



# Board Rules

## Texas Optometry Board

[www.tob.state.tx.us](http://www.tob.state.tx.us)

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## IMPORTANT NOTICE ORAL MEDICATIONS

Only an optometric glaucoma specialist licensed by the Board may prescribe oral medications. Oral medications may only be prescribed in the following classifications and only to treat medical conditions within the scope of practice of an optometric glaucoma specialist:

- one 10-day supply of oral antibiotics
- one 72-hour supply of oral antihistamines
- one seven-day supply of oral nonsteroidal anti-inflammatories
- one three-day supply of any analgesic identified in Schedules III, IV, and V of 21 U.S.C. Section 812

A complete reading of Sections 351.358 and 351.3581 clarifies this restriction. You may use the information in Board Rules 280.5 and 280.10, as well as the information on this page to insure compliance with the law. Please call the Texas Optometry Board if you have questions.

### **Name on Door, in Advertising and on Written Materials**

*Name must be visible to public before entry into office*

**Optometrists** must use one of the following methods of identification:

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

These designations are set out in the Healing Arts Practitioners section of the Occupations Code (Section 104.003).

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 is:

Jane Smith, O.D.  
Optometric Glaucoma Specialist, *or*

Jane Smith, Therapeutic Optometrist  
Optometric Glaucoma Specialist

NOTICE: These rules may be amended at the meetings of the Board. The current text of the rules may be found on the Board's Website at [www.tob.state.tx.us](http://www.tob.state.tx.us). Links are provided to the official text in the Texas Administrative Code. The text for this booklet was obtained from the Website of the Texas Administrative Code maintained by the Secretary of State. Please consult the Texas Administrative Code for the official text of any rule.

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## CHAPTER 271. EXAMINATIONS

### §271.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Act--The Texas Optometry Act, Chapter 351, Texas Occupations Code.
- (2) APA--The Administrative Procedure Act, Government Code, Chapter 2001.
- (3) Board--The Texas Optometry Board.
- (4) Contested case--A proceeding, including but not restricted to licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.
- (5) Executive director--Executive director of the Texas Optometry Board.
- (6) PFD--Proposal for decision.
- (7) Respondent--A person against whom a formal charge has been made alleging conduct that violates the Act or rules, regulations, or orders of the board and whose legal rights are to be determined by the board after the opportunity for an adjudicative hearing in a contested case as defined by the APA.
- (8) SOAH--State Office of Administrative Hearings.

### §271.2. Applications.

(a) The applicant shall make application furnishing to the executive director, on forms to be furnished by the board, satisfactory evidence that the applicant has attained the age of 21 years, and has a preliminary education equivalent to permit matriculation in the University of Texas, and that the applicant has attended and graduated from a reputable university or college of optometry which meets with the requirements of the board, or in the alternative, submit a written statement from the dean of a reputable college of optometry that the applicant is enrolled in good standing in the college and is in the final semester before graduation, and such other information as the board may deem necessary for the enforcement of the Act.

(b) The applicant shall report all felony and misdemeanor criminal convictions, including deferred adjudication or court ordered community or mandatory supervision, with or without an adjudication of guilt or revocation of parole, probation or court ordered supervision on the application. Failure of an applicant to report every criminal conviction is deceit, dishonesty and misrepresentation in seeking admission to practice and authorizes the board to take disciplinary action under §351.501 of the Act. An applicant is not required to report a Class C Misdemeanor traffic violation. The applicant shall furnish any document relating to the criminal conviction as requested by the Board. The applicant shall also provide a complete criminal history by submitting fingerprints to the authority authorized by the Department of Public Safety to take the fingerprints in the form required by that authority.

(c) In such application, the applicant shall state that the applicant will abide by the laws of this state regulating the practice of optometry and that all facts, statements and answers contained in the application are true and correct. Such application shall be signed and dated.

(d) Applicants shall submit proof that the applicant is legally entitled to the issuance of a license under federal law. Applicants shall submit a report of out-of-state disciplinary action prepared by an approved national databank.

(e) Any person furnishing false information in such application shall be denied the right to take the examination, or if the applicant has been licensed before it is made known to the board of the falseness of such information, such license shall be subject to suspension, revocation, or cancellation in accordance with the Act, §351.501.

(f) Applications submitted by graduates of an approved college of optometry must contain a certified copy of the optometry school transcript. A license will not be issued until the applicant has submitted certified copies of the transcript of record from preoptometry and optometry colleges attended by the applicant, which certified transcript of record shall show the total number of hours of attendance, the subjects studied, the grades or marks given, and the date of graduation of the applicant. All required documents, including transcripts, license verifications, birth certificates, and criminal histories must be received by the executive director prior to the date which is one year after successful passage of the board's jurisprudence examination; otherwise, the applicant must reapply and take and pass the board's jurisprudence examination.

(g) The completed application and examination fee must be filed with the executive director

not later than 45 days prior to the date of the examination.

(h) The fee for taking the examination shall be \$150. The fee must be submitted in the form of a money order or cashier's check.

(i) Any applicant who is refused a license because of failure to pass the examination shall be permitted to take a second examination without resubmitting an application, provided:

- (1) the applicant submits a payment of \$150;
- (2) the second examination is taken within a period of one year from the date the examination was first taken; and
- (3) a written request to take the second examination and the required fee is received by the executive director at least 30 days prior to the date of the examination requested.

(j) If an applicant is refused a license because of failure to pass the second examination, the applicant must reapply and take and pass the board's jurisprudence examination.

(k) No application fee for examination will be returned to any applicant after the application has been accepted by the board, because of the decision of the applicant not to stand for the scheduled examination or failure for any reason to take the examination.

### **§271.3. Jurisprudence Examination Administration.**

(a) Examination for a license to practice optometry in this state shall be conducted in the English language in writing and by such other means as the board shall determine adequate to ascertain the qualifications of the applicant. Each applicant shall be given due notice of the date and place of examination. The board shall administer the jurisprudence examination at least on a quarterly schedule.

(b) Prior to an examination, the executive director or a member of the board designated by the chair shall prepare a tentative schedule showing the time allotted to each examination.

(c) The examination shall be a written jurisprudence examination. The passing grade on the jurisprudence written test shall be 70. In addition, passing scores from the National Board of Examiners in Optometry (NBEO) Examination will be required for licensure under §271.6 of this title (relating to National Board Examinations).

(d) Applicants shall not communicate any words or signs, in person, in writing, or electronically, with another applicant while the applicant's examination is in progress. Applicants shall not collaborate in any manner with any other person, including another applicant, a licensee, or a staff member of the Board, on examination matters while the applicant's examination is in progress. Violations of this rule shall subject the offender to disciplinary action.

(e) Examination materials are the property of the board and shall not be returned to the applicant. An unsuccessful candidate may request an analysis of such person's performance, which request must be made in writing within 30 days after final grading.

(f) The board will provide reasonable examination accommodations to an examinee diagnosed as having dyslexia for all examinations administered by the board. Applications requesting reasonable examination accommodations shall be submitted to the board at least 30 days before the start date of the examination. Applications for accommodations shall include a diagnosis of dyslexia by a health professional licensed to diagnose the condition, documentation establishing that accommodations are necessary, and the specific accommodation requested.

### **§271.4. Reserved.**

### **§271.5. Licensure without Examination.**

(a) Upon payment of a fee in an amount set by the Board, the board may license applicants without examination who:

- (1) have no pending disciplinary actions in the state, district, or territory in which the applicant is licensed;
- (2) have never had their license suspended or revoked;
- (3) meet all requirements of the Act;
- (4) are currently licensed as a therapeutic optometrist in good standing in another state, the District of Columbia, or territory of the United States;
- (5) have passed an examination that is equivalent or superior to the examination required by §351.253 and §351.256 of the Act; and
- (6) have, for at least five of the seven years preceding the application date, been:

- (A) actively engaged in the practice of therapeutic optometry; or
- (B) engaged in full-time teaching at an accredited college of optometry or medicine.

(b) The applicant must furnish a certificate of good standing from the jurisdictions where licensed. The certificate must establish that:

- (1) the applicant's license has never been suspended or revoked;
- (2) there are no pending disciplinary actions against the applicant; and
- (3) the applicant is presently authorized to practice therapeutic optometry without restrictions.

(c) An examination is deemed equivalent or superior to the examination required by §351.253 and §351.256 of the Act if at the time the applicant took the examination, the examination met the requirements of §351.253 and §351.256 of the Act.

(d) The applicant shall take and pass the jurisprudence examination administered by the board.

(e) The applicant must have complied with §271.2 of this title (relating to Applications). The completed application with all supporting documents must be received by the board not later than 30 days before the date of the board meeting at which the application is to be considered.

### **§271.6. National Board Examination.**

(a) The board determines that the written examination by the National Board of Examiners in Optometry (NBEO) known as Part I and Part II complies in all material respects with the written examination requirements of the Act, §351.255 and §351.256. The passing score on each Part of the National Board written examination is determined by the criterion-referenced standard setting approach, in which the passing score is set at the scaled score of 300. The Texas Optometry Board will accept scores from an NBEO written examination if Part I or II was satisfactorily completed on or after January 1, 1984.

(b) The board determines that the practical examination known as Part III by the National Board of Examiners in Optometry (NBEO) complies in all material respects with the practical examination requirements of the Act, §351.255 and §351.256. The passing scores on Part III shall be determined by the NBEO. The board will accept scores from an NBEO Part III examination if Part III was satisfactorily completed on or after June of 1994.

(c) All applicants must comply with the application process and qualification criteria of the Act, §351.254, as well as all applicable board rules.

(d) All applicants must pay an examination fee of \$150 to the Texas Optometry Board. No fee for examination will be returned to any applicant after the application has been approved by the board.

(e) In addition to the NBEO examinations referenced in subsections (a) and (b) of this section, all applicants shall take and pass a written jurisprudence examination given by the Texas Optometry Board in order to be eligible for licensure. The board shall administer the jurisprudence written examination at least on a quarterly schedule. The jurisprudence examination can be administered in conjunction with Part III of the NBEO, provided the applicant has graduated from an approved college of optometry and has completed application with the board. However, an applicant who meets the other requirements of this section and §351.254 of the Act may take the examination without having graduated, if the dean of a college of optometry that meets the requirements of the board notifies the board in writing that the applicant is enrolled in good standing in the college and is in the final semester before graduation.

(f) Each applicant shall submit a true and correct copy of the applicant's score report to the executive director, and such other evidence of having achieved a passing grade on each part of the NBEO examination as the executive director may determine. Such satisfactory evidence of passage of the NBEO examination must be submitted to the executive director within 12 months of successful passage of the board's jurisprudence examination; otherwise, the applicant must reapply and take and pass the board's jurisprudence examination. No license will be issued to an applicant until evidence of passage of the NBEO examination is received.

### **§271.7. Criminal History Evaluation Letters.**

(a) Authority. A person may request the Board to issue a criminal history evaluation letter

regarding the person's eligibility for a license as authorized by Chapter 53 of the Texas Occupations Code.

(b) Eligibility. Only a person planning to enroll or who is enrolled in optometry school and who has reason to believe that the person is ineligible for licensure due to a conviction or deferred adjudication for a felony or misdemeanor offense may request the criminal history evaluation letter.

(c) Request. The request must include:

- (1) A completed Board request form available from the Board;
- (2) A statement by the person of the basis for the person's potential ineligibility;
- (3) The required fee set out in §273.4 of this title (relating to Fees (Not Refundable));
- (4) Official copies of all court documentation regarding a conviction or deferred adjudication which the person believes may make that person ineligible for license; and
- (5) Proof that the person has requested the Federal Bureau of Investigation and the Texas Department of Public Safety to provide a criminal history report to the Board based on fingerprints submitted by the person.

(d) Investigation. The Board has the same powers to investigate a request submitted under this section and the person's eligibility that the Board has to investigate a person applying for a license. The Board may request additional information from the person in order to complete the investigation. The person must timely respond to requests from the Board.

(e) Issuance of Letter. The Board will issue a letter stating that a ground for ineligibility does not exist or a letter setting out each basis for potential ineligibility and the Board's determination as to eligibility, within 90 days of the receipt of the items listed in subsection (c) of this section, and receipt of the criminal history report on the person from the Federal Bureau of Investigation and the Texas Department of Public Safety. The 90 day period may be extended if the person has not timely provided information requested by the Board.

(f) Limitation of Board's Determination. In the absence of new evidence known to but not disclosed by the person or not reasonably available to the Board at the time the letter is issued, the Board's ruling on the request determines the person's eligibility with respect to the grounds for potential ineligibility set out in the letter. The letter is limited to the law in effect on the date the letter is issued.

## **CHAPTER 272. ADMINISTRATION**

### **§272.1. Open Records.**

(a) Open records requests. The following guidelines apply to requests for records under the Open Records Act, Government Code, Chapter 552.

- (1) Requests must be in writing and reasonably identify the records requested.
- (2) Records access will be by appointment only.
- (3) Records access is available only during the regular business hours of the agency.
- (4) Generally, unless confidential information is involved, review may be by physical access or by duplication at the requester's option. Any person, however, whose request would be unduly disruptive to the ongoing business of the office may be denied physical access and will only be provided the option of receiving copies.
- (5) When the safety of any public record is at issue, physical access may be denied, and the records will be provided by duplication as previously described.
- (6) Confidential files will not be made available for inspection or for duplication except under certain circumstances, e.g., court order.
- (7) All open records request appointments will be referred to the executive director before complying with a request.
- (8) The open records coordinator for the agency is the executive director.

(b) Charges for public records. In accordance with Chapter 428, Acts, 73rd Legislature (1993), the following specifies the charges the Texas Optometry Board will make for copies of public records. These charges are based on the full cost to the agency for providing the copies.

(1) Definitions. The following words and terms, when used in the section, shall have the following meanings, unless the context clearly indicates otherwise.

- (A) Standard-size copy. A printed impression on one side of a piece of paper that measures up to 8-1/2 by 14 inches. Each side of the paper on which an impression is made is counted as a single copy. A piece of paper printed on both sides is



counted as two copies.

(B) Copy charge. A charge for costs incurred in copying standard-size paper copies reproduced by an office machine copier or a computer printer.

(C) Postage and shipping charge. A charge for costs incurred in sending information to a requester, such as cost of postage, envelope, or long-distance phone call for facsimile transmission.

(D) Personnel charge. A charge imposed for costs incurred for personnel time expended in processing a request for public information. This charge may include the time any employee spends reading/reviewing the initial request for records, making copies of records, conducting a file search, conducting a computer search, preparing and reviewing the response to the records request (administrative oversight/review), and any other type of personnel time necessary to respond to the request.

(E) Overhead charge. A charge for direct and indirect costs incurred in addition to the personnel charge. This charge covers such costs as depreciation of capital assets, rent, maintenance and repair, and utilities.

(F) Microfiche and microfilm charge. A charge for costs incurred for making a copy of microfiche or microfilm.

(G) Remote document retrieval charge. A charge for costs incurred in obtaining information not in current use in remote storage locations.

(H) Computer resource charge. A charge for costs incurred in obtaining information on computers based on the amortized cost of acquisition, lease, operation, and maintenance of computer resources. This charge may also include programming time if a request requires a programmer to enter data in order to execute an existing program or create a new program so that requested information may be accessed.

(I) Not readily available information. Information that is not readily available includes information that requires personnel to locate and retrieve a specific file, review the file to locate the record, and replace the file after the record has been located. Information that is not readily available also includes information that requires personnel review to determine if the records contain information confidential by law. Information that is not readily available includes, but is not limited to:

- (i) information in optometrist licensing files;
- (ii) information in complaint files;
- (iii) information in investigation files;
- (iv) information in personnel files; and
- (v) information in the agency's computerized data base system.

## (2) Charges.

(A) For 1 to 50 standard-size copies of readily available information, the charge shall be \$.10 per page.

(B) For 51 pages or more of readily available information, or any quantity of not readily available information, the charge shall be the sum of the following:

- (i) \$.10 per page;
- (ii) personnel charge in an amount reflecting the average hourly cost for classified state employees as determined from time to time by the General Services Commission;
- (iii) overhead charge in an amount to be determined in accordance with the guidelines of the General Services Commission;
- (iv) microfiche and microfilm charge (if applicable) in an amount equal to the actual cost to the agency of the reproduction, or in accordance with General Services Commission Guidelines;
- (v) remote document retrieval charge (if applicable) in an amount equal to the actual cost to the agency of the retrieval or in accordance with General Services Commission Guidelines;
- (vi) computer resource charge (if applicable) including any programming time, in an amount equal to the cost to the agency, or in accordance with General Services Commission Guidelines; and

(vii) actual cost of miscellaneous supplies (if applicable) in an amount equal to the actual cost to the agency.

(C) If, in the opinion of the executive director, a request for information may result in substantial cost to the agency, the executive director may require the requester to make a deposit in the anticipated approximate amount of the charges, which may be applied to the costs incurred in responding to the request.

(D) If a particular request may involve considerable time and resources to process, the agency may advise the requesting party of what may be involved and provide an estimate of date of completion and the charges that may result.

