

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1166 Session of 1995

INTRODUCED BY PICCOLA, VEON, GLADECK, EVANS, CLARK, LEH, KAISER, BROWN, WOZNIAK, ROONEY, MARSICO, McCALL, ALLEN, TANGRETTI, BLAUM, STEELMAN, M. COHEN, GORDNER, PESCI, D. R. WRIGHT, ROHRER, FLEAGLE, STETLER, MCGILL, SATHER, HERSHEY, GAMBLE, SURRA, DALEY, STAIRS, HANNA, MILLER, CARONE, CORNELL, HUTCHINSON, BIRMELIN, GIGLIOTTI, PETTIT, LUCYK, MAJOR, ARMSTRONG, KUKOVICH, CALTAGIRONE, ROBERTS, DRUCE, ITKIN, HASAY, MERRY, STEIL, LEVDANSKY, TRELLO, MANDERINO, READSHAW, TRICH, BELARDI, LEDERER, ZIMMERMAN AND SANTONI, MARCH 15, 1995

AS REPORTED FROM COMMITTEE ON PROFESSIONAL LICENSURE, HOUSE OF REPRESENTATIVES, AS AMENDED, JUNE 5, 1996

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," further providing
4 for definitions and for the powers and duties of the State
5 Board of Optometry, including licensure.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Sections 2 and 2.1(a) and (b) of the act of June
9 6, 1980 (P.L.197, No.57), known as the Optometric Practice and
10 Licensure Act, amended or added May 15, 1986 (P.L.186, No.58),
11 are amended to read:

12 Section 2. Definitions.

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

1 "Advisory Committee on Continuing Professional Education."
2 An advisory committee established pursuant to section 3 to make
3 recommendations to the board relating to continuing professional
4 education.

5 "Board." The State Board of Optometry.

6 ["Examination and diagnosis." Any examination or diagnostic
7 means or method compatible with optometric education and
8 professional competence. The term shall encompass the use of
9 pharmaceutical agents for diagnostic purposes classified as
10 miotics, mydriatics, cycloplegics, topical anesthetics and dyes
11 when applied topically to the eye, which pharmaceutical agents
12 shall be approved by the Secretary of Health and, subject to the
13 rules and regulations of the board, provided however that with
14 respect to optometrists licensed before March 1, 1974, only such
15 optometrists who have satisfactorily completed a course in
16 pharmacology as it applies to optometry, with particular
17 emphasis on the topical application of diagnostic pharmaceutical
18 agents to the eye, approved by the board shall be permitted to
19 use diagnostic pharmaceutical agents topically in the practice
20 of optometry.]

←

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

←

25 "Optometrist." Any person who, following formal and
26 recognized training in the art and science of optometry has
27 received a doctor of optometry degree from an accredited
28 institution and is qualified to seek or has acquired a license
29 to practice the profession of optometry. An optometrist shall be
30 identified either by "Doctor of Optometry," "O.D.," or "Dr."

1 followed by "Optometrist."

2 "Practice of optometry." [The use of any and all means or
3 methods for the examination, diagnosis and except for drugs or
4 surgery, treatment of conditions of the human visual system and
5 shall include the examination for, and adapting and fitting of,
6 any and all kinds and types of lenses including contact lenses.]

7 ~~The use of any and all means and methods for the examination,~~ <—
8 ~~diagnosis and treatment of conditions of the visual system which~~
9 ~~shall be limited to:~~

10 ~~(1) the examination for, and adapting and fitting of,~~
11 ~~any and all kinds and types of lenses, including contact~~
12 ~~lenses;~~

13 ~~(2) the provision of developmental and perceptual vision~~
14 ~~therapy; and~~

15 ~~(3) the administration and prescription of legend and~~
16 ~~nonlegend drugs for treatment of the anterior segment of the~~
17 ~~eye, the eyelids, the lacrimal system and the conjunctiva and~~
18 ~~the removal of foreign bodies from the ocular surface.~~

19 ~~The term shall not include:~~

20 ~~(1) invasive surgery or injections in the treatment of~~
21 ~~ocular disease;~~

22 ~~(2) the use of Schedule I and Schedule II controlled~~
23 ~~substances; and~~

