

# **SUNSET COMMISSION DECISIONS**



**TEXAS OPTOMETRY BOARD**

**September 2004**

## **AGENCY INFORMATION**

## Agency at a Glance

---

The Texas Optometry Boards' mission is to protect the public's health, safety, and economic welfare by ensuring that optometry professionals are qualified and competent, and adhere to established professional standards. The State began regulating optometrists in 1921 when the Legislature created the Texas State Board of Examiners in Optometry, later renamed the Texas Optometry Board in 1969, to protect patients by setting and enforcing standards for the profession. In addition, the Board enforces key provisions of the state's Contact Lens Prescription Act. To accomplish its mission, the Board:

- licenses optometrists, therapeutic optometrists, glaucoma specialists, and approves continuing professional education programs;
- regulates separations between optometry practices and retail optical dispensing; and
- investigates and resolves complaints, taking disciplinary action when necessary to enforce the Board's statute and rules.

### Key Facts

- **Funding.** In fiscal year 2003, the agency operated on a \$342,127 budget and collected about \$1.1 million in revenue from professional and licensing fees and fines. The Board also passed through \$82,277 in licensing fee revenues to support the University of Houston's College of Optometry.
- **Staffing.** The agency employs seven people, all of whom work in Austin.
- **Licensing.** In fiscal year 2003, the Board licensed 3,207 individuals to practice optometry. Of these individuals, 1,096 are also dually licensed as therapeutic optometrists and optometric glaucoma specialists.
- **Inspections.** Board staff inspect optometry practices to check patient exam records, ensure availability of complaint information, and to check separation of patient services from optical dispensing. In fiscal year 2003, the Board conducted 60 of these inspections.
- **Enforcement.** The Board received 196 complaints in fiscal year 2003, and resolved 164, with 167 initiated by consumers. Of the complaints submitted by the public, the most common are for failure to provide a contact lens prescription, incorrect prescription, or failure to diagnose a disease.



## **ISSUES / RECOMMENDATIONS**

# **Issue 1 The Texas Optometry Board Lacks Adequate Authority to Address Concerns About Contact Lens Prescriptions, as Currently Required by Federal Law.**

## **Recommendation**

### Change in Statute

#### **1.1 Conform the state's Contact Lens Prescription Act with federal regulations governing the release and verification of contact lens prescriptions.**

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

- eliminating requirements for an optometrist to release only one original prescription to the patient, and requirements for a patient to request their prescription;
- eliminating requirements for a contact lens dispenser to fill a prescription only upon receipt of a original prescription;
- authorizing verification of a contact lens prescription between a dispenser and a prescriber;
- requiring the development of rules to provide time frames for a prescriber to verify a prescription on request of a dispenser, and for a dispenser to maintain certain information when making such a request; and
- eliminating requirements for the number of contact lenses to be written on a prescription, and instead authorizing the Board to adopt rules specifying the contents of a contact lens prescription written by an optometrist, including the number of contact lenses.

These recommendations would authorize the Texas Optometry Board to enforce provisions regarding release and verification of a prescription by licensed optometrists, and provide the Board flexibility to modify the contents of a prescription by rule. The Texas Department of Health would enforce provisions regarding verification requests from permitted contact lens dispensers. The Optometry Board would retain its authority to enforce regulations requiring that only valid contact lens prescriptions be filled. Because these recommendations affect ophthalmologists who prescribe lenses, and pharmacists who sell lenses, the Texas State Board of Medical Examiners and the Texas State Board of Pharmacy would be responsible for ensuring that their licensees comply with requirements of the Contact Lens Prescription Act, under their current regulatory authority prescribed by the Act.

Under these recommendations, a patient would no longer have to request their prescription in order to receive it. Eliminating references in the statute to “original” as it pertains to prescriptions, and eliminating references to release of a single prescription would allow sellers to fill prescriptions received through electronic means or direct communication. Authorizing verification of a prescription between dispensers and prescribers would also include providing a prescription to a person designated by the patient to act on that patient’s behalf, such as a dispenser. A prescriber would retain the ability to refuse to verify an invalid or expired prescription.

