

**Department of State Health Services
Agenda Item for State Health Services Council
January 30-31, 2008**

Agenda Item Title: Proposed Repeal and New Rules concerning the voluntary registration and regulation of opticians.

Agenda Number: 4i

Recommended Council Action:

For Discussion Only

For Discussion and Action by the Council

Background:

The Opticians' Registry is located in the Professional Licensing and Certification Unit, Health Care Quality Section, Division for Regulatory Services. The purpose of the Opticians' Registry, which is funded through registration fees deposited to the General Revenue fund, is to regulate voluntarily registered opticians in Texas. In FY06 there were 234 voluntarily registered opticians.

Summary:

The proposed repeal and new rules are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 TAC Chapter 140 Health Professions Regulation.

The new rules transfer and update existing language, and do not impose any new requirements or fees on applicants or licensees. The new rules also clarify that one registration certificate, not two, will be issued to a dual registrant, and eliminate language relating to the "carryover" of hours from one continuing education period to the next. The only persons affected by these rules are voluntarily registered opticians.

Summary of Input from Stakeholder Groups:

The program received a comment from the Registered Opticians Association of Texas requesting a change to the rules which would restrict the types of continuing education that voluntarily registered opticians complete to levels 2 and 3 only (more technical content).

Subsequently, the program surveyed all registered opticians regarding the proposed change. Fifty-one persons responded to the survey out of a total of 210 total registrants.

Based on the results of survey (21 in favor and 30 against, including 18 who stated that they would not or might not renew if the change was made), the program did not implement the requested change. We also received a letter from the American Board of Opticianry/National Contact Lens Examiners, the national organization which approves continuing education for opticians, in defense of the quality of their level 1 continuing education programs.

Proposed Motion: Motion to recommend HHSC approval for publication of rules contained in agenda item #4i.

Agenda Item Approved by Assistant Commissioner/Director: Kathryn C. Perkins **Date:** 12/21/07

Person Presenting: David Olvera **Program:** Optician **Phone No:** (512) 834-6628, x 6768

Final CAM Approved by Consumer Affairs: RMM **Date:** 12/21/07

Title 25. HEALTH SERVICES
Part 1. DEPARTMENT OF STATE HEALTH SERVICES
Chapter 129. Opticians' Registry.
Repeal §§129.1 - 129.2, 129.4 - 129.5, 129.7-129.13
Subchapter G. Opticians.
New §§140.275 - 140.285

Proposed Preamble

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposed the repeal of §§129.1 - 129.2, 129.4 - 129.5 and 129.7 - 129.13 and adoption of new §§140.275 - 140.285, concerning the voluntary registration and regulation of opticians.

BACKGROUND AND PURPOSE

The proposed repeal and new rules are necessary to consolidate existing Professional Licensing and Certification Unit program rules in 25 Texas Administrative Code (TAC), Chapter 140, Health Professions Regulation. The new rules transfer and update existing language, and do not impose any new requirements or fees on applicants or licensees. The new rules also clarify that one registration certificate, not two, will be issued to a dual registrant, and eliminate language permitting the "carryover" of hours from one continuing education period to the next.

SECTION-BY-SECTION SUMMARY

The repeal of §§ 129.1 - 129.2, 129.4 - 129.5 and 129.7 - 129.13 is necessary in order to combine the Professional Licensing and Certification Unit rules in one chapter, 25 TAC, Chapter 140, Health Professions Regulation.

New §140.275 sets forth purpose and scope of the rules. New §140.276 includes definitions for terms used within the rules. New §140.277 lists the fees required for application, registration, renewal, and issuance of a duplicate certificate. New §140.278 describes application procedures and qualifications for registration as an optician. New §140.279 covers procedures related to the issuance of a certificate of registration, including duplicate certificates, titles, and expiration date of an initial certificate. New §140.280 sets forth information concerning registration renewal and late renewal, including renewal procedures for a registration on active military duty. New §140.281 sets forth continuing education requirements. New §140.282 sets forth procedures for a change of name or address. New §140.283 sets out violations, procedures concerning complaints and investigations, and actions the department may take against a person when violations have occurred. §140.284 sets out the guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain registration. New §140.285 details professional and ethical standards, including standards related to advertising by a registrant.

FISCAL NOTE

Cindy Bourland, Manager, Professional Licensing and Certification Unit, has determined that for each year of the first five-year period that the sections are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Bourland has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This determination was made because the repeal and new rules do not impose any new requirements. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Bourland has also determined that for each year of the first five years the sections are in effect, the public will benefit from the adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections is to continue to ensure public health and safety through the voluntary registration and regulation of opticians.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment or the public health and safety of a state or a sector of the state. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The department has determined that the proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Yvonne Feinleib, Program Director, Opticians Registry, Professional Licensing and Certification Unit, Division for Regulatory Services, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756, (512) 834-4521 or by email to Yvonne.Feinleib@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed rules have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The proposed repeal and new rules are authorized by Occupations Code, Chapter 352, which authorizes the adoption of rules regarding the regulation of opticians; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Chapter 1001, Health and Safety Code.

The proposed amendments affect the Occupations Code, Chapter 352, and Health and Safety Code, Chapter 1001; Government Code, §2001.039, and Chapter 531.

Sections for Repeal

- §129.1. Purpose and Construction.
- §129.2. Definitions.
- §129.4. Fees.
- §129.5. Application Procedures and Requirements for Registration.
- §129.7. Issuance of Certificate of Registration.
- §129.8. Renewal of Registration.
- §129.9. Requirements for Continuing Education.
- §129.10. Change of Name or Address.
- §129.11. Violations, Complaints, Investigation of Complaints, and Disciplinary Actions.
- §129.12. Registration of Applicants with Criminal Backgrounds.
- §129.13. Professional and Ethical Standards.

Legend: (Proposed New Rules)
Regular Print = Proposed new language

§140.275. Purpose and Construction.

(a) Purpose. This subchapter implements the provisions of the Opticians' Registry Act, Texas Occupations Code, Chapter 352, concerning the voluntary registration and regulation of dispensing opticians by providing a means by which the public can identify registered providers of ophthalmic dispensing services and products that meet minimum standards of competence.

(b) Construction. These sections cover definitions; fees; application procedures and requirements; issuance of a certificate of registration; renewal of registration; requirements for continuing education; changes of name or address; procedures for violations, complaints, investigation of complaints, and disciplinary actions; registration of applicants with criminal backgrounds; and professional and ethical standards.

§140.276. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Act--The Opticians' Registry Act (Act), Texas Occupations Code, Chapter 352.
- (2) Applicant--A person who applies for registration under the Act.
- (3) Commissioner--The commissioner of the Department of State Health Services.
- (4) Consumer--An individual receiving services or obtaining a product from a registered dispensing optician.
- (5) Contact lens dispensing--The fabrication, ordering, mechanical adjustment, dispensing, sale, and delivery to the consumer of contact lenses prescribed by and dispensed in accordance with a prescription from a licensed physician or optometrist, together with appropriate instructions for the care and handling of the lenses. The term does not include the taking of any measurements of the eye or the cornea or evaluating the physical fit of the contact lenses, unless that action is directed or approved by a licensed physician.
- (6) Contact lens prescription--A written specification by a licensed physician or optometrist for therapeutic, corrective, or cosmetic contact lenses that states the refractive power of the product and other information as required by:
 - (A) the physician or the Texas Medical Board; or
 - (B) the optometrist or the Texas Optometry Board.
- (7) Department--The Department of State Health Services.

(8) Dispensing optician--A person who provides or offers to provide spectacle or contact lens dispensing services or products to the public.

(9) Dual application--An application by one person as both a registered spectacle dispensing optician and a registered contact lens dispenser.