24 ~~(3) treatment of systemic disease.~~

25 (1) THE USE OF ANY AND ALL MEANS AND METHODS FOR THE <—
26 EXAMINATION, DIAGNOSIS AND TREATMENT OF CONDITIONS OF THE
27 HUMAN VISUAL SYSTEM WHICH SHALL BE LIMITED TO:

28 (I) THE EXAMINATION FOR, AND ADAPTING AND FITTING
29 OF, ANY AND ALL KINDS AND TYPES OF LENSES, INCLUDING
30 CONTACT LENSES;

1 (II) THE PROVISION OF DEVELOPMENTAL AND PERCEPTUAL
2 VISION THERAPY; AND

3 (III) THE ADMINISTRATION AND PRESCRIPTION OF LEGEND
4 AND NONLEGEND DRUGS AS APPROVED BY THE SECRETARY OF
5 HEALTH FOR TREATMENT OF THE ANTERIOR SEGMENT OF THE EYE,
6 THE EYELIDS, THE LACRIMAL SYSTEM AND THE CONJUNCTIVA AND
7 THE REMOVAL OF SUPERFICIAL FOREIGN BODIES FROM THE OCULAR
8 SURFACE AND ADNEXA, SO LONG AS TREATMENT OF DISEASES OR
9 CONDITIONS OF THE VISUAL SYSTEM AS AUTHORIZED UNDER THIS
10 PARAGRAPH SHALL NOT CONTINUE BEYOND SIX WEEKS FROM THE
11 INITIATION OF TREATMENT UNLESS THE PRESCRIBING
12 OPTOMETRIST DOCUMENTS CONSULTATION WITH A LICENSED
13 PHYSICIAN.

14 AS USED IN THIS PARAGRAPH, THE INITIATION OF TREATMENT MAY,
15 BUT NEED NOT, INCLUDE THE PRESCRIPTION OR ADMINISTRATION OF
16 PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES.

17 (2) THE TERM SHALL NOT INCLUDE:

18 (I) SURGERY, INCLUDING, BUT NOT LIMITED TO, LASER
19 SURGERY; THE USE OF LASERS FOR THERAPEUTIC PURPOSES; AND
20 THE USE OF INJECTIONS IN THE TREATMENT OF OCULAR DISEASE;

21 (II) THE USE OF SCHEDULE I AND SCHEDULE II
22 CONTROLLED SUBSTANCES;

23 (III) THE USE OF BETA BLOCKERS AND THE USE OF
24 STEROIDS;

25 (IV) TREATMENT OF SYSTEMIC DISEASE; AND

26 (V) THE TREATMENT OF GLAUCOMA.

27 ["Treatment." The use of any and all preventive and
28 corrective means and methods, except for drugs or surgery, for
29 aid to the human visual system and shall include but is not
30 limited to the adapting and fitting of any and all kinds and

1 types of lenses and devices including contact lenses and the
2 provision of vision developmental and perceptual therapy or
3 ocular exercise for aid to or enhancement of visual functions.]
4 Section 2.1. State Board of Optometry.

5 (a) The State Board of Optometry shall consist of [12] 13
6 members, all of whom shall be residents of Pennsylvania. [Seven]
7 Eight members shall be optometrists who are licensed to practice
8 in Pennsylvania and who have been practicing optometry in
9 Pennsylvania for at least the five-year period immediately
10 preceding their appointment. Three members shall be persons
11 representing the public at large, one member shall be the
12 Commissioner of Professional and Occupational Affairs and one
13 member shall be the Director of the Bureau of Consumer
14 Protection in the Office of Attorney General or his designee.
15 The professional and public members of the board shall be
16 appointed by the Governor with the advice and consent of a
17 majority of the members elected to the Senate.

18 (b) [Professional members appointed after the effective date
19 of this act as successors to professional members whose terms
20 expired prior to the effective date of this act shall serve the
21 following terms: one shall serve one year; one shall serve two
22 years; two shall serve three years; and the remainder shall
23 serve four years. All other] All professional and public members
24 shall serve for terms of four years. No member shall be eligible
25 for appointment to serve more than two consecutive terms. A
26 member may continue to serve for a period not to exceed six
27 months following the expiration of his or her term if a
28 successor has not been duly appointed and qualified according to
29 law. [Any member whose term expired prior to the effective date
30 of this act may continue to serve for no more than six months

1 following the effective date of this act.]

