

## No. 1980-57

## AN ACT

## SB 770

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

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

## Section 1. Short title.

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

## Section 2. Definitions.

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

"Advisory Committee on Continuing Professional Education." An advisory committee established pursuant to section 3 to make recommendations to the board relating to continuing professional education.

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

"Examination and diagnosis." Any examination or diagnostic means or method compatible with optometric education and professional competence. The term shall encompass the use of pharmaceutical agents for diagnostic purposes classified as miotics, mydriatics, cycloplegics, topical anesthetics and dyes when applied topically to the eye, which pharmaceutical agents shall be approved by the Secretary of Health and, subject to the rules and regulations of the

board, provided however that with respect to optometrists licensed before March 1, 1974 only such optometrists who have satisfactorily completed a course in pharmacology as it applies to optometry, with particular emphasis on the topical application of diagnostic pharmaceutical agents to the eye, approved by the board shall be permitted to use diagnostic pharmaceutical agents topically in the practice of optometry.

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

**"Practice of optometry."** The use of any and all means or methods for the examination, diagnosis and except for drugs or surgery, treatment of conditions of the human visual system and shall include the examination for, and adapting and fitting of, any and all kinds and types of lenses.

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

**Section 3. Powers and duties of the board.**

(a) The board shall have the following duties:

(1) To meet at least six times annually at a place within the 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 conduct examinations of qualified applicants for licensure at least twice annually at such times and places as designated by the board.

(3) To record all licenses in its office.

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

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

(b) The board shall have the following powers:

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

(2) To conduct hearings, investigations and discovery proceedings; to administer oaths or affirmations to witnesses, take testi-

mony, issue subpoenas to compel attendance of witnesses or the production of records; to exercise all powers granted by law or regulation in accordance with the general rules of administrative practice and procedure. The board or its designated hearing examiner may exercise the powers enumerated in this paragraph with regard to both licensed doctors of optometry and persons practicing optometry without a license.

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

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

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

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

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

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

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

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

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

(12) In consultation with the Advisory Committee on Continuing Professional Education, to establish and approve by rule and regulation courses of continuing professional optometric education. Only those educational programs as are available to all licensees on a reasonable nondiscriminatory fee basis shall be approved. Programs to be held within or outside of the Commonwealth may

receive approval. The number of required hours of study may not exceed those that are available at approved courses held within the Commonwealth during the applicable license renewal period. In cases of certified illness or undue hardship, the board is empowered to waive the continuing education requirement.

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

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

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

#### Section 4. Requirements for examination.

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

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

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

#### Section 5. Renewal of license.

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

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

#### Section 6. Exemptions and exceptions.

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

(b) The board shall permit externs, who are fourth year optometric students, to perform procedures and tests for the sole purpose of instruction and experience under the direct supervision and control of

an optometrist licensed in this Commonwealth. Nothing contained in this act shall be construed to entitle an extern to practice optometry.

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

- (1) is at least 21 years of age; and
- (2) (i) has passed a standard examination in optometry 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; or  
(ii) is licensed in another state and has practiced in that state for a minimum of four years immediately preceding application.

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

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

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

Section 7. Refusal, revocation or suspension of license.

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

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

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

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

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

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

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

(7) Inability to practice optometry with reasonable skill and safety to patients by reason of incompetence, illness, drunkenness,

excessive use of drugs, narcotics, chemicals or other type of material, or as a result of any mental or physical condition.

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

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

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

(11) Neglect of duty in the practice of optometry, which may include failure to refer a patient, when appropriate, to a physician for consultation or further treatment when an optometric examination determines the presence of a pathology.

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

(1) Refuse, revoke or suspend a license.

(2) Administer a public or private reprimand.

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

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

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

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

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

Section 8. Violations and penalties.

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

(2) A person convicted of practicing optometry without a license shall be guilty of a misdemeanor and shall, on first offense, be subject to a fine of not more than \$1,000 or imprisonment of not

more than six months, or both. Conviction on each additional offense shall result in a fine of not less than \$2,000 and imprisonment of not less than six months or more than one year.

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

#### Section 9. Fees and other moneys.

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

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

#### Section 10. Freedom of choice.

Any State or municipal board, commission, department, institution, agency or bureau including public schools, expending public money for any purpose involving eye care which is within the scope of the practice of optometry shall not deny the recipients or beneficiaries the freedom to choose an optometrist or a physician and shall make the same reimbursement whether the service is provided by an optometrist or a physician: Provided, That whenever programs, policies, plans or contracts which pay on the basis of usual, customary and reasonable charges or on some similar basis are used, only the method of determining the amount of reimbursement shall be the same.

#### Section 11. Transitional provisions.

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

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

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

#### Section 12. Repeals.

(a) The act of March 30, 1917 (P.L.21, No.10), entitled "An act defining optometry; and relating to the right to practice optometry in the Commonwealth of Pennsylvania, and making certain exceptions; and providing a Board of Optometrical Education, Examination, and Licensure, and means and methods whereby the right to practice optometry may be obtained; and providing for the means to carry out

the provisions of this act; and providing for revocation or suspension of licenses given by said board, and providing penalties for violations thereof; and repealing all acts or parts of acts inconsistent therewith," is repealed.

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

Section 13. Effective date.

This act shall take effect in 60 days.

APPROVED—The 6th day of June, A. D. 1980.

DICK THORNBURGH