



TEXAS OPTOMETRY BOARD

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NEWSLETTER

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2006 LICENSE RENEWAL BEGINS FIRST WEEK OF NOVEMBER

Again last year eighty percent of licensees renewed on-line. Credit cards and electronic checks may be used to pay the license fee on-line.

ALL LICENSES EXPIRE DECEMBER 31, 2005

Renewal Procedure

- **Mail in Continuing Education** attendance documentation (certificates) as soon as received from the provider (unless the course provider has informed you that it is submitting the documents). The Board must have received and posted all 16 hours of CE *before* active licensees may renew on-line. There appear to be many misconceptions about the CE requirements -- please see page 2.
- **Log on to the Board's website after November 1, 2005** and click the button: "Renew" (www.tob.state.tx.us) Follow the instructions on the post-card being mailed to every licensee in late October 2005.
- Military and federal government employees who are exempt from fees may renew on-line

50 YEARS

Personal reflections on 50 years of practice are presented throughout the Newsletter

50 YEARS

Exceptions

The on-line system cannot renew the following types of licenses, and these licensees (as well as other licensees who do not wish to renew on-line) should contact the Board by mail, e-mail or telephone:

- Licensees changing status from inactive to active (or vice-versa)
- Employees of military or federal government who are required by their employer to pay a fee

OPTOMETRY LAWS CHANGED SUNSET REVIEW COMPLETED

Along with several other health professional licensing agencies, the Optometry Board was reviewed by the Sunset Advisory Commission this year (which is required of all state agencies every 12 years). House Bill 1025 was subsequently passed by the legislature reauthorizing the Board for an additional 12 years. Changes to the Optometry Act in House Bill 1025 include:

- Federal law regarding **releasing contact lens prescriptions** and dispensing of contact lenses is now incorporated into the Texas Contact Lens Prescription Act.
- Office and patient record **inspections** by the Board are specifically defined

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Continuing Education Refresher

The following information should answer the most common questions about continuing education. More specific information is available on the website and in Board Rules 275.1 and 275.2.

50 - A Nash Hogue, O.D. - 50

Along with many other veterans from World War II, Dr. Hogue attended Southern College of Optometry on the GI Bill soon after being discharged from the Navy. Most of the veterans were older than Dr. Hogue and some had already started families.

Dr. Hogue began practice in Lufkin where the only other optometrist still used trial frames and trial lenses to do exams. Exams for safety glasses were arranged with employees of local industry for \$5.00. Two eye, ear, nose and throat physicians did refractions in their office, but patients had to travel to Houston for any eye surgery. Because so few people had insurance, surgery was put off as long as possible, as well as eye care in general. Dr. Hogue remembers seeing a five year old girl and in the exam finding that she was blind in one eye, which was a complete surprise to her parents. Dr. Hogue treated that same girl through school, marriage, and the birth of her children, until he gave up full-time practice. He now practices one day a week in Lufkin.

Dr. Hogue believes in building friendships with his patients by treating them like he wants to be treated. He tries to "explain in plain English their vision problem, solutions, and sometimes the long range prognosis." Dr. Hogue still enjoys his patients and through the years has had great relationships with his partners.

The best changes in practice include therapeutic optometry and contact lenses. The worst change was the growth of commercial chain optometry in the 1950's.

Church and community activities brought a lot of satisfaction. In addition to part-time practice, Dr. Hogue stays busy with the cattle on his farm. He is helped by his son and teenage grandsons, and still manages an active and happy life although his wife passed away three years ago.

Board Approved: Every course must be approved by Board. The Board meets for the last time this year on November 4, 2005. All courses must be submitted to the Board before that date. COPE approved and courses provided by optometry schools will be approved by Board, but the Board may designate diagnostic/therapeutic hours differently and cannot approve state law specific courses. Every year out-of-state courses are submitted for the first time after the last Board meeting and cannot be used for license renewal.

Approved Courses: A list of approved courses is on the Board's website which is updated after each Board Meeting.

Obtaining Course Approval: Instructions for submitting a course to the Board for approval are on the website. Course providers can use this procedure to submit the necessary information. This must be done prior to November 4, 2005.

Hours required: Sixteen hours, 6 of which must be diagnostic/therapeutic. Maximum of 8 hours may be obtained from approved Internet or correspondence courses (in any combination). Maximum of 4 hours from approved grand rounds (8 actual hours since 2 hours of grand rounds equals one hour of continuing education).

