



ANALYSIS

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1976, No. 61

An Act to consolidate and amend the Opticians Act 1928 and its amendments, and to provide for the registration and control of optometrists and dispensing opticians

[1 December 1976]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Optometrists and Dispensing Opticians Act 1976.

(2) This Act shall come into force on the 1st day of April 1977.

2. Interpretation—(1) In this Act, unless the context otherwise requires,—

“Annual practising certificate” means a certificate issued under section 40 of this Act:

“Board” means the Opticians Board constituted under section 3 of this Act:

“Certificate of temporary registration” means a certificate issued under section 28 of this Act:

“Company” means a company within the meaning of the Companies Act 1955; and includes an overseas company as defined in that Act:

“Chairman” means the Chairman of the Board appointed under section 5 of this Act:

“Convener of the Penal Cases Committee” or “convener” means the person who is for the time being the convener of the Penal Cases Committee in accordance with subsection (6) or subsection (8) of section 10 of this Act:

“Minister” means the Minister of Health:

“Optical appliance” means an appliance designed to correct, remedy, or relieve a defect of sight:

“Optician” and “registered optician” include registered optometrist and registered dispensing optician:

“Penal Cases Committee” means the committee of that name appointed under section 10 of this Act:

“Professional misconduct”, in relation to a registered optometrist or registered dispensing optician, means conduct that, in the judgment of the Board,—

(a) In the case of a registered optometrist, constitutes malpractice or negligence by the optometrist in connection with the practice of optometry, or brings or is likely to bring discredit on the optometric profession; and

(b) In the case of a registered dispensing optician, constitutes malpractice or negligence by the optician in connection with the practice of optical dispensing, or brings or is likely to bring discredit on the optical dispensing profession.

“Provisional certificate” means a certificate issued under section 27 of this Act:

“Register” means a register maintained under section 14 of this Act; and, in relation to the register of optometrists or the register of dispensing opticians, “registered” and “registration” have corresponding meanings:

“Registered dispensing optician” means a person whose name appears for the time being in the register of dispensing opticians maintained under section 14 of this Act; and “registered as a dispensing optician” has a corresponding meaning:

“Registered optometrist” means a person whose name appears for the time being in the register of optometrists maintained under section 14 of this Act; and “registered as an optometrist” has a corresponding meaning:

“Secretary” means the person for the time being holding office as secretary to the Board pursuant to section 12 of this Act.

(2) References in this Act to the practice of optometry are references to the examination of the human eye for the purpose of determining in any instance whether there is any defect of sight and, if so, what that defect is, and of correcting, remedying, or relieving any such defect that is of an anato-

mical or a physiological nature by means of an optical appliance prescribed on the basis of the determination.

(3) References in this Act to the practice of optical dispensing are references to—

(a) The interpreting and dispensing of prescriptions for appliances designed to correct, remedy, or relieve defects of sight:

(b) The taking of facial measurements for, and the fitting and selling of such appliances, including the selling of any such appliance by any person as agent or servant of a company or other incorporated body.

(4) Every reference to a registered optician in any enactment that came into force before the commencement of this Act, and every reference to a registered optometrist in any enactment, shall, unless the context otherwise requires, be read as a reference to a registered optometrist within the meaning of this Act.

(5) Every reference in any enactment to a registered dispensing optician shall, unless the context otherwise requires, be read as a reference to a registered dispensing optician within the meaning of this Act.

Cf. 1928, No. 40, s. 2; 1966, No. 34, s. 10 (1)

PART I

OPTICIANS BOARD

3. Constitution of Opticians Board—(1) There shall continue to be a Board called the Opticians Board.

(2) The Board shall consist of—

(a) Four registered optometrists to be appointed on the nomination of the New Zealand Optometrical Association Incorporated:

(b) One registered optometrist who is actively engaged in teaching optometry, to be appointed on the nomination of the Council of the University of Auckland:

(c) Two registered dispensing opticians to be appointed on the nomination of the Association of Dispensing Opticians and Optical Dispensers of New Zealand Incorporated:

(d) Two ophthalmological specialists who are registered in respect of that speciality under the Medical Practitioners Act 1968, to be appointed on the nomination of the New Zealand Medical Association:

(e) One other person, being an officer of the Public Service employed in the Department of Health.

(3) For the purposes of the first appointment of members of the Board pursuant to paragraph (c) of subsection (2) of this section the term "registered dispensing opticians" shall be deemed to include persons who appear to the Minister to be qualified to be registered as dispensing opticians under paragraph (a) or paragraph (b) of subsection (1) of section 16 of this Act.

(4) Every member of the Board in office immediately before the date of the commencement of this Act shall cease to hold that office on that date, but, if he is then eligible for membership of the Board, he may be reappointed.

(5) The members of the Board shall be appointed by the Governor-General on the advice of the Minister.

(6) A member shall hold office for a term of 3 years, but may from time to time be reappointed.

(7) A member may be removed from office at any time by the Governor-General for disability, bankruptcy, neglect of duty, or misconduct, or may at any time resign his office by writing addressed to the secretary.

(8) If a member dies, resigns, or is removed from office, the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made, and every person appointed under this subsection shall hold office for the remainder of the term for which his predecessor was appointed.

(9) Notwithstanding subsection (6) of this section, unless he sooner vacates his office under subsection (7) of this section, a member shall continue in office until his successor comes into office.

(10) The powers of the Board shall not be affected by a vacancy in its membership.

Cf. 1928, No. 40, s. 3 (1)–(4); 1938, No. 20, s. 42; 1962, No. 91, s. 2

4. Functions of Board—The functions of the Board shall be—

- (a) To advise and make recommendations to the Minister in respect of any matter relating to the education and registration of opticians:
- (b) To promote high standards of professional education and professional conduct among opticians:
- (c) To prepare and publish from time to time, if it sees fit, a code of practice and professional conduct to be observed by opticians generally, or by registered

optometrists or by registered dispensing opticians in particular:

- (d) To exercise disciplinary powers in accordance with this Act:
- (e) To consider applications for registration under this Act:
- (f) To carry out such other functions and to exercise such other powers as are conferred on it by this Act.

Cf. 1928, No. 40, s. 4A; 1966, No. 34, s. 11

5. Chairman of Board—(1) The Board shall, at its first meeting held after the commencement of this Act, and at its first meeting held after the 31st day of March in each year thereafter, appoint one of its members to be the Chairman of the Board.

(2) A member so appointed may from time to time be reappointed as Chairman of the Board.

(3) The Chairman appointed in each year shall hold office until his successor is appointed, or until he sooner ceases to be a member of the Board.

(4) If the Chairman ceases to be a member of the Board before the expiration of the period for which he has been appointed, the Board shall appoint another member to be Chairman for the balance of that period.

(5) The Chairman shall preside at all meetings of the Board at which he is present.

(6) If at any meeting of the Board the Chairman is not present, or there is no Chairman of the Board, the Deputy Chairman shall preside at the meeting; and if the Deputy Chairman also is absent or there is no Deputy Chairman, the members present shall appoint one of their number to preside at that meeting.

(7) The Deputy Chairman or the person so appointed shall have and may exercise all the functions and powers of the Chairman for the purposes of that meeting.

(8) Subject to subsection (9) of this section, between meetings of the Board the Chairman may act on behalf of the Board in respect of any matter.

(9) The Chairman shall not exercise the power conferred on him by subsection (8) of this section in respect of any matter—

- (a) If authority to act in respect of that matter has been conferred on a committee of the Board; and
- (b) Unless he considers on reasonable grounds that the particular matter is urgent.

(10) The Chairman shall report any action taken by him under subsection (8) of this Act to the Board at its next meeting.

Cf. 1928, No. 40, s. 4 (1)

6. Deputy Chairman of Board—(1) The Board, at any meeting, may appoint one of its members to be its Deputy Chairman.

(2) Unless the Deputy Chairman sooner resigns from that office, or is appointed to be the Chairman of the Board, or vacates his office as a member of the Board, he shall hold the office of Deputy Chairman of the Board for a term expiring with the 31st day of March in the year following that in which he was last appointed as Deputy Chairman of the Board, and shall be eligible for reappointment.

