

By: Shapleigh

S.B. No. 404

A BILL TO BE ENTITLED

AN ACT

relating to the powers and duties of the Texas Optometry Board and to contact lens prescriptions and the dispensing of contact lenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. TEXAS OPTOMETRY BOARD

SECTION 1.001. Section 351.004, Occupations Code, is amended to read as follows:

Sec. 351.004. SUNSET PROVISION. The Texas Optometry Board is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the board is abolished and this chapter expires September 1, 2017 [~~September 1, 2005~~].

SECTION 1.002. The heading to Section 351.053, Occupations Code, is amended to read as follows:

Sec. 351.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS; CONFLICTS OF INTEREST.

SECTION 1.003. Section 351.053, Occupations Code, is amended by adding Subsections (c) and (d) to read as follows:

(c) A person may not be a member of the board and may not be a board employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.) if:

(1) the person is an officer, employee, or paid

1 consultant of a Texas trade association in the field of health care;

2 or

3 (2) the person's spouse is an officer, manager, or paid
4 consultant of a Texas trade association in the field of health care.

5 (d) In this section, "Texas trade association" means a
6 cooperative and voluntarily joined statewide association of
7 business or professional competitors in this state designed to
8 assist its members and its industry or profession in dealing with
9 mutual business or professional problems and in promoting their
10 common interest.

11 SECTION 1.004. Section 351.055, Occupations Code, is
12 amended to read as follows:

13 Sec. 351.055. OFFICERS. (a) The governor shall designate a
14 member of the board as the presiding officer of the board to serve
15 in that capacity at the pleasure of the governor.

16 (b) The board shall elect [a presiding officer,] an
17 assistant presiding officer[7] and a secretary-treasurer every two
18 years.

19 SECTION 1.005. Sections 351.056(a) and (d), Occupations
20 Code, are amended to read as follows:

21 (a) It is a ground for removal from the board that a member:

22 (1) does not have at the time of taking office
23 [appointment] the qualifications required by Sections 351.051 and
24 351.052;

25 (2) does not maintain during service on the board the
26 qualifications required by Sections 351.051 and[7] 351.052[7 ~~and~~
27 ~~351.053~~]; [~~or~~]

1 (3) is ineligible for membership under Section 351.051
2 or 351.053;

3 (4) cannot, because of illness or disability,
4 discharge the member's duties for a substantial part of the member's
5 term; or

6 (5) without an excuse approved by a majority vote of
7 the board, is absent from more than [~~fails to attend at least~~] half
8 of the regularly scheduled board meetings that the member is
9 eligible to attend during [~~held in~~] a calendar year[~~, excluding~~
10 ~~meetings held while the person was not a member~~].

11 (d) If the executive director has knowledge that a potential
12 ground for removal exists, the executive director shall notify the
13 presiding officer of the board of the potential ground. The
14 presiding officer shall then notify the governor and the attorney
15 general that a potential ground for removal exists. If the
16 potential ground for removal involves the presiding officer, the
17 executive director shall notify the next highest ranking officer of
18 the board, who shall then notify the governor and the attorney
19 general that a potential ground for removal exists. [~~The attorney~~
20 ~~general shall investigate a complaint to the attorney general that~~
21 ~~a board member no longer has the qualifications required by~~
22 ~~Sections 351.051, 351.052, and 351.053. If the attorney general~~
23 ~~determines that there is reason to believe the complaint is valid,~~
24 ~~the attorney general shall institute suit in a Travis County~~
25 ~~district court to have the member removed from office.]~~

26 SECTION 1.006. Subchapter B, Chapter 351, Occupations Code,
27 is amended by adding Section 351.0585 to read as follows:

1 Sec. 351.0585. CERTAIN REPORTS REQUIRED AT REGULAR
2 MEETINGS. The board shall receive a report regarding complaints at
3 each board meeting.

4 SECTION 1.007. Sections 351.059(b), (c), and (d),
5 Occupations Code, are amended to read as follows:

6 (b) A person who is appointed to and qualifies for office as
7 [Before] a board member may not vote, deliberate, or be counted as a
8 member in attendance at a board meeting until [assume] the person
9 completes a [member's duties and be confirmed by the senate, the
10 member must complete at least one course of the] training program
11 that complies with this section [established under Subsection (a)].

