

Texas Optometry Act

including
CONTACT LENS PRESCRIPTION ACT



As Amended Through 2005

TEXAS OPTOMETRY BOARD
333 Guadalupe Street, Suite 2-420
Austin, Texas 78701
512/305-8500
<http://www.tob.state.tx.us>

MEMBERS OF THE TEXAS OPTOMETRY BOARD

PRESENT MEMBERS

	Appointed	Term Expires
Golden, D. Dixon, O.D. <i>Chair</i>	8/2003	1/2015 Center
Randall Reichle, O.D. <i>Vice-Chair</i>	8/2003	1/2015 Houston
Larry Fields <i>Secretary-Treasurer</i>	12/2007	1/2011 Carthage
Carolyn Carmen, O.D.	2/2006	1/2011 Mansfield
John Coble, O.D.	2/2006	1/2011 Rockwall
Melvin Cleveland Jr., O.D.	5/2007	1/2013 Arlington
Virginia Sosa, O.D.	5/2007	1/2013 Uvalde
James Dyess	5/2009	1/2013 Austin
Cynthia Jenkins	12/2008	1/2015 Irving

FORMER MEMBERS

	Appointed	Term Expired
Armstrong, Mollie W.*	1933	1951 Brownwood
.....	1925	1929
Aronsfeld, G.H.*	1921	1937 Houston
Baber, W.F.*	1969	1969 Vernon
.....	1953	1967
Baker, Fred*	1921	1923 San Angelo
Batteiger-Place, Susan	1993	1997 Plano
Bitner, Jimmy	1989	1997 Kerrville
Blackwell, Gene B.....	1985	1989 Childress
Brown, Terry, Ph.D.....	1986	1992 Dallas
Bowen, John B.....	1971	1983 Lubbock
Bradford, Ann Appling	1998	2007 Midland
Burton, Jack*	1969	1975 Cleburne
Butler, L.L.*	1941	1947 Dallas
Carmen-Merrifield, Carolyn	1995	2001 Arlington
Clark, J. Howard*	1941	1953 Houston
Cohen, Jacob M.....	1969	1973 Houston
Curry, Paul T.	1979	1985 El Paso
Davis, Barry J.	1983	1995 Port Arthur
Davis, John W.....	1975	1987 Dallas
.....	1969	1971
Day, Emmett*	1951	1955 Kaufman
DeLoach, Joe.....	1997	2005 Plano
DeWolfe, Clinton M.....	1987	1993 Blanco
.....	1982	1985
DeWolfe, Kevin D	1995	2001 Austin
Eidson, Judy McClendon ...	1997	2007 San Antonio
Farias III, Fred	2001	2007 McAllen
Friedman, E. Richard.....	1973	1979 Dallas
Garner, B.J.....	1997	2003 Houston
Gear, Katherine Garrett	1995	2003 Mineral Wells
Geller, Daniel J.	1967	1968 El Paso
Georgia, W.B.*	1921	1924 Waco
Gill, James R., Jr.*	1955	1969 Waxahachie
Giolma, Theresa*	1992	1995 San Antonio

	Appointed	Term Expired	
Glenz, Donald	1997	2003	Houston
Greeman, Nelson, Sr.*	1937	1949	San Antonio
Griffith, Gary E.	1982	1987	Dallas
Harbour, H.A.*	1955	1966	Kerrville
Hodges, R.B.*	1930	1941	Fort Worth
Jenison, Edward, Sr.*	1921	1933	San Antonio
Johnson, Sharon L.	2001	2007	Arlington
Latta, Mark A.	1996	2006	Amarillo
Lewis, Philip	1975	1975	Houston
Montgomery, T.M.*	1939	1951	Amarillo
Moore, Barry O.	1993	1996	Sugar Land
Mora, Salvador S.*	1969	1987	Laredo
Norvell, Marcus L.*	1949	1955	Corpus Christi
Pearle, Stanley C.	1985	1997	Dallas
Pittman, W. Duke*	1931	1939	Mexia
Pittman, William D.*	1985	1992	Mexia
Pittman, Wesley E.	1993	1997	Mexia
Pray, R. Fred*	1949	1955	Beaumont
Preslar, P.A.*	1935	1941	Childress
Rebsch, Albert*	1949	1950	La Grange
Rogers, N.Jay*	1955	1983	Beaumont
	1947	1949	
Shipman, Robert H.*	1950	1967	San Antonio
Shropshire, C.T.	1967	1968	Dallas
Silva, Elsa	2003	2008	EIPaso
Stephens, Donnya E.,	1993	1997	Nacogdoches
Sticksel, Hugh A., Jr.*	1973	1979	Amarillo
Terrell, R.A.*	1927	1937	Dallas
Thomas, James B.	1983	1989	Galveston
Thornton, Floyd L.	1987	1993	Wichita Falls
Towle, H.G.*	1937	1949	Snyder
	1923	1935	
Treadwell, W.C., Jr.*	1979	1985	Austin
Waldman, Nelson F.*	1969	1973	Houston
Walls, Kay	1987	1993	Cleburne
	1982	1985	
Ward, J. Thomas*	1925	1927	Austin
Whiteside, G.P.*	1923	1925	Paris
Woods, Ira E.*	1951	1969	Grapevine
Woolsey, Fred*	1921	1923	Wichita Falls
Wright, E.M.*	1989	1995	Seminole

* Deceased

**IMPORTANT NOTICE
REGARDING THE PRESCRIBING OF 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 OF PRACTICE

Name must be visible to public before entry into office

Permitted Listing of Name on Door, in Advertising and on Written Materials

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), which may be found on page 46 of this booklet.

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: The text in this pamphlet was obtained from the copies of legislation available on the website of the Texas Legislature. No warranty as to the accuracy of the data can be provided by the Texas Optometry Board. Please consult an official copy of the law.

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**TEXAS OPTOMETRY ACT
OPTOMETRISTS AND THERAPEUTIC OPTOMETRISTS**

CHAPTER 351, TEXAS OCCUPATIONS CODE

**SUBCHAPTER A.
GENERAL PROVISIONS**

Sec. 351.001. SHORT TITLE.

This chapter may be cited as the Texas Optometry Act.

Sec. 351.002. DEFINITIONS.

In this chapter:

- (1) "Adnexa" means the lids and drainage system of the eye.
- (2) "Board" means the Texas Optometry Board.
- (3) "Dispensing optician" or "ophthalmic dispenser" means a person who:
 - (A) is not an optometrist, therapeutic optometrist, or licensed physician; and
 - (B) sells or delivers to the consumer ophthalmic devices, including fabricated and finished spectacle lenses, frames, and contact lenses, prescribed by an optometrist, therapeutic optometrist, or licensed physician.
- (4) "Optometrist" means a person licensed under this chapter and authorized to practice optometry.
- (5) "Person" means an individual, association of individuals, trustee, receiver, partnership, corporation, or organization or the manager, agent, servant, or employee of any of those entities.
- (6) "Practice of optometry" means using objective or subjective means, with or without the use of topical ocular pharmaceutical agents, to:
 - (A) determine or measure the powers of vision of the human eye as provided by Section 351.355;
 - (B) examine or diagnose visual defects, abnormal conditions, or diseases of the human eye or adnexa; or
 - (C) prescribe or fit lenses or prisms to correct or remedy a defect or abnormal condition of vision as provided by Section 351.356.
- (7) "Practice of therapeutic optometry" means using objective or subjective means, not including surgery or laser surgery, to:
 - (A) determine or measure the powers of vision of the human eye as provided by Section 351.355;
 - (B) examine or diagnose visual defects, abnormal conditions, or diseases of the human eye or adnexa;
 - (C) prescribe or fit lenses or prisms to correct or remedy a defect or abnormal condition of vision as provided by Section 351.356;
 - (D) administer or prescribe a drug or physical treatment in the manner authorized by this chapter; or
 - (E) treat the visual system, including the eye or adnexa as authorized by this chapter.
- (8) "Surgery" means a procedure using instruments, including lasers, scalpels, or needles, in which human tissue is cut, burned, vaporized, or otherwise altered by any mechanical means, laser, or ionizing radiation. The term includes procedures using instruments that require closing by suturing, clamping, or another device. The term does not include a noninvasive procedure to remove a superficial foreign body in the conjunctiva, eyelid, or corneal epithelium that has not perforated the Bowman's membrane.
- (9) "Therapeutic optometrist" means a person licensed under this chapter and authorized to practice therapeutic optometry.

Sec. 351.003. REFERENCE IN OTHER LAW.

A reference in another law of this state or in a law of a subdivision of this state to "optometrist" means an optometrist or therapeutic optometrist, unless the context clearly indicates otherwise.

Sec. 351.004. SUNSET PROVISION.

The Texas Optometry Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017.

Sec. 351.005. APPLICATION OF CHAPTER; EXEMPTIONS.

(a) This chapter does not:

- (1) apply to an officer or agent of the United States or this state in performing official duties;
- (2) prevent or interfere with the right of a physician licensed by the Texas State Board of Medical Examiners to:

(A) treat or prescribe for a patient; or

(B) direct or instruct a person under the physician's control, supervision, or direction to aid or attend to the needs of a patient according to the physician's specific direction, instruction, or prescription;

- (3) prevent a person from selling ready-to-wear eyeglasses as merchandise at retail;
- (4) prevent an unlicensed person from making simple repairs to eyeglasses;
- (5) prevent or interfere with the right of a dispensing optician registered under Chapter 352 to engage in spectacle or contact lens dispensing under that chapter;
- (6) prevent an ophthalmic dispenser who does not practice optometry or therapeutic optometry from measuring interpupillary distances or making facial measurements to dispense or adapt an ophthalmic prescription, lens, product, or accessory in accordance with the specific directions of a written prescription signed by an optometrist, therapeutic optometrist, or licensed physician;
- (7) prevent the administrator or executor of the estate of a deceased optometrist or therapeutic optometrist from employing an optometrist or therapeutic optometrist to continue the practice of the deceased during estate administration; or
- (8) prevent an optometrist or therapeutic optometrist from working for the administrator or executor of the estate of a deceased optometrist or therapeutic optometrist to continue the practice of the deceased during estate administration.

(b) A direction, instruction, or prescription described by Subsection (a)(2)(B) must be in writing if it is to be followed, performed, or filled outside the physician's office.

(c) Subsection (a)(5) does not prohibit the board from acting under this chapter to restrict the unauthorized practice of optometry.

(d) Continuation of the practice of a deceased optometrist or therapeutic optometrist by an estate under Subsections (a)(7) and (8) must:

- (1) be authorized by the county judge; and
- (2) terminate before the first anniversary of the date of death of the optometrist or therapeutic optometrist.

**SUBCHAPTER B.
TEXAS OPTOMETRY BOARD**

Sec. 351.051. TEXAS OPTOMETRY BOARD; MEMBERSHIP.

(a) The Texas Optometry Board consists of nine members appointed by the governor with the advice and consent of the senate as follows:

- (1) six optometrists or therapeutic optometrists; and
- (2) three members who represent the public.

(b) Appointments to the board shall be made without regard to the race, color, disability, sex, age, religion, or national origin of the appointee.

Sec. 351.052. MEMBERSHIP ELIGIBILITY.

(a) An optometrist or therapeutic optometrist member of the board must have been a resident of this state engaged in the practice of optometry or therapeutic optometry in this state for the five years preceding the date of the member's appointment.

(b) A person is not eligible for appointment as a public member of the board if the person or the person's spouse:

- (1) is registered, certified, or licensed by an occupational regulatory agency in the field of health care;
- (2) is employed by or participates in the management of or is an officer or paid consultant of a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment;
- (3) owns, controls, or has, directly or indirectly, a financial interest in a business entity or other organization that provides health care services or that sells, manufactures, or distributes health care supplies or equipment; or

(4) uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.

Sec. 351.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS; CONFLICTS OF INTEREST.

(a) A member or employee of the board may not:

- (1) be a member of the faculty of a college of optometry or an agent, paid consultant, officer, or employee of a wholesale optical company;
- (2) have a financial interest in a college of optometry or wholesale optical company;
- (3) be an officer, employee, or paid consultant of a trade association in the field of health care; or
- (4) be related within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to a person who is an officer, employee, or paid consultant of a trade association in the field of health care.

(b) A person may not serve as a member of the board or act as the general counsel to the board if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.

(c) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

- (1) the person is an officer, employee, or paid consultant of a Texas trade association in the field of health care; or
- (2) the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of health care.

(d) In this section, "Texas trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest

Sec. 351.054. TERMS.

(a) Members of the board serve staggered six-year terms. The terms of two optometrist or therapeutic optometrist members and one public member expire on January 31 of each odd-numbered year.

(b) A member may not serve more than two complete terms. Service on the board before September 1, 1981, does not count toward that limitation.

Sec. 351.055. OFFICERS.

(a) The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the pleasure of the governor.

(b) The board shall elect an assistant presiding officer and a secretary-treasurer every two years.

Sec. 351.056. GROUNDS FOR REMOVAL.

(a) It is a ground for removal from the board that a member:

- (1) does not have at the time of taking office the qualifications required by Sections 351.051 and 351.052;
- (2) does not maintain during service on the board the qualifications required by Sections 351.051 and 351.052;
- (3) is ineligible for membership under Section 351.051 or 351.053;
- (4) cannot, because of illness or disability, discharge the member's duties for a substantial part of the member's term; or
- (5) without an excuse approved by a majority vote of the board, is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year

(b) The validity of an action of the board is not affected by the fact that it is taken when a ground for removal of a board member exists.

(c) A board member who no longer has the qualifications required by Sections 351.051, 351.052, and 351.053 shall immediately inform the governor and the attorney general of that fact and shall resign from the board.

(d) If the executive director has knowledge that a potential ground for removal exists, the executive director shall notify the presiding officer of the board of the potential ground. The presiding officer shall then notify the governor and the attorney general that a potential ground for removal exists. If the poten-

tial ground for removal involves the presiding officer, the executive director shall notify the next highest ranking officer of the board, who shall then notify the governor and the attorney general that a potential ground for removal exists.

Sec. 351.057. PER DIEM; REIMBURSEMENT.

(a) A board member is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board.

(b) A board member may be reimbursed for actual travel expenses, including expenses for meals, lodging, and transportation. A board member is entitled to reimbursement for transportation expenses as provided by the General Appropriations Act.

