

The GREEN Sheet



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PRESIDENT'S COLUMN



Dr. Frank Salimeno

By the time you read this, the AOA Summit on Board Certification & Continuing Competency will have taken place. But lets go back in time to those thrilling days of yesteryear, April 9, 1999, to Oak Brook, Illinois, when the ARBO's National

Optometric Continuing Education Conference (NOCEC) took place. The participants represented a broad spectrum of leadership in Optometry. The quotations that I make here are taken from the NOCEC Final Report. What I saw as thought provoking in the report may not appear so in the minds of others, but I leave that up to you.

The meeting was chaired by the then IAB President, Dr. Steve Eyler, the visionary who conceived and developed the meeting. The mission of the NOCEC as stated, "was to initiate a profession-wide analysis of the current status of optometric CE and to foster an exploration of its future direction for the benefit of the public."

Keynote Speaker, Dr. Richard Penna, Executive Vice-President of the American Association of Colleges of Pharmacy and a past member of the Council on Optometric Education, exemplified the mindset of the meeting with this statement: "The kind of questions you are asking - Is continuing education the right way to go? Is *requiring* continuing education the right way to go? Do we need to reevaluate this current yardstick for measuring the quality of professional practice? - are precisely the kinds of questions that all health professions should be asking."

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NEWLY REDESIGNED WEB SITE LAUNCHED

- Emphasis on ARBO's identity and services
- ListServ Started; 170+ Members Participate



Just over a month ago, ARBO launched a completely redesigned web site, incorporating a whole new approach to ARBO's identity on the World Wide Web. The redevelopment of ARBO's web presence is a key objective in the Board's 3-year strategic plan, and its completion is right on schedule.

The use of any of ARBO's three, key domain names - arbo.org, copeonline.org and OptometryCE.org - now deliver all visitors to ARBO's new greeting page (also known as a 'splash' page), where access to all three services is conveniently presented. The new greeting page underscores ARBO's role as the owner of these

services and emphasizes ARBO's identity for both new and repeat visitors. Further, all three sites incorporate similar layout and design elements to reinforce the concept that the entire site, and the varying information presented, is part of ARBO's family of web services. Two new services introduced with the new site are worth mentioning:

LISTSERV

ARBO has long supported the development of means by which our Member Boards can communicate on issues of importance related to state regulatory interests. The explosion in information technology over the past five years has created an abundance of tools to help in this endeavor, and ARBO is pleased to present one of the more useful of these new technologies: the ARBO ListServ.

Some of you may already be familiar with how listservs work, especially if you participate in the Optcom list. A listserv is a program that, when sent an e-mail, automatically distributes the e-mail to a list of subscribers. Instead of having an address book of possibly hundreds of e-mail addresses, you'd only have one, and only those who are subscribed to the list can send and receive messages from other subscribers. ARBO has now created a restricted listserv intended only for state board members and staffs.

Some members of the ListServ have expressed concern that participating in the ListServ may violate open meeting laws or sunshine statutes. ARBO has asked Dale Atkinson, our legal counsel, for an opinion and Dale responded, "...it is our opinion that the mere fact ARBO sets up this list serve and its member boards choose to participate does not violate the open meeting laws of the various jurisdictions."

Dale went on to state that the ListServ could be likened in many ways to a phone or fax as

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2001 ANNUAL MEETING PROGRAM HIGHLIGHTS

The 82nd Annual Meeting of ARBO will be held June 24-26, 2001, at the Sheraton Boston Hotel, Boston, Massachusetts. A general overview of meeting activities is as follows:

SUNDAY, JUNE 24 (8:00 A.M. START)

National Board workshop
(mandatory for stipend disbursement)
State Board Execs./Administrators
Workshop
* COPE Workshop
* Impaired Practitioner Programs

MONDAY, JUNE 25

State Board Execs./Administrators
Networking Roundtable
General Session of House of Delegates
Legal Update
Panel Discussion: Delegation of Authority
President's Reception

TUESDAY, JUNE 26

General Session of House of Delegates
Elections
AOA Legislative Update
COE and ASCO Reports
ARBO Committee Reports
Special Presentation: Making Boards
Consumer-Friendly

Program Highlights

Four key items are receiving special focus at this year's Annual Meeting:

State Board Execs./ Administrators Workshop

The State Board Execs./Administrators Workshop will cover two big areas in this year's program:

*** COPE Workshop**

Get the most out of COPE. This workshop will give you a 'how to' on using the web site to verify CE documentation forms against COPE's database of approved courses, along with an overview of the extensive new developments and program enhancements implemented this past year.

