

No. 1996-130

AN ACT

HB 1166

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," further providing for definitions and for the powers and duties of the State Board of Optometry, including licensure.

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

Section 1. Sections 2 and 2.1(a) and (b) of the act of June 6, 1980 (P.L.197, No.57), known as the Optometric Practice and Licensure Act, amended or added May 15, 1986 (P.L.186, No.58), are 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 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.”

(1) 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.

(2) *The administration and prescription of legend and nonlegend drugs as approved by the Secretary of Health for treatment of the anterior segment of the eye, the eyelids, the lacrimal system and the conjunctiva and the removal of superficial foreign bodies from the ocular surface and adnexa so long as treatment of diseases or conditions of the visual system as authorized under this paragraph shall not continue beyond six weeks from the initiation of treatment unless the prescribing optometrist documents consultation with a licensed physician. As used in this paragraph, the initiation of treatment may, but need not, include the prescription or administration of pharmaceutical agents for therapeutic purposes.*

(3) *The term shall not include:*

(i) *surgery, including, but not limited to, laser surgery; the use of lasers for therapeutic purposes; and the use of injections in the treatment of ocular disease;*

(ii) *the use of Schedule I and Schedule II controlled substances;*

(iii) *the use of beta blockers and the use of steroids;*

(iv) *treatment of systemic disease; and*

(v) *the treatment of glaucoma.*

“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 2.1. State Board of Optometry.

(a) The State Board of Optometry shall consist of [12] 13 members, all of whom shall be residents of Pennsylvania. [Seven] Eight 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 members elected* to 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] All 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.]

* * *

Section 2. Section 3(a)(1) and (2) and (b)(1), (3) and (11) of the act, amended May 15, 1986 (P.L.186, No.58), are amended and subsection (a) is amended by adding paragraphs to read:

Section 3. Powers and duties of the board.

(a) The board shall have the following duties:

(1) To meet at least [six] *four* 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 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.]"

(2.1) To determine, in accordance with optometric education, training, professional competence and skill, the means and methods for the examination, diagnosis and treatment of conditions of the visual system.

(2.2) To establish and approve a course, including an examination, with respect to the prescription and administration of pharmaceutical agents for therapeutic purposes as defined in this act.

(2.3) To require optometrists who prescribe and administer pharmaceutical agents for therapeutic purposes to be certified by the board.

(2.4) To notify biennially the State Board of Pharmacy of the names of optometrists who have been certified in accordance with section 4.1 with respect to the prescription and administration of pharmaceutical agents for therapeutic purposes.

(2.5) To require every licensee to insure liability by purchasing and maintaining professional liability insurance coverage in accordance with the following provisions:

(i) Beginning with the first license renewal period at least two years after the effective date of this paragraph or upon first making application for licensure, whichever occurs earlier, a licensee shall obtain and maintain, to the satisfaction of the board, professional liability insurance coverage in the minimum amount of \$200,000 per occurrence and \$600,000 per annual aggregate. The professional liability insurance coverage shall remain in effect as long as the licensee maintains a current license.

(ii) A licensee shall notify the board within 30 days of the licensee's failure to be covered by the required insurance. Failure to notify the board shall be actionable under section 7 or 8. Further, the license to practice shall automatically be suspended upon failure to be covered by the required insurance and shall not be restored until submission to the board of satisfactory evidence that the licensee has the required professional liability insurance coverage.

(iii) The board shall accept from licensees as satisfactory evidence of insurance coverage, pursuant to this paragraph, proof of any or all of the following: self-insurance, personally purchased professional liability insurance, professional liability insurance coverage provided by the licensee's employer or any similar type of coverage.

(iv) The board, after consultation with the Insurance Commissioner, shall establish standards and procedures by regulation for self-insurance under this paragraph.

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(b) The board shall have the following powers:

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

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(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.] jurisdiction upon petition of the commissioner or the board. In any proceeding under this section, it shall not be necessary to show that any person is individually injured by the actions complained of. If the court finds that the respondent has violated this subsection, it shall enjoin him from so practicing or holding himself out as an optometrist until he has been duly licensed or certified.

Procedure in such cases shall be the same as in any other injunctive suit.

* * *

(11) In consultation with [the Council on Optometric Education or its successor] *a national accrediting body recognized by the United States Department of Education* 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.

* * *

Section 3. Section 4 of the act is amended to read:

Section 4. [Requirements for examination.] *General qualifications for licensure.*

(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 *appropriate* 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.

(d) *The board shall not issue a license to an applicant who has been convicted 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 of an offense under the laws of another jurisdiction which, if committed in this Commonwealth, would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act," unless:*

(1) *at least ten years have elapsed from the date of conviction;*

(2) *the applicant satisfactorily demonstrates to the board that he has made significant progress in personal rehabilitation since the conviction such that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of his patients or the public or a substantial risk of further criminal violations; and*

(3) *the applicant otherwise satisfies the requirements of this act.*

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

Section 4.1. *Certification to prescribe and administer pharmaceutical agents for therapeutic purposes.*

(a) *In addition to its other powers and duties under this act, the board shall have the power and duty to certify qualified licensees to prescribe and administer pharmaceutical agents for therapeutic purposes as defined in*

this amendatory act. To obtain such certification, a licensee shall submit an application to the board on a form provided by the board showing to the satisfaction of the board that the licensee has either:

(1) graduated from an accredited school of optometry and as a condition for graduation has successfully completed a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes and has passed a licensure examination to practice optometry, which examination included the prescription and administration of pharmaceutical agents for therapeutic purposes; or

(2) completed a board-approved course of a minimum of 100 hours in the prescription and administration of pharmaceutical agents for therapeutic purposes and has passed an examination on the prescription and administration of pharmaceutical agents for therapeutic purposes, which examination was 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."