(E) The agency has the discretion to furnish public records without charge or at a reduced charge if the agency determines that a waiver or reduction is in the public interest. The executive director is authorized to determine whether a public interest/benefit exists on a case-by-case basis.

### **§272.2. Historically Underutilized Businesses.**

The Texas Optometry Board adopts by reference the rules promulgated by the General Services Commission regarding the Historically Underutilized Business Program which are set forth in Chapter 111, Subchapter B, of Title 1, Part 5 of the Texas Administrative Code.

### **§272.3. Contract and Purchasing Procedures.**

(a) In accordance with Tex. Gov't Code §2155.076, the Board adopts by reference the rules of the Comptroller of Public Accounts regarding purchasing protest procedures set forth in 34 Tex. Admin. Code §20.384. All vendor protests under this rule must be submitted to the Board's purchaser, who shall initiate a review of the protest. Any appeal to a determination of a protest by the purchaser shall be to the executive director, who may elect to submit the appeal to the Board for final determination. The Board shall maintain all documentation on the purchasing process that is the subject of a protest or appeal in accordance with the Board's retention schedule.

(b) In accordance with Tex. Gov't Code §2156.005, the Board adopts by reference the rules of the Comptroller of Public Accounts regarding bid opening and tabulation set forth in 34 Tex. Admin. Code §20.35.

(c) In accordance with Tex. Gov't Code §2260.052, the Board adopts by reference the rules of the Office of the Attorney General in 1 Tex. Admin. Code Part 3, Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes). The rules set forth a process to permit parties to structure a negotiation or mediation in a manner that is most appropriate for a particular dispute regardless of the contract's complexity, subject matter, dollar amount, or method and time of performance.

(d) In accordance with Tex. Gov't Code §2261.202, the executive director shall be responsible for monitoring agency contracts and for monitoring agency compliance with all applicable laws governing agency contracting. The executive director may delegate those duties necessary to carry out this responsibility to other agency staff who report directly to the executive director.

## **CHAPTER 273. GENERAL RULES**

### **§273.1. Surrender of License.**

Any person formerly licensed to practice optometry in this state, who receives notification from the board that the person's license to practice optometry has expired for failure to pay the annual renewal fee, shall within 10 days of receipt of such notification from the board either pay the applicable renewal fee or surrender the license by mailing or otherwise delivering such license to the board office. Alternatively, rather than physically surrender the license, the person may file with the board an affidavit in the form acceptable to the executive director to the effect that such person is not practicing and will not practice optometry.

### **§273.2. Use of Name of Retired or Deceased Optometrist.**

(a) In the event of the death or retirement of an optometrist who was practicing optometry in a partnership, or with a professional corporation or professional association, the surviving members of the professional corporation or association may, with the written permission of the

retiring optometrist, or the deceased optometrist's legal representative, continue to practice with the name of the deceased or retired optometrist.

(b) The fact that such optometrist is retired or deceased shall be clearly displayed in such a manner that such facts will be clearly visible to the public prior to entry of the optometrist's office or reception area. By way of an example, an appropriate professional identifying sign might be as follows: "SMITH, JONES & BROWN, INC. OPTOMETRISTS, Jim Smith O.D. (1912-1981), Jim Jones, O.D. Retired, Paul Brown, O.D."

### **§273.3. Contact Lenses as Prize or Premium.**

In order to provide consistency in the enforcement of the Texas Optometry Act, Section 351.404, no person in this state shall give or cause to be given, deliver or cause to be delivered, in any manner whatsoever, any contact lenses as a prize or premium, or as an inducement to sell any book, paper, magazine, or any work of literature or art, or any item of merchandise whatsoever.

### **§273.4. Fees (Not Refundable).**

(a) Examination Fee \$150.00. Applicant fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety.

(b) Initial Therapeutic License \$50.00 plus \$5.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$55.00.

(c) Provisional License \$75.00.

(d) Limited Faculty License \$50.00. Applicant fee required for FBI criminal history in the amount charged by the Texas Department of Public Safety.

(e) Duplicate License (lost, destroyed, or name change) \$25.00.

(f) Duplicate/Amended Renewal Certificate (lost, destroyed, inactive, active) \$25.00.

(g) License Renewal.

(1) Optometrist and Therapeutic Optometrist: \$208.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fees: \$209.00. The license renewal fee includes \$10.00 to fund a program to aid impaired optometrists and optometry students as authorized by statute.

(2) Optometric Glaucoma Specialist: \$208.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature and \$7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: \$216.85 active renewal; \$209.00 inactive renewal. The license renewal fee includes \$10.00 to fund a program to aid impaired optometrists and optometry students as authorized by statute.

(h) License fee for late renewal, one to 90 days late.

(1) Optometrist and Therapeutic Optometrist: \$312.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fees: \$313.00.

(2) Optometric Glaucoma Specialist: \$312.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature and \$7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: \$320.85 active renewal; \$313.00 inactive renewal.

(i) License fee for late renewal, 90 days to one year late.

(1) Optometrist and Therapeutic Optometrist: \$416.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total late license fees: \$417.00.

(2) Optometric Glaucoma Specialist: \$416.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature and \$7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature. The inactive license renewal fee does not include the Prescription Monitoring Program fee. Total fees: \$424.85 active renewal; \$417.00 inactive renewal.

(j) Late fees (for all renewals with delayed continuing education) \$208.00.

(k) Therapeutic Certification Application \$80.00.

(l) Duplicate Therapeutic or Optometric Glaucoma Specialist Certificate (lost, destroyed) \$25.00.

(m) License Without Examination Fee \$300.00. Applicant fee required for FBI criminal his-

tory in the amount charged by the Texas Department of Public Safety.

(n) Optometric Glaucoma Specialist License Application \$50.00.

(o) Retired License.

(1) Optometrist and Therapeutic Optometrist: \$208.00 plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$209.00.

(2) Optometric Glaucoma Specialist: \$208.00 plus, \$1.00 fee required by House Bill 2985, 78th Legislature and \$7.85 fee to fund the Prescription Monitoring Program authorized by Senate Bill 195, 84th Legislature. Total fee: \$216.85.

(p) Retired License to Active License Application Fee. For individuals holding Retired License making application for active license. \$25.00.

(q) Request for Criminal History Evaluation Letters \$125.00.

### **§273.5. Clinical Instruction and Practice - Limited License for Clinical Faculty**

(a) Issuance of limited license. The criteria for the issuance of a limited faculty license are as follows:

(1) the applicant must be a full-time faculty member of an institution accredited by the Council on Optometric Education of the American Optometric Association (COEAOA) or a state recognized accrediting entity;

(2) the applicant must be a graduate of an institution accredited by the COEAOA;

(3) the applicant's practice must be limited to the premises of the institution and its affiliated clinics;

(4) the practice must be an adjunct to the institution's teaching program; and

(5) the applicant must have paid the fees required by §273.4 of this title (relating to Fees).

(b) Duties and Responsibilities of Dean of Institution. As a condition to continued approval of the institution, the board imposes the following duties and responsibilities upon the dean of the institution relating to those faculty members performing professional optometric services in programs of the institution. The dean shall:

(1) furnish each applicant for a limited faculty license a certificate that such applicant is a bona fide member of the faculty;

(2) report immediately to the board any information received relating in any way to a member of the faculty holding only a limited license who is performing professional optometric services other than as an adjunct to such faculty member's function at the institution. Every reasonable means to prevent such unlawful practice shall be used by the dean;

(3) cooperate fully and completely with the board toward the end that the limited license provided will be used only for the purpose for which it is intended;

(4) promptly notify the board of any changes in limited license personnel on the faculty.

(c) Application and renewal. Each member of the faculty desiring a limited license shall make written application to the executive director of the board and attach to the application the original certificate of the dean herein above provided and shall enclose therewith the payment of a fee of \$50 for the issuance of the limited license and the fee imposed by Section 351.153 of the Texas Optometry Act. The annual renewal fee for a limited license is equal to the fee charged for a regular license as specified in §273.4 of this title (relating to Fees). Holders of limited licenses shall also be required to meet the same continuing education requirements as holders of regular licenses. Said renewal fee shall be due on January 1 and expire after December 31 of each year. Failure to pay the renewal fee on or before January 1 shall subject the license to the same requirements of renewal as a regular license, including late penalties.

(d) Validity of limited license. The limited license shall be valid as long as the holder thereof remains a faculty member of the institution and abides by all regulations of the board.

(e) Limitation of limited license. It shall be a violation of this rule for the holder of a limited license who is not regularly licensed under the statutes to perform optometric services in any manner except as part of the program of the institution and as an adjunct to teaching functions in the institution.

(f) Revocation of limited license. Those persons granted a limited license shall be subject to the same disciplinary procedures as the holder of a regular license. If, after disciplinary proceedings as set out in board rules, a holder of a limited license is found to be in violation of the

Texas Optometry Act or board rules, the board may revoke the limited license. In such event, the executive director shall promptly notify the limited licensee and the dean of the institution.

(g) A student currently enrolled in an approved in-state college of optometry may participate in clinical instruction and practice, provided that:

- (1) The clinical instruction and practice is conducted on the premises of an approved in-state college of optometry, or the college's affiliated clinics, under the instruction and supervision of a licensed optometrist or physician employed by the college of optometry; or
- (2) The clinical instruction and practice is conducted as an externship in the office of a licensed optometrist or physician appointed as a clinical instructor by an approved in-state college of optometry. The clinical training must be under the instruction and supervision of the appointed clinical instructor.

(h) No provision of this rule is intended to remove an exemption provided by statute.

## **§273.6. Licenses for a Limited Period.**

Provisional License.

(1) Requirements for Provisional License. On application for examination, a candidate may apply for a provisional license under the following circumstances:

(A) The applicant must be licensed in good standing as a therapeutic optometrist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Optometry Act, and must furnish proof of such licensure on board forms provided.

(B) The applicant must have passed the National Board of Examiners in Optometry (NBEO) Examination Parts I and II, after January 1, 1984, and Part III after June of 1994, as well as the Treatment and Management of Ocular Disease (TMOD) Examination after January of 1985 and must submit a true and correct copy of the applicant's score report.

(C) The applicant must have satisfied the educational requirement of §280.2 of this title (relating to Required Education).

(D) The applicant must not have failed an examination for a license conducted by the board.

(E) The applicant's license to practice optometry must not have been revoked or suspended by any jurisdiction.

(2) Sponsorship. A candidate for provisional licensure must be sponsored by a therapeutic optometrist who is currently licensed by the board with the following conditions applicable.

(A) Prior to practice in Texas, on forms provided by the board, the sponsor licensee will certify to the board the following:

(i) that such candidate will be working within the same office as the licensee, under direct supervision of the sponsor licensee; and

(ii) that such sponsor licensee is aware of the Act and rules governing provisional licensure and that the sponsorship will cease upon the invalidity of the provisional license.

(B) Sponsor licensee will be held responsible for the unauthorized practice of optometry should such provisional license expire.

(3) Hardship. An applicant for a provisional license may be excused from the requirements of sponsorship if the board determines that compliance constitutes a hardship to the applicant.

(4) Application and fee.

(A) The candidate for provisional licensure will be subject to all application requirements required by Chapter 271 of this title (relating to Examinations) and subject to the applicable examination fees established under §273.4 of this title (relating to Optometry Fees). In addition, the candidate will be subject to a fee for issuance of a provisional license, as established under §273.4 of this title.

(B) No provisional license can be issued until all application forms and fees are received in the board office and the application is approved.

(C) A provisional license expires upon the earlier to occur of the passage of 180

days or notice by the board of the candidate's successful passage or failure of all examinations required by Chapter 271 of this title. It shall be the responsibility of the candidate and sponsor to return the provisional license to the board office upon expiration.

(D) The candidate's failure to sit for the first scheduled board examination following application for examination invalidates the provisional license unless in the discretion of the board sufficient and reasonable evidence regarding nonappearance exists.

(E) Each candidate for provisional license shall receive only one nonrenewable license prior to the issuance of a therapeutic optometry license.

(5) If at any time during the provisional licensure period it is determined that the holder of such provisional license has violated the Optometry Act or board rules, such provisional license will be subject to termination.

### **§273.7. Inactive Licenses and Retired License for Volunteer Charity Care.**

(a) Placing a license on inactive status. A person who is licensed by the board to practice optometry but who is not engaged in the practice of optometry in this state may place the license on inactive status at the time of license renewal or during a license year as follows.

(1) To place a license on inactive status at the time of renewal, the licensee shall:

(A) complete and submit before the expiration date of January 1 of each year a license renewal application provided by the board;

(B) state on the renewal application that the license is to be placed on inactive status and that the licensee shall not practice optometry in Texas while the license is inactive;

(C) pay the fee for renewal of license as specified in §273.4 of this title (relating to Optometry Fees). The fee for renewal of license shall not be subject to the Section 351.153 of the Texas Optometry Act. Penalty fees as provided by Section 351.304 of the Act, will apply to those received after December 31 of the applicable renewal period.

(2) To place a license on inactive status at a time other than the time of license renewal, the licensee shall: (A) return the current renewal certificate to the board office;

(B) submit a signed statement stating that the licensee shall not practice optometry in Texas while the license is inactive, and the date the license is to be placed on inactive status;

(C) pay the fee for issuance of an amended renewal certificate as specified in §273.4 of this title (relating to Optometry Fees).

(b) Reactivation of an Inactive License.

(1) A holder of a license that is on inactive status may return the license to active status by:

(A) applying for active status on a form prescribed by the board;

(B) providing proof of completion certificates from approved continuing education programs as specified in Chapter 275 of this title (relating to Continuing Education Requirements) for the number of hours that would otherwise have been required for the renewal of the license. Approved continuing education earned within the calendar year prior to the licensee applying for the return to active status may be applied toward the continuing education requirement;

(C) paying the fee for issuance of an amended renewal certificate as specified in §273.4 of this title (relating to Optometry Fees);

(D) paying the fee imposed by Section 351.153 of the Act, if the licensee begins practice within the state.

(2) If the application for reactivation of the license is made at the time of license renewal, the applicant shall pay the license renewal fee specified in §273.4 of this title (relating to Optometry Fees). If the application for reactivation of the license is made at a time other than the time of license renewal, the applicant shall pay the license renewal fee as well as a fee for issuance of an amended certificate to practice optometry as specified in §273.4 of this title.

(c) Prohibition against practicing optometry in Texas. A holder of a license that is on inac-

tive status shall not practice optometry in this state. The practice of optometry by a holder of a license that is on inactive status constitutes the practice of optometry without a license.

(d) Retired License. The Board may issue a Retired License to optometrists or therapeutic optometrists whose only practice is volunteer charity care pursuant to subsections (d) - (k) of this section.

(e) Application. An applicant holding a current license may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this title (relating to Fees (Not Refundable)). There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. In determining whether to grant retired status, the board shall consider the age, years of practice, and status of the license holder at the time of the application. Applicants must supply proof that the continuing education requirements for a Retired License have been met in §275.1(g)(1) of this title (relating to General Requirements) (Rule 275.1).

(f) Application by Expired Licensee. A former licensee whose license has expired for one year or more may apply for a Retired License by submitting to the Board a completed application with the license fee required by §273.4 of this title. There is no charge to apply. A Retired License will not be issued to applicants subject to current or pending disciplinary action. Applicants must supply proof of having met the continuing education requirements of §275.1(g)(2) of this title. An applicant for a therapeutic Retired License must have been licensed by the Board as a therapeutic optometrist. An applicant for a therapeutic Retired License whose license has been expired for five years or more must supply proof of a passing score on the jurisprudence examination taken within the one year period prior to the submission of the application. In determining whether to grant retired status, the Board shall consider the age, years of practice, and status of the license holder at the time of the application.

(g) Scope of License. The holder of a Retired License may practice optometry or therapeutic optometry in the same manner as an active licensee of the Board, subject to the restrictions contained in this section. A holder of a Retired License may only practice optometry or therapeutic optometry when such practice is without compensation or expectation of compensation (except for the reimbursement of travel and supply expenses) as a direct service volunteer of a charitable organization.

(h) Charitable Organization. A charitable organization includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, including these types of organizations with a §501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(i) Renewal. A Retired License expires on the same date as a regular license. Prior to renewing the license, the licensee must supply proof that the continuing education requirements for a Retired License have been met. The license renewal fee is set in §273.4 of this title.

(j) Penalty. The holder of a Retired License shall not receive compensation for the practice of optometry. To do so constitutes the practice of optometry without a license and subjects the optometrist or therapeutic optometrist to the penalties imposed for this violation.

(k) Reinstatement of an Active License by a Holder of a Retired License. The Board may reinstate an active license to applicants who hold a Retired License pursuant to the requirements of this subsection. Applicants may apply for reinstatement by submitting to the Board a completed application with the application fee required by §273.4 of this title. Applicants must supply proof that the continuing education requirements for an active license have been met. If the Board approves the application to reinstate the active license, the Board may issue the license once the requirements of subsection (b)(1)(C) and (D) have been met. An active license will not be issued to a holder of a Retired License who applied for that license under subsection (f) of this section.

## **§273.8. Renewal of License.**

(a) Expired license.

