

NEWSLETTER

Vermont Board of Optometry

Secretary of State, Office of Professional Regulation

Topics in this newsletter include: Chairman's Report, Changes in Legislation; Update re the Formulary Committee; Fee Increase and explanation; the Board's Web site; and more.

Board Members

The members of the Vermont Board of Optometry and their term expiration dates follow: **Jon D. Eriksson, O.D.**, Chairman, Richmond, Vermont (12/04); **Lois M. Shiozawa, O.D.**, Vice-Chair, Essex Junction, Vermont (12/07); **Thomas F. Terry, O.D.**, White River Junction, Vermont (12/05); and **Claudette Marinelli** (Public Member), East Montpelier, Vermont (12/05). We currently have a vacancy for a public member.

Dr. Terry indicated that he was officially resigning from the Board as of June 7, 2006. The other Members and Staff thanked him for his many years of public service, his interest in the profession, and continued support months after his term expired.

Members are appointed by the Governor to a five-year term and are eligible to serve two terms. Persons who are interested in serving on the Board may contact our Office or the Governor's Office directly at 802-828-3333.

Introduction

The Vermont Board of Optometry is pleased to bring you its second Newsletter. This Newsletter contains information about staff, statutory amendments, details re the fee increase, the formulary committee, continuing education, statistics, and other issues pertaining to the profession.

Staff

Carla Preston is the Board's Unit Administrator. You may reach Ms. Preston at (802) 828-2875; Fax: (802) 828-2465; or via E-mail: cpreston@sec.state.vt.us.

Larry S. Novins, Esq. serves as the Board's Counsel.

Kara Shangraw is the Board's Staff Secretary. Ms. Shangraw may be reached at (802) 828-1134; Fax: (802) 828-2465; E-Mail: kshangraw@sec.state.vt.us Our Web site is: www.vtprofessionals.org

From the Chairman

There have been many changes in our scope of practice since the last re-licensing cycle. One of our many duties is to help the optometrists follow the current laws and regulations. This will be my focus in this section. The formulary committee, as explained in more detail below, will be changed so that the Board has direct input in the process. Please send in any requests for additional medications to us in a letter so that we may act on the formal request. There has been an ongoing question that there is a need for a substitute medication for any patients who are allergic to Tylenol with codeine. If anyone has a suggestion, please send it to the Board so we can see how the new process works and repair any kinks that might exist!

We have updated our renewal form to include a question about the requirement to co-manage five NEW glaucoma patients before we can treat new glaucoma patients independently. We are going to audit every person after they have treated these five patients. There

are two reasons for this. First we want to have a squeaky clean process so when we go back to the legislature for any future requests we can show them that our profession self regulates to an acceptable level. Secondly, we need to audit on a random basis and this will make the process go much smoother so nobody gets audited more than once or left out of the “fun” process. We will be asking for documentation that an ophthalmologist saw these patients in consultation. This documentation could include a letter from the ophthalmologist or a log of patients certified by the ophthalmologist. If there are any questions, please feel free to contact the Board.

Please note that the audit would also include submittal of evidence of your continuing education credits.

Our Newsletter is an excellent source for informing our licensees of current and proposed changes in the profession.

The main purpose of the Board is to protect the public health, safety and welfare. The Board also has a quasi judicial role in which it serves as jury in cases of unprofessional conduct. The Board’s roles are accomplished by establishing standards, licensing only qualified applicants, and ensuring compliance with the laws and rules.

*Jon D. Eriksson, O.D.,
Chairman*

Fee Increase

Below is a detailed explanation for the Fee Increase to \$525, which was approved by the Legislature, effective July 1, 2006.

Statutory Background

The Office of Professional Regulation (OPR) was established within the Office of the Secretary of State in 1990 and charged with providing administrative, secretarial, financial, investigatory, inspection, and legal services to the boards and professions attached to the Office. There are currently 44 professions and occupations attached to the Office of the Secretary of State and administered by OPR.

