

No. 1986-58

AN ACT

HB 1680

Amending the act of June 6, 1980 (P.L.197, No.57), entitled "An act regulating the licensure and practice of optometry, making repeals and providing penalties," reestablishing the State Board of Optometrical Examiners as the State Board of Optometry; providing for its composition, powers and duties; further providing for renewal, revocation and suspension of licenses; providing for fees; and making repeals.

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

Section 1. Section 2 of the act of June 6, 1980 (P.L.197, No.57), known as the Optometric Practice and Licensure Act, is amended to read:

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] *Optometry*.

"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.

"*Fitting of contact lenses.*" *A procedure in which a prescribed contact lens is placed upon the eye of a patient and the lens-cornea relationship is evaluated with the use of a biomicroscope or slit-lamp.*

"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 *including contact 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 *including contact lenses* and the provision of vision developmental and perceptual therapy or ocular exercise for aid to or enhancement of visual functions.

Section 2. The act is amended by adding a section to read:

Section 2.1. State Board of Optometry.

(a) *The State Board of Optometry shall consist of 12 members, all of whom shall be residents of Pennsylvania. Seven members shall be optometrists who are licensed to practice in Pennsylvania and who have been practicing optometry in Pennsylvania for at least the five-year period immediately preceding their appointment. Three members shall be persons representing the public at large, one member shall be the Commissioner of Professional and Occupational Affairs and one member shall be the Director of the Bureau of Consumer Protection in the Office of Attorney General or his designee. The professional and public members of the board shall be appointed by the Governor with the advice and consent of a majority of the Senate.*

(b) *Professional members appointed after the effective date of this act as successors to professional members whose terms expired prior to the effective date of this act shall serve the following terms: one shall serve one year; one shall serve two years; two shall serve three years; and the remainder shall serve four years. All other professional and public members shall serve for terms of four years. No member shall be eligible for appointment to serve more than two consecutive terms. A member may continue to serve for a period not to exceed six months following the expiration of his or her term if a successor has not been duly appointed and qualified according to law. Any member whose term expired prior to the effective date of this act may continue to serve for no more than six months following the effective date of this act.*

(c) *A majority of the members of the board serving in accordance with law shall constitute a quorum. Except for temporary and automatic suspensions under section 7, a member may not be counted as part of a quorum or vote on any issue, unless he or she is physically in attendance at the meeting. The board shall select, from among its membership, a chairman, a vice chairman and a secretary.*

(d) *Each public and professional member of the board shall be paid reasonable traveling, hotel and other necessary expenses incurred in the performance of his or her duties in accordance with Commonwealth regulations and per diem compensation at the rate of \$60 for each day of actual service while on board business.*

(e) A member who fails to attend three consecutive meetings shall forfeit his or her seat unless the Commissioner of Professional and Occupational Affairs, upon 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) In the event that a member of the board dies or 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) 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 3. Section 3(a)(2) of the act is amended and subsections (a) and (b) are amended by adding paragraphs to read:

Section 3. Powers and duties of the board.

(a) The board shall have the following duties:

* * *

(2) To prescribe the subjects to be tested, authorize written and practical portions of the examination and **[conduct] 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 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," except that neither the oral nor the practical examination shall be subject to section 812.1 until such examination is available from a testing organization.*

* * *

(6) *To submit annually to the Department of State an estimate of the financial requirements of the board for its administrative, investigative, legal and miscellaneous expenses.*

(7) *To submit annually to the House and Senate Appropriations Committees, 15 days after the Governor has submitted his budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the board previously submitted to the Department of State.*

(8) *To submit annually to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure Committee of the Senate a report containing a description of the types of complaints received, status of cases, board action which has been taken and the length of time from the initial complaint to final board resolution.*

(9) To require all optometrists to provide to their patients information on the existence, powers, functions and duties of the board, including the procedure for bringing a complaint to the board. If such information is available through a publication of the Department of State, providing a copy of such publication to the patient may satisfy the requirements of this subsection.