*** Impaired Practitioner Programs**

Impaired Professionals? Peer Assistance? Early Intervention? Monitoring Program? *Do you have a program? Is your board prepared?*

Lois Ewald will speak on the Impaired Practitioner Program used by the Texas Pharmacy Board; and Special Guest Speaker Monica Feider, MSW, Program Manager at the Minnesota Health Professionals Services Program, will present a case study on a cooperative program utilized by several health licensing boards.

Panel Discussion:

Delegation of Authority

Where are the boundaries of the delegation of authority in the clinical setting in your state? What are your fellow state boards doing on this issue? Does, or should, the AOA's Paraoptometric Certification program have a place in your state's rules or regulations? What about patient safety? Our knowledgeable panel of experts will debate these questions, and more.

Making Boards Consumer-Friendly

How do you make a state board responsive to the needs of consumers? Special Guest Speaker Ms. Anne Saile, formerly the Director of the Office of Professional Medical Conduct of the New York State Department of Health, shares her insights on how she helped remake the approach to public service for a 186-member board that oversees the investigation of 6,000 complaints a year.

Executive Directors/ Administrators Networking Session

Monday, June 25, 2001, 7:30 a.m. This session is designed specifically with state board staffs in mind. You'll be able to network with your peers on administrative issues of every kind, and learn how your colleagues are handling the multitude of challenges we face. Attendance offers the best form of benefit of any networking session: exactly what you put into it, and the answers, comments and suggestions you'll get from other executive directors/administrators!



Hotel Reservations

The Sheraton Boston Hotel is almost completely full. We strongly urge you to call immediately, if you haven't already done so. To make room reservations, call the Sheraton's central reservation system at (800) 325-3535 or call the hotel directly at (617) 236-2000 and ask for reservations.

As we are using the same hotel as the AOA, it is very important that you specify that you are making a room reservation under the ARBO room block, as the AOA block has already sold out. Mention either "Association of Regulatory Boards of Optometry" or "ARBO Annual Meeting." ARBO shares the same rate as AOA attendees for this excellent property:

**\$209.00 (+ local taxes) for a single/
double occupancy**

(After 2 people the extra person charge is \$20 per night per person.)

If you have trouble booking a room at the Sheraton, you may also wish to try the Westin Hotel Copley Plaza at (617) 262-9600 or the Fairmont Hotel Copley at (800) 441-1414. ARBO does not have a room block at either of these properties, but they are official AOA overflow hotels.

Location

The Sheraton Boston Hotel is part of the Boston Convention Complex (a group of hotels, restaurants, 200 shops, an 11-screen cinema and the convention center), and is almost directly attached to the Hynes Convention Center, where the AOA meeting will be held. The Sheraton is AOA's HQ hotel for the 2001 Annual Congress.

Transportation

The Sheraton Boston Hotel is approximately 12-15 minutes from Logan International Airport (BOS) by cab; the fare is \$20 one way.

Visit our online site at www.arbo.org/annualmeeting2001.htm for more detailed information on Boston, including links for site-specific activities. A draft agenda and registration form is also available for downloading.

We look forward to meeting you in Boston!

PRESIDENT'S COLUMN

Continued from front page

The following quotations are taken from the position papers submitted by the invited organizations:

The American Academy of Optometry, generally held as the “top of the pyramid” in optometric CE, is the administrator of the Ellerbrock Program and the Scientific Papers & Posters, which provide optometry with what are widely considered the best CE in the profession. The AAO presented not only a complete overview of its programs but also a description of its Diplomate criteria as an avenue for advanced knowledge.

Quote one: “The American Academy of Optometry believes that the key to state-of-art postgraduate education and training is to provide a number of options from which the practitioner can choose to advance his/her education.”

Quote two is from the final sentence of the presentation: “The Academy is also expecting to play a leadership role in the development of credentialing and certification courses and examinations as the need develops.”

No one can deny the important building block the AAO plays in any program to develop a post-doctoral program for continued competence for the optometric practitioner.

Drs. Joseph T. Boorady and Leo Semes, members of ASCO’s CE Directors SIG, prepared the second paper, “Professional Competency As It Relates To Optometry.” Their paper stated that it was the opinion of the authors and did not reflect the official position of ASCO; the paper was neither reviewed nor approved by the Board of Directors of ASCO. That being said, Drs. Boorady and Semes are both highly respected educators and CE lecturers in their own right. In my opinion, they have a handle on “what’s up” in the training of optometry students and in CE for the post-graduate practitioner. Their paper took the area of continued competence head on, as well as “Board Certification” in optometry. (Keep in mind that, at the time, the issue of ABOP was mostly an unknown and guarded subject and direct discussion was typically relegated to “hallway talk” at meetings of the period.)

