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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 770**      Session of  
1979

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**Report of the Committee of Conference**

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To the Members of the Senate and House of Representatives:

We, the undersigned, Committee of Conference on the part of the Senate and House of Representatives for the purpose of considering Senate Bill No. 770, entitled:  
"An act regulating the licensure and practice of optometry, making repeals and providing penalties."

respectfully submit the following bill as our report:

W. LOUIS COPPERSMITH

JAMES R. KELLEY

RALPH W. HESS

(Committee on the part of the Senate.)

EUGENE R. GEESEY

WILLIAM D. HUTCHINSON

REID BENNETT

(Committee on the part of the House of Representatives.)

AN ACT

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

3 TABLE OF CONTENTS

4 Section 1. Short title.

5 Section 2. Definitions.

6 Section 3. Powers and duties of the board.

7 Section 4. Requirements for examination.

8 Section 5. Renewal of license.

9 Section 6. Exemptions and exceptions.

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

11 Section 8. Violations and penalties.

12 Section 9. Fees and other moneys.

13 Section 10. Freedom of choice.

14 Section 11. Transitional provisions.

15 Section 12. Repeals.

16 Section 13. Effective date.

17 The General Assembly of the Commonwealth of Pennsylvania

18 hereby enacts as follows:

19 Section 1. Short title.

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

22 Section 2. Definitions.

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

26 "Advisory Committee on Continuing Professional Education."

27 An advisory committee established pursuant to section 3 to make  
28 recommendations to the board relating to continuing professional  
29 education.

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

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

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

27 "Practice of optometry." The use of any and all means or  
28 methods for the examination, diagnosis and except for drugs or  
29 surgery, treatment of conditions of the human visual system and  
30 shall include the examination for, and adapting and fitting of,

1 any and all kinds and types of lenses.

2 "Treatment." The use of any and all preventive and  
3 corrective means and methods, except for drugs or surgery, for  
4 aid to the human visual system and shall include but is not  
5 limited to the adapting and fitting of any and all kinds and  
6 types of lenses and devices and the provision of vision  
7 developmental and perceptual therapy or ocular exercise for aid  
8 to or enhancement of visual functions.

9 Section 3. Powers and duties of the board.

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

11 (1) To meet at least six times annually at a place  
12 within the Commonwealth determined by the board for the  
13 transaction of its business.

14 (2) To prescribe the subjects to be tested, authorize  
15 written and practical portions of the examination and conduct  
16 examinations of qualified applicants for licensure at least  
17 twice annually at such times and places as designated by the  
18 board.

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

20 (4) To grant a license to practice optometry in this  
21 Commonwealth to any applicant for licensure who has passed  
22 the prescribed examination and otherwise complied with the  
23 provisions of this act.

24 (5) To appoint an Advisory Committee on Continuing  
25 Professional Education which shall consist of consultants who  
26 are optometric educators and optometric practitioners to  
27 serve with the Deputy Secretary for Higher Education or his  
28 designee.

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

30 (1) To grant, refuse, revoke or suspend any license to

1 practice optometry in this Commonwealth pursuant to the  
2 provisions of this act.

3 (2) To conduct hearings, investigations and discovery  
4 proceedings; to administer oaths or affirmations to  
5 witnesses, take testimony, issue subpoenas to compel  
6 attendance of witnesses or the production of records; to  
7 exercise all powers granted by law or regulation in  
8 accordance with the general rules of administrative practice  
9 and procedure. The board or its designated hearing examiner  
10 may exercise the powers enumerated in this paragraph with  
11 regard to both licensed doctors of optometry and persons  
12 practicing optometry without a license.

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

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

24 (5) To incur expenses, retain consultants, appoint  
25 committees from its own membership and appoint advisory  
26 committees which may include nonboard members.

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

29 (7) To authorize the payment of special reimbursements  
30 for the secretary of the board or any other designated member

1 of the board for rendering special services authorized by the  
2 board.

3 (8) To use qualified board hearing examiners to conduct  
4 hearings and prepare adjudications for final review and  
5 approval by the board, including disciplinary sanctions.  
6 Nothing shall prohibit the board or a designated board member  
7 from conducting such hearings.