(c) At the time a board member applies for reimbursement under this section, the member shall make a sworn statement of the number of days the member engaged in the business of the board and the amount of the member's expenses.

Sec. 351.058. MEETINGS.

(a) At least twice a year the board shall hold regular meetings.

(b) The board shall hold special meetings on the request of five members of the board or on the call of the presiding officer.

(c) If a quorum is not present on the day set for a meeting, the members present may adjourn from day to day until a quorum is present, but that period may not exceed three successive days.

Sec. 351.0585. CERTAIN REPORTS REQUIRED AT REGULAR MEETINGS.

The board shall receive a report regarding complaints at each board meeting.

Sec. 351.059. TRAINING.

(a) The board shall establish a training program for the members of the board in consultation with the governor, the attorney general, and the Texas Ethics Commission.

(b) A person who is appointed to and qualifies for office as a board member may not vote, deliberate, or be counted as a member in attendance at a board meeting until the person completes a training program that complies with this section.

(c) The training program must provide the person with information regarding:

(1) the legislation that created the board and the legislation that created the Contact Lens Prescription Act ;

(2) the board's programs, functions, rules, and budget;

(3) the results of the most recent formal audit of the board;

(4) the requirements of laws relating to open meetings, public information, administrative procedures, and conflicts-of-interest ; and

(5) any applicable ethics policies adopted by the board or the Texas Ethics Commission.

(d) A person appointed to the board is entitled to reimbursement, as provided by the General Appropriations Act, for travel expenses incurred in attending a training program under this section, regardless of whether the attendance at the program occurs before or after the person qualifies for office.

**SUBCHAPTER C.
EXECUTIVE DIRECTOR AND OTHER AGENCY PERSONNEL**

Sec. 351.101. EXECUTIVE DIRECTOR.

The board may employ an executive director as the executive head of the agency.

Sec. 351.103. STAFF ATTORNEY.

The board is authorized to employ a staff attorney.

Sec. 351.104. OTHER PERSONNEL.

The board may employ personnel necessary to administer this chapter, including stenographers, secretaries, inspectors, and legal assistants.

Sec. 351.105. DIVISION OF RESPONSIBILITIES.

The board shall develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the executive director and the staff of the board.

Sec. 351.106. QUALIFICATIONS AND STANDARDS OF CONDUCT INFORMATION.

The board shall provide, as often as necessary, to its members and employees information regarding their:

- (1) qualifications for office or employment under this chapter; and
- (2) responsibilities under applicable law relating to standards of conduct for state officers or employees.

Sec. 351.107. CAREER LADDER PROGRAM; PERFORMANCE EVALUATIONS.

(a) The executive director or the executive director's designee shall develop an intra-agency career ladder program. The program must require intra-agency posting of all nonentry level positions concurrently with any public posting.

(b) The executive director or the executive director's designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

Sec. 351.108. EQUAL OPPORTUNITY POLICY; REPORT.

(a) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of an equal opportunity program under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

- (1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with the requirements of Chapter 21, Labor Code;
- (2) a comprehensive analysis of the board workforce that meets federal and state guidelines;
- (3) procedures by which a determination can be made of significant underuse in the board workforce of all persons for whom federal or state guidelines encourage a more equitable balance; and
- (4) reasonable methods to appropriately address those areas of significant underuse.

(b) A policy statement prepared under Subsection (a) must:

- (1) cover an annual period;
- (2) be updated annually;
- (3) be reviewed by the Commission on Human Rights for compliance with Subsection (a)(1); and
- (4) be filed with the governor.

(c) The governor shall deliver a biennial report to the legislature based on information received under Subsection (b). The report may be made separately or as part of other biennial reports made to the legislature.

**SUBCHAPTER D.
POWERS AND DUTIES**

Sec. 351.151. RULES.

(a) The board by a majority vote of a quorum may adopt procedural and substantive rules.

(b) The board may not adopt a substantive rule before submitting the proposed rule to the attorney general for a ruling on the proposed rule's validity.

Sec. 351.152. FEES.

(a) The board shall set fees in amounts reasonable and necessary so that in the aggregate the fees produce sufficient revenue to cover the cost of administering this chapter. The board shall set fee amounts so as not to maintain an unnecessary fund balance.

(b) The board shall set fees under this section only for acts or services performed or provided by the board, including:

- (1) an examination;
- (2) a re-examination;
- (3) an issuance of a license;

- (4) a renewal of a license; and
- (5) an issuance of a duplicate license.
- (c) The board may not set a fee that existed on September 1, 1993, for an amount less than the amount of the fee on that date.

Sec. 351.153. ADDITIONAL FEE.

(a) The fee for the issuance of a license under this chapter and the fee for the renewal of a license under this chapter are the amounts of those fees set by the board under Section 351.152 and an additional fee of \$200.

(b) Of each additional fee collected, \$50 shall be deposited in the foundation school fund and \$150 shall be deposited in the general revenue fund.

(c) The additional fee imposed by this section does not apply to a person who is not practicing optometry or therapeutic optometry in this state at the time the charge is imposed.

(d) The additional fee imposed by this section may not be used to compute the amount to be deposited in the University of Houston development fund under Section 351.154.

Sec. 351.154. APPLICATION OF FEES.

(a) Except as otherwise provided by this section, the board shall apply the funds realized from all fees payable under this chapter first to pay all necessary expenses of the board and then, by order of the board, to compensate members of the board.

(b) The board shall deposit in the University of Houston development fund 15 percent of each annual renewal fee collected by the board under Section 351.152. The money paid to that fund under this subsection may be used solely for scholarships or improvements in the physical facilities, including library facilities, of the College of Optometry.

Sec. 351.155. RULES RESTRICTING ADVERTISING OR COMPETITIVE BIDDING.

(a) The board may not adopt a rule restricting advertising or competitive bidding by a person regulated by the board except to prohibit a false, misleading, or deceptive practice.

(b) The board may not include in rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:

- (1) restricts the use of any advertising medium;
- (2) restricts the person's personal appearance or use of the person's voice in an advertisement;
- (3) relates to the size or duration of an advertisement by the person;
- (4) restricts the person's advertisement under a trade name;
- (5) restricts a truthful statement regarding:
 - (A) the address or telephone number of an office maintained by the person;
 - (B) office hours regularly maintained by the person;
 - (C) languages, other than English, fluently spoken in the person's office;
 - (D) whether the person provides services under a specified private or public insurance plan or health care plan;
 - (E) publications authored by the person;
 - (F) a teaching position held or formerly held by the person and the dates the position was held;
 - (G) an affiliation with a hospital or clinic;
 - (H) the fact that the person regularly accepts installment payment of fees;
 - (I) the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised; or
 - (J) other factual information that is not false, fraudulent, misleading, or likely to deceive; or
- (6) restricts a truthful statement that relates to public health or that encourages preventive or corrective care.

(c) Subsection (b) does not prevent the board from restricting advertising that is false, fraudulent, misleading, or likely to deceive.

Sec. 351.156. BOARD DUTIES REGARDING COMPLAINTS.

(a) The board by rule shall:

- (1) adopt a form to standardize information concerning complaints made to the board; and
- (2) prescribe information to be provided to a person when the person files a complaint with the board.

(b) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Sec. 351.157. ENFORCEMENT.

(a) The board, a committee of the board, or a member of the board or a committee may:

- (1) issue a subpoena or subpoena duces tecum to compel the attendance of a witness or the production of books, records, or documents;
- (2) administer an oath; or
- (3) take testimony on all matters in the jurisdiction of the board, committee, or member.

(b) The board is not bound by strict rules of procedure or by the laws of evidence in conducting board proceedings but shall base a determination on sufficient legal evidence to sustain the determination.

Sec. 351.1575. INSPECTION OF PREMISES AND REVIEW OF RECORDS AUTHORIZED.

(a) The board, at any time and without notice during regular business hours, may:

- (1) enter and inspect a facility operated by a person engaged in any activity regulated under this chapter; and
- (2) to the extent allowed by federal law, inspect and review any record, including a patient record, maintained by a person engaged in any activity regulated under this chapter.

(b) The board may enter and inspect a facility or inspect and review any record under Subsection (a) as necessary to:

- (1) ensure compliance with this chapter; or
- (2) investigate a complaint made to the board.

Sec. 351.158. LEGAL REPRESENTATION.

(a) In a hearing before the board or in a suit in which the board is a party, the board may appoint the board's staff attorney as an attorney of record for the board, except that the staff attorney is subordinate to a county attorney, district attorney, or attorney general if one of those attorneys is also an attorney of record in the proceeding.

(b) In a suit in which the board is a party, the board may appoint the staff attorney as special assistant to the county attorney, district attorney, or attorney general. The board must pay the staff attorney.

(c) This section does not limit or exclude the right of the county attorney, district attorney, or attorney general to appear as the board's attorney in the court to which that attorney is entitled or required under the constitution to represent the state.

Sec. 351.159. COMMITTEE APPOINTMENTS AND RECOMMENDATIONS.

(a) The board may appoint committees from its own membership.

(b) A committee shall consider any matter referred to the committee relating to the enforcement of this chapter and rules adopted under this chapter. The committee shall make a recommendation on the matter to the board.

Sec. 351.160. PHARMACEUTICAL AGENTS.

The board by rule shall designate classifications of pharmaceutical agents that therapeutic optometrists may use in the practice of therapeutic optometry as authorized by this chapter. Additional classifications of medications authorized by Section 351.165(c)(3) may only be approved as provided by that section.

Sec. 351.161. SEAL; DESIGN OF LICENSE.

The board shall adopt an official seal and a license of suitable design.

Sec. 351.162. OFFICE.

The board shall maintain an office in which it keeps all permanent records.

Sec. 351.163. BOARD RECORDS.

(a) The board shall keep a record of its proceedings.

(b) The board may keep a record of any information the board wants to record. The board shall keep a record of:

- (1) the name, age, and present legal and mailing address of each applicant for examination;

- (2) the name and location of the school of optometry from which the applicant holds credentials;
 - (3) the time devoted by the applicant to the study and practice of optometry; and
 - (4) whether the board rejects or licenses the applicant.
- (c) A certified copy of the record described by Subsection (b), marked with the hand and seal of the executive director, is:
- (1) admissible evidence in all courts; and
 - (2) prima facie evidence of all matters contained in the record.
- (d) The executive director shall number and record each license or annual renewal certificate issued by the board.

Sec. 351.164. ANNUAL REPORT.

(a) The board shall file annually with the governor and the presiding officer of each house of the legislature a complete and detailed written report accounting for all funds received and disbursed by the board during the preceding fiscal year.

(b) The report must be in the form and reported in the time provided by the General Appropriations Act.

Sec. 351.165. OPTOMETRIC HEALTH CARE ADVISORY COMMITTEE.

(a) The Optometric Health Care Advisory Committee consists of six members appointed as follows:

- (1) two members who are therapeutic optometrists, appointed by the board;
- (2) two members who are board-certified ophthalmologists, appointed by the Texas State Board of Medical Examiners; and
- (3) two members who are pharmacologists, appointed by the Texas State Board of Pharmacy.

(b) Members of the committee serve staggered two-year terms, with the terms of half of the members expiring September 1 each year.

(c) The committee shall make recommendations that:

- (1) establish requirements for the education and clinical training necessary for certification as an optometric glaucoma specialist;
- (2) establish the parameters of care for treatment of ocular diseases and conditions by optometric glaucoma specialists as health care technology advances; and
- (3) identify additional classes of pharmaceuticals under Section 351.358(c) that are effective treatments for ocular diseases and conditions and that may be effectively used by certified optometric glaucoma specialists.

(d) A person is not eligible for appointment as a pharmacologist member of the committee if the person is licensed as a therapeutic optometrist or ophthalmologist or is related within the second degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to a person who is licensed as a therapeutic optometrist or ophthalmologist.

(e) In making any recommendation, the committee shall consider patient safety, patient costs, the effect on a patient's access to health care, patient convenience, and any added efficiencies to the health care delivery system the decision may involve.

(f) Before a recommendation made by the committee may become law, the board and the Texas State Board of Medical Examiners must adopt the recommendation. If either board fails to adopt a recommendation of the committee, that board must articulate a sound scientific reason for the failure to adopt.

(g) Unless continued in existence by act of the legislature, the Optometric Health Care Advisory Committee is abolished and this section expires September 1, 2005.

Sec. 351.166. INFORMATION PROVIDED TO LICENSE HOLDERS.

At least once each biennium, the board shall provide to license holders information on:

- (1) prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;
- (2) abusive and addictive behavior of certain persons who use prescription pain medications;
- (3) common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and
- (4) the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

Sec. 351.167. POISON CONTROL CENTER INFORMATION.

The board shall provide to license holders information regarding the services provided by poison con-

trol centers.

Sec. 351.168. TECHNOLOGICAL SOLUTIONS POLICY REQUIRED.

The board shall implement a policy requiring the board to use appropriate technological solutions to improve the board's ability to perform its functions. The policy must ensure that the public is able to interact with the board on the Internet.

Sec. 351.169. ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION.

(a) The board shall develop and implement a policy to encourage the use of:

(1) negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of board rules; and

(2) appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) The board's procedures relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c) The board shall designate a trained person to:

(1) coordinate the implementation of the policy adopted under Subsection (a);

(2) serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3) collect data concerning the effectiveness of those procedures, as implemented by the board.

**SUBCHAPTER E.
PUBLIC INTEREST INFORMATION AND COMPLAINT PROCEDURES**

Sec. 351.201. PUBLIC INTEREST INFORMATION.

(a) The board shall prepare information of public interest describing the functions of the board and the procedures by which complaints are filed with and resolved by the board.

(b) The board shall make the information available to the public and appropriate state agencies.

Sec. 351.202. PUBLIC PARTICIPATION.

(a) The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the board's jurisdiction.

(b) The board shall prepare and maintain a written plan that describes how a person who does not speak English may be provided reasonable access to the board's programs.

Sec. 351.203. COMPLAINTS.

(a) The board by rule shall establish methods by which a consumer or service recipient is notified of the name, mailing address, and telephone number of the board for the purpose of directing a complaint to the board. The board may provide for that notice:

(1) on each registration form, application, or written contract for service provided by a person regulated under this chapter;

(2) on a sign prominently displayed in the place of business of a person regulated under this chapter;

or

(3) in a bill for service provided by a person regulated under this chapter.

