



# TEXAS OPTOMETRY BOARD

# NEWSLETTER

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

## Inadvertent Hiring of Unlicensed "Doctor"

Sadly, but true, the "doctor" who solicits a fill-in opportunity with your practice may not have a current license. A recent investigation uncovered a former licensee (whose license had been expired for over 2 years) soliciting fill-in work through his websites, personal e-mails, and national job listings. Several doctors had used his services. The Optometry Act treats a licensee who fails to renew the same as any unlicensed individual. Not surprisingly, it is a violation of the Act to pay such a person to perform eye exams. The Act actually authorizes the Board to impose disciplinary measures against the practice owner. Additionally, liability may be an issue for the owner of the practice for the care provided by the unlicensed individual.

**Protect yourself and your patients. Use the Board's website to verify license status before you contract with or employ a doctor:**

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

The Board has referred this case to the Office of the Attorney General to obtain substantial civil penalties.

In the recent past the Board has also investigated individuals (who have never been licensed) posing as optometrists to obtain fill-in work, and optometrists whose license has expired hiring fill-in doctors.

This investigation highlights the importance of timely license renewal. Again, a doctor whose license has expired is not authorized to practice optometry. To do so not only violates the Optometry Act, but may subject the doctor to malpractice liability and may be a criminal offense.

## Continuing Education

new database

Once the Board receives the certificate of CE Course completion, the hours are recorded in the database and transferred to the website so that the doctor may search to determine the number of individual CE hours. The Board's new database has temporarily slowed down the process as some automated steps must now be

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## Prescription Release Reminders (glasses & contacts)

### SPECTACLES

The Board has received several complaints recently in which the patient contends that he or she never received their spectacle prescription. The responses of the licensees shows that there may be some confusion regarding the release of spectacle prescriptions, with at least some doctors not giving the patient a written prescription immediately after the conclusion of the eye exam.

[Section 351.365](#) of the Optometry Act states:

- (a) If, after examining a patient, a [doctor] believes that lenses are required . . . , the [doctor] shall:
  - (1) inform the patient; and
  - (2) provide the patient with a copy of the patient's spectacle prescription.
- (b) The [doctor] 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 [doctor] 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.

Optometrists are also required to comply with Federal Trade Commission Rules ([16 CFR § 456.2](#)):

- It is an unfair act or practice for a [doctor] to:
- (a) Fail to provide to the patient one copy of the patient's prescription immediately after the eye examination is completed.

Therefore, office practices where the patient is directed to the optician before receiving the prescription, or where the patient is only given a prescription after the patient requests a copy, would not comply with the law.

In some complaints where the patient stated that they did not receive a prescription after completion of the exam, the doctor could not provide any evidence that a prescription was given to the patient. Copies of the prescription in the patient file and notation in the patient record of the date the prescription was released are evidence that the patient was given a prescription.

### CONTACT LENSES

The Board continues to receive a significant number of complaints that a patient's optometrist did not release the contact lens prescription immediately after the examination was concluded. In most of these complaints, the doctor's response indicates that the patient never returned for a scheduled follow-up examination, and therefore the prescription was not finalized. In these cases the patient is told that the doctor is not required to release a prescription if the follow-up exam was not completed.

Common questions answered by the Board each year:

**Must I give a duplicate prescription to a patient who received a prescription 6 months ago at the conclusion of the examination?** NO. You are not legally required to release more than one copy of the prescription, although you may. If requested by a dispenser acting on behalf of the patient, you are, however, required to provide the dispenser with a copy of the prescription or verify the prescription, even if you complied with the law and earlier released a prescription to the patient.

**Should I verify, for a second time, a prescription?** YES. Federal law requires the doctor to respond to multiple verifications requests. If you know that the patient purchased a portion or all of the contacts authorized by the prescription (for example, the patient purchased the lenses from your office), you may include that information in your verification response.

