

CHAPTER 935

H.B. No. 1479

AN ACT

relating to the regulation of optometry and to the continuation and functions of the Texas Optometry Board; providing penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 1.02, Texas Optometry Act (Article 4552-1.02, Vernon's Texas Civil Statutes), is amended by amending Subdivisions (1), (2), (6), and (7) and adding Subdivisions (9) and (10) to read as follows:

(1) The "practice of optometry" is defined to be the employment of objective or subjective means, with or without the use of topical ocular pharmaceutical agents, for the purpose of ascertaining and measuring the powers of vision of the human eye, examining and diagnosing visual defects, abnormal conditions, and diseases of the human eye and adnexa, and *prescribing or fitting* lenses or prisms to correct or remedy any defect or abnormal condition of vision. Nothing herein shall be construed to permit optometrists to treat the eyes for any defect whatsoever in any manner nor to administer nor to prescribe any drug or physical treatment whatsoever, unless such optometrist is a regularly licensed physician, ~~or~~ surgeon, *or therapeutic optometrist* under the laws of this state. ~~[Nothing herein shall be construed to prevent selling ready-to-wear spectacles or eyeglasses as merchandise at retail, nor to prevent simple repair jobs.]~~

(2) "Ascertaining and measuring the powers of vision of the human eye" shall be construed to include:

(A) The examination of the eye to *diagnose* ~~[ascertain]~~ the presence of defects or abnormal conditions which may be corrected, remedied, or relieved, or the effects of which may be corrected, remedied, or relieved by the use of lenses or prisms, or

(B) The employment of any objective or subjective means to determine the accommodative or refractive condition or the range or powers of vision *or* ~~[of]~~ muscular equilibrium of the human eye, or

(C) The employment of any objective or subjective means for the examination of the human vision system for the purpose of ascertaining any departure from the normal, measuring its power of vision or adapting lenses or prisms for the aid or relief thereof, and it shall be construed as a violation of this Act, for any person not a licensed optometrist, therapeutic optometrist, or physician to do any one act or thing, or any combination of acts or things, named or described in this subdivision; provided, that nothing herein shall be construed to permit optometrists to treat the eye for any defect whatsoever in any manner, nor to administer any drug or physical treatment whatsoever, unless said optometrist is a therapeutic optometrist or a duly licensed physician and surgeon, under the laws of this state.

(6) A ~~[Nothing in this Act shall be construed as preventing a]~~ licensed optometrist or therapeutic optometrist *may perform* ~~[from performing]~~ vision therapy, hand-eye coordination exercises, visual training, and developmental vision therapy *and may evaluate and remediate*, ~~[or from the evaluation and remediation of]~~ learning or behavioral disabilities associated with or caused by ~~[a]~~ defective or abnormal *conditions* ~~[condition]~~ of vision.

(7) The "practice of therapeutic optometry" means the employment of objective or subjective means for the purpose of ascertaining and measuring the powers of vision of the human eye, examining and diagnosing visual defects, abnormal conditions, and diseases of the human eye and adnexa, *prescribing or fitting* lenses or prisms to correct or remedy a defect or abnormal condition of vision, administering or prescribing a drug or physical treatment in the manner authorized by this Act, and treating the eye and adnexa as authorized by this Act without the use of surgery or laser surgery.

(9) "Optometrist" means a person licensed under this Act and authorized to engage in the practice of optometry.

(10) "Therapeutic optometrist" means a person licensed under this Act and authorized to engage in the practice of therapeutic optometry.

SECTION 2. Sections 2.01 and 2.01a, Texas Optometry Act (Articles 4552-2.01 and 4552-2.01a, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2.01. BOARD CREATED. The Texas Optometry Board is created. The board is composed of nine members appointed by the governor with the advice and consent of the Senate. Appointments to the board shall be made without regard to the race, *color*, *disability* ~~[creed]~~, sex, *age*, religion, or national origin of the appointees.

Sec. 2.01a. 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 Act expires September 1, 2005 [1993].

SECTION 3. Section 2.02, Texas Optometry Act (Article 4552-2.02, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (d), and (i) and adding Subsections (j) and (k) to read as follows:

(b) Three members must be representatives of the general public. A person is not eligible for appointment as a public member *of the board* if the person or the person's spouse:

(1) is *registered, certified, or licensed* by an occupational regulatory agency in the field of health care;

(2) is employed by or participates in the management of or is an officer or paid consultant of a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; [~~or~~]

(3) owns, controls, or has, directly or indirectly, a financial interest in a business entity or other organization that provides health-care services or that sells, manufactures, or distributes health-care supplies or equipment; *or*

(4) *uses or receives a substantial amount of tangible goods, services, or funds from the board, other than compensation or reimbursement authorized by law for board membership, attendance, or expenses.*

(d) A person [~~who is required to register as a lobbyist under Chapter 305, Government Code,~~] may not serve as a member of the board or act as the general counsel to the board *if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the board.*

(i) A [~~No~~] person may *not* serve more than *two complete terms* [~~a total of 12 years~~] on the board. Time served on the board prior to September 1, 1981, shall not count toward this limitation.

(j) *Each board member shall comply with the board member training requirements established by any other state agency that is given authority to establish the requirements for the board.*

(k) *The board shall establish a training program for the members of the board.*

(1) *Before a member of a board may assume the member's duties and before the member may be confirmed by the Senate, the member must complete at least one course of the training program established under this section.*

(2) *A training program established under this section shall provide information to a participant regarding:*

(A) *the enabling legislation that created the board to which the member is appointed;*

(B) *the programs operated by the agency;*

(C) *the role and functions of the agency;*

(D) *the rules of the agency with an emphasis on the rules that relate to disciplinary and investigatory authority;*

(E) *the current budget for the agency;*

(F) *the results of the most recent formal audit of the agency;*

(G) *the requirements of the:*

(i) *open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and its subsequent amendments;*

(ii) *open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes), and its subsequent amendments; and*

(iii) *Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments;*

(H) the requirements of the conflict of interest laws and other laws relating to public officials; and

(I) any applicable ethics policies adopted by that state agency or the Texas Ethics Commission.

(3) In developing the training requirements provided for in this section, the board shall consult with the governor's office, the attorney general's office, and the ethics commission.

(4) In the event that another state agency or entity is given the authority to establish the training requirements, the board shall allow that training in lieu of developing its own program.

SECTION 4. Sections 2.06(a), (b), (c), and (f), Texas Optometry Act (Article 4552-2.06, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The board shall preserve a record of its proceedings [~~in a book kept for that purpose~~].

(b) A record shall be kept showing the name, age, and present legal and mailing address of each applicant for examination, the name and location of the school of optometry from which the applicant [~~he~~] holds credentials, and the time devoted to the study and practice of optometry, together with such information as the board may desire to record. Said record shall also show whether applicants were rejected or licensed and shall be prima facie evidence of all matters therein contained. The executive director [~~secretary of the board~~] shall on or before September [~~March~~] 1 of each year send a certified copy of said record to the secretary of state for permanent record. A certified copy of said record with the hand and seal of the executive director [~~secretary of said board~~] to the secretary of state, shall be admitted as evidence in all courts.

(c) Every license and annual renewal certificate issued shall be numbered and recorded [~~in a book kept~~] by the executive director [~~secretary of the board~~].

(f) The board shall maintain [~~an information file about each~~] complaint files in accordance with Section 4.06 of this Act [~~filed with the board relating to a licensee. If a written complaint is filed with the board relating to a licensee, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notification would jeopardize an undercover investigation~~].