12 (c) The training program [established under Subsection (a)]
13 must provide the person with information [to a participant]
14 regarding:

15 (1) the legislation that created the board and the
16 legislation that created the Contact Lens Prescription Act [this
17 chapter];

18 (2) the board's programs, [operated by the board,
19 [~~(3)~~ the role and] functions, [of the board,
20 [~~(4)~~ the] rules, and [of the board with an emphasis on
21 the rules that relate to disciplinary and investigatory authority,
22 [~~(5)~~ the current] budget;

23 (3) [for the board,
24 [~~(6)~~] the results of the most recent formal audit of
25 the board;

26 (4) [~~(7)~~] the requirements of laws relating to open
27 meetings, public information, administrative procedures, and

1 conflicts-of-interest [~~Chapters 551, 552, 2001, and 2002,~~
2 ~~Government Code~~]; and

3 (5) [~~(8)~~] ~~the requirements of the conflict of interest~~
4 ~~laws and other laws relating to public officials, and~~

5 [~~(9)~~] any applicable ethics policies adopted by the
6 board or the Texas Ethics Commission.

7 (d) A person appointed to the board is entitled to
8 reimbursement, as provided by the General Appropriations Act, for
9 travel expenses incurred in attending a training program under this
10 section, regardless of whether the attendance at the program occurs
11 before or after the person qualifies for office. [~~If another state~~
12 ~~agency or entity is authorized to establish training requirements,~~
13 ~~the board shall allow that training instead of developing its own~~
14 ~~program, and each member shall comply with those training~~
15 ~~requirements.]~~

16 SECTION 1.008. Section 351.105, Occupations Code, is
17 amended to read as follows:

18 Sec. 351.105. DIVISION OF RESPONSIBILITIES. The board
19 shall develop and implement policies that clearly separate [~~define~~]
20 the policy-making [~~respective~~] responsibilities of the board and
21 the management responsibilities of the executive director and the
22 staff of the board.

23 SECTION 1.009. Subchapter D, Chapter 351, Occupations Code,
24 is amended by adding Section 351.1575 to read as follows:

25 Sec. 351.1575. INSPECTION OF PREMISES AND REVIEW OF RECORDS
26 AUTHORIZED. (a) The board, at any time and without notice during
27 regular business hours, may:

1 (1) enter and inspect a facility operated by a person
2 engaged in any activity regulated under this chapter; and

3 (2) to the extent allowed by federal law, inspect and
4 review any record, including a patient record, maintained by a
5 person engaged in any activity regulated under this chapter.

6 (b) The board may enter and inspect a facility or inspect
7 and review any record under Subsection (a) as necessary to:

8 (1) ensure compliance with this chapter; or

9 (2) investigate a complaint made to the board.

10 SECTION 1.010. Subchapter D, Chapter 351, Occupations Code,
11 is amended by adding Sections 351.168 and 351.169 to read as
12 follows:

13 Sec. 351.168. TECHNOLOGICAL SOLUTIONS POLICY REQUIRED. The
14 board shall implement a policy requiring the board to use
15 appropriate technological solutions to improve the board's ability
16 to perform its functions. The policy must ensure that the public is
17 able to interact with the board on the Internet.

18 Sec. 351.169. ALTERNATIVE RULEMAKING AND DISPUTE
19 RESOLUTION. (a) The board shall develop and implement a policy to
20 encourage the use of:

21 (1) negotiated rulemaking procedures under Chapter
22 2008, Government Code, for the adoption of board rules; and

23 (2) appropriate alternative dispute resolution
24 procedures under Chapter 2009, Government Code, to assist in the
25 resolution of internal and external disputes under the board's
26 jurisdiction.

27 (b) The board's procedures relating to alternative dispute

1 resolution must conform, to the extent possible, to any model
2 guidelines issued by the State Office of Administrative Hearings
3 for the use of alternative dispute resolution by state agencies.

4 (c) The board shall designate a trained person to:

5 (1) coordinate the implementation of the policy
6 adopted under Subsection (a);

7 (2) serve as a resource for any training needed to
8 implement the procedures for negotiated rulemaking or alternative
9 dispute resolution; and

10 (3) collect data concerning the effectiveness of those
11 procedures, as implemented by the board.

12 SECTION 1.011. Section 351.203, Occupations Code, is
13 amended by adding Subsection (c) to read as follows:

14 (c) The board shall make information available describing
15 the procedures established by the board relating to complaint
16 investigation and resolution.

17 SECTION 1.012. Subchapter E, Chapter 351, Occupations Code,
18 is amended by adding Sections 351.2035 and 351.2036 to read as
19 follows:

20 Sec. 351.2035. COMPLAINTS RESULTING FROM INSPECTIONS. (a)
21 The board shall handle as a complaint any violation of this chapter
22 or a rule adopted by the board that is discovered during an
23 inspection conducted under Section 351.1575(b)(1).

