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SNL2012 CHAPTER O-7.02

**OPTOMETRY ACT, 2012**

Amended:

2012 c35 s13; 2013 c16 s25; 2014 c7 s13

**CHAPTER O-7.02**

**AN ACT RESPECTING THE PRACTICE OF OPTOMETRY IN THE  
PROVINCE**

*(Assented to June 27, 2012)*

*Analysis*

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*Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:*

#### **Short title**

1. This Act may be cited as the *Optometry Act, 2012*.

[2012 cO-7.02 s1](#)

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#### **Definitions**

2. In this Act

- (a) "association" means the Newfoundland and Labrador Association of Optometrists Inc.;
- (b) "by-laws" means the by-laws made by the council under section 12 and the *Corporations Act*;
- (c) "college" means the Newfoundland and Labrador College of Optometrists continued under section 6;
- (d) "council" means the council referred to in section 8;
- (e) "director" means a person elected or appointed to the council;
- (f) "licence" means a licence to practise optometry issued and in force under this Act;
- (g) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (h) "ophthalmic appliances" means lenses, spectacles, eyeglasses, artificial eyes, contact lenses, or accessories for the relief or correction of a visual or muscular error or defect of the eye;

- (i) "ophthalmic dispensing" means
  - (i) supplying, preparing and dispensing ophthalmic appliances,
  - (ii) interpreting prescriptions of optometrists or medical practitioners, and
  - (iii) fitting, adjusting and adapting of ophthalmic appliances to the human face and eyes in accordance with the prescriptions of optometrists or medical practitioners;
- (j) "optometrist" means a person who through specialized education, training and experience is skilled in the principles and practice of optometry;
- (k) "optometry" means the services usually performed by an optometrist, and includes
  - (i) measuring or attempting to measure the refractive or muscular condition of the eye,
  - (ii) prescribing and ophthalmic dispensing of ophthalmic appliances,
  - (iii) prescribing orthoptic treatment for the relief or correction of a visual or muscular error or defect of the eye,
  - (iv) removing superficial foreign bodies from the human eye and surrounding tissue in accordance with the regulations, and
  - (v) prescribing and administering pharmaceutical agents in accordance with the regulations where the optometrist is certified by the council as qualified;
- (l) "practitioner" means an optometrist licensed to practise under this Act;
- (m) "professional optometric corporation" means a corporation that is permitted under Part III to provide the services of an optometrist;
- (n) "register" means the register referred to in section 10; and
- (o) "registrar" means the registrar elected under section 8.

[2012 cO-7.02 s2](#)

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### **Application**

#### **3. (1) This Act does not apply to or affect**

- (a) a medical practitioner registered under the laws of the province;
- (b) a registered nurse or a nurse practitioner who checks the visual acuity of a person or a person authorized by another Act or regulation to perform these checks;
- (c) a person who provides orthoptic services under the direction of a medical practitioner; or
- (d) a person engaged solely in ophthalmic dispensing.

(2) This Act does not prevent the sale of protective glasses for industrial purposes, coloured glasses that are not ophthalmic appliances or goggles or magnifying glasses not sold or designed for the relief, prevention or correction of visual or ocular anomalies of the eyes.

[2012 cO-7.02 s3](#)

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## **Association**

4. (1) The Newfoundland Association of Optometrists is continued under the name Newfoundland and Labrador Association of Optometrists Inc. as a corporation without share capital for the purpose of Part XXI of the *Corporations Act* .

(2) The objects of the association shall include, notwithstanding anything in the by-laws of the association,

- (a) advancing and protecting the profession of optometry in the province; and
- (b) improving the practice of optometry and optometric education in the province.

(3) Notwithstanding its incorporation under this Act, the association shall be governed by the *Corporations Act* for all purposes, including a change of the name of the association.

[2012 cO-7.02 s4](#)

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## **Membership**

5. A person who holds a licence and pays the membership fee set by the association is a member of the association notwithstanding anything in the by-laws of the association.

[2012 cO-7.02 s5](#)

## **PART II COLLEGE**

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### **College of optometrists**

6. (1) The Newfoundland and Labrador Optometric Board is continued under the name Newfoundland and Labrador College of Optometrists as a corporation without share capital for the purpose of Part XXI of the *Corporations Act*.

(2) All persons who hold a licence issued under this Act are members of the college.

[2012 cO-7.02 s6](#)

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### **Objects of college**

7. (1) The college is authorized to regulate the practice of optometry and the optometric profession in the public interest.

(2) The objects of the college include

- (a) the promotion of
  - (i) high standards of practice, and
  - (ii) continuing competency and quality improvement through continuing education;
- (b) the administration of a licensing program; and
- (c) ensuring that the public interest is protected by the administration of a quality assurance program and a discipline process.

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### **Council of the college**

8. (1) The council consists of
  - (a) 4 directors elected from and by the practitioners in accordance with the by-laws; and
  - (b) 2 directors appointed under section 9 who are not practitioners.
- (2) The council shall govern the college, administer its affairs and exercise in the name and on behalf of the college the powers, privileges and rights of the college.
- (3) A member of the board of directors of the association is ineligible to be a director of the council.
- (4) The council shall elect a chairperson from the directors and a registrar from the elected directors.
- (5) The chairperson shall chair all meetings of the council and the annual general meeting required under section 11.
- (6) A director may be elected for a term set by the by-laws which shall not exceed 3 years and is eligible to be re-elected, but shall not hold the office of director for more than 9 consecutive years.
- (7) An elected director may resign the office of director by written notice to the council.
- (8) Where an elected director resigns, dies or becomes incapable of performing the duties of a director, the remaining directors shall appoint a replacement to serve until the next annual general meeting.

