

香港視光師管理委員會
**OPTOMETRISTS BOARD
HONG KONG**

專業守則
CODE OF PRACTICE

二零零八年九月修訂
Revised in September 2008

CODE OF PRACTICE OF
THE OPTOMETRISTS BOARD OF HONG KONG

FOR THE GUIDANCE OF
REGISTERED OPTOMETRISTS

(N.B. All registered optometrists are earnestly advised to read through this pamphlet and to acquaint themselves thoroughly with its contents, thereby avoiding the danger of inadvertently transgressing accepted codes of professional ethical behaviour which might then lead to disciplinary action by the Optometrists Board.)

PART I INTRODUCTION

1. The Optometrists Board (henceforth called the Board) was established on 1st May 1986 under section 5 of the Supplementary Medical Professions Ordinance, Cap. 359 (henceforth called the Ordinance).

The functions of the Board are—

- (a) to promote adequate standards of professional practice and professional conduct among optometrists, and
- (b) to carry out a number of functions assigned to it under the Ordinance.

These functions include the compilation and maintenance of a register of optometrists (henceforth called the register) and the investigation of any alleged infringement of the Optometrists (Registration and Disciplinary Procedure) Regulation (henceforth called the Regulation).

The Board is also required to exercise control over the way in which the profession is practised.

2. The Ordinance lays down general rules on the following—

Registration and Practising Certificates (Part III)

Control of Professions (Part IV)

Discipline (Part V)

and these rules apply to all professions controlled under the Ordinance. It is therefore important that optometrists familiarize themselves with those parts of the Ordinance.

The exact way in which the register of optometrists is compiled and maintained, and the procedure governing disciplinary action in the case of registered optometrists, have been laid down in the Regulation. The relevant sections of the Ordinance and Regulation concerning disciplinary matters are reproduced at Annex I.

Copies of the Ordinance and the Regulation are available from the Government Publications Centre.

3. The purpose of this Code of Practice is to provide guidance for the profession and is intended to assist optometrists in the conduct of their profession.

4. Under section 26(1)(a) of the Ordinance the Board may prepare and revise the Code of Practice prescribing standards of conduct and practice for persons practising optometry, for the employers of persons practising optometry and for the directors of any company carrying on the business of practising optometry.

5. Under section 26(1)(b) of the Ordinance, the Code of Practice may also regulate the activities of registered persons in the supervision and control of unqualified persons assisting such persons in the practice of the profession.
6. A copy of this Code and each revision thereof will be sent to each person registered under the Regulation.
7. A person who contravenes any part of this Code of Practice may be subject to inquiries held by the Board. However, the omission of any matter from this Code shall not preclude the Board from judging a person of having acted in an unprofessional or improper manner with regard to that matter. An optometrist is also guilty of unprofessional conduct when he, in the pursuit of his profession, does something or omits to do something, which in the opinion of his professional colleagues of good repute and competency, might reasonably be regarded as disgraceful or dishonourable, or which falls below the standard of competency that his colleagues might regard as reasonable, having regard to the optometrist's stage of experience.
8. The Board wishes to emphasize that notwithstanding the contents of this Code, every case in which a registered optometrist is accused of unprofessional conduct will be judged individually.
9. The Board also wishes to emphasize that, in considering convictions, it is bound to accept the determination of a court as conclusive evidence that the person was guilty of the offence of which he was convicted. A person who faces a criminal charge should remember this if he is advised to plead guilty, or not to appeal against a conviction, in order to avoid publicity or a severe sentence. It is not open to him, if he has been convicted of an offence, to argue before the Board that he was in fact innocent. It is therefore unwise for a person to plead guilty in a court of law to a charge to which he believes that he has a defence.

PART II
EXAMPLES OF CONVICTIONS AND FORMS
OF PROFESSIONAL MISCONDUCT WHICH
MAY LEAD TO DISCIPLINARY PROCEEDINGS

1. This part of the pamphlet sets out certain kinds of offences and professional misconduct which may lead to disciplinary proceedings by the Board. This pamphlet is NOT a complete code of professional ethics, nor can it specify all offences which may lead to disciplinary action. It is simply a guide.

2. When a complaint against an optometrist is received by the Secretary of the Board, it is initially investigated by the Preliminary Investigation Committee, a committee of the Board. This Committee decides whether or not the professional concerned has a case to answer before the Board.

