



TEXAS OPTOMETRY BOARD

333 GUADALUPE STREET SUITE 2-420
AUSTIN TX 78701-3942
(512) 305-8500
FAX (512) 305-8501
WWW.TOB.STATE.TX.US

2004

NEWSLETTER

VOL XII, NO 1 ----- AUGUST, 2004

LICENSE RENEWALS ON-LINE

Eighty percent of licensees renewed on-line last year. All license renewals will be on-line (the Internet) again this year. The overall impression was very favorable (admittedly some problems arose last year and the Board has been working to remedy those problems). Credit cards and electronic checks may be used to pay the renewal fee. The Board, as well as other state agencies, must strictly control costs for the next few years, and on-line renewals can result in significant cost savings by reducing mailing and data entry costs. The Board appreciates your cooperation.

Renewal Procedure

Mail in your Continuing Education attendance documentation 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. CE status may be checked on the website (a link is provided on the main or Table of Contents page of the Board's website).

Follow the instructions on the postcard being mailed to every licensee in late October 2004.

If you lose the postcard, or do not receive it, log on the Board's website after November 1, 2004 (www.tob.state.tx.us) and use the button link: "Renew"

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

- Licensees changing status from inactive to active (or vice-versa)
- Licensees in the military or employed by the federal government.

Detailed renewal instructions are on the Board's website (click on the Renew button beginning November 1, 2004).

CONTINUING EDUCATION

Questions from licensees concerning Continuing Education show that there is some degree of confusion regarding Board requirements. The website, including Rules 275.1 and 275.2, should answer most CE questions. The following information is provided to refresh your memory:

Hours required: 16 of which 6 must be diagnostic/therapeutic. Maximum of 8 hours combined Internet/correspondence. Maximum of 4 hours grand rounds (8 actual hours).

Board Approved Continuing Education: All courses must be approved by Board. COPE approved and courses provided by optometry schools

NEWSLETTER CONTENTS

Renewals On-Line	1
CE	1
Contact Rx Questions	2
Federal Contact Rx	3
Sunset	3
Profile Information	3
Information on Website	4
New Rules	4
Customer Service Survey Statistics	8
Compliance Matters	9
Administrative Penalties	9
Disciplinary Actions	9
HIPAA	9

continued on page 3

CONTACT LENS RX: QUESTIONS AND ANSWERS

Do I need to release a prescription before the follow-up exam? No. Both the federal law and Board rules recognize that the parameters of the prescription may not be determined until after a follow-up exam, provided the follow-up exam is “medically necessary” (extended follow-up periods would also need to meet the “medically necessary” test).

Do I need to release a prescription if the patient buys a full year’s supply of contacts at the end of the examination? Yes. According to comments by the FTC, a prescription must be re-leased. After first releasing the prescription, Board Rule 279.6 (j) offers a solution: “... the optometrist or therapeutic optometrist writes on the prescription “All Lenses Dispensed,” makes a copy of the prescription to retain in the licensee’s records, and returns the original to the person presenting the prescription.”

Do I need to release a prescription to a patient who received a prescription 6 months ago at the conclusion of the examination? No, you are not legally required to release more than one copy of the prescription, although you may if you choose to do so. According to comments by the FTC to the adopted rules, the federal law does not require the release of additional copies of the prescription. However, the federal law and FTC rules do require the optometrist to respond to multiple verification requests on the same prescription.

Am I required to extend a prescription for two months, regardless of the reason for the extension request? Yes, the Contact Lens Prescription Act requires the doctor to authorize “at least once, an extension of the patient’s contact lens prescription.”

I have dispensed a full year’s supply of contacts to a patient, and a dispenser is requesting a faxed verification. Can I write “expired” on the verification and fax it back?

No. According to comments by the FTC to the adopted rules, the prescriber should treat this as an “inaccurate” prescription and inform the prescriber of the number of lenses prescribed.

If a verification request is received at midnight, when does the 8 hour period to verify a prescription begin? Comments by the FTC to the adopted rules state that the 8 hour period would begin at 9:00 a.m. the next day, excluding Saturdays, Sundays and holidays. However, if the dispenser determines that the prescriber has Saturday office hours, Saturday would be included in the 8 hour period.

