

**BOARD MEETING MINUTES
MAY 6, 2022**

1. CALL TO ORDER.

Dr. Gutierrez called the May 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
Judy Chambers	Secretary/Treasurer
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
Dennis McKinney	Assistant Attorney General

3. MINUTES.

The Board reviewed the February 25, 2022 meeting minutes. A motion was made by Mr. Cornett to accept the minutes and seconded by Dr. Patrick. The motion passed unanimously. (FOR – 9/OPPOSED – 0/ABSTAIN – 0)

4. BOARD CHAIR REPORT.

Dr. Gutierrez presented the Board Chair Report. He reminded the Board that at the last four or five meetings the glaucoma rules had been considered. Dr. Gutierrez noted that at all of the meetings an opportunity was provided for public comment and in addition a stakeholder meeting was held. He reported that the Board shall continue to remain consistent with the Texas Optometry Act when finalizing rules for the glaucoma complaint process. Dr. Gutierrez thanked the Texas Medical Board for the continued collaboration between the agencies. Dr. Gutierrez thanked Drs. Cornett and Schutte for their work on the rule review workgroup. He

announced that he and Drs. Cornett and Schutte will continue to work on the rule review for Chapter 280.

Dr. Gutierrez thanked CE Broker for their continued partnership. He noted that there has been some resistance to change in social media circles but noted that the information on these websites were not always accurate. Dr. Gutierrez reminded everyone that the Board only requires the free CE Broker account, the agency does not receive any income or other revenue from the partnership and providers are not charged to offer courses. Dr. Gutierrez noted that Ms. Parker will hold two more stakeholder meetings related to CE Broker. He also noted that the agency continues to increase communication and specifically noted the quarterly email blasts along with the Facebook page. Finally, Dr. Gutierrez announced that the Board Members will be using digital binders and digital materials moving forward which is consistent with the goal of modernization for the agency.

5. GENERAL MATTERS.

The Board discussed and considered the Agenda item under General Matters as follows:

- a. **Optometry School Liaison Reports.** Dr. Schutte was asked to give an update on behalf of the Rosenberg School of Optometry. She reported that she reached out to Dean Fortenberry with no response as of the board meeting date. Dr. Schutte asked Dr. Gutierrez to assist her with future communication connections to Rosenberg School of Optometry. Dr. Cornett provided an update as the liaison for the University of Houston (U of H). He said that U of H lowered the price for the professional responsibility course to \$75 per hour and also provided some vouchers to TOA for optometrists that could not pay the hourly fee.
- b. **Disciplinary Matrix.** Dr. Gutierrez reported that he and Ms. Parker will be working on the matrix over the next few months. Ms. Parker further explained the process and need for the matrix.

6. PUBLIC COMMENT.

The Public Comment period opened at 9:30 a.m.

Dr. Fred Brecheen, President of the Southwestern Congress of Optometry provided written comments as well as verbal comments. Dr. Brecheen requested the Board consider the Optometric Extension Program Foundation and the Southwestern Congress of Optometry to be an automatic approved provider of continuing education courses related to optometry.

Dr. Thomas Lucas, Director of Advocacy for the Texas Optometric Association (TOA) provided verbal comments to the Board regarding SB993 rules. Dr. Lucas reported that he was personally involved in helping pass SB993 because there was a need to improve the scope of practice so that access to care would be adequate across the state. He complimented the Board for their hard work on the SB993 rules and stated that the TOA supported the rules as published in the March 25, 2022 *Texas Register*.

7. EXECUTIVE DIRECTOR’S REPORT.

Ms. Parker presented the Executive Director’s Report.

Budget Update. Ms. Parker provided the Board with financial information prepared by the Board Accountant through April 9, 2022. Ms. Parker noted that there are no financial concerns to report and the Board is in good financial standing.

Licensing Statistics. Ms. Parker provided an update on licensing statistics through April 29, 2022. She also reported that the agency received notice of the passing of Dr. Larry Portales (#2211T).