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### **Appointed directors**

9. (1) The minister shall appoint as directors of the council 2 persons who are not optometrists who are suitable to represent the public interest.
- (2) A person appointed under subsection (1) holds office for a term of 3 years and is eligible to be re-appointed.
- (3) Where a person appointed under subsection (1) holds office for a period of 9 consecutive years the person is not eligible for appointment as a member of the council until the expiration of 12 months from the end of the year in which he or she was last a director.
- (4) Where the term of an appointed director expires, he or she continues to be a director until re-appointed or replaced.
- (5) The council shall pay the expenses of an appointed director in accordance with guidelines established by the Lieutenant-Governor in Council.
- (6) A person appointed under subsection (1) may resign the office of director by written notice to the minister.

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## **Registrar**

**10.** (1) The registrar is the secretary of the council and shall

- (a) keep a record of the proceedings of the council;
- (b) maintain a register containing the names of those persons qualified and licensed to practise optometry in the province and other information that the council may require; and
- (c) subject to the payment of applicable fees under this Act, where the council has approved the licensing of a person, enter the name of that person in the register and, in accordance with section 15, issue to that person a licence to practise optometry.

(2) The registrar shall make the registers of the college available for inspection by the public on reasonable notice and at reasonable times.

(3) Where registration or licensure is in issue, the production of a copy of the register, certified by the registrar, is sufficient evidence of persons who are licensed or registered in the absence of the production of the original.

(4) The absence of the name of a person from the register or a copy of it certified according to subsection (3) is, in the absence of evidence to the contrary, proof that that person is not licensed or registered.

[2012 cO-7.02 s10](#)

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## **Meetings**

**11.** (1) A quorum of the council is 4 directors, one of whom is an appointed director.

(2) Except where prohibited in the by-laws, a director may, where all the directors consent, participate in a meeting of the council by means of telephone or other telecommunication devices that permit all persons participating in the meeting to communicate with each other.

(3) Where a quorum under subsection (1) exists, a majority of that number is sufficient to make a decision, and in the event of a tie the chairperson of the meeting shall cast the deciding vote.

(4) The college shall hold, in accordance with the by-laws, an annual general meeting of practitioners at which

- (a) the election for directors shall be held; and
- (b) an auditor shall be appointed to audit the accounts of the college and report on the financial statements of the college.

(5) The council may in its by-laws provide for the annual general meeting of practitioners to be held or for practitioners to participate in the meeting by mail, telecommunications or other means.

[2012 cO-7.02 s11](#)

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## **By-laws**

**12.** (1) The council may make by-laws

- (a) respecting the holding and procedure of its meetings;
- (b) providing for the election of directors under subsection 11(4) and setting the terms of office;

- (c) the payment of travel and other expenses of elected directors;
- (d) limiting the participation of directors in a meeting of the council by telephone or other telecommunications devices;
- (e) providing for voting at a meeting of practitioners by mail or electronic means;
- (f) respecting the rates of remuneration for members of an adjudication tribunal;
- (g) setting standards for proof of active practice;
- (h) establishing a code of ethics which may include a definition of "professional misconduct" and "conduct unbecoming an optometrist" for the purpose of Part IV; and
- (i) generally, to assist in the administration of this Act and the regulations.

(2) The council shall have its by-laws available for inspection by the public on reasonable notice and at reasonable hours.

[2012 cO-7.02 s12](#)

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### **Annual report**

**13.** (1) The college shall prepare and submit to the minister before July 1 in a year

- (a) a report on the activities of the council; and
- (b) the college's audited financial statements.

(2) The minister shall publish the annual report on the Health and Community Services website.

(3) Where the college has a website, the college shall publish the annual report on its website in a manner that the annual report may be accessed by a member of the public.

(4) Where the college fails to comply with subsection (1) or (3), the college is guilty of an offence and is liable upon summary conviction to a fine of \$1,000.

[2012 c35 s13](#)

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### **Application for licence**

**14.** (1) A person may apply for a licence to practise optometry where he or she

- (a) has the academic qualifications set in the regulations and has passed the examination that may be required by the regulations;
- (b) has a working knowledge of the English language sufficient to enable the person to practise optometry in the province; and
- (c) produces evidence of satisfactory character that is acceptable to the council.

(2) An application shall be directed to the registrar who shall determine whether the applicant meets the requirements in subsection (1) or whether further examination is required.

[2012 cO-7.02 s14](#)

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## **Licence**

15. (1) The council shall issue to an applicant who meets the qualifications in section 14, a licence to practise optometry where he or she

- (a) pays the licence fee set by the council;
- (b) pays outstanding fines, penalties or fees, which are owed to the college;
- (c) establishes that he or she is not suspended or restricted with respect to the practise of optometry by a licensing board or equivalent body governing the practise of optometry in a jurisdiction outside of the province;
- (d) provides proof that he or she has obtained professional liability insurance coverage in a form and amount satisfactory to the council; and
- (e) satisfies other requirements that may be set by the council in the regulations.

(2) A person who is issued a licence under this section shall within 30 days of the date the licence is issued, become a member of the association and the failure of that person to do so makes the licence void upon the expiry of the 30 days.

(3) A licence issued under this section shall, unless cancelled or suspended by the council, expire at midnight on December 31 of the calendar year for which it is issued.

[2012 cO-7.02 s15](#)

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## **Annual renewal**

16. (1) A person's licence may be renewed where he or she

- (a) meets the conditions in paragraphs 15(1)(a) to (e) ; and
- (b) submits proof satisfactory to the council that he or she successfully completed the required continuing education hours.

(2) The council may, as a condition of licence renewal, require proof of active practice in accordance with standards that may be set in the by-laws.

(3) The registrar shall issue a renewal licence to a person who has applied and paid the fees and who is otherwise in compliance with the Act.

[2012 cO-7.02 s16](#)

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## **Students**

17. (1) A person may apply to be registered as a student with the college.

- (2) The college shall register a student where
  - (a) he or she is enrolled in a professional optometry school that is acceptable to the council and which requires that the student complete an external placement;
  - (b) the registrar has approved the student's placement; and
  - (c) he or she pays the fee set by the council.

(3) Registration of student confers upon the student the right to perform tasks within the scope of practice of an optometrist, but only under the direct supervision of a practitioner.

(4) External placements shall only be completed by students registered with the college.