SECTION 5. Section 2.08, Texas Optometry Act (Article 4552-2.08, Vernon's Texas Civil Statutes), is amended by amending Subsections (b) and (c) and adding Subsections (d), (e), (f), and (g) to read as follows:

(b) The executive director [~~of the board~~] or the executive director's [~~his~~] designee shall develop an intra-agency [~~intraagency~~] career ladder program. The program shall require intra-agency [~~one part of which shall be the intraagency~~] posting of all nonentry level positions concurrently with [~~for at least 10 days before~~] any public posting.

(c) The executive director [~~of the board~~] or the executive director's [~~his~~] designee shall develop a system of annual performance evaluations based on measurable job tasks. All merit pay for board employees must be based on the system established under this subsection.

(d) The executive director or the executive director's designee shall prepare and maintain a written policy statement to ensure implementation of a program of equal opportunity under which all personnel transactions are made without regard to race, color, disability, sex, religion, age, or national origin. The policy statement must include:

(1) personnel policies, including policies relating to recruitment, evaluation, selection, appointment, training, and promotion of personnel, that are in compliance with requirements of the Commission on Human Rights Act (Article 5221k, Vernon's Texas Civil Statutes) and its subsequent amendments;

(2) a comprehensive analysis of the board work force that meets federal and state guidelines;

(3) procedures by which a determination can be made of significant underuse in the board work force of all persons for whom federal or state guidelines encourage a more equitable balance; and

(4) reasonable methods to appropriately address those areas of significant underuse.

(e) A policy statement prepared under Subsection (d) of this section must cover an annual period, be updated annually, be reviewed by the Commission on Human Rights for compliance with Subsection (d)(1) of this section, and be filed with the governor's office.

(f) The governor's office shall deliver a biennial report to the legislature based on information received under Subsection (e) of this section. The report may be made separately or as part of other biennial reports made to the legislature.

(g) The board shall develop and implement policies that clearly define the respective responsibilities of the board and the staff of the board.

SECTION 6. Sections 2.10 and 2.11, Texas Optometry Act (Articles 4552-2.10 and 4552-2.11, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 2.10. PROCEEDINGS; SUBPOENAS; OATHS. The board, any committee, or any member thereof, shall have the power to issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records and documents, to administer oaths and to take testimony concerning all matters within ~~the [its or his]~~ jurisdiction of the board, committee, or member. The board shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings but the determination shall be founded upon sufficient legal evidence to sustain it.

Sec. 2.11. BOND OF ~~EXECUTIVE DIRECTOR [SECRETARY-TREASURER]~~. Before entering upon the discharge of the duties of [his] office, the executive director ~~[secretary-treasurer of the board]~~ shall give such bond for the performance of the executive director's [his] duties as the board may require, the premium of which is to be paid from funds in the possession of the board.

SECTION 7. Sections 2.15(a), (b), and (d), Texas Optometry Act (Article 4552-2.15, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) Except as provided by Subsection (b) of this section, the fund realized from all fees payable under this Act shall first be applied to the payment of all necessary expenses of the board, and the remainder shall be applied, by order of the board, to compensate members of the board. Each member of the board is entitled to a per diem as set by legislative appropriation for each day that the member engages in the business of the board. A member may be compensated ~~[not receive any compensation]~~ for actual travel expenses, including expenses for meals and lodging ~~and, [other than]~~ transportation expenses. A member is entitled to compensation for transportation expenses as provided by the General Appropriations Act. Each board member shall make out, under oath, a complete statement of the number of days engaged and the amount of the member's [his] expenses when presenting same for payment.

(b) The funds realized from annual renewal fees shall be distributed as follows: 15 percent [\$10] of each renewal fee collected by the board under Section 3.03 of this Act shall be dedicated to the University of Houston Development Fund. The license money placed in the development fund pursuant hereto shall be utilized solely for scholarships and improvements in the physical facilities, including library, of the ~~College [School]~~ of Optometry.

The remainder of the fees attributable to annual renewal fees and all other fees payable under this Act shall be placed in the state treasury to the credit of a special fund to be known as the "Optometry Fund," and the comptroller shall upon requisition of the board from time to time draw warrants upon the state treasurer for the amounts specified in such requisition; provided, however, the fees from this optometry fund shall be expended as specified by itemized appropriation in the General Appropriations bill and shall be used by the Texas Optometry Board, and under its direction in carrying out its statutory duties.

(d) ~~The [On or before January 1 of each year, the]~~ board shall file annually with ~~[make in writing to]~~ the governor and the presiding officer of each house of the legislature a complete and detailed written ~~[annual]~~ report accounting for all funds received and disbursed by the board during the preceding fiscal year. The annual report must be in the form and reported in the time provided by the General Appropriations Act.

SECTION 8. Article 2, Texas Optometry Act (Article 4552-2.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Sections 2.16, 2.17, 2.18, and 2.19 to read as follows:

Sec. 2.16. QUALIFICATIONS FOR OFFICE OR EMPLOYMENT. The board shall provide to its members and employees, as often as necessary, information regarding their qualification for office or employment under this Act and their responsibilities under applicable law relating to standards of conduct for state officers or employees.

Sec. 2.17. PUBLIC INTEREST INFORMATION. (a) The board shall prepare information of public interest describing the functions of the board and the board's procedures by which complaints are filed with and resolved by the board. The board shall make the information available to the public and appropriate state agencies.

(b) The board by rule shall establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of the board for the purpose of directing complaints to the board. The board may provide for that notification:

(1) on each registration form, application, or written contract for services of an individual or entity regulated under this Act;

(2) on a sign prominently displayed in the place of business of each individual or entity regulated under this Act; or

(3) in a bill for services provided by an individual or entity regulated under this Act.

(c) The board shall list along with its regular telephone number the toll-free telephone number that may be called to present a complaint about a health professional if the toll-free number is established under other state law.

Sec. 2.18. PUBLIC PARTICIPATION IN BOARD HEARINGS. The board shall develop and implement policies that provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the board.

Sec. 2.19. PROGRAM ACCESSIBILITY. The board shall prepare and maintain a written plan that describes how a person who does not speak English can be provided reasonable access to the board's programs. The board shall also comply with federal and state laws for program and facility accessibility.

SECTION 9. Section 3.01, Texas Optometry Act (Article 4552-3.01, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.01. MUST PASS EXAMINATION. Every person hereafter desiring to be licensed to practice therapeutic optometry in this state shall be required to pass the examination given by the Texas Optometry Board. [~~However, the board may adopt substantive rules to authorize the waiver of this or other license requirements for an applicant with a valid license from another state having, at the time of the applicant's initial licensure in that state, license requirements and continuing education requirements substantially equivalent to those currently required in this state.~~] The examination must include examination in pharmacology and related pathology.

SECTION 10. Sections 3.02(a) and (b), Texas Optometry Act (Article 4552-3.02, Vernon's Texas Civil Statutes), are amended to read as follows:

(a) The applicant shall make application, furnishing to the *executive director* [~~secretary of the board~~], on forms to be furnished by the board, satisfactory sworn evidence that *the applicant* [~~he~~] has attained the age of majority, is of good moral character, and has [~~at least graduated from a first grade high school, or has~~] a preliminary education equivalent to permit *the applicant* [~~him~~] to matriculate in The University of Texas, and that *the applicant* [~~he~~] has attended and graduated from a reputable [~~university or~~] college of optometry which meets with the requirements of the board, and such other information as the board may deem necessary for the enforcement of this Act.

(b) A college [~~university or school~~] of optometry is reputable whose entrance requirements and course of instruction are as high as those adopted by the better class of universities and schools of optometry and whose course of instruction shall be equivalent to not less than six terms of eight months each, and approved by the board. Provided, however, that the provisions of this subsection shall only apply to those students enrolling in school from and after *September 1, 1969* [~~the effective date of this Act~~].

