



NEWSLETTER

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Office Inspections

- Inspections conducted for 40 years
- HIPAA compliance easily accomplished
- Required performance measure set by legislature
- Verifies compliance with Section 351.353
- Inspections conducted by Board Investigator

History

Every year the Board inspects at least 60 optometry offices to verify compliance with Section [351.353](#) of the Optometry Act. Older licensees who attended the University of Houston may remember that in the past the Board hired students to visit offices and obtain an eye exam. The Board used the student’s report to determine whether the optometrist performed the procedures required by Section 351.353. The Board is required to annually report the number of inspections conducted to the legislature as a measure of the proper performance of the regulatory function of the Board.

Current Procedure

Now, and for the past several years, the Board makes the compliance determination by examining a limited number of recent patient records. The Board’s investigator visits an office, identifies himself or herself, presents a letter from the Executive Director, and requests copies of the records, which the investigator will take back to Austin for review by a Board Member. The doctor is notified of the results of the record review. The offices inspected

are primarily chosen by random. Should an office have reason to doubt the credentials of an investigator, the office may obtain additional information by calling the Optometry Board.

[continued on next page](#)

In This Newsletter

Office Inspections	1
Pain Management	2
Optometry School News	2
Disciplinary Matters:	
License Suspension	3
Letter Agreements w/ Penalty	3
Administrative Penalties	4
Help! Substance Abuse / Mental Health	5
License Renewal	5
Continuing Education	5
New Licensees	6
New Legislation	6
New Rules:	
Authority of Students / Externs	7
Computerized Signatures	7
New Board Member	7

[continued from page 1](#)

Employed Optometrists

The patient records are requested from the doctor(s) practicing at the office at the time of the inspection. This includes employed optometrists as well as owners of the practice. Each doctor practicing at an office is responsible for compliance with the Optometry Act (see [Board Rule 279.10](#), Professional Identification, for example).

Patient Records - HIPAA

The letter presented by the investigator includes a citation to the legal authority for the inspection including the legal authority to obtain personally identifiable health records under HIPAA regulations. However, the optometrist is always offered the opportunity to remove any personally identifiable health information as long as the patient record can be tied to a particular patient. If the office uses electronic medical records, a paper copy of the record will be requested ([Board Rule 277.7](#) requires doctors using EMR to be able to print a paper copy).

Other Matters

The investigator will also check whether the doctor's professional designation is correct on forms in the office (including the prescription forms), running water in the contact lens fitting area, proper separation from a leasing optical, and the correct signage at the entrance of the practice.

Recent Inspections

Offices in the following cities have been inspected in the last few years: Abilene, Allen, Austin, Ballinger, Baytown, Belton, Brady, Burnet, Carrollton, Cedar Park, Coppell, Copperas Cove, Corsicana, Dickinson, Early, Ennis, Fairview, Friendswood, Frisco, Galveston, Georgetown, Harker Heights, Highland Village, Hillsboro, Horseshoe Bay, Kemah, Killeen, Kyle, La Porte, League City, Lewisville, Lockhart, Marble Falls, McKinney, New Braunfels, Pearland, Pflugerville, Plano, Round Rock, San Angelo, Selma, Universal City, Waco, Webster, and Whitney.

Pain Management Information

According to the Texas State Board of Pharmacy, "within the last decade, abuse and misuse of certain prescription drugs, especially pain medications, has become prevalent. Studies have indicated that educating health care providers about the growing problem and providing them with information will create a heightened awareness of the appropriate use of pain medication as well as the misuses and diversion of addictive pain medications."

State law requires the Optometry Board to provide information on:

- prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;
- abusive and addictive behavior of certain persons who use prescription pain medications;
- common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and
- the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

The information may be accessed on the Pharmacy Board's [website](#). The Optometry Board's [website](#) contains the link to the Pharmacy Board, as well as a link and phone number for the [Texas Poison Center Network](#).

Optometry School News

The Board has licensed the first graduates from the [Rosenberg School of Optometry](#) at the University of the Incarnate Word in San Antonio. The school has been accredited by the Accreditation Council on Optometric Education (ACOE).

