

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2757 Session of  
1994

INTRODUCED BY MARKOSEK, MIHALICH, CESSAR, MELIO, BAKER, TIGUE,  
COY, SERAFINI, VAN HORNE, STERN AND CIVERA, MAY 16, 1994

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MAY 16, 1994

AN ACT

1 Relating to the practice of opticianry and contact lens fitting;  
2 requiring licensing of persons; providing for injunctions and  
3 penalties; and making an appropriation.

4 It is the purpose of this act to provide for the regulation  
5 of persons in the practice of opticianry and contact lens  
6 fitting in order to safeguard public health, safety and welfare  
7 and to protect the public by assuring that persons engaged in  
8 the practice of opticianry and contact lens fitting meet minimum  
9 standards of competence.

TABLE OF CONTENTS

- 10
- 11 Section 1. Short title.
- 12 Section 2. Definitions.
- 13 Section 3. State Board of Opticians and Contacts Lens  
14 Technicians.
- 15 Section 4. Powers and duties of board.
- 16 Section 5. License required.
- 17 Section 6. Persons and practices not affected.
- 18 Section 7. Requirements for licensure.

1 Section 8. Examinations.  
2 Section 9. Waiver of examination requirements.  
3 Section 10. Licenses.  
4 Section 11. Renewal of license; continuing education.  
5 Section 12. Apprentices and other ancillary personnel.  
6 Section 13. Special provisions.  
7 Section 14. Causes for denial, suspension or revocation of  
8 license.  
9 Section 15. Procedures in disciplinary actions.  
10 Section 16. Reporting of multiple licensure.  
11 Section 17. Display of license or certificate.  
12 Section 18. Surrender of license.  
13 Section 19. Unlawful acts.  
14 Section 20. Civil penalty.  
15 Section 21. Fees.  
16 Section 22. Appropriation.  
17 Section 23. Repeals.  
18 Section 24. Effective date.

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

21 Section 1. Short title.

22 This act shall be known and may be cited as the Opticians and  
23 Contact Lens Technicians Licensing Act.

24 Section 2. Definitions.

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

28 "Apprentice." A person who holds a certificate of  
29 apprenticeship issued in accordance with this act.

30 "Board." The State Board of Opticians and Contact Lens

1 Technicians.

2 "Commissioner." The Commissioner of Professional and  
3 Occupational Affairs.

4 "Contact lens technician." A person licensed in accordance  
5 with this act who fits an appropriate contact lens for a  
6 specific intended wearer and completely assists such wearer in  
7 the use of the contact lens if the following conditions are met:

8 (1) The fitting is based on prescription of a licensed  
9 physician or optometrist.

10 (2) The wearer is informed, in accordance with section  
11 13(b), to return to the prescribing physician or optometrist  
12 for periodic evaluation during the fit whenever the contact  
13 lens technician believes professional judgment is needed, but  
14 at intervals not to exceed three months.

15 (3) No person licensed under this act shall fill a  
16 prescription or dispense contact lenses unless the  
17 prescribing physician or optometrist specifies that the  
18 prescriber intends it to be for contact lenses.

19 (4) No person licensed in accordance with this act shall  
20 fill a prescription beyond an expiration date specified by  
21 the prescribing physician or optometrist.

22 "Fitting of contact lenses." A procedure in which a contact  
23 lens is placed upon the eye of a wearer and the lens-cornea  
24 relationship is evaluated with the use of a biomicroscope or  
25 slit-lamp.

26 "Optician." A person licensed in accordance with this act to  
27 practice opticianry, including, but not limited to, those  
28 persons listed by the State Board of Optometry under section  
29 6(h)(5) of the act of June 6, 1980 (P.L.197, No.57), known as  
30 the Optometric Practice and Licensure Act, to the extent that

1 their activities fall within the scope of the practice of  
2 opticianry as defined in this act. Such person shall be a  
3 professional health care provider as defined in and subject to  
4 the provisions of the act of July 20, 1974 (P.L.564, No.193),  
5 known as the Peer Review Protection Act.

