

**TEXAS OPTOMETRY BOARD**  
**Self-Evaluation Report**



**August 2003**

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## TEXAS OPTOMETRY BOARD

### I. Key Functions, Powers, and Duties

Please provide the following information about the overall operations of the agency. More detailed information about individual programs will be requested in a later section.

**A. Provide an overview of the agency's mission, key functions, powers, and duties. Specify which duties are statutory.**

The Board protects the safety and welfare of the citizens of Texas through the administration and implementation of the Texas Optometry Act (and other acts, such as the Contact Lens Prescription Act, that directly affect the practice of optometry). The Optometry Act, Chapter 351 of the Texas Occupations Code (Act), not only provides for the regulation of the optometric profession, but contains provisions regarding ophthalmic dispensing. The administration of the Act requires:

- examination and licensure of optometrists,
- renewal of licenses on an annual basis,
- approval of continuing education courses and recording continuing education hours,
- investigation and enforcement of compliance with the Act,
- responding to questions, concerns and complaints of the general public, and
- operating the administrative functions of the agency to facilitate the listed activities.

**B. Does the agency's enabling law correctly reflect the agency's mission, key functions, powers, and duties?**

Yes, in general. However, additional authority to regulate and discipline those practicing optometry without a license would be beneficial.

**C. Please explain why these functions are needed. Are any of these functions required by federal law?**

The functions listed above are needed to protect the public health and provide the quality of health care that the citizens of Texas deserve.

The importance of proper vision correction cannot be underestimated (169 million Americans wore eyeglasses or contact lenses in 2001\*). Learning, driving, reading, sports, most professions, and in fact, almost all aspects of everyday life are dependent on good eyesight. Optometrists perform a majority of the eye examinations in the United States, and a substantial number of patients selecting a new eye doctor choose an optometrist as their eye care provider.\*\* Therapeutic optometrists are trained and licensed to treat diseases and conditions of the eye that require treatment in addition to corrective lenses and prisms, and may administer and prescribe certain topical prescription

drugs. A thorough eye examination not only uncovers diseases and visual abnormalities of the eye, but may detect other medical conditions such as diabetes and hypertension.

Federal law requires a licensed doctor's prescription for both eyeglasses and contact lenses, so these items may only be prescribed by licensed optometrists or physicians. Federal law also requires a licensed doctor's prescription for the topical prescriptions used and prescribed by therapeutic optometrists, and the oral and glaucoma medications that may be administered and prescribed by optometric glaucoma specialists.

**Licensing and examination:** Only a person with specialized training, both in knowledge of the science and expertise in the clinical procedures, is competent to perform a medically valid examination of the eye. To insure that applicants are competent to perform the eye examination, the agency employs examinations -- both clinical and written. National tests measure each applicant's education competency and require a demonstration of the procedures necessary to conduct an eye examination and properly treat abnormal conditions and disease. The agency also requires information on each applicant, including completion of the required education and criminal history, to insure that the public's safety will be protected when seeking treatment from the licensee. License renewal requires each licensee to supply information regarding criminal convictions received during the year. To insure that those initially licensed by the agency maintain the expertise and training that were originally certified by the licensing examination, the agency requires all licensees to obtain 16 hours of continuing education. The continuing education also exposes licenses to new treatments developed since graduation and licensing.

**Enforcement:** The agency protects the public health by investigating complaints of incompetent treatment, by investigating complaints and disseminating information to insure that licenses follow laws that make eye health care affordable and available to all citizens, by inspecting the offices of licensees, including the patient records, to determine whether licensees provide competent eye examinations, and by investigating criminal history information on applications to insure that licensees may be trusted by the public to maintain their personal safety, health and financial security.

\* Jobson Publishing LLC, Article on All About Vision Website: [allaboutvision.com/resources/statistics.htm](http://allaboutvision.com/resources/statistics.htm)

\*\* 2003 Survey by the American Optometric Association reported in American Optometric Association News, vol 41, No. 24, June 16, 2003

**D. In general, how do other states carry out similar functions?**

All states license optometrists. A large majority of the states have examination and licensing requirements similar to Texas, including the use of national examinations. All states investigate complaints against licensees and unlicensed practice, but there are differences in the number of investigations and enforcement priorities. The scope of practice permitted varies significantly from state to state.

The organization of optometry boards also varies from state to state. Independent agencies similar to Texas exist as do agencies connected in some manner, along with other agencies, to a larger

agency. The organization of these connected agencies varies from agencies which are almost completely independent of the larger agency such that the optometry agency has an independent staff, to agencies that are completely integrated into the larger agency with no independent staff, and even a shared executive officer. The manner in which the licensing, renewal, enforcement and administration functions are performed depends on the integration with the larger agency. This larger agency may be the Secretary of State, the state health department, a professional licensing agency, or a consumer affairs agency. Almost all optometry boards have an independent board of licensees and public members, however the powers and duties of the boards do vary.

**E. Describe any major agency functions that are outsourced.**

The agency outsources two major functions: the database of licensees and payment transactions and the primary examination of the competency of applicants. The maintenance of the database is contracted to Northrop-Grumman through a contract overseen by the Department of Information Resources. The database is accessed by agency staff on personal computers at each desk.

The agency accepts the written and clinical examinations given by the National Board of Examiners in Optometry. Acceptance of this examination, which is also accepted in most states, makes it easier for optometrists to relocate, results in a better exam which is constructed and administered by an organization totally devoted to optometry examinations, and at the same time allows the agency to use resources in other areas that would normally be allocated to examination preparation and administration. Examination fees pay for the exam.

**F. Discuss anticipated changes in federal law and outstanding court cases as they impact the agency's key functions.**

Two bills have been introduced in the United States House of Representatives that would affect the functions of the agency, and one of the bills could have a significant impact on the operations of the agency. Both bills would regulate the prescribing of contact lenses. Although only one section of the Act concerns the dispensing of contact lenses, the agency expends a significant amount of resources enforcing the provisions of the Contact Lens Prescription Act, including the adoption and enforcement of several lengthy and important rules.

HR 2218 would restore the status quo as it existed prior to the Federal Drug Administration's decision in March 2003 that colored "cosmetic" contact lenses (lenses that do not correct vision and are worn only to change the appearance of the eye) are not prescriptive devices and may be dispensed without a prescription. The decision of the FDA and the proposed bill both affect Section 351.607 of the Act which imposes a penalty on any person dispensing a contact lens without a prescription.

HR 2221 would establish a federal contact lens prescription release law, with provisions similar to, but in some cases markedly different, from the Contact Lens Prescription Act. Federal bills concerning contact lens prescription release have been introduced in the past few sessions. As stated above, the agency has spent considerable staff time and money to inform licensees of the requirements of the Texas law since it was enacted in 1997. Similar effort has gone into the enforcement of the law, including answering numerous consumer telephone calls. Any change in the law

would require the reeducation of the licensees and public regarding the requirements of the release of contact lens prescriptions.

The agency is not aware of any court cases that may impact the operations of the agency.

<p><b>G. Please fill in the following chart, listing citations for all state and federal statutes that grant authority to or otherwise significantly impact the agency.</b> Do not include general state statutes that apply to all agencies, such as the Public Information (Open Records) Act, the Open Meetings Act, or the Administrative Procedure and Texas Register Act. Provide the same information for Attorney General opinions from FY 1999 - 2003, or earlier significant Attorney General opinions, that affect the agency's operations.</p>	
<p><b>TEXAS OPTOMETRY BOARD</b>  <b>Exhibit 1: Statutes/Attorney General Opinions</b></p>	
<p><b>Statutes</b></p>	
<p><b>Citation/Title</b></p>	<p><b>Authority/Impact on Agency</b></p>
<p>Chapter 351, Texas Occupations Code</p>	<p>Enabling act: licensing application, examination, renewal, continuing education, complaints, enforcement and discipline, specific requirements of practice</p>
<p>Chapter 353, Texas Occupations Code</p>	<p>Contact lens prescriptions</p>
<p>Chapter 53, Texas Occupations Code</p>	<p>Criminal convictions</p>
<p><b>Attorney General Opinions</b></p>	
<p><b>Attorney General Opinion No.</b></p>	<p><b>Impact on Agency</b></p>
<p>JC-0274 (2000)</p>	<p>Historical method of conducting inspections found improper</p>
<p>JC-0097 (1999)</p>	<p>Definition of surgery, superceded by legislation</p>
<p>JC-0342 (2001)</p>	<p>Testimonial advertising allowed in some cases</p>
<p>JC-0381 (2001)</p>	<p>Professional designation for Optometric Glaucoma Specialist</p>

<p><b>H. Please fill in the following chart:</b></p>				
<p><b>TEXAS OPTOMETRY BOARD</b>  <b>Exhibit 2: Agency Contacts</b></p>				
	<p><b>Name</b></p>	<p><b>Address</b></p>	<p><b>Telephone &amp; Fax Numbers</b></p>	<p><b>E-mail Address</b></p>
<p><b>Agency Head</b></p>	<p>Chris Kloeris Executive Director</p>	<p>333 Guadalupe Street Suite 2-420 Austin, TX 78701</p>	<p>512/305-8500 512/305-8501 (fax)</p>	<p>chris.kloeris@mail.capnet.state.tx.us</p>
<p><b>Agency's Sunset Liaison</b></p>	<p>Chris Kloeris Executive Director</p>	<p>333 Guadalupe Street Suite 2-420</p>	<p>512/305-8500 512/305-8501 (fax)</p>	<p>chris.kloeris@mail.capnet.state.tx.us</p>

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## II. History and Major Events

**Provide a time line discussion of the agency's history, briefly describing the key events in the development of the agency, including:**

- the date the agency was established;
- the original purpose and responsibilities of the agency;
- major changes in responsibilities or statutory authority;
- agency/policymaking body name and composition changes;
- the impact of state/federal legislation, mandates, and funding;
- the impact of significant state/federal litigation that specifically affects the agency's operations; and
- key organizational events, and areas of change and impact on the agency's organization (e.g., a major reorganization of the agency's divisions or program areas).

