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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 770

Session of
1979

INTRODUCED BY COPPERSMITH, EARLY, MESSINGER, LINCOLN, ORLANDO,
LYNCH, HANKINS, O'CONNELL, MANBECK, SCHAEFER, LEWIS, MELLOW,
MURRAY, ZEMPRELLI, MOORE, HESS AND REIBMAN, MAY 22, 1979

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
MARCH 24, 1980

AN ACT

1 Regulating the licensure and practice of optometry, making
2 repeals and providing penalties.

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1 Section ~~12~~ 13. Effective date.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 Section 1. Short title.

5 This act shall be known and may be cited as the "Optometric
6 Practice and Licensure Act."

7 Section 2. Definitions.

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

11 "Advisory Committee on Continuing Professional Education."

12 An advisory committee established pursuant to section 3 to make
13 recommendations to the board relating to continuing professional
14 education.

15 "Board." The State Board of Optometrical Examiners
16 established pursuant to section 415, act of April 9, 1929
17 (P.L.177, No.175), known as "The Administrative Code of 1929,"
18 or any successor board.

19 "Examination and diagnosis." Any examination or diagnostic
20 means or method compatible with optometric education and

21 professional competence. The term shall encompass the use of
22 pharmaceutical agents for diagnostic purposes classified as

23 miotics, mydriatics, cycloplegics, topical anesthetics and dyes
24 when applied topically to the eye, WHICH PHARMACEUTICAL AGENTS

<—

25 SHALL BE APPROVED BY THE SECRETARY OF HEALTH AND, subject to the
26 rules and regulations of the board, provided however that with
27 respect to optometrists licensed before March 1, 1974 only such
28 optometrists who have satisfactorily completed a course in
29 pharmacology as it applies to optometry, with particular
30 emphasis on the topical application of diagnostic pharmaceutical

1 agents to the eye, approved by the board shall be permitted to
2 use diagnostic pharmaceutical agents topically in the practice
3 of optometry.

4 "Optometrist." Any person who, following formal and
5 recognized training in the art and science of optometry has
6 received a doctor of optometry degree from an accredited
7 institution and is qualified to seek or has acquired a license
8 to practice the profession of optometry. An optometrist shall be
9 identified either by "Doctor of Optometry," "O.D.," or "Dr."
10 followed by "Optometrist."

11 "Practice of optometry." The use of any and all means or
12 methods for the examination, diagnosis and except for drugs or
13 surgery, treatment of conditions of the human visual system and
14 shall include the examination for, and adapting and fitting of,
15 any and all kinds and types of lenses. WHENEVER AN OPTOMETRIST <—
16 DURING THE COURSE OF AN EXAMINATION OF A PERSON SHALL DETERMINE
17 THE POSSIBILITY OF THE EXISTENCE OF A PATHOLOGICAL CONDITION,
18 SUCH OPTOMETRIST SHALL ADVISE THE PERSON OF SUCH OPINION AND
19 REFER SUCH PERSON TO A PHYSICIAN FOR FURTHER EVALUATION.

20 "Treatment." The use of any and all preventive and
21 corrective means and methods, except for drugs or surgery, for
22 aid to the human visual system and shall include but is not
23 limited to the adapting and fitting of any and all kinds and
24 types of lenses and devices and the provision of vision
25 developmental and perceptual therapy or ocular exercise for aid
26 to or enhancement of visual functions.

27 Section 3. Powers and duties of the board.

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

29 (1) To meet at least six times annually at a place
30 within the Commonwealth determined by the board for the

1 transaction of its business.

2 (2) To prescribe the subjects to be tested, develop <—
3 AUTHORIZE written and practical portions of the examination <—
4 and conduct examinations of qualified applicants for
5 licensure at least twice annually at such times and places as
6 designated by the board.

7 (3) To record all licenses in its office.

