
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 516 Session of
2011

INTRODUCED BY HARKINS, CONKLIN, D. COSTA, DeLUCA, MURT,
M. O'BRIEN AND JOSEPHS, FEBRUARY 8, 2011

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, FEBRUARY 8,
2011

AN ACT

1 Regulating the licensure and practice of ophthalmic dispensing;
2 establishing the State Board of Ophthalmic Dispensers;
3 providing for its powers and duties; and providing penalties.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Short title.

7 This act shall be known and may be cited as the Ophthalmic
8 Dispensing Practice and Licensure Act.

9 Section 2. Definitions.

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

13 "Advisory Committee on Continuing Professional Education" or
14 "advisory committee." An advisory committee established under
15 section 4 to make recommendations to the State Board of
16 Ophthalmic Dispensers relating to continuing professional
17 education.

18 "Board." The State Board of Ophthalmic Dispensers.

1 "Fitting of contact lenses." A procedure in which a
2 prescribed contact lens is placed upon the eye of a patient and
3 the lens-cornea relationship is evaluated with the use of a
4 biomicroscope or slit-lamp.

5 "Ophthalmic dispensing." The preparation and dispensing of
6 lenses, spectacles, eyeglasses or appurtenances thereto to the
7 intended wearers thereof on written prescriptions from
8 physicians, osteopaths or optometrists duly licensed to practice
9 their profession, and in accordance with such prescriptions,
10 interprets, measures, adapts, fits and adjusts such lenses,
11 spectacles, eyeglasses or appurtenances thereto to the human
12 face for the aid or correction of visual or ocular anomalies of
13 the human eye. The services and appliances relating to
14 ophthalmic dispensing shall be dispensed, furnished or supplied
15 to the intended wearer or user thereof only upon written
16 prescription issued by a physician, osteopath or optometrist;
17 but duplications, replacements, reproductions or repetitions may
18 be done without prescriptions, in which event any such act shall
19 be construed to be ophthalmic dispensing the same as if
20 performed on the basis of an original written prescription.

21 Section 3. State Board of Ophthalmic Dispensers.

22 (a) Establishment.--The State Board of Ophthalmic Dispensers
23 is established and shall consist of 13 members, all of whom
24 shall be residents of this Commonwealth. Eight members shall be
25 medical physicians or osteopaths experienced in the treatment
26 and examination of the human eye, who are licensed to practice
27 in this Commonwealth and who have been practicing in this
28 Commonwealth for at least the five-year period immediately
29 preceding their appointment. Three members shall be persons
30 representing the public at large, one member shall be the

1 Commissioner of Professional and Occupational Affairs and one
2 member shall be the Director of the Bureau of Consumer
3 Protection in the Office of Attorney General or the director's
4 designee. The professional and public members of the board shall
5 be appointed by the Governor with the advice and consent of a
6 majority of the members elected to the Senate.

7 (b) Terms of office.--All professional and public members
8 shall serve for terms of four years. No member shall be eligible
9 for appointment to serve more than two consecutive terms. A
10 member may continue to serve for a period not to exceed six
11 months following the expiration of the member's term if a
12 successor has not been duly appointed and qualified according to
13 law.

14 (c) Quorum.--A majority of the members of the board serving
15 in accordance with law shall constitute a quorum. Except for
16 temporary and automatic suspensions under section 12, a member
17 may not be counted as part of a quorum or vote on any issue
18 unless the member is physically in attendance at the meeting.
19 The board shall select, from among its membership, a
20 chairperson, a vice chairperson and a secretary.

21 (d) Expenses of board members.--Each public and professional
22 member of the board shall be paid reasonable traveling, hotel
23 and other necessary expenses incurred in the performance of the
24 member's duties in accordance with Commonwealth regulations and
25 per diem compensation at the rate of \$60 for each day of actual
26 service while on board business.

27 (e) Effect of absences.--A member who fails to attend three
28 consecutive meetings shall forfeit the member's seat unless the
29 Commissioner of Professional and Occupational Affairs, upon
30 written request from the member, finds that the member should be

1 excused from a meeting because of illness or the death of an
2 immediate family member.

3 (f) Appointment of successors.--In the event that a member
4 of the board dies, resigns or otherwise becomes disqualified
5 during a term of office, a successor shall be appointed in the
6 same manner and with the same qualifications as set forth in
7 subsection (a) and shall hold office for the unexpired term.