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

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

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

20 (12) In consultation with the Advisory Committee on  
21 Continuing Professional Education, to establish and approve  
22 by rule and regulation courses of continuing professional  
23 optometric education. Only those educational programs as are  
24 available to all licensees on a reasonable nondiscriminatory  
25 fee basis shall be approved. Programs to be held within or  
26 outside of the Commonwealth may receive approval. The number  
27 of required hours of study may not exceed those that are  
28 available at approved courses held within the Commonwealth  
29 during the applicable license renewal period. In cases of  
30 certified illness or undue hardship, the board is empowered

1 to waive the continuing education requirement.

2 (13) To certify, upon the written request of a licensee  
3 and payment of the prescribed fee, that the licensee is  
4 qualified for licensure and the practice of optometry in this  
5 Commonwealth.

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

8 (15) To administer and enforce the laws of the  
9 Commonwealth relating to those activities involving optometry  
10 for which licensing is required under this act and to  
11 instruct and require its agents to bring prosecutions for  
12 unauthorized and unlawful practice.

13 Section 4. Requirements for examination.

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

22 (b) The board may establish further requirements to be met  
23 by optometric graduates from unaccredited schools or colleges of  
24 optometry before granting such graduates the right to take an  
25 examination.

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

30 Section 5. Renewal of license.

1 (a) A person licensed by the board shall apply for renewal  
2 of such license by such methods as the board shall determine by  
3 regulation, provided that such renewal period shall not exceed  
4 two years.

5 (b) Beginning with the year 1982 license shall not be  
6 renewed by the board unless the optometrist applying for renewal  
7 submits proof to the board that during the two calendar years  
8 immediately preceding his application he has satisfactorily  
9 completed a minimum of 24 hours of continuing professional  
10 optometric education approved by the board.

11 Section 6. Exemptions and exceptions.

12 (a) The licensure requirements of this act shall not apply  
13 to optometry officers in the medical service of the armed forces  
14 of the United States, the United States Public Health Service,  
15 the Veterans' Administration or optometrists employed in Federal  
16 service, while in discharge of their official duties.

17 (b) The board shall permit externs, who are fourth year  
18 optometric students, to perform procedures and tests for the  
19 sole purpose of instruction and experience under the direct  
20 supervision and control of an optometrist licensed in this  
21 Commonwealth. Nothing contained in this act shall be construed  
22 to entitle an extern to practice optometry.

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

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

27 (2) (i) has passed a standard examination in optometry  
28 in any other state or all parts of the examination given  
29 by the National Board of Examiners in Optometry, provided  
30 that the standards of the other state or the National

1 Board are equal to or exceed the standards of this  
2 Commonwealth; or

3 (ii) is licensed in another state and has practiced  
4 in that state for a minimum of four years immediately  
5 preceding application.

6 (d) Nothing in this section shall prohibit the board from  
7 imposing additional uniform educational requirements as a  
8 requisite for licensure.

9 (e) Nothing in this act shall prohibit the sale, duplication  
10 and reproduction or dispensing of frames, lenses, spectacles or  
11 eyeglasses and related optical appurtenances by any person  
12 provided that no such person shall change or modify an original  
13 lens power except on a signed written order of a licensed doctor  
14 of optometry or licensed physician and surgeon. The sale or  
15 manufacture of ready-to-wear spectacles and eyeglasses does not  
16 constitute change or modification of an original lens power  
17 within the meaning of this act.

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

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

21 (a) The board shall have the power to refuse, revoke or  
22 suspend a license to practice optometry in this Commonwealth  
23 for:

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

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

30 (3) Use of deceit or fraud in obtaining a license or in

1 the practice of optometry.

2 (4) Making misleading, deceptive, untrue or fraudulent  
3 representations or advertisements in the practice of  
4 optometry.

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

8 (6) Revocation, suspension or refusal to grant a license  
9 to practice optometry, or imposition of other disciplinary  
10 action, by the proper licensing authority of another state,  
11 territory or country.

12 (7) Inability to practice optometry with reasonable  
13 skill and safety to patients by reason of incompetence,  
14 illness, drunkenness, excessive use of drugs, narcotics,  
15 chemicals or other type of material, or as a result of any  
16 mental or physical condition.

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

20 (9) Knowingly aiding, assisting, procuring or advising  
21 an unlicensed person, or person who is in violation of this  
22 act, or the rules and regulations of the board, to practice  
23 optometry.