[2012 cO-7.02 s17](#)

### **PART III PROFESSIONAL OPTOMETRIC CORPORATION**

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#### **Definitions**

**18.** In this Part

(a) "non-voting share" means an issued share of a professional optometric corporation that is not a voting share; and

(b) "voting share" means an issued share of a professional optometric corporation with the right to vote at a meeting of shareholders attached to it.

[2012 cO-7.02 s18](#)

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#### **Professional corporation**

**19.** (1) One or more practitioners may incorporate a corporation to provide the services of an optometrist.

(2) The corporation shall be incorporated under the *Corporations Act* .

(3) The name of the corporation shall meet the requirements of subsection 17(1) of the *Corporations Act* .

(4) A corporation shall not provide the services of an optometrist unless it is registered and licensed under this Act.

[2012 cO-7.02 s19](#)

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#### **Corporate register**

**20.** (1) The registrar shall maintain a register of professional optometric corporations in which shall be entered the names of those corporations permitted under this Part to provide the services of an optometrist.

(2) The council shall direct the registrar to register a professional optometric corporation that establishes that

(a) all the voting shares of the corporation are beneficially owned by and registered in the name of one or more practitioners and there is no restriction on the right of each practitioner to exercise his or her vote as he or she wishes to;

(b) a natural person owns the non-voting shares;

(c) all the directors of the corporation are practitioners, and there is no agreement restricting the powers of the directors to manage the business and affairs of the corporation in relation to the practice of optometry;

- (d) all of the persons who will be practising optometry as employees of or on behalf of the corporation are practitioners;
  - (e) the articles of the corporation restrict it to providing the services of an optometrist and related matters;
  - (f) the corporation is in good standing under the *Corporations Act*; and
  - (g) the corporation has complied with other requirements for registration in the regulations.
- (3) The corporate register shall be available for inspection under section 10.

(4) The college may enter into a reciprocal agreement with an optometric college, association or other body having responsibility for the registration and licensing of professional optometric corporations in another jurisdiction for the registration of corporations from that jurisdiction in the register of the college.

(5) Notwithstanding subsection (2), the voting shares of a professional optometric corporation may be held for no longer than 180 days, or a longer period as permitted by the registrar, by

- (a) an executor or administrator of the estate of a deceased practitioner to discharge the duties of that position; or
- (b) a trustee in bankruptcy to discharge his or her duties as trustee in respect of the corporation or a practitioner.

[2012 cO-7.02 s20](#)

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### **Annual licence**

**21.** (1) A professional optometric corporation may apply for a licence to provide the services of an optometrist in the province and the council shall issue the corporate licence provided that

- (a) the professional optometric corporation is registered under this Act;
- (b) the application is accompanied by a licence fee which may be established by the council; and
- (c) the professional optometric corporation continues to meet the requirements for registration set out in section 20 and other requirements for being licensed which may be set out in this Act and regulations.

(2) The holder of a licence issued under this section is entitled to recover from a person, in a court of the province having jurisdiction to order payment from that person, reasonable charges for the provision of professional services by that licence holder.

(3) A licence issued under this section expires on December 31 of the calendar year for which it is issued.

[2012 cO-7.02 s21](#)

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### **Revocation of licence**

**22.** A licence issued under section 21 may be revoked by the council where

- (a) the professional optometric corporation ceases to meet a requirement for registration or licensing under this Act;

- (b) the professional optometric corporation contravenes this Act or the regulations; or
- (c) a practitioner is disciplined under Part IV in respect of professional services performed by him or her as an employee of or on behalf of the professional optometric corporation.

[2012 cO-7.02 s22](#)

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### **Effect of incorporation**

23. (1) A practitioner who provides professional services to or through a professional optometric corporation is, notwithstanding his or her relationship to the professional optometric corporation or the relationship between the patient and the professional optometric corporation, subject to

- (a) the application of this Act as if he or she were providing services as an individual practitioner; and
- (b) the same duties and responsibilities in connection with his or her dealings with patients of the professional optometric corporation as if he or she were providing services directly to those patients.

(2) The relationship between a professional optometric corporation and a patient receiving services from or through that corporation is subject to the laws relating to the confidential and ethical relationship between a practitioner and his or her patient.

(3) All rights and obligations pertaining to communications made to, or information received by, practitioners apply to the shareholders, directors, officers and employees of a professional optometric corporation.

[2012 cO-7.02 s23](#)

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### **Liability of optometrist**

24. (1) Notwithstanding a provision to the contrary in the *Corporations Act*, a practitioner who provides services as an optometrist through or on behalf of a professional optometric corporation is liable to a person in relation to those services to the same extent and in the same manner as if the practitioner provided those services as an individual and that liability is not affected because of the practitioner's relationship to the professional optometric corporation as a shareholder, director, officer, employee or in another capacity.

(2) A practitioner is jointly and individually liable with a professional optometric corporation for all claims made against the corporation in connection with the provision of services or the practice of optometry by the practitioner.

(3) In this section, "practitioner" includes a person formerly licensed under this Act to practise optometry.

[2012 cO-7.02 s24](#)

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### **Misconduct of a professional optometric corporation**

25. (1) A practitioner is liable to be disciplined under Part IV for the actions or conduct of a professional optometric corporation while the practitioner was a shareholder, director, officer or employee of the professional optometric corporation.

(2) A practitioner shall not be liable to discipline under subsection (1) where the practitioner proves that he or she did not know and could not reasonably have known about the relevant actions or conduct of the professional optometric corporation.

(3) Any powers of inspection, investigation or inquiry that may be exercised in respect of a practitioner under Part IV or Part V may be exercised in respect of a professional optometric corporation or its records in connection with an inquiry under subsection (1).

(4) A professional optometric corporation is jointly and individually liable with the practitioner for all fines and costs the practitioner is ordered to pay in connection with an inquiry under subsection (1).

(5) In this section, "practitioner" includes a person formerly licensed under this Act to practise optometry.