(10) Examination--A qualifying test administered to eligible applicants by the department or its designee.

(11) Executive Commissioner--The Executive Commissioner of the Health and Human Services Commission.

(12) Registered contact lens dispenser--A person properly registered under the Act as a contact lens dispenser.

(13) Registered spectacle dispensing optician--A person properly registered under the Act as a spectacle dispensing optician.

(14) Registration certificate--A document issued by the department to a qualified person authorizing that person to represent that he or she is registered under the Act.

(15) Spectacle dispensing--The design, verification, fitting, adjustment, sale, and delivery to the consumer of fabricated and finished spectacle lenses, frames, or other ophthalmic devices, other than contact lenses, prescribed by and dispensed in accordance with a prescription from a licensed physician or optometrist. The term includes:

(A) prescription analysis and interpretation;

(B) the taking of measurements of the face, including interpupillary distances, to determine the size, shape, and specification of the spectacle lenses or frames best suited to the wearer's needs;

(C) the preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabricating spectacles;

(D) the verification of the quality of finished spectacle lenses;

(E) the adjustment of spectacle lenses or frames to the intended wearer's face; and

(F) the adjustment, repair, replacement, reproduction, or duplication of previously prepared spectacle lenses, frames, or other specially fabricated optical devices, other than contact lenses.

(16) Spectacle prescription--A written specification by a licensed physician or optometrist for therapeutic or corrective lenses that states the refractive power of the product and other information as required by the physician or optometrist.

§140.277. Fees.

(a) Schedule of fees. The fees are as follows:

(1) initial application and registration fee for a registration issued for two years--\$100;

(2) initial dual application and registration fee for a registration issued for two years--\$160;

(3) registration renewal fee;

(A) for a registration issued for two years--\$100;

(B) for a retired optician registration issued for two years--\$50;

(4) dual registration renewal fee;

(A) for a registration issued for two years--\$160;

(B) for a retired optician registration issued for two years--\$80;

(5) late registration fee--a fee that is one and one-half times the registration renewal fee if renewed within 90 days of expiration or a fee that is two times the registration renewal fee if renewed more than 90 days but less than one year after expiration;

(6) duplicate certificate fee--\$20; and

(7) examination fee--the then current fee assessed by the Department of State Health Services' (department's) designee for the examination.

(b) Payment of fees. If paid by mail, all fees shall be submitted in the form of a personal check, certified check for guaranteed funds or a money order made payable to the Department of State Health Services. If submitted in person, cash may be accepted by the department's cashier.

(c) Nonrefundable fees. All fees submitted to the department are nonrefundable.

(d) For all applications and renewal applications, the department is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.

(e) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to

recover costs associated with application and renewal application processing through Texas Online.

§140.278. Application Procedures and Requirements for Registration.

(a) Purpose. The purpose of this section is to set out the application procedures and requirements for registration.

(b) General.

(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official Department of State Health Services (department) forms.

(2) Applications may be submitted for registration as a registered contact lens dispenser, a registered spectacle dispensing optician, or both.

(3) The department will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.

(4) An application not completed within 30 days after the date of the department's notice of deficiency may be voided.

(c) Required application materials.

(1) The application form shall contain:

(A) specific information regarding personal data, social security number, birth month and day, place of employment, preferred mailing address and telephone number, other registrations and licenses held, misdemeanor and felony convictions, educational and training background, and work experience;

(B) a statement that the applicant has read the Opticians' Registry Act (Act) and this subchapter and agrees to abide by them;

(C) a statement that the applicant shall return to the department any registration certificate(s) or identification card(s) upon the expiration, revocation, or suspension of the registration;

(D) a statement that the applicant understands that fees submitted in the registration process are nonrefundable unless the processing time is exceeded without good cause as set out in subsection (f) of this section;

(E) a statement that the applicant understands that materials submitted in the registration process become the property of the department and are not returnable;

(F) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application, the failure to be granted any registration, or the revocation of any registration issued;

(G) the signature of the applicant which has been dated; and

(H) a statement that if issued a registration certificate, the registrant shall keep the department advised of his or her current mailing address.

(2) An applicant shall submit documentation satisfactory to the department that he or she has completed five classroom hours.

(A) The hours must have been completed within three years prior to the date of the application.

(B) The hours must be offered or approved by the American Board of Opticianry or the National Contact Lens Examiners.

(C) If applying for dual registration, the applicant must have completed 10 classroom hours offered or approved by the American Board of Opticianry or the National Contact Lens Examiners.

(D) Documentation may include a transcript, diploma, certificate, or other official or certified document.

(3) Proof of having passed the prescribed examination shall be attached to the application form.

(d) Examinations.

(1) The examination administered by the American Board of Opticianry, or its successor, is the examination for registered spectacle dispensing opticians.

(2) The examination administered by the National Contact Lens Examiners, or its successor, is the examination for registered contact lens dispensers.

(e) Determining eligibility. The department shall receive and approve or disapprove all applications for registration as registered spectacle dispensing opticians or registered contact lens dispensers or both.

(1) Notices of application approval, disapproval or deficiency shall be in accordance with subsection (f) of this section.

(2) An application for a registration shall be disapproved if the applicant has:

(A) not met the requirements in this section;

(B) failed to or refused to properly complete or submit any application form, endorsement, or fee or deliberately presented false information on any form or document required by the department;

(C) violated any provision of the Act or this subchapter;

(D) been convicted of a felony or misdemeanor as set out in §140.284 of this title (relating to Registration of Applicants with Criminal Backgrounds); or

(E) violated any provision of state law relating to the practice of dispensing opticians.

(3) If after review, the department determines that the application should not be approved, the department shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The notice shall be in accordance with §140.283 of this title (relating to Violations, Complaints, Investigation of Complaints, and Disciplinary Actions).

(f) Application processing.

(1) Time periods. The department shall comply with the following procedures in processing applications for registration and renewal.

(A) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:

(i) letter of acceptance of application for registration--20 working days;

(ii) letter of application or renewal deficiency--20 working days;
and

(iii) issuance of registration renewal--10 working days.

(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required examination has been successfully completed by the applicant. The time periods are as follows:

- (i) letter of approval for examination--20 working days;
- (ii) initial letter of approval for registration--30 days;
- (iii) letter of denial of registration--30 days; and
- (iv) issuance of registration renewal--10 working days.

(2) Reimbursement of fees.

(A) In the event an application is not processed in the time periods stated in this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the department. If the department does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(B) Good cause for exceeding the time period is considered to exist if the number of applications for registration and registration renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.

(3) Appeal. If a request for reimbursement is denied by the department, the applicant may appeal to the commissioner of the department for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The department shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner shall provide written notice of the commissioner's decision to the applicant. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

(4) Contested cases. The time periods for contested cases related to the denial of registration or registration renewals are not included within the time periods stated in this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a long period of time depending on the particular circumstances of the hearing.

§140.279. Issuance of Certificate of Registration.

(a) Issuance of certificate. The Department of State Health Services (department) shall issue a certificate of registration and a registration identification card containing a registration number and expiration date to each qualified applicant.

(b) Certificate and identification card. Any certificate of registration or identification card issued remains the property of the department and shall be surrendered on demand of the department.

(c) Display of certificate. The certificate shall be displayed in a prominent location in the primary office or place of employment of the registrant. A current identification card shall be carried by the registrant.

(d) Reproduced or altered certificates/cards. The certificate or identification card shall not be reproduced or altered in any manner.

(e) Duplicate replacement certificates. Duplicate replacement certificates will be issued by the department upon written request from a registrant and payment of the appropriate duplicate certificate fee. The request shall include a statement detailing the loss or destruction of the original certificate or identification card or be accompanied by the damaged certificate or card.