SECTION 11. Section 3.03, Texas Optometry Act (Article 4552-3.03, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 3.03. FEES. (a) The board shall establish reasonable and necessary fees so that the fees, in the aggregate, produce sufficient revenue to cover the cost of administering ~~for the administration of~~ this Act. The fees established by the board under this section may include fees for examination, re-examination, issuance of a license, renewal of a license, issuance of a duplicate license, and other acts performed by or services provided by the board. The board may not set a fee for an amount less than the amount of that fee on September 1, 1993. The fees may be adjusted upward to reflect increased costs in the administration of this Act ~~in amounts not to exceed:~~

[1. Examination	\$ 55
[2. Re-examination	20
[3. License	40
[4. License renewal	135
[5. Lost license	15]

The board shall not maintain unnecessary fund balances, and fee amounts shall be set in accordance with this requirement.

(b) If anyone successfully passing the examination and meeting the requirements of the board has not paid the fee for issuance of a license within 90 days after having been notified by registered mail at the address given on the [his] examination papers, or at the time of the examination, that the person [he] is eligible for the license [same], such person shall by the person's [his] own act have waived the [his] right to obtain the [his] license, and the board may at its discretion refuse to issue such license until such person has taken and successfully passed another examination.

SECTION 12. Section 3.03B, Texas Optometry Act (Article 4552-3.03B, Vernon's Texas Civil Statutes), is amended by adding Subsections (c) and (d) to read as follows:

(c) The fee increase imposed by this section may not apply to a person who is not engaged in the practice of optometry or therapeutic optometry in this state at the time the fee is imposed.

(d) The fee increase imposed by this section may not be used to compute the amount dedicated to the University of Houston Development Fund under Section 2.15(b) of this Act.

SECTION 13. Sections 3.05 and 3.06, Texas Optometry Act (Articles 4552-3.05 and 4552-3.06, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 3.05. SUBJECTS OF EXAMINATION. The examination shall consist of written, oral or practical tests, in practical, theoretical, and physiological optics, in theoretical and practical optometry, and in the anatomy, physiology and pathology of the eye as applied to optometry and in such other subjects as may be regularly taught in ~~[all] recognized accredited colleges of optometry [standard optometric universities or schools].~~

Sec. 3.06. CONDUCT OF EXAMINATION. All examinations shall be conducted in writing and by such other means as the board shall determine adequate to ascertain the qualifications of applicants and in such manner as shall be entirely fair and impartial to all individuals and every recognized school of optometry. *If the written portion of the examination is not prepared by a national testing organization, the board shall have the written portion validated by an independent testing professional.* All applicants examined at the same time shall be given the same written examination. Within 30 days after the date a licensing examination is administered under this Act, the board shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the board shall notify each examinee of the results of the examination within two weeks after the date the board receives the results from the testing service. If the notice of the examination results will be delayed for more than 90 days after the examination date, the board shall notify each examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails the licensing examination administered under this Act, the board shall furnish the person with an analysis of the person's performance on the examination.

SECTION 14. Article 3, Texas Optometry Act (Article 4552-3.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Sections 3.08, 3.09, and 3.10 to read as follows:

Sec. 3.08. PROVISIONAL LICENSE FOR PERSON LICENSED IN ANOTHER STATE. (a) *On application, the board shall grant a provisional license to practice optometry or therapeutic optometry. An applicant for a provisional license under this section must:*

(1) be licensed in good standing as an optometrist or therapeutic optometrist in another state, the District of Columbia, or a territory of the United States that has licensing requirements that are substantially equivalent to the requirements of this Act;

(2) have passed a national or other examination recognized by the board relating to the practice of optometry or therapeutic optometry; and

(3) be sponsored by a person licensed by the board under this Act with whom the provisional license holder may practice under this section.

(b) An applicant for a provisional license may be excused from the requirement of Subsection (a)(3) of this section if the board determines that compliance with that subdivision constitutes a hardship to the applicant.

(c) A provisional license is valid until the date the board approves or denies the provisional license holder's application for a license. The board shall issue a license under this Act to the holder of a provisional license under this section if:

(1) the provisional license holder passes the examination required by Section 3.01 of this Act;

(2) the board verifies that the provisional license holder has the academic and experience requirements for a license under this Act; and

(3) the provisional license holder satisfies any other license requirements under this Act.

(d) The board must complete the processing of a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. The board may extend this time as necessary to receive the results of an examination administered or graded by a testing organization.

Sec. 3.09. LIMITED LICENSE FOR CLINICAL FACULTY. (a) *The board by rule may provide for the issuance of a limited license to a full-time clinical faculty member of an institution of higher education of this state who provides instruction in optometry or therapeutic optometry.*

(b) A license under this section may authorize the faculty member to practice optometry or therapeutic optometry only on the premises of the institution of higher education and its affiliated teaching clinics and only as part of the institution's teaching program.

(c) The board by rule may adopt criteria and fees for issuance and renewal of a license under this section.

Sec. 3.10. INACTIVE STATUS. *The board by rule may provide for a person who holds a license under this Act to be placed on inactive status.*

SECTION 15. Section 4.01, Texas Optometry Act (Article 4552-4.01, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 4.01. ANNUAL RENEWAL. (a) *On or before January 1 of each year, every licensed optometrist and therapeutic optometrist in this state shall pay to [the secretary-treasurer of] the board an annual renewal fee for the renewal of a [his] license to practice optometry or therapeutic optometry for the current year. The amount of the fee shall be as determined by the board. A person may renew an unexpired license by paying to the board before the expiration date of the license the required renewal fee.*

(b) If a person's license has been expired for 90 [not more than 180] days or less, the person may renew the license by paying to the board the required renewal fee and a fee that is one-half of the examination fee for the license.

(c) If a person's license has been expired for longer than 90 [more than 180] days but less than one year [three years], the person may renew the license by paying to the board all unpaid renewal fees and a fee that is equal to the examination fee for the license.

(d) If a person's license has been expired for one year or longer [three years or more], the person may not renew the license. The person may obtain a new license by submitting to

reexamination and complying with the requirements and procedures for obtaining an original license. *However, the board may renew without examination an expired license of a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding application. The person must pay to the board a fee that is equal to the examination fee for the license.*

(e) *At least 30 days before the expiration of a person's license, the board shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the board.*

(f) ~~[(b)]~~ On receipt of the required fees, the board shall issue an annual renewal certificate bearing the number of the license, the year for which renewed, and such other information from the records of the board as said board may deem necessary for the proper enforcement of this Act.

~~(g) [(e) When the person's license has been expired for three years, the board shall notify the county clerk of the county in which such license may have been recorded of the cancellation, and such clerk, upon receipt of such notice from said board, shall enter upon the optometry register of such county the fact that such license has been cancelled for nonpayment of annual renewal fee and shall notify the board in writing that such entry has been made.~~

~~[(d)]~~ Practicing optometry or therapeutic optometry without an annual renewal certificate for the current year as provided herein, shall have the same force and effect and be subject to all penalties of practicing optometry or therapeutic optometry without a license.

SECTION 16. Section 4.01B, Texas Optometry Act (Article 4552-4.01B, Vernon's Texas Civil Statutes), is amended by amending Subsections (b), (c), and (e) and adding Subsections (f) and (g) to read as follows:

(b) *The length of study required is 16 [12] hours per calendar year. At least six hours of study per calendar year must be in the diagnosis or treatment of ocular disease.*

(c) *The continuing education requirements established by this section shall be fulfilled by attendance in continuing education courses sponsored by an accredited college of optometry or in a course approved by the board. Attendance at a course of study shall be certified to the board on a form approved [provided] by the board and shall be submitted by each licensed optometrist and therapeutic optometrist in conjunction with the [his] application for renewal of the [his] license and submission of renewal fee.*

~~(e) The [Licensees who have not complied with the requirement of this section may not be issued a renewal license, except for the] following persons [who] are exempt from the requirements of this section:~~

(1) a person who holds a Texas license but who does not practice optometry or therapeutic optometry in Texas;

(2) a licensee who served in the regular armed forces of the United States during part of the 12 months immediately preceding the annual license renewal date;

(3) a licensee who submits proof that *the licensee [he] suffered a serious or disabling illness or physical disability which prevented the licensee [him] from complying with the requirements of this section during the 12 months immediately preceding the annual license renewal date; or*

(4) a licensee first licensed within the 12 months immediately preceding the annual renewal date.

