



Newsletter

A YEAR IN REVIEW

Agency Relocation



The Texas Optometry Board has relocated to its new office in the brand new George H.W. Bush Building, at 1801 Congress Avenue in Austin, Texas. The 14-story, George H. W. Bush State Office Building, includes 603,000 SF of office and 1,665 parking spaces above ground and below ground stands at the gateway to the reimagined Texas Capitol Complex. The new location is also home to other health occupation regulatory boards along with the Racing and Lottery Commissions.

Complaints Resulting From Glaucoma

After months and months of long meetings, including some special meetings, collaboration with the Texas Medical Board and many discussions with stakeholders related to SB993 of the 87th Regular Legislative Session, rules concerning complaints resulting from glaucoma treatment were effectively final and implemented as of May 31, 2022. Specifically, new Board Rules 277.13 Complaints Resulting From Glaucoma Treatment—Investigation Process and 277.14 Complaints Resulting From Glaucoma Treatment—Use of Case Review Consultants and Expert Panel outline and define the new investigation process for complaints resulting from glaucoma treatment and/or failure to refer cases for glaucoma treatment. The Board is mandated to work with physicians, specializing in ophthalmology, and therapeutic optometrists certified as Optometric Glaucoma Specialists to carry out the established process.

Telehealth

Telehealth remains a hot topic in the community and at the Texas Optometry Board. The Board supports the use of telehealth so long as the laws and rules of Optometry Act are met in the best interest of public protection. The Board has opined that though telehealth is a way for licensees to provide services it may not be appropriate for every type of patient or visit. If you are a licensee rendering telehealth services especially to new patients, make sure you are familiar with Texas laws and rules that require certain care components.

Inside this Issue

Rules Update	2
Practice Reminders	3
Complaint Information.....	4
Licensing Update.....	5

Special points of interest

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- Practice Reminders—Initial Patient Exams.
 - Glaucoma Complaints & Investigations.
 - Disciplinary Actions & The National Practitioner Data Bank
 - 88th Legislative Session—January 2023.



ARE YOU READY FOR RENEWAL SEASON?



Pursuant to Rule 275.3, all licensees are required to use the CE Broker digital platform for CE reporting and compliance in conjunction with license renewals. Rule 275.3 further states that licensees are responsible for the accuracy of the account. The TOB only requires a free, basic, account for license renewal purposes.

CE Broker provides a comprehensive course search, allows you to track and monitor completed hours and has customer service available to assist you Monday through Friday, 7:00 a.m. to 7:00 p.m. via email, chat or telephone.

Do not wait to sign up for your CE Broker account! The license renewal system

will not authorize renewal of a license unless you are 100% compliant with CE hours in CE Broker.

Finally, please note, the Board is aware of misinformation being posted on other public platforms regarding the agency's transition to CE Broker. Licensees are encouraged to contact the agency or CE Broker's Customer Service for accurate information related to the Board's requirement for reporting and tracking CE requirements.

The 2022 renewal season will open on Monday, October 17, 2022. Refer to Board Rule 275.2 for continuing education requirements. Remember—the professional responsibility course is an annual requirement!

BOARD MEETING RECAP

Since September 2021, the TOB has held four regular board meetings and one special meeting. Board meeting agendas and meeting minutes can be found at : <https://tob.texas.gov/board-meetings/>

EMAIL ADDRESSES

If you are not receiving the quarterly email updates or other notices, you may need to update your email address. Updates may be submitted to info@tob.texas.gov. Note, do not use a general office email for all staff

2023—CPR or BLS REQUIRED

After January 1, 2023, all applicants and licensees will be required to show proof of a CPR or BLS certification for initial or renewal of licensure.

Rules Update

Amended 22 TAC 275.1 General Requirements - Amended Rule 275.1 modernizes the way the TOB approves continuing education course providers and courses. The Board continues to reserve the right to review and approve providers that are not automatically granted approval through the amended rule. The Board also continues to reserve the right to reject any course

Amended 22 TAC 273.5 Clinical Instruction and Practice – Limited License for Clinical Faculty.—Amended Rule §273.5 replaced “Council on Optometric Education of the American Optometric Association (COEAOA)” with “Accreditation Council on Optometric Education (ACOE)”. Amended §273.5(g)(1)-(2) removed the “in-state” college of optometry requirement.

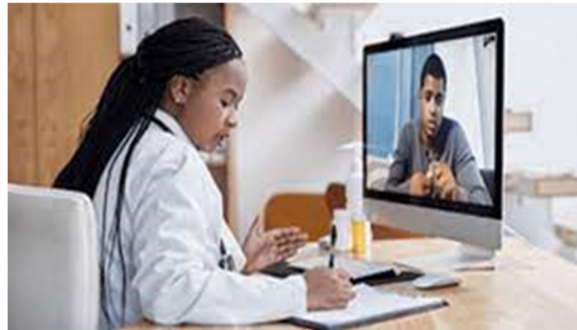
New 22 TAC 277.13 Complaints Resulting From Glaucoma Treatment – Investigation Process.

