

The GREEN Sheet

ARBO

Association of Regulatory Boards of Optometry, Inc.

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45 OPTOMETRY BOARDS ATTEND 2001 MEETING

-- Delegation of Authority Panel Discussion Captures Attention of Attendees



Panel participants: Back row from left, Drs. Steve Grant, Russ Jones, and Mr. Dale Atkinson. Front row, from left, Dr. John Classé, Mrs. Jill Luebbert and Ms. Sherry Cooper

The 2001 Annual Meeting held June 24-26 in Boston, Massachusetts, drew forty-five (45) optometry boards, the largest number ever to attend ARBO's annual gathering of Member Boards. The meeting, held over three days, brought together 72 representatives from 43 state boards of optometry, plus the District of Columbia and the territory of Puerto Rico, as well as other invited speakers and guests. Total attendance at the

Annual Meeting was 99 individuals representing 56 various organizations.

The meeting opened on Sunday, June 24 with two unique workshops. The morning session saw the repeat of the popular National Board Workshop, presented by the staff of the National Board of Examiners in Optometry. This interactive presentation allowed the delegates to gain a first hand look at the workings behind the organization that administers the primary licensing examination for optometrists in the U.S. The workshop gave attendees a chance to question NB staff on the 'mechanics' of exam construction and testing techniques while also engaging in lengthy discussions on the future of the "National Boards". Executive Director Norman E. Wallis, Ph.D., O.D., and NB Director of Psychometrics and Research Leon J. Gross, Ph.D., represented the National Board at this workshop.



Jill Luebbert, CPOT, Chair-Elect, AOA Paraoptometric Section

The State Board Executive Directors/Administrators Workshop, held in the afternoon, started with an informative briefing from Dr. Barry Schneider, COPE Chair, on current developments with COPE, and was followed by a presentation from ARBO Executive Director, James Vrac, on the services now available through the COPE web site.

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Dr. Beverly Miller (Maryland) poses a question for the panel



Frank Salimeno, O.D., ARBO President and Presiding Officer at the Annual Meeting



Dr. Don Crouch

DR. DON CROUCH IS ELECTED ARBO PRESIDENT 2001-2002

In an interview held shortly after the ARBO Annual Meeting, Dr. Crouch noted the beginning of a new administrative year for ARBO and stated his goals for the coming year. The full text of the interview follows:

How did you get involved with ARBO and/or your state board?

The Governor appointed me to the Iowa Board of Examiners in 1990. Dr. Bucky Gazaway had completed his three 3-year terms and I filled his position. I completed my term in 1999. If I remember correctly, my first ARBO (or IAB at that time) meeting was in 1994. The following year, I volunteered for a committee and Dr. Linda Dejmek assigned me to COPE. In 1997, I was elected to the ARBO Board of Directors. I have enjoyed working with the staff and board members immensely. We have a very talented Board that works well together.

How has ARBO changed over the years since you joined the Board ?

In the few short years I have been associated with ARBO, I have seen growth in our credibility and in our commitment to serve our Member Boards. We are constantly trying to improve our communication and services at all levels. I think our name change has been a great move. It tells what we are and is not misleading. Other Optometric organizations know more about us now because the Board has been very active in cultivating our relationships. Several ARBO Board members serve on as directors on the boards of other Optometric organizations and this has worked to our

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Optometry Meeting

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Delegates came prepared with questions and many expressed surprise at the capabilities of the recently redesigned web site.



Dr. Jack Terry (West Virginia) hears news on the Vistakon settlement

The latter part of the afternoon featured a presentation on Impaired Practitioners Programs from Monica Feider, Program Manager of the Minnesota Health Professionals Services Program (HPSP), and Lois Ewald, speaking on behalf of the Texas Pharmacy Board. This program generated a great many questions from the attending delegates.

The ARBO House of Delegates convened on Monday, June 25, and began two days of discussions and presentations that addressed the issues that currently impact licensuring jurisdictions, and the laws and regulations that govern the scope of optometric practice. In addition to the business of the association, the House of Delegates heard presentations from several allied organizations, including the Association for Schools and Colleges of Optometry (ASCO); the American Optometric Association (AOA) State Government Relations Center; the AOA's Licensure & Regulation Committee; and the American Optometric Student Association (AOSA).