24 (b) The board shall investigate and dispose of a complaint
25 described by Subsection (a) in the same manner that the board
26 investigates and disposes of other complaints made under this
27 chapter.

Sec. 351.2036. PROCEDURE FOR PROCESSING COMPLAINTS. (a)

The board by rule shall establish a screening process through which all complaints under this chapter are screened and categorized into one of the following categories:

(1) complaints that are not directly related to patient care and the investigation or disposition of which do not require expertise in optometry or therapeutic optometry; and

(2) complaints that are directly related to patient care or the investigation and disposition of which require expertise in optometry or therapeutic optometry.

(b) The board by rule shall establish procedures that:

(1) allow board employees to review and investigate a complaint described by Subsection (a)(1) and to:

(A) dismiss the complaint if:

(i) no violation occurred; or

(ii) the complaint is not within the board's jurisdiction; or

(B) recommend enforcement action, including administrative fines, and refer the complaint to an informal settlement conference under Section 351.507; and

(2) require two board members who are optometrists or therapeutic optometrists to review and investigate a complaint described by Subsection (a)(2) and to:

(A) dismiss the complaint if both board members agree that the complaint should be dismissed; or

(B) refer the complaint to an informal settlement conference under Section 351.507.

1 SECTION 1.013. Section 351.204, Occupations Code, is
2 amended to read as follows:

3 Sec. 351.204. RECORDS OF COMPLAINTS. (a) The board shall
4 maintain a system to act promptly and efficiently on [~~keep an~~
5 ~~information file about~~] each complaint filed with the board. The
6 board shall maintain information concerning [~~information file must~~
7 ~~be kept current and contain a record for each complaint of~~]:

8 (1) parties [~~each person contacted in relation~~] to the
9 complaint;

10 (2) the subject matter [~~a summary of findings made at~~
11 ~~each step~~] of the complaint [~~process~~];

12 (3) a summary of the results of the review or
13 investigation [~~an explanation of the legal basis and reason for any~~
14 ~~dismissal~~] of the complaint;

15 (4) the disposition of the complaint [~~schedule~~
16 ~~required under Section 351.205 and a notation of any change in the~~
17 ~~schedule~~]; and

18 (5) other relevant information.

19 (b) The board shall periodically notify parties to the
20 complaint of the status of the complaint until the board finally
21 disposes of the complaint. [~~If a written complaint is filed with~~
22 ~~the board that the board has authority to resolve, the board, at~~
23 ~~least quarterly and until final disposition of the complaint, shall~~
24 ~~notify the parties to the complaint of the status of the complaint~~
25 ~~unless notice would jeopardize an undercover investigation.~~]

26 SECTION 1.014. Section 351.205, Occupations Code, is
27 amended by adding Subsection (a-1) to read as follows:

1 (a-1) The board shall adopt rules that prescribe a method
2 for prioritizing complaints for purposes of complaint
3 investigation and disposition. The rules adopted under this
4 subsection must:

5 (1) place the highest priority on complaints that
6 allege conduct that:

7 (A) violates the standard of professional care
8 and judgment of an optometrist or therapeutic optometrist, as
9 applicable;

10 (B) involves professional misconduct; or

11 (C) potentially threatens public health or
12 safety; and

13 (2) place a lower priority on complaints that are not
14 described by Subdivision (1).

15 SECTION 1.015. Section 351.256(a), Occupations Code, is
16 amended to read as follows:

17 (a) The examination must consist of written[~~, oral,~~] or
18 practical tests in subjects regularly taught in recognized
19 accredited colleges of optometry, including:

20 (1) practical, theoretical, and physiological optics;

21 (2) theoretical and practical optometry; and

22 (3) the anatomy, physiology, and pathology of the eye
23 as applied to optometry.

24 SECTION 1.016. Section 351.304(b), Occupations Code, is
25 amended to read as follows:

26 (b) A person whose license has been expired for 90 days or
27 less may renew the license by paying to the board a [~~the required~~]

1 renewal fee [~~and a fee~~] that is equal to the sum of one and one-half
2 times the annual renewal [~~half of the license examination~~] fee set
3 by the board under Section 351.152 and the additional fee required
4 by Section 351.153. If a person's license has been expired for more
5 than 90 days but less than one year, the person may renew the
6 license by paying to the board a renewal fee [~~all unpaid renewal~~
7 ~~fees and a fee~~] that is equal to the sum of two times the annual
8 renewal [~~license examination~~] fee set by the board under Section
9 351.152 and the additional fee required by Section 351.153.

