

P E N N S Y L V A N I A

STATE BOARD OF

# Optometry

NEWSLETTER

Fall 2005

*Inside:*



Commonwealth of Pennsylvania

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Pedro A. Cortés  
*Secretary of the Commonwealth*

Basil L. Merenda  
*Commissioner,  
Bureau of Professional  
and Occupational Affairs*

Peter V. Marks, Sr.  
*Deputy Commissioner,  
Bureau of Professional  
and Occupational Affairs*

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# Chairman's Message

by Steven J. Reto, O.D., F.A.A.O.

On behalf of the State Board of Optometry, we present this newsletter to all our licensees. Many issues come before the Board and we have found that proper communication is essential for their resolution. The members of the Board are committed in assuring that government regulations serve to protect the health, safety and welfare of every citizen of the Commonwealth. If there is anything unclear regarding licensure issues, please feel free to contact the Board. Your input is always welcome and appreciated.

This newsletter will serve as my last, as both the Chairman, and a member of the State Board. I have enjoyed serving the citizens of this Commonwealth, as well as the outstanding members on this Board, and the profession of Optometry during the past 8 years. Thank you for the opportunity!

## Meet Deputy Commissioner Marks

Peter V. Marks, Sr. was appointed Deputy Commissioner of the Bureau of Professional and Occupational Affairs by Governor Edward G. Rendell on January 31, 2005.

As Deputy Commissioner, he is primarily responsible for the day-to-day administrative oversight of the Bureau. The administrative responsibilities include Bureau staffing, budget and training. Other responsibilities include supervising Commissioner office staff, the Professional Health Monitoring Program (PHMP) as well as the Revenue Office. Deputy Marks assists the Commissioner in all relevant licensing board issues and acts as the Commissioner's designee on various boards and commissions.

Peter has served as Trustee on various Health, Welfare, Pension and Pre-Paid Legal Funds. He also functioned as lobbyist at the Pennsylvania State Legislature. Two notable successes in lobbying were the Pennsylvania Public Employee Collective Bargaining Act and the Pennsylvania Anti-Polygraph Law.

Deputy Marks has also served as Director of Organizing, Director of Education and as Director of Collective Bargaining (dealing with approximately 250 Collective Bargaining Agreements and supervising a staff of Representatives).

Peter designed and implemented a pre-paid dental program for approximately 14,000 people. He served as Arbitrator

for the Philadelphia Court system and was President of the Philadelphia Municipal Court Association of Arbitrators. He has been a New Jersey Superior Court Arbitrator and Arbitrator for the United States District Court of New Jersey.

Deputy Marks is a member of the American Bar Association, Labor and Employment Law Section and the Alternative Dispute Resolution Committee.

A native of Philadelphia, Peter earned a bachelor's degree in personnel and labor relations from LaSalle University and a law degree from Delaware Law School.

Peter has eight children, 10 grandchildren and currently resides in Dauphin County.

# ARBO Report June 18-21, 2005

by Marc M. Berson, O.D., M.B.A.

I had the pleasure and honor of representing the Commonwealth of PA at the 86<sup>th</sup> annual meeting of the Association of Regulatory Boards of Optometry (ARBO) from June 19-21 in Dallas, Texas. Many important issues which have relevance to Optometrists in PA were discussed, and I will highlight some of them in this article.

The National Board of Examiners in Optometry (NBEO) has moved its offices from Bethesda, MD to Charlotte, NC. Dr. Norman Wallis has retired as Executive Director after 25 years, and that position has been assumed by Dr. Jack Terry. For those practitioners who are or wish to become examiners for the National Boards, please contact NBEO. They can be located through the link on the ARBO website ([www.ARBO.org](http://www.ARBO.org)).

The profession's first Optometric education tracking program, OE TRACKER, has been introduced. The purpose of the OE TRACKER program is to provide the most comprehensive verification of optometric data in the profession. It is designed to capture continuing education attendance at educational meetings for transfer to the ARBO website for access by both the doctor and participating state boards of optometry in order to verify attendance information needed for state continuing education requirements for license renewal. The Pennsylvania Board cannot mandate or participate in the program, but individual licensees may opt to use it for their own record-keeping purposes.

The OE TRACKER program will integrate the following components. All optometrists will be issued an individual Optometric Education Card by ARBO. Each OE TRACKER card has a unique identification number, assigned by ARBO, along with a magnetic strip and bar code. In registering for educational events, the unique identification number will be used to link the doctor to the courses that are being taken. Electronic "reader" units will be used to capture attendee information at the approved courses. After the educational event, the data will be verified by the administrator and exported to the ARBO website for storage. The doctor can then access the website and view the courses that they have taken at various educational events and certificates of hours completed can be printed. If you have not received your card in the mail, please access the ARBO website, click on the link for OE TRACKER and follow the instructions to register and request your card.