~~(f) The board may not issue a renewal license to a licensee who has not complied with the requirements of this section unless the licensee:~~

~~(1) provides the board with evidence acceptable to the board that the licensee has, since the expiration of the license, completed sufficient hours of approved continuing education courses to satisfy any deficiency in the previous year; and~~

~~(2) pays to the board the license renewal fee plus a penalty in an amount equal to the amount of the license renewal fee.~~

(g) Continuing education hours used by a licensee to satisfy a deficiency for a previous year under Subsection (f)(1) of this section may not be used to satisfy the requirements for the year in which they are earned.

SECTION 17. Sections 4.02 and 4.03, Texas Optometry Act (Articles 4552-4.02 and 4552-4.03, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 4.02. RENEWAL AFTER DISCHARGE FROM MILITARY. Any licensed optometrist or therapeutic optometrist whose renewal certificate has expired while *the licensee* [he] has been engaged in active duty with any United States military service or with the United States Public Health Service, engaged in full-time federal service, or engaged in training or education under the supervision of the United States, preliminary to induction into the military service, may have *the* [his] renewal certificate reinstated without paying any lapsed renewal fee or registration fee, or without passing an examination, if within one year after termination of said service, training or education, other than by dishonorable discharge, *the licensee* [he] furnishes the board with affidavit to the effect that *the licensee* [he] has been so engaged and that *the* [his] service, training or education has been so terminated.

Sec. 4.03. LOST OR DESTROYED LICENSE. If any license issued under this law shall be lost or destroyed, the holder of said license shall make an affidavit of its loss or destruction, and that *the person making the affidavit* [he] is the same person to whom such license was issued, and such other information as may be desired by the board, and shall, upon payment of a fee *set in accordance with Section 3.03 of this Act*, [of \$10] be granted a license under this law.

SECTION 18. Section 4.04, Texas Optometry Act (Article 4552-4.04, Vernon's Texas Civil Statutes), is amended by amending Subsections (a), (b), and (e) and adding Subsection (g) to read as follows:

(a) By five or more votes, the board may refuse to issue a license to an applicant, 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* [~~probate a license suspension~~], or reprimand a licensee if it finds that:

(1) the applicant or licensee is guilty of any fraud, deceit, dishonesty, or misrepresentation in the practice of optometry or therapeutic optometry or in [his] seeking admission to such practice;

(2) the applicant or licensee is unfit or incompetent by reason of negligence;

(3) the applicant or licensee has been convicted of a felony or a misdemeanor which involves moral turpitude;

(4) the applicant or licensee is an habitual drunkard or is addicted to the use of morphine, cocaine or other drugs having similar effect or has become insane or has been adjudged by a court of competent jurisdiction to be of unsound mind;

(5) the licensee has directly or indirectly employed, hired, procured, or induced a person, not licensed to practice optometry or therapeutic optometry in this state, to so practice;

(6) the licensee directly or indirectly aids or abets in the practice of optometry or therapeutic optometry any person not duly licensed to practice under this Act;

(7) the licensee lends, leases, rents or in any other manner places *the* [his] license at the disposal or in the service of any person not licensed to practice optometry or therapeutic optometry in this state;

(8) the applicant or licensee has willfully or repeatedly violated any of the provisions of this Act *or a lawful rule of the board*;

(9) the licensee has willfully or repeatedly represented to the public or any member thereof that *the licensee* [he] is authorized or competent to cure or treat diseases of the eye beyond the authorization granted in this Act; [~~or~~]

(10) the licensee has *the* [his] right to practice optometry or therapeutic optometry suspended or revoked by any federal agency for a cause which in the opinion of the board warrants such action;

(11) the applicant or licensee has engaged in conduct to deceive, defraud, or harm the public;

(12) the applicant or licensee is found by the board to be guilty of gross incompetence in the practice of optometry or therapeutic optometry;

(13) the applicant or licensee is found by the board to have engaged in a pattern of practice or other behavior that demonstrates a willful rendering of substandard care;

(14) the applicant or licensee commits an act of sexual abuse, misconduct, or exploitation with a patient or otherwise unethically or immorally abuses the doctor-patient relationship;

(15) the applicant or licensee prescribes, sells, administers, distributes, or gives any drug legally classified as a controlled substance or as an addictive or dangerous drug for other than accepted diagnostic or therapeutic purposes;

(16) the applicant or licensee fails to report to the board the relocation of the applicant's or licensee's office not later than the 30th day after the relocation, whether in or out of this state; or

(17) the licensee practices or attempts to practice optometry while the licensee's license is under suspension.

(b) Any person may begin proceedings under this section by filing charges with the board in writing and under oath. If charges are filed against a person or if the board proposes to refuse a person's application for a license or to suspend or revoke a person's license, the person is entitled to a hearing. *The State Office of Administrative Hearings shall conduct the hearing [before the board].* Except as provided by Subsection (c) of this section, proceedings are governed by the Administrative Procedure and Texas Register Act[, as amended] (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

(e) Nothing in this Act shall be construed to prevent the administrator or executor of the estate of a deceased optometrist or therapeutic optometrist from employing a licensed optometrist or therapeutic optometrist to carry on the practice of such deceased during the administration of such estate nor to prevent a licensed optometrist or therapeutic optometrist from working for such person during the administration of the estate when the legal representative thereof has been authorized by the county judge to continue the operation of such practice. *Operation of a practice by an estate under this subsection must terminate before the first anniversary of the death of the optometrist or therapeutic optometrist.*

(g) If a license suspension is probated, the board may require the licensee to:

(1) report regularly to the board on matters that are the basis of the probation;

(2) limit practice to the areas prescribed by the board; or

(3) continue or review professional education until the licensee attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

SECTION 19. Article 4, Texas Optometry Act (Article 4552-4.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Sections 4.05, 4.06, 4.07, 4.08, and 4.09 to read as follows:

Sec. 4.05. **ADMINISTRATIVE PENALTIES.** (a) *The board may impose an administrative penalty against a person licensed or regulated under this Act who violates this Act or a rule or order adopted under this Act.*

(b) *The penalty for each violation may be in an amount not to exceed \$2,500. Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty.*

(c) *The amount of the penalty shall be based on:*

(1) *the seriousness of the violation, including the nature, circumstances, extent, and gravity of any prohibited acts, and the hazard or potential hazard created to the health, safety, or economic welfare of the public;*

(2) *the economic harm to property or the environment caused by the violation;*

(3) *the history of previous violations;*

(4) *the amount necessary to deter future violations;*

(5) *efforts to correct the violation; and*

(6) any other matter that justice may require.

(d) If the executive director or a subcommittee of the board appointed for that purpose determines that a violation has occurred, the executive director or subcommittee may issue to the board a report that states the facts on which the determination is based and the recommendation of the executive director or subcommittee on the imposition of a penalty, including a recommendation on the amount of the penalty. A subcommittee of the board appointed under this subsection must include at least one public member of the board.