(3) If the Deputy Chairman is appointed to be the Chairman of the Board, or ceases to be a member of the Board, he shall thereupon vacate the office of Deputy Chairman.

(4) During a vacancy in the office of Chairman, or in the absence of the Chairman from New Zealand, or while the Chairman is incapacitated by sickness or otherwise, the Deputy Chairman shall have all the functions and powers of the Chairman.

7. Meetings of Board—(1) Meetings of the Board shall be held at such times and places as the Chairman, or the secretary at the direction of the Chairman, may from time to time appoint.

(2) Notice of the time and place of every meeting, signed by the Chairman or by the secretary or other appropriate officer of the Board, shall be sent to every member of the Board at least 3 clear days before the time appointed for that meeting.

(3) At a meeting of the Board held for the purpose of hearing a charge of professional misconduct 4 members shall constitute a quorum, and at any other meeting of the Board 6 members shall constitute a quorum.

(4) Every question before the Board shall be determined by a majority of the votes cast by the members present at the meeting.

(5) The Chairman shall have a deliberative vote, and, in the case of an equality of votes, shall also have a casting vote.

(6) Except as expressly provided in this Act, or in any regulations for the time being in force under this Act, the Board may determine its own procedure.

Cf. 1928, No. 40, s. 4

8. Deputy of official member—(1) If the person appointed to be a member of the Board under section 3 (2) (e) of this Act is unable to attend a meeting of the Board, he may authorise another officer of the Department of Health to attend the meeting in his place.

(2) While a person is attending a meeting of the Board pursuant to subsection (1) of this section, he shall be deemed for all purposes to be a member of the Board.

(3) The fact that any such person so attends any meeting shall be sufficient evidence of his authority to do so in the absence of proof to the contrary.

Cf. 1928, No. 40, s. 3 (6)

9. Remuneration and travelling allowances—(1) The Board and every committee of the Board are hereby declared to be statutory Boards within the meaning of the Fees and Travelling Allowances Act 1951.

(2) There may be paid to the members of the Board, other than the member appointed under section 3 (2) (e) of this Act, and to members of any committee of the Board, remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

Cf. 1928, No. 40, s. 3 (5); 1951, No. 79, s. 10 (1)

10. Penal Cases Committee—(1) There shall be a Committee of the Board to be known as the Penal Cases Committee.

(2) The function of the Committee shall be to investigate complaints against opticians in accordance with section 32 of this Act.

(3) In the performance of that function the Committee shall have the powers conferred by this Act on the Committee in particular, and on committees of the Board in general.

(4) The Committee shall consist of 3 members of the Board.

(5) The members of the Committee shall be appointed by the Board, and shall hold office at the pleasure of the Board.

(6) The Board shall appoint one of the members to be the convener of the Committee.

(7) If, in relation to a particular complaint, the Chairman is satisfied that it would be impracticable, inappropriate, or unduly inconvenient for a member of the Committee to serve on the Committee for the purpose of investigating that complaint, he may appoint another member of the Board to serve in the place of that member for that purpose, and while that person is so serving he shall be deemed to be a member of the Committee.

(8) If a person is appointed under subsection (7) of this section to serve on the Committee in the place of the convener, the Chairman shall appoint either that person or another member of the Committee to act as the convener of the Committee.

(9) The person appointed to act as the convener shall be deemed for the purposes of this Act to be the convener while he is so acting.

(10) The Committee may, at any stage of a case, with the approval of the Director-General of Health, take the advice of a barrister or solicitor and may instruct him to draw up proofs of evidence and otherwise prepare the case, and may be represented by him at any hearing before the Board in accordance with section 32 (4) of this Act.

(11) Subject to the provisions of this Act, the Board may from time to time make rules for regulating the procedure of the Committee, and prescribing classes of cases that need not be referred to the Committee before they are considered by the Board.

(12) Subject to the provisions of this Act, in the absence of any such rules, or so far as the rules do not extend, the Committee may determine its own procedure.

Cf. 1966, No. 34, ss. 2, 3 (8)

11. Other committees—(1) The Board may from time to time appoint committees, consisting of 2 or more persons, to inquire into and report to the Board on such matters within the scope of its functions as the Board determines, or to exercise on behalf of the Board any of its functions or powers.

(2) Subject to section 34 of this Act, the Board may from time to time delegate to a committee appointed under subsection (1) of this section any of its functions and powers, except those imposed or conferred on the Board by sections 19 and 20 of this Act and the power of delegation conferred by this subsection.

(3) Except in the case of a committee appointed for the purposes of section 34 of this Act, a committee appointed by the Board under this section may include persons who are not members of the Board.

(4) Every such committee shall be subject in all things to the control of the Board, and may at any time be discharged, altered, or reconstituted by the Board.

(5) Subject to any general or special directions given or conditions imposed by the Board, a committee to whom a function or power is delegated under this section may perform or exercise that function or power in the same manner and with the same effect as if it had been imposed or conferred directly by this Act and not by delegation.

(6) A committee purporting to act pursuant to a delegation under this section shall, in the absence of proof to the contrary, be presumed to be acting in accordance with the terms of the delegation.

(7) A delegation under this section may be revoked at any time.

(8) No delegation under this section shall prevent the exercise of any function or power by the Board.

12. Secretary to Board and other officers—(1) There shall from time to time be appointed under the State Services Act 1962 a secretary to the Board, and such other officers as may be necessary for the efficient performance of the Board's functions.

(2) An office of the Board may be held either separately or in conjunction with any other office in the Public Service.

13. Finance—(1) The secretary or any other officer of the Board, or any officer of the Department of Health authorised in that behalf by the Director-General of Health, as the case may be, shall take and receive such fees in respect of such matters under this Act as are from time to time prescribed.

(2) Until the prescribed fee has been paid, the secretary or other officer may decline to do any act, or permit any act to be done, or to receive any document, in respect of which that fee is payable.

(3) All fees and other money received under this Act shall be paid into the Consolidated Revenue Account, and all expenses incurred under or in respect of the administration

of this Act shall be paid out of money from time to time appropriated by Parliament for the purpose.

Cf. 1928, No. 40, s. 20

PART II

REGISTRATION OF OPTICIANS

14. Registers—(1) The Board shall set up and maintain—

- (a) A register of optometrists:
- (b) A register of dispensing opticians:
- (c) A register of practices of deceased opticians, as required by section 42 (4) of this Act:
- (d) A register of companies, as required by section 43 (7) of this Act.

(2) The registers shall be kept by the secretary and shall be maintained in such form, whether in bound books or otherwise, as may be prescribed, or, if no form is prescribed, as the Board may determine.

(3) The secretary shall enter in the register of optometrists or the register of dispensing opticians, as the case may require, the name of every person entitled to be registered as an optometrist or dispensing optician, together, in each case, with the postal address of the premises at which the registered optician carries on his practice, and such other particulars as may be prescribed.

(4) The Register of Opticians kept under section 5 of the Opticians Act 1928 shall be deemed to be the register of optometrists referred to in subsection (1) of this section, and every person who was registered as an optician immediately before the commencement of this Act shall be deemed to be registered as an optometrist under this Act.

(5) Notwithstanding subsection (4) of this section, the Board may direct that all or any of the entries appearing in the Register of Opticians referred to in that subsection be transcribed into the register of optometrists maintained under this Act.

(6) The registers shall be open for inspection during ordinary office hours by members of the public at the office of the Board, or at the head office of the Board if it has more than one office, on payment of such fee, if any, as may be prescribed.

(7) The secretary shall, on payment of the prescribed fee, if any, supply a copy certified by him of any entry in a register to any person requesting it.

(8) The secretary shall, on request by a person registered as an optometrist or dispensing optician under this Act, and on payment of the prescribed fee, issue to that person a certificate of his registration.

Cf. 1928, No. 40, ss. 5, 9

15. Qualifications for registration as optometrist—Except as otherwise provided in this Act, a person shall, on payment of the prescribed fee, be entitled to be registered as an optometrist under this Act if he satisfies the Board that he has received adequate training qualifying him to practise optometry, and that he holds a degree, diploma, licence, certificate, or other qualification recognised by the Board, in accordance with regulations made under this Act, as sufficient for the purposes of this section.