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

12 (5) To appoint an Advisory Committee on Continuing
13 Professional Education which shall consist of consultants who
14 are optometric educators and optometric practitioners to
15 serve with the Deputy Secretary for Higher Education or his
16 designee.

17 (b) The board shall have the following powers:

18 (1) To grant, refuse, revoke or suspend any license to
19 practice optometry in this Commonwealth pursuant to the
20 provisions of this act.

21 (2) To conduct hearings, investigations and discovery
22 proceedings; to administer oaths or affirmations to
23 witnesses, take testimony, issue subpoenas to compel
24 attendance of witnesses or the production of records; to
25 exercise all powers granted by law or regulation in
26 accordance with the general rules of administrative practice
27 and procedure. The board or its designated hearing examiner
28 shall exercise the powers enumerated in this paragraph with
29 regard to both licensed doctors of optometry and persons
30 practicing optometry without a license.

1 (3) To obtain injunctions from a court of competent
2 jurisdiction against persons practicing optometry in
3 violation of this act when such practice constitutes a threat
4 to the health and welfare of the public; provided that the
5 board or its designated hearing examiner shall conduct a
6 hearing as otherwise required by this section within 30 days
7 of the injunction date. The chairperson of the board shall
8 exercise this power whenever the board is not in session.

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

12 (5) To incur expenses, retain consultants, appoint
13 committees from its own membership and appoint advisory
14 committees which may include nonboard members.

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

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

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

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

29 (10) To hold meetings, other than required by subsection
30 (a), for the conduct of its business upon giving public

1 notice of such meetings.

2 (11) In consultation with the Council on Optometric
3 Education or its successor and the appropriate regional
4 accrediting body recognized by the United States Department
5 of Education, to approve those optometric educational
6 institutions in the United States and Canada which are
7 accredited for the purposes of this act.

8 (12) In consultation with the Advisory Committee on
9 Continuing Professional Education, to establish and approve
10 by rule and regulation courses of continuing professional
11 optometric education. Only those educational programs as are
12 available to all licensees on a reasonable nondiscriminatory
13 fee basis shall be approved. Programs to be held within or
14 ~~without~~ OUTSIDE OF the Commonwealth may receive approval. The <—
15 number of required hours of study may not exceed those that
16 are available at approved courses held within the
17 Commonwealth during the applicable license renewal period. In
18 cases of certified illness or undue hardship, the board is
19 empowered to waive the continuing education requirement.

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

24 (14) To promulgate all rules and regulations necessary
25 to carry out the purposes of this act. THE PROPOSED RULES AND <—
26 REGULATIONS SHALL BE SUBMITTED TO THE SECRETARY OF THE SENATE
27 AND THE CHIEF CLERK OF THE HOUSE OF REPRESENTATIVES WHO SHALL
28 CAUSE THE RULES OR REGULATIONS TO BE PRINTED AND DISTRIBUTED
29 AMONG ALL MEMBERS OF BOTH CHAMBERS IN THE SAME MANNER AS A
30 REORGANIZATION PLAN. IF BOTH BODIES FAIL TO ACT WITHIN 60

1 DAYS OF RECEIPT OF SUCH RULES OR REGULATIONS, OR WITHIN TEN
2 LEGISLATIVE DAYS AFTER RECEIPT, WHICHEVER SHALL LAST OCCUR,
3 RULES OR REGULATIONS ADOPTED BY THE BOARD SHALL BE
4 PROMULGATED PURSUANT TO THE PROVISIONS OF THE ACT OF JULY 31,
5 1968 (P.L.769, NO.240), REFERRED TO AS THE COMMONWEALTH
6 DOCUMENTS LAW AND 45 PA.C.S. PART II (RELATING TO PUBLICATION
7 AND EFFECTIVENESS OF COMMONWEALTH DOCUMENTS). IF EITHER
8 CHAMBER DISAPPROVES ANY RULE OR REGULATION, SUCH INFORMATION
9 SHALL BE CERTIFIED BY THE SPEAKER OF THE HOUSE OF
10 REPRESENTATIVES OR PRESIDENT PRO TEMPORE OF THE SENATE TO THE
11 BOARD, ANY SUCH RULE OR REGULATION SHALL NOT BE PROMULGATED
12 AS A FINAL RULE OR REGULATION.

