sometime in December.

PRESIDENT'S REPORT: Dr. Cheezum stated that he looks forward to serving as president again and thanked the Board for their confidence.

EXECUTIVE DIRECTOR'S REPORT: Dr. Carter reported that staff is trying to maintain a good liaison between the Board for Opticians

and the board office. She introduced Bill Ferguson, Executive Director for the Board of Opticians, who was attending the meeting. The Board for Opticians wants the Board of Optometry to be aware of a media alert that they have issued about the dangers of cosmetic contact lenses and are asking for the Board of Optometry's help in disseminating the information. Mr. Ferguson stated that it has been disseminated to schools, newspapers, radio stations, etc. Dr. Carter stated that it will be placed on the Board's website also.

Dr. Carter reported on the case categories for fiscal year 2001 through fiscal year 2003. It is for reference purposes so that the Board can see a breakdown of the kinds and numbers of cases they are reviewing.

Dr. Carter reported that there are three pieces of federal legislation before Congress that relate to contact lenses. One of them is HR2218 that will formally affect the Food and Drug Administration Regulations by requiring that even cosmetic, plano contact lenses be deemed to be medical devices. It has not passed yet. She stated that there are two other bills, HR2221 and HR3140 that relate to a requirement for prescribers of contact lenses to provide patients with their prescriptions. Dr. Carter stated that the Board's regulations generally address this requirement already. However, there is some language that would require an expiration date to be no less than twelve months from issuance, unless there is a medical reason for a shorter period.

NEW BUSINESS:

Dr. Hettler stated that at the last meeting they discussed reviewing the parts of the Regulations that relate to visit types and correlating that to the E & NM codes. He stated that the Board regulations talk about an exam type that lists specific tests that is not in sync with the current coding techniques that are commonly used by virtually all insurance carriers. He would like to look into revising the regulations regarding what is included in eye exams to have them correlate more closely with the insurance carrier codes.

Dr. Cheezum stated that historically the Board

members did not want to get into mandating all points of what is included in an eye exam. Dr. Cheezum said that the Legislative/Regulatory Committee will meet in January and review this issue.

MEETING ADJOURNED:

There being no further business, upon properly seconded motion by Dr. Hettler, the Board voted unanimously to adjourn the meeting at 1:30 p.m.

Thomas R. Cheezum, O.D., President

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