

**BOARD OF OPTOMETRY  
LEGISLATIVE/REGULATORY REVIEW COMMITTEE MEETING  
MAY 9, 2008  
RICHMOND, VA**

- TIME AND PLACE:** The meeting was called to order at 9:03 a.m. on Friday, May 9, 2008 at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2<sup>nd</sup> Floor, Room 1, Richmond, Virginia.
- PRESIDING CHAIRMAN:** David H. Hettler, O.D.
- MEMBERS PRESENT:** Jonathan R. Noble, O.D.
- MEMBERS NOT PRESENT:** Jacquelyn S. Thomas, Citizen Member
- STAFF PRESENT:** Elizabeth A. Carter, Ph.D., Executive Director  
Amy Marschean, Assistant Attorney General, Board Counsel  
Elaine Yeatts, Senior Regulatory Analyst  
Carol Stamey, Operations Manager
- OTHERS PRESENT:** Bo Keeney, Virginia Optometric Association  
Eric B. Martin, Reed Smith, LLP
- QUORUM:** With two members of the Committee present, a quorum was established.
- PUBLIC COMMENT:** No public comment was presented.
- APPROVAL OF MINUTES:** On properly seconded motion by Dr. Noble, the committee voted unanimously to approve the minutes of the September 26, 2007 meeting.
- DISCUSSION ITEMS:** **Section 18 VAC 105-20-40 Optometry Regulations**  
The Committee reviewed the current regulations titled "Unprofessional Conduct" and proposed the following amendments as well as a title change::
- 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 18VAC 105-20-45.

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 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 violation 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.) or regulations of the board.

On properly seconded motion by Dr. Noble, the Committee voted unanimously to approve the proposed changes to the regulations for presentation to the full board.

#### **Section 18 VAC 105-20-50 Optometry Regulations**

On properly seconded motion by Dr. Noble, the Committee voted unanimously to table the matter.

#### **Section 18 VAC 105-20-75 Optometry Regulations**

Ms. Yeatts reported that HB 1222 had been approved which amended the regulations for registration for voluntary practice by out-of-state licensees. The regulations with proposed amendments are as follows:

#### **Registration for voluntary practice by out-of-state licensees.**

Any optometrist who does not hold a license to practice in Virginia and who seeks registration to practice on a voluntary basis under the auspices of a publicly supported, all volunteer, nonprofit organization ~~with no paid~~

employees that sponsors the provision of health care to populations of underserved people throughout the world shall:

1. File a complete application for registration on a form provided by the board at least ~~45~~ five days prior to engaging in such practice. An incomplete application will not be considered;
2. Provide a complete list of professional licensure in each state in which he has held a license and a copy of any current license;
3. Provide the name of the nonprofit organization, the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with provisions of subdivision 2 of [§54.1-3202](#) of the Code of Virginia.

On properly seconded motion by Dr. Noble, the Committee voted unanimously to approve the amendments to Section 18 VAC 105-20-75 of the regulations for presentation to the full board.

### **Section 18 VAC 105-20-45 Optometry Regulations**

The Committee reviewed the current regulations and proposed the following amendments:

~~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.~~ 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;
  - 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 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 patients contact lens prescription in accordance with the Federal Trade Commission Contact Lens Rule (16 C.F.R. 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 C.F.R. Part 456).~~

E. Maintenance of patient records. 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. Record destruction. 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 destruction. Patient records shall only be destroyed in a manner that protects patient confidentiality.

On properly seconded motion by Dr. Noble, the Committee voted unanimously to approve the proposed amendments to the Standards of Care regulatory section. Further, that Sections 18 VAC 105-20-40 and 18 VAC 105-20-45 be combined and submit as one NOIRA.

**NEW BUSINESS:**

No new business was presented.

**ADJOURNMENT:**

The meeting adjourned at 11:00 a.m.

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David H. Hettler, O.D., Chair

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