This new rule was adopted pursuant to SB993 of the 87th Regular Legislative Session. This new rule established the investigation process for all complaints received by the agency resulting from the treatment of glaucoma after September 1, 2021. SB993 required collaboration with the Texas Medical Board for this rulemaking process.

New 22 TAC 277.14 Complaints Resulting From Glaucoma Treatment – Use of Case Review Consultant and Expert Panel.

This rule was adopted pursuant to SB993 of the 87th Regular Legislative Session. This new rule established the selection process for the Case Review Consultant and Expert Panel as required by SB993 of the 87th Regular Legislative Session. SB993 required collaboration with the Texas Medical Board for this rulemaking process.

New 22 TAC 273.17 Emergency Management.—Effective January 1, 2023, all initial applicants for licensure shall provide proof of successful completion of CPR or BLS course prior to receiving a license. Also, effective, January 1, 2023, proof of completion of CPR or BLS is required for renewal of licensure.



PRACTICE REMINDERS

INITIAL PATIENT EXAMINATIONS

Texas licensees are required to abide by the laws and rules of the Texas Optometry Act when treating Texas patients regardless of the type of visit (in-person or telehealth). Here are a few practice reminders when dealing with initial patient exams according to the laws and rules of the state:

Sec. 351.353 INITIAL EXAMINATION OF PATIENT - To ensure adequate examination of a patient for whom a prescription is issued, the components of this section are required when issuing a prescription to a new patient.

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. 351.360. 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.

Board Rule 279.1 CONTACT LENS EXAMINATION. This rule specifies what a licensee must personally do and what tasks can be delegated during a contact lens examination. Note, pursuant to this rule, if a licensee cannot complete requirements of 351.353, it must be noted in the chart.

Board Rule 279.3 SPECTACLE EXAMINATION. This rule specifies what a licensee must personally do and what tasks can be delegated during a spectacle examination. Note, pursuant to this rule, if a licensee cannot complete requirements of 351.353, it must be noted in the chart.

Board Rule 277.7 PATIENT RECORDS. This rule requires that each patient chart shall contain specific information. Remember, if it is not in the chart—it did not happen!

Board Rule 279.16 TELEHEALTH SERVICES. This rule requires informed telehealth consent. Optometrists or therapeutic optometrists that use telehealth services must provide notice to patients regarding how they may file a complaint prior to rendering telehealth services. This rule states a telehealth service is subject to the same standard of care that would apply to the provision of the same health care service or procedures in an in-person setting.

FRAUD ALERT!

As early as May 2020, AG Paxton warned “all Texans should be aware of unsolicited calls and emails from scammers impersonating leaders in their government.” Currently, licensees still randomly experience this issue.

TOB urges you to be on the lookout for unexpected scam phone calls from anyone claiming to be from of our office.

TOB staff will NEVER:

- Threaten to bring in local police, FBI, immigration officers or other law enforcement to have you arrested for not paying.
- Pressure you to make a payment.
- Ask for personal information not directly related to an agency transaction.
- Ask for money outside of routine transactions made through Texas.gov or our secure vendors.
- Ask for bank account information.

Report suspected fraud to the Texas Attorney General’s Consumer Protection Division by calling toll-free 1-800-621-0508 or by filing an online complaint at <https://www.texasattorneygeneral.gov/consumer-protection/file-consumer-complaint>.

Attorney General Opinions

On March 30, 2020, the Office of the Attorney General issued Opinion KP-0297 regarding the authority of the TOB under section 351.005 of the Occupations Code over activities of licensed optometrists employed by physicians and retailers of ophthalmic goods leasing space to physicians. In KP-0297, Attorney General Paxton pointed out that 351.005 is not a blanket exception from the Texas Optometry Act in its entirety.

At the May 2022 meeting, the Board voted unanimously to seek a subsequent AG opinion due to an increased trend in the types of complaints being received at the agency and in the best interest of public protection.

The request was filed on May 31, 2022. Most opinions are issued **within 180 days** of the request, but the amount of time required may vary depending on the volume of research required and the number and length of commentaries and briefs received.

Professional Recovery Network

The TOB continues to contract with the Professional Recovery Network to offer impaired optometrists and optometry students a pathway to confidential recovery as long as treatment progresses in a satisfactory manner. Impairment includes substance abuse as well as mental health issues.

Colleagues of impaired optometrists may also use this service to assist in finding help for the impaired professional.

Information is available on the Board's website or the impaired professional or student may all the Program directly at 1-800-



Glaucoma Complaints & Investigations

Since September 1, 2021, pursuant to Section 351.3581(f)(1), the TOB has been required to maintain a publicly available list regarding the number of complaints filed with the Board regarding the treatment of patients for glaucoma by therapeutic optometrists and the disposition of those complaints. The list is updated quarterly after each board meeting.

As of the date of this Newsletter publication and since September 1, 2021, the agency has investigated two cases directly resulting from the treatment of glaucoma. Both cases were agency initiated—meaning, the agency became aware of issues and investigated without a patient and/or consumer complaint. Both cases underwent the investigation process outlined in new rules 277.13 and 277.14 which requires a physician ophthalmologist and expert panel reviews.

