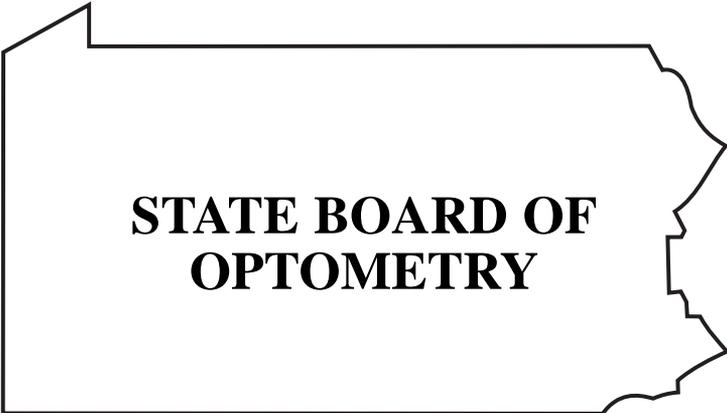


**OPTOMETRY
PRACTICE ACT**

**ACT 130
AS AMENDED 2002**



**STATE BOARD OF
OPTOMETRY**

COMMONWEALTH OF PENNSYLVANIA

Printing Date: August 2003

AN ACT

Regulating the licensure and practice of optometry, making repeals and providing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

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Section 1. Short title.

This act shall be known and may be cited as the “Optometric Practice and Licensure Act.”

Section 2. Definitions.

The following words and phrases when used in this act shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Advisory Committee on Continuing Professional Education.” An advisory committee established pursuant to section 3 to make recommendations to the board relating to continuing professional education.

“Board.” The State Board of Optometry.

“Examination and diagnosis.” Any examination or diagnostic means or method compatible with optometric education and professional competence. The term shall encompass the use of pharmaceutical agents for diagnostic purposes classified as miotics, mydriatics, cycloplegics, topical anesthetics and dyes when applied topically to the eye, which pharmaceutical agents shall be approved by the Secretary of Health as provided in section 4.3 and, subject to the rules and regulations of the board, provided however that with respect to optometrists licensed before March 1, 1974, only such optometrists who have satisfactorily completed a course in pharmacology as it applies to optometry, with particular emphasis on the topical application of diagnostic pharmaceutical agents to the eye, approved by the board shall be permitted to use diagnostic pharmaceutical agents topically in the practice of optometry. (*Def. amended Dec. 16, 2002, P.L.1950, No. 225*)

“Fitting of contact lenses.” A procedure in which a prescribed contact lens is placed upon the eye of a patient and the lens-cornea relationship is evaluated with the use of a biomicroscope or slit-lamp.

“Optometrist.” Any person who, following formal and recognized training in the art and science of optometry has received a doctor of optometry degree from an accredited institution and is qualified to seek or has acquired a license to practice the profession of optometry. An optometrist shall be identified either by “Doctor of Optometry,” “O.D.,” or “Dr.” followed by “Optometrist.”

“Practice of optometry.”

- (1) The use of any and all means or methods for the examination, diagnosis and treatment of conditions of the human visual system and shall include the examination for, and adapting and fitting of, any and all kinds and types of lenses including contact lenses.
- (2) The administration and prescription of legend and nonlegend drugs as approved by the Secretary of Health as provided in section 4.3 for treatment of the eye, the eyelids, the lacrimal system and the conjunctiva and the removal of superficial foreign bodies from the ocular surface and adnexa so long as treatment of diseases or conditions of the visual system, other than glaucoma, as authorized under this paragraph shall not continue beyond six weeks from the initiation of treatment

unless the prescribing optometrist documents consultation with a licensed physician. As used in this paragraph, the initiation of treatment may, but need not, include the prescription or administration of pharmaceutical agents for therapeutic purposes.

- (3) The term shall not include:
- (i) surgery, including, but not limited to, laser surgery; the use of lasers for therapeutic purposes; and the use of injections in the treatment of ocular disease;
 - (ii) the use of Schedule I and Schedule II controlled substances;
 - (iii) treatment of systemic disease; and
 - (iv) the treatment of glaucoma, except that optometrists may use all topical pharmaceutical agents in the treatment of primary open angle glaucoma, exfoliation glaucoma and pigmentary glaucoma.

(Def. amended Dec. 16, 2002, P.L. 1950, No.225)

“Treatment.” The use of any and all preventive and corrective means and methods for aid to the human visual system and shall include but is not limited to the adapting and fitting of any and all kinds and types of lenses and devices including contact lenses and the provision of vision developmental and perceptual therapy or ocular exercise for aid to or enhancement of visual functions.

(2 amended Oct. 30, 1996, P.L.721, No.130)

Section 2.1. State Board of Optometry.