**I have dispensed a full year's supply of contacts to a patient, and a dispenser is requesting a faxed verification. Can I write "expired" on the verification and fax it back?** NO. According to comments by the FTC, the prescriber should treat this as an "inaccurate" prescription and inform the prescriber of the number of lenses prescribed.

**Under HIPAA, can I transfer prescription data to a contact lens dispenser without a signed release from the patient?** YES. The HIPAA website states that the transfer of prescription information does not require a release from a patient.

Additional questions and answers can be found in the August 2007 [Newsletter](#).

Graduated Southern College of Optometry, Memphis, Tennessee, 1961. Began practice with the only slit lamp in town. We had not been trained much at all with their use. Some of the physicians were very good to work with, I would refer them over for prescriptions for antibiotics or allergy meds. Frequently they would call back and ask what I would suggest they prescribe. An optometrist could not Rx meds, could not remove foreign bodies, could not legally remove an eyelash. Glass lenses were used, plastic was not available. Lenses could be thermally heat treated for impact resistance. Contact lenses were just coming into accepted use, rigid PMMA only.

When optometrists were allowed to Rx some medications, remove corneal foreign bodies, epilate lashes, was really a great change for us and our patients. The use of retinal cameras has been a tremendous aid in detecting and monitoring eye conditions.

Soft lenses have been a great addition especially as they have developed these with higher DK values. What I did not like was the use of contact lenses for continuous wear. No matter how high the DK, you still have an incubator to enhance the growth of bacteria.

Probably not the worse change, but I still have difficulty with professional advertising.

The new HIPPA law was definitely an overkill. I know some like the medical aspect of optometric practice and wish to expand it further. I think some are getting away from our specialty of refraction and understanding the patients visual concerns and needs.

Embrace your education and chosen profession. Small towns and small cities have some benefits over the larger cities. Get involved in your community, you owe them, they have provided for you.

Do the best you can. Treat all patients in the same manner from the Mayor to the Medicaid patient.

I still practice 4 days a week, 8:00am to 6:00pm. Of course Sharon and I travel more. I have loved optometry and my patients. I hope someone will come along and want this practice, I have

the world's best patients.

## Continuing Education

performed manually. Every effort will be made to keep the on-line totals of CE hours up-to-date. Please remember that you can always call the Board to check on CE hours.

Licensees who have waited to the last moment to obtain CE tell the Board that such a decision is very stressful, and that they will never again wait until the end to renew.

### Reminders

- CE must be completed before license renewal
- 16 hours required, minimum of 6 DT and 1 professional responsibility
- Maximum of 8 hours of Internet CE counts toward 16 hour requirement
- Detailed information is on the [website](#)

## License Renewal

- All licenses must be renewed by 12/31/11\*
- Doctors cannot practice with expired license
- Significant penalties apply to late renewals and continuing education completed after 12/31/11.

The Board will be using a new computer system for license renewals this year. Beginning November 1, doctors wishing to renew on-line will need to register and obtain a password before they may renew. This procedure is a security procedure to protect against the disclosure of personal data. The Board appreciates your cooperation with the new procedure.

### Procedure:

- Start: Renewal Notice Postcard mailed late October
- Period Begins: November 1
- Instructions: On website after 11/1/11
- On-line Renewal: On Board's [website](#)
- Paper Renewal: Request form @ 512-305-8500
- End: December 31 (01/01/12 for on-line renewals)

Renewal Certificate - Renewal certificates are normally mailed within seven days after payment clears (If certificate is needed for insurance, an early renewal will allow sufficient time to receive certificate)

*Please note that the Board cannot guarantee the availability of the license renewal computer to renew timely at the last minute. If a doctor does not have access to a computer, paper renewal forms can be sent upon request.*

\* on-line renewal without penalty is available on 01/01/12. Staff will not be available on that date to assist with renewal issues.

