BOARD OF OPTOMETRY
FULL BOARD MEETING
MAY 16, 2014

TIME AND PLACE:	The Board of Optometry (Board) meeting was called to order at 10:05 a.m. at the Department of Health Professions (DHP), Perimeter Center, 9960 Mayland Drive, 2nd Floor, Room 3, Henrico, Virginia 23233.
PRESIDING OFFICER:	Jonathan R. Noble, O.D., Chair
MEMBERS PRESENT:	Hal Breedlove, O.D. Joseph E. Droter, O.D. Steven A Linas, O.D.
MEMBERS NOT PRESENT:	Douglas Weberling, O.D. Devon Cabot, Citizen Member
STAFF PRESENT:	Leslie L. Knachel, Executive Director Elaine Yeatts, Senior Policy Analyst David E. Brown , D.C., Director Jamie Hoyle, Chief Deputy Director Carol Stamey, Operations Manager Tamara Farmer, Administrative Assistant
OTHERS PRESENT:	Bruce Keeney, Virginia Optometric Association (VOA) Bo Keeney, VOA Greg Sagstetter, Reed Smith Cal Whitehead, Virginia Society of Eye Physicians/Surgeons
QUORUM:	With four members of the Board present, a quorum was established.
ORDERING OF AGENDA	The agenda was revised to include the approval of minutes for the April 9, 2014, conference call.
PUBLIC COMMENT:	No public comment was presented.
INTRODUCTION OF DIRECTOR:	Dr. Noble welcomed the new agency director, David E. Brown, D.C.
DIRECTOR'S REPORT:	Dr. Brown provided a brief summary of his background, recognized the agency's performance and thanked the board members for their time and service.
APPROVAL OF MINUTES:	Dr. Droter moved to approve, as a block, the May 9, 2012, December 13, 2013, and April 9, 2014, meeting minutes as

presented. The motion was seconded and carried.

REGULATORY UPDATE: Ms. Yeatts provided an overview of the 2014 legislation that may affect the DHP boards.

Ms. Yeatts also noted that the proposed regulatory action of the Board had been at the Secretary's Office for 346 days.

DISCUSSION ITEMS:

Vision Screening Report
As requested at the previous board meeting, Ms. Knachel conducted research on laypersons performing vision screenings in public and private schools. She indicated that because each situation regarding vision screenings would need to be evaluated on a case by case basis, a guidance document would be difficult to draft. The Board requested that the issue remain on the Board's topics of interest.

Amendments to Bylaws Follow-Up
As requested at the previous board meeting, Ms. Knachel provided a proposed draft of the revised Bylaws. The proposed amendments are incorporated into the minutes as Attachment 1 and the amendments were approved individually as follows:

Item 1: Dr. Breedlove moved to accept item 1 as presented. The motion was seconded and carried.

Item 2: Dr. Droter moved to accept item 2 as presented. The motion was seconded and carried.

Item 3: Dr. Droter moved to accept item 3 as presented. The motion was seconded and carried.

Item 4: Dr. Linas moved to accept item 4, option 2, as presented. The motion was seconded and carried.

Item 5: Dr. Breedlove moved to accept item 5 with amendment. The amended item reads as follows: *The Board delegates to the Executive Director the authority to review information regarding alleged violations of law or regulation with at least one board member on a rotating basis to make a determination as to whether probable cause exists to proceed with possible disciplinary action.* The motion was seconded and carried.

Item 6: Dr. Droter moved to accept item 6 as presented. The motion was seconded and carried.

Item 7: Dr. Breedlove moved to accept item 7 as presented. The

motion was seconded and carried.

Item 8: Dr. Linas moved to accept item 8 as presented. The motion was seconded and carried.

Item 9: Dr. Droter moved to accept item 9 as presented. The motion was seconded and carried.

Item 10: Dr. Droter moved to accept item 10 as presented. The motion was seconded and carried.

Item 11: Dr. Droter moved to accept item 11 as presented. The motion was seconded carried.

