

The GREEN Sheet



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Published three times per year

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2003-2

84TH ANNUAL MEETING A BIG SUCCESS

The 84th Annual Meeting of the Association of Regulatory Boards of Optometry (ARBO) was held June 15-17, 2003, at the Westin Horton Plaza Hotel in San Diego, California.

Despite the fiscal constraints facing state governments which prevented some from attending, 37 member boards of optometry were represented at the Annual Meeting.

Dr. Russell W. Jones was elected President (see article on this page). Others newly elected are: Dr. Janet L. Carter, Vice President; Dr. Robert W. Smalling, Secretary-Treasurer; Drs. Robert M. Easton, Jr., and Jack E. Terry, Directors (see page 2).

Resolutions were adopted regarding licensure mobility (page 3) and honoring Dr. Linda M. Dejmek (page 4). The Accreditation Council on Optometric Education (ACOE) report was received (page 4). The NBE staff was thanked for its interim administration of ARBO last year (page 6).

Additional reports on other presentations made at the Annual Meeting will be included in the next issue of TheGREENSheet.

ARBO BOARD OF DIRECTORS



Left to right: *Front Row:* Janet L. Carter, O.D., Vice President; Russell W. Jones, O.D., President; Robert L. Sorrell, O.D., Immediate Past President; Linda M. Dejmek, O.D. (who retired from the ARBO Board after this meeting). *Back Row:* Robert M. Easton, Jr., O.D., Director; Donovan L. Crouch, O.D., Director; Robert W. Smalling, O.D., Secretary-Treasurer; Steven H. Eyer, O.D., Director; Frank L. Salimeno, O.D., Director; Jack E. Terry, O.D., Ph.D., Director.

RUSSELL W. JONES, O.D. ELECTED ARBO PRESIDENT



Russell W. Jones, O.D., of Flagstaff, Arizona, was elected President of the Association of Regulatory Boards of Optometry, Inc. (ARBO) for the 2003-2004 term at the 84th Annual Meeting at the Westin Horton Plaza Hotel, San Diego, California, June 15-17, 2003. Dr. Jones was elected to the ARBO Board of Directors in 1998 and served as Secretary-Treasurer 2001-2002 and Vice President 2002-2003.

In private practice in Flagstaff since 1976, Dr. Jones has an undergraduate degree from the University of Colorado, a Master of Science degree from the University of Arizona, and is a summa cum laude graduate of the Pacific University College of Optometry.

Dr. Jones had served for many years on the Arizona State Board of Optometry, twice serving as its president. A past president of the Arizona Optometric Association, he was the AZOA's Optometrist of the Year in 1992. He recently completed a term as President of the Mountain West Council of Optometrists. Dr. Jones is a Past Chair of the Licensure and Regulation Committee of the American Optometric Association.

Last year, Dr. Jones was appointed to the Board of Directors of the National Board of Examiners in Optometry.

Dr. Jones is a past president of the Flagstaff Route 66 Rotary Club and a member of the Board of Directors of Big Brothers of Flagstaff.

Dr. Jones' wife, Daphne, an elementary school teacher, is a Past President of the American Foundation for Vision Awareness (AFVA).

MISSION STATEMENT: *The mission of the Association of Regulatory Boards of Optometry is to represent and assist member licensing agencies in regulating the practice of optometry for the public welfare.*

JANET L. CARTER, O.D. SELECTED AS VICE PRESIDENT



Janet L. Carter, O.D.
Vice President

Dr. Janet L. Carter, of Reno, Nevada, is a graduate of the University of California, Berkeley and its School of Optometry. Dr. Carter is the Director of Clinical Services, Pacific Laser Eye Center of Northern Nevada and is in private practice in the Reno area.

Dr. Carter is a past member of the Nevada State Board of Optometry, serving as President 1996-2001.

She was elected to the ARBO Board in 2001 and served as Secretary-Treasurer for the 2002-2003 term. She was recently appointed to the Board of Directors of NBEO.

Dr. Carter is a Fellow of the American Academy of Optometry.

ROBERT W. SMALLING, O.D. CHOSEN AS SECRETARY-TREASURER



Robert W. Smalling, O.D.
Secretary-Treasurer

Dr. Robert W. Smalling of Warren, Arkansas, is a graduate of Arkansas State University and the Southern College of Optometry. He practices in Warren.

Dr. Smalling has served on the Arkansas State Board of Optometry since 1989 when he was appointed by then Governor Bill Clinton. He has been serving as President of the Board since 1995. He was elected to the ARBO Board of Directors in 2002.

A past president of the Arkansas Optometric Association, he was the Arkansas Optometrist of the Year in 2001.

Dr. Smalling served as President of the Southern Council of Optometrists/SECO International 2000-2001.