## Substance Abuse Help

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

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

After contacting the Professional Recovery Network, the licensee or optometry school student will be given the opportunity to be evaluated. If a problem is identified, a program will be devised for the licensee. Provided that the licensee complies with the program, the assistance provided and corrected condition will remain confidential. However, if the licensee refuses to enter into a program or does not follow the program, the Professional Recovery Network may be required to report the licensee to the Board.

Work associates or family members may also refer a licensee or student to the Program.

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

Statistics strongly suggest that out of a population of 3,000 actively practicing optometrists in Texas, several licensees will have substance abuse issues or mental health issues that may hinder their ability to practice, as well as their ability to lead satisfying and productive lives. Part of each licensee's annual renewal fee funds the operation of the program, but the actual treatment costs will be the responsibility of the licensee.

## Rx / Dispensing Pain Medications

The Optometry Act requires the Board to provide doctors information regarding:

- prescribing and dispensing pain medications, with particular emphasis on Schedule II and Schedule III controlled substances;

- abusive and addictive behavior of certain persons who use prescription pain medications;
- common diversion strategies employed by certain persons who use prescription pain medications, including fraudulent prescription patterns; and
- the appropriate use of pain medications and the differences between addiction, pseudo-addiction, tolerance, and physical dependence.

In addition, the Act also requires the Board to provide doctors information regarding the services provided by poison control centers. This information is provided on the Board's website, primarily through a link to an information page on the website of the [Pharmacy Board](#).

## Electronic Medical Records

More and more doctors are switching to electronic medical records (EMR). The Board has noticed two issues with the widespread use of this technology.

While the use of templates or pre programmed responses can be a time saving feature, the Board has noticed in reviewing a significant number of electronic records several problems resulting from this feature. The first problem is the "automatic" use of pre programmed responses such that the records for each patient look remarkably similar. Records that have the exact same entries for all patients, regardless of the variety of ages, medical history, and complaints, can raise questions about the correctness of the records and tests performed in the examination.

The second issue is the use of pre programmed responses such that the information recorded in the patient records contradicts other information in the record. Examples include records in which the doctor has typed in a diagnosis or additional findings that contradict the template information recorded elsewhere in the record. This appears to be the result of the doctor picking a "usual" pre programmed response without considering that additional findings will not match the pre programmed response, or even worse, never entering the additional findings.

The Board has also seen electronic medical records where the doctor has reproduced examination findings from an earlier patient

visit as documentation for subsequent visits. Again, this casts doubt on the accuracy of any of information in the records.

These errors discount the presumption that the medical records accurately reflect the findings and results of the eye examination. This is an issue when the Board investigates a complaint involving standard of care, but would also be an issue in a malpractice lawsuit.

The second issue is the integrity and production of the records. The Board has investigated complaints where the doctor was unable to produce the patient records because the data had not properly been backed up prior to a hardware failure.

## Disciplinary Actions

### **Administrative Penalties**

Since the last Newsletter, administrative penalties were issued in the following agreed settlements for alleged violations of the Texas Optometry Act and Board Rules.

Several administrative penalties were issued for failing to comply with the professional identification requirements of the law. The identification requirements are set out below.

**Incorrect identification of practice**, either using an incorrect professional designation of the optometrists's name, or no identification at all on the outside of the practice. During the year the minimum penalty was increased to \$300.00. Optometry Act Section [351.362](#) and Occupations Code, Section 104.003 (see requirements below). **Administrative Penalties:** \$100 to \$300.

**Incorrect identification on prescription pads.** Doctor did not use correct professional identification on prescription pad. Occupations Code, Section 104.003 (see requirements below). **Administrative Penalty:** \$300.

The Board also issued administrative penalties in the following agreed settlements:

**5 Contact lens prescription not released** at the conclusion of exam (no follow-up was scheduled). Complainant alleged that

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## Frank Sortin, O.D.