While much of the remainder of the meeting followed a predictable routine of business, three special presentations caught the interest of delegates. A panel discussion on Delegation of Authority, hosted by ARBO's Contemporary Issues in Optometry Committee, caused a



Dr. Steve Grant, Secretary, California Board of Optometry

stir of questions and debate among delegates. ARBO's recent survey on the extent of permissible delegation of authority among state boards was reviewed and discussed by a wide variety of experts convened for the panel. Panel participants included: Steve Grant, O.D., Secretary, California Board of Optometry; John Classé, O.D., J.D., Professor, UAB School of Optometry; Jill Luebbert,

CPOT, Chair-Elect, AOA Paraoptometric Section; Ms. Sherry Cooper, Staff, Licensure & Regulation Committee; and Dale Atkinson, J.D., ARBO Legal Counsel.

On Tuesday, the delegates heard from Mr. Philip R. Keefer, President of Vistakon Americas, who presented Vistakon's view of the terms of the contact lens prescription release settlement. The presentation left no doubt in anyone's mind of the possible impact of the settlement on state boards.

Finally, on Tuesday afternoon, special guest speaker Ms. Anne Saile, Executive Vice President, Bellevue Woman's Health, presented an engrossing view of her former role as Director of the Office of Professional Medical Conduct of the New York State Department of Health, and shared 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 year.



Dr. Barry Schneider (New Jersey) presenting his state's annual report



Dr. Frank Salimeno, with other attendees, hears the International Report delivered by Tom Lawless

Dr. Crouch, O.D. Dr. Salimeno, who remains on the ARBO Board as immediate past president, was presented with a handsome wall plaque recognizing his contributions to ARBO and commemorating his service as President. Robert L. Sorrell, O.D. and Russell W. Jones, O.D., were elected as Vice-President and Secretary-Treasurer respectively for the 2001-2002 term (see page 5).

The House of Delegates also passed seven resolutions (synopsis below), which the Judicial Council is currently reviewing. The full text of all resolutions follows on page 3:

* Resolution 1 commemorates the 50th anniversary of the National Board of Examiners in Optometry (NBEO);

- * Resolution 2 expresses ARBO's support for the World Health Organization's VISION2020: The Right to Sight program;
- * Resolution 3 is a housekeeping action to archive non-essential or expired resolutions and to recognize extant resolutions;
- * Resolution 4 recognizes the contributions of Dr. Howard Flippin during his eight years of service on the ARBO Board of Directors (see page 4);
- * Resolution 5 recognizes the contributions of Dr. D.R. Gordon during his eleven years of service on the ARBO Board of Directors (see page 4);
- * Resolution 6 recognizes the service of Dr. David Sullins, Jr., to the Council on Optometric Education (COE), ARBO and the profession upon completion of his tenure on COE;
- * Resolution 7 approves the list of accredited schools/colleges of optometry as submitted to the House of Delegates by COE.

All photos, except Crouch (page 1), Carter (page 5) and Atkinson (page 7), courtesy of Mainframe Photographics, Inc., Boston, MA

Annual Meeting 2001 Resolutions

Resolution 1

WHEREAS, the National Board of Examiners in Optometry is celebrating the 50th anniversary of its founding in 2001; and

WHEREAS, the International Association of Boards of Examiners in Optometry (now known as the Association of Regulatory Boards of Optometry) joined with the Association of Schools and College of Optometry to found the National Board in 1951; and

WHEREAS, this Association nominates four of the eight directors of the National Board; and

WHEREAS, the Member Boards of this Association rely on the testing services of the National Board to help them assure that new licensees are safe to undertake the unsupervised practice of optometry; and

WHEREAS, the excellence of the National Board's testing services has created a single pathway to licensure for new graduates of optometry schools; and

WHEREAS, the candidates, the state boards, the profession, and the public have been, and are, well served by the work of the National Board; now, therefore, be it

RESOLVED, that the Association of Regulatory Boards of Optometry, by action of the 2001 House of Delegates, hereby congratulates the National Board on 50 years of excellence in testing services for its members and the profession; and further be it

RESOLVED, that the Association of Regulatory Boards of Optometry does hereby extend its best wishes to the National Board of Examiners in Optometry for many more years of successful service for the public's health and welfare.