6 "Practice of opticianry." The practice of filling  
7 prescriptions of licensed physicians or optometrists for  
8 ophthalmic lenses; interpreting these prescriptions and taking  
9 measurements to determine size and shape of lenses, frames or  
10 lens forms best suited to the wearer's needs; providing  
11 duplicate or replacement lenses without prescription; repairing  
12 and reproducing previously prepared ophthalmic lenses and frames  
13 without prescription; preparing and delivering work orders to  
14 technicians engaged in grinding lenses and fabricating eyewear;  
15 verifying the accuracy of ophthalmic lenses; and adjusting and  
16 dispensing lenses, specially fabricated optical devices, frames  
17 and appurtenances thereof to the intended wearer. The practice  
18 of opticianry shall not include the fitting of contact lenses.

19 "Prescription." A written or oral direction from a licensed  
20 physician or optometrist for lenses, consisting of the  
21 refractive power and, when necessary, the vertex distance, the  
22 cylinder axis and prism. A prescription for contact lenses shall  
23 also specifically indicate approval for contact lens fitting.  
24 The neutralization of a spectacle lens shall not constitute a  
25 prescription for contact lenses. An oral or telephonically  
26 transmitted prescription shall be documented in the files of the  
27 optician or the contact lens technician.

28 "Supervision." The direction and control of work through  
29 personal inspection and evaluation of work and the provision of  
30 such consultation and instruction as may be needed.

1 Section 3. State Board of Opticians and Contact Lens

2 Technicians.

3 (a) Creation.--There is hereby created a departmental  
4 administrative board to be known as the State Board of Opticians  
5 and Contact Lens Technicians which shall be in the Bureau of  
6 Professional and Occupational Affairs of the Department of  
7 State.

8 (b) Members.--The board shall consist of nine members, all  
9 of whom shall be residents of this Commonwealth and two of whom  
10 shall be chosen as representatives of the public interest. The  
11 remaining seven members shall be two opticians, two contact lens  
12 technicians, one individual who is either an optician or a  
13 contact lens technician and who owns a retail place of business  
14 in which either opticianry or the fitting of contact lenses is  
15 practiced, the Commissioner of Professional and Occupational  
16 Affairs and the Director of the Bureau of Consumer Protection in  
17 the Office of Attorney General or his designee. The professional  
18 and public members of the board should be chosen so they are  
19 geographically representative.

20 (c) Appointment.--The professional and public members of the  
21 board shall be appointed by the Governor with the advice and  
22 consent of a majority of the members elected to the Senate.

23 (d) Terms of office.--The term of each professional and  
24 public member of the board shall be four years or until his  
25 successor has been appointed and qualified. In the event that  
26 any of the members shall die or resign or otherwise become  
27 disqualified during his term, a successor shall be appointed in  
28 the same way and with the same qualifications and shall hold  
29 office for the unexpired term. Of the optician members of the  
30 board first appointed, one optician shall serve a term of two

1 years and the other optician shall serve a term of four years.  
2 Of the contact lens technician members of the board first  
3 appointed, one contact lens technician shall serve a term of  
4 four years and the other shall serve a term of two years. The  
5 individual first appointed who is either an optician or a  
6 contact lens technician and who owns a retail place of business  
7 in which either opticianry or the fitting of contact lenses is  
8 practiced shall serve a term of four years. Of the public  
9 members of the board first appointed, one public member shall  
10 serve a term of two years and one public member shall serve a  
11 term of four years. The Governor shall nominate the initial  
12 professional and public members within 90 days of the effective  
13 date of this act.

14 (e) Reappointment.--A member of the board shall be eligible  
15 for reappointment. A member shall not be appointed to serve more  
16 than two consecutive terms.

17 (f) Compensation.--Each member of the board, except the  
18 commissioner and the Director of the Bureau of Consumer  
19 Protection, shall receive \$60 per diem when actually attending  
20 to the work of the board in accordance with Commonwealth  
21 regulations. Members shall also receive the amount of reasonable  
22 traveling, hotel and other necessary expenses incurred in the  
23 performance of their duties in accordance with Commonwealth  
24 regulations.

25 (g) Meetings.--The board shall meet at least twice a year  
26 and may hold additional meetings whenever necessary to discharge  
27 its duties. A majority of the members of the board serving in  
28 accordance with law shall constitute a quorum. Except for  
29 temporary and automatic suspensions under section 15, a member  
30 may not be counted as part of a quorum or vote on any issue

1 unless he is physically in attendance at the meeting.