Also in 1990, the Professional Regulatory Fee Fund was created. All revenue received by OPR is deposited into this fund, credited to the appropriate board or to the professions regulated by the director as a group. Revenue is used to offset up to two years of the costs incurred by that board or that group and is not to be used for any purpose other than professional regulation. The cost of regulating a profession is borne by the profession with no profession subsidizing the cost of regulating another profession.

To ensure that revenues derived by the office are adequate to offset the cost of regulation, the law requires the Secretary of State to review fees from time to time, and present proposed fee changes to the General Assembly.

Board Budgets

Separate budgets are maintained for the 22 boards and for the advisory professions as a group. Estimates of direct and allocated expenses are prepared at the beginning of each fiscal year, quarterly reports are provided, and a year end report of actual expenses is completed.

All budgeting is through annual budgets conforming to the state fiscal year. The majority of the board receipts are credited in the year in which biennial license renewal occurs. This means that a board will generally have an operating budget surplus in a renewal year and an operating budget deficit in the following year.

To account for this, a “fund balance” is maintained for each board. When biennial receipts are sufficient to cover two years’ operating expenses, the board will have a positive fund balance. If receipts are insufficient to cover expenses, the board will have a fund deficit. Once a fund deficit is incurred, it will remain until biennial receipts and expenses are adjusted to provide an operating surplus to retire the fund deficit.

The goal of the budgeting process is have each board’s operating budget balanced over the biennial license cycle; and to do so without adjusting license fees every two years.

Review of Fees

To ensure that licensing revenue is adequate to offset the cost of regulation, the law requires the Office of the Secretary of State to review fees from time to time, and present proposed fee changes to the General Assembly. Each year the office reviews fees for each profession set to renew in the next fiscal year.

For each board, the Office determines:

*Whether the board's operating budget is in balance on a biennial basis

*Whether the board has a positive or negative balance in the Regulatory Fee Fund.

*Whether fee revenue is sufficient to cover projected operating costs for the next license cycle.

Results of Review of Fees for Professions Renewing in Fiscal Year 2007

The Office of the Secretary of State reviewed the budgets for thirteen boards whose licensees will renew in FY2007. The Office is recommending fee increases for ten boards, fee reductions for one board, and no change for two boards.

Board of Optometry: Licensing fees for optometrists were last increased in 1997. Renewal fees were increased from \$225 to \$350 for the two year license period. The Board has run an *operating deficit* since the 2002-2003 license period. The operating deficit is estimated to be \$6,000 for the

current license period 2004-2005. Without a fee increase, this operating deficit is projected to grow to over \$7,000 in the next license period (2006-2007).

The Board has also incurred a significant, and growing, *fund deficit*. If no action is taken, this fund deficit is projected to reach \$24,000 by the end of the next license period. The professional regulatory fee fund cannot continue to carry this fund deficit indefinitely.

The board's operating budget is in deficit. The board has a growing fund deficit. Revenue is insufficient to cover projected operating expenses. The board approved a recommendation for increases in initial application (\$95 to \$225) and for renewal (\$350 to \$525). These fee increases will cover projected operating expenses and retire the fund deficit over the next 4-6 years.

Vermont law does not permit us to carry such a deficit. The only way to eliminate this deficit given the number of licensees in our profession is to raise the current application fee from \$95 to \$225 and the renewal fee from \$350.00 to \$525. This increase was authorized by the Legislature this spring.

Optometric Formulary

Since its creation, and pursuant to 26 V.S.A. § 1724 the Vermont Formulary Committee has taken action as follows:

Explanation of Approval: The Formulary Committee approves the drugs or classes of drugs listed below. The Formulary Committee's approval is *not* a blanket approval of the use of these drugs. **Use of the drugs listed below is permitted only for the appropriate diagnosis, management, and treatment of the eye and adnexa.** Any other use violates the Formulary Committee's approval. The Committee understands that any other use can be considered and prosecuted as unprofessional conduct.