(e) Within 14 days after the date the report is issued, the executive director or subcommittee shall give written notice of the report to the person. The notice may be given by certified mail. The notice must include a brief summary of the alleged violation and a statement of the amount of the recommended penalty and must inform the person that the person has a right to a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(f) Within 20 days after the date the person receives the notice, the person in writing may accept the determination and recommended penalty of the executive director or subcommittee, as applicable, or may make a written request for a hearing on the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(g) If the person accepts the determination and recommended penalty of the executive director or subcommittee, as applicable, the board by order shall approve the determination and impose the recommended penalty.

(h) If the person requests a hearing or fails to respond timely to the notice, the executive director shall set a hearing and give notice of the hearing to the person. The hearing shall be held by an administrative law judge of the State Office of Administrative Hearings. The administrative law judge shall make findings of fact and conclusions of law. The administrative law judge shall promptly issue to the board a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty. Based on the findings of fact, conclusions of law, and proposal for a decision, the board by order may find that a violation has occurred and impose a penalty or may find that no violation occurred.

(i) The notice of the board's order given to the person under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments must include a statement of the right of the person to judicial review of the order.

(j) Within 30 days after the date the board's order is final as provided by Section 16(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments, the person shall:

(1) pay the amount of the penalty;

(2) pay the amount of the penalty and file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty; or

(3) without paying the amount of the penalty, file a petition for judicial review contesting the occurrence of the violation, the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(k) Within the 30-day period, a person who acts under Subsection (j)(3) of this section may:

(1) stay enforcement of the penalty by:

(A) paying the amount of the penalty to the court for placement in an escrow account; or

(B) giving to the court a supersedeas bond approved by the court for the amount of the penalty and that is effective until all judicial review of the board's order is final; or

(2) request the court to stay enforcement of the penalty by:

(A) filing with the court a sworn affidavit of the person stating that the person is financially unable to pay the amount of the penalty and is financially unable to give the supersedeas bond; and

(B) giving a copy of the affidavit to the executive director by certified mail.

(l) If the executive director receives a copy of an affidavit under Subsection (k)(2) of this section, the executive director may file with the court, within five days after the date the copy is received, a contest to the affidavit. The court shall hold a hearing on the facts alleged in the affidavit as soon as practicable and shall stay the enforcement of the penalty on finding that the alleged facts are true. The person who files an affidavit has the burden of proving that the person is financially unable to pay the amount of the penalty and to give a supersedeas bond.

(m) If the person does not pay the amount of the penalty and the enforcement of the penalty is not stayed, the executive director may refer the matter to the attorney general for collection of the amount of the penalty.

(n) Judicial review of the order of the board:

(1) is instituted by filing a petition as provided by Section 19, Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and

(2) is under the substantial evidence rule.

(o) If the court sustains the occurrence of the violation, the court may uphold or reduce the amount of the penalty and order the person to pay the full or reduced amount of the penalty. If the court does not sustain the occurrence of the violation, the court shall order that no penalty is owed.

(p) When the judgment of the court becomes final, the court shall proceed under this subsection. If the person paid the amount of the penalty and if that amount is reduced or is not upheld by the court, the court shall order that the appropriate amount plus accrued interest be remitted to the person. The rate of the interest is the rate charged on loans to depository institutions by the New York Federal Reserve Bank, and the interest shall be paid for the period beginning on the date the penalty was paid and ending on the date the penalty is remitted. If the person gave a supersedeas bond and if the amount of the penalty is not upheld by the court, the court shall order the release of the bond. If the person gave a supersedeas bond and if the amount of the penalty is reduced, the court shall order the release of the bond after the person pays the amount.

(q) A penalty collected under this section shall be remitted to the comptroller for deposit in the general revenue fund.

(r) All proceedings under this section are subject to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) and its subsequent amendments.

Sec. 4.06. COMPLAINT PROCEDURE IN GENERAL. (a) The board shall keep an information file about each complaint filed with the board. The board's information file shall be kept current and contain a record for each complaint of:

(1) all persons contacted in relation to the complaint;

(2) a summary of findings made at each step of the complaint process;

(3) an explanation of the legal basis and reason for a complaint that is dismissed; and

(4) other relevant information.

(b) If a written complaint is filed with the board that the board has authority to resolve, the board, at least as frequently as quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

(c) The board by rule shall adopt a form to standardize information concerning complaints made to the board. The board by rule shall prescribe information to be provided to a person when the person files a complaint with the board.

(d) The board shall provide reasonable assistance to a person who wishes to file a complaint with the board.

Sec. 4.07. COMPLAINT INVESTIGATION AND DISPOSITION. (a) The board shall adopt rules concerning the investigation of a complaint filed with the board. The rules adopted under this subsection shall:

- (1) distinguish between categories of complaints;
- (2) ensure that complaints are not dismissed without appropriate consideration;
- (3) require that the board be advised of a complaint that is dismissed and that a letter be sent to the person who filed the complaint explaining the action taken on the dismissed complaint;
- (4) ensure that the person who filed the complaint has an opportunity to explain the allegations made in the complaint; and
- (5) prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the board to obtain the services of a private investigator.

(b) The board shall dispose of all complaints in a timely manner. The board shall establish a schedule for conducting each phase of a complaint that is under the control of the board not later than the 30th day after the date the complaint is received by the board. The schedule shall be kept in the information file for the complaint and all parties shall be notified of the projected time requirements for pursuing the complaint. A change in the schedule must be noted in the complaint information file and all parties to the complaint must be notified not later than the seventh day after the date the change is made.

(c) The executive director shall notify the board of a complaint that extends beyond the time prescribed by the board for resolving the complaint so that the board may take necessary action on the complaint.

Sec. 4.08. MONITORING OF LICENSE HOLDER. The board by rule shall develop a system for monitoring license holders' compliance with the requirements of this Act. Rules adopted under this section shall include procedures for monitoring a license holder who is ordered by the board to perform certain acts to ascertain that the license holder performs the required acts and to identify and monitor license holders who represent a risk to the public.

Sec. 4.09. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt procedures governing:

- (1) informal disposition of a contested case under Section 13(e), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments; and
- (2) informal proceedings held in compliance with Section 18(c), Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), and its subsequent amendments.

(b) Rules adopted under this section must provide the complainant and the licensee an opportunity to be heard and must require the presence of a representative of the office of the attorney general to advise the board or the board's employees.

SECTION 20. Sections 5.01, 5.02, 5.03, 5.04, and 5.08, Texas Optometry Act (Articles 4552-5.01, 4552-5.02, 4552-5.03, 4552-5.04, and 4552-5.08, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 5.01. DISPLAY OF LICENSE. Every person practicing optometry or therapeutic optometry in this state shall display the person's [his] license or certificate in a conspicuous place in the principal office where the person [he] practices optometry or therapeutic optometry and whenever required, exhibit such license or certificate to said board, or its authorized representative, and whenever practicing said profession of optometry or therapeutic optometry outside of, or away from said office or place of business, the person [he] shall deliver to each person fitted with glasses a bill, which shall contain the person's [his] signature, post-office address, and number of the person's [his] license or certificate, together with a specification of the lenses and material furnished and the prices charged for the same respectively.

