

**SUBJECT:** Continuing the Texas Optometry Board

**COMMITTEE:** Public Health — committee substitute recommended

**VOTE:** 8 ayes — Delisi, Laubenberg, Coleman, Dawson, Jackson, McReynolds, Solis, Zedler

0 nays

1 absent — Truitt

**WITNESSES:** For — John Todd Cornett, Texas Optometric Association; (*Registered, but did not testify:* B.J. Avery, Laurie Sorrenson, Texas Optometric Association)

Against — None

On — Chris Kloeris, Texas Optometry Board; Christian Ninaud, Sunset Advisory Commission; (*Registered, but did not testify:* Yvonne Feinleib, Department of State Health Services, Professional Licensing and Certification Unit; Mark Latta, Texas Optometry Board)

**BACKGROUND:** The Texas Optometry Board, created in 1921, licenses optometry professionals, enforces the Optometry Act and provisions of the Contact Lens Prescription Act, and investigates and resolves complaints about optometry professionals. The board's nine members serve staggered six-year terms and are appointed by the governor. The board has a fiscal 2004-05 budget of \$759,100, with an approved staff of seven in fiscal 2005. The board recovers all costs from fees to the optometric industry.

The Optometric Health Care Advisory Committee makes recommendations to the board on issues pertaining to the optometric glaucoma specialty. This committee consists of six members who serve staggered two-year terms. The Optometry Board, Board of Pharmacy, and Board of Medical Examiners each appoint two of these members.

The board underwent sunset review in 1993 and was continued by the 73rd Legislature. If not continued by the 79th Legislature, the board will be abolished September 1, 2005.

DIGEST:

CSHB 1025 would continue the Texas Optometry Board until September 1, 2017. It would revise the complaint review process; enhance enforcement authority and investigation procedures; change procedures for the provision of contact lens prescriptions to consumers; and establish a process for contact lens sellers to verify a prescription with the prescribing physician, optometrist, or therapeutic optometrist.

The bill also would add standard sunset provisions governing conflicts of interest, designation of a presiding officer, grounds for removing a board member, information on complaints, training of board members, division of staff and board responsibility, testing procedures, time frames for renewing delinquent licenses, inspection procedures, and disciplinary procedures and penalties.

**Complaint review.** CSHB 1025 would require at least two optometrist members of the board to review all complaints that require professional expertise and determine whether to dismiss a complaint or refer it to an informal hearing. Complaints not requiring expertise or relating directly to patient care could be reviewed by the staff.

**Enforcement authority.** The board would be granted cease-and-desist authority to stop unlicensed activity and could assess administrative penalties against those who violate cease-and-desist orders. The board also would be allowed to conduct unannounced inspections of optometrist offices, including reviewing records to the extent permissible by federal law. The board would be allowed temporarily to suspend licenses if it determined the continued operations of an optometrist would threaten public health.

**Contact lens prescriptions.** CSHB 1025 would expand the authority of a person other than the prescribing physician, optometrist, or therapeutic optometrist to fill an unexpired prescription to include prescriptions verified by telephone, fax, or email. To verify a prescription, a contact lens dispenser would have to provide the prescribing physician with information, including the patient's name and address, order quantity, and specifications for the lenses. A prescription would be considered verified either if the prescriber confirmed the accuracy of the required information or did not respond within eight business hours of the request. If the information provided to the prescriber was inaccurate, that individual would be required to note why the prescription was inaccurate or invalid

and correct it. The verification process also would be used to fill emergency prescriptions.

A person dispensing contact lenses would not be able to fill a prescription that had been modified unless one of the following conditions were met: the prescribed lens was produced by the same manufacturer under various labels and an equivalent lens was dispensed under a different label name or the consumer requested that fewer lenses be dispensed than the prescription indicated. If lenses were dispensed under the second condition, this would be noted on the prescription or verification along with how many lenses remained unfilled in the prescription. The dispenser would maintain photocopies of such changes should the customer seek to fill the remainder of the prescription and would provide the customer a new prescription reflecting the lenses remaining.

An optometrist performing an exam that included fitting for contact lenses would be required to give a contact lens prescription to the patient and to verify the prescription to another seller of contact lenses when asked to do so. No fee could be charged for issuing or verifying a contact lens prescription, and issuing a prescription or verification could not be conditioned on the purchase of goods.

The Optometry Board and the Health and Human Services Commission (HHSC) would adopt rules for prescription verification by March 1, 2006, and the HHSC and Department of State Health Services would be required to have these procedures in place by the same date. CSHB 1025 would require these agencies make information available to the public and other state agencies regarding the release of contact lens prescriptions and the process for prescription verification.

Except as otherwise provided, this bill would take effect September 1, 2005.

