

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 770

Session of
1979

INTRODUCED BY COPPERSMITH, EARLY, MESSINGER, LINCOLN, ORLANDO,
LYNCH, HANKINS, O'CONNELL, MANBECK, SCHAEFER, LEWIS, MELLOW,
MURRAY, ZEMPRELLI, MOORE, HESS AND REIBMAN, MAY 22, 1979

SENATOR COPPERSMITH, PUBLIC HEALTH AND WELFARE, AS AMENDED,
OCTOBER 22, 1979

AN ACT

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

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17 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Short title.

3 This act shall be known and may be cited as the "Optometric
4 Practice and Licensure Act."

5 Section 2. Primary health care profession.

6 The practice of optometry is declared to be a primary health
7 care profession and healing art entitled to the same rights and
8 privileges which are attached to and devolve upon other such
9 professions in this Commonwealth.

10 Section 3. Definitions.

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

14 "Advisory Committee on Continuing Professional Education."

15 An advisory committee established pursuant to section 4 to make
16 recommendations to the board relating to continuing professional
17 education.

18 "Board." The State Board of Optometrical Examiners
19 established pursuant to section 415, act of April 9, 1929
20 (P.L.177, No.175), known as "The Administrative Code of 1929,"
21 or any successor board.

22 "Examination and diagnosis." Any examination or diagnostic
23 means or method compatible with optometric education and
24 professional competence. The term shall encompass the use of
25 pharmaceutical agents for diagnostic purposes classified as
26 miotics, mydriatics, cycloplegics, topical anesthetics and dyes
27 when applied topically to the eye, subject to the rules and
28 regulations of the board, provided however that with respect to
29 optometrists licensed before March 1, 1974 only such
30 optometrists who have satisfactorily completed a course in

1 pharmacology as it applies to optometry, with particular
2 emphasis on the topical application of diagnostic pharmaceutical
3 agents to the eye, approved by the board shall be permitted to
4 use diagnostic pharmaceutical agents topically in the practice
5 of optometry.

6 "Optometrist." Any person who, following formal and
7 recognized training in the art and science of optometry has
8 received a doctor of optometry degree from an accredited
9 institution and is qualified to seek or has acquired a license
10 to practice the primary health care profession of optometry. An
11 optometrist shall be identified either by "Doctor of Optometry,"
12 "O.D.," or "Dr." followed by "Optometrist."

13 "Practice of Optometry." The use of any and all means or
14 methods for the examination, diagnosis and except for drugs or
15 surgery, treatment of conditions of the human visual system and
16 shall include the examination for, and adapting and fitting of,
17 any and all kinds of ~~contact~~ AND TYPES OF lenses. <—

18 "Treatment." The use of any and all preventive and
19 corrective means and methods, except for drugs or surgery, for
20 aid to the human visual system and shall include but is not
21 limited to the adapting and fitting of any and all kinds AND <—
22 TYPES of lenses, ~~devices and contact lenses~~ AND DEVICES and the <—
23 provision of vision developmental and perceptual therapy or
24 ocular exercise for aid to or enhancement of visual functions.

25 Section 4. Powers and duties of the board.

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

27 (1) To meet at least six times annually at a place
28 within the Commonwealth determined by the board for the
29 transaction of its business.

30 (2) To prescribe the subjects to be tested, develop

1 written and practical portions of the examination and conduct
2 examinations of qualified applicants for licensure at least
3 twice annually at such times and places as designated by the
4 board.

5 (3) To record all licenses in its office.

6 (4) To grant a license to practice optometry in this
7 Commonwealth to any applicant for licensure who has passed
8 the prescribed examination and otherwise complied with the
9 provisions of this act.

10 (5) To appoint an Advisory Committee on Continuing
11 Professional Education which shall consist of consultants who
12 are optometric educators and optometric practitioners to
13 serve with the Deputy Secretary for Higher Education or his
14 designee.