Sec. 5.02. LICENSEE INFORMATION. Each licensee shall file with the board:

- (1) the licensee's mailing address;
- (2) the address of the licensee's residence;
- (3) the mailing address of each of the licensee's offices; and

~~(4) the address for the location of each of the licensee's offices if that address is different from the office's mailing address [RECORDATION OF LICENSE. It shall be unlawful for any person to practice optometry or therapeutic optometry within the limits of this state who has not registered and recorded his license in the office of the county clerk of the county in which he resides, and in each county in which he practices, together with his age, post-office address, place of birth, subscribed and verified by his oath. The fact of such oath and record shall be endorsed by the county clerk upon the license. The absence of record of such license in the office of the county clerk shall be prima facie evidence of the lack of the possession of such license to practice optometry or therapeutic optometry].~~

Sec. 5.03. *DUTY TO UPDATE INFORMATION.* ~~Not later than the 10th day after the date of a change in any of the information required to be filed with the board under Section 5.02 of this Act, the licensee shall file with the board a written notice of the change [OPTOMETRY REGISTER. Each county clerk in this state shall purchase a book of suitable size, to be known as the "Optometry Register" of such county, and set apart at least one full page for the registration of each optometrist and therapeutic optometrist, and record in said optometry register the name and record of each optometrist and therapeutic optometrist who presents for record a license or certificate issued by the state board. When an optometrist or therapeutic optometrist shall have his license revoked, suspended, or cancelled, said county clerk, upon being notified by the board, shall make a note of the fact beneath the record in the optometry register, which entry shall close the record and be prima facie evidence of the fact that the license has been so cancelled, suspended or revoked. The county clerk of each county shall, upon the request of the secretary of the board, certify to the board a correct list of the optometrists and therapeutic optometrists then registered in the county, together with such other information as the board may require].~~

Sec. 5.04. *PRACTICE WITHOUT LICENSE; FRAUD; HOUSE-TO-HOUSE.* It shall be unlawful for any person to:

(1) falsely impersonate any person duly licensed as an optometrist or therapeutic optometrist under the provisions of this Act or to falsely assume another name;

(2) buy, sell, or fraudulently obtain any optometry diploma, optometry or therapeutic optometry license, record of registration or aid or abet therein;

(3) practice, offer, or represent to others that the person is ~~[hold himself out as]~~ authorized to practice optometry or therapeutic optometry or use in connection with the person's [his] name any designation tending to imply that the person [he] is a practitioner of optometry or therapeutic optometry if not licensed to practice under the provisions of this Act;

(4) practice optometry or therapeutic optometry during the time *the* [his] license shall be suspended or revoked;

(5) *fill an expired contact lens prescription; or*

(6) practice optometry or therapeutic optometry from house-to-house or on the streets or highways, notwithstanding any laws for the licensing of peddlers. This shall not be construed as prohibiting an optometrist, therapeutic optometrist, or physician from attending, prescribing for and furnishing spectacles, eyeglasses or ophthalmic lenses to a person who is confined to *the person's* [his] abode by reason of illness or physical or mental infirmity, or in response to an unsolicited request or call, for such professional services.

Sec. 5.08. *PRACTICE WHILE SUFFERING FROM CONTAGIOUS DISEASE.* (a) No licensed optometrist or therapeutic optometrist shall practice optometry or therapeutic optometry while knowingly suffering from a contagious or infectious disease, *as defined by the Texas Department of Health, if the disease is one that could reasonably be transmitted in the normal performance of optometry or therapeutic optometry.*

(b) *The board by rule shall adopt guidelines that define, according to guidelines issued by the Texas Department of Health and specific to the practice of optometry or therapeutic optometry, each disease or type of disease that could reasonably be transmitted in the normal performance of optometry or therapeutic optometry.*

SECTION 21. Section 5.09, Texas Optometry Act (Article 4552-5.09, Vernon's Texas Civil Statutes), is amended by amending Subsection (c) and adding Subsection (h) to read as follows:

(c) Any advertisement of the price of prescription spectacles or contact lenses is required to contain the following information:

(1) a statement of whether or not the cost of an examination, *prescription services, and follow-up care* by an eye doctor is included in the price;

(2) if the advertised goods are to be available to the public at the advertised price for less than 30 days after the date of publication of the advertisement, the advertisement shall state the time limitation on the offer;

(3) if the advertised goods are to be available to the public in limited quantities and no rainchecks are given upon total depletion of the inventory of the goods advertised, the advertisement shall state the total quantity available to all customers; ~~and~~

(4) if the advertised goods are to be available to the public at a limited number per customer, the advertisement shall state the limit per customer; *and*

(5) *with regard to contact lenses, the advertisement shall state the number of lenses included for the price specified.*

(h) *A statement required to appear in an advertisement under this section must be readily audible or readable by a person of average comprehension or reading speed.*

SECTION 22. Section 5.10, Texas Optometry Act (Article 4552-5.10, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.10. BOARD RULES RESTRICTING ADVERTISING. (a) The board may not adopt ~~[substantive]~~ rules restricting competitive bidding or advertising by a person regulated by the board except to *prohibit* ~~[adopt such rules as are necessary to prevent]~~ false, misleading, or deceptive practices.

(b) *The board may not include in its rules to prohibit false, misleading, or deceptive practices by a person regulated by the board a rule that:*

(1) *restricts the use of any medium for advertising;*

(2) *restricts the person's personal appearance or use of the person's voice in an advertisement;*

(3) *relates to the size or duration of an advertisement by the person;*

(4) *restricts the person's advertisement under a trade name;*

(5) *restricts any truthful statement regarding:*

(A) *the address or telephone number of an office maintained by the person;*

(B) *office hours regularly maintained by the person;*

(C) *languages, other than English, fluently spoken by the person or a person in the person's office;*

(D) *whether the person provides services under a specified private or public insurance plan or health-care plan;*

(E) *publications authored by the person;*

(F) *a teaching position held or formerly held by the person and the dates the position was held;*

(G) *an affiliation with a hospital or clinic;*

(H) *the fact that the person regularly accepts installment payment of fees;*

(I) *the manufacturer, designer, style, make, trade name, brand name, color, size, or type of commodities advertised; or*

(J) *other factual information that is not false, fraudulent, misleading, or likely to deceive; or*

(6) *restricts any truthful statement that relates to public health or that encourages preventive or corrective care.*

(c) *Subsection (b) of this section may not be construed to prevent the board from restricting advertising that is false, fraudulent, misleading, or likely to deceive.*

SECTION 23. Section 5.12, Texas Optometry Act (Article 4552-5.12, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.12. BASIC COMPETENCE. (a) In order to *ensure* [~~insure~~] an adequate examination of a patient for whom an optometrist or therapeutic optometrist signs or causes to be signed a prescription for an ophthalmic lens, in the initial examination of the patient the optometrist or therapeutic optometrist shall make and record, if possible, the following findings of the condition of the patient:

- (1) Case History (ocular, physical, occupational and other pertinent information).
- (2) *Visual* [~~Far point~~] acuity[, O.D., O.S., O.U., unaided; with old glasses, if available, and with new glasses, if any].
- (3) *Biomicroscopy* [~~External~~] examination (lids, cornea, sclera, etc.).
- (4) Internal ophthalmoscopic examination (media, fundus, etc.).
- (5) Static retinoscopy, O.D., O.S., or *autorefractor*.
- (6) Subjective findings, far point and near point.
- (7) *Assessment of binocular function* [~~Phorias or ductions, far and near, lateral and vertical~~].
- (8) Amplitude or range of accommodation.
- (9) *Tonometry* [~~Amplitude or range of convergence~~].
- (10) Angle of vision, to right and to left.

(b) Every prescription for an ophthalmic lens shall include [~~the following information: interpupillary distance, far and near; lens prescription, right and left; color or tint; segment type, size and position;~~] the optometrist's or therapeutic optometrist's signature and the information and parameters that the optometrist or therapeutic optometrist considers relevant or necessary. The prescription may not contain restrictions limiting the parameters to private labels not available to the optical industry as a whole. Specifications of a prescription for an ophthalmic lens may not be altered without the consent of the prescribing doctor.

(c) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the foregoing requirements shall be considered by the board to constitute prima facie evidence that the optometrist or therapeutic optometrist [~~he~~] is unfit or incompetent by reason of negligence within the meaning of Section 4.04(a)(3) of this Act, and shall be sufficient ground for the filing of charges to cancel, revoke or suspend the [~~his~~] license. The charges shall state the specific instances in which it is alleged that the rule was not complied with. At a hearing pursuant to the filing of such charges, the person charged shall have the burden of establishing that compliance with the rule in each instance in which proof is adduced that it was not complied with was not necessary to a proper examination of the patient in that particular case.