[2012 cO-7.02 s25](#)

## **PART IV DISCIPLINE**

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### **Definitions**

**26.** In this Part

- (a) "allegation" means a written document alleging that a person has engaged in conduct deserving of sanction;
- (b) "complainant" means a person making an allegation described in section 28;
- (c) "conduct deserving of sanction" includes
  - (i) professional misconduct,
  - (ii) professional incompetence,
  - (iii) conduct unbecoming an optometrist, and
  - (iv) acting in breach of this Act, the regulations, or the code of ethics made under section 12;
- (d) "costs incurred by the college" includes
  - (i) out of pocket expenses incurred by or on behalf of the college,
  - (ii) amounts paid by the college to adjudication tribunal members as remuneration and for expenses, and
  - (iii) the actual cost of legal counsel for the college and the adjudication tribunal;
- (e) "disciplinary panel" means the panel of persons appointed under section 27 from which the members of an adjudication tribunal are chosen; and
- (f) "respondent" means a practitioner, a former practitioner or a professional optometric corporation against whom an allegation is made.

[2012 cO-7.02 s26](#)

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### **Committees**

**27.** (1) The council shall appoint the chairperson, vice-chairperson and members of the complaints authorization committee, and the practitioners who will serve on the disciplinary panel, one of whom shall be appointed the chairperson.

(2) The complaints authorization committee shall consist of at least 3 persons, all of whom shall be directors, and at least one of whom shall be a director who was appointed by the minister.

(3) The registrar is not eligible to be a member of the complaints authorization committee.

(4) The disciplinary panel shall consist of not less than 6 practitioners who are not directors and not less than 3 persons who are not practitioners who shall be appointed by the minister to represent the public interest.

(5) The appointments of members to the disciplinary panel shall be for a term of 3 years.

(6) Notwithstanding the expiry of his or her term, a member of the disciplinary panel continues to be a member until he or she is re-appointed or his or her replacement is appointed.

(7) Persons appointed to the disciplinary panel may be reappointed.

(8) Members of the disciplinary panel shall serve as a member of the panel without payment for their services, but may be remunerated for service as a member of an adjudication tribunal and paid their travel and other expenses associated with the work of that tribunal by the council, in accordance with the rates set in the by-laws.

(9) The complaints authorization committee and an adjudication tribunal appointed under section 31 and a person appointed by either of them may summon an optometrist or another person and require them to give evidence, orally or in writing, upon oath or affirmation, and produce the documents and things that either of them considers necessary to the full investigation and hearing of an allegation or complaint and shall have the powers, privileges and immunities that are conferred on a commissioner appointed under the *Public Inquiries Act, 2006*.

[2012 cO-7.02 s27](#)

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### **Allegation**

**28.** (1) An allegation shall be in writing and signed by the complainant or his or her solicitor, and filed with the registrar.

(2) The registrar may on his or her own motion make an allegation and file it, and the allegation shall have the same effect as an allegation referred to in subsection (1).

(3) Where the registrar has been informed that a practitioner has been convicted of an offence under the provisions of the *Criminal Code* or a similar penal statute of another territory or country or has been suspended by a governing body of optometrists in another province or territory of Canada or another territory or country for reason of professional misconduct, conduct unbecoming an optometrist or professional incompetence, the information shall be dealt with by the registrar as an allegation.

(4) For the purpose of subsection (3), a certified copy of the record of a conviction or findings made or the action taken by an external regulatory body constitutes proof, in the absence of evidence to the contrary, of the conviction or findings made or the action taken by that body, without proof of the signature of the convicting justice or person purporting to have signed on behalf of that body.

[2012 cO-7.02 s28](#)

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### **Effect of filing allegation**

**29.** (1) Where it appears to the registrar, after notifying the respondent, that the allegation may be resolved satisfactorily and where the complainant and the respondent consent, the registrar may attempt to resolve the matter.

(2) Where the allegation is not satisfactorily resolved by the registrar under subsection (1), the registrar shall refer the allegation and all other allegations to the complaints authorization committee.

(3) The registrar shall inform a complainant and a respondent of the referral of the allegation to the complaints authorization committee.

[2012 cO-7.02 s29](#)

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### **Complaints authorization committee**

**30.** (1) After an allegation has been submitted to the complaints authorization committee, the committee may exercise one or more of the following powers:

- (a) refer the allegation back to the registrar for an investigation or alternative dispute resolution in accordance with the regulations;
- (b) conduct an investigation itself or appoint a person to conduct an investigation on its behalf; and
- (c) require the respondent to appear before it.

(2) Where the complaints authorization committee is of the opinion there are no reasonable grounds to believe the respondent has engaged in conduct deserving of sanction, the committee shall dismiss the allegation and give notice in writing of the dismissal to the complainant.

(3) Where the complaints authorization committee is of the opinion that there are reasonable grounds to believe that a respondent has engaged in conduct deserving of sanction, the allegation shall be considered as constituting a complaint, and the committee may

- (a) counsel or caution the respondent; or
- (b) instruct the registrar to file the complaint against the respondent and refer it to the disciplinary panel; and
- (c) recommend to the council that
  - (i) the respondent's practice be suspended or restricted, or
  - (ii) the registrar conduct an investigation of the respondent's practice, and where the council approves an investigation the registrar shall conduct it,

at any time before a final determination by the adjudication tribunal.

(4) A person conducting an investigation under paragraph (1)(b) or subparagraph (3)(c)(ii) may

- (a) require a respondent to
  - (i) undergo an examination or assessment he or she considers necessary and as arranged by the registrar or the council, and
  - (ii) permit the registrar or a member of the council or a person appointed by the council to inspect and copy records of the respondent and other documents relating to the subject matter of the investigation; and
- (b) require another person to permit the registrar or a member of the council or a person appointed by the council to inspect and copy records and other documents relating to the subject matter of the investigation held by that person,

and the respondent or other person shall comply.

(5) Where the registrar, a member of the council or a person appointed by the council requires that a respondent or another person provide information under subsection (4), that information shall be provided within 7 days of receipt of the request or a different period as specified by the registrar, a member of the council or a person appointed by the council.

