

**DRAFT
BOARD OF OPTOMETRY
SUMMARY SUSPENSION/BOARD MEETING
AUGUST 23, 2004**

TIME AND PLACE: The meeting was called to order at 1:05 p.m. on Monday, August 23, 2004 at the Department of Health Professions, Conference Room 3, 6603 W. Broad St., Richmond, VA.

PRESIDING OFFICER: David H. Hettler, O.D

MEMBERS PRESENT: Paula H. Boone, O.D.
Cathleen Burk
Gregory P. Jellenek, O.D.
W. Ernest Schlabach, Jr., O.D.
William T. Tillar, O.D.

MEMBERS ABSENT: No absentees.

STAFF PRESENT: Emily Wingfield, Assistant Attorney General, Board Counsel
William Clay Garrett, Assistant Attorney General
Cynthia Gaines, Senior Adjudication Analyst
Elizabeth A. Carter, Ph.D., Executive Director for the Board
James Banning, APD
Susan Beasecker, Compliance
Ann Tiller, Compliance Manager
Carol Stamey, Administrative Assistant

OTHERS PRESENT: Bill Ferguson, Board for Opticians
Cal Whitehead, VSO
Bruce Keeney, VOA

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

SUMMARY SUSPENSION OF THE LICENSE OF ARTHUR M. MOODY, OD. Mr. Garrett, Assistant Attorney General, presented evidence on behalf of the Commonwealth that the continued practice of optometry by Arthur M. Moody, III, O.D., license number 0601001169, may present a substantial danger to the health and safety of the citizens of the Commonwealth and requested that the Board summarily suspend Dr. Moody's license pursuant to § Va. Code 54.1-2408.1.

CLOSED SESSION: On properly seconded motion by Ms. Burk, the Board convened a closed meeting pursuant to Section 2.2-3711.A.28 of the Code of Virginia for the purpose of deliberation to reach a decision in the matter of Arthur M. Moody, O.D.

OPEN SESSION: On properly seconded motion by Ms. Burk, the Board certified that the matters discussed in the preceding closed

session met the requirements of Section 2.2-3711.A.28 of the Code, the Board convened and announced its decision.

Upon properly seconded motion by Dr. Tillar, the Board voted to summarily suspend the license of Arthur M. Moody, III, O.D. and to offer a Consent Order that included the option for Dr. Moody to voluntarily surrender his license. Further, absent Dr. Moody's acceptance of the voluntary surrender, a formal hearing is to be scheduled for October 6, 2004.

**ADJOURNMENT OF SUMMARY
SUSPENSION:**

The summary suspension portion of the meeting adjourned at 1:50 p.m.

REGULAR BOARD MEETING:

The regular board meeting was called to order at 2:00 p.m.

GENERAL PUBLIC COMMENT:

No public comment was presented.

INTRODUCTION:

A brief introduction of board members and staff was held with a welcome to the new board members, Dr. Jellenek and Dr. Schlabach.

**REVIEW AND APPROVAL OF
AGENDA:**

◆Action - On properly seconded motion by Dr. Tillar, the Board voted unanimously to approve the agenda as presented.

APPROVAL OF MINUTES:

◆Action - On properly seconded motion by Dr. Boone, the Board voted unanimously to approve the minutes of the June 30, 2004 meeting.

**REPORT OF THE TPA FORMULARY
COMMITTEE AND CONSIDERATION
OF PROPOSED REGULATIONS:**

Dr. Tillar directed the Board to the Committee's report in the agenda package.

Ms. Yeatts requested that the Board consider adoption of two separate actions:

- 1) emergency regulations to move the language of Chapter 30 (repealing) to Chapter 20 which includes TPA requirements for certification, fees and continuing education.
- 2) under the APA exemption, adopt the proposed regulations 18 VAC 105-20-46 and 47 for the treatment guidelines in the TPA Formulary.

◆Action - On properly seconded motion by Dr. Boone, the Board voted unanimously to adopt emergency regulations and to issue a Notice of Intended Regulatory Action to include sections 18 VAC 105-20-5, 10, 15, 16, 20 and 70.

◆Action - On properly seconded motion by Dr. Jellenek, the Board voted unanimously to add topical oral immunosuppressive agent as item h to 18 VAC 105-20.47.3.