8 (g) Effect of absence at mandatory seminars.--A public
9 member who fails to attend two consecutive statutorily mandated
10 seminars in accordance with section 813(e) of the act of April
11 9, 1929 (P.L.177, No.175), known as The Administrative Code of
12 1929, shall forfeit his or her seat unless the Commissioner of
13 Professional and Occupational Affairs, upon written request from
14 the public member, finds that the public member should be
15 excused from a meeting because of illness or the death of a
16 family member.

17 Section 4. Powers and duties of board.

18 (a) General rule.--The board shall have the following
19 duties:

20 (1) To meet at least four times annually at a place
21 within this Commonwealth determined by the board for the
22 transaction of its business.

23 (2) To prescribe the subjects to be tested, authorize
24 written and practical portions of the examination and
25 contract with a professional testing organization for
26 examinations of qualified applicants for licensure at least
27 twice annually at such times and places as designated by the
28 board. All written, oral and practical examinations shall be
29 prepared and administered by a qualified and approved
30 professional testing organization in accordance with section

1 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as
2 The Administrative Code of 1929.

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

6 (i) Beginning with the first license renewal period
7 at least two years after the effective date of this
8 paragraph or upon first making application for licensure,
9 whichever occurs earlier, a licensee shall obtain and
10 maintain, to the satisfaction of the board, professional
11 liability insurance coverage in the minimum amount of
12 \$200,000 per occurrence and \$600,000 per annual
13 aggregate. The professional liability insurance coverage
14 shall remain in effect as long as the licensee maintains
15 a current license.

16 (ii) A licensee shall notify the board within 30
17 days of the licensee's failure to be covered by the
18 required insurance. Failure to notify the board shall be
19 actionable under section 9 or 11. The license to practice
20 shall automatically be suspended upon failure to be
21 covered by the required insurance and shall not be
22 restored until submission to the board of satisfactory
23 evidence that the licensee has the required professional
24 liability insurance coverage.

25 (iii) The board shall accept from licensees as
26 satisfactory evidence of insurance coverage, under this
27 paragraph, proof of any or all of the following: self-
28 insurance, personally purchased professional liability
29 insurance, professional liability insurance coverage
30 provided by the licensee's employer or any similar type

1 of coverage.

2 (iv) The board, after consultation with the
3 Insurance Commissioner, shall establish standards and
4 procedures by regulation for self-insurance under this
5 paragraph.

6 (4) To record all licenses in its office.

7 (5) To grant a license to practice ophthalmic dispensing
8 in this Commonwealth to any applicant for licensure who has
9 passed the prescribed examination and otherwise complied with
10 the provisions of this act.

11 (6) To appoint an Advisory Committee on Continuing
12 Professional Education which shall consist of consultants who
13 are ophthalmic dispensing educators and ophthalmic dispensing
14 practitioners to serve with the Deputy Secretary for Higher
15 Education or the deputy secretary's designee.

16 (7) To submit annually to the Department of State an
17 estimate of the financial requirements of the board for its
18 administrative, investigative, legal and miscellaneous
19 expenses.

20 (8) To submit annually to the Appropriations Committee
21 of the Senate and the Appropriations Committee of the House
22 of Representatives, 15 days after the Governor has submitted
23 the annual budget to the General Assembly, a copy of the
24 budget request for the upcoming fiscal year which the board
25 previously submitted to the Department of State.

26 (9) To submit annually to the Consumer Protection and
27 Professional Licensure Committee of the Senate and the
28 Professional Licensure Committee of the House of
29 Representatives a report containing a description of the
30 types of complaints received, status of cases, board action

1 which has been taken and the length of time from the initial
2 complaint to final board resolution.

3 (10) To require all ophthalmic dispensers to provide to
4 their patients information on the existence, powers,
5 functions and duties of the board, including the procedure
6 for bringing a complaint to the board. If such information is
7 available through a publication of the Department of State,
8 providing a copy of such publication to the patient may
9 satisfy the requirements of this paragraph.

10 (b) Additional powers.--The board shall have the following
11 powers:

12 (1) To grant, refuse, revoke, limit or suspend any
13 license to practice ophthalmic dispensing in this
14 Commonwealth under the provisions of this act.

15 (2) To conduct hearings, investigations and discovery
16 proceedings; to administer oaths or affirmations to
17 witnesses, take testimony, issue subpoenas to compel
18 attendance of witnesses or the production of records; and to
19 exercise all powers granted by law or regulation in
20 accordance with the general rules of administrative practice
21 and procedure. The board or its designated hearing examiner
22 may exercise the powers enumerated in this paragraph with
23 regard to both licensed ophthalmic dispensers and persons
24 practicing ophthalmic dispensing without a license.