(f) Individual or dual registration. A certificate of registration shall be issued for a contact lens dispenser or a spectacle dispensing optician. In the event an individual is registered as a contact lens dispenser and a spectacle dispensing optician, he or she shall be issued one certificate which lists both titles.

(g) Titles.

(1) A registered spectacle dispensing optician may refer to himself or herself as a registered dispensing optician, a registered spectacle dispenser, or a registered spectacle dispensing optician.

(2) A registered contact lens dispenser may refer to himself or herself as a registered contact lens technician or a registered contact lens dispenser.

(3) A registrant may not use abbreviations or other letters to represent that the person is registered.

(h) Expiration of initial registration. The initial registration certificate is valid through the registrant's next birth month for a term of up to two years.

§140.280. Renewal of Registration.

(a) Purpose. The purpose of this section is to establish the rules governing renewal of registration certificates.

(b) General.

(1) When issued, a registration certificate is valid through the registrant's next birth month for a two year term, as determined by the department.

(2) A registrant must renew the registration certificate in order to remain registered.

(3) Each registrant is responsible for renewing the registration certificate before the expiration date indicated on the face of the certificate and shall not be excused from paying the late registration fee. Failure to receive notification from the Department of State Health Services (department) prior to the expiration date of the registration certificate will not excuse failure to apply for renewal or late renewal.

(4) The department will not renew the registration of a registrant who is in violation of the Opticians' Registry Act (Act) or this subchapter at the time of application for renewal.

(5) The department shall not renew a registration if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).

(6) The department shall not renew a registration if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (Suspension of License for Failure to Pay Child Support), as set out in §1.301 of this title (relating to Suspension of License for Failure To Pay Child Support).

(7) Notices of renewal approval, disapproval, or deficiency shall be in accordance with §140.278(f) of this title (relating to Application Procedures and Requirements for Registration).

(c) Registration renewal.

(1) At least 30 days prior to the expiration date of a person's registration, the department will send notice to the registrant at the address in the department's records of the expiration date of the registration and the total renewal fee, the continuing education report form, and the renewal form.

(2) The renewal form for each registrant shall require the provision of the preferred mailing address, primary employment address and telephone number, and a statement of all misdemeanor and felony offenses for which the registrant has been convicted.

(3) A registrant has submitted all renewal application materials when the registrant has mailed the renewal form, the required renewal fee, and the continuing education report form to the department prior to the expiration date of the registration. The postmark date shall be considered as the date of mailing.

(4) The department shall issue to a registrant who has met all requirements for renewal a renewed registration certificate and identification card.

(5) Each registrant is responsible for renewing the registration before the expiration date and shall not be excused from paying the late registration fee. Failure to receive notification from the department prior to the expiration date of the registration shall not excuse failure to apply for renewal or late renewal.

(d) Late renewal.

(1) The department shall inform a person who has not renewed a registration within 30 days following the expiration of the registration of the amount of the late registration fee required for renewal and the date the registration expired.

(2) A person whose registration has expired for not more than 90 days may renew the registration by submitting to the department the registration renewal form, the completed continuing education report form, and the late registration fee. A person whose registration has expired more than 90 days but less than one year may renew the registration by submitting to the department the registration renewal form, the completed continuing education report form, and a late registration fee.

(3) A person whose registration has been expired for more than one year may not renew. The person may obtain a new registration by complying with the then current requirements and procedures for obtaining a registration.

(4) If a registrant fails to timely renew his or her registration because the registrant is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the registrant may renew the registration pursuant to this paragraph.

(A) Renewal of the registration may be requested by the registrant, the registrant's spouse, or an individual having power of attorney from the registrant. The renewal form shall include a current address and telephone number for the individual requesting the renewal.

(B) Renewal may be requested before or after expiration of the registration.

(C) A copy of the official orders or other official military documentation showing that the registrant is or was on active duty serving outside the State of Texas shall be filed with the department along with the renewal form.

(D) A copy of the power of attorney from the registrant shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this paragraph.

(E) A registrant renewing under this paragraph shall pay the renewal fee, but not the late registration fee.

(F) A registrant renewing under this paragraph shall not be required to submit any continuing education hours if continuing education is required to be shown for the renewal.

(e) Expiration of registration. A person whose registration has expired may not refer to himself or herself by any of the titles listed in §140.279(g) of this title (relating to Issuance of Certificate of Registration).

(f) A retired registrant who wishes to use the titles authorized by §140.279(g) of this title (relating to Issuance of Certificate of Registration), only in the provision of voluntary charity care, may renew the registration every two years by submitting the renewal form and the retired optician registration renewal fee in accordance with the renewal procedures described in this section. Voluntary charity care means engaging in the practice of contact lens dispensing and/or spectacle dispensing at no cost to the consumer.

§140.281. Requirements for Continuing Education.

(a) Purpose. The purpose of this section is to establish the continuing education requirements a registrant shall meet to maintain registration. The requirements are intended to maintain and improve the quality of services provided to the public by registered spectacle dispensing opticians and registered contact lens dispensers. Continuing education credit includes programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of dispensing opticians, thus improving health care to the public. The Department of State Health Services (department) assumes dispensing opticians will maintain the high standards of the profession in selecting quality educational programs to fulfill the continuing education requirements.

(b) Number of hours required. Proof of having earned ten contact hours of continuing education credit in each area for which the registrant is renewing shall be required at the time of renewal for each registration issued for a two year term. A contact hour is 50 minutes.

(1) The hours must have been completed within 24 months prior to the date of expiration of a registration issued for a two year term.

(2) For a registered spectacle dispensing optician the hours must be offered or approved by the American Board of Opticianry. For a registered contact lens dispenser the hours must be offered or approved by the National Contact Lens Examiners.

(3) If applying for dual registration renewal the applicant must have a total of 20 contact hours of continuing education for a registration issued for a two year term. Half of the contact hours must be offered or approved by the American Board of Opticianry and half of the contact hours must be offered or approved by the National Contact Lens Examiners.

(c) Records. The registrant shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of the continuing education hours are not to be forwarded to the department at the time

of renewal unless the registrant has been selected for audit by the department. Only the completed continuing education report form should accompany the renewal form and fee if the registrant has not been selected for audit.

(d) Audit process.

(1) The department shall select for audit a random sample of registrants for each renewal month. Audit forms shall be sent to the selected registrants at the time the renewal notice is mailed.

(2) All registrants selected for audit will furnish documentation such as official transcripts, certificates, diplomas, receipts, agendas, programs, or an affidavit identifying the continuing education experience satisfactory to the department, to verify proof of having earned the continuing education hours listed on the continuing education report form. The documentation must be provided at the time the renewal form is returned to the department.

(3) Failure to timely furnish this information or knowingly providing false information in the audit process or during the renewal process are grounds for suspension or revocation of the registration.

(e) Reduced hours required for retired opticians providing voluntary charity care. A retired registered optician renewing under §140.280(f) of this title (relating to Renewal of Registration) is required to complete one-half of the hours regularly required for registration renewal.

§140.282. Change of Name or Address.

(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes.

(b) The registrant shall notify the Department of State Health Services (department) of changes in name, preferred mailing address, or place of business or employment within 30 days of such change.

(c) Before any new registration certificate or identification card will be issued by the department, notification of a name change must be forwarded to the department and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name.

(d) The registrant shall return any previously issued certificate or identification card and remit the appropriate replacement fee as set out in §140.277 of this title (relating to Fees).

§140.283. Violations, Complaints, Investigation of Complaints, and Disciplinary Actions.

(a) Purpose. The purpose of this section is to set out:

(1) procedures concerning complaints alleging violations of the Act or this subchapter; and

(2) Department of State Health Services (department) actions against a person when violations have occurred.

(b) Compliance with the Act. A registrant or applicant must comply with the Act and this subchapter.

(c) Filing of complaints.