2 * * *

3 Section 2. Section 3(a)(1) and (2) and (b)(1), (3) and (11)
4 of the act, amended May 15, 1986 (P.L.186, No.58), are amended
5 and subsection (a) is amended by adding paragraphs to read:

6 Section 3. Powers and duties of the board.

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

8 (1) To meet at least [six] four times annually at a
9 place within the Commonwealth determined by the board for the
10 transaction of its business.

11 (2) To prescribe the subjects to be tested, authorize
12 written and practical portions of the examination and
13 contract with a professional testing organization for
14 examinations of qualified applicants for licensure at least
15 twice annually at such times and places as designated by the
16 board. All written, oral and practical examinations shall be
17 prepared and administered by a qualified and approved
18 professional testing organization in accordance with section
19 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as
20 "The Administrative Code of 1929[," except that neither the
21 oral nor the practical examination shall be subject to
22 section 812.1 until such examination is available from a
23 testing organization.]".

24 (2.1) To determine, in accordance with optometric
25 education, training, professional competence and skill, the
26 means and methods for the examination, diagnosis and
27 treatment of conditions of the visual system.

28 (2.2) To establish and approve a course, including an
29 examination, with respect to the use of pharmaceutical agents <—
30 for the treatment of conditions of the visual system.

~~(2.3) To require any optometrist licensed prior to the effective date of this act who chooses to use pharmaceutical agents for the treatment of conditions of the visual system to successfully complete the course, including passage of the examination, established by the board prior to such use.~~

PRESCRIPTION AND ADMINISTRATION OF PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES AS DEFINED IN THIS ACT.

(2.3) TO REQUIRE OPTOMETRISTS WHO PRESCRIBE AND ADMINISTER PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES TO BE CERTIFIED BY THE BOARD.

~~(2.4) To notify biennially the State Board of Pharmacy of the names of optometrists who have met the requirements of this act, with respect to the use of pharmaceutical agents for the treatment of conditions of the visual system.~~ BEEN CERTIFIED IN ACCORDANCE WITH SECTION 4.1, WITH RESPECT TO THE PRESCRIPTION AND ADMINISTRATION OF PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES.

(2.5) To require every licensee to insure liability by purchasing and maintaining professional liability insurance coverage in accordance with the following provisions:

(i) Beginning with the first license renewal period at least two years after the effective date of this paragraph or upon first making application for licensure, whichever occurs earlier, a licensee shall obtain and maintain, to the satisfaction of the board, professional liability insurance coverage in the minimum amount of \$200,000 per occurrence and \$600,000 per annual aggregate. The professional liability insurance coverage shall remain in effect as long as the licensee ~~has~~ MAINTAINS a current license.

1 board or its designated hearing examiner shall conduct a
2 hearing as otherwise required by this section within 30 days
3 of the injunction date. The chairperson of the board shall
4 exercise this power whenever the board is not in session.]

5 JURISDICTION UPON PETITION OF THE COMMISSIONER OR THE BOARD. ←
6 IN ANY PROCEEDING UNDER THIS SECTION, IT SHALL NOT BE
7 NECESSARY TO SHOW THAT ANY PERSON IS INDIVIDUALLY INJURED BY
8 THE ACTIONS COMPLAINED OF. IF THE COURT FINDS THAT THE
9 RESPONDENT HAS VIOLATED THIS SUBSECTION, IT SHALL ENJOIN HIM
10 FROM SO PRACTICING OR HOLDING HIMSELF OUT AS AN OPTOMETRIST
11 UNTIL HE HAS BEEN DULY LICENSED OR CERTIFIED. PROCEDURE IN
12 SUCH CASES SHALL BE THE SAME AS IN ANY OTHER INJUNCTIVE SUIT.

13 * * *

14 (11) In consultation with [the Council on Optometric
15 Education or its successor] a national accrediting body
16 recognized by the United States Department of Education and
17 the appropriate regional accrediting body recognized by the
18 United States Department of Education, to approve those
19 optometric educational institutions in the United States and
20 Canada which are accredited for the purposes of this act.

