



Prescription Monitoring Program

Every Optometric Glaucoma Specialist who prescribes controlled substances must register with the Pharmacy Board. Register here:

<http://www.pharmacy.texas.gov/PMP/>

Optometric Glaucoma Specialists are **required** to access the Prescription Monitoring Program database when prescribing or dispensing Schedule III, IV or V analgesics beginning **September 1, 2019**.

Although the requirements are not effective until September 1, 2019, optometric glaucoma specialists are encouraged to register with the Prescription Monitoring Program *now*. Once registered, the optometric glaucoma specialist may access the Prescription Monitoring Program.

As of September 1, 2019, every optometric glaucoma specialist prescribing a Schedule III, IV or V analgesic must first:

1. check with the Prescription Monitoring Program for the prescription data and history related to the patient, if any, contained in the Prescription Monitoring Program
2. make a determination whether the planned prescribing would constitute a potentially harmful prescribing pattern or practice. This determination would be based on the information in the

Prescription Monitoring Program, as well as:

- the nature and intensity of the presenting pain;
- current and past treatments for the presenting pain;
- underlying or coexisting diseases and conditions;
- any history and potential for substance abuse or diversion; and
- the presence of one or more recognized medical indications for the use of a dangerous or scheduled drug.

The abuse of opioids is a nationwide issue, including Texas. The Texas House of Representatives has formed a select committee to study the issue and provide guidance to the legislature. At the May 15, 2018, meeting, the health professional licensing boards presented

HELP impaired professional
drugs • alcohol • mental health
Peer Assistance Link

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testimony on the efforts at the state agency level to combat the misuse of opioids.

In 2017, state law was amended to require state health professional licensing agencies to regulate potentially harmful prescribing patterns or practices. State law requires the Optometry Board to review information in the Prescription Monitoring Program and gives the Board the authority to discipline optometric glaucoma specialists who have engaged in potentially harmful prescribing patterns or practices. The agency operating the Prescription Monitoring Program (Texas State Board of Pharmacy) regularly sends the Optometry Board information on optometrists prescribing unusual numbers of opioids.

The Board voted to amend Rule §280.10 to provide guidance and satisfy the requirements of the 2017 legislation:

RULE §280.10. Optometric Glaucoma Specialist: Administration and Prescribing of Oral Medications and Anti-Glaucoma Drugs.

....

(g) Prescribing a Controlled Substances Schedule III, IV or V analgesic.

(1) If permitted by the generally accepted standard of care, an optometric glaucoma specialist may prescribe a Schedule III, IV or V analgesic if the following minimum requirements have been met:

(A) Evaluation of the patient.

(i) An optometric glaucoma specialist is responsible for obtaining a medical history and a physical examination that includes a problem-focused exam specific to the chief presenting complaint of the patient.

(ii) Should the optometric glaucoma specialist prescribe a Schedule III, IV or V analgesic, the medical record shall document the medical history and physical examination, including:

- (a) the nature and intensity of the presenting pain;
- (b) current and past treatments for the presenting pain;
- (c) underlying or coexisting diseases and conditions;
- (d) any history and potential for substance abuse or diversion; and

(e) the presence of one or more recognized medical indications for the use of a dangerous or scheduled drug.

(B) Prior to prescribing a Schedule III, IV or V analgesic, an optometric glaucoma specialist must review the prescription data and history related to the patient, if any, contained in the Prescription Drug Monitoring Program set out in §§481.075, 481.076, and 481.0761 of the Texas Health and Safety Code, unless:

(i) the patient has been diagnosed with cancer or the patient is receiving hospice care and the optometric glaucoma specialist clearly notes in the prescription record that the patient was diagnosed with cancer or is receiving hospice care, as applicable; or

(ii) the optometric glaucoma specialist makes a good faith attempt to comply but is unable to access the information under §481.076(a)(5) because of circumstances outside the control of the prescriber or dispenser.

