



Agency at a Glance

To ensure the eye health of Texans, the Texas Optometry Board (the Board) has regulated the State's optometry profession since its creation in 1921. The Board meets its mission by:

- licensing optometrists, therapeutic optometrists, and glaucoma specialists;
- enforcing key provisions of the state's Contact Lens Prescription Act;
- regulating separations between optometry practices and retail optical dispensing; and
- investigating and resolving complaints, including taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2004, the Board operated on a \$372,000 budget and collected more than \$1 million in revenues from professional and licensing fees and fines. The Board also passed through \$83,448 in licensing fee revenues to support the University of Houston's College of Optometry.
- **Staffing.** The agency employs seven people, all of whom work in Austin.
- **Licensing.** In fiscal year 2004, the Board licensed 3,384 individuals to practice optometry. Of these individuals, 1,358 are also dually licensed as therapeutic optometrists and glaucoma specialists.
- **Inspections.** Board staff inspect optometry practices to check patient exam records, ensure availability of complaint information, and to check separation of patient services from optical dispensing. In fiscal year 2004, the Board conducted 60 of these inspections.
- **Enforcement.** The Board received 148 complaints in fiscal year 2004, and resolved 148, with 139 initiated by consumers. Of the complaints submitted by the public, the most common are for failure to provide a contact lens prescription, incorrect prescription, or failure to diagnose a disease.


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Recommendations

1. **Modify the State's Contact Lens Prescription Act to Increase Consumers Access to Prescriptions and Provide a Greater Range of Purchasing Choices.**
2. **Conform Key Elements of the Board's Licensing and Regulatory Functions to Commonly Applied Licensing Practices.**
3. **Continue the Texas Optometry Board for 12 Years.**

The Texas Optometry Board Lacks Adequate Authority to Address Concerns About Contact Lens Prescriptions, as Currently Required by Federal Law.

Key Findings

- The State's Contact Lens Prescription Act does not adequately authorize the Board to address complaints regarding contact lens prescriptions, and limits consumers from purchasing lenses in a more competitive market.
- State law does not provide safeguards against contact lens sellers potentially circumventing the authority of the prescriber.

State law governing consumer access to contact lens prescriptions has not kept up with federal law, enforced by the Federal Trade Commission. Federal law requires the release of contact lens prescriptions, superceding state requirements that prescriptions be released only on request of the patient. Because the Board does not have clear authority to enforce the requirements of federal law, consumers have little recourse when seeking to address concerns about access to contact lens prescriptions. State laws governing the verification of these prescriptions may also harm consumer's ability to purchase lenses from a greater range of retail sellers. Because state law does not go as far as federal law regarding the release of contact lens prescriptions, it also does not provide needed safeguards against contact lens sellers manipulating the system to circumvent the authority of the prescribing optometrist or ophthalmologist.

Recommendation

Change in Statute

- 1.1 Conform the State's Contact Lens Prescription Act with federal regulations governing the release and verification of contact lens prescriptions, and ensure protection of consumer's eye health when purchasing lenses from dispensers.**

This recommendation would align the State's regulation of contact lens prescriptions with the federal Fairness to Contact Lens Consumers Act. Specifically, changes would include:

- requiring prescribers to give patients their prescription without having to ask for it;
- eliminating requirements for a contact lens dispenser to fill a prescription only on receipt of an original prescription;
- authorizing verification of a contact lens prescription between a dispenser and a prescriber, to occur within eight business hours by the prescriber;
- prohibiting a dispenser from altering a prescription, and allowing a dispenser to substitute only the identical contact lens sold by the manufacturer under different labels; and
- eliminating requirements for the number of contact lenses to be written on a prescription.

Under this recommendation, patients would have greater access to their contact lens prescriptions, and sellers would be able to fill prescriptions received electronically or by other communication, subject to verification by the prescriber that the prescription is correct. In addition, the health of

patients would be protected by prohibiting sellers from altering a prescription and by allowing the seller to substitute one brand of lens for a different brand only if it is the same contact lens prescribed. The Board would have clear authority to address consumer complaints regarding access to their prescriptions, and would enforce provisions regarding release and verification of a prescription by optometrists.

