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INTRODUCED BY MILLER, MANDERINO, McCALL, ARTY, SWEET,
J. L. WRIGHT, CALTAGIRONE, WHITE AND VAN HORNE, OCTOBER 27,
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REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,
OCTOBER 27, 1981

AN ACT

1 Relating to ophthalmic dispensing; requiring registration of
2 certain persons and providing for injunctions and penalties.

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

16 Section 1. Short title.

17 This act shall be known and may be cited as the "Ophthalmic
18 Dispensing Act."

19 Section 2. Declaration of purpose.

20 In order to safeguard public health, safety and welfare; to
21 protect the public by assuring that providers of ophthalmic
22 dispensing services and products meet minimum standards of
23 competence; and to insure that competent providers of such
24 services and products are available in adequate numbers, it is
25 the purpose of this act to provide for the regulation of persons
26 offering ophthalmic dispensing services to the public.

27 Section 3. Definitions.

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

1 "Department." The Department of Health.

2 "Ophthalmic dispensing." The design, verification and
3 delivery to the intended wearer of lenses, frames and other
4 specially fabricated optical devices upon prescription. It
5 includes, but is not limited to, prescription analysis and
6 interpretation; the taking of measurements to determine the
7 size, shape and specifications of the lenses, frames, contact
8 lenses or lens forms best suited to the wearer's needs; the
9 preparation and delivery of work orders to laboratory
10 technicians engaged in grinding lenses and fabricating eyewear;
11 the verification of the quality of finished ophthalmic products;
12 the adjustment of lenses or frames to the intended wearer's face
13 or eyes; and the adjustment, replacement, repair and
14 reproduction of previously prepared ophthalmic lenses, frames or
15 other specially fabricated ophthalmic devices.

16 "Prescription." A written or verbal direction from a
17 licensed physician or optometrist for lenses and consists of the
18 refractive power and when necessary the vertex distance, the
19 cylinder axis and prism; a prescription for contact lenses shall
20 also specify for contact lenses.

21 "Secretary." The Secretary of Health.

22 "Supervision." The provision of direction and control
23 through personal inspection and evaluation of work and the
24 provision of such consultation and instruction as may be needed.

25 Section 4. Registration required.

26 No person shall engage in ophthalmic dispensing or hold
27 himself or herself out as an ophthalmic dispenser, or as being
28 able to engage in ophthalmic dispensing or to render ophthalmic
29 dispensing services in this State, unless he or she is
30 registered in accordance with the provisions of this act.

1 Section 5. Persons and practices not affected.

2 Nothing in this act shall prevent or restrict:

3 (1) the practices, services or activities of any
4 physician or optometrist duly licensed or registered in this
5 State by any other law from engaging in the profession or
6 occupation for which he or she is licensed or registered;

7 (2) the activities of any person employed by a licensed
8 physician or optometrist;

9 (3) any individual, firm or corporation from employing
10 persons registered under this act or from engaging in
11 ophthalmic dispensing through persons registered under this
12 act; or

13 (4) advertising prices and locations of places of
14 business.

15 Section 6. Requirements for registration.

16 (a) Spectacle dispensing.--To be eligible to engage in
17 spectacle dispensing a person shall successfully complete a
18 written qualifying spectacle dispensing examination.

19 (b) Contact lens dispensing.--To be eligible to dispense
20 contact lenses a person shall successfully complete a written
21 qualifying contact lens examination. Upon successful completion
22 of this examination an applicant shall be authorized to dispense
23 contact lenses without the requirement that he pass any other
24 examination except that to engage in spectacle dispensing he
25 must also meet the spectacle dispensing eligibility requirements
26 established herein.

27 Section 7. Examination for registration of spectacle dispensers
28 and contact lens dispensers.

29 The written qualifying spectacle dispensing examination and
30 the contact lens examination shall be designed to measure

1 specific job performance requirements, be professionally
2 constructed and validated and be independently and objectively
3 administered and scored. The examinations shall be given at
4 least twice each year at sites which are accessible to
5 applicants on dates that are publicly announced 90 days in
6 advance of the administration dates. Each applicant shall
7 receive his or her examination score and a performance profile
8 by subject matter area within a reasonable time after taking an
9 examination.