(1) If a license is not renewed on or before January 1 of each year, it becomes expired.

(2) If a person's license has been expired for 90 days or less, the person may renew the license by paying to the board the amount of one and one-half times the renewal fee.

(3) If a person's license has been expired for longer than 90 days but less than one year, the person may renew the license by paying to the board the amount of two times the renewal fee.

(4) If a person's license has been expired for one year or longer, the person may not renew the license but may obtain a new license by taking and passing the jurisprudence exam and complying with the requirements and procedures for obtaining an initial license. If the person was not licensed as a therapeutic optometrist when the license expired, the person must also complete the requirements for therapeutic license in §§280.1 - 280.3 of this title prior to obtaining a new license.

(5) The board, however, may renew without examination an expired license of a person who was previously licensed in Texas, is currently licensed in another state, and has been in practice for two years immediately preceding application for renewal. The person shall be required to furnish documentation of continuous practice for the two-year period, pay the renewal fee as established by subsection (a)(3) of this section. The person must furnish license verifications from each state in which the person is currently or previously licensed. A license renewal under this section is subject to the same requirements of §351.501 of the Act as a license applicant.

(6) Written notice of the impending license expiration will be mailed to the licensee at the licensee's last known address, according to the records of the board.

(7) A licensee receiving a felony or misdemeanor criminal conviction, including deferred adjudication or court ordered community or mandatory supervision, with or without an adjudication of guilt, or revocation of parole, probation or court ordered supervision, other than a Class C Misdemeanor traffic violation, shall report the order of conviction, deferred adjudication or court ordered community or mandatory supervision, or revocation of parole, probation, or supervision on the next license renewal. This requirement is in addition to the 30 day reporting requirement in §277.5 of this title (relating to Convictions). This paragraph does not require the reporting of a Class C Misdemeanor traffic violation. The failure of a licensee to report a criminal conviction is deceit, dishonesty and misrepresentation in the practice of optometry and authorizes the board to take disciplinary action under §351.501 of the Act. The licensee shall furnish any document relating to the criminal conviction as requested by the Board.

(8) Only an active licensee who has provided a complete fingerprint criminal history report to the Board is eligible to renew a license. During the period 2018 to 2022, one-fifth of current active licensees who have not submitted the report will be notified each year by the Board to provide the report. Licensees so notified shall submit fingerprints to the authority authorized by the Department of Public Safety to take the fingerprints in the form required by that authority. A license will not be renewed until the notified licensee has complied with the requirement to submit fingerprints.

(b) Mandatory Continuing Education for Renewal of License.

(1) The board may not issue a renewal license to a licensee who has not complied with the mandatory continuing education requirements unless an exemption provided by §275.1 of this title (relating to General Requirements) is applicable.

(2) If a licensee has not fulfilled the required continuing education requirements within the calendar year preceding the license renewal date, the license shall expire. To renew that expired license, the licensee may obtain and provide the board with certified attendance records that the licensee has, since the expiration of the license, completed sufficient hours of approved continuing education courses to satisfy any deficiency in the previous year. Education obtained for renewal of an expired license cannot be applied toward renewal of license for the following year.

(3) The licensee cannot practice optometry until such time as education is obtained and the expired license has been renewed.

(4) The licensee must pay to the board the license renewal fee with a late penalty fee authorized by §351.304 of the Act, plus a penalty authorized by §351.308 of the Act, in an amount equal to the amount of the license renewal fee.

(5) The executive director shall determine if all requirements for renewal of license have



been fulfilled, and will notify the licensee when the practice of optometry can resume.

(6) To practice optometry with an expired license shall constitute the practice of optometry without a license.

### **§273.9. Public Interest Information.**

(a) In order for the public to be informed regarding the functions of the board and the board's procedures by which complaints are filed with and resolved by the board, each licensee is required to display at every location where optometric services are provided information regarding the board's name, address, and telephone number.

(b) The licensee may either display a placard or sign furnished by the board or provide to all patients and consumers a consumer pamphlet furnished by the board containing the name of the board, mailing address, and telephone number for the purpose of directing complaints to the board.

(c) The placard or sign shall be conspicuously and prominently displayed in a location where it may be seen by all patients.

(d) The consumer pamphlet, if chosen, shall be prominently displayed and available to patients at all times.

### **§273.10. Licensee Compliance with Payment Obligations.**

(a) Texas Guaranteed Student Loan Corporation

(1) If, after a hearing or an opportunity for hearing, the board determines that a licensee is in default on a loan guaranteed by the Texas Guaranteed Student Loan Corporation, the license shall not be renewed unless the licensee presents a certificate issued by the corporation certifying that:

(A) the licensee has entered into a repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation.

(2) If, after a hearing or an opportunity for hearing, the board determines that a licensee has defaulted on a repayment agreement with the Texas Guaranteed Student Loan Corporation, the license shall not be renewed unless the licensee presents a certificate issued by the corporation certifying that:

(A) the licensee has entered into another repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation or on a repayment agreement.

(b) Child support payments; Chapter 232 of the Texas Family Code

(1) An application for license renewal will not be accepted if a child support agency provides the board with notice that a licensee has failed to pay child support for six months or more and requests that the board not accept the application.

(2) The application will be considered once the board receives notice from the child support agency that the licensee is in compliance with the requirements of Chapter 232 of the Texas Family Code.

(3) The board may charge the licensee a fee in an amount sufficient to recover the administrative costs incurred by the board under this chapter.

### **§273.11. Public Participation in Meetings.**

A schedule time shall be established on each posted agenda to allow the opportunity for public comment on any issue under the jurisdiction of the board. The time allowed an individual spokesperson may be limited at the discretion of the chair.

### **§273.12. Profile Information.**

(a) All licensees shall provide, on each application for renewal of license, the information listed in subsection (b). New licensees shall provide the information listed in subsection (b) prior to receiving a license.

(b) Each license holder is required to furnish:

(1) the name of the license holder and the address and telephone number of the license holder's primary practice location;

(2) whether the license holder's patient service areas, as applicable, are accessible to dis-

abled persons, as defined by federal law;

(3) the type of language translating services, including translating services for a person with impairment of hearing, that the license holder provides for patients, clients, users, customers, or consumers, as applicable;

(4) if applicable, insurance information, including whether the license holder participates in the state child health plan under Chapter 62, Health and Safety Code, or the Medicaid program;

(5) the education and training received by the license holder, as required by the licensing entity;

(6) any specialty certification held by the license holder;

(7) the number of years the person has practiced as a license holder; and

(8) if applicable, any hospital affiliation of the license holder.

(c) The information listed in subsection (b) shall be furnished when requested by the Board on the license renewal form or, in the case of a new applicant, when requested by letter from the Board.

(d) The Board shall make the information available to the public, including posting the information on the Board's Internet website.

### **§273.13. Contract or Employment with Community Health Centers**

(a) Definitions.

(1) Community Health Center. A nonprofit corporation under the Texas Non-Profit Corporation Act and §501(c)(3), Internal Revenue Code of 1986 that is organized and operated as either:

(A) a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. §254b or §254c; or

(B) a federally qualified health center under 42 U.S.C. §1396d(l)(2)(B).

(2) Application for Certification by Board. A completed application contains:

(A) the completed application form provided by the Board,

(B) the certificate of incorporation under the Texas Non-Profit Corporation Act;

(C) documentation that the organization is tax exempt under §501(c)(3) of the Internal Revenue Code and,

(D) documentation that the organization is organized and operated as a migrant, community, or homeless health center under the authority of and in compliance with 42 U.S.C. §254b or §254c, or is a federally qualified health center under 42 U.S.C. §1396d(1)(2)(B).

(3) Certified Community Health Center. A community health center certified by the Board as making application and meeting the requirements of this section and therefore authorized to employ an optometrist or therapeutic optometrist. A certified community health center shall annually report to the Board the status of the community health center under paragraph (1) of this subsection, and shall notify the Board immediately if the health center no longer meets the requirements of paragraph (1) of this subsection. The Board shall remove the certification granted if the community health center does not meet the requirements of paragraph (1) of this subsection.

(b) Section 351.367 of the Optometry Act authorizes an optometrist or therapeutic optometrist to contract with or be employed by a certified community health center to practice optometry and therapeutic optometry.

### **§273.14. License Applications for Military Service Member, Military Veteran, and Military Spouse**

(a) Definitions.

(1) "Military service member" means a person who is on active duty.

(2) "Military spouse" means a person who is married to a military service member.

(3) "Military veteran" means a person who has served on active duty, who was discharged or released from active duty, and who was not dishonorably discharged.

(4) "Active duty" means current full-time military service in the armed forces of the United States or active duty military service as a member of the Texas military forces, as defined by §437.001, Government Code, or similar military service of another state.

(5) "Armed forces of the United States" means the army, navy, air force, coast guard, or marine corps of the United States or a reserve unit of one of those branches of the armed forces.

(b) License eligibility requirements for applicants with military experience.

(1) Verified military service, training, or education will be credited toward the licensing requirements, other than an examination requirement, of an applicant who is a military service member or military veteran.

(2) This subsection does not apply if the applicant holds a restricted license issued by another jurisdiction or has an unacceptable criminal history.

(c) Alternate licensing procedure authorized by Texas Occupations Code §55.004 and §55.005.

(1) Applicants currently licensed in another state.

(A) Application.

(i) The military service member, military veteran or military spouse applicant must be licensed in good standing as a therapeutic optometrist or the equivalent in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Optometry Act.

(ii) The military service member, military veteran or military spouse applicant shall submit a completed Military application, including the submission of a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each state in which the applicant is or was licensed, a certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and proof of the applicant's status as a military service member, military veteran or military spouse.

(iii) A military service member, military veteran, or military spouse licensed in another state is exempt from the application fee in §273.4 of this title. Such an applicant is not exempt from exam fees charged for an exam administered by an organization or person other than the Board.

(iv) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

(B) License Renewal.

(i) A license issued under this subsection shall expire twelve months subsequent to the date the license is issued. If the license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee not later than January 1 of each year.

(ii) Prior to renewing the license for the first time, the military service member, military veteran or military spouse licensee shall take and pass the Texas Jurisprudence Examination.

(iii) With the exception of clause (ii) of this subparagraph, the requirements for renewing the license are the same as the requirements for renewing an active license.

(2) Requirements for license for military service member, military veteran or military spouse applicant not currently licensed to practice optometry who was licensed in Texas within five years of the application submission.

(A) Application.

(i) The military service member, military veteran or military spouse applicant shall submit a completed Military application, including the submission of a completed Federal Bureau of Investigation fingerprint card provided by the Board, official license verifications from each state in which the applicant is or was licensed, a certified copy of the applicant's birth certificate, a certified copy of the optometry school transcript granting the applicant a doctor of optometry degree, and proof of the applicant's status as a military service member, military veteran or military spouse.

(ii) An application fee in the same amount as the application fee set out in §273.4 of this title must be submitted with the application.

(iii) A license issued under this subsection shall be a license to practice therapeutic optometry with the same obligations and duties required of a licensed therapeutic optometrist and subject to the same disciplinary requirements for that license.

(B) License Renewal.

(i) A license issued under this subsection shall expire twelve months subsequent to the date the license is issued. If the license is timely renewed, the licensee may thereafter renew the license by paying the renewal fee not later than January 1 of each year.

(ii) Prior to renewing the license for the first time, the military service member, military veteran or military spouse licensee shall take and pass the Texas Jurisprudence Examination.

(iii) With the exception of clause (ii) of this subparagraph, the requirements for renewing the license are the same as the requirements for renewing an active license.

(d) Alternative method to demonstrate competency. To protect the health and safety of the citizens of this state, a license to practice optometry requires the licensee to obtain a doctorate degree in optometry and passing scores on lengthy and complex nationally accepted examinations. An alternative method to demonstrate competency is not available at this time.

## **CHAPTER 275. CONTINUING EDUCATION**

### **§275.1. General Requirements.**

(a) The Act requires each optometrist licensed in this state to take 16 hours of continuing education per calendar year with at least six hours in the diagnosis or treatment of ocular disease. Beginning with the 2010 license renewal, the subject of at least one hour of the required 16 hours shall be professional responsibility. The calendar year is considered to begin January 1 and run through December 31.

(b) The board accepts for continuing education credit all courses sponsored by any board-accredited college or schools of optometry and such other programs or courses of other organizations as are approved by the board upon recommendation from the Continuing Education Committee, appointed by the Board Chair. The Continuing Education Committee will consider, among other things in its discretion, the following criteria in approving courses and classifying the hours as general, diagnosis or treatment of ocular disease, and professional responsibility:

(1) all subjects of education must be directly related to optometry;

(2) courses sponsored by or given by accredited optometry schools will be granted automatic approval as limited by paragraph (9) of this subsection;

(3) courses meeting evaluation standards and receiving approval of the Association of Regulatory Boards of Optometry will be granted automatic approval as limited by paragraph (9) of this subsection;

(4) courses sponsored by optometric organizations may be given approval;

(5) courses sponsored by universities or accredited nonoptometric schools may be given approval if the subject matter is directly related to optometry;

(6) correspondence courses sponsored and graded by accredited optometry schools may be given approval. The maximum number of hours allowed for these courses is set out in §275.2(f) of this title;

(7) courses sponsored by individual providers may be approved but providers must supply the committee with a synopsis of the lecture material to be presented, itinerary including time in the class, and resumes of the lecturers;

(8) on-line computer courses with post-course testing sponsored by the Association of Regulatory Boards of Optometry or by accredited optometry schools. The maximum number of hours allowed for these courses is set out in §275.2(f) of this title.

(9) courses in professional responsibility given by a board accredited instate college or school of optometry may be given approval if the course:

(A) is made available as a live course in this state and on the internet, and

(B) includes the study of professional ethics, the Texas Optometry Act and Board

Rules, judicious prescribing of dangerous drugs, pain management, or drug abuse by professionals.

(c) Licensees who have not complied with the education requirements may not be issued a renewal license unless such person is entitled to an exemption under Section 351.309 of the Act. The following persons are exempt:

- (1) a licensee who holds a Texas license, but does not practice optometry in Texas; provided, however, that if at any time during the calendar year for which such exemption has been obtained such person desires to practice optometry, such person shall not be entitled to practice optometry in Texas until 16 hours of continuing education credits are obtained and the board has been notified of the completion of such continuing education requirements;
- (2) a licensee who served in the regular armed forces of the United States during part of the 12 months immediately preceding the annual license renewal date;
- (3) a licensee who submits proof satisfactory to the board that the licensee suffered a serious or disabling illness or physical disability which prevented the licensee from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; provided, however, that in lieu of claiming the exemption, a licensee who has submitted the requisite proof of illness or disability may elect to obtain the education requirement by correspondence or multi-media courses sponsored, monitored, or graded by colleges of optometry; or
- (4) a licensee who is first licensed within the 12 months immediately preceding the annual renewal date.

(d) Approved courses must be available to all Texas licensed optometrists at a fee considered reasonable and nondiscriminatory.

(e) Summaries of the courses and resumes of those teaching must be submitted to the board's Continuing Education Committee for approval or disapproval. This information should be received 60 days prior to the date the course is to take place.

(f) Written proof of attendance and completion of approved courses must be supplied by the licensed optometrist to the board in conjunction with the renewal application for an optometry license. If the licensed optometrist is practicing in Texas, the licensee should submit the original proof of attendance or the approved sponsors of continuing education may submit to the board written proof of attendance and completion of approved courses on behalf of the licensed optometrist.

Information such as the following will be required: sponsoring organizations; location and dates; course names; instructors; names of attendee; number of education hours completed; and any other information deemed necessary by the board. Proof of attendance supplied by the sponsor should contain at least one signature of the sponsor's designee.

(g) Retired License Continuing Education.

- (1) An applicant with a current license applying for the Retired License shall obtain 8 hours of Board approved continuing education during the calendar year preceding the date of application. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.
- (2) An applicant whose license has expired for one year or more shall obtain 16 hours of Board approved continuing education during the calendar year preceding the date of application. All of the hours may be obtained on the Internet or by correspondence. At least 8 of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.
- (3) The holder of a retired license shall obtain 8 hours of Board approved continuing education during the calendar year prior to renewing the license. All of the hours may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic as approved by the Board and one hour must be professional responsibility.

## **§275.2. Required Education.**

(a) Education for an advanced degree in optometric field or optometrically related field. One hour credit will be given for each semester hour earned, and a total of 16 credit hours will

be allowed for each full academic year of study.

(b) Research in lieu of training. Credit will be given only for full-time research. Sixteen credit hours will be given for each full year of research.

(c) Teaching. One credit hour is allowed for each education hour of teaching of board-approved continuing education courses.

(d) Continuing education courses. See §275.1(b) of this title.

(e) Clinical rotations or rounds. One hour of continuing education credit will be given for each two clock hours spent on clinical rounds, for a maximum of four hours per calendar year. Sponsoring organizations and universities must submit information regarding scheduled rounds and certify to the board at least on a quarterly basis the number of continuing education hours obtained.

