



TEXAS OPTOMETRY BOARD

NEWSLETTER

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Texas Optometry Board, 333 Guadalupe St, Ste. 2-420, Austin, TX, 78701; 512-305-8500 (fax: 512-305-8501)

Advertising Issues

This issue of the Optometry Board Newsletter is primarily devoted to advertising issues, including use of the term **"Board Certified"** or **"specialist,"** the correct display of **doctors' names at the entrance to the practice**, the correct form of **professional identification** on signs and on prescriptions, the advertising of **"free eye exams,"** and other issues that are the frequent basis for disciplinary action and the subject of many inquiries from licensees. The August Newsletter will continue to be the primary issue and will include the reporting of disciplinary actions and rule changes.

In general, an optometrist cannot publish a "... false, deceptive, or misleading statement or advertisement concerning ophthalmic services or materials. . ." (§351.403) or "... use advertising that is false, misleading, deceptive, or not readily subject to verification." (Occupations Code §101.102). However, there are several additional specific requirements which are covered in this newsletter.

Improper advertising, including using the improper form of professional identification, can result in disciplinary action, including substantial fines. Each newsletter includes disciplinary action taken against doctors whose professional identification did not identify the doctor as an optometrist, or failed to provide any identification at the entrance to their office.

Advertising issues are addressed on the website on the Main Information Page, which is the first link in the Table of Contents. Links are provided to the Optometry Act and Board Rules.

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Other Issues

Important information on a former licensee practicing without a license and the Board's program for impaired licensees is also included in this newsletter.

Board Certification

Board Certification is a voluntary procedure available to doctors. It is not a requirement for renewing or maintaining a Texas optometry license. Board Certification may be advertised if the following restrictions are met. These restrictions apply to business cards, prescription forms, door signs, and telephone books.

Certification by the Optometry Board

Texas Optometry Board does *not* certify optometrists. Therefore it is misleading for a doctor to state that he or she is certified by the Optometry Board. The Board *licenses* therapeutic optometrists and optometric glaucoma specialists.

Advertising Board Certification

Optometrists certified by readily identifiable organizations may advertise that they are certified, provided that the same advertisement specifically identifies the organization that awarded the certification.

Example: Joe Smith, O.D., FNAEI / Fellow of the North American Eye Institute

See Board Rule §279.9 (b):

(b) The term "board certified" or any similar word or phrase denoting certification or specialization may be used by an optometrist if the advertising includes the name of the organization that has conferred the certification or specialization. The Texas Optometry Board does not confer certifications or specializations.

Specialist

Advertising Specialization

Using the term "specialist," such as "Contact Lens Specialist," is prohibited unless the optometrist also includes the name of the organization conferring the specialty designation.

Example: Janet Smith, O.D., Contact Lens Specialist / Certified by the North American Contact Lens Foundation

An optometrist may advertise that he or she *specializes* in a certain type of treatment or patient.

Required Professional Designation

Every newsletter contains a list of doctors issued fines for failing to use the proper professional identification. The correct form of identification is printed in the newsletters and on the first page of the Optometry Act and Board Rules booklets available on the website. In addition to fines imposed by the Board, failure to use the correct identification is a misdemeanor criminal offense.

An optometrist using his or her name in a professional setting must inform the public of the type of professional license held. This includes printing the doctor's name on the door of the practice (and on any other sign), Rx pads, business cards, phone book listings, stationary, and billing invoices. See the Healing Arts Practitioners section of the Texas Occupations Code (§104.003). State law requires an optometrist to use 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

An optometric glaucoma specialist must first use one of the above designations prior to identifying themselves as an optometric glaucoma specialist. The Attorney General in Opinion JC-381 (2001) ruled that "An optometric glaucoma specialist may not use the phrase 'optometric glaucoma specialist' exclusively as a professional designation." An example of a proper identification:

John Smith, O.D.
Optometric Glaucoma Specialist, or
Jane Smith, Therapeutic Optometrist
Optometric Glaucoma Specialist

The use of the term "optometric physician" is a violation.

Name on Practice Door Relief Doctors Required to Comply

"An optometrist or therapeutic optometrist practicing in this state shall display the actual name under which the optometrist or therapeutic optometrist is licensed by the board, so that the name is visible to the public before entry into the optometrist's or therapeutic optometrist's office reception area." (§351.362). This requirement includes relief or fill-in doctors who regularly practice at a location, which is defined as practicing at a location for more than a two month period. This requirement is explained in Board Rule 279.10:

(a) To protect the public health and provide a means for the patient to identify a licensee in a complaint filed with the Board, §351.362 of the Act requires an optometrist or therapeutic optometrist to display the doctor's name so that the name is visible to the public before entry into the office reception area. This requirement does not apply to an optometrist or therapeutic optometrist practicing at a location on a temporary basis, as defined in subsection (b) of this section.

(b) Temporary basis is defined as the practice of optometry or therapeutic optometry at an office for no more than two consecutive months. For example, an optometrist or therapeutic optometrist practicing at a location one day per week during a three month period is not at that location on a temporary basis, and the doctor's name must be displayed as required in §351.362 of the Act.

Leasing Space from an Optical

Doctors who lease space from an optical must comply with advertising restrictions imposed by several sections of the Optometry Act. Section 351.408 prohibits a retailer of ophthalmic goods from controlling or attempting to control the manner of practice of a leasing doctor, including the providing of "business services." A doctor who permits the retailer to control the licensee's practice places the optometrist's license at the service of the retailer, which is prohibited by §351.501 and subjects the licensee to disciplinary

action.