Cf. 1928, No. 40, s. 6; 1934, No. 4, s. 2; 1949, No. 51, s. 41; 1965, No. 103, s. 2

16. Qualifications for registration as dispensing optician—
(1) Except as otherwise provided in this Act, a person shall, on payment of the prescribed fee, be entitled to be registered as a dispensing optician under this Act if he satisfies the Board—

- (a) That he was a fellowship member of the Association of Dispensing Opticians and Optical Dispensers of New Zealand Incorporated immediately before the commencement of this Act; or
- (b) That he was regularly engaged in optical dispensing in New Zealand throughout the period of 1 year immediately preceding the commencement of this Act, either on his own account or in the employ of a company in which he held at least 55 percent of the share capital throughout that period; or
- (c) That he was regularly engaged in optical dispensing in New Zealand, throughout the period of 5 years immediately preceding the commencement of this Act, in the employ of an optician registered under the Opticians Act 1928; or
- (d) That he has received adequate training qualifying him to practise optical dispensing, and that he holds a

degree, diploma, licence, certificate, or other qualification recognised by the Board, in accordance with regulations made under this Act, as sufficient for the purposes of this section; or

(e) That he has passed such examination, or undergone such course of training and passed such examination, as may be prescribed for the purposes of this section.

(2) A person shall not be registered under paragraph (a) or paragraph (b) or paragraph (c) of subsection (1) of this section unless he applies for registration within 1 year after the commencement of this Act, or within such longer period as the Board may allow in a particular case.

17. Restrictions on registration—(1) A person shall not be registered under this Act if he is under 20 years of age.

(2) A person shall not be registered under this Act unless, in the opinion of the Board, he is of good character and reputation, and is a fit and proper person to be registered in accordance with his application.

(3) A person who for the time being is registered as an optometrist shall not be registered as a dispensing optician, and a person who for the time being is registered as a dispensing optician shall not be registered as an optometrist.

Cf. 1928, No. 40, s. 8

18. Applications for registration—(1) Except as may be provided by regulations for the time being in force under this Act, an application for registration under this Act shall be made in writing addressed to the Board.

(2) An application shall be accompanied by the prescribed fee (if any).

(3) No entry of the name of any person shall be made in a register otherwise than at the direction of the Board.

Cf. 1928, No. 40, s. 7

19. Applications to be considered by Board—(1) At its first meeting after an application has been submitted to it under section 18 of this Act, or as soon as practicable thereafter, the Board shall consider the application, and shall give such directions to the secretary in respect of it as it thinks fit, and as are authorised by or under this Act.

(2) Before giving a direction the Board may, if it thinks fit, examine on oath or otherwise the applicant, or any

person objecting to the application, or any other person, with respect to the application; and for the purposes of an examination the Chairman may administer an oath to any person.

(3) The Board may also, if it thinks fit, require a person to verify by statutory declaration any statement made by him with respect to an application before the Board.

Cf 1928, No. 40, s. 7 (1)

20. Registration, etc.—(1) If, after considering an application under section 19 of this Act, the Board is of opinion that the applicant is entitled to be registered in accordance with his application, it shall direct the secretary to register him; and the secretary shall register that person in that manner, and shall notify him accordingly.

(2) If the Board is of opinion that the applicant is not entitled to be registered in accordance with his application, it shall direct the secretary not to register him; and the secretary shall refuse to register that person.

(3) If the Board refuses to direct the registration of an applicant, it shall cause the applicant to be notified in writing of its refusal and the reasons for it.

21. Additional qualifications—(1) If a registered optometrist or registered dispensing optician obtains any degree, diploma, licence, certificate, or other qualification approved by the Board for the purposes of this section in relation to optometry or optical dispensing, as the case may require, other than the qualification by virtue of which he is registered, he may apply to the Board to amend the register so far as it relates to his qualifications.

(2) If the Board is satisfied that the applicant is entitled to the degree, diploma, licence, certificate, or other qualification in respect of which the application is made, it shall direct the secretary to amend the appropriate register accordingly; and the secretary shall, on payment of the prescribed fee (if any), enter in that register particulars of the degree, diploma, licence, certificate, or other qualification.

(3) The Board may, for the purpose of approving any degree, diploma, licence, certificate, or other qualification under this section, require the course of instruction or programme of work, or examination relating to the course or programme, to be such as may be approved or prescribed by the Board.

(4) The Board may at any time revoke an approval given for the purposes of this section.

(5) The provisions of this section, with the necessary modifications, shall apply in a case where the optician holds, at the time of his application for registration, any degree, diploma, licence, certificate, or other qualification in addition to that by virtue of which he is entitled to be registered.

22. Opticians to notify change of address—(1) If a registered optician changes his address from that recorded in a register he shall, within 3 months thereafter, notify the secretary of his new address; and the secretary shall amend the entry in the register relating to that optician.

(2) Every registered optician who fails to comply with subsection (1) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$10.

Cf. 1934, No. 4, s. 3

23. Name may be removed from register if registered optician cannot be found—(1) The secretary may at any time, and shall if the Board so directs, send to a registered optician, by registered letter addressed to him at his address as recorded in a register, an inquiry as to whether or not he desires to have his name retained in the register.

(2) If no reply is received within 3 months after the date of the posting of the letter, or if the letter is not delivered and is returned to the secretary, the secretary shall, if the Board so directs, remove from the appropriate register the name of the optician to whom the letter was sent.

(3) If the Board has reason to believe that a registered optician has died, it may direct the secretary to remove the name of that person from the appropriate register; and the secretary shall remove that name accordingly.

(4) A person whose name has been removed from a register under this section may apply to the secretary to have his name restored to that register, and, on proof to the satisfaction of the Board that his name has been so removed, the Board shall direct the secretary to restore that person's name to that register; and the secretary shall restore that name accordingly.

Cf. 1934, No. 4, s. 4

24. Amendment of register if person wrongfully registered or if particulars incorrect—(1) If a person has been registered

under this Act by reason of a false or fraudulent representation or declaration, made either orally or in writing, or if a person not entitled to be registered has been registered, the Board shall direct the secretary to remove the name of that person from the appropriate register; and the secretary shall remove that name accordingly.

(2) If any particulars appearing in a register in respect of the qualifications of a person are proved to the satisfaction of the Board to be, or are to the knowledge of the Board, false or erroneous in any respect, the Board shall direct the secretary to remove those particulars from the register, or otherwise amend that register; and the secretary shall remove those particulars or amend that register accordingly.

(3) Subsection (2) of this section shall apply notwithstanding that at the time when the entry in the register was made the person actually possessed the qualifications recorded in the register, or that at that time the entry was otherwise correct.

Cf. 1928, No. 40, s. 11

25. Removal of name from register after removal from overseas register—(1) If the Board is satisfied that the name of a registered optician has, since the date of his registration, been removed from any register of opticians in the country in which his foreign degree, diploma, licence, certificate, or qualification was granted, it may, by writing under the hand of the Chairman, after giving the optician a reasonable opportunity to be heard, direct the secretary to remove the optician's name from the appropriate register; and the secretary shall remove that name accordingly.

(2) Notice of its intention to direct any name to be removed from the register under this section shall be given by the Board to the optician concerned, either personally, or, if his address is unknown, by advertisement in such manner as the Board thinks sufficient; and his name shall not be removed from the register before the expiration of 1 month after the date of the notice or before the expiration of such further period as may be necessary to give that person a reasonable opportunity to be heard.

26. Amendment of register on change of name, and removal of name on request—(1) Where it appears to the satisfaction of the Board that a registered optician has changed his name, or that the name of a registered optician is incorrectly stated

in a register, the Board shall direct the secretary to amend the register; and the secretary shall, on payment of the prescribed fee (if any), correct any entry in that register relating to that optician accordingly.

(2) Notwithstanding subsection (1) of this section, no fee shall be payable where the correction of the register is necessary by reason of a mistake made by the Board or the secretary or any other officer of the Board or of the Department of Health.