(1) Any person may complain to the department alleging that a registered dispensing optician or another person has violated the Act or this subchapter.

(2) A person wishing to file a complaint against a registered dispensing optician or another person shall notify the department. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the department's office. The mailing address is Opticians' Registry, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3183.

(3) Upon receipt of a complaint, the department shall send to the complainant an acknowledgment letter and the department's complaint form, which the complainant must complete and return to the department before further action can be taken. If the complaint is made by a visit to the department's office, the form may be given to the complainant at that time; however, it must be completed and returned to the department before further action can be taken.

(4) Anonymous complaints may be accepted by the department if the complainant provides sufficient information.

(d) Investigation of complaints.

(1) The department may investigate any complaint.

(2) If the department determines that the complaint does not come within the department's jurisdiction, the department shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.

(3) The department shall, at least as frequently as quarterly, notify the parties to the complaint of the status of the complaint until its final disposition.

(4) If the department determines that there are insufficient grounds to support the complaint, the department shall dismiss the complaint and give written notice of the dismissal to the registrant or person against whom the complaint has been filed and to the complainant.

(5) If the department determines that there are sufficient grounds to support the complaint, the department may propose to deny, suspend, revoke, probate, or not renew a registration.

(6) If an investigation is done, the investigator shall always attempt to contact the complainant to discuss the complaint.

(e) Disciplinary actions.

(1) The department may deny an application or registration renewal or suspend or revoke a registration or impose probation or administrative penalties for any violation of the Act or this subchapter.

(2) Prior to institution of formal proceedings to revoke or suspend a registration, the department shall give written notice to the registrant of the facts or conduct alleged to warrant revocation or suspension, and the registrant shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this subchapter.

(3) If denial, revocation, suspension, or probation of a registration is proposed, the department shall give written notice to the registrant or applicant that the applicant or registrant must request, in writing, a formal hearing within 10 days of receipt of the notice. The notice shall state the basis for the proposed action. Receipt of the notice is presumed to occur on the 10th day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.

(4) If no timely request for a hearing is received, the applicant or registrant is deemed to have waived the hearing and be in agreement with the allegations and proposed action.

(5) The formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001 and §140.284 of this title (relating to Registration of Applicants With Criminal Backgrounds), if applicable.

(6) If the applicant or registrant fails to appear or be represented at the scheduled hearing, the person is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing.

(7) If the hearing is waived, the application or registration shall be denied, suspended, revoked, or probated by an order of the commissioner of health.

(8) Administrative penalties shall be assessed in accordance with the procedures set forth in the Act, Subchapter G (relating to Administrative Penalty).

(f) Suspension, revocation, or denial of renewal.

(1) If the department suspends a registration, the suspension shall remain in effect until the department determines that the reason for suspension no longer exists or for the period of time stated in the order. The department shall investigate prior to making a determination.

(2) During the time of suspension, the suspended registrant shall return his or her registration certificate and identification card to the department.

(3) If a suspension overlaps a registration renewal date, the suspended registration holder may comply with the renewal procedures in this subchapter; however, the department may not renew the registration until the department determines that the reason for suspension no longer exists or the period of suspension is completed.

(4) If the department revokes or does not renew a registration, a person may reapply for a registration by complying with the requirements and procedures in this subchapter at the time of reapplication. The department may refuse to issue a registration if the reason for revocation or denial of renewal continues to exist.

(5) Upon revocation or denial of renewal, a registration holder shall return the registration certificate and identification card to the department.

(g) The department may impose an emergency suspension for a violation of the Act or this chapter in accordance with the procedures established in Occupations Code, §352.254.

§140.284. Registration of Applicants with Criminal Backgrounds.

(a) This section sets out the guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain registration as spectacle dispensers or contact lens dispensers.

(b) Criminal convictions which directly relate to the occupation of dispensing opticians shall be considered by the Department of State Health Services (department) as follows.

(1) The department may suspend or revoke an existing registration or disqualify a person from receiving a registration because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities under that registration.

(2) In considering whether a criminal conviction directly relates, the department shall consider:

(A) the nature and seriousness of the crime;

(B) the relationship of the crime to the purposes for requiring a registration as a spectacle dispensing optician or a contact lens dispenser;

(C) the extent to which a registration might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a registered spectacle dispensing optician or a registered contact lens dispenser.

(c) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or an unwillingness for the person to be able to perform or to be fit for registration:

- (1) the misdemeanor of violating the Opticians' Registry Act (Act);
- (2) a conviction relating to deceptive business practices;
- (3) a misdemeanor or felony offense involving moral turpitude;
- (4) the misdemeanor of practicing medicine or optometry without a license;
- (5) a misdemeanor or felony offense under various titles of the Texas Penal Code:
 - (A) Title 5 concerning offenses against the person;
 - (B) Title 7 concerning offenses against property;
 - (C) Title 9 concerning offenses against public order and decency;
 - (D) Title 10 concerning offenses against public health, safety, and morals;

and

(E) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection; and

(6) other misdemeanors and felonies if disciplinary action by the department will promote the intent of the Act, this subchapter, and the Texas Occupations Code, Chapter 53.

§140.285. Professional and Ethical Standards.

(a) The purpose of this section is to establish the professional and ethical standards to be followed by a registered spectacle dispensing optician or a registered contact lens dispenser.

(b) A registrant shall not misrepresent any professional qualifications or credentials.

(c) A registrant shall not provide any information that is false, deceptive, or misleading to the Department of State Health Services (department).

(d) A registrant shall cooperate with the department by furnishing required documents or information and by responding to a request for information.

(e) A registrant shall not consume alcohol or take controlled substances not prescribed by a licensed physician during the hours the registrant is available to dispense spectacles or contact lenses.

(f) A registrant shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.

(1) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(A) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(B) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;

(C) compares a health care professional's service with another health care professional's service unless the comparison can be factually substantiated;

(D) contains a testimonial;

(E) causes confusion or misunderstanding as to the credentials, education, or registration of a health care professional;

(F) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductible or copayments are required;

(G) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;

(H) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or

(I) advertises or represents in the use of professional name, a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(2) A "health care professional" includes a dispensing optician or any other person licensed, certified, or registered by the state in a health-related profession.

(g) On the written request of a client, a client's guardian, or a client's parent if the client is a minor, a registrant shall provide, in plain language, a written explanation of the dispensing services previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.

(h) A registrant may not persistently or flagrantly overcharge or overtreat a client.

(i) A registrant shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department by providing notification:

(1) on each written contract for services of a registrant;

(2) on a sign prominently displayed in the primary place of business of each registrant; or

(3) in a bill for services provided by a registrant to a client or third party.

(j) A registrant shall be subject to disciplinary action by the department if under the Crime Victims Compensation Act, Texas Civil Statutes, Article 8309-1, the registrant is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office.

(k) Unless exempt, a registrant shall comply with the Texas Contact Lens Prescription Act, Texas Occupations Code, Chapter 353.

(l) A registrant may not sell, deliver, or dispense contact lenses to a patient or other consumer in this state unless the registrant receives or verifies a prescription that conforms to the requirements of the Texas Contact Lens Prescription Act, Texas Occupations Code, Chapter 353. The registrant must fill the prescription accurately without modification.

(m) Spectacles may be dispensed only in accordance with a spectacle prescription from a licensed physician or optometrist. This subsection does not prohibit a registrant from duplicating lenses.