Resolution 2

WHEREAS, The Association of Regulatory Boards in Optometry (ARBO), based in Bethesda, MD, USA recognizes the crippling effect that loss of sight places on the world's populations; and

WHEREAS, ARBO has reviewed the statistical information relative to the numbers of blind and vision impaired worldwide provided by the World Health Organization (WHO) and acknowledges the need to address the critical vision needs of those individuals; and

WHEREAS, ARBO, through its membership affiliation with the World Council of Optometry (WCO), has been made aware of the WHO initiative, called VISION 2020 - The Right to Sight, to eliminate the causes of preventable vision loss; and

WHEREAS, ARBO represents 54 states, territories and districts of the United States, and 2 Canadian provinces, whose Participating Members are comprised of individuals involved in the delivery of quality optometric eye care to the public; now, therefore, be it

RESOLVED, that the ARBO Board of Directors and its Delegates attending the 82nd Annual Meeting, in Boston, MA, USA, confirm the organization's full support of the principles and efforts of the VISION 2020 initiative; and further be it

RESOLVED, that the Association of Regulatory Boards of Optometry, by action of the 2001 House of Delegates, encourages its Member Boards to notify all optometric organizations in each of the Member's jurisdictions to support this initiative with appropriate resources and to raise the awareness of the VISION 2020 program throughout North America; and further be it

RESOLVED, that Participating Members who serve on the ARBO Member Boards be encouraged to personally support this initiative and notify other charitable and humanitarian organizations within and without the profession of optometry, in their locale, to join in support of this program; and further be it

RESOLVED, that a copy of the description of the VISION 2020 - The Right to Sight initiative and a copy of this resolution be circulated to all optometric organizations and institutions to encourage their support and cooperation with WHO in this most worthwhile and beneficial program.

Resolution 3

WHEREAS, Under the Bylaws of the Association of Regulatory Boards of Optometry, Article IV, Sec. 8B, the Judicial Council shall in 1995 and every five (5) years thereafter study and review all resolutions expressing the policy of this Association adopted by the House of Delegates then in effect and shall recommend to the House of Delegates whether each such resolution should continue in effect, be deleted or be modified.

WHEREAS, this Judicial Council, following a careful search of all available and known records of this association, located and read 57 active resolutions that have been passed by this association between 1950 and 2000; and

WHEREAS, each resolution was carefully and thoughtfully examined for its current applicability; and

WHEREAS, 12 of the resolutions were determined to be either completed, non-policy expressions of appreciation or sympathy, moot, obsolete, or merely of historic interest or value and of no current import to the present direction or policy of this association; now, therefore be it

RESOLVED, that the following resolutions be declared inactive and placed in the archives because of their possible historical significance:

1995	Resolutions 2, 3, 4
1996	Resolutions 1, 2
1997	Resolutions 1, 2, 4
1998	Resolution 1
1999	Resolutions 1, 4
2000	Resolution 3

RESOLVED, that in addition to the Constitution and Bylaws of this association, the following 45 extant resolutions do constitute the policy pronouncements of the Association of Regulatory Boards of Optometry:

1950	Resolution 11
1960	Resolutions 7, 8
1966	Resolution 5
1972	Resolution 4
1974	Resolutions 2, 3
1975	Resolution 5
1976	Resolution 3
1977	Resolution 2
1978	Resolutions 6, 8, 9
1979	Resolution 3
1981	Resolutions 2, 4, 7, 8
1983	Resolution 6
1984	Resolution 4
1986	Resolutions 1, 3, 4, 5
1988	Resolutions 1, 2, 3
1989	Resolution 1
1990	Resolutions 1, 2
1992	Resolution 4
1993	Resolution 3
1994	Resolution 1
1995	Resolutions 1, 5, 6, 7
1996	Resolution 3
1997	Resolution 3
1998	Resolution 2
1999	Resolutions 2, 3
2000	Resolutions 1, 2, 4

Resolution 4

WHEREAS, Dr. Howard F. Flippin has performed an outstanding service for the Association of Regulatory Boards of Optometry during his eight consecutive years on the Board of Directors of ARBO, including service as President, 1996-1997; and

WHEREAS, his service has been exemplified by sterling qualities of leadership which underlie his personal successes and those of the Association of Regulatory Boards of Optometry; and

WHEREAS, Dr. Flippin has given outstanding service to the profession of optometry in various other capacities; and

WHEREAS, the member boards of this Association wish formally to acknowledge Dr. Flippin's distinguished contributions to the Association and the profession; now, therefore, be it

RESOLVED, that the Association of Regulatory Boards of Optometry, at this 82nd Annual Meeting, express its sincere thanks to Dr. Flippin for

his many years of distinguished service and outstanding contributions, and bestow upon him the status of Life Member in this Association.