◆ **Action** - On properly seconded motion by Dr. Tillar, the Board voted unanimously to amend 18 VAC 105-20-46.C.3 as follows: *If there are no medical contraindications, an oral osmotic agent may be administered as well as an oral carbonic anhydrase inhibitor and any other medically accepted, Schedule III, IV and VI oral antiglaucomic agent as may become available; and.*

◆ **Action** - On properly seconded motion by Dr. Tillar, the Board voted unanimously to amend 18 VAC 105-20-46.B.4, 18 VAC 105-20-46.C, 18 VAC 105-20-46.C.3 with an addition of item D as follows:

18 VAC 105-20-46.B4 - deleted the word “anterior”;
18 VAC 105-20-46.C - deleted the word “acute”;
18 VAC 105-20-46.C.3 - added Schedule III, IV and VI; and.

New item D in Section 46 - Oral Schedule VI immunosuppressive agents shall be used only when the condition fails to appropriately respond to other treatment regimens, is prescribed in consultation with a physician and includes monitoring of systemic effects.

A copy of the final proposed language for sections 18 VAC 105-20-46 and 18 VAC 105-20-47 is incorporated into the minutes as Attachment 1.

**MANDATORY REPORTING
REQUIREMENTS, §63.1-1606(A)
GAIL JASPEN:**

Ms. Jaspén presented an overview on the mandatory reporting requirements of §63.2-1606(A) and it is incorporated into the minutes as Attachment 2.

ELECTIONS:

◆ **Action** - On properly seconded motion by Dr. Tillar, the Board voted unanimously to elect Dr. Hettler as Board President.

◆ **Action** - On properly seconded motion by Dr. Tillar, the Board voted unanimously to elect Dr. Boone as Vice-President of the Board.

◆ **Action** - On properly seconded motion by Dr. Jellenek, the Board voted unanimously to elect Dr. Tillar as Secretary of the Board.

Dr. Hettler made the following Committee assignments:

Dr. Jellenek to fill the vacancy positions on the CE, Newsletter and Legislative/Regulatory Review Committees.
Dr. Schlabach to fill the vacancy positions on the CPT, Newsletter and PD Committees.

NEW BUSINESS:

No new business was presented.

ADJOURNMENT:

The meeting adjourned at 4:00 p.m.

David H. Hettler, O.D., Acting Chair

Elizabeth A. Carter, Ph.D.
Executive Director

PROPOSED AMENDED REGULATIONS

Promulgated under § 54.1-3223 of the Code of Virginia

(Public Comment received until 10/6/04)

18VAC105-20-46. Treatment guidelines for TPA certification.

A. TPA-certified optometrists may treat diseases and abnormal conditions of the following structures of the human eye and its adnexa which may be appropriately treated with pharmaceutical agents as referenced in 18VAC105-20-47:

1. Lids and adnexa;
2. Lacrimal system;
3. Cornea;
4. Conjunctiva; and
5. Episclera.

B. In addition, the following may be treated:

1. Glaucoma (excluding the treatment of congenital and infantile glaucoma). Treatment of angle closure shall follow the protocol prescribed in subsection C of this section.
2. Ocular-related post-operative care in cooperation with patient's surgeon.
3. Ocular trauma to the above tissues as in subsection A of this section.
4. Uveitis.
5. Anaphylactic shock (limited to the administration of intramuscular epinephrine).

C. The protocol for treatment of angle closure glaucoma shall be as follows:

1. Treatment shall be limited to the initiation of immediate emergency care with appropriate pharmaceutical agents as prescribed by this chapter;
2. Once the diagnosis of acute angle closure glaucoma has been established by the optometrist, the ophthalmologist to whom the patient is to be referred should be contacted immediately;

3. If there are no medical contraindications, an oral osmotic agent may be administered as well as an oral carbonic anhydrase inhibitor and any other medically accepted, Schedule III, IV or VI, oral antiglaucomic agent as may become available; and

4. Proper topical medications as appropriate may also be administered by the optometrist.

D. An oral Schedule VI immunosuppressive agent shall only be used when 1) the condition fails to appropriately respond to any other treatment regimen; 2) such agent is prescribed in consultation with a physician; and 3) treatment with such agent includes monitoring of systemic effects.

18VAC105-20-47. Therapeutic pharmaceutical agents.