SECTION 24. Sections 5.13(d), (e), (g), (i), and (j), Texas Optometry Act (Article 4552-5.13, Vernon's Texas Civil Statutes), are amended to read as follows:

(d) An optometrist or therapeutic optometrist may practice optometry or therapeutic optometry under a trade name or an assumed name or under the name of a professional corporation or a professional association. Every optometrist or therapeutic optometrist practicing in the State of Texas, including those practicing under a trade or assumed name, shall be required to display the actual name under which the optometrist or therapeutic optometrist [~~he~~] is licensed by the board in a manner such that the [~~his~~] name will be visible to the public prior to entry of the optometrist's or therapeutic optometrist's office reception area.

(e) No optometrist or therapeutic optometrist shall use, cause or allow to be used, the optometrist's or therapeutic optometrist's [~~his~~] name or professional identification, as authorized by Article 4590e, [~~as amended,~~] Revised [~~Civil~~] Statutes [~~of Texas, 1925,~~] and its subsequent amendments, on or about the door, window, wall, directory, or any sign or listing whatsoever, of any office, location or place where optometry or therapeutic optometry is practiced, unless said optometrist or therapeutic optometrist is actually present and practicing optometry or therapeutic optometry therein during the hours such office, location or place of practice is open to the public for the practice of optometry or therapeutic optometry.

(g) The requirement of Subsections (e) and (f) of this section that an optometrist or therapeutic optometrist be “actually present” in an office, location or place of practice holding *the optometrist’s or therapeutic optometrist’s* [his] name out to the public shall be deemed satisfied if the optometrist or therapeutic optometrist is, as to such office, location or place of practice, either:

(1) physically present therein more than half the total number of hours such office, location, or place of practice is open to the public for the practice of optometry or therapeutic optometry during each calendar month for at least nine months in each calendar year; or

(2) physically present in such office, location, or place of practice for at least one-half of the time such person conducts, directs, or supervises any practice of optometry or therapeutic optometry.

(i) The requirement of Subsections (e) and (f) of this section that an optometrist or therapeutic optometrist be “practicing optometry or therapeutic optometry” at an office, location, or place of practice holding *the optometrist’s or therapeutic optometrist’s* [his] name out to the public shall be deemed satisfied if the optometrist or therapeutic optometrist regularly makes personal examination at such office, location, or place of practice of the eyes of some of the persons prescribed for therein or regularly supervises or directs in person at such office, location or place of practice such examinations.

(j) The willful or repeated failure or refusal of an optometrist or therapeutic optometrist to comply with any of the provisions of this section shall be considered by the board to constitute prima facie evidence that such optometrist or therapeutic optometrist is guilty of violation of this Act, and shall be sufficient ground for the filing of charges to cancel, revoke or suspend a [his] license. The charges shall state the specific instance or instances in which it is alleged that the rule was not complied with. Alternatively, or in addition to the above, it shall be the duty of the board to institute and prosecute an action in a court of competent jurisdiction to restrain or enjoin the violation of any of the preceding rules.

SECTION 25. Sections 5.14(c) and (g), Texas Optometry Act (Article 4552–5.14, Vernon’s Texas Civil Statutes), are amended to read as follows:

(c) The prescription files and all business records of the *optometric* practice shall be the sole property of the optometrist or therapeutic optometrist and free from involvement with the mercantile establishment or any unlicensed person. Except, however, that those business records essential to the successful initiation or continuation of a percentage of gross receipts lease of space may be inspected by the applicable lessor.

(g) The optometrist or therapeutic optometrist shall not permit *the optometrist’s or therapeutic optometrist’s* [his] name or [his] practice to be directly or indirectly used in connection with the mercantile establishment in any advertising, displays, signs, or in any other manner.

SECTION 26. Sections 5.15(d) and (e), Texas Optometry Act (Article 4552–5.15, Vernon’s Texas Civil Statutes), are amended to read as follows:

(d) No person, firm, or corporation engaged in the business of a dispensing optician, other than a licensed optometrist, therapeutic optometrist, or physician, shall have, own, or acquire any interest in the practice, books, records, files, equipment, or materials of a licensed optometrist or therapeutic optometrist, or have, own, or acquire any interest in the premises or space occupied by a licensed optometrist or therapeutic optometrist for the practice of optometry or therapeutic optometry other than a lease for a specific term without retention of the present right of occupancy on the part of the dispensing optician. In the event an optometrist, therapeutic optometrist, or physician who is also engaged in the business of a dispensing optician (whether as an individual, firm, or corporation) does own an interest in the practice, books, records, files, equipment or materials of another licensed optometrist or therapeutic optometrist, *the optometrist, therapeutic optometrist, or physician* [he] shall maintain a completely separate set of books, records, files, and accounts in connection therewith.

(e) If, after examining a patient, an optometrist or therapeutic optometrist believes that lenses are required to correct or remedy any defect or abnormal condition of vision, the optometrist or therapeutic optometrist shall so inform the patient and shall *provide the*

patient with a copy of the patient's spectacle prescription. The optometrist or therapeutic optometrist shall expressly indicate verbally or by other means that the patient has two alternatives for the preparation of the lenses according to the optometrist's or therapeutic optometrist's prescription: First, that the optometrist or therapeutic optometrist will prepare or have the lenses prepared according to the prescription; and second, that the patient may have the prescription filled by any dispensing optician but should return for an optometrical examination of the lenses. This subsection does not require an optometrist or therapeutic optometrist to provide a prescription to a patient before the patient has paid the examination fee.

SECTION 27. Section 5.17, Texas Optometry Act (Article 4552-5.17, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.17. EXCEPTIONS. (a) Nothing in this Act shall be construed to apply to ~~[persons who sell ready-to-wear spectacles and eyeglasses as merchandise at retail or]~~ officers or agents of the United States or the State of Texas, in the discharge of their official duties.

(b) Nothing in this Act shall prevent, limit, or interfere with the right of a physician duly licensed by the Texas State Board of Medical Examiners to treat or prescribe for [his] patients or to direct or instruct others under the control, supervision, or direction of such a physician to aid or minister to the needs of [his] patients according to the physician's specific directions, instructions or prescriptions; and where such directions, instructions, or prescriptions are to be followed, performed, or filled outside or away from the physician's office such directions, instructions, or prescriptions shall be in writing.

(c) *Nothing in this Act shall be construed to prevent persons from selling ready-to-wear spectacles as merchandise at retail, nor to prevent unlicensed persons from making simple repairs to spectacles.*

(d) *Nothing in this Act shall prevent, limit, or interfere with the right of a dispensing optician or ophthalmic dispenser registered under the Opticians' Registry Act (Article 4551-1, Vernon's Texas Civil Statutes) and its subsequent amendments to engage in spectacle or contact lens dispensing as defined by that Act. This subsection does not prohibit the board from acting under this Act to restrict the unauthorized practice of optometry.*

SECTION 28. Section 5.18, Texas Optometry Act (Article 4552-5.18, Vernon's Texas Civil Statutes), is amended by amending Subsections (a) and (b) and adding Subsection (e) to read as follows:

(a) It shall be a violation of this Act for any person who is not a licensed optometrist, therapeutic optometrist, or physician to engage in the practice of optometry or therapeutic optometry as such practices are defined by this Act *or to engage in any activity prohibited by this Act.*

(b) Any person who shall be injured by another person who violates this section may institute suit in any district court in Travis County or in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and to recover damages sustained, plus costs of court and reasonable attorney's fees.