Both Texas optometry schools opened important additions during the year. An Optometry Board meeting was held at the University of Houston Health & Biomedical Sciences Building in February 2013. The building, dedicated that same month, includes the Molly and Doug Barnes Vision Institute. The Rosenberg School of Optometry dedicated the Bowden Eye Care and Health Institute in June 2013, to serve Eastside residents of San Antonio.

Disciplinary Action

Every newsletter, including the August 2013 Newsletter, contains a list of doctors issued fines for failing to use the proper professional identification. State law requires an optometrist to use one of the following whenever the optometrist identifies himself or herself:

- John Smith, O.D., or
- John Smith, Doctor of Optometry, or
- John Smith, Optometrist, or
- Dr. John Smith, Optometrist

A therapeutic optometrist must use one of the above identifications, or any of the following:

- Jane Smith, Therapeutic Optometrist, or
- Dr. Jane Smith, Therapeutic Optometrist

License Suspension: Failure to Comply with Probation

Based on the findings of an Administrative Law Judge, the Board found that the licensee had not complied with the conditions of probation (see [August 2010 Newsletter](#)). The Board revoked the probation and issued an order suspending the doctor's license for a period of one year. Kristyna Dan Thanh Le, O. D.; 6360T

Letter Agreements with Administrative Penalties

Licensees attended an Informal Conference in Austin with three Board Members. After the conference and a vote of the Board, the licensees entered into a Letter Agreement. In addition to the administrative penalties, licensees agreed to comply with the Optometry Act and Board Rules.

Failure to Timely Respond

The Board alleges in the Letter Agreement that during the investigation of a complaint, the licensee did not respond to multiple inquiries from the Board, and when the licensee did respond, the responses were several months late. Licensee stated that he had been told by the owner of practice that the owner would respond to the Board. Administrative penalty of

Letter Agreements, continued

\$1,000 plus refund of patient fees. [Board Rule 277.1](#).

Control by Optical

The Letter Agreement alleges that the doctor practiced in a space leased from a retailer of ophthalmic goods, that a doorway was present in the wall separating the doctor's office from the optical, that employees of the optical made appointments for the doctor, and that the telephone number belonged to the optical. The Board alleges that these activities constituted the providing or sharing of business services, or the control of optometry. The Board also alleges the office and the optical were not separated as required by law. Administrative penalty of \$1,000 and correction of violations. Optometry Act §§[351.364](#) and [351.408](#).

Patient Records

Based on an inspection of the doctor's office, the Board alleges that the doctor did not record or adequately record the required findings of tonometry, assessment of binocular function, amplitude or range of accommodation, angle of vision, and retinoscopy. Administrative penalty of \$300 and correction of examination/recording procedures. Optometry Act §§[351.353](#) and [Board Rule 277.7](#).

Board alleges that doctor did not make multiple entries in patient record for visual acuities at each visit based on change from patient's visual acuities in the year's previous visit. Electronic medical records were incomplete and did not contain information recorded manually at examination, and were set up based on incorrect "reason for visit." Board alleges reasons for visit recorded in patient history should have required electronic medical records to be more complete, including treatment plan. Board also alleges that doctor could have more strongly emphasized need for visual fields examination based on patient's reason for visit. Administrative penalty of \$600 and attendance at additional continuing education, including

courses in the use of electronic medical records. Optometry Act §[351.501\(a\)](#) and [Board Rule 277.7](#).

Criminal Conviction _____

Board alleges in Letter Agreement that Applicant reported criminal convictions on application, including felony driving while intoxicated for which the applicant was placed on probation. Letter Agreement states that applicant has provided extensive evidence of change and compliance with terms of probation. Letter agreement requires applicant to report on status of probation and any failed substance screenings. Optometry Act [§351.501\(a\)](#).

Administrative Penalties

Administrative penalties were issued in the following agreed settlements for alleged violations of the Texas Optometry Act and Board Rules.

Professional Identification _____

Several administrative penalties were issued for failing to comply with the professional identification requirements of the law (see above and the [February 2012 Newsletter](#)). Occupations Code §[104.003](#), [Board Rule 277.6](#).

Identification on Rx

Three doctors received administrative penalties for allegedly failing to identify themselves as optometrists on prescriptions written by the doctors. Administrative penalty of \$300 for each doctor.

Identification on Office Door or in Advertising

Four doctors allegedly failed to correctly identify themselves as optometrists either on a sign on the office door, or in advertising materials (including business cards, the doctor's website, and outdoor signage). Administrative penalties of \$300 to \$400 for each doctor.