(3) The Board may at any time, if it thinks fit, on the application of a registered optician, direct the secretary to remove the name of that optician from the register in which it appears; and the secretary shall remove that name accordingly.

27. Provisional certificates—(1) Notwithstanding anything to the contrary in this Act, where it appears to the secretary that an applicant for registration is qualified for registration, the secretary may grant to that person a provisional certificate which shall entitle him, while the certificate is in force pending consideration of his application by the Board, to practise such calling as he would have been entitled to practise if he had been registered in accordance with his application.

(2) A provisional certificate shall, unless it has been cancelled or has lapsed, remain in force for the period, not exceeding 3 months, stated in it, but it may from time to time be renewed for a further period not exceeding 3 months.

(3) The holder of a provisional certificate shall, while the certificate is in force, be deemed for all purposes to be registered in respect of the calling specified in the certificate.

(4) The secretary shall cancel a provisional certificate at any time on the direction of the Board, and may, without any such direction, refuse to renew any such certificate.

28. Temporary registration of visitors to New Zealand—

(1) Notwithstanding anything in this Act, if the Board is satisfied—

(a) That a person is or will be temporarily visiting New Zealand and intends to practise optometry or optical dispensing at any institution or place in New Zealand, whether for the purpose of demonstrating clinical procedures, or as the holder of a fellowship, or under a foreign aid programme, or in any other circumstances approved for the purpose by the Board; and

(b) That, whether or not the person is entitled to be registered under this Act, he has sufficient knowledge and experience to practise optometry or optical dispensing (as the case may require) efficiently in that institution or place, subject to such restrictions (if any) as the Board may specify,—
the Board may issue to him a certificate of temporary registration entitling him to practise optometry or optical dispensing, as the case may require, in such institution or place, subject to such restrictions (if any), and for such period, as may be specified in the certificate.

(2) The secretary shall enter the names and particulars of persons to whom certificates of temporary registration are issued under this section in a separate subdivision of the appropriate register.

(3) The provisions of sections 17 to 19 of this Act shall apply to every application for temporary registration under this section.

(4) No fee shall be payable in respect of an application for temporary registration under this section, or in respect of the issue of a certificate of temporary registration.

(5) The Board may from time to time, in its discretion, extend the period specified in a certificate of temporary registration if it is satisfied that the circumstances in which it was issued still exist; and the secretary shall, at his discretion, either endorse the extension on the certificate, or issue a new certificate in respect of the extension.

(6) During the period specified in his certificate of temporary registration, and any extension of the period, the holder shall, unless the certificate has been cancelled under this section, be deemed for the purposes of this Act to be registered as an optometrist or as a dispensing optician, as the case may require.

(7) The secretary shall cancel a certificate of temporary registration at any time on the direction of the Board.

(8) Every person who, being the holder of a certificate of temporary registration, practises optometry or optical dispensing otherwise than in the institution or place and subject to the restrictions specified in the certificate commits an offence and is liable on summary conviction to a fine not exceeding \$200, and to a further fine not exceeding \$20 for each day during which the offence continues.

Cf. 1928, No. 40, s. 11A; 1966, No. 34, s. 12

29. Suspension from practice for disability—(1) If it appears to the Board that a registered optician is, by reason of mental or physical disability, unable to practise his calling satisfactorily, and that, because he may attempt to practise it, it is necessary in the public interest to prevent him from doing so, the Board may, by notice in writing signed by the Chairman or secretary and served on the optician, require the optician, at the expense of the Board, to submit himself for examination by the medical practitioner named in the notice within such reasonable time, being not less than 7 days, as may be specified in the notice.

(2) Where a medical practitioner makes an examination of an optician for the purposes of subsection (1) of this section, he shall, as soon as practicable, submit a written report to the secretary as to the mental and physical condition of the optician so far as it affects the capacity of the optician to practise his calling satisfactorily.

(3) Where a notice in writing has been served on an optician under subsection (1) of this section, the Board may,—

- (a) After the expiration of the time specified in the notice, or on the earlier receipt by the secretary of a written report in respect of the optician from the medical practitioner named in the notice; and
- (b) After considering the report (if any) and all relevant circumstances; and
- (c) After giving the optician a reasonable opportunity to be heard,—

by writing under the hand of the Chairman, suspend the optician from practice, if it is satisfied that he is, by reason of mental or physical disability, unable to practise his calling satisfactorily, and that, because he may attempt to practise it, it is necessary in the public interest to prevent him from doing so.

(4) A suspension shall take effect when written notice of it is served on the optician, but may at any time be revoked by the Board.

(5) While a person is suspended from practice under this section, he shall be deemed for the purposes of the provisions of this Act, other than Part III, not to be registered under this Act.

(6) Notwithstanding subsections (1) to (5) of this section, if the Board is satisfied that a registered optician is, by reason of mental or physical disability, unable to practise his calling

satisfactorily except under special conditions, the Board may, instead of suspending him under subsection (3) of this section, or revoking a suspension under subsection (4) of this section, by writing under the hand of the Chairman, suspend or continue the suspension of that optician from practice, except practice in such hospital or other institution or with such organisation as may from time to time be specified by the Board, and in accordance with such conditions, if any, as the Board may from time to time see fit to impose.

(7) Subsection (4) of this section shall apply to a suspension limited in terms of subsection (6) of this section in the same manner and to the same extent as it applies to any other suspension under this section, and subsection (5) of this section shall apply in respect of a suspension so limited except in relation to practice in the hospital or other institution or with the organisation for the time being specified for the purpose of the said subsection (6) and in accordance with every condition imposed under that subsection.

30. Offences as to registration—Every person commits an offence and is liable on summary conviction to imprisonment for a term not exceeding 12 months or to a fine not exceeding \$1000 or to both who, for the purpose of obtaining registration under this Act (either for himself or for any other person),—

- (a) Either orally or in writing, makes a declaration or representation that to his knowledge is false or misleading in a material particular; or
- (b) Produces to the Board or makes use of a document knowing it to contain any such declaration or representation; or
- (c) Produces to the Board or makes use of a document knowing that it is not genuine.

Cf. 1928, No. 40, s. 10

PART III

DISCIPLINARY PROVISIONS

31. Complaints against registered opticians—(1) Except as otherwise provided by rules made under section 10 (11) of this Act, a person who wishes to complain to the Board about the conduct of a registered optician shall make his complaint to the secretary.

(2) Every complaint shall be in writing.

(3) When the secretary has received a complaint under this section he shall notify the convener of the Penal Cases Committee of the complaint; and the convener may require that the complaint be supported by such statutory declarations as he may specify.

(4) After considering the matter, the convener may decide either that it need not be proceeded with, or that it should be investigated in accordance with section 32 of this Act.

(5) Without limiting subsection (1) of this section, a complaint may be made under this section by a person in the service of the Crown acting in his official capacity.

Cf. 1966, No. 34, s. 3 (1)-(3)

32. Penal Cases Committee to investigate complaint—

(1) Except where the convener decides that a complaint need not be proceeded with, he shall, upon being notified of the complaint in accordance with section 31 of this Act, and having received any statutory declarations that he may require, cause the Penal Cases Committee to investigate the complaint and determine whether any further action shall be taken in respect of it.

(2) Before the Penal Cases Committee decides whether or not further action shall be taken in respect of the complaint—

(a) The convener shall post or deliver to the optician concerned a notice specifying the substance of the complaint with sufficient particularity to enable the optician to understand the nature of the complaint made against him, and inviting him within such period, being not less than 14 days, as may be specified in the notice to give the convener any written explanation he may wish to offer, and to advise the convener if he wishes to be heard by the Committee:

(b) The Penal Cases Committee shall allow the time specified in the notice to elapse, and shall give the optician reasonable opportunity to be heard, either personally or by counsel or otherwise, and shall give due consideration to any explanation made.

(3) Where at the conclusion of an investigation the majority of the members of the Penal Cases Committee considers that further inquiry should be made by the Board in relation to the subject-matter of the complaint, the Committee shall frame an appropriate charge and refer it to the Chairman of the

Board, who shall convene a meeting of the Board to hear the charge.

