



ANALYSIS

Title
1. Short Title

PART I

DISCIPLINARY PROVISIONS

2. Investigation Committee
3. Complaints against opticians
4. Grounds for disciplinary action
5. Inquiry by Board into complaint
6. Witnesses may be required to attend and give evidence
7. Immunity of witnesses and counsel
8. Witnesses' expenses
9. Disciplinary powers of Board

10. Consequential amendments

PART II

MISCELLANEOUS AMENDMENTS

11. Functions of the Board
12. Temporary registration of persons visiting New Zealand for teaching or experience
13. Appeals from decisions of the Board
14. Restriction on companies carrying on business as opticians
15. Regulations

1966, No. 34

An Act to amend the Opticians Act 1928

[7 October 1966]

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—This Act may be cited at the Opticians Amendment Act 1966, and shall be read together with and deemed part of the Opticians Act 1928 (hereinafter referred to as the principal Act).

PART I

DISCIPLINARY PROVISIONS

2. Investigation Committee—(1) There shall be a Committee to be called the Opticians Investigation Committee.

(2) The Committee shall consist of—

(a) The Convenor who shall be a registered optician nominated by the Minister of Health:

(b) Two registered opticians to be nominated by the Board.

(3) No member of the Board shall be appointed as a member of the Committee.

(4) The decision of any two members of the Committee shall be the decision of the Committee.

(5) The members of the Committee shall be appointed by the Governor-General, and shall hold office for a period of three years, but any member may from time to time be re-appointed, or may be at any time removed from office by the Governor-General for such cause as he thinks sufficient, or may at any time resign his office by writing addressed to the Registrar.

(6) If any member of the Committee dies or 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from office, the vacancy so created shall be filled in the manner in which the appointment to the vacant office was originally made. Every person so appointed shall be appointed for the residue of the term for which his predecessor was appointed.

(7) Notwithstanding anything to the contrary in this section, every member of the Committee, unless he sooner dies or vacates office as aforesaid, shall continue to hold office until his successor comes into office.

(8) The Committee is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

(9) There shall be paid to the members of the Committee remuneration by way of fees, salary, or allowances and travelling allowances and expenses in accordance with the Fees and Travelling Allowances Act 1951.

3. Complaints against opticians—(1) Every person who seeks to make a formal complaint that any registered optician has done anything which renders the exercise of the disciplinary powers of the Board expedient in the interests of the public or of the Board shall make the complaint to the Registrar.

(2) Every such complaint shall be in writing and shall, if the Registrar or the Investigation Committee so requires, be supported by such statutory declarations as the Registrar or the Committee may require.

(3) Where the Registrar has received any such complaint and such statutory declarations as may be required as aforesaid, he shall refer the complaint to the Investigation Committee; and the Committee, after due inquiry, shall decide whether the complaint should be referred to the Board to be dealt with as hereafter provided in this Act.

(4) For the purposes of any such investigation, the Investigation Committee may—

(a) Make or appoint any person to make whatever preliminary inquiries it deems necessary:

(b) Require the production for inspection by the Committee or any person so appointed of any books, documents, papers, equipment, or things which are in the possession or under the control of the optician to whom the investigation relates and which relate to the subject matter of the investigation:

(c) Require the said optician to give all information in relation to any such books, documents, papers, equipment, or things which may be reasonably required by the Committee or by the person so appointed.

(5) Every optician who without lawful justification refuses or fails to produce to the Investigation Committee or any person whom that Committee may specify any books, documents, papers, equipment, or things required of him as aforesaid, or give any such information, commits an offence against the principal Act and is liable to a fine not exceeding one hundred pounds.

(6) Before the Investigation Committee makes any final determination in respect of any matter which it investigates under this section—

(a) The Convenor shall post or deliver to the person concerned—

(i) Copies of the written complaint (if any) and of all statutory declarations that have been made in support of the complaint; and

(ii) A notice setting out any further particulars that may be necessary to disclose the reason for the investigation, and inviting the person concerned, within such period (not being less than fourteen days) as may be specified in the notice, to give

to the Convenor any written explanation he may wish to offer and to advise the Convenor if he wishes to be heard by the Committee:

- (b) The Investigation Committee shall allow the time specified in the notice to elapse, and shall give the person concerned reasonable opportunity to be heard if he wishes to do so, and shall give due consideration to any explanation he may make.