The Board would work with the Texas Department of State Health Services, the State Board of Medical Examiners, and the Board of Pharmacy to ensure the consistent application of these new requirements in each agency's regulatory program. The Department would enforce provisions regarding verification requests from permitted contact lens dispensers, as well as requirements for the substitution of lenses sold to consumers.

Issue 2

Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Key Findings

- Licensing provisions of the Board's statute do not follow model licensing practices and could potentially affect the fair treatment of licensees and the agency's ability to protect consumers.
- Nonstandard enforcement provisions of the Board's statute could reduce the agency's effectiveness in protecting consumers.

Various licensing and enforcement processes in the Texas Optometry Act, and in the Board's rules, do not match model licensing standards that the Sunset Commission has developed from experience gained through more than 80 Sunset reviews of occupational licensing agencies in 25 years. For example, the lack of a full range of penalties may affect the agency's ability to protect the public from practitioners who violate the law and Board rules. Comparing the Board's regulatory practices and statute to these licensing standards identified variations and needed changes to bring them in line with model standards.

Recommendations

Licensing

Change in Statute

2.1 Require the Board to change its method for calculating late renewal penalties.

The renewal fee for optometrists who are delinquent in renewing their licenses would be based on the normal renewal rate set by the Board, not the examination fee. A person whose license has been expired for 90 days or less would pay a renewal fee equal to 1-1/2 times the renewal fee. Those whose licenses have been expired for more than 90 days, but less than one year, would pay an amount equal to twice the renewal fee. In calculating the late penalty, the Board would not include the \$200 professional fee assessed on optometrists.

2.2 Eliminate the statutory authority for oral exams in the Board's statute.

This recommendation would remove the authority to use oral exams from its statute, since this language is obsolete and does not conform to model examination procedures.

Management Action

2.3 The Board should contract with an external entity for jurisprudence examination administration, if found to be cost effective.

The Board would develop a request for proposal to determine whether an external entity could administer its jurisprudence examination more efficiently and cost effectively than staff. In determining whether to contract for exam administration, the Board should consider the advantages and disadvantages to licensees, such as frequency of testing opportunities and exam locations.

Enforcement

Change in Statute

2.4 Authorize the Board to conduct inspections for compliance purposes, and as part of the complaint investigation process.

This recommendation would authorize the Board to inspect the premises of a licensee on an unannounced basis during reasonable business hours, as part of the Board's audits and complaint investigations.

2.5 Require the Board to process as complaints all violations found during inspections.

The Board would open formal complaints for any violation of its statutes or rules found during an onsite inspection of an optometrist's patient records and office. By integrating the agency's inspection complaints into the same process as all other complaints, the Board would provide a more accurate portrayal of its overall enforcement performance.

2.6 Require the Board to investigate complaints according to risk.

This recommendation would require the Board to handle complaints according to a more relevant priority system than currently used by the agency. Addressing complaints based on seriousness would ensure that the agency places attention on its most serious cases first and makes more effective use of its investigative resources.

2.7 Authorize staff to process complaints that do not require professional expertise.

The Board's staff would be clearly authorized to dismiss cases or to recommend enforcement action on cases that do not require professional expertise, or are not directly related to patient care. For example, staff would be able to dismiss cases if the investigation shows that no violation occurred, or if the complaint was non-jurisdictional. Additionally, staff would be able to recommend enforcement action, including administrative fines, which the licensee may accept or reject, and have the matter considered by an informal settlement conference of Board members. All proposed orders would still need final approval by the full Board.

2.8 Require that at least two optometrist members of the Board review complaints requiring professional expertise.

This recommendation would require the Board to provide for at least two optometrist members of the Board to review all complaints requiring optometric expertise, and to decide whether to dismiss a case or refer it to an informal settlement conference. If the two members differ on how to proceed, the complaint would automatically be referred to a settlement conference. Board members who

review a complaint would also conduct any subsequent settlement conference, and recuse themselves from voting on disciplinary action concerning that case at a full Board meeting.