(C) Informed consent. It is the responsibility of the optometric glaucoma specialist to discuss the risks and benefits of the use of a Schedule III, IV or V analgesic with the patient, persons designated by the patient, or with the patient's surrogate or guardian if the patient is without medical decision-making capacity. This discussion must be documented by a contemporaneous notation included in the medical records. Discussion of risks and benefits must include an explanation of the:

(i) diagnosis;

(ii) treatment plan;

(iii) anticipated therapeutic results, including the realistic expectations for sustained pain relief and improved functioning and possibilities for lack of pain relief;

(iv) therapies in addition to or instead of drug therapy, including physical therapy or psychological techniques;

(v) potential side effects and how to manage them;

(vi) adverse effects, including the potential for dependence, addiction, tolerance, and withdrawal; and

(vii) potential for impairment of judgment and motor skills.

(D) Patients who are at-risk for abuse or addiction require special attention. Patients with chronic pain and histories of substance

abuse or with co-morbid psychiatric disorders require even more care. A referral to an expert in the management of such patients must be considered in their treatment.

(E) Medical records. The medical records shall document the rationale of the treatment plan and the rationale for prescribing a Schedule III, IV or V analgesic. The medical records must be sufficient to document compliance with this rule, including but not limited to containing:

- (i) the medical history and the physical examination;
- (ii) diagnostic, therapeutic and laboratory results;
- (iii) evaluations and consultations;
- (iv) treatment objectives;
- (v) discussion of risks and benefits;
- (vi) informed consent;
- (vii) treatments;
- (viii) medications (including date, type, dosage and quantity prescribed); and
- (ix) instructions and agreements.

(2) The Board may open a complaint against an optometric glaucoma specialist if the Board finds evidence during a periodic check of the Prescription Monitoring Program that the optometric glaucoma specialist is engaging in potentially harmful prescribing patterns or practices may be occurring. A potentially harmful prescribing pattern or practice may be determined from:

- (A) the number of times a optometric glaucoma specialist prescribes a Schedule III, IV or V analgesic;
- (B) patterns of prescribing combinations of Schedule III, IV or V analgesics and other dangerous combinations of drugs;
- (C) data from the Prescription Monitoring Program indicating that the volume of prescribing places the optometric glaucoma specialist in the top 20 prescribers in the state at any time in the preceding 12 months for prescriptions of Schedule III, IV or V analgesics, except for an optometric glaucoma specialist prescribing the drugs to treat cancer patients or patients in hospice facilities;
- (D) complaints and/or information, from non-anonymous complainants related to inappropriate prescribing practices, including

those from law enforcement agencies or health care regulators;

- (E) A patient overdose death related to Schedule III, IV or V analgesics, prescribed by a optometric glaucoma specialist; or
- (F) arrest of an optometric glaucoma specialist related to improper or fraudulent prescribing of controlled substances;

(3) Language in this section regarding the prescribing of a Schedule III, IV or V analgesic is not intended to expand the classes of drugs that may be prescribed by an optometric glaucoma specialist under subsections (a) – (e) of this section.

(4) The requirements of subsection (g)(1)(B) have an effective date of September 1, 2019. Optometric glaucoma specialists may comply with this subsection prior to September 1, 2019.

License Renewal Certificate New Form

The annual renewal certificate will now be provided on-line. In customer surveys and phone calls to the Board, licensees have expressed concern on the amount of time it takes to receive the license renewal certificate. Beginning with the renewal for 2019, the certificates will be provided on the Board's website. Certificates will not be mailed (however, arrangements can be made for those licensees without access to the Internet).

Instructions will be available on the website beginning the first week in November. Basically, the certificates will be available 24 hours after the license renewal payment. Keep in mind that accurate and up-to-date license information is available 24/7 on the Board's [website](#).

Customer Survey

In April the Board e-mailed a survey to all licensees. Over 600 licensees responded, with many licensees providing comments. The Board Members have considered the comments and the survey responses, as part of the continual effort to make the Board customer responsive. For example, the Board will be initiating on-line renewal certificates to expedite the process of obtaining the certificate. The results of the survey are posted on the Board's [website](#).