(4) A charge shall be prosecuted at the hearing by the Penal Cases Committee, and the Committee and the optician may for that purpose be represented by counsel or otherwise.

(5) No member of the Penal Cases Committee shall act as a member of the Board, or of any other committee of the Board, at the hearing of, or deliberation and adjudication on, a charge arising out of a complaint that has been referred to the Penal Cases Committee under this section.

(6) Notwithstanding anything in subsections (1) to (5) of this section, if a member of the Penal Cases Committee has reason to believe that a registered optician may have been guilty of professional misconduct, or that a matter may have arisen for the consideration of the Board pursuant to paragraph (a) or paragraph (b) of subsection (1) of section 33 of this Act, the Committee may investigate the matter of its own motion, notwithstanding that no complaint under section 31 of this Act has been made, and subsections (2) to (5) of this section shall apply in any such case with any necessary modifications.

Cf. 1966, No. 34, ss. 3 (4)–(7), 5

33. Disciplinary powers of Board—(1) If a registered optician—

(a) Is convicted by a Court in New Zealand of an offence for which the maximum punishment is not less than 3 months' imprisonment; or

(b) Is a bankrupt who has not obtained his order of discharge, or whose order of discharge is suspended for a term not yet expired, or is subject to conditions not yet fulfilled; or

(c) After due inquiry is found by the Board to have been guilty of professional misconduct,—

the Board may, if it thinks fit, impose on the optician any one of the penalties authorised by this section.

(2) Subject to subsections (4) and (5) of this section, where the Board is entitled under subsection (1) of this section to impose a penalty on an optician, it may, by writing under the hand of the Chairman,—

(a) Order that the name of the optician be removed from the appropriate register:

(b) Order that the optician be suspended from practice for a period not exceeding 12 months:

- (c) Impose a fine on the optician not exceeding \$500;
- (d) Order that the optician be censured.

(3) Notwithstanding subsection (1) of this section, if the Board suspends or censures an optician it may also impose a fine upon him under subsection (2) (c) of this section.

(4) The Board shall not impose a fine upon an optician, nor order that he be censured, on the ground of an offence committed before the date of his registration.

(5) The Board shall not exercise any of its disciplinary powers against an optician on the ground of an offence committed before the date of his registration if, at that date, the Board knew of his conviction for that offence.

(6) The Board shall not impose a fine on an optician under subsection (2) (c) of this section where the Board's inquiry relates to an act or omission that constitutes an offence of which the optician has been convicted by a Court in New Zealand, if the offence is punishable by imprisonment or a fine.

(7) The Board may, by writing under the hand of the Chairman, instead of or in addition to imposing a penalty on an optician under subsection (2) of this section, order the optician to pay the whole or any part of the costs and expenses of and incidental to the inquiry by the Board and any investigation made by the Penal Cases Committee.

(8) Each fine imposed, and all costs and expenses payable, under this section shall be recoverable as a debt due to the Crown.

(9) While an order of suspension from practice under this section remains in force, the person shall be deemed for the purposes of the provisions of this Act, other than this Part, not to be registered; but on the expiry of the order his rights and privileges as a registered optician shall be revived as from the date of the expiry.

(10) Subject to subsections (11) and (12) of this section, a person whose name has been removed from a register under this section, or from the corresponding register under the corresponding provisions of any previous enactment, may apply to the Board for the restoration of his name to the register; and the provisions of sections 17 to 20 of this Act, so far as they are applicable and with the necessary modifications, shall apply in respect of the application.

(11) In an order under this section directing the name of a person to be removed from a register, the Board and, in the event of an appeal against any such order, the Supreme

Court, may fix a time after which the person whose name is so removed may apply to have his name restored to the register.

(12) If neither the Board nor the Supreme Court fixes a time, the Board may refuse to consider any such application for such time as it thinks just.

(13) No order that the name of a person be removed from a register, and no order of suspension or censure, shall take effect, and no fine or costs or expenses shall be payable, in any case until the expiry of a period of 28 days after the notification by the Board to the person affected of the making of the order.

(14) If, within the period of 28 days referred to in subsection (13) of this section, the person gives due notice of appeal, the order shall not take effect, and no fine or costs or expenses shall be payable, unless and until the order is confirmed by the Supreme Court, or the appeal is withdrawn or for any reason dismissed by that Court.

Cf. 1966, No. 34, ss. 4, 9

34. Procedure—(1) Before the Board acts under section 33 of this Act, it shall cause to be served on the registered optician concerned a notice containing a copy of the charge framed by the Penal Cases Committee, or, if there is no such charge, a notice stating that the Board has reason to believe that a ground exists entitling the Board to exercise its powers under that section, and specifying the ground with sufficient particularity to enable the optician to understand the nature of the allegation against him.

(2) A notice shall specify the time, date, and place for the hearing of the matter by the Board.

(3) A notice under subsection (1) of this section may require the optician to notify the Board in writing, not later than some specified date before the date proposed for the hearing of the matter, as to whether or not he intends to appear before the Board at the hearing.

(4) If the optician fails to notify his intention as required by the notice, or notifies the Board that he does not intend to appear, he shall not be entitled to appear and be heard except by leave of the Board granted on such conditions as to the payment of costs or otherwise as the Board thinks fit.

(5) Where the optician has notified the Board that he intends to appear, the Board may, with the consent of the optician, constitute a committee of the Board to hear and determine the matter.

(6) The determination of a committee appointed under subsection (5) of this section shall be of no effect until it has been confirmed by the Board, which shall have power—

- (a) To determine that no penalty be imposed; or
- (b) To reduce the penalty determined by the committee by suspending the optician from practice for a period or imposing a fine, instead of removing his name from a register; or
- (c) To reduce the period of suspension from practice or the fine determined by the committee; or
- (d) To substitute a fine for a period of suspension; or
- (e) To substitute a censure for any of the other penalties; or
- (f) To rescind or modify an order to pay costs and expenses.

(7) The succeeding provisions of this section and sections 35 to 39 of this Act shall apply in respect of any proceedings before a committee under subsection (5) of this section as if they were proceedings before the Board, and for that purpose the committee and the Chairman of the committee shall have the powers and discretions respectively conferred on the Board and the Chairman of the Board by sections 36, 38, and 39 of this Act.

(8) If any university or institution, having granted to any person a degree, diploma, licence, certificate, or other qualification registrable under this Act, exercises any power conferred by law of removing the name of that person from the rolls or register in which the degree, diploma, licence, certificate, or qualification is recorded and notifies the Board of the fact of the removal,—

- (a) The secretary shall make a note of the fact in the appropriate register:
- (b) If the university or institution notifies the Board of the findings of fact on which the decision to remove the name was based, the findings may (if the Board thinks fit) be treated, for the purposes of an inquiry under section 33 of this Act, as a rebuttable presumption of the facts found.

(9) In all proceedings under this Part of this Act the Board shall observe the rules of natural justice.

(10) The Board may receive evidence whether or not it would be admissible in a Court of law.

(11) The decision of a majority of the members of the Board present at any proceedings held under this Part of this Act shall be the decision of the Board.

(12) Unless the Board otherwise directs, proceedings held under this Part of this Act shall not be open to the public.

(13) Every order, decision, or determination of the Board under this Part of this Act shall be committed to writing, shall contain a statement of the reasons on which it is based, and shall be signed by the Chairman of the Board.

(14) A copy of every order, decision, or determination of the Board under this Part of this Act shall be served by the secretary on the optician in respect of whom it was made.

35. Appointment of legal assessor—(1) For the purposes of advising the Board on questions of law and procedure arising in proceedings under this Part of this Act, the Board may, with the approval of the Director-General of Health, appoint an assessor, who shall be a barrister or solicitor, to attend the proceedings.

(2) The Board shall pay to the assessor, by way of remuneration and expenses for his services in respect of the proceedings, such sum as may be agreed upon between the assessor and the Board with the approval of the Director-General.

(3) Subject to any order made by the Board, all such remuneration and expenses shall be paid out of money appropriated by Parliament for the purpose.

