

TEXAS OPTOMETRY BOARD NEWSLETTER



Texas Optometry Act Clarification

The Texas Optometry Act (Act) governs optometrists. However, the practice of optometry and the practice of ophthalmology—regulated by the Texas Medical Board—have areas of overlap. In recognition of this overlap, the Act provides a carve-out in §351.005 of the Act for certain acts performed or directed by a medical doctor.

The central issue in a recent administrative hearing was whether a licensed optometrist working for a physician-owned medical practice is exempted from the Act under §351.005’s carve-out because he or she is acting according to the directions of a medical doctor.

In the hearing, an Administrative Law Judge (ALJ) concluded that the Act’s §351.005 carve-out does not apply if the directions received by a licensed optometrist from an ophthalmologist are not sufficiently specific, are addressed to the technicians rather than the optometrist, and are not designed to aid or attend to the needs of a specific patient.

The ALJ also found that the optometrist and his employer created the “impossibility” of making the required findings under §351.353 of the Act when they decided to operate remotely, and, therefore, an optometrist is not excused from the requirements to make those findings required in §351.353 even in a virtual setting.

The Board adopted the findings of the ALJ at its August meeting. In doing so, the Board affirmed that optometrists must comply with the Act even if acting under the direction of a medical doctor unless that direction is sufficiently specific, addressed to the optometrist, and aids the needs of the patient.

Under the Board’s findings, in future compliance investigations, an optometrist could be found in violation of the Act for failure to comply with the Act and could be subject to administrative penalties.

Inside this issue

Jurisprudence Exam	2
Rules Update	2
CPR/BLS	3
Continuing Education	3
Practice Pointers	4
License Renewals.....	5
Office Inspections	5
Disciplinary Actions	6
Update Contact Info	7
Office Relocation	7
PRN.....	8
Agency Contacts	8

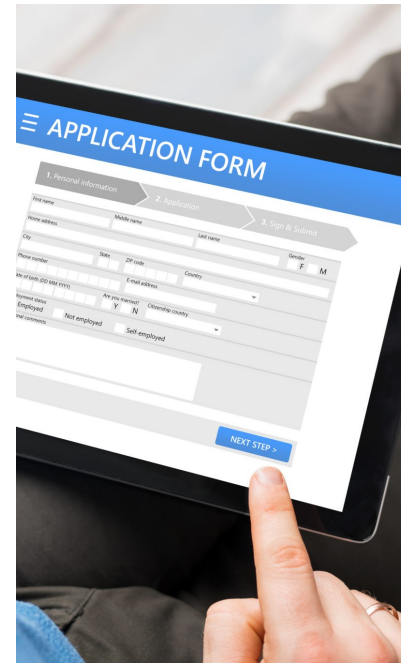
Jurisprudence Exam

The Board updated its initial licensing process including how it administers the Texas Jurisprudence Exam.

A person may take the exam at any time after registering on the NBE0 site – even if an application for licensure has not been received by the Board. The exam score will be valid for one year. If a person is not licensed within one year of passing the exam, the person must re-take and pass the exam prior to licensure.

The exam is administered solely by the National Board of Examiners in Optometry (see the [NBE0 Website](#) for details). There is a NBE0 registration fee – which is separate from any other NBE0 exam registration or from the Texas Optometry Board application fee.

Making this change should decrease the amount of time it takes from application to initial licensure.



BOARD MEETINGS

Since September 1, 2022, the Board has held four regular board meetings and one special board meeting.

Board meeting agendas and meeting minutes can be found under “[Board Meetings](#)” on the TOB website.

The next Board meeting will be held on November 3, 2023.

Rules Update

In January 2023, the Board adopted amendments to [22 TAC Chapter 277 — Practice and Procedure](#). The main focus of the amendments was to update the agency’s complaint process to make it more efficient and effective for both the complainant and the respondent.

Also in January 2023, the Board adopted amendments to [22 TAC Chapter 279 — Interpretations](#). The main focus of the amendments was to update the rules related to an optometrist’s general practice authority.

In April 2023, the Board adopted amendments to [22 TAC Chapter 280—Therapeutic Optometry](#). The main focus of the amendments was to update the rules related to therapeutic optometry practice.

In August 2023, the Board adopted amendments to [22 TAC Chapter 271—Examinations](#) and [22 TAC Chapter 273 – General Rules](#). The main focus of the amendments was to update the agency’s licensing and renewal process to increase efficiency in the licensing process.

CPR or BLS Certification

Beginning January 2023, all licensees must take a CPR or BLS certification course prior to renewal. Licensees must use CE Broker to upload certification to the Board.

The Board will accept online or in-person courses from any provider that offers certification as follows:

- A certification in CPR includes training and successful course completion in cardiopulmonary resuscitation, AED and obstructed airway procedures for all age groups according to recognized national standards.
- A certification in BLS includes training and successful course completion in airway management, cardiopulmonary resuscitation (CPR), control of shock and bleeding, and splinting of fractures, according to recognized national standards.