3. The Board alone decides whether any course of conduct amounts to unprofessional conduct. If this is proved, the Board then assesses the gravity of that unprofessional conduct and may impose any penalty in accordance with section 22(1)(i)–(iv) of the Ordinance. Thereafter there is a route of appeal to the Court of Appeal.

4. Optometrists desiring detailed advice on questions of professional conduct arising in particular circumstances are advised to consult their professional association, their own legal advisers or senior colleagues for advice. The Board, having a quasi-judicial function, is not able to advise individuals directly.

5. The following paragraphs describe the more common types of offence or misconduct which may be regarded as grounds for disciplinary proceedings.

6. Convictions—

A serious view is likely to be taken if an optometrist is convicted of criminal deception, forgery, fraud, theft, indecent behaviour or assault in the course of his professional duties or against a patient or colleague. Such convictions may lead to subsequent disciplinary proceedings, irrespective of whether a prison term is imposed or not.

7. Abuse of professional position in order to further an improper association—

An optometrist who abuses his professional position in order to further an improper association with a patient is guilty of professional misconduct and may be subject to disciplinary proceedings.

PART III
FURTHER GUIDANCE ON THE CONDUCT
OF THE PROFESSION

1. General Professional Ethics

1.1 An optometrist should at all times act in a way which brings credit on himself and the profession.

1.2 An optometrist must keep the best interests of the patient uppermost in his mind at all times.

1.3 An optometrist must maintain at all times the highest standard of professional competence and continually strive to update and extend his or her professional knowledge and skill.

1.4 It is the duty of an optometrist to keep confidential all information concerning a patient unless disclosure is made in the course of referral to another professional or is required by law.

1.5 An optometrist must keep adequate records of all patients for a minimum period of five years from the date on which the patient last consulted the optometrist.

2. Relationship with Other Optometrists

2.1 Consultation with other optometrists should be arranged when an optometrist feels that he is unable to best meet the needs of his patient. This is especially vital while there are different categories of optometrists, possibly resulting in a member of the public being uncertain what the optometrist of his choice is able to provide in the way of optometric care. In matters of referral, it is recognized that the ability to perceive the need to refer will vary according to the training the optometrist has received and with the standard of examination he is able to provide.

2.2 In cases where a patient is referred to another optometrist, both optometrists must charge their appropriate fee separately. Splitting of fees is unethical. Sharing fees with any person who has not taken a commensurate part in the service for which the fees are charged is considered to be an unethical practice, as also is the provision or receipt of rebates, and may lead to disciplinary action.

2.3 The depreciation of the professional skill, knowledge, services or qualifications of another optometrist, either expressly or by implication, must be avoided.

3. Relationship with Other Professionals

3.1 Any patient who appears to the optometrist to have an ocular abnormality which might require specialized attention should be referred for the appropriate professional care.

3.2 Wherever practical, a written report on the patient should be sent to the professional to whom the patient is referred.

3.3 If a person, who in the opinion of the optometrist requires specialized treatment, is unwilling to consult another practitioner, the optometrist shall record that fact and the grounds which the person gives for his unwillingness in the person's records.

3.4 The depreciation, during a patient's consultation, of the professional skill, knowledge, services or qualifications of other professionals, either expressly or by implication, must be avoided.

4. Display of Registration Certificates

4.1 Section 18(1) of the Ordinance states that a person registered shall keep displayed, in a conspicuous position, in any premises in which he practises his profession, his certificate of registration, or a certified copy of such certificate.

4.2 Application for more than two certified copies may be subject to investigation by the Board to ensure that the Regulation is being complied with.

5. Advertising and Publicity

5.1 Advertising or publicity must be honest and truthful.

5.2 It must not contain any statement or implication which cannot be substantiated.

5.3 It must not contain any claim of superiority over other practitioners nor depreciate the services of other practitioners.

5.4 No announcements on discount or free professional services are allowed.

5.5 The use of a flamboyant, grandiose or misleading business name must be avoided. (Amended on 3.5.2004)

5.6 The use of a business name which suggests that a specialist or medical service is being provided, or that a commercial establishment has an educational function is not permitted.

5.7 The use of terms such as 'supermarket' to describe a business at which a registered person provides a service is not permitted.

5.8 Only qualifications which have been approved by the Board may be displayed either inside or outside the premises or on any stationery used in the conduct of the business.