A TPA-certified optometrist, acting within the scope of his practice, may procure, administer and prescribe therapeutic pharmaceutical agents (or any therapeutically appropriate combination thereof) to treat diseases and abnormal conditions of the human eye and its adnexa within the following categories:

1. Oral analgesics - Schedule III, IV and VI narcotic and non-narcotic agents.

2. Topically administered Schedule VI agents:

a. Alpha-adrenergic blocking agents;

b. Anesthetic (including esters and amides);

c. Anti-allergy (including antihistamines and mast cell stabilizers);

d. Anti-fungal;

e. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);

f. Anti-infective (including antibiotics and antivirals);

g. Anti-inflammatory;

h. Cycloplegics and mydiratics;

i. Decongestants; and

j. Immunosuppressive agents.

3. Orally administered Schedule VI agents:

a. Aminocaproic acids (including antifibrinolytic agents);

b. Anti-allergy (including antihistamines and leukotriene inhibitors);

c. Anti-fungal;

d. Anti-glaucoma (including carbonic anhydrase inhibitors and hyperosmotics);

e. Anti-infective (including antibiotics and antivirals);

f. Anti-inflammatory (including steroidal and non-steroidal);

g. Decongestants; and

h. Immunosuppressive agents.

B. Schedule I, II and V drugs are excluded from the list of therapeutic pharmaceutical agents.

C. Over-the-counter topical and oral medications for the treatment of the eye and its adnexa may be procured for administration, administered, prescribed or dispensed.

<p>When and How to Report Disciplinary Actions, Impairment, and Misconduct of Health Care Practitioners</p> <p>House Bill No. 1441 (2003 Session) House Bill No. 577 (2004 Session)</p> <p>Gail D. Jaspen Chief Deputy Director Virginia Department of Health Professions August 2004</p> <p style="text-align: right;">1</p>	<p>2003 & 2004 Legislative Changes</p> <ul style="list-style-type: none"> ➤ Clarify <u>when</u> reports are to be made ➤ Require <u>earlier</u> reporting to DHP ➤ Specify the <u>information</u> to be reported ➤ Provide for enhanced <u>penalties</u> for noncompliance <p style="text-align: right;">2</p>
<p style="text-align: center;">Reporting Laws</p> <ul style="list-style-type: none"> ➤ Va. Code § 54.1-2400.6 (2004) <i>(formerly § 54.1-2906)</i> ➤ Va. Code § 54.1-2400.7 (2004) <i>(formerly § 54.1-2907)</i> ➤ Va. Code § 54.1-2908 (2003) ➤ Va. Code § 54.1-2909 (2003) <p style="text-align: right;">3</p>	<p style="text-align: center;">➤ Reporting Laws Va. Code § 54.1-2400.6</p> <p>Hospitals and other health care institutions to report:</p> <ul style="list-style-type: none"> • impairment, • misconduct, • disciplinary action begun or taken, and • resignation while under investigation <p><i>of any person licensed, certified or registered by a health regulatory board or, beginning 2005, holding a multistate license to practice nursing</i></p> <p>State Health Commissioner and Commissioner of Dept. of Social Services to report</p> <ul style="list-style-type: none"> • information of which agencies may become aware indicating misconduct <p style="text-align: center;">by any such health professional</p> <p style="text-align: right;">4</p>

Reporting Laws (cont.)

Va. Code § 54.1-2400.7

Every practitioner licensed or certified by a health regulatory board or who holds a multistate licensure privilege to practice nursing who treats professionally *any other person so licensed or certified* or holding a multistate licensure privilege,

shall report, *except as prohibited by federal law,*

when such other health professional is treated for a mental disorder, chemical dependency or alcoholism

unless the treating practitioner determines there is a reasonable probability that the professional being treated is competent to continue practice or would not constitute a danger to himself, his patients, or the public.

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Reporting Laws (cont.)

Va. Code § 54.1-2908

The presidents of professional organizations are required to report disciplinary action resulting from:

- intentional or negligent conduct that causes or is likely to cause injury to a patient,
- breach of professional ethics,
- incompetence,
- moral turpitude,
- drug addiction, or
- alcohol abuse

taken against any member licensed by the BOM

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Reporting Laws (cont.)

