



TEXAS OPTOMETRY BOARD

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NEWSLETTER

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ALL LICENSE RENEWALS ON-LINE THIS YEAR*

All license renewals will be on-line (the Internet) this year. Credit cards may now be used to pay the renewal fee (a check may also be transmitted electronically). The Board, as well as other state agencies, must strictly control costs for the next few years, and on-line renewals can result in significant cost savings.

***However, we understand that some licensees may not have access to the Internet.**

If you do not, call or fax the Board and a regular renewal form will be mailed to you.

New Renewal Procedure

- ★ Mail in your Continuing Education attendance documentation as soon as received from the provider (unless the course provider is submitting the documents). The Board must have received and posted all 16 hours of CE *before* active licensees may renew on-line. See story below regarding checking CE status on the website.
- ★ Follow the instructions on the postcard being mailed to every licensee in late October 2003.
- ★ If you lose the postcard, or do not receive it, log on the Board's website (www.tob.state.tx.us) and use the button link: "Renew"
- ★ **All renewals, mail or on-line, are due December 31, 2003.**

CONTINUING EDUCATION

Continuing Education status can now be checked on-line at the Board's website: www.tob.state.tx.us. Please look for the button link: "Check CE" Call or e-mail the Board if it appears that the information is incorrect.

Sixteen hours of **Board Approved Continuing Education** must be submitted before a license may be renewed (inactive licensees and doctors licensed this year are not required to submit CE). Mailing CE hours to the Board as soon as confirmation is received from the CE provider allows the staff to post the information in a more timely manner. Since renewals will be on-line this year, proof of CE attendance cannot be attached to the renewal.

Board rules require that the original certification of attendance be mailed to the Board. The course provider may also submit certification to the Board on your behalf. Once the certification is received by the Board, every effort is made to process and post the hours without delay. Using the website rather than

telephoning the Board to check on CE status frees up the staff to quickly post the CE credit. Please check the Board website frequently as changes will be posted daily.

A list of Board approved Continuing Education courses is on the website. This list is current through the August 8, 2003, Board meeting.

CONTENTS

Renewals On-Line	1
CE Submission	1
Advertising Violations	2
Drug Rx Questions	2
Everything Internet	3
Profile Information	3
New Legislation	3
New Rules	3
Statistics	4
New Licensees	4
Compliance Matters	5
Disciplinary Actions	5
Contact Lens Rx	6
HIPAA	6

FINES FOR ADVERTISING VIOLATIONS

The Board may assess an administrative fine of between \$100 and \$500 for advertising that does not comply with the Optometry Act or Board Rule. Despite repeated articles in past newsletters, advertising violations continue to occur. Listed below are common violations that will be cause for an administrative fine:

- ✓ A retailer, manufacturer, or wholesaler of optical goods cannot advertise for an optometrist, unless the optometrist owns the optical (three office exception applies).
- ✓ An optometrist may not refer to a retailer, manufacturer, or wholesaler of optical goods in an advertisement, even as location landmark.
- ✓ Using the term “specialist,” such as “Contact Lens Specialist,” is prohibited, unless the optometrist also includes the name of the organization conferring the specialty designation. See the August 2000 Newsletter for examples.
- ✓ An optometrist’s professional identification must comply with the following list. If the identification “optometrist” or “therapeutic optometrist” is on a separate line, the identification must be in the same type and size as the optometrist’s name. The law does not provide for exceptions.

John Smith, O.D. <i>or</i> John Smith, Doctor of Optometry <i>or</i> John Smith, Optometrist <i>or</i> Dr. John Smith, Optometrist	A therapeutic optometrist must use one of the identifications to the left, or any of the following: <div style="text-align: center;"> Jane Smith, Therapeutic Optometrist <i>or</i> Dr. Jane Smith, Therapeutic Optometrist </div>
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If you have general questions concerning an advertisement, please call the Board.

DRUG PRESCRIBING QUESTIONS & ANSWERS

A new topical drug has been approved by the FDA for ophthalmic use, but I cannot find it in the formulary in Rule 280.5. Can I prescribe this drug? Example: cyclosporine ophthalmic emulsion, an anti-inflammatory approved for the treatment of dry eye.