~~§129.1. Purpose and Construction.~~

~~(a) Purpose. This chapter implements the provisions of the Opticians' Registry Act, Texas Occupations Code, Chapter 352, concerning the voluntary registration and regulation of dispensing opticians by providing a means by which the public can identify registered providers of ophthalmic dispensing services and products that meet minimum standards of competence.~~

~~(b) Construction. These sections cover definitions; fees; application procedures and requirements; applicant eligibility and registration; examination; renewal of registration certificates; requirements for continuing education; name or address changes; procedures for violations, complaints, investigation of complaints, and disciplinary actions; registration of applicants with criminal backgrounds; and professional and ethical standards.~~

~~§129.2. Definitions.~~

~~The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.~~

- ~~(1) Act—The Opticians' Registry Act (Act), Texas Occupations Code, Chapter 352.~~
- ~~(2) Administrator—The department employee designated as the administrator of registration activities authorized by the Act.~~
- ~~(3) Applicant—A person who applies for registration under the Act.~~
- ~~(4) Commissioner—The commissioner of the Department of State Health Services.~~
- ~~(5) Consumer—An individual receiving services or obtaining a product from a registered dispensing optician.~~
- ~~(6) Contact lens dispensing—The fabrication, ordering, mechanical adjustment, dispensing, sale, and delivery to the consumer of contact lenses prescribed by and dispensed in accordance with a prescription from a licensed physician or optometrist, together with appropriate instructions for the care and handling of the lenses. The term does not include the taking of any measurements of the eye or the cornea or evaluating the physical fit of the contact lenses, unless that action is directed or approved by a licensed physician.~~
- ~~(7) Contact lens prescription—A written specification by a licensed physician or optometrist for therapeutic, corrective, or cosmetic contact lenses that states the refractive power of the product and other information as required by:
 - ~~(A) the physician or the Texas Medical Board; or~~
 - ~~(B) the optometrist or the Texas Optometry Board.~~~~
- ~~(8) Department—The Department of State Health Services.~~

~~(9) Dispensing optician—A person who provides or offers to provide spectacle or contact lens dispensing services or products to the public.~~

~~(10) Dual application—An application by one person as both a registered spectacle dispensing optician and a registered contact lens dispenser.~~

~~(11) Examination—A qualifying test administered to eligible applicants by the department or its designee.~~

~~(12) Executive Commissioner—The Executive Commissioner of the Health and Human Services Commission.~~

~~(13) Registered contact lens dispenser—A person properly registered under the Act as a contact lens dispenser.~~

~~(14) Registered spectacle dispensing optician—A person properly registered under the Act as a spectacle dispensing optician.~~

~~(15) Registration certificate—A document issued by the department to a qualified person authorizing that person to represent that he or she is registered under the Act.~~

~~(16) Spectacle dispensing—The design, verification, fitting, adjustment, sale, and delivery to the consumer of fabricated and finished spectacle lenses, frames, or other ophthalmic devices, other than contact lenses, prescribed by and dispensed in accordance with a prescription from a licensed physician or optometrist. The term includes:~~

~~(A) prescription analysis and interpretation;~~

~~(B) the taking of measurements of the face, including interpupillary distances, to determine the size, shape, and specification of the spectacle lenses or frames best suited to the wearer's needs;~~

~~(C) the preparation and delivery of work orders to laboratory technicians engaged in grinding lenses and fabricating spectacles;~~

~~(D) the verification of the quality of finished spectacle lenses;~~

~~(E) the adjustment of spectacle lenses or frames to the intended wearer's face; and~~

~~(F) the adjustment, repair, replacement, reproduction, or duplication of previously prepared spectacle lenses, frames, or other specially fabricated optical devices, other than contact lenses.~~

~~(17) Spectacle prescription—A written specification by a licensed physician or optometrist for therapeutic or corrective lenses that states the refractive power of the product and other information as required by the physician or optometrist.~~

~~§129.4. Fees.~~

~~(a) Schedule of fees. The fees are as follows:~~

~~(1) application and registration fee:~~

~~(A) for a registration issued for one year—\$50;~~

~~(B) for a registration issued for two years—\$100;~~

~~(2) initial dual application and registration fee:~~

~~(A) for a registration issued for one year—\$80;~~

~~(B) for a registration issued for two years—\$160;~~

~~(3) registration renewal fee;~~

~~(A) for a registration issued for one year—\$50;~~

~~(B) for a registration issued for two years—\$100;~~

~~(C) for a retired optician registration issued for two years—\$50;~~

~~(4) dual registration renewal fee;~~

~~(A) for a registration issued for one year—\$80;~~

~~(B) for a registration issued for two years—\$160;~~

~~(C) for a retired optician registration issued for two years—\$80;~~

~~(5) late registration fee—a fee that is one and one half times the registration renewal fee if renewed within 90 days of expiration or a fee that is two times the registration renewal fee if renewed more than 90 days but less than one year after expiration;~~

~~(6) duplicate certificate fee—\$20; and~~

~~(7) examination fee—the then current fee assessed by the Department of State Health Services' (department's) designee for the examination.~~

~~(b) Payment of fees. If paid by mail, all fees shall be submitted in the form of a personal check, certified check for guaranteed funds or a money order made payable to the Department of State Health Services. If submitted in person, cash may be accepted by the department's cashier.~~

~~(c) Nonrefundable fees. All fees submitted to the department are nonrefundable.~~

~~(d) For all applications and renewal applications, the department is authorized to collect fees to fund the Office of Patient Protection, Health Professions Council, as mandated by law.~~

~~(e) For all applications and renewal applications, the department is authorized to collect subscription and convenience fees, in amounts determined by the Texas Online Authority, to recover costs associated with application and renewal application processing through Texas Online.~~

~~§129.5. Application Procedures and Requirements for Registration.~~

~~(a) Purpose. The purpose of this section is to set out the application procedures and requirements for registration.~~

~~(b) General.~~

~~(1) Unless otherwise indicated, an applicant must submit all required information and documentation of credentials on official Department of State Health Services (department) forms.~~

~~(2) Applications may be submitted for registration as a registered contact lens dispenser, a registered spectacle dispensing optician, or both.~~

~~(3) The department will not consider an application as officially submitted until the applicant pays the application fee. The fee must accompany the application form.~~

~~(4) An application not completed within 30 days after the date of the department's notice of deficiency may be voided.~~

~~(c) Required application materials.~~

~~(1) The application form shall contain:~~

~~(A) specific information regarding personal data, social security number, birth month and day, place of employment, preferred mailing address and telephone number, other registrations and licenses held, misdemeanor and felony convictions, educational and training background, and work experience;~~

~~(B) a statement that the applicant has read the Opticians' Registry Act (Act) and this chapter and agrees to abide by them;~~

~~(C) a statement that the applicant shall return to the department any registration certificate(s) or identification card(s) upon the expiration, revocation, or suspension of the registration;~~

~~(D) a statement that the applicant understands that fees submitted in the registration process are nonrefundable unless the processing time is exceeded without good cause as set out in subsection (g) of this section;~~

~~(E) a statement that the applicant understands that materials submitted in the registration process become the property of the department and are not returnable;~~

~~(F) a statement that the information in the application is truthful and that the applicant understands that providing false and misleading information on items which are material in determining the applicant's qualifications may result in the voiding of the application, the failure to be granted any registration, or the revocation of any registration issued;~~

~~(G) the signature of the applicant which has been dated and notarized; and~~

~~(H) a statement that if issued a registration certificate, the registrant shall keep the department advised of his or her current mailing address.~~

~~(2) An applicant shall submit a full face photo of a minimum size of 1 1/2 inches by 1 1/2 inches signed on the reverse side with the applicant's signature as it appears on the application. The photograph must have been taken within six months prior to application.~~

~~(3) An applicant shall submit documentation satisfactory to the department, that he or she has completed five classroom hours.~~

~~(A) The hours must have been completed within three years prior to the date of the application.~~

~~(B) The hours must be offered or approved by the American Board of Opticianry or the National Contact Lens Examiners.~~