13 (15) TO ADMINISTER AND ENFORCE THE LAWS OF THE
14 COMMONWEALTH RELATING TO THOSE ACTIVITIES INVOLVING OPTOMETRY
15 FOR WHICH LICENSING IS REQUIRED UNDER THIS ACT AND TO
16 INSTRUCT AND REQUIRE ITS AGENTS TO BRING PROSECUTIONS FOR
17 UNAUTHORIZED AND UNLAWFUL PRACTICE.

18 Section 4. Requirements for examination.

19 (a) A person holding a Doctor of Optometry degree from an
20 accredited optometric educational institution in the United
21 States or Canada, who furnishes the board with evidence that he
22 is at least 21 years of age, has completed the educational
23 requirements prescribed by the board AND is of good moral <—
24 character, is not addicted in the use of alcohol or narcotics or
25 other habit-forming drugs and who pays the fee may apply to the
26 board for examination for licensure.

27 ~~(b) The board shall establish by rule or regulation~~ <—
28 ~~procedures for examination and all other matters related to the~~
29 ~~proficiency of applicants for licensure.~~

30 ~~(c)~~ (B) The board may establish further requirements to be <—

1 met by optometric graduates from unaccredited schools or
2 colleges of optometry before granting such graduates the right
3 to take an examination.

4 ~~(d)~~ (C) An applicant who knowingly makes a false statement <—
5 of fact in an application for examination shall be deemed to
6 have violated this act and shall be subject to the penalties set
7 forth herein.

8 Section 5. Renewal of license.

9 (a) A person licensed by the board shall apply for renewal
10 of such license by such methods as the board shall determine by
11 regulation, provided that such renewal period shall not exceed
12 two years.

13 (b) Beginning with the year 1982 license shall not be
14 renewed by the board unless the optometrist applying for renewal
15 submits proof to the board that during the two calendar years
16 immediately preceding his application he has satisfactorily
17 completed a minimum of 24 hours of continuing professional
18 optometric education approved by the board.

19 Section 6. Exemptions and exceptions.

20 (a) The licensure requirements of this act shall not apply
21 ~~to optometry officers in the medical service of the armed forces~~ <—
22 TO: <—

23 (1) OPTOMETRY OFFICERS IN THE MEDICAL SERVICE OF THE
24 ARMED FORCES of the United States, the United States Public
25 Health Service, the Veterans' Administration or optometrists
26 employed in Federal service, while in discharge of their
27 official duties; OR <—

28 (2) PERSONS SELLING SPECTACLES AND EYEGLASSES BUT WHO DO
29 NOT ASSUME, DIRECTLY OR INDIRECTLY, TO ADAPT THEM TO THE EYE,
30 OR TO PRACTICE OR PROFESS TO PRACTICE OPTOMETRY.

1 (b) The board shall permit externs, who are fourth year
2 optometric students, to perform procedures and tests for the
3 sole purpose of instruction and experience under the direct
4 supervision and control of an optometrist licensed in this
5 Commonwealth. Nothing contained in this act shall be construed
6 to entitle an extern to practice optometry.

7 (c) The board may, upon written application and payment of
8 the regular examination fee, issue a license without an
9 examination, other than clinical, to any applicant who:

- 10 (1) ~~Is~~ IS at least 21 years of age; AND <—
- 11 (2) ~~Has~~ (I) HAS passed a standard examination in <—
12 optometry in any other state or all parts of the
13 examination given by the National Board of Examiners in
14 Optometry, provided that the standards of the other state
15 or the National Board are, ~~in the opinion of the board,~~ <—
16 equal to OR EXCEED the standards of this Commonwealth; OR <—
17 ~~(3)—Is~~ (II) IS licensed in another state and has <—
18 practiced in that state for a minimum of ~~five~~ FOUR years <—
19 immediately preceding application.