Va. Code § 54.1-2909

Persons licensed by the BOM, presidents of professional organizations, *state-licensed* health care institutions, malpractice insurance carriers, and HMOs are required to report

with regard to persons licensed by the BOM

disciplinary actions, malpractice judgments, voluntary surrenders of license, settlements of malpractice claims, and any other evidence indicating that such person

- may be professionally incompetent,
- has engaged in misconduct that causes or is likely to cause injury,
- has engaged in unprofessional conduct, or
- may be mentally or physically unable to practice safely.

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A closer look at ...

***Va. Code § 54.1-2400.6
as amended by HB 1441 (2003)
and HB 577 (2004)***

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A closer look... . . . Va. Code § 54.1-2400.6

➤ Who reports:

CEO and Chief of Staff of every hospital or other health care institution in the Commonwealth.

“Health care institution” *includes*:

- general hospitals,
- outpatient surgical hospitals,
- nursing homes and certified nursing facilities,
- licensed mental or psychiatric hospitals,
- every facility operated by DMHMRSAS, including training centers, and
- hospitals operated by UVa and VCU.

State Health Commissioner
Commissioner of DSS

➤ Who is reported:

Any person licensed, certified or registered by a health regulatory board and, beginning 1/1/05, any person holding a multistate licensure privilege to practice nursing

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A closer look... . . . Va. Code § 54.1-2400.6

➤ What is reported / when:

1. When a CEO/COS becomes aware *in his official capacity*:

a. that a practitioner is in need of treatment for or has been admitted or committed to treatment for substance abuse or psychiatric illness which may render practitioner a danger to himself or others.

- Report admission or commitment within 5 days.
- Report need for treatment within 30 days.

b. that a *reasonable probability* exists that a practitioner may have engaged in *unethical, fraudulent or unprofessional conduct*.

- Report within 30 days of determining reasonable probability exists.

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Defining Terms used in Va. Code § 54.1-2400.6

“*In his official capacity*” = when information is imparted to or

received by the CEO/COS while engaged in official duties or by

virtue of his position.

“*Reasonable Probability*” = a likelihood greater than a mere possibility.

To determine “reasonable probability,” a CEO/COS may undertake reasonable investigation or consultation, as needed, with internal boards or committees. If information received is of sufficient credibility and is sufficiently complete, no investigation by CEO/COS may be needed.

“*Unethical, fraudulent or unprofessional conduct*” – as defined by the laws and regulations governing the profession.

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A closer look... . . . Va. Code § 54.1-2400.6 (cont.)

➤ What is reported / when (cont.)

2. **Any** disciplinary action *taken or begun* **against a practitioner as a result of** intentional or negligent conduct that causes or is likely to cause injury, a breach of professional ethics, professional incompetence, moral turpitude, or substance abuse.

- Report within 30 days of notifying practitioner in writing of disciplinary action.

3. **Any** voluntary resignation, restriction, or expiration of privileges of any health professional while under investigation or subject to disciplinary proceedings **related to possible** intentional or negligent conduct that causes or is likely to cause injury, medical incompetence, unprofessional conduct, moral turpitude, mental or physical impairment, or substance abuse.

- Report within 30 days.

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<p><i>A closer look. . . Va. Code § 54.1-2400.6 (cont.)</i> ➤ To whom / Content / Penalty:</p> <p>Report in writing to Director of DHP. Include:</p> <ul style="list-style-type: none"> • Name and address of subject • Full description of the circumstances • Names and contact information of persons with knowledge of the facts • Names and contact information of persons from whom the institution sought information • All relevant medical records if patient care or practitioner health is at issue. <p>Give professional who is the subject of the report to DHP an opportunity to review the report. Practitioner may submit a separate report.</p> <p style="text-align: right;">13</p>	<p>Additional provisions of Va. Code § 54.1-2400.6 (cont.) If report is sent to National Practitioner Data Bank, provide notice to DHP.</p> <p>No requirement to submit any proceedings, minutes, records, or reports that are privileged under peer review statute (§ 8.01-581.17), except that there is no bar to making the required report or to submitting medical records that are necessary to investigate professional conduct.</p> <p>No person has an obligation to report if such person has actual knowledge that matter has been reported.</p> <p>Certain records and information in connection with treatment for drug or alcohol abuse are subject to confidentiality under federal law and are exempt from these reporting requirements.</p> <p style="text-align: right;">14</p>
<p>Additional provisions of Va. Code § 54.1-2400.6 (cont.) <i>If you are wondering whether to make a report, consider . . .</i></p> <p>Persons making report, testifying in a proceeding as a result of a report, or providing information pursuant to a DHP investigation, in good faith, shall be immune from civil liability.</p> <p>A civil penalty up to \$ 25,000 may be assessed by Director of DHP for a failure to report. Loss of Medicare / Medicaid certification and denial of issuance or renewal of licensure until penalty is paid.</p> <p style="text-align: right;">15</p>	<p style="text-align: center;"><i>A closer look at ...</i> Va. Code § 54.1-2909 as amended by HB 1441 (2003)</p> <p style="text-align: right;">16</p>