(f) Credit will be given for a maximum of eight hours of the combined total of correspondence course hours and on-line computer course hours per calendar year. On-line computer courses are those courses described in §275.1(b)(8) of this title (relating to General Requirements). Correspondence courses must be sponsored and graded by accredited optometry colleges.

## **CHAPTER 277. PRACTICE AND PROCEDURE**

### **§277.1. Complaint Procedures.**

(a) Filing complaints. Complaints may be filed in writing with the agency, either in person at the board's office, or by mail. The board shall adopt a form as its official complaint form which shall be maintained at the board's office for use at the request of any complainant. At a minimum, all complaints shall contain information necessary for the proper processing of the complaint by the board, including, but not limited to:

- (1) complainant's name, address, and phone number;
- (2) name, address, and phone number of the optometrist, therapeutic optometrist, or other person, firm, or corporation, if known; (3) date, time, and place of occurrence of alleged violation;
- (4) complete description of incident giving rise to the complaint; and
- (5) express authorization to release patient records to the Board where applicable.

(b) Classification of Complaints. All complaints received shall be sent to the executive director. The board shall distinguish between categories of complaints as follows:

- (1) non jurisdictional. If possible, these complaints shall be referred to an agency having jurisdiction over the complaint.
- (2) jurisdictional, requiring expertise of a licensee board member to resolve. The Board shall further classify these complaints according to the schedule in subsection (c) of this section. These complaints shall be processed according to subsection (d) of this section.
- (3) jurisdictional, concerning matters other than those requiring professional expertise of a licensee board member. The Board shall further classify these complaints according to the schedule in subsection (c) of this section. These complaints may be processed according to subsection (e) of this section.

(c) Classification of Jurisdictional Complaints. All jurisdictional complaints shall be classified in one of the following categories:

- (1) Complaints of high priority. This includes, but is not limited to, complaints alleging:
  - (A) professional misconduct,
  - (B) qualifications of applicants or licensees,
  - (C) unauthorized practice;
  - (D) other acts or the failure to act that potentially threatens the public health, and
  - (E) a violation of the professional standard of care. The processing of these complaints shall have priority over normal priority complaints. The Board shall evaluate complaints of high priority to determine whether an emergency temporary suspension shall be sought under §277.8 of this title (Rule 279.8).
- (2) Complaints of normal priority. This includes, but is not limited to, complaints alleging:
  - (A) advertising violations,
  - (B) violations of the Act or Board Rules resulting in economic harm, and
  - (C) violations of the Act regarding notice that do no potentially threaten the public health.

(d) Investigation-Enforcement Committee.

(1) Makeup of Committee. The chair shall appoint a committee to consider all complaints classified under subsection (b)(2) of this title and complaints referred from Board staff. The committee shall be known as the investigation-enforcement committee and shall be composed of board members who are licensed optometrists or therapeutic optometrists. The executive director shall divide the state into geographic areas, with each member of the investigation-enforcement committee being assigned areas of responsibility within such geographic areas. Two members shall be charged with the responsibility of enforcing the provisions of the Act within the assigned area and are authorized to initiate investigations. The executive director shall supervise all investigations. If, as a result of an investigation within a geographic area, including an inspection of a facility or record, a complaint is filed against a licensed optometrist, therapeutic optometrist, or other person, firm, or corporation by the investigator, the members charged with that area shall assist in the handling of the prosecution of such complaint and disciplinary proceeding, if any.

(2) Authority of Committee. The executive director shall forward a complaint classified under subsection (b)(2) above to the committee members assigned to the area of the complaint unless in the judgment of the executive director, unusual circumstances exist such that it is more appropriate that the complaint be under province of another member. The investigation-enforcement committee, or any member thereof, shall have the power to issue subpoenas and subpoenas deuces tecum to compel the attendance of witnesses and the production of books, records, and documents, to issue commissions to take depositions, to administer oaths and to take testimony concerning all matters within the assigned jurisdiction. In addition to subpoena power, each member of the committee may authorize the executive director to investigate an alleged violation.

(3) Disposition of Complaint. On receipt of the complaint, the members shall determine:

(A) whether to dismiss the matter and take no further action;

(B) whether to send a letter to the person charged reciting that a complaint has been received and that while the investigating member cannot determine or pass upon the merits of the complaint without conducting further investigation that the subject of the complaint be asked to review the complaint to ensure that the Act is being complied with, and that if the allegations are true, to cease and desist from the alleged violations or words to that effect;

(C) whether to conduct further investigations, including conducting investigational hearings or informal conferences;

(D) whether to forward to the board the members' determination that a violation of the Act may have occurred together with a recommendation that the Board issue a remedial plan;

(E) whether to forward to the board the members' determination that a violation of the Act may have occurred together with a recommendation that proceedings be instituted with the State Office of Administrative Hearings to consider disciplinary action, sanctions, administrative penalties, issuance of cease and desist orders, or refusal to issue a license;

(F) whether to forward to the board the members' determination that some person, firm, or corporation may be practicing optometry without a license or otherwise violating the provisions of the Act, along with the members' recommendation that the board notify the attorney general or appropriate district attorney with accompanying request that appropriate action be taken in accordance with law; and

(G) whether to forward to the executive director the members' determination of findings applicable to subparagraphs (D) and (E) of this paragraph for assessment of administrative penalties.

(H) Should the members of the committee disagree on the disposition of the complaint, the members shall schedule an informal conference.

(e) Complaints Investigated by Staff. Board staff may investigate complaints that do not directly relate to patient care and the investigation or disposition of which do not require expertise in optometry or therapeutic optometry. The investigation may employ members of the Investigation-Enforcement Committee to assist with the investigation as authorized by subsection (d)(2). A complaint shall be directed to the Investigation-Enforcement Committee if the ex-

executive director determines that the complaint should not be dismissed or settled or the executive director is unable to reach an agreed settlement.

(f) Request for Information. The committee or board staff may request that the subject of a complaint respond in writing to the allegations in the complaint. The subject of the complaint shall have 14 days from the receipt of the Board's request to respond. The executive director may extend the time period upon a showing of good cause by the subject of the complaint.

(g) Dismissal and Tracking of Complaints. A complaint shall not be dismissed without appropriate consideration. The board and complainant shall be advised of complaint dismissals. A complaint dismissed by the executive director shall be approved by the Board at a Board Meeting. The executive director shall make a report at each board meeting regarding complaints to the Board.

(h) Basic Competence Violations.

(1) If during the investigation of an optometrist's or therapeutic optometrist's compliance with Section 351.353 of the Act and §279.7 of this title, the optometrist or therapeutic optometrist fails to complete all the of required findings in an initial examination, the completed report of investigation will be classified as an complaint and forwarded by the executive director to the committee members.

(2) In determining the action to take under subsection (d)(3), if any, the committee members shall consider the seriousness of the omitted finding, the compliance history of the optometrist or therapeutic optometrist, and prior actions of the board concerning similar complaints. Omission of four or more basic competency findings requires the committee members to conduct an informal conference.

## **§277.2. Disciplinary Proceedings.**

(a) General statement. In a contested case before the board, proceedings shall be governed by the Administrative Procedure Act (APA), except as specifically provided in the Optometry Act. In any contested case, opportunity shall be afforded to all parties to respond and present evidence and argument on all issues involved. Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, default, refund of examination fees, remedial plan or dismissal.

(b) Informal disposition of contested case. Prior to the imposition of disciplinary sanctions, remedial plan, or administrative penalties against a respondent (a licensee or a person issued a cease and desist order), the respondent shall be offered an opportunity to attend an informal conference and show compliance with all requirements of law, in accordance with the APA.

(1) Informal conferences shall be attended by the executive director, the board's legal counsel, the two members of the Investigation-Enforcement Committee, a public member, and other representatives of the board as the executive director and legal counsel may deem necessary for the proper conduct of the conference. The respondent and/or the authorized representative may attend the informal conference and shall be provided an opportunity to be heard.

(2) In any case where charges are based upon information provided by a person who filed a complaint with the board (complainant), the complainant may attend the informal conference, and shall be provided with an opportunity to be heard. Nothing herein requires a complainant to attend an informal conference.

(3) Notice of the informal conference shall include:

(A) a statement of the legal authority, jurisdiction, and alleged conduct under which the enforcement action is based, with a reference to the particular section(s) of the statutes and rules involved;

(B) an offer for the respondent to attend an informal conference at a specified time and place and show compliance with all requirements of law, in accordance with Chapter 2001 of the Administrative Procedure Act;

(C) a statement that the respondent has an opportunity for a hearing before the State Office of Administrative Hearings on the allegations; and

(D) the following statement in capital letters in 12 point boldface type: FAILURE TO RESPOND TO THE ALLEGATIONS, BY EITHER PERSONAL APPEARANCE AT THE INFORMAL CONFERENCE OR IN WRITING, WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION MADE AT THE INFORMAL



CONFERENCE BEING GRANTED BY DEFAULT. The notice shall be served by delivering a copy to the respondent or licensee in person, by courier receipted delivery, or by certified or registered mail, return receipt requested, to the licensee's last known address of record as shown by agency records, not less than 10 days prior to the date of the conference.

(4) The respondent shall respond by either personal appearance at the informal conference or in writing no later than the date of the informal conference. If the respondent chooses to respond in writing, the response shall admit or deny each of the allegations. If the respondent intends to deny only a part of an allegation, the respondent shall specify so much of it is true and shall deny only the remainder. The response shall also include any other matter, whether of law or fact, upon which the respondent intends to rely for his or her defense. If the respondent fails to respond to the notice specified in this subsection, the matter will be considered as a default case and the respondent will be deemed to have:

- (A) admitted all the factual allegations in the notice specified in this subsection;
- (B) waived the opportunity to show compliance with the law;
- (C) waived notice of a hearing;
- (D) waived the opportunity for a hearing on the allegations; and
- (E) waived objection to the recommended sanctions made at the informal conference.

(5) The Investigation-Enforcement Committee may recommend that the board enter a default order, based upon the allegations set out in the notice specified in this subsection, adopting the recommended sanctions made at the informal conference. Upon consideration of the case, the Board may enter a default order under §2001.056 of the Administrative Procedure Act or direct that the case be set for a hearing at the State Office of Administrative Hearings.

(6) Any default judgment granted under this section will be entered on the basis of the factual allegations in the notice and upon proof of proper notice to the respondent's address of record as specified in paragraph (3) of this subsection.

(7) A motion for rehearing which requests that the Board vacate its default order under this section shall be granted if the motion presents convincing evidence that the failure to respond to the notice specified in this subsection was not intentional or the result of conscious indifference, but due to accident or mistake, provided that the respondent has a meritorious defense to the factual allegations contained in the notice specified in this subsection and the granting thereof will not result in delay or injury to the public or the Board.

(8) Informal conferences shall not be deemed to be meetings of the board and no formal record of the proceedings at the conferences shall be made or maintained.

(9) The Investigation-Enforcement Committee shall consider the Penalty Schedule in §277.6 of this title (Rule 277.6) to determine the parameters of any administrative fine or penalty to recommend to the respondent and the Board. The Investigation-Enforcement Committee may recommend a settlement to the respondent that includes an agreed order to refund all or part of the examination fee paid by the complainant to the respondent. This settlement must be approved by the Board pursuant to subsection (b) (10).

(10) Any proposed order shall be presented to the board for its review. At the conclusion of its review, the board shall approve, amend, or disapprove the proposed order. Should the board approve the proposed order, the appropriate notation shall be made in the minutes of the board and the proposed order shall be entered as an official action of the board. Should the board amend the proposed order, the executive director shall contact the respondent to seek concurrence. If the respondent does not concur, the provisions of the next sentence shall apply. Should the board disapprove the proposed order, the case shall be rescheduled for purposes of reaching an agreed order or in the alternative forwarded to the State Office of Administrative Hearings for formal action.

(c) Formal disposition of a contested case. All contested cases not resolved by informal conference shall be referred to the State Office of Administrative Hearings.

(1) Notice. The respondent shall be entitled to reasonable notice of not less than 10

days. Notice shall include the matters specifically required by the APA, to wit:

- (A) a statement of the time, place, and nature of the hearing;
- (B) a statement of the legal authority and jurisdiction under which the hearing is being held;
- (C) a reference to the particular section of the Act and rules involved; and
- (D) a short and plain statement of the matters asserted.

(2) Service of notice. The notice of hearing and a copy of the formal complaint shall be served on the respondent's last known address at least 10 days prior to the hearing. Service on the respondent shall be complete and effective if the document to be served is sent by registered or certified mail to the respondent at the address shown on the respondent's annual renewal certificate.

(3) Filing of documents. All pleadings and motions relating to any contested case pending before the State Office of Administrative Hearings shall be filed with the State Office of Administrative Hearings. They shall be deemed filed only when actually received.

(4) Motion for continuance. Continuances may be granted by the State Office of Administrative Hearings in accordance with procedural rules established by that agency.

(5) Transcription. Proceedings, or any part of them, must be transcribed on the written request of any party. The agency may pay the cost of the transcript or assess the cost to one or more parties.

(6) Discovery. Requests for the issuance of subpoenas, requests for depositions and for production of documents, and other discovery matters shall be governed by the APA.

(d) If, after receiving notice of hearing, a party fails to appear in person or by representative on the day and time set for hearing, the Administrative Law Judge may proceed in that party's absence and, as authorized by applicable law, may issue a proposal for decision or order against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

(e) Any default judgment entered under this section shall be issued only upon adequate proof that proper notice was provided to the defaulting party, and such notice includes disclosure, in 12 point, bold-faced type, of the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. Proper notice may be established by proof that the Board complied with subsections (c)(1) and (2) of this section.

(f) This section does not preclude the agency from informally disposing of a case by default under the agency's statute or rules in the event the respondent fails to file a timely written response or other responsive pleading required by the agency's statute or rules.

### **§277.3. Probation.**

(a) The board shall have the right and may upon majority vote rule that an order denying an application for license or any order canceling, suspending, or revoking any license be probated so long as the probated practitioner conforms to such orders and rules as the board may set out in the terms of the probation. The board, at the time of its decision to probate the practitioner, shall set out the period of time which shall constitute the probationary period; provided, however, that the board may at any time while the practitioner remains on probation upon majority vote rescind the probation and enforce the board's original action denying, suspending, or revoking such license for violation of the terms of the probation or for other good cause as the board in its discretion may determine. To rescind the probation shall require a formal disciplinary hearing and be conducted as a contested case within the meaning of the APA.

(b) The executive director shall maintain a chronological and alphabetical listing of licensees who have had their license canceled, suspended, or revoked, and shall monitor each consent order in respect to each license holder's specific sanction. Any noncompliance observed as a result of monitoring shall be referred to the board.

### **§277.4. Reinstatement.**

Any practitioner whose license to practice has been revoked for a period of more than one year may, after the expiration of at least one year from the date that such revocation became final, apply to the board, on forms provided by the board, to have the revocation order withdrawn and to have the board reinstate a license to practice optometry or therapeutic optometry. In

considering the reinstatement of a revoked license, the State Office of Administrative Hearings shall consider all factors it deems relevant, and the applicant for reinstatement of a revoked license must appear before the State Office of Administrative Hearings. After consideration of the proposal for decision, the board in its discretion may:

- (1) deny reinstatement of a revoked license;
- (2) reinstate a revoked license and probate the practitioner for a specified period of time under specified conditions; or
- (3) authorize reinstatement of the revoked license.

#### **§277.5. Convictions.**

(a) The Act, §351.501(a)(3), and Texas Occupations Code Chapter 53, provide that the board may suspend or revoke an existing valid license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor, including being placed on deferred adjudication or court ordered community or mandatory supervision, with or without an adjudication of guilt, or revocation of parole, probation or court ordered supervision, if the crime directly relates to duties and responsibilities of a licensed optometrist or therapeutic optometrist.

(b) A licensee or applicant receiving a felony or misdemeanor criminal conviction, including deferred adjudication or court ordered community or mandatory supervision, with or without an adjudication of guilt, or revocation of parole, probation or court ordered supervision, shall report the order of conviction, deferred adjudication or court ordered community or mandatory supervision, or revocation of parole, probation, or supervision within 30 days of the date the court issued the order. This subsection does not require the reporting of a Class C Misdemeanor traffic violation. The failure of a licensee or applicant to report a conviction is deceit, dishonesty and misrepresentation in the practice of optometry and authorizes the board to take disciplinary action under §351.501 of the Act. The licensee shall furnish any document relating to the conviction as requested by the Board.

(c) The Texas Optometry Act authorizes licensees to provide health services.

(d) A person currently incarcerated because of a felony conviction or revocation of parole, probation or court ordered supervision in a felony case may not sit for examination, obtain a license under this act, or renew a previously issued license to practice optometry or therapeutic optometry.

(e) In considering whether a criminal conviction directly relates to the occupation of an optometrist or therapeutic optometrist, the Board shall consider the factors listed in Texas Occupations Code §53.022.