(b) The board shall list with its regular telephone number any toll-free telephone number established under other state law that may be called to present a complaint about a health professional.

(c) The board shall make information available describing the procedures established by the board relating to complaint investigation and resolution.

Sec. 351.2035. COMPLAINTS RESULTING FROM INSPECTIONS.

(a) The board shall handle as a complaint any violation of this chapter or a rule adopted by the board that is discovered during an inspection conducted under Section 351.1575(b)(1).

(b) The board shall investigate and dispose of a complaint described by Subsection (a) in the same manner that the board investigates and disposes of other complaints made under this chapter.

Sec. 351.2036. PROCEDURE FOR PROCESSING COMPLAINTS.

(a) The board may delegate to board staff the authority to dismiss or enter into an agreed settlement of a complaint that does not directly relate to patient care and the investigation or disposition of which does not require expertise in optometry or therapeutic optometry. The disposition determined by board staff must be approved by the board at a public meeting.

(b) A complaint delegated under this section shall be referred to an informal settlement conference under Section 351.507 if:

- (1) the board staff determines that the complaint should not be dismissed or settled; or
- (2) the board staff is unable to reach an agreed settlement.

(c) A complaint that is directly related to patient care or the investigation or disposition of which requires expertise in optometry or therapeutic optometry shall be reviewed by two board members who are optometrists or therapeutic optometrists who shall:

- (1) dismiss the complaint if both board members agree that the complaint should be dismissed; or
- (2) refer the complaint to an informal settlement conference under Section 351.507.

Sec. 351.204. RECORDS OF COMPLAINTS.

(a) The board shall maintain a system to act promptly and efficiently on each complaint filed with the board. The board shall maintain information concerning:

- (1) parties to the complaint;
- (2) the subject matter of the complaint;
- (3) a summary of the results of the review or investigation of the complaint;
- (4) the disposition of the complaint; and
- (5) other relevant information.

(b) The board shall periodically notify parties to the complaint of the status of the complaint until the board finally disposes of the complaint.

Sec. 351.2045. CONFIDENTIALITY OF INVESTIGATION FILES.

(a) The board's investigation files are confidential, privileged, and not subject to discovery, subpoena, or any other means of legal compulsion for release other than to the board or an employee or agent of the board.

(b) The board shall share information in investigation files, on request, with another state or federal regulatory agency or with a local, state, or federal law enforcement agency regardless of whether the investigation has been completed. The board is not required to disclose under this subsection information that is an attorney-client communication, an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(c) On the completion of the investigation and before a hearing under Section 351.503, the board shall provide to the license holder, subject to any other privilege or restriction set forth by rule, statute, or legal precedent, access to all information in the board's possession that the board intends to offer into evidence in presenting its case in chief at the contested case hearing on the complaint. The board is not required to provide:

- (1) a board investigative report or memorandum;
- (2) the identity of a nontestifying complainant; or
- (3) attorney-client communications, attorney work product, or other materials covered by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence.

(d) Notwithstanding Subsection (a), the board may:

- (1) disclose a complaint to the affected license holder; and
- (2) provide to a complainant the license holder's response to the complaint, if providing the response is considered by the board to be necessary to investigate the complaint.

(e) This section does not prohibit the board or another party in a disciplinary action from offering into evidence in a contested case under Chapter 2001, Government Code, a record, document, or other information obtained or created during an investigation.

Sec. 351.205. GENERAL RULES REGARDING COMPLAINT INVESTIGATION AND DISPOSITION.

(a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this section must:

- (1) distinguish between categories of complaints;
- (2) ensure that a complaint is not dismissed without appropriate consideration;

- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the complaint;
 - (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
 - (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and prescribe the procedures for the board to obtain the services of a private investigator.
- (a-1) The board shall adopt rules that prescribe a method for prioritizing complaints for purposes of complaint investigation and disposition. The rules adopted under this subsection must:
- (1) place the highest priority on complaints that allege conduct that:
 - (A) violates the standard of professional care and judgment of an optometrist or therapeutic optometrist, as applicable;
 - (B) involves professional misconduct; or
 - (C) potentially threatens public health or safety; and
 - (2) place a lower priority on complaints that are not described by Subdivision (1).
- (b) The board shall:
- (1) dispose of a complaint in a timely manner; and
 - (2) establish a schedule for conducting each phase of the disposition of the complaint that is under the control of the board not later than the 30th day after the date the board receives the complaint.
- (c) The board shall notify the parties to the complaint of the projected time requirements for pursuing the complaint.
- (d) The board shall notify the parties to the complaint of any change in the schedule not later than the seventh day after the date the change is made.
- (e) The executive director shall notify the board of a complaint that is unresolved after the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

SUBCHAPTER F. LICENSE REQUIREMENTS

Sec. 351.251. LICENSE REQUIRED.

A person may not practice optometry or therapeutic optometry unless the person holds a license issued under this chapter.

Sec. 351.252. EDUCATION REQUIREMENTS FOR THERAPEUTIC OPTOMETRIST.

- (a) A person must satisfactorily complete the education requirements established by board rule to be licensed as a therapeutic optometrist.
- (b) The education necessary to meet the requirements must:
 - (1) be provided by an entity approved by the board; and
 - (2) include an emphasis on the examination, diagnosis, and treatment of conditions of the human eye and adnexa.
- (c) The board by rule shall require successful completion of accredited academic and clinical courses in pharmacology and related pathology that are:
 - (1) approved by the board; and
 - (2) determined by the board to be equivalent in the total number of classroom hours to the requirements for other health care professionals in this state who are licensed to use pharmaceutical agents, including dentists, podiatrists, and physicians.

Sec. 351.253. EXAMINATION REQUIREMENT FOR THERAPEUTIC OPTOMETRIST.

A person must pass the examination given by the board to be licensed to practice therapeutic optometry in this state.

Sec. 351.254. EXAMINATION APPLICATION.

- (a) An applicant is eligible to take the licensing examination if the applicant provides to the executive director, on a form provided by the board, information the board considers necessary to enforce this chapter, including satisfactory sworn evidence that the applicant:
 - (1) has attained the age of majority;
 - (2) is of good moral character;
 - (3) has a preliminary education equivalent to one that would permit the applicant to enroll in The

University of Texas; and

(4) has attended and graduated from a reputable college of optometry that meets board requirements.

(b) For purposes of Subsection (a)(4), a college of optometry is reputable if the college has:

(1) entrance requirements that are as high as those adopted by the better class of universities and schools of optometry; and

(2) a course of instruction that is:

(A) as demanding as that adopted by the better class of universities and schools of optometry;

(B) equivalent to not less than six terms of eight months each; and

(C) approved by the board.

(c) An applicant who meets the other requirements of this section may take the examination without having graduated as required by Subsection (a) 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.

Sec. 351.255. CONDUCT OF EXAMINATION.

(a) The board shall give an applicant notice of the date and place of the examination. The examination shall be given at least twice a year at the board's regular meetings.

(b) The board shall conduct the examination:

(1) in writing and by other means that the board considers adequate to determine applicant qualifications; and

(2) in a manner that is fair and impartial to each applicant and recognized school of optometry.

(c) If a national testing organization does not prepare the written portion of the examination, the board shall have an independent testing professional validate that portion.

(d) The board shall give the same written examination to each applicant examined at the same time.

Sec. 351.256. EXAMINATION SUBJECTS.

(a) The examination must consist of written or practical tests in subjects regularly taught in recognized accredited colleges of optometry, including:

(1) practical, theoretical, and physiological optics;

(2) theoretical and practical optometry; and

(3) the anatomy, physiology, and pathology of the eye as applied to optometry.

(b) The examination must also include examination in pharmacology and related pathology.

Sec. 351.257. EXAMINATION RESULTS.

(a) The board shall notify each examinee of the examination results not later than the 30th day after the date the examination is administered. If an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the examination results not later than the 14th day after the date the board receives the results from the testing service.

(b) If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day.

(c) If requested in writing by a person who fails an examination, the board shall provide to the person an analysis of the person's performance on the examination.

Sec. 351.258. ISSUANCE OF LICENSE TO THERAPEUTIC OPTOMETRIST; FEE.

(a) The board shall:

(1) register as qualified under this chapter an applicant who passes the examination and meets all board requirements; and

(2) issue to the applicant a license to practice therapeutic optometry in this state.

(b) A person who passes the examination and meets board requirements must pay a fee for issuance of a license not later than the 90th day after the date the person receives notice, by registered mail at the address given on the examination papers or given at the time of the examination, that the person is eligible for a license.

(c) A person described by Subsection (a) who fails to pay the fee in a timely manner waives the right to obtain a license. The board may refuse to issue a license to the person until the person passes another examination.

Sec. 351.259. PROVISIONAL LICENSE.

(a) The board shall issue a provisional license to practice optometry or therapeutic optometry to an applicant who:

- (1) is licensed in good standing as an optometrist or therapeutic optometrist in another state that has licensing requirements that are substantially equivalent to the requirements of this chapter;
- (2) has passed a national or other examination recognized by the board relating to the practice of optometry or therapeutic optometry; and
- (3) is sponsored by a person licensed by the board under this chapter with whom the provisional license holder may practice.

(b) The board may waive the requirement of Subsection (a)(3) for an applicant if the board determines that compliance is a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this chapter to the holder of a provisional license under this section if:

- (1) the provisional license holder passes the examination required by Section 351.253 and satisfies other license requirements under this chapter; and
- (2) the board verifies that the provisional license holder meets the academic and experience requirements for a license under this chapter.

(d) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the board issues the provisional license. The board may extend the 180-day limit if the results of an examination administered or graded by a testing organization have not been received by the board.

Sec. 351.2595. LICENSE WITHOUT EXAMINATION.

The board may issue a license to practice therapeutic optometry without requiring the applicant to pass all or part of the examination required by Section 351.253 if:

- (1) the applicant is licensed in good standing as a therapeutic optometrist in another state;
- (2) the applicant has passed an examination that is equivalent or superior to the examination required by Section 351.253;
- (3) during at least five of the seven years preceding the application date, the applicant has 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;
- (4) there are no pending disciplinary actions against the applicant in the state in which the applicant is licensed; and
- (5) the applicant's license has never been suspended or revoked.

Sec. 351.260. LIMITED LICENSE FOR CLINICAL FACULTY.

(a) The board by rule may issue a limited license to a full-time clinical faculty member of an institution of higher education of this state who provides instruction in optometry or therapeutic optometry.

(b) A license issued under this section may authorize the faculty member to practice optometry or therapeutic optometry only on the premises of the institution of higher education and its affiliated teaching clinics and only as part of the institution's teaching program.

(c) The board by rule may adopt criteria and fees for issuance and renewal of a license under this section.

Sec. 351.261. DISPLAY OF LICENSE OR CERTIFICATE.

A person practicing optometry or therapeutic optometry in this state shall:

- (1) display the person's license or certificate in a conspicuous place in the principal office in which the person practices optometry or therapeutic optometry; and
- (2) whenever required, exhibit the license or certificate to the board or the board's authorized representative.

Sec. 351.262. INFORMATION PRESENTED TO PATIENT.

(a) An optometrist or therapeutic optometrist shall, within a reasonable time after completing an examination of a patient, present to the patient a prescription, bill, or receipt containing the license number and name of the optometrist or therapeutic optometrist. This subsection does not affect the individual professional liability of the optometrist or therapeutic optometrist.

(b) Notwithstanding Subsection (a), a person practicing optometry or therapeutic optometry outside

of the principal office in which the person practices optometry or therapeutic optometry shall deliver to a patient fitted with eyeglasses a specification of and the prices charged for the lenses and material provided to the patient, with a bill containing:

- (1) the person's signature;
- (2) the person's mailing address; and
- (3) the number of the person's license or certificate.

Sec. 351.263. LOST OR DESTROYED LICENSE.

The board shall issue a license under this chapter to a license holder whose license has been lost or destroyed on:

- (1) submission of an affidavit stating:
 - (A) that the license has been lost or destroyed;
 - (B) that the person making the affidavit is the person to whom the license was issued; and
 - (C) any other information required by the board; and
- (2) payment of a fee for issuance of a duplicate license.

Sec. 351.264. INACTIVE STATUS.

The board by rule may provide for a license holder's license to be placed on inactive status.

SUBCHAPTER G. LICENSE RENEWAL

Sec. 351.301. ANNUAL RENEWAL CERTIFICATE.

(a) A person required by this subchapter to hold an annual renewal certificate may not practice optometry or therapeutic optometry without the certificate.

(b) A violation of this section has the same effect as, and is subject to the penalties for, practicing optometry or therapeutic optometry without holding a license as required by Subchapter F.

Sec. 351.302. LICENSE RENEWAL.

(a) The board by rule may adopt a system under which licenses expire on various dates during the year. The board shall adjust the final dates for payment, the dates for notice of nonpayment, and the dates for license cancellation accordingly.

(b) For the year in which the license expiration date is changed, license renewal fees payable not later than January 1 shall be prorated on a monthly basis so that each license holder pays only that portion of the license renewal fee allocable to the number of months during which the license is valid.

(c) On renewal of the license on the new expiration date, the total license renewal fee is payable.

Sec. 351.303. NOTICE OF LICENSE EXPIRATION.

Not later than the 30th day before the date a person's license is to expire, the board shall send written notice of the impending license expiration to the person at the person's last known address according to board records.

Sec. 351.304. PROCEDURE FOR RENEWAL.

(a) Not later than January 1 of each year or as otherwise provided under Section 351.302, an optometrist or therapeutic optometrist shall pay to the board an annual renewal fee for the renewal of a license to practice optometry or therapeutic optometry for the year. A person may renew an unexpired license by paying the required renewal fee to the board before the license expiration date.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the board a renewal fee that is equal to the sum of one and one-half times the annual renewal fee set by the board under Section 351.152 and the additional fee required by Section 351.153. If a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the board a renewal fee that is equal to the sum of two times the annual renewal fee set by the board under Section 351.152 and the additional fee required by Section 351.153.

(c) Except as otherwise provided by this subchapter, a person whose license has been expired for one year or more may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license.

Sec. 351.305. ISSUANCE OF CERTIFICATE.

On receipt of the required fees, the board shall issue an annual renewal certificate containing information from board records that the board considers necessary for the proper enforcement of this chapter, including the license number and the year for which the license is renewed.

Sec. 351.306. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER.

