

TENNESSEE BOARD OF OPTOMETRY TASKFORCE MEETING MINUTES

DATE: June 17, 2020

TIME: 9:00 A.M., CST

LOCATION: Health Related Boards
WebEx-Teleconference
Iris Room
665 Mainstream Drive
Nashville, TN

TASKFORCE MEMBERS PRESENT: Christopher H. Cooper, O.D.
Zachary McCarty, O.D.
James Venable, O.D.
Kenneth Young, O.D.

STAFF PRESENT: Lyndsey Boone, Board Manager
Yvette Vagle, Board Administrator
Kimberly Wallace, Executive Director
Kaitlin Parham, Assistant General Counsel

Call to Order

This meeting was convened electronically, via WebEx, due to the gathering restrictions resulting from the COVID-19 pandemic. The meeting was called to order at 9:03 AM. A roll call of the Board Members and Board staff present was initiated by Kimberly Wallace, Unit 3 Director.

Necessity of Meeting

Ms. Wallace informed all present that prior to proceeding with the electronic meeting, certain criteria for continuing with an electronic meeting must be met. To ensure the meeting proceeded according to guidelines, Ms. Wallace requested that each Board Member and Staff Member confirm they were able to hear one another. All confirmed.

Next, Ms. Wallace reminded all present that this Taskforce was created by the TN Board of Optometry for the purpose of reviewing the Board of Optometry Scope of Practice. Because this Taskforce was unable to convene in a physical location today to consider these matters - in light of the COVID-19 pandemic, for which the TN Governor and Mayor of Nashville have

recommend limiting the number of attendees at meetings for the next several weeks - this WebEx remote meeting was necessary.

Dr. Venable made a motion for the Taskforce to proceed to conduct this electronic meeting for the aforementioned purpose, with a second from Dr. McCarty. A roll call vote was conducted:

Dr. Cooper	xYES	NO
Dr. McCarty	xYES	NO
Dr. Venable	xYES	NO
Dr. Young	xYES	NO

The motion passed.

In addition, all Taskforce Members were asked to acknowledge whether they had received, prior to this meeting, copies of all the materials and documents that were to be discussed at this meeting.

Dr. Cooper	xYES	NO
Dr. McCarty	xYES	NO
Dr. Venable	xYES	NO
Dr. Young	xYES	NO

All Taskforce Members confirmed they did receive the materials prior to the meeting.

Finally, because only certain matters are proper for a teleconference, Dr. McCarty made a motion that this meeting does meet the requirements of:

The subject matter requires timely action;

The physical presence of all members is not possible considering the period of time required for action; and

The participation by some or all of the members of the Committee by electronic means is necessary.

With a second from Dr. McCarty, a roll call vote was conducted:

Dr. Cooper	xYES	NO
Dr. McCarty	xYES	NO
Dr. Venable	xYES	NO
Dr. Young	xYES	NO

The motion passed.

Public Comments

It was noted that Public Comments would be heard during this meeting. Instructions were provided for all attendees via the WebEx system and phone call-in options. It was reminded that the Taskforce may only take action on items that are listed on the agenda.

Meeting Protocol

All participants were asked to state their name each time they were to speak.

Nomination and Vote for a Taskforce Committee Chairperson

A motion was made by Dr. Cooper, to nominate Dr. McCarty as Taskforce Committee Chairperson, with a second made by Dr. Venable. Dr. McCarty accepted the nomination, and with no other nominations being heard, a roll call vote was conducted:

Dr. Cooper	xYES	NO
Dr. McCarty	xYES	NO
Dr. Venable	xYES	NO
Dr. Young	xYES	NO

The motion passed.

Review of Rules Regarding Optometry Scope of Practice

Dr. McCarty asked for some insight on the Board’s decision to request the formation of this Taskforce. Ms. Parham discussed the Board’s current use of CPT codes for clarification of the Scope of Practice and the recommendation to move away from the use of CPT codes and instead, expand in the Rules the types of services that fall within the Scope as defined in T.C.A. 63-8-102(12)(E)(i)(b), rather than using a CPT Code list. She has spoken with the VA Board and they discussed their experience with moving away from CPT Code lists, noting that CPT Codes are copyrighted material. Ms. Parham noted that the Associations should be fighting insurance claims issues, not the Board.

Dr. McCarty stated that this issue began about 10 years ago. Medicare law acknowledges that Optometrists are physicians and by law, they should be reimbursed for appropriate procedures. There have, however, been claims that have been unpaid, with payers purporting that they are not within the Scope of Practice. It creates an environment where insurance companies are usurping the authority of the Board and TN legislation by making determinations of what is or isn’t within the Scope of Practice.

Historically, it was deemed easiest by the Board to use CPT Codes to define Scope of Practice when conveying to insurers what were allowable services and procedures. It would take too long for the Board to have to send a letter every time a claim code was being denied to confirm that the procedure or service was indeed within the Scope of Practice.

Discussion continued surrounding the idea of possibly creating some type of procedures list, without using the CPT Codes, noting that it's hard to keep up with a CPT Code list, and they are AMA copyrighted material. The idea that it's better to say what Optometrists can do, based on what they have been taught was presented, with a suggestion of a list of exclusionary items that are outside of the Scope of Practice.

Ms. Parham was asked to clarify that all Health Related Boards are authorized and charged with the role of protecting the public through the Scope of Practice, and that is up to the individual Boards to determine what the Scope of Practice includes.