DRS. ROBERT M. EASTON, JR., AND JACK E. TERRY ELECTED TO BOARD



Robert M. Easton, Jr., O.D.
Director

Dr. Robert M. Easton, Jr., of Fort Lauderdale, Florida, is a graduate of the University of Central Florida and the University of Houston College of Optometry. He practices in Ft. Lauderdale.

Appointed to the Florida Board of Optometry in 1999 by Governor Jeb Bush, Dr. Easton is the current Vice Chair of the Board. Dr. Easton served as the Chair of ARBO's National Board Examination Review Committee (NBERC) last year.

A past president of the Florida Optometric Association and past chair of the American Optometric Association Political Action Committee (AOA-PAC), Dr. Easton is a Fellow of the American Academy of Optometry.

As a native Floridian, he extends a warm welcome to ARBO for the 2004 Annual Meeting in Orlando.



Jack E. Terry, O.D., Ph.D.
Director

Dr. Jack E. Terry of Huntington, West Virginia, is a graduate of The Ohio State University (M.S. and O.D.) and Marshall University (Ph.D. in Pharmacology/Biomedical Sciences).

The Chief of the Optometry Service at the Department of Veterans Affairs Medical Center in Huntington since 1992, and Coordinator of Research and Development for the VAMC since 1996, he is also an Associate Professor of Pharmacology at the Marshall U. School of Medicine, Director of the MU Office of Research Integrity, and maintains a private practice in Kenova, WV.

Dr. Terry is presently serving as President of the West Virginia Board of Optometry. He has served as a member of ARBO's Information & Data Services and Licensure Mobility committees.

He is a Fellow of the American Academy of Optometry and a member of Beta Sigma Kappa honorary fraternity.

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A true leader in innovation, Vistakon revolutionized the vision correction industry in 1988 with the invention of ACUVUE® Brand Contact Lenses, the world's first soft disposable contact lens.

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Vistakon has built an impressive team by fostering an unyielding dedication to innovative thinking and to maintaining the highest standards in quality. With a workforce of approximately 2,500, Vistakon makes ACU-

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The essence of Vistakon's philosophy is perhaps best embodied in the Johnson & Johnson Credo which reflects the values and commitment of the entire organization worldwide. First introduced in 1943, the words echoed in the Credo carefully define Johnson & Johnson's responsibilities to our customers, to our employees, to the communities in which we work, and to our shareholders as well.

Through our commitment to our patients and Eye Care Professionals, Vistakon will continue to positively affect people's lives by investing in innovation, building the ACUVUE® Brand, inventing new products, and fortifying our position as the worldwide leader in vision care.

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The Spectacle Lens Group is committed to employing state-of-the-art technology to improve vision options in the spectacle lens arena, and develops, manufactures and distributes technologically advanced spectacle lenses. It utilizes a proprietary Freeform Generation manufacturing process that uses the front and back surface space of the lens, to develop **DEFINITY™** progressive lenses. **DEFINITY™** Lenses use a patented DUAL ADD™ technology that reduces unwanted astigmatism, which causes patients to experience swim and distortion. **DEFINITY™** Lenses offer the least amount of unwanted astigmatism and the widest intermediate zone of any progressive lens on the market.

DEFINITY™ Lenses are available with The Spectacle Lens Group's exclusive GEMCOAT™ Multicoating System. The GEMCOAT™ system uses a nine layer anti-reflective coating per lens side, reducing reflection and enhancing scratch resistance.

Vistakon, a Division of Johnson & Johnson Vision Care, Inc., is a GOLD LEVEL Supporter of ARBO.

LICENSURE MOBILITY RESOLUTION ADOPTED

The ARBO House of Delegates adopted Resolution 2 of 2003. The Resolution, which must be approved by the Judicial Council before it can become effective, is as follows:

WHEREAS, mobility of practitioners is an increasing trend of the doctoral level health care professions; and

WHEREAS, the majority of the doctoral level health care practitioners, including optometrists, strongly desire the flexibility to obtain licensure in another state without reexamination; and

WHEREAS, the American Optometric Association strongly supports the concept of licensure by endorsement in a Resolution it passed in 1995; and

WHEREAS, the majority of State Boards of Optometry do not currently have an effective program in place to address licensure by endorsement; and

WHEREAS, the Association of Regulatory Boards of Optometry (ARBO) is the most appropriate organization to administer a licensure mobility program given its Mission Statement and close working relationship with State Boards; now, therefore, be it

RESOLVED, that the Association of Regulatory Boards of Optometry House of Delegates supports the development of a licensure mobility program to assist State Boards of Optometry in making decisions related to licensure by endorsement.