- (a) The State Board of Optometry shall consist of 13 members, all of whom shall be residents of Pennsylvania. Eight members shall be optometrists who are licensed to practice in Pennsylvania and who have been practicing optometry in Pennsylvania for at least the five-year period immediately preceding their appointment. Three members shall be persons representing the public at large, one member shall be the Commissioner of Professional and Occupational Affairs and one member shall be the Director of the Bureau of Consumer Protection in the Office of Attorney General or his designee. The professional and public members of the board shall be appointed by the Governor with the advice and consent of a majority of the members elected to the Senate. *((a) amended Oct. 30, 1996, P.L.721, No.130)*

- (b) All professional and public members shall serve for terms of four years. No member shall be eligible for appointment to serve more than two consecutive terms. A member may continue to serve for a period not to exceed six months following the expiration of his or her term if a successor has not been duly appointed and qualified according to law. *((b) amended Oct. 30, 1996, P.L.721, No.130)*
- (c) A majority of the members of the board serving in accordance with law shall constitute a quorum. Except for temporary and automatic suspensions under section 7, a member may not be counted as part of a quorum or vote on any issue, unless he or she is physically in attendance at the meeting. The board shall select, from among its membership, a chairman, a vice chairman and a secretary.
- (d) Each public and professional member of the board shall be paid reasonable traveling, hotel and other necessary expenses incurred in the performance of his or her duties in accordance with Commonwealth regulations and per diem compensation at the rate of \$60 for each day of actual service while on board business.
- (e) A member who fails to attend three consecutive meetings shall forfeit his or her seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of an immediate family member.
- (f) In the event that a member of the board dies or resigns or otherwise becomes disqualified during a term of office, a successor shall be appointed in the same manner and with the same qualifications as set forth in subsection (a) and shall hold office for the unexpired term.
- (g) A public member who fails to attend two consecutive statutorily mandated seminars in accordance with section 813(e) of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," shall forfeit his or her seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the public member, finds that the public member should be excused from a meeting because of illness or the death of a family member.

(2.1 added May 15, 1986, P.L.186, No.58)

Section 3. Powers and duties of the board.

- (a) The board shall have the following duties:

- (1) To meet at least four times annually at a place within the Commonwealth determined by the board for the transaction of its business. *((1 amended Oct. 30, 1996, P.L.721, No.130))*
- (2) To prescribe the subjects to be tested, authorize written and practical portions of the examination and contract with a professional testing organization for examinations of qualified applicants for licensure at least twice annually at such times and places as designated by the board. All written, oral and practical examinations shall be prepared and administered by a qualified and approved professional testing organization in accordance with section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929." *((2) amended Oct. 30, 1996, P.L.721, No. 130)*
 - (2.1) To determine, in accordance with optometric education, training, professional competence and skill, the means and methods for the examination, diagnosis and treatment of conditions of the visual system. *((2.1) added Oct. 30, 1996, P.L.721, No.130)*
 - (2.2) To establish and approve a course, including an examination, with respect to the prescription and administration of pharmaceutical agents for therapeutic purposes as defined in this act. *((2.2) added Oct. 30, 1996, P.L.721, No.130)*
 - (2.3) To require optometrists who prescribe and administer pharmaceutical agents for therapeutic purposes to be certified by the board. *((2.3) added Oct. 30, 1996, P.L.721, No.130)*
 - (2.4) To notify biennially the State Board of Pharmacy of the names of optometrists who have been certified in accordance with section 4.1 with respect to the prescription and administration of pharmaceutical agents for therapeutic purposes. *((2.4) added Oct. 30, 1996, P.L.721, No.130)*
 - (2.5) To require every licensee to insure liability by purchasing and maintaining professional liability insurance coverage in accordance with the following provisions:
 - (i) Beginning with the first license renewal period at least two years after the effective date of this paragraph or upon first making application for licensure, whichever occurs earlier, a licensee shall obtain and maintain, to the satisfaction of the board, professional liability insurance coverage in the minimum amount of \$200,000 per occurrence and \$600,000 per annual aggregate. The profes-

sional liability insurance coverage shall remain in effect as long as the licensee maintains a current license.

- (ii) A licensee shall notify the board within 30 days of the licensee's failure to be covered by the required insurance. Failure to notify the board shall be actionable under section 7 or 8. Further, the license to practice shall automatically be suspended upon failure to be covered by the required insurance and shall not be restored until submission to the board of satisfactory evidence that the licensee has the required professional liability insurance coverage.
- (iii) The board shall accept from licensees as satisfactory evidence of insurance coverage, pursuant to this paragraph, proof of any or all of the following: self-insurance, personally purchased professional liability insurance, professional liability insurance coverage provided by the licensee's employer or any similar type of coverage.
- (iv) The board, after consultation with the Insurance Commissioner, shall establish standards and procedures by regulation for self-insurance under this paragraph.

