

No. 142

1st Session, 15th Legislature, Alberta
12 Elizabeth II

BILL 142

A Bill respecting Dispensers of Ophthalmic Appliances

HON. DR. ROSS

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Edmonton, Alberta, 1964

Explanatory Note

General. The Bill will regulate the practice of "ophthalmic dispensing" i.e., the supplying, preparation, adjusting, etc., of eye glasses, contact lenses, etc., upon prescription of an optometrist or medical doctor who is an eye specialist. The standards of competency of "ophthalmic appliances" and the examination of candidates wishing to become ophthalmic dispensers will be regulated by an Ophthalmic Dispensers Examining Board. The Alberta Guild of Ophthalmic Dispensers is incorporated by the Bill and will be the regulatory and disciplinary body of practising ophthalmic dispensers.

2. Definitions.

BILL

No. 142 of 1964

An Act respecting Dispensers of Ophthalmic Appliances

(Assented to _____, 1964)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "*The Ophthalmic Dispensers Act*".

2. In this Act,

- (a) "Board" means the Ophthalmic Dispensers Examining Board appointed under this Act;
- (b) "certificate of competency" means a certificate of competency issued by the Board;
- (c) "certificate of registration" means a certificate of registration of membership in the Guild;
- (d) "council" means the council of the Guild;
- (e) "Guild" means The Alberta Guild of Ophthalmic Dispensers;
- (f) "Minister" means the member of the Executive Council charged with the administration of this Act;
- (g) "non-participating member" means a member of the Guild enrolled as a non-active member;
- (h) "ophthalmic appliances" means lenses, spectacles, eye-glasses, frames, contact lenses, artificial eyes, optical devices, accessories, and appurtenances thereto, for the relief, prevention or correction of visual or ocular anomalies of the eyes;
- (i) "ophthalmic dispenser" means a person who performs services of ophthalmic dispensing;
- (j) "ophthalmic dispensing" means
 - (i) the supplying and preparing of ophthalmic appliances, and
 - (ii) the measuring, adjusting, and adapting ophthalmic appliances to the needs of the intended wearer,

in accordance with a prescription from an ophthalmologist or optometrist, or without a prescription where the refractive value of the lenses are not varied and whether for hire, gain or reward or not;

3. Incorporation of Guild.

4. Persons entitled to membership.

5. Classes of members.

- (k) "ophthalmologist" means a legally qualified medical practitioner who is entitled to practise as a specialist in ophthalmology;
- (l) "optometrist" means a person registered under *The Optometry Act*;
- (m) "participating member" means a member of the Guild enrolled as an active member;
- (n) "registrar" means the registrar of the Guild;
- (o) "society" means The Alberta Guild of Ophthalmic Dispensers incorporated under *The Societies Act*.

The Guild

3. The following persons, namely, Ernest Beeby, Edward A. Hamilton, Eric J. Penfold and Leonard W. Schmode all of Edmonton, Ernest H. Downton, David L. George and Frank A. Willoughby all of Calgary, and Sydney A. Hall of Lethbridge and such other persons as are from time to time members of the Guild are hereby constituted and created a corporation under the name of "The Alberta Guild of Ophthalmic Dispensers".

4. (1) A person is entitled to be registered as a member of the Guild who pays the enrolment fee and annual fee, if any, and who

- (a) applies to the council on or before the thirtieth day of September, 1964, and furnishes proof satisfactory to the council that he has been practising as an ophthalmic dispenser in the Province continuously for the period of three years before the commencement of this Act, or
- (b) is the holder of a certificate of competency.

(2) Upon registration as a member of the Guild, the registrar shall issue the member a certificate of registration.

(3) Unless otherwise provided in the by-laws, the enrolment fee shall be twenty-five dollars.

5. (1) Any person who is registered as a member of the Guild shall, according to his choice, be classified as either a participating member or a non-participating member of the Guild.

(2) Participating membership entitles the member to all rights, privileges and benefits of the Guild.

(3) Non-participating members are governed by this Act and all by-laws made hereunder and affecting the members of the Guild, but they shall not have a vote at any meeting of the Guild and are not entitled to any benefits of the Guild.