(f) The practice of optometry and therapeutic optometry places the optometrist or therapeutic optometrist in a position of public trust. A licensee practices in an autonomous role in treating patients young and old; in prescribing, administering and safely storing dangerous drugs including controlled substances; in preparing and safeguarding confidential records and information; and in accepting client funds. Therefore the crimes considered by the Board to relate to the practice of optometry and therapeutic optometry include, but are not limited to:

- (1) any felony or misdemeanor of which fraud, dishonesty or deceit is an essential element;
- (2) any criminal violation of the Optometry Act, or other statutes regulating or pertaining to the practice or profession of optometry and therapeutic optometry;
- (3) any criminal violation of statutes regulating other professions in the healing arts;
- (4) any crime involving moral turpitude;
- (5) murder;
- (6) burglary;
- (7) robbery;
- (8) theft;
- (9) sex offense;
- (10) perjury;
- (11) child molesting; and
- (12) substance abuse or substance diversion.

(g) In determining the present fitness of a person who has been convicted of a crime, the Board shall consider the factors listed in Texas Occupations Code §53.023.

(h) It shall be the responsibility of the applicant for license to secure and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities regarding all offenses.

(i) The applicant for license shall also furnish proof in such form as may be required by the Board, that the licensee maintained a record of steady employment and has supported licensee dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines and restitution as may have been ordered in all criminal cases in which the licensee has been convicted.

(j) Upon suspension or revocation of a license, or denial of an application for license or examination because of the person's prior conviction of a crime and the relationship of the crime to the license, the Board shall notify the person in writing:

- (1) of the reasons for the suspension, revocation, denial, or disqualification;
- (2) of the review procedure provided by Texas Occupations Code §53.052; and
- (3) of the earliest date that the person may appeal.

(k) The board, however, shall be under no duty to generate evidence with respect to the matters listed in Texas Occupations Code Chapter 53.

### **§277.6. Administrative Fines and Penalties.**

(a) Based upon the criteria in this section, and in addition to the sanctions listed in subsection (e) of this section, the guideline administrative penalty or fine amount for:

- (1) felony conviction: \$2,000 minimum penalty for each offense (§351.501(a)(3) of the Act)
- (2) misdemeanor conviction involving moral turpitude: \$2,000 minimum penalty for each offense (§351.501(a)(3) of the Act)
- (3) impaired ability to practice: \$2,000 minimum penalty for each offense (§351.501(a)(4) of the Act)
- (4) violations of the act or rules involving controlled substances: \$2,000 minimum penalty for each offense (§§351.501(a)(4) and (15), 351.358, 351.451, and 351.452 of the Act)
- (5) fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or in applying for license; or deceiving, defrauding, or harming the public: \$2,000 minimum penalty for each offense (§351.501(a)(4) and (11) of the Act)
- (6) gross incompetence in the practice of optometry or engaging in a pattern of practice or other behavior demonstrating a wilful provision of substandard care: \$2,000 minimum penalty for each offense (§351.501(a)(12) and (13) of the Act)
- (7) practicing or attempting to practice optometry while the license is suspended or violating the terms of a Board Order: \$2,000 minimum penalty for each offense (§351.501(a)(8) and (17) of the Act)
- (8) having the right to practice optometry suspended or revoked by a federal agency: \$2,000 minimum penalty for each offense (§351.501(a)(10) of the Act)
- (9) the guideline administrative penalty or fine amount for the following violations is a \$300 minimum penalty for the first offense and \$600 minimum penalty for the second offense and subsequent:
  - (A) Failure to report address changes to the Board as required by §351.351 and §351.501(16) of the Act.
  - (B) Failure to properly display name visible to the public as required by §351.362 of the Act.
  - (C) Failure to display public interest information as required by §351.203 of the Act, and §273.9 of this title.
  - (D) Failure to properly release contact lens prescription as required by §353.156 of the Contact Lens Prescription Act,
  - (E) Advertising violations, including misleading advertising as prohibited by §351.155 and §351.403 of the Act, and §279.9 of this title.
  - (F) Failure to use proper professional identification as required by §104.003 of the Texas Occupations Code.
  - (G) Offering glasses or contact lenses as a prize or inducement as prohibited by §351.404 of the Act and §273.3 of this title. (H) Failure of the subject of a com-

plaint to respond within 14 days of receipt to a request letter from the Board regarding the complaint as required by §277.1 of this title.

(10) the guideline administrative penalty or fine amount for the following violations is a \$1,500 minimum and \$2,500 maximum penalty:

(A) Directing or allowing optical employees or owners to make appointments for a leasing licensee as prohibited by §351.408 and §351.459 of the Act.

(B) Directing or allowing optical employees or owners to advertise for a leasing licensee or include the licensee's office in the advertising as prohibited by §351.408 and §351.459 of the Act.

(C) Directing or allowing optical employees or owners to set the practice hours for a leasing licensee as prohibited by §351.408 of the Act.

(D) Practicing in an office not properly separated from a lessor optical as prohibited by §§351.363, 351.364, 351.408, and 351.459 of the Act, and §279.12 of this title.

(b) In accordance with §351.551 of the Act, administrative penalties may be assessed for violations of the Act or rule or order of the board. Either the executive director or a subcommittee of the board, to include at least one public member of the board, may assess a penalty for each violation and present a report to the board concerning the facts on which the determination was based and the amount of penalty.

(c) In accordance with §351.507 of the Act, the Investigation - Enforcement Committee shall use the guidelines in this rule when determining the appropriate administrative penalty or fine to recommend to the board.

(d) The guidelines in this rule are intended to promote consistent sanctions for similar violations, facilitate timely resolution of cases, and encourage settlements. The guidelines in this rule apply to a single violation where there are no aggravating or mitigating factors. Multiple violations and aggravating or mitigating factors as listed in subsection (f) of this section may justify a modification of the guideline amount. The guideline amount may be reduced when a respondent acknowledges a violation and agrees to comply with terms and conditions of an agreed order.

(e) The guidelines in this rule apply to administrative penalties and fines. The Board may also, alone or in conjunction with imposing an administrative penalty or fine, refuse to issue a license to an applicant, revoke or suspend a license, place on probation a person whose license has been suspended, impose a stipulation, limitation, or condition relating to continued practice, including conditioning continued practice on counseling or additional education, or reprimand a licensee.

(f) The amount of the penalty shall be based on:

(1) the seriousness of the violation, including nature, circumstances, extent, and gravity of any prohibited act, and hazard or potential hazard created to the health, safety, or economic welfare of the public;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

(g) Penalties imposed by the board pursuant to subsections (a) - (f) of this section may be imposed for each violation subject to the following limitations:

(1) imposition of an administrative penalty not to exceed \$2,500 for each violation;

(2) each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.

(h) Administrative penalties or fines for violations not specifically mentioned in this rule shall be based on an amount that corresponds to the scheme of the guidelines of this rule.

(i) The provisions of this rule shall not be construed so as to prohibit other appropriate disciplinary action under the Act, civil or criminal action and remedy and enforcement under other laws.

### **§277.7. Patient Records.**

(a) In order to protect the patient's health, an optometrist or therapeutic optometrist shall

create and maintain a legible and accurate written patient record for each patient. Every patient record shall provide sufficient information such that:

- (1) another optometrist or therapeutic optometrist can identify the examination performed and the results obtained, and
- (2) the Board can accurately assess a licensee's compliance with §§279.1 and 279.3 of this title, and Optometry Act §351.353.

(b) This rule is adopted to assist the Board in determining whether a licensee has complied with the requirements of Optometry Act §351.353, Initial Examination of Patient. This rule is not adopted to establish a standard of care for the practice of optometry.

(c) 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. Any patient record that is created or maintained in an electronic format must have the capability of printing a paper record that meets the requirements of this rule.

(d) The patient record for each initial examination for which an ophthalmic lens prescription is signed shall contain, at a minimum, written notations recording the procedures and findings required by §§279.1 and 279.3 of this title, and Optometry Act §351.353, in the following format:

- (1) An accurate identification of the patient;
- (2) The date of the examination;
- (3) The name of the optometrist or therapeutic optometrist conducting the examination;
- (4) Past and present medical history, including complaint presented at visit;
- (5) A numerical value of the monocular uncorrected or monocular corrected visual acuity in a standard acceptable format;
- (6) The results of a biomicroscopic examination of the lids, cornea, and sclera;
- (7) The results of the internal examination of the media and fundus, including the optic nerve and macula, all recorded individually;
- (8) The results of a retinoscopy. A tape from an automatic refractor is acceptable;
- (9) The subjective findings of the examination. A tape from a computer assisted refractor/photometer is acceptable if the instrument is being used to obtain subjective findings;
- (10) The results of an assessment of binocular function, including the test used and the numerical endpoint value;
- (11) The amplitude or range of accommodation expressed in numerical endpoint value including the test used in the examination;
- (12) A tonometry reading including the type of instrument used in the examination; and
- (13) Angle of vision: the extent of the patient's field to the left and right.

### **§277.8. Emergency Temporary Suspension or Restriction.**

(a) Annually, the chair of the Board shall appoint for approval by the Board a three-member disciplinary panel ("panel") and alternate, consisting of at least one public member, for the purpose of making a determination of whether a license should be temporarily suspended or restricted under Section 351.5015 of the Act. The chair shall name one of the members as chair of the panel. If a member of the panel is recused, or unable to participate in the panel, the alternate Board member may serve in the member's place.

(b) The panel shall meet to receive information on a complaint indicating that a licensee's continued practice of optometry or therapeutic optometry may constitute a continuing or imminent threat to the public welfare. At the conclusion of the meeting, if the panel concludes that the licensee's continued practice would constitute a continuing or imminent threat to the public welfare, the panel may restrict or suspend the license for a temporary, stated period of time.

(c) The disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.

(d) The panel may suspend a license under this section without notice or a hearing on the complaint, provided the Investigation-Enforcement Committee shall meet in an informal conference as soon as practical, to determine if formal disciplinary proceedings should be initiated against the licensee. The licensee must receive notice of the conference at least 72 hours prior

to the conference.

(e) Following the informal conference, the Investigation-Enforcement Committee shall take one of the following actions:

(1) Lift the temporary suspension or restriction and reinstate the license without conditions.

(2) Negotiate an agreed settlement order that will dissolve, continue or modify the suspension or restriction, or impose other sanctions as appropriate. The agreed order shall be presented to the Board at the next available Board Meeting for approval.

(3) Prepare a complaint affidavit setting out the details of the complaint and recommended sanctions, and forward the complaint affidavit to the State Office of Administrative Hearings for setting of an administrative hearing. Following the hearing, the administrative law judge will prepare a proposal for decision for adoption, in the form of an order, by the Board.

(f) The panel and the Investigation-Enforcement Committee may receive testimony and evidence in oral or written form. Written statements may be sworn or unsworn. The panel or committee members may question witnesses at the members' discretion. Evidence or information that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered.

### **§277.9. Alternative Dispute Resolution.**

(a) Policy. The Board encourages the resolution and early settlement of all contested matters through voluntary settlement procedures. Board employees shall implement this policy.

(b) Definitions. The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) ADR--Alternative Dispute Resolution.

(2) Alternative dispute resolution procedure or ADR procedure--A nonjudicial and informally conducted forum for the voluntary settlement of contested matter through intervention of an impartial third party.

(3) Alternative dispute resolution director or ADR director--The director of the agency of office empowered by the Board to coordinate and oversee ADR procedures and mediators.

(4) Contested matter--A request for an order or other formal or informal authorization from the Board that is opposed.

(5) Mediator--The person appointed by the ADR office director to preside over ADR proceedings regardless of which ADR method is used.

(6) Parties--The agencies, employees, managers, supervisors or customers who are in conflict.

(7) Participants--The executive director, the agency legal counsel, the complainant, the respondent, the person who timely filed hearing requests which gave rise to the dispute or if parties have been named, the named parties.

(8) Private mediator--A person in the profession of mediation who is not a Texas state employee and who has met all the qualifications prescribed by Texas law for mediators.

(c) Referral of Contested Matter for Alternative Dispute Resolution Procedures. The Board or the ADR director may seek to resolve a contested matter through any ADR procedure. Such procedures may include, but are not limited to, those applied to resolve matters pending at the State Office of Administrative Hearing (SOAH) and in the state's district courts.

(d) Appointment of Mediator.

(1) For each matter referred for ADR procedures, the ADR director shall assign a mediator, unless the participants agree upon the use of a private mediator. The ADR director may assign a substitute or additional mediator to a proceeding as the ADR director deems necessary.

(2) A private mediator may be hired for Board ADR procedures provided that:

(A) the participants unanimously agree to use a private mediator;

(B) the participants unanimously agree to the selection of the person to serve as the mediator;

(C) the mediator agrees to be subject to the direction of the Board's ADR director and to all time limits imposed by the director, the judge, statute or regulation.

(3) If a private mediator is used, the costs for the services of the mediator shall be apportioned equally among the participants, unless otherwise agreed upon by the partici-

pants, and shall be paid directly to the mediator. In no event, however, shall any such costs be apportioned to a governmental subdivision or entity that is a statutory party to the hearing.

(4) All mediators in Board mediation proceedings shall subscribe to the ethical guidelines for mediators adopted by the ADR Section of the State Bar of Texas.

(e) Qualifications of Mediators.

(1) The Board shall establish a list of mediators to resolve contested matters through ADR procedures.

(A) To the extent practicable, each mediator shall receive 40 hours of formal training in ADR procedures through programs approved by the ADR director.

(B) Other individuals may serve as mediators on an ad hoc basis in light of particular skills or experience which will facilitate the resolution of individual contested matters.

(2) SOAH mediators, employees of other agencies who are mediators and private pro bono mediators may be assigned to contested matters as needed.

(A) Each mediator shall first have received 40 hours of Texas mediation training as prescribed above.

(B) Each mediator shall have some knowledge in the area of the contested matter.

(C) If the mediator is a SOAH judge, that person will not also sit as the judge for the case if the contested matter goes to a public hearing.

(f) Commencement of ADR.

(1) The Board encourages the resolution of disputes at any time, whether under this policy and procedure or not. ADR procedures under this policy may begin, at the discretion of the ADR director, at anytime once the dispute is deemed administratively complete and at least one letter of appeal has been filed with Board.

(2) Upon unanimous motion of the parties and the discretion of the judge, the provisions of this subsection may apply to contested hearings. In such cases, it is within the discretion of the judge to continue the hearing to allow use of the ADR procedures.

(g) Stipulations. When ADR procedures do not result in the full settlement of a contested matter, the participants, in conjunction with the mediator, shall limit the contested issues through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the judge assigned to conduct the hearing on the merits and shall be included in the hearing record.

(h) Agreements. Agreements of the participants reached as a result of ADR must be in writing and are enforceable in the same manner as any other written contract.

(i) Confidentiality of Communications in Alternative Dispute Resolution Procedures.

(1) Except as provided in subsections (3) and (4) of this section, a communication relating to the subject matter made by the participant in an ADR procedure whether before or after the institution of formal proceedings, is confidential, is not subject to disclosure, and may not be used as evidence in any further proceedings.

(2) Any notes or record made of an ADR procedure are confidential, and participants, including the mediator, may not be required to testify in any proceedings relating to or arising out of the matter in dispute or be subject to process requiring disclosure of confidential information or data relating to or arising out of the matter in dispute.

(3) An oral communication or written material used in or made a part of an ADR procedure is admissible or discoverable independent of the procedure.

(4) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the judge to determine, in camera, whether the facts, circumstances and context of the communications or materials sought to be disclosed warrant a protective order or whether the communications or materials are subject to disclosure.

(5) The mediator may not, directly or indirectly, communicate with the judge or any Board Member, of any aspect of ADR negotiations made confidential by this section.

## **§277.10. Remedial Plans.**

(a) Section 351.509 authorizes the Board to issue a remedial plan to resolve the investigation of a complaint.



(b) The issuance of a remedial plan does not impose disciplinary action. Records of the remedial plan will be removed from the records of the Board on the date two years after the date that a licensee successfully completes a remedial plan.

(c) A remedial plan may not:

- (1) revoke, suspend, limit, or restrict a license or assess an administrative penalty;
- (2) be imposed to resolve a complaint concerning a death, hospitalization, or the commission of a felony; and
- (3) be imposed if the board issued a remedial plan to a licensee within the preceding 24 months.

(d) A remedial plan must be approved by Board. The plan may be initiated in the following manner:

- (1) for violations listed in §277.6(a)(9) of this title, by the executive director in the same manner as administrative penalties are assessed by the executive director in §277.1 of this title; or
- (2) by the Investigation-Enforcement Committee in the same manner as the disposition of complaints in §277.1 of this title.

(e) If a licensee does not accept an offer of settlement based on the issuance of a remedial plan, the Board shall schedule an informal settlement conference according to the provisions of §277.2 of this title.

(f) If a licensee does not successfully complete the terms of a remedial plan, the Board may reopen the investigation of the complaint to determine if disciplinary action should be imposed.

(g) The board may assess a plan administration fee in an amount of \$1,000, to recover the costs of administering the plan.