As a contact lens dispenser, do I need an original copy of the prescription to dispense contacts? No the FTC rule comments state that contacts may be dispensed upon presentation of the original prescription, the receipt of a fax of the prescription, or an e-mail with an attached scan of the prescription.

Does the Board enforce the federal contact lens prescription law? No, enforcement is by the Federal Trade Commission. The Board will continue to vigorously enforce the provisions of the Texas Contact Lens Prescription Law to insure that patients receive a contact lens prescription when legally entitled to one.

Is the Board taking only the side of consumers and contact lens dispensers? The Board is required to enforce the Contact Lens Prescription Act and the Optometry Act as written. Frequently this means explaining to patients that in the scenario they have described the law does not require the optometrist to release a prescription.

Who enforces the law regarding the practices of contact lens dispensers? The FTC enforces the federal law and the Texas Department of Health, the agency that licenses contact lens dispensers in Texas, enforces compliance with the Texas Contact Lens Prescription Act.

CE CONTINUED FROM PAGE 1

will be approved by Board with minor exceptions (some state law specific courses may not be approved, designation of hours may be different).

Checking CE Status: On-line at the Board's website: www.tob.state.tx.us, or telephone the Board at 512-305-8500.

Mailing Proof of Course Attendance: Original certificates should be mailed as soon as received. Some providers mail a list to the Board -- please check with the provider before assuming that a list will be sent to the Board.

Approved Courses: A list of approved courses is on the Board's website.

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 2004, 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.

FEDERAL CONTACT LENS PRESCRIPTION LAW

The federal law on the release of contact lens prescriptions, Public Law 108-164, governs the release of contact lens prescriptions in Texas. Since the federal law conflicts with the Texas Contact Lens Prescription Act in some respects, the Board has adopted new Rule 279.6, Interpretation of Requirements of Federal Contact Lens Prescription Law. The most significant difference is the requirement that an optometrist or therapeutic optometrist release a prescription once the parameters of the prescription are determined, regardless of whether the release is requested by the patient. The federal law also adopts a prescription verification system which allows a contact lens dispenser to deliver contacts to a customer if a prescription verification has not been received from the optometrist 8 working hours after the dispenser requested the verification.

Rule 279.6 is contained in this newsletter (under the New Rules heading), and has been available on the website since proposed by the Board at the May 2004 Board Meeting. The website also has the full text of the federal law, as well as the text of the adopted rules of the Federal Trade Commission (which are ef-

fective August, 2004).

SUNSET

"Sunset" is the regular assessment by the Legislature of the continuing need for a state agency to exist. The Texas Optometry Board has undergone a review by the Sunset Advisory Commission this year since it has been 12 years since a review was last conducted. On July 14, 2004, the Commission delayed a vote on the staff recommendations for the Optometry Board (available on the Board's website under "Reports"), until the next meeting which is scheduled for September 14 and 15, 2004. At that meeting, the Commission will vote on the staff recommendations, including additions to the Optometry Act that permit the Board to enforce the federal contact lens prescription law and minor changes to the disciplinary procedures used by the Board, including a requirement for the input of additional Board Members, the ability to order restitution as part of disciplinary process, and authority to suspend a license on an emergency basis. The recommendations would also require the Board to consider alternative methods of giving the Jurisprudence Exam. The issues approved by the Commission will be used to draft legislation that will be introduced in 2005.

The Commission will not vote on the continued existence of the Board until the review of the majority of the health profession licensing boards is completed. At that time (fall 2004), a decision will be made on whether the Board should remain independent or become part of an umbrella licensing agency along with other health profession licensing boards.

PROFILE INFORMATION

State law requires *all* health licensing agencies to provide practice profile information on an Internet site available to the public. *This information may be used by prospective patients to select a practice!*

To view the profile available to the public, log onto the state website, "www.state.tx.us" select "Online Services" from the menu on the left, select "Professional Profiles" and then select "Public Search." Information may be updated using this procedure on the state website: select "Online Services" from the menu on the left, select "Professional Profiles" and then select "License Profile Management."