Internet Courses: Both Internet and correspondence courses may require several days or even weeks to furnish a certificate of completion. The original of this certificate must be furnished to the Board before the course hours will be credited. A check with the provider before taking the course may be advisable. Some providers are not staffed near the end of the year to answer questions or provide certificates.

Checking Individual CE Hours Obtained: Each doctor may check the number of approved CE hours that have been reported to and approved by the Board. If access to the Internet is available, hours may be checked on-line at the Board's website. A zero must be used before the license number, and the license number should not include the "T" or "TG" The hours are also available by telephoning the Board at 512-305-8500.

Mailing Proof of Course Attendance: Original certificates should be mailed as soon as received (keep a copy in case the original is lost in the mail). Some providers mail a list to the Board -- please

check with the provider before assuming that a list will be sent to the Board.

Medical Exemptions: A licensee claiming a medical exemption under Rule 275.1(c), must apply to the Board for the exemption prior to the last Board Meeting of the year in November.

Who is Exempt: Doctors first obtaining a license in 2005, doctors with an inactive license, doctors in the military, and doctors working for the federal government who do not practice outside the federal government facility.

Law Changes
continued from page 1

- **Late renewal fee** penalty is slightly increased
- **Refunds** of examination fees by a licensee may be part of an Agreed Order in a disciplinary matter
- **Temporary suspension** or restriction of a license on an emergency basis when the public health is threatened is now authorized
- **Cease and desist** authority for the Board has been added to the Optometry Act

The legislation also makes some changes to the procedure for the evaluation of complaints, increasing the number of Board Members who must review a complaint pertaining to medical issues. Similar to other licensing boards, the governor will now select the chair of the Board.

CONTACT LENS PRESCRIPTIONS
Changes to Law

House Bill 1025, 79th Legislature, amended the Texas Contact Lens Prescription Act such that the requirements of federal law regarding the release of contact lens prescriptions are now part of state law. An informational copy of the amended state law is available on the Board's website on the "Optometry Act" page. A quick summary of the changes follows.

The Board adopted Rule 279.6 last year to assist licensees with complying with the federal law. House Bill 1025 will allow the Board to amend Rule 279.2 as a

complete guideline to the requirements of releasing and verifying a contact lens prescription. The text of Rule 279.2 will be posted on the website when available.

Section 353.101, regarding dispensing of contact lenses, has been amended to remove the requirement that the dispenser receive an original copy of the prescription, and to add that the prescription may be received directly or by fax, or in the alternative, the dispenser may verify the prescription by telephone, fax, or electronic mail.

New Section 353.1015 creates the verification process. It requires a dispenser requesting a verification to provide the doctor with:

- (1) patient's full name and address;
- (2) contact lens power, manufacturer, base curve or appropriate designation, and diameter when appropriate;
- (3) quantity of lenses ordered;
- (4) date of patient request;
- (5) date and time of verification request; and
- (6) name of contact person at dispenser's company, including facsimile and telephone number.

The new section defines the verification process as completed when the doctor:

- confirms that the prescription is accurate,
- states that the prescription is inaccurate and provides the correct prescription information (the doctor is required to specify the inaccuracy and provide the correct information), or
- does not communicate with the dispenser within eight business hours of the request.

The new section prohibits dispensing contacts when the

- 50 - Wilbur C. Treadwell, Jr., O.D. - 50 -

Dr. Treadwell was licensed on April 9, 1951. He graduated from Southern College of Optometry. After receiving a license, Dr. Treadwell practiced with his father for a short time before going into the Air Force where he practiced for five years, two in San Antonio and three in England. After his discharge, Dr. Treadwell returned to practicing with his father in downtown Austin. At that time his father also sold hearing aids, a practice Dr. Treadwell discontinued. Dr. Treadwell continues to practice optometry in Austin five days a week (although as the sole owner of his practice he can practice when he wants).

Dr. Treadwell has "enjoyed optometry the whole time." He sees the therapeutic legislation as the best change in the practice during his fifty years, and enjoys the challenge of keeping up to date on new medications and treatment (Dr. Treadwell is an optometric glaucoma specialist). The worst change has been the decline of the individually owned practice. Other changes he has seen include better education (Southern College was housed in sheet metal buildings when Dr. Treadwell attended the then closest school to Austin), and a much greater willingness of the public to accept therapeutic treatment from the optometric profession.