21 * * *

22 Section 3. Section 4 of the act is amended to read:

23 Section 4. [Requirements for examination.] General
24 qualifications for licensure.

25 (a) A person holding a Doctor of Optometry degree from an
26 accredited optometric educational institution in the United
27 States or Canada, who furnishes the board with evidence that he
28 is at least 21 years of age, has completed the educational
29 requirements prescribed by the board and is of good moral
30 character, is not addicted in the use of alcohol or narcotics or

1 other habit-forming drugs and who pays the appropriate fee may
2 apply to the board for examination for licensure.

3 (b) The board may establish further requirements to be met
4 by optometric graduates from unaccredited schools or colleges of
5 optometry before granting such graduates the right to take an
6 examination.

7 (c) An applicant who knowingly makes a false statement of
8 fact in an application for examination shall be deemed to have
9 violated this act and shall be subject to the penalties set
10 forth herein.

11 (d) The board shall not issue a license to an applicant who
12 has been convicted of a felony under the act of April 14, 1972
13 (P.L.233, No.64), known as "The Controlled Substance, Drug,
14 Device and Cosmetic Act," or of an offense under the laws of
15 another jurisdiction which, if committed in this Commonwealth,
16 would be a felony under "The Controlled Substance, Drug, Device
17 and Cosmetic Act," unless:

18 (1) at least ten years have elapsed from the date of
19 conviction;

20 (2) the applicant satisfactorily demonstrates to the
21 board that he has made significant progress in personal
22 rehabilitation since the conviction such that licensure of
23 the applicant should not be expected to create a substantial
24 risk of harm to the health and safety of his patients or the
25 public or a substantial risk of further criminal violations;
26 and

27 (3) the applicant otherwise satisfies the requirements
28 of this act.

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

30 ~~Section 4.1. Educational requirements to use therapeutic~~

<—

1 ~~pharmaceutical agents.~~

2 SECTION 4.1. CERTIFICATION TO PRESCRIBE AND ADMINISTER <—

3 PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES.

4 (a) In addition to its other powers and duties under this
5 act, the board shall have the power and duty to recognize <—
6 qualified licensees to use therapeutic pharmaceutical agents. A
7 licensee shall show to the satisfaction of the board that the
8 licensee has passed an examination for licensure to practice
9 optometry, which examination included the use of therapeutic
10 pharmaceutical agents and was prepared and administered by a
11 qualified and approved professional testing organization in
12 accordance with section 812.1 of the act of April 9, 1929
13 (P.L.177, No.175), known as "The Administrative Code of 1929,"
14 and that the licensee has completed a minimum of 100 hours of
15 study in the use of therapeutic pharmaceutical agents, as
16 approved by the board. CERTIFY QUALIFIED LICENSEES TO PRESCRIBE <—

17 AND ADMINISTER PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES AS
18 DEFINED IN THIS AMENDATORY ACT. TO OBTAIN SUCH CERTIFICATION, A
19 LICENSEE SHALL SUBMIT AN APPLICATION TO THE BOARD ON A FORM
20 PROVIDED BY THE BOARD SHOWING TO THE SATISFACTION OF THE BOARD
21 THAT THE LICENSEE HAS EITHER:

22 (1) GRADUATED FROM AN ACCREDITED SCHOOL OF OPTOMETRY AND
23 AS A CONDITION FOR GRADUATION HAS SUCCESSFULLY COMPLETED A
24 MINIMUM OF 100 HOURS IN THE PRESCRIPTION AND ADMINISTRATION
25 OF PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES AND HAS
26 PASSED A LICENSURE EXAMINATION TO PRACTICE OPTOMETRY WHICH
27 EXAMINATION INCLUDED THE PRESCRIPTION AND ADMINISTRATION OF
28 PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES; OR

29 (2) COMPLETED A BOARD-APPROVED COURSE OF A MINIMUM OF
30 100 HOURS IN THE PRESCRIPTION AND ADMINISTRATION OF

1 PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES AND HAS PASSED
2 AN EXAMINATION ON THE PRESCRIPTION AND ADMINISTRATION OF
3 PHARMACEUTICAL AGENTS FOR THERAPEUTIC PURPOSES WHICH
4 EXAMINATION WAS PREPARED AND ADMINISTERED BY A QUALIFIED AND
5 APPROVED PROFESSIONAL TESTING ORGANIZATION IN ACCORDANCE WITH
6 SECTION 812.1 OF THE ACT OF APRIL 9, 1929 (P.L.177, NO.175),
7 KNOWN AS "THE ADMINISTRATIVE CODE OF 1929."