(6) An action for damages does not lie against a practitioner or another person to whom a request is made solely because he or she provides information requested of him or her under subsection (4).

(7) Where the complaints authorization committee recommends to the council that a respondent's practice be suspended, restricted or investigated the council may

- (a) decide not to act on the recommendation; or
- (b) suspend, restrict or investigate the respondent's practice.

(8) A complainant whose allegation is dismissed by the complaints authorization committee under subsection (2) may within 30 days after receiving notice of the dismissal, appeal the dismissal to the Trial Division by filing a notice of appeal with the court.

(9) Subsections (4), (5) and (6) apply to the Crown.

[2012 cO-7.02 s30; 2013 c16 s25](#)

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### **Adjudication tribunal**

**31.** (1) For the purpose of dealing with complaints referred to the disciplinary panel, the chairperson of the disciplinary panel shall appoint from it an adjudication tribunal consisting of 3 persons, of whom 2 shall be practitioners and one shall be a member of the panel appointed to represent the public interest.

(2) The chairperson of the disciplinary panel shall appoint one of the practitioners on an adjudication tribunal to be the chairperson.

[2012 cO-7.02 s31](#)

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### **Hearing**

**32.** (1) Where a complaint has been referred under paragraph 30(3)(b), an adjudication tribunal shall hear the complaint.

(2) The parties to a hearing are the college and the respondent and a party may be represented by his or her counsel at a hearing.

(3) A hearing shall be conducted in public but an adjudication tribunal may exclude the public from a hearing, or from part of it, where it considers the desirability of protecting a party to the complaint or another person against the consequences of possible disclosure of personal matters outweighs the desirability of holding the hearing in public.

[2012 cO-7.02 s32](#)

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### **Copies of books, etc. as evidence**

**33.** A copy or extract of a book, record, document or thing certified by



- (a) a member of the complaints authorization committee; or
- (b) a person authorized under subsection 30(4) to conduct an inspection,

who made the copy or extract under subsection 30(4) is admissible in evidence in an action, proceeding or prosecution, in the absence of evidence to the contrary, as evidence of the original book, record, document or thing and its contents.

[2012 cO-7.02 s33](#)

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### **Guilty plea by respondent**

**34.** (1) Where a respondent pleads guilty to one or more of the charges set out in a complaint, the adjudication tribunal shall, without calling evidence or hearing witnesses, unless the tribunal believes it is appropriate to do so, hear submissions from the parties.

(2) Where a respondent pleads guilty, and following submissions under subsection (1), the adjudication tribunal may

- (a) reprimand the respondent;
- (b) order that the respondent be suspended for a fixed period that it considers appropriate, until conditions which it may impose are fulfilled, or until further order of the adjudication tribunal;
- (c) allow or direct the respondent to surrender his or her licence to the council upon those conditions that may be considered appropriate and, where the respondent's name appears on the register maintained under this Act, strike the respondent's name from the register;
- (d) impose a fine not to exceed \$10,000 to be paid to the college;
- (e) order that the respondent pay the costs or a part of the costs incurred by the college in the investigation and hearing of the complaint;
- (f) order that the registrar publish a summary of the decision including the information set out in subsection 36(4) and other information that the tribunal may specify; and
- (g) order that the respondent comply with one or more of the following:
  - (i) make restitution to the complainant or other person affected by the conduct of the respondent,
  - (ii) obtain medical treatment,
  - (iii) obtain counselling,
  - (iv) obtain substance abuse counselling or treatment, until the respondent can demonstrate to the council or other body or person designated by the adjudication tribunal that a condition related to substance abuse rendering the respondent incapable or unfit to practise has been overcome,
  - (v) engage in continuing education programs,
  - (vi) complete a course of studies or obtain supervised clinical experience, or both, to the satisfaction of the council or another body or person designated by the adjudication tribunal,
  - (vii) report on his or her compliance with an order made under this section and authorize others involved with his or her treatment or supervision to report on it,

- (viii) restrict his or her professional practice or continue his or her practice under specified conditions,
- (ix) permit periodic inspection of his or her practice,
- (x) permit periodic inspection of records relating to his or her practice, or
- (xi) impose other requirements that are just and reasonable in the circumstances.

(3) The costs incurred by the college to ensure the compliance of a respondent with an order or direction of an adjudication tribunal under this section shall be borne by the respondent.

[2012 cO-7.02 s34](#)

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### **Powers of adjudication tribunal**

**35.** (1) Upon hearing a complaint, an adjudication tribunal shall decide whether or not a respondent is guilty of conduct deserving of sanction.

(2) Where an adjudication tribunal decides that a respondent is not guilty, it shall dismiss the complaint and may, where it believes that the submission of the complaint to the tribunal for a hearing was unreasonable,

- (a) order that those costs that the tribunal considers appropriate be paid by the college to the respondent; and
- (b) make another order that it considers appropriate.
- (3) Where an adjudication tribunal decides that a respondent is guilty, it may
  - (a) reprimand the respondent;
  - (b) order that the respondent be suspended for a fixed period that it considers appropriate, until conditions which it may impose are fulfilled, or until further order of the adjudication tribunal;
  - (c) allow or direct the respondent to surrender his or her licence to the council upon those conditions that may be considered appropriate and, where the respondent's name appears on the register maintained under this Act, strike the respondent's name from the register;
  - (d) impose a fine not to exceed \$10,000 to be paid to the college;
  - (e) order that the respondent pay the costs or a part of the costs incurred by the college in the investigation or hearing of the complaint;
  - (f) order that the registrar publish a summary of the decision including the information set out in subsection 36(4) and other information that the tribunal may specify; and
  - (g) order that the respondent comply with one or more of the following:
    - (i) make restitution to the complainant or other person affected by the conduct of the respondent,
    - (ii) obtain medical treatment,
    - (iii) obtain counselling,
    - (iv) obtain substance abuse counselling or treatment, until the respondent can demonstrate to the council or other body or person designated by the adjudication

tribunal that a condition related to substance abuse rendering the respondent incapable or unfit to practise has been overcome,

- (v) engage in continuing education programs,
- (vi) complete a course of studies or obtain supervised clinical experience, or both, to the satisfaction of the council or another body or person designated by the adjudication tribunal,
- (vii) report on his or her compliance with an order made under this section and authorize others involved with his or her treatment or supervision to report on it,
- (viii) restrict his or her professional practice or continue his or her practice under specified conditions,
- (ix) permit periodic inspection of his or her practice,
- (x) permit periodic inspection of records relating to his or her practice, or
- (xi) impose other requirements that are just and reasonable in the circumstances.

