



# TEXAS OPTOMETRY BOARD

333 GUADALUPE STREET SUITE 2-420  
AUSTIN TX 78701-3942  
(512) 305-8500  
FAX (512) 305-8501  
WWW.TOB.STATE.TX.US

# 2006

VOL XIV, NO 1

## NEWSLETTER

AUGUST, 2006

### LICENSE RENEWAL BEGINS FIRST WEEK OF NOVEMBER

Again last year eighty percent of licensees renewed on-line. Credit cards and electronic checks may be used to pay the license fee on-line.

## ALL licenses expire December 31, 2006

### Renewal Procedure

- **Mail in Continuing Education** attendance documentation (certificates) as soon as received from the provider (unless the course provider has informed you that it is submitting the documents). The Board must have received and posted all 16 hours of CE before active licensees may renew on-line. If hours are recorded by ARBO CE Tracker, send in the list from ARBO's website. *Please see CE check list on page 2.*
- **Log on to the Board's website after November 1, 2006** and click the button: "Renew" ([www.tob.state.tx.us](http://www.tob.state.tx.us)), or follow the instructions on the *postcard* being mailed to every licensee in late October 2006. Licensees are required to renew before January 1 *even if they do not receive a postcard.*
- Military and federal government employees who are exempt from fees may renew on-line

### Paper Renewals, Exceptions

Licensees who do not wish to renew on-line, and the following types of licenses, should contact the Board by mail, e-mail or telephone beginning November 1, 2006. You will be sent a paper renewal form, or a renewal form can be e-mailed to you.

- Licensees changing status from inactive to active (or vice-versa)
- Employees of military or federal government who are required by their employer to pay a fee

### CONTACTING THE BOARD

If you have questions about the renewal process, please contact the Board at:

- 512-305-8500
- [www.tob.state.tx.us](http://www.tob.state.tx.us) (e-mail address is at the bottom of the web page)
- 333 Guadalupe Street, Suite 2-420, Austin, Texas, 78701

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## Continuing Education Checklist

- \_\_\_ 16 hours, 6 diagnostic therapeutic (no more than 8 Internet/correspondence, no more than 4 grand rounds)
- \_\_\_ All courses approved by Board (list of approved courses is on the Board's website)\*
- \_\_\_ All original certificates of attendance mailed to Board (Internet courses may or may not provide certificates quickly)
- \_\_\_ Hours checked on Board Website or by calling Board
- \_\_\_ Beginning November 1, renew license

\*COPE approved and courses provided by optometry schools are approved by Board; other courses must be specifically approved by Board on or before November 3. *Every year out-of-state courses are submitted for the first time after the last Board meeting and cannot be used for license renewal.*

More specific information is available on the website and in Board Rules 275.1 and 275.2.

### Exemptions from CE Requirements

Medical - A licensee claiming a medical exemption under Rule 275.1(c), must apply to the Board for the exemption prior to November 3.

Other - New Licensees, doctors with an inactive license, doctors in the military, and doctors working for the federal government who do not practice outside the federal government facility. Holders of a retired license have a reduced CE requirement.

## KEEPING TRACK OF CE HOURS

Based on comments received in the 2006 survey of licensees, there may be some confusion about the method the Board uses to record continuing education compliance. Normally on the day the Board receives proof of completion of an approved course, the hours are entered into the computer database. Last year, over 15,000 entries were made. Only once or twice during the renewal period was there even a slight delay in this schedule. Please note, however, that the hours cannot be entered until after the Board approves the course.

Before a licensee may renew his or her license, the information on the Board's computer must first be transferred to the Texas Online computer, which takes a minimum of 24 hours (only with very expensive programming costs can this time period be shortened). On occasion, despite the best efforts of Board Staff, the transfer takes more than 24 hours. To keep any confusion to a minimum, CE hours are not posted on the website immediately when received, but are delayed a day or two to compensate for the transfer period (thus preventing unsuccessful renewal attempts).

The Board does not begin to post hours on the website until April because the CE database is still being used to renew late license renewals from the preceding year. Once the majority of late license renewals are received and processed, the Board can clear CE hours from the preceding year and enter current hours. The Board appreciates your patience during the first few months of each year.

### **Jacob M. Cohen, O.D.**

Fifty years ago when I went into practice, optometry was just beginning to assert itself as a profession. We still had practitioners who were given a license under the grandfather clause, and most of them had jewelry stores. Thus it was common to see an optometrist in the back of jewelry stores. Some of the early O.D.'s attended short 12 to 18 month courses in a school such as the old Needles Institute in Chicago and others by mail order. Our knowledge of pathology and visual function was very limited. The main purpose at that time was to sell eye glasses.

Today we can be very proud of ourselves and our students as we now have an excellent knowledge and understanding of vision function, pathology, pharmacology and the treatment of ocular disease. Fifty-six years ago everything, including a inverted eyelash, was referred to an ophthalmologist — who was a “real doctor.” The real specialist today proudly has a O.D. behind their names.

I can't think of any real down side to our development, but the establishment of the College of Optometry at the University of Houston was a major up side for the recognition of an optometrist as a professional and not just a “spec peddler.”