24 (10) Failure to conform to, the acceptable and  
25 prevailing standards of optometric practice in rendering  
26 professional service to a patient. Actual injury to a patient  
27 need not be established.

28 (11) Neglect of duty in the practice of optometry, which  
29 may include failure to refer a patient, when appropriate, to  
30 a physician for consultation or further treatment when an

1 optometric examination determines the presence of a  
2 pathology.

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

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

6 (2) Administer a public or private reprimand.

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

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

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

15 (d) A person may complain of a violation of the provisions  
16 of this act or the rules and regulations of the board by filing  
17 a written complaint with the secretary of the board. The board  
18 shall decide either to dismiss the case, issue an injunction, or  
19 hold a hearing in accordance with the general rules of  
20 administrative practice and procedure. If the person filing the  
21 complaint is a member of the board, he shall disqualify himself  
22 from participating as a member of the board in all procedures  
23 related to the complaint which he filed.

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

26 Section 8. Violations and penalties.

27 (a) (1) It is unlawful for any person in the Commonwealth to  
28 engage in the practice of optometry or pretend to have a  
29 knowledge of any branch or branches of the practice of  
30 optometry or to hold himself forth as a practitioner of

1 optometry, unless he has fulfilled the requirements of this  
2 act and received a license to practice optometry in this  
3 Commonwealth.

4 (2) A person convicted of practicing optometry without a  
5 license shall be guilty of a misdemeanor and shall, on first  
6 offense, be subject to a fine of not more than \$1,000 or  
7 imprisonment of not more than six months, or both. Conviction  
8 on each additional offense shall result in a fine of not less  
9 than \$2,000 and imprisonment of not less than six months or  
10 more than one year.

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

14 Section 9. Fees and other moneys.

15 (a) The board shall have the power to fix or change fees for  
16 examination, biennial license renewal, verification of licensure  
17 or grades to other jurisdictions, initial and renewal certified  
18 copies of licenses, and biennial renewal of branch offices.

19 (b) Moneys collected under the provisions of this act shall  
20 be paid into a designated account and disbursed according to  
21 law.

22 Section 10. Freedom of choice.

23 Any State or municipal board, commission, department,  
24 institution, agency or bureau including public schools,  
25 expending public money for any purpose involving eye care which  
26 is within the scope of the practice of optometry shall not deny  
27 the recipients or beneficiaries the freedom to choose an  
28 optometrist or a physician and shall make the same reimbursement  
29 whether the service is provided by an optometrist or a  
30 physician: Provided, That whenever programs, policies, plans or

1 contracts which pay on the basis of usual, customary and  
2 reasonable charges or on some similar basis are used, only the  
3 method of determining the amount of reimbursement shall be the  
4 same.

5 Section 11. Transitional provisions.

6 (a) Notwithstanding its repeal pursuant to section 12(a),  
7 all valid licenses issued prior to the effective date of this  
8 act under the provisions of the act of March 30, 1917 (P.L.21,  
9 No.10), referred to as the Optometry Practice Law shall continue  
10 with full force and validity during the period for which issued.  
11 For the subsequent license period, and each license period  
12 thereafter, the board shall renew such licenses without  
13 requiring any license examination to be taken. However,  
14 applicants for renewal or holders of such licenses shall be  
15 subject to all other provisions of this act.

16 (b) All proceedings in progress on the effective date of  
17 this act shall continue to proceed under the former terms of the  
18 act under which they were originally brought.

19 (c) All offenses alleged to have occurred prior to the  
20 effective date of this act shall be processed under the former  
21 Optometry Practice Law.

22 Section 12. Repeals.

23 (a) The act of March 30, 1917 (P.L.21, No.10), entitled "An  
24 act defining optometry; and relating to the right to practice  
25 optometry in the Commonwealth of Pennsylvania, and making  
26 certain exceptions; and providing a Board of Optometrical  
27 Education, Examination, and Licensure, and means and methods  
28 whereby the right to practice optometry may be obtained; and  
29 providing for the means to carry out the provisions of this act;  
30 and providing for revocation or suspension of licenses given by

1 said board, and providing penalties for violations thereof; and  
2 repealing all acts or parts of acts inconsistent therewith," is  
3 repealed.

4 (b) All acts or parts of acts are repealed which are  
5 inconsistent herewith.

6 Section 13. Effective date.

7 This act shall take effect in 60 days.