## **CHAPTER 279. INTERPRETATIONS**

### **§279.1. Contact Lens Examination.**

(a) The optometrist or therapeutic optometrist shall, in the initial examination of the patient for whom contact lenses are prescribed:

(1) Personally make and record, if possible, the following findings of the conditions of the patient as required by §351.353 of the Act:

- (A) biomicroscopy examination (lids, cornea, sclera, etc.), using a binocular microscope;
- (B) internal ophthalmoscopic examination (media, fundus, etc.), using an ophthalmoscope or biomicroscope with fundus condensing lenses; videos and photographs may be used only for documentation and consultation purposes but do not fulfill the internal ophthalmoscopic examination requirement; and
- (C) subjective findings, far point and near point;

(2) Either personally make and record or authorize an assistant present in the same office with the optometrist or therapeutic optometrist to make and record the following findings required by §351.353 of the Act. The authorization for assistants to make and record the following findings does not relieve the optometrist or therapeutic optometrist of professional responsibility for the proper examination and recording of each finding required by §351.353 of the Act:

- (A) case history (ocular, physical, occupational, and other pertinent information);
- (B) visual acuity;
- (C) static retinoscopy O.D., O.S., or autorefractor;
- (D) assessment of binocular function;
- (E) amplitude or range of accommodation;
- (F) tonometry; and
- (G) angle of vision, to right and to left.

(3) Personally notate in the patient's record the reasons why it is not possible to make and record the findings required in subsection (a) of this section;

(4) When a follow-up visit is medically indicated, schedule the follow-up visit within 30 days of the contact lens fitting, and inform the patient on the initial visit regarding the necessity for the follow-up care; and

(5) Personally or authorize an assistant to instruct the patient in the proper care of lenses.

(b) The optometrist or therapeutic optometrist and assistants shall observe proper hygiene in the handling and dispensing of the contact lenses and in the conduct of the examination. Proper hygiene includes sanitary office conditions, running water in the office where contact lenses are dispensed, and proper sterilization of diagnostic lenses and instruments.

(c) The fitting of contact lenses may be performed only by a licensed physician, optometrist, or therapeutic optometrist. Ophthalmic dispensers may make mechanical adjustments to contact lenses and dispense contact lenses only after receipt of a fully written contact lens prescription from a licensed optometrist, therapeutic optometrist, or a licensed physician. An ophthalmic dispenser shall make no measurement of the eye or the cornea or evaluate the physical fit of the contact lenses, by any means whatever, subject solely and only to the exception contained in the §351.005 of the Act.

(d) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the requirements in the Act, §351.353 and §351.359, shall be considered by the board to constitute prima facie evidence that the licensee is unfit or incompetent by reason of negligence within the meaning of the Act, §351.501(a)(2), and shall be sufficient ground for the filing of charges to cancel, revoke, or suspend the license. The charges shall state the specific instances in which it is alleged that the rule was not complied with. After the board has produced evidence of the omission of a finding required by §351.353, the burden shifts to the licensee to establish that the making and recording of the findings was not possible.

## **§279.2. Contact Lens Prescriptions.**

(a) A prescription for contact lenses is defined as a written order manually signed by the examining optometrist, therapeutic optometrist or physician, or a written order manually signed by an optometrist, therapeutic optometrist or physician authorized by the examining doctor to issue the prescription.

(1) If the prescription is signed by the examining optometrist or therapeutic optometrist, the prescription may be signed electronically, provided that:

(A) the prescription is electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription; and

(B) the security features of the system require the practitioner to authorize each use.

(2) If the prescription is signed by a doctor other than the examining optometrist, therapeutic optometrist or physician, the prescription must contain:

(A) the name of the examining doctor; and

(B) the license number of both the examining doctor and the doctor signing the prescription.

(b) Applicable Law. A contact lens prescription must comply with the requirements of the Texas Optometry Act, Sections 351.005, 351.356, 351.357, 351.359 and 351.607, and the Contact Lens Prescription Act, Sections 353.152, 353.153 and 353.158 and federal law, 15 U.S.C. Sections 7601 - 7610 (Public Law 108-164).

(c) Contents of Prescription. A fully written contact lens prescription must contain all information required to accurately dispense the contact lens, including:

(1) patient's name;

(2) the name, postal address, telephone number, and facsimile telephone number of the prescribing optometrist or therapeutic optometrist (required by federal law);

(3) the date of examination (not including date of follow-up examinations) (required by federal law);

(4) date the prescription is issued;

(5) an expiration date of not less than one year, unless a shorter period is medically indicated;

(6) examining optometrist's signature or authorized signature

(7) name of the lens manufacturer, if required to accurately dispense the lens;

(8) lens brand name, including:

(A) a statement that brand substitution is permitted if the optometrist intends to

authorize a contact lens dispenser to substitute the brand name, and (B) name of manufacturer, trade name of private label brand, and, if applicable, trade name of equivalent brand name when the prescribed brand name is not available to the optical industry as a whole, unless the prescribing of a proprietary lens brand is medically indicated;

(9) lens power;

(10) lens diameter, unless set by the manufacturer;

(11) base curve, unless set by the manufacturer; and

(12) number of lenses and recommended replacement interval.

(d) Release of Prescription, Timing. Regardless of whether the release is requested by the patient, the optometrist or therapeutic optometrist shall release a prescription once the parameters of the prescription are determined. An exception to this requirement exists if the optometrist or therapeutic optometrist determines that because of a medical indication further monitoring is required, and the optometrist or therapeutic optometrist gives the patient a verbal explanation of the reason the prescription is not released and documents in the patient's records a written explanation of the reason.

(e) Release of Prescription, Method. An optometrist or therapeutic optometrist shall issue a prescription by giving or delivering an original signed copy of the prescription to the patient or to another person in accordance with subsection (d) above.

(f) Faxing Prescription. When directed by a dispenser designated to act on behalf of the patient, an optometrist or therapeutic optometrist shall fax an original signed prescription to the dispenser. When faxing a prescription, the optometrist or therapeutic optometrist shall write "by fax" or similar wording on the original prescription prior to faxing.

(g) Verification of Prescription. An optometrist or therapeutic optometrist shall verify a prescription when a dispenser designated to act on behalf of the patient requests a verification by telephone, facsimile or electronic mail.

(h) Verification Procedure. A dispenser designated to act on behalf of the patient is required to provide the optometrist or therapeutic optometrist with the following information when seeking a verification of a prescription:

(1) the patient's full name and address;

(2) contact lens power, manufacturer, base curve or appropriate designation, and diameter, as appropriate;

(3) quantity of lenses ordered;

(4) the date on which the patient requests lenses to be dispensed;

(5) the date and time of the verification request; and

(6) the name, telephone number, and facsimile number of a person at the contact lens dispenser's company with whom to discuss the verification.

(i) Verification Requirements. If the format of the verification request allows, the optometrist or therapeutic optometrist, when verifying a prescription, should provide the contact lens dispenser with all of the information required in subsection (c) of this title. An optometrist or therapeutic optometrist who did not perform the examination, may verify a prescription according to subsection (a) of this title, providing to the dispenser the name and license number of the examining doctor if the format of the verification request so allows. Each request for a prescription verification should be recorded in the patient record, including the name of the dispenser, the date verification is requested, number of lenses requested, and response of the optometrist or therapeutic optometrist.

(j) Inaccurate or Invalid Verification. A contact lens dispenser seeking a contact lens prescription verification shall not fill the prescription if an optometrist or therapeutic optometrist informs a dispenser that the contact lens prescription is inaccurate, expired, or otherwise invalid. An optometrist or therapeutic optometrist is required to communicate the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the dispenser to the optometrist or therapeutic optometrist is inaccurate or invalid, the optometrist or therapeutic optometrist is required to provide the correct information to the dispenser. A dispenser may dispense lenses without verification if an optometrist or therapeutic optometrist fails to communicate with the dispenser within 8 business hours, or a similar time as defined by the Federal Trade Commission.

(k) Number of Lenses. An optometrist or therapeutic optometrist dispensing contact lenses

shall record on the prescription the number of lenses dispensed and return the prescription to the person. If all the contact lenses authorized by the prescription are dispensed by an optometrist or therapeutic optometrist, the following procedure complies with state law and should not be in conflict with federal law: the optometrist or therapeutic optometrist writes on the prescription "All Lenses Dispensed," makes a copy of the prescription to retain in the licensee's records, and returns the original to the person presenting the prescription.

(l) Extension. The Contact Lens Prescription Act requires an optometrist or therapeutic optometrist to authorize, upon request of the patient, a one time, two month extension of the contact lens prescription.

(m) Private Labels. The prescribing optometrist or therapeutic optometrist has the authority to specify any and all parameters of an optical prescription for the therapeutic and visual health and welfare of a patient, but the prescription shall not contain restrictions limiting the parameters to private labels not available to the optical industry as a whole, unless the prescribing of a proprietary lens brand is medically indicated. The specifications of the prescription may not be altered without the consent of the prescribing doctor.

(n) Fee. The Contact Lens Prescription Act prohibits an optometrist or therapeutic optometrist from charging the patient a fee in addition to the examination fee and the fitting fee as a condition for giving a contact lens prescription to the patient or verifying a prescription according to subsections (g) and (h). An optometrist or therapeutic optometrist may not refuse to release a prescription solely because charges assigned or presented for payment to an insurance carrier, health maintenance organization, managed care entity, or similar entity have not been paid by that entity.

(o) Fitting Process. An optometrist or therapeutic optometrist may charge a fitting fee that includes fees for lenses required to be used in the fitting process. The fitting process may include the initial eye examination, an examination to determine the specifications of the contact lenses, and follow-up examinations that are medically necessary. Unless medically necessary, the optometrist or therapeutic optometrist may not require the patient to purchase a quantity of lenses in excess of the lenses the optometrist or therapeutic optometrist was required to purchase to complete the fitting process.

(p) The executive commissioner of the Health and Human Services Commission and the executive director of the Texas Optometry Board may enter into interagency agreements as necessary to implement and enforce this chapter.

### **§279.3. Spectacle Examination.**

(a) The optometrist or therapeutic optometrist shall, in the initial examination of the patient for whom ophthalmic lenses are prescribed:

(1) Personally make and record, if possible, the following findings of the conditions of the patient as required by §351.353 of the Act:

(A) biomicroscopy examination (lids, cornea, sclera, etc.), using a binocular microscope;

(B) internal ophthalmoscopic examination (media, fundus, etc.), using an ophthalmoscope or biomicroscope with fundus condensing lenses; videos and photographs may be used only for documentation and consultation purposes but do not fulfill the internal ophthalmoscopic examination requirement; and

(C) subjective findings, far point and near point.

(2) Either personally make and record or authorize an assistant present in the same office with the optometrist or therapeutic optometrist to make and record the following findings required by §351.353 of the Act. The authorization for assistants to make and record the following findings does not relieve the optometrist or therapeutic optometrist of professional responsibility for the proper examination and recording of each finding required by §351.353 of the Act:

(A) case history (ocular, physical, occupational, and other pertinent information);

(B) visual acuity;

(C) static retinoscopy O.D., O.S., or autorefractor;

(D) assessment of binocular function;

(E) amplitude or range of accommodation;

(F) tonometry;

(G) angle of vision, to right and to left.

(3) Personally notate in the patient's record the reasons why it is not possible to make and record the findings required in this section.

(b) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the requirements in the Act, §351.353 and §351.359, shall be considered by the board to constitute prima facie evidence that the licensee is unfit or incompetent by reason of negligence within the meaning of the Act, §351.501(a)(2), and shall be sufficient ground for the filing of charges to cancel, revoke, or suspend the license. The charges shall state the specific instances in which it is alleged that the rule was not complied with. After the board has produced evidence of the omission of a finding required by §351.353, the burden shifts to the licensee to establish that the making and recording of the findings was not possible.

#### **§279.4. Spectacle and Ophthalmic Devices Prescriptions.**

(a) A prescription for spectacles or ophthalmic devices is defined as a written order manually signed by the examining optometrist, therapeutic optometrist or physician, or a written order manually signed by an optometrist, therapeutic optometrist or physician authorized by the examining doctor to issue the prescription. If the prescription is signed by the examining optometrist or therapeutic optometrist, the prescription may be signed electronically, provided that:

(1) the prescription is electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription; and

(2) the security features of the system require the practitioner to authorize each use.

(b) An optometrist or therapeutic optometrist may issue a duplicate prescription in the following manner:

(1) giving or delivering an original signed copy of the prescription to the patient or to another person when requested by the patient,

(2) faxing an original signed prescription to a person authorized to fill the prescription. When faxing a prescription, the optometrist or therapeutic optometrist shall write "by fax" or similar wording on the original prescription prior to faxing;

(3) transmitting a complete prescription as defined in this section, to a person authorized to fill the prescription, by email or other computerized electronic means. When transmitting a prescription by computerized electronic means, including e-mail, the optometrist or therapeutic optometrist shall attach a digital signature in a commonly recognized format. The computerized electronic transmission shall also include the office address and license number of the optometrist or therapeutic optometrist; or

(4) if the optometrist or therapeutic optometrist determines that the patient needs an emergency refill of the spectacle prescription, the prescription may be telephoned to a person authorized to fill the prescription.

(c) If the prescription is signed by a doctor other than the examining optometrist, therapeutic optometrist or physician, the prescription must contain:

(1) the name of the examining doctor, and

(2) the license number of both the examining doctor and the doctor signing the prescription.

(d) The prescribing optometrist or therapeutic optometrist has the authority to specify any and all parameters of an optical prescription for the therapeutic and visual health and welfare of a patient, but the prescription shall not contain restrictions limiting the parameters to private labels not available to the optical industry as a whole, unless the prescribing of a proprietary lens brand is medically indicated. The specifications of the prescription may not be altered without the consent of the prescribing doctor.

#### **§279.5. Dispensing Ophthalmic Materials.**

(a) The dispensing of medications, spectacles, contact lenses, or ophthalmic devices without a valid prescription constitutes the unlawful practice of optometry, subject to penalties under the Texas Optometry Act, §§351.251, 351.406, 351.602, 351.603, 351.606 and 351.607.

(b) The Texas Optometry Act, §351.453, relates to prescribing without examination. Nothing in this section prohibits a licensed optometrist or therapeutic optometrist from:

- (1) duplicating a patient's spectacle lenses;
- (2) filling or having filled a prescription that has been signed by an authorized practitioner;
- (3) dispensing or having dispensed lenses from a patient's optometric record located within the same optometric office; or
- (4) replacing or repairing frames or parts thereof.

(c) Under the Texas Optometry Act, §§351.005, 351.356 and 351.357, the practice of optometry and therapeutic optometry includes prescribing lenses or prisms, and an ophthalmic dispenser is charged to fill such prescription in accordance with the specific directions of a prescription of a licensed physician, optometrist, or therapeutic optometrist.

#### **§279.6 - §279.8. Reserved.**

#### **§279.9. Advertising.**

(a) All advertising must be in compliance with the Texas Optometry Act, §351.155 and §351.403. Any advertising regarding services to be provided by an optometrist must not be false, deceptive, or misleading.

(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.

(c) Any advertisement of price of contact lens shall affirmatively disclose the number of lenses included for the price specified.

#### **§279.10. Professional Identification.**

(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.

(c) Section 351.458 of the Act prohibits the display of an optometrist or therapeutic optometrist's professional designation if the intent of the display is to mislead the public that the named optometrist or therapeutic optometrist owner regularly practices at that location. Therefore an optometrist or therapeutic optometrist practicing at an office in which the doctor has no ownership interest, must display the doctor's name as licensed by the Board, regardless of the percentage of time spent at that office, unless the doctor's practice meets the definition of temporary basis in subsection (b) of this section.

#### **§279.11. Relationship with Dispensing Optician - Books and Records.**

(a) Texas Optometry Act, §351.364, relating to relationships with dispensing opticians, states: The purpose of this section is to insure that the practice of optometry shall be carried out in such a manner that it is completely and totally separated from the business of any dispensing optician, with no control of one by the other and no solicitation for one by the other.

(b) It is therefore the interpretation of this board that an optometrist practicing under his own name and dispensing, repairing, or duplicating lenses and/or frames in his own office as part of his optometric practice would not be required to keep separate records or books by virtue of the fact that it is all part of his practice of optometry and not a separate dispensing business.

#### **§279.12. Relationship with Dispensing Optician - Separation of Offices.**

(a) The Texas Optometry Act, §351.364(a), requires that the space occupied by the optom-

etrust or therapeutic optometrist shall be separated from the space occupied by the dispensing optician by solid partitions or walls from floor to ceiling. The intent of the legislature in passing §351.364 is specifically spelled out in §351.364(d) and is to insure that the practices of optometry and therapeutic optometry shall be carried out in such a manner that they are completely and totally separated from the business of any dispensing optician.

(b) In light of the overriding legislative intent in passing §351.364 that the practices of optometry and therapeutic optometry be completely and totally separate from the business of any dispensing optician, it is the interpretation of the board that §351.364(a), set forth in subsection (a) of this section, prohibits the space occupied by an optometrist or therapeutic optometrist and space occupied by a dispensing optician from being joined by a wall in which there is a door, either locked or unlocked.