Office Practice Pointers

- Reporting Illegal Sales of Contact Lenses
- Deaf Patients (ADA Compliance)
- Natural Disaster Volunteers

Reporting Illegal Sales of Contact Lenses

Contact lens dispensers are not required to register with the state (the requirement was removed from state law in 2015). State law (and federal law) still prohibits the dispensing of contact lenses without a valid prescription. Complaints of illegal dispensing can be made to the [Attorney General](#), the Optometry Board, local police or sheriff, or the federal government:

Report adverse events to the FDA: <http://www.fda.gov/Safety/MedWatch/default.htm>

Report illegal sales on the Internet to the FDA: <http://www.fda.gov/Safety/ReportaProblem/ucm059315.htm>

Report illegal dispensing to the FDA: 877-382-4357

Report illegal dispensing to the FTC: <https://www.ftccomplaintassistant.gov/GettingStarted?NextQID=275&Url=%23%26panel1-9>

Deaf Patients (ADA Compliance)

At least once a month, the Board receives a telephone call asking about the optometrist's responsibility concerning a deaf patient.

The Americans With Disabilities Act (ADA) is outside the expert knowledge of staff, but the ADA may require a doctor's office to provide auxiliary aids and services to patients who are deaf or hard of hearing. This may be as simple as using written materials, but may require contracting with a qualified interpreter for a particular patient. For specific information, call the federal government, 800-514-0301 (Department of Justice, ADA Matters), visit the DOJ website ([ADA publications](#)), call the Texas Department of Assistive and Rehabilitative Services, Office for Deaf and Hard of Hearing Services: 512-407-3250 (office can refer to an interpreter if required), or the Governor's Committee on People with Disabilities: 512-463-5739.

This information is posted on the website under "[Main Information Page](#)."

Natural Disaster Volunteers

With hurricane season upon Texas, please note that the Texas Department of State Health Services maintains a registry of volunteers who can be considered for assistance in an emergency or disaster.

Registrants have the option to choose a group in his or her area with which to affiliate. For example, registrants are encouraged to join the nearest Medical Reserve Corps. The information provided will be kept secure and shared only with emergency management officials during a disaster response. As a volunteer, an optometrist has the right to say "yes" or "no" to any requests for his or her services. As a volunteer, the optometrist has the right to decide how far he or she is willing to travel and how long he or she is willing to serve.

For more information visit the website for the [registry](#).

CE Misconceptions

Board staff has noticed several misconceptions about the continuing education submitted to satisfy the legal requirements to renew.

1. If I take a CE course, submit the certificate to the Board, it will quickly be posted to the Board's website.

For approved courses, this is not a misconception. However, a common misconception is if the course is not on the [approved course list](#) on the Board's website. Only approved courses can be posted. If the course you submitted is not posted, check to see if it is on the approved course lists. Courses are approved at Board Meetings in April, May, August and November.

2. All COPE courses are automatically approved.

COPE courses must still be approved by the Board, to determine for example, whether the hours are general or diagnostic/therapeutic. Credit cannot be posted until the course is approved at one of the four board meetings held each year.

3. I can assume that the Board will be familiar with every CE course in the United States.

4

Sorry, this is not possible. If you take or plan to take a course that is



not on the approved list, the website has a description of the information the Board needs to approve the course. Frequently the course certificate does not provide this information (exception: COPE approved courses – the information needed for approval is available from COPE)

4. *ARBO, OE Tracker, and COPE send course information to the Board.*

These organizations do not send information to the Board. You can, however, submit the OE Tracker certificate or transcript to the Board.

5. *There is no list of approved courses.*

There are three [lists](#): Live, Internet, and Professional Responsibility Courses.

6. *The Board has the staff to acknowledge all of the hundreds of CE submissions received daily during November and December.*

Sorry, this is just not physically possible.

7. *It is best practice to wait until December to submit a course I took in April.*

This is a common misconception, but tends to overload the entering of courses during the very busy months of November and December.

8. *Submission of an approved course (it will be on the list on the website) as soon as it is taken will make it easier to timely renew.*

This is a true statement.