1961

I graduated from the University of Houston, College of Optometry in 1960. I came from Florida to Houston as Houston and Ohio State were lauded as the best out there. Houston had more work opportunities, so I came to Houston to get my degree and work my way through. Those were the days of Free eye exams, glasses for \$19.95, and the profession had little standing in the eye's of other professions and the public. Loans to set up a practice were difficult to obtain.

The Houston College of Optometry was in its infancy, and we had space in the basement of the Science Building, and the student's lounge was also the boiler room for the building. My class was the first to be granted a Doctorate Degree; prior to that the program issued Certificates of Optometry.

I received an excellent education, but the need to develop a bed (chair) side manner was not a high priority. So after a few patients, I began to realize this and spent a lot of time sitting in other optometrist offices and learning the art of optometry. I did get better at this, and along with my good technical education, practiced over fifty years, thirty of which were in a low income area where I was given great appreciation for my services.

Through the years our profession changed from making glasses to a more therapeutic approach. And courses were presented to obtain new certification for the 'older crowd.' I decided to attempt the later certifications and became therapeutic and a glaucoma specialist. What a new and fresh interest this presented to our public use. But life and professional practice change and sometimes the older approach is discarded or loses value. This happens to older people; and happens to the art of a practice also.

I retired in 2009 and now take care of an invalid wife and do cartoons and make and design toys. I also play poker with two different groups, play chess, attempt golf, and love to do handy man jobs which I sometimes do poorly but the errors are often a learning process. I eat right and exercise on a regular basis, and this too was an off-shoot of my optometry education.

I have two ending comments: If anyone wishes to contact me, please do so. The Board has my contact information, and I would enjoy hearing from you. I would like to see all optometrists have a forum to express themselves to fellow optometrists such as this opportunity is presented to me.

## Disciplinary Actions (continued)

she never received prescription, and treating doctors could not provide any evidence that prescription had been released in compliance with law. Contact Lens Prescription Act Section [353.156](#).

**Administrative Penalties:** \$300

**Incomplete exam performed.** Board alleges that doctor did not complete the necessary steps for an initial eye examination, and then submitted claim to patient's insurance carrier for a full eye exam. Optometry Act Section [351.501](#). **Administrative Penalty:** \$500

**Signature stamp of another doctor on prescription.** Board alleges examining doctor gave her patient a glasses prescription that had the stamped signature of another doctor in the office. Texas Optometry Act Section [351.359](#) and [Rule 279.4](#). **Administrative Penalty:** \$300

**Failure to complete exam.** Doctor is alleged to have become embroiled in a unrelated business dispute with patient between initial exam and originally scheduled follow-up exam for contact lenses. Doctor would not conduct follow-up exam or refund examination fee which included fee for follow-up exam. Optometry Act Section [351.501](#). **Administrative Penalty:** \$300.

### **LETTER OF AGREEMENT**

**--Failure to record diagnosis and conduct necessary tests.** Board alleges elderly patient presented for treatment with complaint of pain behind the patient's eye and an itchy and grainy discomfort in the eye. Patient diagnosed with and treated for recurrent corneal erosion, but diagnosis was not recorded in patient record. Board also alleges that intraocular eye pressures should have been taken to rule out diagnosis of glaucoma. Licensee and Board agreed in letter that diagnoses will be recorded in patient records and all necessary tests performed. Optometry Act Section [351.501](#) and [Rule 277.7](#).

