

BOARD MEETING MINUTES
February 6, 2021

1. CALL TO ORDER.

Dr. Gutierrez called the meeting of the Texas Optometry Board (TOB) to order at 9:06 a.m.

2. ROLL CALL.

A roll call vote was taken and quorum was present for the meeting.

Mario Gutierrez, O.D.	Chair
Ronald L. Hopping, O.D.	Vice Chair
Judy Chambers	Secretary/Treasurer
Carey A. Patrick, O.D.,	Member
John Todd Cornett, O.D.	Member
Bill Thompson, O.D.	Member
Meghan Schutte, O.D.	Member
Rene Pena	Member
Kelly Parker	Executive Director
Vincent Pina	Executive Assistant
Dennis McKinney	Assistant Attorney General

Note, Mr. Sheehan was absent and excused from the meeting.

3. MINUTES.

The Board reviewed the November 6, 2020 meeting minutes. A motion was made by Dr. Schutte to accept the minutes and seconded by Ms. Chambers. The motion passed unanimously. (FOR-8/ OPPOSED-0 /ABSTAIN-0)

The Board reviewed the December 18, 2020 meeting minutes. A motion was made by Dr. Thompson to accept the minutes and seconded by Dr. Cornett. The motion passed unanimously. (FOR-8/ OPPOSED-0 /ABSTAIN-0)

4. GENERAL MATTERS.

The Board discussed information related to current issues with optometry schools. Dr. Hopping reported on behalf of the University of Houston. Specifically, Dr. Hopping mentioned that there is an issue with the residency match date and the application deadline. Dr. Patrick reported on behalf of the Rosenberg School of Optometry and noted that they also have an issue with the residency match date and application deadline. She encouraged the Board to consider ways to modernize exam processes. Dr. Gutierrez stated that the application deadline is 45-days prior to the exam because it is in Board Rule. Further, he noted the Board looked at the residency match date when setting deadlines in November. However, after the November meeting, the residency program changed the dates due to COVID-19.

5. BOARD CHAIR REPORT.

Dr. Gutierrez presented the Board Chair Report. He noted that the end of 2020 was challenging and thanked Board staff for their hard work. Dr. Gutierrez acknowledged that we learned a lot from 2020 and that the theme of the day's meeting is modernization. Specifically, Dr. Gutierrez touched on the need to modernize the recording and tracking of continuing education as well as ways to keep licensees informed of requirements. He discontinued the 100th Anniversary Committee as an official Board committee.

6. PUBLIC COMMENT.

Dr. Gutierrez called for public comment at 10:00 a.m. No comments were received during the public comment period.

7. EXECUTIVE DIRECTOR'S REPORT.

Ms. Parker presented the Executive Director's Report.

- a. **Update on Renewal Extensions.** Ms. Parker reported that on January 4, 2021, there were approximately 510 licensees on the extension list. As of February 1, 2021, there were less than 98 licensees on the list. Weekly reminder emails are sent to licensees.
- b. **Budget Update.** Ms. Parker reported that the TOB remains consistent with its budget. TOB recently paid DIR-Texas.Gov \$23,710 for the subscription fees collected from each license. The TOB accountant is still planning to retire this Spring. The TOB is working with the Texas Board of Nursing for the purposes of entering an interagency agreement for accounting services.
- c. **Licensure Statistics/Renewal Report.** As of February 1, 2020, the TOB had a total of 4,805 licensees; 3,549 OGS licensees; 981 T licensees; and, 121 military licensees. Ms. Parker also reported the passing of Dr. Mervyn Bloom of San Antonio in November 2020.

Renewal Report. Ms. Parker noted that there were less than 100 licensees on the extension list. Additionally, approximately 328 licenses have lapsed since December 31, 2020. Lapsed notices were sent on January 13, 2021.

- d. **Performance Measures.** Ms. Parker reported that quarterly performance measures were filed in January. In comparison to last year's measures, the figures were consistent except for license renewals. She noted that this was

anticipated due to the issues with COVID-19 and the extensions. Ms. Parker also addressed the metric for days to case resolution. She explained that the figure was again high because the agency resolved one case that was initiated in 2016, two cases from 2017 and once case from 2018.

- e. **2021 Legislative Session.** Ms. Parker mentioned that the 87th Legislative Session opened on January 12, 2021. She noted that bills may be filed up until March 12, 2021. Ms. Parker provided a list of bills that are being monitored. She advised that she will testify at the upcoming Senate Finance hearing on the agency's legislative appropriations requests.
- f. **Sunset Management Action – Online Applications.** Ms. Parker advised that implementing online applications is an outstanding management action from the sunset review during the 85th Legislative Session. She reported that the online application process is being developed.
- g. **DPS Audit.** Ms. Parker informed the Board that the agency underwent a DPS audit. The audit was managed by the Board Investigator and the Executive Assistant. DPS found that the agency was deficient in a number of areas. Specifically, DPS alleged that the agency had not made corrections that were noted in the 2017 audit. Ms. Parker reassured the Board that the agency was working on a compliance plan.

8. LEGAL REPORT.

No new report.

9. COMMITTEE REPORTS.

ADMINISTRATIVE/LICENSING COMMITTEE.

Dr. Patrick, Chair of the Administrative/Licensing Committee, reported that one exam was held since the last Board Meeting: January 1-14, 2021: 33 registrants, 32 took the exam and 32 passed. Since the last Board Meeting, 26 new licenses have been issued. The Committee reviewed and approved one Application for Licensure Without Exam.

Dr. Patrick advised that the Committee voted to recommend the Rules Committee review and possibly update the requirements regarding exam deadlines and the process for application to take the Jurisprudence Exam. Dr. Patrick also noted that the Rules Committee should bear in mind both the method of exam delivery and the timeline for applicants to residency programs. The motion was seconded by Dr. Hopping and passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

CONTINUING EDUCATION COMMITTEE.