Total Licenses	5,080 (4,638 active; 438 inactive; 3 retired)
Total OGS	3,852 (3,732 active; 119 inactive, 1 retired)
Military	122

Performance Measures. Ms. Parker reported that the agency met all Q2 performance measures.

Stakeholder Meetings. Ms. Parker reminded the Board that staff will hold two stakeholder meetings in May related to CE Broker.

Office Relocation. Ms. Parker announced that the relocation date has been confirmed for June 10, 2022. She noted that meeting space will not be immediately available at the new location but staff will work to find the best options for the July and November meeting.

Website. Ms. Parker reported that a new, more-intuitive agency website will be released by the end of May 2022. Staff is working with the Health Professions Council IT staff to improve the website.

Legislative Reports. Ms. Parker informed the Board that the agency’s Strategic Plan and Report on Customer Service is due June 1, 2022.

Customer Service Report Summary. Ms. Parker provided a brief overview of the results from the agency’s customer service survey.

8. LEGAL REPORT.

Request for Attorney General Opinion. Dr. Hopping moved to go into Executive Session to consult with legal counsel as authorized by Section 551.071 of the Government Code for legal advice and guidance related to a possible request for Attorney General Opinion and Mrs. Chambers seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-0/ABSTAIN-0)

At 9:59 a.m., the Board went into Executive Session. The Board returned to Open Session at 10:19 a.m. The Board did not take any action during the Executive Session.

At 10:19 a.m. upon returning to the open meeting session, the Board recessed for a 10-minute break.

At 10:28 a.m., Dr. Gutierrez called the meeting back to order and resumed discussion on the Request for Attorney General Opinion. A motion was made by Dr. Hopping to request an Attorney General Opinion regarding Section 351.005(a) and 351.501 of the Texas Optometry Act. Dr. Patrick seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-0/ABSTAIN-0) Dr. Gutierrez further noted that he would work with Ms. Parker and Mr. McKinney to submit the request to the Attorney General's Office.

9. COMMITTEE REPORTS.

ADMINISTRATIVE/LICENSING COMMITTEE.

Dr. Cornett, Chair of the Administrative/Licensing Committee, provided the report. The Committee reviewed three applications for licensure: one application for licensure without examination, one application for military licensure and one application for therapeutic licensure. Dr. Cornett reported that the Committee moved to approve all three applications. Mr. Sheehan seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-0/ABSTAIN-0).

Dr. Cornett reported that the Committee would like the Rules Committee to consider two things. First, he asked that the Rules Committee review the jurisprudence exam requirements for military applicants and consider if there is a need to change the requirements. Secondly, Dr. Cornett asked the Rules Committee to consider whether applicants need to meet requirements to work in Texas such as U.S. citizenship and/or work visa.

CONTINUING EDUCATION COMMITTEE.

Dr. Patrick, Chair of the Continuing Education Committee, reported that the Committee moved to approve 39.5 hours of D/T hours, eight hours of general education and two hours for controlled substance. Dr. Thompson seconded the motion. (APPROVE-9/OPPOSED-0/ABSTAIN-0)

Dr. Patrick also reported that the Committee was provided with an update on CE Broker and that the Board is continuing to move in a forward direction. She noted that CE Broker has been very supportive and responsive to the needs of staff, licensees and CE providers.

Further, Dr. Patrick reported that the CE Committee received a request from the Optometric Extension Foundation Program/Southwestern Congress of Optometry to be added to the list of automatic approved continuing education providers. Dr. Becheen also provided public comment at the CE Committee meeting. Dr. Patrick recommended that the Rules Committee consider

whether the groups should be added to the automatic list of approved providers. Dr. Cornett commented that the Southwestern Congress courses are in the process of obtaining COPE approval.

