

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1898 Session of  
1985

INTRODUCED BY MILLER, NOVEMBER 20, 1985

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,  
NOVEMBER 20, 1985

AN ACT

1 Amending the act of June 6, 1980 (P.L.197, No.57), entitled "An  
2 act regulating the licensure and practice of optometry,  
3 making repeals and providing penalties," reestablishing the  
4 State Board of Optometrical Examiners; providing for its  
5 composition, powers and duties; further providing for  
6 revocation and suspension of licenses; providing for fees;  
7 and making repeals.

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

10 Section 1. The definition of "board" in section 2 of the act  
11 of June 6, 1980 (P.L.197, No.57), known as the Optometric  
12 Practice and Licensure Act, is amended to read:

13 Section 2. Definitions.

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

17 \* \* \*

18 "Board." The State Board of Optometrical Examiners  
19 [established pursuant to section 415, act of April 9, 1929

1 (P.L.177, No.175), known as "The Administrative Code of 1929," ]  
2 or any successor board.

3 \* \* \*

4 Section 2. The act is amended by adding a section to read:

5 Section 2.1. State Board of Optometrical Examiners.

6 (a) There is hereby established within the Department of  
7 State the State Board of Optometrical Examiners. The board shall  
8 consist of eleven members, as follows:

9 (1) The Commissioner of Professional and Occupational  
10 Affairs.

11 (2) Two members representing the general public, who  
12 shall be appointed by the Governor with the advice and  
13 consent of a majority of the members of the Senate.

14 (3) The Director of the Bureau of Consumer Protection in  
15 the Office of Attorney General, or his designee.

16 (4) Seven members, appointed by the Governor with the  
17 advice and consent of a majority of the members of the  
18 Senate, who are licensed to practice optometry under the laws  
19 of this Commonwealth and who have been engaged in the full-  
20 time practice of optometry in this Commonwealth for at least  
21 five years immediately preceding their appointment.

22 (b) The term of office of each professional and public  
23 member shall be four years from his appointment or until his  
24 successor has been duly appointed and qualified according to  
25 law, but no longer than six months beyond the four-year period.  
26 No member may serve more than two consecutive terms. In the  
27 event that any member should die or resign during his term of  
28 office, his successor shall be appointed in the same way and  
29 with the same qualifications as set forth in subsection (a) and  
30 shall hold office for the unexpired term.

1     (c) Six members shall constitute a quorum. The board shall  
2     annually select, from among its members, a chairman and a  
3     secretary.

4     (d) Each public and professional member of the board shall  
5     be paid reasonable traveling, hotel and other necessary expenses  
6     and per diem compensation at the rate of \$60 for each day of  
7     actual service while on board business.

8     (e) A member who fails to attend three consecutive meetings  
9     shall forfeit his seat unless the Commissioner of Professional  
10    and Occupational Affairs, upon written request from the member,  
11    finds that the member should be excused from a meeting because  
12    of illness or the death of an immediate family member.

13    Section 3. Section 3(a)(2) of the act is amended and the  
14    subsection is amended by adding paragraphs to read:

15    Section 3. Powers and duties of the board.

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

17           \* \* \*

18           (2) To prescribe the subjects to be tested, authorize  
19    written and practical portions of the examination and conduct  
20    examinations of qualified applicants for licensure at least  
21    twice annually at such times and places as designated by the  
22    board, in accordance with section 812.1 of the act of April  
23    9, 1929 (P.L.177, No.175), known as The Administrative Code  
24    of 1929".

25           \* \* \*

26           (6) To submit annually to the House and Senate  
27    Appropriations Committees, 15 days after the Governor has  
28    submitted his budget to the General Assembly, a copy of the  
29    budget request for the upcoming fiscal year which the board  
30    previously submitted to the Department of State.

1       (7) To submit annually a report to the Professional  
2       Licensure Committee of the House of Representatives and to  
3       the Consumer Protection and Professional Licensure Committee  
4       of the Senate a description of the types of complaints  
5       received, status of cases, board action which has been taken  
6       and the length of time from the initial complaint to final  
7       board resolution.

8       \* \* \*

9       Section 4. Section 5 of the act is amended by adding  
10 subsections to read:

11 Section 5. Renewal of license.

12       \* \* \*

13       (c) Any person whose license has expired for failure to make  
14       biennial renewal over a period of five years or more shall be  
15       required to apply for a license in accordance with section 4 if  
16       he desires to resume practicing optometry.

17       (d) Any licensee of this Commonwealth who is also licensed  
18       to practice optometry in any other state, territory or country  
19       shall report this information to the board on the biennial  
20       renewal application. Any disciplinary action taken in other  
21       states must be reported to the board on the biennial renewal  
22       application. Multiple licensure shall be noted on the licensee's  
23       record by the board, and such state, territory or country shall  
24       be notified by the board of any disciplinary actions taken  
25       against said licensee in this Commonwealth.

26       Section 5. Section 7(a) and (b) of the act are amended by  
27 adding paragraphs and the section is amended by adding  
28 subsections to read:

29 Section 7. Refusal, revocation or suspension of license.

30       (a) The board shall have the power to refuse, revoke or

suspend a license to practice optometry in this Commonwealth  
for:

\* \* \*

(12) Conviction of a felonious act prohibited by the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or conviction of a felony related to a controlled substance in a court of law of the United States or any other state, territory or country. 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.

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

\* \* \*

(5) Require a licensee to submit to the care, counseling or treatment of a physician or physicians designated by the board.