~~(C) If applying for dual registration, the applicant must have completed 10 classroom hours offered or approved by the American Board of Opticianry or the National Contact Lens Examiners.~~

~~(D) Documentation may include a transcript, diploma, certificate, or other official or certified document.~~

~~(4) Proof of having passed the prescribed examination shall be attached to the application form.~~

~~(d) Examinations.~~

~~(1) The examination administered by the American Board of Opticianry, or its successor, is the examination for registered spectacle dispensing opticians.~~

~~(2) The examination administered by the National Contact Lens Examiners, or its successor, is the examination for registered contact lens dispensers.~~

~~(e) Determining eligibility. The department shall receive and approve or disapprove all applications for registration as registered spectacle dispensing opticians or registered contact lens dispensers or both. The administrator shall be responsible for reviewing all applications.~~

~~(1) Notices of application approval, disapproval or deficiency shall be in accordance with subsection (f) of this section.~~

~~(2) An application for a registration shall be disapproved if the applicant has:~~

~~(A) not met the requirements in this section;~~

~~(B) failed to or refused to properly complete or submit any application form, endorsement, or fee or deliberately presented false information on any form or document required by the department;~~

~~(C) violated any provision of the Act or this chapter;~~

~~(D) been convicted of a felony or misdemeanor as set out in §129.12 of this title (relating to Registration of Applicants with Criminal Backgrounds); or~~

~~(E) violated any provision of state law relating to the practice of dispensing opticians.~~

~~(3) If after review, the department determines that the application should not be approved, the administrator shall give the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing. The notice shall be in accordance with §129.11 of this title (relating to Violations, Complaints, Investigation of Complaints, and Disciplinary Actions).~~

~~(f) Application processing.~~

~~(1) Time periods. The department shall comply with the following procedures in processing applications for registration and renewal.~~

~~(A) The following periods of time shall apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are as follows:~~

~~(i) letter of acceptance of application for registration—20 working days;~~

~~(ii) letter of application or renewal deficiency—20 working days;~~
and

~~(iii) issuance of registration renewal—10 working days.~~

~~(B) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of the proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required examination has been successfully completed by the applicant. The time periods are as follows:~~

~~(i) letter of approval for examination—20 working days;~~

~~(ii) initial letter of approval for registration—30 days;~~

~~(iii) letter of denial of registration—30 days; and~~

~~(iv) issuance of registration renewal—10 working days.~~

~~(2) Reimbursement of fees.~~

~~(A) In the event an application is not processed in the time periods stated in this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made to the administrator. If the administrator does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.~~

~~(B) Good cause for exceeding the time period is considered to exist if the number of applications for registration and registration renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the department in the application process caused the delay; or any other condition exists giving the department good cause for exceeding the time period.~~

~~(3) Appeal. If a request for reimbursement is denied by the administrator, the applicant may appeal to the commissioner of the department for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the commissioner at the address of the department that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The administrator shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The commissioner shall provide written notice of the commissioner's decision to the applicant and the administrator. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good~~

cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

~~(4) Contested cases. The time periods for contested cases related to the denial of registration or registration renewals are not included within the time periods stated in this subsection. The time period for conducting a contested case hearing runs from the date the department receives a written request for a hearing and ends when the decision of the department is final and appealable. A hearing may be completed within one to four months, but may extend for a long period of time depending on the particular circumstances of the hearing.~~

~~§129.7. Issuance of Certificate of Registration.~~

~~(a) Issuance of certificate. The Department of State Health Services (department) shall issue a certificate of registration and a registration identification card containing a registration number and expiration date to each qualified applicant.~~

~~(b) Certificate and identification card. Any certificate of registration or identification card issued remains the property of the department and shall be surrendered on demand of the department.~~

~~(c) Display of certificate. The certificate shall be displayed in a prominent location in the primary office or place of employment of the registrant. A current identification card shall be carried by the registrant.~~

~~(d) Reproduced or altered certificates/cards. The certificate or identification card shall not be reproduced or altered in any manner.~~

~~(e) Duplicate replacement certificates. Duplicate replacement certificates will be issued by the department upon written request from a registrant and payment of the appropriate duplicate certificate fee. The request shall include a statement detailing the loss or destruction of the original certificate or identification card or be accompanied by the damaged certificate or card.~~

~~(f) Individual or dual registration. A certificate of registration shall be issued for a contact lens dispenser or a spectacle dispensing optician. In the event an individual is registered as a contact lens dispenser and a spectacle dispensing optician, he or she shall be issued two certificates.~~

~~(g) Titles.~~

~~(1) A registered spectacle dispensing optician may refer to himself or herself as a registered dispensing optician, a registered spectacle dispenser, or a registered spectacle dispensing optician.~~

~~(2) A registered contact lens dispenser may refer to himself or herself as a registered contact lens technician or a registered contact lens dispenser.~~

~~(3) A registrant may not use abbreviations or other letters to represent that the person is registered.~~

~~(h) Expiration of initial registration. The initial registration certificate is valid through the registrant's next birth month for a one or two year term, as determined by the department.~~

~~§129.8. Renewal of Registration.~~

~~(a) Purpose. The purpose of this section is to establish the rules governing renewal of registration certificates.~~

~~(b) General.~~

~~(1) When issued, a registration certificate is valid through the registrant's next birth month for a one or two year term, as determined by the department.~~

~~(2) A registrant must renew the registration certificate in order to remain registered.~~

~~(3) Each registrant is responsible for renewing the registration certificate before the expiration date indicated on the face of the certificate and shall not be excused from paying the late registration fee. Failure to receive notification from the Department of State Health Services (department) prior to the expiration date of the registration certificate will not excuse failure to apply for renewal or late renewal.~~

~~(4) The department will not renew the registration of a registrant who is in violation of the Opticians' Registry Act (Act) or this chapter at the time of application for renewal.~~

~~(5) The department shall not renew a registration if renewal is prohibited by the Education Code, §57.491 (relating to Loan Default Ground for Nonrenewal of Professional or Occupational License).~~

~~(6) The department shall not renew a registration if renewal is prohibited by a court order or attorney general's order issued pursuant to the Family Code, Chapter 232 (Suspension of License for Failure to Pay Child Support), as set out in §1.301 of this title (relating to Suspension of License for Failure To Pay Child Support).~~

~~(7) Notices of renewal approval, disapproval, or deficiency shall be in accordance with §129.5(f) of this title (relating to Application Procedures and Requirements for Registration).~~

~~(c) Registration renewal.~~

~~(1) At least 30 days prior to the expiration date of a person's registration, the department will send notice to the registrant at the address in the department's records of the expiration date of the registration and the total renewal fee, the continuing education report form, and the renewal form.~~

~~(2) The renewal form for each registrant shall require the provision of the preferred mailing address, primary employment address and telephone number, and a statement of all misdemeanor and felony offenses for which the registrant has been convicted.~~

~~(3) A registrant has submitted all renewal application materials when the registrant has mailed the renewal form, the required renewal fee, and the continuing education report form to the department prior to the expiration date of the registration. The postmark date shall be considered as the date of mailing.~~

~~(4) The department shall issue to a registrant who has met all requirements for renewal a renewed registration certificate and identification card.~~

~~(5) Each registrant is responsible for renewing the registration before the expiration date and shall not be excused from paying the late registration fee. Failure to receive notification from the department prior to the expiration date of the registration shall not excuse failure to apply for renewal or late renewal.~~

~~(d) Late renewal.~~

~~(1) The department shall inform a person who has not renewed a registration within 30 days following the expiration of the registration of the amount of the late registration fee required for renewal and the date the registration expired.~~

~~(2) A person whose registration has expired for not more than 90 days may renew the registration by submitting to the department the registration renewal form, the completed continuing education report form, and the late registration fee. A person whose registration has expired more than 90 days but less than one year may renew the registration by submitting to the department the registration renewal form, the completed continuing education report form, and a late registration fee.~~

~~(3) A person whose registration has been expired for more than one year may not renew. The person may obtain a new registration by complying with the then current requirements and procedures for obtaining a registration.~~

~~(4) If a registrant fails to timely renew his or her registration because the registrant is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the registrant may renew the registration pursuant to this paragraph.~~

~~(A) Renewal of the registration may be requested by the registrant, the registrant's spouse, or an individual having power of attorney from the registrant. The renewal~~

form shall include a current address and telephone number for the individual requesting the renewal.