In his practice Dr. Treadwell has tried to satisfy the patient, and as a Rotarian, followed those principles. Dr. Treadwell served on the Board from 1979 to 1985. He is a past president of Texas Optometric Association, and his son is a third generation optometrist.

dispenser is notified that the prescription is invalid (if the prescription is invalid, the doctor is required to specify why the prescription is invalid) .

Section 353.103 is amended to acknowledge the existence of the verification process and to remove the requirement that an original prescription must be kept by the dispenser when all the lenses have been dispensed.

Section 353.104 is amended to include verification as an accepted method of transmitting a prescription for an emergency refill.

Section 353.105 is amended to allow the dispenser to “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.”

Section 353.152, which defines the requirements for a contact lens prescription, is amended to remove the requirement for the original signature of the doctor and substitute, where applicable, that prescription has been verified, and to remove the requirement for placing the number of lenses on the prescription (although the Board may make this requirement by rule).

Section 353.156 is amended to require release of a prescription after the prescription is determined regardless of whether the patient requested it, and to require verification. The amendment prohibits charging the patient for providing a verification.

Section 353.158 is amended to prohibit charges for verifying a prescription.

NEW RULES & AMENDMENTS

Summary of Changes Since Last Newsletter

- 277.1 Duty to Respond to Information Request by Board Regarding a Complaint
- 277.6 Increase in Penalties, Penalty for Failing to Respond to Information Request by Board
- 279.10 Door Signs for Relief Optometrists & Doctors in Multiple Offices
- 271.2 Criminal History Verifications Required for License Applicants [adopted, effective September 2005]
- 273.4 Changes in License Renewal Fees and Setting of Fee for New Retired License [adopted, effective September 2005]
- 273.8 Changes to the Late License Renewal Penalties [adopted, effective September 2005]
- 277.7 Temporary License Suspension Procedure [adopted, effective September 2005]

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. Once a rule is adopted, all licensees are required to comply with the rule. The Board’s website contains links to all the Board Rules.

Duty to Respond to Information Request by Board Regarding a Complaint

Licensee has 14 days to respond

RULE §277.1 Complaint Procedures

(a) - (b) No change

(c) (1) - (3) No change

(4) The committee may request that the subject of a complaint respond in writing to the allegations in the complaint. The subject of the complaint shall have 14 days from the receipt of the Board’s request to respond. The executive director may extend the time period upon a showing of good cause by the subject of the complaint.

(5) No change

Increase in Penalties, Penalty for Failing to Respond to Information Request by Board

RULE §277.6. Administrative Fines and Penalties

(a) - (c) No change

(d) Based upon the criteria in subsection (b), the Board may assess a penalty up to the maximum amount listed in each category below for a first violation of the identified prohibited action:

- (1) Category 1 Violations: \$1,000 maximum penalty
 - (A) - (G) (No change.)
 - (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.
- (2) Category 2 Violations: \$2,000 maximum penalty
 - (A) - (D) No change
- (3) - (4) No change
- (e) No change

Door Signs for Relief Optometrists & Doctors in Multiple Offices

Doctors Who do not Own a Practice Must Place Name at Entrance Unless Only Temporary

RULE §279.10. Professional Identification

(a) To protect the public health and provide a means for the patient to identify a licensee in a complaint filed with the Board, §351.362 of the Act requires an optometrist or therapeutic optometrist to display the doctor's name so that the name is visible to the public before entry into the office reception area. This requirement does not apply to an optometrist or therapeutic optometrist practicing at a location on a temporary basis, as defined in subsection (b) of this section.

(b) Temporary basis is defined as the practice of optometry or therapeutic optometry at an office for no more than two consecutive months. For example, an optometrist or therapeutic optometrist practicing at a location one day per week during a three month period is not at that location on a temporary basis, and the doctor's name must be displayed as required in §351.362 of the Act.

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

Criminal History Verifications Required for License Applicants

Adopted by Board, effective September 2005

RULE §271.2 Applications.

