



Physicians Caring for Texans

Apr. 4, 2021

Kelly Parker  
Executive Director  
Texas Optometry Board  
333 Guadalupe, Suite 2-420  
Austin, Texas 78701

Via email to [Kelly.Parker@tob.texas.gov](mailto:Kelly.Parker@tob.texas.gov)

Re: Comments on Proposed Rule 22 TAC §273.16, 275.2, 279.16 (46 Tex. Reg. 1452, March 5, 2021)

Dear Ms. Parker:

On behalf of the Texas Medical Association (TMA), we submit these comments on the Texas Optometry Board's (TOB's) proposed rules in 22 Tex. Admin. Code § 273.16, 275.2, 279.16 as published in the March 5 Texas Register. TMA, on behalf of our over 55,000 members, has a few concerns relating to potential scope expansion inconsistent with Texas law. We thank you in advance for your consideration and prompt attention to our concerns.

### Comments

Our concerns are on the language in proposed 22 Tex. Admin. Code § 279.16 (f)(4), which states:

(4) A valid prescription shall be issued for a legitimate *medical* purpose, for any *pharmaceutical agent* or for ophthalmic goods or procedures *by an optometrist* or therapeutic optometrist as part of practitioner-patient relationship as set out in subsection (b) of this section. A valid prescription for a prescription for any pharmaceutical agent shall meet all applicable laws regarding the prescribing, dispensing, delivering or administering of a dangerous drug or controlled substance. A valid prescription for ophthalmic goods or procedures shall meet all applicable requirements of Texas Occupations Code, Chapter 351.

### **1. An optometrist cannot prescribe a pharmaceutical agent.**

The proposed draft language may be interpreted to allow an optometrist greater prescription authority than authorized by Texas law. The practice of optometry only includes:

- ...using objective or subjective means, with or without the use of topical ocular pharmaceutical agents, to:
- (A) determine or measure the powers of vision of the human eye as provided by Section 351.355;
- (B) examine or diagnose visual defects, abnormal conditions, or diseases of the human eye or adnexa; or
- (C) prescribe or fit lenses or prisms to correct or remedy a defect or abnormal condition of vision as provided by Section 351.356.<sup>1</sup>

An optometrist is expressly prohibited from prescribing a drug unless the optometrist is a therapeutic optometrist,<sup>2</sup> and even then, the prescribing authority of a therapeutic optometrist is limited.<sup>3</sup> It is important that the proposed rule accurately reflects Texas law. In section three below, we offer edits for accuracy.

### **2. Legitimate “medical” purpose should state legitimate “ophthalmic” purpose.**

We are concerned with the Board’s use of the term “medical” in subsection (f) because this is applicable to prescriptions provided by an optometrist or a therapeutic optometrist, not a physician. Chapter 351 clearly defines the purpose of these prescriptions as “ophthalmic.” For example, Section 351.359, which describes prescription lenses, states it is an “ophthalmic lens prescription.” Section 351.358(b), which describes the practice of therapeutic optometry, qualifies that a therapeutic optometrist may “...prescribe ophthalmic devices, procedures, and appropriate medications...” Similar “ophthalmic” terminology is used in Sections 351.353, 351.403, and 351.405, as well as other places throughout the Chapter. And of course this makes sense because optometrists and therapeutic optometrists are not engaged in the practice of medicine. Therefore, the rule language should reflect the underlying statute and not impermissibly characterize the prescriptions as medical when not issued by a physician.

### **3. We note just a few other clarifying items and propose the following amended language.**

We have just two final minor comments. For proper sentence structure and to prevent confusion, we recommend moving “for any pharmaceutical agent or for ophthalmic goods or procedures” after “A valid prescription.” It also appears the phrase “any pharmaceutical agent” was left out of the last sentence. This should of course also be issued in accordance with all requirements of the Texas Occupation Code.

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<sup>1</sup> Tex. Occ. Code § 351.002(6).

<sup>2</sup> Tex. Occ. Code § 351.358(a) (“An optometrist may not treat the eye for a defect or administer or prescribe a drug or physical treatment unless the optometrist is a therapeutic optometrist or licensed physician.”).

<sup>3</sup> See generally, e.g., Tex. Occ. Code § 351.358(c).

To address the issues noted above, we propose the following clarifying language amendments:

(4) A valid prescription for any pharmaceutical agent shall be issued for a legitimate ophthalmic [medical] purpose[, for any pharmaceutical agent or for ophthalmic goods or procedures,] by [an optometrist or] a therapeutic optometrist as part of practitioner-patient relationship as set out in subsection (b) of this section. A valid prescription for a prescription for any pharmaceutical agent shall meet all applicable laws regarding the prescribing, dispensing, delivering or administering of a dangerous drug or controlled substance. A valid prescription for any pharmaceutical agent [or ophthalmic goods or procedures] shall meet all applicable requirements of Texas Occupations Code, Chapter 351.

(5) A valid prescription for any ophthalmic goods or procedures shall be issued for a legitimate ophthalmic purpose by an optometrist or a therapeutic optometrist as part of practitioner-patient relationship as set out in subsection (b) of this section. A valid prescription for ophthalmic goods or procedures shall meet all applicable requirements of Texas Occupations Code, Chapter 351.

This ensures the rules will be interpreted accurately: 1) optometrists may not issue prescriptions for pharmaceutical agents, and 2) therapeutic optometrists may only issue prescriptions for pharmaceutical agents for legitimate ophthalmic purposes in accordance with Chapter 351 of the Texas Occupations Code.

### Conclusion

Thank you for your consideration of the above comments, concerns, and recommendations. Should you have any questions, please feel free to contact us by email as follows: Rocky Wilcox, vice president and general counsel, at [rocky.wilcox@texmed.org](mailto:rocky.wilcox@texmed.org); Kelly Walla, associate vice president and deputy general counsel, at [kelly.walla@texmed.org](mailto:kelly.walla@texmed.org); Laura Thetford, associate general counsel, at [laura.thetford@texmed.org](mailto:laura.thetford@texmed.org); or Dan Finch, vice president of advocacy, at [dan.finch@texmed.org](mailto:dan.finch@texmed.org); or by phone at 512-370-1300; or at our mailing address: 401 West 15<sup>th</sup> Street, Austin, Texas 78701.

Sincerely,



Diana L. Fite, MD  
President