Resolution 5

WHEREAS, Dr. D.R. Gordon has performed an outstanding service for the Association of Regulatory Boards of Optometry during his eleven consecutive years on the Board of Directors of ARBO, including service as President, 1991-1992; and

WHEREAS, his service has been exemplified by sterling qualities of leadership which underlie his personal successes and those of the Association of Regulatory Boards of Optometry; and

WHEREAS, Dr. Gordon has given outstanding service to the profession of optometry in various other capacities; and

WHEREAS, the member boards of this Association wish formally to acknowledge Dr. Gordon's distinguished contributions to the Association and the profession; now, therefore, be it

RESOLVED, that the Association of Regulatory Boards of Optometry, at this 82nd Annual Meeting, express its sincere thanks to Dr. Gordon for his many years of distinguished service and outstanding contributions, and bestow upon him the status of Life Member in this Association.

Resolution 6

WHEREAS, Dr. W. David Sullins, Jr., has performed an outstanding service during his nine consecutive years on the Council on Optometric Education (COE), including service as President, 1996-2001; and

WHEREAS, his service has been exemplified by sterling qualities of leadership which underlie his personal successes and those of the Council on Optometric Education; and

WHEREAS, Dr. Sullins has given outstanding service to the profession of optometry in various other capacities; and

WHEREAS, the member boards of this Association wish formally to acknowledge Dr. Sullins' distinguished contributions to the Council on Optometric Education, the Association, and the profession; now, therefore, be it

RESOLVED, that the Association of Regulatory Boards of Optometry, by action of the House of Delegates of the 82nd Annual Meeting, expresses its sincere thanks to Dr. Sullins for his distinguished service and outstanding contributions; and be it further

RESOLVED, that the Association of Regulatory Boards of Optometry, by action of the House of Delegates of the 82nd Annual Meeting, bestow upon Dr. Sullins an Honorary Membership in this Association.

Resolution 7

WHEREAS, the Council on Optometric Education has made an on-site visitation to one (1) school or college of optometry and twelve (12) residency programs; and

WHEREAS, the Council has listed those schools and colleges as having achieved the accreditation classification of either Accredited or Conditionally Accredited; and

WHEREAS, the Council has reported its activities and recommendations regarding accreditation to the Association of Regulatory Boards of Optometry (ARBO) at its June 2001 Annual Meeting; now, therefore, be it

RESOLVED, that the Association of Regulatory Boards of Optometry, at this 82nd Annual Meeting on June 26, 2001, accepts the report of the Council on Optometric Education of the American Optometric Association as submitted and recommends to its Member Boards that the "accredited" status bestowed by the Council on Optometric Education be accepted for accrediting purposes as may be required by state laws.

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advantage. Our administration and staff have been a big part in our growth as an organization. We are very fortunate to have a very futuristic-thinking staff. This year, there were several candidates for the two Board positions. This is a healthy sign in any organization when members want to volunteer their time to be on the board.

What do you see as the primary role for ARBO?

I feel ARBO's primary role is clearly articulated in our Mission Statement: "to represent and assist member licensing agencies in regulating the practice of Optometry for the public welfare."

How can ARBO ensure that it stays relevant to its member boards?

There is one word that tells how we stay relevant to our member boards - COMMUNICATION. If we communicate with our boards, listen to their needs and wants and help them fulfill those needs, we will have followed our mission.

What are your main goals for your year as President?

My main goal (as well as the Board's) is to follow our strategic plan developed in September 2000. Our key objectives for the next three years are to:

- * Expand and improve COPE
- * Design and establish a CE registry and storage service
- * Actively pursue development of a vehicle to address continued competence
- * Design a master plan to capitalize on the potential of the Internet
- * Investigate the development of a system for licensure by endorsement
- * Continue to pursue a positive reserve position equal to two years of operating expense.

What do you think your biggest challenge will be?

I think the biggest challenge is going to be in prioritizing the possibilities of new services and expanding/improving our present services. Uniform licensure by endorsement will be a huge challenge in the coming years and it is an issue in which all states will become involved. Life after ABOP will be another challenge. Where does the continued competence debate go from here? Do we control our own destiny or does some consumer/public group dictate direction to our profession? Another challenge is to improve our relationships with other Optometric organizations to make

Optometry a stronger profession. I believe we all share the same goal of providing the best care for our patients.

How would you like to be remembered after your term is over?

I will strive to do my best to keep the ARBO Board focused on providing the Member Boards with the leadership and guidance they need to fulfill their role of regulating the Optometric Profession for the public welfare.

Tell the members a little about yourself. What do you do to relax?

We have a close-knit family and we all enjoy getting together 4 or 5 times per year. Lois and I have four children and 11 grandchildren. Two sons and a daughter-in-law are optometrists; one son is a radiologist and our daughter is a periodontal hygienist. As you can imagine, we have lengthy discussions on health issues! I also enjoy all sports and try to participate in racquetball, tennis, golf (only for the social aspect) and bicycling. When the time allows, I spend a few minutes in my woodworking shop making sawdust.

