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NEWSLETTER

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THIS IS AN IMPORTANT DOCUMENT AND SHOULD BE RETAINED IN YOUR PERMANENT FILES

This newsletter contains several new rules, which can be found as an insert with this newsletter
Please read the entire newsletter carefully and maintain in your records

NEW PRESCRIPTION REQUIREMENTS FOR GENERIC SUBSTITUTION

All therapeutic optometrists should have recently received notice from the Texas State Board of Pharmacy regarding generic substitution of drug prescriptions. The Pharmacy Board amended Pharmacy Rule 309.3 to comply with legislation passed in 2001.

The "two line" system will no longer be effective to prevent substitution of generic equivalents. To prevent substitution, the practitioner is now required to write across the face of the written prescription, in the practitioner's own handwriting, the phrase "brand necessary" or "brand medically necessary." The Pharmacy Board, 512-305-8000, is a good source for additional information. The change is also on the Pharmacy Board's website:

www.tsbp.state.tx.us/Newsletter/NewSub12.htm

The Optometry Board has proposed amending Rule 280.5 to incorporate these changes.

SPECTACLE PRESCRIPTIONS: FTC REQUIREMENTS & DISCLAIMERS

The Board has received copies of several prescriptions recently which contained language similar to:

Optical Dispenser: in accepting this Rx you assume the obligation to accurately fill the Rx, to make frame adjustments, lens power adjustments, or remakes if required. Otherwise do not accept.

An optometrist using a prescription with similar language was fined by the Federal Trade Commission several years ago because the language violated FTC regulations stating that it is an unfair act or practice to deliver to a patient a form or notice waiving or disclaiming the liability or responsibility of an optometrist for the accuracy of the eye examination.

In correspondence to the Board, the FTC has stated that the following statements on a prescription comply with the regulations:

- The person who dispenses your eyeglasses is responsible for their accuracy
- Note: Please be prepared to remake glasses for patient comfort
- The dispenser is liable and responsible for the proper fitting, adjustment and service of the eyewear.

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The Board is not in a position to review variations of the above language to determine whether the language complies with FTC regulations. The above examples are provided as informational services only.

1-800 CONTACTS SETTLEMENT (SEE INSERT)

Please see the enclosed insert for information on the settlement of the lawsuit brought by the Board against 1-800 Contacts, Incorporated.

FILING COMPLAINTS CONCERNING THE DISPENSING OF CONTACTS

The Contact Lens Prescription Act gives an agency within the Texas Department of Health the authority to regulate the dispensing of contacts in Texas. The Contact Lens Dispensing Permit Program issues permits to contact lens dispensers and regulates the dispensers' conduct. The Texas Optometry Act does not give the Board the same broad regulatory authority over dispensers. However, the Board has used the authority it possesses under the Optometry Act to sue a dispenser for the dispensing of contacts without a prescription and the failure to use the required language in advertisements.

Since the Contact Lens Dispensing Permit Program is the agency permitting contact lens dispensers, complaints against dispensers should be directed to that agency rather than the Board. The Program's address and phone number are:

Contact Lens Dispensing Permit Program
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756
512-834-4515

The Program is also the best place to register a complaint concerning the selling of contacts without prescriptions at flea markets, beauty shops, or schools.

CURRENT RULES

This newsletter contains an insert of the Board's current rules. Please keep this copy of the rules and the statute booklet handy to answer your questions concerning the practice of optom-

etry. Frequently a quick look at the rules is all it takes to find an answer and may save a telephone call to the Board. If the rules do not answer your question, please do not hesitate to call the Board staff.

These rules may be amended from time to time, but the current wording of any rule may be found on the Board's website. The Board meets four times per year (meeting dates are also on the website). Regular viewing of the website insures that all amendments are timely seen. Keeping abreast of proposed amendments also gives licensees the opportunity to make comments directly to the Board concerning proposed new rules and rule changes.

NEW RULES SINCE LAST NEWSLETTER

The Board amended Rules **279.2** and **279.4** to permit the faxing of prescriptions to opticians and dispensers. A Newsletter was mailed to all licensees in January of this year to announce this amendment.

Rule 279.2 was also amended in November 2001 to clarify that charges not paid by an insurance carrier are not a valid basis for refusing to release a contact lens prescription. Please see section (h) of the rule.

Amendments to **Rule 275.2** now permit a total of **8** hours of internet or correspondence continuing education courses each year without distinguishing between the two. As an example, 7 hours of internet courses and a 1 hour correspondence course would be acceptable. The text of these rules may be found in the Board Rules insert to this newsletter.