25 (3) To obtain injunctions from a court of competent
26 jurisdiction upon petition of the Commissioner of
27 Professional and Occupational Affairs or the board. In any
28 proceeding under this section, it shall not be necessary to
29 show that any person is individually injured by the actions
30 complained of. If the court finds that the respondent has

1 violated this subsection, it shall enjoin the person from so
2 practicing or holding himself out as an ophthalmic dispenser
3 until the person has been duly licensed or certified.

4 Procedure in such cases shall be the same as in any other
5 injunctive suit.

6 (4) To recommend to the Commissioner of Professional and
7 Occupational Affairs such staff as is necessary to carry out
8 the provisions of this act.

9 (5) To incur expenses, retain consultants, appoint
10 committees from its own membership and appoint advisory
11 committees which may include nonboard members.

12 (6) To compensate at a rate fixed by the board
13 consultants and nonboard members of advisory committees.

14 (7) To authorize the payment of special reimbursements
15 for the secretary of the board or any other designated member
16 of the board for rendering special services authorized by the
17 board.

18 (8) To use qualified board hearing examiners to conduct
19 hearings and prepare adjudications for final review and
20 approval by the board, including disciplinary sanctions.
21 Nothing shall prohibit the board or a designated board member
22 from conducting such hearings.

23 (9) To establish and administer a records system which
24 records shall be open to public inspection during the regular
25 business hours of the board.

26 (10) To hold meetings, other than required by subsection
27 (a), for the conduct of its business upon giving public
28 notice of such meetings.

29 (11) In consultation with a national accrediting body
30 recognized by the United States Department of Education and

1 the appropriate regional accrediting body recognized by the
2 United States Department of Education, to approve those
3 ophthalmic dispensing educational institutions in the United
4 States and Canada which are accredited for the purposes of
5 this act.

6 (12) In consultation with the advisory committee, to
7 establish and approve by rule and regulation courses of
8 continuing professional ophthalmic dispensing education. Only
9 those educational programs as are available to all licensees
10 on a reasonable nondiscriminatory fee basis shall be
11 approved. Programs to be held within or outside this
12 Commonwealth may receive approval. The number of required
13 hours of study may not exceed those that are available at
14 approved courses held within this Commonwealth during the
15 applicable license renewal period. In cases of certified
16 illness or undue hardship, the board may waive the continuing
17 education requirement.

18 (13) To certify, upon the written request of a licensee
19 and payment of the prescribed fee, that the licensee is
20 qualified for licensure and the practice of ophthalmic
21 dispensing in this Commonwealth.

22 (14) To promulgate all rules and regulations necessary
23 to carry out the purposes of this act.

24 (15) To administer and enforce the laws of this
25 Commonwealth relating to those activities involving
26 ophthalmic dispensing for which licensing is required under
27 this act and to instruct and require its agents to bring
28 prosecutions for unauthorized and unlawful practice.

29 (16) To employ or contract, with the approval of the
30 Commissioner of Professional and Occupational Affairs, for

1 qualified ophthalmic dispensers to assist the board in the
2 conduct of the practical portions of the examinations
3 conducted by the board, for such reasonable compensation,
4 including expenses, as the board shall determine, in
5 accordance with section 812.1 of the act of April 9, 1929
6 (P.L.177, No.175), known as The Administrative Code of 1929.

7 (17) To issue subpoenas upon application of an attorney
8 responsible for representing the Commonwealth in disciplinary
9 actions before the board for the purpose of investigating
10 alleged violations of the disciplinary provisions
11 administered by the board. The board shall have the power to
12 subpoena witnesses, to administer oaths, to examine witnesses
13 or to take testimony or compel the production of books,
14 records, papers and documents as it may deem necessary or
15 proper in and pertinent to any proceeding, investigation or
16 hearing held by the board. Ophthalmic dispensing records may
17 not be subpoenaed without consent of the patient or without
18 order of a court of competent jurisdiction on a showing that
19 the records are reasonably necessary for the conduct of the
20 investigation. The court may impose such limitations on the
21 scope of the subpoena as are necessary to prevent unnecessary
22 intrusion into patient confidential information. The board is
23 authorized to apply to Commonwealth Court to enforce its
24 subpoenas.

25 Section 5. Reports to board.

26 An attorney who represents the Commonwealth in disciplinary
27 matters before the board shall notify the board immediately upon
28 receiving notification of an alleged violation of this act. The
29 board shall maintain current records of all reported alleged
30 violations and periodically review the records for the purpose

1 of determining that each alleged violation has been resolved in
2 a timely manner.

