

**LAWS**  
*OF THE*  
**STATE OF DELAWARE**

*ONE HUNDRED AND THIRTY-FOURTH*  
*GENERAL ASSEMBLY*  
*FIRST SESSION COMMENCED AND HELD AT DOVER*

**On Tuesday, January 13, A.D.**  
**1987**

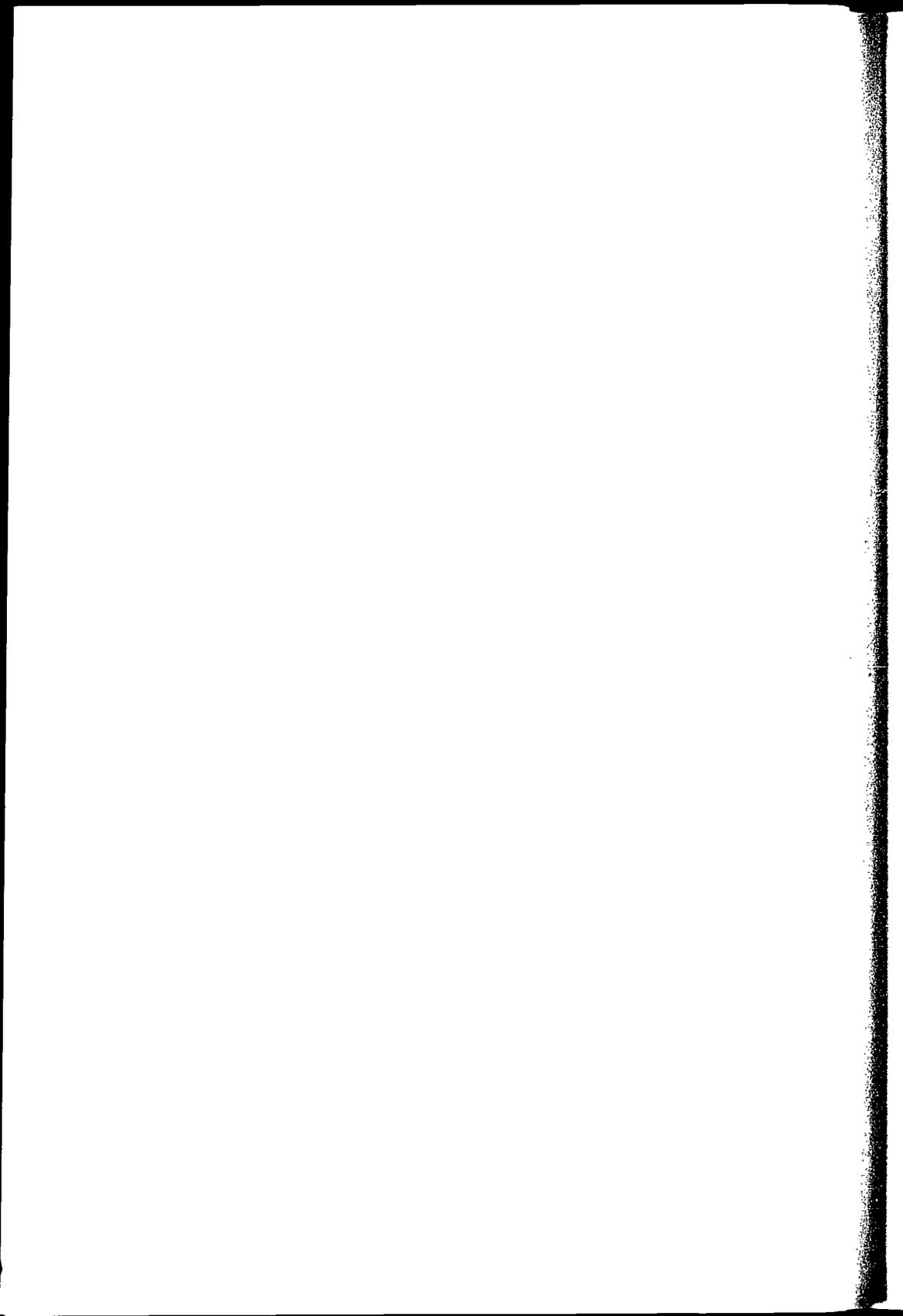
*SECOND SESSION COMMENCED AND HELD AT DOVER*

