

From: [Sunset Advisory Commission](#)
To: [Janet Wood](#)
Subject: FW: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Monday, June 30, 2014 9:31:34 AM

-----Original Message-----

From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]
Sent: Monday, June 30, 2014 9:16 AM
To: Sunset Advisory Commission
Subject: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)

Submitted on Monday, June 30, 2014 - 09:16

Agency: DEPARTMENT STATE HEALTH SERVICES DSHS

First Name: Chris

Last Name: Kloeris

Title: Executive Director

Organization you are affiliated with: Texas Optometry Board

City: Austin

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

The Texas Optometry Board submits the following comments concerning the Sunset Commission Staff Recommendation to abolish the Contact Lens Dispensing Permit Program at the Department of State Health Services.

A contact lens is a medical device which may only be dispensed by prescription under federal and state law. This includes decorative contact lenses. The U.S. Food and Drug Administration regulates the manufacture and dispensing of contact lenses on a federal level. On the state level, the dispensing of contact lenses is regulated by the Contact Lens Prescription Act, Chapter 353 of the Texas Occupations Code.

The Contact Lens Prescription Act sets up a regulatory scheme to insure a contact lens, a strictly regulated medical device, may only be dispensed by a licensed dispenser after the dispenser obtains a prescription or the verification of a prescription. Just as a prescription drug may only be dispensed by a licensed entity, the Contact Lens Prescription Act requires that a prescription contact lens may only be dispensed by a licensed entity.

This is also the case in the other major states.

The Act is much broader than the regulation of dispensers who have a license: the Act, similar to other regulatory acts, also applies to the very important need to enforce the Act against dispensers who are not licensed. The recommendation by Sunset Staff appears not to consider the enforcement duty of the Contact Lens Dispensing Permit Program regarding the illegal sales of contact lenses, not just by permitted entities, but also by unpermitted entities who are required by law to be permitted.

This enforcement requirement is important because the wearing of contact lenses obtained without a prescription can seriously damage the vision of the wearer. The FDA has released several notices concerning this danger, including:

<http://www.fda.gov/MedicalDevices/ProductsandMedicalProcedures/HomeHealthandConsumer/ConsumerProducts/ContactLenses/ucm062347.htm>.

The dispensing of contact lenses by unlicensed dispensers who do not obtain a prescription is a real and present danger. See, for example, <http://www.aoa.org/news/advocacy/aoa-advocacy-leads-to-federal-crackdown-on-illegal-contact-lenses?sso=y>.

The Contact Lens Prescription Act, in Section 353.204(b), states, "[e]xcept as otherwise provided by this section, the board is responsible for enforcing this chapter." The Board is defined in Section 353.002(1) as "... the executive commissioner of the Health and Human Services Commission or the Department of State Health Services, as consistent with the respective duties of the executive commissioner or department under the laws of this state."

Abolishing the Contact Lens Dispensing Permit Program would remove the enforcement mechanism set up in Texas to prevent the dangerous public health issue of the illegal dispensing of contact lenses.

Any Alternative or New Recommendations on This Agency: Retain Contact Lens Dispensing Permit Program

My Comment Will Be Made Public: I agree