6. Property and liabilities of the Guild.

7. Meetings of Guild.

8. Officers.

9. Registrar.

10. Council.

6. (1) Upon the commencement of this Act,
(a) the assets of the society are vested in the Guild, and
(b) the liabilities of the society are liabilities of the Guild.

(2) The funds of the Guild shall be deposited in a chartered bank or a treasury branch for the credit of the Guild and the expenses of the Guild shall be paid therefrom.

(3) Notwithstanding subsection (2), the Guild may invest in any securities specified in section 3 of *The Trustee Act* such portion of its funds as is not required for its immediate purposes.

7. (1) A general meeting of the members of the Guild shall be held annually for the purpose of electing the president, the vice-president and the members of the council and for conducting such other business as may be brought before the meeting.

(2) The general meeting of the Guild shall be held at such time and place, upon such notice and otherwise as is provided in the by-laws of the Guild.

(3) The first general meeting of the Guild shall be held during 1964 at the time and place specified by the first council.

Officers

8. (1) The officers of the Guild are the president, the vice-president, the secretary-treasurer and the registrar.

(2) The president and the vice-president shall be elected by the participating members of the Guild from their numbers.

(3) The secretary-treasurer shall be appointed by the council but it is not necessary that he be a member of the Guild.

(4) The persons who were, immediately before the commencement of this Act, the president and vice-president of the society are, respectively, the president and vice-president of the Guild until their successors are elected at the first general meeting of the members.

(5) The offices of secretary-treasurer and registrar may be filled by the same person.

9. The registrar shall be appointed by the council from its membership and shall perform the functions prescribed in the by-laws of the Guild and such other functions as the council may prescribe.

The Council

10. (1) The council of the Guild shall consist of the president, the vice-president and such other number of participating members as may be prescribed in the by-laws of the Guild.

11. Idem.

12. Powers of council.

13. By-laws subject to approval by the Lieutenant Governor in Council.

14. (1) By-laws.

(2) The persons named in section 3 are the first council of the Guild and shall hold office until the election of the council at the first general meeting.

11. (1) A quorum of the council shall not be fewer than one-half the members thereof.

(2) When a vacancy occurs in the council by reason of the suspension from practice of a council member or the removal of a council member's name from the register or from any other cause or when the council declares a vacancy by reason of the physical or mental disability of a council member, the council shall appoint any participating member of the Guild to fill the vacancy until the next annual meeting of the Guild.

(3) The council shall hold two meetings in each year at such times and places as may from time to time be fixed by the council.

12. The council shall manage and conduct the business and affairs of the Guild and may exercise all powers of the Guild.

By-laws of the Guild

13. (1) All by-laws of the Guild are subject to the approval of the Lieutenant Governor in Council.

(2) A by-law of the Guild may only be passed by the Guild at an annual general meeting or at a general meeting called for that purpose.

- 14.** (1) The Guild may make by-laws providing for
- (a) the government and discipline of the members of the Guild,
 - (b) the purchase, management and sale of the property of the Guild,
 - (c) the maintenance of the Guild by levy or contributions or otherwise,
 - (d) the management of the Guild generally,
 - (e) the advancement of the standards of ophthalmic dispensers,
 - (f) the advancement of standards for ophthalmic appliances,
 - (g) enrolment fees and annual fees,
 - (h) the calling and conduct of its meetings and proceedings,
 - (i) the appointment, duties and removal of officers or servants of the Guild and their remuneration,
 - (j) the time and place of the annual meeting and other meetings of the Guild and the notice necessary therefor, and
 - (k) any other matter or thing pertaining to the management and affairs of the Guild.

14. (2) Annual fees.

15. By-laws re elections.

16. Eligibility as to voting and re-election.

17. Petition to Court to set aside election.

(2) Annual membership fees shall not exceed
(a) one hundred dollars for participating members, and
(b) twenty-five dollars for non-participating members,
but in no case shall the fees for non-participating members
be greater than one-half the fee for participating members.