Approval is a recognition that the drugs listed may be used appropriately by trained professionals. The presence of any drug or variety of drugs on this list does not in any way relieve licensees from their duty to exercise professional judgment in the selection and proper use of these drugs.

Drugs Approved:

For treatment of Glaucoma: All oral or topical pharmaceuticals used in the treatment of glaucoma are approved.

All topical pharmaceutical agents for the appropriate diagnosis, management, and treatment of the eye and adnexa.

March 17, 2005:

All oral carbonic anhydrase inhibitors;
Injectables: only for the appropriate emergency stabilization of a patient in anaphylaxis;

All oral hyperosmotic agents, including but not limited to Glycerin and Isosorbide;

All non-legend, over-the-counter agents;

Specific antiherpetic agents: Acyclovir, Valacyclovir, and Famcyclovir

March 30, 2005:

Schedule V drugs; Schedule IV drugs; Schedule III: Tylenol with codeine

April 13, 2005:

Oral antibacterials: augmentin (amoxicillin/clavulanate); keflex (cephalexin); ceclor (cefactor); zithromax (azithromycin); tetracycline; doxycycline;

May 4, 2005:

Dicloxacillin; cloxacillin; cipro; levaquin

June 1, 2005:

Allegra; Zyrtec; Compazine; Zofran; Ketoprofen; Ibuprofen; Naproxen; Tramadol (Ultram)

June 22, 2005:

oral cortical steroids: approved for use up to 14 days. Any oral cortical steroid use after 14 days may occur only after consultation and or notification with the patient's primary care physician.

Drugs Not Approved:

The Formulary Committee does not approve use of “**all oral immunosuppressive agents.**” Use of any oral immunosuppressive agent is **prohibited** without specific Committee approval.

The Formulary Committee does not approve use of “**all oral antifungals**” Use of any oral antifungal is **prohibited** without specific Committee approval.

For updates to this Formulary, please visit our Web site at: <http://www.vtprofessionals.org/optometrists/>

Statutory Amendment

Effective July 1, 2006

§ 1718. FEES

Applicants and persons regulated under this chapter shall pay the following fees:

- (1) Application \$ ~~95.00~~ \$225.00
- (2) Biennial renewal \$ ~~350.00~~ \$525.00

Status of Formulary Committee

Governor Douglas signed the professional regulation bill (H.871) into law. As you may be aware there was much discussion this year about whether the optometric formulary was no longer necessary and whether the formulary committee should continue to exist.

Pursuant to the Formulary Committee's recommendation, the House Government Operations Committee was asked to extend the life of the Committee to 2008.

They did that, and it passed the House with this language:

(a) 26 V.S.A. § 1724 (formulary committee) shall be repealed in its entirety on ~~July 1, 2006~~ July 1, 2008. Any formulary in effect on this date shall remain in effect unless or until a process for adopting a new formulary is authorized by law.

When it got to the Senate, however, they substantially changed that provision. The Senate version prevailed and emerged as the final language of the bill. The law regarding the optometry formulary, which will go into effect July 1, reads as follows:

§ 1724a. FORMULARY; DIRECTOR OF THE OFFICE OF PROFESSIONAL REGULATION

At least annually, the director, with the advice of the board of optometry and in consultation with the commissioner of health, shall review and update the formulary of prescription medicines optometrists may use in a manner consistent with the optometry scope of practice and training. The director shall establish written protocols designed to ensure both meaningful and timely consultation with the board and the commissioner of health and other experts whose input the director finds useful.

This means that as of July 1, 2006, regulation of the formulary will be up to the Director with the advice of the Optometry Board and in

consultation with the Department of Health. We have not had time to figure out exactly how this will work.

We do plan to make this an open process with plenty of opportunity for comment. In all likelihood, the Director and/or the Commissioner of Health will continue to look to some of you for advice on the formulary in the future.