5.9 The titles “registered optometrist (Part I)”, “registered optometrist (Part II)”, “registered optometrist (Part III)”, and “registered optometrist (Part IV)” shall be used. The use of any other titles is expressly forbidden.
(Amended on 11.1.2005)

5.10 An optometrist who has been awarded the degree of doctor of optometry (O.D.) may use the title ‘doctor’, in the form of ‘Dr. XXX (name), optometrist’, or ‘XXX (name), doctor of optometry’. The Chinese translation is ‘博士’. Care must be taken to avoid giving the impression to any member of the public that the optometrist is a physician.

6. Standards of Care

6.1 It is recognized that while there are different levels of professional training it is not possible to set one standard of practice for all optometrists. It is, however, important for optometrists to realize that they are expected to provide a standard of care commensurate with the training they have received and with the part of the register on which their names appear.

6.2 Optometrists and employers of optometrists are advised that they should organize their workload, and that of any registered persons working under them, to maintain the required standard of care.

6.3 The premises at which a registered person provides a service must be equipped to allow the provision of a proper standard of care. Optometrists should aim at equipping their practice to permit the highest standard of practice of which they are capable.

6.4 It is not considered that the result of a computerized eye test, particularly one which does not give a subjective visual acuity, on its own, provides an adequate standard of refractive prescription or vision care.

6.5 Optometrists should provide appropriate information to a patient pertaining to his conditions upon request.

7. Contact Lens Fitting

7.1 Paragraph 1.5 has already stressed the need to maintain adequate case records. This is considered particularly essential in contact lens practice.

7.2 A contact lens practitioner is required to make arrangements for continuing contact lens aftercare and supervision compatible with the clinical needs of the patient.

7.3 When faced with refusal to return for aftercare, this fact should be recorded in the patient’s records.

7.4 An optometrist is not allowed to supply contact lenses to patient unless—

- (a) he personally conducts an eye examination upon the patient and dispenses contact lenses; or
- (b) the contact lenses are supplied upon valid prescription.

7.4.1 Where an eye examination is conducted under item 7.4(a), the optometrist shall provide to the patient the following information—

- (a) care regimens of the contact lenses;
- (b) wearing schedule of the contact lenses;
- (c) recommended lens replacement schedule; and
- (d) recommended aftercare schedule;

and shall upon request issue a prescription containing the following information—

- 7.4.1.1 name of patient;
- 7.4.1.2 full name of optometrist and phone number;
- 7.4.1.3 parameters of contact lenses;
- 7.4.1.4 prescription expiry date (not more than 12 months from the date of examination);
- 7.4.1.5 date of examination; and
- 7.4.1.6 signature of optometrist.

7.4.2 Where contact lenses are supplied upon valid prescription under item 7.4(b), the optometrist shall ensure that the contact lenses are supplied before the prescription expiry date (not more than 12 months from the date of examination) and that the prescription contains the following particulars—

- 7.4.2.1 name of patient;
- 7.4.2.2 full name of optometrist/medical practitioner and phone number;
- 7.4.2.3 parameters of contact lenses;
- 7.4.2.4 prescription expiry date (not more than 12 months from the date of examination);
- 7.4.2.5 date of examination; and
- 7.4.2.6 signature of optometrist/medical practitioner.

Amended on 1.9.2008

8. Use of Drugs in the Course of Practice

8.1 A list of drugs which appropriately trained optometrists (i.e. those registered in Part I of the register) are expressly permitted to use in the course of their practice has been drawn up by the Board and appears in Annex II to this Code. This list may be updated at intervals to be determined by the Optometrists Board. There is no restriction on the use of fluorescein sodium and rose bengal.

8.2 Optometrists are warned that care must be exercised in the use of any drug. Any careless or irresponsible use may lead to disciplinary action.

8.3 Drugs listed in Annex II can only be used for diagnostic purposes.

8.4 An optometrist who is entitled to use specified drugs (other than staining agents) in the course of his practice must have knowledge of cardio-pulmonary resuscitation (CPR) and be proficient in this technique. Relevant accessories for resuscitation (e.g. Ambu bag) should be made available on the premises.

9. Fitness to Practise

Abuse of Alcohol or Drugs—

An optometrist shall not engage in the practice of optometry whilst his ability to perform any professional act is impaired by alcohol or drugs.

