

No. 105

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3rd Session, 15th Legislature, Alberta  
14 Elizabeth II

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## **BILL 105**

A Bill respecting the Practice of Optometry

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HON. DR. ROSS

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## **Explanatory Note**

General. This Bill is a general revision of The Optometry Act, being chapter 229 of the Revised Statutes. The most important changes are these:

1. The procedure whereby optometrists are licensed by the Minister of Health is abolished, so that the right to practise optometry will depend only on membership in The Alberta Optometric Association.

2. Disciplinary matters covered only briefly in the present Act will be replaced by provisions setting up a comprehensive procedure for dealing with complaints.

Where a provision in the present Act is repeated or is found in a revised form in a section of this Bill, the explanatory note opposite the section indicates the number of that provision in the present Act.

### **2. Definitions.**

### **3. Continuation of the Association. Powers of Association.**

# BILL

No. 105 of 1966

An Act respecting the Practice of Optometry

(Assented to \_\_\_\_\_, 1966)

**H**ER 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 Optometry Act, 1966*".

2. In this Act,

- (a) "Association" means The Alberta Optometric Association;
- (b) "Board" means the Board of Examiners in Optometry appointed under this Act;
- (c) "by-law" means a by-law of the Association;
- (d) "certificate of approval for registration" means a certificate issued by the Board under section 14;
- (e) "certificate of registration" means a certificate of registration as a member of the Association;
- (f) "council" means the Council of Management of the Association;
- (g) "member" means a person registered as a member of the Association;
- (h) "Minister" means that member of the Executive Council charged with the administration of this Act;
- (i) "optometry" means
  - (i) the examination of the human eye and related structures to determine the presence of vision problems,
  - (ii) the prescribing and adapting of lenses, frames, mountings, contact lenses or other aids, and
  - (iii) the utilization of vision training to preserve, restore and enhance vision efficiency;
- (j) "Registrar" means the Registrar of the Association.

### The Alberta Optometric Association

3. (1) The Alberta Optometric Association as heretofore constituted continues by that name as a body corporate and politic.

**4. By-laws of the Association.**

(2) The membership of the Association consists of all persons holding certificates of registration.

(3) The Association, in addition to the powers vested in it by section 14 of *The Interpretation Act, 1958* and by this Act, has the power to

- (a) acquire, hold, lease, sell or otherwise dispose of real property for its purposes, and
- (b) may borrow money for its purposes and mortgage or charge its property as security for moneys borrowed.

(4) The Association may invest any portion of its funds that is not required for its immediate purposes in any securities or classes of securities authorized under *The Trustee Act* for the investment of trust funds.

4. (1) The Association may by special resolution make by-laws providing for

- (a) the government, discipline and welfare of the members,
- (b) the management of its property,
- (c) the payment to the Association of a fee not exceeding fifty dollars by each applicant for registration,
- (d) the maintenance of the Association by levying contributions or otherwise,
- (e) the payment of fees by the members of the Association, and
- (f) any other matters considered necessary or convenient for the working or management of the Association or the advancement of the profession of optometry.

(2) No by-laws made under this Act are valid until they are approved by the Lieutenant Governor in Council.

(3) The total of the levies and contributions and membership fees required under clauses (d) and (e) of subsection (1) in any year shall not exceed the sum of one hundred dollars for each member or such greater sum as may be approved by the Lieutenant Governor in Council.

(4) The council may waive the payment of part or all of the fees of any member not in active practice, subject to such conditions as the council may prescribe.

(5) In subsection (1) "special resolution" means

- (a) a special resolution passed at a general meeting of the Association of which two weeks' notice in writing specifying the intention to propose the resolution has been duly given, and by a majority of at least two-thirds of the members who have registered at the meeting, or
- (b) a special resolution consented to in writing by at least two-thirds of the members of the Association.

**5.** Association meetings.

**6.** Association's officers.

**7.** The Council of Management.

**5. (1)** A general meeting of the members of the Association shall be held at least once in every year and not later than the last day of April.

(2) A special meeting of the Association shall be held at the call of the council or upon petition signed by not less than fifteen members of the Association and delivered to the Secretary-Treasurer.

(3) A special meeting called by the council shall be held on such date and at such place as the council determines or, if called for upon petition, at such place as the President shall determine and within sixty days of the date of receipt of the petition by the Secretary-Treasurer.

(4) Notice of every meeting of the Association shall be given by the Secretary-Treasurer to each member of the Association showing the date, time and place of the meeting at least fourteen days before the date of the meeting.

**6. (1)** The officers of the Association are the President, the Vice-President, the Secretary-Treasurer and the Registrar.