**1921** The Texas State Board of Examiners in Optometry was created by the Thirty-Seventh Legislature. The Act defined the practice of optometry and required passing of examination and registration for license. Statute set up a five member Board to “. . . carry out the purposes and enforce the provisions of this Act . . . .”

**1925** Act amended to specifically define terms used in original act including the scope of practice of optometry. The legislature determined that “. . . the interest of public health, welfare, safety and comfort . . . .” required an eye examination before an ophthalmic prescription could be issued.

**1931** Board increased to six members.

**1939** Specific causes for disciplinary action added to Act.

**1955** First optometrist licensed from University of Houston, the only optometry school located in Texas.

**1957** Agency authority to promulgate rules regarding initial eye examination, advertising and corporate practice upheld by Texas Supreme Court.

**1967** Agency authority to promulgate rules regarding fee splitting, practice under an assumed name, and display of professional name on office upheld by Texas Supreme Court.

**1969** The 61st Legislature abolished the State Board of Examiners and created the Texas Optometry Board. Major revisions were made to the optometry statutes, including limiting rule making power to procedural rules. Many of the rules in effect at this time were made a part of the 1969 Act.

- 1973** United States Supreme Court holds that Board Members may not initiate and conduct investigation if the Board Members also make the determination to impose disciplinary measures. New rule adopted to formalize enforcement functions in compliance with decision.
- 1975** Mandatory Continuing Education requirement added to Optometry Act.
- 1977** Executive Director hired as full time employee.
- 1981** The agency undergoes first Sunset Review. Act amended so that rule making power is no longer limited to procedural rules.
- 1991** Amendments to Act substantially expand the scope of optometry to include the practice of therapeutic optometry. Licensees may now examine or diagnose visual defects, abnormal conditions and diseases of the eye and adnexa, and administer drugs. Optometrists already licensed were required to take additional education and pass national test prior to making application for therapeutic optometrist license. All new licensees receive a therapeutic license.
- 1993** Agency undergoes Sunset Review for second time. The current law is enacted (which was subsequently codified as Chapter 351 of the Texas Occupations Code in 1999).
- 1996** Agency ceases preparing and conducting written and practical examinations with the exception of the state Jurisprudence Examination. The national board examinations satisfy all examination requirements except for the Jurisprudence Examination.
- 1997** Contact Lens Prescription Act enacted. This act requires the release of contact lens prescriptions and significantly affects the practice of optometrists.
- 1999** Amendments to act add a new license: optometric glaucoma specialist. These licensees may treat glaucoma with the co-management of ophthalmologists, and prescribe some oral prescription medications as well as anti-glaucoma topical medications. Applicants for license must be therapeutic optometrists who have completed a Board approved course and examination as well as other requirements.
- 2001** Amendments to Act removed the association membership restrictions. Prior to amendments, three Board Members were required to be a member of Texas Optometric Association, three members associated with the Texas Association of Optometrists, and three members were public members. All licensee Board Members are now appointed regardless of association membership.

### III. Policymaking Structure

<b>A. Please complete the following chart:</b>				
<b>TEXAS OPTOMETRY BOARD</b> <b>Exhibit 3: Policymaking Body</b>				
<b>Member Name</b>	<b>Term/ Appointment Dates/ Appointed by</b>	<b>Qualification</b>	<b>Address</b>	<b>Telephone &amp; Fax Numbers</b>
Joe W. DeLoach, O.D., Chair	07/21/97 - 01/31/05 Governor Appointment	Optometrist	Plano Eye Associates 5900 Coit Rd. Plano, TX 75023	Office: 972/985-1412 Fax: 972/964-5758
Mark A. Latta, O.D. Vice Chair	05/02/96 - 01/31/05 Governor Appointment	Optometrist	Wolflin Vision Clinic 2481 I-40 West Amarillo, TX 79109	Office: 806/358-2205 Fax: 806/463-2907
Ann Appling Bradford	10/14/98 - 01/31/05 Governor Appointment	Public Member	2500 Dartmouth Midland, TX 79705	Office: 915/687-3003 Fax: 915/686-8400
Judy McClendon Eidson	07/21/97 - 01/31/07 Governor Appointment	Public Member	108 Bison Road San Antonio, TX 78232	Office: 210/494-8334 Fax: 210/545-4721
Fred Farias, III, O.D.	09/24/01 - 01/31/07 Governor Appointment	Optometrist	1313 S. 10th Street McAllen, TX 78501	Office: 956/630-2020 Fax: 956/630-2060
B.J. Garner, O.D.	07/21/97 - 01/31/03 Governor Appointment	Optometrist	Garner & Garner Vi- sion Center 11408 Hughes Rd. Houston, TX 77089	Office: 281/484-2020 Fax: 281/481-0000
Katherine M. Garrett Gear	07/27/95 - 01/31/03 Governor Appointment	Public Member	PO Box 940 Mineral Wells, TX 76068	Office: 940-325-4491 Fax: 940/325-0108
Donald R. Glenz, O.D.	07/21/97 - 01/31/03 Governor Appointment	Optometrist	32360 SH 249 Suite 200 Pinehurst, TX 77362	Office: 281/351-2332 Fax: 281/356-3634
Sharon L. Johnson, O.D.	12/06/01 - 01/31/07 Governor Appointment	Optometrist	214 Billings St., Suite 230 Arlington, TX 76010	Office: 817/695-1050 Fax: 817/561-6474

#### **B. How is the chair of the policymaking body appointed?**

The chair is elected by the Board Members.

**C. Describe the primary role and responsibilities of the policymaking body.**

The Board is composed of nine members, who are appointed by the governor with the advice and consent of the Senate. Six members must be licensed optometrists who have been residents of the state actually engaged in the practice of optometry for a period of five years immediately preceding their appointment. Members serve staggered six-years terms with a two complete term limitation.

Public members have served a valuable role by representing the citizens of Texas in many of the issues faced by the Board, including rule making and imposing disciplinary action. These members actively serve on various administrative committees, including the Rules Committee, Continuing Education Committee, Committee on Legislative Issues and the Administrative–Licensing Committee. A public member of the Investigation–Enforcement Committee is present at all informal conferences.

The primary role of the board is threefold: writing and adopting rules, reviewing investigations of complaints and making disciplinary decisions, and hiring and reviewing the performance of the executive director’s management of the administration of the agency, which includes financial matters, enforcement, and the issuance and renewal of licenses. Most aspects of the license application and renewal are directly managed by the executive director following the rules adopted by the Board, but the Board does approve all continuing education courses. The Board also makes all decisions regarding litigation and ultimately, through the rules process and enforcement, interprets the provisions of the Act.

Normally the first day of each Board Meeting consists of committee meetings and disciplinary informal conferences. The second day of each meeting continues with committee meetings and the full Board Meeting.

**D. List any special circumstances or unique features about the policymaking body or its responsibilities.**

Prior to the 2001 statutory amendments, the makeup of the Board was equally divided between members of two associations and public members. The 2001 amendments removed the association membership restrictions.

**E. In general, how often does the policymaking body meet? How many times did it meet in FY 2002? in FY 2003?**

The board meets on a quarterly basis and met four times during FY 2002. The board also held four board meetings during FY 2003.

**F. What type of training do the agency's policymaking body members receive?**

The Board Members receive that training required by Section 351.059 of the Act. This includes a training session at the agency office conducted by the executive director. The New Board Member Training Manual developed by the Health Professions Council and agency specific training materials, including the Investigation-Enforcement Training Manual, are employed.

**G. Does the agency have policies that describe the respective roles of the policymaking body and agency staff in running the agency? If so, please describe these policies.**

The policy manual (not complete) and the detailed job description for the executive director position defines the duties of the Board and executive director and the method for review. For enforcement matters, a combination of specific language in the rules and the Investigation-Enforcement Policy Manual delineates the responsibility of staff versus the Board.

**H. If the policymaking body uses subcommittees or advisory committees to carry out its duties, please fill in the following chart.**

<b>TEXAS OPTOMETRY BOARD</b>			
<b>Exhibit 4: Subcommittees and Advisory Committees</b>			
<b>Name of Subcommittee or Advisory Committee</b>	<b>Size/Composition/ How are members appointed?</b>	<b>Purpose/Duties</b>	<b>Legal Basis for Committee</b>
Administrative/ Licensing Committee	Four board members appointed by the Board Chair	This committee assists the office staff regarding administrative issues and matters involving the board examinations, accreditation of colleges, applications for licensure and licensing requirements.	Act, Section 351.159
Continuing Education Committee	Four board members appointed by the Board Chair	This committee reviews and approves, if appropriate, all continuing education submitted to the Board. This includes additional courses required for therapeutic optometry and optometric glaucoma specialist licensure.	See above
Rules Committee	Four board members appointed by the Board Chair	This committee drafts procedural and substantive rules for submission to full Board for adoption.	See above
Committee on Legislative Issues	Four board members appointed by the Board Chair	This committee reviews the current statutes to determine what legislative issues should be addressed. The committee will focus on the upcoming Sunset review process. The committee will establish liaisons with professional associations for interaction on proposed changes to the Act.	See above

**I. How does the policymaking body obtain input from the public regarding issues under the jurisdiction of the agency? How is this input incorporated into the operations of the agency?**

The primary method in which the public provides input is through comments and questions in letters, telephone calls, and e-mails to the agency staff. These comments and questions are answered by the executive director and if the comment presents an unusual issue, an issue raised frequently, or an issue of first concern, the comments are referred to the chair or vice-chair of the Board. Other Board Members are also contacted by the public. Any Board Member may request that an item appear on the next Board Meeting agenda. A significant number of agenda items suggested by Board Members are the result of public and licensee input.

