# Competency in Optometry Examination
# Supplementary Materials for Candidates

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## Optometry in Australia—a brief history

Nineteenth century Australians received their vision care from a variety of sources including so-called 'sight-testing opticians', jewellers, watch-makers and travelling hawkers. In those days it was common not to charge for the sight-testing part of the

transaction, only for the spectacles. Opticians (the forerunner of today's optometrists) lacked professional identity, seeing themselves as retailers.

Between 1905 and 1920 the opticians began to group together and formed professional societies. The Australian Optometrical Association (AOA), now known as Optometrists Association Australia (OAA) was formed as a national body in 1918. With the formation of these bodies professionalisation began. The professional bodies set out to lay down codes of behaviour and educational standards for those who called themselves opticians. Government recognition of professional status through registration was the first primary aim of the infant profession.

Education was fundamental to the achievement of this goal. The first optometric course was established by the Institute of Ophthalmic Opticians of Queensland in 1909 and other states soon followed suit. By 1920 the forerunner of the journal, Clinical and Experimental Optometry was produced. Opticians began to call themselves optometrists, following the example of their American counterparts. The Australian profession was to follow the American example by placing a biological science, rather than a physical science, emphasis on training.

Legislation restricting optometric practice to those adequately trained was difficult to achieve and faced strong medical opposition. In 1913 Tasmania became the first State to have legislation enacted which required registration of optometrists. It took more than 20 years for the rest of the remaining Australian states to follow suit. Compared to the rest of the world this record is good. The first registration of optometrists in the world occurred in Minnesota, USA in 1901 while British optometrists were not registered until 1958.

Organised ophthalmology attempted to restrict the progress of the optometric profession in a variety of ways and in the 1930s ophthalmologists established OPSM. This had the desired effect of reducing the number of ophthalmologists' prescriptions dispensed by optometrists. In turn OPSM allowed ophthalmologists to maintain an interest in dispensing from a suitable distance. OPSM's advertising and shopfronts made it possible for ophthalmologists to recruit patients.

Ophthalmologists' opposition was also based on claims of inadequate educational standards for optometrists. Nevertheless the ophthalmologists refused to provide optometrists with any form of teaching which might raise the standard. In 1943 the ophthalmologists at the Melbourne Eye and Ear hospital threatened to strike rather than teach optometrists. This situation remains unaltered to this day.

Optometry's advancement as a legitimate clinical science received a boost in 1939 when it was included as a distinct section within the congress of the Australian and New Zealand Association for the Advancement of Science (ANZAAS).

In 1952 when the first Australian National Health Scheme was introduced, benefits for consultations with optometrists were not included. Optometry won a pyrrhic victory in having included in the legislation regulation which prevented ophthalmologists' patients receiving benefits when spectacles were prescribed. It was easy to circumvent this regulation and the proportion of patients seen by optometrists declined dramatically. It seemed likely the profession would die.

The AOA struggled against the discriminatory legislation with little effect for more than 20 years until the Labor party came to power in 1972. In 1975 the Whitlam Government introduced Medibank (which was later dismantled and resurrected as Medicare in 1984), and as a result of intense political activity by the AOA optometry was included in the National Health Scheme. After 23 years, optometrists' patients were on the same footing as ophthalmologists' patients. Once again, the profession began to thrive.

Since 1975 optometry has consolidated its standing in the community. In 1977 veterans, considered an 'at-risk' group, were allowed to consult with optometrists for the first time. Restrictions on use of ophthalmic drugs by optometrists have gradually been relaxed. Progressively all sorts of authorities are recognising the professional standing and expertise of optometrists and are approaching optometry when advice on vision care is required.

In 1993, the AOA and its members were able to overturn a Government decision to remove Medicare benefits for most optometric consultations. This campaign illustrated the great public acceptance of optometry. This is also reflected by the fact that two-thirds of primary eyecare consultations in Australia today are provided by optometrists.

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# Medicare and Optometry

### What is Medicare?

Medicare is a universal health insurance scheme providing basic health cover for all Australians. It is funded from taxes, in particular the 'Medicare levy' which is usually calculated at 1.5% of taxable income over a certain level, and administered by a statutory body, the Health Insurance Commission (HIC).

### How does Medicare work?

When an optometrist examines a patient, Medicare will pay a benefit of 85% of the fee charged for the consultation.

#### What is covered?

All optometric consultations are covered, provided that the following conditions are met:

The consultation is provided legally (ie. by a registered optometrist, and not in breach of any State or Federal laws).

The optometrist providing the service has agreed to participate in the Medicare system.

A significant consultation or examination procedure has been carried out.

A clinical record of the consultation has been made.

The consultation has been provided at premises listed in a participating agreement (except in the case of domiciliary care).

The consultation has involved the personal attendance of both the patient and the optometrist (ie. no telephone consultations).

The service is 'clinically relevant', as defined in the Health Insurance Act (ie. the service is generally accepted in the optometric profession as being necessary for the appropriate treatment of the patient to whom it is rendered).

The service is a 'clinically relevant service ordinarily rendered by the optometrist in relation to consultation on ocular or vision problems'. Almost all services provided by optometrists fall within these criteria, and attract Medicare benefits.

### What is not covered?

There are a number of situations in which optometric consultations will not attract Medicare benefits.