9. *Once the Board approves many additional courses at the November meeting, the accumulated certificates will be posted immediately.*

Many certificates are submitted before the course is approved. Since these cannot be posted until after the course is approved, a backlog builds up during the period between Board Meetings. Staff works very hard to post the accumulated submissions as quickly as possible after the November Board Meeting.

Impaired Optometrists

The Peer Assistance Program has been set up by the Board to offer optometrists a pathway to recovery that remains confidential as long as treatment progresses in a satisfactory manner. During treatment, the Program, which is operated independently of the Board, only reports the number of persons in the program. The Board does not receive any identifying information if the doctor or student is complying with Program requirements. The Program is very similar to the programs utilized by physicians, nurses, dentists, veterinarians, and pharmacists.

Impairment includes alcohol and drug dependency as well as mental health issues. The program is also available to Texas optometry school students.

Information is available on the Board's [website](#) or the impaired doctor or student can call the Program directly at: **1-800-727-5152**. *Colleagues of impaired optometrists may also use this service to assist in finding help for the impaired doctor.*

Disciplinary Matters

Informal Conference

The Board requested that two licensees attend an Informal Conference in Austin with the Investigation - Enforcement Committee. After the conference and a vote of the Board, the optometrists entered into agreements with the Board as follows:

Practice Without Renewing License

The Board alleges that the optometrist practiced optometry after January 1 without first renewing her license. The optometrist stated that she believed that she had completed the renewal process and was therefore able to practice, but acknowledged that she had not received a renewal certificate. The optometrist entered in an agreement to pay the Board a penalty of \$600. Optometry Act §[351.301](#)

Inadequate Patient Records

During an office inspection by the Board's investigator, the inves-



continued

tigator obtained copies of five patient records recorded on initial patients receiving an ophthalmic prescription. The Board alleges that the patient records did not record the examination procedures required by Optometry Act §351.353. Board Rule 277.7 sets out the requirement needed to show compliance with §351.353. The Board alleges that the records did not comply with the rule. The optometrist and Board entered into a Letter Agreement requiring the optometrist to submit a \$2,000 penalty, attend additional continuing education, and submit patient records for review. Optometry Act [§351.002](#); Board Rule [§277.7](#)

Administrative Penalties

Patient Record Deficient

The Board alleges that a patient record with no notations on the record form does not comply with Board Rule §277.7:

Notations to a detailed preprinted checklist are acceptable if the results of an examination may clearly and accurately be presented in this format. The use of a check mark or similar minimal notation to record the performance of an examination, if not made to a detailed checklist, does not meet the requirements of subsection (a) of this section.

The optometrist stated that no notation meant that examination was performed and the results were within normal limits. The optometrist agreed to change the recording method and submit a penalty of \$400. Optometry Act [§351.002](#); Board Rule [§277.7](#)

After examining patient records obtained by the investigator during an office inspection, the Board alleged that the records did not record all of the examination findings required by Optometry Act §351.353. The optometrist was alleged to have similar issues with patient records obtained at a previous inspection. Administrative penalty of \$700. Optometry Act [§351.002](#); Board Rule [§277.7](#)

Misrepresentation on Application - Reporting Convictions

Two applicants allegedly did not disclose arrests and convictions when applying for license. The Board alleges that the applicants stated under oath that they had not been charged with or convicted of a crime. Penalty of \$300 each. Optometry Act [§351.501\(a\)](#)

Professional Identification

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

Identification on Rx or Business Card

Four doctors received an administrative penalty for allegedly failing to correctly identify as an optometrist on prescriptions written by the doctor. Administrative penalties of \$300 - \$400. The Board also alleges that an optometrist was additionally signing the prescription with a name different from the name licensed by the Board. \$500 penalty. One optometrist allegedly used the incorrect professional identification on the doctor's business card. \$600 penalty (other violations alleged).

No Identification on Office Door

Two doctors allegedly practiced in offices that did not identify the doctors on signs prior to entry into the offices. Administrative penalty of \$400 - \$500. Optometry Act [§351.362](#).