Each Board Meeting also has a time certain for public comment. Although decisions cannot be made at that time, the Board may instruct staff to research the issue.

The public also has a direct input to the Board in comments made to all proposed rules. The agency must respond by law to these comments in the *Texas Register*.

## IV. Funding

### A. Describe the agency's process for determining budgetary needs and priorities.

The staff, in preparation of the Legislative Appropriation Request, presents the Board members with budgetary considerations, including past budgets and foreseeable future needs (including anticipated new legislation, new government requirements, new computer hardware and software that may be required, cost history of the implementation of recent cost savings, and items brought to the agency's attention by other agencies in the Health Professions Council). Priorities are determined considering the factors above, considering the importance of the licensing and enforcement functions of the agency. Customer service is also an important factor considered by the Board Members in determining priorities. The appropriation of sufficient funds to meet the performance measures set by the legislature is also a high priority.

### B. Show the agency's sources of revenue. Please include all local, state, and federal appropriations, all professional and operating fees, and all other sources of revenue collected by the agency.

<b>TEXAS OPTOMETRY BOARD</b> <b>Exhibit 5: Sources of Revenue - Fiscal Year 2002 (Actual)</b>	
Source	Amount
Licensing	493,433.25
Professional Fees/Administrative Penalties	493,217.50
Subscription Fees	15,725.00
Internal Auditor	15,000.00
Dedicated Funds (University of Houston)	80,088.75
Appropriated Receipts	17,368.66
Interagency Contract	20,046.36
Interest Earned - Petty Cash Account	85.20
<b>TOTAL</b>	<b>\$1,134,964.72</b>

### C. If you receive funds from multiple federal programs, show the types of federal funding sources.

<b>TEXAS OPTOMETRY BOARD</b> <b>Exhibit 6: Federal Funds - Fiscal Year 2002 (Actual)</b>				
Type of Fund	State/Federal Match Ratio	State Share	Federal Share	Total Funding
N/A				

<b>D. If applicable, please provide detailed information on fees collected by the agency. See Exhibit 7</b>				
<b>TEXAS OPTOMETRY BOARD</b>				
<b>Exhibit 7: Fee Revenue and Statutory Fee Levels - Fiscal Year 2002</b>				
Description/ Program/ Statutory Citation	Current Fee/ Statu- tory maximum	Number of per- sons or entities paying fee	Fee Reve- nue	Where Fee Revenue is Deposited
Texas Occupations Code, Chapter 351, Subchapter D, Section 351.152. Fees:				
<u>Licensing:</u>				
Examination	150.00	169	25,350.00	General Revenue Fund
Initial License	50.00	147	7,350.00	General Revenue Fund
Duplicate License or Renewal Certificate	25.00	10	250.00	General Revenue Fund
License Renewal	175.00	3,123	546,525.00	General Revenue Fund
Therapeutic License Application	80.00	5	400.00	General Revenue Fund
Optometric Glaucoma Specialist License Application	50.00	50	9,600.00	General Revenue Fund
Texas Occupations Code, Chapter 351, Subchapter D, Section 351.153. Additional Fees:				
<u>Licensing:</u>				
Professional Fees	200.00	2,419	483,800	General Revenue Fund
Texas Occupations Code, Chapter 351, Subchapter L, Section 351.551. Imposition of Penalty:				
<u>Enforcement:</u>				
Administrative Penalty	Varies/ \$2,500	2	1,125	General Revenue Fund

<b>E. Show the agency's expenditures by strategy.</b>	
<b>TEXAS OPTOMETRY BOARD</b>	
<b>Exhibit 8: Expenditures by Strategy - Fiscal Year 2002 (Actual)</b>	
Goal/Strategy	Amount
1.1.1	354,823.91
<b>GRAND TOTAL:</b>	<b>\$354,823.91</b>

<b>F. Show the agency's expenditures and FTEs by program.</b>					
<b>TEXAS OPTOMETRY BOARD</b>					
<b>Exhibit 9: Expenditures and FTEs by Program - Fiscal Year 2002 (Actual)</b>					
<b>Program</b>	<b>Budgeted FTEs, FY 2002</b>	<b>Actual FTEs as of August 31, 2002</b>	<b>Federal Funds Expended</b>	<b>State Funds Expended</b>	<b>Total Actual Expenditures</b>
Licensure and Enforcement	7	6	N/A	\$354,823.91	\$354,823.91
<b>TOTAL</b>	7	6	N/A	\$354,823.91	\$354,823.91

<b>G. Show the agency's objects of expense for each category of expense listed for your agency in the General Appropriations Act FY 2004-2005.</b>	
<b>TEXAS OPTOMETRY BOARD</b>	
<b>Exhibit 10: Objects of Expense by Program or Function - Fiscal Year 2004</b>	
<b>Object-of-Expense Informational Listing</b>	<b>Strategy Licensing &amp; Enforcement</b>
Salaries and Wages	\$268,000
Other Personnel Costs	7,100
Operating Costs	97,350
<b>Total, FY 2004</b>	
<b>Object-of-Expense Informational Listing</b>	<b>\$372,450</b>

<b>TEXAS OPTOMETRY BOARD</b>	
<b>Objects of Expense by Program or Function -- Fiscal Year 2005</b>	
<b>Object-of-Expense Informational Listing</b>	<b>Strategy Licensing &amp; Enforcement</b>
Salaries and Wages	268,000
Other Personnel Costs	7,800
Operating Costs	96,650
<b>Total, FY 2005</b>	
<b>Object-of-Expense Informational Listing</b>	<b>\$372,450</b>

<b>H. Please fill in the following chart.</b>				
<b>TEXAS OPTOMETRY BOARD</b>				
<b>Exhibit 11: Purchases from HUBs</b>				
<b>FISCAL YEAR 2000</b>				
<b>Category</b>	<b>Total \$ Spent</b>	<b>Total HUB \$ Spent</b>	<b>Percent</b>	<b>Statewide Goal</b>
<b>Heavy Construction</b>	0	0	0	11.9%
<b>Building Construction</b>	0	0	0	26.1%
<b>Special Trade</b>	0	0	0	57.2%
<b>Professional Services</b>	4,056	0	0	20.0%
<b>Other Services</b>	22,321	1,682	7.5%	33.0%
<b>Commodities</b>	17,027	5,821	34.1%	12.6%
<b>TOTAL</b>	\$43,404	7,503	17.3%	

<b>FISCAL YEAR 2001</b>				
<b>Category</b>	<b>Total \$ Spent</b>	<b>Total HUB \$ Spent</b>	<b>Percent</b>	<b>Statewide Goal</b>
<b>Heavy Construction</b>	0	0	0	11.9%
<b>Building Construction</b>	0	0	0	26.1%
<b>Special Trade</b>	0	0	0	57.2%
<b>Professional Services</b>	3,846	0	0	20.0%
<b>Other Services</b>	36,915	\$420	1.13%	33.0%
<b>Commodities</b>	19,748	\$8,044	40.6%	12.6%
<b>TOTAL</b>	\$60,509	\$8,464	14%	

<b>FISCAL YEAR 2002</b>				
<b>Category</b>	<b>Total \$ Spent</b>	<b>Total HUB \$ Spent</b>	<b>Percent</b>	<b>Statewide Goal</b>
<b>Heavy Construction</b>	0	0	0	11.9%
<b>Building Construction</b>	0	0	0	26.1%
<b>Special Trade</b>	0	0	0	57.2%
<b>Professional Services</b>	4,267	0	0	20.0%
<b>Other Services</b>	26,706	1,789	6.7%	33.0%
<b>Commodities</b>	11,315	4,478	39.5%	12.6%
<b>TOTAL</b>	\$42,288	6,267	14.8%	

**I. Does the agency have a HUB policy? How does the agency address performance shortfalls related to the policy?**

Yes, as expressed in the agency’s strategic plans, the agency’s policy is to make a good faith effort to include historically underutilized businesses (HUB) in all purchases.