(e) *A person commits an offense if that person dispenses contact lenses by mail or otherwise to a patient in this state without having a valid prescription signed by an optometrist, therapeutic optometrist, or physician. An offense under this subsection is a misdemeanor punishable by a fine in the amount of \$1,000 for each lens so dispensed. This fine is in addition to any other penalty imposed under this Act.*

SECTION 29. Section 5.19, Texas Optometry Act (Article 4552-5.19, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 5.19. PENALTY. A person who violates any provision of this Act is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 [\$50] nor more than \$1,000 [\$500] or by confinement in the county jail for not less than two months nor more than six months, or both. A separate offense is committed each day a violation of this Act occurs or continues.

SECTION 30. Article 5, Texas Optometry Act (Article 4552-5.01 et seq., Vernon's Texas Civil Statutes), is amended by adding Section 5.21 to read as follows:

Sec. 5.21. **OWNERSHIP OF RECORDS.** (a) All prescription files, patient records, and business records of an optometric practice are the sole property of the optometrist or therapeutic optometrist.

(b) A patient may obtain a copy of the patient's optometric records, or may have them forwarded to another doctor, by making a signed, written request to the optometrist or therapeutic optometrist for the records.

(c) The optometrist or therapeutic optometrist may charge a reasonable processing fee for providing optometric records to a patient.

(d) The optometric records may be provided in summary form unless the patient specifically requests otherwise.

SECTION 31. The Texas Optometry Act (Article 4552-1.01 et seq., Vernon's Texas Civil Statutes) is amended by amending Article 6 and adding Article 7 to read as follows:

ARTICLE 6. **DISCRIMINATION PROHIBITED** [~~MISCELLANEOUS PROVISIONS~~]

Sec. 6.01. **GOVERNMENTAL DISCRIMINATION PROHIBITED.** (a) A program supported, in whole or in part, by this state, or a program supported or provided by a state agency, or a county, municipality, or other political subdivision, may not discriminate against a health-care practitioner because the practitioner is an optometrist or therapeutic optometrist or physician specializing in ophthalmology.

(b) A law of this state or a rule, ordinance, or policy of an agency or political subdivision of this state that requires or encourages a person to obtain vision care or medical eye care that is within the scope of practice of an optometrist or therapeutic optometrist may not discriminate against a health-care practitioner because the practitioner is an optometrist or therapeutic optometrist or physician specializing in ophthalmology.

ARTICLE 7. **MISCELLANEOUS PROVISIONS**

Sec. 7.01. **REFERENCE TO BOARD OF EXAMINERS** [~~ABOLISHED~~]. [~~The Texas State Board of Examiners in Optometry is abolished. All property, equipment, records, files, and papers in the possession of that board are transferred to the Texas Optometry Board created by this Act.~~] All references in the statutes to the Texas State Board of Examiners in Optometry shall be construed to mean the Texas Optometry Board.

Sec. 7.02 [6.02]. **SEVERABILITY.** If any provision, section or clause of this Act or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications thereof which can be given effect without the invalid provision, section or clause, and to this end the provisions of this Act are declared to be severable.

[~~Sec. 6.03. REPEALER. Chapter 10, Title 71, Revised Civil Statutes of Texas, 1925, as amended, and Chapter 5, Title 12, Penal Code of Texas, 1925, as amended, and all other laws and parts of laws in conflict with this Act are hereby repealed.~~

[~~Sec. 6.04. EFFECTIVE DATE. This Act takes effect September 1, 1969.~~

[~~Sec. 6.05. EMERGENCY. The fact that the practice of optometry has become one of the important health professions and it is in the interest of the people of Texas that the practice of optometry and that optometrists, in keeping with the traditions of the other health professions, be properly regulated, and the further fact that existing laws have proved ineffective in securing the underlying purposes and objectives of this Act, create an emergency of the greatest importance to the visual health and welfare of the people of Texas and an imperative public necessity requiring that the Constitutional Rule that bills be read on three several days in each House be suspended, and such Rule is hereby suspended; and this Act shall take effect and be in force from and after its passage, and it is so enacted.~~]

SECTION 32. Subchapter E, Chapter 21, Insurance Code, is amended by adding Article 21.52D to read as follows:

Art. 21.52D. **USE OF OPTOMETRISTS AND OPHTHALMOLOGISTS BY MANAGED CARE PLAN.** (a) In this article:

(1) "Managed care plan" means a health maintenance organization, a preferred provider organization, or another organization that provides or arranges for health care benefits to participants and that requires or encourages participants to use health care practitioners designated by the plan.

(2) "Ophthalmologist" means a physician who is licensed by the Texas State Board of Medical Examiners and who specializes in ophthalmology.

(b) A managed care plan that provides or arranges for benefits for vision or medical eye care services or procedures that are within the scope of the license of an optometrist or therapeutic optometrist may not:

(1) discriminate against a health care practitioner because the practitioner is an optometrist, therapeutic optometrist, or ophthalmologist;

(2) fail to include optometrists, therapeutic optometrists, and ophthalmologists as participating practitioners in the plan;

(3) restrict or discourage a participant from obtaining covered vision or medical eye care services or procedures from a participating optometrist, therapeutic optometrist, or ophthalmologist because the practitioner is an optometrist, therapeutic optometrist, or ophthalmologist;

(4) fail to include the name of a participating optometrist, therapeutic optometrist, or ophthalmologist on a list of participating practitioners or fail to give equal prominence to the name;

(5) fail to include an optometrist, therapeutic optometrist, or ophthalmologist as a participating practitioner in the plan because the optometrist, therapeutic optometrist, or ophthalmologist does not have medical staff privileges at a hospital or at a particular hospital; or

(6) fail to include an optometrist, therapeutic optometrist, or ophthalmologist as a participating practitioner in the plan because the services or procedures provided by the optometrist, therapeutic optometrist, or ophthalmologist may be provided by another type of practitioner.

(c) This article does not require a managed care plan to provide vision or medical eye care services or procedures.

SECTION 33. The changes in law made by this Act to the requirements for membership on the Texas Optometry Board apply only to an appointment made on or after the effective date of this Act and do not affect the entitlement of a member serving on the board on the effective date of this Act to continue to hold office for the remainder of the term for which the person was appointed.

SECTION 34. On and after January 1, 1994, the State Office of Administrative Hearings shall assume responsibility for hearings held with respect to each contested case arising under the Texas Optometry Act (Article 4552-1.01 et seq., Vernon's Texas Civil Statutes). The Texas Optometry Board and the chief administrative law judge of the State Office of Administrative Hearings may agree to transfer contested cases pending before the board to the State Office of Administrative Hearings before January 1, 1994.

SECTION 35. Not later than January 1, 1994, each person licensed under the Texas Optometry Act (Article 4552-1.01 et seq., Vernon's Texas Civil Statutes) shall file with the Texas Optometry Board the information required under Section 5.02, Texas Optometry Act (Article 4552-5.02, Vernon's Texas Civil Statutes), as amended by this Act.

SECTION 36. The Texas Optometry Board shall adopt rules required by this Act not later than December 31, 1993.

SECTION 37. Article 21.52D, Insurance Code, as added by this Act, applies only to a managed care plan that is delivered, issued for delivery, or renewed on or after January 1, 1994. A managed care plan that is delivered, issued for delivery, or renewed before January 1, 1994, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 38. This Act takes effect September 1, 1993.

SECTION 39. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 11, 1993, by a non-record vote; the House refused to concur in Senate amendments to H.B. No. 1479 on May 26, 1993, and requested the appointment of a conference committee to consider the differences between the two houses; the House adopted the conference committee report on H.B. No. 1479 on May 30, 1993, by a non-record vote; passed by the Senate, with amendments, on May 23, 1993, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; the Senate adopted the conference committee report on H.B. No. 1479 on May 29, 1993, by a viva-voce vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.