((2.5) added Oct. 30, 1996, P.L.721, No.130)

- (3) To record all licenses in its office.
- (4) To grant a license to practice optometry in this Commonwealth to any applicant for licensure who has passed the prescribed examination and otherwise complied with the provisions of this act.
- (5) To appoint an Advisory Committee on Continuing Professional Education which shall consist of consultants who are optometric educators and optometric practitioners to serve with the Deputy Secretary for Higher Education or his designee.
- (6) To submit annually to the Department of State an estimate of the financial requirements of the board for its administrative, investigative, legal and miscellaneous expenses. *((6) added May 15, 1986, P.L.186, No.58)*
- (7) To submit annually to the House and Senate Appropriations Committees, 15 days after the Governor has submitted his budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the board previously sub-

mitted to the Department of State. ((7) added May 15, 1986, P.L.186, No.58)

- (8) To submit annually to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure Committee of the Senate a report containing a description of the types of complaints received, status of cases, board action which has been taken and the length of time from the initial complaint to final board resolution. ((8) added May 15, 1986, P.L.186, No.58)
 - (9) To require all optometrists to provide to their patients information on the existence, powers, functions and duties of the board, including the procedure for bringing a complaint to the board. If such information is available through a publication of the Department of State, providing a copy of such publication to the patient may satisfy the requirements of this subsection. ((9) added May 15, 1986, P.L.186, No.58)
- (b) The board shall have the following powers:
- (1) To grant, refuse, revoke, limit or suspend any license to practice optometry in this Commonwealth pursuant to the provisions of this act. ((1) amended Oct. 30, 1996, P.L.721, No.130)
 - (2) To conduct hearings, investigations and discovery proceedings; to administer oaths or affirmations to witnesses, take testimony, issue subpoenas to compel attendance of witnesses or the production of records; to exercise all powers granted by law or regulation in accordance with the general rules of administrative practice and procedure. The board or its designated hearing examiner may exercise the powers enumerated in this paragraph with regard to both licensed doctors of optometry and persons practicing optometry without a license.
 - (3) To obtain injunctions from a court of competent jurisdiction upon petition of the commissioner or the board. In any proceeding under this section, it shall not be necessary to show that any person is individually injured by the actions complained of. If the court finds that the respondent has violated this subsection, it shall enjoin him from so practicing or holding himself out as an optometrist until he has been duly licensed or certified. Procedure in such cases shall be the same as in any other injunctive suit. ((3) amended Oct. 30, 1996, P.L.721, No.130)

- (4) To recommend to the Commissioner of Professional and Occupational Affairs such staff as is necessary to carry out the provisions of this act.
- (5) To incur expenses, retain consultants, appoint committees from its own membership and appoint advisory committees which may include nonboard members.
- (6) To compensate at a rate fixed by the board, consultants and nonboard members of advisory committees.
- (7) To authorize the payment of special reimbursements for the secretary of the board or any other designated member of the board for rendering special services authorized by the board.
- (8) To use qualified board hearing examiners to conduct hearings and prepare adjudications for final review and approval by the board, including disciplinary sanctions. Nothing shall prohibit the board or a designated board member from conducting such hearings.
- (9) To establish and administer a records system which records shall be open to public inspection during the regular business hours of the board.
- (10) To hold meetings, other than required by subsection (a), for the conduct of its business upon giving public notice of such meetings.
- (11) In consultation with a national accrediting body recognized by the United States Department of Education and the appropriate regional accrediting body recognized by the United States Department of Education, to approve those optometric educational institutions in the United States and Canada which are accredited for the purposes of this act. *((11) amended Oct. 30, 1996, P.L.721, No.130)*
- (12) In consultation with the Advisory Committee on Continuing Professional Education, to establish and approve by rule and regulation courses of continuing professional optometric education. Only those educational programs as are available to all licensees on a reasonable nondiscriminatory fee basis shall be approved. Programs to be held within or outside of the Commonwealth may receive approval. The number of required hours of study may not exceed those that are available at approved courses held within the Commonwealth during the applicable license renewal period. In cases of certified

illness or undue hardship, the board is empowered to waive the continuing education requirement.

- (13) To certify, upon the written request of a licensee and payment of the prescribed fee, that the licensee is qualified for licensure and the practice of optometry in this Commonwealth.
- (14) To promulgate all rules and regulations necessary to carry out the purposes of this act.
- (15) To administer and enforce the laws of the Commonwealth relating to those activities involving optometry for which licensing is required under this act and to instruct and require its agents to bring prosecutions for unauthorized and unlawful practice.
- (16) To employ or contract, with the approval of the Commissioner of Professional and Occupational Affairs, for qualified optometrists or physicians to assist the board in the conduct of the practical portions of the examinations conducted by the board, for such reasonable compensation, including expenses, as the board shall determine, in accordance with section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929." *((16) added May 15, 1986, P.L.186, No.58)*
- (17) To issue subpoenas upon application of an attorney responsible for representing the Commonwealth in disciplinary actions before the board for the purpose of investigating alleged violations of the disciplinary provisions administered by the board. The board shall have the power to subpoena witnesses, to administer oaths, to examine witnesses or to take testimony or compel the production of books, records, papers and documents as it may deem necessary or proper in and pertinent to any proceeding, investigation or hearing held by it. Optometric records may not be subpoenaed without consent of the patient or without order of a court of competent jurisdiction on a showing that the records are reasonably necessary for the conduct of the investigation. The court may impose such limitations on the scope of the subpoena as are necessary to prevent unnecessary intrusion into patient confidential information. The board is authorized to apply to Commonwealth Court to enforce its subpoenas. *((17) added May 15, 1986, P.L.186, No.58)*

Section 3.1. Reports to the board.