<b>J. For agency with contracts valued at \$100,000 or more:</b>	
	<b>Response / Agency Contact</b>
Does your agency follow a HUB subcontracting plan to solicit bids, proposals, offers, or other applicable expressions of interest for subcontracting opportunities available under contracts of \$100,000 or more? (Tex. Government Code, Sec. 2161.252; TAC 111.14)	N/A

<b>K. For agencies with biennial appropriations exceeding \$10 million:</b>	
	<b>Response / Agency Contact</b>
Do you have a HUB coordinator? (Tex. Government Code, Sec. 2161.062; TAC 111.126)	N/A
Has your agency designed a program of HUB forums in which businesses are invited to deliver presentations that demonstrate their capability to do business with your agency? (Tex. Government Code, Sec. 2161.066; TAC 111.127)	N/A
Has your agency developed a mentor-protege program to foster long-term relationships between prime contractors and HUBs and to increase the ability of HUBs to contract with the state or to receive subcontracts under a state contract? (Tex. Government Code, Sec. 2161.065; TAC 111.128)	N/A

## V. Organization

A. Please fill in the chart below. If applicable, list field or regional offices.			
TEXAS OPTOMETRY BOARD			
Exhibit 12: FTEs by Location - Fiscal Year 2002			
Headquarters, Region, or Field Office	Location	Number of Budgeted FTEs, FY 2002	Number of Actual FTEs as of August 31, 2002
HEADQUARTERS	AUSTIN	7	6
<b>TOTAL</b>		7	6

**B. What was the agency's FTE cap for fiscal years 2002 - 2005?**

7

**C. How many temporary or contract employees did the agency have as of August 31, 2002?**

N/A

D. Please fill in the chart below.							
TEXAS OPTOMETRY BOARD							
Exhibit 13: Equal Employment Opportunity Statistics							
FISCAL YEAR 2000							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	10		5%		8%	100%	26%
Professional	2		7%		7%		44%
Technical			13%		14%		41%
Protective Services			13%		18%		15%
Para-Professionals	1		25%		30%	100%	55%
Administrative Support	3		16%		17%	100%	84%
Skilled Craft			11%		20%		8%
Service/Maintenance			19%		32%		27%

FISCAL YEAR 2001							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	1		5%		8%	100%	26%
Professional	4		7%	25%	7%	50%	44%
Technical			13%		14%		41%
Protective Services			13%		18%		15%
Para-Professionals	1		25%		30%	100%	55%
Administrative Support	2		16%		17%	100%	84%
Skilled Craft			11%		20%		8%
Service/Maintenance			19%		32%		27%

FISCAL YEAR 2002							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force %	Agency	Civilian Labor Force %	Agency	Civilian Labor Force %
Officials/Administration	2		5%		8%	50%	26%
Professional	6		7%	33.33%	7%	63.33%	44%
Technical			13%		14%		41%
Protective Services			13%		18%		15%
Para-Professionals			25%		30%		55%
Administrative Support	3	33.33%	16%		17%	100%	84%
Skilled Craft			11%		20%		8%
Service/Maintenance			19%		32%		27%

**E. Does the agency have an equal employment opportunity policy? How does the agency address performance shortfalls related to the policy?**

Yes. Should the agency experience a shortfall, the agency would follow the procedures in the agency's Affirmative Action Plan, including the placement of advertising and job opening notices with those groups not adequately represented in the workforce.

**VI. Guide to Agency Programs**

Please complete this section for each agency program (or each agency function, activity, or service if more appropriate). Copy and paste the question boxes as many times as needed to discuss each program, activity, or function. Please contact Sunset staff with any questions about applying this section to your agency.

**A. Please complete the following chart.**

<b>TEXAS OPTOMETRY BOARD</b>	
<b>Exhibit 14: Program or Function Information - Fiscal Year 2002</b>	
<b>Name of Program or Function</b>	Enforcement
<b>Location/Division</b>	Austin, Texas / Enforcement
<b>Contact Name</b>	Roger Young
<b>Number of Budgeted FTEs, FY 2002</b>	1.25
<b>Number of Actual FTEs as of August 31, 2002</b>	.25

**B. What are the key services of this function or program? Describe the major activities involved in providing all services.**

The key service of the Enforcement function is the enforcement of the sections of the Act that regulate the competency of service provided by licensees, and very importantly, answering numerous daily questions from the public, patients and licensees. Enforcement of the Act is primarily through the agency's investigation of complaints and inspection of licensees' practices. Complaints investigated include written complaints from patients, the public, licensees, and complaints initiated by the agency.

Offices are inspected to determine compliance with sections of the Act concerning initial examination of patients (through an audit of patient records), control by opticals, professional identification, and consumer notices.

Complaints and the results of an office inspection are reviewed by the Investigation-Enforcement Committee of the Board. If a violation is found, the agency initiates disciplinary action which may involve the holding of informal conferences and prosecution of cases with the State Office of Administrative Hearings. Both the agency's investigator and executive director are involved with the Enforcement function.

**C. When and for what purpose was the program or function created? Describe any statutory or other requirements for this program or function.**

Investigations and inspections have been conducted for quite some time. After the 1973 U.S. Supreme Court holding that Board Members may not initiate and conduct investigations (please see history timeline), the agency adopted specific rules to formalize the investigative and inspection activities of the agency. Similar rules are still in effect. Because the Act sets out very specific requirements for an initial eye examination, and these requirements may not be understood by the general public, the agency has inspected eye examinations for at least 25 years.

The Act authorizes and in some cases requires enforcement and investigative action, primarily in Sections D, E, and H through M. The Administrative Procedures Act, Chapter 2001 of the Texas Government Code, governs the investigative and disciplinary activities of all state agencies, especially the disciplinary hearings.

The agency cannot foresee a time when protection of the public health does not require investigations of practices and complaints.

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program or function will no longer be needed?**

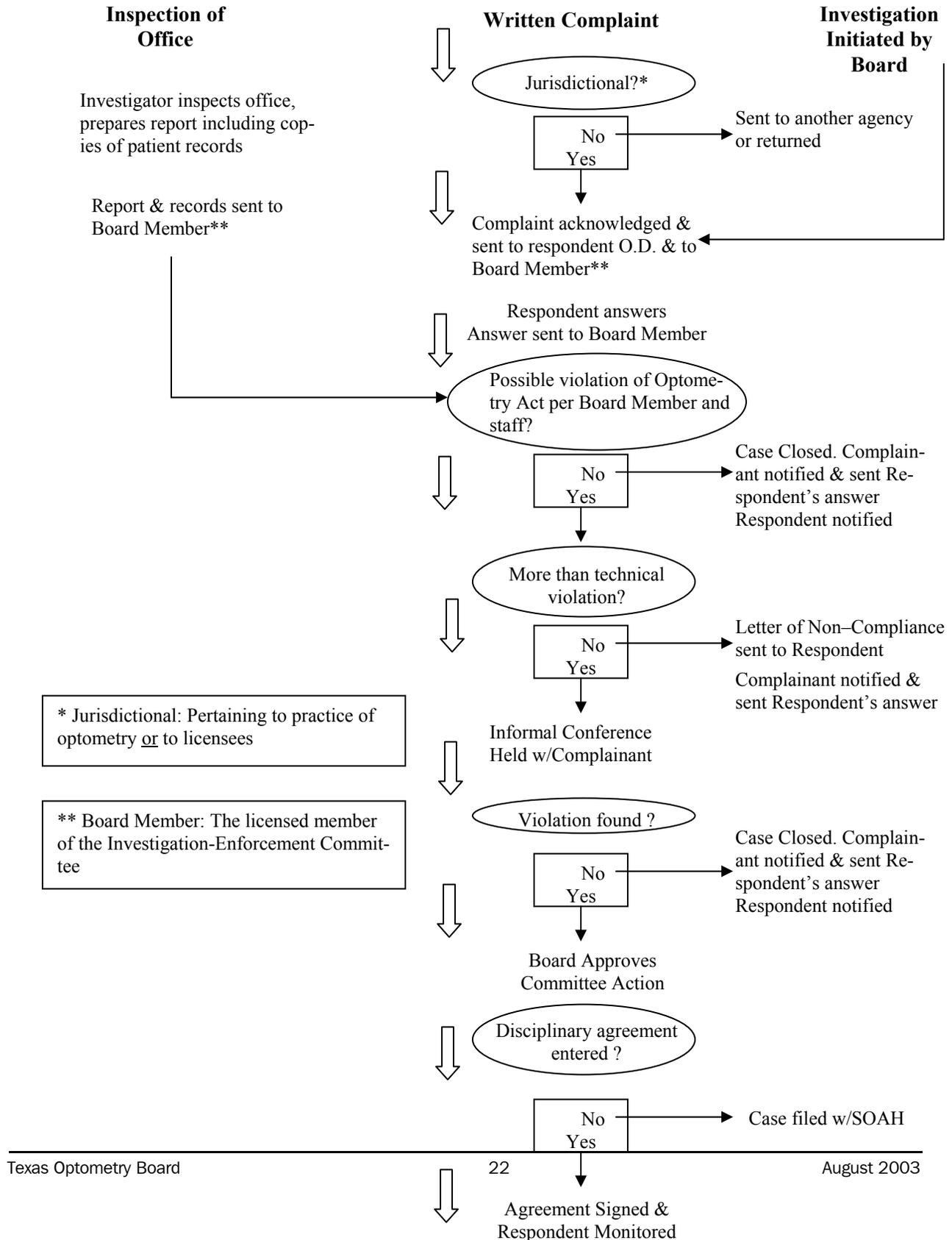
The History and Major Events section details one of the important milestones: the 1973 U. S. Supreme Court case that required the agency to revise investigation and enforcement procedures to insure, with great specificity, that the investigation and enforcement activities were properly separated.

The inspection of offices is now markedly changed from the original procedure of employing optometry students to obtain eye examinations from licensees. Attorney General Opinion JC-0274 (2000) advised agencies that search warrants are required for certain types of investigations. The agency decided to revise the inspection procedure. Now, the agency's full time investigator limits the inspection to an examination of the office layout. In addition, copies of recent patient records are requested to determine compliance with Section 351.353 of the Act and agency rule 277.7. The new procedure has highlighted for licensees the importance of proper patient record keeping procedures.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

This function affects both patients and licensees. There are no eligibility requirements for patients affected by the Enforcement function other than having first hand knowledge of the actions made a basis of a complaint. Both licensees and patients are affected only if the agency has jurisdiction of the complaint.

**F. Describe how the program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.**



Enforcing the provisions of the Act (and other applicable acts, such as the Contact Lens Prescription Act) requires the services of an investigator, the executive director, and all the board members. The flowchart above presents a rough guide to the process employed by the Enforcement function which is described in detail below. The flowchart and the following discussion does not include one of the most important services of this function – answering numerous daily questions from the public, patients, pharmacists, and licensees concerning the statutes, rules, and all aspects of optometry practice. This is a primary proactive method of insuring compliance with the rules and Act. Phone calls and e-mails are answered in detail by persons with an extensive knowledge of the rules and Act, making compliance with the law much easier for licensees and the public.