Any consultation which does not meet all the criteria listed above will not attract benefits. Some procedures, such as fundus photography, do not fall within the scope of service, and so if they are the only services provided at a consultation, that consultation will not attract benefits. In practice, such consultations are rare.

Screenings, and services provided as part of an industrial arrangement are not covered.

In addition, services provided to people not eligible for Medicare benefits are not covered. This mainly involves services to visitors from other countries. Australia has reciprocal health insurance arrangements with some countries, but these agreements cover a different range of services in each case. The safest thing to do when examining people who do not have a Medicare card is to charge them directly, give them an itemised receipt, and then let them sort it out with Medicare.

The most common situation in which consultations do not attract a benefit is when a person is fitted with contact lenses and the patient does not satisfy any of the criteria specified in the definitions of items 10921 to 10929 (contact lens consultation items) in the Medicare Schedule.

## The Medicare Schedule

Before billing for any consultation, it is wise to familiarise yourself with the Medicare Schedule which changes from time to time.

The Medicare Schedule and related information on the arrangements for the payment of Medicare benefits for Optometrical consultations is contained in a booklet published by the Commonwealth Department of Health and Family Services entitled 'Medicare Benefits for Consultations by Optometrists'. The latest edition of this booklet can be obtained by writing to the Department of Health and Ageing at GPO Box 9848 in any capital city. Detailed information is also available from the HIC's website: www.hic.gov.au.

## How do I get involved?

There is no obligation on optometrists to take part in Medicare, but if they do not, their patients will not receive any benefits. All practicing optometrists in Australia currently participate in Medicare.
The practicalities of Medicare are fairly simple, and are set out below.

## Participating Agreement

Before benefits can be paid for optometric services, the optometrist providing the services must formally agree to take part in the Medicare system. This is done through the Participating Agreement, also known as the Common Form of Undertaking. This is essentially a contract between the optometrist and the Government under which the optometrist agrees to abide by certain rules, and the Government agrees to pay benefits for consultations provided by the optometrist.

You can obtain the Undertaking from State offices of the Department of Health and Ageing.

### What do I agree to?

The main provisions of the Participating Agreement are:

The optometrist agrees to charge eligible patients no more than the fees set out in the Medicare schedule. The optometrist may elect to charge a patient less than the schedule fee, but the benefits paid will also be reduced

accordingly.

The optometrist, or someone acting on their behalf, are prohibited from advertising in a manner which could lead to unnecessary consultations.

Spectacle prescriptions are the property of the patient, and must be handed over on request. The patient must be informed of this prior to any dispensing taking place. A sign stating this is an acceptable method of informing the patient.

The optometrist is required to refer a patient to a medical practitioner when it is apparent to the optometrist that the patient has a condition which requires treatment by a medical practitioner.

## Provider number

Every optometrist who takes part in Medicare must have a provider number. A separate provider number is issued for each location at which an optometrist practises. Thus the provider number is a way for Medicare to identify the practitioner who provided a particular service, as well as the location at which they provided it. This is important for preventing over servicing and fraud.

Provider numbers are issued by the Health Insurance Commission offices in each State.

When you apply for a provider number you will have to specify where the benefit cheques from Medicare are to be directed. If you are self-employed, they will be directed to you, but if you are an employee, they will generally be directed to your employer. When Medicare issues your provider number they will establish a 'pay link' between that provider number and a participating agreement, which ensures that the benefits are sent to the correct destination. If you practise for more than one employer it is possible to establish multiple pay links, so that benefits for consultations at one location are paid to one person, while benefits for consultations at another location are paid to another person.

You need to have a provider number for each location at which you practise. If you are practising in a short-term locum position (less than two weeks) you do not have to get a new provider number, provided you already have a provider number. In this situation you complete the assignment of benefits form (form DB2) using the name and provider number of the optometrist who actually provided the service. When a claim form (form DB1) is submitted to Medicare, it should use the employer's provider number, and the benefits will be paid to them. Benefits can also be directed to the locum optometrist. If the locum position is for more than two weeks, you must obtain a provider number for that location.

## How do benefits get paid?

There are three methods by which benefits can be paid for optometric services.

## Patient payment

### On the spot

The optometrist gives the patient a bill for any amount up to the maximum fee for the consultation provided. The patient pays the bill, then takes the receipt to a Medicare office and claims a rebate of 85% of the amount paid.

This is a simple procedure, and the optometrist gets their money on the spot, but the patient is out of pocket for the difference between the rebate and the fee, and there is always the problem that the patient may not have enough money to pay immediately.

### Medicare cheques

The optometrist gives the patient a bill for any amount up to the maximum fee for the consultation provided. The patient takes the bill to the Medicare office, and is given a cheque, made out to the optometrist, for 85% of the fee. The patient gives the optometrist the cheque, and pays the balance.

This is a little more complex, and the patient may not be happy paying the difference between the rebate and the fee. There is also the risk that the patient may not pay the bill. The advantage is that the patient only has to find the difference between the rebate and the fee, and the optometrist receives the full fee.

### Direct billing (Bulk billing)

The optometrist fills out an assignment of benefits form, which the patient signs. The optometrist sends the form to Medicare, who send a cheque for the rebate directly to the optometrist.

This is the most popular method of billing. It has the advantage that payment is guaranteed, so you have no bad debts; it is convenient; it is popular with patients; and it is socially responsible when financially disadvantaged patients are involved.