10 SECTION 1.017. Section 351.306(b), Occupations Code, is
11 amended to read as follows:

12 (b) The person must pay to the board a fee that is equal to
13 the amount of the [~~license examination~~] fee set by the board under
14 Section 351.153(a).

15 SECTION 1.018. Section 351.501, Occupations Code, is
16 amended by adding Subsection (c) to read as follows:

17 (c) Notwithstanding Subsection (a), the board may not, as
18 part of a disciplinary action, order a license holder to acquire a
19 license or certificate of a different or higher class or type than
20 the license holder holds at the time of the disciplinary action.

21 SECTION 1.019. Subchapter K, Chapter 351, Occupations Code,
22 is amended by adding Section 351.5015 to read as follows:

23 Sec. 351.5015. TEMPORARY SUSPENSION OR RESTRICTION OF
24 LICENSE. (a) The board shall appoint a three-member disciplinary
25 panel consisting of board members to determine whether a license
26 issued to a person under this chapter should be temporarily
27 suspended or restricted.

1 (b) If the disciplinary panel determines from the evidence
2 presented to the panel that a license holder would, by the person's
3 continuation in the practice of optometry or therapeutic optometry,
4 constitute a continuing threat to the public welfare, the
5 disciplinary panel shall temporarily suspend or restrict the
6 license holder's license.

7 (c) The disciplinary panel may temporarily suspend or
8 restrict a license under this section without notice or hearing if:

9 (1) the board immediately provides notice of the
10 suspension or restriction to the license holder; and

11 (2) a hearing before the disciplinary panel concerning
12 the temporary suspension or restriction is scheduled for the
13 earliest possible date following the suspension or restriction.

14 (d) Notwithstanding Chapter 551, Government Code, the
15 disciplinary panel may hold a meeting by telephone conference call
16 if immediate action is required and convening of the panel at one
17 location is inconvenient for any member of the disciplinary panel.

18 (e) After the hearing described by Subsection (c)(2), if the
19 disciplinary panel affirms the temporary suspension or restriction
20 of the license holder's license, the board shall schedule an
21 informal settlement conference that meets the requirements of
22 Section 2001.054(c), Government Code, to be held as soon as
23 practicable, unless the license holder waives the informal
24 settlement conference or an informal settlement conference has
25 already been held with regard to the issues that are the basis for
26 the temporary suspension or restriction.

27 (f) If the license holder is unable to show compliance at

1 the informal settlement conference regarding the issues that are
2 the basis for the temporary suspension or restriction, a board
3 representative shall file a complaint under Section 351.2035 as
4 soon as practicable.

5 (g) If after the hearing described by Subsection (c)(2) the
6 disciplinary panel does not temporarily suspend or restrict the
7 license holder's license, the facts that were the basis for the
8 temporary suspension or restriction may not be the sole basis for
9 another proceeding to temporarily suspend or restrict the license
10 holder's license. The board may use those same facts in a
11 subsequent investigation to obtain new information that may be the
12 basis for the temporary suspension or restriction of the license
13 holder's license. For purposes of this subsection, facts that are
14 the basis for the temporary suspension or restriction of a license
15 holder's license include facts presented to the disciplinary panel
16 and facts presented by the board or a representative of the board at
17 the time evidence was presented to the disciplinary panel.

18 SECTION 1.020. Section 351.507, Occupations Code, is
19 amended to read as follows:

20 Sec. 351.507. INFORMAL PROCEEDINGS; INFORMAL SETTLEMENT
21 CONFERENCE AND REFUNDS. (a) The board by rule shall adopt
22 procedures governing:

23 (1) informal disposition of a contested case under
24 Section 2001.056, Government Code; and

25 (2) an informal proceeding held in compliance with
26 Section 2001.054, Government Code.

27 (b) The board by rule shall establish procedures by which a

1 panel of board members may conduct an informal settlement
2 conference to resolve a complaint against a person licensed under
3 this chapter.

4 (c) Procedures established under Subsection (b) must:

5 (1) require that at least one board member who
6 represents the public be included in the panel conducting the
7 conference;

8 (2) require that the two board members who reviewed
9 and investigated a complaint under Section 351.2036(b)(2) be
10 included in the panel conducting the conference;

11 (3) require the panel conducting the conference to use
12 the standardized penalty schedule adopted by the board under
13 Section 351.552(c) to determine the appropriate disciplinary
14 action, if any, to recommend to the board;

15 (4) require a complaint settlement recommended by the
16 panel to be approved by the board; and

17 (5) require the panel conducting the conference to:

18 (A) recommend settlement of the complaint to the
19 board; or

20 (B) refer the complaint to the State Office of
21 Administrative Hearings for a formal hearing and notify the board
22 of the referral.