3 Section 6. General qualifications for licensure.

4 (a) General rule.--A license as an ophthalmic dispenser
5 shall be issued by the board to any person who files an
6 application, pays a fee of \$50 and submits evidence under oath
7 satisfactory to the board that the applicant:

8 (1) Is more than 18 years of age and of good moral
9 character.

10 (2) Has graduated from high school or possesses a
11 General Educational Development certificate.

12 (3) Has at least two years of satisfactory training and
13 experience in ophthalmic dispensing under the supervision of
14 an ophthalmic dispenser, physician, osteopath or optometrist
15 or is a graduate of an accepted school of ophthalmic
16 dispensing.

17 (4) Has passed a satisfactory examination in ophthalmic
18 dispensing approved by the board.

19 (5) Is not addicted to the use of alcohol or narcotics
20 or other habit-forming drugs.

21 (b) Other requirements.--The board may establish further
22 requirements to be met by applicants before granting them the
23 right to take an examination.

24 (c) Penalties for false statements.--An applicant who
25 knowingly makes a false statement of fact in an application for
26 examination shall be deemed to have violated this act and shall
27 be subject to the penalties specified in this act.

28 (d) Grounds for refusal of license.--The board shall not
29 issue a license to an applicant who has been convicted of a
30 felony under the act of April 14, 1972 (P.L.233, No.64), known

1 as The Controlled Substance, Drug, Device and Cosmetic Act, or
2 of an offense under the laws of another jurisdiction which, if
3 committed in this Commonwealth, would be a felony under The
4 Controlled Substance, Drug, Device and Cosmetic Act, unless:

5 (1) at least ten years have elapsed from the date of
6 conviction;

7 (2) the applicant satisfactorily demonstrates to the
8 board that the applicant has made significant progress in
9 personal rehabilitation since the conviction such that
10 licensure of the applicant should not be expected to create a
11 substantial risk of harm to the health and safety of the
12 applicant's patients or the public or a substantial risk of
13 further criminal violations; and

14 (3) the applicant otherwise satisfies the requirements
15 of this act.

16 Section 7. Renewal of license.

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

21 (b) Continuing education.--Beginning with the year 2011, a
22 license shall not be renewed by the board unless the ophthalmic
23 dispenser applying for renewal submits proof to the board that
24 during the two calendar years immediately preceding filing of
25 the application, the ophthalmic dispenser has satisfactorily
26 completed a minimum of 30 hours of continuing professional
27 ophthalmic dispensing education approved by the board. No credit
28 shall be given for any course in office management or practice
29 building.

30 (c) Activity in other states, territories and countries.--

1 (1) Any licensee of this Commonwealth who is also
2 licensed to practice ophthalmic dispensing in any other
3 state, territory or country shall report this information to
4 the board on the biennial renewal application. Any
5 disciplinary action taken in other states shall be reported
6 to the board on the biennial renewal application or within 90
7 days of final disposition, whichever is sooner.

8 (2) Multiple licensure shall be noted on the licensee's
9 record by the board, and that state, territory or country
10 shall be notified by the board of any disciplinary action
11 taken against the licensee in this Commonwealth.

12 (d) Inactive status.--

13 (1) An ophthalmic dispenser who requests in writing to
14 place his license on inactive status may reactivate the
15 license after paying the required fees and showing proof of
16 meeting the continuing education requirement for the biennial
17 renewal period immediately preceding the request for
18 reactivation.

19 (2) An ophthalmic dispenser who seeks to renew an
20 inactive license shall file with the board an affidavit
21 affirming that the ophthalmic dispenser has not practiced
22 ophthalmic dispensing in this Commonwealth during such period
23 the license was inactive.

24 Section 8. Exemptions and exceptions.

25 (a) General rule.--The licensure requirements of this act
26 shall not apply to ophthalmic dispensing officers in the medical
27 service of the armed forces of the United States, the United
28 States Public Health Service, the Veterans' Administration or
29 ophthalmic dispensers employed in Federal service, while in
30 discharge of their official duties.

1 (b) Eligibility for exemption from examination.--The board
2 may, upon written application and payment of the regular
3 examination fee, issue a license without an examination to an
4 applicant who:

5 (1) Is at least 21 years of age.

6 (2) (i) Has passed a standard examination in ophthalmic
7 dispensing in any other state or all parts of the
8 examination given by the National Board of Examiners in
9 Optometry, provided that the standards of the other state
10 or the National Board are equal to or exceed the
11 standards of this Commonwealth.