The disadvantages of direct billing are that the optometrist must accept the 85% rebate as full payment. The optometrist cannot charge the patient any additional fee. In addition, patients may get the impression that optometric consultations are free. It is a good idea for the optometrist to let the patient know that a fee is being paid for their services by Medicare on the patient's behalf.

It is Optometrists Association policy that optometrists should direct-bill pensioners and members of other disadvantaged groups (unemployed, students, etc.).

## Inappropriate practice and fraud

The Health Insurance Commission monitors the payment of Medicare benefits to ensure that they are only paid in appropriate situations. Obtaining benefits for unnecessary consultations or for consultations which did not take place is illegal, and carries very severe penalties, including exclusion from the Medicare system, heavy fines, and long jail terms. In addition, registration boards will almost certainly take disciplinary action against optometrists who are found to have defrauded Medicare, including deregistering them.

The HIC has a computer system which monitors the payment of benefits, and compares the consultation pattern of each provider with those of other optometrists. If someone stands out, it will detect this, and alert the HIC to the need for investigation to establish whether the optometrist is practising appropriately.

'Inappropriate practice' is the term used to describe conduct which would be unacceptable to the general body of the members of the profession. This includes providing unnecessary or substandard consultations, but could also include billing for consultations which are not part of regular optometry. For example, an optometrist could give a patient a back massage, but it would be regarded as inappropriate practice if they billed Medicare for this, as it is not generally regarded as part of optometry.

There are a number of steps which the HIC follows when investigating a possible case of inappropriate practice.

### Counselling

When the HIC's computer detects an optometrist whose consultation 'profile' stands out from the crowd, a counsellor is asked to investigate the situation and counsel the optometrist. In most cases there is a simple reason for the optometrist's profile being unusual, such as the optometrist specialising in children's vision or contact lenses. In other cases, the optometrist may have been ignorant of the provisions of the schedule, and have been billing patients incorrectly. In these cases, the counsellor will usually show the optometrist where they have been in error, and they will be required to pay back the benefits which they have claimed incorrectly. All discussions between the counsellor and the optometrist are confidential, and cannot be used as evidence in later actions.

### Professional Services Review Committee

When the counsellor is unable to resolve the case, it will be referred to an Professional Services Review Committee. This is a body drawn from a panel of experienced optometrists, which is responsible for investigating the case and deciding whether the consultations provided should have attracted benefits. The committee's investigations are confidential, and the counsellor plays no role in them.

The committee attempts to determine whether the services provided were inappropriate. They then report to the 'Determining Officer' (an optometrist), giving their findings. They may also make recommendations regarding disqualification of the practitioner being investigated. The Determining Officer decides on the action to be taken regarding the practitioner. This can include a reprimand, counselling, requiring repayment of benefits, and exclusion from Medicare.

### Prosecution

If it appears that an optometrist has been deliberately defrauding Medicare (ie. claiming for consultations which did not take place), the case may be referred to the Federal Police. They can interview patients and optometrists to determine whether or not services were provided, and if warranted, will lay charges against the optometrist.

If the optometrist is convicted, they face penalties of fines and imprisonment, as well as being required to pay back the money they obtained fraudulently. They will also have to face a Medicare Benefits Review Committee. This is a body made up of two optometrists and a lawyer, whose job is to determine whether the convicted optometrist should be allowed to continue to participate in the Medicare system. They may decide on counselling, reprimand, or disqualification from Medicare benefits.

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# Legal responsibilities

Adapted from McBeath, IJ. Legal responsibilities of optometrists. *Aust J Optom.* 1981; 64: 1: 9–14.

As an optometrist in practice in Australia you have legal responsibilities in the performance of your professional work to the following persons or bodies:

1 your patients,
2 your staff, partners or fellow directors,
3 your professional colleagues whether they be optometrists, ophthalmologists or dispensers,
4 the suppliers of your materials, equipment and other items used in the practice of optometry.

There are many other areas of legal responsibility which affect you, but I propose to deal here only with those affecting you in your practice of optometry.

### 1. Your responsibility to your patients

Quite clearly, the greatest responsibility you have to your patients is to conduct your practice in a manner which is devoid of any negligence. However, if you are negligent in your practice of optometry, then your injured or aggrieved patient may be entitled to recover damages for the injuries sustained as a result of your negligent actions. In practice, the damages awarded to the injured

patient would be paid by your professional indemnity insurer if such a policy was in force at the time the negligent act occurred.

Negligence may be defined succinctly as the neglect of some care which you are bound to exercise towards a person.

There are three elements in the course of an action for negligence.

1 A duty of care recognised by the law which requires conformity to a certain standard of conduct for the protection of others against unreasonable risks;
2 The failure to conform to that standard. That is that the defendant was negligent in his actions, in that it was below the standard of their conduct required by the law;
3 Injury occurring to the plaintiff as a result of the actions of the defendant, there being a reasonably proximate connection between the actions of the defendant and the injuries sustained by the plaintiff.

If items one to three are proven satisfactorily to a court and the defences of contributory negligence or consent to the risk are not sustained, then the plaintiff will be successful in his or her claim for damages.

I will now expand on the preceding points in greater detail under the three following headings, A. Duty of care, B. Standard of care, and C. Foreseeability of injury.