**On Tuesday, January 12, A.D.**  
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**VOLUME LXVI**

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## CHAPTER 1

## FORMERLY

SENATE BILL NO. 8  
AS AMENDED BY SENATE AMENDMENT NO. 1

AN ACT TO AMEND CHAPTER 21, TITLE 24 OF THE DELAWARE CODE, RELATING TO THE BOARD OF EXAMINERS IN OPTOMETRY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of the members of each house thereof concurring therein):

Section 1. Amend Chapter 21, Title 24 of the Delaware Code, by striking said Chapter in its entirety and by substituting in lieu thereof the following:

## "CHAPTER 21. OPTOMETRY

§21D1. Definition of Practice of Optometry

(a) The practice of optometry for the purpose of this chapter is defined to be:

(1) The diagnosis and/or the examination of the human eye and its appendages; and/or

(2) The employment of any objective or subjective means or methods for the purpose of determining the refractive powers of the human eye and/or any visual, muscular or anatomical anomalies of the human eyes and their appendages, or any ocular deficiency; and/or

(3) The prescribing and/or application of lenses, prisms, contact lenses, orthoptics (visual training), or any physical, mechanical or psycho-visual therapy for the correction, remedy or relief of any insufficiencies or abnormal conditions of the human eyes and their appendages.

(b) Any person shall also be deemed to be practicing the profession of optometry who:

(1) Holds himself out as being able to do so; or

(2) Opens for practice or operates, conducts or manages an office in this State, either directly or indirectly, where optometric practice is carried on with the intent of receiving therefrom, either directly or indirectly, any money, gift or any form of compensation which might result from any part of the practice of optometry as defined in this section; or

(3) Uses the title of Doctor of Optometry (O.D.), or any other letters or title in connection with his name, which in any way may convey the impression that he is engaged in the practice of optometry.

(c) For purposes of disability insurance, workmen's compensation, standard health and accident, sickness and other insurance policies, programs and plans, if the optometrist is authorized by law to perform the particular services, he shall be entitled to compensation for his services under the said programs. Individuals entitled to such services shall have freedom to choose between any optometrist and any physician skilled in diseases of the eye.

§21D2. Board of Examiners in Optometry; Members; Appointment; Terms of Office; Vacancies; Oaths

(a) The Delaware State Board of Examiners in Optometry, heretofore established and hereafter in this chapter referred to as the "Board", shall carry out and enforce this chapter.

(b) The Board shall be appointed by the Governor, and shall consist of three residents of this State engaged in the actual practice of optometry and two public members, who shall also be residents of this State. Said public members shall not be nor ever have been licensed as an optometrist, ophthalmologist or optician; nor be a member of the immediate family of an optometrist, ophthalmologist or optician; shall not have been employed by an optometrist, ophthalmologist or optician; shall not have had a material financial interest in the providing of goods and services to those licensed in this chapter; nor have been engaged in any activity directly related to

optometry; shall not have been licensed in any health-related field nor be licensed to practice law.

Said public members shall be accessible to inquiries, comments and suggestions from the general public. The public members of the Board shall have full voting privileges, except that they shall not be empowered to pass upon the clinical competency of persons who have applied to be licensed as optometrists.

Each member of the Board shall hold office for a term of three years, beginning on the seventh day of November in the year of appointment. Each member shall hold office until his or her successor is appointed, and appointments to fill vacancies caused by death, resignation or removal shall be made for the remainder of such terms by the Governor.

(c) The members of the Board, before entering upon their duties, shall respectively take and subscribe to an oath to exercise the duties of their office with fidelity. Such oath shall be filed with the clerk of the peace of the county in which the member resides.

(d) The Board shall have a common seal.

§2103. Election of officers; Annual and Special Meetings; Quorum; Oath, Record of Proceedings

(a) The Board shall choose annually 1 of its members as President and 1 as Secretary, thereof, who severally shall have the power during their terms of office to administer oaths and take affidavits, certifying thereto under their hand and seal of the Board. The Board shall meet at least once in each year, and, in addition thereto, whenever and wherever the President and Secretary thereof shall call a meeting.

