Optometrists and Dispensing Opticians Amendment Act 1994

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An Act to amend the Optometrists and Dispensing Opticians Act 1976

BE IT ENACTED by the Parliament of New Zealand as follows:

1 Short Title and commencement

(1) This Act may be cited as the Optometrists and Dispensing Opticians Amendment Act 1994, and shall be read together with and deemed part of the

Optometrists and Dispensing Opticians Act 1976 (hereinafter referred to as the principal Act).

(2) This Act shall come into force on a date to be appointed by the Governor-General by Order in Council.

2 New heading and sections inserted

The principal Act is hereby amended by inserting in Part III, after section 39, the following heading and sections:

"Application of Health and Disability Commissioner Act 1994

"39A Interpretation

In this section and sections 39B to 39G of this Act, unless the context otherwise requires,—

"'Code' means the Code of Health and Disability Services Consumers' Rights for the time being prescribed by regulations made under section 74 of the Health and Disability Commissioner Act 1994:

"'Commissioner' means the Health and Disability Commissioner under the Health and Disability Commissioner Act 1994:

"'Director of Proceedings' means the person for the time being designated under section 15 of the Health and Disability Commissioner Act 1994 as the Director of Proceedings.

"39B Complaints to be notified to Commissioner

(1) Where—

"(a) A complaint is made under section 31 of this Act; or

"(b) The Board otherwise becomes aware that a registered optician might be guilty of professional misconduct,—

the secretary shall forthwith notify the Commissioner of that complaint or matter.

"(2) Where, pursuant to section 32(6) of this Act, the Penal Cases Committee becomes aware that a registered optician might be guilty of professional misconduct, the convener shall forthwith notify the Commissioner of that matter.

"39C Consultation with Commissioner

Where, in accordance with section 39B of this Act, a complaint or matter is notified to the Commissioner, the Commissioner may at any time after receiving the notification, consult with the Board in relation to the complaint or matter.

“39D Suspension of action under this Act

(1) Notwithstanding anything in this Part of this Act, but subject to subsection (2) of this section and to section 39E(3) of this Act, where a complaint or matter is notified to the Commissioner in accordance with section 39B of this Act, no action shall be taken under this Act concerning that complaint or matter until—

“(a) The Commissioner notifies the Board—

“(i) That the complaint or matter is not to be investigated, or investigated further, under the Health and Disability Commissioner Act 1994; or

“(ii) That the complaint or matter has been resolved; or

“(iii) That the complaint or matter has been investigated under that Act and the complaint or matter is not to be referred to the Director of Proceedings in accordance with section 45(f) of that Act; or

“(b) The Director of Proceedings notifies the Board that the Director of Proceedings has decided, pursuant to section 49 of that Act, not to institute disciplinary proceedings under this Act in relation to the complaint or matter.

“(2) Nothing in this section prevents the taking of any action under section 29 of this Act.

“39E Director of Proceedings may lay charge under this Part of this Act

(1) This section applies where,—

“(a) After conducting an investigation under Part IV of the Health and Disability Commissioner Act 1994, the Commissioner is of the opinion that any action (within the meaning of that Act) that was the subject-matter of the investigation, being the action of a registered optician, was in breach of the Code; and

“(b) The Director of Proceedings decides, pursuant to section 49 of that Act, that proceedings should be taken under this Part of this Act against that person.

“(2) Where this section applies, the Director of Proceedings shall frame an appropriate charge (being a charge of professional misconduct) and lay the charge with the Board.

“(3) Where the Director of Proceedings lays a charge with the Board under subsection (2) of this section, the Board shall deal with the matter as if the charge had been referred to the Chairman of the Board by the Penal Cases Committee under section 32(3) of this Act, and, subject to section 39F of this Act, the provisions of this Part of this Act shall apply accordingly with all necessary modifications.

"39F Director of Proceedings to prosecute charge

Notwithstanding anything in this Part of this Act, any charge laid under section 39E of this Act by the Director of Proceedings shall be prosecuted at the hearing by the Director of Proceedings, who for that purpose may be represented by counsel or otherwise.

"39G Costs may be awarded to Commissioner

(1) In any proceedings under this Part of this Act relating to a charge laid by the Director of Proceedings under section 39E of this Act, the person so charged may be ordered to pay—

"(a) Any costs and expenses of and incidental to any investigation made by the Commissioner under the Health and Disability Commissioner Act 1994 in relation to the subject-matter of the charge:

"(b) The costs and expenses of and incidental to the prosecution of the charge by the Director of Proceedings.

"(2) Any costs and expenses payable pursuant to subsection (1) of this section—

"(a) Shall be recoverable as a debt due to the Crown; and

"(b) Notwithstanding anything in section 13(3) of this Act, shall be paid to the Commissioner.

"(3) Subsections (13) and (14) of section 33 of this Act shall apply in respect of an order made under subsection (1) of this section as if it were an order made under that section.

"(4) Nothing in this section limits section 33(7) of this Act."

3 Matters on which appeals lie

Section 46(1)(f) of the principal Act is hereby amended by inserting, after the word "inquiry", the words ", investigation, or prosecution".

This Act is administered in the Ministry of Health.