12 (ii) Is licensed in another state and has practiced
13 in that state for a minimum of four years immediately
14 preceding the application.

15 (c) Additional requirements.--The board may impose
16 additional uniform educational requirements as a requisite for
17 licensure.

18 (d) Nonapplicability.--The provisions of this act shall not
19 apply to physicians licensed under the laws of this
20 Commonwealth.

21 (e) Contact lens fittings.--

22 (1) Nothing in this act shall be construed to prohibit
23 the fitting of contact lenses by a person acting under the
24 direction, personal supervision and control of a physician or
25 an optometrist within the standards of practice of that
26 respective profession.

27 (2) Nothing in this act shall be construed to prohibit
28 any individual from fitting an appropriate contact lens for a
29 specific intended wearer and the complete assisting of such
30 wearer in the use of the contact lens, provided that:

1 (i) The individual who fits the contact lens
2 successfully passed the examination administered by the
3 National Contact Lens Examiners as of July 14, 1986, and
4 is currently certified by the National Contact Lens
5 Examiners.

6 (ii) The fitting is based on prescription of a
7 licensed physician or optometrist.

8 (iii) The wearer is informed in writing to return to
9 the prescribing physician or optometrist for periodic
10 evaluation during the fit, at intervals not to exceed
11 three months or whenever the fitter feels professional
12 judgment is needed.

13 (iv) The individual who passed the examination
14 administered by the National Contact Lens Examiners as of
15 July 14, 1986, submitted evidence of such successful
16 examination to the board by September 12, 1986.

17 (v) The board shall compile and publish a list of
18 individuals who meet the requirements of this subsection
19 and shall enforce the provisions of this subsection.

20 (f) Leasing space and franchise payments.--Nothing in this
21 act shall prohibit any optometrist from leasing space from an
22 establishment or from paying for franchise fees or other
23 services on a percentage of gross receipts basis.

24 Section 9. Reasons for refusal, suspension, revocation or other
25 corrective actions.

26 (a) General rule.--The board may refuse, revoke, limit or
27 suspend a license or take other corrective action authorized
28 under this act against an ophthalmic dispenser licensed to
29 practice ophthalmic dispensing in this Commonwealth for any or
30 all of the following reasons:

1 (1) Failure of an applicant for licensure to demonstrate
2 the necessary qualifications as provided in this act or the
3 rules and regulations of the board.

4 (2) Failure to permanently display in any location in
5 which he practices a license or a certified copy of a license
6 issued by the board.

7 (3) Use of deceit or fraud in obtaining a license or in
8 the practice of ophthalmic dispensing.

9 (4) Making misleading, deceptive, untrue or fraudulent
10 representations or advertisements in the practice of
11 ophthalmic dispensing.

12 (5) Conviction of a felony or a crime involving moral
13 turpitude. Conviction shall include a finding or verdict of
14 guilt, an admission of guilt or a plea of nolo contendere.

15 (6) Revocation, suspension or refusal to grant a license
16 to practice ophthalmic dispensing, or imposition of other
17 disciplinary action, by the proper licensing authority of
18 another state, territory or country.

19 (7) (i) Being unable to practice the profession with
20 reasonable skill and safety to patients by reason of
21 illness, addiction to drugs or alcohol, having been
22 convicted of a felonious act prohibited under the act of
23 April 14, 1972 (P.L.233, No.64), known as The Controlled
24 Substance, Drug, Device and Cosmetic Act, or convicted of
25 a felony relating to a controlled substance in a court of
26 law of the United States or any other state, territory,
27 possession or country, or if the applicant is or shall
28 become mentally incompetent.

29 (ii) An applicant's statement on the application
30 declaring the absence of a conviction shall be deemed

1 satisfactory evidence of the absence of a conviction
2 unless the board has some evidence to the contrary.

3 (iii) In enforcing this paragraph, the board shall,
4 upon probable cause, have authority to compel an
5 ophthalmic dispenser to submit to a mental or physical
6 examination by a physician or a psychologist approved by
7 the board.

8 (iv) Failure of an ophthalmic dispenser to submit to
9 an examination when directed by the board, unless such
10 failure is due to circumstances beyond the ophthalmic
11 dispenser's control, shall constitute an admission of the
12 allegations against the ophthalmic dispenser, consequent
13 upon which a default and final order may be entered
14 without the taking of testimony or presentation of
15 evidence.