My advice to young O.D.'s would be to treat each patient as you would like to be treated and use your knowledge to the benefit of that patient.

I may be considered one of the old timers, but I still enjoy practicing my profession, and I hope to be at it for many years to come.

### **Clinton DeWolfe, O.D.**

In 1950 few graduates seemed to have the financial means to open a private practice. Jobs were scarce. The chain optical operations were relatively new having begun just prior to or immediately after World War II. Rumors pervaded the profession that such operations were unethical, unprofessional and run by charlatans. There was animus toward these who chose to work in a "commercial" situation. But they were attractive because the pay scale was much higher than the private practitioner could afford. Most new licensees resisted accepting jobs with these companies as long as they could, but many finally capitulated to the monetary pressures having families to support. Anecdotally, in my early private practice I knew I was in trouble when a wonderful lady came into my office to receive her new glasses, while paying for them with a brace of frozen rabbits - ready to fry of course. Happily, the years have clouded bad feelings and there has been an acceptance by the whole profession predicated on the commonality of our education and joint legislative efforts.

The legislative successes of optometry to achieve the right to practice at the level of our education has certainly been the most positive change in 50 years. The conflicts with medicine have been beyond understanding, making the victories all the more sweet. Certainly, our profession is accepted with respect by the populace as a whole. The battles of the last 50 years has resulted in this "respect." Young O.D.'s today enter this world of acceptance and are able to achieve early success as a direct result of the efforts of so many over the past five decades.

It was my privilege to serve two appointments to the Texas Optometry Board where I witnessed untold hours of effort to regulate and improve our profession. I was in awe of so many of the men and women who worked tirelessly to make us all "better." Public members who became part of optometry regulation in the 80's also proved valuable. But standing alone was a lady with an organized mind and an attentiveness to detail enabling us to do things beyond our own capabilities. Lois Ewald was more than an Executive Director, she was an arbiter, peace maker, mentor and friend to each of us.

Today, I practice little but do maintain an office. I'm approaching certification as a REAL Texas Cowboy with a Hill Country Ranch, Angus Cattle and a profusion of grandchildren to roam and play. Optometry has been good to me and mine. I hope it will be good to you and yours.

#### **INSPECTION OF OFFICES & PATIENT 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 30 years. The current procedure has the Board's investigator visiting licensee's offices and asking for copies of a few recent 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, a licensee may remove personal identifying information from the copies.

The office inspection should only disrupt a practice for a short time as staff may make the copies requested by the Board. Frequently the visit only requires 15 minutes of the office's time (depending in part on the speed of the copier). This is a performance measure set by the legislature for the Board.

In the past few years, office inspections have been conducted in:

Abilene	Kerrville	San Antonio
Austin Metro	Laredo	Tyler
Brownsville	Lubbock	Uvalde
Bryan/College Station	Lufkin	Victoria
Del Rio	Midland/Odessa	Waco
El Paso	Nacogdoches	
Fredericksburg	New Braunfels	
Harlingen	San Angelo	

#### **CLOSING OR MOVING OFFICES**

The Optometry Act does not impose any special duties on optometrists closing or moving an office other than the requirement to notify the Board of an address change within 30 days. There are no special requirements in the Act for storing, transferring or destroying patient records, although HIPAA certainly imposes duties regarding the confidentiality of patient records.

Although the Act does not impose notice requirements, the Board regularly receives phone calls from patients of doctors who have moved or closed their office without notice. Usually the patient simply wants the phone number or address for the doctor's new office so that the patient can obtain a copy of their patient records or a copy of their ophthalmic prescription. But sometimes the patients want to contact the doctor because glasses or contacts ordered and paid for were not picked up before the office was closed down.

Therefore, having the current address of all licensees at the Board office is quite important. Rule 277.6 imposes an administrative penalty when changes of office addresses are not timely reported to the Board (the 30 day period).

Obviously the Board must also have current addresses to send renewal notices and publication notices for the newsletter. Every year optometrists renew late and pay the penalty because they did not inform the Board of their new address.

## NEW RULES & AMENDMENTS

### *Summary of Changes Since Last Newsletter*

**Contact lens prescribing and verification of prescriptions:** Rule 279.2 was amended to incorporate federal law regarding the release of a contact lens prescription and the verification of these prescriptions. Rule 279.6, which previously contained these requirements, has been repealed. The rule is printed below.

**Recommended administrative penalties and fines:** Rule 277.6 was amended to be more specific on the recommended fine amount for violations of the Optometry Act or Board Rules. The rule is printed below.

**Changes to the disciplinary proceedings:** Rule 277.2 was amended as required by state law to modify the procedure the Board uses to impose disciplinary action. The rule now allows the Investigation-Enforcement Committee to enter into an agreed order with a licensee in which the licensee agrees to refund the examination fee paid by the patient, based on changes to the Optometry Act. The text of the rule is available on the Board's website or by calling the Board.

**Requirements of Retired License:** Rules 273.7 and 275.1, as well as 273.4 were amended to create a new category of licensee -- the retired license practicing only volunteer charity care. A description of the new license was included in the 2005 Newsletter. The rules are printed below.