Ms. Wallace noted that the Boards usually do not get involved with 3rd party claim issues; in addition, she noted that other TN Boards do not make use of CPT Code lists the way that Optometry has been doing, as far as she is aware.

It was also brought up that, when an insurer is usurping the Board's authority by making their own determinations of what falls within the Scope of Practice, it then becomes an issue for the Board to intervene. Dr. McCarty noted that other professions do not see the same problems with the determination of Scope of Practice as Optometrists do, due to the different credentials.

Dr. Cooper asked Ms. Parham, if it is the job of all Health Related Boards to interpret statute, then can the Board determine by exclusion as well?

Ms. Parham confirmed that another state she researched did provide their Scope of Practice by means of exclusion, and this would be fine if that's the route the Taskforce wants to take. She reminded the Committee that any changes to the Rules will have to go through the standard Rulemaking process.

Discussion continued around the thought that practitioners can be without detailed guidance on new issues as they arise, because of the lengthy Rulemaking review process. The possibility of implementing an exclusionary list was mentioned as a cleaner way of listing what can't be done instead of what can be done, due to the wide Scope of Practice.

The Scope of Practice for other states was reviewed in summary format, with those of KY, LA, AR, AK, and OK mentioned. It was mentioned that Southern College of Optometry graduates do not have to have any additional training to practice in any of these states, except in OK. The "as taught" laws fit in TN and these other states.

Dr. Venable confirmed for the record that he works at Southern College of Optometry as VP of Clinical Programs; he has been involved in the execution of last 2 years' of curriculum.

Dr. McCarty summarized that the discussion thus far had led to a consensus that seems to promote moving away from a CPT Code list, with the preferred path as drafting an exclusionary list similar to KY.

A motion was made by Dr. Venable to request the Administrative Office team provide for the Taskforce copies of the KY, LA, and OK laws for review prior to continuing their work. With a second made by Dr. Young and no further discussion, a roll call vote was conducted:

Dr. Cooper	xYES	NO
Dr. McCarty	xYES	NO

Dr. Venable xYES NO
Dr. Young xYES NO

The motion passed.

Dr. Venable asked that, as he works on the Taskforce, in his position as VP at SCO, can he consult with his SCO colleagues? Ms. Parham confirmed that this is acceptable, but he must disclose that he has had those conversations when he shares any follow-up information at the Taskforce meetings. Dr. McCarty agreed this could be beneficial because of the “as taught” laws, it would be good to have input from other educators.

Public Comments

The meeting was opened at this time to public comment:

Pubic Commenter, Dr. Garret Shepherd, current President of T.A.O.P., believes that their Executive Director, Dr. Gary Odom could speak on this issue; Dr. Shepherd voiced his agreement that the Board has the authority to determine the Scope of Practice. He knows it’s difficult when areas that are under the Board’s authority are questioned and are not recognized by outside parties. He thinks it is important for the Board to be able to exercise its role as given in statute.

Public Commenter, Dr. Gary Odom, Executive Director of T.A.O.P. states that prior to his current role, he served in the Health Related Boards, supervising investigators and attorneys when reviewing licensee allegation investigations. He understands the Board’s dilemma on behalf of the public to determine the Scope of Practice. He understands why the Board developed the CPT Code process, noting that it’s not the actual numbers, but use of the written definitions is what is important. He likes what he’s heard today about defining what is excluded, instead of defining what is included. Thinks it’s a good discussion. He feels the Taksforce is on its way to doing what is beneficial for patients, which are the public. The Optometrist, in many cases, is the only eye doctor within 100 miles. He applauds the direction the taskforce is headed and notes that if there’s anything the association can do to assist, they are happy to do so, and feels this is important work.

No further public comments were made.

Follow-Up Meeting

A motion was made by Dr. Cooper for a follow-up meeting of the Taskforce to be held on Wednesday, August 19th, at 9:00am CST, with a second made by Dr. Young.

In discussion, it was asked if the Taskforce Members could submit documents they’re written with potential draft language and their thoughts after reviewing the other state Rules, to the Administrative staff ahead of the next meeting so that all Taskforce Members could review and be prepared to discuss at the meeting. Ms. Wallace and Ms. Parham confirmed this was acceptable; they should submit any drafts directly to the Administrative Office.

A roll call vote was conducted on the motion:

Dr. Cooper	xYES	NO
Dr. McCarty	xYES	NO
Dr. Venable	xYES	NO
Dr. Young	xYES	NO

The motion passed.

Dr. Cooper asked Ms. Wallace and Ms. Parham to review the Conflict of Interest procedures for the benefit of all Taskforce Members. Everyone was reminded that, under the Open Meetings Act, no business can be conducted outside of a public meeting, and all matters discussed and for which action is taken, must appear on the Public Notice.

Call for Public Comment

An additional call was made for public comment, and there were none heard


Adjournment

There being no other business, a motion made by Dr. Venable to adjourn, with a second by Dr. Young. A roll call vote was conducted:

Dr. Cooper	xYES	NO
Dr. McCarty	xYES	NO
Dr. Venable	xYES	NO
Dr. Young	xYES	NO

The motion passed.

The Optometry Rules Taskforce teleconference meeting was adjourned at 10:20am CST.


Board Chair

8/25/2020
Date