15. (1) The Guild may make by-laws governing the election of the president, the vice-president and the members of the council and without restricting the generality of the foregoing the by-laws may provide for

- (a) the time and place of the election,
- (b) the division of the Province into electoral districts,
- (c) the nomination and qualifications of candidates,
- (d) the appointment of a presiding officer,
- (e) the form of ballot to be used,
- (f) the procedure for the holding of the election and determining the persons elected, and
- (g) the duration of the terms of office of the persons elected.

(2) The first council shall make by-laws governing the election to be held at the first general meeting of the Guild and for that purpose may provide for any matter referred to in subsection (1) but such by-laws

- (a) do not require the approval of the Lieutenant Governor in Council,
- (b) are not required to be filed under *The Regulations Act*, and
- (c) cease to have effect after the election.

16. (1) Every participating member of the Guild in good standing is entitled to vote at an election.

(2) The retiring president and vice-president and the retiring members of the council if otherwise qualified are eligible for re-election.

17. (1) If a member of the Guild desires to contest the validity of an election for the council, the member may within thirty days of the election date, present a petition to the Supreme Court of Alberta praying that the election be set aside.

(2) At a time and place appointed for the hearing and determining of the matters complained of, and after hearing the parties and considering the evidence adduced, the judge shall decide the matters in question and his decision is final.

(3) The judge has in respect of the petition such powers as may be exercised by him in any cause or proceeding in the Supreme Court.

18. Annual roll.

19. Suspension for non-payment of annual fees.

20. Powers of Council re discipline.

Annual Roll

18. (1) The registrar shall prepare an annual roll in June of each year.

(2) The annual roll shall contain the name and the business and home address of each participating and non-participating member of the Guild who has paid his annual fee for the current year.

(3) The annual roll shall be divided according to electoral districts and the names of the members residing in each district shall be listed in alphabetical order for that district.

(4) If it is at any time established to the satisfaction of the council that there has been entered in the annual roll the name of a person who is not entitled to have his name so entered, the name shall be removed therefrom by order of the council.

(5) If it is at any time established to the satisfaction of the council that there has been removed or not entered in the annual roll the name of a person who is entitled to have his name so entered, the name shall be entered thereon by order of the council.

(6) The registrar when called upon to do so shall provide the Minister with a copy of an annual roll.

19. Notwithstanding anything in this Act, the council may suspend a member who is in default of payment for a period exceeding three months of an amount owing by him to the Guild as an annual fee, levy or contribution, but upon payment of the amount owing and a fee of five dollars, the suspension is thereby cancelled.

Discipline

20. (1) The council may order

(a) the removal of the name of the member from the register, or

(b) the suspension from practice of a member for a fixed period,

where that member is guilty of conduct unbecoming an ophthalmic dispenser.

(2) Conduct unbecoming an ophthalmic dispenser is a question of fact for the determination of the council.

(3) For the purposes of subsection (1), the following acts are deemed to be conduct unbecoming an ophthalmic dispenser:

(a) supplying frames and lenses of poor optical and mechanical quality or supplying any ophthalmic appliance that is of a lesser standard of quality than that prescribed by the Board;

21. Investigating committee.

22. Notice of committee meeting.

23. Procedure at committee meeting.

- (b) charging unreasonable fees;
- (c) soliciting or canvassing from house to house or place to place or by mail;
- (d) allowing a person who is not a member of the Guild to practise ophthalmic dispensing with him, in his name, or under his patronage, or under any style in his office;
- (e) the committing of an indictable offence;
- (f) the committing of an offence under this Act or the regulations; or
- (g) any act specified by the by-laws of the Guild.

21. (1) The council shall appoint an investigating committee of three members of the Guild to inquire into and ascertain the facts of any matter of complaint against a member of the Guild which may be referred to the committee by the council or the president.

(2) The committee, subject to the provisions of this Act and the by-laws of the Guild, may regulate

- (a) the convening, notice, place, management, conduct and adjournment of its meeting,
- (b) the mode of deciding questions,
- (c) its rules of procedure and evidence, and
- (d) generally, the transaction and management of its business.

22. (1) At least ten days' notice of the date, time and place of the meeting of the committee for taking evidence or otherwise ascertaining the facts shall be served on the member whose conduct is the subject of inquiry.