(6) Restore a suspended license to practice optometry and impose any disciplinary or corrective measures which it might originally have imposed.

\* \* \*

(f) Unless ordered to do so by a court, the board shall not reinstate a revoked license to practice optometry 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 if he desires to practice optometry at any time after such revocation.

(g) A license issued under this act shall automatically be suspended upon the legal commitment of a licensee to an

1 institution because of: mental incompetency from any cause, upon  
2 filing with the board a certified copy of such commitment;  
3 conviction of a felony under the act of April 14, 1972 (P.L.233,  
4 No.64), known as "The Controlled Substance, Drug, Device and  
5 Cosmetic Act"; or conviction of an offense under the laws of  
6 another jurisdiction which, if committed in Pennsylvania, would  
7 be a felony under "The Controlled Substance, Drug, Device and  
8 Cosmetic Act." As used in this section the term "conviction"  
9 shall include a judgment, an admission of guilt or a plea of  
10 nolo contendere. Automatic suspension under this section shall  
11 not be stayed pending any appeal of a conviction. Restoration of  
12 a license shall be made as provided in this act for revocation  
13 or suspension of such license.

14 (h) The board shall temporarily suspend a license under  
15 circumstances as determined by the board to be an immediate and  
16 clear danger to the public health or safety. The board shall  
17 issue an order to that effect without a hearing, but upon due  
18 notice to the licensee concerned at his last known address,  
19 which shall include a written statement of all allegations  
20 against the licensee. The provisions of section 7(f) shall not  
21 apply to temporary suspension. The board shall thereupon  
22 commence formal action to suspend, revoke and restrict the  
23 license of the person concerned as otherwise provided for in  
24 this act. All actions shall be taken promptly and without delay.  
25 Within 30 days following the issuance of an order temporarily  
26 suspending a license, registration or certificate, the board  
27 shall conduct or cause to be conducted a preliminary hearing to  
28 determine that there is a prima facie case supporting the  
29 suspension. The licensee whose license has been temporarily  
30 suspended may be present at the preliminary hearing and may be

1 represented by counsel, cross-examine witnesses, inspect  
2 physical evidence, call witnesses, offer evidence and testimony  
3 and make a record of the proceedings. If it is determined there  
4 is not a prima facie case, the suspended license shall be  
5 immediately restored. The temporary suspension shall remain in  
6 effect until vacated by the board, but in no event longer than  
7 180 days.

8 Section 6. Sections 8 and 9 of the act are amended by adding  
9 subsections to read:

10 Section 8. Violations and penalties.

11 \* \* \*

12 (c) In addition to any other civil remedy or criminal  
13 penalty provided for in this act, the board, by a vote of the  
14 majority of the maximum number of the authorized membership of  
15 the board as provided for by this act or by a vote of the  
16 majority of the qualified and confirmed membership or a minimum  
17 of six members, whichever is greater, may levy a civil penalty  
18 of up to \$1,000 on any current licensee who violates any  
19 provision of this act or on any person who practices optometry  
20 without being properly licensed to do so under this act. The  
21 board shall levy this penalty only after affording the accused  
22 party the opportunity for a hearing, as provided in Title 2 of  
23 the Pennsylvania Consolidated Statutes (relating to  
24 administrative law and procedure).

25 (d) All fines and civil penalties imposed in accordance with  
26 this section shall be paid into the Professional Licensure  
27 Augmentation Account.

28 Section 9. Fees and other moneys.

29 \* \* \*

30 (c) All fees required under this act shall be fixed by the

1 board by regulation and shall be subject to the act of June 25,  
2 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If  
3 the revenues raised by fees, fines and civil penalties imposed  
4 pursuant to this act are not sufficient to meet expenditures  
5 over a two-year period, the board shall increase those fees by  
6 regulation so that the projected revenues will meet or exceed  
7 projected expenditures.

8 (d) If the Bureau of Professional and Occupational Affairs  
9 determines that the fees established by the board under  
10 subsection (c) are inadequate to meet the minimum enforcement  
11 efforts required by this act, then the bureau, after  
12 consultation with the board and subject to the "Regulatory  
13 Review Act," shall increase the fees by regulation in an amount  
14 that adequate revenues are raised to meet the required  
15 enforcement effort.

16 Section 7. Sections 11, 12 and 13 of the act are repealed.

17 Section 8. (a) Section 415 of the act of April 9, 1929  
18 (P.L.177, No.175), known as The Administrative Code of 1929, is  
19 repealed.

20 (b) All other acts and parts of acts are repealed insofar as  
21 they are inconsistent with this act.

22 Section 9. This act, with respect to the State Board of  
23 Optometrical Examiners, constitutes the legislation required to  
24 reestablish an agency under the act of December 22, 1981  
25 (P.L.508, No.142), known as the Sunset Act.

26 Section 10. The presently confirmed members of the existing  
27 State Board of Optometrical Examiners as of December 31, 1985,  
28 shall continue to serve as members of the State Board of  
29 Optometrical Examiners until their present terms of office  
30 expire.



1       Section 11. Each rule, regulation or fee of the State Board  
2 of Optometrical Examiners in effect on the effective date of  
3 this act shall remain in effect after such date until repealed  
4 or amended by the board, provided that the board shall  
5 immediately initiate the repeal or amendment of any rule or  
6 regulation which is inconsistent with the provisions of this  
7 act.

8       Section 12. This act shall take effect January 1, 1986, or  
9 immediately, whichever is later.