### A. Duty of Care

There has been no definitive Australian court interpretation of the duty of care owed by an optometrist to a patient, but it would be safe to assume that it is similar to the duty owed by a medical practitioner to his patient. This duty has been defined as ...' If a person holds themself out as possessing special skill and knowledge, by or on behalf of a patient, they owes a duty to the patient to use due caution in undertaking the treatment. If they accept the responsibility and undertake the treatment and the patient submits to their direction and treatment accordingly, they owe a duty to the patient to use diligence, care, knowledge, skill and caution in administering the treatment'.

It should be noted that this duty is not limited to consultation where a fee is paid. Gratuitous advice or consultation will not prevent an injured patient from succeeding in a negligence action, providing the other matters are satisfied.

In the area of this duty it is also necessary to consider the question of consent on the part of the patient.

The relationship between the optometrist and the patient is contractual, and in contract the duty is owed only to the parties to the contract. Any attempt by an optometrist to treat a patient without the patient's consent is likely to result in a prosecution by the patient for assault and battery. This consent, which may be implied, amounts to an agreement on the part of the patient to allow themselves to be treated, and is sufficient consideration for an implied promise to exercise proper skill and care.

Specific written consents may be obtained if you are proposing to adopt a different or unusual method of treatment, but an attempt to exonerate the professional from all claims arising as a result of treatment may be held to be non-enforceable by a court as being contrary to public policy.

In any professional relationship between you and a patient, you can assume that you owe a duty of care to that person in your examination, or treatment, of that person.

### B. Standard of Care

This is, of course, the area in which the courts have to decide what is the appropriate standard to be exercised. It is an area in which no precise advice can be given to what standard is required in a particular procedure. The courts have refrained from attempting to lay down a code of what is acceptable and what is unacceptable, and have adopted a test which permits the standard to change over time and with the introduction of different treatments.

The standard of care required to be exercised by an optometrist may be defined with the question: would a reasonable qualified, registered and practising optometrist have carried out the alleged actions in the same way as the defendant optometrist? It is this matter that has to be answered by the jury and if the jury finds that the defendant did not meet this standard, then the claim will succeed provided that the other matters are proven.

This test requires a person to act as a reasonable and practising optometrist would have acted in the circumstances. Three points should be noted here:

1 The defendant's actions are judged by the standards of his fellow practitioners. The standards imposed on a medical practitioner are not applied to an optometrist or *vice versa*. The standards for a newly qualified optometrist are the same as for an optometrist who has been practising for many years, but are not the standards required of the most skilled optometrist in Australia;
2 The definition does not prevent the use of a different practice from that advocated by a body of professional opinion as long as the practice adopted by the optometrist is in accordance with a practice accepted as proper by a responsible body of optometrical people skilled in that particular field;
3 The date for judging the practice adopted by the optometrist is the date the negligent act is said to have occurred. It is not judged at the time the case is heard by the court.

If procedures which have been shown to be outdated or potentially dangerous are used by an optometrist, this could result in the test being applied successfully against an optometrist if the patient suffered an injury as a result of the application of such a procedure.

It should be noted that the 'standard of care' concept does take cognisance of the general practitioner and the specialist. While not readily discernible in the optometric field, it is safe to say that a medical specialist will be subject to a different standard of care from a general medical practitioner, each being judged on the standards of his own area. This applies unless the general practitioner undertook a specialist's work. In such a case they would be judged on the standard applying to the specialist. By analogy, if an optometrist had received no special training in the field of contact lenses, their actions would, in this field, be judged on the standards applying to those optometrists specially trained for and practising in the contact lens field.

A further aspect to be considered is that the standard is based on the conduct of the person carrying out the action. A person who entrusts the repair of a watch or the removal of an appendix to an optometrist is only entitled to the standard of skill that the optometrist possesses as an optometrist, not to that required of a repairer of watches or a skilled surgeon.

## C. The foreseeability of your actions

In the area of the remoteness of damage there has been a great deal of controversy, and it is in an area which will continue to cause controversy as legal cases grapple with the problem.

An optometrist will be held liable for negligence if the injuries suffered by the patient are the direct consequence of his negligence, though such consequences could not reasonably have been anticipated. If the injuries sustained by the defendant are a result of the defendant's breach of duty, and the injury is one of cause and effect in accordance with scientific or objective notions, then the plaintiffs claim will succeed.

This assessment of whether the defendant's conduct was a causally relevant factor, and the extent to which a defendant is held responsible, is complex. Once the defendant's conduct has been established as a causal factor, one has to consider whether the defendant should have foreseen the danger.

A simple hypothetical situation on illustrates the problem. You examine a patient and dilate their pupils, affecting their vision. The patient, while driving shortly after leaving your rooms, has an accident in which injuries are sustained. A claim by the patient for damages against the optometrist would depend on whether:

a. you advised the patient not to drive—in which case you would not be held to have been negligent,
b. you did not so advise the patient (assuming there were no other contributing factors which caused the accident).

In such a case it is possible that a claim against you for negligence would succeed. It should be noted that negligence includes both acts and omissions involving an unreasonable risk of harm.

As you will appreciate, it could be very difficult for a lay person to prove a case of negligence against an optometrist, as the patient knows little or nothing of optometry or the examination or treatment of the eye. The law in such circumstances permits a variation on the normal burden of proof. This variation is that the injured person alleges negligence and must prove this negligence by proof. The variation in this area flows from the Latin maxim *Re ipsa loquitar* which means 'the thing speaks for itself'.
This maxim applies when it is so improbable that such an accident would have happened without the negligence of the defendant, and when the maxim is so applied it falls on the defendant to prove that there was no negligence.