### **LICENSE PROBATION**

#### **—Prescribing Outside Scope of Practice**

The Board alleges that doctor prescribed on three occasions (with multiple refills) medication to treat asthma. The medications were prescribed for the doctor. The treatment of asthma is not within the scope of a therapeutic optometrist, and no licensee of the Board is authorized to prescribe any of the drugs prescribed by the doctor. The doctor also prescribed an oral analgesic for a patient in an amount exceeding that authorized by the Optometry Act. The doctor's license was suspended for a year, with the period of suspension probated. The terms of the Agreed Settlement also required the doctor to submit an administrative penalty of \$750.00. Texas Optometry Act Sections [351.358](#); [351.451](#); [351.452](#); [Rule 280.10](#). Thomas Blankenship, O.D.; 6497TG

#### **—Failure to Make Timely Diagnosis & Refer Patient**

A patient had been seen by the doctor for several years. The Board alleges that the patient presented with a family history of glaucoma, and that the patient had seen an ophthalmologist who faxed the doctor a statement that, because of family history and borderline pressures, an evaluation was required. The Board alleges that because of the family history, the information from the ophthalmologist, and increasing intraocular eye pressures during annual exams, the doctor's failure to order additional tests, the failure to schedule more frequent exams, and the failure to refer the patient at an earlier date than actually referred for glaucoma treatment, did not meet the required standard of care. The Board also alleges a dilated exam should have been conducted at the doctor's last examination of the patient. The doctor's license was suspended for a period of one year, with the period of suspension probated for a two year period. The terms of the Agreed Settlement also required the doctor to have a partner review all patient records for a 3 month period, and set out in the agreement specifically defined criteria for the immediate referral of a glaucoma suspect. The doctor also agreed to take 8 additional CE hours in the diagnosis of glaucoma. Texas Optometry Act Section [351.501](#). William A. Sansing, O. D.; 1792T

## Disciplinary Actions (continued)

### Required Professional Identification

An optometrist, in common with all health professionals, must inform the public of their professional license. [State law](#) requires an optometrist to use the following whenever the optometrist identifies himself or herself (no exceptions):

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

## New Legislation

The 82nd Legislature did not amend the Optometry Act or the Contact Lens Prescription Act. However, two bills might be of interest to licensees. [House Bill 300](#) amends statutes concerning HIPPA and the electronic transfer of medical information. The bill is quite lengthy and several provisions could possibly affect an optometrist's practice, including provisions regarding posting of notice if records are subject to electronic disclosure, requirements for training programs, and requirements for standards for electronic transmission of records. Section 6 regarding the release of medical records is one section that may be directly applicable:

### Sec. 181.102. CONSUMER ACCESS TO ELECTRONIC HEALTH RECORDS.

(a) Except as provided by Subsection (b), if a health care provider is using an electronic health records system that is capable of fulfilling the request, the health care provider, not later than the 15th business day after the date the health care provider receives a written request from a person for the person's electronic health record, shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form.

(b) A health care provider is not required to provide access to a person's protected health information that is excepted from access, or to which access may be denied, under 45 C.F.R. Section 164.524.

(c) For purposes of Subsection (a), the executive commissioner, in

consultation with the Department of State Health Services, the Texas Medical Board, and the Texas Department of Insurance, by rule may recommend a standard electronic format for the release of requested health records. The standard electronic format recommended under this section must be consistent, if feasible, with federal law regarding the release of electronic health records.

[House Bill 1951](#) is also quite lengthy, but the following section may be of interest:

SECTION 12.001. Section 1451.153, Insurance Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) A managed care plan may not:

(1) discriminate against a health care practitioner because the practitioner is an optometrist, therapeutic optometrist, or ophthalmologist;

(2) restrict or discourage a plan participant from obtaining covered vision or medical eye care services or procedures from a participating optometrist, therapeutic optometrist, or ophthalmologist solely because the practitioner is an optometrist, therapeutic optometrist, or ophthalmologist;

(3) exclude an optometrist, therapeutic optometrist, or ophthalmologist as a participating practitioner in the plan because the optometrist, therapeutic optometrist, or ophthalmologist does not have medical staff privileges at a hospital or at a particular hospital; [or]

(4) exclude an optometrist, therapeutic optometrist, or ophthalmologist as a participating practitioner in the plan because the services or procedures provided by the optometrist, therapeutic optometrist, or ophthalmologist may be provided by another type of health care practitioner; or

(5) as a condition for a therapeutic optometrist or ophthalmologist to be included in one or more of the plan's medical panels, require the therapeutic optometrist or ophthalmologist to be included in, or to accept the terms of payment under or for, a particular vision panel in which the therapeutic optometrist or ophthalmologist does not otherwise wish to be included.