The Boorady-Semes Paper, in light of what has transpired in the last two years, is controversial if not profound. I would recommend that you pull out a copy of the NOCEC Report and reread this paper.

Quote one: “Continued competency is a measure of an experienced practitioner’s ability to practice at a level acceptable to the profession and public authority. Advanced competency describes an individual who has exceeded the basic and continued levels of competency in one or more areas of specialty practice within optometry. Continued competency, in our opinion, becomes increasingly more difficult to assess in terms of the number of years an individual has practiced.”

Quote two: “The complexity and political ramifications of a structured test to judge continued competency in experienced practitioners would be inconceivable.”

Quote three: “As of 1999 I feel the profession has other issues to deal with of much greater concern. How can there be discussion about board certification when no national standard exists for the practice of optometry, including reciprocity? We should focus our efforts on one profession with equal standards of care, state to state.”

The ARBO paper was titled, “Continuing Education: Valid Tool or Time for a Change?” The paper presented an overview of the historical aspects of ARBO’s formation and its responsibilities to its member state boards.

Quote one: “It is at each board’s discretion as to where the level for both initial and continued licensure is established. Beyond initial licensure, optometry boards are charged by law to license and regulate practitioners throughout their career, and may restrict or remove the license of an optometrist should the board come to believe the patient is endangered. No other group in optometry is similarly empowered.”

Quote two: “In recent years, IAB member boards have spent a great deal of time and energy discussing and debating the topics of licensure by endorsement, board certification and continued practitioner competency. IAB considers CE to be a shared foundation to all of these issues.”

Quote three: “Even with this knowledge (lack of empirical evidence supporting CE as a competency assurance tool) there is a strong belief among both medical and optometry boards, and plenty of agreement among practitioners, which supports the general opinion that for the most part the current CE model works.”

The paper goes on to relate the history of COPE and its endeavor to simplify and standardize the reporting of CE, and while noting the evolving and controversial nature of the program, points out its acceptance by a considerable majority of state boards.

Quote four: “COPE has raised the bar regarding the quality of post-graduate education, and has provided optometry a base model on which to build.”

The ARBO report summarizes by outlining four areas where change could prove beneficial in helping state boards assure practitioner competence, which by my assumption could be read as the further development of the existing principles underlying COPE:

1. Organized Learning: Development of ‘learning tracks’ to allow practitioners to educate themselves in a coordinated manner in specific content areas;
2. Stricter Controls, Quality Controls: On-site peer review processes to bolster CE quality measures; the development and use of new technologies to support attendance

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Dr. Howard Flippin



Dr. Don Crouch

★ ★ CALL FOR NOMINATIONS ★ ★

Nominations are being solicited for TWO positions on the ARBO Board of Directors. The following elections are to be made at the Annual Meeting:

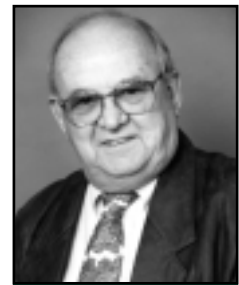
1. Election to the Board of Directors of ARBO to a four-year term. Howard Flippin, O.D., Board Director, is completing his last four-year term and is not eligible for reelection.
2. Election to the Board of Directors of ARBO to a four-year term. Donovan Crouch, O.D., Board Director, is completing his first four-year term and is eligible, and is planning on running, for reelection to a second, full four-year term.

Interested in running for office? Call ARBO for more information (301) 913-0641, or e-mail us at jvrac@arbo.org.

DR. JOHN ROBINSON CELEBRATED AT FARB FORUM

ARBO received the following news release from FARB and would like to share it with our members:

At the 25th Annual FARB Forum, the Federation of Associations of Regulatory Boards (FARB) bestowed an award of appreciation upon John D. Robinson, O.D., Executive Director of the North Carolina Board of Examiners in Optometry. Dr. Robinson, along with Fred D. Mahaffey, Executive Secretary of the National Association of Boards of Pharmacy, established the Federation of Associations of Health Regulatory Boards (FAHRB), a nonprofit association incorporated on January 8, 1974. FAHRB would thereafter change its name to the Federation of Associations of Regulatory Boards (FARB) to more accurately reflect its expanding membership.



Dr. John D. Robinson

During its initial years, FARB had no staff, no funds, and no history, and, as a result, Dr. Robinson personally undertook the responsibility of conducting a great majority of the operations of FARB. Through his efforts, the organization began to grow in strength and in numbers. Dr. Robinson served as Secretary from the time of the formation of FARB in 1974 for a period in excess of 10 years. He was also responsible for the establishment and circulation of the original newsletter, called the FARB Wire.