2.9 Require the Board to include one of its public members in the informal settlement process.

Requiring the Board to include at least one public member in its informal settlement conferences would ensure that consumer interests are properly represented in determining whether a violation occurred and what action to take.

2.10 Require the Board to adopt an administrative penalty matrix in agency procedures or rules.

This recommendation would ensure that the Board develops administrative penalty amounts that relate appropriately to different violations of the Board's Acts or rules. By requiring the Board to adopt the matrix in rule, the public would have the opportunity to comment.

2.11 Authorize the Board to require a refund as part of the settlement process.

The Board would be allowed to include a refund as a part of an agreed order reached in an informal settlement conference on a complaint. Refunds would be limited to the amount the complainant paid for their eye exam, eyeglasses, or contacts lenses, and would not include an estimation of other damages or harm.

2.12 Prohibit the Board from requiring additional practice authority as part of a sanction.

The Board would no longer be able to allow licensees to obtain additional practice authority as part of a disciplinary action. Instead, continued practice would have to be conditioned on satisfactory completion of remedial continuing education, or appropriate practice restrictions, before the licensee would be eligible for expanded authority.

2.13 Authorize the Board to temporarily suspend a license.

The Board would be authorized to temporarily suspend an optometrist's license upon determination by a committee of the Board that continued practice by the optometrist threatens the public welfare. Action by a panel of three Board members would be required to temporarily suspend an optometry license, and could occur by telephone conference. The Board would also ensure due process to the license holder through subsequent proceedings to resolve issues that are the basis of the temporary suspension.

2.14 Authorize the Board to issue cease-and-desist orders.

Providing the Board with cease-and-desist authority would enable the Board to move more quickly to stop unlicensed activity that threatens the public's health and safety. The recommendation would also authorize the Board to assess administrative penalties against persons who violate cease-and-desist orders.

Management Action

2.15 The Board should make its complaint form available on its Web site in an easily accessible format.

Making a complaint form available on the Board's Web site will help the public more easily prepare and file complaints.

2.16 The Board should use its informal settlement process to develop agreed orders.

The Board should provide sufficient opportunity for a respondent to indicate whether the terms of a proposed order are acceptable, rather than simply stating its recommended disciplinary action. If a respondent does not agree to a proposed order, the participants in an informal settlement conference should attempt to negotiate for terms that both the Board and the respondent can agree to.

2.17 The Board should share prescription-related enforcement cases with appropriate law enforcement agencies.

The Board should share its disciplinary actions resulting from prescription drug violations with the Controlled Substance Registration Program at the Texas Department of Public Safety, and the federal Drug Enforcement Administration. The Board should also coordinate its complaints investigations with these law enforcement agencies to take advantage of the assistance they can provide.

Issue 3

Texas Has a Continuing Need for the Texas Optometry Board.

Key Findings

- Texas has a continuing interest in licensing and regulating optometrists.
- The Texas Optometry Board protects the public by ensuring that qualified individuals practice optometry.

Optometrists play a vital role in ensuring that Texans can see. Texans rely on optometrists for routine eye exams, prescriptions for corrective lenses, monitoring of conditions such as cataracts and macular degeneration, and for treatment of specific conditions such as glaucoma. In addition, certain optometrists may prescribe drugs, including controlled substances. Such services can potentially harm the public's health and safety, and should be regulated by the State.

Recommendation

Change in Statute

3.1 Continue the Texas Optometry Board for 12 years.

This recommendation would continue the Board as a separate, stand-alone agency for the standard 12-year period.

Fiscal Implication Summary

One recommendation would have a fiscal impact to the State, as summarized below.

- **Issue 2** – Changing the basis on which the Board assesses late renewal penalties would result in a revenue gain to the State of about \$12,700 annually. Applying other licensing and enforcement procedural improvements, and updating the agency's licensing database, would have a negligible cost.

<i>Fiscal Year</i>	<i>Gain to the General Revenue Fund</i>
2006	\$12,700
2007	\$12,700
2008	\$12,700
2009	\$12,700
2010	\$12,700