Let us assume that you examine a patient's eyes. During the course of the examination the patient's eye was injured and the patient dies as a result of infection setting in. The patient's spouse could successfully use the *Re ipsa loquitur* maxim, as the optometrist would be hard pressed to show that the case evidenced normal conduct.

However, the law does make concessions where a patient has an inherent weakness which is unknown to the professional treating the patient. For instance, if a patient with an eggshell skull presented for an eye examination and the skull fractured during the course of an eye examination, the optometrist would not be held to have been negligent providing he did not use unreasonable force while conducting the examination. The question of what was reasonable force or pressure would be assessed on the basis of examining a patient without such a weakness. Of course the position would be different if the optometrist knew of the eggshell skull.

Negligence is not limited to injuries which result from a positive act and this field of negligence has only recently been developed. In 1963, the House of Lords decided that damages could be recovered for the uttering in ordinary speech of words which were negligent where the person uttering the words knew, or should have known, that the advice would be relied on by the person hearing them. The facts in that case were that a bank had been asked for a credit reference for a customer of the plaintiff. The bank had advised that the person 'was good for £17,000'. The customer was not good for that sum and the bank was negligently wrong in its advice.

The principle that flowed from that case has been followed in Australia. The High Court of Australia has affirmed the principle and said that a disclaimer of liability does not automatically serve to provide indemnity to a speaker or writer.

In optometry this principle clearly indicates that you can be held liable for damages for negligence as a result of negligent verbal advice given to a patient personally or over the telephone. The same also applies to your staff, whether they be qualified persons or your receptionist, but in such a case the action for negligence lies against the employer of those persons.

In the area of negligence the payouts to injured persons can be very substantial and certain steps can be taken to reduce the possibility of a negligence action against you. These are as follows:

i. If you examine a patient and feel that you are not competent to deal with the problem, refer that patient to a skilled person even if it means declining or losing a patient and fees. The law regards this as your duty.

ii Keep abreast of developments and changes in practice. If you maintain within your practice methods which are outdated and not approved by the profession, the chances of a successful negligence action against you are greatly increased. It is, therefore, necessary to keep abreast of optometric developments by further reading, and attendance at continuing education activities.

iii Maintain full and accurate records of each patient and the treatment and prescription given to them. These records should be compiled on the day you examine the patient and preferably during and immediately after the conclusion of the examination. A brief note on the patient's card about the advice given, for example the care of lenses, is also recommended, especially in the area of patients who wear contact lenses. A negligence case can take three to five years before it reaches court (assuming it is not settled beforehand) and it is imperative that you are equipped to refresh your memory of the patient's treatment, your diagnosis, prescription, referral and use and care of lenses. To rely on memory to describe the patient's treatment is very dangerous, as would be the insertion of other material into the patient's record card some years after the alleged negligence.

iv If there is any suggestion on the part of the patient that you have been negligent, consult a solicitor and your insurer immediately.

v As an employer you are liable for the negligence of your staff. Therefore, it is imperative that you properly supervise and check work of employees of little experience. To let inexperienced persons have full rein is to court disaster, with you as the employer eventually being the responsible person.

### 2. Your responsibility to your staff

In this area your responsibilities are wide and varied. Your major responsibilities are:

i To indemnify all employees against any action for negligence committed by them while working in your employ. In this regard the employer is responsible, but this does not extend to a staff member who, for instance, is negligent while seeing patients at home such consultations being without the knowledge of the employer or with his sanction as the extension of the employer's practice;

ii To deduct the employee's Income Tax, to remit the deduction to the Taxation Department and to issue Group Tax Certificates to employees at the end of the financial year or the period of employment if the employee ceases to work prior to the end of the financial year;

iii To maintain a safe working area for your staff. The failure by an employer to provide safety glasses for employees when grinding lenses could result in the employer being liable for any eye damage sustained by the employee while grinding lenses. If the safety wear was supplied and the employee refused or neglected to wear it, then the position would be different. This requirement also extends to carpets, floors, proper lighting and ventilation;

iv To pay no less than the award wage and to comply with requirements concerning annual leave entitlements, sick leave and hours of work;

v To ensure that all employees are covered by a worker's compensation policy;

vi To comply with the legal requirements as to the method of payment of staff and the transporting by employees of cash sums to and from the bank on behalf of the employer.

### 3. Your responsibility to your professional colleagues

Such responsibilities will include acting in an ethical manner and conforming to the requirements of the relevant Registration Act and any regulations made thereunder. In general Registration Act empower registration boards to remove an optometrist from the register and to withdraw the privileges of the practice of the profession if the optometrist has been found guilty of 'infamous conduct in any professional respect'.

Such a removal would conceivably cover the situation of an optometrist belittling or bringing into disrepute or disfavour other optometrists. The Board would be empowered to de-register such a person. An optometrist so belittled by another optometrist could also sue for defamation.