ANSWER: Yes. Since the drug may be classified as an anti-inflammatory, subsection (g)(3)(D) of Rule 280.5 allows a therapeutic optometrist to prescribe the drug. Please note that subsection (i) of Rule 280.5, also allows the administration of some drugs not specifically listed in the rule formulary:

- (i) This formulary specifically lists the types of drugs which may be prescribed by a therapeutic optometrist. Subject to the antiglaucoma limitations described in subsections (g) and (h) of this section, a therapeutic optometrist may possess and administer any topical ocular pharmaceutical agent

which has a legitimate diagnostic or therapeutic use.

Where can I find a copy of Rule 280.5?

ANSWER: The 2002 Newsletter contained a copy of the Board Rules. The Rules are also available on the Internet: www.tob.state.tx.us.

I am confused. Section 351.358 of the Optometry Act states, “a therapeutic optometrist may prescribe oral medications . . .” I thought only optometric glaucoma specialists could prescribe oral medications.

ANSWER: Only optometric glaucoma specialists may prescribe oral medications. That section of the law must be read with Section 351.3581, which states that only therapeutic optometrists with an optometric glaucoma specialist license may prescribe an oral medication. “Oral medication” in these sections of the law refers to medications which may only be obtained with a doctor’s prescription.

EVERYTHING INTERNET

To improve customer service and efficient operation of the Board, the following information is available on the Board's website: www.tob.state.tx.us:

- ✓ On-Line Renewals (beginning November 2003, there will be a link to Texas Online)
- ✓ CE Hours Status
- ✓ Approved CE Courses
- ✓ Optometry Act (printable version available)
- ✓ Rules (printable version available)
- ✓ HIPAA Information (links to federal websites)
- ✓ Newsletters
- ✓ Demographic Information
- ✓ Applications for License (available soon)

Please call the Board if you are unable to access the Internet and hard copies of any of these materials can be mailed to you.

PROFILE INFORMATION

A recent law requires *all* health licensing agencies to provide practice profile information on the Internet for each license. *This information may be used by prospective patients to select a practice!* Therefore accurate and complete information should be helpful to your practice. The Board has adopted Rule 273.12 to comply with the law.

When you renew your license on-line this year, you will be asked to check for the accuracy of profile information as well as supply additional information required by statute. This includes (as stated in Rule 273.12):

- (1) the name of the license holder and the address and telephone number of the license holder's primary practice location;
- (2) whether the license holder's patient service areas, as applicable, are accessible to disabled persons, as defined by federal law;
- (3) the type of language translating services, including translating services for a person with impairment of hearing, that the license holder provides for patients, clients, users, customers, or consumers, as applicable;
- (4) if applicable, insurance information, including whether the license holder participates in the state child health plan under Chapter 62, Health and Safety Code, or the Medicaid program;
- (5) the education and training received by the license holder, as required by the licensing entity;

(6) any specialty certification held by the license holder;

(7) the number of years the person has practiced as a license holder; and

(8) if applicable, any hospital affiliation of the license holder.

Providing and correcting this information is voluntary for 2004 renewal, but the information will be available to the public. *However, these steps will be required in 2005 in order to renew your license.* To look at your profile, log onto the state website, "www.state.tx.us" select "Online Services" from the menus on the left, select "Professional Profiles" and then "License Profile Management"

NEW LEGISLATION

Three pieces of legislation passed this session directly affect Texas optometrists:

—Managed Care Plans

Senate Bill 857 amends the Insurance Code such that: "A managed care plan that provides or arranges for vision or medical eye care services or procedures must allow a therapeutic optometrist who is on one or more of the vision panels of the plan to be a fully participating provider on the plan's medical panels to the full extent of the therapeutic optometrist's license to practice therapeutic optometry."

—Confidentiality of Complaint Investigations

Senate Bill 211 amends the Optometry Act to make investigations of complaints confidential during the investigative process.

—Office of Patient Protection

House Bill 2985 creates the Office of Patient protection. This office assists persons with complaints against health care providers. The new law requires the Board to add one dollar to the licensing fee.

NEW RULES SINCE LAST NEWSLETTER

The Board amended Rule 277.6, which imposes administrative fines for violations of the Optometry Act and Board rules. Violations with fines of \$100 to \$500 include:

- (A) Failure to report address changes to the Board as required by Sections 351.351 and 351.501(16) of the Texas Optometry Act.
- (B) Failure to properly display name visible to the public as required by Sections 351.362

of the Act.

(C) Failure to display public interest information as required by Section 351.203 of the Act, and §273.9 of this title.

