

BOARD MEETING MINUTES²⁹
July 30, 2021

1. CALL TO ORDER.

Dr. Gutierrez called the meeting of the Texas Optometry Board (TOB) to order at 9:00 a.m.

2. ROLL CALL.

A roll call vote was taken and quorum was present for the meeting.

Mario Gutierrez, O.D.	Chair
Ronald L. Hopping, O.D.	Vice Chair
Carey A. Patrick, O.D.,	Member
John Todd Cornett, O.D.	Member
Bill Thompson, O.D.	Member
Meghan Schutte, O.D.	Member
Rene Pena	Member
Ty Sheehan	Member
Kelly Parker	Executive Director
Vincent Pina	Executive Assistant
David Gordan	Assistant Attorney General

Note, Mrs. Chambers was absent and excused from the meeting.

3. MINUTES.

The Board reviewed the May 7, 2021 meeting minutes. Dr. Hopping requested a change to the school liaison report to clarify the passage rate of the jurisprudence exam. Dr. Cornett moved to approve the minutes as amended and it was seconded by Dr. Schutte. The motion passed unanimously. (FOR-8/ OPPOSED-0 /ABSTAIN-0)

4. GENERAL MATTERS.

- a. **Optometry School Liaison Reports.** Dr. Hopping advised that there is no new report from the University of Houston. Dr. Patrick reported that there will be a new Dean at Rosenberg but there has not been a formal announcement.
- b. **ARBO Meeting Report, June 19-20, 2021.** Dr. Hopping reported that he attended the virtual ARBO meeting along with Ms. Parker. Dr. Hopping recognized Dr. Patrick for being recommended as a candidate for the ACOE Council.

- c. **Executive Director Annual Review Process.** Dr. Gutierrez reported that the Board will begin the annual review process of the Executive Director. He advised that Ms. Parker will circulate the performance evaluation forms to the Board Members and that the forms should be returned to Mrs. Chambers. Mrs. Chambers will score the review and it will be discussed at the November meeting.

5. **BOARD CHAIR REPORT.** Dr. Gutierrez commented that the Board has a lot on its plate. Specifically, he mentioned SB993 of the 87th Regular Legislative Session is effective as of September 1, 2021. Dr. Gutierrez explained that the Board needs to collaborate on rules with the Texas Medical Board that should be final by December 1, 2021. Further, he announced that the Board will hold an additional Rules Committee and Board Meeting in August. Dr. Gutierrez reminded Board Members that staff is working with CE Broker. Finally, Dr. Gutierrez pointed out that the telehealth rules are on the agenda for final adoption.

6. **PUBLIC COMMENT.**

Dr. Gutierrez called for public comment at 10:00 a.m.

Dr. Patricia Aronin, representing Texas 4400, made a public comment to the Board regarding SB993 and the new rules. Dr. Aronin addressed the Board specifically regarding the appointment of the initial ophthalmologist. She asked that there be transparency in how the initial ophthalmologist is selected. Dr. Aronin went on to note that there are a lot of people who are just looking for side gigs to make money and she does not want the ophthalmologist selected to see this opportunity as a cash cow. In her opinion, in order for this to be a fair process it needs to be transparent as far as how the initial ophthalmologist is selected.

7. **EXECUTIVE DIRECTOR'S REPORT.**

Ms. Parker presented the Executive Director's Report.

- a. **Budget Update.** Ms. Parker reported that the TOB continues to work with the Board of Nursing through an interagency contract for accounting services. She noted that the agency is working with a contract accountant, similar to years past, to complete the Annual Financial Report. A quarterly financial summary was provided to members. Ms. Parker also reported on appropriations granted to the agency from the 87th Legislative Session.
- b. **Licensure Statistics.** Ms. Parker reported the following statistics as of July 23, 2021:

Total Licenses	5,006 (4,538 active; 465 inactive; 3 retired)
Total OGS	3,709 (3,585 active; 123 inactive, 1 retired)
Military	124

- c. **Performance Measures.** Ms. Parker reported that the agency filed the 3Q performance measures on July 1, 2021. She explained that the agency met all metrics with the exception of the "average days to case resolution" category. Ms. Parker advised that the agency continues to make progress in this area

but older, more complex cases, directly impact the days to case resolution metric.