We greatly appreciate the Formulary Committee's willingness to volunteer and graciously donate their time and expertise to protect the people of Vermont. Their efforts and contribution created a responsible basis that the director can use to continue to assure the safety of optometric patients in Vermont. Once again, our thanks to the members of the Optometric Formulary Committee.

Statutory Amendment

26 V.S.A. § 1724a. FORMULARY; DIRECTOR OF THE OFFICE OF PROFESSIONAL REGULATION

At least annually, the director, with the advice of the board of optometry and in consultation with the commissioner of health, shall review and update the formulary of prescription medicines optometrists may use in a manner consistent with the optometry scope of practice and training. The director shall establish written protocols designed to ensure both meaningful and timely consultation with the board and

the commissioner of health and other experts whose input the director finds useful.

26 V.S.A. § 1728c. USE OF ORAL THERAPEUTIC PHARMACEUTICAL AGENT; COMMUNICATION WITH PRIMARY CARE PROVIDER

A licensee who employs an oral therapeutic pharmaceutical agent, as identified by the formulary ~~committee~~ established in section ~~1724~~ 1724a of this title, which might prove to have significant systemic adverse reactions or systemic side effects shall, in a manner consistent with Vermont law, ascertain the risk of systemic side effects through either a case history or by communicating with the patient's primary care provider. The licensee shall also communicate with the patient's primary care provider, or with a physician skilled in diseases of the eye, when in the professional judgment of the licensee, it is medically appropriate. The communication shall be noted in the patient's permanent record. The methodology of communication shall be determined by the licensee.

Statutory Amendment

Effective July 1, 2006

26 V.S.A. § 1712. LICENSE REQUIRED

(a) No person may practice optometry in this state who is not licensed under this chapter.
* * *

(f) Nothing contained in subsection (a) of this section shall

prevent a student from providing optometric services:
(1) under the on-site supervision of a licensed optometrist or ophthalmologist at a state hospital; or
(2) as part of an optometric clinical program under the on-site supervision of a licensed optometry instructor of a school of optometry, a college, or an optometry department of a university recognized by the board; or
(3) as a student intern in a hospital under the on-site supervision of a licensed optometrist or ophthalmologist.

Changes to Title 3

3 V.S.A. § 127 is amended to read:

Effective July 1, 2006

127. UNAUTHORIZED PRACTICE

(a) When the office receives a complaint of unauthorized practice, the director shall refer the complaint to the appropriate board for investigation.
(b) A person practicing a regulated profession without authority may, upon the complaint of the attorney general or a state's attorney or an attorney assigned by the office of professional regulation, be enjoined there from by the superior court where the violation occurred or the Washington County superior court and may be assessed a civil penalty of not more than \$1,000.00. The attorney general or an attorney assigned by the office of professional regulation may elect to bring an action seeking only a civil penalty

of not more than \$1,000.00 for practicing a regulated profession without authority before the board having regulatory authority over the profession. Hearings shall be conducted in the same manner as disciplinary hearings. A civil penalty imposed by a board or administrative law officer under this subsection shall be deposited in the professional regulatory fee fund established in section 124 of this title for the purpose of providing education and training for board members and advisor appointees. The director shall detail in the annual report receipts and expenses from these civil penalties.

(c) In addition to other provisions of law, unauthorized practice shall be punishable by a fine of not more than \$5,000.00 or imprisonment for not more than one year, or both. Prosecution may occur upon the complaint of the attorney general or a state's attorney or an attorney assigned by the office of professional regulation under this section and shall not act as a bar to civil or administrative proceedings involving the same conduct.

(d) A person practicing a licensed profession without authority shall not institute any proceedings in this state for the enforcement of any right or obligation if at the time of the creation of the right or obligation it the unlicensed person was acting without authority.

(d)(e) The provisions of this section shall be in addition to any other remedies or penalties for unauthorized practice established by law.