Is there anything you'd like to say to the members?

I am a big proponent of COMMUNICATING. I think everything starts with communication. If we do not know what the other is thinking, it will be a long year. Of course, we always need volunteers. Like the commercial says, "Try it - you'll like it." Optometry has been good to all of us and we need to give back a portion of our good fortune to our profession.

FAREWELL TO HOWARD FLIPPIN AND D.R. GORDON



Drs. Flippin and Gordon

After eleven years of service to ARBO, D.R. Gordon, O.D., attended his last ARBO Annual Meeting in Boston, MA, in his capacity as an Ex-officio Board Director. Dr. Gordon continues to serve as a director on the National Board of Examiners in Optometry until October, when he will complete his tenure and pass the baton to incoming director, Don Crouch, O.D.

Also retiring from the ARBO Board at the Boston meeting was eight-year veteran, Howard F. Flippin, O.D., who has had a great impact on guiding ARBO into the Information Age. Howard continues to serve on ARBO's Information & Data Services Committee.

At the Boston meeting, Dr. Frank Salimeno, ARBO President, praised the exceptional work and outstanding service of both individuals, who have both given so much to ARBO through some very lean and difficult years.

Both Howard and D.R. received commemorative plaques from the Board of Directors acknowledging their services to ARBO, and gifts to celebrate their contributions. Thereafter, the House of Delegates passed, in a unanimous proclamation, resolutions recognizing Drs. Gordon and Flippin and re-affirming their Life Membership in ARBO (see resolutions 4 and 5 on page 3).

CROUCH, SORRELL, JONES ASSUME OFFICE; CARTER JOINS BOARD



*New ARBO Officers: from left
Vice-President Robert Sorrell,
President Don Crouch,
and Secretary-Treasurer Russ Jones*

Iowa practitioner Donovan Crouch, O.D., was elected to the office of President at the June 2001 ARBO Annual Meeting. Dr. Crouch was first elected to the ARBO Board in 1997, and ran unopposed at the 2001 Annual Meeting for a final term of four years on the ARBO Board.

Ohio practitioner Robert Sorrell, O.D., was elected Vice President and Arizona practitioner Russ Jones, O.D., was elected to the position of Secretary-Treasurer. Both are in private practice.

Dr. Janet Carter (Nevada) was elected to a first four-year term on the ARBO Board at the Boston meeting from a field of four very qualified and strong candidates. Dr. Carter is currently serving as President of the Nevada State Board of



Dr. Janet Carter

Optometry. She has served on the Nevada board for almost nine years and is a 1979 graduate of the University of California at Berkeley School of Optometry. She is a member of the AOA, the Nevada Optometric Association (serving as Secretary-Treasurer from 1991-92), and a fellow of the American Academy of Optometry. Dr. Carter has been in the private practice of optometry in the Reno-Sparks area since 1979. She is also the Director of Clinical Services for Pacific Laser Eye Center of Northern Nevada.

Dr. Carter is married to Jerry Kumar and has two sons, Edward and Andy, both of whom are students at Reno High School. She has served on numerous local non-profit boards and is proud to be a life member of Sorooptimist International of Truckee Meadows.

Regarding her election to the ARBO board, Dr. Carter says, "I am honored to have been elected from a field of four very qualified

candidates. The profession of optometry is changing rapidly, and the state boards serve a crucial role in protecting the public interest in light of these changes. ARBO must take the lead in assisting its member state boards in this process. I am looking forward to helping our organization fulfill this mandate."

ANNUAL MEETING BUSINESS ROUND UP

House Adopts \$414,640 Budget; Dues Increase Approved; CE Research Project to Proceed

Dr. Robert Sorrell, ARBO Secretary-Treasurer, presented a balanced \$414,640 budget at the Annual Meeting, which was adopted unanimously by the delegates on Tuesday, June 26. Dr. Sorrell also requested adoption of the first dues increase in thirteen years, which was adopted unanimously. The dues structure will increase each of the next three years as follows:

Dues for calendar year 2002:

up to 200 licensees in the state or other jurisdiction	\$525
201 - 400 licensees in the state or other jurisdiction	\$635
401 or more licensees in the state or other jurisdiction	\$745

Dues for calendar year 2003:

up to 200 licensees in the state or other jurisdiction	\$575
201 - 400 licensees in the state or other jurisdiction	\$695
401 or more licensees in the state or other jurisdiction	\$815

Dues for calendar year 2004:

up to 200 licensees in the state or other jurisdiction	\$600
201 - 400 licensees in the state or other jurisdiction	\$750
401 or more licensees in the state or other jurisdiction	\$900

During the presentation on the budget adoption, Dr. Sorrell also noted that the Board of Directors has approved the funding for a multi-disciplinary survey, coordinated by the National Council of States Boards of Nursing (NCSBN), on the efficacy of CE. It is expected that some 12,000 practitioners from six different professions will be surveyed on how CE affects practice and patient treatments. The results are to be released in June 2002.