- d. **Update on Remote Inspections.** Ms. Parker provided an update on remote inspections in 2021. She explained that remote inspections allowed the agency to reach parts of Texas that are smaller and had not ever been inspected. Ms. Parker noted that the agency has successfully met the performance metric for required inspections in 2021.
- e. **Termination of Emergency Suspension of Open Meetings.** Ms. Parker reminded Board Members that the suspension which has allowed meetings to be conducted virtually will be lifted as September 1, 2021.
- f. **2021 Board Newsletter.** Ms. Parker reported that historically the annual newsletter is released in or around August each year. However, the newsletter will be circulated in September due to changes to the practice act, continuing education updates and rule updates which include telehealth regulations.

8. LEGAL REPORT.

Mr. Gordon did not have a legal report. However, Mr. Gordon did briefly mention the Governor's termination of the emergency suspension of open meetings along with the Board's ability to perform hybrid meetings. He noted that he could supply specific resource information to Ms. Parker for hybrid meetings.

9. COMMITTEE REPORTS.

ADMINISTRATIVE/LICENSING COMMITTEE.

Dr. Patrick, Chair of the Administrative/Licensing Committee, reported that two exams were held since the last Board Meeting: May 1-14, 2021: 66 registrants, 64 took the exam and 64 passed; July 1-14, 2021: 59 registrants; 57 took the exam and 57 passed. Since the last Board Meeting, 114 new licenses have been issued. The Committee recommended and moved that one Application for Licensure Without Exam be approved. Dr. Cornett seconded the motion. (FOR-8/AGAINST-0/ABSTAIN-0)

CONTINUING EDUCATION COMMITTEE.

Dr. Thompson, Chair of the Continuing Education Committee, reported that the Committee recommended and moved to approve 129 courses, which included 291 D/T hours, 13 General hours, five hours related to opioids, and four hours related to the controlled substance requirement. In total, the committee approved 313 hours. Dr. Patrick seconded the motion. (FOR-8/AGAINST-0/ABSTAIN-0)

Dr. Thompson mentioned there was one request for exemption but the Committee did not act on it because he is a military licensee. Military licensees are exempted from continuing education. Staff were directed to contact the applicant.

Dr. Thompson also updated the Board regarding the contract with CE Broker. He noted that Staff sought approval to contract with CE Broker from two state agencies, the Attorney General's Office and the Information Resources Department (DIR). The AG's Office completed a legal sufficiency review and DIR approved the exemption request. Staff will work with CE Broker to implement the platform by January 1, 2022.

Dr. Thompson also noted that another topic the Committee discussed was the approval of continuing education providers. He explained that as the Board moves forward with the digital platform the Board needs to update other continuing education practices for transition to the system. Dr. Thompson reported that the goal is to approve more providers and courses quicker and not at each board meeting. Dr. Thompson noted that the Committee discussed preapproving providers courses affiliated with certain organizations for efficiency purposes, such as ACOE, AOA, COPE, ABO, and AACME. Other providers may still submit application for approval as providers to the Continuing Education Committee if they are not associated with a preapproved organization. Dr. Thompson advised that the Committee discussion was forwarded to the Rules Committee for an update to board rules.

Note, the Board recessed for a break at 9:47 a.m. and reconvened at 9:58 a.m.

INVESTIGATION-ENCFORCEMENT COMMITTEE

Dr. Thompson moved to go into Executive Session to consult with legal counsel as authorized by Section 551.071 of the Government Code regarding investigative matters and Dr. Patrick seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

At 10:03 a.m., the Board went into Executive Session to consult with legal counsel and get legal advice concerning legal matters involving License Numbers: Case No. 21-026 and Case No. 20-134. The Board returned to Open Session at 10:30 a.m. The Board did not take any action during Executive Session.

Dr. Gutierrez requested Ms. Parker summarize the recommendations of the Investigations-Enforcement Committee.