(b) A majority of the Board shall at all times constitute a quorum.

(c) The Secretary of the Board shall keep a full record of the proceedings of the Board, which record shall at all reasonable times be open to public inspection.

§2104. Rules and Regulations

The Board may make any rules and regulations not inconsistent with the laws of the State which it deems necessary or expedient for the effective enforcement of this chapter or for the full and efficient performance of its duties hereunder.

§2105. Compensation and Expenses; Receipts and Disbursements; Annual Report

(a) Each member of the Board shall receive as compensation a sum not to exceed \$50 for each day actually engaged in the duties of the office, which sum shall include compensation for all expenses incurred by such member.

(b) All fees and other money received by the Board shall be paid over to the State Treasurer in accordance with Chapter 61 of Title 29. All expenses of the Board, within the limits of appropriations made to it, shall be paid by the State Treasurer upon receipt of vouchers signed by the proper officers of the Board.

(c) The Board shall make an annual report of its proceedings to the Governor on the first Monday of January of each year, which report shall contain an account of all moneys received by the Board for the preceding year pursuant to this chapter.

§2106. Certificate Required

No person shall practice optometry in this State unless he shall first have obtained a certificate of registration and filed the same, or a certified copy thereof, with the Department of Finance.

§2107. Application Requirements; Fee

Every person before beginning to practice optometry in this State shall be of good moral character, shall have had a preliminary education of at least 4 years of high school or the equivalent from a state department of public education or from a first-class university entrance examination, and have completed at least 2 years preoptometry in a recognized college or university (provided, however, that this preoptometry requirement is not to affect any person who was attending a school of optometry on May 20, 1949), and have graduated from a school or college approved by the Board which maintains a course of optometry of at least 4 years of not less than 32

months of residence work in optometry, and shall pass an examination before such Board to determine his qualifications.

Any person desiring to be examined by the Board shall file his application accompanied by an examination fee of \$75, and shall appear before the Board at such time and place as the Board may designate.

#### §2108. Examinations

Examinations shall be given at least once each year to new applicants and to those who have previously failed such examinations.

The examinations shall consist of tests in practical optics, theoretical optics, physiological optics, theoretical optometry, practical optometry, orthoptics, ocular anatomy, physiology and pathology, general anatomy, general physiology, pathology and hygiene, and such other knowledge as the Board deems essential to the practice of optometry.

#### §2109. Reexamination; Fee

If any applicant be rejected, he shall be entitled to be admitted to another examination without further payment, but for all subsequent examinations he shall pay an examination fee of \$75.

#### §2110. Internship Requirements

Every applicant, after complying with all the requirements of this chapter and after satisfactorily passing the written examinations in optometry, shall, before receiving any prescribed practical examinations and certificate to practice optometry, be required to spend an internship in optometry for a period of six months, which shall be approved by the Board. The Board shall waive the internship requirement for an ethically practicing optometrist from any state, territory of the United States or the District of Columbia when said venue has standards for licensure equal to, or greater than, those of this State.

The Board may grant temporary licenses to any candidate successfully passing the written and oral portions of the examinations. The temporary license shall be issued only for the duration of the internship.

#### §2111. Certificate and Registration for Successful Applicants

All persons successfully passing the examinations shall be registered in the Board Register, which shall be kept by the Secretary of the Board, as licensed to practice optometry, and shall also receive a certificate of such registration, to be signed by the President and Secretary of the Board, which shall be filed as provided in this chapter. The applicant shall pay to the Board a fee of \$10 for such registration and certificate before the same shall be issued.

#### §2112. Renewal of Certificate

Every registered optometrist who desires to continue the practice of optometry in this State shall on a biennial basis, on such date as the Board may determine, pay to the Secretary a registration fee of \$40. If all other requirements of license renewal, as spelled out in this section, are satisfied, the licensee shall receive a renewal of the registration. In case of default in such payment by any person, his certificate may be revoked by the Board upon twenty days' notice to the person of the time and place of considering such revocation, but certificate shall not be revoked for such nonpayment if the person so notified shall pay said fee before or at such time of consideration and such penalty as may be imposed by the Board. The Board may impose a penalty of \$25 and no more on any person so notified, as a condition of allowing his certificate to stand. The Board may collect any such fees by suit.

