PRIOR PRINTER'S NO. 374 PRINTER'S NO. 2009

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 391 Session of 2019

INTRODUCED BY GORDNER, SCARNATI, FOLMER, BAKER, HUTCHINSON, YUDICHAK, HAYWOOD AND PITTMAN, MARCH 5, 2019

SENATOR TOMLINSON, CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, AS AMENDED, SEPTEMBER 22, 2020

AN ACT

~~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, for approval of drugs, for exemptions and exceptions and for violations and penalties; and providing for insurance billing codes.~~ <--

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, FOR APPROVAL OF DRUGS, FOR EXEMPTIONS AND EXCEPTIONS AND FOR VIOLATIONS AND PENALTIES. <--

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

~~Section 1. The definitions of "examination and diagnosis," "optometrist" and "practice of optometry" in section 2 of the act of June 6, 1980 (P.L.197, No.57), known as the Optometric Practice and Licensure Act, 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:~~

~~* * *~~

"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 approved by the Food and Drug Administration and published in the Code of Federal Regulations for diagnostic purposes [classified as], including miotics, mydriatics, cycloplegics, topical anesthetics and dyes when applied topically to the eye, [which pharmaceutical agents shall be approved by the Secretary of Health as provided in section 4.3 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."] "O.D." or "Doctor."

"Practice of optometry."

(1) The use of any and all means or methods for the examination, diagnosis, prevention and treatment of all conditions [of] affecting 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.], including all conditions of the human eye and adnexa applicable to this act. The term shall include:

(i) The examination for, and adapting and fitting of, any and all kinds and types of lenses, including contact lenses.

(ii) The administration and prescription of all legend and nonlegend drugs, by any means, methods or delivery systems, approved by the board in section 4.3 for the treatment of diseases and conditions affecting the eye and adnexa, including codeine and hydrocodone combinations which were reclassified from Schedule III to Schedule II prior to the effective date of this subparagraph. The prescription of Schedule II controlled substances containing codeine and hydrocodone combinations may not exceed a 72-hour supply.

(iii) The removal of superficial foreign bodies.

(iv) The draining of superficial cysts.

(v) Epinephrine auto-injectors for anaphylaxis.

(vi) The ordering and interpretation of angiography via noninvasive imaging, including, but not limited to, light wave imaging and other imaging tests.

(vii) The treatment of glaucoma.

[(2) The administration and prescription of legend and nonlegend drugs as approved by the Secretary of Health as provided in section 4.3 for treatment 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, other than glaucoma, 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) treatment of systemic disease; and~~

~~(iv) the treatment of glaucoma, except that optometrists may use all topical pharmaceutical agents in the treatment of primary open angle glaucoma, exfoliation glaucoma and pigmentary glaucoma.~~]

~~(4) The term shall not include:~~

~~(i) Surgery with a scalpel or scissors, refractive or therapeutic surgery with a laser and surgery with a CryoProbe.~~

~~(ii) Injection into the globe.~~

~~(iii) The use of Schedule I and Schedule II controlled substances, except for the use of codeine and hydrocodone combinations which were reclassified from Schedule III to Schedule II prior to the effective date of this subparagraph and any drugs approved by the board in section 4.3 for the treatment of ocular disease.~~

~~* * *~~

~~Section 2. Sections 4.3 and 6(b) of the act are amended to~~

~~read:~~

~~Section 4.3. Approval of drugs.~~

~~Drugs shall be approved as follows:~~

~~(1) All drugs currently approved by the Secretary of Health and in use in the practice of optometry on the effective date of this section shall be deemed approved under this section.~~

~~[(2) Within 90 days of the effective date of this section, the board shall submit a list of drugs authorized under this act to the Secretary of Health, who, in consultation with the Physician General, shall approve or disapprove for good cause each drug. Upon failure of the Secretary of Health to act within 90 days of receipt of the list of drugs, the drugs shall be deemed approved for use under this act.~~

~~(3) The State Board of Optometry shall provide the Secretary of Health with lists of additional drugs for use under this act after such drugs are approved by the Food and Drug Administration, as published in the Code of Federal Regulations. The Secretary of Health, in consultation with the Physician General, shall approve or disapprove for good cause any such drug within 90 days of the receipt of the list. Upon failure of the Secretary of Health to act within 90 days, the drugs shall be deemed approved for use under this act.]~~

~~(4) On and after the effective date of this paragraph, the board may approve drugs for use in the practice of optometry after the drugs are approved by the Food and Drug Administration, as published in the Code of Federal Regulations.~~

~~Section 6. Exemptions and exceptions.~~

~~* * *~~

~~(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.~~

~~* * *~~

~~Section 3. Section 8(a) of the act is amended by adding a paragraph to read:~~

~~Section 8. Violations and penalties.~~

~~(a) * * *~~

~~(4) It is unlawful for an optometrist to advertise a service prohibited under this act. A person convicted of violating this paragraph commits a summary offense and shall, for a first offense, be subject to a fine of not more than $500. For a second or subsequent violation, the board may impose a suspension of the person's license for up to 30 days, in addition to the fine.~~