SUPPORTERS  
SAY:

**Complaint review.** By requiring at least two optometrist board members to review complaints that require professional expertise, no one individual would have too much decision-making authority over a single complaint. Such a requirement is common practice among other health licensing boards, and this would enhance the fairness of the process. It also would provide extra perspective and expertise in deciding whether a standard of care was met or violated. In allowing the staff to handle complaints not

requiring expertise, the board members would not be overburdened by the number of complaints they had to review.

**Enforcement authority.** Granting the board cease-and-desist authority could stop quickly unlicensed and potentially harmful practices. The current issuance of a warning letter is ineffective, and an official cease-and-desist order would carry real enforcement value. The authority to conduct unannounced inspections of optometrists' offices would help the board adequately investigate complaints in which an inspection was necessary to gather the appropriate information to make a well informed decision in the public interest. The authority to suspend licenses would be a means for the board to take immediate action to prevent an individual engaging in dangerous behaviors from harming the public. Only a few health licensing agencies do not now have this authority, and granting it would promote consistency and fairness in the board's ability to regulate optometrists.

**Contact lens prescriptions.** By requiring optometrists to provide patients with their prescriptions without having to ask for them, CSHB 1025 would improve patients' access to their contact lens prescriptions and decrease the barriers for consumers to buy contact lenses from a variety of sellers. Such barriers would be reduced further with the verification process, including the eight-business-hour deadline for response. Because the board could set rules defining what eight business hours would mean, it could balance setting reasonable guidelines for the time that an optometrist would need to verify a prescription with the need to ensure that the process was speedy for the consumer. Consumers would not have to get signed copies of their prescriptions. They also would have more flexibility in shopping around to get the best deals on their contacts without sacrificing their eye health because their optometrists still would verify the validity and accuracy of their prescriptions. The changes in CSHB 1025, including the eight business hours deadline to verify a contact lens prescription, would conform Texas' Contact Lens Prescription Act with the Federal Fairness to Contact Lens Consumers Act.

**Board continuation.** The board provides valuable services to consumers and practitioners of optometry, using special expertise to ensure the health and safety of optometric procedures. Consumers also receive better customer service with the staff focus and expertise dedicated to a single profession. The board is efficient and has generated a substantial amount of general revenue for the state. The board's duties are appropriately

independent because optometrists face competition from other health care professions. It would create a conflict of interest to have another body make policy decisions if that body regulated other professions that could stand to gain from inhibiting the business practices of optometrists.

OPPONENTS  
SAY:

**Complaint review.** Requiring two board members to review complaints would unnecessarily hinder the speedy resolution of complaints. This also would double the work load of each board member. The positions of investigator and executive director within the staff are intended to help board members review each complaint to ensure consistency, so requiring duplication of board member duties is unnecessary.

**Enforcement authority.** Both unannounced inspections and temporary license suspensions could harm an optometrist's business. Some complaints may be filed with malicious intent, and the unnecessary presence of an investigator at an office during business hours could damage an optometrist's reputation. The same could happen to an optometrist whose license was suspended hastily without a thorough investigation. Such a person then would be unable to practice and support a business because of a potentially unmerited punishment.

**Contact lens prescriptions.** CSHB 1025 would perpetuate the mistaken belief that contact lenses are a consumer commodity that is harmless and should not be monitored carefully by eye doctors. The FDA considers contact lenses a medical device because of the potential health hazard they pose if poorly fitted or improperly used. Eight hours would not provide enough time to respond to requests for verification, considering that different practitioners keep various business hours or may be on vacation when requests for verification are received. If a physician did not respond to verification requests within eight hours, the lens dispenser would be free to fill a prescription assuming that it had been passively verified. This would risk an inaccurate or invalid prescription being filled. Patients should be able to shop around, but physicians also should be able to protect their patients' health.

**Board continuation.** Thirty-three states regulate optometry through health-related or general licensing umbrella agencies. The duties associated with regulating the board's relatively small number of licensees easily could be absorbed by another medical licensing board. In doing so, the state could realize greater administrative efficiencies and benefit from better coordination and consistency in regulating health licensing agencies.

NOTES:

The committee substitute differs from the original in that it:

- simplified language authorizing board staff to review complaints that do not require professional expertise;
- would limit a refund in an enforcement action to the amount the patient paid for the examination;
- would prohibit board members who participated in an informal settlement conference from voting on any later disciplinary action related to that complaint;
- would remove the requirement to return a verification of a contact lens prescription to the patient;
- clarified that the board is authorized to add to the information provided in a contact lens prescription,
- would require a prescribing optometrist or physician to verify a contact lens prescription by means of the verification procedures created in this bill, and
- corrected errors, including references to code and conflicting implementation dates.

The fiscal note estimates that the provisions of this bill would generate a positive impact of \$2,775 per year.

The companion bill, SB 404 by Shapleigh, has been referred to the Senate Government Organization Committee.