(7) When the Investigation Committee determines that any matter investigated by it under this section should be referred to the Board, it shall be the duty of the Convenor to take that action or arrange for it to be taken.

(8) Subject to the provisions of this Act and of any regulations made under the principal Act, the Investigation Committee may regulate its procedure as it thinks fit.

4. Grounds for disciplinary action—Upon a complaint referred to the Board as aforesaid by the Investigation Committee, or upon a complaint made to the Board by the Investigation Committee of its own motion, the Board may exercise in respect of that person all or any of the disciplinary powers conferred on it by section 9 of this Act if it is satisfied, after inquiry as hereafter provided in this Act, but not otherwise—

- (a) That he has been convicted by any Court in New Zealand of any offence against the principal Act or of any offence for which the maximum punishment is not less than three months' imprisonment; or
- (b) That he has been guilty of professional misconduct or of infamous conduct in a professional respect; or
- (c) That he 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.

5. Inquiry by Board into complaint—(1) Upon any complaint being referred or made to it as aforesaid, the Board shall hold an inquiry into the matter, and shall give to the person concerned not less than thirty days' notice in writing of its intention to hold an inquiry, and of the time and place of hearing, and of the nature of the charge to be inquired into. The notice may be served personally or by registered letter addressed to the person concerned at his last known place of business or abode.

(2) At the inquiry the person concerned shall be entitled to be present and to be heard, and may if he thinks fit be represented by counsel or otherwise.

(3) Every complaint that is referred or made to the Board by the Investigation Committee shall be prosecuted at the inquiry by such person as that Committee shall appoint.

(4) At any inquiry, any person so appointed by the Investigation Committee may be heard and may be represented by counsel or otherwise.

6. Witnesses may be required to attend and give evidence—(1) The Board, by notice in writing signed by or on behalf of the Registrar, may, on tendering proper travelling expenses, require any person to attend and give evidence before it at any such inquiry.

(2) The Board may require any such evidence to be given on oath and either orally or in writing and for that purpose the person presiding at any meeting of the Board may administer an oath.

(3) Every person commits an offence against the principal Act and shall be liable to a fine not exceeding fifty pounds, who without lawful justification refuses or fails to attend and give evidence when required to do so by the Board, or to answer truly and fully any question put to him by a member of the Board.

7. Immunity of witnesses and counsel—Witnesses and counsel shall have the same privileges and immunities in relation to matters before the Board as if they were proceedings in a Court of law.

8. Witnesses' expenses—(1) Every witness giving evidence or intending to give evidence at any inquiry before the Board shall be entitled in the discretion of the Board to such sum for his expenses and loss of time as the Board may determine.

(2) Subject to any order made by the Board or a Board of Appeal as to the payment of costs and expenses, all such witnesses' expenses shall be paid by the Crown.

9. Disciplinary powers of Board—(1) The disciplinary powers which the Board may exercise as aforesaid in respect of any registered optician, if it thinks fit, shall be as follows:

(a) Subject to subsection (2) of this section, the Board may cause the name of the person to be removed from the register:

(b) Subject to subsection (2) of this section, the Board may, by writing under the hand of the Registrar, suspend the registration of the person for a period not exceeding five years:

(c) The Board may, by writing under the hand of the Registrar, impose a penalty upon the person concerned not exceeding one hundred pounds:

Provided that no such penalty may be imposed under this paragraph in any case where the Board is proceeding under paragraph (a) of this subsection, or where the Board is inquiring into any act or omission which constitutes an offence for which the person concerned has been convicted by any Court and which is punishable by imprisonment or fine:

(d) The Board may, by writing under the hand of the Registrar, censure the person:

(e) The Board may, by writing under the hand of the Registrar, order the person to pay to the Crown such sum as the Board thinks fit in respect of costs and expenses of and incidental to the inquiry by the Board and the investigation by the Investigation Committee.

(2) No person's name shall be removed from a register, and no person's registration shall be suspended under paragraph (b) of subsection (1) of this section, by reason of any offence committed before the date of his registration if at that date the Board was aware of his conviction in respect of that offence.

(3) Every monetary penalty imposed, and all costs and expenses payable, under this section shall be recoverable as a debt due to the Crown, and shall be paid into the Consolidated Revenue Account.