**Alternative Dispute Resolution:** New Rule 277.9 sets up ADR and mediation procedures at the Board as required by Sunset Legislation. The text of the rule is available on the Board's website or by calling the Board.

**Amendment of license fees:** Rule 273.4 was proposed at the August 2006 Meeting. The Rule changes renewal fees, as required by the appropriations authority of the Board, to: \$385 for active licenses and \$185 for inactive licenses. Late renewal fees are also affected. The rule is printed below.

*The Board has met four times since the last newsletter was published. New rules and amendments to existing rules may be proposed or adopted at each Board Meeting. When a rule is first proposed, the public, including licensees, have an opportunity to make comments on the proposal. Once a rule is adopted, all licensees are required to comply with the rule. The website contains links to all the Board Rules.*

### **Rule 279.2. Contact Lens Prescriptions**

(a) A prescription for contact lenses is defined as a written order signed by the examining optometrist, therapeutic optometrist or physician, or a written order signed by an optometrist, therapeutic optometrist or physician authorized by the examining doctor to issue the prescription. If the prescription is signed by a doctor other than the examining optometrist, therapeutic optometrist or physician, the prescription must contain:

- (1) the name of the examining doctor, and
- (2) the license number of both the examining doctor and the doctor signing the prescription.

(b) Applicable Law. A contact lens prescription must comply with the requirements of the Texas Optometry Act, Sections 351.005, 351.356, 351.357, 351.359 and 351.607, and the Contact Lens Prescription Act, Sections 353.152, 353.153 and 353.158 and federal law, 15 U.S.C. Sections 7601 - 7610 (Public Law 108-164).

(c) Contents of Prescription. A fully written contact lens prescription must contain all information required to accurately dispense the contact lens, including:

- (1) patient's name;
- (2) the name, postal address, telephone number, and facsimile telephone number of the prescribing optometrist or therapeutic optometrist (required by federal law);
- (3) the date of examination (not including date of follow-up examinations) (required by federal law);
- (4) date the prescription is issued;
- (5) an expiration date of not less than one year, unless a shorter period is medically indicated;
- (6) examining optometrist's signature or authorized signature
- (7) name of the lens manufacturer, if required to accurately dispense the lens;
- (8) lens brand name, including:
  - (A) a statement that brand substitution is permitted if the optometrist intends to authorize a contact lens dispenser to substitute the brand name, and
  - (B) name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name when the prescribed brand name is not available to the optical industry as a whole, unless the prescribing of a proprietary lens brand is medically indicated;
- (9) lens power;
- (10) lens diameter, unless set by the manufacturer;

- (11) base curve, unless set by the manufacturer; and
  - (12) number of lenses and recommended replacement interval.
- (d) Release of Prescription, Timing. Regardless of whether the release is requested by the patient, the optometrist or therapeutic optometrist shall release a prescription once the parameters of the prescription are determined. An exception to this requirement exists if the optometrist or therapeutic optometrist determines that because of a medical indication further monitoring is required, and the optometrist or therapeutic optometrist gives the patient a verbal explanation of the reason the prescription is not released and documents in the patient's records a written explanation of the reason.
- (e) Release of Prescription, Method. An optometrist or therapeutic optometrist shall issue a prescription by giving or delivering an original signed copy of the prescription to the patient or to another person in accordance with subsection (d) above.
- (f) Faxing Prescription. When directed by a dispenser designated to act on behalf of the patient, an optometrist or therapeutic optometrist shall fax an original signed prescription to the dispenser. When faxing a prescription, the optometrist or therapeutic optometrist shall write "by fax" or similar wording on the original prescription prior to faxing.
- (g) Verification of Prescription. An optometrist or therapeutic optometrist shall verify a prescription when a dispenser designated to act on behalf of the patient requests a verification by telephone, facsimile or electronic mail.
- (h) Verification Procedure. A dispenser designated to act on behalf of the patient is required to provide the optometrist or therapeutic optometrist with the following information when seeking a verification of a prescription:
- (1) the patient's full name and address;
  - (2) contact lens power, manufacturer, base curve or appropriate designation, and diameter, as appropriate;
  - (3) quantity of lenses ordered;
  - (4) the date on which the patient requests lenses to be dispensed;
  - (5) the date and time of the verification request; and
  - (6) the name, telephone number, and facsimile number of a person at the contact lens dispenser's company with whom to discuss the verification.
- (i) Verification Requirements. If the format of the verification request allows, the optometrist or therapeutic optometrist, when verifying a prescription, should provide the contact lens dispenser with all of the information required in subsection (c) of this title. An optometrist or therapeutic optometrist who did not perform the examination, may verify a prescription according to subsection (a) of this title, providing to the dispenser the name and license number of the examining doctor if the format of the verification request so allows. Each request for a prescription verification should be recorded in the patient record, including the name of the dispenser, the date verification is requested, number of lenses requested, and response of the optometrist or therapeutic optometrist.
- (j) Inaccurate or Invalid Verification. A contact lens dispenser seeking a contact lens prescription verification shall not fill the prescription if an optometrist or therapeutic optometrist informs a dispenser that the contact lens prescription is inaccurate, expired, or otherwise invalid. An optometrist or therapeutic optometrist is required to communicate the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the dispenser to the optometrist or therapeutic optometrist is inaccurate or invalid, the optometrist or therapeutic optometrist is required to provide the correct information to the dispenser. A dispenser may dispense lenses without verification if an optometrist or therapeutic optometrist fails to communicate with the dispenser within 8 business hours, or a similar time as defined by the Federal Trade Commission.
- (k) Number of Lenses. An optometrist or therapeutic optometrist dispensing contact lenses shall record on the prescription the number of lenses dispensed and return the prescription to the person. If all the contact lenses authorized by the prescription are dispensed by an optometrist or therapeutic optometrist, the following procedure complies with state law and should not be in conflict with federal law: the optometrist or therapeutic optometrist writes on the prescription "All Lenses Dispensed," makes a copy of the prescription to retain in the licensee's records, and returns the original to the person presenting the prescription.
- (l) Extension. The Contact Lens Prescription Act requires an optometrist or therapeutic optometrist to authorize, upon request of the patient, a one time, two month extension of the contact lens prescription.
- (m) Private Labels. The prescribing optometrist or therapeutic optometrist has the authority to specify any and all parameters of an optical prescription for the therapeutic and visual health and welfare of a patient, but the prescription shall not contain restrictions limiting the parameters to private labels not available to the optical industry as a whole, unless the prescribing of a proprietary lens brand is medically indicated. The specifications of the prescription may not be altered without the consent of the prescribing doctor.
- (n) Fee. The Contact Lens Prescription Act prohibits an optometrist or therapeutic optometrist from charging the patient a fee in addition to the examination fee and the fitting fee as a condition for giving a contact lens prescription to the patient or verifying a prescription according to subsections (g) and (h). An optometrist or therapeutic optometrist may not refuse to release a prescription solely because charges assigned or presented for payment to an insurance carrier, health maintenance organization, managed care entity, or similar entity have not been paid by that entity.
- (o) Fitting Process. An optometrist or therapeutic optometrist may charge a fitting fee that includes fees for lenses