Item 12: Dr. Breedlove moved to accept item 12, option 2, as presented. The motion was seconded and carried.

Item 13: Dr. Droter moved to accept item 13 as presented. The motion was seconded and carried.

Item 14: Dr. Droter moved to accept item 14 as presented. The motion was seconded and carried.

Item 15: Dr. Linas moved to accept item 15 as presented. The motion as seconded and carried.

Continuing Education (CE) Audit Update
Ms. Knachel provided a statistical analysis of the CE audit conducted for the year 2013.

Review of Guidance Document 105-12 on CE Audits
Ms. Knachel provided an overview of Guidance Document 105-12 and reported that a number of requests for CE extensions or waivers had been received past the renewal deadline of December 31st. She noted that granting CE extensions or waivers pursuant to 18VAC105-20-70(B) of the *Regulations of the Virginia Board of Optometry* after December 31st would not be consistent with the Regulations or guidance document previously adopted by the Board. It was the consensus of the Board to follow Guidance Document 105-12 as previously adopted by the Board.

Disciplinary Process
Ms. Knachel presented an overview of the disciplinary process which included an updated probable cause review form.

Draft Guidance Document on Transfer of Medical Records

Ms. Knachel reported that due to an increase in the number of cases involving failure to notify patients of practice closure or relocation, a draft guidance document was presented for the Board's consideration. It was the consensus of the Board to go forward with a guidance document at a future meeting after receipt of disciplinary statistics and additional research on the use of email or phone notification as sufficient patient notification.

Letter from National Board of Examiners in Optometry (NBEO)
Ms. Knachel reported that the NBEO Board Certification letter had been included in the board's agenda for informational purposes. She noted that any advertising issues would be addressed on a case-by-case basis. The Board asked that this issue be taken up again by the Legislative/Regulatory Committee.

2015 Calendar
Dr. Droter moved to approve the 2015 calendar as presented. The motion was seconded and carried. The dates of the 2015 board meetings are the following:

- February 27, 2015
- May 8, 2015
- October 30, 2015

BOARD OF HEALTH PROFESSIONS REPORT:

Dr. Noble reported that the Board of Health Professions was currently reviewing potential barriers to licensure.

PRESIDENT'S REPORT:

Dr. Noble requested that a "Sanctions Reference Points" statistical review and compliance analysis be added as a future agenda item.

Dr. Noble apprised the Board that his term as a Board of Health Professions (BHP) board member was expiring on June 30, 2014. He encouraged any board member interested in being appointed to serve on the BHP to contact the Secretary of the Commonwealth.

EXECUTIVE DIRECTOR'S REPORT:

Statistics
Ms. Knachel reviewed the Board's licensure and disciplinary statistics and noted that the statistics are located on the agency's website.

Budget
Ms. Knachel reported that budget information specific to the Board had been included in the packet and financial information is also located on the agency's website.

Board Report to Association of Regulatory Boards of

Optometry (ARBO)
Ms. Knachel reported that the annual ARBO report had been included in the packet.

Maryland Press Release on Illegal Sales of Contact Lenses
Ms. Knachel reported that a copy of the Maryland Board of Examiners in Optometry's press release regarding new legislation authorizing the Maryland Board to take action against illegal sales of decorative contact lenses was included in the agenda packet. Ms. Knachel is researching the issue and will report the options available to the Virginia Board.

NEW BUSINESS: No new business was presented.

ADJOURNMENT: The meeting adjourned at 12:15 a.m.

Jonathan R. Noble, O.D.
Chair

Leslie L. Knachel, M.P.H.
Executive Director

For Action by the Board on 04.10.14: Bylaw Amendments **Attachment 1**

Key: All current bylaws are provided first in plain type and amendments to delegated authorities are in shaded italics. Please note: 1) The alphabetic listing for the current and new bylaws do not necessarily match due to amendments; and 2) All delegated authorities are listed regardless of whether a change is proposed or not so that the board members can review Article IV in its entirety.