36. Board and Penal Cases Committee may require witnesses to attend and give evidence—(1) The Board and the Penal Cases Committee, by notice in writing under the hand of the Chairman of the Board or, as the case may require, the convener of the Penal Cases Committee, may require a person to attend and give evidence before it at an inquiry or investigation under this Act, and to produce all books, documents, papers, equipment, or things that are in that person's custody or under his control and that relate to the subject-matter of the inquiry or investigation.

(2) The Board or the Penal Cases Committee may require evidence to be given on oath, and either orally or in writing, and for that purpose the Chairman of the Board or the convener of the Penal Cases Committee, as the case may require, may administer an oath to any person.

(3) In addition to the powers conferred on it by subsections (1) and (2) of this section, the Penal Cases Committee may appoint a person to make whatever preliminary inquiries it considers necessary.

(4) Every person who, without lawful justification, refuses or fails to give evidence when required to do so by the Board or the Penal Cases Committee, or to answer truly and fully any question put to him by the Board or Committee, or to produce to the Board or Committee any book, document, paper, equipment, or thing required of him, commits an offence and is liable on summary conviction to a fine not exceeding \$100.

Cf. 1966, No. 34, s. 6

37. Immunity of witnesses and counsel—Witnesses and counsel shall have the same privileges and immunities in relation to inquiries and investigations before the Board and the Penal Cases Committee as if the inquiries and investigations were proceedings in a Court of law.

Cf. 1966, No. 34, s. 7

38. Witnesses' expenses—(1) A witness giving evidence or intending to give evidence at the hearing of an inquiry or investigation under this Part of this Act shall be entitled in the discretion of the Board or the Penal Cases Committee, as the case may require, to such sum for his expenses and loss of time as the Board or Committee may determine.

(2) Subject to an order made by the Board or Committee as to the payment of costs or expenses, all such witnesses' expenses shall be paid out of money appropriated by Parliament for the purpose.

Cf. 1966, No. 34, s. 8

39. Power to adjourn and postpone hearings—Subject to this Act, the Board may from time to time adjourn the hearing of any proceedings pending before it under this Part of this Act, and may postpone any finding or judgment until a further meeting of the Board.

PART IV

THE PRACTICE OF OPTOMETRY AND OPTICAL DISPENSING

40. Annual practising certificates for registered persons—(1) In this section the term "year" means the period of 12 months commencing with the 1st day of April in any year and ending with the 31st day of March in the next succeeding year.

(2) No registered optician shall in any year practise his calling unless he is the holder of an annual practising certificate issued in respect of that year.

(3) Every registered optician who practises his calling in contravention of subsection (2) of this section commits an offence and is liable on summary conviction to a fine not exceeding \$200, and to a further fine not exceeding \$20 for every day during which the offence continues.

(4) The Board, on application made to it by a registered optician, and on payment of the prescribed fee, shall issue to him an annual practising certificate.

(5) A practising certificate shall be in force until the expiry of the year in respect of which it is issued, or until the holder sooner ceases to be registered under this Act.

(6) Every person who is entitled to receive an annual practising certificate under this section shall be deemed to have obtained the certificate when he has duly applied to the Board for it and has paid the prescribed fee.

(7) Nothing in this section shall apply with respect to—

(a) A person holding a provisional certificate for the time being in force under section 27 of this Act:

(b) A person holding a certificate of temporary registration for the time being in force under section 28 of this Act.

(8) An applicant for an annual practising certificate may be required, in any form prescribed for the purpose, to supply such personal particulars relating to the applicant, and such information as to his present employment and as to his intention to continue in practice, as may be specified in the form; and if any such form is not fully and properly completed the Board may refuse to issue a certificate to the applicant.

(9) Any regulations prescribing a fee for the purposes of this section may prescribe an additional fee payable by persons who have not applied for annual practising certificates in respect of either of the 2 years immediately preceding the year in respect of which the application is made, and who would have been required to obtain a certificate in respect of either of those preceding years, if, being registered, they had then been practising their profession.

Cf. 1932–33, No. 45, s. 15 (2)–(6)

41. Practice of optometry or optical dispensing by un-registered persons prohibited—Subject to sections 42, 43, and 45 of this Act, every person who—

- (a) Not being a registered optometrist,—
- (i) Practises optometry or holds himself out, whether directly or by implication, as practising or being entitled to practise optometry; or
 - (ii) Uses or causes to be used in connection with his business, trade, calling, or profession, any written words, titles, or initials, or any abbreviations of any words, titles, or initials, either alone or in combination with any other words, titles, initials, or abbreviations, intended to cause, or that may reasonably cause, people to believe that he is a registered optometrist or is otherwise qualified or authorised to practise optometry; or
- (b) Not being a registered optician,—
- (i) Practises optical dispensing or holds himself out, whether directly or by implication, as practising or being entitled to practise optical dispensing; or
 - (ii) Sells any optical appliance; or
 - (iii) Uses or causes to be used in connection with his business, trade, calling, or profession, any written words, titles, or initials, or any abbreviations of any words, titles, or initials, either alone or in combination with any other words, titles, initials, or abbreviations, intended to cause, or that may reasonably cause, people to believe that he is a registered dispensing optician or is otherwise qualified or authorised to practise optical dispensing; or
- (c) Being a registered optometrist, represents himself, whether orally or in writing, to be a registered dispensing optician—

commits an offence and is liable on summary conviction to a fine not exceeding \$500, and to a further fine not exceeding \$50 for every day during which the offence continues.

Cf. 1928, No. 40, ss. 16, 17; 1942, No. 18, s. 31

42. Continuation of practice of deceased optician—(1) For the purposes of this section, the term “registered optician” includes an unregistered person who has died or dies before the 1st day of April 1978, and who, in the opinion of the Board, would have been entitled, at the date of his death, to be registered as a dispensing optician if this Act had then been in force and he had duly applied to be registered as a dispensing optician under it.

(2) If a registered optician has died before the date of the

commencement of this Act or dies after that date and, at the date of his death, he was practising optometry or optical dispensing, his personal representative may (with a view to the disposal of the goodwill of the practice) continue the practice under the management of a registered optometrist or registered dispensing optician, as the case may require, for not more than 5 years calculated, in the case of a registered optician who has died before the date of the commencement of this Act, from that date, and, in the case of a registered optician who dies after that date, from the date of his death; and if it is shown to the satisfaction of the Board that it is or may be impracticable satisfactorily to dispose of the practice within that period, it may authorise the personal representative to continue the practice under this section for such further period or periods, not exceeding 2 years in the aggregate, as the Board thinks fit.

(3) The personal representative shall keep the secretary informed of the name of the registered optician who is from time to time managing the practice.

(4) The secretary shall, under the direction of the Board, maintain a register of the practices of deceased opticians in which shall be recorded the names of the managers of those practices.

43. Restrictions on companies carrying on business as opticians—(1) For the purposes of this Act,—

(a) A company carries on business as an optometrist if it employs a person, or causes or permits a person employed by it, whether that person is registered under this Act or not, to practise optometry in the course of the business of the company:

(b) A company carries on business as a dispensing optician if, while not carrying on business as an optometrist, it employs a person, or causes or permits a person employed by it, whether that person is registered under this Act or not, to practise optical dispensing in the course of the business of the company.

(2) If a company carries on business as an optometrist or dispensing optician otherwise than as authorised by this section, or holds itself out, whether directly or by implication, as carrying on such business or as being entitled to carry on such business while not so authorised, the company and every director of the company and every person concerned in the

management of the company commits an offence and is liable on summary conviction to a fine not exceeding \$500, and to a further fine not exceeding \$50 for every day during which the offence continues after the conviction for any such offence of the company or of a director or other person concerned in the management of the company.

(3) Subject to subsection (4) of this section, a company may carry on business—

(a) As an optometrist, if it satisfies the Board that it was lawfully carrying on business as an optometrist in New Zealand throughout the period of 1 year ending with the 7th day of October 1966 (being the date of the passing of the Opticians Amendment Act 1966); or

(b) As a dispensing optician, if it satisfies the Board that it was lawfully carrying on business as a dispensing optician in New Zealand throughout the period of 1 year immediately preceding the passing of this Act—

and if in either case at least 55 percent of its share capital is owned by approved persons.