required to be used in the fitting process. The fitting process may include the initial eye examination, an examination to determine the specifications of the contact lenses, and follow-up examinations that are medically necessary. Unless medically necessary, the optometrist or therapeutic optometrist may not require the patient to purchase a quantity of lenses in excess of the lenses the optometrist or therapeutic optometrist was required to purchase to complete the fitting process.

(p) The executive commissioner of the Health and Human Services Commission and the executive director of the Texas Optometry Board may enter into interagency agreements as necessary to implement and enforce this chapter.

### **Rule 277.6. Administrative Fines and Penalties**

*Please note that this specific rule does not address other sanctions available in the disciplinary process, such as suspension, revocation and probation.*

(a) Based upon the criteria in this section, and in addition to the sanctions listed in subsection (f), the guideline administrative penalty or fine amount for:

- (1) felony conviction: \$2,000 penalty (Section 351.501(a)(3) of the Act)
- (2) misdemeanor conviction involving moral turpitude: \$1,000 penalty (Section 351.501(a)(3) of the Act)
- (3) impaired ability to practice: \$1,500 penalty (Section 351.501(a)(4) of the Act)
- (4) violations of the act or rules involving controlled substances: \$2,000 penalty (Sections 351.501(a)(4) and (15), 351.358, 351.451, and 351.452 of the Act)
- (5) fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or in applying for license; or deceiving, defrauding, or harming the public: \$1,500 penalty (Section 351.501(a)(4) and (11) of the Act)
- (6) gross incompetence in the practice of optometry or engaging in a pattern of practice or other behavior demonstrating a wilful provision of substandard care: \$1,000 penalty (Section 351.501(a)(12) and (13) of the Act)
- (7) practicing or attempting to practice optometry while the license is suspended or violating the terms of a Board Order: \$1,000 penalty (Section 351.501(a)(8) and (17) of the Act)
- (8) having the right to practice optometry suspended or revoked by a federal agency: \$1,000 penalty (Section 351.501(a)(10) of the Act)
- (9) the guideline administrative penalty or fine amount for the following violations is a \$300 penalty:
  - (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.
  - (H) Failure of the subject of a complaint to respond within 14 days of receipt to a request letter from the Board regarding the complaint as required by §277.1 of this title.
- (10) the guideline administrative penalty or fine amount for the following violations is a \$750 penalty:
  - (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.

(b) In accordance with Section 351.551 of the Texas Optometry Act, administrative penalties may be assessed for violations of the Act or rule or order of the board. Either the executive director or a subcommittee of the board, to include at least one public member of the board, may assess a penalty for each violation and present a report to the board concerning the facts on which the determination was based and the amount of penalty.

(c) In accordance with Section 351.507 of the Act, the Investigation - Enforcement Committee shall use the guidelines in this rule when determining the appropriate administrative penalty or fine to recommend to the board.

(d) The range of penalty is \$100 to \$2,500 for each violation.