2 (h) Attendance.--A member who fails to attend three  
3 consecutive meetings shall forfeit membership unless the  
4 commissioner, upon written request from the member, finds that  
5 the member should be excused from a meeting because of illness  
6 or the death of an immediate family member.

7 (i) Attendance at training seminars.--A public member who  
8 fails to attend two consecutive statutorily mandated training  
9 seminars in accordance with section 813(e) of the act of April  
10 9, 1929 (P.L.177, No.175), known as The Administrative Code of  
11 1929, shall forfeit his seat, unless the commissioner, upon  
12 written request from the public member, finds that the public  
13 member should be excused from a meeting because of illness or  
14 the death of a family member.

15 Section 4. Powers and duties of board.

16 (a) Electing officers.--The State Board of Opticians and  
17 Contact Lens Technicians shall elect annually from its  
18 membership a chairman, vice chairman and secretary.

19 (b) Reviewing applications.--The board shall pass upon the  
20 qualifications of applicants for licensure, insure the conduct  
21 of examinations and issue and renew licenses to opticians or  
22 contact lens technicians who qualify under this act.

23 (c) Disciplinary actions.--The board may refuse, revoke,  
24 suspend, limit or otherwise restrict a license of an optician or  
25 contact lens technician pursuant to this act, conduct  
26 investigations, including the power to issue subpoenas and hold  
27 hearings upon written charges indicating violation of this act  
28 or of regulations promulgated pursuant thereto.

29 (d) Maintaining records.--The board shall maintain a record  
30 listing the name of every living optician or contact lens

1 technician licensed to practice in this Commonwealth, the last  
2 known place of business, the last known place of residence and  
3 the date and number of the license of the licensee. The listing  
4 shall be available to any citizen of this Commonwealth after  
5 reimbursement for the actual cost of reproduction and mailing.

6 (e) Promulgating rules and regulations.--The board may  
7 promulgate rules and regulations not inconsistent with law which  
8 it deems necessary for the performance of its duties and the  
9 proper administration of this act.

10 (f) Filing reports.--The board shall submit annually:

11 (1) To the Department of State, an estimate of the  
12 financial requirements of the board for its administrative,  
13 investigative, legal and miscellaneous expenses.

14 (2) To the Appropriations Committee of the Senate and to  
15 the Appropriations Committee of the House of Representatives,  
16 15 days after the Governor has submitted his budget to the  
17 General Assembly, a copy of the budget request for the  
18 upcoming fiscal year which the board previously submitted to  
19 the Department of State.

20 (3) To the Consumer Protection and Professional  
21 Licensure Committee of the Senate and to the Professional  
22 Licensure Committee of the House of Representatives, a report  
23 containing a description of the types of complaints received,  
24 status of cases, board action which has been taken and the  
25 length of time from the initial complaint to final board  
26 resolution.

27 (g) Subpoenas.--The board shall have power to issue  
28 subpoenas, upon application of an attorney responsible for  
29 representing the Commonwealth in disciplinary matters before the  
30 board, for the purpose of investigating alleged violations of



1 the disciplinary provisions administered by the board. The board  
2 shall have the power to subpoena witnesses, to administer oaths,  
3 to examine witnesses and to take such testimony or compel the  
4 production of such books, records, papers and documents as it  
5 may deem necessary or proper in, and pertinent to, any  
6 proceeding, investigation or hearing held or had by it.

7 (h) Court action.--The board shall have power to take  
8 appropriate actions to initiate injunctive and criminal  
9 prosecution proceedings in connection with the lawful or  
10 unauthorized practice of opticianry or contact lens fitting or  
11 other violations of this act. Injunctive and criminal  
12 proceedings shall be instituted in accordance with the act of  
13 October 15, 1980 (P.L.950, No.164), known as the Commonwealth  
14 Attorneys Act.

15 (i) Reports to board.--An attorney responsible for  
16 representing the Commonwealth in disciplinary matters before the  
17 board shall notify the board immediately upon receiving  
18 notification of an alleged violation of this act. The board  
19 shall maintain current records of all reports of alleged  
20 violations and periodically review the records for the purpose  
21 of determining that each alleged violation has been resolved in  
22 a timely manner.