Case No. 21-026: The Investigative-Enforcement Committee recommended an administrative penalty in the amount of \$300.00. Dr. Thompson moved to accept the recommendation and Dr. Cornett seconded the motion. (FOR-5/AGAINST-0/ABSTAIN-3)

Case No. 20-134: The Investigation Enforcement Committee recommended a Remedial Plan for a term of six months. During the six months, the Respondent shall pay a \$1,500.00 fine; submit proof of completion of four hours of continuing education (from at least two different providers), in addition to renewal hours, in which the subject matter involves a review of the

optometry practice act and prescriptive authority in Texas. Dr. Patrick moved to accept the recommendation and Dr. Thompson seconded the motion. (FOR-5/AGAINST-0/ABSTAIN-3)

Ms. Parker reported to the Board regarding Case No. 2021-00050 and an administrative penalty assessed by staff for failing to disclose and report a criminal history on an initial application. Dr. Hopping moved to accept the fine assessed by the Executive Director. Dr. Patrick seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

Ms. Parker provided the quarterly report related to investigations. The report contained information regarding new cases, closed cases and dismissed cases since the last meeting. Ms. Parker noted that staff continues to increase efficiencies in attempts to meet investigation metrics.

RULES COMMITTEE

Dr. Hopping, Rules Committee Chair, reported the following:

Rules Approved for Final Adoption:

22 TAC 271.2 Applications. The amended rule updates the examination deadline and clarifies fee requirements. Dr. Hopping noted that the amended rule has been published in the *Texas Register* and the Board did not receive any public comments. Dr. Hopping moved the Committee's recommendation to adopt the rule as final in the *Texas Register*. Dr. Thompson seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

22 TAC 275.3 Continuing Education Tracking System. The new rule requires all licensees to submit continuing education records to the Board's digital platform beginning in January 2022. Dr. Hopping reported that the new rule was published in the *Texas Register* and the Board did not receive any public comments. Dr. Hopping moved the Committee's recommendation to adopt the rule as final in the *Texas Register*. Dr. Schutte seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

22 TAC 279.16 Telehealth Services. The amended rule updates the telehealth requirements. Dr. Hopping advised that the amendments to the rule were previously posted in the *Texas Register* and three comments were received during the public comment period. Staff also held a Stakeholder Meeting. Dr. Hopping reported that all comments were taken into consideration and the Committee revised the rule based on some comments. He also noted that it is important to note that the rule does not restrict care in any way. Dr. Hopping moved the Committee's recommendation to adopt the rule as final in the *Texas Register*. Dr. Thompson seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

Rules Approved for Proposal:

22 TAC 273.4 Fees. The proposed amended rule will increase initial fees by five dollars and increase renewal fees by 10 dollars Dr. Hopping moved the

Committee's recommendation to propose the rule with preamble in the *Texas Register* for public comment. Dr. Thompson seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

22 TAC 275.1 General Requirements. The proposed amended rule authorizes the Board to preapprove certain continuing education providers and courses. Dr. Hopping moved the Committee's recommendation to propose the rule with preamble in the *Texas Register* for public comment. Mr. Sheehan seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

Rule for Repeal:

22 TAC 280.11 Optometric Glaucoma Specialist: Administration and Prescribing of Oral Medication and Anti-Glaucoma Drugs. Dr. Hopping explained to the Board that the rule will not be needed due to SB993 of the 87th Regular Legislative Session. Dr. Hopping moved the Committee's recommendation to propose the repeal of the rule with preamble in the *Texas Register* for public comment. Dr. Patrick seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

Dr. Hopping also reported that the Rules Committee discussed SB993 and new rules required. The Board directed Staff to share the draft rules document with the Texas Medical Board for collaboration as required by SB993.

COMMITTEE ON PEER ASSISTANCE.

Ms. Parker provided an update regarding the Peer Assistance Program and the Professional Recovery Network (PRN) program. Ms. Parker reported that the agency was currently working with the Comptroller's Office to post the Request for Proposal for the peer assistance contract.

10. QUARTERLY BOARD MEMBER TRAINING.

Ms. Parker, Mr. Pina and Board Members reviewed the Board's new online application process.

11. ANNOUNCEMENTS.

Dr. Gutierrez thanked the Board Members for their time and service. He advised that there will be a Rules Committee meeting on August 25, 2021 and Board meeting on August 27, 2021. Dr. Gutierrez also reminded the Board that the November meeting is scheduled for November 18-19, 2021.

12. ADJOURNMENT.

Dr. Patrick moved that the meeting be adjourned, Dr. Schutte seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0) The meeting was adjourned at 11:59 a.m.