(a) The board may renew without examination the expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application.

(b) The person must pay to the board a fee that is equal to the amount of the fee set by the board under Section 351.153(a).

Sec. 351.307. GOVERNMENTAL SERVICE, TRAINING, OR EDUCATION.

An optometrist or therapeutic optometrist may obtain reinstatement of an expired license without paying a lapsed renewal fee or other fee and without passing an examination if:

- (1) the license holder's license expired while the license holder was engaged in:
 - (A) active duty with a United States military service or with the United States Public Health Service;
 - (B) full-time federal service; or
 - (C) training or education under the supervision of the United States, before induction into a United States military service;
- (2) termination of the license holder's service, training, or education occurred other than by dishonorable discharge; and
- (3) not later than the first anniversary of the date of termination of the service, training, or education, the license holder provides the board with an affidavit stating that:
 - (A) the license holder was engaged in the service, training, or education; and
 - (B) termination of the service, training, or education occurred other than by dishonorable discharge.

Sec. 351.308. CONTINUING EDUCATION.

(a) An optometrist or therapeutic optometrist must take annual courses in subjects relating to the use and application of scientific, technical, and clinical advances in subjects relating to the practice of optometry or therapeutic optometry regularly taught in recognized optometric universities and schools, including:

- (1) vision care;
- (2) vision therapy; and
- (3) visual training.

(b) An optometrist or therapeutic optometrist must complete 16 hours of study each calendar year, of which at least six hours must be in the diagnosis or treatment of ocular disease.

(c) An optometrist or therapeutic optometrist shall fulfill the continuing education requirements by attending continuing education courses sponsored by an accredited college of optometry or a course approved by the board. Course attendance must be certified to the board on a form approved by the board. The license holder shall submit the certification with the license renewal application and fee.

(d) The board may take action necessary to qualify for federal funds or grants made available to establish or maintain continuing education programs.

(e) The board may not issue a renewal certificate to a license holder who has not complied with the requirements of this section unless the license holder:

- (1) provides the board with evidence acceptable to the board that the license holder has, since the license expiration, completed sufficient hours of approved continuing education courses to satisfy any deficiency for the previous year; and
- (2) pays to the board in addition to the license renewal fee a penalty that is equal to the amount of the license renewal fee.

(f) Continuing education hours used by a license holder to satisfy a deficiency for the previous year under Subsection (e)(1) may not be used to satisfy the requirements for the year in which the hours are earned.

Sec. 351.309. CONTINUING EDUCATION EXEMPTIONS.

A person is exempt from the continuing education requirements of Section 351.308 if the person:

- (1) holds a license but does not practice optometry or therapeutic optometry in this state;
- (2) served in the regular armed forces of the United States during part of the 12 months preceding the annual license renewal date;
- (3) submits proof to the board that the person suffered a serious or disabling illness or physical disability preventing the person from complying with the requirements during the 12 months preceding the annual license renewal date; or
- (4) was first licensed during the 12 months preceding the annual license renewal date.

**SUBCHAPTER H.
PRACTICE BY LICENSE HOLDER**

Sec. 351.351. LICENSE HOLDER INFORMATION.

(a) A license holder shall file with the board:

- (1) the license holder's mailing address;
- (2) the address of the license holder's residence;
- (3) the mailing address of each office of the license holder; and
- (4) the address for the location of each office of the license holder that has an address different from the office's mailing address.

(b) Not later than the 10th day after the date of a change in the information required to be filed with the board under Subsection (a), the license holder shall file with the board a written notice of the change.

Sec. 351.352. OPTOMETRIC FILES AND RECORDS.

(a) All prescription files, patient records, and business records of an optometric practice are the sole property of the optometrist or therapeutic optometrist.

(b) A patient may obtain a copy of the patient's optometric records, or may have the records forwarded to another doctor, by making a signed, written request to the optometrist or therapeutic optometrist for the records.

(c) An optometrist or therapeutic optometrist may charge a reasonable processing fee for providing optometric records to a patient. The optometrist or therapeutic optometrist may provide the records in summary form unless the patient specifically requests otherwise.

(d) This section does not affect a patient's right of access to the patient's contact lens prescription under Chapter 353.

Sec. 351.353. INITIAL EXAMINATION OF PATIENT.

To ensure adequate examination of a patient for whom an optometrist or therapeutic optometrist signs or causes to be signed an ophthalmic lens prescription, in the initial examination of the patient the optometrist or therapeutic optometrist shall make and record, if possible, the following findings concerning the patient's condition:

- (1) case history, consisting of ocular, physical, occupational, and other pertinent information;
- (2) visual acuity;
- (3) the results of a biomicroscopy examination, including an examination of lids, cornea, and sclera;
- (4) the results of an internal ophthalmoscopic examination, including an examination of media and fundus;
- (5) the results of a static retinoscopy, O.D., O.S., or autorefractor;
- (6) subjective findings, far point and near point;
- (7) assessment of binocular function;
- (8) amplitude or range of accommodation;
- (9) tonometry; and
- (10) angle of vision, to right and to left.

Sec. 351.354. CERTAIN OPTOMETRIC SERVICES AUTHORIZED.

An optometrist or therapeutic optometrist may:

- (1) perform:
 - (A) vision therapy;
 - (B) hand-eye coordination exercises;

- (C) visual training; and
- (D) developmental vision therapy; and
- (2) evaluate and remedy a learning or behavioral disability associated with or caused by a defective or abnormal condition of vision.

Sec. 351.355. DETERMINING OR MEASURING VISION.

In determining or measuring the powers of vision of the human eye, an optometrist or therapeutic optometrist may:

- (1) examine the eye to diagnose the presence of a defect or abnormal condition, the presence or effect of which may be corrected, remedied, or relieved by the use of lenses or prisms;
- (2) determine the accommodative or refractive condition or the range or powers of vision or muscular equilibrium of the eye; or
- (3) examine the human vision system to determine a departure from the normal, measure the system's powers of vision, or adapt lenses or prisms for the system's aid or relief.

Sec. 351.356. FITTING LENSES OR PRISMS.

In fitting lenses or prisms, an optometrist or therapeutic optometrist may:

- (1) directly or indirectly prescribe or supply lenses or prisms;
- (2) make measurements involving the eyes or the optical requirements of the eyes; or
- (3) adapt or supply lenses or prisms to:
 - (A) correct, remedy, or relieve a defect or abnormal condition of the human eye; or
 - (B) correct, remedy, or relieve or attempt to correct, remedy, or relieve the effect of a defect or abnormal condition of the human eye.

Sec. 351.357. FITTING AND DISPENSING CONTACT LENSES.

(a) Contact lenses may be fitted only by an optometrist, therapeutic optometrist, or licensed physician.

(b) An ophthalmic dispenser may dispense contact lenses on a fully written contact lens prescription issued by an optometrist, therapeutic optometrist, or licensed physician. The ophthalmic dispenser may:

- (1) fabricate or order the contact lenses and dispense them to the patient with appropriate instructions for the care and handling of the lenses; and
- (2) mechanically adjust the lenses.

(c) The ophthalmic dispenser may not measure the eye or cornea or evaluate the physical fit of the contact lenses in any way.

(d) Notwithstanding Subsection (b), an optometrist, therapeutic optometrist, or licensed physician who issues a contact lens prescription remains professionally responsible to the patient.

Sec. 351.358. OPHTHALMIC DEVICES, ORAL MEDICATIONS, AND PHARMACEUTICAL AGENTS.

(a) An optometrist may not treat the eye for a defect or administer or prescribe a drug or physical treatment unless the optometrist is a therapeutic optometrist or licensed physician.

(b) A therapeutic optometrist may:

- (1) administer, perform, or prescribe ophthalmic devices, procedures, and appropriate medications administered by topical or oral means, in accordance with this section and Section 351.3581, to diagnose or treat visual defects, abnormal conditions, or diseases of the human vision system, including the eye and adnexa; or
- (2) administer medication by parenteral means for a purpose and in a manner prescribed by Subsection (e).

(c) A therapeutic optometrist may prescribe oral medications only in the following classifications of oral pharmaceuticals:

- (1) one 10-day supply of oral antibiotics;
- (2) one 72-hour supply of oral antihistamines;
- (3) one seven-day supply of oral nonsteroidal anti—inflammatories;
- (4) one three-day supply of any analgesic identified in Schedules III, IV, and V of 21 U.S.C. Section 812; and
- (5) any other oral pharmaceutical recommended by the Optometric Health Care Advisory Committee and approved by the board and the Texas State Board of Medical Examiners.

(d) A therapeutic optometrist may independently administer oral carbonic anhydrase inhibitors for

emergency purposes only and shall immediately refer the patient to an ophthalmologist.

(e) A therapeutic optometrist may inject appropriate medication for a patient who has an anaphylactic reaction to counteract the anaphylaxis. The therapeutic optometrist shall immediately refer the patient to a physician.

Sec. 351.3581. DIAGNOSIS AND TREATMENT OF GLAUCOMA.

(a) A therapeutic optometrist may not administer or prescribe an oral or parenteral medication or treat glaucoma unless the therapeutic optometrist holds a certificate issued by the board. A therapeutic optometrist certified under this subsection shall be known as an optometric glaucoma specialist. To obtain a certificate, a therapeutic optometrist must as required under Section 351.165(c):

- (1) complete an instructional clinical review course; and
- (2) pass an examination approved by the board.

(b) Not later than the 30th day after the date of the initial diagnosis of glaucoma, a therapeutic optometrist shall engage in consultation with an ophthalmologist to develop an individual treatment plan that is approved by the therapeutic optometrist and ophthalmologist. 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) A therapeutic optometrist required to engage in comanagement consultation with an ophthalmologist shall inform the patient diagnosed with glaucoma that the therapeutic optometrist is required to have the diagnosis confirmed and comanaged with 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 therapeutic optometrist practices.

(d) A therapeutic optometrist shall refer a patient to an ophthalmologist if:

- (1) the patient is younger than 16 years of age and has been diagnosed as having glaucoma;
- (2) the patient has been diagnosed as having acute closed angle glaucoma;
- (3) the patient has been diagnosed as having malignant glaucoma or neovascular glaucoma;
- (4) the therapeutic optometrist 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
- (5) the therapeutic optometrist determines that a patient's glaucoma is not responding appropriately to a treatment specified in Subsection (f) and, after consulting a physician by telephone, fax, or another method, the physician determines that the patient should be seen by the physician or an appropriate specialist.

(e) A therapeutic optometrist 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 a therapeutic optometrist from recommending a physician or specialist.

(f) On making an initial diagnosis of glaucoma, a therapeutic optometrist shall set a target pressure that is not more than 80 percent of the initial intraocular pressure. The patient's glaucoma is not considered to be appropriately responding to treatment if the patient fails to achieve the target pressure within an appropriate time.

(g) Before a therapeutic optometrist may prescribe a beta blocker, the therapeutic optometrist 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. 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 therapeutic optometrist must refer the patient to a physician for a physical examination before initiating beta blocker therapy.

(h) A therapeutic optometrist who diagnoses acute closed angle glaucoma may initiate appropriate emergency treatment for a patient but shall refer the patient to a physician in a timely manner.

(i) A physician may charge a reasonable consultation fee for a consultation given as provided by this section.

(j) A physician to whom a patient is referred by a therapeutic optometrist under this section shall forward to the therapeutic optometrist, not later than the 30th day after first seeing the patient, a written report on the results of the referral. The therapeutic optometrist shall maintain the report in the patient's records. A physician who, for a medically appropriate reason, does not return a patient to the therapeutic optometrist who referred the patient shall state in the physician's report to the therapeutic optometrist the specific medical reason for failing to return the patient.

Sec. 351.359. PRESCRIPTION.

- (a) An ophthalmic lens prescription must include:
 - (1) the signature of the optometrist or therapeutic optometrist; and
 - (2) the information and parameters the optometrist or therapeutic optometrist considers relevant or necessary.
- (b) The prescription may not contain a restriction that limits the parameters to a private label not available to the optical industry as a whole.

Sec. 351.360. PROFESSIONAL STANDARD OF THERAPEUTIC OPTOMETRIST.

A therapeutic optometrist, including an optometric glaucoma specialist, is subject to the same standard of professional care and judgment as a person practicing as an ophthalmologist under Subtitle B.

Sec. 351.361. LEASE; PAYMENT BASIS; ACCOUNTS RECEIVABLE.

- (a) An optometrist or therapeutic optometrist may:
 - (1) lease space from an establishment;
 - (2) pay for franchise fees or other services on a percentage or gross receipts basis; or
 - (3) sell, transfer, or assign accounts receivable.
- (b) Subsection (a)(2) does not authorize activity prohibited by Section 351.408.
- (c) The purpose of this section is to protect the public in the practice of optometry or therapeutic optometry, better enable the public to assign professional responsibility, and further safeguard the doctor-patient relationship.

Sec. 351.362. PROFESSIONAL RESPONSIBILITY; NAME OF PRACTICE.

- (a) An optometrist or therapeutic optometrist may practice under a trade name, an assumed name, or the name of a professional corporation or association.
- (b) An optometrist or therapeutic optometrist practicing in this state shall display the actual name under which the optometrist or therapeutic optometrist is licensed by the board, so that the name is visible to the public before entry into the optometrist's or therapeutic optometrist's office reception area.
- (c) Section 351.361(c) applies to this section.

Sec. 351.363. MERCANTILE ESTABLISHMENT.

- (a) To safeguard the visual welfare of the public and the doctor-patient relationship, assign professional responsibility, establish standards of professional surroundings, more nearly secure to the patient the optometrist's or therapeutic optometrist's undivided loyalty and service, and carry out the prohibitions of this chapter against placing an optometric or therapeutic optometric license in the service or at the disposal of an unlicensed person, this section applies to an optometrist or therapeutic optometrist who leases space from and practices optometry or therapeutic optometry on the premises of a mercantile establishment.
- (b) The optometric practice must be owned by an optometrist or therapeutic optometrist. Every phase of the practice and the leased space of the optometric practice must be controlled exclusively by an optometrist or therapeutic optometrist.
- (c) The prescription files and business records of the optometric practice are the sole property of the optometrist or therapeutic optometrist and may not be involved with a mercantile establishment or unlicensed person.
- (d) The lessor of the optometric practice space may inspect business records that are essential to the successful initiation or continuation of a lease of space based on a percentage of gross receipts.
- (e) The leased space of the optometric practice must be definite and apart from space used by other occupants of the premises. Solid, opaque partitions or walls from floor to ceiling must separate the optometric practice space from space used by other occupants. Railings, curtains, or other similar arrangements do not satisfy the requirements of this subsection.
- (f) The leased space must have a patient's entrance opening on a public thoroughfare, such as a public street, hall, lobby, or corridor. An aisle of a mercantile establishment does not satisfy the requirement of this subsection. An entrance is not considered a patient's entrance unless actually used as an entrance by the optometrist's or therapeutic optometrist's patients.