State law requires optometrists to provide profile information when renewing their license in 2005.

INFORMATION ON THE WEBSITE

The Board has attempted to provide services at historic levels despite recent reductions to the Board's budget (7.5 percent in 2003, and 12.5 percent in both 2004 and 2005). Future budgets may be reduced further.

To become even more efficient, the Board is adding more information to the website. This newsletter is one example: the Board saves printing and mailing costs by distributing the newsletter on the Internet (even with postcard notice mailings). Licensees have instant access to the newsletter -- no need to look for a misplaced newsletter, it should always be available on the website. Another example is information on the federal contact lens prescription law: the text of the federal law and proposed rules by the Board have been on the website since December, 2003. Regular re-

view of the website should be an excellent way to keep up-to-date with changes in the law, and *a quick review of the website is recommended before telephoning the Board, as your question may be answered on the website.*

NEW ON THE WEBSITE

CE Check (not new, but reinstated early due to many requests)
Applications and instructions (initial license and license upgrades)
Information regarding abuse of prescription drugs
Federal contact lens prescription law and interpreting rules
Career as an Optometrist (coming soon)
Downloadable Optometry Act and Rules booklets
Information on Sunset process
Board's 2005 - 2009 Strategic Plan

NEW RULES & AMENDMENTS

Since Last Newsletter

The Board has met four times since the last newsletter was published. Usually new rules and amendments to existing rules are 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.

Contact Lens Prescriptions

Additional information concerning contact lens prescriptions is presented in this newsletter, and on the Board's website.

Rule §279.6 Interpretation of Requirements of Federal Contact Lens Prescription Law.

(a) A contact lens prescription must comply with the requirements of the Texas Optometry Act, the Contact Lens Prescription Act, and federal contact lens prescription laws, 15 U.S.C. Sections 7601 - 7610 (Public Law 108-164).

(b) Where federal contact lens prescription laws conflict with state law, the federal law controls. This interpretation, based on the federal law and rules proposed by the Federal Trade Commission, is intended as a guide to the requirements of the federal law for writing and releasing contact lens prescriptions. Enforcement of the federal law is conducted by the Federal Trade Commission.

(c) The federal law requires an optometrist or therapeutic optometrist to release a prescription once the parameters of the prescription are determined, regardless of whether the release is requested by the patient. This requirement supersedes the general release requirement of state law and §279.2 of this title (Board Rule 279.2).

(d) A fully written contact lens prescription must contain the information required by §279.2 of this title (Board Rule 279.2). The federal law requires the following additional information:

- (1) the name, postal address, telephone number, and facsimile telephone number of the prescribing optometrist or therapeutic optometrist;
- (2) the date of examination; and
- (3) if the prescription specifies a trade name of private label brand, the trade name of equivalent brand name, if applicable.

(e) When directed by a dispenser designated to act on behalf of the patient, the federal law requires an optometrist or therapeutic optometrist to fax an original signed prescription to the dispenser. When faxing a prescription, the optometrist or therapeutic optometrist shall write "by fax" or similar wording on the original prescription prior to faxing in accordance with §279.2 of this title (Board Rule 279.2).

(f) The federal contact lens prescription law requires an optometrist or therapeutic optometrist to verify a prescription to a dispenser designated to act on behalf of the patient, by telephone, facsimile or electronic mail.

(g) Under the federal law, a dispenser designated to act on behalf of the patient is required to provide the optometrist or therapeutic optometrist with the following information when seeking a verification of a prescription:

- (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.

(h) If the format of the verification request allows, the optometrist or therapeutic optometrist, when verifying a prescription, should provide the contact lens dispenser with all of the information required in subsection (c) of §279.2 of this title (Board Rule 279.2). An optometrist or therapeutic optometrist who did not perform the examination, may verify a prescription according to subsection (a) of §279.2 of this title (Board Rule 279.2), providing to the dispenser the name and license number of the examining doctor if the format of the verification request so allows. Each request for a prescription verification should be recorded in the patient record, including the name of the dispenser, the date verification is requested, number of lenses requested, and response of the optometrist or therapeutic optometrist.