(2) The Vice-President and the Registrar shall be elected by the council from among their number.

(3) The offices of Secretary-Treasurer and Registrar may be held by the same person.

(4) The Vice-President shall be the Acting President if the President is absent or unable to act.

(5) A majority of the council may appoint one of their number as Acting President if both the President and the Vice-President are absent or unable to act.

(6) The Acting President has the powers and shall perform the duties of the President.

(7) Where the Secretary-Treasurer or the Registrar is absent or for any reason unable to act, the President may appoint any other member as Acting Secretary-Treasurer or Acting Registrar, as the case may be, and that member, when so acting, has the powers and shall perform the duties of the officer for whom he acts.

**7. (1)** There shall be a Council of Management of the Association consisting of the President, the immediate past President, the Secretary-Treasurer and such other number of members as the by-laws prescribe.

(2) The members of the council shall be elected by the Association for such term as the by-laws may provide, but in no case shall a member hold office after the second annual meeting following his election without being re-elected.

(3) A quorum of the council consists of not less than one-half of the members thereof.

**8.** Annual elections.

**9.** Appeal as to election.

**10.** Board of Examiners.



**8.** (1) At each annual meeting of the Association, an election shall be conducted in accordance with the by-laws to elect the President, the Secretary-Treasurer and the number of members of the council required to replace the retiring members.

(2) The Association may make by-laws governing elections and such by-laws may

- (a) provide the procedure for the nomination of candidates,
- (b) provide for the appointment or designation of presiding officers for the election,
- (c) prescribe the forms to be used, and
- (d) prescribe the procedure to be used in the holding of elections and for determining the persons elected.

**9.** (1) A member of the Association may dispute the validity of an election under section 8 or the validity of the election of one or more of the persons declared elected by petition to the Supreme Court filed within thirty days of the date of the election.

(2) The petition shall be heard by a judge of the Supreme Court in chambers in a summary way.

(3) Where it appears to the judge that the election or the voting was conducted substantially in accordance with the requirements of this Act and the by-laws and that the non-compliance, violation, mistake or irregularity did not materially affect the result of the election or the voting, he may adjudge the election or the voting to be valid.

(4) Where the judge decides that the election is invalid, he shall

- (a) give directions as to the holding of another election, and
- (b) direct that the persons who held office immediately prior to the election shall continue in office or resume their offices until that election.

(5) Where the judge decides that the election of one or more but not all of the persons declared elected is invalid, he shall

- (a) direct the remaining members of the council to appoint another or others in his or their stead until the next annual election, or
- (b) give directions as to the holding of another election to fill the vacancies and the terms for which they shall be elected.

(6) The decision of the Court is final and the costs of the proceedings shall be in the discretion of the judge.

#### **Registration of Members**

**10.** (1) There shall be a board known as the Board of Examiners which shall be composed of not more than seven

**11.** Certification of graduates of approved schools or colleges.

**12.** Certification of persons who are not graduates of approved schools or colleges.

persons who shall be appointed by and who hold office during the pleasure of the Lieutenant Governor in Council.

(2) Three members of the Board shall be members of the Association appointed from members nominated by the council.

(3) The Lieutenant Governor in Council may, in an order appointing a member of the Association as a member of the Board, prescribe that his appointment shall be for a term of one, two or three years, but the prescribing of a term does not derogate from the powers of the Lieutenant Governor in Council to revoke that appointment.

(4) The Lieutenant Governor in Council

(a) may designate one of the members of the Board to be chairman, and

(b) may appoint a secretary of the Board.

(5) A majority of the members of the Board constitutes a quorum.

(6) The Lieutenant Governor in Council may prescribe the fees and allowances for expenses to be paid to members of the Board.

**11.** (1) The Board shall designate the schools or colleges whose graduates may, subject to subsection (2), apply for and be granted certificates of approval for registration without the necessity of taking examinations.

(2) The Board may, with respect to any school or college designated under subsection (1),

(a) determine the subject or subjects of examination to be taken by its graduates,

(b) prescribe the content of, and conduct, the examinations, and

(c) determine the time or times when the examinations are to be held.

**12.** The Board shall, with respect to applicants for certificates of approval for registration who are not graduates of the schools or colleges designated under subsection (1) of section 11,

(a) prescribe the qualifications as to general education, training and experience to be possessed by those applicants,

(b) determine the subjects of examination to be taken by those applicants,

(c) prescribe the content of, and conduct, the examinations, and

(d) determine the time or times when the examinations are to be held.