(2) The notice shall contain a statement of the matter that forms the subject of the inquiry.

(3) If the person whose conduct is the subject of the inquiry does not attend, though notified, the committee may proceed in his absence.

(4) The meetings of the committee shall be held *in camera*.

23. (1) The member whose conduct is the subject of inquiry may be represented by counsel.

(2) The evidence of the witnesses shall be taken under oath.

(3) The chairman of the committee may administer oaths to witnesses.

(4) There shall be full right to cross-examine all witnesses called, and examine all documents and reports, and to adduce evidence in defence and in reply.

24. Attendance of witnesses, production of documents.

25. Report of committee and action by council.

26. Costs.

24. (1) The committee and any party to the proceedings may obtain by praecipe from the Supreme Court a subpoena for the attendance of witnesses and the production of relevant books, documents and things.

(2) Witnesses are entitled to the same allowances as witnesses attending upon the trial of an action in the Supreme Court.

25. (1) The committee shall report in writing to the council giving a summary of the evidence adduced, its findings and such recommendations as it deems advisable.

(2) The absence of one member of the committee during the inquiry does not invalidate the report.

(3) Upon considering the report of the committee the council shall dismiss the complaint or make an order under subsection (1) of section 20.

(4) Any member of the council who has been a member of the committee investigating the particular complaint shall not participate in any proceedings of the council relating to that complaint.

(5) A copy of the order, with the council's findings and reasons, shall be served upon the member whose conduct was the subject of the inquiry.

(6) When the complaint is found to be frivolous or vexatious the council may order the payment by the Guild or the person making the complaint of such costs as it considers just to the member whose conduct has been the subject of the inquiry.

26. (1) When the council orders the removal of a member's name from the register or orders the suspension of a member from practice, it may direct that the cost of and incidental to the inquiry be paid by that member.

(2) After taxation of the costs by the taxing officer of the Supreme Court at Edmonton or Calgary, execution may issue out of the Supreme Court for the recovery thereof in like manner as upon a judgment in an action in that court.

(3) The costs to be taxed and allowed shall, as far as practical, be the same as the like costs in an action in the Supreme Court.

(4) The taxing officer may also allow such fees and disbursements for work done or proceedings taken before notice of complaint as he deems just.

(5) Any costs that are not ordered to be paid by the member whose conduct was the subject of the inquiry or by the person who made the complaint shall be paid by the Guild.

27. Barring of action against members.

28. Appeal to Guild or the Court.

29. Disposal of appeal by the Court.

30. Powers of council to restore membership or cancel suspension.

31. Ophthalmic Dispensers Examining Board.

27. No action lies against the Guild, the council or the committee or any member thereof for any act done in proceedings taken in good faith or orders made or enforced under the disciplinary provisions of this Act or the by-laws of the Guild.

28. A person whose name has been removed from the register or who has been suspended from practice by order of the council may appeal from the order either

- (a) to a general meeting of the Guild by ordinary resolution, or
- (b) directly to a judge of the Supreme Court in chambers by originating notice of motion.

29. (1) The judge shall consider

- (a) the proceedings before the committee and the evidence taken,
- (b) the report of the committee, and
- (c) the order of the council certified by the chairman of the committee or by the registrar.

(2) The judge may

- (a) receive further evidence by oral examination or by affidavit, or
- (b) direct a trial to determine any or all of the matters in issue.

(3) The judge on the hearing of the appeal may

- (a) confirm the order to the council,
- (b) restore the name of the appellant to the register,
- (c) cancel, reduce or lengthen the appellant's suspension from practice, or
- (d) make such other order as to the judge seems just, and award costs in his discretion.

30. Except during the period that an appeal is pending before a judge, the council at any time may

- (a) order the restoration to the register of the name of a person whose name has been removed, or
- (b) cancel or reduce the period of suspension of a person from practice,

upon such terms and conditions as the council deems just.