(c) For the purposes of Subsection (a)(5), "medical panel" and "vision panel" have the meanings assigned by Section 1451.154(a).

SECTION 12.002. The change in law made by Section 12.001 of this Act applies only to a contract entered into or renewed by a therapeutic optometrist or ophthalmologist and an issuer of a managed care plan on or after January 1, 2012. A contract entered into or renewed before January 1, 2012, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

## New Rules & Amendments

The Board has met four times since the last newsletter was published. New rules and amendments to existing rules may be proposed or adopted at each Board Meeting. When a rule is first proposed, the public, including licensees, have an opportunity to make comments on the proposal. A link to the proposed rule will be on the [Board's website](#). Once a rule is adopted, all licensees are required to comply with the rule. The [website](#) contains links to all the Board Rules.

The following rules were amended during the last year:

- **Increased Administrative Penalties:** Rule [277.6](#) was amended to increase the minimum amount for administrative penalties. The full text of the rule is printed below.
- **Deferred Adjudication Reporting:** Several rules were amended to make clear that the reporting of criminal convictions also includes the requirement to report deferred adjudications. The amendments also clarify that disciplinary action may be imposed when a licensee receives a deferred adjudication. A discussion of the amendments is below. Rules [273.8](#), [277.5](#), and [271.2](#).
- **Optometric Glaucoma Specialist Course.** Rule [280.8](#) was amended to allow the Optometric Glaucoma Specialist course to be presented at remote location, using the technological tools now available to monitor and deliver optometric education.

### Deferred Adjudication

The amendment of Chapter 53 of the Occupations Code makes clear that the definition of criminal conviction includes deferred adjudication, as well as community and mandatory supervision and revocations of parole, probation or supervision. Therefore, the Board amended Rule 271.2 to include deferred adjudications as matters that must be reported by applicants for license. Rule 273.8 was amended to inform the licensees and the public that the requirement to report criminal convictions at license renewal includes the requirement to report deferred adjudications as well as other actions taken regarding criminal charges against a licensee. Rule 277.5 was amended to include deferred adjudications (including other actions taken regarding criminal charges) in the requirement to report convictions within 30 days of the judgment. The rule amendment also clarifies the definition of criminal conviction for the purposes of disciplinary action. Use the links above to see the entire text of the amendments.

### Administrative Penalties

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

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

- (1) felony conviction: \$2,000 minimum penalty for each offense ([~~Section~~] §351.501(a)(3) of the Act)
- (2) misdemeanor conviction involving moral turpitude: ~~\$2,000~~ [~~\$1,000~~] minimum penalty for each offense ([~~Section~~] §351.501(a)(3) of the Act)
- (3) impaired ability to practice: ~~\$2,000~~ [~~\$1,500~~] minimum penalty for each offense ([~~Section~~] §351.501(a)(4) of the Act)
- (4) violations of the act or rules involving controlled substances: \$2,000 minimum penalty for each offense ([~~Sections~~] §§351.501(a)(4) and (15), 351.358, 351.451, and 351.452 of the Act)
- (5) fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or in applying for license; or deceiving, defrauding, or harming the public: ~~\$2,000~~ [~~\$1,500~~] minimum penalty for each offense ([~~Section~~] §351.501(a)(4) and (11) of the Act)
- (6) gross incompetence in the practice of optometry or engaging in a pattern of practice or other behavior demonstrating a wilful provision of substandard care: ~~\$2,000~~ [~~\$1,000~~] minimum penalty for each offense ([~~Section~~] §351.501(a)(12) and (13) of the Act)

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## New Rules (continued)