Extract of sections 22–25 of the Supplementary Medical Professions Ordinance, Cap. 359 is reproduced as below:—

PART V
DISCIPLINE

22. Disciplinary powers of board

(1) If after due inquiry into any case referred to it by a Preliminary Investigation Committee in accordance with regulations made under section 29 a board is satisfied that a person registered by that board—

- (a) has been convicted in Hong Kong or elsewhere of an offence punishable with imprisonment;
- (b) has been guilty in Hong Kong or elsewhere of unprofessional conduct;
- (c) was not at the time of his registration qualified to be registered;
- (d) has obtained registration by fraud or misrepresentation; or
- (e) has not complied with or is in breach of any condition of his registration (other than a condition under section 15) or has failed to comply with this Ordinance,

the board may—

- (i) order the name of the person registered to be removed from the register;
- (ii) order the name of the person registered to be removed from the register for such period as it thinks fit;
- (iii) order the person registered to be reprimanded; or
- (iv) order that a warning letter in such terms as it considers appropriate be served on the person registered.

(2) Within 1 month after the expiry of the time within which an appeal against an order made by a board under subsection (1) may be made to the Court of Appeal under section 25 or if such appeal has been made, within 1 month after the appeal is finally determined, the board—

- (a) shall, in the case of an order made under subsection (1)(i), (ii) or (iii), publish the order or, if the order is varied on appeal, the order as so varied in the Gazette together with an account of the particulars and the nature of the matter to which such order relates; and
- (b) may, in the case of an order made under subsection (1)(iv), publish the order or, if the order is varied on appeal, the order as

so varied in the Gazette together with an account of the particulars and the nature of the matter to which such order relates.

(3) In any inquiry held under this section, a board may make such order as it thinks fit for the payment of the costs of its secretary, a complainant, counsel or a solicitor present at the inquiry and the person registered or any one or more of them and any costs awarded may be recovered as a civil debt.

(4) Nothing in this section shall require a board to inquire into the question whether the person registered was properly convicted but the board may consider any record of the case in which such conviction was recorded and any other evidence which may be available and is relevant as showing the nature and gravity of the offence.

(5) In any inquiry under this section as to whether a person has been guilty of unprofessional conduct, any finding of fact which is shown to have been made in any matrimonial proceedings in a court in a common law jurisdiction which has unlimited jurisdiction in civil matter, or on appeal from a decision in such proceedings, shall be conclusive evidence of the fact found.

23. Powers of boards at inquiries

(1) For the purposes of an inquiry under section 13 or 22 or when it otherwise appears desirable to a board that any matter relating to the relevant profession should be inquired into, the board shall subject to subsection (4) have power—

- (a) to hear, receive and examine evidence on oath;
- (b) to summon a person to attend the inquiry to give evidence or produce a document or other thing in his possession and examine him as a witness or require him to produce a document or other thing in his possession;
- (c) to admit to the inquiry or to exclude therefrom the public or any member of the public;
- (d) to admit to the inquiry or to exclude therefrom the press; and
- (e) to award any person summoned to attend the inquiry such sum or sums as in the opinion of the board may have been reasonably expended by him by reason of his attendance.

(2) A summons under subsection (1) shall be in the prescribed form and signed by the secretary of the board.

(3) Subject to subsection (4), a person who—

- (a) being summoned under subsection (1) to attend an inquiry to give evidence or to produce a document or other thing in his possession, refuses or neglects to do so; or

- (b) being examined under subsection (1) as a witness by or before a board, refuses or neglects to answer a question put to him by or with the concurrence of the board, or to produce a document or other thing in his possession when required to do so,

commits an offence.

(4) Notwithstanding subsection (3) a person who appears as a witness before a board shall be entitled to the same privileges in respect of the giving of evidence and the production of a document or other thing as he would be entitled to if appearing as a witness in civil proceedings before the Court of First Instance.

(5) A person whose conduct is the subject of an inquiry, or who is implicated or concerned in the subject matter of the inquiry, shall be entitled to be represented by counsel or a solicitor at the inquiry.

(6) A person who—

- (a) behaves in an insulting manner or uses any abusive, threatening or insulting expression to or in the presence of a board; or

- (b) wilfully disrupts the proceedings of a board,

commits an offence.

24. Provisions relating to decisions and orders of boards

(1) The secretary of a board shall cause a copy of any decision of the board under section 13(3) or of any order made by the board under section 22 to be served forthwith upon the person concerned.

(2) No order of a board under section 22(1) shall take effect while the person to whom the order relates remains entitled to appeal to the Court of Appeal against the decision in accordance with section 25 or, if such an appeal has been made, before the appeal is finally determined.