8 (b) In order to maintain such authority, the licensee shall,
9 as part of the continuing education required for renewal of a
10 license under this act, complete such additional study in the
11 use of therapeutic pharmacological agents as the board may <—
12 require. PRESCRIPTION AND ADMINISTRATION OF PHARMACEUTICAL <—
13 AGENTS FOR THERAPEUTIC PURPOSES.

14 Section 5. Sections 5, 6(c) and (h) and 7 heading, (a)(7),
15 (b)(2) and (d) of the act, amended or added May 15, 1986
16 (P.L.186, No.58), are amended to read:

17 Section 5. Renewal of license.

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

22 (b) Beginning with the year [1982] ~~1996~~ 1998, a license <—
23 shall not be renewed by the board unless the optometrist
24 applying for renewal submits proof to the board that during the
25 two calendar years immediately preceding his application he has
26 satisfactorily completed a minimum of [24] 30 hours of
27 continuing professional optometric education approved by the
28 board[.] ~~Not less than six of these hours shall concern~~ <—
29 ~~pharmaceutical agents.~~ SO LONG AS A LICENSEE WHO IS CERTIFIED <—
30 IN ACCORDANCE WITH SECTION 4.1 SHALL BE REQUIRED TO COMPLETE A

1 MINIMUM OF 30 HOURS, AT LEAST SIX OF WHICH CONCERN THE
2 PRESCRIPTION AND ADMINISTRATION OF PHARMACEUTICAL AGENTS FOR
3 THERAPEUTIC PURPOSES. No credit shall be given for any course in
4 office management or practice building.

5 (c) Any licensee of this Commonwealth who is also licensed
6 to practice optometry in any other state, territory or country
7 shall report this information to the board on the biennial
8 renewal application. Any disciplinary action taken in other
9 states shall be reported to the board on the biennial renewal
10 application or within 90 days of final disposition, whichever is
11 sooner. Multiple licensure shall be noted on the licensee's
12 record by the board, and such state, territory or country shall
13 be notified by the board of any disciplinary action taken
14 against said licensee in this Commonwealth.

15 (d) An optometrist who requests in writing to place his
16 license on inactive status may reactivate his license, after
17 paying the required fees and showing proof of meeting the
18 continuing education requirement for the biennial renewal period
19 immediately preceding such request for reactivation. An
20 optometrist who seeks to renew an inactive license shall file
21 with the board an affidavit affirming that he has not practiced
22 optometry in this Commonwealth during such period his license
23 was inactive.

24 Section 6. Exemptions and exceptions.

25 * * *

26 (c) The board may, upon written application and payment of
27 the regular examination fee, issue a license without an
28 examination[, other than clinical,] to any applicant who:

29 (1) is at least 21 years of age; and

30 (2) (i) has passed a standard examination in optometry

1 in any other state or all parts of the examination given
2 by the National Board of Examiners in Optometry, provided
3 that the standards of the other state or the National
4 Board are equal to or exceed the standards of this
5 Commonwealth; or

6 (ii) is licensed in another state and has practiced
7 in that state for a minimum of four years immediately
8 preceding application.

9 * * *

10 (h) Nothing in this act shall prohibit any individual from
11 fitting an appropriate contact lens, ~~a procedure in which a~~ ←
12 ~~prescribed lens is placed upon the eye of a patient and the~~
13 ~~lens cornea relationship is evaluated with the use of a~~
14 ~~biomicroscope or a slit lamp,~~ for a specific intended wearer and
15 the complete assisting of such wearer in the use of the contact
16 lens [if the following conditions are met], provided that:

17 (1) The individual who fits the contact lens [has]
18 successfully passed the examination administered by the
19 National Contact Lens Examiners as of [the effective date of
20 this act] July 14, 1986, and is currently certified by the
21 National Contact Lens Examiners.

22 (2) The fitting is based on prescription of a licensed
23 physician or optometrist.