In writing your prescriptions or referrals you have a responsibility to give accurate, clear and readily readable instructions. The failure to do so can cause annoyance, delays and could possibly be the foundation of a negligence claim or dispute as to whether the optometrist's account is recoverable from the patient. A case in America centred on a chemist who was presented with a medical prescription which he interpreted as a prescription for a nasal decongestant. This was duly made up and given to the patient. In fact, the prescription was for oral contraceptives, and the patient became pregnant and sued the chemist for negligence and recovered damages. The chemist added the medical practitioner as a co-defendant but this practitioner was found not to be negligent, it being the responsibility (so the court found) of the chemist to confirm the prescription if he had any doubt about its content. The damages for negligence were therefore recovered solely from the chemist.

### As Partners and Directors

As a partner in a partnership or as a director in a company practising optometry you have legal responsibilities to your other partners or directors. These responsibilities, obligations and liabilities are covered in the relevant Acts of each State covering partnerships and

companies. Furthermore, State Optometric Registration Acts detail the ownership requirements for partnerships and companies practising optometry, and the failure to comply with these requirements can result in the imposition of penalties and possible de-registration of the optometrist. In partnerships, the actions of one partner can have repercussions on all the other partners, as the partnership as a legal entity is responsible. Furthermore the partners' own assets are available to a creditor of the partnership in the event of a financial collapse or substantial negligence claim against the partnership.

### 4. Your responsibility to suppliers and undertakings given pursuant to the Health Insurance Act

Your responsibilities in these areas are contractual, the basis of which will be embodied in the contract between the parties.

The failure to comply with the provisions of the contract can result in actions for damages, recision of the contract or specific performance of the terms of the contract. With regard to undertakings given pursuant to the Health Insurance Act, criminal charges can arise against a person who, for instance, bills for fees for services not rendered.

A conviction on such a ground would result in the State Registration Board investigating the optometrist with a view to ascertaining whether the optometrist should be removed from the Register of Optometrists. It is most likely that the Board would remove such a person as has happened with State Medical Boards.

### Contractual Relationships

Your relationship with patients turns on the law of contact and for there to be an enforceable binding contract the following basic requirements are necessary:

a. Offer
b. Acceptance
c. Consideration
d. Intention to create legal relations
e. Capacity

Points (a) and (b). In your professional capacity the patient offers to have you examine his eyes and this offer is accepted by the optometrist when you agree to examine the patient's eyes. The acceptance must be unconditional and in the exact terms in which the offer was made.

Point (c). The consideration is the price paid and must be something of value. It need not necessarily be money but would be some other value such as the supply of time for the erection of a fence. In the practice of optometry however, money will be the main form of consideration.
Point (d). The intention to create legal relations can be inferred from the circumstances and in commercial transactions this is readily inferred. Both parties must be aware of the agreement they are entering into and in your practice this is unlikely to cause problems.

### Other areas of legal responsibilities

### As LESSEES of premises

As a lessee of premises your lease sets out the legal obligations and responsibilities of both the lessor and lessee.

Your failure to perform the conditions of the lease can result in you as the lessee being evicted from the premises and possibly being liable for the rent for the balance of the unexpired term of the lease if a new tenant is not located.

Leases should be read carefully and understood before execution, especially where you are proposing to lease rooms in a modern shopping complex, as many of the clauses are draconian and the formula for increasing rent can be harsh. Furthermore with word processing packages, which churn out lengthy leases, a great number of clauses are not relevant either to the premises to be leased by the optometrist, or the mode of practice of a professional. In this regard, a lease which provides for the rent to increase as the cash receipts increase, or which specifies that the rent is a percentage of the gross takings of the premises, should be considered carefully, as it could be argued that the income of the professional is being shared with a non-qualified person.

Lease agreements may also apply to the equipment of the practice, motor vehicles and illuminated signs. Each agreement details the responsibilities of the lessor and lessee and again each should be read and understood before execution. Before leasing premises it is imperative to obtain the requisite permit to use the premises for the practice of optometry. Do not rely on the assurance of the lessor or his estate agent that there is no problem about the use of the premises for the practice of optometry.

### Banking

As a practitioner, your payments for services rendered will be received either in the way of cash or cheques and you will pay suppliers and other creditors by way of a cheque drawn on the account of the practice.

There exists between you and your banker a contract and this contract forms the basis of your legal relationship with the bank.

In your writing of cheques, the bank has a responsibility to honour the drawer's cheque if there are sufficient funds in the account to meet the cheque or if an overdraft facility will not be overdrawn by the honouring of the cheque by the bank. The failure by the bank to adhere to this mandate, for example to dishonour a cheque when there are sufficient funds in the account to meet the cheque, gives

the drawer of the cheque a right of action for damages against the bank.

To protect yourself as the drawer of cheques the following should be observed,

a. Each cheque must be clearly written with the amount in figures and words agreeing.
b. The cheque should be crossed 'not negotiable' (unless the cheque is to be cashed). The failure by your bank to comply with this order to pay it to the credit of the payee's account can result in your having a right of action against a bank for a breach of the mandate.
c. Blank cheques should not be signed even if you are to be absent for a time.
d. Cash cheques are transferable by delivery and hence must be treated with great caution and used as infrequently as possible.
e. You are under a legal responsibility in your relationship with the bank in drawing cheques to take all possible steps to prevent alteration and forgery. If you are careless in this regard, the bank may not be held liable, with the result that the altered or forged cheque is debited to your account leaving you still with liability of paying the intended payee.
f. Writing which can be easily erased should not be used and banks are at present advising customers not to use a certain pen which advertises erasure and easy alteration as a feature.
g. Only trusted and experienced staff should be authorised to write and sign cheques on behalf of the practice. Practices which have allowed non-qualified persons or non-partners to operate the firm's cheque account have at times found, after the employee has left, that there has been misappropriation of funds.