23 Section 5. License required.

24 (a) Grace period.--It shall be unlawful, beginning one year  
25 from the appointment of the professional and public members of  
26 the State Board of Opticians and Contact Lens Technicians, for  
27 any person to engage in the practice of opticianry or the  
28 fitting of contact lenses or to offer or attempt to do so or to  
29 hold himself out to the public by any title or description of  
30 services incorporating the words "optician," "contact lens

1 technician," "opticianry" or "the fitting of contact lenses,"  
2 without first obtaining a license pursuant to this act.

3 (b) Limitation on grant of license.--The licensure of  
4 opticians or contact lens technicians shall extend only to  
5 individuals. A license shall not be issued to a partnership,  
6 unincorporated association, corporation or similar business  
7 organization.

8 Section 6. Persons and practices not affected.

9 This act shall not be construed to prevent or restrict:

10 (1) A person licensed in this Commonwealth in accordance  
11 with the provisions of another law of this Commonwealth from  
12 engaging in the profession or occupation for which licensed.  
13 Licensed persons may employ unlicensed persons to provide  
14 contact lens services, except those services which require  
15 licensure under this act, under the direct, personal  
16 supervision and control of such licensee within the standards  
17 of his profession.

18 (2) The sale or manufacture of ready-to-wear eyeglasses,  
19 which sale or manufacturing is hereby specifically excluded  
20 from this act.

21 (3) A person pursuing a course of study leading to a  
22 degree or certificate in opticianry or contact lens fitting  
23 in an accredited and approved educational program, provided  
24 that the activities and services are part of a supervised  
25 course of study and the person is designated by a title which  
26 clearly indicates the status of student or trainee and not  
27 licensed optician or licensed contact lens technician.

28 (4) A person fulfilling the apprenticeship requirements  
29 of this act, provided that the activities and services  
30 constitute a part of the apprenticeship necessary to meet the

requirements of the program.

(5) Any individual, firm or corporation from employing persons licensed under this act to engage in the practice of opticianry or the fitting of contact lenses.

#### Section 7. Requirements for licensure.

Upon filing timely application with the State Board of Opticians and Contact Lens Technicians upon forms approved by the board and payment of an examination fee determined by the board, any person desiring to qualify for licensing as an optician or as a contact lens technician shall be permitted to take an examination for licensing, provided that the individual submits with the application evidence satisfactory to the board that:

(1) The individual is a citizen of the United States of America or has applied for citizenship.

(2) The individual is 18 years of age or older.

(3) The individual is of good moral character.

(4) The individual is a graduate of an accredited high school or has completed the full equivalent of a grammar school and a four year high school course.

(5) In the case of an applicant for licensing as an optician, the individual has had at least two years of practical training and experience in opticianry immediately prior to the end of one year from the effective date of this act, has completed an apprenticeship in accordance with section 12 or has successfully completed the prescribed course in opticianry for opticians in a college, university or other institution of learning, which course shall have been accredited by an accrediting agency recognized and approved by the United States Department of Education or the

1 Council of Post-Secondary Education and officially approved  
2 by the board.

3 (6) In the case of an applicant for licensing as a  
4 contact lens technician, he has successfully completed the  
5 prescribed course of study for an associates degree in  
6 ophthalmic sciences in a college, university or other  
7 institution of learning, which course shall have been  
8 accredited by an accrediting agency recognized and approved  
9 by the United States Department of Education or the Council  
10 of Post-Secondary Education and officially approved by the  
11 board. The course shall include clinical training covering  
12 the competencies required in fitting, adapting and dispensing  
13 of contact lenses and shall include at least nine credit  
14 hours in contact lens courses. The board may require a more  
15 extensive course of study.

16 Section 8. Examinations.

17 (a) Administration.--The examination for licensing shall be  
18 conducted at least twice a year, and at other times the State  
19 Board of Opticians and Contact Lens Technicians may determine as  
20 necessary, at the times and places the board determines. The  
21 examination shall be prepared and administered by a qualified  
22 and approved professional testing organization in accordance  
23 with section 812.1 of the act of April 9, 1929 (P.L.177,  
24 No.175), known as The Administrative Code of 1929.

25 (b) Substance of optician examination.--The license  
26 examination for an optician shall be confined to the knowledge  
27 that is essential to practice as an optician and, at a minimum,  
28 shall show proficiency in the following subjects: prescription  
29 interpretation and analysis; fitting, design and dispensing of  
30 eyeglass lenses, frames and accessories; the use of standard

1 ophthalmic equipment; the taking of pupillary and facial  
2 measurements; administrative recordkeeping; and professional and  
3 ethical conduct. The examination shall be in written form.