Each newsletter contains a list of doctors issued fines for failing to use the proper professional identification. Most of these violations are discovered during office inspections by the Board. State law requires an optometrist to use one of the following (no exceptions in the law, which is a criminal offense):

- 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

Professional Identification - Misleading Advertising

An optometrist may be licensed as an "optometric glaucoma



specialist.” Optometrists using “glaucoma specialist” as a professional identification are not complying with the required professional identification and subject the public to misleading advertising. Several newsletters have discussed this issue. The Board alleged that three optometrists used the phrase “glaucoma specialist” on business cards and/or the front door. Penalties of \$300 each. Occupations Code §[104.003](#), Optometry Act §[351.403](#), and Board Rule §[277.6](#).

Control by Optical; Advertising

Optometrists were assessed an administrative penalty for allegedly allowing a leasing optical to control the practice. Four doctors allegedly permitted a leasing optical to post signs such that there was no public thoroughfare leading to the entrance of the optometrists’ practices or allegedly allowed a leasing optical to post optical advertising on the optometrists’ practices. Administrative penalties of \$300 to \$600. Two optometrists allegedly placed the name of the leasing optical on the doctor’s business card, and one optometrist allegedly placed the name on a brochure. Administrative penalties of \$300 - \$600. The Optometry Act, in regulating the relationship of dispensing optician and an optometrist, prohibits solicitation for one by the other. The Act also prohibits a lessee doctor from allowing an a lessor optical to provide advertising services. Optometry Act §§[351.364](#), [351.408](#), [351.459](#) and [351.501\(a\)](#).

New Rules

Since the last Newsletter, the Board adopted amendments to several rules. Most of the amendments were to comply with changes made to the Optometry Act in 2017 after the Board was reviewed by the Sunset Commission.

- [Rule §273.4](#) amendments concern renewal fee changes required by legislation to fund the Prescription Monitoring Program. These fee changes were in effect for the 2018 license renewal.
- [Rule §277.1](#) was amended to include requirements to keep a complainant’s name confidential and a prohibition on accepting anonymous complaints.

- [Rule §277.11](#), a new rule, sets out the procedures for a physical or mental examination when necessary to determine fitness to practice.
- [Rule §273.6](#) was amended to include licensing procedures for military optometrists volunteering to provide charity care in response to legislation passed in 2017.
- [Rule §273.8](#) amendments add restrictions on license renewal when administrative penalties are unpaid or when a licensee has not complied with disciplinary orders or agreements.
- [Rule §277.12](#) is a new rule setting out the disciplinary actions the Board may take, including actions authorized in 2017 amendments to the Optometry Act.

National Meeting Topics

The Texas Optometry Board, like most other states, belongs to the Association of Regulatory Boards of Optometry (ARBO). At the national meeting in June, the members discussed several issues that are a common concern to almost all the states.

Mobility / State Compacts

A speaker with a multi-state compact for physicians spoke on the process of allowing licensees to apply to multiple states through a single entity, as well as to renew licenses for multiple states. An issue for optometry is the significantly different scope of practice in each state. Although there is much commonality in licensing exam requirements, there are still significant differences here too.

North Carolina State Brd. Dental Examiners v. FTC

This 2015 Supreme Court Decision may mean significant changes to the methods state optometry boards (as well as all other regulatory boards) employ to regulate the practice of optometry. The Court held that a state regulatory agency was not automatically immune from the restrictions imposed by federal anti-trust laws. States are looking at ways to organize state boards differently in response to the decision. These organizational structures vary, but in common among the states is the need to regulate in a smart and careful manner. The

Texas Optometry Board has met with the office of the Texas Attorney General on multiple occasions for advice on the regulatory actions before the Board.

Continuing Education

COPE is the continuing education arm of ARBO. COPE is moving to develop standards such that COPE approved courses will have equivalency with approved education in the other medical fields.

License Renewal

Continuing Education

- Submitting certificates to the Board as soon as received speeds up the process immensely

Notice to Renew:

- Postcard is mailed to address in database. Everyone must renew whether the postcard is received or not.