~~* * *~~

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

~~Section 10.1. Insurance billing codes.~~

~~An insurance billing code may not be used to define or interpret a procedure performed by an optometrist as surgery.~~

~~Section 5. This act shall take effect in 60 days.~~

SECTION 1. THE DEFINITIONS OF "EXAMINATION AND DIAGNOSIS" AND "PRACTICE OF OPTOMETRY" IN SECTION 2 OF THE ACT OF JUNE 6, 1980 (P.L.197, NO.57), KNOWN AS THE OPTOMETRIC PRACTICE AND LICENSURE ACT, 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:

* * *

"EXAMINATION AND DIAGNOSIS." ANY EXAMINATION OR DIAGNOSTIC MEANS OR METHOD COMPATIBLE WITH OPTOMETRIC EDUCATION AND PROFESSIONAL COMPETENCE. THE TERM SHALL ENCOMPASS THE USE OF TOPICAL AND ORAL PHARMACEUTICAL AGENTS APPROVED BY THE BOARD AS PROVIDED IN SECTION 4.3 FOR DIAGNOSTIC PURPOSES [CLASSIFIED AS], INCLUDING MIOTICS, MYDRIATICS, CYCLOPLEGICS, TOPICAL ANESTHETICS AND DYES WHEN APPLIED TOPICALLY TO THE EYE, [WHICH PHARMACEUTICAL AGENTS SHALL BE APPROVED BY THE SECRETARY OF HEALTH AS PROVIDED IN SECTION 4.3 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.

* * *

"PRACTICE OF OPTOMETRY."

(1) THE USE OF ANY AND ALL MEANS OR METHODS FOR THE EXAMINATION, DIAGNOSIS AND TREATMENT OF ALL 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]. THE TERM SHALL INCLUDE:

(I) THE EXAMINATION FOR, AND ADAPTING AND FITTING

OF, ANY AND ALL KINDS AND TYPES OF LENSES, INCLUDING CONTACT LENSES.

(II) THE ADMINISTRATION AND PRESCRIPTION OF ALL LEGEND AND NONLEGEND DRUGS, EITHER BY TOPICAL OR ORAL ROUTES OF ADMINISTRATION, APPROVED BY THE BOARD IN SECTION 4.3 FOR THE TREATMENT OF THE EYE, THE EYELIDS, THE LACRIMAL SYSTEM AND THE CONJUNCTIVA, INCLUDING CODEINE AND HYDROCODONE COMBINATIONS, SO LONG AS THE TREATMENT OF DISEASES OR CONDITIONS OF THE VISUAL SYSTEM, OTHER THAN GLAUCOMA, DRY EYES OR ALLERGIES, 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. THE PRESCRIPTION OF SCHEDULE II CONTROLLED SUBSTANCES CONTAINING CODEINE AND HYDROCODONE COMBINATIONS MAY NOT EXCEED A 72-HOUR SUPPLY.

(III) THE REMOVAL OF SUPERFICIAL FOREIGN BODIES FROM THE OCULAR SURFACE OR ADNEXA.

(IV) EPINEPHRINE AUTO-INJECTORS FOR ANAPHYLAXIS.

(V) THE ORDERING AND INTERPRETATION OF ANGIOGRAPHY VIA NONINVASIVE IMAGING, WHICH SHALL ONLY INCLUDE OPTICAL COHERENCE TOMOGRAPHY.

(VI) THE ADMINISTRATION AND PRESCRIPTION OF ALL LEGEND AND NONLEGEND DRUGS APPROVED BY THE BOARD UNDER SECTION 4.3 FOR THE TREATMENT OF GLAUCOMA.

[(2) THE ADMINISTRATION AND PRESCRIPTION OF LEGEND AND NONLEGEND DRUGS AS APPROVED BY THE SECRETARY OF HEALTH AS

PROVIDED IN SECTION 4.3 FOR TREATMENT 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, OTHER THAN GLAUCOMA, 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) TREATMENT OF SYSTEMIC DISEASE; AND

(IV) THE TREATMENT OF GLAUCOMA, EXCEPT THAT OPTOMETRISTS MAY USE ALL TOPICAL PHARMACEUTICAL AGENTS IN THE TREATMENT OF PRIMARY OPEN ANGLE GLAUCOMA, EXFOLIATION GLAUCOMA AND PIGMENTARY GLAUCOMA.]

(4) THE TERM SHALL NOT INCLUDE:

(I) SURGERY, INCLUDING, BUT NOT LIMITED TO, DIAGNOSTIC, EXPLORATORY, PALLIATIVE, THERAPEUTIC, REHABILITATIVE, COSMETIC, RECONSTRUCTIVE, REFRACTIVE, LIGHT-BASED OR LASER SURGERY; OR THE USE OF LASERS FOR THERAPEUTIC PURPOSES.