~~(B) Renewal may be requested before or after expiration of the registration.~~

~~(C) A copy of the official orders or other official military documentation showing that the registrant is or was on active duty serving outside the State of Texas shall be filed with the department along with the renewal form.~~

~~(D) A copy of the power of attorney from the registrant shall be filed with the department along with the renewal form if the individual having the power of attorney executes any of the documents required in this paragraph.~~

~~(E) A registrant renewing under this paragraph shall pay the renewal fee, but not the late registration fee.~~

~~(F) A registrant renewing under this paragraph shall not be required to submit any continuing education hours if continuing education is required to be shown for the renewal.~~

~~(e) Expiration of registration. A person whose registration has expired may not refer to himself or herself by any of the titles listed in §129.7(g) of this title (relating to Issuance of Certificate of Registration).~~

~~(f) A retired registrant who wishes to use the titles authorized by §129.7(g) of this title (relating to Issuance of Certificate of Registration), only in the provision of voluntary charity care, may renew the registration every two years by submitting the renewal form and the retired optician registration renewal fee in accordance with the renewal procedures described in this section. Voluntary charity care means engaging in the practice of contact lens dispensing and/or spectacle dispensing at no cost to the consumer.~~

~~§129.9. Requirements for Continuing Education.~~

~~(a) Purpose. The purpose of this section is to establish the continuing education requirements a registrant shall meet to maintain registration. The requirements are intended to maintain and improve the quality of services provided to the public by registered spectacle dispensing opticians and registered contact lens dispensers. Continuing education credit includes programs beyond the basic preparation which are designed to promote and enrich knowledge, improve skills, and develop attitudes for the enhancement of dispensing opticians, thus improving health care to the public. The Department of State Health Services (department) assumes dispensing opticians will maintain the high standards of the profession in selecting quality educational programs to fulfill the continuing education requirements.~~

~~(b) Number of hours required. Proof of having earned five contact hours of continuing education credit in each area for which the registrant is renewing shall be required at the time of~~

renewal for each registration issued for a one year term, or proof of having earned ten contact hours of continuing education credit in each area for which the registrant is renewing shall be required at the time of renewal for each registration issued for a two year term. A contact hour is 50 minutes.

(1) The hours must have been completed within 12 months prior to the date of expiration of a registration issued for a one year term, or within 24 months prior to the date of expiration of a registration issued for a two year term.

(2) For a registered spectacle dispensing optician the hours must be offered or approved by the American Board of Opticianry. For a registered contact lens dispenser the hours must be offered or approved by the National Contact Lens Examiners.

(3) If applying for dual registration renewal the applicant must have a total of 10 contact hours of continuing education for a registration issued for a one year term, or 20 contact hours of continuing education for a registration issued for a two year term. Half of the contact hours must be offered or approved by the American Board of Opticianry and half of the contact hours must be offered or approved by the National Contact Lens Examiners.

(c) Records. The registrant shall be responsible for maintaining a record of his or her continuing education experiences. The certificates, diplomas, or other documentation verifying earning of the continuing education hours are not to be forwarded to the department at the time of renewal unless the registrant has been selected for audit by the department. Only the completed continuing education report form should accompany the renewal form and fee if the registrant has not been selected for audit.

(d) Audit process.

(1) The department shall select for audit a random sample of registrants for each renewal month. Audit forms shall be sent to the selected registrants at the time the renewal notice is mailed.

(2) All registrants selected for audit will furnish documentation such as official transcripts, certificates, diplomas, receipts, agendas, programs, or an affidavit identifying the continuing education experience satisfactory to the department, to verify proof of having earned the continuing education hours listed on the continuing education report form. The documentation must be provided at the time the renewal form is returned to the department.

(3) Failure to timely furnish this information or knowingly providing false information in the audit process or during the renewal process are grounds for suspension or revocation of the registration.

(e) Accrual carryover. Earned continuing education hours exceeding the minimum requirements in a previous renewal period shall first be applied to the continuing education requirements for the current renewal period. A maximum of five additional clock hours may be accrued during a registration period to be applied to the next consecutive renewal period. A

~~maximum of 10 additional clock hours may be accrued for dual registrants during a registration period to be applied to the next consecutive renewal period. To be eligible for carryover, all hours earned must be reported to the department in the previous renewal period.~~

~~(f) Reduced hours required for retired opticians providing voluntary charity care. A retired registered optician renewing under §129.8(f) of this title (relating to Renewal of Registration) is required to complete one half of the hours regularly required for registration renewal.~~

~~§129.10. Change of Name or Address.~~

~~(a) The purpose of this section is to set out the responsibilities and procedures for name and address changes.~~

~~(b) The registrant shall notify the Department of State Health Services (department) of changes in name, preferred mailing address, or place of business or employment within 30 days of such change.~~

~~(c) Before any new registration certificate or identification card will be issued by the department, notification of a name change must be forwarded to the administrator and shall include a copy of a marriage certificate, court decree evidencing such change, or a social security card reflecting the new name.~~

~~(d) The registrant shall return any previously issued certificate or identification card and remit the appropriate replacement fee as set out in §129.4 of this title (relating to Fees).~~

~~§129.11. Violations, Complaints, Investigation of Complaints, and Disciplinary Actions.~~

~~(a) Purpose. The purpose of this section is to set out:~~

~~(1) procedures concerning complaints alleging violations of the Act or this chapter; and~~

~~(2) Department of State Health Services (department) actions against a person when violations have occurred.~~

~~(b) Compliance with the Act. A registrant or applicant must comply with the Act and this chapter.~~

~~(c) Filing of complaints.~~

~~(1) Any person may complain to the department alleging that a registered dispensing optician or another person has violated the Act or this chapter.~~

~~(2) A person wishing to file a complaint against a registered dispensing optician or another person shall notify the department. The initial notification of a complaint may be in~~

writing, by telephone, or by personal visit to the administrator's office. The mailing address is Opticians' Registry, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756-3183.

~~(3) Upon receipt of a complaint, the administrator shall send to the complainant an acknowledgment letter and the department's complaint form, which the complainant must complete and return to the administrator before further action can be taken. If the complaint is made by a visit to the administrator's office, the form may be given to the complainant at that time; however, it must be completed and returned to the department before further action can be taken.~~

~~(4) Anonymous complaints may be accepted by the department if the complainant provides sufficient information.~~

~~(d) Investigation of complaints.~~

~~(1) The department may investigate any complaint.~~

~~(2) If the administrator determines that the complaint does not come within the department's jurisdiction, the administrator shall advise the complainant and, if possible, refer the complainant to the appropriate governmental agency for handling such a complaint.~~

~~(3) The department shall, at least as frequently as quarterly, notify the parties to the complaint of the status of the complaint until its final disposition.~~

~~(4) If the administrator determines that there are insufficient grounds to support the complaint, the program administrator shall dismiss the complaint and give written notice of the dismissal to the registrant or person against whom the complaint has been filed and to the complainant.~~

~~(5) If the administrator determines that there are sufficient grounds to support the complaint, the administrator may propose to deny, suspend, revoke, probate, or not renew a registration.~~

~~(6) If an investigation is done, the investigator shall always attempt to contact the complainant to discuss the complaint.~~