- (e) The guidelines in this rule are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements. The guidelines in this rule apply to a single violation where there are no aggravating or mitigating factors. Multiple violations and aggravating or mitigating factors as listed in subsection (g) may justify a modification of the guideline amount. The guideline amount may be reduced when a respondent acknowledges a violation and agrees to comply with terms and conditions of an agreed order.
- (f) The guidelines in this rule apply to administrative penalties and fines. The Board may also, alone or in conjunction with imposing an administrative penalty or fine, refuse to issue a license to an applicant, revoke or suspend a license, place on probation a person whose license has been suspended, impose a stipulation, limitation, or condition relating to continued practice, including conditioning continued practice on counseling or additional education, or reprimand a licensee.
- (g) The amount of the penalty shall be based on:
- (1) the seriousness of the violation, including nature, circumstances, extent, and gravity of any prohibited act, and hazard or potential hazard created to the health, safety, or economic welfare of the public;
  - (2) the economic harm to property or the environment caused by the violation;
  - (3) the history of previous violations;
  - (4) the amount necessary to deter future violations;
  - (5) efforts to correct the violation; and
  - (6) any other matter that justice may require.
- (h) Penalties imposed by the board pursuant to subsections (a) - (g) of this section may be imposed for each violation subject to the following limitations:
- (1) imposition of an administrative penalty not to exceed \$2,500 for each violation;
  - (2) each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.
- (i) Administrative penalties or fines for violations not specifically mentioned in this rule shall be based on an amount that corresponds to the scheme of the guidelines of this rule.
- (j) The provisions of this rule shall not be construed so as to prohibit other appropriate disciplinary action under the Act, civil or criminal action and remedy and enforcement under other laws.

## **Rules Regarding Retired License**

*These rules apply to a licensee whose practice only consists of volunteer charity care as defined in Rule 273.7. Licensees who are not practicing, but wish to maintain a license, may renew as inactive (a fee is required).*

### **Rule 273.4. Fees (Not Refundable).**

- (a) - (n) (No changes regarding this issue).
- (o) Retired License. \$25.00 plus \$200.00 additional fee required by Section 351.153 of the Act, and plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$226.00.

### **Rule 273.7. Inactive Licenses and Retired License for Volunteer Charity Care.**

- (a) - (c) (No change).
- (d) Occupations Code Section 112.051 requires the Board to adopt rules providing for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is volunteer charity care.
- (e) Application. An applicant for a Retired License must complete and submit to the Board the Retired License Application. There is no charge to apply. Applicants must supply proof that the continuing education requirements for a Retired License have been met. See §275.1 of this title (Rule 275.1).
- (f) Scope of License. A holder of a Retired License may only practice optometry or therapeutic optometry when such practice is without compensation or expectation of compensation (except for the reimbursement of travel and supply expenses) as a direct service volunteer of a charitable organization.
- (g) Charitable Organization. A charitable organization is defined in Section 84.003 of the Texas Civil Practice and Remedies Code and includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, including these types of organizations with a Section 501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.
- (h) Renewal. A Retired License expires on the same date as a regular license. Prior to renewing the license, the licensee must supply proof that the continuing education requirements for a Retired License have been met.
- (i) Penalty. The holder of a Retired License shall not receive compensation for the practice of optometry. To do so constitutes the practice of optometry without a license and subjects the optometrist or therapeutic optometrist to the penalties imposed for this violation.

**Rule 275.1. General Requirements**

(a) - (f) (No change).

(g) An applicant for or a licensee renewing the Retired License shall obtain 8 hours of Board approved continuing education prior to receiving or renewing the license. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board.

**Rule 273.4. Fees (Non Refundable) Proposed**

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(g) License Renewal ~~\$184.00~~ [~~\$182.00~~] plus \$200.00 additional fee required by Section 351.153 of the Act, and plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include \$200.00 additional fee. Total fees: ~~\$385.00~~ [~~\$383.00~~] active renewal; ~~\$185.00~~ [~~\$183~~] inactive renewal

(h) License fee for late renewal, one to 90 days late: ~~\$276.00~~ [~~\$273.00~~] plus \$200.00 additional fee required by Section 351.153 of the Act, and plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include \$200.00 additional fee. Total late license fees: ~~\$477.00~~ [~~\$474.00~~] active renewal; ~~\$277.00~~ [~~\$274.00~~] inactive renewal

(i) License fee for late renewal, 90 days to one year late: ~~\$368.00~~ [~~\$364.00~~] plus \$200.00 additional fee required by Section 351.153 of the Act, and plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include \$200.00 additional fee. Total late license fees: ~~\$569.00~~ [~~\$565.00~~] active renewal; ~~\$369.00~~ [~~\$365.00~~] inactive renewal

(j) Late fees (for all renewals with delayed continuing education) ~~\$184.00~~ [~~\$175.00~~]

....

***EDWIN PACK, O.D.***

Dr. Pack attended Northern Illinois College of Optometry on the G.I. Bill with 1,700 fellow optometry students. His was the first class that offered training for prescribing contact lenses, which at that time only included scleral lenses. He started practice in Hillsboro and Mexia, but has been practicing in Fort Worth since 1951. He remembers having to raise the eye examination fee to \$5.00.