3 V.S.A. § 129(a) is amended to

read:

(a) In addition to any other provisions of law, a board may exercise the following powers:

* * *

(5) Discipline any licensee or refuse to license any person who has had a license revoked, suspended, limited, conditioned, or otherwise disciplined by a licensing agency in another jurisdiction for ~~an offense~~ conduct which would constitute unprofessional conduct in this state, or has surrendered a license while under investigation for unprofessional conduct.

* * *

(12) ~~Treat as incomplete any license application submitted with a check subsequently returned for insufficient funds~~ Waive or modify continuing education requirements for persons on active duty in the United States armed forces.

Sec. 4. 3 V.S.A. § 129a(a) is amended to read:

(a) In addition to any other provision of law, the following conduct by a licensee constitutes unprofessional conduct. When that conduct is by an applicant or person who later becomes an applicant, it may constitute grounds for denial of a license or other disciplinary action. Any one of the following items, or any combination of items, whether or not the conduct at issue was committed within or outside the state, shall constitute unprofessional conduct:

* * *

(11) Failing to report to the office a conviction of any felony or any offense related to the practice of

the profession in a Vermont district court, a Vermont superior court, a federal court, or a court outside Vermont within 30 days.

* * *

(13) Performing treatments or providing services which the licensee is not qualified to perform or which are beyond the scope of the licensee's education, training, capabilities, experience, or scope of practice.

(14) Failing to report to the office within 30 days a change of name or address.

26 V.S.A. § 1707.

QUALIFICATIONS; TERM OF OFFICE; REMOVAL was amended. Effective July 1, 2005

* * *

(b) The board shall consist of five members, three of whom shall be residents of the state, have had at least five years' experience in the practice of optometry in the state and are in the active practice of optometry at the time of their appointment; and two members who shall be representatives of the public, who shall be residents of the state for five years and who shall have no financial interest in the profession other than as a consumer or potential consumer of its services. ~~The public members shall participate in all board functions with the exception of drafting and grading examinations.~~

(c) ~~The term of office of each member shall be five years, and no person may serve two successive five year terms. Vacancies shall be filled in the same manner as the original appointment for the unexpired term.~~ Board members

shall be appointed by the governor pursuant to sections 129b and 2004 of Title 3.

~~(d) The governor shall appoint members to the board and may remove any member as provided in section 2004 of Title 3.~~

26 V.S.A. § 1709.

FUNCTIONING OF BOARD OF OPTOMETRY

* * *

~~(d) A majority of the members of a board shall constitute a quorum for transacting business, and all action shall be taken upon a majority vote of the members present and voting.~~

~~(e) All business may be transacted by a majority vote of the members present and voting, unless otherwise provided by law.~~

The provision below was Repealed as of July 1, 2005

26 V.S.A. § 1728b.

DISCLOSURE OF INFORMATION (Repealed)

Continuing Education

4.3 CONTINUING EDUCATION REQUIREMENTS

All persons licensed to practice optometry must earn a minimum of 20 hours of continuing education during the two-year renewal period and must report these hours at the time of license renewal. An applicant who holds a special license endorsement for the use of therapeutic drugs must complete at least an additional 20 hours for a total of at least **40** hours of continuing education during the two-year renewal period. At least 20 of the 40 hours

must be related to the use of therapeutic drugs and treatment of ocular disease.

"Continuing education" means the direct participation of an optometrist in a structured educational format. Continuing education credits are calculated in the following manner:

- one contact hour equals one continuing education credit.
- one semester credit equals fifteen continuing education credits.
- one quarter credit equals ten continuing education credits.
- one workshop hour equals one continuing education credit.

Every licensed optometrist must complete at least 20 continuing education credits (at least 40 continuing education credits for licensees holding a special license endorsement for use of therapeutic drugs) in a two- year renewal period in order to renew licensure. The continuing education requirement does not apply for the renewal period during which a person initially obtained licensure. It will begin with the first full two-year renewal period following initial licensure.