HIPAA EXTENSION

For those licensees filing insurance claims, the Department of Health & Human Services has issued an extension to the effective date of the requirement that all claims be filed electronically in the specified format. To obtain the extension, a practitioner must apply for the extension by October 15, 2002. This date was obtained from the Department of Health & Human Services website - please verify that it is the applicable date:

<http://aspe.hhs.gov/admnsimp/PRelease.htm>

If you are not familiar with the extension, or HIPAA in general, the Department of Health & Human Services, Office for Civil Rights, website is a good starting point:

www.hhs.gov/ocr/hipaa/index.html#Initial%20Guidance

PRESCRIBING ORAL MEDICATIONS

Only optometric glaucoma specialists may prescribe oral medications. The language of the statute may be somewhat confusing, but a reading of the entire statute clearly shows that only those doctors with an optometric glaucoma specialist license may prescribe oral medications. The Board has received numerous telephone calls from pharmacists who are closely checking prescriptions to verify if the writer of the prescription has the correct license, and if not, notifying the Board.

Only oral medications for the treatment of conditions within an optometric glaucoma specialist's scope of practice may be prescribed. Again, the Board has received telephone calls from many pharmacists verifying whether an oral medication has been correctly prescribed. The statute clearly sets out the classes of oral medications that may be prescribed. An optometric glaucoma specialist may not attempt to treat a condition or disease that exceeds their statutory scope of practice when prescribing an oral medication.

EMPLOYING UNLICENSED "OPTOMETRISTS"

The Optometry Board is currently investigating an incident where an unlicensed person performed relief work for several licensees. The unlicensed person represented to each of the doctors contracting with him that he was licensed and presented a license number. The unlicensed person also told the licensees that he had performed relief work at another licensee's office, which was true, and these licensees confirmed that the unlicensed person had worked at their office. None of the licensees realized that the unlicensed person was not an optometrist. After reviewing patient records prepared by the unlicensed person, one of the licensees called the Board to verify the unlicensed person's license. The Board has referred this case to law enforcement authorities for prosecution.

It takes only a telephone call to verify whether

a person is licensed by the Board. This check may also be prudent when hiring a new graduate to determine the exact date of licensing. The ramifications of employing or contracting with an unlicensed person to perform eye examinations are clearly imaginable, and in most cases can be prevented by verification from the Board.

DISCIPLINARY ACTIONS

—Practicing Before Being Licensed:

On December 19, 2001, the Board entered into an Agreed Order with Neda Sadighi, O.D., resulting in a suspension for one year, with the suspension being probated after the Board denied issuance of a license for a 45 day period. The Agreed Order alleges that the doctor practiced optometry for a 45 day period, after graduation, but prior to receiving a license from the Board.

On March 25, 2002, the Board entered into an Agreed Order with Amrita Bains, O.D., resulting in a suspension for one year and sixty days, the suspension being probated with the exception of a 60 day period in which the doctor was prohibited from practicing. The Agreed Order alleges that the doctor practiced optometry for a 45 day period, after graduation, but prior to receiving a license from the Board, and subsequently practiced for a 15 day period during which her license was not renewed.

On June 5, 2002, the Board entered into an Agreed Order with Amer Diab, O.D., resulting in a suspension for one year, with the suspension being probated with the exception of a 60 day period in which the doctor was prohibited from practicing. The Agreed Order alleges that the doctor knew or should have known that individuals he employed or contracted with to practice optometry in his offices were not licensed by the Board.

—Prescribing Oral Medications Without Authority:

On December 14, 2001, the Board entered into an Agreed Order with Raymond Martinez, O.D., resulting in a suspension for three months, with the entire suspension period being probated, and an administrative penalty of \$500. The Agreed Order alleges that the doctor prescribed an oral medication to treat gout, a treatment outside the scope of an optometric glaucoma specialist.

—Practicing While Holding Only an Inactive License:

On July 2, 2002, the Board entered into an Letter of Formal Agreement with Michael O'Malley, O.D. The Agreement alleges that the doctor practiced for a period of time in Texas, without first taking the required steps to change his license status from inactive to active.

A license cannot be renewed if the Board has not been furnished with proof of the required 16 hours of Continuing Education. It may be easier to send in original proof of attendance or completion as the courses are taken rather than waiting until the end of the year (this approach also helps the Board staff operate more efficiently). Approved CE courses are posted on the Board's website.

LICENSE RENEWALS

The Board typically sends out license renewal forms during the last week of October. To insure the timely receipt of your renewal form, please make sure that the Board has your current address. If you do not receive a renewal form by the second week in November, please call the Board. New licensees will be required to renew their license by December 31 regardless of when they were licensed in 2002.

Please read the instruction sheet that will accompany your renewal form. And please remember to sign the renewal -- many renewal forms must be returned because the form was not signed by the licensee.

BOARD WEBSITE

The Board Website, www.tob.state.tx.us, is your source for current information from the Board. Approved continuing education, information on optometric glaucoma specialist application, current rules and proposed amendments, the Texas Optometry Act, past newsletters, and future meeting and exam dates are all available on the website. This information is also available by telephoning the Board if you do not have access to the Internet.

The Board welcomes your suggestions concerning additional information for the website. The Board is working with Texas Online to allow future license renewals over the Internet. Unfortunately, it appears that this complicated process may take some time to implement.

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