25. Appeals to Court of Appeal

(1) Any person whose application for registration is declined under section 13(3) or a person registered who is aggrieved by an order made in respect of him under section 22(1) may appeal to the Court of Appeal and the Court of Appeal may thereupon affirm, reverse or vary the decision or order appealed against.

(2) (Repealed 10 of 2005 s. 75)

(3) The Court of Appeal may make such order for the payment of costs as it considers reasonable.

(4) Subject to subsection (5), the practice in relation to the appeal shall be subject to any rules of court made under the High Court Ordinance (Cap. 4).

(5) Notwithstanding subsection (4), the Court of Appeal shall not hear an appeal against a decision of a board under section 13(3) or an order made under section 22(1) unless notice of the appeal was given within 1 month of the service of a board's decision on the applicant or within 1 month of the service of the order under section 24, as the case may be.

Extract of sections 17–46 of the Optometrists (Registration and Disciplinary Procedure) Regulation is reproduced as below:—

PART III

PROCEEDINGS PREPARATORY TO HEARING BY THE BOARD

17. Preliminary Investigation Committee

(1) For the purposes of performing the functions conferred upon it by the Ordinance and this Regulation, there shall be a Preliminary Investigation Committee consisting of—

- (a) a chairman who shall be a member of the Board nominated by the Board and appointed by the Chairman of the Board;
- (b) 1 registered optometrist ordinarily resident in Hong Kong, not being a member of the Board, nominated by the Hong Kong Optometric Association and appointed by the Chairman of the Board;
- (c) 1 registered optometrist ordinarily resident in Hong Kong, not being a member of the Board, nominated by the Hong Kong Society of Professional Optometrists and appointed by the Chairman of the Board.

(2) Save as provided in Schedule 5 the members of the Committee shall hold office for 12 months but at the end of such period they may be reappointed.

(3) Schedule 5 shall apply in relation to the Preliminary Investigation Committee.

18. Submission of complaint or information

(1) Where—

- (a) a complaint is made to the Secretary in respect of a registered optometrist; or
- (b) information is received by the Secretary in respect of an application for registration,

as to any of the matters referred to in paragraph (a), (b), (c), (d) or (e) of section 22(1) of the Ordinance he shall submit the complaint or that information to the Chairman of the Committee.

(2) In this Part “complaint” (申訴) includes information received by the Secretary under subsection (1)(b) and submitted under that subsection.

19. Complaint touching conduct

(1) Where, in a complaint submitted by the Secretary to the Chairman of the Committee under section 18, any allegation is made which in the opinion of

the Chairman of the Committee gives rise to a question whether a registered optometrist or an applicant for registration—

- (a) has been convicted in Hong Kong or elsewhere of an offence punishable with imprisonment;
- (b) has been guilty in Hong Kong or elsewhere of unprofessional conduct; or
- (c) may be guilty of any of the matters referred to in paragraph (c), (d) or (e) of section 22(1) of the Ordinance,

the Chairman of the Committee may require that the complaint be formulated in writing setting out the grounds thereof and, except where the complaint is in writing under the hand of a public officer, supported by one or more statutory declarations as to the facts of the case.

- (2) Each statutory declaration referred to in subsection (1) shall state—
 - (a) the address and description of the declarant; and
 - (b) if any fact declared is not within the personal knowledge of the declarant, the source of the declarant's information and the grounds for his belief in the truth of the facts.

20. Reference of complaint to the Committee

(1) On receiving a complaint submitted under section 18, the Chairman of the Committee shall fix a date for the meeting of the Committee to consider the complaint for the purpose of determining whether it should be referred to the Board for inquiry.

(2) Where a complaint is to be considered by the Committee for the purposes described in subsection (1) the Secretary shall—

- (a) notify the respondent of the receipt of the complaint;
- (b) inform him of the substance thereof;
- (c) forward to him a copy of any statutory declaration furnished under section 19(1);
- (d) inform him of the date fixed for the meeting of the Committee to consider the complaint; and
- (e) invite him to submit to the Committee any explanation he wishes to offer for his conduct or any other matter alleged in the complaint.

21. Consideration of complaint by the Committee

(1) The Secretary shall, at the meeting at which the complaint is considered, put before the Committee the complaint, any statutory declaration received therewith, any explanation submitted by the respondent and any other available document or matter in the nature of evidence relevant to the complaint.

(2) The Committee shall consider any documents or matter put before it under subsection (1) and, subject to subsection (3), shall determine either—

- (a) that no inquiry shall be held; or
- (b) that the complaint shall in whole or in part be referred to the Board for inquiry.