Removing the number of lenses to be dispensed from the prescription and authorizing the Board to adopt rules specifying the contents of a prescription would give the Board flexibility to modify prescription requirements as needed, to reflect changes in federal law or FTC regulations. Specifically, the Board could choose to retain, by rule, the requirement that a prescription for contact lenses include

the number of lenses prescribed, if it does not conflict with federal requirements and is necessary to protect public health. Additionally, these recommendations would not change the length of time a prescription can be valid, and patients could still request a two-month extension of their prescription as currently allowed under state law.

Because the Board and TDH share regulatory authority over contact lens dispensers, they should work together to adopt consistent rules, and an inter-agency agreement as necessary, to implement these recommendations, and to clarify their respective roles in enforcing state regulations. The Board and TDH should develop these rules with input from the Medical and Pharmacy Boards. These rules could specify the type of information dispensers would provide to prescribers when requesting verification of a prescription, the type of information to be included on a prescription such as contact information for the prescriber, and time frames for the verification process. FTC rules for the federal Act could serve as a model for state rules.

### **Fiscal Implication**

This recommendation would not have a fiscal impact to the State.

## **Responses**

---

### **Agency**

Recommendation 1.1: As stated in the Commission's report, the Board does not have clear authority to enforce the new federal contact lens prescription law. Amending state law would allow the Board to continue to enforce both the Optometry Act and the Contact Lens Prescription Act. Since federal law is new and not yet subject to interpretation (the Federal Trade Commission's proposed rules essentially only reiterate the language of the statute), any conforming amendments to state law should be carefully crafted to allow the Board to respond to changes in federal rules. Additionally, amendments should not remove provisions of the state Contact Lens Prescription Act that are not in conflict with the new federal law. For example, any legislation removing the number of lenses requirements from the state Contact Lens Prescription Act, must clearly state that the intent of the legislation is to retain such a requirement through rules adopted by the Board (if not in conflict with federal law.)

(Chris Kloeris, Executive Director – Texas Optometry Board)

Staff Comment: The recommendation to eliminate the number of contact lenses to be written on a prescription specifically includes adding the authorization for the Board to adopt rules regarding the contents of contact lens prescriptions, including the number of lenses.

Recommendation 1.1: There is very little difference between the Contact Lens Prescription Act and the new federal law. The only consumer issue relates to the state law requiring release by patient request and the federal law requiring release without request. This is the only provision of the federal law the Texas Optometry Board lacks the authority to address. I still agree that the state law should mirror the federal law.

(Joe W. DeLoach, O.D., F.A.A.O. Chair – Texas Optometry Board)

## Affected Agency Responses

The Texas State Board of Pharmacy notes that it would be responsible for ensuring that its licensees comply with the requirements of the Contact Lens Prescription Act. Responsibility for enforcing this section would not present a burden to the agency, and, in fact, the federal requirements are very similar to those in place for prescriptions for medications handled by pharmacists and pharmacies.

(Gay Dodson, R.Ph Executive Director – Texas State Board of Pharmacy)

The Texas Department of Health indicated that the recommendation to conform State law with the federal law governing the release and verification of contact lens prescriptions is appropriate. The Board of Health proposed a rule amendment on April 15, 2004, which requires contact lens dispenser permit holders to comply with the requirements of the new federal law. The proposal was published for a 30-day comment period in the April 30, 2004 Texas Register.

(Eduardo J. Sanchez, M.D., M.P.H., Commissioner of Health – Texas Department of Health)

## Public Response

### For

None received.

### Against

None received.

**Recommended Action:** Adopt Recommendation I.1.

**Commission Decision:** The Commission adopted Recommendation I.1 with the following modifications, providing additional language to conform Texas laws with the new federal law.

- A contact lens seller shall be prohibited from altering a prescription.
- If the prescription specifies a private label contact lens, it must contain the name of the manufacturer, trade name of the private label brand, and trade name of any equivalent brand. If a private label lens is specified on a prescription, the seller may substitute only an identical contact lens that the same company manufactures and sells under different labels.
- Verification of a contact lens prescription by a seller shall occur within eight business hours by the prescriber, or a similar time frame as provided by agency rules.



