

**BOARD MEETING MINUTES
MAY 7, 2021**

1. CALL TO ORDER.

Dr. Gutierrez called the meeting of the Texas Optometry Board (TOB) to order at 9:05 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 Schuttte, O.D.	Member
Ty Sheehan	Member
Rene Pena	Member
Kelly Parker	Executive Director
Vincent Pina	Executive Assistant
Dennis McKinney	Assistant Attorney General

Note, Mr. McKinney entered the meeting at 9:07 a.m.

3. MINUTES.

The Board reviewed the February 6, 2021 meeting minutes. A motion was made by Dr. Patrick to accept the minutes and seconded by Mr. Sheehan. The motion passed unanimously. (FOR – 9/OPPOSED – 0/ABSTAIN – 0)

4. GENERAL MATTERS.

The Board discussed and considered the Agenda item under General Matters as follows:

- a. **Optometry School Liaison Reports.** Dr. Hopping provided an update on behalf of the University of Houston (U of H). He reported that the student passage rate is 98% for the jurisprudence exam over a span of 6-years. Dr. Hopping also noted that U of H has not experienced any transmission

issues with COVID-19 and that they planned to have a live graduation ceremony. He reported that NBEQ testing is more manageable and that UofH plans to resume normal operations in the Fall.

Dr. Patrick provided a brief update on behalf of University of Incarnate Word (UIW). She reported that UIW is currently COVID-free. She also reported that UIW will resume normal operations in the Fall as well.

5. PUBLIC COMMENT.

The Public Comment period opened at 10:00 a.m. No public comments were received.

6. BOARD CHAIR REPORT.

Dr. Gutierrez presented the Board Chair Report. Dr. Gutierrez acknowledged the reappointment of and congratulated the following Board Members: Dr. Ron Hopping, Dr. Carey Patrick and Mr. Rene Pena. He thanked the Governor's Office, Department of State Health Services and Ms. Parker for facilitating and assisting with the process to allow optometrists to provide COVID-19 vaccines. Additionally, Dr. Gutierrez noted that the continuous theme throughout the meeting and in the future months will be modernization. He noted that it is important to continue to modernize to create efficiencies for increased customer service. The agency will be working on modernization in the following areas: continuing education tracking, online applications, website updates, and even, possibly, text updates for licensees in the future. Finally, Dr. Gutierrez thanked Dr. Patrick for continuing to remind the Board about increasing access to the jurisprudence exam.

7. EXECUTIVE DIRECTOR'S REPORT.

Ms. Parker presented the Executive Director's Report.

- a. **Budget Update & Accounting Staff.** Financials through April 29, 2021 were provided as an attachment in the Board materials. Ms. Parker reported that the agency has saved money by having virtual meetings along with performing remote inspections again this year. The agency has entered an interagency contract with the Texas Board of Nursing for accounting services. The agency may hire a part-time accounting technician this Summer.
- b. **Licensure Statistics.** Ms. Parker reported that as of April 29, 2021 there are 4,884 total licensees. Out of the 4,884 licensees. Ms. Parker reported that the following licensees have passed away but may not have been acknowledged by the Board to date: Jesse P. Jackson (1632); Jesus Benavides (2362); Melissa Stansell (3578); and, James Lanier (1358).
- c. **Performance Measures.** Ms. Parker advised that performance measures for 2Q 2021 were filed on April 1, 2021. The agency met its performance measures in all categories except for average time to case resolution. The days to case resolution was high because the agency resolved a few complex and/or older cases. Specifically, we resolved one case from 2017, five cases

from 2018 and seven from 2019. She noted that the older cases directly impact the average days to case resolution metric.

- d. **2021 Legislative Session.** Ms. Parker presented the Board with a legislative tracking sheet for review. She also reported on the progress of SB993 related to the practice of optometry. Ms. Parker informed the Board that the legislative session ends on May 31, 2021.
- e. **Remote Inspections 2021.** Ms. Parker reported that the agency is currently conducting remote inspections. The first group of notices were sent in early April. She advised the Board that remote inspections allow the agency to reach areas that were not always possible when doing physical inspections due to financial constraints.
- f. **Update: Online Application Process.** Ms. Parker informed the Board that the development of the online application process was progressing and is on schedule for July 2021 availability. She reported that based on data pulled from the licensure database, it currently may take an applicant anywhere from two months to six months to obtain a license. Ms. Parker clarified that the length of time does not mean it is an agency issue. She noted that common issues also involve missing documents not submitted by the applicants. However, Ms. Parker anticipates an increase in efficiency with the online application system which will hopefully speed up the licensing process.
- g. **Update: Office Move.** Ms. Parker reported that meetings related to the relocation are ongoing with the Texas Facilities Commission. The agency will be responsible for packing the office and may experience some downtime. The move will also be during graduation season. Ms. Parker noted that information and timelines will be communicated as soon as they are available.
- h. **Update: ED Activities.** Ms. Parker updated the Board on some activities she was involved in since the last meeting. Specifically, Ms. Parker reported she presented to a third-year class regarding applying for licensure and maintaining licensure. She also discussed the Q&A session she held for licensees regarding the current continuing education requirements.
- i. **ARBO Meeting: June 19-20, 2021.** Ms. Parker advised that ARBO is holding a virtual meeting beginning on Saturday, June 19, 2021 through Sunday, June 20, 2021. Ms. Parker and Dr. Hopping will be attending on behalf of the Board.