23 (d) The board may order a person licensed under this chapter
24 to issue a refund to a patient as provided in an agreement resulting
25 from an informal settlement conference instead of or in addition to
26 assessing an administrative penalty against the person under
27 Subchapter L. The amount of a refund ordered under this subsection

1 may not exceed the amount the patient paid to the license holder for
2 an examination or ophthalmic device, including spectacle lenses or
3 frames and contact lenses. The board may not require payment of
4 other damages or estimate harm in a restitution order.

5 (e) Rules adopted under this section must:

6 (1) provide the complainant and the license holder
7 with an opportunity to be heard; and

8 (2) require the presence of the attorney general to
9 advise the board or the board's employees.

10 SECTION 1.021. Subchapter K, Chapter 351, Occupations Code,
11 is amended by adding Section 351.508 to read as follows:

12 Sec. 351.508. RECUSAL REQUIRED. A member of the board who
13 reviews and investigates a complaint under Section 351.2036(b)(2)
14 may not vote on any disciplinary action following the informal
15 settlement conference concerning the complaint and shall recuse
16 himself or herself from voting on any disciplinary action following
17 the informal settlement conference concerning the complaint.

18 SECTION 1.022. Section 351.552, Occupations Code, is
19 amended by adding Subsection (c) to read as follows:

20 (c) The board by rule shall develop and publish a
21 standardized penalty schedule based on the criteria listed in
22 Subsection (b).

23 SECTION 1.023. Subchapter M, Chapter 351, Occupations Code,
24 is amended by adding Section 351.608 to read as follows:

25 Sec. 351.608. CEASE AND DESIST ORDER. (a) If it appears to
26 the board that a person is engaging in an act or practice that
27 constitutes the practice of optometry or therapeutic optometry

1 without a license or certificate under this chapter, the board,
2 after notice and opportunity for a hearing, may issue a cease and
3 desist order prohibiting the person from engaging in the activity.

4 (b) Notwithstanding Section 351.551, the board may impose
5 an administrative penalty under Subchapter L against a person who
6 violates an order issued under this section.

7 ARTICLE 2. CONTACT LENS PRESCRIPTION ACT

8 SECTION 2.001. Section 353.002, Occupations Code, is
9 amended by amending Subdivisions (1) and (2) and adding Subdivision
10 (2-a) to read as follows:

11 (1) "Board" means the executive commissioner of the
12 Health and Human Services Commission or the Department of State
13 Health Services, as consistent with the respective duties of the
14 executive commissioner or department under the laws of this state
15 [Texas Board of Health].

16 (2) "Department" means the Department of State Health
17 Services or the Health and Human Services Commission, as consistent
18 with the respective duties of those agencies under the laws of this
19 state [Texas Department of Health].

20 (2-a) "Direct communication" includes communication
21 by telephone, facsimile, or electronic mail.

22 SECTION 2.002. Section 353.004(a), Occupations Code, is
23 amended to read as follows:

24 (a) The board and the Texas Optometry Board shall prepare
25 and provide to the public and appropriate state agencies
26 information regarding the release and verification of contact lens
27 prescriptions.

1 SECTION 2.003. Subchapter A, Chapter 353, Occupations Code,
2 is amended by adding Section 353.005 to read as follows:

3 Sec. 353.005. RULES. (a) The executive commissioner of the
4 Health and Human Services Commission shall adopt rules, including
5 rules that require a person dispensing contact lenses to maintain
6 certain information when verifying a prescription under Section
7 353.1015, as necessary to:

8 (1) govern and implement verification procedures
9 under Section 353.1015; and

10 (2) enter into interagency and other agreements to
11 implement and enforce this chapter.

12 (b) The executive commissioner of the Health and Human
13 Services Commission and the Texas Optometry Board shall each adopt
14 rules relating to contact lens prescriptions and the dispensing of
15 contact lenses, including rules that allow for interagency
16 agreements, as necessary to implement and enforce this chapter.

17 (c) In implementing rules under Subsection (b), the
18 executive commissioner of the Health and Human Services Commission
19 and the Texas Optometry Board:

20 (1) shall cooperate with one another as necessary to
21 adopt rules that are consistent with the rules adopted by the other
22 agency; and

23 (2) may consult with the Texas State Board of Medical
24 Examiners and the Texas State Board of Pharmacy.