(i) The federal law prohibits a contact lens dispenser seeking a contact lens prescription verification from filling the prescription if an optometrist or therapeutic optometrist informs a dispenser that the contact lens prescription is inaccurate, expired, or otherwise invalid. Federal law requires the optometrist or therapeutic optometrist to specify the basis for the inaccuracy or invalidity of the prescription. If the prescription communicated by the dispenser to the optometrist or therapeutic optometrist is inaccurate, federal law requires the optometrist or therapeutic optometrist to correct it. A dispenser may dispense lenses without verification if an optometrist or therapeutic optometrist fails to communicate with the dispenser within 8 business hours, or a similar time as defined by the Federal Trade Commission.

(j) An optometrist or therapeutic optometrist dispensing contact lenses shall record on the prescription the number of lenses dispensed and return the prescription to the person. If all the contact lenses authorized by the prescription are dispensed by an optometrist or therapeutic optometrist, the following procedure complies with state law and should not be in conflict with federal law: the optometrist or therapeutic optometrist writes on the prescription "All Lenses Dispensed," makes a copy of the prescription to retain in the licensee's records, and returns the original to the person presenting the prescription.

A new section (a) was added to Rule 279.2 to direct persons to new Rule 279.6, above.

Rule 279.2. Contact Lens Prescriptions.

(a) Federal law, 15 U.S.C. Sections 7601 - 7610 (Public Law 108-164), imposes requirements on the prescribing and dispensing of contact lenses that supersede some of the provisions of the Texas Optometry Act and Contact Lens Prescription Act, including requirements on the release of a prescription and requirements to verify a prescription. Section 279.6 of this title (Rule 279.6, Interpretation of Requirements of Federal Contact Lens Prescription Law) should therefore be consulted contemporaneously with this section.

Criminal Convictions: Effect

Note: Although titled "Felony Convictions," the following rule applies to both misdemeanor and felony convictions.

Rule §277.5 Felony Convictions

(a) The Act, Section 351.501(a)(3), and Texas Occupations Code Chapter 53, provide that the board may suspend or revoke an existing valid license, disqualify a person from receiving a license, or deny to a person the opportunity to be examined for a license because of a person's conviction of a felony or misdemeanor if the crime directly relates to duties and responsibilities of a licensed optometrist or therapeutic optometrist.

(b) A person currently incarcerated because of a felony conviction may not sit for examination, obtain a license under this act, or renew a previously issued license to practice optometry or therapeutic optometry.

(c) In considering whether a criminal conviction directly relates to the occupation of an optometrist or therapeutic optometrist, the Board shall consider the factors listed in Texas Occupations Code §53.022.

(d) The practice of optometry and therapeutic optometry places the optometrist or therapeutic optometrist in a position of public trust. A licensee practices in an autonomous role in treating patients young and old; in prescribing, administering and safely storing dangerous drugs including controlled substances; in preparing and safeguarding confidential records and information; and in accepting client funds. Therefore the crimes considered by the Board to relate to the practice of optometry and therapeutic optometry include, but are not limited to:

- (1) any felony or misdemeanor of which fraud, dishonesty or deceit is an essential element;
- (2) any criminal violation of the Optometry Act, or other statutes regulating or pertaining to the practice or profession of optometry and therapeutic optometry;
- (3) any criminal violation of statutes regulating other professions in the healing arts;
- (4) any crime involving moral turpitude;
- (5) murder;

- (6) burglary;
- (7) robbery;
- (8) theft;
- (9) sex offense;
- (10) perjury;
- (11) child molesting; and
- (12) substance abuse or substance diversion.

(e) In determining the present fitness of a person who has been convicted of a crime, the Board shall consider the factors listed in Texas Occupations Code §53.023.

(f) It shall be the responsibility of the applicant for license to secure and provide to the Board the recommendations of the prosecution, law enforcement, and correctional authorities regarding all offenses.