## **Issue 2 Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.**

### **Recommendations**

#### **Licensing**

##### Change in Statute

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

This recommendation would require the Board to use the standard renewal fee as the basis for its late renewal penalties, rather than the cost of its jurisprudence exam. For example, the Board would charge a person whose license has been expired for 90 days or less the standard renewal fee plus a penalty equal to one and a half times the renewal fee. For those whose licenses have been expired for more than 90 days, but less than one year, the Board would charge the standard renewal fee plus a penalty of twice the renewal fee. In calculating the late penalty, the Board would not include the \$200 professional fee assessed on optometrists.

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

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

##### Management Action

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

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

#### **Enforcement**

##### Change in Statute

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

This recommendation would authorize the Board to inspect the premises of a licensee on an unannounced basis during reasonable business hours, as part of the Board's compliance audits and complaint investigations. The Board would be able to inspect facilities and review patient records as necessary.

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

This recommendation would require the Board to open formal complaints for any violation of its statutes or rules found during an onsite inspection of an optometrist's patient records and office. The Board would then process and track each inspection complaint in the same manner that it processes all other complaints received from the public, licensees, and the Board. Finally, the Board would include the inspection complaint data in the performance measures concerning the Board's enforcement process.

Integrating the agency's inspection complaints into the same process as all other complaints would provide a more accurate portrayal of the Board's overall enforcement performance.

**2.6 Require the Board to investigate complaints according to risk.**

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

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

This recommendation would expand the authority of the Board's staff to dismiss cases or to recommend enforcement action on cases that do not require professional expertise or are not directly related to patient care. Staff would be able to dismiss cases, for example, if the investigation shows that no violation occurred, or if the complaint does not fall under the Board's jurisdiction. Additionally, staff would be able to recommend enforcement action, including administrative fines, which the licensee may accept or reject, and have the matter considered by an informal settlement conference. All proposed orders must still receive final approval by the full Board. Staff would regularly report administratively dismissed complaints to Board members at the Board's public meetings.

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

This recommendation would require the Board to provide for at least two optometrist members of the Board to review all complaints requiring optometric expertise, and to decide whether to dismiss a case or refer it to an informal settlement conference. If the two members differ on how to proceed, the complaint would automatically be referred to a settlement conference. Board members who review a complaint would also conduct any subsequent settlement conference, and recuse themselves from voting on disciplinary action concerning that case at a full Board meeting.

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

This recommendation would ensure that the Board includes at least one public member in its informal settlement conferences. These conferences help the Board determine whether a violation occurred and what action to take, and therefore should always include public membership to ensure consumer interests are properly represented in the enforcement process.

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

This recommendation would ensure that the Board develops administrative penalty amounts that relate appropriately to different violations of the Texas Optometry Act, the state's Contact Lens Prescription Act, and Board rules. In developing this matrix, the Board should take into account the licensee's compliance history, seriousness of the violation, or the threat to the public's health and safety. The agency may develop these amounts in procedures and not in formal rules; however, the procedures should be adopted by the Board and published in the Texas Register, after giving the public the opportunity to comment.

**2.11 Authorize the Board to require restitution as part of the settlement process.**

Under this recommendation, the Board would be allowed to include restitution as a part of an agreed order reached in an informal settlement conference on a complaint. Restitution authority would be limited to ordering a refund not to exceed the amount the complainant paid for their eye exam, eyeglasses, or contacts lenses. Any restitution order would not include an estimation of other damages or harm. The refund may be in lieu of or in addition to other sanctions against a licensee.

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

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

**2.13 Authorize the Board to temporarily suspend a license.**

Under this recommendation, the Board would be authorized to temporarily suspend an optometrist's license upon determination by a committee of the Board that continued practice by the optometrist threatens the public welfare. A panel of three Board members would be required to temporarily suspend an optometry license. In addition, the disciplinary panel would be authorized to hold a meeting by telephone conference call under the provisions in the Open Meetings Act if threat to public health and safety is imminent, and convening of the panel at one location is impossible for the timely action required. The Board would also need to ensure due process to the license holder through subsequent proceedings to resolve issues that are the basis of the temporary suspension.