Ophthalmic Dispensers Examining Board

31. (1) There is hereby established a board to be known as the Ophthalmic Dispensers Examining Board consisting of the Director of the Division of Medical Services of the Department of Public Health or an alternate appointed by the Minister and five other members appointed by the Minister

- (a) two of whom shall be members of the Guild,
- (b) one of whom shall be an ophthalmologist, and

32. Regulations.

(c) two of whom shall be members of the public at large but who are neither employees of the Government, members of the Guild, optometrists or ophthalmologists.

(2) The Minister shall appoint one of the members of the Board as chairman and may appoint one of the members as acting chairman.

(3) The Minister may appoint a secretary of the Board who shall be an employee of the Department of Public Health.

32. Subject to the approval of the Lieutenant Governor in Council, the Board may make regulations

- (a) prescribing standards of competency and proficiency to be maintained and observed by members of the Guild,
- (b) prescribing standards of quality of ophthalmic appliances supplied by members of the Guild,
- (c) governing the time, place and manner of examinations of applicants for certificates of competency and for special certificates of competency in dispensing contact lenses,
- (d) prescribing the qualifications of applicants for certificates of competency that may be accepted by the Board without the necessity for the taking of examinations,
- (e) prescribing the manner of proof as to technical qualifications, experience, education and good character,
- (f) providing for any matter in connection with applications for or the issuing of certificates of competency or special certificates of competency in dispensing contact lenses,
- (g) prescribing the conditions under which a certificate of competency or a special certificate of competency in dispensing contact lenses may be cancelled,
- (h) providing for the maintenance of records of the Board,
- (i) providing for the establishment of educational training and apprenticeship programs and prescribing the qualifications of persons to be admitted to apprenticeship and the length of apprenticeship,
- (j) providing for the rules of procedure of the Board,
- (k) prescribing the fees payable to the Department of Public Health in connection with applications to the Board, the issuing of certificates, examinations, or any service provided by the Board,
- (l) prescribing forms for use in connection with the regulations,

33. Duties of Board.

34. Certificates of competency and special certificates of competency in dispensing contact lenses.

35. Prohibitions.

- (m) specifying the contraventions of the regulations that constitute offences, and
- (n) governing any other matter considered necessary to carry out the purposes of this Act.

33. (1) The Board shall

- (a) prescribe a program of studies and training for student ophthalmic dispensers,
 - (b) evaluate the credentials of applicants for certificates,
 - (c) exempt from examination a candidate who in the opinion of the Board
 - (i) qualifies by reason of his training and experience, and
 - (ii) possesses the qualifications required under the regulations,
 - (d) set examinations or tests, and
 - (e) evaluate the qualifications of applicants and the proof of their qualifications submitted to the Board.
- (2) A certificate of competency or a special certificate of competency in dispensing contact lenses shall be issued on behalf of the Board by the chairman or in his absence, by the acting chairman.

34. (1) A certificate of competency shall be issued to a person who

- (a) passes the examinations set by the Board, or
 - (b) proves to the satisfaction of the Board that he has qualifications that may be accepted by the Board without the necessity of the taking of examinations,
- and who pays any prescribed fees and otherwise qualifies under the regulations.

(2) A special certificate of competency in dispensing contact lenses shall be issued to a holder of a certificate of competency who

- (a) passes the examinations prescribed by the Board, or
 - (b) proves to the satisfaction of the Board that he has qualifications that may be accepted by the Board without the necessity for the taking of examinations,
- and who pays any prescribed fee and otherwise qualifies under the regulations.

Offences and Penalties

35. (1) No person shall practise as an ophthalmic dispenser or perform any act of ophthalmic dispensing unless he is a member of the Guild who is not under suspension from practice.

36. Prohibitions as to contact lenses.

37. Offences.

38. Non-application of Act.

39. Members not affected by The Optometry Act.

40. Practice by corporation.

(2) No person other than a member of the Guild shall use the designation "ophthalmic dispenser", "registered ophthalmic dispenser", "dispensing optician", "optical dispenser" or any other style or designation implying that he is a member of the Guild or the holder of a certificate of competency or is a person permitted by law to practice as an ophthalmic dispenser or perform ophthalmic dispensing.

(3) No member of the Guild whose certificate of competency has been cancelled shall practise as an ophthalmic dispenser or do any act of ophthalmic dispensing until a new certificate of competency has been issued to him.

