

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

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INTRODUCED BY ZORD, BELARDI, ARTY, PICCOLA, COLE, STEWART,
STEIGHNER, ZWIKL, DOMBROWSKI, POTT, MADIGAN, McMONAGLE,
CAPPABIANCA, GRIECO, ALDEN, PYLES, LASHINGER, BOWSER,
McVERY, WHITE, SHADDING AND WILLIAMS, FEBRUARY 13, 1980

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,
FEBRUARY 13, 1980

AN ACT

1 Relating to ophthalmic dispensing.

2 TABLE OF CONTENTS

3 Section 1. Short title.

4 Section 2. Declaration of purpose.

5 Section 3. Definitions.

6 Section 4. Registration required.

7 Section 5. Persons and practices not affected.

8 Section 6. Requirements for registration.

9 Section 7. Examination for registration of ophthalmic
10 dispensers.

11 Section 8. Waiver of written examination requirements.

12 Section 9. Provisional registration.

13 Section 10. Renewal of registration.

14 Section 11. Registration of apprentices and other ancillary
15 personnel.

16 Section 12. Administrative requirements.

1 Section 13. Fees.

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

3 registration.

4 Section 15. Notice of denial.

5 Section 16. Consumer complaints, investigations and

6 proceedings.

7 Section 17. Unlawful acts.

8 Section 18. Injunctions.

9 Section 19. Civil penalty.

10 Section 20. Exemption from other registration.

11 Section 21. Effective date.

12 The General Assembly of the Commonwealth of Pennsylvania

13 hereby enacts as follows:

14 Section 1. Short title.

15 This act shall be known and may be cited as the "Ophthalmic

16 Dispensing Act."

17 Section 2. Declaration of purpose.

18 In order to safeguard public health, safety, and welfare; to

19 protect the public by assuring that providers of ophthalmic

20 dispensing services and products meet minimum standards of

21 competence; and to insure that competent providers of such

22 services and products are available in adequate numbers, it is

23 the purpose of this act to provide for the regulation of persons

24 offering ophthalmic dispensing services to the public.

25 Section 3. Definitions.

26 The following words and phrases when used in this act shall

27 have, unless the context clearly indicates otherwise, the

28 meanings given to them in this section:

29 "Department." The Department of Health.

30 "Ophthalmic dispensing." The design, verification, and

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

13 "Prescription." A written or verbal direction from a
14 licensed physician or optometrist.

15 "Secretary." The Secretary of Health.

16 "Supervision." The provision of direction and control
17 through personal inspection and evaluation of work and the
18 provision of such consultation and instruction as may be needed.

19 Section 4. Registration required.

20 No person shall engage in ophthalmic dispensing or hold
21 himself or herself out as an ophthalmic dispenser, or as being
22 able to engage in ophthalmic dispensing or to render ophthalmic
23 dispensing services in this State, unless he or she is
24 registered in accordance with the provisions of this act.

25 Section 5. Persons and practices not affected.

26 Nothing in this act shall prevent or restrict:

27 (1) the practices, services or activities of any person
28 duly licensed or registered in this State by any other law
29 from engaging in the profession or occupation for which he or
30 she is licensed or registered;

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

3 (3) any individual, firm, or corporation from employing
4 persons registered under this act or from engaging in
5 ophthalmic dispensing through persons registered under this
6 act; or

7 (4) advertising prices and locations of places of
8 business.

9 Section 6. Requirements for registration.

10 To be eligible to engage in ophthalmic dispensing a person
11 shall successfully complete a written qualifying ophthalmic
12 dispensing examination.

13 Section 7. Examination for registration of ophthalmic
14 dispensers.

15 The written qualifying ophthalmic dispensing examination
16 shall be designed to measure specific job performance
17 requirements, professionally constructed and validated, and be
18 independently and objectively administered and scored. The
19 examination shall be given at least once each year at sites
20 which are accessible to applicants on dates that are publicly
21 announced 90 days in advance of the administration dates. Each
22 applicant shall receive his or her examination score and a
23 performance profile by subject matter area within a reasonable
24 time after taking an examination.

