

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

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

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

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

#### Section 4. Powers and duties of board.

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

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

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

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

(1) Is at least 21 years of age.

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

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

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

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

(e) Contact lens fittings.--

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

(2) Nothing in this act shall be construed to prohibit any individual from fitting an appropriate contact lens for a specific intended wearer and the complete assisting of such 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



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

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

(d) Injunctive relief.--

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

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

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

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

(5) Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given 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.