### **§279.13. Board Interpretation Number Thirteen.**

The Texas Optometry Act was enacted in part to safeguard the visual welfare of the public and the optometrist-patient relationship and to fix professional responsibility with respect to the patient. In order to comply with these objectives and to assure patients will have adequate follow-up care, licensed optometrists or therapeutic optometrists who practice optometry or therapeutic optometry, including the examination and prescribing or supplying of lenses to patients, at:

- (1) a nursing home or other abode to patients confined therein,
- (2) an industrial site, when requested to do so, or
- (3) a school site when requested to do so by the school administration, must have an office location or place of practice within 100 miles of such examination site, or, in the alternative must have made arrangements, confirmed in writing prior to offering or providing services, for continued care with a qualified eye health professional with an office location or place of practice within 100 miles of such examination site. Failure to comply with this rule shall be deemed as practicing from house-to-house and the improper solicitation of patients in violation of the Act, § 5.04(5). In addition, the optometrist must comply with the requirements of § 5.02 to maintain current information regarding practice locations with the board office.

### **§279.14. Patient Files.**

Patient's optometric records are defined as the patient chart, historical record, or working document during the course of examination and patient care between the doctor and patient. The patient's records may contain information regarding spectacle prescription findings and contact lens prescription findings but do not include a prescription for spectacles or contact lenses.

### **§279.15. Board Interpretation Number Fifteen.**

The Texas Optometry Act, §5.08(a), requires that no licensed optometrist or therapeutic optometrist practice optometry or therapeutic optometry while knowingly suffering from a contagious or infectious disease, if the disease is one that could reasonably be transmitted in the normal performance of optometry or therapeutic optometry. For purposes of interpretation, a "contagious or infectious disease" is defined as a "disease capable of being transmitted from one person to another by contact or close proximity." Infectious agents transmitted from one person to another by contact or close proximity would include bacteria and viruses. A licensee shall be deemed practicing while knowingly suffering from an infectious or contagious disease when a medical diagnosis of that disease has been made. The following include but are not limited to infectious diseases or diseases that can be transmitted:

- (1) Infectious agents which may be transmitted by direct contact or by respiratory route include: chickenpox, common cold, infectious mononucleosis, influenza, mycoplasma pneumonia, measles, meningococcal disease, mumps, pertussis, rubella and tuberculosis.
- (2) Diseases that could be transmitted by direct contact include: chlamydia trachomatous infections, herpes simplex viruses, staphylococcal infections, streptococcal infections, and bacterial and viral conjunctivitis.

### **§279.16. Telehealth Services**

(a) Definitions. The following words and terms, when used in this section shall have the following meanings unless the context indicates otherwise.

(1) Established treatment site--A location where a patient will present to seek optometric care where there is an optometrist, therapeutic optometrist or physician present and sufficient technology and equipment to allow for an adequate physical evaluation as appropriate for the patient's presenting complaint. It requires an optometrist-patient relationship. A patient's private home is not considered an established medical site.

(2) Face-to-face visit--An evaluation performed on a patient where the provider and patient are both at the same physical location or where the patient is at an established medical site.

(3) In-person evaluation--A patient evaluation conducted by a provider who is at the same physical location as the location of the patient.

(4) Provider--An optometrist or therapeutic optometrist holding an active Texas license.

(5) Distant sight provider--The provider providing the telehealth service from a site other than the patient's current location.

(6) Telehealth service--A health service, other than a telemedicine service, that is delivered by a licensed optometrist or therapeutic optometrist acting within the scope of his or her license, and that requires the use of advanced telecommunications technology, other than telephone or facsimile technology, including:

(A) compressed digital interactive video, audio, or data transmission;

(B) clinical data transmission using computer imaging by way of still-image capture and store and forward; and

(C) other technology that facilitates access to health care services or optometric specialty expertise.

(b) Fraud and Abuse Prevention.

(1) All optometrist or therapeutic optometrists that use telehealth services in their practices shall adopt protocols to prevent fraud and abuse through the use of telehealth services. These standards shall be consistent with those established by the Texas Health and Human Services Commission pursuant to §531.02161 of the Government Code.

(2) In order to establish that an optometrist or therapeutic optometrist has made a good faith effort in the licensee's practice to prevent fraud and abuse through the use of telehealth services, the optometrist or therapeutic optometrist must implement written protocols that address the following:

(A) authentication and authorization of users;

(B) authentication of the origin of information;

(C) the prevention of unauthorized access to the system or information;

(D) system security, including the integrity of information that is collected, program integrity, and system integrity;

(E) maintenance of documentation about system and information usage;

(F) information storage, maintenance, and transmission; and

(G) synchronization and verification of patient profile data.

(c) Notice.

(1) Privacy Practices.

(A) Providers that communicate with patients by electronic communications other than telephone or facsimile must provide patients with written notification of the providers' privacy practices prior to evaluation or treatment. In addition, a good faith effort must be made to obtain the patient's written acknowledgement, including by e-mail, of the notice.

(B) The notice of privacy practices shall include language that is consistent with federal standards under 45 CFR Parts 160 and 164 relating to privacy of individually identifiable health information.

(2) Limitations of Telehealth. Providers who use telehealth services must, prior to providing services, give their patients notice regarding telehealth services, including the risks and benefits of being treated via telehealth, how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure. A signed and dated notice, including an electronic acknowledgement, by the patient establishes a presumption of notice.

(3) Necessity of In-Person Evaluation. When, for whatever reason, the telehealth modal-



ity in use for a particular patient encounter is unable to provide all pertinent clinical information that a health care provider exercising ordinary skill and care would deem reasonably necessary for the practice of optometry or therapeutic optometry at an acceptable level of safety and quality in the context of that particular encounter, then the distant site provider must make this known to the patient and advise and counsel the patient regarding the need for the patient to obtain an additional in-person evaluation reasonably able to meet the patient's needs.

(4) Complaints to the Board. Optometrists or therapeutic optometrists that use telehealth services must provide notice of how patients may file a complaint with the Board on the optometrist's or therapeutic optometrist's website or with informed consent materials provided to patients prior to rendering telehealth services.

(d) Services Provided at an Established Medical Site. Telehealth services provided at an established medical site may be used for all patient visits, including initial evaluations to establish a proper doctor-patient relationship between a distant site provider and a patient.

(1) a provider or licensed physician must be reasonably available onsite at the established medical site to assist with the provision of care.

(2) A distant site provider may authorize an assistant at the established medical site to perform the procedures authorized by §279.1 and §279.3 of this title (relating to Contact Lens Examination and Spectacle Examination), subject to the same requirements as provided in those sections.

(e) Evaluation and Treatment of the Patient.

(1) Distant site providers who utilize telehealth services must ensure that a proper provider-patient relationship is established which at a minimum includes:

(A) establishing that the person requesting the treatment is in fact whom he/she claims to be;

(B) establishing a diagnosis through the use of acceptable medical practices, including patient history, mental status examination, physical examination (unless not warranted by the patient's mental condition), and appropriate diagnostic and laboratory testing to establish diagnoses, as well as identify underlying conditions or contra-indications, or both, to treatment recommended or provided;

(C) discussing with the patient the diagnosis and the evidence for it, the risks and benefits of various treatment options; and

(D) ensuring the availability of the distant site provider or coverage of the patient for appropriate follow-up care.

(2) Treatment. Treatment and consultation recommendations made in an online setting, including issuing a prescription via electronic means, will be held to the same standards of appropriate practice as those in traditional in-person clinical settings.

(f) Technology and Security Requirements.

(1) At a minimum, advanced communication technology must be used for all patient evaluation and treatment conducted via telehealth.

(2) Adequate security measures must be implemented to ensure that all patient communications, recordings and records remain confidential.

(3) Electronic Communications.

(A) Written policies and procedures must be maintained when using electronic mail for provider-patient communications. Policies must be evaluated periodically to make sure they are up to date. Such policies and procedures must address:

(i) privacy to assure confidentiality and integrity of patient-identifiable information;

(ii) health care personnel, in addition to the provider, who will process messages;

(iii) hours of operation and availability;

(iv) types of transactions that will be permitted electronically;

(v) required patient information to be included in the communication, such as patient name, identification number and type of transaction;

(vi) archival and retrieval; and

(vii) quality oversight mechanisms.

(B) All relevant provider-patient e-mail, as well as other patient-related electronic

communications, must be stored and filed in the patient record.

(C) Patients must be informed of alternative forms of communication for urgent matters.

(g) Patient Records for Telehealth Services.

(1) Patient records must be maintained for all telehealth services. Both the distant site provider and the provider or physician at the established medical site must maintain the records created at each site unless the distant site provider maintains the records in an electronic health record format.

(2) Distant site providers must obtain an adequate and complete medical history for the patient prior to providing treatment and must document this in the patient record.

(3) Patient records must include copies of all relevant patient-related electronic communications, including relevant provider-patient e-mail, prescriptions, laboratory and test results, evaluations and consultations, records of past care and instructions. If possible, telehealth encounters that are recorded electronically should also be included in the patient record.

## **CHAPTER 280. THERAPEUTIC OPTOMETRY**

### **§280.1. Application for Certification.**

(a) To be certified to administer and prescribe ophthalmic devices, over-the counter oral medications, and topical ocular pharmaceutical agents, other than antiglaucoma agents, for the purpose of diagnosing and treating visual defects, abnormal conditions and diseases of the human eye and adnexa, and to be able to remove superficial foreign matter and eyelashes from the external eye or adnexa, a licensed optometrist must submit a completed application on forms provided by the Texas Optometry Board (board). After September 1, 1992, all applicants for initial licensure in Texas must be licensed as a therapeutic optometrist in order to practice optometry in Texas.

(b) A licensed optometrist who is not certified as a therapeutic optometrist may only use topical ocular pharmaceutical agents for the purpose of ascertaining and measuring the powers of vision of the human eye, examining and diagnosing visual defects, abnormal conditions, and diseases of the human eye and adnexa, and fitting lenses or prisms to correct or remedy any defect or abnormal condition of vision.

(c) An application for certification must be completed by the applicant, signed and notarized, and forwarded to the board along with an application fee of \$80. Proof of the required education as set forth in §280.2 of this title (relating to Required Education) must accompany the application form.

(d) Successful examination results of the Treatment and Management of Ocular Disease (TMOD) Examination must be submitted prior to the issuance of the certificate to practice as a therapeutic optometrist. The certificate must be displayed along with the initial license in a conspicuous place in the principal office where the optometrist practices.

(e) Designation of authority as a certified therapeutic optometrist will appear along with the optometrist's license number in the format of the license numbers followed by the letter "T." Such designation must appear whenever the license number is required under board statutes or board rules.

(f) In the event the original certification is lost or destroyed, the board may issue a duplicate certificate; the person entitled thereto must make written application to the board for a duplicate, under affidavit setting forth that such certificate was lost or destroyed, and the circumstances under which loss or destruction occurred. Should the original subsequently be found, it must be forwarded immediately to the board and not used by the person to whom issued originally or by any other person. A fee of \$25 must be submitted to the board along with the affidavit for the duplicate issue.

(g) Successful completion of a board approved examination testing knowledge of general and ocular pharmacology and related pathology with particular emphasis on the topical application of pharmaceutical agents shall be required, as defined in §280.3 of this title (relating to Certified Therapeutic Optometrist Examination).

### **§280.2. Required Education.**

(a) In order to demonstrate compliance in regard to therapeutic optometry, successful com-

pletion of at least 90 classroom hours of board approved postgraduate course work and clinical training in general and ocular pharmacology and related pathology conducted by an accredited institution which has facilities for both didactic and clinical instruction, or via other educational programs approved by the board, is required. Of the required 90 classroom hours, a minimum of 20 hours must be obtained in applied clinical skills. The applicant must provide documentation of successful completion of course work from the institution.

(b) In order to assure that therapeutic optometrists are current and proficient in up-to-date therapeutic knowledge and techniques, optometrists having graduated prior to January 1, 1991, shall obtain a minimum of 90 classroom hours in postgraduate courses of general and ocular pharmacology and related pathology. Optometrists graduated after January 1, 1991, shall be considered as having met the educational requirements.

(c) To be acceptable, courses of classroom hours must receive prior approval by the board, upon recommendation of the Continuing Education Committee. Any courses taken subsequent to January 1, 1991, and prior to September 1, 1991, may be submitted for consideration of approval by the board. Approved courses may be given only by accredited colleges and schools of optometry or via other educational programs approved by the board.

### **§280.3. Certified Therapeutic Optometrist Examination.**

(a) The certified therapeutic optometrist examination shall be the Treatment and Management of Ocular Disease Examination (TMOD) administered by the National Board of Examiners in Optometry under contract with the International Association of Boards of Examiners in Optometry. Inasmuch as the inception date of the TMOD was April of 1985, a passing score from any TMOD test administered subsequent to that date will be accepted.

(b) Application and appropriate fees required for that examination shall be made directly by the applicant with the testing entity.

(c) Applicant is responsible for having the certified test results forwarded to the Texas Optometry Board upon successful completion. A pass/fail grade will be sufficient.

(d) Any applicant who has failed the TMOD may submit to a reexamination under the guidelines of the testing entity. The filing of a new application and payment of a new application fee will be required to be filed with the Texas Optometry Board.

### **§280.4. Reserved.**

### **§280.5. Prescription and Diagnostic Drugs for Therapeutic Optometry.**

(a) A therapeutic optometrist may administer and prescribe any drug authorized by Section 351.358(a) and (b)(1) of the Act.

(b) To prohibit substitution of a generically equivalent drug product on a written prescription drug order, a therapeutic optometrist must write across the face of the written prescription, in the therapeutic optometrist's own handwriting, "brand necessary" or "brand medically necessary." If the therapeutic optometrist does not clearly indicate "brand necessary" or "brand medically necessary," the pharmacist may substitute a generically equivalent drug product in compliance with the Texas Pharmacy Act, Sections 562.008 and 563.002 of the Texas Occupations Code, and §309.3 of this title.

(c) All prescriptions shall contain the following information:

- (1) the date of issuance;
- (2) the name and address of the patient for whom the drug is prescribed;
- (3) the name, strength, and quantity of the drug, medicine, or device prescribed;
- (4) the direction for use of the drug, medicine, or device prescribed;
- (5) the name and address of the therapeutic optometrist;
- (6) the manually written signature of the prescribing therapeutic optometrist; or an electronic signature provided that the prescription is electronically signed by the practitioner using a system which electronically replicates the practitioner's manual signature on the written prescription, and provided:

(A) that security features of the system require the practitioner to authorize each use; and

(B) 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; and  
(7) the license number of the prescribing therapeutic optometrist including the therapeutic designation.

(d) The prescribing therapeutic optometrist issuing verbal or electronic prescription drug orders to a pharmacist shall furnish the same information required for a written prescription, except for the written signature. If the therapeutic optometrist does not clearly indicate "brand necessary" or "brand medically necessary," when communicating the prescription to the pharmacist, the pharmacist may substitute a generically equivalent drug product in compliance with the Texas Pharmacy Act and §309.3 of this title.

(e) A therapeutic optometrist may charge a reasonable fee for drugs administered within the optometric office, but a therapeutic optometrist shall not charge for any drugs supplied to the patient as take-home medication. Any drug supplied by a therapeutic optometrist other than an over-the-counter drug shall be labeled in compliance with the following information in compliance with the Texas Dangerous Drug Act (Health and Safety Code, Chapter 483), shall contain the following:

- (1) the name, address and telephone number of the therapeutic optometrist;
- (2) the date of dispensing;
- (3) the name of the patient;
- (4) the name and strength of the drug; and
- (5) the directions for use.

(f) At least annually, the Texas Optometry Board shall provide to the Texas State Board of Pharmacy a list of the topical ocular pharmaceutical agents which may be prescribed by therapeutic optometrist.

(g) A therapeutic optometrist may administer and prescribe all:

- (1) ophthalmic devices;
- (2) over-the-counter oral medications; and
- (3) appropriate topical pharmaceutical agents used for diagnosing and treating visual defects, abnormal conditions, and diseases of the human eye and adnexa, which are included in the following classifications or are combinations of agents in the classifications. No drug falling within one of the following categories may be used for the treatment of glaucoma in a manner that was not permitted by law on August 31, 1991:

(A) anti-allergy:

- (i) antihistamine;
- (ii) membrane stabilizer;

(B) anti-fungal:

- (i) imidazoles;
- (ii) polyenes;

(C) anti-infective:

- (i) aminoglycoside;
- (ii) anti-cell membrane;
- (iii) anti-cell wall synthesis;
- (iv) anti-DNA synthesis;
- (v) anti-protein synthesis (excluding chloramphenicol);
- (vi) anti-ACHase;
- (vii) cephalosporin;
- (viii) agents affecting intermediary metabolism;

(D) anti-inflammatory:

- (i) nonsteroidal anti-inflammatory drug (NSAID);
- (ii) steroid;

(E) antiseptic;

(F) chelating agent;

(G) chemical cautery;

(H) cycloplegic: parasympatholytic;

(I) hyperosmotic;

(J) miotic:

- (i) anti-ACHase;

- (ii) parasympathomimetic;
- (K) mucolytic;
- (L) mydriatic: sympathomimetic (Alpha 1 agonists only);
- (M) vasoconstrictor: sympathomimetic (Alpha 1 agonists only)
- (N) antivirals.