In addition to the other provisions of this section, each Delaware registered optometrist shall be required to attend in each two-year period a total of twelve hours of optometric or such other scientific educational lectures, symposiums or courses approved by the Board. The full twelve hours may be taken in one year or may be spread over the entire two-year period. Each Delaware registered optometrist shall be required to furnish the Secretary of the Board satisfactory evidence that he has completed such continuing education requirements each second year. The Board shall publish in its rules and regulations the guidelines governing acceptable continuing education requirements.

The Secretary of the Board shall notify in writing each Delaware registered optometrist, at least thirty days prior to the date the renewal is due, of this educational requirement.

In the event that any registered optometrist shall fail to meet such additional requirement, his registration shall be revoked except when proven hardship makes compliance impossible; provided further that the Board shall reinstate such registration upon presentation of satisfactory evidence of successful completion of continuing education requirements and upon payment of all fees due; further provided that this educational requirement shall not apply to those Delaware registered optometrists who are not in active practice in this State.

§2113. Revocation; Causes; Notice and Hearings; Reissuance

(a) The Board may revoke or suspend any certificate of registration granted by it under this chapter:

(1) For the conviction of a crime; or

(2) For habitual drunkenness for six months immediately before the charge is made; or

(3) For gross incompetency; or

(4) For contagious disease; or

(5) Where any person presents to the Board any diploma, license or certificate that has been secured or issued unlawfully or under fraudulent representations; or

(6) Where any person is found guilty of unprofessional conduct as defined by the Board; or

(7) Where any person is found guilty by the Board of:

(a) Practicing in a merchandising store; or

(b) Practicing in an office not exclusively devoted to the practice of optometry or other health care profession, where material or merchandise is displayed pertaining to a business or commercial undertaking not bearing any relation to the practice of optometry or other health care profession; or practicing in a store or office which does not conform to that used by the majority of professional optometrists in the area; or

(c) Violating a Board rule or regulation duly promulgated by the Board hereunder or any provision of this chapter; or

(d) The continuance of an optometrist in the employ of or acting as an assistant to any person, firm, corporation, either directly or indirectly, after he has knowledge that such person, firm or corporation is violating the laws of Delaware concerning the practice of optometry; or

(e) Any conduct which is of a character likely to deceive or defraud the public; or

(f) Soliciting in person or through an agent or agents for the purpose of selling ophthalmic materials or optometric services or employing what are known as "chasers", "steerers" or "solicitors" to obtain business, unless in conjunction with a vision service plan approved by the Board; or

(g) Causing or permitting the use of his name, profession or professional title by or in conjunction with any association, company, corporation or nonlicensed person, in any advertising of any manner, unless in conjunction with a vision service plan approved by the Board; or

(h) Practicing for, or in conjunction with, either directly or indirectly, a corporation or company, except that allowed under Chapter 6 of Title B; provided that the foregoing shall not prevent a person licensed pursuant to this chapter from rendering optometric services at a nonprofit clinic which is operated by a corporation or company that is affiliated with a hospital licensed by the State Board of Health and accredited by the Joint Commission Accreditation of Hospitals or the American Osteopathic Association.

(b) (1) Any practitioner or member of the public who has a question or complaint concerning any aspect of the practice of optometry may, during the regular business hours of a business day, contact the Board or the Division of Professional Regulation; or voice such question or complaint at a business meeting of the Board.

(2) The Board shall investigate any complaint, including oral complaints; and shall follow through on those complaints which, upon investigation, appear to be valid and well founded. In cases where the complainant is known to the Board it shall, within six weeks after the receipt of the complaint, notify the complainant whether or not it will take any action in the matter. If the Board decides to take no action it shall, by letter, state its reasons therefor. A record shall be kept of each complaint, formal and informal, for a period of five years.

(3) Upon receipt of a complaint against a practitioner, the Board shall determine what action, if any, it shall take. Where the Board has determined to take further action, the matter shall be heard by the Board within three months from the date on which the complaint was received, unless circumstances surrounding the complaint warrant a lengthier investigation. The Board shall fix the time and date for the hearing, with notice to be personally delivered or served upon the practitioner at least thirty days before the date fixed for the hearing. In cases where the practitioner cannot be located or where personal service cannot be effected, substitute service will be effected in the same manner as with civil litigation.