No Identification on Office Door _____

Three doctors allegedly failed to identify themselves on a sign prior to entry into the doctor's office. Some of the doctors assessed a penalty were employees of a practice. Administrative penalty of \$300 for each doctor. Optometry Act §[351.362](#).

Misleading Application _____

An applicant received an administrative penalty for allegedly submitting misleading applications, and specifically for not disclosing arrests or criminal convictions. The applicant is alleged to have filed two applications a year apart without disclosing criminal charges (although the Board was notified by applicant the day of receiving the FBI criminal history report that she had a criminal history).

A licensed doctor was alleged to have filed an application several years ago without disclosing criminal charges even though another state had imposed disciplinary action for the same offenses. Administrative penalties of \$500 and \$600. Optometry Act §[351.501\(a\)](#), [Board Rule 271.2](#).

Control by Optical

Three optometrists were separately assessed administrative penalties for allegedly allowing a leasing optical to control their practice. Violations alleged included placing the name of the leasing optical on the doctor's business cards and prescription pad, displaying the optical's advertising brochure in the doctor's office, and allowing the optical to place advertising on the window of the doctor's office. Administrative penalties of \$300 to \$400 for each doctor. Optometry Act §§[351.364](#), [351.408](#), [351.459](#).

HELP!

Substance Abuse / Mental Health Alternative to Permanent Disciplinary Action

Optometrists, just like other health professionals and the public, may find themselves in a situation where the doctor is abusing drugs or alcohol. Even if the abuse is not a criminal act, the Board will be required to take disciplinary action if the ability to provide proper health care is affected. This may include probation, and suspension or revocation of license. The disciplinary action is public, a permanent notice appears on the website, and must be reported to the national databank. But there is an alternative that may avoid disciplinary action:

The Alternative: Board's Peer Assistance Program

A licensee or student with a substance abuse or mental health issue that may affect their ability to provide proper health care may contact the Board's Peer Assistance Program. The Program is operated by the Professional Recovery Network which provides assistance to optometrists and other health professionals.

After contacting the Professional Recovery Network, the licensee or optometry school student will be given the opportunity to be evaluated. If a problem is identified, a program will be devised for the licensee. Provided that the licensee complies with the program, the assistance provided by the Professional Recovery Network may remain confidential. However, if the licensee refuses to enter into a program or does not follow the program, the Professional Recovery Network may be required to report the licensee to the Board.

Work associates or family members may also refer a licensee or student to the Program.

The Professional Recovery Network may be contacted at **1-800-727-5152**, or consult the [website](#).

If you do not contact the Peer Assistance Program, and a patient or licensee reports you to the Board, or you are charged with a criminal offense which is reported to the Board, you will be subject to public discipline by the Board.

License Renewal

- Renewal period expected to start first week in November
- Postcard is sent to address in database
- Instructions will be on website starting November 1
- On-line renewal system allows a January 1, 2014 renewal, but only if system is operational on that day
- Board cannot guarantee that on-line renewal system will be operational at all times
- Same on-line renewal system used last year
- Most doctors will not need to reregister to renew on-line – use password created last year
- Same fee as last year

Continuing Education

- Courses must be approved by the Board – courses are approved at each board meeting
- Approved courses are listed on website
- Doctor or course provider must send proof of attendance to Board
- Hours for each licensee are posted on the website (only those hours from approved courses): "Check CE" link
- Last chance to have Board approve medical exemption is November 8, 2013
- COPE courses are generally accepted, but must still be formally approved before credit can be given*
*other state jurisprudence courses are not approved, some poster sessions are not approved
- Last minute attempt to obtain CE – frequently very stressful for doctor. CE must be obtained on or before 12/31/13
- Last minute attempt to obtain CE – Board office may be able to offer suggestions
- Insufficient CE hours – substantial monetary penalty and doctor cannot renew
- Detailed information on CE requirements is on website: www.tob.state.tx.us/cegeneral.htm

New Licensees

Since the publication of the last newsletter, 206 optometrists have been licensed in Texas. Information on the practice of optometry was provided with each license, but to review, please note the following:

- Your license expires on January 1, 2014. No exceptions!
- You will be mailed a postcard when it is time to renew (usually the first week in November), so a having a current address on file with the Board is very important (it is also required by law). You must renew your license even if you do not receive the postcard.
- Instructions for renewing will be on the website starting November 1. Almost all licensees renew on the Internet.
- You are exempt from continuing education to renew for 2014 (if you were first licensed in 2013).
- Optometric glaucoma specialist license details are on the website (many new licensees have already received the license).
- Important information regarding optometry practice, including new laws and rules, recent disciplinary actions, and common issues can be found in each [Newsletter](#). The Optometry Board assumes that all licensees read the Newsletter each August.
- The [website](#) has information on maintaining patient records, treating minors, responsibilities to deaf patients, disability license plates, controlled substances prescription requirements, and partnerships, for example. The "Main Information" page also has links to Medicare, Medicaid and HIPAA resources.

New Legislation

New Section 351.509 was added to the Optometry Act in the 2013 legislative session. [House Bill 2627](#) gives the Board authority, similar to other health licensing Boards, to use a remedial plan in lieu of disciplinary action for some violations.

Amendments to the Insurance Code may also be of interest (these laws are not regulated by the Optometry Board). See (note brief description may not include all subjects covered by bill):

- [Senate Bill 632](#) - HMO and health insurance plans may not set

New Legislation, continued

fee or require a discount on products or services that are not covered products or services.

- [Senate Bill 822](#) - Defines "contracting entity" as a person who enters into a direct contract with a provider for delivery of health care services and establishes a provider network or networks for access by another party. Contracting entity:
 - may not sell, lease, or otherwise transfer information regarding the payment or reimbursement terms without authority of provider
 - may not provide a person access to health care services or contractual discounts under a provider network contract unless contract states that contracting entity may contract to provide access to entity's rights and responsibilities under the provider network contract
 - must in contract state that it will provide information to determine whether a particular person is authorized to access the provider's services and discounts
- [Senate Bill 365](#) - Expedited credentialing process now includes therapeutic optometrists

Other legislation of interest:

- [Senate Bill 166](#) - Allows optometrists to use driver's license information to identify patients; subject to HIPAA
- [Senate Bill 162](#) - Expedited license application for military spouse
- [Senate Resolution 1022](#) - Congratulating Fred Farias III, O.D., as president-elect of the Texas Optometric Association.
- [House Bill 746](#) - Uniform Emergency Volunteer Health Practitioners Act. Allows volunteer health practitioners licensed in another state to practice in Texas in a declared emergency. Regulated by Texas Division of Emergency Management.

New Rules

Clinical Instruction of Students and Externs

The Board amended [Board Rule 273.5](#) to clarify the requirements for a student or extern's participation in clinical instruction. Students at an optometry school in Texas may only participate in clinical instruction on the premises of the school or affiliated clinics while under the instruction and supervision of a licensed optometrist or physician employed by the school.

Students on an externship may participate in clinical instruction at the office of a licensed optometrist or physician who is currently appointed as a clinical instructor by a Texas optometry school. The clinical training must be under the instruction and supervision of the appointed clinical instructor. The rule only gives authority for the clinical instruction of students enrolled in a Texas optometry school.

Computerized Signature on Prescriptions

The Board has amended rules to allow a computerized signature on a paper prescription. The amendments do not allow the use of a rubber stamp, or the pre-printing of prescriptions with a computerized signature. Each prescription printed must be individually authorized by the optometrist.

Ophthalmic Prescriptions

Amendments to [Board Rules 279.2](#) and [279.4](#) permit the doctor to issue a written prescription containing a computerized signature provided that the signature is a copy of the doctor's signature, and the security features of the computer system printing the prescription require the doctor to authorize each use of the signature.

Drug Prescriptions

The requirements for a drug prescription are those of the Texas State Board of Pharmacy. Amendments to [Board Rule 280.5](#) allow a computerized signature if the signature is a copy of the doctor's manual signature, the security features of the computer system printing the prescription require the doctor

to authorize each use of the signature, and the prescription is printed on paper that is designed to prevent unauthorized copying of a completed prescription and to prevent the erasure or modification of information written on the prescription by the prescribing practitioner.

New Board Member

The governor appointed, and the Senate confirmed, a new public Board Member: Judith Chambers. Ms. Chambers is a resident of the Austin area. She replaces a public member whose term had expired.