**13.** Application to the Board of Examiners.

**14.** Issue of certificate of approval for registration.

**15.** Issue of certificate of registration as a member of the Association.

**16.** Display of certificates of registration.

**13.** (1) An applicant for registration as a member shall first apply to the Board for a certificate of approval of registration.

(2) The application shall be filed in duplicate with the secretary of the Board, and the secretary shall send one copy to the Registrar of the Association.

(3) An application to the Board shall be verified by affidavit or statutory declaration and shall show

(a) that the applicant is twenty-one years of age or over,

(b) that the applicant has not been refused admission to and that his name has not been removed from the register of any association, college or other body of optometrists in Canada or elsewhere other than as a result of his resignation as a member of that body, and

(c) the qualifications as to general education, training and experience possessed by the applicant.

(4) The Board shall consider the application and if it is satisfied

(a) that the statements in the application are true,

(b) that the applicant is of good moral character, and

(c) that the applicant's qualifications are those prescribed by the Board,

the Board shall permit the applicant to take the examinations prescribed by it.

**14.** Where an applicant passes the examination set by the Board and the fee of fifty dollars is paid to the Minister, the secretary of the Board shall issue a certificate of approval for registration to him, and send a copy of it to the Registrar of the Association.

**15.** (1) The Registrar of the Association shall, within fourteen days after the filing of the certificate of approval for registration, issue to the holder thereof a certificate of registration as a member of the Association.

(2) All certificates issued by the Registrar shall be numbered consecutively and recorded in a register kept by him for that purpose.

(3) The Registrar shall in April of each year submit to the Minister a list showing the names of all persons registered as members on the preceding thirty-first day of March.

**16.** Every member shall display his certificate of registration in a conspicuous place in the office or place where he usually practices.

**17.** Penalties for conduct unbecoming an optometrist.

**18.** Conduct unbecoming an optometrist.

**19.** Disciplinary by-laws.

**20.** Discipline committee.

## **Discipline**

**17.** The council may order

- (a) the name of a member to be struck off the register, or
- (b) the suspension of a member for a fixed period, or
- (c) the imposition of a fine against a member not exceeding five hundred dollars,

where that member is found by the council to be guilty of conduct unbecoming an optometrist.

**18.** (1) The question of whether a member is guilty of conduct unbecoming an optometrist shall be determined by the council or, on appeal, by the Supreme Court of Alberta.

(2) For the purposes of this Act, the following acts are deemed to be conduct unbecoming an optometrist,

- (a) any act or conduct that is inimical to the best interests of the public or the members of the Association, or
- (b) the contravention of any provision of this Act or the by-laws.

**19.** The Association may make by-laws

- (a) providing for the preliminary investigation of complaints against members and prescribing the powers and duties of the member or members appointed to conduct the investigation,
- (b) subject to this Act, governing proceedings of the discipline committee appointed under section 20, and
- (c) governing proceedings before the council in matters pertaining to discipline.

**20.** (1) The council shall from time to time

- (a) appoint a committee called the "discipline committee" consisting of not less than three active members of whom at least one shall be a member of the council, and
- (b) designate a member of the council appointed to the committee as its chairman.

(2) Three members of the discipline committee constitute a quorum.

(3) The council may at any time alter the number, constitution, and tenure of office of the discipline committee.

(4) The discipline committee, subject to the provisions of this Act and the by-laws of the Association, may regulate

- (a) the convening, notice, place, management, conduct and adjournment of its meetings,
- (b) the mode of deciding questions,
- (c) its rules of procedure and evidence, and

**21.** Review of complaints.

**22.** Appeal re complaint.

**23.** Laying of charge.

**24.** Inquiry.



(d) generally, the transaction and management of its business.

**21.** (1) The chairman of the discipline committee shall review all complaints received against members of the Association and shall either

- (a) direct that the complaint be dealt with by the discipline committee, or
- (b) direct that a preliminary investigation be held regarding the complaint in accordance with the by-laws, or
- (c) direct that no further action be taken, if he is of the opinion that the complaint is frivolous or without basis or, if proven, would not constitute conduct unbecoming an optometrist.

(2) Upon receiving the report of a preliminary investigation, the chairman of the discipline committee shall either

- (a) direct that the complaint be dealt with by the discipline committee, or
- (b) direct that no further action be taken, if he is of the opinion that the complaint is frivolous or without basis or, if proven, would not constitute conduct unbecoming an optometrist.

**22.** Where the chairman of the discipline committee directs, pursuant to subsection (1) or (2) of section 21, that no further action be taken regarding a complaint, the complainant may appeal his direction to the council who may make any direction regarding it that the chairman could have made under either of those subsections.