Positive changes in the profession include the higher quality of optometry education received by today's graduates. Dr. Pack pointed out the greater number and variety of frames and styles as well as lens materials now available to the profession..

A negative is the influence that insurance companies appear to have on current practice.

Dr. Pack is still in the office, and cannot imagine not having anything to do.

Until very recently, Dr. Pack was involved on a daily basis with his serious hobby of racing thoroughbred and quarter horses.

Dr. Pack has never been afraid to say "I don't know" and try to find out the answer. "Don't try to fool people that you know what you don't know."

**NEW LEGISLATION**

**EXCLUSIONS FROM REVENUE FOR HEALTH CARE PROVIDERS**

The reconfiguration of the state's franchise tax in House Bill 3 passed in May of this year may have consequences for many licensees, since in new Section 171.0002 (a) of the Tax Code, a taxable entity now includes "... a partnership, corporation, banking corporation, savings and loan association, limited liability company, business trust, professional association, business association, joint venture, joint stock company, holding company, or other legal entity. . . ." There are many exceptions and limitations to this definition.

As you might guess, the Board does not possess any expertise in this area, but has been made aware of the following exclusion from the determination of business revenue in Section 171.1011 (n) of the Tax Code. Licensees might bring this section to the attention of their tax professional.

**Sec. 171.1011. DETERMINATION OF TOTAL REVENUE FROM ENTIRE BUSINESS.**

(n) Except as provided by Subsection (o), a taxable entity that is a health care provider shall exclude from its total revenue, to the extent included under Subsection (c)(1)(A), (c)(2)(A), or (c)(3): (1) the total amount of payments the health care provider received: (A) under the Medicaid program, Medicare program, Indigent Health Care and Treatment Act (Chapter 61, Health and Safety Code), and Children's Health Insurance Program (CHIP); (B) for professional services provided in relation to a workers' compensation claim under Title 5, Labor Code; and (C) for professional services provided to a beneficiary rendered under the TRICARE military health system; and (2) the actual cost to the health care provider for any uncompensated care provided, but only if the provider maintains records of the uncompensated care for auditing purposes and, if the provider later receives payment for all or part of that care, the provider adjusts the amount excluded for the tax year in which the payment is received.



## ***JOHN BOWEN, O.D.***

A third generation optometrist (grandfather and uncle), Dr. Bowen started practicing in 1957 in Sweetwater with his uncle. But first he served and practiced in the Air Force, stationed at Del Rio, receiving a direct commission upon graduation from Southern College of Optometry.

At that time, the practice was not even remotely similar to today's practice. Exam prices were \$3.00 (then raised to \$7.50) and patients had a choice of only 4 or 5 frames.

Dr. Bowen pointed out the substantial changes to the Optometry Act in 1969 as well as changes in the Act allowing therapeutic and diagnostic practice as the best changes to the practice. On the negative side is the proliferation of advertising.

He has no regrets about choosing optometry as a career. Optometry is an excellent, clean profession for both men and women with a relatively low stress level. Dr. Bowen noted that there were only three women in his optometry class in 1954.

A former Board Member of the Texas Optometry Board (1971 - 1983), the highlight of his long optometry career was being chosen as Optometrist of the Year in 1981 by the Texas Optometric Association. Dr. Bowen served in the Air Force Reserve for 22 years, rising to the rank of Major. At 77, he still practices in Lubbock, with plans to travel and perform volunteer work this year.

### **CUSTOMER SERVICE STATISTICS**

Recently the Board surveyed licensees regarding the customer service provided by the Board. E-mail requests to participate were sent to about 900 licensees, and 330 licensees responded. The overall results showed that the Board was doing at least a "good" job in the surveyed areas, and in many areas an "excellent" job. Some of the respondents submitted comments. A customer service report was filed with the governor's office in May as required by law.

The information provided by licensees will be quite valuable as the Board works to continue good customer service. For example, several surveys included comments regarding the website continuing education tracking. An article on page two of the Newsletter addresses those comments.

The area receiving the lowest satisfaction score: the frequency of the newsletter publication. Rather than post or send multiple newsletters during the year, the website is constantly updated with new information. More than likely, this information will be found in the Table of Contents Heading "New Licensees" or "General Information (for licensees)." Recently additional information has been added concerning NPI numbers, Medicare and Medicaid enrollment, revised DEA phone numbers, patient record retention periods, and a link to a website listing all the permits that an optometrist's office might need to obtain.

Applicants for license were also surveyed. Several applicants thought the directions to the examination at the University of Houston were not sufficient. Next year more complete directions, including directions inside the school will be provided to exam takers, many of whom are not University of Houston graduates.

The customer survey also gives the Board an opportunity to test an e-mail notice system. Such a sys-

tem has two obvious benefits: the system is very timely and very cost effective. Unfortunately, such a system is still not practical. Even though 80 percent of licensees renewed on-line, the Board only obtained 900 valid e-mail addresses (which are confidential unless that confidentiality is waived by the sender). About 30 percent of the licensees sent an e-mail participated in the survey. This does not mean that only 30 percent received or read the e-mail, but at this time an e-mail notification system does not appear practical.