(3) Before coming to a determination under subsection (2), the Committee may cause to be made such further investigation and may obtain such additional advice or assistance as it considers necessary.

22. Determination of Committee that no inquiry be held

(1) If the Committee determines that no inquiry shall be held, it shall direct that the complaint be dismissed and the Secretary shall inform the complainant, if any, and the respondent accordingly.

(2) If the Committee determines that an inquiry shall be held, it shall refer the case to the Board and the Chairman of the Committee shall notify the Chairman of the Board of the matters into which inquiry is to be made.

23. Determination of Committee that inquiry be held

(1) Where a matter is referred to the Board under section 22(2), the Chairman of the Board shall fix a date for the holding of an inquiry and the Secretary shall, within 2 months of the determination of the Committee to refer the complaint to the Board, serve on the respondent—

- (a) a notice of inquiry which shall be in accordance with Form 4 in Schedule 2; and
- (b) a copy of this Regulation.

(2) A notice of inquiry shall—

- (a) in a case where the complaint is that the respondent has been guilty of unprofessional conduct, state in the form of a charge the matters into which inquiry is to be held;
- (b) in any other case, state the allegation contained in the complaint; and
- (c) specify the date, time and place at which the inquiry is proposed to be held.

(3) An inquiry shall not be held until 28 days after the date of service of the notice of inquiry unless the respondent consents in writing to holding it earlier.

(4) Service of a notice of inquiry on the respondent may be by registered post addressed to him at his registered address or at his address last known to the Secretary if different.

(5) Within the time stipulated for service of the notice of inquiry, the Secretary shall send a copy of the notice of inquiry to any complainant.

24. Adjournment of inquiry

(1) The Chairman of the Board may, at any time, adjourn any inquiry to such date as he thinks fit.

(2) Notice of any such adjournment shall be given to the respondent and to any complainant.

25. Documents to be furnished to Board

The respondent and any complainant shall furnish to the Secretary, not less than 10 days before the date of an inquiry or such lesser period as the Board may determine, 2 copies of all documents upon which he intends to rely at the hearing of the inquiry.

26. Documents to be available to each party

The Secretary on the request of the respondent or a complainant and on the payment of reasonable charges (if any) shall send to the respondent or to the complainant, as the case may be, copies of any document sent to the Secretary by the other party for the purposes of an inquiry.

27. Notice to produce

Any party may at any time give to any other party notice to produce any document alleged to be in the possession of that party and, on failure to produce such document, may prove the contents thereof by any alternative method.

28. Amendment of notice

(1) Where before the hearing or at any stage of the hearing it appears to the Board that a notice of inquiry is defective, the Chairman of the Board may give such directions for the amendment of the notice as he may consider necessary to meet the circumstances of the case unless, having regard to the merits of the case, he is of the opinion that the required amendments cannot be made without prejudice to the respondent.

(2) The Secretary shall, as soon as is practicable, after the amendment of a notice of inquiry, give notice in writing thereof to the respondent and to any complainant.

PART IV

PROCEEDINGS AT HEARING OF THE BOARD

29. Interpretation

In this Part—

“order” (命令) means an order made by the Board in the exercise of its powers under section 22 of the Ordinance;

“Secretary” (秘書) includes a counsel, a solicitor or a legal officer appointed in pursuance of section 31.

30. Record of proceedings

(1) A shorthand writer may be appointed by the Board to prepare a verbatim record of the proceedings.

(2) If a verbatim record of any proceedings or any part of any proceedings has been prepared the Chairman of the Board, on application to him by any party and on the payment of reasonable charges (if any), shall furnish such party with a copy of such record.

31. Appointment of counsel, solicitor or legal officer as Secretary

On the application of the Secretary of the Board appointed under section 5(4)(a) of the Ordinance, the Secretary for Justice may appoint a counsel, a solicitor or a legal officer within the meaning of the Legal Officers Ordinance (Cap. 87) to carry out the duties which a secretary has to perform in an inquiry where the complainant is not present or is not represented by counsel or solicitor.

32. Opening of inquiry

(1) At the opening of an inquiry the Secretary shall read the notice of inquiry.

(2) If the respondent is not present and is not represented by a counsel or solicitor at the opening of the inquiry, the Secretary shall furnish to the Board such evidence as the Board may require that the notice of inquiry was served on the respondent in accordance with section 23(4) and, on being satisfied as to such evidence, the Board may proceed with the inquiry in the absence of the respondent.