INVESTIGATION-ENFORCEMENT COMMITTEE

Dr. Cornett moved to go into Executive Session to discuss confidential investigation information and consult with legal counsel as authorized by Section 551.071 of the Government Code related to Case Nos. 2022-00011, 2022-00017, 2022-00015, and Case No. 2022-00024. The motion was seconded by Dr. Patrick. The motion passed unanimously. (FOR-9/AGAINST-0/ABSTAIN-0)

At 10:38 a.m., the Board went into Executive Session to discuss confidential investigation information and consult with legal counsel concerning legal matters involving case number 2022-00011, 2022-00017, 2022-00015, and 2022-00024. Dr. Patrick recused herself from Case Number 2022-00024 and was not part of the discussion. The Board returned to Open Session at 11:32 a.m. The Board did not take any action during the Executive Session.

Dr. Gutierrez requested Ms. Parker summarize the recommendations of the Investigation-Enforcement Committee for Case Nos. 2022-00011, 2022-00017, 2022-00015 and 2022-00024. Ms. Parker reported the following:

Case No. 2022-00011

Respondent's license shall be suspended for a period of six months with a one month enforced suspension. Respondent shall be required to take and successfully pass the Texas Jurisprudence exam during the one-month enforced suspension period. Respondent shall pay a \$2,000.00 fine within six months. Respondent shall abide by all State of Texas laws, Texas Optometry Act and Board Rules

Case No. 2022-00017

Respondent's license shall be suspended for a period of six months with a one month enforced suspension. Respondent shall be required to take and successfully pass the Texas Jurisprudence exam during the one-month enforced suspension period. Respondent shall pay a \$2,000.00 fine within six months. Respondent shall abide by all State of Texas laws, Texas Optometry Act and Board Rules

Dr. Hopping moved to consolidate the recommendations for Case Number 2022-00011 and Case Number 2022-00017 into one disciplinary order, that the penalties be additive and that the enforced suspensions be consecutive months because both cases relate to the same licensee. He noted that the Licensee shall only have to take the Texas Jurisprudence examination once. Mr. Sheehan seconded the motion. The motion passed unanimously. Dr. Gutierrez, Dr. Cornett and Mr. Pena abstained from the vote. (FOR-5/AGAINST-0/ABSTAIN-3).

Case Number 2022-00015

Respondent's license shall be suspended for a period of six months with a three month enforced suspension. Respondent shall be required to take and successfully pass the Texas Jurisprudence exam during the three-month enforced suspension period. Respondent shall pay a \$2,000.00 fine within six months. Respondent shall abide by all State of Texas laws, Texas Optometry Act and Board Rules

Dr. Thompson moved to accept and second the recommendations of the Investigation-Enforcement Committee related to Case Number 2022-00015. The motion passed unanimously. Dr. Gutierrez, Dr. Cornett and Mrs. Chambers abstained from the vote. (FOR-5/AGAINST-0/ABSTAIN-3)

Case Number 2022-00024

Respondent's license shall be suspended for a period of one year with a one month enforced suspension. Respondent shall take and successfully pass the Texas Jurisprudence exam during the one month enforced suspension. Respondent shall pay a total fine of \$5,000.00 within six months. Respondent shall submit five initial patient examinations for which lens prescriptions are issued each month for a standard of care review for the first six month period of the one year suspension. Patient examination files shall be submitted in their entirety by the 10th of each following month. Respondent shall abide by all State of Texas laws, Texas Optometry Act and Board Rules

Mr. Sheehan moved to accept and second the recommendations of the Investigation-Enforcement Committee related to Case Number 2022-00024. The motion passed unanimously. Dr. Gutierrez, Dr. Thompson and Mrs. Chambers abstained from the vote. (FOR-5/AGAINST-0/ABSTAIN-3)

Ms. Parker provided a summary of investigative activity to the Board regarding complaints and investigations since the last Board meeting. She reported that since the last meeting no cases had been dismissed by the agency. Ms. Parker reported that there is one open investigation related to the treatment of glaucoma and the complaint was initiated by the agency. She explained that the agency received a National Practitioner Data Bank report and opened the glaucoma investigation based on that report.

RULES COMMITTEE

Dr. Hopping, Rules Committee Chair, began his report by thanking the Committee, the rules workgroup and Ms. Parker for all of the work on the rules in between meetings.