(b) In order to maintain such authority, the licensee shall, as part of the continuing education required for renewal of a license under this act, complete such additional study in the prescription and administration of pharmaceutical agents for therapeutic purposes.

Section 5. Sections 5, 6(c) and (h) and 7 heading, (a) introductory paragraph and (7), (b)(2) and (d) of the act, amended or added May 15, 1986 (P.L.186, No.58), are amended to read:

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] 1998, a 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] 30 hours of continuing professional optometric education approved by the board[.] *so long as a licensee who is certified in accordance with section 4.1 shall be required to complete a minimum of 30 hours, at least six of which concern the prescription and administration of pharmaceutical agents for therapeutic purposes. No credit shall be given for any course in office management or practice building.*

(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.

(d) An optometrist who requests in writing to place his license on inactive status may reactivate his license after paying the required fees and showing proof of meeting the continuing education requirement for the biennial renewal period immediately preceding such request for reactivation. An optometrist who seeks to renew an inactive license shall file with the board an affidavit affirming that he has not practiced optometry in this Commonwealth during such period his license was inactive.

Section 6. Exemptions and exceptions.

* * *

(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.

* * *

(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**], *provided that*:

(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**] *July 14, 1986, and is currently certified by the National Contact Lens Examiners.*

(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**] *July 14, 1986, submitted* evidence of such successful examination to the board [**within 60 days**] *by September 12, 1986.*

(5) The board shall compile and publish a list of [such] individuals *who meet the requirements of this subsection* and shall enforce the provisions of this subsection.

* * *

Section 7. [Refusal, revocation or suspension of license.] *Reasons for refusal, suspension, revocation or other corrective actions; powers of board and actions authorized.*

(a) The board shall have the power to refuse, revoke, *limit* or suspend a license *or take other corrective action authorized hereunder against an optometrist licensed* to practice optometry in this Commonwealth for *any or all of the following reasons*:

* * *

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

* * *

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

* * *

(2) Administer a public [or private] reprimand.

* * *

(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.

* * *

Section 6. The act is amended by adding a section to read:

Section 7.1. Impaired professionals.

(a) *The board, with the approval of the Commissioner of Professional and Occupational Affairs, shall appoint and fix the compensation of a professional consultant who is a licensee of the board, or such other professional as the board may determine, with education and experience in the identification, treatment and rehabilitation of persons with physical or mental impairments. Such consultant shall be accountable to the board and treatment programs, such as alcohol and drug treatment programs licensed by the Department of Health, psychological counseling and impaired professional support groups, which are approved by the board and which provide services to licensees under this act.*

(b) *The board may defer and ultimately dismiss any of the types of corrective action set forth in this act for an impaired professional so long as the professional is progressing satisfactorily in an approved treatment program, provided that the provisions of this subsection shall not apply to a professional convicted of a felonious act prohibited under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country. An approved program provider shall, upon request, disclose to the consultant such information in its possession regarding an impaired professional in treatment which the program provider is not prohibited from disclosing by an act of this Commonwealth, another state or the United States. Such requirement of disclosure by an approved program provider shall apply in the case of impaired professionals who are the subject of a board investigation or disciplinary proceeding and impaired professionals who voluntarily enter a treatment program other than under the provisions of this section but fail to complete the program successfully or to adhere to an aftercare plan developed by the program provider.*

(c) *An impaired professional who enrolls in an approved treatment program shall enter into an agreement with the board under which the professional's license shall be suspended or revoked, but enforcement of that suspension or revocation may be stayed for the length of time the professional remains in the program and makes satisfactory progress, complies with the terms of the agreement and adheres to any limitations on*

his practice imposed by the board to protect the public. Failure to enter into such an agreement shall disqualify the professional from the impaired professional program and shall activate an immediate investigation and disciplinary proceeding by the board.

(d) If, in the opinion of the consultant after consultation with the provider, an impaired professional who is enrolled in an approved treatment program has not progressed satisfactorily, the consultant shall disclose to the board all information in his possession regarding said professional, and the board shall institute proceedings to determine if the stay of the enforcement of the suspension or revocation of the impaired professional's license shall be vacated.

(e) An approved program provider who makes disclosure pursuant to this section shall not be subject to civil liability for such disclosure or its consequences.

(f) Any hospital or health care facility, peer or colleague who has substantial evidence that a professional has an active addictive disease for which the professional is not receiving treatment, is diverting a controlled substance or is mentally or physically incompetent to carry out the duties of his or her license shall make or cause to be made a report to the board, provided that any person or facility which acts in a treatment capacity to an impaired professional in an approved treatment program is exempt from the mandatory reporting requirements of this subsection. Any person or facility that reports pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from such report. Failure to provide such report within a reasonable time from receipt of knowledge of impairment shall subject the person or facility to a fine not to exceed \$1,000. 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).

Section 7. Section 9 of the act, amended May 15, 1986 (P.L.186, No.58), is amended to read:

Section 9. Fees and other moneys.

(a) The board shall have the power to fix or change fees for *initial licensure*, 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] *the Professional Licensure Augmentation Account* and disbursed according to law.

(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 shall take effect immediately.

APPROVED—The 30th day of October, A.D. 1996.

THOMAS J. RIDGE