The Board is working with CE Broker to ensure these hours are counted correctly. If your license is set to expire December 31, 2023, the Board encourages you to confirm your CE is correct prior to completing your renewal.

Continuing Education Requirements Needed

[22 TAC §275.2—Required Education](#) outlines continuing education requirements for all licensees. Specifically, §275.2(g) details the requirements needed that are mandated by state law not found in Chapter 351 of the Act.

- **Two-hour controlled substances prescribing course.** §481.07635 of the Health and Safety Code requires each active Optometric Glaucoma Specialist to complete two hours of continuing education related to approved procedures of prescribing and monitoring controlled substances within one year of the initial Optometric Glaucoma Specialist certification date. This is a one-time education requirement.
- **One-hour opioid prescribing course.** All active Optometric Glaucoma Specialists who prescribe or dispense opioids shall complete an approved opioid course each year (two hours for a biennial renewal) pursuant to §481.0764 of the Health and Safety Code.
- **One-hour human trafficking course.** All active licensees who provide direct patient care shall complete one-hour of human trafficking continuing education prior to each biennial renewal as required by §116.003 of the Occupations Code.

Texas Optometry Board

Mario Gutierrez, O.D. of San Antonio is a Therapeutic Optometrist and Optometric Glaucoma Specialist. Dr. Gutierrez serves as Board chair.

Ron Hopping, O.D., MPH, of Friendswood is a Therapeutic Optometrist and Optometric Glaucoma Specialist. Dr. Hopping serves as Board Vice-Chair.

Judy Chambers, of Austin is a public member. Mrs. Chambers serves as Board Secretary.

John Todd Cornett, O.D. of Amarillo is a Therapeutic Optometrist and Optometric Glaucoma Specialist.

Carey Patrick, O.D. of Allen is a Therapeutic Optometrist and Optometric Glaucoma Specialist.

Rene Pena of El Paso is a public member.

Meghan Schutte, O.D. of Austin is a Therapeutic Optometrist and Optometric Glaucoma Specialist.

Ty Sheehan of San Antonio is a public member.

Bill Thompson, O.D. of Richardson is a Therapeutic Optometrist and Optometric Glaucoma Specialist.

Practice Pointer—Telehealth

[22 TAC §279.16 Telehealth Services](#) applies to all Texas licensed optometrists.

The Board recently affirmed an administrative hearing decision that the standard of care must be met pursuant to §351.353 of the Act regardless of whether it is an in-person service or a telehealth service.

All licensees providing telehealth services must provide notice of how complaints may be filed with the Board on the licensee's website or with informed consent materials provided to patients prior to rendering telehealth services.

Practice Pointer—Prescription Monitoring Program

Every Optometric Glaucoma Specialist who prescribes or will prescribe a Controlled Substance must register with the [Prescription Monitoring Program](#) (PMP).

State law directs the prescriber to consult the PMP prior to prescribing or dispensing an opioid to determine what controlled substances, if any, have previously been prescribed to the patient. Optometric Glaucoma Specialists also should consult [22 TAC §280.10](#) for more information about the administration and prescribing of Oral Medications and Anti-Glaucoma Drugs.

Practice Pointer—Patient Drug Abuse Information

According to the Texas State Board of Pharmacy, “within the last decade, abuse and misuse of certain prescription drugs, especially pain medications, has become prevalent. Studies have indicated that educating health care providers about the growing problem and providing them with information will create a heightened awareness of the appropriate use of pain medication as well as the misuses and diversion of addictive pain medications.”

More information regarding this topic can be found on the [Texas Pharmacy Board website](#).

License Renewals

The renewal season will open on **Monday, October 16, 2023**. If your license expires on December 31, 2023, it is almost time to renew!

All licenses are on a two-year renewal cycle. A total of 32 hours of continuing education is required for two-year licenses. This includes 24-hours of diagnostic/therapeutic, two hours of Professional Responsibility, one hour of human trafficking, and two hours for the opioid requirement (for OGS licensees).

Please do not wait to renew. It is easier for staff to help with any renewal issues early on. If you wait until the end of December, staff may not be available to help in time and you may be subject to penalties.



Office Inspections

Inspections are specifically authorized by the Texas Optometry Act §351.1575.

The Board previously conducted inspections in April and May of each year. Starting this Fall, inspections will be conducted throughout the year instead of just in the Spring.

The Board will conduct inspections both onsite or remotely. The location of the office being inspected may determine the type of inspection. The Board always reserves the right to turn a remote inspection into an onsite inspection.

As a reminder, if you receive a notice of a remote inspection or onsite inspection, make sure to cooperate with the request within 14 business days as required by [22 TAC §273.16 Licensee Compliance With Board Investigations and Inspections](#).

For questions about the board inspection process, contact Board Investigator, [Dennis Riggins](#).