25 SECTION 2.004. Section 353.101, Occupations Code, is
26 amended to read as follows:

27 Sec. 353.101. PROHIBITED SELLING OR DISPENSING. (a) A

1 person, other than the prescribing physician, optometrist, or
2 therapeutic optometrist, may not fill a contact lens prescription
3 or sell or dispense contact lenses to a consumer in this state
4 unless the person:

5 (1) receives from the prescribing physician,
6 optometrist, or therapeutic optometrist or the consumer, directly
7 or by facsimile, a [an original] contact lens prescription that has
8 not expired and that conforms to the requirements of this chapter;
9 or

10 (2) verifies by direct communication a contact lens
11 prescription to be filled.

12 (b) A person receiving a direct communication under
13 Subsection (a)(2) shall maintain a record of the communication.

14 SECTION 2.005. Subchapter C, Chapter 353, Occupations Code,
15 is amended by adding Section 353.1015 to read as follows:

16 Sec. 353.1015. VERIFICATION PROCEDURE. (a) When seeking
17 verification of a contact lens prescription, a person dispensing
18 contact lenses shall provide the prescribing physician,
19 optometrist, or therapeutic optometrist with the following
20 information:

21 (1) the patient's full name and address;

22 (2) contact lens power, manufacturer, base curve or
23 appropriate designation, and diameter, as appropriate;

24 (3) quantity of lenses ordered;

25 (4) the date on which the patient requests lenses to be
26 dispensed;

27 (5) the date and time of the verification request; and

1 (6) the name, telephone number, and facsimile number
2 of a person at the contact lens dispenser's company with whom to
3 discuss the verification.

4 (b) A prescription is considered verified under this
5 section if:

6 (1) the prescribing physician, optometrist, or
7 therapeutic optometrist by a direct communication confirms that the
8 prescription is accurate;

9 (2) the prescribing physician, optometrist, or
10 therapeutic optometrist informs the person dispensing the contact
11 lenses that the prescription is inaccurate and provides the correct
12 prescription information; or

13 (3) the prescribing physician, optometrist, or
14 therapeutic optometrist fails to communicate with the person
15 dispensing the contact lenses not later than the eighth business
16 hour after the prescribing physician, optometrist, or therapeutic
17 optometrist receives from the person dispensing the contact lenses
18 the request for verification or within another similar period
19 specified by rule.

20 (c) If a prescribing physician, optometrist, or therapeutic
21 optometrist timely informs the person dispensing the contact lenses
22 that the prescription is inaccurate or invalid, the person may not
23 dispense the contact lenses.

24 (d) If a prescribing physician, optometrist, or therapeutic
25 optometrist notifies the person dispensing the contact lenses that
26 the prescription is inaccurate or invalid, the prescribing
27 physician, optometrist, or therapeutic optometrist shall:

1 (1) specify the basis for the inaccuracy or invalidity
2 of the prescription; and

3 (2) correct the prescription.

4 SECTION 2.006. Sections 353.103 and 353.104, Occupations
5 Code, are amended to read as follows:

6 Sec. 353.103. AUTHORIZED MODIFICATION OF PRESCRIPTION. (a)
7 If a patient presents a contact lens prescription to be filled or
8 asks a permit holder to verify a contact lens prescription under
9 Section 353.1015, but requests that fewer than the total number of
10 lenses authorized by the prescription be dispensed, the person
11 dispensing the lenses shall note on the prescription or
12 verification:

13 (1) the number of lenses dispensed;

14 (2) the number of lenses that remain eligible to be
15 dispensed under the prescription; and

16 (3) the name, address, telephone number, and license
17 or permit number of the person dispensing the lenses.

18 (b) A notation under Subsection (a) is a permanent
19 modification of the prescription. Except as provided by this
20 subsection, a contact lens prescription may not be modified.

21 (c) The [~~Subject to Subsection (d), the~~] person dispensing
22 the lenses shall:

23 (1) maintain a photocopy of the [~~original signed~~]
24 prescription or verification, as modified, in the person's records
25 as if the copy were the [~~original~~] prescription to be filled; and

26 (2) return a [~~the original~~] prescription or
27 verification to the patient so that the patient may have the

1 additional lenses dispensed elsewhere.