(D) Failure to properly release contact lens prescription as required by Section 353.156 of the Contact Lens Prescription Act,

(E) Advertising violations, including misleading advertising as prohibited by Sections 351.155 and 351.403 of the Act, and §279.9 of this title.

(F) Failure to use proper professional identification as required by Section 104.003 of the Texas Occupations Code.

(G) Offering glasses or contact lenses as a prize or inducement as prohibited by Section 351.404 of the Act and §273.3 of this title.

Violations with fines of \$100 to \$1,000 include:

(A) Directing or allowing optical employees or owners to make appointments for a leasing licensee as prohibited by Sections 351.408 and 351.459 of the Act.

(B) Directing or allowing optical employees or owners to advertise for a leasing licensee or include the licensee's office in the advertising as prohibited by Sections 351.408 and 351.459 of the Act.

(C) Directing or allowing optical employees or owners to set the practice hours for a leasing licensee as prohibited by Section 351.408 of the Act.

(D) Practicing in an office not properly separated from a lessor optical as prohibited by Sections 351.363, 351.364, 351.408, and 351.459 of the Act, and §279.12 of this title.

The Board also amended Rule **280.5** to comply with recent legislation which changed the method for generic substitution instructions on drug prescription. The amended sections of the rule now read:

(b) To prohibit substitution of a generically equivalent drug product on a written prescription drug order, a therapeutic optometrist must write across the face of the written prescription, in the therapeutic optometrist's own handwriting, "brand necessary" or "brand medically necessary." If the therapeutic optometrist does not clearly indicate "brand necessary" or "brand medically necessary," the pharmacist may substitute a generically equivalent drug product in compliance with the Texas Pharmacy Act, Sections 562.008 and 563.002 of the Texas Occupations Code, and §309.3 of this title.

(d) The prescribing therapeutic optometrist

issuing verbal or electronic prescription drug orders to a pharmacist shall furnish the same information required for a written prescription, except for the written signature. If the therapeutic optometrist does not clearly indicate "brand necessary" or "brand medically necessary," when communicating the prescription to the pharmacist, the pharmacist may substitute a generically equivalent drug product in compliance with the Texas Pharmacy Act and §309.3 of this title.

STATISTICS

Statistics concerning the distribution and ethnicity of optometrists in Texas are on the Board's website, under the Table of Contents entry: "Information About Optometrists." In most cases, the statistics are presented in tables with "all licensees" in one column, and those licensed in the past ten years in the other column. In some categories, there have been substantial changes in the last ten years. For example, among all licensees, 66 percent are male, but among those licensed in the past ten years, male licensees make up 46 percent of those licensed.

A link to more detailed statistics regarding the distribution of optometrists in Texas, to be published by the Texas Department of Health, will be added in September.

NEW LICENSEES

Information Important to New Optometrists

Oral Medications: Only optometric glaucoma specialists may prescribe oral medications.

CE Exemption: New licensees are exempt from continuing education for the first renewal after being licensed (those licensed in 2003 may renew their license for 2004 without continuing education).

License Renewal: Each licensee is responsible for renewing his or her license. If the Board has your correct address, a notice that renewal is due will be sent out in late October or early November. Regardless of whether a licensee receives this notice, it is the licensee's responsibility to renew their license by January 1, 2004. License renewal is on the Internet: the Board's website (www.tob.state.tx.us) has a link to the renewal site. A licensee cannot practice if the license is not renewed -- this is strictly enforced by the Board.

DEA Numbers: A therapeutic optometrist who does not possess or administer Cocaine eye drops may prac-

tice *without* a Controlled Substances Permit from the Texas Department of Public Safety (DPS) and a Drug Enforcement Administration (DEA) Controlled Substances Registration. An optometric glaucoma specialist who does not prescribe, possess, or administer controlled substances likewise does not need to obtain the permits.

Should a therapeutic optometrist or an optometric glaucoma specialist wish to obtain a DPS permit and DEA registration (both are required), the DPS permit should be obtained first by calling 512-424-2188. Once the DPS permit has been issued, a licensee may obtain a Midlevel Practitioner DEA registration by calling the Dallas Office (214-366-6982), the Houston Office (713-693-3660), or downloading the forms from the Internet at:

<http://www.deadiversion.usdoj.gov>

Questions on filling out the forms? Please e-mail or telephone the Board.