An attorney responsible for representing the Commonwealth in disciplinary matters before the board shall notify the board immediately upon receiving notification of an alleged violation of this act. The board shall maintain current records of all reported alleged violations and periodically review the records for the purpose of determining that each alleged violation has been resolved in a timely manner.

(3.1 added May 15, 1986, P.L.186, No.58)

Section 4. General qualifications for licensure.

- (a) A person holding a Doctor of Optometry degree from an accredited optometric educational institution in the United States or Canada, who furnishes the board with evidence that he is at least 21 years of age, has completed the educational requirements prescribed by the board and is of good moral character, is not addicted in the use of alcohol or narcotics or other habit-forming drugs and who pays the appropriate fee may apply to the board for examination for licensure.
- (b) The board may establish further requirements to be met by optometric graduates from unaccredited schools or colleges of optometry before granting such graduates the right to take an examination.
- (c) An applicant who knowingly makes a false statement of fact in an application for examination shall be deemed to have violated this act and shall be subject to the penalties set forth herein.
- (d) The board shall not issue a license to an applicant who has been convicted of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or of an offense under the laws of another jurisdiction which, if committed in this Commonwealth, would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act," unless:
 - (1) at least ten years have elapsed from the date of conviction;
 - (2) the applicant satisfactorily demonstrates to the board that he has made significant progress in personal rehabilitation since the conviction such that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of his patients or the public or a substantial risk of further criminal violations; and
 - (3) the applicant otherwise satisfies the requirements of this act.

(4 amended Oct. 30, 1996, P.L.721, No.130)

Section 4.1. Certification to prescribe and administer pharmaceutical agents for therapeutic purposes.

- (a) In addition to its other powers and duties under this act, the board shall have the power and duty to certify qualified licensees to prescribe and administer pharmaceutical agents for therapeutic purposes as defined in this amendatory act. To obtain such certification, a licensee shall submit an application to the board on a form provided by the board showing to the satisfaction of the board that the licensee has either:
- (1) graduated from an accredited school of optometry and as a condition for graduation has successfully completed a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes and has passed a licensure examination to practice optometry, which examination included the prescription and administration of pharmaceutical agents for therapeutic purposes; or
 - (2) completed a board-approved course of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes and has passed an examination on the prescription and administration of pharmaceutical agents for therapeutic purposes, which examination was prepared and administered by a qualified and approved professional testing organization in accordance with section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as “The Administrative Code of 1929.”
- (b) In order to maintain such authority, the licensee shall, as part of the continuing education required for renewal of a license under this act, complete such additional study in the prescription and administration of pharmaceutical agents for therapeutic purposes.

(4.1 added Oct. 30, 1996, P.L.721, No.130)

Section 4.2. Additional requirements to prescribe and administer pharmaceutical agents for the treatment of certain types of glaucoma.

- (a) Prior to treating glaucoma for the first time, all therapeutically certified optometrists must have passed an examination that included prescription and administration of pharmaceutical agents for therapeutic purposes as required in section 4.1(a). Therapeutically certified optometrists who passed the examination under section 4.1(a)(2) shall also complete at least 18 hours of continuing education in glaucoma. In order to continue treating glaucoma, the therapeutically certified optometrist shall, as part of the continuing

education required for renewal of a license under this act, complete at least four hours in the study of the prescription and administration of pharmaceutical agents for the treatment of glaucoma.

- (b) Therapeutically certified optometrists who prescribe and administer pharmaceutical agents for the treatment of glaucoma permitted under this act shall obtain and maintain professional liability insurance in accordance with section 3(a)(2.5), except that the amount of professional liability insurance maintained shall be a minimum of \$1,000,000 per occurrence and \$3,000,000 per annual aggregate.

(4.2 added Dec. 16, 2002, P.L.1950, No.225)

Section 4.3. Approval of drugs.

Drugs shall be approved as follows:

- (1) All drugs currently approved by the Secretary of Health and in use in the practice of optometry on the effective date of this section shall be deemed approved under this section.
- (2) Within 90 days of the effective date of this section, the board shall submit a list of drugs authorized under this act to the Secretary of Health, who, in consultation with the Physician General, shall approve or disapprove for good cause each drug. Upon failure of the Secretary of Health to act within 90 days of receipt of the list of drugs, the drugs shall be deemed approved for use under this act.
- (3) The State Board of Optometry shall provide the Secretary of Health with lists of additional drugs for use under this act after such drugs are approved by the Food and Drug Administration, as published in the Code of Federal Regulations. The Secretary of Health, in consultation with the Physician General, shall approve or disapprove for good cause any such drug within 90 days of the receipt of the list. Upon failure of the Secretary of Health to act within 90 days, the drugs shall be deemed approved for use under this act.