**23.** Where the chairman of the discipline committee or the council directs that a complaint is to be dealt with by the discipline committee,

- (a) the chairman shall direct the Secretary-Treasurer to lay a charge of conduct unbecoming an optometrist against the member concerned containing particulars of the complaint, and
- (b) the charge shall be heard by the discipline committee.

**24.** (1) The discipline committee shall inquire into the charge against the member.

(2) At least ten days' notice of the date, time and place of the meeting of the discipline committee for the hearing of the charge shall be served on the member charged.

(3) The notice shall contain a copy of the charge that forms the subject of the inquiry.

(4) If the member charged does not attend, though notified, the committee may proceed in his absence.

**25.** Procedure at inquiry.

**26.** Witnesses.

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

**25.** (1) The member charged may be represented by counsel.

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

(3) Any member 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.

**26.** (1) For the purposes of an inquiry by the discipline committee, the discipline committee may summon witnesses and require them

(a) to give evidence before it, and

(b) to produce such documents and things as the discipline committee requires for the inquiry.

(2) A witness

(a) who fails

(i) to attend before the discipline committee in obedience to a notice to attend,

(ii) to produce any books, papers or other documents in obedience to a notice to produce them,  
or

(iii) in any way to comply with either such notice,  
or

(b) who refuses to be sworn or to answer any question directed to be answered by the chairman of the discipline committee,

is liable to attachment upon application to a judge of the Supreme Court of Alberta and may be punished as for contempt of that Court.

(3) Where the witness referred to in subsection (1) is the member charged, his failure or refusal may be held to be conduct unbecoming an optometrist.

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

(5) Testimony may be adduced before the committee in such manner as the committee deems proper and the committee is not bound by the rules of law concerning evidence applicable to judicial proceedings.

(6) The member charged is a compellable witness in any disciplinary proceedings under this Act.

(7) A witness in any proceedings before the discipline committee may be examined on oath on all matters relevant

**27.** Report after inquiry.

**28.** Payment of costs.

to the charge and shall not be excused from answering any question on the ground that the answer

- (a) might tend to criminate him,
- (b) might subject him to punishment under the disciplinary provisions of this Act, or
- (c) might tend to establish his liability
  - (i) to a civil proceeding at the instance of the Crown or of any other person, or
  - (ii) to prosecution under any statute,

but the answer so given, if it is such as tends to criminate him, shall not be used or received against him in any civil proceedings or in any proceedings under any other Act of the Province.

**27.** (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 find the member either guilty or not guilty of the charge.

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

(5) The member charged shall be served with a copy of the council's findings and the order, if any, made against the member pursuant to section 17.

**28.** (1) When the council finds the member charged to be guilty of conduct unbecoming an optometrist, it may direct that the costs of and incidental to the inquiry be paid by that member.

(2) when the complaint is dismissed on the ground that it is frivolous or vexatious, the council may order the payment by the Association or the person making the complaint of such costs as it considers just to the member charged.

(3) Any costs that are not ordered to be paid by the member charged or by the person who made the complaint shall be borne by the Association.

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

(5) 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 of Alberta.

**29.** Protection against action.

**30.** Appeal against finding of unbecoming conduct.

**31.** Hearing of appeal.

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

**29.** No action lies against the Association, the council or the discipline committee or any member thereof or any person conducting a preliminary investigation 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.

**30.** (1) A member who has been found guilty of conduct unbecoming an optometrist may appeal to the Supreme Court of Alberta by originating notice of motion

- (a) from the finding of guilt, or
- (b) if an order has been made against him under section 17, from the finding of guilt and the order or from the order only,

within thirty days of the date that the member was served with a copy of the council's findings and the order, if any, made under section 17.

(2) The Registrar, upon the request of any person desiring to appeal, shall furnish him with a certified copy of all proceedings, reports, orders and papers upon which the council acted in making the order appealed against.

(3) Notice of the appeal shall be given to the Registrar.

(4) The member may, after commencing his appeal and upon notice to the Secretary-Treasurer, apply to any judge of the Supreme Court of Alberta for an order staying the imposition of any punishment under an order made pursuant to section 17.

**31.** (1) The judge hearing the appeal 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, if any, certified by an officer of the Association.

(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, as the case may be,

- (a) confirm the finding of guilt, or
- (b) confirm the order to the council made under section 17, or
- (c) order that the appellant be reinstated as a member of the Association, or

**32.** Reinstatement.

**33.** Suspension or striking off of member convicted of an indictable offence.

**34.** Suspension for non-payment of fees.

**35.** Resignation from Association.

**36.** Offences by non-members re the practice of optometry, etc.



- (d) cancel, reduce or lengthen the appellant's suspension from practice, or
- (e) cancel, decrease or increase the fine imposed by the council, or
- (f) make any order in substitution for the order of the council under section 17, or
- (g) cancel or vary any order of the council under section 28 as to costs, or
- (h) make such other order as to the judge seems just, and award costs in his discretion.