4 (c) Substance of contact lens technician examination.--The  
5 license examination for a contact lens technician shall be  
6 confined to the knowledge that is essential to practice as a  
7 contact lens technician and, at a minimum, shall show  
8 proficiency in the following subjects: prefit evaluation;  
9 prescription interpretation and analysis; use of instrumentation  
10 consistent with contact lens fitting; determination of lens type  
11 and design of contact lens specifications; instructions on  
12 application and care of lenses; follow-up procedures; practice  
13 management; and professional and ethical conduct. This  
14 examination shall include both written and practical portions.

15 Section 9. Waiver of examination requirements.

16 (a) Requirements to waive optician examination.--The State  
17 Board of Opticians and Contact Lens Technicians shall waive the  
18 optician examination requirement and grant an optician license  
19 to any applicant who meets any one of the following:

20 (1) Is currently licensed to practice opticianry in  
21 another state if the state's qualifications are equivalent to  
22 those qualifications required in this Commonwealth and if  
23 that state offers similar privileges to licensees of the  
24 board.

25 (2) Holds a currently valid certificate as a certified  
26 optician from the American Board of Opticianry on the  
27 effective date of this act.

28 (3) Has been engaged in the practice of opticianry for a  
29 period of three years immediately prior to the effective date  
30 of this act.

(b) Requirements to waive contact lens technician examination.--The board shall waive the contact lens examination requirement and grant a contact lens technician license to any applicant who, within three months of the effective date of this act, meets one of the following criteria:

(1) Is currently licensed to fit contact lenses in another state if that state's qualifications are equivalent to those qualifications required in this Commonwealth and if that state offers similar privileges to licensees of the board.

(2) Is currently certified by the National Committee of Contact Lens Examiners on the effective date of this act.

#### Section 10. Licenses.

Each applicant who successfully completes the examination for licensing as an optician or a contact lens technician or who is exempt from either such examination in accordance with section 9 shall, upon payment of the required fee established by the State Board of Opticians and Contact Lens Technicians, receive a license as an optician or as a contact lens technician, as the case may be, from the board. The license shall be recorded in the office of the Commissioner of Professional and Occupational Affairs in a record book to be properly kept for that purpose and shall be open to public inspection.

#### Section 11. Renewal of license; continuing education.

(a) Application.--Licenses under this act shall be subject to renewal every two years and shall expire unless the licensee submits an application for renewal in the manner prescribed by the State Board of Opticians and Contact Lens Technicians.

(b) Continuing education.--The application shall be accompanied by a renewal fee and evidence that the applicant

1 has, during the preceding two-year period, completed continuing  
2 education as follows:

3 (1) An optician must complete eight hours of continuing  
4 education in opticianry approved by the board.

5 (2) A contact lens technician must complete 12 hours of  
6 continuing education in contact lens fitting approved by the  
7 board.

8 (3) An individual who is licensed as an optician and  
9 also as a contact lens technician must complete 12 hours of  
10 continuing education in contact lens fitting approved by the  
11 board and four hours of continuing education in opticianry  
12 approved by the board.

13 (4) No credit shall be given for courses in office  
14 management or sales.

15 Section 12. Apprentices and other ancillary personnel.

16 (a) Employment of apprentices.--Persons licensed under this  
17 act may utilize apprentices to engage in opticianry when the  
18 apprentices are under their direct supervision and at the same  
19 location where the licensed person dispenses, but no licensed  
20 optician may supervise more than two apprentices. Apprentices  
21 may be employed upon the issuance of a certificate of  
22 apprenticeship by the State Board of Opticians and Contact Lens  
23 Technicians.

24 (b) Certificate of apprenticeship.--Applications for a  
25 certificate of apprenticeship shall be made to the board in  
26 writing upon forms provided by the board and shall contain such  
27 information as the board requires. A certificate shall be issued  
28 for a maximum of two years. Upon completion of the two-year  
29 apprenticeship, which shall include a minimum of 3,500 hours of  
30 employment during the apprenticeship, the apprentice shall take

1 the first scheduled licensing examination except for reasons of  
2 health or hardship. If the examination is failed, the apprentice  
3 shall take it again on the next scheduled date. If the  
4 apprentice is unsuccessful in passing three consecutive  
5 examinations, he shall return his certificate. While the  
6 apprentice is waiting to take a licensing examination, his  
7 certificate of apprenticeship shall remain in effect. An  
8 individual shall only be permitted to obtain another  
9 apprenticeship certificate under exceptional circumstances  
10 approved by the board.