10 Section 8. Waiver of written examination requirements.

11 (a) Spectacle dispensing examination.--The department shall
12 waive the written spectacle dispensing examination requirement
13 and grant registration to any applicant who:

14 (1) holds a currently valid ophthalmic dispensing
15 license in another state;

16 (2) holds a certificate as a certified optician from the
17 American Board of Opticianry at the effective date of this
18 act; provided, that the department has reviewed the
19 qualifications for said certificate and determined that they
20 are at least equal to the examination and requirements that
21 the department administers under section 7;

22 (3) holds a certificate as a certified dispenser from
23 the Pennsylvania Society of Dispensing Opticians at the
24 effective date of this act; provided, that the department has
25 reviewed the qualifications for said certificate and
26 determined that they are at least equal to the examination
27 and requirements that the department administers under
28 section 7; or

29 (4) has been engaged in ophthalmic dispensing for a
30 period of one year prior to the effective date of this act.

(b) Contact lens examination.--The department shall waive the written qualifying contact lens examination requirement and grant registration to any applicant who:

(1) is currently licensed to dispense contact lenses in another state;

(2) has passed the Fellowship Examination administered by the Contact Lens Society of America at the effective date of this act; provided, that the department has reviewed said examination and determined that it is at least equal to the examination that the department administers under section 7;

(3) has passed the Contact Lens Registry Examination of the National Contact Lens Examiners at the effective date of this act; provided, that the department has reviewed said examination and determined that it is at least equal to the examination that the department administers under section 7;

(4) has passed the Pennsylvania Society of Dispensing Opticians Contact Lens Certification Examination at the effective date of this act; provided, that the department has reviewed said examination and determined that it is at least equal to the examination that the department administers under section 7; or

(5) has been engaged in contact lens dispensing for a period of one year prior to the effective date of this act.

(c) Temporary waiver of written examination.--Other persons with experience in ophthalmic dispensing may be issued registration to engage in ophthalmic dispensing without examination provided they shall file an application with the department for temporary waiver of the examination requirement within one year from the effective date of this act except that such persons shall be required to pass the written qualifying

1 examination before the first renewal of their registration.

2 Section 9. Renewal of registration.

3 Registration under this act shall be subject to renewal every
4 three years and shall expire unless the registrant submits an
5 application for renewal in the manner prescribed by the
6 department. Such application shall be accompanied by a renewal
7 fee and evidence that the applicant has during the three-year
8 period completed continuing education as follows:

9 (1) For dispensers of spectacles, the applicant must
10 meet the continuing education requirement of the American
11 Board of Opticianry (ABO) Registry or nine hours of
12 continuing education in spectacle dispensing, provided that
13 the department has reviewed the continuing education program
14 and the ABO Registry and determined that they meet the
15 department's criteria.

16 (2) For dispensers of contact lenses, the applicant must
17 meet the continuing education requirement of the Registry of
18 the National Contact Lens Examiners or 15 hours of continuing
19 education in contact lens dispensing, provided that the
20 department has reviewed the continuing education program and
21 determined that it meets the department's criteria.

22 (3) For dispensers of spectacles and contact lenses, the
23 applicant must meet both of the requirements contained in
24 paragraphs (1) and (2).

25 (4) Verified attendance at or participation in any
26 formal educational program contributing to the advancement,
27 extension or enhancement of professional skills and knowledge
28 in the practice of ophthalmic dispensing which is sponsored
29 or conducted by any nonprofit or for-profit entity that meets
30 the department's criteria shall constitute approved

1 continuing education.

2 Section 10. Registration of apprentices and other ancillary
3 personnel.

4 (a) Registration.--Persons registered under this act may
5 utilize apprentices to engage in ophthalmic dispensing when such
6 apprentices are under their supervision and at the same location
7 where the registered person dispenses, except that no registered
8 ophthalmic dispenser shall supervise more than three
9 apprentices. Apprentices may be employed upon submission of an
10 application for registration to the department.