(g) The applicant for license shall also furnish proof in such form as may be required by the Board, that the licensee maintained a record of steady employment and has supported licensee dependents and has otherwise maintained a record of good conduct and has paid all outstanding court costs, supervision fees, fines and restitution as may have been ordered in all criminal cases in which the licensee has been convicted.

(h) Upon suspension or revocation of a license, or denial of an application for license or examination because of the person's prior conviction of a crime and the relationship of the crime to the license, the Board shall notify the person in writing:

- (1) of the reasons for the suspension, revocation, denial, or disqualification;
- (2) of the review procedure provided by Texas Occupations Code §53.052; and
- (3) of the earliest date that the person may appeal.

(i) The board, however, shall be under no duty to generate evidence with respect to the matters listed in Texas Occupations Code Chapter 53.

Criminal Convictions: Reporting

Only the new language of Rule 273.8 is printed here. The full text of the rule is available on the Board's website.

Rule §273.8 Renewal of License

(a) (7) A licensee receiving a felony or misdemeanor criminal conviction, other than a Class C Misdemeanor traffic violation, shall report the conviction to the Board within thirty days of the date the conviction is entered by the court. A licensee receiving a conviction shall also report the fact that the licensee was convicted at the next license renewal. The failure of a licensee to report a criminal conviction is deceit, dishonesty and misrepresentation in the practice of optometry and authorizes the board to take disciplinary action under section 351.501 of the Act. The licensee shall furnish any document relating to the criminal conviction as requested by the Board.

License Renewal Fees

New legislation requires the Board to add \$1.00 to all license renewals effective January 1, 2004, to fund the Office of Patient Protection.

Rule §273.4 Fees

- (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 \$175.00 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: \$376 active renewal; \$176 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
- (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

Failure to Appear at Informal Conference or Administrative Hearing

Only the new and amended sections have been printed.

Rule §277.2 Disciplinary Proceedings.

(a) (no change)

(b) Informal disposition of contested case. Prior to the imposition of disciplinary sanctions against a license, the licensee shall be offered an opportunity to attend an informal conference and show compliance with all requirements of law, in accordance with the APA.

(1) Informal conferences shall be attended by the executive director, the board's legal counsel, a member of the Investigation-Enforcement Committee, and other representatives of the board as the executive director and legal counsel may deem necessary for the proper conduct of the conference. The licensee and/or the licensee's authorized representative may attend the informal conference and shall be provided an opportunity to be heard.

(2) In any case where charges are based upon information provided by a person who filed a complaint with the board (complainant), the complainant may attend the informal conference, and shall be provided with an opportunity to be heard. Nothing herein requires a complainant to attend an informal conference.

(3) Notice of the informal conference shall include:

(A) a statement of the legal authority, jurisdiction, and alleged conduct under which the enforcement action is based, with a reference to the particular section(s) of the statutes and rules involved;

(B) an offer for the licensee to attend an informal conference at a specified time and place and show compliance with all requirements of law, in accordance with Chapter 2001 of the Administrative Procedure Act;

(C) a statement that the licensee has an opportunity for a hearing before the State Office of Administrative Hearings on the allegations; and

(D) the following statement in capital letters in 12 point boldface type: **FAILURE TO RESPOND TO THE ALLEGATIONS, BY EITHER PERSONAL APPEARANCE AT THE INFORMAL CONFERENCE OR IN WRITING, WILL RESULT IN THE ALLEGATIONS BEING ADMITTED AS TRUE AND THE RECOMMENDED SANCTION MADE AT THE INFORMAL CONFERENCE BEING GRANTED BY DEFAULT.** The notice shall be served by delivering a copy to the licensee in person, by courier receipted delivery, or by certified or registered mail, return receipt requested, to the licensee's last known address of record as shown by agency records, not less than 10 days prior to the date of the conference.

(4) The licensee shall respond by either personal appearance at the informal conference or in writing no later than the date of the informal conference. If the licensee chooses to respond in writing, the response shall admit or deny each of the allegations. If the licensee intends to deny only a part of an allegation, the licensee shall specify so much of it is true and shall deny only the remainder. The response shall also include any other matter, whether of law or fact, upon which the licensee intends to rely for his or her defense. If the licensee fails to respond to the notice specified in subsection (b) of this section, the matter will be considered as a default case and the licensee will be deemed to have:

(A) admitted all the factual allegations in the notice specified in subsection (b) of this section;

(B) waived the opportunity to show compliance with the law;

(C) waived notice of a hearing;

(D) waived the opportunity for a hearing on the allegations; and

(E) waived objection to the recommended sanctions made at the informal conference.