~~(e) Disciplinary actions.~~

~~(1) The department may deny an application or registration renewal or suspend or revoke a registration or impose probation or administrative penalties for any violation of the Act or this chapter.~~

~~(2) Prior to institution of formal proceedings to revoke or suspend a registration, the department shall give written notice to the registrant of the facts or conduct alleged to~~

warrant revocation or suspension, and the registrant shall be given an opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

~~(3) If denial, revocation, suspension, or probation of a registration is proposed, the department shall give written notice to the registrant or applicant that the applicant or registrant must request, in writing, a formal hearing within 10 days of receipt of the notice. The notice shall state the basis for the proposed action. Receipt of the notice is presumed to occur on the 10th day after the notice is mailed to the last address known to the department unless another date is reflected on a United States Postal Service return receipt.~~

~~(4) If no timely request for a hearing is received, the applicant or registrant is deemed to have waived the hearing and be in agreement with the allegations and proposed action.~~

~~(5) The formal hearing shall be conducted in accordance with the Administrative Procedure Act, Government Code, Chapter 2001 and §129.12 of this title (relating to Registration of Applicants With Criminal Backgrounds), if applicable.~~

~~(6) If the applicant or registrant fails to appear or be represented at the scheduled hearing, the person is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing.~~

~~(7) If the hearing is waived, the application or registration shall be denied, suspended, revoked, or probated by an order of the commissioner of health.~~

~~(8) Administrative penalties shall be assessed in accordance with the procedures set forth in the Act, Subchapter G (relating to Administrative Penalty).~~

~~(f) Suspension, revocation, or nonrenewal.~~

~~(1) If the department suspends a registration, the suspension shall remain in effect until the administrator or the department determines that the reason for suspension no longer exists or for the period of time stated in the order. The administrator or the department shall investigate prior to making a determination.~~

~~(2) During the time of suspension, the suspended registrant shall return his or her registration certificate and identification card to the department.~~

~~(3) If a suspension overlaps a registration renewal date, the suspended registration holder may comply with the renewal procedures in this chapter; however, the department may not renew the registration until the administrator determines that the reason for suspension no longer exists or the period of suspension is completed.~~

~~(4) If the department revokes or does not renew a registration, a person may reapply for a registration by complying with the requirements and procedures in this chapter at~~

~~the time of reapplication. The department may refuse to issue a registration if the reason for revocation or nonrenewal continues to exist.~~

~~(5) Upon revocation or nonrenewal, a registration holder shall return the registration certificate and identification card to the department.~~

~~(g) The department may impose an emergency suspension for a violation of the Act or this chapter in accordance with the procedures established in Occupations Code, §352.254.~~

~~§129.12. Registration of Applicants with Criminal Backgrounds.~~

~~(a) This section sets out the guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain registration as spectacle dispensers or contact lens dispensers.~~

~~(b) Criminal convictions which directly relate to the occupation of dispensing opticians shall be considered by the Department of State Health Services (department) as follows:~~

~~(1) The department may suspend or revoke an existing registration or disqualify a person from receiving a registration because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities under that registration.~~

~~(2) In considering whether a criminal conviction directly relates, the department shall consider:~~

~~(A) the nature and seriousness of the crime;~~

~~(B) the relationship of the crime to the purposes for requiring a registration as a spectacle dispensing optician or a contact lens dispenser;~~

~~(C) the extent to which a registration might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and~~

~~(D) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a registered spectacle dispensing optician or a registered contact lens dispenser.~~

~~(e) The following felonies and misdemeanors directly relate because these criminal offenses indicate an inability or an unwillingness for the person to be able to perform or to be fit for registration:~~

~~(1) the misdemeanor of violating the Opticians' Registry Act (Act);~~

~~(2) a conviction relating to deceptive business practices;~~

~~(3) a misdemeanor or felony offense involving moral turpitude;~~

~~(4) the misdemeanor of practicing medicine or optometry without a license;~~

~~(5) a misdemeanor or felony offense under various titles of the Texas Penal Code:~~

~~(A) Title 5 concerning offenses against the person;~~

~~(B) Title 7 concerning offenses against property;~~

~~(C) Title 9 concerning offenses against public order and decency;~~

~~(D) Title 10 concerning offenses against public health, safety, and morals;~~

and

~~(E) Title 4 concerning offenses of attempting or conspiring to commit any of the offenses in this subsection; and~~

~~(6) other misdemeanors and felonies if disciplinary action by the department will promote the intent of the Act, this chapter, and the Texas Occupations Code, Chapter 53.~~

~~§129.13. Professional and Ethical Standards.~~

~~(a) The purpose of this section is to establish the professional and ethical standards to be followed by a registered spectacle dispensing optician or a registered contact lens dispenser.~~

~~(b) A registrant shall not misrepresent any professional qualifications or credentials.~~

~~(c) A registrant shall not provide any information that is false, deceptive, or misleading to the Department of State Health Services (department).~~

~~(d) A registrant shall cooperate with the department by furnishing required documents or information and by responding to a request for information.~~

~~(e) A registrant shall not consume alcohol or take controlled substances not prescribed by a licensed physician during the hours the registrant is available to dispense spectacles or contact lenses.~~

~~(f) A registrant shall not use advertising that is false, misleading, or deceptive or that is not readily subject to verification.~~

~~(1) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:~~

~~(A) makes a material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;~~

~~(B) makes a representation likely to create an unjustified expectation about the results of a health care service or procedure;~~

~~(C) compares a health care professional's service with another health care professional's service unless the comparison can be factually substantiated;~~

~~(D) contains a testimonial;~~

~~(E) causes confusion or misunderstanding as to the credentials, education, or registration of a health care professional;~~

~~(F) advertises or represents that health care insurance deductibles or copayments may be waived or are not applicable to health care services to be provided if the deductible or copayments are required;~~

~~(G) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or copayments are required;~~

~~(H) makes a representation that is designed to take advantage of the fears or emotions of a particularly susceptible type of patient; or~~

~~(I) advertises or represents in the use of professional name, a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.~~

~~(2) A "health care professional" includes a dispensing optician or any other person licensed, certified, or registered by the state in a health related profession.~~

~~(g) On the written request of a client, a client's guardian, or a client's parent if the client is a minor, a registrant shall provide, in plain language, a written explanation of the dispensing services previously made on a bill or statement for the client. This requirement applies even if the charges are to be paid by a third party.~~

~~(h) A registrant may not persistently or flagrantly overcharge or overtreat a client.~~

~~(i) A registrant shall make a reasonable attempt to notify each client of the name, mailing address, and telephone number of the department for the purpose of directing complaints to the department by providing notification:~~

~~(1) on each written contract for services of a registrant;~~

~~(2) on a sign prominently displayed in the primary place of business of each registrant; or~~

~~(3) in a bill for services provided by a registrant to a client or third party.~~

~~(j) A registrant shall be subject to disciplinary action by the department if under the Crime Victims Compensation Act, Texas Civil Statutes, Article 8309-1, the registrant is issued a public letter of reprimand, is assessed a civil penalty by a court, or has an administrative penalty imposed by the attorney general's office.~~

~~(k) Unless exempt, a registrant shall comply with the Texas Contact Lens Prescription Act, Texas Occupations Code, Chapter 353.~~

~~(l) A registrant may not sell, deliver, or dispense contact lenses to a patient or other consumer in this state unless the registrant receives or verifies a prescription that conforms to the requirements of the Texas Contact Lens Prescription Act, Texas Occupations Code, Chapter 353. The registrant must fill the prescription accurately without modification.~~

~~(m) Spectacles may be dispensed only in accordance with a spectacle prescription from a licensed physician or optometrist. This subsection does not prohibit a registrant from duplicating lenses.~~