December 8, 2016

Via electronic mail to sunset@sunset.texas.gov

Mr. Ken Levine  
Executive Director, Texas Sunset Advisory Commission  
P.O. Box 13066  
Austin, TX 78711

RE: Sunset Advisory Commission Staff Review of the Texas Optometry Board

Dear Mr. Levine,

The Texas Optometric Association, founded in 1900, represents over 4,000 licensed Doctors of Optometry and the millions of citizens they diligently serve throughout the state. We appreciate the opportunity to address the comments, findings and recommendations found in the Texas Sunset Advisory Commission Staff Report on the Texas Optometry Board.

The Texas Optometry Board was created in 1921 with the passage of the Texas Optometry Act. At that time, Texas and states across the nation began to recognize the importance of regulating the practice of optometry by having highly educated professionals serve the visual needs of its citizenry. In the 95 years since, the Texas Optometry Board has worked to ensure that Texans are receiving the highest quality of vision care, while protecting them from the opposite.

Eye health and vision care is a critically important segment of health care and public health. The high economic impact of blindness, eye disease, poor vision, and improper vision correction is a serious matter affecting all facets of a productive society. The public considers blindness, alongside cancer and Alzheimer’s, as the three worst health situations that could happen to a person. There is little doubt that what the public is naturally fearful of is worthy of careful, professional oversight and regulation.

Our Association’s comments to the recommendations of the Staff Report follow this letter. We appreciate the thoroughness of the Sunset Advisory Commission staff and their work to bring recommendations forward for consideration.

Sincerely,

David Frazee, O.D.  
Immediate Past President, Texas Optometric Association

David Frazee, O.D.  
President, Texas Optometric Association

Doctors on the Frontline of Eye and Vision Care
Sunset Recommendation Comments from the Texas Optometric Association (“TOA”)

ISSUE 1 - Key Elements of the Agency’s Licensing Functions Do Not Conform to Common Licensing Standards.

1.1 Require the agency to conduct fingerprint-based criminal background checks of all licensure applicants and licensees.

The TOA supports this recommended change in statute.

1.2 Authorize the agency to provide biennial license renewal.

The TOA supports this recommended change in statute.

1.3 Remove subjective qualification required of applicants for licensure.

The TOA supports this recommended change in statute.

1.4 Remove the notarization requirement for individuals applying for licensure.

The TOA supports this recommended change in statute.

1.5 Remove the statutory limitation currently restricting the agency’s authority to lower fees.

The TOA supports this recommended change in statute.

1.6 Require the agency to check for disciplinary or other legal actions in other states for license applications and renewals, and authorize the agency to pursue any necessary enforcement action.

The TOA supports this recommended change in statute.

1.7 Eliminate the provision requiring five affirmative votes of the nine-member board to take an enforcement action.

The TOA supports this recommended change in statute.

Doctors on the Frontline of Eye and Vision Care
1.8 Replace archaic and subjective disciplinary provisions such as “habitual drunkard” with more specific disciplinary criteria, and authorize the agency to order physical and mental examinations if probable cause exists to do so.

The TOA supports this recommended change in statute.

1.9 Direct the agency to accept all license applications and fee payments online.

The TOA supports this recommended board action.

1.10 Direct the agency to update its website.

The TOA supports this recommended board action.

1.11 Direct the agency to make all formal disciplinary orders easily accessible and readily available on its website.

The TOA supports this recommended board action.

1.12 Direct the agency to report all letters of formal agreement to the National Practitioner Data Bank unless discussions with agency counsel and the federal administrator indicate otherwise.

The TOA supports this recommended board action.

1.13 Direct the agency to maintain complainants’ confidentiality when possible.

The TOA generally supports this recommended board action and understands the desire for complainant confidentiality. For some categories of complaints, it may be possible to have complainant confidentiality. But, in complaints where patient records are necessary for adjudication of the complaint, complainant confidentiality may be impossible. Furthermore, the Association would suggest to the Commission that anonymous complaints not be allowed to be acted upon by the Board.
ISSUE 2 - Texas Should Continue Regulating the Practice of Optometry.