11 (c) Rules and regulations.--The board shall promulgate rules  
12 and regulations to insure that the apprentice is tested  
13 periodically as to his progress.

14 (d) Employment of others.--Persons licensed under this act  
15 may employ other ancillary personnel to assist in fashion  
16 consulting, to perform clerical and office duties, to assist in  
17 making minor repairs and to perform laboratory work. Those  
18 personnel need not be registered as apprentices.

19 Section 13. Special provisions.

20 (a) Duplicated lenses.--Subsequent to the completion of  
21 contact lens fitting and evaluation of the fit by a licensed  
22 physician or optometrist, contact lenses may be duplicated and  
23 dispensed by a licensed contact lens technician. The  
24 specifications of such duplicated contact lenses shall be  
25 obtained from the original fitter, physician or optometrist and  
26 may not be determined by measurement of the contact lens or from  
27 parameters listed on contact lens packaging.

28 (b) Duty to inform.--The contact lens technician shall  
29 inform each individual for whom he fits any form or kind of  
30 contact lens that the wearer should return to the prescribing





1 authorized by law.

2 (3) Holding oneself out by or using the title "Doctor."

3 (4) Fraud or misrepresentation in the repair, fitting or  
4 selling of ophthalmic devices, including advertising, by  
5 publication, transmission or otherwise, which has the  
6 tendency to mislead or is deceptive or fraudulent on its  
7 face, by inference, or by effect.

8 (5) The employment, to perform any act covered by this  
9 act, of a person known to the employer whose license is  
10 suspended or who does not possess a valid license issued  
11 under this act.

12 (6) Violating or permitting, with notice or knowledge of  
13 its commission, the violation by any licensed employee of any  
14 provision of this act or any rules or regulations promulgated  
15 under this act.

16 (7) Being convicted of a felony or receiving probation  
17 without verdict, disposition in lieu of trial or an  
18 Accelerated Rehabilitative Disposition in the courts of this  
19 Commonwealth, a Federal court or a court of any state,  
20 territory, possession or country.

21 (8) Having a license or other authorization to practice  
22 the profession revoked or suspended or having other  
23 disciplinary action taken, or an application for a license or  
24 other authorization refused, revoked or suspended by a proper  
25 licensing authority of another state, territory, possession  
26 or country, or a branch of the Federal Government.

27 (9) Being unable to practice the profession with  
28 reasonable skill and safety to patients by reason of illness,  
29 addiction to drugs or alcohol, having been convicted of a  
30 felonious act prohibited by the act of April 14, 1972

1 (P.L.233, No.64), known as The Controlled Substance, Drug,  
2 Device and Cosmetic Act, or convicted of a felony relating to  
3 a controlled substance in a court of law of the United States  
4 or any other state, territory, possession or country, or if  
5 he is or shall become mentally incompetent. An applicant's  
6 statement on the application declaring the absence of a  
7 conviction shall be deemed satisfactory evidence of the  
8 absence of a conviction unless the board has some evidence to  
9 the contrary. In enforcing this paragraph, the board shall,  
10 upon probable cause, have authority to compel a practitioner  
11 to submit to a mental or physical examination by a physician  
12 or a psychologist approved by the board. Failure of a  
13 practitioner to submit to such examination when directed by  
14 the board, unless such failure is due to circumstances beyond  
15 his control, shall constitute an admission of the allegations  
16 against him consequent upon which a default and final order  
17 may be entered without the taking of testimony or  
18 presentation of evidence. A practitioner affected under this  
19 paragraph shall at reasonable intervals be afforded an  
20 opportunity to demonstrate that he can resume a competent  
21 practice of his profession with reasonable skill and safety  
22 to patients.

23 (10) Violating a lawful regulation promulgated by the  
24 board or violating a lawful order of the board previously  
25 entered by the board in a disciplinary proceeding.