(5) The Investigation-Enforcement Committee may recommend that the board enter a default order, based upon the allegations set out in the notice specified in subsection (b) of this section, adopting the recommended sanctions made at the informal conference. Upon consideration of the case, the Board may enter a default order under §2001.056 of the Administrative Procedure Act or direct that the case be set for a hearing at the State Office of Administrative Hearings.

(6) Any default judgment granted under this section will be entered on the basis of the factual allegations in the notice and upon proof of proper notice to the licensee's address of record as specified in subsection (b)(3) of this section.

(7) A motion for rehearing which requests that the Board vacate its default order under this section shall be granted if the motion presents convincing evidence that the failure to respond to the notice specified in subsection (b) of this section was not intentional or the result of conscious indifference, but due to accident or mistake, provided that the licensee has a meritorious defense to the factual allegations contained in the notice specified in subsection (b) of this section and the granting thereof will not result in delay or injury to the public or the Board.

(8) Informal conferences shall not be deemed to be meetings of the board and no formal record of the proceedings at the conferences shall be made or maintained.

(9) Any proposed order shall be presented to the board for its review. At the conclusion of its review, the board shall approve, amend, or disapprove the proposed order. Should the board approve the proposed order, the appropriate

notation shall be made in the minutes of the board and the proposed order shall be entered as an official action of the board. Should the board amend the proposed order, the executive director shall contact the respondent to seek concurrence. If the respondent does not concur, the provisions of the next sentence shall apply. Should the board disapprove the proposed order, the case shall be rescheduled for purposes of reaching an agreed order or in the alternative forwarded to the State Office of Administrative Hearings for formal action.

(c) (no change)

(d) If, after receiving notice of hearing, a party fails to appear in person or by representative on the day and time set for hearing, the Administrative Law Judge may proceed in that party's absence and, as authorized by applicable law, may issue a proposal for decision or order against the defaulting party in which the factual allegations against that party in the notice of hearing are deemed admitted as true without the requirement of submitting additional proof.

(e) Any default judgment entered under this section shall be issued only upon adequate proof that proper notice was provided to the defaulting party, and such notice includes disclosure, in 12 point, bold-faced type, of the fact that upon failure of the party to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. Proper notice may be established by proof that the Board complied with subsections (c)(1) and (2) of this section.

(f) This section does not preclude the agency from informally disposing of a case by default under the agency's statute or rules in the event the respondent fails to file a timely written response or other responsive pleading required by the agency's statute or rules.

CUSTOMER SERVICE STATISTICS

Recently the Board surveyed licensees regarding the customer service provided by the Board. E-mail requests to participate were sent to about 1,500 licensees, and 350 licensees responded. The overall results showed that the Board was doing at least a "good" job in the surveyed areas, and in many areas an "excellent" job. Many of the respondents submitted comments which have been forwarded to the Board Members. A customer service report was filed with the governor's office in May as required by law.

The information provided by licensees will be quite valuable as the Board works to continue good customer service. For example, several surveys included comments asking when it would be possible to check continuing education hours on the website again. That capability was removed from the website after the renewal deadline, and the Board staff did not plan to add the feature back until late in the fall (data has to be manually downloaded and manipulated on a regular basis to generate the database used by the program). Based on comments in the survey and many phone calls, the feature was added to the website in July. Frankly, Board staff completely underestimated the popularity of this feature.