2 ~~[(d) When a prescription has been completely filled, the~~
3 ~~person dispensing the lenses shall retain the original prescription~~
4 ~~in the person's records until the fifth anniversary of the date the~~
5 ~~prescription is completely filled.]~~

6 ~~[(e) The board by rule may permit a contact lens~~
7 ~~prescription required to be maintained under this chapter to be~~
8 ~~scanned into a computer and the original paper prescription~~
9 ~~destroyed.]~~

10 Sec. 353.104. EMERGENCY REFILL. (a) If a patient needs an
11 emergency refill of the patient's contact lens prescription, a
12 physician, optometrist, or therapeutic optometrist may telephone
13 or fax the prescription to a person authorized to dispense contact
14 lenses under Section 353.051 or may verify a prescription under
15 Section 353.1015.

16 (b) A ~~[The person filling the prescription shall maintain a~~
17 ~~copy of the fax or telephone record as if the record were an~~
18 ~~original signed prescription.]~~

19 ~~[(c) The]~~ fax or telephone record received under Subsection
20 (a) must include the name, address, telephone number, and license
21 number of the physician, optometrist, or therapeutic optometrist.

22 SECTION 2.007. Subchapter C, Chapter 353, Occupations Code,
23 is amended by adding Section 353.105 to read as follows:

24 Sec. 353.105. ALTERATION OF PRESCRIPTION PROHIBITED. (a)
25 Except as provided by Subsection (b) and Section 353.103, a person
26 dispensing contact lenses may not alter a contact lens
27 prescription.

1 (b) A person dispensing contact lenses may fill a contact
2 lens prescription that requires a contact lens manufactured by a
3 particular company with another lens manufactured by that company
4 if the lens required by the prescription and the lens with which the
5 prescription is filled are the same lens but are sold by the company
6 under multiple labels to different contact lens dispensers.

7 SECTION 2.008. Section 353.151(a), Occupations Code, is
8 amended to read as follows:

9 (a) If a physician's directions, instructions, or orders
10 are to be performed or a physician's prescription is to be filled by
11 an optician who is independent of the physician's office, the
12 directions, instructions, orders, or prescription must be:

13 (1) in writing or verified under Section 353.1015;

14 (2) of a scope and content and communicated to the
15 optician in a form and manner that, in the professional judgment of
16 the physician, best serves the health, safety, and welfare of the
17 physician's patient; and

18 (3) in a form and detail consistent with the optician's
19 skill and knowledge.

20 SECTION 2.009. Section 353.152, Occupations Code, is
21 amended to read as follows:

22 Sec. 353.152. REQUIREMENTS FOR CONTACT LENS PRESCRIPTION.

23 (a) A contact lens prescription must ~~[be written and must]~~ contain:

24 (1) the patient's name;

25 (2) the date the prescription was issued;

26 (3) the manufacturer of the contact lens to be
27 dispensed, if needed;

1 (4) the expiration date of the prescription;

2 (5) the ~~[original]~~ signature of the physician,
3 optometrist, or therapeutic optometrist or a verification of the
4 prescription described by Section 353.1015;

5 ~~(6) [if the prescription is for disposable contact~~
6 ~~lenses, the total number of lenses authorized to be issued under the~~
7 ~~prescription and the recommended lens replacement interval,~~

8 ~~[(7)]~~ if the prescription is issued by an optometrist,
9 specification information required by Texas Optometry Board rule;
10 and

11 (7) ~~[(8)]~~ if the prescription is issued by a
12 physician, specification information required by Texas State Board
13 of Medical Examiners rule.

14 (b) The Texas Optometry Board and the Texas State Board of
15 Medical Examiners may adopt rules regarding the contents of a
16 prescription for contact lenses.

17 SECTION 2.010. Section 353.156, Occupations Code, is
18 amended to read as follows:

19 Sec. 353.156. PATIENT ACCESS TO PRESCRIPTION; TIMING. (a)
20 A physician, optometrist, or therapeutic optometrist who performs
21 an eye examination and fits a patient for contact lenses shall:

22 (1) [on request], prepare and give a contact lens
23 prescription to the patient; and

24 (2) as directed by any person designated to act on
25 behalf of the patient, provide or verify the contact lens
26 prescription by any means.

27 (b) If the ~~[patient requests the]~~ contact lens prescription

1 results from [~~during~~] an initial or annual eye examination, the
2 physician, optometrist, or therapeutic optometrist shall prepare
3 and give the prescription to the patient at the time the physician,
4 optometrist, or therapeutic optometrist determines the parameters
5 of the prescription.