The Office will provide a form upon which all credits must be recorded. The name and date of the activity, the number of credits requested, and the name of the instructors and sponsor must be clearly indicated on the form. The form must be submitted with the biennial renewal forms. Credits will be granted only for actual time spent as a learner. Breaks and lunches must be deducted.

Credits cannot be granted for time spent in activities as an instructor, presenter, or supervisor.

Each licensee must maintain records showing attendance and participation in the continuing education activities claimed, such as pamphlets, certificates of attendance received during the instruction, receipt of registration, program announcement, signature of facilitator or brief summary of the work content. Those records are subject to inspection and verification by the Office upon request during reasonable business hours.

The Board may require a licensee who cannot produce satisfactory documentation of continuing education, as set forth above, to develop and complete a specific corrective action plan within 90 days. The Office will extend the license during the 90-day corrective period but will not renew it if the licensee fails to complete the plan.

Additional Continuing Education Pursuant to 26 V.S.A. 1729a (e).

A licensee certified to use therapeutic pharmaceutical agents shall, as part of required continuing education, receive not less than 50 percent of his or her continuing education in the use of pharmaceuticals, including treating possible complications arising from their use, and the treatment of glaucoma.

Reminders

- 1) It is your responsibility to report changes of name and/or

address to this Office (See 3 V.S.A. § 129a). You may amend your address via fax or E-mail. You must provide evidence of your name change (i.e., copy of marriage license, divorce decree, or other court documents).

2) You must now report within 30 days convictions, felonies, or other criminal offenses related to the profession (26 V.S.A. 129a (a) (11)).

3) If you have Optician Trainees working under your direct supervision, you have several responsibilities in that role and are required to follow the laws and rules governing this practice. See the Web site for additional information at

www.vtprofessionals.org (Under Pick a Profession, click on Opticians, Board Rule 2.6).

Complaints

What follows is a composite of some of the issues that may result in the filing of a complaint against a practitioner. Having a complaint filed against you can be extremely disruptive and upsetting. If a case alleges unprofessional conduct, as defined by the Board's laws and rules, the Office will order an investigation.

Although many complaints do not result in disciplinary action, they are still investigated. Many of those complaints that are closed might have been avoided altogether if the practitioner had better communicated with the patient. Many insurance carriers, and many states now ask if you

are, or have ever been, the subject of an investigation.

If a complaint is filed and the Investigative Team finds unprofessional conduct, the Board may take disciplinary action after a hearing. We hope that you will read this carefully. It does not cover every possible scenario, but it may help you avoid common pitfalls that result in a complaint, and/or disciplinary action.

1) Poor communication. Be sure to communicate well between yourself and your clients, between yourself and your colleagues, and between yourself and your employees.

2) Attitude. The Investigative Teams find that many cases are brought to the Office of Professional Regulation because the professional had an "attitude" that was flippant or perhaps condescending.

3) Unauthorized Practice. Working without proper registration or license to do so, or allowing unlicensed or unregistered persons to practice.

4) Failure to provide a prescription once the patient (buyer) has paid for such services (See 26 V.S.A. § 1719 and 3 V.S.A. 129a for unprofessional conduct).

Disciplinary Actions

The Office of Professional Regulation issues Press Releases of all disciplinary actions taken during the month. The full text of

decisions can be accessed for reading or printing from the OPR Web site noted below. The direct link to the search page is: <http://vtprofessionals.org/opr1/searchdiscipline.htm>

Web Site

The Board's Web site, www.vtprofessionals.org is a great resource for information. There you may find the current laws and rules. You may check the status of a license. You will also find our updated applications and forms on our Web site.

Statistics

For your information we currently have 114 Active Optometrists (91 Resident; 23 Non-Resident).

Please note that all of our meetings are public and we encourage you to attend. Meetings are typically held during the months of March, June and September. The next meeting is scheduled for September 6th. Please contact the Office if you plan to attend a meeting to verify the date and time.

Contact us

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