(7) practicing or attempting to practice optometry while the license is suspended or violating the terms of a Board Order: \$2,000 [~~\$1,000~~] minimum penalty for each offense ([Section] §351.501(a)(8) and (17) of the Act)

(8) having the right to practice optometry suspended or revoked by a federal agency: \$2,000 [~~\$1,000~~] minimum penalty for each offense ([Section] §351.501(a)(10) of the Act)

(9) the guideline administrative penalty or fine amount for the following violations is a \$300 minimum penalty for the first offense and \$600 minimum penalty for the second offense and subsequent:

(A) Failure to report address changes to the Board as required by [Sections] §351.351 and §351.501(16) of the [Texas Optometry] Act.

(B) Failure to properly display name visible to the public as required by [Sections] §351.362 of the Act.

(C) Failure to display public interest information as required by [Section] §351.203 of the Act, and §273.9 of this title.

(D) Failure to properly release contact lens prescription as required by [Section] §353.156 of the Contact Lens Prescription Act,

(E) Advertising violations, including misleading advertising as prohibited by [Sections] §351.155 and §351.403 of the Act, and §279.9 of this title.

(F) Failure to use proper professional identification as required by [Section] §104.003 of the Texas Occupations Code.

(G) Offering glasses or contact lenses as a prize or inducement as prohibited by [Section] §351.404 of the Act and §273.3 of this title.

(H) Failure of the subject of a complaint to respond within 14 days of receipt to a request letter from the Board regarding the complaint as required by §277.1 of this title.

(10) the guideline administrative penalty or fine amount for the following violations is a \$1,500 [~~\$750~~] minimum and \$2,500 maximum penalty:

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

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

## Stewart Webb, O.D.

1961

WOW!! 50 Years as an Optometrist—WOW!!

I joined my father in private practice in 1961. Spectacle lenses were mostly glass; single vision lenses were plus cylinder; contact lenses were pmma (Plexiglas); and, corneal edema was a problem, especially in West Texas. We modified lenses, and, some times fenestrated them to prevent central corneal clouding. Exam and glasses were \$32.50 for single vision and \$35 for bifocals. We did understand binocular vision and the use of prism, orthoptics and vision training to enhance vision and perception.

Some of the best changes in the profession are the following:

1. soft contact lenses
2. gas-permeable rigid contact lenses
3. diagnostic & therapeutic pharmaceuticals
4. diagnostic technology, i.e., auto-refractors, visual fields, retinal imaging, topography and electronic medical records
5. reverse geometry lenses for orthokeratology
6. polycarb, high index, photochromic lenses
7. new lens designs, i.e., no-line progressive, free-form
8. vision research at our institutions

The worst change is probably third-party involvement.

ADVICE: Never stop learning—keep up with new developments.

My philosophy:

1. Give each patient your best.
2. Give patients more than they pay for.
3. The Golden Rule is the best management philosophy.

I currently practice 2 or 3 days a week with my son in Plainview Texas. The future of optometry seems very bright and it has been my privilege to be an optometrist.

## New Rules (continued)

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

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

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

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

~~[(d) The range of penalty is \$100 to \$2,500 for each violation.]~~

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

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

(f) ~~[(g)]~~ The amount of the penalty shall be based on:

- (1) the seriousness of the violation, including nature, circumstances, extent, and gravity of any prohibited act, and hazard or potential hazard created to the health, safety, or economic welfare of the public;
- (2) the economic harm to property or the environment caused by the violation;
- (3) the history of previous violations;

(4) the amount necessary to deter future violations;

(5) efforts to correct the violation; and

(6) any other matter that justice may require.

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

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

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

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

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

## 50 Years of Practice

Optometrists actively licensed for 50 years or more were invited to submit comments to the Newsletter. Many of these licensees have had their comments published in past newsletters. This issue has the most recent comments. Comments have been edited by the editor due to space issues. Publication is not an endorsement of the comments.