ARBO has released updated results of its initiative to document complications caused by contact lenses dispensed without a valid prescription. It is felt that many more complications exist, but are not being reported. You are all encouraged to report any complications that you encounter by filling out the form, which can be found on the ARBO website.

The Council on Endorsed Licensure Mobility for Optometrists (CELMO), reported that four states recognize their certificate, and are expecting about twelve by the end of the year. While Pennsylvania has strict regulations regarding licensure by endorsement, this licensure mobility program may assist other state optometry boards in reviewing applications for licensure from established practitioners in other jurisdictions. Having a CELMO certificate does not guarantee that a practitioner will obtain a license by endorsement, but it will provide a Board with an additional tool to evaluate the applicant. Currently, applicants for CELMO certificates must be in active practice for three of the last four years and have authority to prescribe therapeutic pharmaceutical medications in the state in which they currently practice. Applicants must obtain fifty hours of COPE approved continuing education in a two year period. Additional information about the CELMO certificate and applications are available through the ARBO website link.

I would like to thank the Board for allowing me to attend this informative and important meeting.

# Disciplinary Actions

*The following is a chronological listing of disciplinary actions taken by the Board from July 2004, through July 2005. Each entry includes the name, certificate or registration number (if any), and last known address of the respondent; the disciplinary sanction imposed; a brief description of the basis of the disciplinary sanction and the effective date of the disciplinary sanction.*

*Every effort has been made to ensure that the following information is correct. However, this information should not be relied on without verification from the Prothonotary's Office of the Bureau of Professional and Occupational Affairs. One may obtain verification of individual disciplinary action by writing or telephoning the Prothonotary's Office at P.O. Box 2649, Harrisburg, PA 17105-2649; (717) 772-2686. Please note that the names of persons listed below may be similar to the names of persons who have not been disciplined by the Board.*

**John Stanley Toman**, license no. **OE-004059-P**, of McLean, VA, was ordered to pay a \$1,000 civil penalty and was issued a public reprimand because he had disciplinary action taken against his license by the proper licensing authority of another state. (07-08-04)

**Thomas J. Marino**, license no. **OE-004533-L**, of Trenton, NJ, had charges against him dismissed. (07-13-04)

**Rick D. Pasquariello**, license no. **OE-005962-T**, of State College, Centre County, was ordered to pay a civil penalty of \$1,500, because Pasquariello failed to submit proof of completion of a minimum of 30 hours of continuing education credits (09-08-04)

**Adam C. Cherry**, license no. **OE-008151-P**, of Coral Springs, FL, voluntarily surrender his license to practice optometry in the Commonwealth of Pennsylvania, because Cherry had disciplinary action imposed on his license to practice optometry by the proper licensing authority of another state. (11-10-04)

**Anthony LeDonne**, license no. **OE-003582-P**, of Pen Argyl, Northampton County, was ordered to pay a civil penalty of \$500, because LeDonne made untrue representations in the practice of optometry. (11-10-04)

**James M. Maressa**, license no. **OE-004462-L**, of Newark, NY was ordered to pay a civil penalty of \$2,000 and placed on probation, because Maressa had disciplinary action imposed by the proper licensing authority of another state and failed to notify the Board in writing within 90 days of the issuance of the disciplinary action taken against his license. (11-10-04)

**Renee Ross**, license no. **OE-007552-T**, of Lehighton, Carbon County, was indefinitely suspended because Respondent is unable to practice the profession with reasonable skill and safety to patients by reason of illness, addiction to drugs or alcohol, or mental incompetence. (01-14-05)

**Daniel A. Casamento**, license no. **OE-G000705**, of Bradford, McKean County, was ordered to pay a civil penalty of \$2,000, placed on probation for a period of one (1) year, and a reprimand was placed on his record with the Board, because Casamento failed to conform to the acceptable and prevailing standards of optometric practice in rendering professional service to a patient. (03-10-05)

**Earl James Kempton**, unlicensed, of Media, Delaware County, was assessed a civil penalty of \$2,000 and ordered to cease and desist from the practice of optometry based on findings he engaged in the practice of optometry without fulfilling the requirements of the Optometric Practice and Licensure Act and without receiving a license to practice in the Commonwealth and he practiced optometry in the Commonwealth of Pennsylvania from the mid 1970's to April 2000 without a valid, unexpired, unrevoked and unsuspended license issued by the Board. (03-11-05)

**Daniel H. Messinger**, license no. **OE-003602-L**, of Rydal, Bucks County, was ordered to pay a civil penalty of \$3,000 and Messinger agreed to the voluntary surrender of his license to practice optometry in the Commonwealth of Pennsylvania, because Messinger violated regulations promulgated by the Board by aiding or abetting an unlicensed individual in the unlicensed practice of optometry. (07-13-05)