The agency conducts the following types of investigations:

- investigations of complaints filed by public, patients, or licensees, including:
  - complaints of a violation of the Act, and
  - complaints of conduct by licensees related to the practice of optometry (technically outside the jurisdiction of the act, but undertaken as a service to the public)
- investigations of possible violations of the Act discovered by the Board, such as
  - applicants for license not meeting statutory qualifications,
  - licensees reporting criminal convictions,
  - information received from law enforcement and other agencies, and
  - advertising violations
- investigations of licensees' offices and patient records

A complaint that is outside the jurisdiction of the Act and unrelated to the practice of a licensee is sent to another agency that appears to have jurisdiction. If no agency appears to have jurisdiction, the complaint is returned to the sender with suggestions on how to proceed.

The framework for investigation of complaints is established by agency rule. Under that framework, the state is divided into enforcement districts. Each licensed board member, as a member of an Investigation-Enforcement Committee, is assigned to review complaints and investigations from certain enforcement districts.

Normally when a complaint is received by the agency, a formal case is opened and assigned a case number. A letter of acknowledgement is sent to the complainant. A letter is also sent to the licensee complained of, asking the licensee to respond to the statements in the written complaint enclosed with the letter to the optometrist. Additionally, the Board member who is assigned as a member of the Investigation-Enforcement Committee for the area in which the optometrist is located is sent a copy of the complaint.

The licensee's response is sent to the Board member. After the investigator, in consultation with the executive director and the Board member, determines that further investigation is not required, the investigation is reviewed by the Board member, the investigator and the executive director to determine whether there is evidence of violations of the Act. If there is no evidence of violation or insufficient evidence to prove a violation, the case is closed and the complainant and licensee notified by letter. A copy of the optometrist's written response is enclosed with the letter to the complainant.

If a violation appears to have occurred, the three individuals described above may determine that the violation is a minor violation of the Act, or the evidence of the violation is weak, and that the complaint should be closed with a letter to the licensee that the licensee is not in strict compliance with the law. For all serious violations of the Act, the licensee is invited to an informal confer-

ence, a step required under the Administrative Procedures Act so that the licensee may present evidence of compliance with the Act. Present at the informal conference are the licensee (and an attorney at the licensee's option), the executive director, the investigator, the licensee Board Member of the Investigation-Enforcement Committee, a public member of the Board, and an assistant attorney general (required by statute). The complainant is entitled to visit Austin to discuss their complaint, but historically the agency's more serious and jurisdictional complaints have been initiated by the agency.

During the informal conference, the licensee is presented with the results of the agency's investigation in the form of findings which show a violation of the Act. The licensee is given an opportunity to show that the Act was not violated by the licensee. The Investigation-Enforcement Committee (the two Board members) then offers the licensee an agreed settlement of the case (which, if evidence presented at the conference shows that no violation occurred, may be to close the case). Usually the full Board meets the next day, and the Committee presents the settlement for Board approval. Once the Board approves an offer of settlement, the licensee is made a formal offer. If the licensee accepts, a disciplinary order is drafted, and the licensee is monitored for compliance with the order. If the licensee does not accept the offer of settlement, a case is filed with the State Office of Administration and the Attorney General represents the agency.

Office inspections are conducted by the agency investigator who inspects the office layout, signage, advertising, and the display of the required complaint sign. The investigator also obtains copies of a small number of recent patient records, which are examined by the Investigation-Enforcement Committee to determine compliance with agency rules and the provisions of the Act that require certain examination procedures. If a determination is made by the investigator, the executive director, and the Board Member that a violation has occurred, the case is handled in the same manner as a complaint with evidence of a violation.

Historically the public and patient complaints have mostly concerned matters outside the jurisdiction of the agency -- patient relations; prices charged; fitting, quality and price of optical goods sold by a licensee; and insurance reimbursement. Thus investigations initiated by the agency, including the inspection of licensees' offices, have generated the largest share of disciplinary action. However, with the increased scope of practice and increased prescriptive abilities, patient complaints are expected to become more serious in nature.

There are no field offices.

**G. If the program or function works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency.**

The Enforcement function works on a regular basis with local law enforcement: police, sheriff, and county or district attorney regarding criminal complaints against licensees and the unauthorized practice of optometry.

**H. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

General revenue.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

No. The current budget, with reductions, may not provide sufficient amounts for investigator travel or sufficient funds should a costly enforcement action be necessary.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

There are no programs that provide identical or similar services. Other state agencies and the federal government prosecute Medicare and Medicaid fraud, but their investigations are limited to these items.

**K. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or interagency contracts.**

None. If Medicare or Medicaid fraud is an issue, the agency refers case to those state or federal agencies whose expertise is in this area. If investigation by these agencies is completed, the board will accept referral to determine whether violation of act has occurred.

**L. Please provide any additional information needed to gain a preliminary understanding of the program or function.**

N/A

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

**Need for Regulation:** Protection of the public health requires agency to investigate complaints of incompetence. Investigation of applicant's criminal history insures that a person who may pose a danger to the public is not licensed. Proactive inspections uncover incompetent eye examinations even though patients may not have realized exam did not meet statutory requirements.

**Inspections and Audits:** Office inspections are conducted by the agency investigator who inspects the office layout, signage, advertising, and the display of the required complaint sign. The investigator also obtains copies of a small number of recent patient records, which are examined by the Investigation-Enforcement Committee.

**Follow-up:** Licensees found to be in violation of Act or rules are scheduled for next possible office inspection.

**Sanctions:** Agency may issue a letter of non-compliance, impose an administrative penalty, revoke or suspend a license, place on probation a person whose license has been suspended, impose a fine, impose a stipulation, limitation, or condition relating to continued practice, including conditioning continued practice on counseling or additional education, or reprimand a license holder.

**Complaint procedure:** Described in detail in VI.F. Complaint is investigated with information obtained from complainant and respondent licensee. Investigation reviewed by a Board Member, the investigator and the executive director to determine if evidence of violation is present.

**N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.**

<b>TEXAS OPTOMETRY BOARD Enforcement Exhibit 15: Complaints <u>Against</u> Regulated Entities or Persons - Fiscal Years 2001 and 2002</b>		
	<b>FY 2001</b>	<b>FY 2002</b>
Total Number of complaints received	84	158
Number of complaints investigated & closed	91	141
Number of non-jurisdictional complaints	19	8
Number of sanctions	3	6
Number of complaints pending from prior years	18	9
Average time period for resolution of a complaint	63.11 Days	70.13 Days
Number of entities inspected or audited by the agency	73	45
Total number of entities or persons regulated by the agency	3,223	3,270

**GUIDE TO AGENCY PROGRAMS CONT'D.**

<b>A. Please complete the following chart.</b>	
<b>TEXAS OPTOMETRY BOARD</b> <b>Exhibit 14: Program or Function Information — Fiscal Year 2002</b>	
<b>Name of Program or Function</b>	Licensing/Administration
<b>Location/Division</b>	Austin, Texas
<b>Contact Name</b>	Lisa Holder
<b>Number of Budgeted FTEs, FY 2002</b>	5.75*
<b>Number of Actual FTEs as of August 31, 2002</b>	5.75

\* One FTE is shared employee with two other agencies

**B. What are the key services of this function or program? Describe the major activities involved in providing all services.**

Licensing has two components: application for license (which covers additional licensure as well as initial licensure) including examination, and the second component, license renewal including continuing education. A very important part of each component is the answering of numerous daily questions from the public, applicants and licensees. The licensing section:

- furnishes applications
- reviews initial applications including a review of national test scores
- administers state jurisprudence examination
- reviews additional license applications
- deposits application and initial license fees
- prepares continuing education course submission for approval
- tabulates each licensee's continuing education hours
- renews licenses
- deposits license renewal funds
- verifies licenses to public

The administration part of this function operates the agency (including the enforcement function) and performs the following services:

- payroll, purchasing, administration of budget
- Board Meetings and rule adoption
- compliance with statutory requirements (reports, statistical tabulation, maintaining agency records, open records requests)
- human resources
- computer services and security



**C. When and for what purpose was the program or function created? Describe any statutory or other requirements for this program or function.**

Both aspects of the Licensing and Administration function have existed since the formation of the agency in 1921. Subchapters B, C and D of the Act are the main statutory requirements for the administration function. Subchapters F and G are the main requirements for the licensing part of the function.

**D. Describe any important history not included in the general agency history section, including a discussion of how the services or functions have changed from the original intent. Will there be a time when the mission will be accomplished and the program or function will no longer be needed?**

The functions have evolved over the years as the operation of a state agency has become more complicated and subject to litigation. Licensing has also become more complicated as the scope of practice and requirements for licensure have increased. The history section lists 1977 as a turning point for the administration function when the executive director was made a full-time employee. Also listed in that section is the 1996 decision by the agency to discontinue the administering of a three day exam constructed by the agency and accept all parts of the national board examinations. The agency still gives a state Jurisprudence Examination.

There is a possibility that the Jurisprudence Examination can be prepared and administered by others sometime in the future, but the other services will be still be necessary, although slightly changing with advances in automation.

**E. Describe who or what this program or function affects. List any qualifications or eligibility requirements for persons or entities affected. Provide a statistical breakdown of persons or entities affected.**

Licenses, applicants, and ultimately the public who is dependent on the agency limiting license to those qualified to practice optometry safely and competently are affected by this function. Applicants must of course be eligible as this is defined in the Act, which is basically a graduate of an approved college of optometry and passage of extensive written, practical and clinical examinations.