Sec. 351.364. RELATIONSHIPS WITH DISPENSING OPTICIANS.

- (a) If an optometrist or therapeutic optometrist occupies space for the practice of optometry or therapeutic optometry on premises on which a person engages in the business of a dispensing optician, solid

partitions or walls from floor to ceiling must separate the space occupied by the optometrist or therapeutic optometrist from the space occupied by the dispensing optician.

(b) The space occupied by the optometrist or therapeutic optometrist must have a patient's entrance opening on a public thoroughfare, such as a public street, hall, lobby, or corridor. An entrance is not considered a patient's entrance unless actually used as an entrance by the optometrist's or therapeutic optometrist's patients.

(c) An optometrist or therapeutic optometrist may engage in the business of a dispensing optician, own stock in a corporation engaged in the business of a dispensing optician, or be a partner in a firm engaged in the business of a dispensing optician, but the records and accounts of the business of a dispensing optician must be kept separate from those of the optometric practice.

(d) The purpose of this section is to ensure that the practices of optometry and therapeutic optometry are carried out in a manner completely separate from the business of a dispensing optician, with no control of one by the other and no solicitation for one by the other, except as described by this section.

Sec. 351.365. PATIENT RIGHTS REGARDING SPECTACLE PRESCRIPTION.

(a) If, after examining a patient, an optometrist or therapeutic optometrist believes that lenses are required to correct or remedy a defect or abnormal condition of vision, the optometrist or therapeutic optometrist shall:

- (1) inform the patient; and
- (2) provide the patient with a copy of the patient's spectacle prescription.

(b) The optometrist or therapeutic optometrist shall expressly indicate verbally or by other means that the patient has the following alternatives for the preparation of the lenses according to the prescription:

- (1) the optometrist or therapeutic optometrist will prepare or have the lenses prepared; or
- (2) the patient may have the prescription filled by a dispensing optician but should return for an optometrical examination of the lenses.

(c) This section does not require an optometrist or therapeutic optometrist to provide a prescription to a patient before the patient has paid the examination fee.

(d) Section 351.364(d) applies to this section.

Sec. 351.366. AUTHORITY TO FORM CERTAIN JOINTLY OWNED ENTITIES.

(a) Except as provided by Section 351.361 or 351.457, an optometrist or therapeutic optometrist and a physician may, for the purposes described by Subsection (b), organize, jointly own, and manage any legal entity, including:

- (1) a partnership under the Texas Revised Partnership Act (Article 6132b-1.01 et seq., Vernon's Texas Civil Statutes);
- (2) a limited partnership under the Texas Revised Limited Partnership Act (Article 6132a-1, Vernon's Texas Civil Statutes); or
- (3) a limited liability company under the Texas Limited Liability Company Act (Article 1528n, Vernon's Texas Civil Statutes).

(b) An entity authorized under Subsection (a) may:

- (1) own real property, other physical facilities, or equipment for the delivery of health care services or management;
- (2) lease, rent, or otherwise acquire the use of real property, other physical facilities, or equipment for the delivery of health care services or management; or
- (3) employ or otherwise use a person who is not an optometrist, therapeutic optometrist, or physician for the delivery of health care services or management.

(c) Only an optometrist, therapeutic optometrist, or physician may have an ownership interest in an entity authorized under Subsection (a). This subsection does not prohibit an entity from making one or more payments to an owner's estate following the owner's death under an agreement with the owner or as otherwise authorized or required by law.

SUBCHAPTER I. PROHIBITED PRACTICES IN GENERAL

Sec. 351.401. PROHIBITED OFFER, REPRESENTATION, OR DESIGNATION.

Unless a person is licensed to practice under this chapter, the person may not:

- (1) offer to practice optometry or therapeutic optometry;
- (2) represent to others that the person is authorized to practice optometry or therapeutic optometry;

or

(3) use in connection with the person's name a designation implying that the person practices optometry or therapeutic optometry.

Sec. 351.402. IMPERSONATION PROHIBITED.

A person may not:

- (1) impersonate an optometrist or therapeutic optometrist or falsely assume another name; or
- (2) buy, sell, or fraudulently obtain an optometry diploma, an optometry or therapeutic optometry license, or a record of registration, or aid or abet in that purchase, sale, or acquisition.

Sec. 351.403. FALSE, DECEPTIVE, OR MISLEADING ADVERTISING.

(a) A person may not publish or display, or cause or permit to be published or displayed, by any means, including by newspaper, radio, television, billboard, or window display, a false, deceptive, or misleading statement or advertisement concerning ophthalmic services or materials. In this subsection, "ophthalmic materials" include lenses, frames, eyeglasses, or contact lenses, or parts of lenses, frames, eyeglasses, or contact lenses.

(b) An advertisement of prescription eyeglasses or contact lenses must contain language to the effect that an eye doctor's prescription is required to purchase prescription eyeglasses or contact lenses.

(c) An advertisement of the price of prescription eyeglasses or contact lenses must contain the following information:

- (1) a statement of whether the cost of an examination, prescription services, and follow-up care by an eye doctor is included in the price;
- (2) if the advertised goods are to be available to the public at the advertised price for less than 30 days after the date of publication of the advertisement, a statement of the time limitation on the offer;
- (3) if the advertised goods are to be available to the public in limited quantities and if no rainchecks are to be given on total depletion of the inventory of the advertised goods, a statement of the total quantity available to all customers;
- (4) if the advertised goods are to be available to the public at a limited number for each customer, a statement of the limit for each customer; and
- (5) for contact lenses, a statement of the number of lenses included for the price specified.

(d) A person who fails to satisfy the requirements of Subsection (b) or (c) is considered to have published a false, deceptive, or misleading statement within the meaning of this section.

(e) A statement required by Subsection (b) or (c) must be readily audible or readable by a person of average comprehension or reading speed.

Sec. 351.404. EYEGLASSES AS PRIZE OR INDUCEMENT.

A person in this state may not give or deliver, or cause to be given or delivered, in any manner, eyeglasses as:

- (1) a prize or premium; or
- (2) an inducement to sell an item of merchandise, including a book, paper, magazine, or work of literature or art.

Sec. 351.405. ALTERATION OF PRESCRIPTION.

A person may not alter the specifications of an ophthalmic lens prescription without the prescribing doctor's consent.

Sec. 351.406. EXPIRED CONTACT LENS PRESCRIPTION.

A person may not fill an expired contact lens prescription.

Sec. 351.407. GOVERNMENTAL DISCRIMINATION PROHIBITED.

(a) A program supported by the state or by a political subdivision of the state may not discriminate against a health care practitioner because the practitioner is an optometrist or therapeutic optometrist.

(b) A law or policy of the state or of a political subdivision of the state that requires or encourages a person to obtain vision care or medical eye care that is within the scope of practice of an optometrist or therapeutic optometrist may not discriminate against a health care practitioner because the practitioner is an optometrist or therapeutic optometrist.

Sec. 351.408. CONTROL OF OPTOMETRY.

(a) This section and Sections 351.602(c)(2), 351.603(b), 351.604(3), and 351.605 shall be liberally construed to prevent manufacturers, wholesalers, and retailers of ophthalmic goods from controlling or attempting to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist.

(b) In this section, “control or attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist” includes:

(1) setting or attempting to influence the professional fees or office hours of an optometrist or therapeutic optometrist;

(2) restricting or attempting to restrict an optometrist’s or therapeutic optometrist’s freedom to see a patient by appointment;

(3) terminating or threatening to terminate an agreement, including a lease, or other relationship in an attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist;

(4) providing, hiring, or sharing employees, business services, or similar items to or with an optometrist or therapeutic optometrist; and

(5) making or guaranteeing a loan to an optometrist or therapeutic optometrist in excess of the value of the collateral securing the loan.

(c) A manufacturer, wholesaler, or retailer of ophthalmic goods may not directly or indirectly:

(1) control or attempt to control the professional judgment, manner of practice, or practice of an optometrist or therapeutic optometrist;

(2) employ or contract for the services of an optometrist or therapeutic optometrist if part of the optometrist’s or therapeutic optometrist’s duties involves the practice of optometry or therapeutic optometry; or

(3) pay an optometrist or therapeutic optometrist for a service not provided.

(d) This section does not apply to a manufacturer, wholesaler, or retailer of ophthalmic goods who is an optometrist, therapeutic optometrist, or licensed physician or a legal entity wholly owned and controlled by at least one optometrist, therapeutic optometrist, or licensed physician, unless the optometrist, therapeutic optometrist, or legal entity has offices at more than three locations.

Sec. 351.409. PROHIBITED ACTIVITY BY UNLICENSED PERSON.

An unlicensed person may not engage in any activity prohibited by this chapter.

**SUBCHAPTER J.
PROHIBITED PRACTICES BY LICENSE HOLDER**

Sec. 351.451. PROHIBITED TREATMENT BY LICENSE HOLDER.

(a) An optometrist or therapeutic optometrist may not provide a person with treatment except as authorized by law.

(b) An optometrist or therapeutic optometrist who violates Subsection (a) is considered to be practicing medicine without a license and, in addition to the penalties prescribed for a violation of this chapter, is subject to the penalty for the practice of medicine without a license.

Sec. 351.452. PROHIBITED USE OF PHARMACEUTICAL AGENT.

A therapeutic optometrist may not use a pharmaceutical agent not authorized by the board or by law.

Sec. 351.4521. PERFORMANCE OF SURGERY PROHIBITED.

A therapeutic optometrist may not perform surgery or laser surgery.

Sec. 351.453. EXAMINATION REQUIRED FOR PRESCRIPTION.

An optometrist or therapeutic optometrist may not sign, or cause to be signed, an ophthalmic lens prescription without first personally examining the eyes of the person for whom the prescription is made.

Sec. 351.454. CONTAGIOUS OR INFECTIOUS DISEASE.

(a) An optometrist or therapeutic optometrist may not practice optometry or therapeutic optometry while knowingly suffering from a contagious or infectious disease, as defined by the Texas Department of Health, if the disease is one that could reasonably be transmitted in the normal performance of optometry

or therapeutic optometry.

(b) The board by rule shall adopt guidelines that define, according to guidelines issued by the Texas Department of Health and specific to the practice of optometry or therapeutic optometry, each disease or type of disease that could reasonably be transmitted in the normal performance of optometry or therapeutic optometry.

Sec. 351.455. PRACTICE PROHIBITED FROM HOUSE TO HOUSE.

(a) A person may not practice optometry or therapeutic optometry from house to house or on the streets or highways, notwithstanding any laws for the licensing of peddlers.

(b) Subsection (a) does not prohibit an optometrist, therapeutic optometrist, or licensed physician from attending, prescribing for, or providing eyeglasses or ophthalmic lenses to a person:

- (1) who, because of illness or physical or mental infirmity, is confined to the place the person resides; or
- (2) in response to an unsolicited request or call for those services.

Sec. 351.456. PRACTICE PROHIBITED DURING LICENSE SUSPENSION OR REVOCATION.

A person may not practice optometry or therapeutic optometry while the person's license is suspended or revoked.

Sec. 351.457. PROFESSIONAL RESPONSIBILITY; FEES.

(a) An optometrist or therapeutic optometrist may not directly or indirectly divide, share, split, or allocate a fee for optometric services or materials with:

- (1) a layperson, firm, or corporation; or
- (2) another optometrist, therapeutic optometrist, or licensed physician, except on the basis of a division of service or responsibility.

(b) Subsection (a) does not:

- (1) prevent an optometrist or therapeutic optometrist from paying an employee in the regular course of employment;
- (2) prevent establishment of a partnership for the practice of optometry or therapeutic optometry; or
- (3) prohibit an optometrist or therapeutic optometrist from being employed on a salary, with or without a bonus arrangement, by an optometrist, therapeutic optometrist, or licensed physician, regardless of the amount of supervision exerted by the employer over the office in which the employee works.

(c) A bonus arrangement described by Subsection (b)(3) may not be based on the business or income of an optical company.

(d) Section 351.361(c) applies to this section.

Sec. 351.458. PROFESSIONAL RESPONSIBILITY; USE OF NAME OR PROFESSIONAL IDENTIFICATION.

(a) An optometrist or therapeutic optometrist may not use, or cause or allow to be used, the optometrist's or therapeutic optometrist's name or professional identification, as authorized by Chapter 104, on or near the door, window, wall, directory, sign, or listing of an office or place of practice, unless the optometrist or therapeutic optometrist is actually present and practicing optometry or therapeutic optometry in that office or place during the hours it is open to the public for the practice of optometry or therapeutic optometry.

(b) An optometrist or therapeutic optometrist may not practice in an office or place where a name or professional identification on or near the door, window, wall, directory, sign, or listing of the office or place, or where a name or professional identification used in connection with the office or place, indicates that it is owned, operated, supervised, staffed, directed, or attended by a person not actually present and practicing optometry or therapeutic optometry in that office or place during the hours it is open to the public for the practice of optometry or therapeutic optometry.

(c) To be actually present for purposes of Subsections (a) and (b), the optometrist or therapeutic optometrist must be physically present in the office or place of practice:

- (1) for more than half of the total number of hours the office or place is open to the public for the practice of optometry or therapeutic optometry in each calendar month for at least nine months in each calendar year; or
- (2) for at least half of the time the optometrist or therapeutic optometrist conducts or supervises the practice of optometry or therapeutic optometry.

(d) To be practicing optometry or therapeutic optometry for purposes of Subsections (a) and (b), the

optometrist or therapeutic optometrist must regularly and personally in the office or place of practice:

- (1) examine the eyes of some of the persons for whom prescriptions have been issued in that office or place; or
 - (2) supervise those eye examinations.
- (e) This section does not require the physical presence of a person who is ill, injured, or otherwise temporarily incapacitated.
- (f) Section 351.361(c) applies to this section.

