



GOVERNOR GREG ABBOTT

To: Dr. Mario Gutierrez, Chair
Kelly Parker, Executive Director
Texas Optometry Board

From: Erin Bennett, Director
Regulatory Compliance Division, Office of the Governor

Date: July 19, 2022

Subject: Proposed Title 22 Texas Administrative Code Section 273.17 (RCD Rule Review #2022-006)

I. Syllabus

The Texas Optometry Board (“board”) proposed new 22 TAC §273.17, which requires both initial applicants for and applicants for renewal of an optometrist or therapeutic optometrist license to provide proof of successful completion of a cardiopulmonary resuscitation (“CPR”) or basic life support (“BLS”) certification.¹ The board submitted the proposed rule to the Regulatory Compliance Division (“division”) for review on June 16, 2022. The division invited public comments on the proposed rule for a 30-day period ending July 18, 2022, and received one comment in support of this new requirement. As explained below, the division has determined that the proposed rule is consistent with state policy, and, thus, proposed new §273.17 is approved by the division and may be finally adopted and implemented.

II. Analysis

The board proposed new §273.17 in response to patient health emergencies that have occurred, and continue to occur, in offices providing optometry or therapeutic optometry services.² According to the board, optometrists and therapeutic optometrists have a high likelihood of encountering emergency situations in their practices due, in part, to the significant volume of optometry patients who are middle aged or in their senior years and who may also have underlying conditions that contribute to the onset of a health emergency.³ Requiring CPR or BLS certification is intended to equip optometrists and therapeutic optometrists with added safety

¹ 47 Tex. Reg. 3103 (2022) (to be codified at 22 TAC §273.17) (proposed May 27, 2022) (Tex. Optometry Bd.); Rule Submission Memorandum from the Texas Optometry Board (June 16, 2022), at 1 (on file with the Regulatory Compliance Division of the Office of the Governor).

² Rule Submission Memorandum from the Texas Optometry Board (June 16, 2022), at 2.

³ *Id.*

tools to manage a patient health emergency until an emergency response team is able to arrive at their office.⁴ The board believes that obtaining and maintaining such certification will help ensure that optometrists and therapeutic optometrists are better prepared to manage a patient health emergency, which is in the best interest of public health and safety.⁵

While the impetus for proposed new §273.17 is protection of public health and safety, the board acknowledges that by adding to the requirements for an initial or renewal license as an optometrist or therapeutic optometrist, the proposed rule may operate as a barrier to participation in the profession.⁶ Thus, the board identified proposed new §273.17 as affecting market competition pursuant to Section 57.105(d)(1), Texas Occupations Code, and, consequently, submitted the proposed rule to the division for review.⁷

A. The requirement that initial licensure applicants obtain CPR or BLS certification is consistent with state policy.

After defining CPR and BLS and explaining what certification in those emergency procedures and services encompasses in proposed new §273.17(a), proposed new §273.17(b) requires all applicants for initial licensure to provide proof of successful completion of a CPR or BLS certification prior to receiving a license. Section 351.252(a), Texas Occupations Code, recognizes the board's responsibility to establish in rule education requirements for licensure as a therapeutic optometrist, and Section 351.258(a) directs the board to license those who meet board requirements.⁸ While not a board requirement today, optometry students are already required to be certified in either CPR or BLS to treat patients in optometry school clinics.⁹ As a result, the proposed provision will likely have a minimal impact on recent optometry school graduates seeking initial licensure. Ultimately, proposed new §273.17(b) is a reasonable exercise of the board's broad statutory authority to establish education requirements for licensure that reflects what is already being required in practice, and, thus, the proposed provision is consistent with state policy.

B. The requirement that applicants for renewal of an optometrist or therapeutic optometrist license maintain CPR or BLS certification is also consistent with state policy.

⁴ *Id.*

⁵ *Id.* at 1.

⁶ *Id.* at 3-4.

⁷ *Id.*

⁸ Sections 351.252 and 351.258, Texas Occupations Code, are limited to the education requirements for therapeutic optometrists and the issuance of therapeutic optometrist licenses, respectively, which reflects that since 1992, the board has only issued therapeutic optometrist licenses. Texas Optometry Board, Self-Evaluation Report, at 26 (September 2015), *available at* https://www.sunset.texas.gov/public/uploads/files/reports/Optometry%20Board%20Self-Evaluation%20Report_0.pdf.

⁹ Rule Submission Memorandum from the Texas Optometry Board (June 16, 2022), at 1.

Similarly, proposed new §273.17(c) requires all active licensees to provide proof of successful completion of a CPR or BLS certification for renewal of a license each renewal cycle. The proposed provision also allows licensees to be credited two general hours of continuing education for CPR certification and four general hours of continuing education for BLS certification. Section 351.308, Texas Occupations Code, requires licensees to take annual courses in subjects relating to the practice of optometry or therapeutic optometry regularly taught in optometric universities and schools. As mentioned above, completion of a CPR or BLS certification is already required for optometry students.¹⁰ Moreover, a survey conducted by the board during the 2021 license renewal cycle revealed that almost half of active licensees are CPR or BLS certified, which suggests widespread industry recognition of emergency management certification as valuable to the practice of optometry.¹¹ Thus, while the board's continuing education statute provides limited detail on the coursework required for license renewal, it is a reasonable inference of the board that CPR or BLS certification sufficiently relates to the practice of optometry and that Section 351.308 supports the establishment of the new requirement to maintain, and to receive continuing education credit for, emergency management certification in proposed new §273.17(c). It is worth noting that the grant of continuing education credit for such certification reflects current board practice and is in line with the board's conferral of continuing education credit for activities such as the completion of a human trafficking course in 22 TAC §275.2(g)(3).¹² In the end, proposed new §273.17(c) furthers the statutory requirement that active licensees regularly engage in educational activities related to their practice, and, thus, the proposed provision is consistent with state policy.

III. Determination

Based on the above analysis, proposed new 22 TAC §273.17 is approved by the division and may proceed to final adoption and implementation.

¹⁰ *Id.*

¹¹ *Id.* at 1 and 3.

¹² *Id.* at 3.