If the optometrist leases space from a mercantile, §351.459 prohibits the licensee from allowing his or her practice "to be directly or indirectly used in connection with a mercantile establishment in any manner, including in advertising, displays, or signs." Section 351.363 requires that "[e]very phase of the practice and the leased space of the optometric practice must be controlled exclusively by an optometrist or therapeutic optometrist."

Examples of Prohibited Acts:

- Allowing a sign referring to the doctor or doctor's practice to be displayed in a mercantile (or on property controlled by the mercantile)
- Mention of an optometrist's office (including the optometrist's name and telephone number) in an advertisement by a retailer
- Reference to a retailer of optical goods in an advertisement by an optometrist, even as a location landmark (prohibited example: "Next door to YYYY Optical")
- Manufacturers, wholesalers and retailers may not place an advertisement for an optometrist

Fines for advertising violations have a minimum penalty of \$1,500 per occurrence.

Free Glasses / Free Exams

An optometrist cannot advertise or give away free eyeglasses. (§351.404) This restriction also applies to contact lenses. A doctor can advertise "buy one pair, get one free." (Board Rule 273.3).

With restrictions, doctors may advertise an offer for a free eye examination. However, such an advertisement, cannot be false, deceptive, or misleading (§351.403). Therefore the advertisement may be required to include explanatory language such as: limitations on the type of eye examination included in the offer, whether the offer includes costs for additional testing if required, and any restrictions on the offer if the patient's examination results do not show a need for glasses.

Other Advertising Issues

Other advertising issues are less of a problem than in the past, but they are presented here for reference.

Comparisons

Comparisons that cannot be substantiated are misleading and a violation of the law. (Occupations Code §101.201(b)(3)) Comparisons to the services of another professional usually cannot be substantiated. For example, "The Best Eye Exam in Town" cannot be substantiated and would be a violation.

Unjustified Expectations

Guarantees of results would be misleading and a violation of the law (Occupations Code §101.201(b)(2)).

Laser Vision Correction

A doctor must define the extent of the optometrist's involvement, for example, "consultation," "evaluation," "management", and/or "comanagement."

Address Changes

During license renewals, many licensees changed or attempted to change their home, office or mailing address. Please note that the Optometry Act requires all address changes to be communicated to the board within 30 days of the change. An address change can be made by e-mailing, mailing, phoning or faxing the board.

Unlicensed Practice

The Board has voted to authorize the Office of the Attorney General to sue for an injunction against Dan R. Patterson, a former licensee of the Board. Despite receiving multiple notices to cease and desist from the Board, Mr. Patterson is alleged to have practiced optometry without a license, and to have continued seeking employment as a relief doctor throughout Texas. The Board alleges that Mr. Patterson uses various message boards to solicit work. He was issued license number 2743T, but that license expired on

December 31, 2008.

To verify that a potential employee or contractor has a current license, you can contact the Board, or do a Public Search on this website:

<https://licensing.hpc.state.tx.us/datamart/mainMenu.do>

Substance Abuse Help Program Volunteer Needed

A licensee or optometry student with a substance abuse and/or mental health issue that may affect their ability to provide proper health care may contact the Board's Peer Assistance Program for help.

The Peer Assistance Program is operated by the Professional Recovery Network which provides assistance to optometrists, pharmacy professionals, dental professionals, and veterinarians.

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 and corrected condition will 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 by telephone (**1-800-727-5152**). In addition, the Professional Recovery Network has a [website](#) with contact information, a description of the program, and helpful information concerning addictions, mental health issues, and intervention information.

The Professional Recovery Network utilizes an advisory board of professionals served by the Network (pharmacists, dentists, veterinarians, and now optometrists). If any licensees are interested in representing their profession and working on substance abuse issues, please contact the executive director of the Optometry Board (Chris Kloeris: e-mail address at the bottom of each page of the website: www.tob.state.tx.us)

Survey

Every other year the Board surveys licensees. The Board will be using e-mail addresses for the survey -- please respond by going to the link in the e-mail and taking the short survey. If you do not have e-mail, you can request a link to the survey by contacting the Board.

Links to Statutes & Rules

Texas Optometry Act

[Sec. 351.155. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING.](#)

[Sec. 351.362. PROFESSIONAL RESPONSIBILITY; NAME OF PRACTICE.](#)

[Sec. 351.363. MERCANTILE ESTABLISHMENT.](#)

[Sec. 351.403. FALSE, DECEPTIVE, OR MISLEADING ADVERTISING.](#)

[Sec. 351.404. EYGLASSES AS PRIZE OR INDUCEMENT.](#)

[Sec. 351.408. CONTROL OF OPTOMETRY.](#)

[Sec. 351.459. MERCANTILE ESTABLISHMENT; PROHIBITED ACTS.](#)

[Sec. 351.501. DENIAL OF LICENSE AND DISCIPLINARY ACTION BY BOARD.](#)

Texas Occupations Code

[Sec. 101.201. FALSE, MISLEADING, OR DECEPTIVE ADVERTISING.](#)

[Sec. 104.003. REQUIRED IDENTIFICATION.](#)

Optometry Board Rules

[Rule 273.3. Contact Lenses as Prize or Premium](#)

[Rule 277.6. Administrative Fines and Penalties](#)

[Rule 279.9. Advertising](#)

[Rule 279.10. Professional Identification](#)