(4) All hearings shall be informal without the rules of evidence. If the Board finds, by a majority vote of all members, that the complaint has merit, the Board shall take such action permitted under this Chapter as it deems necessary. The Board's decision shall be in writing and shall include its reasons for such a decision. A copy of the decision shall be mailed immediately to the complainant and to the practitioner. The Board's decision shall become effective on the thirtieth day after the date it is mailed or served on the practitioner, unless there is an appeal to the Superior Court within that time.

(5) Where either the complainant or the practitioner is in disagreement with the action of the Board, either person may appeal the Board's decision to the Superior Court within thirty days of service, or of the postmarked date of the Board's decision. Upon such appeal, the court shall hear the evidence de novo, and the filing of an appeal shall act as a stay of the Board's decision, pending final determination of the appeal.

(c) Any person whose certificate has been revoked or suspended may, after the expiration of 90 days, apply to have the same regranted to him upon satisfactory showing that the disqualification has ceased.

#### §2114. State License

Upon presentation to it of a proper certificate from the Board and the payment to it of the sum required by §2301 of Title 30 of the Delaware Code for the use of the State, the Department of Finance shall issue a license certifying that such person is authorized to conduct business. The license shall be effective for one year from the date thereof, after which a new license may be issued upon the same terms and conditions provided for in this section.

#### §2115. Display of Certificate

Every person to whom a certificate of examination or registration is granted shall display the same in a conspicuous part of his office wherein the practice of optometry is conducted. The word "optometrist" shall appear on his sign together with his name.

All optometrists shall inform the Board within thirty days after establishing or moving a main or branch office of the current address of the office. All main branch office addresses maintained by an optometrist in this State shall be on file with the Secretary of the Board.

#### §2116. Use of Drugs or Surgery

Nothing in this chapter shall be construed as conferring on the holder of any certificate of registration for license, issued by the Board, the right to make use of drugs or surgery in the treatment of eye diseases. He may employ topical ophthalmic drugs for diagnostic purposes only; the drugs that he may use for such diagnosis will be limited to the following four classes of drugs: Topical anesthetics, mydriatics, cycloplegics and myotics; provided, however, that the Delaware State Board of Examiners in Optometry will include an examination on the subject of pharmacology as it relates

to optometry and the use of topically applied diagnostic drugs for all new applicants for licensure; further provided, that no presently licensed optometrist shall be permitted to make use of topically applied diagnostic drugs until he shall have completed a refresher course in pharmacology as it relates to optometry and the use of topically applied diagnostic drugs given by an institution accredited by a regional or professional accrediting organization which is recognized by the National Commission on Accreditation, and is approved by the Delaware State Board of Examiners in Optometry.

#### §2117. Exemptions

(a) Nothing in this chapter shall be construed to prevent the sale and/or application of spectacles in the ordinary course of trade, provided no part of this chapter is violated by this exemption.

(b) Those persons having the degree of Doctor of Medicine or Doctor of Osteopathy and licensed to practice medicine and surgery in this State under Chapter 17 of this title shall be exempt from this chapter, and nothing in this chapter shall apply to or restrict any ophthalmic assistant, nationally registered as a contact lens technician, from acting under the prescription and supervision of a licensed physician, osteopath or optometrist from fitting, adapting or measuring for contact lenses so long as said ophthalmic assistant's office is on the same premises as a licensed ophthalmologist, osteopath or optometrist.

#### §2118. Discrimination by State Boards between Ocular Practitioners Forbidden

No state board or commission, created or existing by law, including public schools and other state agencies, in the performance of their duties, shall in any way show any discrimination between ocular practitioners.

All boards or commissions shall honor ocular reports or other professional services by legally qualified and licensed optometrists in this State.

#### §2119. Penalties; Enforcement

Whoever violates this chapter shall be fined not less than \$100 nor more than \$500.

The Attorney General or his deputies may prosecute every case to final judgment in the county wherein the offense was committed whenever his attention shall be called to a violation of this chapter.