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

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

Management Action

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

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

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

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

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

The Board should share its disciplinary actions resulting from prescription drug violations with the Controlled Substance Registration Program at the Texas Department of Public Safety, and the federal Drug Enforcement Administration. Information should be shared for *any* Board actions for violations

involving either controlled substances or dangerous drugs. The Board should also coordinate its complaints investigations with these law enforcement agencies to take advantage of the assistance they can provide.

### **Fiscal Implication**

These recommendations would not have a significant fiscal impact to the State. The recommendations are procedural improvements that should require only minor costs to update the agency's licensing database. The recommendation to change the basis of the Board's late renewal penalty would result in a revenue gain to the State of about \$12,700 annually.

## **Responses**

---

---

### **Agency**

Recommendation 2.2: The Board does not offer an oral exam. However the required clinical exam administered by a national testing service contains an oral component (applicants actually examine patients in the presence of exam graders). Any limitations on an "oral exam" would need to be narrowly drawn so as to not inhibit a through clinical examination.

(Chris Kloeris, Executive Director – Texas Optometry Board)

Staff Comment: The recommendation to eliminate oral exams would not restrict the ability of testing services to administer practical exams which require students to examine patients.

Recommendation 2.3: The Board supports jurisprudence examinations that are convenient to take and efficient to administer (all applicants also take and pass nationally administered examinations of optometry competency). Except for the exam the Board offers at the University of Houston at graduation, only a small amount of staff time is devoted to actually giving the examination. The Board will continue to evaluate the costs and benefits of having an outside entity administer the jurisprudence examination versus the costs and benefits of administering the exam in-house.

(Chris Kloeris, Executive Director – Texas Optometry Board)

Administering the jurisprudence exam in testing centers would require additional expenses which the Board does not have the resources to cover.

(Joe W. DeLoach, O.D., F.A.A.O. Chair – Texas Optometry Board)

Staff Comment: The recommendation to contract with an external entity to administer the jurisprudence exams allows the Board to determine if outsourcing would be cost effective for the Board.

Recommendation 2.4: The Board supports specific statutory language regarding compliance inspections, a very important component of the Board's enforcement of the Optometry Act. The statutory language should be broad enough to permit adequate and thorough inspections. The language should also give the Board flexibility on the inspection process so that the Board may quickly respond to new or changing public health needs. The Board would comment that inspections currently being conducted are authorized by the Texas Optometry Act.

(Chris Kloeris, Executive Director – Texas Optometry Board)

Recommendation 2.5: The reviewers recommend that inspections should be processed and treated in the same manner as a complaint. Random inspections are not generated by any complaint, consumer or otherwise. To label them as a complaint puts an unjust designation in a doctor's permanent file. Any investigation that uncovers an issue where a doctor is not compliant with the law initiates a formal investigation that is treated as a complaint.

(Joe W. DeLoach, O.D., F.A.A.O. Chair – Texas Optometry Board)

Recommendation 2.8: Complaint review by one licensee should remain the standard method of review for complaints. In order to protect the public health and satisfactorily serve customers of the Board, the Board strives to resolve complaints quickly and competently. The positions of investigator and executive director are staffed so as to assist Board Members with the resolution of complaints, as well as to review each complaint to insure that each investigation and enforcement is consistent from Board Member to Board Member, or the Board Member may seek advice from other members and experts on their own initiative. To require the involvement of another Board Member would make the speedy resolutions of complaints more difficult. Such a requirement will also immediately double the work load on each licensed Board Member.

(Chris Kloeris, Executive Director – Texas Optometry Board)

Recommendation 2.9: The current system adequately utilizes public member input without unreasonably restricting the operations of the Board. Currently the Board attempts to have a public member at all informal conferences, and does not assess an administrative penalty at the conference unless a public member is present. Except on very rare occasions, a public member has been able to attend conferences. However, a situation has arisen such that the scheduled public member was not available, and the Board was still able to hold the conference rather than rescheduling it three months later. During periods of vacancy on the Board, it may be quite difficult to schedule a public member for every informal conference. Any continuance unduly burdens both the complainant and the licensee.

(Chris Kloeris, Executive Director – Texas Optometry Board)

Recommendation 2.10: The Board is not opposed to adopting administrative penalty guidelines for serious and complex violations not covered by current rules, but the guidelines must be broad to encompass the uniqueness and almost infinite combination of fact, disciplinary history and consequences of the violation of the act.

