

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, RE-REPORTED
AS AMENDED, DECEMBER 4, 1979

AN ACT

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

3 TABLE OF CONTENTS

4 Section 1. Short title.

5 ~~Section 2. Primary health care profession.~~ <—

6 Section 3 2. Definitions. <—

7 Section 4 3. Powers and duties of the board. <—

8 Section 5 4. Requirements for examination. <—

9 Section 6 5. Renewal of license. <—

10 Section 7 6. Exemptions and exceptions. <—

11 Section 8 7. Refusal, revocation or suspension of license. <—

12 Section 9 8. Violations and penalties. <—

13 Section 10 9. Fees and other moneys. <—

14 ~~Section 11. Provision of services and reimbursement.~~ <—

15 SECTION 10. FREEDOM OF CHOICE. <—

16 Section 12 11. Repeals. <—

17 Section 13 12. Effective date. <—

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

3 Section 1. Short title.

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

6 ~~Section 2. Primary health care profession.~~ <—

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

11 Section 3 2. Definitions. <—

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

15 "Advisory Committee on Continuing Professional Education."

16 An advisory committee established pursuant to section 4 3 to <—
17 make recommendations to the board relating to continuing
18 professional education.

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

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

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

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

14 "Practice of Optometry." The use of any and all means or
15 methods for the examination, diagnosis and except for drugs or
16 surgery, treatment of conditions of the human visual system and
17 shall include the examination for, and adapting and fitting of,
18 any and all kinds and types of lenses.

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

26 Section 4 3. Powers and duties of the board. <—

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

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

1 (2) To prescribe the subjects to be tested, develop
2 written and practical portions of the examination and conduct
3 examinations of qualified applicants for licensure at least
4 twice annually at such times and places as designated by the
5 board.

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

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

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

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

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

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

30 (3) To obtain injunctions from a court of competent

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

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

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

14 (6) To compensate at a rate fixed by the board,
15 consultants and 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.

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

(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 without 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.

Section 5 4. Requirements for examination.

(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, 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 5. 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 6. 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, duplication
25 and reproduction or dispensing of frames, lenses, spectacles or
26 eyeglasses and related optical appurtenances by any person
27 provided that no such person shall change or modify an original
28 lens power except on a signed written order of a licensed doctor
29 of optometry or licensed physician and surgeon.

30 (f) The provisions of this act shall not apply to physicians

1 licensed under the laws of this Commonwealth.

2 Section 8 7. Refusal, revocation or suspension of license.

<—

3 (a) The board shall have the power to refuse, revoke or
4 suspend a license to practice optometry in this Commonwealth
5 for:

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

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

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

14 (4) Making misleading, deceptive, untrue or fraudulent
15 representations or advertisements in the practice of
16 optometry.

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

20 (6) Revocation, suspension or refusal to grant a license
21 to practice optometry, or imposition of other disciplinary
22 action, by the proper licensing authority of another state,
23 territory or country.

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

29 (8) Violation of a regulation promulgated or order
30 issued by the board in a previous disciplinary proceeding

1 against that licensee or applicant for licensure.

2 (9) Knowingly aiding, assisting, procuring or advising
3 an unlicensed person, or person who is in violation of this
4 act, or the rules and regulations of the board, to practice
5 optometry.

6 (10) Being guilty of immoral or unprofessional conduct.
7 Unprofessional conduct shall include any departure from, or
8 failure to conform to, the acceptable and prevailing
9 standards of optometric practice in rendering professional
10 service to a patient. Actual injury to a patient need not be
11 established.

12 (b) When the board finds that the license of a person may be
13 refused, revoked or suspended the board may:

14 (1) Refuse, revoke or suspend a license.

15 (2) Administer a public or private reprimand.

16 (3) Limit or otherwise restrict the licensee's practice
17 under this act.

18 (4) Suspend any enforcement under this subsection and
19 place an optometrist on probation, with the right to vacate
20 the probationary order and impose the enforcement.

21 (c) A person affected by any action of the board under this
22 section shall be afforded an opportunity to demonstrate that he
23 is no longer in violation of this section.

24 (d) A person may complain of a violation of the provisions
25 of this act or the rules and regulations of the board by filing
26 a written complaint with the secretary of the board. The board
27 shall decide either to dismiss the case, issue an injunction, or
28 hold a hearing in accordance with the general rules of
29 administrative practice and procedure. If the person filing the
30 complaint is a member of the board, he shall disqualify himself

1 from participating as a member of the board in all procedures
2 related to the complaint which he filed.

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

5 Section ~~9~~ 8. Violations and penalties. <—

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

13 (2) A person found to be guilty of practicing optometry
14 without a license as a result of court action or as a result
15 of board action shall be guilty of a misdemeanor and shall,
16 on first offense, be subject to a fine of not more than
17 \$1,000 or imprisonment of not more than six months, or both.
18 Conviction on each additional offense shall result in a fine
19 of not less than \$2,000 and imprisonment of not less than six
20 months or more than one year.

21 (b) A person convicted of violating a provision of this act,
22 other than of subsection (a), is guilty of a summary offense and
23 shall be fined not more than \$500.

24 Section ~~10~~ 9. Fees and other moneys. <—

25 (a) The board shall have the power to fix or change fees for
26 examination, biennial and late biennial license renewal,
27 verification of licensure or grades to other jurisdictions,
28 initial and renewal certified copies of licenses, and biennial
29 renewal of branch offices.

30 (b) Moneys collected under the provisions of this act shall

1 be paid into a designated account and disbursed according to
2 law.

3 ~~Section 11. Provision of services and reimbursement.~~ <—

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

20 SECTION 10. FREEDOM OF CHOICE. <—

21 ANY STATE OR MUNICIPAL BOARD, COMMISSION, DEPARTMENT,
22 INSTITUTION, AGENCY OR BUREAU INCLUDING PUBLIC SCHOOLS,
23 EXPENDING PUBLIC MONEY FOR ANY PURPOSE INVOLVING EYE CARE WHICH
24 IS WITHIN THE SCOPE OF THE PRACTICE OF OPTOMETRY SHALL NOT DENY
25 THE RECIPIENTS OR BENEFICIARIES THE FREEDOM TO CHOOSE AN
26 OPTOMETRIST OR A PHYSICIAN AND SHALL MAKE THE SAME REIMBURSEMENT
27 WHETHER THE SERVICE IS PROVIDED BY AN OPTOMETRIST OR A
28 PHYSICIAN.

29 Section ~~12~~ 11. Repeals. <—

30 (a) The act of March 30, 1917 (P.L.21, No.10), entitled "An

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

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

13 Section ~~13~~ 12. Effective date.

<—

14 This act shall take effect in 60 days.