(h) The authority of an optometric glaucoma specialist to prescribe antiglaucoma drugs is defined in §280.10. The following are those drugs which are classified as antiglaucoma drugs and may not be used by a therapeutic optometrist in a manner that was not permitted by law on August 31, 1991:

- (1) Pilocarpine 1%-10%
- (2) Carbachol 0.75%-3%
- (3) Carteolol
- (4) Epinephrine 0.25%-2%
- (5) Dipivefrin 0.1%
- (6) Betaxolol 0.5%
- (7) Levobunolol 0.5%
- (8) Metipranolol 0.3%
- (9) Timolol 0.25%-0.5%
- (10) Physostigmine 0.25%-0.5%
- (11) Demecarium 0.125%-0.25%
- (12) Echothiophate 0.03%-0.25%
- (13) Isoflurophate 0.25%

(i) This formulary specifically lists the types of drugs which may be prescribed by a therapeutic optometrist. Subject to the antiglaucoma limitations described in subsections (g) and (h) of this section, a therapeutic optometrist may possess and administer any topical ocular pharmaceutical agent which has a legitimate diagnostic or therapeutic use.

(j) A therapeutic optometrist may possess and administer cocaine eye drops for diagnostic purpose. The cocaine eye drops must be no greater than 10 percent solution in prepackaged liquid form.

- (1) A therapeutic optometrist must observe all requirements of the Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, and all requirements of the Texas Department of Public Safety (DPS) Drug Rules, in making application and maintaining renewal of a United States Drug Enforcement Administration (DEA) registration number for possession of the cocaine eye drops, a Schedule II controlled substance.
- (2) A therapeutic optometrist must obtain a registration number from the DPS for the principal office of practice. Application may be made for a separate registration for the practice of optometry at a satellite office but all requirements of this rule shall apply in all locations.
- (3) The therapeutic optometrist must use the required DEA form for the purchase of the cocaine eye drops and shall maintain a complete and accurate record of purchases (to include samples received from pharmaceutical manufacturer representatives) and administration of controlled substances. The maximum amount to be purchased and maintained in an office of practice shall be no more than two vials, one opened and one in inventory.
- (4) The recordkeeping listed in this section shall be subject to inspection at all times by the Texas Department of Public Safety, the U.S. Drug Enforcement Administration, and the Texas Optometry Board and any officer or employee of the governmental agencies shall have the right to inspect and copy records, reports, and other documents, and inspect security controls, inventory and premises where such cocaine eye drops are possessed or administered.
- (5) Minimum security controls shall be established to include but not limited to:
  - (A) establishing adequate security to prevent unauthorized access and diversion of the controlled substance,
  - (B) during the course of business activities, not allowing any individual access to the storage area for controlled substances except those authorized by the therapeutic optometrist,
  - (C) storing the controlled substance in a securely locked, substantially constructed cabinet or security cabinet which shall meet the requirements under the DPS Drug

Rules,

(D) not employ in any manner an individual that would have access to controlled substances who has had a federal or state application for controlled substances denied or revoked, or have been convicted of a felony offense under any state or federal law relating to controlled substances or been convicted of any other felony, or have been a licensee of a health regulatory agency whose license has been revoked, canceled, or suspended.

(6) Failure of the therapeutic optometrist to maintain strict security and proper accountability of controlled substance shall be deemed to be a violation of the Texas Optometry Act, §351.501 and §351.551.

#### **§280.6. Procedures Authorized for Therapeutic Optometrists.**

(a) Under the authority of §351.358 of the Act, a therapeutic optometrist may administer, perform, or prescribe ophthalmic devices, procedures, and appropriate medications administered by topical means, to diagnose or treat visual defects, abnormal conditions, or diseases of the human vision system, including the eye and adnexa.

(b) Pursuant to the limitations in subsection (a) of this title, a therapeutic optometrist may:

- (1) administer an amniotic membrane in a procedure that does not involve suturing; and
- (2) dispense and charge for therapeutic contact lenses in accordance with §551.004 of the Texas Pharmacy Act.

#### **§280.7. Reserved.**

#### **§280.8. Optometric Glaucoma Specialist: Required Education, Examination and Clinical Skills Evaluation.**

(a) Education Required.

(1) Successful completion of at least 30 verified instruction or classroom hours of board approved review course work in glaucoma diagnosis and treatment and pharmacology of approved oral and anti-glaucoma drugs is required for licensure as an optometric glaucoma specialist. The applicant must provide documentation of successful completion of course work.

(2) To be acceptable, courses of verified instruction or classroom hours must receive prior approval by the board. Approved courses may be given only by accredited colleges and schools of optometry or via other educational programs approved by the board. Successfully completed classroom hours may be used to satisfy the Continuing Education requirements for that year.

(b) Examination. Each applicant for licensure as an optometric glaucoma specialist shall have passed, with a grade of 75 or above, a Board approved examination covering the 30 verified instruction or classroom hours defined in this rule. The examination must have received prior approval by the board. The applicant must provide documentation of passing the examination. Examinations given by accredited schools of optometry or medicine covering the subjects described in the Board's Resolution dated April 14, 2000, are hereby approved.

(c) Sitting for Review Course and Examination Prior to Graduation. An applicant may sit for a board approved review course and examination provided that the applicant submits to the course provider a written statement from the dean of an accredited college of optometry that the applicant is enrolled in good standing in the college and is in the final semester before graduation, and such other information as the board may deem necessary for the enforcement of the Act. Subsequent to licensure by the Board as a therapeutic optometrist, the applicant having sat for the course and examination as a student must obtain a clinical skills evaluation, and when making application to the Board for licensure as an Optometric Glaucoma Specialist, include a copy of the statement from the dean originally furnished to the course provider.

(d) Clinical Skills Evaluation. Each applicant for licensure as an optometric glaucoma specialist shall submit a signed and dated certification prepared by a licensed ophthalmologist or optometric glaucoma specialist. The certification shall confirm the demonstration by the applicant in an adequate and appropriate manner, as directly observed by the ophthalmologist or optometric glaucoma specialist, of the following skills:

- (1) tonometry,

- (2) gonioscopy,
- (3) slit lamp examination,
- (4) optic nerve examination/fundus, and
- (5) interpretation of visual fields.

(e) Applicants Graduating from Curriculums Which Include Instructional Clinical Course. An applicant meets the requirements of §351.3581 of the Act and subsections (a) - (c) of this section, provided:

(1) the Board determines in a review of the curriculum and by certification of the dean of a school or college of optometry that:

(A) The course work required for certification in this section, including an instructional clinic review component, is part of the school or college of optometry's regular curriculum, and that the examination required for graduation from the school or college is the substantive equivalent of an examination approved by the Board pursuant to subsection (b) of this section.

(B) The students of the school or college must receive clinical training and satisfy the evaluation requirement set out in subsection (d) of this section.

(2) This subsection shall apply to all applicants graduating on or after May 1, 2008, from a school or college of optometry for which the Board has issued a determination under paragraph (1) of this subsection, in the calendar year during which the determination was issued or any year thereafter.

### **§280.9. Application for Licensure as Optometric Glaucoma Specialist.**

(a) A licensed therapeutic optometrist must submit a completed application on forms provided by the Texas Optometry Board (board) to be eligible for licensure as an optometric glaucoma specialist. An optometric glaucoma specialist may:

(1) administer and prescribe appropriate medications by topical or oral means for the purpose of diagnosing and treating visual defects, abnormal conditions and diseases of the human vision system, including the eye and adnexa, as set forth in §280.10, and

(2) treat glaucoma, as set forth in §280.10 and §280.11, including the administration and prescribing of appropriate medications by topical, oral or parental means.

(b) A completed application for license as an optometric glaucoma specialist consists of an application form entirely filled out by the applicant, signed and notarized, and forwarded to the board along with an application fee of \$50. Proof of the required successfully completed education, examination and clinical assessment as set forth in §280.8 (relating to Required Education) must accompany the application form. The Board may license the applicant as an optometric glaucoma specialist provided the applicant submits a completed application as defined in this rule, and provided that the applicant is currently licensed and authorized to practice therapeutic optometry in this state.

(c) The license to practice as an optometric glaucoma specialist must be displayed along with all licenses in a conspicuous place in the principal office where the optometrist practices.

(d) Designation of authority as a optometric glaucoma specialist will appear along with the optometrist's license number in the format of the license numbers followed by the letter "T" and "G." Such designation must appear whenever the license number is required under board statutes or board rules.

(e) In the event the original certification is lost or destroyed, the board may issue a duplicate certificate; the person entitled thereto must make written application to the board for a duplicate, under affidavit setting forth that such certificate was lost or destroyed, and the circumstances under which loss or destruction occurred. Should the original subsequently be found, it must be forwarded immediately to the board and not used by the person to whom issued originally or by any other person. A fee of \$25 must be submitted to the board along with the affidavit for the duplicate issue.

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

(a) An optometric glaucoma specialist may administer and prescribe any drug authorized by the Texas Optometry Act, §351.358 and §351.3581, in addition to those drugs that may be administered and prescribed by a therapeutic optometrist.

(b) The requirements of §280.5 and the statutes cited in the rule apply to the optometric glaucoma specialist's prescription orders, the administration of drugs in the optometric office and the labeling of drugs supplied to patients. The requirements for a prescription order for a Controlled Substance are listed in subsection (f) of this section.

(c) At least annually, the Texas Optometry Board shall provide to the Texas State Board of Pharmacy a list of the oral pharmaceutical agents and anti-glaucoma drugs which may be administered and prescribed by an optometric glaucoma specialist.

(d) An optometric glaucoma specialist may administer and prescribe, in addition to those drugs authorized by §280.5:

(1) appropriate oral pharmaceutical agents used for diagnosing and treating visual defects, abnormal conditions, and diseases of the human vision system, including the eye and adnexa, which are included in the following classifications or are combinations of agents in the classifications:

(A) one 10-day supply of oral antibiotics;

(B) one 72-hour supply of oral antihistamines;

(C) one seven-day supply of oral nonsteroidal anti-inflammatories;

(D) one three-day supply of any analgesic identified in Schedules III, IV, and V of 21 U.S.C. §812; and

(2) antiglaucoma drugs.

(e) An optometric glaucoma specialist may administer appropriate medications to treat a patient who has an anaphylactic reaction in order to counteract the anaphylaxis. The optometric glaucoma specialist shall immediately refer the patient to a physician.

(f) Controlled Substances

(1) The following paragraphs apply to an optometric glaucoma specialist possessing, administering or prescribing a Schedule III, IV or V analgesic Controlled Substance. The paragraphs also apply to an optometric glaucoma specialist who has obtained the registrations necessary to possess, administer, or prescribe a Schedule III, IV or V Controlled Substance.

(2) An optometric glaucoma specialist must possess a current Controlled Substances Registration from the United States Drug Enforcement Administration (DEA) and the Texas Department of Public Safety (DPS) in order to procure, possess, administer or prescribe a Schedule III, IV or V analgesic Controlled Substance. A licensee applying for or possessing a Controlled Substances Registration must observe all requirements of the Texas Controlled Substances Act, the Health and Safety Code, Chapter 481, applicable federal law, and all requirements of the Texas Department of Public Safety (DPS) Drug Rules, 37 TAC Chapter 13.

(3) An optometric glaucoma specialist must obtain a registration number from the DPS for the principal office of practice. Application may be made for a separate registration for the possession, administration, and prescribing of controlled substances at a satellite office but all requirements of this rule shall apply in all locations.

(4) All prescriptions for a Schedule III, IV or V Controlled Substance shall contain the following information (Licensees telephoning or communicating the prescription orally to a pharmacist shall supply the information in this subsection to the pharmacist, except for the signature of the optometric glaucoma specialist.):

(A) date of issuance;

(B) name, address and date of birth of the patient for whom the controlled substance is prescribed;

(C) name, strength, and quantity (written as both a number and as a word) of the controlled substance prescribed;

(D) direction for use of the controlled substance;

(E) intended use of the controlled substance prescribed unless the optometric glaucoma specialist determines the furnishing of this information is not in the best interest of the patient;

(F) printed or stamped name, address and business telephone number of the optometric glaucoma specialist;

(G) written signature of the prescribing optometric glaucoma specialist;

(H) complete license number of the prescribing optometric glaucoma specialist;



and

(I) DEA and DPS registration number.

(5) An optometric glaucoma specialist shall maintain a complete and accurate record of purchases (to include samples received from pharmaceutical manufacturer representatives) and administrations of Schedule III, IV or V analgesic Controlled Substances.

(6) The record keeping listed in this section shall be subject to inspection at all times by the Texas Department of Public Safety, the U.S. Drug Enforcement Administration, and the Texas Optometry Board and any officer or employee of the governmental agencies shall have the right to inspect and copy records, reports, and other documents, and inspect security controls, inventory and premises where Schedule III, IV, and V analgesic controlled substances are possessed or administered.

(7) Minimum security controls shall be established to include but not limited to:

(A) establishing adequate security to prevent unauthorized access and diversion of the controlled substance,

(B) during the course of business activities, not allowing any individual access to the storage area for controlled substances except those authorized by the optometric glaucoma specialist,

(C) storing the controlled substance in a securely locked, substantially constructed cabinet or security cabinet which shall meet the requirements under the DPS Drug Rules, and

(D) not employ in any manner an individual that would have access to controlled substances who has had a federal or state application for controlled substances denied or revoked, or have been convicted of a felony offense under any state or federal law relating to controlled substances or been convicted of any other felony, or have been a licensee of a health regulatory agency whose license has been revoked, canceled, or suspended.

(8) Failure of the optometric glaucoma specialist to maintain strict security and proper accountability of controlled substance shall be deemed to be a violation of the Texas Optometry Act, §351.501 and §351.551.

### **§280.11. Treatment of Glaucoma by an Optometric Glaucoma Specialist.**

(a) An optometric glaucoma specialist may treat glaucoma as directed by this rule.

(b) Consultation with an ophthalmologist after an initial diagnosis of glaucoma.

(1) Not later than the 30th day after the date of the initial diagnosis of glaucoma, an optometric glaucoma specialist shall engage in consultation with an ophthalmologist to develop an individual treatment plan that is approved by the optometric glaucoma specialist and ophthalmologist.

(2) The optometric glaucoma specialist shall inform the patient diagnosed with glaucoma that the optometric glaucoma specialist must have the diagnosis confirmed and managed by an ophthalmologist of the patient's choosing or, if the patient does not choose an ophthalmologist, an ophthalmologist practicing in the geographic area in which the optometric glaucoma specialist practices.

(3) The parameters of the consultation shall be at the discretion of the ophthalmologist but must at least include confirmation of the diagnosis and a plan for comanagement of the patient, including periodic review of the patient's progress.

(c) Setting a target pressure on the initial diagnosis of glaucoma.

(1) On making an initial diagnosis of glaucoma, an optometric glaucoma specialist shall set a target pressure that is not more than 80 percent of the initial intraocular pressure.

(2) If the optometric glaucoma specialist determines that a patient's glaucoma is not responding appropriately to treatment, the optometric glaucoma specialist shall consult a physician by telephone, fax, or another method. The patient's glaucoma is considered to not be appropriately responding to treatment if the patient fails to achieve the target pressure within an appropriate time. If the physician determines that the patient should be seen by the physician or an appropriate specialist as a result of the consultation, the optometric glaucoma specialist shall refer the patient to an ophthalmologist.

(d) Prescribing a beta blocker.

(1) Before an optometric glaucoma specialist may prescribe a beta blocker, the optomet-

ric glaucoma specialist must take a complete case history of the patient and determine whether the patient has had a physical examination within the 180 days preceding the date of taking the history.

(2) If the patient has not had a physical examination or if the patient has a history of congestive heart failure, bradycardia, heart block, asthma, or chronic obstructive pulmonary disease, the optometric glaucoma specialist shall refer the patient to a physician for a physical examination before initiating beta blocker therapy.

(e) Referral to an ophthalmologist.

(1) An optometric glaucoma specialist shall refer a patient to an ophthalmologist if:

(A) the patient is under 16 years of age and has been diagnosed as having glaucoma;

(B) the patient has been diagnosed as having acute closed angle glaucoma;

(C) the patient has been diagnosed as having malignant glaucoma or neovascular glaucoma;

(D) the optometric glaucoma specialist determines that a patient's glaucoma is caused by a diabetic complication and, after joint consultation with the physician treating the diabetes and an ophthalmologist by telephone, fax, or another method, the physician or ophthalmologist determines that the patient should be seen by the physician or ophthalmologist; or

(E) the optometric glaucoma specialist determines that a patient's glaucoma is not responding appropriately to a treatment as specified in this rule.

(2) The optometric glaucoma specialist may initiate appropriate emergency treatment for a patient diagnosed with acute closed angle glaucoma, but shall refer the patient to a physician in a timely manner.

(3) An optometric glaucoma specialist who refers a patient to a physician or specialist shall inform the patient that the patient may go to any physician or specialist the patient chooses. This subsection does not prevent an optometric glaucoma specialist from recommending a physician or specialist.

(4) The optometric glaucoma specialist shall maintain physician reports in the patient's records.

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