(4) The costs incurred by the college to ensure the compliance of a respondent with an order or direction of an adjudication tribunal under this section shall be borne by the respondent.

[2012 cO-7.02 s35](#)

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### **Filing and publication of decisions**

**36.** (1) An adjudication tribunal shall file a decision or order made under subsection 34(2) or 35(3) with the registrar and provide a copy to the complainant and the respondent and the respondent's employer.

(2) The registrar shall maintain a copy of a decision or order filed under subsection (1) for a minimum of 10 years after the day the decision is filed and shall upon receiving a request to view the disciplinary records in relation to a practitioner permit a person to view a summary of a decision where that practitioner was the respondent, prepared in accordance with subsection (4).

(3) The registrar shall publish a summary of a decision or order of an adjudication tribunal in a newspaper of general circulation in or nearest to the community in which the respondent practises within 14 days of the filing of the decision or order, where the decision or order

- (a) suspends the respondent;
- (b) allows or directs the respondent to surrender his or her licence;
- (c) restricts the respondent's practice;
- (d) specifies conditions for the continuing practice of the respondent; or
- (e) requires that a summary of the decision or order be published.

(4) Unless a court orders otherwise, the summary of the decision published under subsection (3) shall include

- (a) the name of the respondent and the address where he or she practises;
- (b) the date, location and a brief description of the conduct of the respondent that was found to be deserving of sanction;

- (c) the name of the complainant, unless the complainant has requested that his or her name be withheld;
- (d) the contents of the order in relation to the actions referenced in paragraphs (3)(a) to (d); and
- (e) other information specified for publication in the decision or order.

(5) Where a decision published under this section is varied or set aside, the registrar shall within 14 days of the filing of the subsequent decision or order publish a summary of the decision or order and subsections (3) and (4) apply, with the necessary changes.

[2012 cO-7.02 s36; 2014 c7 s13](#)

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### **De-registration and suspension**

37. (1) Where a respondent is struck off the register, his or her rights and privileges as a licensed optometrist cease.

(2) Where a respondent is suspended, his or her rights and privileges as a licensed optometrist cease for the period of suspension.

(3) Where conditions or restrictions have been imposed upon a respondent's ability to carry on his or her practice, his or her rights and privileges as a licensed optometrist shall be limited to the extent specified by the conditions or restrictions.

[2012 cO-7.02 s37](#)

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### **Failure to comply**

38. (1) On application by the college to the disciplinary panel, an adjudication tribunal may make an order suspending the rights and privileges of a respondent where it determines that the respondent has failed to comply with a decision or an order under this Part.

(2) The parties to the application are the college and the respondent.

(3) An order of an adjudication tribunal under this section may suspend the rights and privileges of the respondent for a fixed period that the adjudication tribunal may consider appropriate, or until conditions which it may impose are fulfilled, or until further order of the adjudication tribunal.

[2012 cO-7.02 s38](#)

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### **Reinstatement and readmission**

39. (1) Where as a result of a decision of the adjudication tribunal the respondent

- (a) has been struck from the register;
- (b) has had his or her rights and privileges suspended; or
- (c) has had imposed upon him or her conditions or restrictions on the manner in which he or she may carry on his or her practice,

and where the respondent alleges that new evidence has become available or a material change in circumstances has occurred since the making of the decision or order, the respondent may apply to

the complaints authorization committee for a supplementary hearing to discharge or vary the decision or order based on the new evidence or material change in circumstances.

(2) An application under subsection (1) shall be made not more than 90 days after the new evidence becomes available or the material change in circumstances has occurred.

(3) Where an application is made to the complaints authorization committee under subsection (1), and the committee is of the opinion that new evidence has become available or that a material change in circumstances has occurred, as alleged by a respondent, the matter shall be referred to an adjudication tribunal as if it were a matter referred under paragraph 30(3)(b) and sections 32 to 37 apply, with the necessary changes, to the referred matter.

(4) The complaints authorization committee may refer a matter under subsection (3) to the adjudication tribunal that made the original decision or order, or may constitute a new adjudication tribunal.

(5) The parties to a supplementary hearing under this section are the respondent and the college.

(6) For the purpose of this section, in addition to an order that an adjudication tribunal may make under section 35, a tribunal may

(a) vary the original decision or order made under section 35; or

(b) discharge the original decision or order, with or without conditions.

[2012 cO-7.02 s39](#)

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### **Costs of the college**

**40.** (1) Where a person who was ordered to pay the costs of the college under paragraph 34(2)(e) or 35(3)(e) fails to pay in the time required, the council may suspend the membership of that person until the costs are paid.

(2) Costs ordered to be paid under paragraph 34(2)(e) or 35(3)(e) are a debt due the college and may be recovered by the college by a civil action.

[2012 cO-7.02 s40](#)

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### **Collection of fine**

**41.** (1) Where an order is made under section 34 or 35 imposing a fine on a respondent, the college may issue a certificate stating the amount of the fine due and remaining unpaid and the name of the person by whom it is payable, and file the certificate with the Trial Division.

(2) Where a certificate is filed with the Trial Division under subsection (1), it has the same effect and all proceedings may be taken on the certificate as if it were a judgment of the Trial Division for the recovery of the amount stated in the certificate against the person named in the certificate.

(3) A person named in a certificate filed under this section may, within 30 days after the certificate is filed, apply to a judge of the Trial Division for a review, on a question of law or jurisdiction, of the certificate.