(4) While any order of suspension of registration under this section remains in force the person concerned shall, except for the purposes of this section and of section 17A of the principal Act, be deemed not to be registered under that Act, but forthwith on the expiry of the order his rights and privileges as a person registered under the principal Act shall be revived as from the date of the expiry.

(5) No decision of the Board exercising any of the disciplinary powers conferred on it by this section shall take effect while the person to whom the decision relates remains entitled to appeal against the decision in accordance with section 12 of the principal Act or while any such appeal by him awaits determination.

(6) In any case where the Board causes the name of any person to be removed from the register as aforesaid, the Board may, as part of its decision, fix a time after which the person whose name is so removed may apply to the Board for re-registration under the principal Act. If no time is so fixed, the Board may allow any such application to be made at such time as it thinks fit.

(7) At any time permitted in accordance with subsection (6) of this section, the person may apply for re-registration; and all the provisions of the principal Act as to registration shall so far as applicable apply to re-registration under this section.

10. Consequential amendments—(1) Section 2 of the principal Act is hereby amended by inserting, in its appropriate alphabetical order, the following definition:

“‘Investigation Committee’ means the Investigation Committee established under section 2 of the Opticians Amendment Act 1966:”.

(2) Section 11 of the principal Act is hereby amended by omitting all the words after the word “error”.

PART II

MISCELLANEOUS AMENDMENTS

11. Functions of the Board—The principal Act is hereby amended by inserting, after section 4, the following section:

“4A. The functions of the Board shall be—

“(a) To advise and make recommendations to the Minister of Health in respect of any matter affecting 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:

“(d) To exercise disciplinary powers in accordance with the provisions of this Act:

“(e) To conduct or direct the conducting of examinations under this Act:

“(f) To consider applications for registration under this Act:

“(g) To carry out such other functions and to exercise such other powers as are conferred on it.”

12. Temporary registration of persons visiting New Zealand for teaching or experience—The principal Act is hereby amended by inserting, after section 11, the following section:

“11A. (1) Notwithstanding anything to the contrary in this Act, if the Board is satisfied—

“(a) That any person is or will be temporarily visiting New Zealand and will be required to practise as an optician 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 circumstances whatsoever; and

“(b) That, whether or not the person is entitled to be registered as an optician by virtue of paragraph (b) of subsection (1) of section 6 of this Act, he has sufficient knowledge and experience to practise as an optician 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 as an optician in such institution or place, subject to such restrictions (if any), and for such period, as may be specified in the certificate.

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

“(3) The provisions of sections 7 to 11 of this Act shall apply to every application for temporary registration under this section.

“(4) No fee shall be payable in respect of any application for temporary registration under this section or in respect of the issue of any certificate thereunder.

“(5) The Board may from time to time, in its discretion, extend the period specified in any certificate under this section if it is satisfied that the circumstances in which it was issued still exist. Any such extension shall be endorsed on the certificate, which for that purpose shall be surrendered by the holder to the Registrar.

“(6) During the period specified in any such certificate, or any such extension thereof, the holder of the certificate shall, unless it has been cancelled under this section, be deemed for the purposes of this Act to be registered as an optician under this Act.

“(7) The Registrar may cancel any such certificate at any time on the direction of the Board.

“(8) Every person commits an offence and is liable to a fine not exceeding one hundred pounds who, being the holder of a certificate of temporary registration issued under this section, practises as an optician otherwise than in the institution or place, and subject to the restrictions, specified in the certificate.

“(9) Nothing in section 15 of the Finance Act 1932–33 (No. 2) (which requires a person who practises as an optician to hold an annual practising certificate) shall apply to the holder of a certificate of temporary registration issued under this section.”

13. Appeals from decisions of the Board—(1) The principal Act is hereby further amended by repealing section 12 (as amended by section 2 of the Opticians Amendment Act 1955), and substituting the following section:

“(12. (1) Every person who is dissatisfied with any decision of the Board relating to an application by him for registration or for the restoration of his name to a register, or to the removal of his name from a register or the suspension of his registration, or to the imposition on him of any censure or penalty or of any liability to pay costs or expenses, may, within twenty-eight days after notice of the decision has been given to him by the Registrar, give notice of appeal in the prescribed manner to the Registrar.