6 (c) On receipt of a prescription request from a patient who
7 did not [~~request or~~] receive an original contact lens prescription
8 during an initial or annual eye examination, the physician,
9 optometrist, or therapeutic optometrist shall provide the patient
10 with the prescription at any time during which the prescription is
11 valid. Except as provided by Section 353.158(1), if [~~if~~] the
12 patient requests the physician, optometrist, or therapeutic
13 optometrist to deliver the prescription to the patient or to
14 another person, the physician, optometrist, or therapeutic
15 optometrist may charge to the patient the cost of delivery.

16 SECTION 2.011. Section 353.158, Occupations Code, is
17 amended to read as follows:

18 Sec. 353.158. PROHIBITED ACTION BY PHYSICIAN, OPTOMETRIST,
19 OR THERAPEUTIC OPTOMETRIST. A physician, optometrist, or
20 therapeutic optometrist may not:

21 (1) charge a patient a fee in addition to or as part of
22 the examination fee and fitting fee as a condition for issuing or
23 verifying [~~giving~~] a contact lens prescription [~~to the patient~~]; or

24 (2) condition the availability to a patient of an eye
25 examination, a fitting for contact lenses, the issuance or
26 verification of a contact lens prescription, or a combination of
27 those services on a requirement that the patient agree to purchase

1 contact lenses or other ophthalmic goods from the physician,
2 optometrist, or therapeutic optometrist or from a specific
3 ophthalmic dispenser.

4 ARTICLE 3. EFFECTIVE DATE; TRANSITION

5 SECTION 3.001. The executive commissioner of the Health and
6 Human Services Commission, the Texas Optometry Board, the Texas
7 State Board of Medical Examiners, and the Texas State Board of
8 Pharmacy shall adopt the rules required by this Act not later than
9 March 1, 2006.

10 SECTION 3.002. The Texas Optometry Board shall have the
11 procedure for processing complaints under Section 351.2036,
12 Occupations Code, as added by this Act, and the informal settlement
13 conference under Section 351.507, Occupations Code, as amended by
14 this Act, fully operational not later than September 1, 2006.

15 SECTION 3.003. The changes in law made by Sections 351.053,
16 351.056, and 351.059, Occupations Code, as amended by this Act,
17 regarding the prohibitions on or qualifications of members of the
18 Texas Optometry Board do not affect the entitlement of a member
19 serving on the board immediately before September 1, 2005, to
20 continue to serve and function as a member of the board for the
21 remainder of the member's term. The changes in law made by those
22 sections apply only to a member appointed on or after September 1,
23 2005.

24 SECTION 3.004. The changes in law made by this Act related
25 to the filing or investigation of a complaint under Chapter 351,
26 Occupations Code, as amended by this Act, apply only to a complaint
27 filed with the Texas Optometry Board on or after the effective date

1 of this Act. A complaint filed before the effective date of this
2 Act is governed by the law as it existed immediately before that
3 date, and the former law is continued in effect for that purpose.

4 SECTION 3.005. The change in law made by this Act with
5 respect to conduct that is grounds for imposition of a disciplinary
6 sanction, including a refund, temporary license suspension, or
7 cease and desist order, applies only to conduct that occurs on or
8 after the effective date of this Act. Conduct that occurs before
9 the effective date of this Act is governed by the law in effect on
10 the date the conduct occurred, and the former law is continued in
11 effect for that purpose.

12 SECTION 3.006. Sections 351.501(c) and 351.508,
13 Occupations Code, as added by this Act, apply only to a disciplinary
14 hearing that commences on or after the effective date of this Act. A
15 disciplinary hearing that commences before the effective date of
16 this Act is governed by the law in effect at the time the
17 disciplinary hearing commences, and that law is continued in effect
18 for that purpose.

19 SECTION 3.007. The Texas Optometry Board shall appoint the
20 three-member panel required under Section 351.5015, Occupations
21 Code, as added by this Act, not later than March 1, 2006.

22 SECTION 3.008. The changes in law made by this Act to
23 Chapter 353, Occupations Code, relating to the presentation and
24 verification of a contact lens prescription apply only to a
25 prescription that is presented or verified on or after the
26 effective date of this Act. A contact lens prescription that is
27 presented or verified before the effective date of this Act is

1 governed by the law in effect at the time the prescription is
2 presented or verified, and that law is continued in effect for that
3 purpose.

4 SECTION 3.009. The executive commissioner of the Health and
5 Human Services Commission and the Department of State Health
6 Services shall have the procedure for contact lens prescription
7 verification under Section 353.1015, Occupations Code, as added by
8 this Act, fully operational not later than September 1, 2006.

9 SECTION 3.010. This Act takes effect September 1, 2005.