25 Section 8. Waiver of written examination requirements.

26 (a) Ophthalmic dispensing examination.--The department shall
27 waive the written ophthalmic dispensing examination requirement
28 and grant registration to any applicant who:

29 (1) holds currently valid ophthalmic dispensing
30 credentials in another state, provided, that the department

has determined that they are at least equal to the department's requirements.

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

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

(4) has been engaged in ophthalmic dispensing for a period of not less than three years prior to the effective date of this act.

(b) Temporary waiver of written examination.--Other persons with experience in ophthalmic dispensing may be issued registration to engage in ophthalmic dispensing without written examination provided they shall file an application with the department for temporary waiver of the written examination requirement within six months from the effective date of this act except that such persons shall be required to pass the written qualifying examination within one year of their registration. Such application shall be accompanied by evidence that the applicant has been engaged in ophthalmic dispensing for more than one year but less than three years.

Section 9. Provisional registration.

1 Provisional or temporary registration shall be issued one
2 time to persons who are unable to meet the requirements
3 established in section 6, provided they show evidence of having
4 one year of experience in ophthalmic dispensing. In no case
5 shall such a provisional registration be valid for more than 12
6 calendar months from the date of issuance.

7 Section 10. Renewal of registration.

8 Registration under this act shall be subject to renewal every
9 three years and shall expire unless the registrant submits an
10 application for renewal in the manner prescribed by the
11 department. Such application shall be accompanied by a renewal
12 fee. The applicant must submit proof to the department that
13 during the preceding three years immediately preceding the
14 application, the applicant has satisfactorily completed a
15 minimum of nine hours of continuing ophthalmic dispensing
16 education approved by the department.

17 Section 11. Registration of apprentices and other ancillary
18 personnel.

19 (a) Registration.--Persons registered under this act
20 pursuant to section 6, may utilize apprentices to engage in
21 ophthalmic dispensing when such apprentices are under their
22 supervision and at the same location where the registered person
23 dispenses, except that no registered ophthalmic dispenser shall
24 supervise more than three apprentices. Apprentices may be
25 employed upon submission of an application for registration to
26 the department.

27 (b) Transfers.--An apprentice who desires to change sponsors
28 shall furnish the department with a sworn or affirmed request
29 giving reasons for the request accompanied by a sworn or
30 affirmed statement from the new sponsor with the undertakings

1 required by this act, and accompanied by the apprentice's
2 temporary certificate of registration. If the transfer is
3 approved, the certificate will be revalidated without charge.

4 (c) Termination.--If the sponsor desires to terminate the
5 responsibilities he has undertaken with regard to an apprentice,
6 he shall give the apprentice ten days written notice, giving
7 reasons, and shall notify the department accordingly by
8 certified mail.

9 (d) Examination.--An apprentice may take the registration
10 examination at any time during his apprenticeship but the
11 apprenticeship period shall not exceed two years.

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

17 Section 12. Administrative requirements.

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

26 (b) Advisory committee.--There is created under this act an
27 advisory committee to the Department of Health which shall be
28 composed of four ophthalmic dispensers, one ophthalmologist
29 (M.D.), one optometrist (O.D.), and two public members who shall
30 be appointed by the Governor. The Governor shall, within 60 days

1 from the effective date of this act, appoint two committee
2 members for a term of one year; and three for a term of two
3 years; and three for a term of three years. Appointments made
4 thereafter shall be for three year terms but no person shall be
5 appointed to serve more than two consecutive terms. Members of
6 the advisory committee shall receive no compensation for their
7 services but shall be entitled to reasonable travel and other
8 expenses incurred in the execution of their duties.

9 Section 13. Fees.

10 The department shall publish fees for the following purposes:

11 (1) Application for examination.

12 (2) Initial registration fee.