(4.3 added Dec. 16, 2002, P.L.1950, No.225)

Section 5. Renewal of license.

- (a) A person licensed by the board shall apply for renewal of such license by such methods as the board shall determine by regulation, provided that such renewal period shall not exceed two years.
- (b) Beginning with the year 1998, a license shall not be renewed by the board unless the optometrist applying for renewal submits proof to

the board that during the two calendar years immediately preceding his application he has satisfactorily completed a minimum of 30 hours of continuing professional optometric education approved by the board so long as a licensee who is certified in accordance with section 4.1 shall be required to complete a minimum of 30 hours, at least six of which concern the prescription and administration of pharmaceutical agents for therapeutic purposes. No credit shall be given for any course in office management or practice building.

- (c) Any licensee of this Commonwealth who is also licensed to practice optometry in any other state, territory or country shall report this information to the board on the biennial renewal application. Any disciplinary action taken in other states shall be reported to the board on the biennial renewal application or within 90 days of final disposition, whichever is sooner. Multiple licensure shall be noted on the licensee's record by the board, and such state, territory or country shall be notified by the board of any disciplinary action taken against said licensee in this Commonwealth.
- (d) An optometrist who requests in writing to place his license on inactive status may reactivate his license after paying the required fees and showing proof of meeting the continuing education requirement for the biennial renewal period immediately preceding such request for reactivation. An optometrist who seeks to renew an inactive license shall file with the board an affidavit affirming that he has not practiced optometry in this Commonwealth during such period his license was inactive.

(5 amended Oct. 30, 1996, P.L.721, No.130)

Section 6. Exemptions and exceptions.

- (a) The licensure requirements of this act shall not apply to optometry officers in the medical service of the armed forces of the United States, the United States Public Health Service, the Veterans' Administration or optometrists employed in Federal service, while in discharge of their official duties.
- (b) The board shall permit externs, who are fourth year optometric students, to perform procedures and tests for the sole purpose of instruction and experience under the direct supervision and control of an optometrist licensed in this Commonwealth. Nothing contained in this act shall be construed to entitle an extern to practice optometry.

- (c) The board may, upon written application and payment of the regular examination fee, issue a license without an examination to any applicant who:
- (1) is at least 21 years of age; and
 - (2) (i) has passed a standard examination in optometry in any other state or all parts of the examination given by the National Board of Examiners in Optometry, provided that the standards of the other state or the National Board are equal to or exceed the standards of this Commonwealth; or
(ii) is licensed in another state and has practiced in that state for a minimum of four years immediately preceding application.
- ((c) amended Oct. 30, 1996, P.L.721, No.130)*
- (d) Nothing in this section shall prohibit the board from imposing additional uniform educational requirements as a requisite for licensure.
- (e) Nothing in this act shall prohibit the sale, duplication and reproduction or dispensing of frames, lenses, spectacles or eyeglasses and related optical appurtenances by any person provided that no such person shall change or modify an original lens power except on a signed written order of a licensed doctor of optometry or licensed physician and surgeon. The sale or manufacture of ready-to-wear spectacles and eyeglasses does not constitute change or modification of an original lens power within the meaning of this act.
- (f) The provisions of this act shall not apply to physicians licensed under the laws of this Commonwealth.
- (g) Nothing in this act shall prohibit the fitting of contact lenses by a person acting under the direction, personal supervision and control of a physician or an optometrist within the standards of practice of his or her respective profession. *((g) added May 15, 1986, P.L.186, No.58)*
- (h) Nothing in this act shall prohibit any individual from fitting an appropriate contact lens for a specific intended wearer and the complete assisting of such wearer in the use of the contact lens, provided that:
- (1) The individual who fits the contact lens successfully passed the examination administered by the National Contact Lens

Examiners as of July 14, 1986, and is currently certified by the National Contact Lens Examiners.

- (2) The fitting is based on prescription of a licensed physician or optometrist.
- (3) The wearer is informed, in writing, to return to the prescribing physician or optometrist for periodic evaluation during the fit, at intervals not to exceed three months or whenever the fitter feels professional judgment is needed.
- (4) The individual who passed the examination administered by the National Contact Lens Examiners as of July 14, 1986, submitted evidence of such successful examination to the board by September 12, 1986.
- (5) The board shall compile and publish a list of individuals who meet the requirements of this subsection and shall enforce the provisions of this subsection.

((h) amended Oct. 30, 1996, P.L.721, No.130)

- (i) Nothing in this act shall prohibit any optometrist from leasing space from an establishment or from paying for franchise fees or other services on a percentage of gross receipts basis. *((i) added May 15, 1986, P.L.186, No.58)*

Section 7. Reasons for refusal, suspension, revocation or other corrective actions; powers of board and actions authorized. *(Hdg. amended Oct. 30, 1996, P.L.721, No.130)*

- (a) The board shall have the power to refuse, revoke, limit or suspend a license or take other corrective action authorized hereunder against an optometrist licensed to practice optometry in this Commonwealth for any or all of the following reasons: *((a) amended Oct. 30, 1996, P.L.721, No.130)*
 - (1) Failure of an applicant for licensure to demonstrate the necessary qualifications as provided in this act or the rules and regulations of the board.
 - (2) Failure to permanently display in any location in which he practices a license or a certified copy of a license issued by the board.
 - (3) Use of deceit or fraud in obtaining a license or in the practice of optometry.
 - (4) Making misleading, deceptive, untrue or fraudulent representations or advertisements in the practice of optometry.