15 (b) The board shall have the following powers:

16 (1) To grant, refuse, revoke or suspend any license to
17 practice optometry in this Commonwealth pursuant to the
18 provisions of this act.

19 (2) To conduct hearings, investigations and discovery
20 proceedings; to administer oaths or affirmations to
21 witnesses, take testimony, issue subpoenas to compel
22 attendance of witnesses or the production of records; to
23 exercise all powers granted by law or regulation in
24 accordance with the general rules of administrative practice
25 and procedure. The board or its designated hearing examiner
26 shall exercise the powers enumerated in this paragraph with
27 regard to both licensed doctors of optometry and persons
28 practicing optometry without a license.

29 (3) To obtain injunctions from a court of competent
30 jurisdiction against persons practicing optometry in

1 violation of this act when such practice constitutes a threat
2 to the health and welfare of the public; provided that the
3 board or its designated hearing examiner shall conduct a
4 hearing as otherwise required by this section within 30 days
5 of the injunction date. The chairperson of the board shall
6 exercise this power whenever the board is not in session.

7 (4) To recommend to the Commissioner of Professional and
8 Occupational Affairs such staff as is necessary to carry out
9 the provisions of this act.

10 (5) To incur expenses, retain consultants, appoint
11 committees from its own membership and appoint advisory
12 committees which may include nonboard members.

13 (6) To compensate at a rate fixed by the board, ~~but not~~ <—
14 ~~to exceed \$75 per diem or \$1,000 annually~~ consultants and
15 nonboard members of advisory committees.

16 (7) To authorize the payment of special reimbursements
17 for the secretary of the board or any other designated member
18 of the board for rendering special services authorized by the
19 board.

20 (8) To use qualified board hearing examiners to conduct
21 hearings and prepare adjudications for final review and
22 approval by the board, including disciplinary sanctions.
23 Nothing shall prohibit the board or a designated board member
24 from conducting such hearings.

25 (9) To establish and administer a records system which
26 records shall be open to public inspection during the regular
27 business hours of the board.

28 (10) To hold meetings, other than required by subsection
29 (a), for the conduct of its business upon giving public
30 notice of such meetings.

1 (11) In consultation with the Council on Optometric
2 Education or its successor and the appropriate regional
3 accrediting body recognized by the United States Office of
4 Education, to approve those optometric educational
5 institutions in the United States and Canada which are
6 accredited for the purposes of this act.

7 (12) In consultation with the Advisory Committee on
8 Continuing Professional Education, to establish and approve
9 by rule and regulation courses of continuing professional
10 optometric education. Only those educational programs as are
11 available to all licensees on a reasonable nondiscriminatory
12 fee basis shall be approved. Programs to be held within or
13 without the Commonwealth may receive approval. The number of
14 required hours of study may not exceed those that are
15 available at approved courses held within the Commonwealth
16 during the applicable license renewal period. In cases of
17 certified illness or undue hardship, the board is empowered
18 to waive the continuing education requirement.

19 (13) To certify, upon the written request of a licensee
20 and payment of the prescribed fee, that the licensee is
21 qualified for licensure and the practice of optometry in this
22 Commonwealth.

23 (14) To promulgate all rules and regulations necessary
24 to carry out the purposes of this act.

25 Section 5. Requirements for examination.

26 (a) A person holding a Doctor of Optometry degree from an
27 accredited optometric educational institution in the United
28 States or Canada, who furnishes the board with evidence that he
29 is at least 21 years of age, has completed the educational
30 requirements prescribed by the board, is of good moral

1 character, is not addicted in the use of alcohol or narcotics or
2 other habit-forming drugs and who pays the fee may apply to the
3 board for examination for licensure.

4 (b) The board shall establish by rule or regulation
5 procedures for examination and all other matters related to the
6 proficiency of applicants for licensure.

7 (c) The board may establish further requirements to be met
8 by optometric graduates from unaccredited schools or colleges of
9 optometry before granting such graduates the right to take an
10 examination.