Article IV. General Delegation of Authority

Item 1

A. The Board delegates to Board staff the authority to issue and renew licenses, registrations and certificates where minimum qualifications have been met.

A. The Board delegates to Board staff the authority to issue and renew licenses and registrations for which statutory and regulatory qualifications have been met.

Comment: The word "certificates" was removed because the Board does not issue certificates.

Item 2

B. The Board delegates to the Executive Director the authority to reinstate licenses, registrations and certificates when the reinstatement is due to the lapse of the license, registration or certificate and not due to previous Board disciplinary action unless specified in the Board order.

B. The Board delegates to the Executive Director the authority to reinstate licenses and registrations when the reinstatement is due to the lapse of the license or registration rather than a disciplinary action and there is no basis upon which the Board could refuse to reinstate.

Comment: Updated language removes certificates since the Board only issues licenses or registrations.

Item 3

C. The Board delegates to the Executive Director the authority to grant long-term continuing education waivers on a case by case basis to licensees with a verified long-standing illness and an attestation of not practicing. The Executive Director shall inform the licensee of the appropriate statute and shall direct the licensee to notify the Board if their situation changes, in which case the waiver may be extended, reconsidered or withdrawn.

C. The Board delegates to the Executive Director the authority to grant long-term continuing education waivers on a case by case basis to licensees with a verified long-standing illness and an attestation of not practicing. The Executive Director shall inform the licensee of the appropriate statute and shall direct the licensee to notify the Board if their situation changes, in which case the waiver may be extended, reconsidered or withdrawn.

Comment: No changes

Item 4 (New)

Option 1
D. The Board delegates to the Executive Director authority to grant an extension for good cause of up to one year for the completion of continuing education requirements upon written request from the licensee prior to the renewal date.

Option 2
D. The Board delegates to the Executive Director authority to grant an extension for good cause of up to 90 days for the completion of continuing education requirements upon written request from the licensee prior to the renewal date.

Comment: The current bylaws authorize the Executive Director to grant a continuing education waiver for a long-standing illness. The addition of one of the options above provides delegation authority to the executive director to grant continuing education extensions. The first option is consistent with other health regulatory boards and the second option was requested by a board member.

Item 5
D. The Board delegates to the Executive Director the authority to close non-standard of care and non-jurisdictional cases after review by one board member on a rotating basis.

E. The Board delegates to the Executive Director the authority to review information regarding alleged violations of law or regulation with at least one member of a special conference committee to make a determination as to whether probable cause exists to proceed with possible disciplinary action.

Comment: This amendment relates to the probable cause review process for standard of care and non-standard of care cases. If this amendment is adopted, one board member would review the case with the option to have another board member review for probable cause determination. The role of the special conference committee member is to make the final decision regarding the case's disposition. The executive director's role is to prepare the probable cause review form and provide information/clarification as requested/needed.

Item 6
E. The Board delegates to the Executive Director the authority to conduct an annual continuing education audit and issue disciplinary action as prescribed in any guidance document adopted by the Board on continuing education audits and sanctions for failure to complete continuing education.

F. The Board delegates to the Executive Director the authority to conduct an annual continuing education audit and take action as prescribed in any guidance document adopted by the Board on continuing education audits.

Comment: The Board's guidance document on CE audits includes issuing a CCA which is not a disciplinary action or sanction.

Item 7

F. The Board delegates to the Executive Director the authority to offer a pre-hearing consent order to resolve disciplinary cases involving practicing with an expired license as prescribed in any guidance document adopted by the Board on practicing with an expired license.

G. The Board delegates to the Executive Director the authority to take action as prescribed in any guidance document adopted by the Board on practicing with an expired license.

Comment: The Board's guidance document on practicing with an expired license includes issuing a CCA not just a pre-hearing consent order.

Item 8

G. The Board delegates to the Executive Director the authority to negotiate consent orders with the Chair of a Special Conference Committee or formal administrative hearing.

H. The Board delegates to the Executive Director the authority to negotiate consent orders with the Chair of a Special Conference Committee or formal administrative hearing.