### **COMPLIANCE MATTERS**

#### ***Administrative Penalties***

The Board issued administrative penalties in the following agreed settlements:

#### **\$100.00 penalty for allowing control by an optical.**

The licensee practiced on the premises of an optical and mercantile, and allowed employees of the optical/mercantile to make appointments.

#### **\$100.00 penalty for failing to properly release contact lens prescription.**

The licensee, relying on one of these exceptions to release, did not give a verbal notice to the patient and did not record in the patient record a written explanation of the reason.

#### **\$100.00 penalty for failing to use required professional identification.**

None of the identification visible to a patient before entering the licensee's office identified the licensee as an optometrist.

#### **\$100.00 penalty each for advertising violations.**

The advertising by two licensees did not properly identify the licensees as optometrists, and a website referenced in the advertisement did not properly identify the licensees as optometrists.

#### **\$100.00 penalty for failing to record all information in patient records.**

The licensee did not

record the information required by Rule 277.7 in a patient record.

**\$500.00 penalty for prescribing unauthorized medication.** The licensee ordered an oral prescription drug over the Internet for the treatment of the licensee's severe back pain. Since the licensee did not have a prescription for the drug, the ordering of the drug constituted prescribing a drug for treatment that an optometric glaucoma specialist does not have authority to treat.

## **DISCIPLINARY ACTIONS**

### —Felony Incarceration:

On February 2, 2006, the Board, through the Office of the Attorney General, revoked the license of Gregory Stringham, O.D., as required by Section 53.021 of the Occupations Code. At that time the licensee was incarcerated because of the revocation of his probation. 5028T

### —Prescribing Unauthorized Medication

On December 6, 2006, the Board entered into an Agreed Order with Scott McPherson, O.D. The Agreed Order alleges that the doctor, a therapeutic optometrist, prescribed an oral drug requiring a prescription, that the drug was prescribed for the treatment of a disease that the doctor was not authorized to treat, and that the prescription was written for an employee of the doctor when the doctor actually was prescribing for himself. The Order suspended Dr. McPherson for 3 months, and probated the suspension with a probation period of six months. The Order also required the doctor to submit an administrative penalty of \$2,000. 6677T

### —Practicing Without a Renewed License; Failure to Inform Board of Change of Address

On June 13, 2006, the Board entered into an Agreed Order with Ricky Alaniz, O.D. The Agreed Order alleges that the doctor practiced for three months after his license expired and before his license was renewed. The Order also alleges that Dr. Alaniz did not inform the Board that the address for his practice had changed within 30 days of the change. The Order suspended Dr. Alaniz for 6 months, and probated the suspension with a probation period of one year. The Order also required the doctor to submit an administrative penalty of \$4,000. 5765T

### —Pending Disciplinary Action

The Board is currently awaiting the outcome of three administrative hearings to impose disciplinary action. The Board alleges that licensees:

- prescribed an oral prescription medication when the licensee was not licensed as an optometric glaucoma specialist
- did not disclose multiple criminal convictions when applying for a license
- administered a controlled substance to himself for other than therapeutic purposes

### *Display of Name*

State law strictly defines how optometrists can display their name professionally. The law applies to other health professionals as well. Violation of the law is a criminal offense. In addition, the Board may impose a fine (administrative penalty) for the failure to use the proper identification (see section above).

An optometrist may only identify themselves in the following manner:

**John Smith, O.D.** or

**John Smith, Doctor of Optometry** or

**John Smith, Optometrist** or

**Dr. John Smith, Optometrist**

The only exception: a therapeutic optometrist may instead use:

**Jane Smith, Therapeutic Optometrist** or

**Dr. Jane Smith, Therapeutic Optometrist**

An optometric glaucoma specialist may be identified as one, but only in addition to one of the above designations.

### ***EDWARD COPE, O.D.***

Dr. Cope began practicing in 1950 in Dallas working for an optometrist. A year later, he started his own practice in Farmersville, a small farming community Northeast of Dallas. The practice prospered and about six years ago Dr. Cope sold the practice. He continued to practice part-time for a few years, but now does not practice regularly and only occasionally sees a patient.

During his service in the Army Medical Corps as a supply officer, Dr. Cope worked in a 2,000 bed hospital at Fort Bragg, North Carolina. At the end of his enlistment, Dr. Cope decided that he should return to school, and he finished his degree at Texas Tech. He then enrolled in Illinois College of Optometry (an ophthalmologist from New York City at the Fort Bragg hospital suggested optometry as a career).

Dr. Cope always respected optometry and it respected him. He has only good things to say about the profession. He advises new graduates to get all the education that they can, and to operate a clean professional practice under their own name. Although advertising is now widespread, Dr. Cope is not in favor of the practice and never advertised his Farmersville office.

### ***H.D. MONTGOMERY, O.D.***

Dr. Montgomery started working in an optical lab when he was 15. After realizing that advancement opportunities were limited, he enrolled in college while still working in the optical lab. The Southern College of Optometry followed, and he began practice in 1949. Dr. Montgomery found that it was not easy to get going in the practice of optometry, especially with the going price of \$3.00 for an exam. He closed his original office on the bottom floor of a bank building and went to work at an office with two other optometrists in Grand Prairie. Patients were charged \$14.00 for an exam and glasses, whether the glasses were single vision or tri-focals.