Sec. 351.459. MERCANTILE ESTABLISHMENT; PROHIBITED ACTS.

- (a) This section applies to an optometrist or therapeutic optometrist who leases space from and practices optometry or therapeutic optometry on the premises of a mercantile establishment.
- (b) An optometrist or therapeutic optometrist may not:
- (1) conduct a phase of practice as a department or concession of a mercantile establishment; or
 - (2) display a legend or sign stating “Optical Department,” “Optometrical Department,” or a similar message on the premises of a mercantile establishment or in advertising.
- (c) An optometrist or therapeutic optometrist may not permit the optometrist’s or therapeutic optometrist’s name or practice to be directly or indirectly used in connection with a mercantile establishment in any manner, including in advertising, displays, or signs.
- (d) The credit account of a patient of an optometrist or therapeutic optometrist must be with the optometrist or therapeutic optometrist and not with the credit department of the mercantile establishment. This subsection does not prevent the optometrist or therapeutic optometrist from subsequently selling, transferring, or assigning that account.
- (e) Section 351.363(a) applies to this section.

Sec. 351.460. RELATIONSHIPS WITH DISPENSING OPTICIANS; PROHIBITED ACTS.

- (a) A person who is engaged in the business of a dispensing optician, other than an optometrist, therapeutic optometrist, or licensed physician, may not have:
- (1) an interest in the practice, books, records, files, equipment, or materials of an optometrist or therapeutic optometrist; or
 - (2) except as provided by Subsection (c), an interest in the premises or space occupied by an optometrist or therapeutic optometrist for the practice of optometry or therapeutic optometry.
- (b) An optometrist, therapeutic optometrist, or licensed physician who is engaged in the business of a dispensing optician and who owns an interest in the practice, books, records, files, equipment, or materials of another optometrist or therapeutic optometrist shall maintain a separate set of books, records, files, and accounts in connection with that interest.
- (c) Subsection (a)(2) does not apply if the interest is a lease for a specific term without retention of the present right of occupancy on the part of the dispensing optician.
- (d) Section 351.364(d) applies to this section.

**SUBCHAPTER K.
DISCIPLINARY PROCEDURES**

Sec. 351.501. DENIAL OF LICENSE AND DISCIPLINARY ACTION BY BOARD.

- (a) On the vote of five or more members, the board may 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 fine, impose a stipulation, limitation, or condition relating to continued practice, including conditioning continued practice on counseling or additional education, or reprimand a license holder if the board determines that:
- (1) the applicant or license holder is guilty of fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or therapeutic optometry or in seeking admission to that practice;
 - (2) the applicant or license holder is unfit or incompetent by reason of negligence;
 - (3) the applicant or license holder has been convicted of a misdemeanor involving moral turpitude or a felony;
 - (4) the applicant or license holder:
 - (A) is a habitual drunkard;
 - (B) is addicted to the use of morphine, cocaine, or other drugs having similar effect;
 - (C) has become insane; or
 - (D) has been found by a court to be of unsound mind;

(5) the license holder has directly or indirectly employed, hired, procured, or induced a person to practice optometry or therapeutic optometry in this state without a license;

(6) the license holder has directly or indirectly aided or abetted an unlicensed person in the practice of optometry or therapeutic optometry;

(7) the license holder has placed the holder's license at the disposal or service of, including lending, leasing, or renting to, a person not licensed to practice optometry or therapeutic optometry in this state;

(8) the applicant or license holder has wilfully or repeatedly violated this chapter or a board rule adopted under this chapter;

(9) the license holder has wilfully or repeatedly represented to a member of the public that the license holder is authorized or competent to cure or treat an eye disease beyond the authorization granted by this chapter;

(10) the license holder has had the right to practice optometry or therapeutic optometry suspended or revoked by a federal agency for a cause that the board believes warrants that action;

(11) the applicant or license holder has acted to deceive, defraud, or harm the public;

(12) the applicant or license holder is guilty of gross incompetence in the practice of optometry or therapeutic optometry;

(13) the applicant or license holder has engaged in a pattern of practice or other behavior demonstrating a wilful provision of substandard care;

(14) the applicant or license holder has committed an act of sexual abuse, misconduct, or exploitation with a patient or has otherwise unethically or immorally abused the doctor-patient relationship;

(15) the applicant or license holder has prescribed, sold, administered, distributed, or given a drug legally classified as a controlled substance or as an addictive or dangerous drug for other than an accepted diagnostic or therapeutic purpose;

(16) the applicant or license holder has failed to report to the board the relocation of the applicant's or license holder's office not later than the 30th day after the date of relocation, whether in or out of this state; or

(17) the license holder has practiced or attempted to practice optometry while the license holder's license was suspended.

(b) A violation of this chapter is not a violation for purposes of disciplinary action under Subsections (a)(8) and (9) if the violation occurs at least four years before the date a complaint is filed that results in a disciplinary hearing before the board on that complaint.

(c) Notwithstanding Subsection (a), the board may not, as part of a disciplinary action, order a license holder to acquire a license or certificate of a different or higher class or type than the license holder holds at the time of the disciplinary action.

Sec. 351.5015. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE.

(a) The board shall appoint a three-member disciplinary panel consisting of board members to determine whether a license issued to a person under this chapter should be temporarily suspended or restricted.

(b) If the disciplinary panel determines from the evidence presented to the panel that a license holder would, by the person's continuation in the practice of optometry or therapeutic optometry, constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend or restrict the license holder's license.

(c) The disciplinary panel may temporarily suspend or restrict a license under this section without notice or hearing if:

(1) the board immediately provides notice of the suspension or restriction to the license holder; and

(2) a hearing before the disciplinary panel concerning the temporary suspension or restriction is scheduled for the earliest possible date following the suspension or restriction.

(d) Notwithstanding Chapter 551, Government Code, 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.

(e) After the hearing described by Subsection (c)(2), if the disciplinary panel affirms the temporary suspension or restriction of the license holder's license, the board shall schedule an informal settlement conference that meets the requirements of Section 2001.054(c), Government Code, to be held as soon as practicable, unless the license holder waives the informal settlement conference or an informal settlement conference has already been held with regard to the issues that are the basis for the temporary suspension or restriction.

(f) If the license holder is unable to show compliance at the informal settlement conference regarding

the issues that are the basis for the temporary suspension or restriction, a board representative shall file a charge under Section 351.503 as soon as practicable.

(g) If after the hearing described by Subsection (c)(2) the disciplinary panel does not temporarily suspend or restrict the license holder's license, the facts that were the basis for the temporary suspension or restriction may not be the sole basis for another proceeding to temporarily suspend or restrict the license holder's license. The board may use those same facts in a subsequent investigation to obtain new information that may be the basis for the temporary suspension or restriction of the license holder's license. For purposes of this subsection, facts that are the basis for the temporary suspension or restriction of a license holder's license include facts presented to the disciplinary panel and facts presented by the board or a representative of the board at the time evidence was presented to the disciplinary panel.

Sec. 351.502. WILFUL OR REPEATED NONCOMPLIANCE.

(a) The board shall consider the wilful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with the requirements of Sections 351.353, 351.359, and 351.405 as prima facie evidence that the optometrist or therapeutic optometrist is unfit or incompetent by reason of negligence within the meaning of Section 351.501(a)(2) and as sufficient ground for the filing of charges to revoke or suspend a license.

(b) The board shall consider the wilful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with the requirements of Sections 351.361, 351.362, 351.457, and 351.458 as prima facie evidence that the optometrist or therapeutic optometrist has violated this chapter and as sufficient ground for the filing of charges to revoke or suspend a license.

(c) Section 351.361(c) applies to Subsection (b).

Sec. 351.503. DISCIPLINARY PROCEEDINGS.

(a) A person may initiate disciplinary proceedings under Section 351.501 by filing a charge with the board in writing and under oath.

(b) A person is entitled to a hearing conducted by the State Office of Administrative Hearings if:

- (1) a charge is filed against the person; or
- (2) the board proposes to:
 - (A) refuse the person's application for a license; or
 - (B) suspend or revoke the person's license.

(c) Disciplinary proceedings are governed by Chapter 2001, Government Code.

(d) A charge filed under Section 351.502(a) must state each specific instance of alleged noncompliance. At a hearing on the charge, the person charged has the burden of establishing, in each instance in which proof of noncompliance is adduced, that compliance was not necessary to a proper examination of the patient in that particular case.

(e) A charge filed under Section 351.502(b) must state each specific instance of alleged noncompliance.)

Sec. 351.504. JUDICIAL REVIEW.

A petition for judicial review of a board action may be filed in a district court in the county of residence of the person against whom the original charge was filed.

Sec. 351.505. REISSUANCE OF LICENSE AFTER REVOCATION.

(a) A person whose license has been revoked:

- (1) may not apply for reissuance under Subsection (b) before the first anniversary of the date of revocation; and
- (2) must apply in any manner required by the board.

(b) On application, the board may reissue a license to practice optometry or therapeutic optometry to a person whose license has been revoked.

Sec. 351.506. PROBATION.

If a license suspension is probated, the board may require the license holder to:

- (1) report regularly to the board on matters that are the basis of the probation;
- (2) limit practice to the areas prescribed by the board; or
- (3) continue or review professional education until the license holder attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

Sec. 351.507. INFORMAL PROCEEDINGS; INFORMAL SETTLEMENT CONFERENCE AND REFUNDS.

- (a) The board by rule shall adopt procedures governing:
 - (1) informal disposition of a contested case under Section 2001.056, Government Code; and
 - (2) an informal proceeding held in compliance with Section 2001.054, Government Code.
- (b) The board by rule shall establish procedures by which a panel of board members may conduct an informal settlement conference to resolve a complaint against a person licensed under this chapter.
- (c) Procedures established under Subsection (b) must:
 - (1) require that at least one board member who represents the public be included in the panel conducting the conference;
 - (2) require that the two board members who reviewed and investigated a complaint under Section 351.2036(c) be included in the panel conducting the conference;
 - (3) require the panel conducting the conference to use the standardized penalty schedule adopted by the board under Section 351.552(c) to determine the appropriate disciplinary action, if any, to recommend to the board;
 - (4) require a complaint settlement recommended by the panel to be approved by the board; and
 - (5) require the panel conducting the conference to:
 - (A) recommend settlement of the complaint to the board; or
 - (B) refer the complaint to the State Office of Administrative Hearings for a formal hearing and notify the board of the referral.
- (d) The board may order a person licensed under this chapter to issue a refund to a patient as provided in an agreement resulting from an informal settlement conference instead of or in addition to assessing an administrative penalty against the person under Subchapter L. The amount of a refund ordered under this subsection may not exceed the amount the patient paid to the license holder for an examination. The board may not require payment of other damages or estimate harm in a restitution order.
- (e) Rules adopted under this section must:
 - (1) provide the complainant and the license holder with an opportunity to be heard; and
 - (2) require the presence of the attorney general to advise the board or the board's employees.

Sec. 351.508. RECUSAL REQUIRED.

A member of the board who reviews and investigates a complaint under Section 351.2036(c) or participates in an informal settlement conference under Section 351.507 may not vote on any disciplinary action following the informal settlement conference concerning the complaint and shall recuse himself or herself from voting on any disciplinary action following the informal settlement conference concerning the complaint.

**SUBCHAPTER L.
ADMINISTRATIVE PENALTY**

Sec. 351.551. IMPOSITION OF PENALTY.

The board may impose an administrative penalty on a person licensed or regulated under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 351.552. AMOUNT OF PENALTY.

- (a) The amount of an administrative penalty may not exceed \$2,500 for each violation. Each day a violation continues or occurs is a separate violation.
- (b) The amount of the penalty shall be based on:
 - (1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the 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 a future violation;
 - (5) efforts to correct the violation; and
 - (6) any other matter that justice may require.
- (c) The board by rule shall develop and publish a standardized penalty schedule based on the criteria listed in Subsection (b).

Sec. 351.553. REPORT AND NOTICE OF VIOLATION AND PENALTY.

(a) If the executive director or a subcommittee of the board appointed for that purpose determines that a violation has occurred, the executive director or subcommittee may issue a report to the board stating:

- (1) the facts on which the determination is based; and
- (2) the recommendation of the executive director or subcommittee on the imposition of the administrative penalty, including a recommendation on the amount of the penalty.

(b) A subcommittee of the board appointed under Subsection (a) must include at least one public member of the board.

(c) Not later than the 14th day after the date the report is issued, the executive director or subcommittee shall give written notice of the report to the person. The notice may be given by certified mail.

(d) The notice issued under this section must:

- (1) include a brief summary of the alleged violation;
- (2) state the amount of the recommended penalty; and
- (3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

Sec. 351.554. PENALTY TO BE PAID OR HEARING REQUESTED.

(a) Not later than the 20th day after the date the person receives the notice under Section 351.553, the person in writing may:

- (1) accept the determination and recommended administrative penalty of the executive director or subcommittee; or
- (2) request a hearing on the occurrence of the violation, the amount of the penalty, or both.

(b) If the person accepts the determination and recommended penalty of the executive director or subcommittee, the board by order shall approve the determination and impose the recommended penalty.

Sec. 351.555. HEARING ON RECOMMENDATIONS.

(a) If the person requests a hearing or fails to respond in a timely manner to the notice, the executive director shall set a hearing and give notice of the hearing to the person.

(b) An administrative law judge of the State Office of Administrative Hearings shall hold the hearing. The administrative law judge shall:

- (1) make findings of fact and conclusions of law; and
- (2) promptly issue to the board a proposal for decision as to the occurrence of the violation and the amount of any proposed administrative penalty.

Sec. 351.556. DECISION BY BOARD.

(a) Based on the findings of fact, conclusions of law, and proposal for decision, the board by order may determine that:

- (1) a violation occurred and impose an administrative penalty; or
- (2) a violation did not occur.

(b) The notice of the board's order given to the person under Chapter 2001, Government Code, must include a statement of the person's right to judicial review of the order.

Sec. 351.557. OPTIONS FOLLOWING DECISION: PAY OR APPEAL.

(a) Not later than the 30th day after the date the board's order becomes final, the person shall:

- (1) pay the administrative penalty;
- (2) pay the penalty and file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both; or
- (3) without paying the penalty, file a petition for judicial review contesting the fact of the violation, the amount of the penalty, or both.