The licensee in Case Number 2022-00025 has entered an Agreed Settlement Order (Order) with the Board as of August 9, 2022. The Order revoked the glaucoma certification of the licensee and also set other conditions in order to maintain a therapeutic license. A fine was also assessed.

Case Number 2022-00042 is pending an informal settlement conference with the Investigation-Enforcement Committee of the Board. A final disposition is expected in or about September 2022.

Disciplinary Actions & The National Practitioner Data Bank

Disciplinary actions are displayed with a license when an online verification search is performed. The Board is federally mandated to report all disciplinary actions to the National Practitioner Data Bank (NPDB).

The NPDB is an online repository of reports containing information on medical malpractice payments and certain adverse actions related to health care practitioners, providers, and suppliers. It was originally established by Congress in 1986 to prevent practitioners from moving state to state without disclosure or discovery of previous damaging performance. If the TOB receives a report from the NPDB, it may trigger an official investigation or may

even constitute a reason for emergency action against a license.

The agency conducts an annual check of licenses in the NPDB database. All initial applicants are also required to provide a self-query report for initial Texas licensure.

Complaints, Investigations & Inspections

The Board takes seriously its core duty to protect the public through licensing qualified individuals, regulation of licensees and enforcement of the Optometry Act. Annually the agency investigates approximately more than 100 complaints regarding licensees, conducts at least 63 annual compliance inspections, performs a variety of applicant investigations and also handles reports of substance abuse or mental impairment. The following are a few examples of agency actions over the last year:

- The agency investigated a patient’s complaint involving telehealth services and concerns over an inaccurate exam which led to an issue with a prescription. The licensee entered an Agreed Settlement Order which imposed a probated suspension for a period of six months, a standard of care chart review, retaking of the Texas Jurisprudence exam and a fine.
- The Board Investigator conducted inspections that revealed violations of the Healing Arts Identification Act. Specifically, the Healing Arts Identification Act mandates how an optometrist or therapeutic optometrist shall professionally designate a name on things like business cards, billing statements, lab coats, and signage. Check it out—<https://statutes.capitol.texas.gov/Docs/OC/htm/OC.104.htm>.
- Some applicants undergo a criminal background check investigation based on fingerprint results. However, we have recently experienced issues with applicants publicly displaying information on websites like “LinkedIn” wherein they assert they have passed the Texas law exam and are a “licensed optometrist” prior to receiving a license; and, we are actively investigating a matter in which an applicant was practicing optometry prior to being licensed.
- Since September 1, 2021, the Board ordered two licensees to the Professional Recovery Network and required participation in the program to maintain licensure.
- Since September 2021, the Board has filed five complaints at the Southern Office of Administrative Hearings. These matters were all related to standard of care issues and could not be settled. Therefore, the Board pursued litigation.

HOW DO YOU LIKE THE NEW TOB WEBSITE? The website was updated to be more intuitive and user friendly. Don't see something?- Contact info@tob.texas.gov

Update from the Licensing Division

Monthly Jurisprudence Exams

In July 2021, the Board began offering monthly Jurisprudence examinations. In previous years, the Board only offered the Jurisprudence exam six times per year. While this has increased the availability of the exam, it has created additional work for the Licensing Division. As always, we will strive to continue to process licensing information consistently and timely.

Updated Applications

Licensure applications, including glaucoma applications, were updated in July 2022. The new forms are required as of August 1, 2022.

Checklists Provided to Applicants

Did you know that the Licensing Division provides checklists to applicants for their use throughout the process? The checklists are customized based on the applicant and details what is needed along with what is missing. Applicants also receive a “missing items” email or letter as well.

Licensure Delays Sometimes Happen

The agency continues to experience issues that cause licensure delays when working with some applicant files that are outside of our control. For instance, applicants often do not send the required documentation needed for the process such as an official transcript with proof of degree or the

National Practitioner Data Bank self-query report—both issues delay the agency’s ability to process a file for licensure. Agency staff work with applicants to resolve the issues as timely as possible.

Current Licensing Statistics (as of July 2022)

Total Licensees: 5,155 (4,714 active; 438 inactive; 3 retired)

Total OGS: 3,876 ((3,755 active; 120 inactive, 1 retired)



Contact Info:

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88th Legislative Session—January 2023

The 88th Legislative Session is set to begin on January 10, 2023 and end on May 29, 2023. Every two years, in advance of the legislative session, Texas agencies are required to file a Legislative Appropriations Request that includes specific requests for funding from the Legislature. The agency recently filed its request but it should be noted that it may be amended throughout the process. The agency specifically requested additional funding for the following:

- Funds to increase staff salaries;
- Funds to create a budget for staff development;
- Funds related to the enhancement of the enforcement program (funds requested for expert witnesses related to glaucoma cases and SOAH witnesses for general standard of care cases); and,
- Funds related to IT advancements and technology.