Start of Renewing Period:

- Instructions on website starting first week in November

Deadline:

- On-line renewal system allows a January 1, 2019, renewal without a late fee, *but only if system is operational on that day. The Board cannot guarantee that the on-line renewal system will be operational at all times*

Fingerprints:

- One fifth of doctors licensed before 2008 will be required by state law to submit fingerprints. Last year was the first year that this requirement was in effect.

Query to NPDB:

- A query will be run for all doctors renewing as required by state law.

Renewal Certificate Available On-Line

- See page 3 of this newsletter.

Doctors waiting until the last minute to renew may find it very stressful to complete all requirements in a timely fashion

Information for New Licensees

(also a refresher for current licensees)

Suggestions from the Board

Read the Newsletter every year (the Board assumes that all licensees read the Newsletter). Important information regarding optometry practice, including new laws and rules, recent disciplinary actions, and common issues can be found in each [Newsletter](#).

Telephone or e-mail the Board if you have a question (but check the website first -- the website might have just what you are looking for)

- On the website, look first in the [Main INFORMATION Page](#) which has information on maintaining patient records, treating minors, responsibilities to deaf patients, disability license plates, controlled substances prescription requirements, and partnerships, for example. This page also links to pages that have links to Medicare, Medicaid and HIPAA resources.
- The [Texas Optometry Act](#) is on the website. A [PDF booklet](#) is also on the website which includes an index.
- All the [Board Rules](#) are also on the website. Again, a [PDF booklet](#) with index is available.

Your license *expires* on January 1, 2019*

- Usually during the first week in November all licensees are mailed a postcard to the address on file with the Board (state law requires that this address be current). You must renew your license even if you do not receive the postcard announcing that licenses can be renewed.
- 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 2019 (if you were first eligible for a license in 2018).

** Recent licensees who are veterans, spouses of veterans, or military service members may have a different expiration date*

Drug prescribing authority: start with the [website](#)

Office Inspections: Your office may be inspected by the Board's investigator. See information on page 9.

Office Inspections

The Board has been conducting inspections of doctors' offices for over forty years. The number of inspections conducted is one of the required performance measures submitted to the Texas Legislature each year. Inspections are specifically authorized by Optometry Act [§351.1575](#).

During an office inspection, the investigator will present a letter describing the inspection, which includes information on HIPAA concerns. The optometrist will be asked by the investigator to provide copies of five patient records while the investigator waits. The investigator will look to determine whether any control issues with a leasing optical are present. Frequently an inspection can be completed in half an hour.

The copies of patient records are delivered by the investigator to one of the professional Board Members who determines whether the records show compliance with [§351.353](#) of the Optometry Act and Board Rule [§277.7](#).

The Board investigator inspected offices in Missouri City, Katy, Richmond and Sugar Land this year. A number of the offices were not in compliance with the requirements of state law. For some of the violations it is normal for the Board to impose an administrative penalty (fine), but some violations may require stronger disciplinary penalties.

Common violations include the failure to:

- list the doctor's name at the entrance of the practice
- include all the examination steps of [§351.353](#) in the record
- properly identify the optometrist as required by Occupations Code [§104.003](#)
- keep a leased office completely separate from the leasing optical

Each Newsletter, in the "Disciplinary Matters" section, contains information regarding administrative penalties assessed for violations present when an office is inspected.

New Board Members

Due to term limits in the Optometry Act, member John Coble, O.D., (chair) and public member Larry W. Fields (secretary) were unable to continue to serve on the Board. The Board thanks the members for their long service and dedication to the Board. Dr. Coble and Mr. Fields were instrumental in many Board accomplishments, not the least of which the review by the Sunset Commission in 2017 such that the Board was able to maintain an independent status.

The Board welcomes the appointment of new chair Mario Gutierrez, O.D., (Dr. Gutierrez is a current member). New members Bill Thompson, O.D., of Dallas, and public member Ty Sheehan of San Antonio, will be serving an initial term of six years.