(b) Within the 30-day period, a person who acts under Subsection (a)(3) may:

- (1) stay enforcement of the penalty by:
 - (A) paying the penalty to the court for placement in an escrow account; or
 - (B) giving to the court a supersedeas bond that is approved by the court and that:
 - (i) is for the amount of the penalty; and
 - (ii) is effective until judicial review of the board's order is final; or
- (2) request the court to stay enforcement of the penalty by:
 - (A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(c) If the executive director receives a copy of an affidavit under Subsection (b)(2), the executive director may file with the court a contest to the affidavit not later than the fifth day after the date the copy is received.

(d) The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the penalty and to give a supersedeas bond.

Sec. 351.558. COLLECTION OF PENALTY.

If the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the penalty.

Sec. 351.559. DETERMINATION BY COURT.

(a) If a court sustains the determination that a violation occurred, the court may uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced penalty.

(b) If the court does not sustain the determination that a violation occurred, the court shall order that a penalty is not owed.

Sec. 351.560. REMITTANCE OF PENALTY AND INTEREST.

(a) If after judicial review, the administrative penalty is reduced or not imposed by the court, the court shall, after the judgment becomes final:

(1) order that the appropriate amount, plus accrued interest, be remitted to the person if the person paid the penalty; or

(2) order the release of the bond in full if the penalty is not imposed or order the release of the bond after the person pays the penalty imposed if the person posted a supersedeas bond.

(b) The interest paid under Subsection (a)(1) is the rate charged on loans to depository institutions by the New York Federal Reserve Bank. The interest shall be paid for the period beginning on the date the penalty is paid and ending on the date the penalty is remitted.

Sec. 351.561. ADMINISTRATIVE PROCEDURE.

A proceeding under this subchapter is subject to Chapter 2001, Government Code.

SUBCHAPTER M. OTHER PENALTIES AND ENFORCEMENT PROVISIONS

Sec. 351.601. MONITORING LICENSE HOLDER.

The board by rule shall develop a system for monitoring a license holder's compliance with the requirements of this chapter. Rules adopted under this section must include procedures to:

(1) monitor for compliance a license holder who is ordered by the board to perform certain acts; and

(2) identify and monitor each license holder who represents a risk to the public.

Sec. 351.602. INJUNCTION; DAMAGES.

(a) The board may sue in the board's own name to enjoin a violation of this chapter. This remedy is in addition to any other action authorized by law.

(b) A person injured by another person who violates Section 351.251, 351.409, or 351.607 may institute an action in district court in Travis County or in the county in which the violation is alleged to have occurred for injunctive relief or damages plus court costs and reasonable attorney's fees.

(c) A person may institute an action in a district court in the county in which the violation is alleged to have occurred for injunctive relief or damages plus court costs and reasonable attorney's fees if the person is injured by another person who violates:

(1) Section 351.403; or

(2) Section 351.408.

Sec. 351.603. ENFORCEMENT BY ATTORNEY GENERAL OR BOARD; CIVIL PENALTY.

(a) The attorney general or board may institute an action in a district court in the county in which a violation of Section 351.251, 351.403, 351.409, or 351.607 is alleged to have occurred for injunctive relief and a civil penalty not to exceed \$10,000 for each violation plus court costs and reasonable attorney's fees.

(b) The attorney general or board may institute an action against a manufacturer, wholesaler, or retailer of ophthalmic goods in a district court in the county in which a violation of Section 351.408 is alleged to have occurred for injunctive relief and a civil penalty not to exceed \$1,000 for each day of a violation plus court costs and reasonable attorney's fees.

Sec. 351.604. DECEPTIVE TRADE PRACTICES.

A violation of any of the following sections is actionable under Subchapter E, Chapter 17, Business & Commerce Code:

- (1) Section 351.251;
- (2) Section 351.403;
- (3) Section 351.408;
- (4) Section 351.409; or
- (5) Section 351.607.

Sec. 351.605. LESSEE ENTITLED TO REMEDIES.

A person injured as a result of a violation of Section 351.408, including an optometrist who is a lessee of a manufacturer, wholesaler, or retailer, is entitled to the remedies in Sections 351.602(c)(2), 351.603(b), and 351.604(3).

Sec. 351.606. GENERAL CRIMINAL PENALTY.

- (a) A person commits an offense if the person violates this chapter.
- (b) An offense under Subsection (a) is a misdemeanor punishable by:
 - (1) a fine of not less than \$100 or more than \$1,000;
 - (2) confinement in county jail for a term of not less than two months or more than six months; or
 - (3) both the fine and confinement.
- (c) A separate offense is committed each day a violation of this chapter occurs or continues.

Sec. 351.607. DISPENSING CONTACT LENSES; PENALTY.

(a) A person commits an offense if the person dispenses a contact lens by mail or otherwise to a patient in this state without having a valid prescription signed by an optometrist, therapeutic optometrist, or licensed physician.

(b) An offense under Subsection (a) is a misdemeanor punishable by a fine of \$1,000 for each lens dispensed. The fine is in addition to any other penalty imposed under this chapter.

Sec. 351.608. CEASE AND DESIST ORDER.

(a) If it appears to the board that a person is engaging in an act or practice that constitutes the practice of optometry or therapeutic optometry without a license or certificate under this chapter, the board, after notice and opportunity for a hearing, may issue a cease and desist order prohibiting the person from engaging in the activity.

(b) Notwithstanding Section 351.551, the board may impose an administrative penalty under Subchapter L against a person who violates an order issued under this section.

**CONTACT LENS PRESCRIPTION ACT
CHAPTER 353, TEXAS OCCUPATIONS CODE
SUBCHAPTER A.
GENERAL PROVISIONS**

Sec. 353.001. SHORT TITLE.

This chapter may be cited as the Contact Lens Prescription Act.

Sec. 353.002. DEFINITIONS.

In this chapter:

- (1) "Board" means the executive commissioner of the Health and Human Services Commission or

the Department of State Health Services, as consistent with the respective duties of the executive commissioner or department under the laws of this state

(2) "Department" means the Department of State Health Services or the Health and Human Services Commission, as consistent with the respective duties of those agencies under the laws of this state.

(2-a) "Direct communication" includes communication by telephone, facsimile, or electronic mail.

(3) "Disposable contact lenses" means soft contact lenses that:

(A) are dispensed in sealed packages;

(B) are sterilized and sealed by the manufacturer; and

(C) according to the physician's, optometrist's, or therapeutic optometrist's instructions concerning wear, have a recommended lens replacement interval of less than three months.

(4) "Optician" means a person, other than a physician, optometrist, therapeutic optometrist, or pharmacist, who is in the business of dispensing contact lenses.

(5) "Optometrist" means a person licensed to practice optometry or therapeutic optometry by the Texas Optometry Board.

(6) "Pharmacist" means a person licensed to practice pharmacy by the Texas State Board of Pharmacy.

(7) "Physician" means a person licensed to practice medicine by the Texas State Board of Medical Examiners.

(8) "Therapeutic optometrist" means a person licensed to practice therapeutic optometry by the Texas Optometry Board.

Sec. 353.003. EFFECT OF CHAPTER.

This chapter does not prevent or restrict a physician from:

(1) treating or prescribing for a patient; or

(2) directing or instructing a person under the physician's control or supervision who assists a patient according to a specific direction, order, instruction, or prescription.

Sec. 353.004. PUBLIC INFORMATION ON PRESCRIPTION RELEASE.

(a) The board and the Texas Optometry Board shall prepare and provide to the public and appropriate state agencies information regarding the release and verification of contact lens prescriptions

(b) The board may adopt rules necessary to implement this section.

Sec. 353.005. RULES.

(a) The executive commissioner of the Health and Human Services Commission shall adopt rules, including rules that require a person dispensing contact lenses to maintain certain information when verifying a prescription under Section 353.1015, as necessary to:

(1) govern and implement verification procedures under Section 353.1015; and

(2) enter into interagency and other agreements to implement and enforce this chapter.

(b) The executive commissioner of the Health and Human Services Commission and the Texas Optometry Board shall each adopt rules relating to contact lens prescriptions and the dispensing of contact lenses, including rules that allow for interagency agreements, as necessary to implement and enforce this chapter.

(c) In implementing rules under Subsection (b), the executive commissioner of the Health and Human Services Commission and the Texas Optometry Board:

(1) shall cooperate with one another as necessary to adopt rules that are consistent with the rules adopted by the other agency; and

(2) may consult with the Texas State Board of Medical Examiners and the Texas State Board of Pharmacy

SUBCHAPTER B. DISPENSING CONTACT LENSES; PERMIT

Sec. 353.051. CONTACT LENS DISPENSER.

Contact lenses may be dispensed only by:

(1) a physician, optometrist, therapeutic optometrist, or pharmacist;

(2) an employee of a physician, optometrist, therapeutic optometrist, or pharmacist who performs contact lens dispensing services only under the direct supervision and control of the physician, optom-

etrist, therapeutic optometrist, or pharmacist; or

(3) an optician who holds a contact lens dispensing permit issued under this subchapter.

Sec. 353.052. CONTACT LENS DISPENSING BY BUSINESS ENTITY.

(a) A business entity that dispenses contact lenses to a person in this state:

(1) must obtain a contact lens dispensing permit in the entity's name; and

(2) may not dispense the lenses to a person in this state through an employee or other person who holds a contact lens dispensing permit.

(b) A business entity that has at least 10 locations may obtain a single permit for the entity and its employees. An employee of an entity with a permit under this subsection is not required to obtain a separate permit.

Sec. 353.053. REQUIREMENTS FOR PERMIT ISSUANCE.

The board shall issue a contact lens dispensing permit to an applicant who:

(1) agrees in writing to comply with state and federal laws and regulations regarding selling, delivering, or dispensing contact lenses;

(2) has not had a contact lens dispensing permit revoked or canceled for cause during the two-year period preceding the application date;

(3) provides the board with the trade name and address of each location where the applicant intends to conduct business;

(4) provides the board with other information the board reasonably requires; and

(5) pays the required permit fee.

Sec. 353.054. TERM OF PERMIT.

(a) A contact lens dispensing permit issued under this subchapter is valid for one year.

(b) The board may temporarily extend or shorten the term of a permit to provide for the staggered renewal of permits or for the annual renewal of all permits on the same date. The board shall prorate the permit fee to accomplish that purpose.

Sec. 353.055. PERMIT RENEWAL.

(a) To renew a contact lens dispensing permit, a permit holder must apply in the manner prescribed by board rule and pay the permit fee.

(b) The board may not require an applicant for renewal of a permit to provide more information than is required for issuance of an original permit.

Sec. 353.056. ANNUAL PERMIT FEE.

(a) The board may adopt annual permit fees in amounts reflecting the cost of administering the provisions of this chapter relating to regulating permit holders.

(b) Until changed by the board, the annual permit fee for a contact lens dispensing permit is:

(1) \$10 for an optician who has registered with the department;

(2) \$25 for an optician who has not registered with the department; and

(3) \$100 for a business entity.

**SUBCHAPTER C.
SALE OR DELIVERY OF CONTACT LENSES**

Sec. 353.101. PROHIBITED SELLING OR DISPENSING.

(a) A person, other than the prescribing physician, optometrist, or therapeutic optometrist, may not fill a contact lens prescription or sell or dispense contact lenses to a consumer in this state unless the person:

(1) receives from the prescribing physician, optometrist, or therapeutic optometrist or the consumer, directly or by facsimile, a contact lens prescription that has not expired and that conforms to the requirements of this chapter; or

(2) verifies by direct communication a contact lens prescription to be filled.

(b) A person receiving a direct communication under Subsection (a)(2) shall maintain a record of the communication.

Sec. 353.1015. VERIFICATION PROCEDURE.

(a) When seeking verification of a contact lens prescription, a person dispensing contact lenses shall provide the prescribing physician, optometrist, or therapeutic optometrist with the following information:

- (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.

(b) A prescription is considered verified under this section if:

- (1) the prescribing physician, optometrist, or therapeutic optometrist by a direct communication confirms that the prescription is accurate;
- (2) the prescribing physician, optometrist, or therapeutic optometrist informs the person dispensing the contact lenses that the prescription is inaccurate and provides the correct prescription information; or
- (3) the prescribing physician, optometrist, or therapeutic optometrist fails to communicate with the person dispensing the contact lenses not later than the eighth business hour after the prescribing physician, optometrist, or therapeutic optometrist receives from the person dispensing the contact lenses the request for verification or within another similar period specified by rule.

(c) If a prescribing physician, optometrist, or therapeutic optometrist timely informs the person dispensing the contact lenses that the prescription is inaccurate or invalid, the person may not dispense the contact lenses.

(d) If a prescribing physician, optometrist, or therapeutic optometrist notifies the person dispensing the contact lenses that the prescription is inaccurate or invalid, the prescribing physician, optometrist, or therapeutic optometrist shall:

- (1) specify the basis for the inaccuracy or invalidity of the prescription; and
- (2) correct the prescription.

Sec. 353.102. ACCURACY REQUIRED.

A person who dispenses contact lenses under this chapter from a contact lens prescription shall fill the prescription accurately subject to Section 353.103.

Sec. 353.103. AUTHORIZED MODIFICATION OF PRESCRIPTION.

(a) If a patient presents a contact lens prescription to be filled or asks a permit holder to verify a contact lens prescription under Section 353.1015, but requests that fewer than the total number of lenses authorized by the prescription be dispensed, the person dispensing the lenses shall note on the prescription or verification

- (1) the number of lenses dispensed;
- (2) the number of lenses that remain eligible to be dispensed under the prescription; and
- (3) the name, address, telephone number, and license or permit number of the person dispensing the lenses.

(b) A notation under Subsection (a) is a permanent modification of the prescription. Except as provided by this subsection, a contact lens prescription may not be modified.

(c) The person dispensing the lenses shall:

- (1) maintain a photocopy of the prescription or verification, as modified, in the person's records as if the copy were the prescription to be filled; and
- (2) return a prescription to the patient so that the patient may have the additional lenses dispensed elsewhere.

Sec. 353.104. EMERGENCY REFILL.

(a) If a patient needs an emergency refill of the patient's contact lens prescription, a physician, optometrist, or therapeutic optometrist may telephone or fax the prescription to a person authorized to dispense contact lenses under Section 353.051 or may verify a prescription under Section 353.1015.

(b) A fax or telephone record received under Subsection (a) must include the name, address, telephone number, and license number of the physician, optometrist, or therapeutic optometrist.