24 (3) The wearer is informed, in writing, to return to the
25 prescribing physician or optometrist for periodic evaluation
26 during the fit, at intervals not to exceed three months or
27 whenever the fitter feels professional judgment is needed.

28 (4) The individual who [has] passed the examination
29 administered by the National Contact Lens Examiners as of
30 [the effective date of this act submits] July 14, 1986,

1 submitted evidence of such successful examination to the
2 board [within 60 days] by September 12, 1986.

3 (5) The board shall compile and publish a list of [such]
4 individuals who meet the requirements of this subsection and
5 shall enforce the provisions of this subsection.

6 * * *

7 Section 7. [Refusal, revocation or suspension of license.]

8 Reasons for refusal, suspension, revocation or
9 other corrective actions; powers of board and
10 actions authorized.

11 (a) The board shall have the power to refuse, revoke, limit
12 or suspend a license, or take other corrective action authorized
13 hereunder against an optometrist licensed to practice optometry
14 in this Commonwealth for any or all of the following reasons:

15 * * *

16 (7) [Inability to practice optometry with reasonable
17 skill and safety to patients by reason of incompetence,
18 illness, drunkenness, excessive use of drugs, narcotics,
19 chemicals or other type of material, or as a result of any
20 mental or physical condition.] Being unable to practice the
21 profession with reasonable skill and safety to patients by
22 reason of illness, addiction to drugs or alcohol, having been
23 convicted of a felonious act prohibited under the act of
24 April 14, 1972 (P.L.233, No.64), known as "The Controlled
25 Substance, Drug, Device and Cosmetic Act," or convicted of a
26 felony relating to a controlled substance in a court of law
27 of the United States or any other state, territory,
28 possession or country, or if he or she is or shall become
29 mentally incompetent. An applicant's statement on the
30 application declaring the absence of a conviction shall be

1 deemed satisfactory evidence of the absence of a conviction
2 unless the board has some evidence to the contrary. In
3 enforcing this paragraph, the board shall, upon probable
4 cause, have authority to compel a practitioner to submit to a
5 mental or physical examination by a physician or a
6 psychologist approved by the board. Failure of a practitioner
7 to submit to such an examination when directed by the board,
8 unless such failure is due to circumstances beyond his or her
9 control, shall constitute an admission of the allegations
10 against him or her, consequent upon which a default and final
11 order may be entered without the taking of testimony or
12 presentation of evidence. A practitioner affected under this
13 paragraph shall at reasonable intervals be afforded an
14 opportunity to demonstrate that he or she can resume a
15 competent practice of his or her profession with reasonable
16 skill and safety to patients.

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

19 * * *

20 (2) Administer a public [or private] reprimand.

21 * * *

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

1 * * *

2 Section 6. The act is amended by adding a section to read:

3 Section 7.1. Impaired professionals.

4 (a) The board, with the approval of the Commissioner of
5 Professional and Occupational Affairs, shall appoint and fix the
6 compensation of a professional consultant who is a licensee of
7 the board, or such other professional as the board may
8 determine, with education and experience in the identification,
9 treatment and rehabilitation of persons with physical or mental
10 impairments. Such consultant shall be accountable to the board
11 and treatment programs, such as alcohol and drug treatment
12 programs licensed by the Department of Health, psychological
13 counseling and impaired professional support groups, which are
14 approved by the board and which provide services to licensees
15 under this act.

16 (b) The board may defer and ultimately dismiss any of the
17 types of corrective action set forth in this act for an impaired
18 professional so long as the professional is progressing
19 satisfactorily in an approved treatment program, provided that
20 the provisions of this subsection shall not apply to a
21 professional convicted of a felonious act prohibited under the
22 act of April 14, 1972 (P.L.233, No.64), known as "The Controlled
23 Substance, Drug, Device and Cosmetic Act," or convicted of a
24 felony relating to a controlled substance in a court of law of
25 the United States or any other state, territory or country. An
26 approved program provider shall, upon request, disclose to the
27 consultant such information in its possession regarding an
28 impaired professional in treatment which the program provider is
29 not prohibited from disclosing by an act of this Commonwealth,
30 another state or the United States. Such requirement of

1 disclosure by an approved program provider shall apply in the
2 case of impaired professionals who are the subject of a board
3 investigation or disciplinary proceeding, and impaired
4 professionals who voluntarily enter a treatment program other
5 than under the provisions of this section but fail to complete
6 the program successfully or to adhere to an aftercare plan
7 developed by the program provider.