- (a) No change.
- (b) Such application shall contain references as to good moral character from at least two licensed optometrists in good standing in the state of licensure and who are actively engaged in the practice of optometry. In the event this is not possible, affidavits from two persons not related to the applicant or to each other, who have known the applicant for at least five years, attesting to the good moral character of the applicant, will be acceptable. The applicant shall report all felony and misdemeanor criminal convictions on the application. Failure of an applicant to report every criminal conviction is deceit, dishonesty and misrepresentation in seeking admission to practice and authorizes the board to take disciplinary action under §351.501 of the Act. An applicant is not required to report a Class C Misdemeanor traffic violation. The applicant shall furnish any document relating to the criminal conviction as requested by the Board. The applicant shall also submit completed Federal Bureau of Investigation (FBI) fingerprint cards provided by the Board so the Board may obtain a criminal history record.
- (c) - (g) No change.
- (h) The fee for taking the initial examination shall be \$150. Each applicant shall also submit an additional fee to the Board in the amount charged by the Texas Department of Public Safety for providing the criminal history record. Any applicant who is refused a license because of failure to pass the first examination shall be

50 - John McCall, Sr., O.D. - 50

"I guess I will quit practicing when they carry me out of my clinic. I want to die with my boots on!"

In his 55 years of practice, Dr. McCall's philosophy has been to "place the patient's needs and welfare first." When he started practicing, "OD's were proficient in doing a good vision analysis, developmental vision tests, prescribing office or home visual training, analysis of occupational vision needs, analysis of unusual muscle problems such as latent hyperphoria as a possible cause of migraine, compensating for a vertical prism imbalance at the reading level by using dissimilar segs or slab off. After the standard use of monocular occlusions for amblyopia we followed with a period of binocular nasal occlusions and home training." Dr. McCall is concerned that young doctors may not be as proficient in these skills.

Dr. McCall is active in the use of therapeutics (the best change in optometry). He was advocating the use of diagnostic drugs even back in the 1950's. Not the first optometric glaucoma specialist, but Dr. McCall has the lowest license number of any optometric glaucoma specialist (therefore he has been practicing optometry longer than any optometric glaucoma specialist).

Dr. McCall still enjoys the challenge of practicing -- "the greater the patient's problem, the more I enjoy the challenge." He practices in Crockett with his son, John McCall, Jr., O.D.

permitted to take a second examination on the payment of \$150, provided the second examination is taken within a period of one year.

(i) No change.

Changes to Active and Inactive License Renewal Fees and Fee Set for New Retired License Renewal

The 79th Legislature authorized spending for increased investigator travel, acquisition of information technology, employee pay raises and executive director salary increase if the Board increased license fees to fund the authorization (see article on page 8). License renewal fees have therefore been increased by \$7.00. See article on page 8 discussing Retired License

Adopted by Board, effective September 2005

RULE §273.4. Fees (Not Refundable)

(a) Examination Fee \$150.00.

(b) Initial Therapeutic License \$50.00 plus \$200.00 additional fee required by Section 351.153 of the Act, and plus \$5.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$255.00

(c) Provisional License \$75.00

(d) Limited Faculty License \$50.00

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

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

(g) License Renewal \$182.00 plus \$200.00 additional fee required by Section 351.153 of the Act, and plus \$1.00 fee required by House Bill 2985, 78th Legislature. The inactive licensee fee does not include \$200.00 additional fee. Total fees: \$383.00 active renewal; \$183 inactive renewal

(h) Late fees (for all renewals, one to 90 days) \$75.00

(i) Late fees (for all renewals, 90 days to 1 year) \$150.00

Note: Late penalties for license renewal, although not yet changed in this rule, have been changed by legislation. See Rule 273.8, below. Renewal fees less than 90 days late will be \$474.00 for active licensees (with timely CE) and \$274 for inactive licensees

(j) Late fees (for all renewals with delayed continuing education) \$175.00

(k) Therapeutic Certification Application \$80.00

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

(m) License Without Examination Fee \$300.00

(n) Optometric Glaucoma Specialist License Application \$50.00

(o) Retired License. \$25.00 plus \$200.00 additional fee required by Section 351.153 of the Act, and plus \$1.00 fee required by House Bill 2985, 78th Legislature. Total fee: \$226.00.

Changes to the Late License Renewal Penalties

House Bill 1025 changed the method of determining late renewal fees. The new method will result in a higher late fee.

Adopted by Board, effective September 2005

RULE §273.8. Renewal of License

(a) Expired license.

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

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

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

(4) If a person's license has been expired for one year or longer, the person may not renew the license but may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an initial license.