(4) The authority conferred by subsection (3) of this section shall cease—

(a) If the company, being a company carrying on business as an optometrist, employs a person other than a medical practitioner or a registered optometrist, or causes or permits any such person employed by it, to practise optometry in the course of the business of the company; or

(b) If the company, being a company carrying on business as a dispensing optician, employs a person other than a registered dispensing optician, or causes or permits any such person employed by it, to practise optical dispensing in the course of the business of the company otherwise than under the supervision of a registered optician; or

(c) On the expiration of the appropriate period of 20 years; or

(d) On the expiration, within the appropriate period of 20 years, of the period of 2 years from the death or bankruptcy of an approved person, if, by reason of that death or bankruptcy, less than 55 percent of the share capital of the company is then owned by approved persons; or

(e) In any case other than a case described in paragraph (d) of this subsection, at any time, within the appropriate period of 20 years, when less than 55 percent of the share capital of the company is owned by approved persons.

(5) For the purposes of this section,—

“Appropriate period of 20 years”, in relation to a company carrying on business as an optometrist, means the period of 20 years commencing with the date on which all the approved persons who were members of the company on the 7th day of October 1966 shall have ceased to be members of the company:

“Appropriate period of 20 years”, in relation to a company carrying on business as a dispensing optician, means the period of 20 years commencing with the date on which all the approved persons who are members of the company on the date of the commencement of this Act shall have ceased to be members of the company:

“Approved person”, in relation to a company carrying on business as an optometrist, means—

(a) A registered optometrist:

(b) A person who, on the 7th day of October 1966, was the spouse of a registered optometrist who was then a member of that company:

(c) A person who, on that date, was the widow or widower of a registered optometrist who had been a member of that company:

(d) A dependant of a deceased registered optometrist who was a member of that company before that date, to the extent that the dependant has acquired his interest in the company from the estate of that registered optometrist:

(e) A person (not being a body corporate) who, before that date, was an original subscriber to the memorandum of association of the company and continued to be a member of the company until that date:

(f) A dependant of a person described in paragraph (e) of this definition, to the extent that the dependant has acquired his interest in the company after the death and from the estate of that person:

“Approved person”, in relation to a company carrying on business as a dispensing optician, means—

(a) A registered dispensing optician:

(b) A person who, on the date of the commencement of this Act, is the spouse of a dispensing optician who is a member of the company:

(c) A person who, on that date, is the widow or widower of a dispensing optician who was a member of the company:

(d) A dependant of a deceased dispensing optician who was a member of the company before that date, to the extent that the dependant has acquired his interest in the company from the estate of that dispensing optician:

(e) A person (not being a body corporate) who, before that date, was an original subscriber to the memorandum of association of the company and continued to be a member of the company until that date:

(f) A dependant of a person described in paragraph (e) of this definition, to the extent that the dependant has acquired his interest in the company after the death and from the estate of that person:

“Dependant” means a person who would be entitled under the Family Protection Act 1955 to make a claim for provision out of the estate from which he has acquired his interest in the company:

“Dispensing optician” includes a person who, on the commencement of this Act, or at the date of his death (whether before or after the commencement of this Act) before the 1st day of April 1978, is or was practising optical dispensing:

“Registered optometrist” includes a person who, on the 7th day of October 1966, or at the date of his death before the commencement of this Act, was registered as an optician under the Opticians Act 1928.

(6) Notwithstanding anything to the contrary in this Act, a company lawfully carrying on business as a dispensing optician immediately before the date of the commencement of this Act may continue to carry on such business for a period of 4 years commencing with that date.

(7) The secretary shall, under the direction of the Board, keep a register of companies that are entitled to carry on business as optometrists, or, on the expiration of the period of 4 years mentioned in subsection (6) of this section, as

dispensing opticians, or that furnish information to the Board pursuant to regulations made under this Act.

(8) There shall be recorded in that register of companies such particulars as the Board may from time to time specify.

Cf. 1928, No. 40, s. 17A; 1966, No. 34, s. 14

44. Offences relating to practice of medicine—(1) Every person, whether registered under this Act or not, commits an offence and is liable on summary conviction to a fine not exceeding \$200, and to a further fine not exceeding \$20 for every day during which the offence continues, who, not being a medical practitioner, assumes the title of ophthalmologist or oculist or eye specialist, or uses or causes to be used in connection with his business, trade, calling, or profession any written words, titles, or initials, or any abbreviation of any words, titles, or initials that are intended to cause, or that may reasonably cause, people to believe that he is qualified to practise medical or surgical treatment of the eye.

(2) Every person, whether registered under this Act or not, commits an offence and is liable on summary conviction to a fine not exceeding \$200 who, not being a medical practitioner or acting under the instruction of a medical practitioner, administers a drug for the purpose of paralysing the accommodation of the eye or otherwise for facilitating the measurement of the powers of vision, or treats any disease of the eye by the use of drugs.

Cf. 1928, No. 40, ss. 18, 19

45. Exemptions—Nothing in this Act shall prohibit—

- (a) A medical practitioner from practising any branch of medicine or surgery or using any written words, titles, initials, or abbreviations for the purposes of his practice;
- (b) A person from practising optometry or optical dispensing as part of a course of education or training for students seeking to qualify as registered optometrists, registered dispensing opticians, or medical practitioners;
- (c) A person from practising optical dispensing under the supervision of a registered optician;
- (d) A person who is practising optical dispensing immediately before the passing of this Act from continuing, for a period of 1 year commencing with the date of

the commencement of this Act, to practise his calling, or to use, for the purposes of his practice, any words, titles, initials, or abbreviations that he would be entitled to use if he were a registered dispensing optician:

- (e) A wholesale dealer from supplying, in the ordinary course of wholesale business, optical appliances for resale, or from supplying frames, ophthalmic lenses, or optical appliances to a medical practitioner or registered optician:
- (f) A person from selling, from a permanent place of business, optical appliances kept in stock in a state ready for use:
- (g) A person from engaging in the craft of lens grinding, or the manufacture of optical appliances.

Cf. 1928, No. 40, s. 22

PART V

APPEALS TO ADMINISTRATIVE DIVISION OF SUPREME COURT

46. Matters on which appeals lie—(1) A person who is dissatisfied with a decision or order of the Board—

- (a) Refusing an application by him for registration; or
- (b) Refusing to restore his name to a register under Part II of this Act; or
- (c) Directing his name to be removed from a register or directing his registration to be suspended; or
- (d) Imposing a fine on him; or
- (e) Censuring him; or
- (f) Requiring him to pay any costs or expenses of and incidental to any inquiry; or
- (g) Amending or refusing to amend the particulars of his registration; or
- (h) Refusing to revoke his suspension under section 29 (4) of this Act; or
- (i) Refusing to consider an application for the restoration of his name to a register under section 33 of this Act—

may, within 28 days after notice of the decision or order has been communicated to him by the secretary, appeal to the Supreme Court against the whole or any part of the decision or order.

(2) Every appeal shall be heard and determined by the Administrative Division of the Supreme Court.

Cf. 1928, No. 40, s. 12; 1966, No. 34, s. 13

47. Decisions of Court in respect of appeals under this Part—(1) The Court may, on hearing an appeal under this Part of this Act, confirm, reverse, or modify the decision of the Board and, in the case of an appeal against a decision of the Board under section 33 or section 34 of this Act, may substitute a different penalty for the penalty imposed by the Board, or may make such other order as it thinks just.

(2) Nothing in this section shall empower the Court to review any part of the Board's decision other than the part against which the appeal has been brought.

48. Procedure on appeal—Subject to this Part of this Act, the procedure in respect of an appeal shall be in accordance with the rules of the Court.

49. Decision of committee of Board deemed to be decision of Board—For the purposes of this Part of this Act, a decision of a committee of the Board appointed to exercise on behalf of the Board any power or function conferred on the Board under Part II of this Act shall be deemed to be a decision of the Board.