Sec. 353.105. ALTERATION OF PRESCRIPTION PROHIBITED.

(a) Except as provided by Subsection (b) and Section 353.103, a person dispensing contact lenses may not alter a contact lens prescription.

(b) A person dispensing contact lenses may fill a contact lens prescription that requires a contact lens manufactured by a particular company with another lens manufactured by that company if the lens required by the prescription and the lens with which the prescription is filled are the same lens but are sold by the company under multiple labels to different contact lens dispensers.

**SUBCHAPTER D.
CONTACT LENS PRESCRIPTIONS**

Sec. 353.151. DIRECTIONS FOR INDEPENDENT OPTICIAN; DELEGATION.

(a) If a physician's directions, instructions, or orders are to be performed or a physician's prescription is to be filled by an optician who is independent of the physician's office, the directions, instructions, orders, or prescription must be:

- (1) in writing or verified under Section 353.1015;
- (2) of a scope and content and communicated to the optician in a form and manner that, in the professional judgment of the physician, best serves the health, safety, and welfare of the physician's patient; and
- (3) in a form and detail consistent with the optician's skill and knowledge.

(b) A person who holds a contact lens dispensing permit issued under Subchapter B may measure the eye or cornea and may evaluate the physical fit of lenses for a particular patient of a physician if the physician has delegated in writing those responsibilities regarding that patient to the person in accordance with Subsection (a) and Section 351.005.

(c) If a physician notes on a spectacle prescription "fit for contacts" or similar language and has, as required by Subsections (a) and (b), specifically delegated to a specific optician the authority to make the additional measurements and evaluations necessary for a fully written contact lens prescription, the optician may dispense contact lenses to the patient even though the prescription is less than a fully written contact lens prescription.

Sec. 353.152. REQUIREMENTS FOR CONTACT LENS PRESCRIPTION.

(a) A contact lens prescription must contain, at a minimum:

- (1) the patient's name;
- (2) the date the prescription was issued;
- (3) the manufacturer of the contact lens to be dispensed, if needed;
- (4) the expiration date of the prescription;
- (5) the signature of the physician, optometrist, or therapeutic optometrist or a verification of the prescription described by Section 353.1015
- (6) if the prescription is issued by an optometrist, specification information required by Texas Optometry Board rule; and
- (7) if the prescription is issued by a physician, specification information required by Texas State Board of Medical Examiners rule.

(b) The Texas Optometry Board and the Texas State Board of Medical Examiners may adopt rules regarding the contents of a prescription for contact lenses.

Sec. 353.153. TERM OF PRESCRIPTION.

A physician, optometrist, or therapeutic optometrist may not issue a contact lens prescription that expires before the first anniversary of the date the patient's prescription parameters are determined, unless a shorter prescription period is warranted by the patient's ocular health or by potential harm to the patient's ocular health.

Sec. 353.154. SHORT-TERM PRESCRIPTION.

If a physician, optometrist, or therapeutic optometrist writes a contact lens prescription for a period of less than one year, the physician, optometrist, or therapeutic optometrist shall:

- (1) give the patient a verbal explanation of the reason for the action at the time of the action; and
- (2) maintain in the patient's records a written explanation of the reason.

Sec. 353.155. EXTENSION OF PRESCRIPTION.

(a) A physician, optometrist, or therapeutic optometrist may extend the expiration date for a contact lens prescription without completing another eye examination.

(b) On request by a patient, a prescribing physician, optometrist, or therapeutic optometrist shall authorize at least once a two-month extension of the patient's contact lens prescription. The physician, optometrist, or therapeutic optometrist may extend the prescription in accordance with Section 353.104.

Sec. 353.156. PATIENT ACCESS TO PRESCRIPTION; TIMING.

(a) A physician, optometrist, or therapeutic optometrist who performs an eye examination and fits a patient for contact lenses shall:

(1) prepare and give a contact lens prescription to the patient; and

(2) as directed by any person designated to act on behalf of the patient, provide the prescription or verify the prescription as provided by Section 353.1015.

(b) If the contact lens prescription results from an initial or annual eye examination, the physician, optometrist, or therapeutic optometrist shall prepare and give the prescription to the patient at the time the physician, optometrist, or therapeutic optometrist determines the parameters of the prescription.

(c) On receipt of a prescription request from a patient who did not receive an original contact lens prescription during an initial or annual eye examination, the physician, optometrist, or therapeutic optometrist shall provide the patient with the prescription at any time during which the prescription is valid. Except as provided by Section 353.158(1), if the patient requests the physician, optometrist, or therapeutic optometrist to deliver the prescription to the patient or to another person, the physician, optometrist, or therapeutic optometrist may charge to the patient the cost of delivery.

Sec. 353.157. LIMITATIONS ON OR REFUSAL TO GIVE PRESCRIPTION.

(a) A physician, optometrist, or therapeutic optometrist may exclude categories of contact lenses from a contact lens prescription if the exclusion is clinically indicated.

(b) Notwithstanding Section 353.156, a physician, optometrist, or therapeutic optometrist may refuse to give a contact lens prescription to a patient if:

(1) the patient's ocular health presents a contraindication for contact lenses;

(2) refusal is warranted due to potential harm to the patient's ocular health;

(3) the patient has a medical condition indicating that:

(A) the patient's ocular health would be damaged if the prescription were released to the patient;
or

(B) further monitoring of the patient is needed;

(4) the patient has not paid for the examination and fitting or has not paid other financial obligations to the physician, optometrist, or therapeutic optometrist if the patient would have been required to make an immediate or similar payment if the examination revealed that ophthalmic goods were not required; or

(5) the request is made after the first anniversary of the date of the patient's last eye examination.

(c) If a physician, optometrist, or therapeutic optometrist refuses to give a patient the patient's contact lens prescription for a reason permitted under Subsection (b), the physician, optometrist, or therapeutic optometrist must:

(1) give the patient a verbal explanation of the reason for the action at the time of the action; and

(2) maintain in the patient's records a written explanation of the reason.

(d) Subsection (b) does not prohibit a physician, optometrist, or therapeutic optometrist from giving a patient the patient's contact lens prescription.

Sec. 353.158. PROHIBITED ACTION BY PHYSICIAN, OPTOMETRIST, OR THERAPEUTIC OPTOMETRIST.

A physician, optometrist, or therapeutic optometrist may not:

(1) charge a patient a fee in addition to or as part of the examination fee and fitting fee as a condition for issuing or verifying a contact lens prescription; or

(2) condition the availability to a patient of an eye examination, a fitting for contact lenses, the issuance or verification of a contact lens prescription, or a combination of those services on a requirement that the patient agree to purchase contact lenses or other ophthalmic goods from the physician, optometrist, or therapeutic optometrist or from a specific ophthalmic dispenser.

Sec. 353.159. WAIVER OR DISCLAIMER OF LIABILITY PROHIBITED.

A contact lens prescription may not contain, and a physician, optometrist, or therapeutic optometrist may not require a patient to sign, a form or notice that waives or disclaims the liability of the physician, optometrist, or therapeutic optometrist for the accuracy of:

- (1) the eye examination on which a contact lens prescription provided to the patient is based; or
- (2) a contact lens prescription provided to the patient.

**SUBCHAPTER E.
LIABILITY AND ENFORCEMENT**

Sec. 353.201. LIABILITY FOR USE OF PRESCRIPTION.

A physician, optometrist, or therapeutic optometrist is not liable for a patient's subsequent use of a contact lens prescription if:

- (1) the physician, optometrist, or therapeutic optometrist does not reexamine the patient; and
- (2) the patient's condition, age, general health, and susceptibility to an adverse reaction caused by or related to the use of contact lenses or other factors result in the patient no longer being a proper candidate for the contact lens prescribed.

Sec. 353.202. DISCIPLINARY ACTION.

The board may suspend or revoke a person's contact lens dispensing permit or place the permit holder on probation for a violation of this chapter.

Sec. 353.203. SEPARATE VIOLATIONS.

A course of conduct that involves more than one prescription is a separate violation for each prescription dispensed in violation of this chapter.

Sec. 353.204. ENFORCEMENT PROCEEDINGS.

(a) The appropriate regulatory agency, the attorney general, or the district or county attorney for the county in which an alleged violation of this chapter occurs shall, on receipt of a verified complaint, initiate an appropriate administrative or judicial proceeding to enforce this chapter and the rules adopted under this chapter.

(b) Except as otherwise provided by this section, the board is responsible for enforcing this chapter.

(c) The Texas State Board of Medical Examiners is responsible for enforcing this chapter with regard to a violation of this chapter by a physician. A violation of this chapter by a physician is considered to be a violation of Subtitle B.

(d) The Texas Optometry Board is responsible for enforcing this chapter with regard to a violation of this chapter by an optometrist or a therapeutic optometrist. A violation of this chapter by an optometrist or a therapeutic optometrist is considered to be a violation of Chapter 351.

(e) The Texas State Board of Pharmacy is responsible for enforcing this chapter with regard to a violation of this chapter by a pharmacist. A violation of this chapter by a pharmacist is considered to be a violation of Subtitle J, other than Chapter 567.

(f) The attorney general or an attorney representing the state may bring an action for an injunction to prohibit a person from violating this chapter or a rule adopted under this chapter.

Sec. 353.205. ADMINISTRATIVE PENALTY.

The board may impose an administrative penalty of not more than \$1,000 for a violation of this chapter.

Sec. 353.206. CIVIL PENALTY.

In addition to granting injunctive or other relief provided by law, a court may impose a civil penalty for a violation of this chapter or a rule adopted under this chapter.

Sec. 353.207. CRIMINAL PENALTY.

- (a) A person commits an offense if the person violates this chapter.
- (b) An offense under this section is a Class B misdemeanor.

IMPORTANT PROVISIONS IN OTHER LAWS (OCCUPATIONS CODE)

Sec. 101.201. FALSE, MISLEADING, OR DECEPTIVE ADVERTISING.

(a) A person may not use advertising that is false, misleading, deceptive, or not readily subject to verification.

(b) False, misleading, or deceptive advertising or advertising not readily subject to verification includes advertising that:

(1) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensing of a health care professional;

(6) represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductibles or copayments are required;

(7) represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(8) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(9) represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

Sec. 101.202. FAILURE TO PROVIDE BILLING INFORMATION.

On the written request of a patient, a health care professional shall provide, in plain language, a written explanation of the charges for professional services previously made on a bill or statement for the patient.

Sec. 101.203. OVERCHARGING OR OVERTREATING.

A health care professional may not persistently or flagrantly overcharge or overtreat a patient.

Sec. 101.204. REMEDIES.

(a) A violation of this subchapter is subject to action by the appropriate health licensing agency as a ground for revocation or denial of a license.

(b) A violation of Section 101.201 is grounds for action under Section 17.47, 17.58, 17.60, or 17.61, Business & Commerce Code, by the consumer protection division of the office of the attorney general.

(c) A violation of Section 101.201 does not create a private cause of action, including an action for breach of warranty or for an implied contract or warranty for good and workmanlike service.

Sec. 104.003. REQUIRED IDENTIFICATION.

(a) A person subject to this section who uses the person's name on a written or printed professional identification, including a sign, pamphlet, stationery, or letterhead, or who uses the person's signature as a professional identification shall designate as required by this section the healing art the person is licensed to practice.

(b) A person who is licensed by the Texas State Board of Medical Examiners and holds a doctor of medicine degree shall use:

(1) physician or surgeon, M.D.;

(2) doctor, M.D.; or

(3) doctor of medicine, M.D.

(c) A person who is licensed by the Texas State Board of Medical Examiners and holds a doctor of osteopathy degree shall use:

(1) physician or surgeon, D.O.;

(2) osteopathic physician or surgeon;

(3) doctor, D.O.;

- (4) doctor of osteopathy;
- (5) doctor of osteopathic medicine;
- (6) osteopath; or
- (7) D.O.(d) A person who is licensed by the State Board of Dental Examiners shall use:
 - (1) dentist;
 - (2) doctor, D.D.S.;
 - (3) doctor of dental surgery;
 - (4) D.D.S.; or
 - (5) doctor of dental medicine, D.M.D.
- (e) A person who is licensed by the Texas Board of Chiropractic Examiners shall use:
 - (1) chiropractor;
 - (2) doctor, D.C.;
 - (3) doctor of chiropractic; or
 - (4) D.C.
- (f) A person who is licensed by the Texas Optometry Board shall use:
 - (1) optometrist;
 - (2) doctor, optometrist;
 - (3) doctor of optometry; or
 - (4) O.D.
- (g) A person who is licensed by the Texas State Board of Podiatric Medical Examiners shall use:
 - (1) chiropodist;
 - (2) doctor, D.S.C.;
 - (3) doctor of surgical chiropody;
 - (4) D.S.C.;
 - (5) podiatrist;
 - (6) doctor, D.P.M.;
 - (7) doctor of podiatric medicine; or
 - (8) D.P.M.

Sec. 104.007. PENALTIES.

- (a) A person who violates this chapter commits an offense. An offense under this section is a misdemeanor punishable by:
 - (1) on conviction of a first offense, a fine of \$100;
 - (2) on conviction of a second offense, a fine of \$500; and
 - (3) on conviction of a third offense:
 - (A) a fine of \$1,000; or
 - (B) revocation of the person’s license to practice the healing art.
- (b) On conviction of the person, the district court shall notify the licensing board that issued the license.

Sec. 112.001. DEFINITIONS.

In this chapter:

- (1) “Health care practitioner” means an individual issued a license, certificate, registration, title, permit, or other authorization to engage in a health care profession.
- (2) “Licensing entity” means a department, commission, board, office, authority, or other agency of the state that regulates activities and persons under this title.

Sec. 112.002. APPLICABILITY. This chapter applies only to licensing entities and health care practitioners under Chapters 401, 453, and 454 and Subtitles B, C, D, E, F, and K.

Sec. 112.051. REDUCED LICENSE REQUIREMENTS FOR RETIRED HEALTH CARE PRACTITIONERS PERFORMING CHARITY WORK.

- (a) Each licensing entity shall adopt rules providing for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is voluntary charity care.
- (b) The licensing entity by rule shall define voluntary charity care.

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ILLINOIS COLLEGE OF OPTOMETRY

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INDIANA UNIVERSITY

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INTER AMERICAN UNIVERSITY OF PUERTO RICO

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