INTRODUCING —

Stacey M. Steelman
COPE Coordinator



Stacey M. Steelman was hired in January 2003 as a part-time COPE Coordinator. Her responsibilities include preliminary review of Applications for Course Qualification and CE Event Reporting Forms for completeness. She also does data entry for COPE and handles COPE correspondence.

Stacey is a student at Columbia College majoring in History.

ARBO Executive Director Tom Eichhorst said that he was "glad Jennifer Parker suggested we hire Stacey, her daughter, on a part-time basis. Stacey has become very knowledgeable about the COPE process, enabling Jennifer to assume other responsibilities. Stacey has been a big help to us as we start to expand ARBO services."

DR. LINDA M. DEJMEK RETIRES FROM ARBO BOARD AFTER ELEVEN YEARS OF SERVICE

Dr. Linda M. Dejmek of Appleton, Wisconsin, retired from the ARBO Board of Directors on Tuesday, June 17, 2003.

Dr. Dejmek was first elected to the ARBO Board in 1992, and served as Vice President of ARBO 1992-1994. She was elected President for 1994-1995 and was re-elected President for the 1995-1996 term.

In 1997, Dr. Dejmek was selected as ARBO's representative to the Federation of Associations of Regulatory Boards (FARB) where she served as Secretary-Treasurer 2001-2003. (ARBO is a founding member of FARB.)

A 1977 graduate of the Indiana University School of Optometry, Dr. Dejmek served on the Wisconsin Optometry Examining Board from 1988 to 1995. She was the Wisconsin Optometric Association Optometrist of the Year in 1995.



ARBO President Dr. Robert L. Sorrell presents a seahorse sculpture to Dr. Linda M. Dejmek in recognition of her eleven years of service as a member of the ARBO Board of Directors. Dr. Dejmek is a Master SCUBA Diver and a P.A.D.I. Dive master and collects seahorse memorabilia. The presentation was made at a reception in Dr. Dejmek's honor. The reception was sponsored by Vistakon, a division of Johnson & Johnson Vision Care, Inc., a Gold Level Supporter of ARBO.

The ARBO House of Delegates unanimously adopted the following resolution:

WHEREAS, Dr. Linda Marie Dejmek has performed outstanding service for the Association of Regulatory Boards of Optometry during her eleven years on the Board of Directors, including service as President, 1994-1996, and Vice President, 1992-1994; and

WHEREAS, her service has been exemplified by sterling qualities of leadership for the Association of Regulatory Boards of Optometry; and

WHEREAS, Dr. Dejmek 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. Dejmek's contributions to the Association and the profession; now, therefore, be it

RESOLVED, that the Association of Regulatory Boards of Optometry, at this 84th Annual Meeting, expresses its sincere thanks to Dr. Dejmek for her many years of distinguished service and outstanding contributions, and bestows upon her the status of Life Member in this Association.

ACOE PRESENTS LIST OF ACCREDITED O.D. PROGRAMS

Dr. Nada Lingel, Chair of the Accreditation Council on Optometric Education (ACOE) presented the ACOE report regarding the accreditation status of the academic programs in North America.

The ARBO House of Delegates voted to recommend "to its member boards that the 'accredited' status bestowed by the Accreditation Council on Optometric Education on programs leading to the Doctor of Optometry degree be accepted for accrediting purposes as may be required by state laws."

The 19 accredited programs are:

- Ferris State University, Michigan College of Optometry
- Illinois College of Optometry
- Indiana University, School of Optometry
- Inter American University of Puerto Rico, School of Optometry
- New England College of Optometry
- Northeastern State University, College of Optometry
- Nova Southeastern University, College of Optometry
- Pacific University, College of Optometry
- Pennsylvania College of Optometry
- Southern California College of Optometry
- Southern College of Optometry
- State University of New York, State College of Optometry
- The Ohio State University, College of Optometry
- University of Alabama at Birmingham, School of Optometry
- University of California, Berkeley, School of Optometry
- University of Houston, College of Optometry
- University of Missouri, St. Louis, College of Optometry
- University of Montreal, Ecole d'Optometrie
- University of Waterloo, School of Optometry

For additional information about the ACOE, see their website at:

www.aoa.org/students/accreditation.asp

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2004 ANNUAL MEETING
ORLANDO, JUNE 19-22**

COUNSEL'S CORNER

Equal (protection): A board's sweetener

By Dale J. Atkinson, Esq.

Regulatory boards have the power to regulate their professions according to the practice act enacted by the legislature. Accompanying this regulatory authority is the right to administratively discipline those found to have violated the act. Sometimes, disgruntled individuals who have been disciplined argue that the sanction imposed is disproportionate to previously disciplined individuals under similar circumstances. Consider the following:

A physician was accused of violating the practice act and provided with due notice of board charges. After a recommendation from the Administrative Hearing Commission that the physician was indeed subject to discipline for violating sections of the practice act, the board held a hearing on the matter. During the hearing, the physician presented evidence of discipline meted out by the board to licensees in similar situations.