36. No person shall

- (a) supply or prepare a contact lens, or
- (b) measure, adjust or adapt a contact lens for an intended wearer, or
- (c) do any act to or upon a human eye for the purpose of preparing a contact lens,

unless he is a member of the Guild not under suspension from practice and the holder of a certificate of competency in dispensing contact lenses.

37. A person who contravenes section 35 or 36 is guilty of an offence.

38. Nothing in this Act prohibits

- (a) a medical practitioner, an optometrist or an apprentice ophthalmic dispenser working under the direct supervision of a member of the Guild from performing work or services ordinarily performed by an ophthalmic dispenser,
- (b) the sale or offering for sale by a retail merchant at his place of business of spectacles or eye-glasses where the spectacles or eye-glasses are not fitted or adjusted for the intended wearer, or
- (c) the sale of protective glasses for industrial purposes, coloured glasses that are not ophthalmic appliances, goggles or magnifying glasses not sold or designed for the relief, prevention or correction of visual or ocular anomalies of the eyes.

39. Nothing in *The Optometry Act* shall be construed as prohibiting a member of the Guild from practising as an ophthalmic dispenser or performing any act of ophthalmic dispensing.

40. Nothing in this Act shall be deemed to prohibit a member of the Guild from carrying on business as an ophthalmic dispenser through and in the name of a corporation where

41. Procuring registration, etc. falsely.

42. Penalties.

43. (1) Limitation of time for prosecution.

(2) Single act will constitute an offence.

44. Certificate of registrar or Board secretary is prima facie proof of facts stated therein.

- (a) the corporation has a member of the Guild in actual charge at all times of its operations,
- (b) at least one member of the board of directors of the corporation is a member of the Guild, and
- (c) the majority of the common shares of the corporation are held by a member or members of the Guild,

but each of such members of the Guild is also guilty of any contravention by the corporation of this Act unless he proves to the satisfaction of the magistrate that he had no knowledge of the contravention or if he had knowledge that he had protested against the act that constituted the contravention.

41. A person who wilfully procures or who wilfully attempts to procure himself

- (a) to be registered as a member of the Guild, or
- (b) to be issued a certificate of competency or a special certificate of competency in dispensing contact lenses,

by making false or fraudulent representations or declarations, either orally or in writing, and a member of the Guild knowingly aiding or assisting him therein is guilty of an offence.

42. A person who is guilty of an offence under this Act or the regulations is liable on summary conviction

- (a) for a first offence to a fine of not more than fifty dollars and in default of payment to imprisonment for not more than thirty days,
- (b) for a second offence to a fine of not more than one hundred dollars and in default of payment to imprisonment for not more than sixty days, and
- (c) for a third or subsequent offence to imprisonment for not more than three months.

43. (1) A prosecution under this Act or the regulations shall not be instituted unless it is commenced within one year from the day the alleged offence was committed.

(2) In a prosecution under this Act or the regulations it is sufficient proof of an offence if it is proved that the accused has committed a single act prohibited by this Act or the regulations, as the case may be.

Miscellaneous

44. (1) In any action, proceeding or prosecution a certificate signed by the registrar is admissible in evidence as *prima facie* proof of the registration or non-registration of any person as a member of the Guild or of the suspension from practice as a member of the Guild, without proof of the office or signature of the person certifying.

45. Notice by mail.

46. Commencement of Act.

(2) In any action, proceeding or prosecution a certificate purporting to be signed by the secretary of the Board is admissible in evidence as *prima facie* proof that the person named therein was or was not on the date specified therein, the holder of a certificate of competency or a special certificate of competency in dispensing contact lenses, without proof of the office or signature of the person certifying.

45. Service of a notice, order or other document required to be served under this Act, the regulations or the by-laws of the Guild may be made by mail.

46. This Act comes into force on the first day of June, 1964.

No. 142

FIRST SESSION

FIFTEENTH LEGISLATURE

12 ELIZABETH II

1964

BILL

An Act respecting Dispensers of
Ophthalmic Appliances

Received and read the

First time

Second time

Third time

HON. DR. ROSS