For years, Dr. Robinson unselfishly dedicated his time, effort and expense toward the continuation of FARB. Had it not been for his efforts, FARB would not be here today. Based upon his outstanding longevity of service, including the development of the initial concept and eventual incorporation, the FARB Board of Directors presented Dr. Robinson with a plaque, which expresses FARB's sincere appreciation and thanks for his outstanding contributions. Regulation and public protection are better off because of Dr. John Robinson. Congratulations!

On behalf of everyone involved with ARBO, we wish to extend our congratulations to Dr. Robinson for this recent recognition of his outstanding civic contributions. For those familiar with ARBO's history, Dr. Robinson's service during FARB's lean years sounds an awful lot like his stellar service in 1965-1984 when ARBO had some lean times, too!

Well done, Jack!

PRESIDENT'S COLUMN

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verification and reporting thereof to state boards;

3. Adaptability: State boards need to be more accepting of new and emerging CE delivery systems, which are different from the current format of education;

4. Post-Course Testing: Instituting psychometric measures to improve the validity and credibility of post-course testing (often referred to as Transcript Quality or TQ education), and supporting its expansion. (As a side note, this has been recently instituted by COPE in the form of the new CEE Policy, developed in consultation with the National Board of Examiners in Optometry.)

The final report from the National Board of Examiners in Optometry was titled, "The Potential Role of the National Board of Examiners in Optometry In the Assurance of Continued Practitioner Competence." Dr. Arol Augsburg, Immediate Past-President of the National Board, presented a background of the NBEO, its founding by the IAB and ASCO in 1951, and described NBEO's creation based on the need for an entry-level examination for graduate optometrists acceptable to all state boards (prior to that time individual boards provided their own examinations for licensure).

The National Board added a very important ingredient in the testing arena at its onset, "test standards."

Quote one: "The specific and primary purposes of the National Board, as enunciated in the corporation's Article of Incorporation, are to develop, administer, and score examinations, and report candidate performance on examinations, that assess competence in optometry and to undertake such activities as may seem in the interest of improving test performances and standards."

The National Board also has made it very clear that it is in the testing business and is not an educational entity, deferring to ASCO and AAO in their respective areas. It also claims no expertise in "regulatory" issues and has deferred those issues to ARBO and its Member Boards.

Quote two: "In return, the National Board believes that because of its unique perspective and expertise in assessment it has earned the respect and confidence of the schools and colleges (and thereby ASCO) and state boards (and thereby IAB) as the "profession's testing agency."

Quote three: "As optometry's recognized expert organization in assessment, the National Board can be a resource to the state boards in meeting their responsibilities. These obligations include assuring that all

licensed practitioners are maintaining a level of competence such that they are not presenting a threat to the public's health and safety. And the NBEO can assist the providers of continuing education when they are required to assess practitioner learning in their educational programs." It's easy to see the National Board's specific expertise within the optometric spectrum, as it is to understand the roles of each group that presented a paper at the NOCEC. Each can meet a particular need in the development of a program to assess continuing competence.

What were the outcomes of the NOCEC? As stated in the final few paragraphs of the summary, the results will depend on the intra-professional dialog that can be achieved to implement the recommendations. Maybe the time is right for this dialog to go to the next step. ARBO's National Optometric Continuing Education Conference set the groundwork with some prescient recommendations; perhaps the AOA Summit on Board Certification & Continuing Competency is the next logical step to have that intra-professional dialog. We all hope so. In the mean time, get yourself a copy of the NOCEC Final Report; with the hoopla surrounding the AOA Summit, it makes for some good reading!

COUNSEL'S CORNER

—by Dale J. Atkinson, Esq., ARBO Legal Counsel

COURT'S TALLY: THE EYES HAVE IT

Regulatory boards are statutorily created and empowered through the legislative process. Boards of optometry can only exercise those powers granted within the enabling legislation. At times, the judiciary is asked to interpret duly adopted legislation and rule upon its enforceability through constitutional or other analysis. A recent judicial decision rendered by the Supreme Court of Tennessee assessed the constitutionality of a Tennessee statute that defined as unlawful, and thus prohibited optometrists from:



“Practicing, or offering to practice optometry in or in conjunction with, any retail store or other commercial establishment where merchandise is displayed or offered for sale.”

LensCrafters, an Ohio corporation that owns numerous optical superstores throughout the United States and produces prescription ophthalmic materials on its premises, challenged the constitutionality of this statute. After various legal maneuvers, the parties agreed to narrow the issue to the following question for judicial determination:

“Whether an entity engaged primarily in the business of selling and dispensing ophthalmic lenses and frames is a 'retail store or other commercial establishment' within the meaning of the [applicable] Tennessee code ...”