The board issued its findings of fact and conclusions of law publicly reprimanding the physician's license and suspending it for 60 days, restricting it after the expiration of the suspension and requiring the physician to complete training on documentation and maintenance of medical records. The board, however, made no findings of fact regarding the evidence presented by the physician on how this discipline compared to previous discipline imposed under similar circumstances.

The physician petitioned the circuit court for judicial review, arguing that the sanction imposed by the board violated his right to equal protection under the law. After considering briefs presented by the two sides, the circuit court reversed the discipline imposed by the board and returned the matter to the board for the entry of findings of fact as to the similarity and dissimilarity of discipline imposed on the physician as compared to others. In its findings, the circuit court stated:

...The Board made no findings of fact as to the similarity or dissimilarity of [physician's] case to the prior cases cited by [the physician] at the time of his disciplinary hearing. The Court finds that Board failed to make findings of fact on this issue, which failure prevents this Court from conducting a review of [the physician's] claim. The Board's failure to make the required findings of fact on a material issue constitutes error to the substantial prejudice of [the physician].

The physician appealed to the Supreme Court of Missouri on several grounds, including the equal protection claims. The Supreme Court dismissed the appeal because of the possibility of the board ruling in the physician's favor, thus rendering an appeal moot. The board, having lost the opportunity to argue that it had not denied the physician his equal protection rights, sought a writ of prohibition in the Court of Appeals. A writ of prohibition is a legal remedy designed to prevent:

1. The usurpation of judicial power by a tribunal lacking either subject matter or personal jurisdiction;
2. A tribunal exceeding its jurisdiction; or

Dale Atkinson is a partner with the Illinois law firm that is counsel for ARBO. He is also executive director of the Federation of Associations of Regulatory Boards, of which ARBO is a member.



3. Irreparable harm to a party, such as cases in which a material question of law is decided erroneously and would otherwise escape review or cause an aggrieved party considerable hardship or expense.

The Court of Appeals issued a preliminary order prohibiting the enforcement of the circuit court order. The appellate court addressed the matter of quashing the writ and allowing the enforcement of the lower court order or making the writ absolute.

The board argued that the writ should be made absolute, thereby prohibiting the enforcement of the lower court order, because the judge exceeded his jurisdiction when he ordered the board to make findings of fact concerning the similarity of previous disciplinary actions. Thus, the court framed the issue as to whether the judge had the jurisdiction—or power—to remand a matter for what would be, in effect, findings of fact about the proportionality of discipline imposed by the board.

The court did an analysis of the power of a reviewing tribunal to remand a matter for reconsideration in light of additional evidence. However, it quickly noted that the remand by the lower court was not a decision based on new evidence not before the board. Rather, the remand was an order for the board to make additional findings of fact based on evidence it already had. Thus, the appellate court held that the lower court order was beyond the authority granted to a reviewing tribunal.

Regarding the equal protection argument, the appellate court held that the government's disciplining one person more harshly than others does not, of itself, give rise to an equal protection argument. As long as the board's discipline was a lawful decision permitted by statute, it could not implicate the Fourteenth Amendment of the United States Constitution.

Appropriately, the court outlined the impact of imposing requirements on regulatory boards concerning proportionality in discipline stating:

Thus, we are concerned that [the lower court's] ruling has the potential for becoming precedent by which the board and all other licensing boards will feel compelled to make findings of fact concerning the similarity of the discipline it imposes anytime a licensee raises a purported equal protection claim without regard for the validity of the claim. Requiring the board to review any number of previous disciplinary orders to make findings of fact as to their similarities would cause considerable hardship and expense to the board.

Optometry boards are encouraged to ask their attorneys about this important issue and the impact of related judicial decisions.

Missouri State Board of Registration for the Healing Arts v. Brown, 2003 WL 939812 (App. Ct. MO 2003)

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**NBEO STAFF
THANKED FOR
INTERIM ADMINISTRATION**

At the National Board Workshop (which preceded the ARBO Annual Meeting), Drs. Donovan L. Crouch, 2001-2002 ARBO President, and Robert L. Sorrell, 2002-2003 ARBO President, presented Dr. Norman E. Wallis, Executive Director of the National Board of Examiners (NBEO), with a Certificate of Appreciation to the NBEO staff for the interim administration of ARBO. The NBEO staff administered ARBO from October 2001 until August 2002, when the office was relocated from Bethesda, Maryland, to St. Louis.



Left to right: Donovan L. Crouch, O.D.; Norman E. Wallis, Ph.D., O.D.; Robert L. Sorrell, O.D.

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