But Dr. Montgomery spent most of his years practicing at his office in Oak Cliff. One of his early patients was an internist who saw Dr. Montgomery early in the morning so that he would not be seen going in to an optometrist's office. That patient referred his own patients to Dr. Montgomery over the years. Many of Dr. Montgomery's patients became like family, and as time has passed he has attended many of their funerals.

Dr. Montgomery was one of the first doctors to make his own contact lenses. He made them not only for his own patients but also for other doctors in North Texas. He also made facet lenses.

He sees the ability to utilize drug therapy as the best change in optometry, and the inability of the Board and the legislature to closely regulate advertising as the worst change.

Dr. Montgomery is now retired, although he does see a patient on occasion. He is actively involved with the Shriners, and oversees the hotel reservations for the annual state conventions, as well as helping organize golf tournaments to fund the Shriner Hospitals in the state.

### **RETIRING BOARD MEMBERS & NEW BOARD MEMBERS GOVERNOR APPOINTS BOARD CHAIR**

In February the governor appointed two new board members to replace Joe DeLoach, O.D., of Plano, who resigned when he joined the University of Houston, and Mark Latta, O.D., of Amarillo, whose term had expired. Dr. Latta served 10 years on the Board and was chair of the Board during his last year. Dr. DeLoach also served as the Board chair during his 8 years of service. The Board thanks both doctors for their many hours of service, including many trips to Austin for Board Meetings and legislative hearings, and wishes them the best of luck in the future.

The two new members are: Carolyn Carman-Merrifield, O.D., of Mansfield, and John Coble, O.D., of Rockwall. Actually, Dr. Carman-Merrifield has served on the Board previously, including a term as chair.

The governor has appointed current Board Member D. Dixon Golden, O.D., as the Chair of the Board.

Board Members serve six year terms and are appointed by the governor subject to confirmation by the Senate. Randall Reichle, O.D., is Vice-chair, and Ann Bradford, serves as Secretary-treasurer.

### **DON'T FORGET THE WEBSITE**

The website is for more than renewing you license and reading the Newsletter.

How do I obtain a **NPI** number? When do I have to report **child abuse**? What about **family violence**? What legal duty do I have to a **deaf patient**? Who do I telephone to obtain a **DPS** or **DEA** Controlled Substances Permit? Where can I find information on becoming a **Medicare** or **Medicaid** provider? Can I offer **free eye exams**? How long should I keep **patient records**? Do I need to report a **criminal conviction**? All of this information and more is available on the Board's Website.

If you are a new licensee, go to the Table of Contents and select "New Licensees"

All other licensees should go to the Table of Contents and select "General Information (for licensees)"

This information is periodically updated and new information is added throughout the year.

**[www.tob.state.tx.us](http://www.tob.state.tx.us)**

### ***PAUL KNIE, O.D.***

I moved to Texas in the fall of 1952 after my service as Optometry Officer in the US Army during the Korean War. I settled in Dallas and joined Lester Optical which later evolved into Optical Clinic and have been with this group first as an employee, then partner, and since my semi-retirement, as part time Optometrist.

In 1952 Optometry was a House Divided: the individual practitioner pitted against the advertising corporate entities. As time went on the discourse became more acrimonious and litigious, but TOA-TAO legislative cooperation came with the first Sunset legislative session. I happened to be TAO's Legislative Chairman at the time. Now here was a situation where TOA and TAO better bury the hatchet and marshal all their legislative assets to fight the forces arrayed against our profession: there was ophthalmology and medicine trying to abolish the independent Optometry Board by melding it into the Department of Health and emasculate the optometry law, and there were the opticians lobbying to establish an independent Opticians Board with the aim of eventually becoming Licensed Refracting Opticians.

Who could have foreseen these changes in 1952 when I saw my first Texas patient: use of diagnostic and therapeutic drugs, glaucoma therapy, gaining full acceptance as a learned profession by the people we serve and are respected, and yes, even courted by ophthalmology to co-manage Lasik, glaucoma and cataract patients.

Our future is bright and secure nourished by the influx of the highly trained optometrists being graduated by our magnificent optometry schools. Who can foresee what changes the next 50 years will see, but I can only hope that in the rush to conquer new fields we do not forget our professional roots and our unique mission: to give our patients, in addition to all other services, the gift of clear, comfortable, efficient, and wherever possible binocular vision, with glasses, contact lenses, vision training and all other modalities which are the foundation of our profession.

### ***Personal Reflections on 50 Years of Practice***

Just over 40 actively licensed doctors have practiced optometry for more than 50 years. Several were selected at random, and they were offered the opportunity to provide the Newsletter with their reflections on the practice of optometry over the last fifty years. Because of very limited space in the Newsletter, the comments and interviews were edited by the executive director. The Board's role is only that of publisher, and it does not endorse any opinions expressed in these articles.

Texas Optometry Board  
333 Guadalupe St Ste 2-420  
Austin TX 78701