ACCREDITATION NEWS

COE Honors Retiring Chair in Boston

The Council on Optometric Education honored retiring chair Dr. W. David Sullins, Jr., during a reception in conjunction with the ACOE annual meeting in Boston in June. Dr. Sullins, who was appointed to the Council in July of 1992, has served as chair for the past five years. During his tenure in office, the US Department of Education and the Council on Higher Education Accreditation have reviewed the Council for effectiveness; both of these groups have deemed that the Council meets their standards for accrediting bodies.

Dr. Douglas Penisten, the COE incoming chair, presented Dr. Sullins with remembrances from the Council including a book containing more than 100 tribute letters received from accredited programs, optometric organizations and individuals. "The entire profession has been positively impacted by David Sullins' strong leadership and the changes he initiated at the COE," said Dr. Penisten.

During their annual meetings in Boston, the Boards of the Association of Schools and Colleges of Optometry and the Association of Regulatory Boards in Optometry presented Dr. Sullins with resolutions honoring him for his service and leadership as chair of the COE.

COE Changes Its Name To Reflect Accrediting Duties

At its June 2001 meeting in Boston, the AOA House of Delegates approved the Council on Optometric Education's request to change its name to the:

Accreditation Council on Optometric Education (ACOE)

As part of its planning process, the Council reviewed and revised its mission, goals, objectives and its name in October of 2000. The Council's new mission is, "The Accreditation Council on Optometric Education serves the public by establishing, maintaining and applying standards to ensure the academic quality and continuous improvement of optometric education that reflect the evolving practice of optometry. The scope of the Accreditation Council on Optometric Education encompasses professional optometric degree, optometric residency, and optometric technician programs."

"The ACOE believes that its new name is more reflective of its mission as an

accrediting body," said Douglas Penisten, O.D., Ph.D., the Council's chair. The Council requests the assistance of the profession and the educational community in updating references to the Accreditation Council on Optometric Education (ACOE) in documents as they are revised. For additional information, contact Joyce Urbeck, the ACOE's administrative director at 800/365-2219, ext. 246 or at jlurbeck@theaoa.org.

2001-02 ACOE Leaders and Members Named

Douglas K. Penisten, O.D., Ph.D., professor and associate dean of Northeastern State University College of Optometry, was appointed by AOA President David Nelson to the position of chair of the Accreditation Council on Optometric Education (ACOE.) Originally appointed to the Council as an ASCO nominee in 1993, Dr. Penisten has served as vice chair of the COE since 1996.

Nada Lingel, O.D., M.S., professor at Pacific University College of Optometry, became the ACOE vice chair. She was also recently reappointed as an ASCO nominee to serve her third three-year term on the Council. She has been a member of the ACOE since 1995.

New members appointed to the Council with terms beginning on July 1, 2001 include:

Gregory W. Hicks, O.D., a practitioner from Sandusky, OH, who was appointed to a three year term to fill the vacancy for a practitioner created by retirement of W. David Sullins, Jr., O.D., of Athens, Tennessee.

Terry Roark, Ph.D., a public member of the Council, who has been appointed to a three-year term. He is the president emeritus of the University of Wyoming, and has served as a COE consultant on several visits to schools and colleges of optometry. He is filling the seat vacated by John Trunick, J.D.

Stacia Yaniglos, O.D., supervisor of the Cleveland VAMC optometric residency program, was appointed to a one-year term to replace Dr. Michael Duenas of Florida, who resigned.

Other members of the 2001-2002 Accreditation Council on Optometric Education include: Lynn Konkel, M.S., CPOT, optometric technician member from Madison, WI; Preston A. Littleton, Jr., DDS, Ph.D., public member of the Council, who is a consultant to the health professions from Potomac, Maryland; Timothy Messer, O.D., optometrist on staff at the Southern

Arizona VA Healthcare System, Department of Veterans Affairs; John Nishimoto, O.D., MBA, Dean for Clinical Affairs of the Southern California College of Optometry, and the third ASCO nominee to the ACOE; Robert Nyre, O.D., nominee from the Association of Regulatory Boards of Optometry (ARBO) and practitioner in Minot, North Dakota; and Larry Stoppel, O.D., nominee from ARBO and practitioner in Washington, Kansas.