11 (b) Examination.--An apprentice may take the registration
12 examination at any time during his apprenticeship.

13 (c) Other personnel.--Persons registered under this act may
14 employ other ancillary personnel to assist in fashion
15 consulting, to perform clerical and office duties, and to assist
16 in making minor repairs. Such personnel need not register as
17 apprentices.

18 Section 11. Administrative requirements.

19 (a) Rule making.--This act shall be administered by the
20 Department of Health whose rule making authority with respect to
21 this act shall be limited to the following procedural matters:
22 processing applications for registration, collecting fees,
23 scheduling and supervising the administration of qualifying
24 examinations, issuing registrations and registering apprentices,
25 reviewing and approving examinations and certifications as
26 required by section 8 and reviewing and approving continuing
27 education programs, and maintaining such records as may be
28 needed to carry out these responsibilities.

29 (b) Exclusion from regulations.--In the administration of
30 this act the department shall have no authority to make rules

1 governing the employment of ophthalmic dispensers, the location
2 of optical stores, advertising of optical products or services,
3 or the manner in which such products can be displayed.

4 (c) Advisory committee.--There is created under this act an
5 advisory committee to the Department of Health which shall be
6 composed of four ophthalmic dispensers, one ophthalmologist
7 (M.D.), one optometrist (O.D.) and two public members who shall
8 be appointed by the Governor. The Governor shall, within 60 days
9 from the effective date of this act, appoint two committee
10 members for a term of one year and three for a term of three
11 years. Appointments made thereafter shall be for three year
12 terms but no person shall be appointed to serve more than two
13 consecutive terms. Members of the advisory committee shall
14 receive no compensation for their services but shall be entitled
15 to reasonable travel and other expenses incurred in the
16 execution of their duties.

17 (d) Open meeting and records.--All meetings of the advisory
18 committee shall be open and the minutes of such meetings shall
19 be available to the public.

20 Section 12. Special provision.

21 Contact lenses may be dispensed only upon the written
22 prescription of a licensed physician or optometrist for contact
23 lenses except that contact lenses may be duplicated on the
24 original prescription of record.

25 Section 13. Fees.

26 The department shall publish fees for the following purposes:

- 27 (1) Application for examination.
- 28 (2) Initial registration fee.
- 29 (3) Temporary registration fee.
- 30 (4) Renewal of registration fee.

1 (5) Apprentice registration fee.

2 Section 14. Causes for denial, suspension or revocation of
3 registration.

4 The secretary may deny, suspend or revoke registration or
5 impose conditions of probation upon a registrant for any of the
6 following causes:

7 (1) Obtaining a registration certificate by fraud or
8 deceit.

9 (2) Use of the term "doctor" or "physician" or "clinic"
10 or any derivation thereof, as part of the firm name under
11 which the registrant fits and sells ophthalmic devices unless
12 authorized by law.

13 (3) Fraud or misrepresentation in the repair, fitting or
14 selling of ophthalmic devices.

15 (4) The employment, to perform any act covered by the
16 provisions of the act, of a person known to the employer
17 whose registration is suspended or who does not possess a
18 valid registration issued under this act.

19 (5) Violate or permit, with notice or knowledge of its
20 commission, the violation by any registered employee of any
21 provision of this act or any rules or regulations duly
22 promulgated under this act.

23 (6) Any known cause which would be grounds for denial of
24 an application for registration.

25 (7) Be enjoined from violating any provision of the act
26 of December 17, 1968 (P.L.1224, No.387), known as the "Unfair
27 Trade Practices and Consumer Protection Law," or be subject
28 to a final order of the Federal Trade Commission, the
29 Pennsylvania Department of Health, or the Food and Drug
30 Administration of the United States Department of Health,

Education and Welfare concerning the sale or offering for sale of unsafe, unhealthful or worthless ophthalmic devices or for engaging in conduct which has the tendency to mislead or deceive.

Section 15. Notice of denial.

Upon denial of an application for registration, the secretary shall notify the applicant in writing, stating:

(1) The reason for denial.