20 (d) Nothing in this section shall prohibit the board from
21 imposing additional UNIFORM educational requirements as a <—
22 requisite for licensure.

23 (e) Nothing in this act shall prohibit the sale, duplication
24 and reproduction or dispensing of frames, lenses, spectacles or
25 eyeglasses and related optical appurtenances by any person
26 provided that no such person shall change or modify an original
27 lens power except on a signed written order of a licensed doctor
28 of optometry or licensed physician and surgeon.

29 (f) The provisions of this act shall not apply to physicians
30 licensed under the laws of this Commonwealth.

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

2 (a) The board shall have the power to refuse, revoke or
3 suspend a license to practice optometry in this Commonwealth
4 for:

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

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

11 (3) Use of deceit or fraud in obtaining a license or in
12 the practice of optometry.

13 (4) Making misleading, deceptive, untrue or fraudulent
14 representations or advertisements in the practice of
15 optometry.

16 (5) Conviction of a felony or a crime involving moral
17 turpitude. Conviction shall include a finding or verdict of
18 guilt, an admission of guilt or a plea of ~~non~~ NOLO <—
19 contendere.

20 (6) Revocation, suspension or refusal to grant a license
21 to practice optometry, or imposition of other disciplinary
22 action, by the proper licensing authority of another state,
23 territory or country.

24 (7) Inability to practice optometry with reasonable
25 skill and safety to patients by reason of incompetence,
26 illness, drunkenness, excessive use of drugs, narcotics,
27 chemicals or other type of material, or as a result of any
28 mental or physical condition.

29 (8) Violation of a regulation promulgated or order
30 issued by the board in a previous disciplinary proceeding

1 against that licensee or applicant for licensure.

2 (9) Knowingly aiding, assisting, procuring or advising
3 an unlicensed person, or person who is in violation of this
4 act, or the rules and regulations of the board, to practice
5 optometry.

6 (10) Being guilty of immoral or unprofessional conduct.
7 Unprofessional conduct shall include any departure from, or
8 failure to conform to, the acceptable and prevailing
9 standards of optometric practice in rendering professional
10 service to a patient. Actual injury to a patient need not be
11 established.

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

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

15 (2) Administer a public or private reprimand.

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

18 (4) Suspend any enforcement under this subsection and
19 place an optometrist on probation, with the right to vacate
20 the probationary order and impose the enforcement.

21 (c) A person affected by any action of the board under this
22 section shall be afforded an opportunity to demonstrate that he
23 is no longer in violation of this section.

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

1 from participating as a member of the board in all procedures
2 related to the complaint which he filed.

3 (e) Actions of the board shall be taken subject to the right
4 of notice, hearing, adjudication and appeal accorded by law.

5 Section 8. Violations and penalties.

6 (a) (1) It is unlawful for any person in the Commonwealth to
7 engage in the practice of optometry or pretend to have a
8 knowledge of any branch or branches of the practice of
9 optometry or to hold himself forth as a practitioner of
10 optometry, unless he has fulfilled the requirements of this
11 act and received a license to practice optometry in this
12 Commonwealth.

13 (2) A person ~~found to be guilty~~ CONVICTED of practicing <—
14 optometry without a license ~~as a result of court action or as~~ <—
15 ~~a result of board action~~ shall be guilty of a misdemeanor and
16 shall, on first offense, be subject to a fine of not more
17 than \$1,000 or imprisonment of not more than six months, or
18 both. Conviction on each additional offense shall result in a
19 fine of not less than \$2,000 and imprisonment of not less
20 than six months or more than one year.