Comment: No changes

Item 9

H. The Board delegates to Board staff the authority to develop and approve any and all forms used in the daily operations of the Board business, to include, but not limited to, licensure applications, renewal forms and documents used in the disciplinary process.

I. The Board delegates to Board staff the authority to develop and approve any and all forms used in the daily operations of Board business, to include, but not limited to, licensure applications, renewal forms and documents used in the disciplinary process.

Comment: A grammatical fix was done by removing "the" after daily operations of."

Item 10

I. The Board delegates to the Executive Director the authority to sign as entered any Order or Board-approved Consent Order resulting from the disciplinary process.

J. The Board delegates to the Executive Director the authority to sign as entered any Order or Consent Order resulting from the disciplinary process or other administrative proceeding.

Comment: The phrase "or other administrative proceeding" was added as a catch all should another type of proceeding be needed. An applicant proceeding may not be disciplinary in nature and would in most cases be considered an "other administrative proceeding."

Item 11

J. The Board delegates to the Executive Director, the authority to provide guidance to the agency's Enforcement Division in situations wherein a complaint is of questionable jurisdiction and an investigation may not be necessary. The Executive Director will provide a quarterly report on such situations, if any.

K. The Board delegates to the Executive Director, the authority to provide guidance to the agency's Enforcement Division in situations wherein a complaint is of questionable jurisdiction and an investigation may not be necessary. The Executive Director will provide a quarterly report on such situations, if any.

K. The Board delegates to the President the authority to represent the Board in instances where Board "consultation" or "review" may be requested where a vote of the Board is not required, and a meeting is not feasible.

L. The Board delegates to the President the authority to represent the Board in instances where Board "consultation" or "review" may be requested where a vote of the Board is not required, and a meeting is not feasible.

Comment: No changes

Item 12

L. Delegated tasks should be summarized and reported to the board at each regularly scheduled meeting.

Option 1 (No change)

M. Delegated tasks should be summarized and reported to the board at each regularly scheduled meeting.

Option 2

M. Delegated tasks shall be summarized and reported to the board at each regularly scheduled meeting.

Comment: Option 1 has no changes. Option 2 changes the "should" to "shall." The format of the agenda currently includes a report from the Executive Director. All agendas are approved by the Board President prior to posting. By changing the "should" to "shall," the action becomes mandatory which decreases the Board's flexibility in agenda preparation. In addition, a situation may arise in which a report cannot be made.

Item 13

N. The Board delegates authority to the Executive Director to issue an Advisory Letter to the person who is the subject of a complaint pursuant to Va. Code § 54.1-2400.2(F), when a probable cause review indicates a disciplinary proceeding will not be instituted.

Comment: Clarifying amendment

Item 14

O. The Board delegates authority to the Executive Director to accept from a licensee or registrant, in lieu of disciplinary action, a Confidential Consent Agreement, pursuant to Va. Code § 54.1-2400(14), consistent with any guidance documents adopted by the Board.

Comment: Clarifying amendment

Item 15

Article V. Amendments.

A board member or staff personnel may propose amendments to these bylaws by presenting the amendment in writing to all Board members 30 days prior to any regularly scheduled meeting of the Board. Such proposed amendment shall be adopted, upon favorable vote of at least two-thirds of the Board members present at said meeting.

A board member or staff personnel may propose an amendment to these bylaws by presenting the amendment in writing to the Executive Director for distribution to all Board members, the Board's legal counsel and staff personnel prior to any regularly scheduled meeting of the Board. An amendment to the bylaws shall be adopted, upon favorable vote of at least two-thirds of the Board members present at said meeting.

Comment: The 30 day notification requirement found in the current bylaws does not comport with *Robert's Rules of Order* and hinders the flexibility of the Board ability to make changes to the bylaws. The Board has the authority to approve or not approve a proposed amendment. If a proposed change is not acceptable, the Board would vote to disapprove. In addition, the method for distribution and who is to receive a copy of the proposed amendment prior to the meeting is clarified.