16 (v) An ophthalmic dispenser affected under this
17 paragraph shall at reasonable intervals be afforded an
18 opportunity to demonstrate that the ophthalmic dispenser
19 can resume a competent practice of the profession with
20 reasonable skill and safety to patients.

21 (8) Violation of a regulation promulgated or order
22 issued by the board in a previous disciplinary proceeding
23 against that licensee or applicant for licensure.

24 (9) Knowingly aiding, assisting, procuring or advising
25 an unlicensed person or person who is in violation of this
26 act or the rules and regulations of the board to practice
27 ophthalmic dispensing.

28 (10) Failure to conform to the acceptable and prevailing
29 standards of ophthalmic dispensing practice in rendering
30 professional service to a patient. Actual injury to a patient

1 need not be established.

2 (11) Neglect of duty in the practice of ophthalmic
3 dispensing, which may include failure to refer a patient,
4 when appropriate, to a physician for consultation or further
5 treatment when an examination determines the presence of a
6 pathology.

7 (b) Action authorized.--When the board finds that the
8 license of a person may be refused, revoked or suspended the
9 board may:

10 (1) Refuse, revoke or suspend a license.

11 (2) Administer a public reprimand.

12 (3) Limit or otherwise restrict the licensee's practice
13 under this act.

14 (4) Suspend any enforcement under this subsection and
15 place the licensee on probation, with the right to vacate the
16 probationary order and impose the enforcement.

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

20 (6) Restore or reissue, in its discretion, a suspended
21 license to practice ophthalmic dispensing and impose any
22 disciplinary or corrective measure which it might originally
23 have imposed.

24 (c) Opportunity to defend.--A person affected by any action
25 of the board under this section shall be afforded an opportunity
26 to demonstrate that the person is no longer in violation of this
27 section.

28 (d) Written complaints to be filed with board.--

29 (1) A person may complain of a violation of the
30 provisions of this act or the rules and regulations of the

1 board by filing a written complaint with the board.

2 (2) The board shall decide to dismiss the case, issue an
3 injunction or hold a hearing in accordance with the general
4 rules of administrative practice and procedure.

5 (3) If the person filing the complaint is a member of
6 the board, the person shall disqualify himself from
7 participating as a member of the board in all procedures
8 related to the complaint.

9 (e) Procedure and appeal.--Actions of the board shall be
10 taken subject to the right of notice, hearing, adjudication and
11 appeal accorded by law.

12 (f) Waiting period for reinstatement.--

13 (1) Unless ordered to do so by a court, the board shall
14 not reinstate the license of a person to practice as an
15 ophthalmic dispenser which has been revoked until at least
16 five years have elapsed from the effective date of the
17 revocation.

18 (2) A person must apply for a license after such five-
19 year period in accordance with section 6 if the person
20 desires to practice ophthalmic dispensing at any time after
21 the revocation.

22 (g) Automatic suspension.--

23 (1) A license issued under this act shall automatically
24 be suspended upon:

25 (i) the legal commitment of a licensee to an
26 institution because of mental incompetency from any cause
27 upon filing with the board a certified copy of such
28 commitment;

29 (ii) conviction of a felony under The Controlled
30 Substance, Drug, Device and Cosmetic Act; or

1 (iii) conviction of an offense under the laws of
2 another jurisdiction which, if committed in this
3 Commonwealth, would be a felony under The Controlled
4 Substance, Drug, Device and Cosmetic Act.

5 (2) As used in this section the term "conviction" shall
6 include a judgment, an admission of guilt or a plea of nolo
7 contendere.

8 (3) Automatic suspension under this subsection shall not
9 be stayed pending any appeal of a conviction. Restoration of
10 the license shall be made as provided in this act for
11 revocation or suspension of the license.

12 (h) Temporary suspension.--

13 (1) The board shall temporarily suspend a license under
14 circumstances as determined by the board to be an immediate
15 and clear danger to the public health or safety. The board
16 shall issue an order to that effect without a hearing, but
17 upon due notice to the licensee concerned, at the licensee's
18 last known address, shall include a written statement of all
19 allegations against the licensee.

20 (2) The provisions of subsection (f) shall not apply to
21 temporary suspension.

22 (3) The board shall commence formal action to suspend,
23 revoke or restrict the license of the person concerned as
24 otherwise provided for in this act.

25 (4) All actions shall be taken promptly and without
26 delay. Within 30 days following the issuance of an order
27 temporarily suspending a license, registration or
28 certificate, the board shall conduct or cause to be conducted
29 a preliminary hearing to determine that there is a prima
30 facie case supporting the suspension.