13 (3) Temporary registration fee.

14 (4) Renewal of registration fee.

15 (5) Apprentice registration fee.

16 Section 14. Causes for denial, suspension or revocation of
17 registration.

18 The secretary may deny, suspend, or revoke registration or
19 impose conditions of probation upon a registrant for any of the
20 following causes:

21 (1) Obtaining a registration certificate by fraud or
22 deceit.

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

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

29 (4) The employment, to perform any act covered by the
30 provisions of the act, of a person known to the employer

1 whose registration is suspended or who does not possess a
2 valid registration issued under this act.

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

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

9 (7) Be enjoined from violating any provision of the act
10 of December 17, 1968 (P.L.1224, No.387), known as the "Unfair
11 Trade Practices and Consumer Protection Law," or be subject
12 to a final order of the Federal Trade Commission, the
13 Pennsylvania Department of Health, or the Food and Drug
14 Administration of the United States Department of Health,
15 Education and Welfare concerning the sale or offering for
16 sale of unsafe, unhealthful or worthless ophthalmic devices
17 or for engaging in conduct which has the tendency to mislead
18 or deceive.

19 Section 15. Notice of denial.

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

22 (1) The reason for the denial.

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

29 Section 16. Consumer complaints, investigations and
30 proceedings.

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

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

10 Section 17. Unlawful acts.

11 It is unlawful for any person:

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

14 (2) To purchase or procure by barter any registration
15 certificate issued by the department with the intent to use
16 the same as evidence of the holder's qualification to
17 practice the fitting and selling of ophthalmic devices.

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

20 (4) To use or attempt to use any registration
21 certificate issued by the department which has been
22 purchased, fraudulently issued, counterfeited, or materially
23 altered as a valid registration certificate.

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

27 (6) To willfully make any false statement in a material
28 regard in an application for an examination before the
29 department for a registration certificate.

30 (7) To engage in the practice of fitting and selling

ophthalmic devices in this Commonwealth without having at the time of so doing a valid unrevoked and unexpired registration certificate or temporary registration certificate.

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

Section 18. Injunctions.

In addition to other proceedings provided for in this act, whenever any person has engaged, or is about to engage in any acts or practices which constitute an offense against this act, the court of common pleas for the county wherein the acts or practices take place or are about to take place, or the Commonwealth Court of Pennsylvania, may issue an injunction or other appropriate order, restraining such conduct on application of the department, the Attorney General, or the district attorney of the county.

Section 19. Civil penalty.

(a) Violation of injunction.--Any person who violates any of the terms of an injunction or other appropriate order issued under the provisions of section 18 shall forfeit and pay to the Commonwealth a civil penalty equal to the penalty provided in the act of December 17, 1968 (P.L.1224, No.387), known as the "Unfair Trade Practices and Consumer Protection Law." For the purposes of this section, the court, issuing an injunction or other appropriate order under section 18, shall retain jurisdiction, and the case shall be continued, and in such instances, the Secretary of Health, the Attorney General or the Commonwealth, may petition for recovery of the civil penalties.

1 (b) Other violations.--If, in any action brought under
2 section 18, the court finds that a person is willfully using or
3 has willfully used a method, act or practice in violation of the
4 provisions of this act, the Secretary of Health, the Attorney
5 General or the appropriate district attorney, acting in the name
6 of the Commonwealth, may recover on behalf of the Commonwealth,
7 a civil penalty equal to the penalty provided in the "Unfair
8 Trade Practices and Consumer Protection Law," per violation,
9 which civil penalty shall be in addition to any other relief
10 which may be granted under section 18.

11 Section 20. Exemption from other registration.

12 Registration under this act shall exempt the registrant from
13 the necessity of obtaining a license under the act of April 14,
14 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug,
15 Device and Cosmetic Act," and the rules and regulations
16 promulgated thereunder.

17 Section 21. Effective date.

18 This act shall take effect in 60 days.