Disciplinary Authority

Pursuant to §351.501 of the Act, 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 or counseling or additional education, or reprimand a license holder.

Public disciplinary actions such as an Order of Suspension or an Agreed Settlement Order are permanent records.

Disciplinary Actions

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.

Agreed Settlement Order

A licensee entered into an Agreed Settlement Order with the Board because the investigation found that the licensee fell below the minimum standard of care in the treatment of a patient for failure to perform a dilated fundus exam to rule out a hole in the retina, gave a misdiagnosis of blepharitis, and failed to refer patient to an ophthalmologist for immediate evaluation and treatment. The licensee agreed to pay a \$1,000 fine, complete eight hours of continuing education in retinal health, and shadow an ophthalmologist who is a retinal/posterior specialist for eight hours.

Agreed Settlement Order

A licensee entered into an Agreed Settlement Order with the Board because the investigation found that the licensee fell below the minimum standard of care in the treatment of a patient for failure to diagnose, properly treat and provide follow-up care for glaucoma. The licensee was suspended for a period of six months, agreed to pay an administrative fine in the amount of \$2,500, complete a 30-hour glaucoma course, shadow a glaucoma specialist for 16 hours, and take additional continuing education related to record keeping. Additionally, once the license is reinstated, the licensee shall submit a total of 10 patient files over the course of six months for review.

Administrative Penalties.

As a result of the inspection process and review of patient records, eight administrative penalties were issued for failing to appropriately conduct an initial exam of a patient as defined in §351.353 of the Texas Optometry Act. Administrative penalties ranged between \$250—\$300.

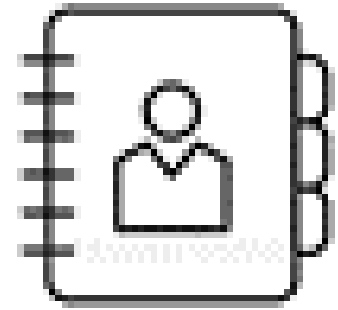
As a result of the inspection process, administrative penalties were issued for failing to correctly identify as an optometrist on prescriptions, business cards and door signage. Administrative penalties were \$250.

Update Your Contact Information.

The Board primarily sends communications via e-mail - including renewal notices, quarterly updates, and other reminders. The Board does send certain communications via U.S. postal mail such as notices of violation and investigation notices.

Please make sure to update your contact information including your email address. The Board recommends you use a personal email address instead of a business email so that correspondence does not get misplaced in the event of a change in job. If you need to update your information, please contact info@tob.texas.gov.

In the upcoming months, the Board will be rolling out a system to allow licensees to update an email or mailing address themselves.



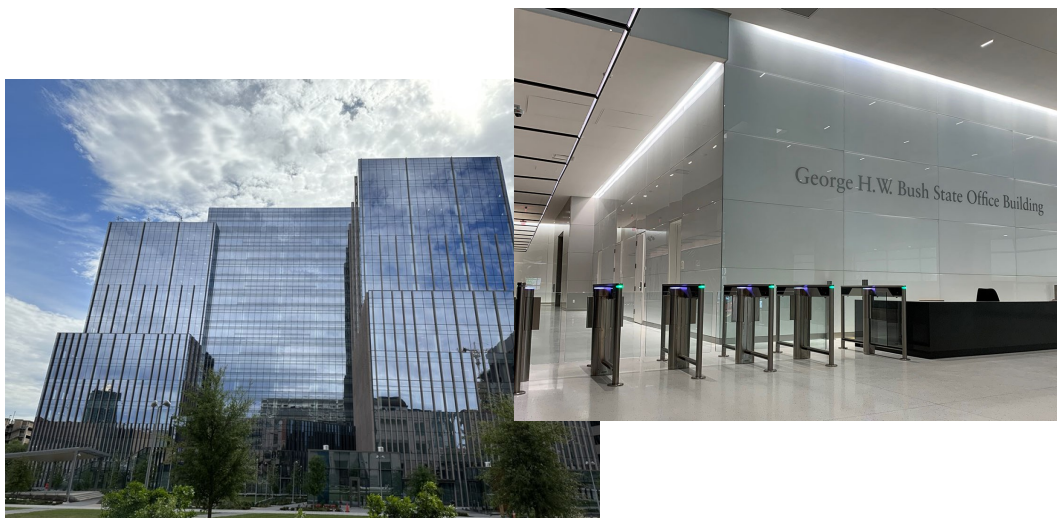
CONTACT INFORMATION

Office Relocation

The Board office relocated in July 2022. Our office is located at 1801 Congress Avenue, Suite 9.300, Austin, Texas, 78701-1319.

Please know building security requires an access badge to access the upper floors. Visitors must stop at the information desk and be escorted upstairs by a badged staff member.

If you intend to visit the office, staff encourages you to make an appointment.





Professional Recovery Network

The TOB has contracted 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 call the Program directly at 1-800-727-5152.

KEEP IN TOUCH

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