1 (5) The licensee whose license has been temporarily
2 suspended may be present at the preliminary hearing and may
3 be represented by counsel, cross-examine witnesses, inspect
4 physical evidence, call witnesses, offer evidence and
5 testimony and make a record of the proceedings.

6 (6) If it is determined that there is not a prima facie
7 case, the suspended license shall be immediately restored.
8 The temporary suspension shall remain in effect until vacated
9 by the board but in no event longer than 180 days.

10 (i) Penalty for refusal to return license.--The board shall
11 require a person whose license has been suspended or revoked to
12 return the license in such manner as the board directs. Failure
13 to surrender the license shall be a misdemeanor of the third
14 degree.

15 Section 10. Impaired professionals.

16 (a) Professional consultant to be appointed.--The board,
17 with the approval of the Commissioner of Professional and
18 Occupational Affairs, shall appoint and fix the compensation of
19 a professional consultant who is a licensee of the board or such
20 other professional as the board may determine with education and
21 experience in the identification, treatment and rehabilitation
22 of persons with physical or mental impairments. The consultant
23 shall be accountable to the board and treatment programs, such
24 as alcohol and drug treatment programs licensed by the
25 Department of Health, psychological counseling and impaired
26 professional support groups, which are approved by the board and
27 which provide services to licensees under this act.

28 (b) Deferral or dismissal of corrective action.--

29 (1) The board may defer and ultimately dismiss any of
30 the types of corrective action set forth under this act for

1 an impaired professional so long as the professional is
2 progressing satisfactorily in an approved treatment program,
3 provided that the provisions of this subsection shall not
4 apply to a professional convicted of a felonious act
5 prohibited under the act of April 14, 1972 (P.L.233, No.64),
6 known as The Controlled Substance, Drug, Device and Cosmetic
7 Act, or convicted of a felony relating to a controlled
8 substance in a court of law of the United States or any other
9 state, territory or country.

10 (2) An approved program provider shall, upon request,
11 disclose to the consultant such information in its possession
12 regarding an impaired professional in treatment which the
13 program provider is not prohibited from disclosing by an act
14 of the Commonwealth, another state or the United States.

15 (3) The duty of disclosure by an approved program
16 provider under paragraph (2) shall apply in the case of
17 impaired professionals who are the subject of a board
18 investigation or disciplinary proceeding and impaired
19 professionals who voluntarily enter a treatment program other
20 than under the provisions of this section but fail to
21 complete the program successfully or to adhere to an
22 aftercare plan developed by the program provider.

23 (c) Agreement between board and impaired professional.--

24 (1) An impaired professional who enrolls in an approved
25 treatment program shall enter into an agreement with the
26 board under which the professional's license shall be
27 suspended or revoked, but enforcement of that suspension or
28 revocation may be stayed for the length of time the
29 professional remains in the program and makes satisfactory
30 progress, complies with the terms of the agreement and

1 adheres to any limitations on his practice imposed by the
2 board to protect the public.

3 (2) Failure to enter into such an agreement shall
4 disqualify the professional from the impaired professional
5 program and shall activate an immediate investigation and
6 disciplinary proceeding by the board.

7 (d) Effect of unsatisfactory progress.--If, in the opinion
8 of the consultant after consultation with the provider, an
9 impaired professional who is enrolled in an approved treatment
10 program has not progressed satisfactorily, the consultant shall
11 disclose to the board all information in his possession
12 regarding said professional, and the board shall institute
13 proceedings to determine if the stay of the enforcement of the
14 suspension or revocation of the impaired professional's license
15 shall be vacated.

16 (e) Civil immunity.--An approved program provider who makes
17 disclosure under this section shall not be subject to civil
18 liability for such disclosure or its consequences.

19 (f) Duty to report.--

20 (1) Any hospital or health care facility, peer or
21 colleague who has substantial evidence that a professional
22 has an active addictive disease for which the professional is
23 not receiving treatment, is diverting a controlled substance
24 or is mentally or physically incompetent to carry out the
25 duties of the professional's license shall make or cause to
26 be made a report to the board, provided that any person or
27 facility which acts in a treatment capacity to an impaired
28 professional in an approved treatment program is exempt from
29 the mandatory reporting requirements of this subsection.

30 (2) Any person or facility that reports under this

1 section in good faith and without malice shall be immune from
2 any civil or criminal liability arising from such report.