“(2) Upon receipt of the notice of appeal, the Registrar shall forthwith inform the Minister of Health, who shall thereupon take all steps necessary for the constitution of a Board of Appeal consisting of a Magistrate and two assessors, of whom one shall be appointed by the Opticians Board and one by the appellant.

“(3) The Board of Appeal so constituted shall as soon as practicable hear the appeal; and may confirm or vary or cancel the decision of the Opticians Board, or may order the registration of the appellant or the restoration of his name to a register or the determination of the order of suspension, or the revocation of the censure, or the remission of the whole or part of any penalty or liability to pay cost or expenses imposed on him, or may make such other order as the case may require.

“(4) The decision of not less than two members of the Board of Appeal (including the Magistrate) shall be the decision of that Board, and that decision shall be final and conclusive.

“(5) On any appeal under this section the Board of Appeal may make an order for the payment by or to the Opticians Board or the appellant, as the case may be, of the costs incurred in respect of the appeal, including the costs and expenses of the Board of Appeal, and in any such case the costs so awarded may be recovered in any Court of competent jurisdiction as a debt due by the party against whom they have been awarded to the party in whose favour they have been awarded.

“(6) From the time an appeal is lodged under this section until a decision is given by the Board of Appeal, any appellant who was registered under the provisions of this Act shall be deemed to remain so registered.

“(7) On any appeal under this section the Board of Appeal shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and all the provisions of that Act except sections 11 and 12 (which relate to costs) shall apply accordingly.”

(2) The Opticians Amendment Act 1955 is hereby consequentially amended by repealing section 2.

14. Restriction on companies carrying on business as opticians—The principal Act is hereby further amended by inserting, after section 17, the following section:

“17A. (1) For the purposes of this Act a company shall be deemed to carry on business as an optician if it employs any person, or causes or permits any person employed by it, whether such person is registered under this Act or not, to practise as an optician in the course of the business of the company.

“(2) If any company carries on business as an 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 to a fine not exceeding one hundred pounds and to a further fine not exceeding five pounds for every day during which the offence continues after the conviction for any such offence of the company or of any director or other person as aforesaid.

“(3) Subject to subsection (4) of this section, a company may carry on business as an optician if it satisfies the Board that it has lawfully been carrying on business as an optician in New Zealand for not less than twelve months immediately

before the passing of the Opticians Amendment Act 1966 and that at least fifty-five percent of its share capital is owned by approved persons.

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

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

“(b) On the expiration of the period of twenty years from the date on which all the approved persons, who are members of the company on the passing of the Opticians Amendment Act 1966 shall have ceased to be members of the company; or

“(c) On the expiration, within the said period of twenty years, of the period of two years from the death or bankruptcy of an approved person, if, by reason of that death or bankruptcy, less than fifty-five percent of the share capital of the company is owned by approved persons; or

“(d) At any time, within the said period of twenty years, when less than fifty-five percent of the share capital of the company is owned by approved persons in any case other than a case described in paragraph (c) of this subsection.

“(5) For the purposes of this section—

“‘Approved person’ means, in relation to any company,—

“(a) A registered optician:

“(b) A person who on the passing of the Opticians Amendment Act 1966 is the spouse of a registered optician who is a member of that company:

“(c) A person who on the passing of the Opticians Amendment Act 1966 is the widow or widower of a registered optician who was a member of that company:

“(d) Any dependant of a deceased registered optician, who was a member of that company before the passing of the Opticians Amendment Act 1966, to the extent that the dependant has acquired his interest in that company from the estate of that optician:

“(e) A person (not being a body corporate) who, before the passing of the Opticians Amendment Act

1966 was an original subscriber to the memorandum of association of that company, and continued to be a member of that company until that date:

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

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

“‘Dependant’ means any 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.

“(6) Notwithstanding anything to the contrary in this Act any company lawfully carrying on business as an optician immediately before the date of the passing of the Opticians Amendment Act 1966 may continue to carry on such business for a period of four years from that date.

“(7) The Registrar shall, under the direction of the Board, keep a register of companies which are entitled to carry on business as opticians on the expiration of the period of four years mentioned in subsection (6) of this section or which 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.”

15. Regulations—Section 21 of the principal Act is hereby amended by inserting, after paragraph (e), the following paragraphs:

“(ee) Regulating the procedure of the Investigating Committee:

“(eee) Requiring companies which carry on business as opticians to furnish information to the Board of such a nature, and at such times, as may be specified:”.