(5) The board, however, may renew without examination an expired license of a person who was previously licensed in Texas, is currently licensed in another state, and has been in practice for two years immediately preceding application for renewal. The person shall be required to furnish documentation of continuous practice for the two-year period, pay the renewal fee as established by subsection (a)(3) of this title, above.

(6) - (7) No change.

(b) No change.

Temporary License Suspension Procedure

House Bill 1025 amended Optometry Act to give Board the same emergency suspension authority as other health licensing boards.

Adopted by Board, effective September 2005

Rule 277.8 Emergency Temporary Suspension or Restriction.

- (a) Annually, the chair of the Board shall appoint for approval by the Board a three-member disciplinary panel (“panel”) and alternate, consisting of at least one public member, for the purpose of making a determination of whether a license should be temporarily suspended or restricted under Section 351.5015 of the Act. The chair shall name one of the members as chair of the panel. If a member of the panel is recused, or unable to participate in the panel, the alternate Board member may serve in the member’s place.
- (b) The panel shall meet to receive information on a complaint indicating that a licensee’s continued practice of optometry or therapeutic optometry may constitute a continuing or imminent threat to the public welfare. At the conclusion of the meeting, if the panel concludes that the licensee’s continued practice would constitute a continuing or imminent threat to the public welfare, the panel may restrict or suspend the license for a temporary, stated period of time.
- (c) The disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel.
- (d) The panel may suspend a license under this section without notice or a hearing on the complaint, provided the Investigation-Enforcement Committee shall meet in an informal conference as soon as practical, to determine if formal disciplinary proceedings should be initiated against the licensee. The licensee must receive notice of the conference at least 72 hours prior to the conference.
- (e) Following the informal conference, the Investigation-Enforcement Committee shall take one of the following actions:
- (1) Lift the temporary suspension or restriction and reinstate the license without conditions.
 - (2) Negotiate an agreed settlement order that will dissolve, continue or modify the suspension or restriction, or impose other sanctions as appropriate. The agreed order shall be presented to the Board at the next available Board Meeting for approval.
 - (3) Prepare a complaint affidavit setting out the details of the complaint and recommended sanctions, and forward the complaint affidavit to the State Office of Administrative Hearings for setting of an administrative hearing. Following the hearing, the administrative law judge will prepare a proposal for decision for adoption, in the form of an order, by the Board.
- (f) The panel and the Investigation-Enforcement Committee may receive testimony and evidence in oral or written form. Written statements may be sworn or unsworn. The panel or committee members may question witnesses at the members’ discretion. Evidence or information that is clearly irrelevant, unreliable, or unduly inflammatory will not be considered.

- End of New Rules and Rule Amendments-

50 - Richard Friedman, O.D. - 50

Dr. Friedman went to optometry school directly from high school and was therefore too young to take the Board exam when he graduated. After a young start, at age 86 he still practices three days a week in the Dallas area. The over fifty years of practice have gone by quickly.

Since he started out so young, Dr. Friedman felt that he still had much to learn about the practice compared to students starting out today. When Dr. Friedman began practicing, optometrists were giving away dishes as an advertising method. Dr. Friedman cited the 1969 Optometry Act, therapeutic legislation, Medicare privileges, and raising the money required for the start-up of the University of Houston College of Optometry as the most significant changes in the practice. One hundred thousand dollars for the College of Optometry was raised by doctors like Dr. Friedman despite the fact that they had recently returned from World War II and had just started practices and families. Commercial consolidation and battles with medicine continue as challenges for the profession.

Dr. Friedman was interviewed at the annual meeting of state optometry boards from across the United States and Canada, where he was honored for his past service as president of that organization. While Dr. Friedman was chair of the Texas Optometry Board, a lawsuit was brought against the Board by another Board Member challenging the authority of state law to restrict the use of trade names and define the membership of the Board. Being chair, Dr. Friedman’s name appears in the title of the case that eventually was decided by the United States Supreme Court (Friedman vs. Rogers). Dr. Friedman still remembers being present at the Supreme Court as his name was read to begin oral argument. The case was decided in the favor of the Board in 1979, and was an important case regarding the legal authority of state regulatory boards (since the case was decided the Optometry Act has been amended to permit the use of trade names).