COMPLIANCE MATTERS

Employees Are Responsible for Complying with Optometry Act

A problem area has come to light in the investigation of complaints and staff discussions with doctors who are employees or independent contractors working in an office owned by another licensee. The employee or independent contractor doctors in several cases were under the impression that they were not personally responsible for violations of the Optometry Act or Board Rules since they did not own the practice. This is incorrect. For example, each licensee is responsible for the correct display of their name at the entrance to the office and on any advertisements. Similarly, each licensee is responsible for the conduct of an exam and the proper recording of the exam findings. Each licensee is also responsible for practicing within their scope of practice, regardless of office policy. It is not a defense to disciplinary action that the licensee's employer told the licensee to practice in a certain manner (where that manner was not in compliance with the Optometry Act), or that the employer never got around to changing the sign on the front door.

Separation

Rule 279.12 states that Section 351.364 of the Optometry Act "... prohibits the space occupied by an optometrist or therapeutic optometrist and space occupied by a dispensing optician from being joined

by a wall in which there is a door, either locked or unlocked."

Inspection of Records

To insure compliance with Section 351.353 of the Optometry Act, Initial Examination of Patient, the Board has investigated offices and examinations for over 25 years. Again this year, the Board's investigator is visiting licensee's offices and asking for copies of patient records. These records are reviewed by the Board for compliance with Section 351.353 and Rule 277.7, Patient Records. Although HIPAA regulations do not prohibit the copying of the entire patient record by the Optometry Board, the investigator will normally ask that identifying information be removed from the copies.

DISCIPLINARY ACTIONS

—Omitted Basic Competency Findings:

On October 4, 2002, the Board entered into an Agreed Order with Donald Bright, O.D., resulting in a suspension for six months, with the suspension period being probated. An administrative penalty of \$500.00 was also assessed. The Agreed Order alleges that an examination of the doctor's patient records showed that the doctor omitted basic competency findings required by Section 351.353 of the Act, including but not limited to: biomicroscopy, internal ophthalmoscopic examination, and subjective findings, far point and near point. The doctor was required to submit patient records during the probation period. 1855TG

—Prescribing Oral Medications Without Authority

On October 4, 2002, the Board entered into an Agreed Order with Agnes Palys, O.D., and assessed an administrative penalty of \$500.00. The Agreed Order alleges that the doctor prescribed Ambien, a Schedule IV controlled substance, so that a patient could sleep on long distance plane flights on which the patient had been unable to sleep because of pain in his eyes from dryness. Ambien is classified by the manufacturer as a hypnotic "... indicated for the short term treatment of insomnia," and the Agreed Order alleges that a licensee of the Board does not have authority to prescribe the drug. The doctor stated that she consulted a computer program before prescribing the drug and believed she had authority to prescribe it. 2863TG

—Contact Lens Prescription

—Patient Records

On July 11, 2003, the Board entered into an Agreed Order with Dwight Allison, O.D., and assessed

an administrative penalty of \$250.00. The Agreed Order alleges that the doctor failed to release a contact lens prescription after initially dispensing a six month supply. The Order also alleges that the doctor's failure to provide copies of patient records to the Board prevented the doctor from showing compliance with Rule 277.7, although the records were subsequently provided at the informal conference. 4906T

CONTACT LENS PRESCRIPTIONS

Legislation introduced this year to substantially modify the Contact Lens Prescription Act did not pass -- *so the law is unchanged*. The Board will continue to investigate complaints regarding licensee's compliance with the Contact Lens Prescription Act. In instances where the licensee did not comply with the Act, disciplinary action will be imposed.

In the past year the Board has received a substantial number of documents concerning the release of contact lens prescriptions. The Board has solicited sufficient information to complete investigations of many of the complaints, and where appropriate, requested a reply from a number of licensees. From these investigations it appears that almost all licensees are complying with the requirements of the Contact Lens Prescription Act. Again, the Board will continue to investigate complaints and impose disciplinary action when violations are found.

Questions regarding the release of a contact lens prescription, should be e-mailed (the e-mail address is on the Board's website: www.tob.state.tx.us) or telephoned to the Board (512-305-8500). Please be aware that patients frequently telephone the Board staff requesting information about the requirements of the Contact Lens Prescription Act.

HIPAA COMPLIANCE

Since the Board's last newsletter, many of the HIPAA requirements have gone into effect. All licensees are encouraged to verify compliance. The website has several links to federal government HIPAA websites.

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