26 (11) Being guilty of malpractice, immoral or  
27 unprofessional conduct. Unprofessional conduct shall include  
28 departure from or failing to conform to the standards of  
29 acceptable and prevailing practice of opticianry or contact  
30 lens fitting. In proceedings based on this paragraph, actual

injury to a patient need not be established.

(12) Acting in such manner as to present an immediate and clear danger to public health or safety.

(13) Acting outside the scope of a license.

(14) Making a false or deceptive biennial registration with the board.

(15) Intentionally submitting to any third-party payor a claim for a service which was not actually provided to a wearer.

(16) Being enjoined from violating any provision of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law, or being subject to a final order of the Federal Trade Commission, the Pennsylvania Department of Health or the Food and Drug Administration of the United States Department of Health and Human Services 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.

(b) Five-year revocation period.--Unless ordered to do so by a court, the board shall not reinstate the license of a person to practice as an optician or contact lens technician which has been revoked, and such person shall be required to apply for licensure after a five-year period in accordance with the provisions of this act, including the examination requirement, if he desires to practice at any time after such revocation.

#### Section 15. Procedures in disciplinary actions.

(a) Procedure.--All disciplinary actions of the State Board of Opticians and Contact Lens Technicians shall be taken subject to the right of notice, hearing and adjudication, and the right

1 of appeal therefrom in accordance with Title 2 of the  
2 Pennsylvania Consolidated Statutes (relating to administrative  
3 law and procedure).

4 (b) Temporary suspension.--A license issued under this act  
5 may be temporarily suspended under circumstances as determined  
6 by the board to be an immediate and clear danger to the public  
7 health and safety. The board shall issue an order to that effect  
8 without a hearing, but upon due notice, to the licensee  
9 concerned at his last known address, which shall include a  
10 written statement of all allegations against the licensee. The  
11 provisions of subsection (a) shall not apply to temporary  
12 suspension. The board shall thereupon commence formal action to  
13 suspend, revoke or restrict the license of the person concerned  
14 as otherwise provided for in this act. All actions shall be  
15 taken promptly and without delay. Within 30 days following the  
16 issuance of an order temporarily suspending a license, the board  
17 shall conduct or cause to be conducted a preliminary hearing to  
18 determine that there is a prima facie case supporting the  
19 suspension. The licensee whose license has been temporarily  
20 suspended may be present at the preliminary hearing, may be  
21 represented by counsel and may cross-examine witnesses, inspect  
22 physical evidence, call witnesses, offer evidence and testimony,  
23 and make a record of the proceedings. If it is determined that  
24 there is not a prima facie case, the suspended license shall be  
25 immediately restored. The temporary suspension shall remain in  
26 effect until vacated by the board, but in no event longer than  
27 180 days.

28 (c) Automatic suspension.--A license issued under this act  
29 shall automatically be suspended upon the legal commitment to an  
30 institution of a licensee because of mental incompetency from

1 any cause upon filing with the board a certified copy of such  
2 commitment, conviction of a felony under the act of April 14,  
3 1972 (P.L.233, No.64), known as The Controlled Substance, Drug,  
4 Device and Cosmetic Act, or conviction of an offense under the  
5 laws of another jurisdiction, which, if committed in this  
6 Commonwealth, would be a felony.

7 Section 16. Reporting of multiple licensure.

8 Any licensed optician or licensed contact lens technician of  
9 this Commonwealth who is also licensed to practice opticianry or  
10 contact lens fitting in any other state, territory, possession  
11 or country shall report this information to the State Board of  
12 Opticians and Contact Lens Technicians on the biennial  
13 registration application. Any disciplinary action taken in such  
14 other jurisdiction shall be reported to the board on the  
15 biennial registration application or within 90 days of final  
16 disposition, whichever is sooner. Multiple licensure shall be  
17 noted by the board on the optician's or contact lens  
18 technician's record and such state, territory, possession or  
19 country shall be notified by the board of any disciplinary  
20 actions taken against the optician or contact lens technician in  
21 this Commonwealth.

22 Section 17. Display of license or certificate.

23 Every holder of a license or certificate granted by the State  
24 Board of Opticians and Contact Lens Technicians under this act  
25 shall display the license or certificate in a conspicuous place  
26 in the office where such person practices opticianry or the  
27 fitting of contact lenses or is serving as an apprentice.