RETIRED STATUS LICENSE (VOLUNTEER CHARITY CARE)

House Bill 2680 authorizes health licensing boards, including the Optometry Board, to “adopt rules providing for reduced fees and continuing education requirements for a retired health care practitioner whose only practice is voluntary charity care.” The Board has proposed adding subsection (o) to Rule 273.4, Fees, to create a new class of license: the Retired License. The

50 - William Jones, O.D. - 50

Dr. Jones first thought of optometry as a career after his mother suggested talking to her optometrist in Coleman, Dr. Black. The doctor took an interest in “Billy” and gave him a college textbook - - assigning him weekly chapters to read which they would discuss in his office. Dr. Black also allowed him to work in the optical once a week.

Dr. Jones went on to attend the Southern College of Optometry, but only because of the resources the G.I. Bill provided (he had served in the Army Air Force during World War II). Along with many other returning veterans, he went to optometry school year round.

Dr. Jones was licensed in 1949 and began practicing in Cleburne. At that time the popular frames were American Optical Numonts, Rimways, and P3 as well as rimless Kryptok lenses. The TURA was a fashionable alternative metal frame in different colored finishes. He is still practicing in Cleburne.

Continuing education has been one of the good changes in the practice of optometry.

Dr. Jones always kept an open Bible in his reception area, “hoping that the most important book may be a constant witness.” He prefers to focus on the satisfaction from helping patients see the world more clearly (as opposed to the practice of optometry solely for financial rewards). He feels fortunate to like what he has been doing for more than fifty years, and he plans to continue practicing “as long as God grants me the health to do so.”

total renewal fee for the retired license is set at \$226.00, which includes the \$200.00 occupation fee required by Section 315.153 of the Optometry Act, and a \$1.00 HB 2985 (78th Legislature) fee. The actual retired license fee of \$25.00 compares to the normal license fee of \$182.00.

The Board has also proposed amending Rule 275.1 by adding subsection (g) to allow the retired optometrist whose only practice is volunteer charity care to

obtain and renew the retired license after submitting 8 hours of Continuing Education, all of which may be obtained on the Internet or by correspondence. At least one half of these hours must be diagnostic/therapeutic.

The practice of providing volunteer charity care is defined in proposed amendments to Rule 273.7, in accordance with the definition in Section 84.003 of the Texas Civil Practice and Remedies Code. To be eligible for the Retired License, the optometrist can only practice optometry without compensation or expectation of compensation (except for the reimbursement of travel and supply expenses) as a direct service volunteer of a charitable organization. Section 84.003 defines “charitable organizations,” which includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in a community, including these types of organizations with a 501(c)(3) or (4) exemption from federal income tax, some chambers of commerce, and volunteer centers certified by the Department of Public Safety.

Those holding a Retired License may not practice any optometry for compensation.

Amended Rules 275.1 and 273.7 can be viewed on the Board’s website -- the rules had not been formally adopted by the Board at the publication of this Newsletter.

OTHER LEGISLATIVE CHANGES

-- License Renewal Fee

The Optometry Act was not amended by legislation in this session other than House Bill 1025, discussed above. License fees, however, were affected by this legislative session. Through Rule 273.4, the Board has set fees of \$383.00 for license renewal (\$183.00 for inactive licenses). This is an increase of \$7.00, to cover additional travel funds for investigations, funds for information technology improvements (computer database changes to interface with on-line renewal), and increased appropriations for the state employee pay raise (including the executive director). Unfortunately, regulatory agencies cannot receive additional appropriations without increasing license fees. The Board continues to operate frugally on a budget reduced 12.5 percent from historical levels with only the additions discussed above.

50 - Ambassador S. L. Abbott, O.D. - 50

Ambassador Abbott practiced optometry for twenty years in El Paso, opening his practice in the then unusual location of a residential suburban area. Early in his practice he started Sunland Optical Company (which at first served the optical needs of Briggs Field and Fort Bliss but now serves Army & Air Force Exchange Services nationwide). Like many of his generation he served in World War II for which he was awarded the Bronze Star.

Ambassador Abbott notes that optometry graduates today are as smart as anyone in the country and have the "training and ability to do many things in our society." He encourages graduates to get active in the community and make a contribution.

The best change in the practice over the years is the real integration of the practice of optometry into the health care profession. Ambassador Abbott's philosophy of practice was to be honest with his patients and not to gossip about fellow health care professionals. He worked hard at his practice and business interests and now enjoys living in Coronado, California, fishing on his boat (with annual boat trips to Mexico) and flying his twin Beechcraft Baron.