(Chris Kloeris, Executive Director – Texas Optometry Board)

Recommendation 2.11: Adding a restitution component to the disciplinary process will take resources and focus away from the Board's public health protection function and require additional avenues of investigation and additional witnesses not necessary to the determination of whether a licensee should be disciplined. At first glance, restitution might appear to be a minor part of the disciplinary process, but the whole focus of a discipline case could easily shift to the small claims dispute. For the individual complainant, restitution may be the most important issue, and the complainant may press the Board for this resolution. However, since stronger disciplinary action may be more important to protect the public health, the Board, having to consider restitution issues would now be caught in the conflict. The Board currently offers an arena for the complainant and licensee to come to an agreement on disputed financial issues.

(Chris Kloeris, Executive Director – Texas Optometry Board)

Involving the Board in fee disputes between consumers and doctors would require resources outside the jurisdiction and investigation ability of the Board, and these fee disputes are rarely issues of competency in patient care. Consumers have other means to settle such disputes, and ultimately have the choice of not obtaining services from that provider again.

(Joe W. DeLoach, O.D., F.A.A.O. Chair – Texas Optometry Board)

Staff Comment: The Board currently routinely investigates complaints for non-jurisdictional issues such as patient dissatisfaction with eye glasses in order to provide a forum for voluntary resolution of the complaint through refunds or other conciliatory gestures. The recommendation to authorize restitution as part of the settlement process provides the Board flexibility to incorporate refunds as part of agreed orders to resolve complaints under the Board's jurisdiction.

Recommendation 2.12: The Board should retain the discretion afforded by statute when crafting disciplinary orders. Requiring a licensee to gain additional practice authority as a part of probation was never intended to reward a disciplined licensee, but was short hand for a requirement to complete a comprehensive education program (90 hour course provided by a college of optometry), including comprehensive testing of course completion by both the educational institution and a national testing service. Rather than list and define each step of the required education, the orders simplified the description: the statutory requirements necessary for obtaining a therapeutic license. This was not a reward to the licensee, but simply a legal recognition of the completion of the statutory requirements that the licensee may never have intended to complete. With the training and knowledge acquired under the terms of probation, and the qualification for the therapeutic license, the licensee could now be held to a higher standard of care than before the disciplinary order was issued.

(Chris Kloeris, Executive Director – Texas Optometry Board)

Recommendation 2.13: The Board supports this recommendation. Only a few health licensing boards do not have this authority, and the public health will be greatly served by extending this authority to the Optometry Board.

(Chris Kloeris, Executive Director – Texas Optometry Board)

Recommendation 2.16: This recommendation appears to reflect not on the attitude of the Board but on the style of the informal conferences used by the Board. The Board has for quite some time intended to maximize Board resources by entering into Agreed Orders in disciplinary matters. A large majority of disciplinary orders are resolved in this matter.

(Chris Kloeris, Executive Director – Texas Optometry Board)

Recommendation 2.17: The Board supports this recommendation. The Board did not report information to the Department of Public Safety regarding the inappropriate prescribing of a controlled substance in one disciplinary action. That licensee was disciplined for inappropriately writing one prescription for a controlled substance.

(Chris Kloeris, Executive Director – Texas Optometry Board)

**Public Response**

**For**

None received.

**Against**

None received.

**Recommended Action:** Adopt Recommendations 2.1 through 2.17.

**Commission Decision:** Adopted Recommendations 2.1 through 2.17.



### **Issue 3     Decide on Continuation of the Texas Optometry Board After Completion of Sunset Reviews of Other Health Licensing Agencies.**

#### **Recommendation**

#### **Licensing**

#### Change in Statute

#### **3.1 Decide on continuation of the Texas Optometry Board as a separate agency upon completion of upcoming Sunset reviews of other health licensing agencies.**

This recommendation would postpone the Sunset Commission’s decision on the status of the Board as a separate agency until completion of the Sunset reviews of other health licensing agencies being reviewed this biennium.

#### **Fiscal Implication**

This recommendation would not have a fiscal impact to the State.