(3) If the respondent is present at the inquiry, the Chairman of the Board shall, immediately after the notice of inquiry has been read, inform him of his right to cross-examine witnesses, to give evidence and to call witnesses on his behalf.

33. Objections on point of law

(1) After the reading of the notice of inquiry the respondent, or his counsel or solicitor, may object to any charge or allegation as the case may be on a point of law and the Secretary and any other party to the inquiry may reply thereto and, if the Secretary or any party replies to that objection, the respondent, or his counsel or solicitor, shall be permitted to answer such reply.

(2) If such objection is upheld by the Board the charge to which such objection relates shall be considered only subject to such objection.

34. Order of procedure before Board

(1) After the reading of the notice of inquiry the order of procedure specified in subsections (2) to (8) shall be observed.

(2) The complainant, or his counsel or solicitor, or in their absence, or if there is no complainant, the Secretary, shall present the case against the respondent, adduce the evidence in support thereof and then close the case against the respondent.

(3) At the close of the case against the respondent, he or his counsel or solicitor may make either or both of the following submissions in relation to any charge or allegation in respect of which evidence has been adduced—

- (a) that sufficient evidence has not been adduced upon which the Board can find that the facts alleged in the complaint have been proved;
- (b) that the facts alleged in the complaint are not such as to constitute the offence charged or the allegation made against the respondent.

(4) Where a submission under subsection (3) is made, a reply thereto may be made by the complainant, or by his counsel or solicitor, or in their absence by the Secretary, and the respondent may answer such reply.

(5) The Board shall determine whether the submission made under subsection (3) shall be upheld and the Chairman of the Board shall announce the determination of the Board.

(6) If the Board—

- (a) upholds the submission in respect of any charge or allegation, the finding shall be recorded that the respondent is not guilty on that charge or allegation;
- (b) rejects the submission, the Chairman of the Board shall call upon the respondent to state his case.

(7) When called upon to state the case, the respondent, or his counsel or solicitor, may then adduce evidence in support of the respondent's case and may address the Board once, either before or after adducing evidence.

(8) At the conclusion of the case of the respondent, the complainant, or his counsel or solicitor, or in their absence the Secretary, may address the Board in reply—

- (a) if evidence other than the respondent's own evidence was adduced on his behalf; or
- (b) with the special leave of the Board.

35. Determination by Board or postponement to future meeting

At the conclusion of the proceedings the Board shall either—

- (a) determine whether the facts alleged in any charge or allegation have been proved to its satisfaction and whether the respondent is guilty as alleged or charged; or
- (b) postpone its determination to a future meeting to be held on a date to be decided by the Board,

and the Chairman of the Board shall announce the decision of the Board.

36. Notification of meeting for determination

(1) Where the Board decides to postpone its determination to a future meeting, the Secretary shall, not less than 1 week before the date fixed for such future meeting, serve on the respondent a notice specifying the date, time and place fixed for the meeting of the Board and invite the respondent to appear at such meeting.

(2) A notice under subsection (1) shall be served in accordance with section 23(4), and a copy of the notice shall be sent to the complainant, if any.

37. Determination by Board at future meeting

At any future meeting of the Board referred to in section 35(b), the Board shall determine whether the facts alleged in any charge or allegation have been proved to its satisfaction and whether the Board finds the respondent guilty as alleged or charged and the Chairman of the Board shall announce the Board's determination.

38. Making of an order or postponement to future meeting

Where the Board makes a finding of guilt or that any allegation against the respondent has been proved under section 35(a) or 37, it shall—

- (a) if the respondent is a registered person, subject to section 41, make an order; and
- (b) if the respondent is an applicant for registration, subject to section 41, decide whether to reject his application for registration; or
- (c) postpone to a future meeting to be held on a date to be decided by the Board, the making of an order under paragraph (a) or a decision under paragraph (b),

and the Chairman of the Board shall announce the decision of the Board.

39. Notification of meeting for an order

(1) Where the Board postpones to a future meeting the making of an order or a decision under section 38, the Secretary shall, not less than 1 week before the date fixed for such meeting, serve on the respondent a notice

specifying the date, time and place fixed for the meeting and inviting him to appear at the meeting.

(2) A notice under subsection (1) shall be served on the respondent in accordance with section 23(4), and a copy of the notice shall be sent to the complainant, if any.