- (5) Conviction of a felony or a crime involving moral turpitude. Conviction shall include a finding or verdict of guilt, an admission of guilt or a plea of nolo contendere.
- (6) Revocation, suspension or refusal to grant a license to practice optometry, or imposition of other disciplinary action, by the proper licensing authority of another state, territory or country.
- (7) Being unable to practice the profession with reasonable skill and safety to patients by reason of illness, addiction to drugs or alcohol, having been convicted of a felonious act prohibited under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory, possession or country, or if he or she is or shall become mentally incompetent. An applicant's statement on the application declaring the absence of a conviction shall be deemed satisfactory evidence of the absence of a conviction unless the board has some evidence to the contrary. In enforcing this paragraph, the board shall, upon probable cause, have authority to compel a practitioner to submit to a mental or physical examination by a physician or a psychologist approved by the board. Failure of a practitioner to submit to such an examination when directed by the board, unless such failure is due to circumstances beyond his or her control, shall constitute an admission of the allegations against him or her, consequent upon which a default and final order may be entered without the taking of testimony or presentation of evidence. A practitioner affected under this paragraph shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume a competent practice of his or her profession with reasonable skill and safety to patients. ((7) amended Oct. 30, 1996, P.L.721, No.130)
- (8) Violation of a regulation promulgated or order issued by the board in a previous disciplinary proceeding against that licensee or applicant for licensure.
- (9) Knowingly aiding, assisting, procuring or advising an unlicensed person, or person who is in violation of this act, or the rules and regulations of the board, to practice optometry.
- (10) Failure to conform to, the acceptable and prevailing standards of optometric practice in rendering professional service to a patient. Actual injury to a patient need not be established.

- (11) Neglect of duty in the practice of optometry, which may include failure to refer a patient, when appropriate, to a physician for consultation or further treatment when an optometric examination determines the presence of a pathology.
- (b) When the board finds that the license of a person may be refused, revoked or suspended the board may:
 - (1) Refuse, revoke or suspend a license.
 - (2) Administer a public reprimand. *((2) amended Oct. 30, 1996, P.L.721, No.130)*
 - (3) Limit or otherwise restrict the licensee's practice under this act.
 - (4) Suspend any enforcement under this subsection and place an optometrist on probation, with the right to vacate the probationary order and impose the enforcement.
 - (5) Require a licensee to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.
 - (6) Restore or reissue, in its discretion, a suspended license to practice optometry and impose any disciplinary or corrective measure which it might originally have imposed.
((b) amended May 15, 1986, P.L.186, No.58)
 - (c) A person affected by any action of the board under this section shall be afforded an opportunity to demonstrate that he is no longer in violation of this section.
 - (d) A person may complain of a violation of the provisions of this act or the rules and regulations of the board by filing a written complaint with the board. The board shall decide either to dismiss the case, issue an injunction, or hold a hearing in accordance with the general rules of administrative practice and procedure. If the person filing the complaint is a member of the board, he shall disqualify himself from participating as a member of the board in all procedures related to the complaint which he filed. *((d) amended Oct. 30, 1996, P.L.721, No.130)*
 - (e) Actions of the board shall be taken subject to the right of notice, hearing, adjudication and appeal accorded by law.
 - (f) Unless ordered to do so by a court, the board shall not reinstate the license of a person to practice as an optometrist which has been revoked until at least five years have elapsed from the effective date of the revocation. A person shall be required to apply for a license after such five-year period in accordance with section 4 if

he or she desires to practice optometry at any time after such revocation. ((f) added May 15, 1986, P.L.186, No.58)

- (g) A license issued under this act shall automatically be suspended upon the legal commitment of a licensee to an institution because of mental incompetency from any cause upon filing with the board a certified copy of such commitment; conviction of a felony under the act of April 14, 1972 (P.L.233, No.64), known as “The Controlled Substance, Drug, Device and Cosmetic Act”; or conviction of an offense under the laws of another jurisdiction which, if committed in Pennsylvania, would be a felony under “The Controlled Substance, Drug, Device and Cosmetic Act.” As used in this section the term “conviction” shall include a judgment, an admission of guilt or a plea of nolo contendere. Automatic suspension under this section shall not be stayed pending any appeal of a conviction. Restoration of such license shall be made as provided in this act for revocation or suspension of such license. ((g) added May 15, 1986, P.L.186, No.58)
- (h) The board shall temporarily suspend a license under circumstances as determined by the board to be an immediate and clear danger to the public health or safety. The board shall issue an order to that effect without a hearing, but upon due notice to the licensee concerned, at his last known address, which shall include a written statement of all allegations against the licensee. The provisions of subsection (f) shall not apply to temporary suspension. The board shall thereupon commence formal action to suspend, revoke or restrict the license of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within 30 days following the issuance of an order temporarily suspending a license, registration or certificate, the board shall conduct, or cause to be conducted, a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee whose license has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board but in no event longer than 180 days. ((h) added May 15, 1986, P.L.186, No.58)
- (i) The board shall require a person whose license has been suspended or revoked to return the license in such manner as the board

directs. Failure to surrender the license shall be a misdemeanor of the third degree. ((i) added May 15, 1986, P.L.186, No.58)