(b) The board shall have the following powers:

* * *

(16) To employ or contract, with the approval of the Commissioner of Professional and Occupational Affairs, for qualified optometrists or physicians to assist the board in the conduct of the practical portions of the examinations conducted by the board, for such reasonable compensation, including expenses, as the board shall determine, in accordance with section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929."

(17) To issue subpoenas upon application of an attorney responsible for representing the Commonwealth in disciplinary actions before the board for the purpose of investigating alleged violations of the disciplinary provisions administered by the board. The board shall have the power to subpoena witnesses, to administer oaths, to examine witnesses or to take testimony or compel the production of books, records, papers and documents as it may deem necessary or proper in and pertinent to any proceeding, investigation or hearing held by it. Optometric records may not be subpoenaed without consent of the patient or without order of a court of competent jurisdiction on a showing that the records are reasonably necessary for the conduct of the investigation. The court may impose such limitations on the scope of the subpoena as are necessary to prevent unnecessary intrusion into patient confidential information. The board is authorized to apply to Commonwealth Court to enforce its subpoenas.

Section 4. The act is amended by adding a section to read:

Section 3.1. Reports to the board.

An attorney responsible for representing the Commonwealth in disciplinary matters before the board shall notify the board immediately upon receiving notification of an alleged violation of this act. The board shall maintain current records of all reported alleged violations and periodically review the records for the purpose of determining that each alleged violation has been resolved in a timely manner.

Section 5. Sections 5 and 6 of the act are amended by adding subsections to read:

Section 5. Renewal of license.

* * *

(c) Any licensee of this Commonwealth who is also licensed to practice optometry in any other state, territory or country shall report this information to the board on the biennial renewal application. Any disciplinary action taken in other states shall be reported to the board on the biennial renewal application or within 90 days of final disposition, whichever is sooner. Multiple licensure shall be noted on the licensee's record by the board, and such

state, territory or country shall be notified by the board of any disciplinary action taken against said licensee in this Commonwealth.

Section 6. Exemptions and exceptions.

* * *

(g) Nothing in this act shall 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 his or her respective profession.

(h) Nothing in this act shall 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 if the following conditions are met:

(1) The individual who fits the contact lens has successfully passed the examination administered by the National Contact Lens Examiners as of the effective date of this act.

(2) The fitting is based on prescription of a licensed physician or optometrist.

(3) The wearer is informed, in writing, to return to the prescribing physician or optometrist for periodic evaluation during the fit, at intervals not to exceed three months or whenever the fitter feels professional judgment is needed.

(4) The individual who has passed the examination administered by the National Contact Lens Examiners as of the effective date of this act submits evidence of such successful examination to the board within 60 days.

(5) The board shall compile and publish a list of such individuals and shall enforce the provisions of this subsection.

(i) Nothing in this act shall prohibit any optometrist from leasing space from an establishment or from paying for franchise fees or other services on a percentage of gross receipts basis.

Section 6. Section 7(b) of the act is amended and the section is amended by adding subsections to read:

Section 7. Refusal, revocation or suspension of license.

* * *

(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.

(5) Require a licensee to submit to the care, counseling or treatment of a physician or a psychologist designated by the board.

(6) Restore or reissue, in its discretion, a suspended license to practice optometry and impose any disciplinary or corrective measure which it might originally have imposed.

* * *

(f) *Unless ordered to do so by a court, the board shall not reinstate the license of a person to practice as an optometrist which has been revoked until at least five years have elapsed from the effective date of the revocation. A person shall be required to apply for a license after such five-year period in accordance with section 4 if he or she desires to practice optometry at any time after such revocation.*

(g) *A license issued under this act shall automatically be suspended upon the legal commitment of a licensee to an institution because of mental incompetency from any cause upon filing with the board a certified copy of such commitment; conviction of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act"; or conviction of an offense under the laws of another jurisdiction which, if committed in Pennsylvania, would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act." As used in this section the term "conviction" shall include a judgment, an admission of guilt or a plea of nolo contendere. Automatic suspension under this section shall not be stayed pending any appeal of a conviction. Restoration of such license shall be made as provided in this act for revocation or suspension of such license.*