If at all feasible, it is preferable for the sole practitioner or a partner or director to sign cheques or at least countersign them after checking the requirement for payment.

### Insurance

You have insurance responsibilities to your staff and lessor in the following areas: Workers compensation,
Insurance against fire and burglary of such leased items such as computers, accounting machines, cars, photocopiers and typewriters.

At the same time you also have a responsibility to yourself to insure in areas that will cover professional indemnity insurance for yourself and staff, insurance against loss through fire or burglary of equipment owned by you as the practitioner and consequent loss of profits, and accident and sickness cover in the event of your being ill and unable to attend to your practice. Life assurance on an employee, partner or director can be obtained to cover the loss to the practice on the death of such a person.

### Conclusion

Legal responsibilities affect us all and it is essential for the proper running of a business that you be aware of these responsibilities. The complexities are not so important, as detailed information is obtainable from the legal profession. However, failure to have a broad idea of your legal responsibilities is to court potential problems if not financial disaster.

With proper diligence and supervision, optometrists in practice can today continue to maintain their high status in the professional community. If this is done, the optometric profession will continue to be a respected profession in the eyes of the public. The role of maintaining that image, and improving it further, rests solely with the members of the profession.

### Reference

*The Bulletin* July 29 1980; pp 22, 25.

## Organisation contact details

### AUSTRALASIAN COLLEGE OF BEHAVIOURAL OPTOMETRISTS

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### OPTOMETRISTS ASSOCIATION AUSTRALIA

National Office 204 Drummond Street Carlton VIC 3053 Telephone: (03) 9668 8500 Facsimile: (03) 9663 7478 Email: oaanat@optometrists.asn.au Internet: www.optometrists.asn.au

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Email: vision@oaansw.com.au Website: www.oaansw.com.au

#### Victoria

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office@vicoptom.asn.au Website: www.vicoptom.asn.au

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**South Australia**

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**Western Australia**

PO Box 375 Subiaco WA 6904 Telephone: (08) 9380 6688 Fax: (08) 9380 6622 E-mail: eo@optometrywa.org.au

**Tasmania**

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Boulcott St PO Box 1978 Wellington NEW ZEALAND Telephone: 0800 4 EYECARE Telephone: 0800 439 322 Telephone: +64 4 473 2322 Facsimile: +64 4 473 2328 Email: info@nzao.co.nz Website http://www.nzao.co.nz/

**BOARDS OF OPTOMETRIC REGISTRATION**

**OPTOMETRY BOARD OF AUSTRALIA**

G.P.O. Box 9958, Melbourne VIC 3001 Telephone 1300 419 495 Enquiries Email: https://www.ahpra.gov.au/about-ahpra/contact-us/make-an-enquiry.aspx Website http://www.optometryboard.gov.au

**Optometrists and Dispensing Opticians Board (New Zealand)**

Level 3, Freemason House, 195-201, Willis Street, Wellington 6011
P O Box 10-140, Wellington 6143, New Zealand
Telephone +64 4 474 0705, Facsimile +64 4 474 0709 Email: registrar@odob.health.nz Website: http://www.odob.health.nz/

**CENTRE FOR EYE RESEARCH, QUEENSLAND UNIVERSITY OF TECHNOLOGY**

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**COMMONWEALTH DEPARTMENT OF IMMIGRATION AND CITIZENSHIP**

Telephone: General Skilled Migration enquiries: 1300 364 613 Website www.immi.gov.au

**INSTITUTE FOR EYE RESEARCH**

Level 4 Rupert Myers Building Gate 14 Barker Street UNSW SYDNEY NSW 2052 AUSTRALIA Tel: +612 9385 7516 Fax: +612 9385 7401 Website: www.ier.org.au/index.asp

**MEDICARE AUSTRALIA**

(Medicare, GPO Box 9822 in each capital city) Telephone 132 011 (local call rate) Website: www.medicareaustralia.gov.au/

**OCCUPATIONAL ENGLISH TEST**

**Location**
Level 3, 7 Bowen Crescent Melbourne VIC 3004, Australia Postal Address GPO BOX 372 Melbourne VIC 3001, Australia Telephone: 61 3 9825 3800 Facsimile: 61 3 9825 3899 Website: www.occupationalenglishtest.org/

**NATIONAL VISION RESEARCH INSTITUTE OF AUSTRALIA**

Corner Keppel and Cardigan Street Carlton VIC 3053 Telephone: (03) 9349 7400 Email: nvri@aco.org.au Website: http://www.vco.org.au/nvri/

**OPTOMETRY COUNCIL OF AUSTRALIA AND NEW ZEALAND**

PO Box 185 Carlton South VIC 3053 Telephone: (03) 9417 3329 Facsimile: (03) 9663 7478 E-Mail: enquiries@ocanz.org

**PROVISION EYE CARE PTY LTD**

92 Peters Avenue, Mulgrave, VIC 3170 Postal Address PO Box 1226, Clayton VIC 3169 Telephone: (03) 8544 3900 Telephone: 1800 64 2020 Facsimile: (03) 8544 3999 Email: info@provision.com.au Internet: www.provision.net.au