The Court of Chancery shall have jurisdiction to issue temporary restraining orders, preliminary injunctions and permanent injunctions to enjoin any violation of this chapter in actions brought by the State Board of Examiners in Optometry, the Delaware Optometric Association, Inc. or the Attorney General of the State."

Section 2. The three persons constituting the State Board of Examiners in Optometry on the effective date of this Act shall continue in office as members of the Board until the expiration of the terms for which they were appointed.

Section 3. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Approved December 15, 1986.

## CHAPTER 2

## FORMERLY

## HOUSE BILL NO. 1B

AN ACT TO AMEND CHAPTER 17, TITLE 24 OF THE DELAWARE CODE RELATING TO THE TEMPORARY SUSPENSION OF CERTIFICATES TO PRACTICE MEDICINE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Subchapter V, Chapter 17, Title 24 of the Delaware Code by adding a new Section 173B to read as follows:

"§173B. Temporary Suspension Pending Hearing

(a) In the event the Board receives a formal or informal written complaint concerning a physician's activities which the Board determines alleges matters presenting a clear and immediate danger to the public health, the Board may issue an order temporarily suspending the physician's certificate to practice medicine, pending a hearing. No order temporarily suspending a certificate to practice medicine shall be issued by the Board, with less than 24 hours prior written or oral notice to the physician or his attorney so that the physician or his attorney may be heard in opposition to the proposed suspension and unless at least eight members of the Board vote in favor of such a temporary suspension. An order of temporary suspension pending a hearing shall remain in effect for a period of time no longer than 60 days from the date of the issuance of said order, unless the suspended physician requests a continuance of the date for the convening of the hearing panel. In such an event, the order of temporary suspension pending a hearing shall remain in effect until the hearing panel has convened and a decision rendered.

(b) The physician whose certificate to practice medicine has been temporarily suspended pending a hearing shall be notified forthwith in writing. Notification shall consist of a copy of the complaint and the order of temporary suspension pending a hearing and shall be personally served upon the physician or sent by certified mail, return receipt requested, to the physician's last known address.

(c) A physician whose certificate to practice medicine has, pursuant to this Section, been temporarily suspended pending a hearing, may request an expedited hearing. The Board shall schedule the hearing on an expedited basis provided that the Board receives said request within five calendar days from the date on which the physician received notification of the decision of the Board to temporarily suspend his certificate to practice medicine.

(d) As soon as possible after the issuance of the order temporarily suspending the physician's certificate to practice medicine pending a hearing, the Board shall appoint a 3-member hearing panel pursuant to its power under §1730 (16) of this Title. The hearing panel, after notice to the physician, shall convene within 60 days of the date of the issuance of the order of temporary suspension in order to consider the evidence regarding the matters alleged in the complaint. In the event that a physician, in a timely manner, requests an expedited hearing, the hearing panel shall convene within 15 days of the receipt by the Board of such a request. The 3-member panel shall proceed to a hearing in accordance with the procedures set forth at §1734 of this Title and shall render a decision within 30 days.

(e) In addition to pertinent findings of fact to be made by the hearing panel, the panel shall also determine whether the facts found by it constitute a clear and immediate danger to public health. If the hearing panel determines that the facts found by it constitute a clear and immediate danger to public health, then, the order of temporary suspension shall remain in effect until such time as the full Board shall deliberate and reach conclusions of law based upon the finding of fact made by the hearing panel pursuant to the provisions of §1734 (f) of this Title. In no event shall the order of temporary suspension remain in effect for longer than 60 days from the date of the decision rendered by the hearing panel unless the suspended physician requests an extension of the order of temporary suspension pending a final decision of the Board. Upon a final decision of the Board, the order of temporary suspension shall be vacated in favor of the disciplinary action ordered by the Board."

Section 2. Amend §1730(a)(16), Chapter 17, Title 24 of the Delaware Code by striking said Section in its entirety and substituting in lieu thereof the following:

"(16) To designate three members of the Board to act as a hearing panel for the purposes of hearing charges of unprofessional conduct as set forth in §1731(b) of this Title or inability to practice medicine as set forth in §1731(c) of this Title or making determinations of fact in connection with the temporary suspension of a certificate to practice medicine pursuant to §1738 of this Title."

Section 3. This Act shall become effective immediately upon its enactment into law.

Approved February 17, 1987.