(4) On an application under subsection (3), the judge may make any amendment to the certificate that is necessary to make the certificate accord with the judge's decision.

(5) There is no appeal from a decision of a judge made under this section.

(6) A certificate filed under this section may also be filed in the judgment enforcement registry on the expiration of the 30 day period referred to in subsection (3) in accordance with Part III of the *Judgment Enforcement Act* and be enforced in accordance with that Act.

[2012 cO-7.02 s41; 2013 c16 s25](#)

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### **Appeal to Trial Division**

**42.** (1) The college or the respondent may, within 30 days after receiving notice of a decision or order of an adjudication tribunal under this Act, appeal the decision or order to the Trial Division by filing a notice of appeal with the court.

(2) An appeal under this section does not stay the decision or order being appealed unless the Trial Division orders otherwise.

[2012 cO-7.02 s42; 2013 c16 s25](#)

## **PART V QUALITY ASSURANCE**

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### **Quality assurance program**

**43.** (1) The council shall establish and maintain a quality assurance program to promote high standards of practice within the optometry profession.

(2) The quality assurance program shall include mandatory continuing education and professional development and shall be designed to promote

- (a) continuing competence; and
- (b) continuing quality improvement.

[2012 cO-7.02 s43](#)

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### **Quality assurance committee**

**44.** (1) The council may appoint a committee known as the quality assurance committee.

(2) The quality assurance committee shall investigate a concern

(a) on the referral of a quality assurance issue by

- (i) the registrar, or
- (ii) the complaints authorization committee; or

(b) on its own accord.

(3) The quality assurance committee may

- (a) subpoena records, including patient records;
- (b) order an optometrist to undergo an evaluation, assessment or examination;
- (c) order a review of an optometrist's practice, including any consequential review of patient records;

- (d) order periodic or random audits of aspects of an optometrist's practice; and
- (e) accept an agreement between the council and the optometrist to give effect to matters which could be ordered by the quality assurance committee.

(4) Where an optometrist fails to comply with an order made by the quality assurance committee, that committee shall refer that failure to comply as an allegation to the complaints authorization committee.

[2012 cO-7.02 s44](#)

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### **Assessment**

45. (1) The quality assurance committee may appoint persons licensed as optometrists under this Act as assessors for the purpose of the quality assurance program.

(2) An assessor may, for the purpose of the quality assurance program

- (a) enter, without notice and at reasonable times, places where optometry is practised to make necessary inspections;
- (b) inspect that optometrist's records of care administered to patients;
- (c) require from the optometrist information required by the quality assurance committee or the assessor respecting the assessment and care of patients by the optometrist, or his or her records of care administered to patients; and
- (d) require that that optometrist confer with the quality assurance committee.

(3) An optometrist whose standards of practice are the subject of an assessment under the quality assurance program shall cooperate fully with the quality assurance committee and assessors.

(4) An assessor may access patient records without the consent of that patient.

(5) All records and specific information relating to the quality assurance program or a review or recommendation under it are confidential.

[2012 cO-7.02 s45](#)

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### **Report and compliance**

46. (1) Upon completion of an assessment an assessor shall submit a report of his or her findings to the quality assurance committee and the committee shall review the report and may

- (a) make no recommendation to the optometrist who has been assessed; or
- (b) confer with the optometrist assessed and make those remedial recommendations to him or her that the quality assurance committee considers appropriate.

(2) The quality assurance committee may

- (a) direct the optometrist who has been assessed to comply with recommendations made by the committee under subsection (1); and
- (b) direct that an optometrist be reassessed.

[2012 cO-7.02 s46](#)

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## **Costs**

47. The costs incurred by an optometrist in implementing remedial recommendations of the quality assurance committee shall be paid by that optometrist and shall not be a cost of the quality assurance committee, the council or the college.

[2012 cO-7.02 s47](#)

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## **Termination of review**

48. (1) Where an assessor or a member of the quality assurance committee learns, in the course of a review, that an optometrist may be guilty of conduct deserving of sanction within the meaning of section 26, the assessment shall be terminated, the optometrist shall be advised, and the matter shall be referred to the complaints authorization committee to be dealt with as a complaint.

(2) Notwithstanding subsection 45(5), an assessor or a member of a quality assurance committee shall provide all information and documents in its possession relating to the review to the complaints authorization committee.

(3) An order of the quality assurance committee issued before it refers a matter to the complaints authorization committee under subsection (1) remains in effect notwithstanding the referral of the matter to the complaints authorization committee.

[2012 cO-7.02 s48](#)

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## **Duty to report**

49. (1) An optometrist who has knowledge, from direct observation or objective evidence, of conduct deserving of sanction of another optometrist shall report the known facts to the registrar.

(2) A person who dissolves a partnership with an optometrist based on direct knowledge of the optometrist's conduct deserving of sanction shall report the known facts to the registrar.

(3) An action shall not be brought against an optometrist, officer, partnership or association for the sole reason that the person, officer, partnership or association complied with this section.

[2012 cO-7.02 s49](#)

## **PART VI GENERAL**

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## **Referral**

50. A practitioner shall refer to a medical practitioner registered under the laws of the province a person consulting the practitioner where the practitioner has reason to suspect the person has a condition that requires a medical opinion or medical or surgical treatment.

[2012 cO-7.02 s50](#)

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## **Pharmaceuticals**

51. A practitioner shall not prescribe or administer pharmaceutical agents except in accordance with a certificate issued under the regulations.



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### **Use of trade name**

**52.** (1) A practitioner shall not use a trade name or corporate name in connection with the practice of optometry, except as permitted in Part III.

(2) Subsection (1) does not prevent a practitioner from practising optometry in a partnership with one or more practitioners under a firm name that includes the surname of one or more of the practitioners.

[2012 cO-7.02 s52](#)

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### **Use of certain titles**

**53.** A person, other than a person holding a valid and existing licence under this Act, shall not use the title "Optometrist" or a word, abbreviation, or letters or signs having a similar meaning.