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**WORLD COUNCIL OF OPTOMETRY**

8360 Old York Road 4th Floor West Elkins Park, PA 19207 USA Telephone: +1 215 780 1320 Facsimile: +1 215 780 1325 Email: WCO@pco.edu Website: www.worldoptometry.org

# Use of Diagnostic Drugs in Australia

The diagnostic drugs which optometrists are legally authorised to use in all states and territories of Australia are:

Anaesthetics:
Oxybuprocaine HCl 0.4%
Proxymetacaine HCl 0.5%

Mydriatics:
Tropicamide 1.0%

Cyclopentolate 1.0%

Cycloplegics:
Tropicamide 1.0%
Cyclopentolate 1.0%

The concentrations given are the maximums allowable.

In addition, a number of other drugs can be used in some States, but not others. These are:

Anaesthetics:
Amethocaine 0.5% (NSW & Vic)
Other 'synthetic cocaine substitutes' 0.5% (Vic)

Mydriatics:
Eucatropine HCl 2.0% (NSW)
Ephedrine HCl 5.0% (NSW)
Phenylephrine HCl 2.5% (NSW)

Miotics:
Physostigmine 0.05% (NSW & Vic)
Pilocarpine 2.0% (NSW, Qld & Vic)
Thymoxamine 1.0% (NSW)

Cycloplegics:
Homatropine HBr 2.0% (NSW)

Vasoconstrictors:
Tetrahydozoline HCl 0.05% (NSW)
Phenylephrine 0.125% (NSW)
Adrenaline 0.1% (NSW)

# Use of Diagnostic Drugs in New Zealand

Anaesthetics:
Amethocaine Lignocaine
Oxybuprocaine
Proxymetacaine

Mydriatics:
Tropicamide
Cyclopentolate

Percentage concentrations are not specified in legislation

# Therapeutic Drugs in Australia & New Zealand

Optometrists in New Zealand and in certain Australian states and territories may be approved by the local registration board to use certain therapeutic agents to manage/treat ocular disease. Please check the relevant board's website for the current list of therapeutic agents that therapeutically endorsed optometrists are able to use.

# Australian and New Zealand Standards

**Australian and New Zealand Standards for ophthalmic lenses, eye protection, interior lighting and colour**

Candidates must know, in detail, the Australian and New Zealand standards that apply to ophthalmic lenses **AS/NZS 1067:2003***

Sunglasses and fashion spectacles **AS 2228.1-1992*** Spectacles - Spectacle lenses **AS 2228.2-1992*** Spectacles - Spectacle frames

**AS ISO 14534-2003*** Ophthalmic optics - Contact lenses and contact lens care products - Fundamental requirements

Candidates must know about Australian and New Zealand practices for the provision of eye protection **AS/NZS 1336:1997*** Recommended practices for occupational eye protection and they should be aware of the kinds of eye protectors that can be provided and (in general) should know the requirements

for those protectors in Australia and New Zealand and how they are specified

**AS/NZS 1337:1992** Eye protectors for industrial applications

**AS/NZS 1338.1:1992** Filters for eye protectors - Filters for protection against radiation generated in welding and allied operations

**AS/NZS 1338.2:1992** Filters for eye protectors - Filters for protection against ultraviolet radiation

**AS/NZS 1338.3:1992** Filters for eye protectors - Filters for protection against infra-red radiation

**AS/NZS 1337.6:2007** Personal eye protection - Prescription eye protectors against low and medium impact

Candidates are expected to have a sound grasp of the principles of ergonomics (human factors engineering) as they can be applied to improving visual comfort and enhancing visual performance at the work place. They must know how light is specified and the general principles of good lighting that are expected to apply in Australia and New Zealand.

**HB 59-1994** Ergonomics - The human factor - A practical approach to work systems design **AS 1680.1-2006** Interior lighting - General principles and recommendations **AS 1680.2.2-2008** Interior lighting - Office and screen-based tasks **AS 1680.3-1991** Interior lighting - Measurement, calculation and presentation of photometric data Candidates may find the following standard useful in revising their knowledge of colour and its specification **AS/NZS 2633:1996** Guide to the specification of colours

Australian Standards are sold and distributed worldwide by SAI Global Limited, and to buy an Australian Standard, please contact SAI Global Business Publishing

Catalogue and Web store: www.saiglobal.com/shop/Script/search.asp Phone (from Australia): 131 242 Phone (from overseas): +61 2 8206 6010 Fax (from Australia)**:** 1300 65 49 49 Fax (from overseas): +61 2 8206 6020 Email: sales@sai-global.com Mail: SAI Global; Business Publishing GPO Box 5420 Sydney NSW 2001 Australia

Candidates are advised they have their own copy of the standards marked*

Copies of all of the above standards are also held at the offices of the College of Optometrists, 42 Craven Street London.

# Assessing Fitness to Drive

For commercial and domestic vehicle drivers see the publication "Assessing Fitness to Drive" available at http://www.austroads.com.au/aftd/downloads/AFTD_text_08-2006.pdf

# Visual standards manual

A Visual Standards Manual with information on the required visual standards for specific occupations and activities published by the Victorian Division of Optometrists Association Australia is available at http://www.optometrists.asn.au/vic/publications/visualstandards