**F. Describe how the program or function is administered. Include flowcharts, timelines, or other illustrations as necessary to describe agency policies and procedures. List any field or regional services.**

### Licensing

#### ---Examination

An applicant for initial license must be a graduate of an approved college of optometry or within the last semester prior to graduation. The applicant must submit an application and the appropriate fee. The Board reviews each application, determining whether the candidate has met statutory requirements from the documentation required with the application, including transcripts, birth cer-

tificates, military discharge, legal documents showing name change, and passing scores of all the tests given by National Board of Examiners in Optometry (NBEO). Criminal history information provided by the applicant is verified with the Department of Public Safety. If the applicant is licensed in another state, verification of good standing in that state is required. Qualifying candidates are notified of application approval and provided with a schedule of the Texas Jurisprudence Examination.

All candidates must take a written, clinical and practical examination and the jurisprudence examination. Beginning in 1994, applicants were allowed by rule to submit scores from all the exams administered by the NBEO in lieu of the exam conducted by the agency. In 1996, the agency ceased giving an examination except for the Jurisprudence Exam. An applicant must submit passing scores on Parts I, II, III and the TMOD. These NBEO exams may be taken at various times while a student is in optometry school. An amendment to the Act in 1997 allows fourth year students in their last semester, with a statement from the dean that the student is expected to timely graduate, to apply and take the state Jurisprudence Exam.

Jurisprudence Examinations are conducted four times a year, and applicants have an additional opportunity to sit for the Texas Jurisprudence Examination at the April and August examinations administered by the NBEO. Provided that the applicant file contains all the appropriate documents and passing NBEO scores are received, and the initial licensure fee has been submitted, successful Jurisprudence Examination candidates are issued a license to practice therapeutic optometry. The issuance of a license requires several time consuming operations in the agency's outsourced database, and preparation of a comprehensive mail-out packet. The license must be displayed in the principal office of practice.

Applicants from out-of-state may apply for license in one of two ways: an applicant having passed the NBEO examinations after the dates of acceptance by the agency (all examination parts after 1994 are accepted), and meeting the other statutory requirements, will be allowed to sit for the Jurisprudence Examination. Other applicants may be allowed to sit for the exam if they meet the Licensure Without Exam statutory requirements: licensed in another state in good standing, licensing exams in licensing state equivalent to Texas licensing exams, and practice as a therapeutic optometrist for five of the last seven years.

The licensing function also administers the application for and issuance of two licenses giving additional practice authority: therapeutic optometrist and optometric glaucoma specialist. Since 1992, the agency has only issued therapeutic optometrist licenses. Those licensees who obtained licenses before 1992 may apply for a therapeutic license after taking an extensive course in therapeutic optometry and passing the TMOD examination offered by the NBEO. Although the vast majority of licensees who wanted to obtain the therapeutic license have already done so, the agency does process a few applications each year. Since August of 2000, the agency has issued over 1,100 optometric glaucoma specialist licenses. Applicants are required to complete a Board approved course and examination in addition to other statutory requirements. These applications are administered in much the same manner as the applications for licensure, including processing of application fees.

#### ---Renewal of Licenses

The Act requires annual renewal of all licenses. Renewing licenses involves a review of each renewal form to check and record address changes, criminal convictions, location and names of practice(s), compliance with control of optometry statutes (separation from optical lessor and ownership of less than four offices), and proper professional designation. Any violations of the rules or Act

are referred to the Enforcement function. All renewed licensees are issued the annual renewal certificate required by the Act in order to practice optometry. License renewal also requires deposit of license fees (including the entry of the fees in the outsourced database and verification of deposit). Renewals are received and processed during the months of November and December. The entire staff assists in the processing of renewals. The agency is attempting to move as many licensees as possible to on-line renewal.

All active licenses (with some exceptions) must obtain sixteen hours of Board approved continuing education as a prerequisite to license renewal. The agency does not audit compliance, but tabulates continuing education hours attended by each licensee throughout the year. The outsourced database is used to record and store continuing education hours, and this information is now available for on-line inquiry by each licensee. A renewal will not be processed if the licensee has not submitted proof of the required continuing education. Therefore licensees without the required continuing education cannot practice optometry. The agency also collects information on continuing education courses offered to present to the Board. Only Board approved courses satisfy the continuing education requirement.

This function of the agency also receives and prepares license verifications for the public, credentialing organizations and insurance providers. Much of this information is available on the agency's website, but official verifications under seal are prepared for sending to the requestor.

#### Administration

This function operates the entire agency (including the enforcement function) and performs services similar to those administrative functions of any state agency, including preparing and following a budget, purchasing, and payroll. Human resource functions such as hiring, discipline, promotion, and evaluation of positions within the needs of the agency are performed by this function. With the move to more and more functions being performed on-line, the administration function's computer security services are even more essential. This function also acts to comply with all statutory requirements for reports, statistical tabulations, maintenance of agency records, and answering open records requests.

There are no field offices.

**G. If the program or function works with local units of government, (e.g., Councils of Governments, Soil and Water Conservation Districts), please include a brief, general description of these entities and their relationship to the agency.**

None.

**H. Identify all funding sources and amounts for the program or function, including federal grants and pass-through monies. Describe any funding formulas or funding conventions. For state funding sources, please specify (e.g., general revenue, appropriations rider, budget strategy, fees/dues).**

General revenue.

**I. Are current and future funding resources appropriate to achieve program mission, goals, objectives, and performance targets? Explain.**

No. On-line renewal costs have exceeded the savings available to the agency. It is anticipated the on-line application costs will also be larger than the amounts saved.

**J. Identify any programs internal or external to the agency that provide identical or similar services or functions. Describe the similarities and differences.**

The NBEO currently administers two of the six state Jurisprudence Exams. This makes it easier for applicants in other cities (a significant number of applicants are from out-of-state) to take the exam. However, the agency's administration of the exam four other times per year gives applicants an opportunity to be licensed throughout the year, and there is no duplication of dates.

**K. Discuss how the program or function is coordinating its activities to avoid duplication or conflict with the other programs listed in Question J and with the agency's customers. If applicable, briefly discuss any memorandums of understanding (MOUs), interagency agreements, or inter-agency contracts.**

Duplication with the NBEO is avoided by giving the Jurisprudence Examination at different times.

**L. Please provide any additional information needed to gain a preliminary understanding of the program or function.**

N/A

**M. Regulatory programs relate to the licensing, registration, certification, or permitting of a person, business, or other entity. If this is a regulatory program, please describe:**

- why the regulation is needed;
- the scope of, and procedures for, inspections or audits of regulated entities;
- follow-up activities conducted when non-compliance is identified;
- sanctions available to the agency to ensure compliance; and
- procedures for handling consumer/public complaints against regulated entities.

**Need for Regulation:** To insure that only competent and safe applicants are licensed to perform complex procedures and prescribe drugs and medical devices that are dangerous if not properly prescribed. To insure that licensees maintain the competency originally licensed and the moral character necessary to protect patients.

**Inspections and Audits:** All licensees must submit direct proof of continuing education attendance. All licensees must report criminal convictions. Criminal history background checks are obtained on all applicants.

**Follow-up for non-compliance:** For criminal convictions, disciplinary and follow-up is administered by Enforcement function. If sufficient continuing education hours are not obtained, licensees are not permitted to renew and practice.

**Sanctions:** Same sanctions as available under the Enforcement function, plus the agency can prevent an applicant from receiving a license.

**Complaint procedures:** Consumer complaints have not been received concerning the areas administered by the Licensing function.

<b>N. Please fill in the following chart for each regulatory program. The chart headings may be changed if needed to better reflect the agency's practices.</b>		
<b>TEXAS OPTOMETRY BOARD Licensing and Administration Exhibit 15: Fiscal Years 2001 and 2002</b>		
	<b>FY 2001</b>	<b>FY 2002</b>
Number of complaints received	All complaints in Administration / Licensing investigated by Enforcement Function	
Number of Individuals Examined	197	169
Number of Exam Sessions	8	6
Number of New Licensees	182	147
Number of Licensees Renewed	3,041	3,123
Number of Continuing Education Courses Approved	424	508
Percent of New Licenses Issued Within 10 Days	97.66	96.43%
Percent of Individual Licenses Renewed Within 7 Days	94.3%	93%

## VII. Agency Performance Evaluation

### A. What are the agency's most significant accomplishments?

- Implementation of optometric glaucoma specialist license without additional funding
- Enforcement of regulations governing increased scope of practice to insure compliance
- Development of website which is a reference for other states and other agencies in Texas
- Enforcement, by lawsuit against mail order contact lens dispenser, of law that prohibits dispensing of contact lenses without a prescription
- Continual internal efforts to operate agency more efficiently – for example, continual enhancement in the use of software to:
  - track and resolve complaints more accurately and efficiently,
  - provide information to the public on disciplinary action more efficiently,
  - automate more of the multiple correspondence and therefore decrease time spent,
  - place information for licensees on the Internet in the most cost efficient manner available, and
  - move to majority of renewals to the Internet
- Revision of rules to reflect current practice
- Responding in a positive manner to an increasingly diverse ethnic applicant and licensee base

### B. Describe the internal process used to evaluate agency performance, including how often performance is formally evaluated and how the resulting information is used by the policymaking body, management, the public, and customers.

Performance is formally evaluated in a yearly report presented at the first Board Meeting following the end of the fiscal year. Performance from a customer service view is formally evaluated after the biennial customer performance surveys. Agency performance the last two years, at least in specific areas, has been evaluated after the report of the internal auditor has been presented to the agency. Historically, the agency has also requested evaluation by the Survey of Operational Excellence at the University of Texas. Each of these evaluations is used by the Board and executive director as a basis for developing procedures that are required to improve the agency's performance in areas of low performance. The agency's most recent strategic plan is available on the agency website so that the public has a basis for input.