The filing of the lawsuit by LensCrafters stemmed from an action by the Tennessee Board of Optometry that sanctioned an optometrist who leased space from LensCrafters. The board found that the practitioner had violated the applicable Tennessee code, which prohibited optometrists from practicing in, or in conjunction with, any retail store or other commercial establishment where merchandise is displayed or offered for sale. The board imposed a monetary fine and ordered the optometrist to close his practice within 30 days unless he was to accomplish the following:

1. Installation of closable, lockable doors separating his leased space from LensCrafters;
2. Providing a separate entrance from the outdoors to his space; and
3. Providing a waiting room area near the separate entrance.

While the administrative action against the licensee was pending on appeal, LensCrafters brought suit in federal district court against the Governor of the State of Tennessee and the members of the Tennessee Board of Optometry in their official capacities.

In its analysis, the Supreme Court initially emphasized that states are allowed great leeway under their police powers to adopt regulations that protect the health and safety of their citizens. In addressing LensCrafters argument that the Tennessee legislation unduly burdened interstate commerce, the Supreme Court emphasized that although the U.S. Constitution conferred upon Congress the authority to regulate commerce, “it was never intended to cut the states off from legislating on all subjects relating to the health, life, and safety of their citizens, though the legislation might indirectly affect the commerce of the country.”

The court also recognized that the statutory prohibitions placed upon optometrists insulated them from undue influence by non-health care commercial entities. The court held that the purpose of this insulation was to prohibit the formation of business relationships between optometrists and such entities. It continued, stating that the rationale supporting such prohibitions was the preservation of an unbroken relationship between the professional and the patient. The court stated that this is best achieved by shielding professionals from the risk of control by an unlicensed person or entity. Indeed, the court cited numerous analogous cases that showed that regulations prohibiting optometrists from practicing optometry as a servant of an unlicensed optical business, though affecting interstate commerce, had been held to be constitutional.

Citing previous Tennessee Supreme Court decisions, the court justified regulations addressing the question of optometrists being employed by corporations. It stated:

“The logical result would be that corporations and business partnerships might practice law, medicine, dentistry or any other profession by the simple expedient of employing licensed agents. And, if this were permitted, professional standards would be practically destroyed, and professions requiring special training would be commercialized, to the public detriment.. The ethics of any profession is based upon personal or individual responsibility.”

Based upon this analysis, the Supreme Court concluded, “even were the statute to prohibit the practice of optometry in LensCrafters' stores, such legislation would still be constitutional.” As a result, the Supreme Court was not persuaded by the constitutional arguments of LensCrafters.

Addressing the specific question of whether an entity engaged primarily in the business of selling and dispensing ophthalmic lenses and frames is a retail store or other commercial establishment within the meaning of the Tennessee legislation, the court interpreted the intent of the legislature and applied the natural and ordinary meaning of the language used within the statute. LensCrafters argued that the statutes governing optometrists and the statutes governing opticians were inconsistent in that they allow opticians to hire dispensing opticians and sell ophthalmic products and also allow optometrists to hire dispensing opticians and sell ophthalmic products, but they do not allow business associations to be formed between the two. In rejecting these arguments, the court emphasized the failure of the parties to recognize that allowing optometrists to practice in conjunction with businesses in the practice of dispensing opticians may involve a compromise of the optometrist's professional autonomy. By allowing such relationships, the legislature would risk subordinating the standards of the optometry profession to the influence of commercial interests operated by laypersons rather than by health care professionals.

As a result, the court held that a reasonable interpretation of the phrase “retail and commercial establishment” refers to non-health care commercial entities. In its analysis, the court held that opticians are not health care professionals. Accordingly, the Tennessee Supreme Court held that an entity engaged primarily in the business of selling and dispensing ophthalmic lenses and frames is a retail store or commercial establishment within the meaning of the Tennessee statute. As a result, optometrists in Tennessee are prohibited from practicing optometry in or in conjunction with opticians or other retail stores or commercial establishments where merchandise is displayed or offered for sale. The statute, however, does not prohibit an optometrist from selling frames and lenses.

Regulatory boards of optometry, as well as many other regulatory boards, are confronted with the issue of corporate practice and sharing retail space. In Tennessee, the Supreme Court has held that statutes limiting such relationships do promote public protection and survive constitutional scrutiny under the commerce clause of the United States Constitution.

LensCrafters, Inc. v. Sundquist,
33 S.W.3d 772 (Tennessee 2000)