The areas receiving the two lowest satisfaction scores were the response time for e-mails sent to the Board and the frequency of newsletter publication (both areas still surveyed as "good"). The staff will increase its efforts to promptly answer e-mail. As for the newsletter frequency, cost has been a factor in the past, but

now that the newsletter is on the website, notification costs are the only real costs. However, rather than post complete newsletters on the website more than once a year, it is much more efficient to add specific information to the website whenever beneficial. For example, information about the federal contact lens prescription law has been placed on the website as soon as it became available, beginning in December of 2003. When the federal rules were proposed they were placed directly on the website, as were the adopted rules shortly after their publication. The website actually frees the Board and licensees from a publication schedule. Another example is the posting of new and amended rules shortly after each Board Meeting.

The customer survey also gives the Board an opportunity to test an e-mail notice system. Such a system has two obvious benefits: the system is very timely and very cost effective. Unfortunately, such a system is still not practical. Even though 80 percent of licensees renewed on-line, the Board only obtained 1,500 e-mail addresses (which are confidential unless that confidentiality is waived by the sender). Six percent of the e-mails sent to these addresses were undeliverable. About 30 percent of the licensees sent an e-mail participated in the survey. This does not mean that only 30 percent received or read the e-mail, but at this time an e-mail notification system does not appear practical.

COMPLIANCE MATTERS

Administrative Penalties

The Board issued administrative penalties in the following agreed settlements:

A \$500.00 penalty for the failure of the doctor to insure that the patient was provided a copy of the spectacle prescription after completion of the exam. The Board alleges that the prescription was placed in the patient's records and the doctor did not take the steps necessary to place the prescription in the hands of the patient.

A \$100.00 penalty where unlicensed office staff signed the doctor's name to two contact lens prescriptions, for which the doctor had performed the examinations. The doctor stated that this action was taken without his knowledge or permission, but the Board alleges that the examining optometrist is directly responsible for all prescriptions leaving his office.

Release of Contact Lens & Spectacle Prescriptions

In the past couple of years the Board has received thousands of "complaints" signed by a patient concerning the failure to release contact lens prescriptions. Where the information presented in these "complaints" was not sufficient to begin an investigation, the Board asked the patient to clarify and provide additional information. The Board also received some complaints that provided sufficient information when submitted to investigate the matter. During the last two years, the Board has investigated almost 100 complaints each year regarding the failure to release contact lens and spectacle prescriptions. From these investigations it appears that almost all licensees are complying with the requirements of the Contact Lens Prescription Act and the Optometry Act.

However, the Board has levied administrative penalties where the doctor did not comply with the law (see example above under administrative penalties). The Board will continue to investigate complaints and impose disciplinary action when violations are found.

Inspection of Records

To insure compliance with Section 351.353 of the Optometry Act, Initial Examination of Patient, the Board has investigated offices and examinations for over 25 years. Again this year, the Board's investiga-

tor is visiting licensee's offices and asking for 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.

DISCIPLINARY ACTIONS

Omitted Basic Competency Findings:

On June 11, 2004, the Board entered into an Agreed Order with Nancy Rigsby, O.D., resulting in an administrative penalty of \$250.00. The Agreed Order alleges that an examination of the doctor's patient records showed that the doctor omitted basic competency findings required by Section 351.353 of the Act, including but not limited to: tonometry and angle of vision on multiple patients, and biomicroscopy and internal ophthalmoscopic examination. Dr. Rigsby provided evidence to the Board that her examination procedures had been corrected. 2152

Prescribing Oral Medications Without Authority

On June 28, 2004, the Board entered into an Agreed Order with Adonya Crowder, O.D., resulting in the suspension of the doctor's optometric glaucoma specialist license for one year, with six months of the suspension probated (the doctor can practice therapeutic optometry during the suspension period). The Board also assessed an administrative penalty of \$500.00. The Agreed Order alleges that the doctor, prior to receiving her optometric glaucoma specialist license, recommended a course of treatment for a patient that included oral doses of Vicodin, 500 milligram tablets. Dr. Crowder recommended this course of treatment, and recommended that a Vicodin prescription was medically necessary, based upon her examination and a previous entry in the patient record where an optometric glaucoma specialist had prescribed a course of treatment that included Vicodin. Such treatment exceeds the scope of practice of a therapeutic optometrist. 6039TG

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.

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).

Texas Optometry Board
333 Guadalupe St Ste 2-420
Austin TX 78701