Dr. Abbott was named United States Ambassador to Lesotho, in Southern Africa, by President Reagan in 1985, and served in that position until 1991. He has also served in the Texas Legislature and was the Regional Administrator of the Bicentennial Administration. Ambassador Abbott recently oversaw the completion of the Abbott Center at his alma matter, Pacific University.

-- Business Record Confidentiality

Since the Board office receives so many questions regarding records, licensees may want to read House Bill 689, which regulates business records. The new law prohibits the disposal of business records without first destroying or deleting "personal identifying information." The text of the law is available on www.capitol.state.tx.us

PRACTICE PROFILE INFORMATION

Every optometrist has a practice profile on the State of Texas website. This information could be used by prospective patients to select a practice. Licensees are responsible for keeping their profile up-to-date.

Navigating to the profiles can be complicated, but these instructions should help. To view the profile available to the public, log onto the state website, "www.state.tx.us" (no quotation marks), select "Online Services" from the menu on the left, from the pop-up menu select "Professional Profiles" and then from the pop-up menu select "Public Search."

Information may be updated using this procedure on the state website: select "Online Services" from the menu on the left, from the pop-up menu select "Professional Profiles" and then from the pop-up menu select "License Profile Management." On the new page select "Individual Profiles," and finally select "optometrists." Unlike other parts of the State website, do not use a zero when entering your license number. Similar to other website pages, do not include the "T" or "TG" with your license number.

NEW BOARD WEBSITE ITEMS

New information on the website:

- Career as an Optometrist
- Printable Optometry Act and Rules
- Printable applications for license and license upgrades
- New Licensee Information -- answers many of the telephone questions the Board receives. This page might be helpful to all licensees
- House Bill 1025

COMPLIANCE MATTERS

Practicing on the Premises of an Optical

This year the Board has investigated and disciplined doctors who have practiced in an office owned by an optical or mercantile without first leasing the office space. To do so allows the optical to control the doctor's practice by providing an impermissible business service to the doctor. The Texas Optometry Act allows a doctor to lease space from an optical to practice optometry, as long as ". . . 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 . . ." Control includes an optical and/or mercantile ". . . providing, hiring, or sharing employees, business services, or similar items to or with an optometrist . . ." A dispensing optician's only allowable interest in an office of an optometrist is a lease of the space.

The law prohibits a doctor from practicing on the property of an optical and/or mercantile without mak-

ing lease payments to the owner, and there are no exceptions in the law that would allow practicing without leasing even if the practice is for one day a week. The Board has also disciplined doctors who used the services of optical employees to make appointments or take payments, because these actions also constitute control by the optical.

Sections 351.364, 351.363, 351.408, 351.459 and 351.460 of the Optometry Act set out the restrictions on the relationship between opticals and/or mercantiles and optometrists.

Administrative Penalties

The Board issued administrative penalties in the following agreed settlements:

\$250.00 penalty for allowing control by an optical. The licensee practiced on the premises of an optical and mercantile, Wal-Mart, without making lease payments for the office space used by the licensee. The licensee also allowed employees of a J.C. Penney to make appointments and seek insurance reimbursement.

\$100.00 penalty for failing to respond to Board. The licensee failed to furnish requested documents within the 14 day time period.

\$150.00 penalty for failing to prepare patient record. A contact prescription from another doctor was changed by the licensee and no examination record was prepared.

\$100.00 penalty for advertising violations. The licensee distributed advertising materials designating herself as a doctor without any required language identifying herself as an optometrist.

\$100.00 penalty each for advertising violations. The advertising copy for two licensees did not identify the licensees as optometrists, and advertised treatments outside the licensees' scope of practice without identifying the role of the licensees.

\$100.00 penalty for failing to respond to Board. Doctor failed to respond to a complaint within 14 days of receiving notice from the Board.

Office Inspections

To insure compliance with Section 351.353 of the Optometry Act, Initial Examination of Patient, the Board continues to inspect offices. The Board's investigator regularly visits licensees' offices and requests copies of recent patient records. These records are reviewed by the Board for compliance with Section 351.353 and Rule 277.7, Patient Records. Although HIPAA regulations do not prohibit the copying of the

entire patient record by the Optometry Board, the investigator will normally ask that identifying information be removed from the copies.