ASCO RECRUITMENT STRATEGY ADDRESSES DROP IN APPLICANTS

ASCO immediate past president, Dr. John Schoessler, addressed the ARBO House of Delegates at the Boston meeting on the decline in student applications to optometry schools. His remarks followed on the heels of a national initiative undertaken by ASCO in spring 2001 to focus the attention of the profession on the nearly 25% drop in the number of applications to optometry school over the last two years.

In that initiative, Schoessler had said, "The continued decline in the number of students applying to optometry school could have serious ramifications for the entire profession. A small applicant pool eventually affects each institution's ability to be selective in the admissions process. If the caliber of individuals graduating from optometry schools is threatened, then so is the profile of our future colleagues and, ultimately, patient care. Optometry must also make greater efforts to increase the diversity of practitioners to better reflect the changing face of America. Both of these concerns -- quality and diversity -- are best addressed by a large and vital applicant pool."

A further indicator of the downturn is a 35% drop in the number of students registered to take the Optometry Admission Test (OAT) over the last three years. In 2000-2001 the total number of examinees for the OAT was 1,635 as opposed to 1,914 in 1999 and 2,129 in 1998. In January of this year some of the ASCO member schools and colleges of optometry reported a decline in their applicant pools for fall 2001 ranging from as low as 1% to as high as 32%, according to Joan Anson, ASCO's director of student and academic affairs.

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COUNSEL'S CORNER

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

LET'S PAUSE FOR A COMMERCIALISM BREAK

Continuing with the assessment of the role a statutory scheme and regulatory board play in impacting the ability of a practitioner to enter into business relationships with other individuals or entities, this newsletter will assess



a recent state Supreme Court opinion. Not only in optometry, the ability of a practitioner to join forces with other individuals or entities, licensed in other professions or unlicensed, is under increased scrutiny within the business community and, consequently, within the judiciary.

In Oklahoma, the applicable statutes and regulations prohibit an optometrist from entering into any agreement, contract, arrangement, practice or understanding, written or otherwise, with any optical supplier engaged in the sale of optical goods and materials to the public. Furthermore, prohibitions exist whereby referrals by the optical supplier to a licensed individual or referrals back to the optical supplier by the licensee for the purchase of optical goods and materials are prohibited.

Under applicable Oklahoma rules, optometric practices may not be established within the premises of any commercial business nor in conjunction with any commercial business and no optometrist shall use a commercial business as a "feeder" to his or her practice of optometry.

Furthermore, Oklahoma statutes reference the fact that it is the public policy of the State of Oklahoma that optometrists rendering visual care to its citizens shall practice in an ethical, professional manner and that their practices shall be free from any appearance of commercialism. The intent of the statute is to provide for the visual welfare of the patient as the prime consideration at all times and that optometrists shall not be associated with any non-professional person or persons in any manner which might degrade or reduce the quality of visual care received by Oklahoma citizens.

In an administrative disciplinary proceeding, the Oklahoma Board of Examiners in Optometry found that an optometrist who had entered into a series of agreements with an optical supplier had so integrated his practice with the optical company as to exhibit the appearance of commercialism in a manner that might degrade or reduce the quality of patient care in violation of applicable Oklahoma law. Furthermore, the board determined that these agreements violated Oklahoma law by resulting in a referral arrangement that allowed the optical supplier to negotiate third party provider agreements. Based upon such findings, the board suspended the license of the optometrist for one year with a proviso that ten months of the suspension be deferred during a three-year probationary period. This sanction was premised upon the fact that the optometrist would sever all contractual arrangements with the optical supplier.

The matter was appealed to the Court of Civil Appeals, which affirmed in part and reversed in part the findings of the board. Thereafter, the matter was appealed to the Supreme Court of Oklahoma, which identified the issues as follows:

1. Whether an agreement to allow the optical supplier to negotiate third party provider contracts constitutes a prohibited referral under applicable Oklahoma law; and
2. Whether the optometrist's relationship with the optical supplier has degraded or reduced the quality of visual care in violation of applicable Oklahoma law.

The Supreme Court also identified a burden of clear and convincing evidence as the necessary standard of proof.