3 (3) Failure to provide such report within a reasonable
4 time from receipt of knowledge of impairment shall subject
5 the person or facility to a fine of not more than \$1,000. The
6 board shall levy this penalty only after affording the
7 accused party the opportunity for a hearing as provided in 2
8 Pa.C.S. (relating to administrative law and procedure).

9 Section 11. Violations and penalties.

10 (a) General rule.--

11 (1) It is unlawful for any person in this Commonwealth
12 to engage in the practice of ophthalmic dispensing or pretend
13 to have knowledge of any branch or branches of the practice
14 of ophthalmic dispensing or to hold himself forth as a
15 practitioner of ophthalmic dispensing, unless the person has
16 fulfilled the requirements of this act and received a license
17 to practice ophthalmic dispensing in this Commonwealth.

18 (2) A person convicted of practicing ophthalmic
19 dispensing without a license commits a misdemeanor and shall,
20 on first offense, be subject to a fine of not more than
21 \$1,000 or imprisonment of not more than six months, or both.
22 Conviction on each additional offense shall result in a fine
23 of not less than \$2,000 and imprisonment of not less than six
24 months or more than one year.

25 (b) Penalty for other violations.--A person convicted of
26 violating a provision of this act, other than of subsection (a),
27 commits a summary offense and shall be fined not more than \$500.

28 (c) Civil penalty.--

29 (1) In addition to any other civil remedy or criminal
30 penalty provided for in this act, the board, by a vote of the

1 majority of the maximum number of the authorized membership
2 of the board as provided for by this act or by a vote of the
3 majority of the qualified and confirmed membership or a
4 minimum of six members, whichever is greater, may levy a
5 civil penalty of up to \$1,000 on any current licensee who
6 violates any provision of this act or on any person who
7 practices ophthalmic dispensing without being properly
8 licensed to do so under this act.

9 (2) The board shall levy this penalty only after
10 affording the accused party the opportunity for a hearing, as
11 provided in 2 Pa.C.S. (relating to administrative law and
12 procedure).

13 (d) Injunctive relief.--

14 (1) It shall be unlawful for any person to practice or
15 attempt to offer to practice ophthalmic dispensing without
16 having at the time of so doing a valid, unexpired, unrevoked
17 and unsuspended license issued under this act.

18 (2) The unlawful practice of ophthalmic dispensing may
19 be enjoined by the courts on petition of the board or the
20 Commissioner of Professional and Occupational Affairs.

21 (3) In any such proceeding, it shall not be necessary to
22 show that any person is individually injured by the actions
23 complained of.

24 (4) If it is found that the respondent has engaged in
25 the unlawful practice of ophthalmic dispensing, the court
26 shall enjoin the respondent from so practicing unless the
27 respondent has been duly licensed.

28 (5) Procedure in such cases shall be the same as in any
29 other injunction suit. The remedy by injunction hereby given
30 is in addition to any other civil or criminal prosecution and

1 punishment.

2 (e) Deposit of fines and civil penalties.--All fines and
3 civil penalties imposed in accordance with this section shall be
4 paid into the Professional Licensure Augmentation Account.

5 Section 12. Fees and other moneys.

6 (a) General rule.--The board shall fix or change fees for
7 initial licensure, examination, biennial license renewal,
8 verification of licensure or grades to other jurisdictions,
9 initial and renewal certified copies of licenses and biennial
10 renewal of branch offices.

11 (b) Deposit of collected moneys.--Moneys collected under the
12 provisions of this act shall be paid into the Professional
13 Licensure Augmentation Account and disbursed according to law.

14 (c) Fixing of fees.--

15 (1) All fees required under this act shall be fixed by
16 the board by regulation and shall be subject to the act of
17 June 25, 1982 (P.L.633, No.181), known as the Regulatory
18 Review Act.

19 (2) If the revenues raised by fees, fines and civil
20 penalties imposed under this act are insufficient to meet
21 expenditures over a two-year period, the board shall increase
22 those fees by regulation so that the projected revenues will
23 meet or exceed projected expenditures.

24 (d) Increase of fees by Bureau of Professional and
25 Occupational Affairs.--If the Bureau of Professional and
26 Occupational Affairs determines that the fees established by the
27 board under subsection (c) are inadequate to meet the minimum
28 enforcement efforts required by this act, then the bureau, after
29 consultation with the board and subject to the Regulatory Review
30 Act, shall increase the fees by regulation in an amount that

1 adequate revenues are raised to meet the required enforcement
2 effort.
3 Section 30. Effective date.
4 This act shall take effect in 60 days.