### C. What are the agency's biggest opportunities for improvement?

Like all agencies and businesses, to provide more information to public and licensees in a cost effective manner, and through automation increase efficiencies.

**D. How does the agency ensure its functions do not duplicate those of other entities?**

The agency staff is familiar with activities performed by other agencies that might be duplicative. For the most part, any duplicative activity would be in the enforcement area. The enforcement staff examines complaints to determine whether there is a possibility of conflict or duplication. If there might be duplication in an investigation, the enforcement staff will contact the other agency to devise a plan avoiding duplication.

**E. Are there any other entities that could perform any of the agency's functions?**

In a broad sense, other licensing agencies could perform some of the agency's functions, but not with the accuracy and efficiency of the agency. The high level of the agency's customer service (knowledge of law and issues, being able to speak directly with someone with specific knowledge, and being able to correspond with the same person each time a contact is made) would not be available if an agency not limited to optometry performed these functions. Even for administrative functions, the ability of staff to quickly determine problems or answer questions would not be available if staff were required to navigate through layers of personnel to obtain answers.

**F. What process does the agency use to determine customer satisfaction and how does the agency use this information?**

Surveys by postcard and e-mail are used to solicit opinions on customer service. Information is used to modify the procedures used by the agency. For example, comments from complainants regarding final correspondence not being sufficiently informative have caused staff to be more specific in the information that is provided in the final letter.

**G. Describe the agency's process for handling complaints against the agency, including the maintenance of complaint files and procedures for keeping parties informed about the process. If the agency has a division or office, such as an ombudsman, for tracking and resolving complaints from the public or other entities, please provide a description.**

Almost all the complaints against the agency regard the agency's handling of complaints against licensees or are made by applicants for license dissatisfied with decisions regarding time lines and test scores. The executive director is made aware of complaints concerning the enforcement function, and if the complaint provides additional information, it is transmitted to the Board Member who originally reviewed the complaint. Once the Office of Patient Protection is functioning, a complainant would be referred to that office if the complainant is not satisfied with the agency's actions.

Since the agency is small, there are no layers of bureaucracy to navigate through. The executive director's e-mail address is on the website, and the website address is on everything sent out by agency. All complaint mail or phone calls are directly transferred to the executive director, who corresponds with the complainant. No special file of complaints is maintained, although correspondence

is usually maintained in a correspondence file. Should a complainant not be satisfied with the actions of the executive director, the complainant would be directed to the Board Chair. The staff is not aware of any formal complaint being filed against the agency in the recent past with the exceptions described in the first paragraph.

<b>H. Please fill in the following chart. The chart headings may be changed if needed to better reflect the agency's practices.</b>		
<b>TEXAS OPTOMETRY BOARD</b> <b>Exhibit 16: Complaints <u>Against the Agency</u> - Fiscal Years 2001 and 2002</b>		
	<b>FY 2001</b>	<b>FY 2002</b>
<b>Number of complaints received</b>	0	0
<b>Number of complaints resolved</b>	0	0
<b>Number of complaints dropped/found to be without merit</b>	0	0
<b>Number of complaints pending from prior years</b>	0	0
<b>Average time period for resolution of a complaint</b>	0	0
The agency does not track complaints against the agency. Please see a description of the type of complaints received in the paragraphs above.		

**I. What process does the agency use to respond to requests under the Public Information (Open Records) Act?**

The executive director receives all requests for public information, other than the normal daily requests processed by the Licensing function. The executive director keeps abreast of the statutory duties of state agencies regarding public information requests and responds appropriately.

<b>J. Please fill in the following chart with updated information and be sure to include the most recent e-mail address if possible.</b>			
<b>Texas Optometry Board</b> <b>Exhibit 17: Contacts</b>			
<b>INTEREST GROUPS</b> (groups affected by agency actions or that represent others served by or affected by agency actions)			
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone &amp; Fax Numbers</b>	<b>E-mail Address</b>
Texas Optometric Association/ BJ Avery	1503 S I-35 Austin TX 78741	512.707.2020 512.326.8504	texop@aol.com
Texas Association of Optometrists/ Don Canada	918 Congress Avenue Ste 200 Austin TX 78701	512.494.1125 512.494.1129	
University of Houston College of Optometry Dean Jerald Strickland, O.D	505 J Davis Armistead Bldg Houston TX 77204	713.743.1899 713.743.0965	
Thomas Hood, Attorney	Packard Hood Bednarz Johnson & Ivy	806.374.3300 806.373.3381	

	500 S Taylor Ste 900 Amarillo TX 79101		
<b>INTERAGENCY, STATE, OR NATIONAL ASSOCIATIONS</b> (that serve as an information clearinghouse or regularly interact with the agency)			
<b>Group or Association Name/ Contact Person</b>	<b>Address</b>	<b>Telephone &amp; Fax Numbers</b>	<b>E-mail Address</b>
Health Professions Council Charles Horton, Administrative Officer	333 Guadalupe Street, Ste. 2-220 Austin, TX 78701	305-8550 305-8553 (Fax)	charles.horton@hpc.state.tx.us
Association of Regulatory Board of Examiners of Optometry	1750 S. Brentwood Blvd., Ste. 503 St. Louis, MO 63144	314/785-6000 314/785-6002 (Fax)	
Texas Optometric Association Bj Avery, Executive Director	1503 S. IH 35 Austin, TX 78741	707-2020 326-8504 (Fax)	texop@aol.com
Texas Association of Optometrists Don Canada, Executive Director	918 Congress Ave., Ste. 200 Austin, TX 78701	494-1125 494-1129 (Fax)	
<b>LIAISONS AT OTHER STATE AGENCIES</b> (with which the agency maintains an ongoing relationship, e.g., the agency's assigned analyst at the Legislative Budget Board, or attorney at the Attorney General's office)			
<b>Agency Name/Relationship/ Contact Person</b>	<b>Address</b>	<b>Telephone &amp; Fax Numbers</b>	<b>E-mail Address</b>
Attorney General's Office Cue Boykin, Agency Legal Counsel	209 W. 14th Street Austin, TX 78711	475-4239	cue.boykin@oag.state.tx.us
Legislative Budget Board Thomas Galvan, Agency Analyst	1501 Congress Avenue, 5th Floor Austin, TX 78701	463-1169	thomas.galvan@lbb.state.tx.us
Governor's Office of Budget, Planning & Policy Janice Ehlert, Agency Budget Analyst	1100 San Jacinto, Ste. 4.300 Austin, TX 78701	463-1880	jehlert@governor.state.tx.us
Health Professions Council Charles Horton, Administrative Officer	333 Guadalupe Street, Ste. 2-220 Austin, TX 78701	305-8550 305-8553(Fax)	charles.horton@hpc.state.tx.us
Board of Nurse Examiners for State of Texas Katherine Thomas, M.N., R.N., Executive Director Chair, HPC	333 Guadalupe Street, Ste. 3-460 Austin, TX 78701	305-7400 305-7401(Fax)	katherine.thomas@bne.state.tx.us
Texas State Board of Pharmacy Gay Dodson, R.Ph., Executive Director Vice Chair, HPC	333 Guadalupe Street, Ste. 3-600 Austin, TX 78701	305-8000 305-8082 (Fax)	gay.dodson@tsbp.state.tx.us
Texas Board of Chiropractic Examiners Sandra D. Smith, Executive Director HPC Member	333 Guadalupe Street, Ste. 3-825 Austin, TX 78701	305-6700 305-6705 (Fax)	sandra.smith@tbce.state.tx.us
Texas State Board of Dental Examiners Bobby Schmidt, Executive Director HPC Member	333 Guadalupe Street, Ste. 3-800 Austin, TX 78701	305-7010 305-7008 (Fax)	bobby.schmidt@tsbde.state.tx.us
Executive Council of Physical Therapy & Occupational Therapy Examiners	333 Guadalupe Street, Ste. 2-510 Austin, TX 78701	305-6900 305-6951 (Fax)	john.maline@ecptote.state.tx.us

Self-Evaluation Report

John P. Maline, Executive Director HPC Member			
Texas State Board of Podiatric Medical Examiners Allen Hymans, Executive Director HPC Member	333 Guadalupe Street, Ste 2-320 Austin, TX 78701	305-7000 305-7003 (Fax)	allen.hymans@foot.state.tx.us
Texas State Board of Examiners of Psychologists Sherry Lee, Executive Director HPC Member	333 Guadalupe Street, Ste. 2-450 Austin, TX 78701	305-7700 305-7701 (Fax)	sherry.lee@tsbep.state.tx.us
Texas State Board of Veterinary Medical Examiners Ron Allen, Executive Director HPC Member	333 Guadalupe Street, Ste. 3-810 Austin, TX 78701	305-7555 305-7556 (Fax)	ron.allen@tsbvme.state.tx.us
Texas Department of Health, Professional Licensing & Certification Division Jim Zukowski, Ed.D, Executive Director HPC Member	1100 West 49th Street Austin, TX 78756	834-6628 834-6677 (Fax)	jim.zukowski@tdh.state.tx.us
Texas Funeral Service Commission Chet Robbins, Executive Director HPC Member	333 Guadalupe Street, Ste. 2-110 Austin, TX 78701	936-2474 479-5064 (Fax)	chet.robbins@tsfc.state.tx.us