11 (d) An applicant who knowingly makes a false statement of
12 fact in an application for examination shall be deemed to have
13 violated this act and shall be subject to the penalties set
14 forth herein.

15 Section 6. Renewal of license.

16 (a) A person licensed by the board shall apply for renewal
17 of such license by such methods as the board shall determine by
18 regulation, provided that such renewal period shall not exceed
19 two years.

20 (b) Beginning with the year 1982 license shall not be
21 renewed by the board unless the optometrist applying for renewal
22 submits proof to the board that during the two calendar years
23 immediately preceding his application he has satisfactorily
24 completed a minimum of 24 hours of continuing professional
25 optometric education approved by the board.

26 Section 7. Exemptions and exceptions.

27 (a) The licensure requirements of this act shall not apply
28 to optometry officers in the medical service of the armed forces
29 of the United States, the United States Public Health Service,
30 the Veterans' Administration or optometrists employed in Federal

1 service, while in discharge of their official duties.

2 (b) The board shall permit externs, who are fourth year
3 optometric students, to perform procedures and tests for the
4 sole purpose of instruction and experience under the direct
5 supervision and control of an optometrist licensed in this
6 Commonwealth. Nothing contained in this act shall be construed
7 to entitle an extern to practice optometry.

8 (c) The board may, upon written application and payment of
9 the regular examination fee, issue a license without an
10 examination, other than clinical, to any applicant who:

11 (1) Is at least 21 years of age.

12 (2) Has passed a standard examination in optometry in
13 any other state or all parts of the examination given by the
14 National Board of Examiners in Optometry, provided that the
15 standards of the other state or the National Board are, in
16 the opinion of the board, equal to the standards of this
17 Commonwealth.

18 (3) Is licensed in another state and has practiced in
19 that state for a minimum of five years immediately preceding
20 application.

21 (d) Nothing in this section shall prohibit the board from
22 imposing additional educational requirements as a requisite for
23 licensure.

24 ~~(e) Nothing in this act shall prohibit the sale or~~ <—
25 ~~duplication of frames, lenses, spectacles or eyeglasses by any~~
26 ~~person provided that no such person shall change or modify an~~
27 ~~original lens power except on a signed written order of a~~
28 ~~licensed doctor of optometry or licensed physician and surgeon,~~
29 ~~provided that no person except a licensed doctor of optometry or~~
30 ~~licensed physician and surgeon may adopt or fit any kind of~~

1 ~~contact lenses.~~

2 (E) NOTHING IN THIS ACT SHALL PROHIBIT THE SALE, DUPLICATION <—
3 AND REPRODUCTION OR DISPENSING OF FRAMES, LENSES, SPECTACLES OR
4 EYEGLASSES AND RELATED OPTICAL APPURTENANCES BY ANY PERSON
5 PROVIDED THAT NO SUCH PERSON SHALL CHANGE OR MODIFY AN ORIGINAL
6 LENS POWER EXCEPT ON A SIGNED WRITTEN ORDER OF A LICENSED DOCTOR
7 OF OPTOMETRY OR LICENSED PHYSICIAN AND SURGEON.

8 (f) The provisions of this act shall not apply to physicians
9 licensed under the laws of this Commonwealth.

10 Section 8. Refusal, revocation or suspension of license.

11 (a) The board shall have the power to refuse, revoke or
12 suspend a license to practice optometry in this Commonwealth
13 for:

14 (1) Failure of an applicant for licensure to demonstrate
15 the necessary qualifications as provided in this act or the
16 rules and regulations of the board.

17 (2) Failure to permanently display in any location in
18 which he practices a license or a certified copy of a license
19 issued by the board.

20 (3) Use of deceit or fraud in obtaining a license or in
21 the practice of optometry.

22 (4) Making misleading, deceptive, untrue or fraudulent
23 representations or advertisements in the practice of
24 optometry.