Adopted: 22 TAC 273.5 Clinical Instruction and Practice – Limited License for Clinical Faculty.

Dr. Hopping moved the Committees recommendation to adopt the amended rule as final. He noted that there were no public comments received regarding the rule. Dr. Patrick seconded the motion. The motion passed unanimously. (FOR-9/OPPOSE-0/ABSTAIN-0).

Adopted: *22 TAC 277.13 Complaints Resulting From Glaucoma Treatment – Investigation Process.*

Adopted: *277.14 Complaints Resulting From Glaucoma Treatment – Use of Case Review Consultant and Expert Panel.*

Dr. Hopping moved the Committees recommendation to adopt the new rules, 277.13 and 277.14, related to SB993 as final. He acknowledged the public comments received by the Texas Ophthalmology Association, Texas 400, and the Texas Medical Association. Dr. Hopping advised that the Committee reviewed and considered each comment. Dr. Hopping also reminded everyone about the continued collaboration with the Texas Medical Board through the final process. Ms. Parker commented that the Texas Medical Board had been consulted prior to the meeting and they had no issues or concerns with the rules as drafted. Dr. Schutte seconded the motion. The motion passed unanimously. (FOR-9/OPPOSE-0/ABSTAIN-0).

Proposal: *22 TAC 277.17 Emergency Management.*

Dr. Hopping moved the Rules Committee recommendation to propose this new rule related to requiring proof of CPR or BLS certification for both an initial license and renewal of license to the Governor’s Office for approval and subsequent posting in the *Texas Register* with preamble for public comment. Dr. Parker seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-9/ABSTAIN-0)

Proposal: *Quadrennial Rule Review – Chapter 277 Practice and Procedure.*

Dr. Hopping moved the Rules Committee recommendation to propose amendments to Chapter 277 as part of the quadrennial rule review process. He noted that the Committee cleaned up the language to ensure licensees can understand the rules easier and clarified a few areas. Mrs. Chambers seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-9/ABSTAIN-0)

Proposal: *Quadrennial Rule Review – Chapter 279 Interpretations.*

Dr. Hopping moved the Rules Committee recommendation to propose amendments to Chapter 279 as part of the quadrennial rule review process. He noted that there was a need to clarify the language in some areas of this Chapter to make it clearer about the “if possible” language. Specifically, the Committee determined that “if possible” is based on the patient not the location. A few clarifying amendments are proposed to clarify the prescription rule and infectious diseases. Dr. Patrick seconded the motion. The motion passed unanimously. (FOR-9/AGAINST-9/ABSTAIN-0)

No Action Taken: *Quadrennial Rule Review – Chapter 280 Therapeutic Optometry.*

Dr. Hopping reported that the Committee did not make any recommendations regarding Chapter 280. He requested the Board Chair to direct the workgroup to continue to work on recommendations for the Rules Committee.

COMMITTEE ON PEER ASSISTANCE.

Mrs. Chambers, Chair of the Committee on Peer Assistance, reported that the TOB has four optometrists (three volunteer enrollments and one Board-ordered) in the Professional Recovery Network (PRN) program. However, she noted that the Board-ordered optometrist was recently released from the program upon successful completion of his monitoring agreement. Mrs. Chambers advised that there is an additional Board-ordered optometrist that may be entering a three-year contract with PRN. Finally, she reported that a seminar and advisory meeting was scheduled for the near future.

10. QUARTERLY BOARD MEMBER TRAINING.

Ms. Parker provided a quarterly board member training on strategic planning. The training included the reasons and process for strategic planning and the agency's strategic planning goals for 2023-2027.

11. ANNOUNCEMENTS.

Dr. Gutierrez announced that the next scheduled meeting is set for July 28-29, 2022. He also announced that the January 2023 meeting will be held on January 19-20, 2023.

12. ADJOURNMENT.

Dr. Patrick moved that the meeting be adjourned, Dr. Hopping seconded the motion. The motion passed unanimously. The meeting was adjourned at 12:03 p.m. (FOR-9/AGAINST-0/ABSTAIN-0)