

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1211 Session of
1995

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DURHAM, LAWLESS, ADOLPH AND WAUGH, MARCH 16, 1995

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE, MARCH 16, 1995

AN ACT

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

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

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

22 Section 1. Short title.

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

25 Section 2. Definitions.

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

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

1 "Board." The State Board of Opticians and Contact Lens
2 Technicians.

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

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

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

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

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

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

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

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

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

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

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

29 "Supervision." The direction and control of work through
30 personal inspection and evaluation of work and the provision of

1 such consultation and instruction as may be needed.

2 Section 3. State Board of Opticians and Contact Lens

3 Technicians.

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

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

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

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

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

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

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

26 (g) Meetings.--The board shall meet at least twice a year
27 and may hold additional meetings whenever necessary to discharge
28 its duties. A majority of the members of the board serving in
29 accordance with law shall constitute a quorum. Except for
30 temporary and automatic suspensions under section 15, a member

1 may not be counted as part of a quorum or vote on any issue
2 unless he is physically in attendance at the meeting.

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

8 (i) Attendance at training seminars.--A public member who
9 fails to attend two consecutive statutorily mandated training
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 seat, unless the commissioner, upon
13 written request from the public member, finds that the public
14 member should be excused from a meeting because of illness or
15 the death of a family member.

16 Section 4. Powers and duties of board.

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

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

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

30 (d) Maintaining records.--The board shall maintain a record

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

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

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

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

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

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

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

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

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

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

24 Section 5. License required.

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

1 services incorporating the words "optician," "contact lens
2 technician," "opticianry" or "the fitting of contact lenses,"
3 without first obtaining a license pursuant to this act.

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

9 Section 6. Persons and practices not affected.

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

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

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

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

29 (4) A person fulfilling the apprenticeship requirements
30 of this act, provided that the activities and services

1 constitute a part of the apprenticeship necessary to meet the
2 requirements of the program.

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

6 Section 7. Requirements for licensure.

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

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

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

18 (3) The individual is of good moral character.

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

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

1 approved by the United States Department of Education or the
2 Council of Post-Secondary Education and officially approved
3 by the board.

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

17 Section 8. Examinations.

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

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

1 eyeglass lenses, frames and accessories; the use of standard
2 ophthalmic equipment; the taking of pupillary and facial
3 measurements; administrative recordkeeping; and professional and
4 ethical conduct. The examination shall be in written form.

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

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

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

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

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

1 of this act.

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

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

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

14 Section 10. Licenses.

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

25 Section 11. Renewal of license; continuing education.

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

30 (b) Continuing education.--The application shall be

1 accompanied by a renewal fee and evidence that the applicant
2 has, during the preceding two-year period, completed continuing
3 education as follows:

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

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

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

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

16 Section 12. Apprentices and other ancillary personnel.

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

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

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

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

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

20 Section 13. Special provisions.

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

29 (b) Duty to inform.--The contact lens technician shall
30 inform each individual for whom he fits any form or kind of

1 contact lens that the wearer should return to the prescribing
2 physician or optometrist for a final evaluation of the fit of
3 the contact lens. Each wearer shall be provided with a form in
4 accordance with this subsection and shall also be informed
5 orally that he should return to the prescribing practitioner.
6 The form shall be signed and dated by the contact lens wearer,
7 who shall receive a copy of the form. The form shall include the
8 following statement:

9 I have been advised that I should return to my physician
10 or optometrist for a final evaluation of the fit of my
11 contact lenses within three months of their delivery to
12 me.

13 (Signature) (Date)

14 The contact lens technician shall retain a copy of the form for
15 two years.

16 (c) Prescriptions.--

17 (1) A physician or optometrist shall provide to the
18 patient, at no charge, a copy of the patient's prescription
19 immediately after a refraction.

20 (2) A physician or optometrist shall provide a person
21 upon whom he previously performed a refraction with a copy of
22 the prescription, at no charge, upon the patient's request.

23 Section 14. Causes for denial, suspension or revocation of
24 license.

25 (a) General rule.--The State Board of Opticians and Contact
26 Lens Technicians may deny, suspend, revoke, limit or otherwise
27 restrict a license for any of the following causes:

28 (1) Obtaining a license by fraud or deceit.

29 (2) Use of the term "doctor," "physician" or "clinic,"
30 or any derivation thereof, as part of the firm name under

1 which the licensee fits and sells ophthalmic devices unless
2 authorized by law.

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

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

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

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

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

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

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

felonious act prohibited by the act of April 14, 1972
(P.L.233, No.64), known as The Controlled Substance, Drug,
Device and Cosmetic Act, or convicted of a felony relating to
a controlled substance in a court of law of the United States
or any other state, territory, possession or country, or if
he is or shall become mentally incompetent. An applicant's
statement on the application declaring the absence of a
conviction shall be deemed satisfactory evidence of the
absence of a conviction unless the board has some evidence to
the contrary. In enforcing this paragraph, the board shall,
upon probable cause, have authority to compel a practitioner
to submit to a mental or physical examination by a physician
or a psychologist approved by the board. Failure of a
practitioner to submit to such examination when directed by
the board, unless such failure is due to circumstances beyond
his control, shall constitute an admission of the allegations
against him consequent upon which a default and final order
may be entered without the taking of testimony or
presentation of evidence. A practitioner affected under this
paragraph shall at reasonable intervals be afforded an
opportunity to demonstrate that he can resume a competent
practice of his profession with reasonable skill and safety
to patients.

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

(11) Being guilty of malpractice, immoral or
unprofessional conduct. Unprofessional conduct shall include
departure from or failing to conform to the standards of
acceptable and prevailing practice of opticianry or contact

1 lens fitting. In proceedings based on this paragraph, actual
2 injury to a patient need not be established.

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

5 (13) Acting outside the scope of a license.

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

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

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

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

28 Section 15. Procedures in disciplinary actions.

29 (a) Procedure.--All disciplinary actions of the State Board
30 of Opticians and Contact Lens Technicians shall be taken subject

1 to the right of notice, hearing and adjudication, and the right
2 of appeal therefrom in accordance with 2 Pa.C.S. (relating to
3 administrative law and procedure).

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

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

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

7 Section 16. Reporting of multiple licensure.

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

22 Section 17. Display of license or certificate.

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

28 Section 18. Surrender of license.

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

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

4 Section 19. Unlawful acts.

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

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

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

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

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

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

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

27 (7) Commits immoral or unprofessional conduct.

28 Unprofessional conduct shall include any departure from, or
29 failure to conform to, the standards of acceptable and
30 prevailing practice of opticianry or contact lens fitting.

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

5 Section 20. Civil penalty.

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

21 Section 21. Fees.

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

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

9 Section 22. Appropriation.

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

18 Section 23. Repeals.

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

21 Section 24. Effective date.

22 This act shall take effect in 60 days.