28 Section 18. Surrender of license.

29 The State Board of Opticians and Contact Lens Technicians  
30 shall require a person whose license has been suspended or

1 revoked to return the license in such manner as the board  
2 directs. A person who fails to do so commits a misdemeanor of  
3 the third degree.

4 Section 19. Unlawful acts.

5 A person commits a misdemeanor of the third degree and shall,  
6 upon conviction, be sentenced to pay a fine of not more than  
7 \$2,500 or to imprisonment for not more than six months, or both,  
8 if he commits any act declared unlawful by any other provision  
9 of this act, or if he:

10 (1) Makes misleading, deceptive, untrue or fraudulent  
11 representations in the practice of opticianry or contact lens  
12 fitting.

13 (2) Practices fraud or deceit in obtaining a license as  
14 an optician or contact lens technician.

15 (3) Displays gross incompetence, negligence or  
16 misconduct in carrying on the practice of opticianry or  
17 contact lens fitting.

18 (4) Makes a false or deceptive biennial registration  
19 with the State Board of Opticians and Contact Lens  
20 Technicians.

21 (5) Violates a lawful regulation promulgated by the  
22 board or a lawful order of the board previously entered in a  
23 disciplinary proceeding.

24 (6) Knowingly aids, assists, procures or advises any  
25 unlicensed person to practice opticianry or contact lens  
26 fitting contrary to this act or regulations of the board.

27 (7) Commits immoral or unprofessional conduct.  
28 Unprofessional conduct shall include any departure from, or  
29 failure to conform to, the standards of acceptable and  
30 prevailing practice of opticianry or contact lens fitting.

1           (8) Engages in the practice of opticianry or the fitting  
2       of contact lenses in this Commonwealth without having at the  
3       time of so doing a valid, unrevoked and unexpired license or  
4       temporary license.

5 Section 20. Civil penalty.

6       In addition to any other civil or criminal penalty provided  
7       for in this act, the State Board of Opticians and Contact Lens  
8       Technicians, by a vote of the majority of the maximum number of  
9       the authorized membership of the board as provided by law, or by  
10      a vote of the majority of the duly qualified and confirmed  
11      membership or a minimum of four members, whichever is greater,  
12      may levy a civil penalty of up to \$1,000 on any current licensee  
13      who violates any provision of this act or on any person who  
14      practices opticianry or fits contact lenses without being  
15      properly licensed to do so under this act. The board shall levy  
16      this penalty only after affording the accused party the  
17      opportunity for a hearing, as provided in Title 2 of the  
18      Pennsylvania Consolidated Statutes (relating to administrative  
19      law and procedure). All fines and civil penalties imposed in  
20      accordance with this section shall be paid into the Professional  
21      Licensure Augmentation Account.

22 Section 21. Fees.

23      (a) Imposition and increases.--All fees required under this  
24      act shall be fixed by the State Board of Opticians and Contact  
25      Lens Technicians by regulation and shall be subject to the act  
26      of June 25, 1982 (P.L.633, No.181), known as the Regulatory  
27      Review Act. If the revenues raised by fees, fines and civil  
28      penalties imposed pursuant to this act are not sufficient to  
29      meet expenditures over a two-year period, the board shall  
30      increase those fees by regulation so that the projected revenues



1 will meet or exceed projected expenditures.

2 (b) Additional increases.--If the Bureau of Professional and  
3 Occupational Affairs determines that the fees established by the  
4 board under subsection (a) are inadequate to meet the minimum  
5 enforcement efforts required by this act, then the bureau, after  
6 consultation with the board and subject to the Regulatory Review  
7 Act, shall increase the fees by regulation in an amount that  
8 adequate revenues are raised to meet the required enforcement  
9 effort.

10 Section 22. Appropriation.

11 The sum of \$75,000, or as much thereof as may be necessary,  
12 is hereby appropriated from the Professional Licensure  
13 Augmentation Account within the General Fund to the Bureau of  
14 Professional and Occupational Affairs in the Department of State  
15 for the establishment and operation of the State Board of  
16 Opticians and Contact Lens Technicians. The appropriation  
17 granted shall be repaid by the board within three years of the  
18 beginning of issuance of licenses by the board.

19 Section 23. Repeals.

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

22 Section 24. Effective date.

23 This act shall take effect in 60 days.