## UNETHICAL OR UNLICENSED ACTIVITY

If you believe the practice or service provided by a licensed professional to be unethical, below an acceptable standard or out of the scope of the profession; or if you are aware of unlicensed practice, please call the Bureau of Professional and Occupational Affairs complaints hotline at:

**In Pennsylvania: 1-800-822-2113**  
**Out of State: 1-717-783-4854**

A complaint form is available on the Department of State's internet site.  
**[www.dos.state.pa.us](http://www.dos.state.pa.us)**

# What is BEI?

by Thomas Bat, PCI and Edmund Booth, PCI both of the Scranton Regional Office

Perhaps as a licensee you already know that the Commonwealth of PA Department of State, Bureau of Professional and Occupational Affairs (BPOA), provides administrative and legal support to 27 professional and occupational licensing boards and commissions. BPOA protects the health, safety, and welfare of the public from fraudulent and unethical practitioners. Professionals range from physicians and cosmetologists to accountants and funeral directors. However, many licensees are not aware of another Bureau in the Department of State that is equally important, the BUREAU OF ENFORCEMENT AND INVESTIGATION (BEI).

BEI is mandated by legislation to conduct investigations and enforce selected regulations of all 27 boards and commissions in Pennsylvania. BEI is able to accomplish this task through the use of Professional Conduct Investigators (PCIs), Regulatory Enforcement Inspectors (REI's), funeral home inspectors, and pharmacy inspectors.

## **What does a PCI do?**

All of the cases PCIs investigate are complaint driven. All complaints against any licensee are filed through the BPOA's Complaints Office first, where legal staff determines whether the allegation, if true, would potentially constitute a violation of the respective licensing Act or regulations. If so, the Complaints Office will open a case and request BEI to conduct an investigation.

The PCI then conducts field interviews with the complainant, licensee, witnesses, and anyone else who has personal knowledge of the subject matter being examined. The PCI will collect and categorize all the documents that are pertinent to the case. If the need arises, the PCI will take photographs, verify records, serve subpoenas, and visit sites in order to accurately record any relevant facts. This information is submitted to the prosecuting attorney of that licensing board, who will make a decision as to whether to close the case or file appropriate charges. Those charges are filed via a document called an "Order to Show Cause (OSC)." The PCI may be called to testify as a witness at a formal hearing to present any information he or she personally gathered during the investigation.

If you are ever visited by a PCI, the most important thing to remember is that they are there not to determine whether you have committed a violation. Their job is to simply obtain your side of the story, so that a prosecutor has as much information as possible in order to make the appropriate charging decision.

## **What does an inspector do?**

The Regulatory Enforcement Inspector (REI), mortuary inspector, and pharmacy inspector performs field inspection work to determine that a facility is in compliance with the laws, rules and regulations regarding professional and occupational licensing and other areas under the jurisdiction of the Secretary of the Commonwealth. The REI does routine and new business inspections for the Cosmetology, Barber, Real Estate and Motor Vehicle Boards. Typically, an inspector will make an appointment to do a new business inspection. All routine inspections, for obvious reasons, are unannounced.

When an inspector enters your place of business, it is to verify that your facility is in compliance with that particular board's rules and regulations. During the inspection, BEI will ask to see your current licenses, required equipment/material/devices and reference books, etc.

## **Does BEI have the authority to impose any disciplinary action?**

When violations are discovered, the inspector may issue a citation (ticket) under Act 48 of 1993. The PA Legislature created Act 48 in an effort to streamline the disciplinary process for BPOA. Currently, citations may be issued for certain violations under the following boards: Barber, Cosmetology, Funeral, Pharmacy, Real Estate, Vehicle, Accountancy, Architect, Auctioneer, Engineering and Dentistry. Thus, there are occasions when a PCI may also issue a citation during the course of an investigation. By and large, however, most of the significant charging decisions are made by a BPOA prosecutor and are filed via an Order to Show Cause, as noted above.

An important thing for all licensees to remember is that during the course of an investigation/inspection, the PCI/inspector is gathering facts to be considered by the licensing board. Although BEI is not the ultimate decision maker in most instances, failure to cooperate with the PCI/REI is paramount to not cooperating with the mandates of the licensing board itself.

We hope this brief introduction gives you a better understanding of what to expect when a PCI or an inspector visits you. BEI maintains four regional offices, located in Harrisburg, Pittsburgh, Philadelphia, and Scranton. BEI employs approximately 75 PCIs and 28 inspectors to cover the 67 counties in Pennsylvania in an expeditious, professional, and customer oriented manner.

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**2006 Board Meeting Dates**

**January 11 , March 9, May 10,  
July 13, September 13  
and November 9**