The most frequent compliance issue found is the absence of a complaint sign or patient pamphlet. State law and Board Rule require each office to have the sign or pamphlet visible to the patient. Both items are available without charge from the Board office.

Display of Name

State law strictly defines how optometrists can display their name professionally. The law applies to other health professionals as well. Violation of the law is a criminal offense. In addition, the Board may impose a penalty of up to \$1,000 for the failure to use the proper identification.

Despite notices at the beginning of both the Optometry Act and Rules booklets sent to every active licensee last year, and articles in the 2003 and 2001 Newsletters, the Board continues to see office signs, letterhead, billing statements, and prescriptions that are not in compliance.

An optometrist may only identify themselves in the following manner:

John Smith, O.D.

or

John Smith, Doctor of Optometry

or

John Smith, Optometrist

or

Dr. John Smith, Optometrist

The only exception: a therapeutic optometrist may instead use:

Jane Smith, Therapeutic Optometrist

or

Dr. Jane Smith, Therapeutic Optometrist

An optometric glaucoma specialist may be identified as one, but only in addition to one of the above designations.

Address Changes

State law requires all licensees to report business and home address changes within 30 days. Changes may be reported by e-mail (an e-mail link is available on the website), letter, fax, or by telephoning the Board at 512-305-8500.

DISCIPLINARY ACTIONS

—Control by Optical; Failure to Respond:

On April 5, 2005, the Board entered into an Agreed Order with Terrisa J. Ruckey, O. D., in which the Board alleged that Dr. Ruckey failed to provide requested in-

formation regarding complaints as required by Board Rule 277.1. The Agreed Order also alleged that the doctor practiced with a door between the doctor's office and the leasing optical next door, that a sign relating policies of the optical was posted in the doctor's office, and that an employee of the doctor's office told the doctor's patient to make a check out to the optical for services performed by the doctor. The Order required the doctor to submit an administrative penalty of \$500 and comply with Sections 351.408, 351.457, and 351.364 of the Optometry Act. 5817T

—Control by Optical

On June 1, 2005, the Board entered into an Agreed Order with Matthew Marsich, O.D. The Agreed Order alleged that the doctor's practice had a door between the doctor's office and the leasing optical next door, that a sign relating policies of the optical was posted in the doctor's office, and that an employee of the doctor's office told the patient to make a check out to the optical for services performed by a licensed employee of the doctor. The Order required the doctor to submit an administrative penalty of \$500. 6186T

—Pending Actions

The Board is currently awaiting the outcome of two administrative hearings to impose disciplinary action. The Board alleges in one hearing that the licensee prescribed an oral prescription medication when the licensee was not licensed as an optometric glaucoma specialist. In the other hearing, the Board alleges that the licensee was convicted of a felony.

HIPAA COMPLIANCE

The Board Office continues to receive telephone calls about HIPAA compliance. Because HIPAA regulations are a federal matter, the Board has posted several links to federal government HIPAA websites on the Board's website: www.tob.state.tx.us.

ARBO WEBSITE

ARBO is the association for Optometry Boards in the United States and Canada. Their website, www.arbo.org, has useful information for licensees as well. For example, the ARBO website contains a list of COPE approved courses, links to websites for other state boards and a reporting form for adverse affects from contact lenses dispensed without a prescription. The website also provides information on "OE Tracker," which is a nationwide CE tracking system

that ARBO has developed (most licensees will have received a card from ARBO that they can use at national CE events to track course hours at that event).

Personal Reflections on 50 Years of Practice

Sixty doctors currently licensed have been licensed by the Board for more than 50 years. Ten were selected at random, and they were offered the opportunity to provide the Newsletter with their reflections on the practice of optometry over the last fifty years. If readers are interested, this will be a regular feature of the newsletters.

Six doctors either sat for an interview or mailed in their comments. Because of very limited space in the Newsletter, the comments and interviews were edited by the executive director.

AMERICANS WITH DISABILITIES ACT

It is the goal of the Texas Optometry Board to assure the public and all constituencies that the agency is in full compliance with the Americans with Disabilities Act and that the office, programs, activities, and publications are accessible to anyone needing reasonable accommodations.

Information concerning the provisions of the ADA, and rights provided are available from the Agency ADA Coordinator, Chris Kloeris, at (voice) 512-305-8500, (fax) 512-305-8501, or 1-RELAY-TEXAS (TDD).

Notes:

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