**VIII. 78th Legislative Session Chart**

<p>Fill in the chart below or attach information if it is already available in an agency-developed format. In addition to summarizing the key provisions, please provide the intent of the legislation. For example, if a bill establishes a new regulatory program, please explain why the new program is necessary (e.g., to address specific health and safety concerns, or to meet federal mandates). For bills that did not pass, please briefly explain the issues that resulted in failure of the bill to pass (e.g., opposition to a new fee, or high cost of implementation).</p>		
<p><b>TEXAS OPTOMETRY BOARD</b> <b>Exhibit 18: 78th Legislative Session Chart</b></p>		
<p><b>Legislation Enacted - 78th Legislative Session</b></p>		
Bill Number	Author	Summary of Key Provisions/Intent
SB 211	Carona	Makes investigation materials of agency confidential during investigation. Agency one of few health licensing agencies where investigative notes and records were available to public and licensee during the investigation of a violation. Agency investigations would have been hampered if agency were required to disclose information during this period.
HB 660	Allen	Allows agency to require applicants for license to submit finger prints for criminal history check by Department of Public Safety and

		the FBI. Checks based on fingerprints are much more accurate than method currently in use.
HB 2985	Capello	Establishes Office of Patient Protection within the Health Professions Council to assist groups in appealing complaints made to agencies including the Optometry Board. Office would also review agency rules and statutes to insure that the agency did not impose any unnecessary impediments to the complaint process.
SB 144	Averitt	Requires agency to notify licensees about dangers of prescription pain medications and to provide information on poison control centers. Apparent intent is to restrict diversion and misuse of these medications by making licensees more aware of the misuse problem.
<b>Legislation Not Passed - 78th Legislative Session</b>		
<b>Bill Number</b>	<b>Author</b>	<b>Summary of Key Provisions/Intent/Reason the Bill did not Pass</b>
HB 2997	Capello	Primarily amendments to Contact Lens Dispensing Act, but Optometry Board would be required to enforce amendments with licensees. Attempted to impose an eight hour time limit on oral or written verification of contact lens prescription, remove requirement for original prescription, allow for unlimited copies of prescription, require verification even if patient/customer had written prescription. Apparently supported by large interstate contact lens dispenser who testified at hearing. Committee members may have felt that current law allowed patients to purchase contacts at dispenser of their choice, although no reason was given for bill not passing out of committee.
HB 1265	Edwards	Would amend §351.408 of Act to raise three office "exemption" to six offices. Board not consulted on bill, apparently sponsor felt exemption for optometrists wishing to avoid control restrictions of Act was too narrow. The agency has no information on why bill did not come out of committee.
HB 1814 SB 1421	Pitts Janek	Placed functions of agency in Health and Human Services Commission. Abolished board. Apparently based on e-Texas report. The agency has no information on why bills did not come out of committee.
HB 1386 SB 622	Hamrick Armbrister	Bill transferred "customer service" functions of agency to Texas Department of Licensing and Regulation. Agency is unsure of definition of "customer service" in bill. The agency has no information on why bills did not come out of committee.
HB 3231 SB 1353	Smith/Todd Ellis	The Health Professions Council would have exercised the administrative responsibilities of information technology, human resources, and financial operations of the agency. Assume the sponsors thought amendment would save money, but the agency is not aware of any study to that effect. The agency has no information on why bills did not come out of committee.

## IX. Policy Issues

### Emergency Suspension

#### A. Brief Description of Issue

Should the Optometry Act be amended to allow the agency to suspend a license on an emergency basis?

#### B. Discussion

The agency is one of the few health licensing agencies without the statutory authority to suspend a license on an emergency basis. Currently the agency may begin procedures to suspend, or actually suspend a license, *only* after a vote at an official Board Meeting. Should the Agency find that a licensee is dangerous to the public at a moment in time months before the next scheduled Board Meeting, the agency may be powerless to immediately act against the license and protect the public health (absent an agreement with the licensee). Tight future budgets may make the calling of a special Board Meeting even more difficult (the current problem of having a quorum assembled on short notice notwithstanding).

The scope of practice of the agency's licensees has been greatly expanded since the last Sunset Review. Some of the licensees are now able to perform much more complex treatments, such as the prescribing and administering of oral controlled substances, and the treatment of glaucoma (co-managed by an ophthalmologist). A great majority of the licensees may administer topical controlled substances, and prescribe dangerous topical medication (prescription drugs), increasing the possibility that more substantial injury may be caused by an incompetent practitioner. Since the agency's licensees provide eye care to the majority of patients seeking eye examinations, emergency suspension power appears to be even more important now.

#### C. Possible Solutions and Impact

The emergency suspension procedures available to other health licensing agencies would give the Optometry Board sufficient authority to protect the public health, but still maintain adequate safeguards for licensees. It would appear that all interested parties would support emergency suspension authority.

### Free Eyeglasses

#### A. Brief Description of Issue

Should the section in the Optometry Act prohibiting the free distribution of prescription eyeglasses (and the agency's rule extending statute to contact lenses) be deleted as obsolete?

## **B. Discussion**

Section 351.404 of the Act, prohibiting advertising eyeglasses as a prize or inducement, was part of the original 1925 Optometry Act. Currently the statute reads:

A person in this state may not give or deliver, or cause to be given or delivered, in any manner, eyeglasses as:

- (1) a prize or premium; or
- (2) an inducement to sell an item of merchandise, including a book, paper, magazine, or work of literature or art.

Apparently legislative history does not provide any clues to the enactment of this section, but the attorney general has surmised in Texas Attorney General Opinion JM-1081 (1989):

[w]e are unaware of any history evidencing the legislature's intent in adopting this provision, although its language suggests that it was directed at a practice of giving away eyeglasses with the purchase of reading material. It is however reasonable to assume that the legislature adopted this provision to protect members of the public from receiving eyeglasses with lenses that would not correct their defects in vision.

This section does not prohibit the advertising of free eye exams, or the advertising of free eyeglasses with the purchase of eyeglasses. See the Attorney General Opinion referenced above.

## **C. Possible Solutions and Impact**

It may be argued that the sophistication of the public, now comfortable with using the professional services of an optometrist, makes the current climate much different than in 1925 when optometrists were first licensed in Texas and required to formally exhibit some measure of competence.

On the other hand, some may refer to the law as very successful in making the public aware that eyeglasses, including eyeglasses “for reading,” are not a cheap commodity more in common with whistles given away free in cereal boxes, rather than a medical device requiring a prescription. This may again be important at the present time when the federal government has chosen to reclassify certain contact lenses (contacts that change the appearance of the eye but do not change the vision) as cosmetics that may be obtained without a prescription. Keeping the statute in the Act, which the Agency by rule has interpreted to apply to contact lenses, may prevent practices similar to that identified by the Attorney General above, in which “cosmetic contact lenses” would be used as a prize or inducement, and possibly be distributed in cartons of products commonly purchased by teenagers.

Interested parties would be licensees, opticians, optical manufactures and distributors and any company that may look to distribute eyeglasses or contacts as a premium or prize.

## Confidential Patient Records and Communications

### A. Brief Description of Issue

Should the Optometry Act include language that gives a specific measure of confidential protection to patient records and communications between the patient and the doctor.

### B. Discussion

The practice of optometry, unlike many of the health fields, is without comprehensive confidentiality protection for patient records and communications between the patient and the doctor. Such protection is not provided automatically. In a fairly recent court opinion, a Texas Appeals Court held that the doctor-patient privilege applicable to statements made by a patient to a physician did not apply to a statement made by a patient to a dentist. Thus a dentist, prior to the recent amendment of the Dental Practices Act, could be compelled to testify concerning a statement made to the dentist by a patient under the dentist's care. Such discussions are afforded confidential stature in the medical and now the dental practice acts to encourage frank discussions by the patient to obtain proper medical treatment.

Since the Act does not contain a confidentiality provision, optometrists could be required to testify about treatment discussions with patients, which could discourage frank discussion between patient and doctor regarding illness and injury. For a discussion of the absence of confidentiality of optometrists' patient records see Texas Attorney General Letter Opinion 98-113.

Although the patient records of optometrists and some discussions between patient and optometrists regarding health care have received some confidential protection under the federal HIPAA regulations (Health Insurance Portability and Accountability Act of 1996) and Senate Bill 11, 77<sup>th</sup> Legislature, the protection afforded by these general regulations and statutes do not provide the same level of privacy as the statutory provisions in the other health licensing acts. When more protective of patient privacy, the state statute controls. Unlike the HIPAA regulations which may and have been changed frequently, state statutory privacy protection would provide a more stable nature of confidentiality.

Both patients and optometrists assume that patient records are confidential by state law. The confusion is most likely due to the fact that the Medical Practices Act contains a confidentiality provision. (Tex. Occ. Code Ann. Chapter 159 (Vernon 2000)), and now by the recent enactment of the HIPAA regulations (April 2003).

A substantial number of optometrists may now treat glaucoma in consultation with an ophthalmologist (a physician licensed by the Medical Board). Without similar confidentiality statutes, there will be a disparity of the confidentiality of the records for a given patient, even when the treatment is for the same condition. Similar problems would arise regarding patient records in those practices where optometrists work in the same office as physicians.

**C. Possible Solutions and Impact**

Amending the Act with comprehensive confidentiality provisions for both patient records and patient doctor communications would appear to be supported by both the public and licensees. Since many believe such protection is already in place, these amendments would only have a minor affect on licensees and the public.

**X. Comments**

Please provide any additional information needed to gain a preliminary understanding of the agency.

The agency's website, [www.tob.state.tx.us](http://www.tob.state.tx.us) has additional information regarding many of the issues presented in this review. The website also illustrates the agency's commitment to customer service and using technology to provide more information, more quickly, but at the same time maintaining a human resource when the Internet cannot provide all the necessary information.

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