21 (b) A person convicted of violating a provision of this act,
22 other than of subsection (a), is guilty of a summary offense and
23 shall be fined not more than \$500.

24 Section 9. Fees and other moneys.

25 (a) The board shall have the power to fix or change fees for
26 examination, biennial ~~and late biennial~~ license renewal, <—
27 verification of licensure or grades to other jurisdictions,
28 initial and renewal certified copies of licenses, and biennial
29 renewal of branch offices.

30 (b) Moneys collected under the provisions of this act shall

1 be paid into a designated account and disbursed according to
2 law.

3 Section 10. Freedom of choice.

4 Any State or municipal board, commission, department,
5 institution, agency or bureau including public schools,
6 expending public money for any purpose involving eye care which
7 is within the scope of the practice of optometry shall not deny
8 the recipients or beneficiaries the freedom to choose an
9 optometrist or a physician and shall make the same reimbursement
10 whether the service is provided by an optometrist or a
11 physician: PROVIDED, THAT WHENEVER PROGRAMS, POLICIES, PLANS OR <—
12 CONTRACTS WHICH PAY ON THE BASIS OF USUAL, CUSTOMARY AND
13 REASONABLE CHARGES OR ON SOME SIMILAR BASIS ARE USED, ONLY THE
14 METHOD OF DETERMINING THE AMOUNT OF REIMBURSEMENT SHALL BE THE
15 SAME.

16 SECTION 11. TRANSITIONAL PROVISIONS.

17 (A) NOTWITHSTANDING ITS REPEAL PURSUANT TO SECTION 12(A),
18 ALL VALID LICENSES ISSUED PRIOR TO THE EFFECTIVE DATE OF THIS
19 ACT UNDER THE PROVISIONS OF THE ACT OF MARCH 30, 1917 (P.L.21,
20 NO.10), REFERRED TO AS THE OPTOMETRY PRACTICE LAW SHALL CONTINUE
21 WITH FULL FORCE AND VALIDITY DURING THE PERIOD FOR WHICH ISSUED.
22 FOR THE SUBSEQUENT LICENSE PERIOD, AND EACH LICENSE PERIOD
23 THEREAFTER, THE BOARD SHALL RENEW SUCH LICENSES WITHOUT
24 REQUIRING ANY LICENSE EXAMINATION TO BE TAKEN. HOWEVER,
25 APPLICANTS FOR RENEWAL OR HOLDERS OF SUCH LICENSES SHALL BE
26 SUBJECT TO ALL OTHER PROVISIONS OF THIS ACT.

27 (B) ALL PROCEEDINGS IN PROGRESS ON THE EFFECTIVE DATE OF
28 THIS ACT SHALL CONTINUE TO PROCEED UNDER THE FORMER TERMS OF THE
29 ACT UNDER WHICH THEY WERE ORIGINALLY BROUGHT.

30 (C) ALL OFFENSES ALLEGED TO HAVE OCCURRED PRIOR TO THE

1 EFFECTIVE DATE OF THIS ACT SHALL BE PROCESSED UNDER THE FORMER
2 OPTOMETRY PRACTICE LAW.

3 Section ~~11~~ 12. Repeals. <—

4 (a) The act of March 30, 1917 (P.L.21, No.10), entitled "An
5 act defining optometry; and relating to the right to practice
6 optometry in the Commonwealth of Pennsylvania, and making
7 certain exceptions; and providing a Board of Optometrical
8 Education, Examination, and Licensure, and means and methods
9 whereby the right to practice optometry may be obtained; and
10 providing for the means to carry out the provisions of this act;
11 and providing for revocation or suspension of licenses given by
12 said board, and providing penalties for violations thereof; and
13 repealing all acts or parts of acts inconsistent therewith," is
14 repealed.

15 (b) All acts or parts of acts are repealed which are
16 inconsistent herewith.

17 Section ~~12~~ 13. Effective date. <—

18 This act shall take effect in 60 days.