8 (c) An impaired professional who enrolls in an approved
9 treatment program shall enter into an agreement with the board
10 under which the professional's license shall be suspended or
11 revoked, but enforcement of that suspension or revocation may be
12 stayed for the length of time the professional remains in the
13 program and makes satisfactory progress, complies with the terms
14 of the agreement and adheres to any limitations on his practice
15 imposed by the board to protect the public. Failure to enter
16 into such an agreement shall disqualify the professional from
17 the impaired professional program and shall activate an
18 immediate investigation and disciplinary proceeding by the
19 board.

20 (d) If, in the opinion of the consultant after consultation
21 with the provider, an impaired professional who is enrolled in
22 an approved treatment program has not progressed satisfactorily,
23 the consultant shall disclose to the board all information in
24 his possession regarding said professional, and the board shall
25 institute proceedings to determine if the stay of the
26 enforcement of the suspension or revocation of the impaired
27 professional's license shall be vacated.

28 (e) An approved program provider who makes disclosure
29 pursuant to this section shall not be subject to civil liability
30 for such disclosure or its consequences.

1 (f) Any hospital or health care facility, peer or colleague
2 who has substantial evidence that a professional has an active
3 addictive disease for which the professional is not receiving
4 treatment, is diverting a controlled substance or is mentally or
5 physically incompetent to carry out the duties of his or her
6 license shall make or cause to be made a report to the board,
7 provided that any person or facility which acts in a treatment
8 capacity to an impaired professional in an approved treatment
9 program is exempt from the mandatory reporting requirements of
10 this subsection. Any person or facility that reports pursuant to
11 this section in good faith and without malice shall be immune
12 from any civil or criminal liability arising from such report.
13 Failure to provide such report within a reasonable time from
14 receipt of knowledge of impairment shall subject the person or
15 facility to a fine not to exceed \$1,000. The board shall levy
16 this penalty only after affording the accused party the
17 opportunity for a hearing, as provided in 2 Pa.C.S. (relating to
18 administrative law and procedure).

19 Section 7. Section 9 of the act, amended May 15, 1986
20 (P.L.186, No.58), is amended to read:

21 Section 9. Fees and other moneys.

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

27 (b) Moneys collected under the provisions of this act shall
28 be paid into [a designated account] the Professional Licensure
29 Augmentation Account and disbursed according to law.

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 [(e) The fees established under this act shall be sufficient <—
17 to enable the board to secure such investigatory and prosecutory
18 staff as is necessary to pursue appropriate legal action against
19 those persons engaged in the practice of optometry in
20 Pennsylvania without being licensed as required by this act and
21 against any person who violates any other provision of this
22 act.] <—

23 ~~Section 8. This act constitutes the legislation required to <—~~
24 ~~reestablish the State Board of Optometry.~~

25 ~~Section 9. This act shall be retroactive to December 31,~~
26 ~~1991.~~

27 ~~Section 10. The presently confirmed members of the State~~
28 ~~Board of Optometry shall continue to serve as board members~~
29 ~~until their present terms of office expire, or until a successor~~
30 ~~has been duly appointed and qualified, but no longer than six~~

1 ~~months beyond the end of the term.~~

2 ~~Section 11. Each rule, regulation or fee of the State Board~~
3 ~~of Optometry in effect on the effective date of this act and not~~
4 ~~inconsistent with this act shall remain in effect after such~~
5 ~~date until amended by the board, provided that the board shall~~
6 ~~immediately initiate the repeal or amendment of any rule or~~
7 ~~regulation which is inconsistent with the provisions of this~~
8 ~~act.~~

9 ~~Section 12. Any person who holds a current, active,~~
10 ~~unexpired license issued prior to the effective date of this~~
11 ~~amendatory act shall, on and after the effective date of this~~
12 ~~act, be deemed to be licensed by the State Board of Optometry as~~
13 ~~provided in this act.~~

14 ~~Section 13. This act shall take effect immediately.~~