(II) INJECTIONS, OTHER THAN THE USE OF EPINEPHRINE AUTO-INJECTORS FOR ANAPHYLAXIS.

(III) THE USE OF SCHEDULE I AND SCHEDULE II CONTROLLED SUBSTANCES, EXCEPT FOR THE USE OF CODEINE AND HYDROCODONE COMBINATIONS.

(IV) THE PREVENTION AND TREATMENT OF SYSTEMIC DISEASE.

* * *

SECTION 2. SECTIONS 4.3 AND 6(B) OF THE ACT ARE AMENDED TO READ:

SECTION 4.3. APPROVAL OF DRUGS.

DRUGS SHALL BE APPROVED AS FOLLOWS:

(1) ALL DRUGS CURRENTLY APPROVED BY THE SECRETARY OF HEALTH AND IN USE IN THE PRACTICE OF OPTOMETRY ON THE EFFECTIVE DATE OF THIS SECTION SHALL BE DEEMED APPROVED UNDER THIS SECTION.

[(2) WITHIN 90 DAYS OF THE EFFECTIVE DATE OF THIS SECTION, THE BOARD SHALL SUBMIT A LIST OF DRUGS AUTHORIZED UNDER THIS ACT TO THE SECRETARY OF HEALTH, WHO, IN CONSULTATION WITH THE PHYSICIAN GENERAL, SHALL APPROVE OR DISAPPROVE FOR GOOD CAUSE EACH DRUG. UPON FAILURE OF THE SECRETARY OF HEALTH TO ACT WITHIN 90 DAYS OF RECEIPT OF THE LIST OF DRUGS, THE DRUGS SHALL BE DEEMED APPROVED FOR USE UNDER THIS ACT.

(3) THE STATE BOARD OF OPTOMETRY SHALL PROVIDE THE SECRETARY OF HEALTH WITH LISTS OF ADDITIONAL DRUGS FOR USE UNDER THIS ACT AFTER SUCH DRUGS ARE APPROVED BY THE FOOD AND DRUG ADMINISTRATION, AS PUBLISHED IN THE CODE OF FEDERAL REGULATIONS. THE SECRETARY OF HEALTH, IN CONSULTATION WITH THE PHYSICIAN GENERAL, SHALL APPROVE OR DISAPPROVE FOR GOOD CAUSE ANY SUCH DRUG WITHIN 90 DAYS OF THE RECEIPT OF THE LIST. UPON FAILURE OF THE SECRETARY OF HEALTH TO ACT WITHIN

90 DAYS, THE DRUGS SHALL BE DEEMED APPROVED FOR USE UNDER THIS ACT.]

(4) ON AND AFTER THE EFFECTIVE DATE OF THIS PARAGRAPH, THE BOARD MAY APPROVE DRUGS FOR ONLY TOPICAL OR ORAL ROUTES OF ADMINISTRATION, WITH THE EXCEPTION OF DRUGS CLASSIFIED AS CHEMOTHERAPY DRUGS, FOR USE IN THE PRACTICE OF OPTOMETRY AFTER THE DRUGS ARE APPROVED BY THE FOOD AND DRUG ADMINISTRATION, AS PUBLISHED IN THE CODE OF FEDERAL REGULATIONS.

SECTION 6. EXEMPTIONS AND EXCEPTIONS.

* * *

(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 IF THE PROCEDURES AND TESTS ARE WITHIN THE SCOPE OF PRACTICE OF THE OPTOMETRIST. NOTHING CONTAINED IN THIS ACT SHALL BE CONSTRUED TO ENTITLE AN EXTERN TO PRACTICE OPTOMETRY.

* * *

SECTION 3. SECTION 8(A) OF THE ACT IS AMENDED BY ADDING A PARAGRAPH TO READ:

SECTION 8. VIOLATIONS AND PENALTIES.

(A) * * *

(4) IT IS UNLAWFUL FOR AN OPTOMETRIST TO ADVERTISE A SERVICE PROHIBITED UNDER THIS ACT. A PERSON CONVICTED OF VIOLATING THIS PARAGRAPH COMMITS A SUMMARY OFFENSE AND SHALL, FOR A FIRST OFFENSE, BE SUBJECT TO A FINE OF NOT MORE THAN $1,000. FOR A PERSON CONVICTED OF A SECOND OR SUBSEQUENT VIOLATION, BE SUBJECT TO A FINE OF NOT LESS THAN $2,000, AND THE BOARD MAY IMPOSE A SUSPENSION OF THE PERSON'S LICENSE FOR

UP TO 30 DAYS, IN ADDITION TO THE FINE.

* * *

SECTION 4. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.