**32.** 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 struck off, or
- (b) cancel or reduce the period of suspension of a member from practice,

upon such terms and conditions as the council deems just.

**33.** Where a member has been convicted of an indictable offence, the council may, without notice or investigation,

- (a) suspend the member pending the determination of any appeal from the conviction or of any proceedings to have the conviction quashed, or
- (b) whether or not an appeal from the conviction or other proceeding to quash the conviction is pending or has been concluded and whether or not a suspension has been ordered under clause (a)
  - (i) suspend the member for a stated period of time,  
or
  - (ii) order that the name of the member be struck off the register.

**34.** The council may, without notice, suspend a member who is in default of payment for a period of at least sixty days of an amount owing by him to the Association as an annual membership fee, levy or contribution or as a fine, and upon payment of the amount owing and a fee of five dollars, the suspension by reason of the default is thereby cancelled.

**35.** No member may resign from the Association unless his resignation is submitted to and approved by the council.

#### **Offences and Penalties**

**36.** (1) No person other than a member not under suspension shall

- (a) practise optometry, or
- (b) offer to practise optometry, or

**37.** Penalty for offence.

**38.** Exemptions.

- (c) hold himself out or represent himself to be a member of the Association or entitled by law to practise optometry in Alberta, or
  - (d) take or use the name or title of "optometrist", either alone or in combination with any other word or words, or any other name, title, description or abbreviation implying that he is a member of the Association or entitled by law to practise optometry in Alberta.
- (2) The use of test lenses, trial frames or other appliances for measuring the human eye or testing the vision of the human eye, shall be deemed to be *prima facie* proof of the practice of optometry.

**37.** (1) A person who contravenes section 36 is guilty of an offence and liable on summary conviction

- (a) for a first offence to a fine of not more than one hundred 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 three 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.
- (2) In a prosecution under this Act it is sufficient proof of an offence if it is proved that the accused committed a single act prohibited by section 36.

**38.** Nothing in this Act prevents

- (a) the practice by a retail merchant of optometry at his ordinary place of business or the carrying on therein of an optical department, if the practice and optical department are in charge of a member of the Association or a duly qualified medical practitioner, or
- (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 provision by a retail merchant at his ordinary place of business of a test card or chart, other than a mechanical instrument, so that customers therein may select spectacles or eye-glasses kept for sale by the retail merchant at his place of business, or
- (d) the furnishing or supplying through the mail by a person to another person of a test card or chart, other than a mechanical instrument, whereby that other person may select spectacles or eye-glasses, or
- (e) the sale of protective glasses for industrial purposes, coloured glasses that are not ophthalmic appliances, goggles or magnifying glasses not sold

**39.** Non-application of Act to medical doctor and ophthalmic dispensers.

**40.** Registrar's certificate as proof.

**41.** Service of notices.

**42.** Transitional.

**43.** Repeal of present Act.

**44.** Commencement of Act.

or designed for the relief, prevention or correction of visual or ocular anomalies of the eyes.

**39.** Nothing in this Act applies to or affects a duly qualified medical practitioner in the practice of his profession or a registered member of The Alberta Guild of Ophthalmic Dispensers in the practice of ophthalmic dispensing as defined in *The Ophthalmic Dispensers Act*.

#### **General**

**40.** In any action, proceeding or prosecution a certificate signed by the Registrar shall be admitted in evidence as *prima facie* proof of the registration or non-registration of any person as a member of the Association or of the suspension from practice of a member of the Association, without proof of the office or signature of the Registrar.

**41.** Unless otherwise provided in this Act or the by-laws, any notice or other document that may or is required to be served under this Act, may be served by mail.

**42.** Upon the commencement of this Act

- (a) the members and council under the Act repealed by section 43 (in this section called the "former Act") continue respectively as the members and council under this Act,
- (b) the register under the former Act continues as the register under this Act, and
- (c) proceedings or appeals pertaining to discipline commenced under the former Act shall continue as if it had not been repealed.

**43.** *The Optometry Act*, being chapter 229 of the Revised Statutes, is hereby repealed.

**44.** This Act comes into force on the first day of July, 1966.

No. 105

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THIRD SESSION  
FIFTEENTH LEGISLATURE  
14 ELIZABETH II  
1966

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**BILL**

An Act respecting the Practice of  
Optometry

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Received and read the

First time .....

Second time .....

Third time .....

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HON. DR. ROSS

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