Section 7.1. Impaired professionals.

- (a) The board, with the approval of the Commissioner of Professional and Occupational Affairs, shall appoint and fix the compensation of a professional consultant who is a licensee of the board, or such other professional as the board may determine, with education and experience in the identification, treatment and rehabilitation of persons with physical or mental impairments. Such consultant shall be accountable to the board and treatment programs, such as alcohol and drug treatment programs licensed by the Department of Health, psychological counseling and impaired professional support groups, which are approved by the board and which provide services to licensees under this act.
- (b) The board may defer and ultimately dismiss any of the types of corrective action set forth in this act for an impaired professional so long as the professional is progressing satisfactorily in an approved treatment program, provided that the provisions of this subsection shall not apply to a professional convicted of a felonious act prohibited under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country. An approved program provider shall, upon request, disclose to the consultant such information in its possession regarding an impaired professional in treatment which the program provider is not prohibited from disclosing by an act of this Commonwealth, another state or the United States. Such requirement of disclosure by an approved program provider shall apply in the case of impaired professionals who are the subject of a board investigation or disciplinary proceeding and impaired professionals who voluntarily enter a treatment program other than under the provisions of this section but fail to complete the program successfully or to adhere to an aftercare plan developed by the program provider.
- (c) An impaired professional who enrolls in an approved treatment program shall enter into an agreement with the board under which the professional's license shall be suspended or revoked, but enforcement of that suspension or revocation may be stayed for the length of time the professional remains in the program and makes satisfactory progress, complies with the terms of the agreement and adheres to any limitations on his practice imposed by the board to

protect the public. Failure to enter into such an agreement shall disqualify the professional from the impaired professional program and shall activate an immediate investigation and disciplinary proceeding by the board.

- (d) If, in the opinion of the consultant after consultation with the provider, an impaired professional who is enrolled in an approved treatment program has not progressed satisfactorily, the consultant shall disclose to the board all information in his possession regarding said professional, and the board shall institute proceedings to determine if the stay of the enforcement of the suspension or revocation of the impaired professional's license shall be vacated.
- (e) An approved program provider who makes disclosure pursuant to this section shall not be subject to civil liability for such disclosure or its consequences.
- (f) Any hospital or health care facility, peer or colleague who has substantial evidence that a professional has an active addictive disease for which the professional is not receiving treatment, is diverting a controlled substance or is mentally or physically incompetent to carry out the duties of his or her license shall make or cause to be made a report to the board, provided that any person or facility which acts in a treatment capacity to an impaired professional in an approved treatment program is exempt from the mandatory reporting requirements of this subsection. Any person or facility that reports pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from such report. Failure to provide such report within a reasonable time from receipt of knowledge of impairment shall subject the person or facility to a fine not to exceed \$1,000. The board shall levy this penalty only after affording the accused party the opportunity for a hearing as provided in 2 Pa.C.S. (relating to administrative law and procedure).

(7.1 added Oct. 30, 1996, P.L.721, No.130)

Section 8. Violations and penalties.

- (a) (1) It is unlawful for any person in the Commonwealth to engage in the practice of optometry or pretend to have a knowledge of any branch or branches of the practice of optometry or to hold himself forth as a practitioner of optometry, unless he has fulfilled the requirements of this act and received a license to practice optometry in this Commonwealth.

- (2) A person convicted of practicing optometry without a license shall be guilty of a misdemeanor and shall, on first offense, be subject to a fine of not more than \$1,000 or imprisonment of not more than six months, or both. Conviction on each additional offense shall result in a fine of not less than \$2,000 and imprisonment of not less than six months or more than one year.
- (3) It is unlawful for optometrists to hold themselves out as performing laser surgery or using therapeutic lasers.