### **Responses**

---

---

#### **Agency**

Recommendation 3.1: The consolidation of the Optometry Board in some manner with other health licensing Boards was an issue in the two previous Sunset Reviews of the Board. The Legislature in each instance chose not to consolidate the Board, the Board remained independent, served the public well in the interim, and through efficient operation generated a substantial amount of revenue for the General Fund. The Board respectfully requests the opportunity to discuss this issue further with staff prior to the issuance of a report, and requests the opportunity to respond when the recommendation is made after the completion of the review of health licensing agencies.

(Chris Kloeris, Executive Director – Texas Optometry Board)

Supportive of consolidation of business efforts, however decisions relating to patient care should remain with the respective health care professionals providing that care.

(Joe W. DeLoach, O.D., F.A.A.O. Chair – Texas Optometry Board)

#### **For**

None received.

#### **Against**

None received.

#### **Modifications - Abolishment of Board**

1. Abolish the Texas Optometry Board, transfer the licensing function to a professional licensing board, and require consumer complaints to be sent to the Consumer Affairs office of the Attorney General’s Office.

(Peggy M. Venable, Texas Director - Americans for Prosperity Foundation, Austin.)

## **Modifications - Consolidation**

2. Do not consolidate licensing and regulatory functions of the Board with a licensing agency regulating the medical profession, which competes with optometrists. If any such consolidation is considered, the medical profession should not be making policy decisions affecting optometrists.

(Dr. Laurie Sorrenson, Legislative Chairperson - Texas Optometry Association, Austin.)

**Recommended Action:** None. The Sunset Commission has already decided to postpone action on the continuation of the health licensing agencies until all such agencies have been reviewed.

**Commission Decision:** The Sunset Commission has already decided to postpone action on the continuation of the health licensing agencies until all such agencies have been reviewed.

## **ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Texas Optometry Board</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Apply	4. Provide that the Governor designate the presiding officer of the policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require training for members of the policymaking body.
Update	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Apply	10. Require the agency to use technology to increase public access.
Apply	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

### **Agency Response**

ATB 10: The Board has embraced technology to increase public access without a statutory directive. Incentives already encourage the use of technology, including the incentive posed when optometry boards in other states use advanced technology. Statutory directives are almost always accompanied with by additional reporting requirements which consume resources that could be used to strengthen public access. (Chris Kloeris, Executive Director – Texas Optometry Board)

Staff Comment: The recommendation does not require additional reporting by the Board.

ATB 11: The Board is not opposed to using alternative dispute resolution processes where appropriate and beneficial. However, implementation of additional procedures and staff training would require the expenditure of significant additional funds. Broad and vague statutory requirements for the use of ADR raise questions as to the areas affected. Without specificity, valuable resources may be consumed attempting to resolve the scope of the process. (Chris Kloeris, Executive Director – Texas Optometry Board)

Staff Comment: The recommendation does not require the use of specific alternative dispute resolution processes by the Board. Providing training to a staff member on ADR polices would not result in a significant fiscal impact to the Board.

**Recommended Action:** Adopt staff recommendations.

**Commission Decision:** Adopted staff recommendations.

**NEW ISSUES**

## New Issues

---

4. Continue the Optometric Health Care Advisory Committee. (Sam Stone – Texas Ophthalmological Association, Austin)

Staff Comment: The Optometric Health Care Advisory Committee is composed of two therapeutic optometrists, two ophthalmologists, and two pharmacologists. The Committee will automatically be abolished on September 1, 2005, unless continued by an act of the Legislature.

5. Require the Board to maintain a registry of optometrists who co-manage glaucoma patients with ophthalmologists. (Sam Stone – Texas Ophthalmological Association, Austin)
6. Require complaints regarding registered opticians that are received by the Texas Optometry Board to be forwarded to the Optician's Registry Program at the Texas Department of Health. (Sam Johnson, President – Registered Opticians Association of Texas, Austin and C. Bruce Richardson – Executive Director, Registered Opticians Association of Texas, Houston)
7. Do not provide the Texas Optometry Board with increased authority. (Sam Johnson, President - Registered Opticians Association of Texas, Austin and C. Sam Tiupa, Vice President – Registered Opticians Association of Texas, Houston)

**Recommended Action:** Staff makes no recommendations on any of these new issues.

**Commission Decision:** The Commission did not adopt any of the new issues.