[2012 cO-7.02 s53](#)

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### **Action prohibited**

**54.** An action for damages shall not lie against the college, council, disciplinary panel, adjudication tribunal or the individual members of those bodies, the registrar, an assessor or an officer, employee or representative of the college for

- (a) an act or failure to act, or a proceeding initiated or carried out in good faith under this Act, or carrying out their duties or obligations as an officer, employee or member under this Act; or
- (b) for a decision or order made or enforced in good faith under this Act.

[2012 cO-7.02 s54](#)

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### **Offence**

**55.** A person who

- (a) is not registered in accordance with this Act, and who, by himself or herself or by another person practises optometry or holds himself or herself out as qualified or entitled to so practise;
- (b) knowingly helps another in the contravention of this Act;
- (c) permits or allows a person in his or her employ other than a registered optometrist to practise optometry;
- (d) obtains or attempts to obtain for himself or herself registration in accordance with this Act by making a false or fraudulent representation or declaration, either orally or in writing; or
- (e) contravenes this Act or the regulations,

is guilty of an offence and liable on summary conviction to a fine not exceeding \$5,000 and in default of payment to imprisonment for a term not exceeding 3 months or to both a fine and imprisonment.

[2012 cO-7.02 s55](#)

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## **Proof**

56. The use by a person of test lenses, trial frames or other appliances for measuring the human eye or testing the vision of the human eye is, in the absence of evidence to the contrary, proof that the person is practising optometry.

[2012 cO-7.02 s56](#)

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## **Regulations**

57. (1) The council may, with the approval of the minister, make regulations

- (a) prescribing the academic qualifications and examinations and other qualifications for the licensing of persons to practise optometry;
- (b) prescribing the qualifications for a practitioner to be permitted to prescribe and administer pharmaceutical agents designated in the regulations and providing for the issuance of a certificate to qualified practitioners to prescribe and administer those pharmaceutical agents;
- (c) designating the pharmaceutical agents and dosages that may be prescribed and administered by a practitioner holding a certificate permitting him or her to prescribe and administer pharmaceutical agents;
- (d) prescribing the qualifications for a practitioner to be permitted to remove superficial foreign bodies from the human eye and surrounding tissue;
- (e) providing for persons to discharge the duties of checking the visual acuity of a person;
- (f) respecting the registration and licensing of professional optometric corporations;
- (g) respecting mandatory continuing education programs;
- (h) respecting the quality assurance program referred to in subsection 43(1);
- (i) respecting alternative dispute resolution for the purpose of Part IV and the procedure for that resolution; and
- (j) prescribing time limits for events in the disciplinary process in Part IV, including time limits for
  - (i) the filing of an allegation,
  - (ii) the resolving of an allegation by the registrar,
  - (iii) the conduct of an investigation under section 30,
  - (iv) the consideration of an allegation by the complaints authorization committee following completion of an investigation,
  - (v) responding to a complainant and respondent at each stage of the process,

- (vi) the conduct of a practice investigation under subparagraph 30(3)(c)(ii),
- (vii) the appointment of an adjudication tribunal under section 31, and
- (viii) the conduct of a hearing and the filing of a decision or order by an adjudication tribunal following completion of the hearing.

(2) Notwithstanding paragraph (1)(j), the minister may make regulations to prescribe time limits for events in the disciplinary process in Part IV where the council has not done so in a time period which the minister considers reasonable.

[2012 cO-7.02 s57](#)

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#### **Fees and forms**

58. The council may set fees and prescribe forms for the purpose and administration of the Act.

[2012 cO-7.02 s58](#)

### **PART VII TRANSITION, CONSEQUENTIAL AMENDMENTS, REPEAL AND COMMENCEMENT**

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#### **Transition**

59. (1) The directors elected to the Newfoundland and Labrador Optometric Board are continued as directors of the council.

(2) The directors appointed to the Newfoundland and Labrador Optometric Board are continued as directors of the council.

[2012 cO-7.02 s59](#)

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#### **SNL2005 cD-25.1 Amdt.**

60. (1) Paragraph 3(a) of the *Dispensing Opticians Act, 2005* is amended by deleting the reference "*Optometry Act, 2004*" and substituting the reference "*Optometry Act, 2012*".

(2) Section 36 of the Act is repealed and the following substituted:

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#### **Effect of the Optometry Act, 2012**

36. The *Optometry Act, 2012* does not apply to a dispensing optician licensed under this Act who practises optical dispensing within the meaning of this Act.

[2012 cO-7.02 s60](#)

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#### **RSNL1990 cH-3 Amdt.**

61. Subsection 174.1(1) of the *Highway Traffic Act* is amended by deleting the reference "*Optometry Act, 2004*" and substituting the reference "*Optometry Act, 2012*".

[2012 cO-7.02 s61](#)

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**SNL2008 cP-7.01 Amdt.**

**62. Subparagraph 2(1)(j)(xi) of the *Personal Health Information Act* is repealed and the following substituted:**

(xi) *Optometry Act, 2012*,

[2012 cO-7.02 s62](#)

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**SNL1994 cP-12.1 Amdt.**

**63. (1) Subparagraph 2(p)(iii.1) of the *Pharmacy Act* is amended by deleting the reference "*Optometry Act, 2004*" and substituting the reference "*Optometry Act, 2012*".**

**(2) Paragraph 3(1)(c.1) of the Act is amended by deleting the reference "*Optometry Act, 2004*" and substituting the reference "*Optometry Act, 2012*".**

[2012 cO-7.02 s63](#)

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**SNL2006 cP-12.01 Amdt.**

**64. Subparagraph 2(p)(iii) of the *Pharmaceutical Services Act* is amended by deleting the reference "*Optometry Act, 2004*" and substituting the reference "*Optometry Act, 2012*".**

[2012 cO-7.02 s64](#)

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**SNL2004 cO-7.01 Rep.**

**65. The *Optometry Act, 2004* is repealed.**

[2012 cO-7.02 s65](#)

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**Commencement**

**66. This Act comes into force on August 31, 2012.**

[2012 cO-7.02 s66](#)