<p>A closer look. . . Va. Code § 54.1-2909</p> <p>➤ Who reports:</p> <ul style="list-style-type: none"> • Persons licensed by the BOM • Presidents of professional organizations whose members are regulated by the BOM • Health care institutions <i>licensed by the Commonwealth</i> • Any malpractice insurance carrier of a person who is the subject of a judgment or settlement • HMOs <p>➤ Who is reported:</p> <ul style="list-style-type: none"> • Any person licensed by the BOM: <ul style="list-style-type: none"> • Doctors of Medicine, including interns and residents • Doctors of Osteopathy • Chiropractors • Podiatrists • Physician Assistants • Radiologic Technologists • Radiologic Technologists. Limited • Respiratory care providers • Occupational Therapists • Acupuncturists • Nurse Practitioners <p style="text-align: right;">17</p>	<p>A closer look. . . Va. Code § 54.1-2909</p> <p>➤ What is reported / when:</p> <ol style="list-style-type: none"> 1. Disciplinary action taken against person licensed by BOM (including oneself) in another state or a federal health institution, or the voluntary surrender of a license in another state while under investigation 2. Any malpractice judgment or settlement against such a practitioner 3. Any evidence indicating a reasonable probability that a person licensed by the BOM is or may be professionally incompetent; has engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient; has engaged in unprofessional conduct; or may be mentally or physically unable to practice safely <p style="text-align: center;"><i>Reports are to be made <u>within 30 days</u>.</i></p> <p style="text-align: right;">18</p>
<p>A closer look. . . Va. Code § 54.1-2909</p> <p>➤ To Whom / Content / Penalty:</p> <p>Report in writing to the Board of Medicine. Include:</p> <ul style="list-style-type: none"> • Name and address of subject of the report • Full description of the circumstances surrounding facts required to be reported <p>The reporting requirements shall be deemed met with regard to any matter if reported to the National Practitioner Data Bank and notice of such report is provided to the BOM.</p> <p>No person is obligated to report if person has actual knowledge that matter has been reported to the BOM.</p> <p style="text-align: right;">19</p>	<p>Additional provisions of Va. Code § 54.1-2909</p> <p>Clerks of state circuit and district courts are also obligated to report to the BOM convictions of known licensees for any misdemeanor involving a controlled substance, marijuana, substance abuse or moral turpitude or for any felony.</p> <p>Person making report, testifying in a proceeding as a result of a report, or providing information pursuant to an investigation in good faith shall be immune from civil liability or criminal prosecution resulting therefrom.</p> <p><i>Any person who fails to make report as required shall be subject to civil penalty not to exceed \$5,000. Denial of issuance or renewal of licensure until penalty is paid.</i></p> <p><i>Disciplinary action against any person licensed, registered, or certified by the BOM shall be based upon the underlying conduct of the person and not upon the report of a settlement or judgment submitted under this section.</i></p> <p style="text-align: right;">20</p>

For more information . . .

See:

- DHP Website: <http://www.dhp.virginia.gov>
- DHP Guidance Document No. 76-34: *“Requirements Imposed on Hospitals, Other Health Care Institutions, and Health Care Professionals to Report Disciplinary Actions Against and Allegations of Misconduct by Certain Health Care Practitioners to The Virginia Department of Health Professions, July 1, 2004”*

Contact:

- Executive Director of relevant health regulatory board;
- Enforcement Division of DHP; or
- Your personal or your institution’s legal counsel.