(h) *The board shall temporarily suspend a license under circumstances as determined by the board to be an immediate and clear danger to the public health or safety. The board shall issue an order to that effect without a hearing, but upon due notice to the licensee concerned, at his last known address, which shall include a written statement of all allegations against the licensee. The provisions of subsection (f) shall not apply to temporary suspension. The board shall thereupon commence formal action to suspend, revoke or restrict the license of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within 30 days following the issuance of an order temporarily suspending a license, registration or certificate, the board shall conduct, or cause to be conducted, a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee whose license has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board but in no event longer than 180 days.*

(i) *The board shall require a person whose license has been suspended or revoked to return the license in such manner as the board directs. Failure to surrender the license shall be a misdemeanor of the third degree.*

Section 7. Sections 8 and 9 of the act are amended by adding subsections to read:

Section 8. Violations and penalties.

* * *

(c) *In addition to any other civil remedy or criminal 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 optometry without being properly licensed to do so under this act. 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) It shall be unlawful for any person to practice or attempt to offer to practice optometry, as defined in this act, without having at the time of so doing a valid, unexpired, unrevoked and unsuspended license issued under this act. The unlawful practice of optometry, as defined in this act, may be enjoined by the courts on petition of the board or the Commissioner of Professional and Occupational Affairs. In any such proceeding, it shall not be necessary to show that any person is individually injured by the actions complained of. If it is found that the respondent has engaged in the unlawful practice of optometry, the court shall enjoin him or her from so practicing unless he or she has been duly licensed. 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 punishment.

(e) All fines and civil penalties imposed in accordance with this section shall be paid into the Professional Licensure Augmentation Account.

Section 9. Fees and other moneys.

* * *

(c) All fees required under this act shall be fixed by the board by regulation and shall be subject to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If the revenues raised by fees, fines and civil penalties imposed pursuant to this act are not sufficient to meet expenditures over a two-year period, the board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures.

(d) If the Bureau of Professional and Occupational Affairs determines that the fees established by the board under subsection (c) are inadequate to meet the minimum enforcement efforts required by this act, then the bureau, after consultation with the board and subject to the "Regulatory Review Act," shall increase the fees by regulation in an amount that adequate revenues are raised to meet the required enforcement effort.

(e) The fees established under this act shall be sufficient to enable the board to secure such investigatory and prosecutory staff as is necessary to pursue appropriate legal action against those persons engaged in the practice of optometry in Pennsylvania without being licensed as required by this act and against any person who violates any other provision of this act.

Section 8. This act with respect to the State Board of Optometrical Examiners constitutes the legislation necessary to reestablish an agency under the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 9. The presently confirmed members of the State Board of Optometrical Examiners constituted under section 415 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, as of the effective date of this act, shall continue to serve as board members until their present terms of office expire.

Section 10. Each rule, regulation or fee of the board in effect on the effective date of this act shall remain in effect after such date until amended by the board, provided that the board shall immediately initiate the repeal or amendment of any rule or regulation which is inconsistent with the provisions of this act.

Section 11. Any person who holds a valid license issued by the State Board of Optometrical Examiners under the act of June 6, 1980 (P.L.197, No.57), known as the Optometric Practice and Licensure Act, prior to the effective date of this amendatory act shall, on and after the effective date hereof, be deemed to be licensed by the State Board of Optometry as provided for in this amendatory act.

Section 12. The State Board of Optometry shall continue together with its statutory functions and duties until December 31, 1991, when it shall terminate and go out of existence unless reestablished or continued by the General Assembly. Evaluation and review, termination, reestablishment and continuation of the board beyond December 31, 1991, shall be conducted pursuant to the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 13. (a) Section 415 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 14. This act shall take effect immediately.

APPROVED—The 15th day of May, A. D. 1986.

DICK THORNBURGH