Dr. Thompson, Chair of the Continuing Education Committee, reported that the Committee reviewed and approved 48 courses, which included seven PR hours, 39 General hours, 164.5 D/T hours (10 of which are opioid related and 16 are

related to the controlled substance requirement). In total, the committee approved 210.50 hours.

Dr. Thompson reviewed the extensions and exemptions that were granted for continuing education pursuant to Section 351.309 of the Optometry Act and Board Rule 275.1(c)(3). He also mentioned the committee reviewed the 2021 CE requirements imposed by other state laws such as the human trafficking course and controlled substance requirement.

Dr. Thompson reported that the committee discussed delegating authority to staff to automatically approve courses, with the exception of PR courses, from the University of Houston and Rosenberg School of Optometry. Dr. Thompson moved to authorize staff to approve courses, other than PR courses, from the University of Houston and Rosenberg School of Optometry. Dr. Cornett seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

Dr. Thompson also reported that the committee received presentations from OE Tracker and CE Broker. He noted that staff would continue to meet with both companies in between Board meetings and that a possible decision will be made in May. Ms. Parker added that all of the Board Members received copies of the presentations for information and reference.

INVESTIGATION-ENCFORCEMNT COMMITTEE

Dr. Hopping moved to go into Executive Session to consult with legal counsel as authorized by Section 551.071 of the Government Code regarding investigative matters and Dr. Thompson seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

At 10:20 a.m., the Board went into Executive Session to consult with legal counsel and get legal advice concerning legal matters involving License Numbers: 5154TG, 6267TG and 6556T. The Board returned to Open Session at 11:20 a.m. The Board did not take any action during Executive Session.

Dr. Gutierrez requested Ms. Parker summarize the recommendations of the Investigations-Enforcement Committee.

License No. 5154T. The Investigations-Enforcement Committee recommended a Board Order for a term of six months. During the six months, the Respondent shall pay a \$2,000 fine; submit 10 patient records for review (five records during the first three months and then five records during the remaining three months); and, submit proof of completion of four hours of COPE approved continuing education (two hours in retinal health and two hours in record keeping). The continuing education is in addition to the hours required to maintain licensure.

Dr. Schutte moved to accept and second the recommendation of the Investigations-Enforcement Committee related to License No.

5154TG. The motion was approved unanimously. (FOR-5/AGAINST-0/ABSTAIN-3)

License No. 6276TG. The Investigations-Enforcement Committee recommended a Remedial Plan for a term of one-year. During the one-year period, the Respondent shall shadow a corneal specialist for 16 hours and complete four hours of COPE approved continuing education in anterior segment disease. The Respondent shall not receive continuing education credit for the shadowing experience. The continuing education is in addition to the hours required to maintain licensure.

Dr. Patrick moved to accept and second the recommendation of the Investigations-Enforcement Committee related to License No. 6276TG. The motion was approved unanimously. (FOR-5/AGAINST-0/ABSTAIN-3)

License No. 6556T. The Investigations-Enforcement Committee recommend an Agreed Suspension Order for License No. 6556T. The Respondent's license shall be suspended until successful enrollment in the Professional Recovery Network (PRN) program to determine fitness to practice. Enrollment is required no later than two weeks after the execution of the Order. The suspension shall be lifted once the Board receives verification from PRN that the Respondent enrolled. If, the PRN evaluator determines that the Respondent is not fit to practice, the suspension shall automatically be reinstated and the Board shall set an informal conference meeting.

Dr. Patrick moved to accept and second the recommendation of the Investigations-Enforcement Committee related to License No. 6556T. The motion was approved unanimously. (FOR-5/AGAINST-0/ABSTAIN-3)

Ms. Parker provided statistics to the Board regarding complaints, investigations and administrative fines since the last Board Meeting.

RULES COMMITTEE

Dr. Hopping, Rules Committee Chair, advised that the Committee voted to recommend to the Board the following:

22 TAC 273.16 Licensee Compliance With Board Investigations and Inspections. The intent of the proposed new rule is to enforce compliance with board investigations and board inspections.

22 TAC 275.2 Required Education. The intent of the proposed amendment to Board Rule 275.2(g) is to clarify continuing education requirements for the biennial renewal process.

22 TAC 279.16 Telehealth Services. Additional amendments were made since the last Board meeting based on feedback from the Governor's oversight office. The recommendations were technical amendments.

Dr. Hopping presented a motion that the Committee's recommendation that Board Rules 273.16, 275.2 and 279.16 be proposed and published in the *Texas Register* with preamble, for public comment. Dr. Thompson seconded the motion. The motion passed unanimously. (FOR-8 /AGAINST-0 /ABSTAIN-0)

COMMITTEE ON PEER ASSISTANCE.

Chair Ms. Chambers provided an update regarding the Peer Assistance Program and the Professional Recovery Network (PRN) program. There are three voluntary optometrists in the program. Ms. Chambers also noted that there was another change in leadership at PRN.

100th ANNIVERSARY COMMITTEE.

Dr. Gutierrez noted that this committee had been discontinued as an official board committee. Dr. Patrick will continue to plan for a celebration informally.

10. QUARTERLY BOARD MEMBER TRAINING.

Ms. Parker and Board Members reviewed the Board's complaint process and investigation timeline.

11. ANNOUNCEMENTS.

Dr. Gutierrez thanked the Board Members for their time and service. He mentioned that the next meeting may possibly be an in-person meeting.

12. ADJOURNMENT.

Dr. Patrick moved that the meeting be adjourned, Dr. Schutte seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0) The meeting was adjourned at 12:05 p.m.