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: April 1-14, 2021: 90 registrants, 89 took the exam and 89 passed. Since the last Board Meeting, 36 new licenses have been issued. Dr. Patrick mentioned that the Board will be offering the exam on a monthly basis beginning in July 2021. This will increase the number of times per year an applicant may take the exam.

CONTINUING EDUCATION COMMITTEE.

Dr. Thompson, Chair of the Continuing Education Committee, reported that the Committee reviewed and recommended approval of 133 courses, which included one professional responsibility hour, 139 general hours, 518.75 D/T hours and five opioid hours for an overall total of 663.75 hours. Dr. Cornett seconded the recommendation of the committee for approval of the courses.

Dr. Thompson reported that the committee received a request for an exemption, however, it was denied. He noted that the request raised questions about the Board's ability to exempt CE when it is required by other state law. Dr. Thompson reported that the Committee requested Ms. Parker to research the issue further for the next meeting. He also mentioned that the Committee will review and continue to consider an update to the process for approving CE providers.

Dr. Thompson reported that the most important thing he felt the Committee accomplished at the meeting was the selection of a CE vendor for the purpose of modernizing CE tracking/reporting. The Board members discussed the vendors and the CE tracking systems. Dr. Thompson mentioned that the Committee received one public comment regarding the process. Therefore, Dr. Thompson, Committee Members and Board staff clarified differences between the two vendors related to the public comment. Dr. Thompson reported that the Committee voted to recommend the Board enter a contract and pursue next steps with CE Broker. Dr. Cornett seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-0/ABSTAIN-0)

Note, the Board took a 10-minute break at 10:23 a.m., between the Continuing Education Committee report and the Investigation-Enforcement Committee report.

INVESTIGATION-ENFORCEMENT COMMITTEE

Dr. Thompson 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 Ms. Chambers seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-0/ABSTAIN-0)

At 10:39 a.m. the Board went into Executive Session to consult with legal counsel and get legal advice concerning legal matters involving the following licensure numbers: 4429TG. The Board returned to Open Session at 10:54 a.m. The Board did not take any action during the Executive Session.

Dr. Gutierrez requested Ms. Parker summarize the recommendation of the Investigation-Enforcement Committee.

License No. 4429TG.

Ms. Parker reported that the Investigation-Enforcement Committee met on Thursday, May 6, 2021 in an informal conference with licensee number 4429TG. Based on the investigation and informal conference, the Committee recommended an Agreed Settlement Order reportable to the National Practitioner Data Bank, which requires 12 hours of COPE approved CE in internal eye health and/or retina health to be completed within one year and in addition to the CE required for renewal; four full, eight hour days of shadowing a retina specialist to be completed within one year; and a \$1,500.00 fine to be paid within six months.

Dr. Patrick moved to accept and second the recommendations of the Investigation-Enforcement Committee related to License No.4429TG The motion passed unanimously. (FOR-6/AGAINST-0/ABSTAIN-3)

Ms. Parker provided information to the Board related to an administrative fine that was assessed and paid since the last Board meeting. License No. 9230 was assessed a \$300.00 fine due to violations identified during an inspection. Ms. Parker reported that the fine had been paid in full. Dr. Thompson moved to accept the administrative penalty and close the file and Ms. Chambers seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-0/ABSTAIN-0)

Ms. Parker provided statistics to the Board regarding complaints and investigations since the last Board meeting.

RULES COMMITTEE

Dr. Hopping, Rules Committee Chair, advised that the following rules were posted in the March 5, 2021 *Texas Register* for public comment, no comments were received and therefore the Committee recommended the Board publish the rules for final adoption:

Adopted: 22 TAC 273.16 Licensee Compliance with Board Investigations and Inspections.; and,

Adopted: 22 TAC 275.2 Required Education.

Mr. Sheehan moved to accept the Committees recommendations. The motion passed unanimously. (FOR-9/AGAINST-0/ABSTAIN-0) Ms. Parker noted that both rules will be final and effective 20 days after the publication in the *Texas Register*.

Dr. Hopping also reported that the Committee moved to recommend the Board propose the following rules, with preamble, in the *Texas Register* for comment:

Proposed: 22 TAC 271.2 Applications. The intent of the revised rule is to clarify the Board's application process regarding deadlines for the examination.

Proposed: 22 TAC 275.3 Continuing Education Tracking System. The intent of the proposed new rule is to require the use of a digital reporting system for continuing education compliance beginning in January 2022.

Dr. Patrick moved to accept the Committee recommendations and seconded the motion. The motion passed unanimously. (FOR-0/AGAINST-0/ABSTAIN-0).

Finally, Dr. Hopping briefly acknowledged the comments received to date related to 22 TAC 279.16 Telehealth Services. Comments were received from the Texas Medical Association, Texas Ophthalmological Association and National Association of Optometrists and Opticians. Ms. Parker mentioned that the Office of Regulatory Compliance reviewed and approved the proposed rule. Dr. Hopping noted that the rule will remain under consideration and review until the July meeting. He also mentioned the possibility of reviewing Board Rules 279.1 and 279.3 in the future.

COMMITTEE ON PEER ASSISTANCE.

Chair Ms. Chambers reported news from the Professional Recovery Network (PRN) program. PRN is again under new leadership. There are four voluntary optometrists in the program.

10. QUARTERLY BOARD MEMBER TRAINING.

Ms. Parker and Board Members reviewed the Board's application process.

11. ANNOUNCEMENTS.

12. ADJOURNMENT.

Dr. Patrick moved that the meeting be adjourned, Dr. Hopping seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-0/ABSTAIN-0)