(2) That the applicant has a right to a hearing if he makes written request therefor within 60 days after notice of denial. Service of the notice required by this section shall be made by certified mail addressed to the applicant at the latest address filed by the applicant in writing with the department in the application or otherwise.

Section 16. Consumer complaints, investigations and proceedings.

(a) Complaints.--Responsibility for the resolution of complaints about products and services provided by persons registered under this act shall be assigned to the department.

(b) Investigations and disciplinary proceedings.--The Secretary of Health or the Attorney General shall initiate any disciplinary investigations and proceedings for violation of this act and the Secretary of Health shall suspend, revoke or impose probationary conditions upon any registrant violating this act.

Section 17. Unlawful acts.

It is unlawful for any person:

(1) To sell or barter or offer to sell or barter any registration certificate issued by the department.

(2) To purchase or procure by barter any registration

1 certificate issued by the department with the intent to use
2 the same as evidence of the holder's qualification to
3 practice the fitting and selling of ophthalmic devices.

4 (3) To alter with fraudulent intent in any material
5 manner a registration certificate issued by the department.

6 (4) To use or attempt to use any registration
7 certificate issued by the department which has been
8 purchased, fraudulently issued, counterfeited or materially
9 altered as a valid registration certificate.

10 (5) To engage in the practice of fitting and selling
11 ophthalmic devices under an assumed name unless registered in
12 accordance with law.

13 (6) To willfully make any false statement in a material
14 regard in an application for an examination before the
15 department for a registration certificate.

16 (7) To engage in the practice of fitting and selling
17 ophthalmic devices in this Commonwealth without having at the
18 time of so doing a valid unrevoked and unexpired registration
19 certificate or temporary registration certificate.

20 (8) To advertise by displaying a sign or otherwise or
21 hold oneself to be a person engaged in the business of
22 selling or the practices of fitting and selling ophthalmic
23 devices without having at the time of so doing a valid,
24 unrevoked registration certificate.

25 Section 18. Injunctions.

26 In addition to other proceedings provided for in this act,
27 whenever any person has engaged, or is about to engage in any
28 act or practices which constitute an offense against this act,
29 the court of common pleas for the county wherein the acts or
30 practices take place or are about to take place, or the

1 Commonwealth Court of Pennsylvania, may issue an injunction or
2 other appropriate order, restraining such conduct on application
3 of the department, the Attorney General or the district attorney
4 of the county.

5 Section 19. Civil penalty.

6 (a) Violation of injunction.--Any person who violates any of
7 the terms of an injunction or other appropriate order issued
8 under the provisions of this section shall forfeit and pay to
9 the Commonwealth a civil penalty equal to the penalty provided
10 in the act of December 17, 1968 (P.L.1224, No.387), known as the
11 "Unfair Trade Practices and Consumer Protection Law." For the
12 purposes of this section, the court, issuing an injunction or
13 other appropriate order under this section, shall retain
14 jurisdiction and the case shall be continued and in such
15 instances the Secretary of Health, the Attorney General or the
16 Commonwealth may petition for recovery of the civil penalties.

17 (b) Other violations.--If, in any action brought under
18 section 18, the court finds that a person is willfully using or
19 has willfully used a method, act or practice in violation of the
20 provisions of this act, the Secretary of Health, the Attorney
21 General or the appropriate district attorney, acting in the name
22 of the Commonwealth, may recover on behalf of the Commonwealth,
23 a civil penalty equal to the penalty provided in the "Unfair
24 Trade Practices and Consumer Protection Law," per violation,
25 which civil penalty shall be in addition to any other relief
26 which may be granted under section 18.

27 Section 20. Exemption from other registration.

28 Registration under this act shall exempt the registrant from
29 the necessity of obtaining a license under the act of April 14,
30 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug,

1 Device and Cosmetic Act," and the rules and regulations
2 promulgated thereunder.

3 Section 21. Exemption for ready-to-wear spectacles or
4 eyeglasses.

5 The act is not intended to regulate the sale or manufacture
6 of ready-to-wear eyeglasses or spectacles and said sale or
7 manufacturing is hereby specifically excluded from this act.

8 Section 22. Effective date.

9 This act shall take effect in 60 days.