PART VI

MISCELLANEOUS PROVISIONS

50. Certificate of secretary to be evidence of registration, etc.—A certificate under the hand of the secretary to the effect that any person is or is not registered, or is or is not the holder of an annual practising certificate or of a provisional certificate or of a certificate of temporary registration, at a particular time or during any period specified in the certificate, or as to any entry in a register, or as to any act or proceeding of the Board or any committee of the Board, shall for all purposes be sufficient evidence of the matters specified in it, in the absence of proof to the contrary.

Cf. 1932-33, No. 45, s. 15 (8)

51. Protection of Board, committees, and other persons—Neither the Board nor any committee of the Board, nor any member of the Board or of any such committee, shall in any

way be liable in respect of anything done or omitted to be done in the discharge of the duties of the Board or of any committee of the Board, or of any words spoken or written at or for the purposes of the hearing of any inquiry, investigation, appeal, or other proceedings under this Act, unless the thing was done or omitted to be done, or the words were written or spoken, in bad faith.

52. Director-General of Health may delegate functions and powers—Any function imposed or power conferred by this Act on the Director-General of Health may be performed or exercised by him personally, or by any other officer of the Department of Health authorised by the Director-General to perform or exercise it, either generally or in a particular case.

53. Regulations—(1) The Governor-General may from time to time, by Order in Council made on the advice of the Minister given after consultation by the Minister with the Board, make regulations for all or any of the following purposes:

- (a) Prescribing, or providing for the Board to prescribe, the form of and the method of maintaining the several registers required to be maintained under this Act:
- (b) Prescribing, or providing for the Board to prescribe, forms of application, certificates, and other documents for the purposes of this Act, and requiring the use of such forms:
- (c) Prescribing the manner in which notices may be served under this Act, and the times at which they shall be deemed to have been served:
- (d) Prescribing fees for—
 - (i) Any application under this Act:
 - (ii) Registration:
 - (iii) The restoration of a name after its removal from a register:
 - (iv) Any other alteration of or addition to a register:
- (e) Prescribing fees for—
 - (i) The issue of certificates of registration, provisional certificates, annual practising certificates, and any other certificates (other than certificates of temporary registration) under this Act:
 - (ii) The issue of copies of certificates:
 - (iii) Inspections of a register:

- (iv) Supplying to opticians any documents obtained by them from the Board for the purpose of seeking registration overseas:
- (f) Exempting or providing for the exemption of any optician or class of optician from liability to pay any such fees:
- (g) Authorising the refund or remission, in such circumstances as in accordance with the regulations the Board thinks fit, of any fees payable under this Act:
- (h) Regulating the procedure of the Board:
- (i) Prescribing the degrees, diplomas, licences, certificates, or other qualifications that may be recognised by the Board as qualifying the holders to be registered as optometrists or as dispensing opticians, as the case may require:
- (j) Prescribing examinations, or courses of training and examination, to be undertaken by any person seeking to be registered as a dispensing optician under section 16 (1) (e) of this Act:
- (k) Prescribing the subject-matter of any such examination or course of training, and the places where such course of training shall be undertaken:
- (l) Regulating the conduct of any such examination, and providing for the exemption of persons from any particular examination or any particular subject or subjects in any such examination, or from the whole or any part of any such course of training:
- (m) Prescribing the circumstances in which, and the conditions subject to which, a person may be accredited with passing any such examination or subject or subjects:
- (n) Prescribing the minimum educational qualifications that must be held by any person before he begins to undertake any such course of training:
- (o) Regulating the use by registered optometrists or registered dispensing opticians, or by any companies carrying on business as optometrists or dispensing opticians, of any means of giving publicity, whether by advertisement or otherwise, to the practice, business, or qualifications of registered optometrists or registered dispensing opticians:
- (p) Regulating or prohibiting the practice of optometry by registered optometrists, or the practice of optical dispensing by registered dispensing opticians, under

names or titles other than those under or by which they are registered:

- (q) Requiring companies that carry on business as optometrists or dispensing opticians to furnish information to the Board of such a nature, and at such times, as may be specified:
- (r) Prescribing offences in respect of the contravention or non-compliance with any regulations made under this Act, and the amount of the fines that may be imposed in respect of any such offences, which fines shall be an amount not exceeding \$100, and, where the offence is a continuing one, a further amount not exceeding \$10 for every day or part of a day during which the offence has continued:
- (s) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for its due administration.

(2) Any regulations made under subsection (1) of this section may be expressed to apply only to registered optometrists or to registration as an optometrist or to the practice of optometry, or only to registered dispensing opticians or to registration as a dispensing optician or to the practice of optical dispensing, or may contain different provisions, in relation to optometry and optical dispensing, in respect of any matter referred to in that subsection.

(3) The fact that regulations may be made under paragraph (o) or paragraph (p) of subsection (1) of this section relating to any matter mentioned in either of those paragraphs shall not prevent the Board from finding that an optician has been guilty of professional misconduct in respect of that matter unless the finding would be inconsistent with any regulation for the time being in force.

(4) Without limiting section 12 of the Acts Interpretation Act 1924, and notwithstanding anything in subsection (2) of section 1 of this Act or in subsection (1) of this section, regulations may be made under this Act, to come into force on or after the date of the commencement of this Act, at any time after the passing of this Act and before the first meeting of the Board as constituted under section 3 of this Act, without consultation by the Minister with the Board.

Cf. 1928, No. 40, s. 21; 1932-33, No. 45, s. 15 (7); 1934, No. 4, s. 5; 1941, No. 26, s. 57; 1945, No. 40, s. 61; 1966, No. 34, s. 15

54. Transitional—(1) For the purposes of applying the provisions of this Act at any time after the commencement of this Act but before the first meeting of the Board, the Director-General of Health shall be deemed to be the Chairman of the Board.

(2) Notwithstanding subsection (1) of this section, the powers of the Chairman may be exercised for the purposes mentioned in that subsection by the officer of the Department of Health who presided at the last meeting of the Opticians Board as constituted under the Opticians Act 1928, unless for any reason the Director-General sees fit to exercise those powers himself.

55. Repeals and amendment—(1) The enactments specified in the Schedule to this Act are hereby repealed.

(2) Section 3 of the Medical and Dental Auxiliaries Act 1966 (as amended by section 2 (1) of the Medical and Dental Auxiliaries Amendment Act 1972) is hereby amended by omitting the words “medical technologist and optical dispenser”, and substituting the words “and medical technologist”.

(3) Section 2 (1) of the Medical and Dental Auxiliaries Amendment Act 1972 is hereby consequentially repealed.

Section 55 (1)

SCHEDULE

ENACTMENTS REPEALED

- 1928, No. 40—The Opticians Act 1928. (Reprinted 1957, Vol. 11, p. 441.)
- 1932–33, No. 45—The Finance Act 1932–33: Section 15. (Reprinted 1957, Vol. 11, p. 452.)
- 1934, No. 4—The Opticians Amendment Act 1934. (Reprinted 1957, Vol. 11, p. 452.)
- 1938, No. 20—The Statutes Amendment Act 1938: Section 42. (Reprinted 1957, Vol. 11, p. 453.)
- 1941, No. 26—The Statutes Amendment Act 1941: Section 57. (Reprinted 1957, Vol. 11, p. 453.)
- 1942, No. 18—The Statutes Amendment Act 1942: Section 31. (Reprinted 1957, Vol. 11, pp. 453, 454.)
- 1945, No. 40—The Statutes Amendment Act 1945: Section 61. (Reprinted 1957, Vol. 11, p. 454.)
- 1949, No. 51—The Statutes Amendment Act 1949: Section 41. (Reprinted 1957, Vol. 11, p. 454.)
- 1951, No. 79—The Fees and Travelling Allowances Act 1951: So much of the First Schedule as relates to the Opticians Board, and so much of the Second Schedule as relates to the Opticians Act 1928. (1957 Reprint, Vol. 4, p. 853.)
- 1955, No. 24—The Opticians Amendment Act 1955. (Reprinted 1957, Vol. 11, p. 455.)
- 1962, No. 91—The Opticians Amendment Act 1962.
- 1965, No. 103—The Opticians Amendment Act 1965.
- 1966, No. 34—The Opticians Amendment Act 1966.

This Act is administered in the Department of Health.

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