25 (5) Conviction of a felony or a crime involving moral
26 turpitude. Conviction shall include a finding or verdict of
27 guilt, an admission of guilt or a plea of non contendere.

28 (6) Revocation, suspension or refusal to grant a license
29 to practice optometry, or imposition of other disciplinary
30 action, by the proper licensing authority of another state,

territory or country.

(7) Inability to practice optometry with reasonable skill and safety to patients by reason of incompetence, illness, drunkenness, excessive use of drugs, narcotics, chemicals or other type of material, or as a result of any mental or physical condition.

(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) Being guilty of immoral or unprofessional conduct. Unprofessional conduct shall include any departure from, or 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.

(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 or private reprimand.

(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.

(c) A person affected by any action of the board under this section shall be afforded an opportunity to demonstrate that he

1 is no longer in violation of this section.

2 (d) A person may complain of a violation of the provisions
3 of this act or the rules and regulations of the board by filing
4 a written complaint with the secretary of the board. The board
5 shall decide either to dismiss the case, issue an injunction, or
6 hold a hearing in accordance with the general rules of
7 administrative practice and procedure. If the person filing the
8 complaint is a member of the board, he shall disqualify himself
9 from participating as a member of the board in all procedures
10 related to the complaint which he filed.

11 (e) Actions of the board shall be taken subject to the right
12 of notice, hearing, adjudication and appeal accorded by law.

13 Section 9. Violations and penalties.

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

21 (2) A person found to be guilty of practicing optometry
22 without a license as a result of court action or as a result
23 of board action shall be guilty of a misdemeanor and shall,
24 on first offense, be subject to a fine of not more than
25 \$1,000 or imprisonment of not more than six months, or both.
26 Conviction on each additional offense shall result in a fine
27 of not less than \$2,000 and imprisonment of not less than six
28 months or more than one year.

29 (b) A person convicted of violating a provision of this act,
30 other than of subsection (a), is guilty of a summary offense and

1 shall be fined not more than \$500.

2 Section 10. Fees and other moneys.

3 (a) The board shall have the power to fix or change fees for
4 examination, biennial and late biennial license renewal,
5 verification of licensure or grades to other jurisdictions,
6 initial and renewal certified copies of licenses, and biennial
7 renewal of branch offices.

8 (b) Moneys collected under the provisions of this act shall
9 be paid into a designated account and disbursed according to
10 law.

11 Section 11. Provision of services and reimbursement.

12 Any State or municipal board, commission, department,
13 institution, agency or bureau, including public schools,
14 expending public money for any purpose involving eye care,
15 policy of insurance, self-insured sickness, health or welfare
16 plan, benefits or medical or health service contracts providing
17 for payment or reimbursement for an eye care service, shall not
18 deny the recipients or beneficiaries the freedom to choose a
19 duly licensed optometrist or a duly licensed physician as the
20 provider of eye care which is within the scope of the practice
21 of optometry as defined in this act. They shall make the same
22 reimbursement whether the care is provided by a duly licensed
23 physician or by a duly licensed optometrist. Whenever programs,
24 policies, plans or contracts which pay on the basis of usual,
25 customary and reasonable charges or on some similar basis are
26 used, only the method of determining the amount of reimbursement
27 shall be the same.

28 Section 12. Repeals.

29 (a) The act of March 30, 1917 (P.L.21, No.10), entitled "An
30 act defining optometry; and relating to the right to practice

1 optometry in the Commonwealth of Pennsylvania, and making
2 certain exceptions; and providing a Board of Optometrical
3 Education, Examination, and Licensure, and means and methods
4 whereby the right to practice optometry may be obtained; and
5 providing for the means to carry out the provisions of this act;
6 and providing for revocation or suspension of licenses given by
7 said board, and providing penalties for violations thereof; and
8 repealing all acts or parts of acts inconsistent therewith," is
9 repealed.

10 (b) All acts or parts of acts are repealed which are
11 inconsistent herewith.

12 Section 13. Effective date.

13 This act shall take effect in 60 days.