2.1 Continue the state’s regulation of optometrists, regardless of organizational setting.

The TOA supports the Sunset Staff’s recommendation that optometry regulation should be continued to protect the public from harm. But, the TOA stands firmly opposed to the transfer of optometry regulation to the Texas Department of Licensing and Regulation (“TDLR”). The TOA believes that the continuation of the Texas Optometry Board as a distinct, separate regulatory agency best serves and protects the public.

- The Texas Optometry Board has existed independently, as authorized by the Texas Optometry Act, since 1921 - with a competent track-record of regulating the practice of optometry and protecting the public from harm.

- The Sunset Staff Report states that “the Sunset review found the optometry board to be generally well-run”. After thorough investigation by the Sunset Staff, this commentary is reassuring to all that the Texas Optometry Board is currently fulfilling its mission to protect the public and regulate the profession of optometry in an appropriate manner.

- The Texas Optometry Board is a lean, productive, and economically efficient state agency. All operating expenses of the Board are paid for with annual license fees collected from the optometrists it regulates. As a state agency, the Texas Optometry Board has no negative fiscal impact on the state, and currently contributes positive net dollars to the general fund.

- The Texas Optometry Board regulates a complex doctoral profession with vital importance to the citizens of Texas. It has Governor-appointed board members that have the expertise and seriousness necessary to accomplish that task. Inside of a large, non-specific government agency such as TDLR, there is little assurance that over time the same level of careful and appropriate regulation would be realized.

Doctors on the Frontline of Eye and Vision Care
The marketplace for consumers of eyeglasses and contact lenses has never been more competitive than as it exists today. Consumers have access to a plethora of retail opportunities to purchase eyeglasses and contact lenses at any desirable combination of price, quality and speed. The requirement of a doctor’s prescription to obtain federally-regulated medical devices (eyeglasses and contact lenses) remains the vital regulation to protect the health and safety of the individual and the public. After the prescription is received, the patient enters a robust, competitive marketplace to decide if, when, where and how they wish to obtain the prescribed medical devices. This marketplace has grown over time to the benefit of the consumer, all while the Texas Optometry Board has focused on its mission to protect the public welfare while not impeding competition.

Without the current well-constructed and well-balanced regulatory structure contained in the Texas Optometry Act that authorizes the Texas Optometry Board, it is possible that less knowledgeable or less concerned actors compromise the visual welfare of Texas through either action or inaction. When this risk is compared to the well-functioning Texas Optometry Board, with almost a century of relevant experience, the Texas Optometric Association does not feel the transfer of optometry regulation to TDLR is appropriate.

2.2 If regulation of optometry is not transferred to the Texas Department of Licensing and Regulation, update the standard across-the-board requirement related to board member training.

The TOA supports this Sunset Staff recommendation, and opposes the transfer of optometry regulation to TDLR. Modern, consistent, and standardized board member training is appropriate for each member of the Texas Optometry Board.
Additional Items of Consideration for Members of the Sunset Advisory Commission

1) Modify the Texas Optometry Act to address the recent Texas Supreme Court decision in *Doris Forte, et al vs. Walmart Stores, Inc.* concerning awardable damages in instances of violations of the Act by corporate optical entities.

2) Modify the Texas Optometry Act to bring the treatment availability for patients by Texas optometrists up to the modern availability of optometric care for patients available in 46 other states (*84th Legislature, SB 577 by Perry / HB 1420 by Lozano*).

3) Modify the respective practice Acts of nurses, physical therapists and occupational therapists to allow these health care professionals the ability to carry out the prescription instructions of an optometrist (*84th Legislature, SB 1111 by Burton*).

4) Prevent any weakening of professional standards in the Act regarding the corporate control of optometrists that may be suggested by corporate optical entities or others.

5) Prevent any weakening of patient safety standards in the Act regarding the prescribing of contact lenses or glasses, which are federally regulated medical devices, that may be suggested by corporate optical entities or others.