The Supreme Court first reviewed the historical perspective of the Oklahoma Board of Examiners in Optometry and the Attorney General's office regarding whether a licensed optometrist could lease or sublease office space from a retail optical supplier or seller. In spite of a previous judicial ruling, which held that an attorney general opinion prohibiting an optometrist from leasing or subleasing office space from a retail merchandiser was not an accurate assessment of Oklahoma law, the board proceeded with its disciplinary hearing against the optometrist.

Following the hearing, the board found that the optometrist's agreements with the optical supplier exhibited the appearance of commercialism in a manner that might

degrade or reduce the quality of patient care. The board also found that by allowing the optical supplier to negotiate third party provider agreements, the optometrist had entered into a referral agreement in violation of Oklahoma law.

The Supreme Court assessed the merits of the appeal based upon defining "third party provider agreements" and "referrals." Pursuant to the court, a third party provider agreement involves agreements between an insurer and a provider of goods or services, such as an optometrist. The third party provider is not a party to the insurance contract, but agrees to provide a good or service to a policyholder for a set fee with reimbursement to come from the insurer. The court also defined referral as the act of directing attention to something or someone.

Under both definitions, the court found that the insurer and optometrist ultimately contracted with one another for the optometrist to be placed on the insurer's list. Furthermore, the court held that the optometrist, through his agreement with the optical supplier, did not compromise the overriding goal of the legislature in regulating optometrists. That is, the court found nothing in the arrangements or in the administrative record that would indicate harm to the personal and professional relationship between the optometrist and patient with the individual's visual care being the primary consideration.

Finally, the court held that no patient was called and no evidence was presented that any patient was unsatisfied with the optometrist's services. No evidence existed that would indicate an adverse or potential to adversely impact patient care.

Thus, the Supreme Court held that an optometrist's agreement to allow an optical supplier to negotiate third party provider contracts subject to mutually agreed upon terms in which the optometrist is listed as one of a number of approved source providers in which there is no interference with the optometrist's professional judgment is not prohibited referral agreements under Oklahoma law.

The court also held that the optometrist's association with the optical supplier had neither degraded nor reduced the quality of visual care in violation of Oklahoma law. Based upon these holdings, the Supreme Court reversed the findings of the board and vacated the board order and sanction against the optometrist.

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All health professions schools generally experienced a decline in applications this year according to ASCO Executive Director Marty Wall, who is currently the president of the Federation of Associations of the Schools of the Health Professions (FASHP). Several factors are commonly cited for the decline including competition from the technology sector and the reluctance of students to incur increasing levels of student debt through professional education.

In an attempt to forestall any situation that might result in a lowering of academic standards, ASCO's Board of Directors last year appointed a task force to develop new materials to aid schools in attracting top level students to optometry. In addition to new recruitment materials, ASCO is furthering its efforts to publicize optometry as a career with links to Internet career pages. The recently redesigned and expanded ASCO Web site (www.opted.org) contains a "frequently asked questions" section for prospective applicants, extensive career information, a list of the schools and colleges of optometry with direct links to their sites, a profile of the entering class and a listing of the prerequisites.

But eventually ASCO hopes to work with national and state optometric associations to implement a program enlisting interested practitioners to encourage students to pursue optometry as a career. Once the program is in place, ASCO will furnish optometrists with the appropriate resources to share with interested students. Many studies of matriculating optometry students indicate that the most important factor influencing their decision was the encouragement of a practicing optometrist. Optometrists' help is needed to ensure a larger applicant pool and, thereby, a higher

standard of academic excellence.

Elected president of ASCO at its June meeting in Boston, Dr. David Loshin, dean of the Nova Southeastern University College of Optometry, will appoint a special Presidential Task Force on Student Recruitment that will include optometric representatives as well as marketing specialists.

Counsel's Corner

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In its conclusion, the Oklahoma Supreme Court stated the following:

Our decision today should not be heralded as a departure from the general recognition that regulations relating to visual care are within the state's police power. However, no clear and convincing evidence of unprofessional behavior was presented and no prohibited referrals were made.

As boards of optometry and other agencies within the regulatory community assess the ability of a licensee to enter into agreements with other unlicensed individuals or organizations, it will be interesting to note the impact of this particular opinion and the opinion covered in ARBO's last newsletter article. (See: COURT'S TALLY: THE EYES HAVE IT, *LensCrafters, Inc. v. Sundquist*, 33 S.W.3d 772 (Tennessee 2000))

Massengale v. Oklahoma Board of Examiners in Optometry, 2001 WL 752697 (Okla. Sup.Ct.)

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