40. Making of order at future meeting

At any future meeting referred to in section 38, the Board shall, subject to section 41—

- (a) if the respondent is a registered person, determine the order to be made; and
- (b) if the respondent is an applicant for registration, decide whether to reject his application for registration,

and the Chairman of the Board shall announce the determination or decision of the Board.

41. Opportunity for mitigation

(1) At any meeting of the Board at which the Board makes in respect of a respondent an order or a decision to reject his application for registration, before the order or decision is made, an opportunity shall be given to the respondent or his counsel or solicitor to make a statement in mitigation and to adduce evidence as to the circumstances leading to the commission of the offence or the conduct complained of and as to the character and antecedents of the respondent.

(2) At any meeting referred to in subsection (1), before the order or decision of the Board is made—

- (a) the Secretary or any other person presenting the case against the respondent may, if the respondent has been the subject of a previous order, produce to the Board the records of the meeting at which that order was made; and
- (b) the respondent, in person or by his counsel or solicitor, may make a statement by way of mitigation and adduce evidence as to the circumstances leading to the previous order.

42. Evidence

(1) Evidence may be taken by the Board by oral statement on oath or by written deposition or statement.

(2) A summons under section 23(1)(b) of the Ordinance to any person requiring him to attend an inquiry to give evidence or produce any document or other thing in his possession shall be in accordance with Form 5 in Schedule 2.

(3) Every witness shall be examined by the party producing him and may then be cross-examined by the other party and may be re-examined by the party calling the witness only upon matters arising out of the cross-examination.

(4) The Board may decline to admit the evidence of any deponent to a document who is not present for, or who declines to submit to, cross-examination.

(5) The Chairman of the Board, and members of the Board through the Chairman of the Board, may put such questions to the parties or to any witness as they may think desirable, and the other parties may then re-examine such party or witness on matters arising out of such questioning.

43. Voting

(1) In the taking of the votes of the Board on any question to be determined by it, the Chairman of the Board shall call upon the members to signify their votes and shall then declare the determination of the Board in respect of such question.

(2) Where a determination of the Board declared under subsection (1) is challenged by any member of the Board, the Chairman of the Board shall call upon each member severally to declare his vote, announce his own vote and announce the number of members of the Board who have voted each way, and the result of the vote.

(3) Where on any question to be determined by the Board the votes are equal, the question shall be deemed to have been decided in favour of the respondent.

(4) No person other than members of the Board and the Legal Adviser shall be present when the Board votes on any matter.

PART V

DUTIES OF LEGAL ADVISER

44. Inquiry by the Board

The Legal Adviser shall be present at every inquiry held by the Board in accordance with section 13 or 22 of the Ordinance and such an inquiry shall not commence if the Legal Adviser is not present.

45. Ordinary meetings of Board

The Chairman of the Board may give to the Legal Adviser prior notice that his advice may be required at any meeting of the Board, not being an inquiry under section 13 or 22 of the Ordinance, or at any meeting of the Committee and, where such notice is given, the Legal Adviser shall be present at such meeting.

46. Advice by legal Adviser

(1) When the Legal Adviser advises the Board on any question of law as to evidence, procedure or any other matter in any inquiry under section 13 or 22 of the Ordinance he shall do so in the presence of every party to the proceedings or the person representing each party or, if the advice is tendered after the Board has commenced to deliberate as to its findings, every such party or person shall be informed of the advice that the Legal Adviser has tendered.

(2) In any case where the Board does not accept the advice of the Legal Adviser on any question described in subsection (1), every such party or person shall be informed of this fact.

Annex II

List of Approved Drugs

The Board has approved a list of drugs which it considers proper for optometrists registered in Part I of the register to use in the normal conduct of their practice. This list is given below—

<i>Type</i>	<i>Drug</i>
Topical Anaesthetics	Proparacaine Hydrochloride used in 0.5% solution
	Oxybuprocaine Hydrochloride used in 0.4% solution
	Tetracaine used in 0.5% solution
Mydriatics	Tropicamide used in 0.5% or 1.0% solution
	Phenylephrine used in not more than 2.5% solution
Cycloplegics	Cyclopentolate Hydrochloride used in 0.5% or 1.0% solution
	Atropine Sulphate used in 0.5% aqueous solution or Atropine Sulphate 1.0% solution available in the form of eyedrops or
	Atropine Sulphate 0.5% ointment or Atropine Sulphate 1.0% ointment

Amended on 3.12.2007