((3) added Dec. 16, 2002, P.L.1950, No.225)

- (b) A person convicted of violating a provision of this act, other than of subsection (a), is guilty of a summary offense and shall be fined not more than \$500.
- (c) In addition to any other civil remedy or criminal penalty provided for in this act the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided for by this act or by a vote of the majority of the qualified and confirmed membership or a minimum of six members, whichever is greater, may levy a civil penalty of up to \$1,000 on any current licensee who violates any provision of this act or on any person who practices optometry without being properly licensed to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in 2 pa.C.S. (relating to administrative law and procedure). *((c) added May 15, 1986, P.L.186, No.58)*
- (d) It shall be unlawful for any person to practice or attempt to offer to practice optometry, as defined in this act, without having at the time of so doing a valid, unexpired, unrevoked and unsuspended license issued under this act. The unlawful practice of optometry, as defined in this act may be enjoined by the courts on petition of the board or the Commissioner of Professional and Occupational Affairs. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If it is found that the respondent has engaged in the unlawful practice of optometry, the court shall enjoin him or her from so practicing unless he or she has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to any other civil or criminal prosecution and punishment *((d) added May 15, 1986, P.L.186, No.58)*

- (e) All fines and civil penalties imposed in accordance with this section shall be paid into the Professional Licensure Augmentation Account. *((e) added May 16, 1986, P.L.186, No.58)*

Section 9. Fees and other moneys.

- (a) The board shall have the power to fix or change fees for initial licensure, examination, biennial license renewal, verification of licensure or grades to other jurisdictions, initial and renewal certified copies of licenses, and biennial renewal of branch offices.
- (b) Moneys collected under the provisions of this act shall be paid into the Professional Licensure Augmentation Account and disbursed according to law.
- (c) All fees required under this act shall be fixed by the board by regulation and shall be subject to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If the revenues raised by fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures over a two-year period, the board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures.
- (d) If the Bureau of Professional and Occupational Affairs determines that the fees established by the board under subsection (c) are inadequate to meet the minimum enforcement efforts required by this act, then the bureau, after consultation with the board and subject to the "Regulatory Review Act," shall increase the fees by regulation in an amount that adequate revenues are raised to meet the required enforcement effort.

(9 amended Oct. 30, 1996, P.L.721, No.130)

Section 10. Freedom of choice.

Any State or municipal board, commission, department, institution, agency or bureau including public schools, expending public money for any purpose involving eye care which is within the scope of the practice of optometry shall not deny the recipients or beneficiaries the freedom to choose an optometrist or a physician and shall make the same reimbursement whether the service is provided by an optometrist or a physician: Provided, That whenever programs, policies, plans or contracts which pay on the basis of usual, customary and reasonable charges or on some similar basis are used, only the method of determining the amount of reimbursement shall be the same.

Section 11. Transitional provisions.

- (a) Notwithstanding its repeal pursuant to section 12(a), all valid licenses issued prior to the effective date of this act under the provisions of the act of March 30, 1917 (P.L.21, No.10), referred to as the Optometry Practice Law shall continue with full force and validity during the period for which issued. For the subsequent license period, and each license period thereafter, the board shall renew such licenses without requiring any license examination to be taken. However, applicants for renewal or holders of such licenses shall be subject to all other provisions of this act.
- (b) All proceedings in progress on the effective date of this act shall continue to proceed under the former terms of the act under which they were originally brought.
- (c) All offenses alleged to have occurred prior to the effective date of this act shall be processed under the former Optometry Practice Law.

Section 12. Repeals.

- (a) The act of March 30, 1917 (P.L.21, No.10), entitled “An act defining optometry; and relating to the right to practice optometry in the Commonwealth of Pennsylvania, and making certain exceptions; and providing a Board of Optometrical Education, Examination, and Licensure, and means and methods whereby the right to practice optometry may be obtained; and providing for the means to carry out the provisions of this act; and providing for revocation or suspension of licenses given by said board, and providing penalties for violations thereof; and repealing all acts or parts of acts inconsistent therewith,” is repealed.
- (b) All acts or parts of acts are repealed which are inconsistent herewith.

Section 13. Effective date.

This act shall take effect in 60 days.

APPENDIX

Supplementary Provisions of Amendatory Statutes

1986, MAY 15, P.L.186, NO.50

Section 8. This act with respect to the State Board of Optometrical Examiners constitutes the legislation necessary to reestablish an agency under the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Compiler's Note: Act 58 added or amended sections 2, 2.1, 3, 3.1, 5, 6, 7, 8 and 9 of Act 57.

Section 9. The presently confirmed members of the State Board of Optometrical Examiners constituted under section 415 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, as of the effective date of this act, shall continue to serve as board members until their present terms of office expire.

Section 10. Each rule, regulation or fee of the board in effect on the effective date of this act shall remain in effect after such date until amended by the board, provided that the board shall immediately initiate the repeal or amendment of any rule or regulation which is inconsistent with the provisions of this act.

Section 11. Any person who holds a valid license issued by the State Board of Optometrical Examiners under the act of June 6, 1980 (P.L.197, No.57), known as the Optometric Practice and Licensure Act, prior to the effective date of this amendatory act shall, on and after the effective date hereof, be deemed to be licensed by the State Board of Optometry as provided for in this amendatory act.

Section 12. The State Board of Optometry shall continue together with its statutory functions and duties until December 31, 1991, when it shall terminate and go out of existence unless reestablished or continued by the General Assembly. Evaluation and review, termination, reestablishment and continuation of the board beyond December 31, 1991, shall be conducted pursuant to the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

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