

Dispensing Opticians Act

CHAPTER 39 OF THE ACTS OF 2005

as amended by

2008, c. 3, s. 5; 2012, c. 48, s. 31



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Published by Authority of the Speaker of the House of Assembly
Halifax

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CHAPTER 39 OF THE ACTS OF 2005
amended 2008, c. 3, s. 5; 2012, c. 48, s. 31

**An Act Respecting
Dispensing Opticians**

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Short title

- 1 This Act may be cited as the *Dispensing Opticians Act*. 2005, c. 39, s. 1.

Interpretation

- 2 In this Act,
- (a) “Board” means the Board of Directors of the College;
 - (b) “certified contact lens fitter” means a dispensing optician who holds a practising licence endorsed with a contact lens certificate;
 - (c) “College” means the Nova Scotia College of Dispensing Opticians;
 - (d) “Complaints Committee” means the Complaints Committee established pursuant to this Act;
 - (e) “contact lenses” means lenses designed to fit over the cornea of the eye;
 - (f) “contact lens provisional permit” means a permit issued to a specialty student optician to allow the student to engage in the measuring, fitting or adjusting of contact lenses to the extent required to gain eligibility for registration on the specialty register;
 - (g) “customer” means the person for whom a dispensing optician provides, fits or adjusts subnormal vision devices, contact lenses or eye-glasses;
 - (h) “dispensing optician” means a person registered under this Act;
 - (i) “dispensing optician education program” means a course of study approved by the Board, that is a prerequisite for a person to have completed before the taking by that person of the registration examination;
 - (j) “former Act” means Chapter 131 of the Revised Statutes, 1989, the *Dispensing Opticians Act*;
 - (k) “licence” means a licence issued pursuant to Section 11;

(l) “member” means a person whose name appears on the Register and, for purposes of the professional conduct process, includes a student optician;

(m) “optical appliances” means lenses, spectacles, eyeglasses, contact lenses or appurtenances thereto for the aid or correction of visual or ocular anomalies of the eyes;

(n) “optical dispensing” means the provision, fitting and adjustment of contact lenses, eyeglasses or subnormal vision devices for customers;

(o) “practising licence” means a licence issued pursuant to subsection 11(1) or (3);

(p) “practising licence endorsed with a contact lens certification” means a licence issued pursuant to subsection 11(4);

(q) “prescription” means a formula given by a qualified medical practitioner or optometrist that indicates

(i) the power of the lens necessary to correct the refractive error in an eye, and

(ii) the reading adds, prisms and back vertex distance;

(r) “Professional Conduct Committee” means the Professional Conduct Committee established pursuant to this Act;

(s) “provisional permit” means a permit issued to a student optician that authorizes the holder of the permit to engage in the practice of a dispensing optician to the extent required to gain eligibility for registration on the register;

(t) “qualified medical practitioner” means a person authorized to practise medicine under the *Medical Act*, who is permitted by the College of Physicians and Surgeons of Nova Scotia to provide vision care services;

(u) “Registrar” means the Registrar of the College;

(v) “registration examination” means an examination approved by the Board that is a prerequisite to registration pursuant to this Act;

(w) “specialty student optician” means a dispensing optician who

(i) is enrolled in a program in the Province approved by the Board that leads to entry as a person qualified to fit contact lenses on the specialty register of the College, or

(ii) following completion of such program, is fitting contact lenses to the extent required by the Board to gain eligibility for registration on the specialty register;

(x) “sponsor” means an optometrist approved by the Board to sponsor a student optician or a specialty student optician, an ophthalmologist approved by the Board to sponsor a specialty student optician or a dispensing

ing optician approved by the Board to sponsor a student optician or specialty student optician, who

- (i) holds an active practising licence,
 - (ii) for purpose of sponsoring a student optician, is engaged in the practice of optical dispensing and, for purpose of sponsoring a specialty student optician, is registered on the specialty register as qualified to fit contact lenses, and
 - (iii) has not been subject to any disciplinary findings within the two-year period immediately before the commencement of sponsorship;
- (y) “student optician” means a person who is not a dispensing optician who
- (i) is enrolled in a program in the Province approved by the Board to lead to registration and licensing under this Act, and
 - (ii) following completion of such program, is engaging in the practice of a dispensing optician to the extent required by the Board to gain eligibility to write the registration examination. 2005, c. 39, s. 2.

BOARD

Board continued

3 (1) The Board of Dispensing Opticians, as constituted immediately before the coming into force of this Act, is hereby continued as a body corporate and, subject to this Act, has the capacity, rights, powers and privileges of a natural person.

(2) The College has perpetual succession and a common seal, with power to acquire, hold, lease, mortgage and otherwise dispose of real and personal property, and may sue and be sued. 2005, c. 39, s. 3.

Objects of College

4 In order that the public interest may be served and protected, the objects of the College are to

- (a) regulate the practice of optical dispensing through registration, licensing and the establishment of a professional conduct process in accordance with this Act and the regulations;
- (b) establish, maintain and develop standards of professional practice among its members;
- (c) establish, maintain and develop standards of professional ethics and a code of conduct for its members; and

(d) administer this Act and perform such other duties and exercise such other powers as are imposed or conferred on the Board by or under any Act. 2005, c. 39, s. 4.

Board of Directors

5 (1) The Board of Directors of the College is composed of

(a) the officers of the Board, who are the Chair, the Past Chair, the Vice-chair and the Treasurer, each of whom must hold a practising licence;

(b) three persons, at least two of whom hold practising licences; and

(c) no fewer than two and no more than three persons appointed by the Governor in Council who

(i) are not members of the College,

(ii) are not optometrists or ophthalmologists, and

(iii) have shown an interest in serving on the Board.

(2) Members of the Board shall be elected or appointed in the manner set out in the regulations.

(3) A majority of the Board constitutes a quorum.

(4) Notwithstanding subsection (2), persons appointed by the Governor in Council hold office until their successors are appointed or until such time as they are re-appointed, notwithstanding that such appointment or re-appointment does not occur until after their specified terms of office have expired.

(5) Notwithstanding subsection (1), the persons who at the coming into force of this Act constitute the Board of Dispensing Opticians pursuant to the former Act constitute the Board until the election or appointment of members pursuant to subsection (2).

(6) Elections required by this Section must be held no later than twelve months after the coming into force of this Act.

(7) The Board shall

(a) approve the investment and disbursement of the funds of the College, including the annual budget;

(b) prepare and submit to each annual general meeting of the College a financial statement of the College's operations for the past year;

(c) appoint the Registrar of the College;

(d) appoint an auditor and solicitor for the College;

- (e) approve dispensing optician education programs required for registration or licensing pursuant to this Act or the regulations;
- (f) approve professional development courses required in order to maintain a licence pursuant to the requirements of the regulations; and
- (g) generally govern the affairs of the College. 2005, c. 39, s. 5.

Regulations

6 (1) Subject to the approval of the Governor in Council, the Board may make, amend or repeal regulations to

- (a) regulate the registration, licensing and re-instatement of members and the professional conduct process for members of the College;
- (b) create one or more categories of membership and set out the rights, privileges, qualifications and obligations of the members of each category;
- (c) set out the conditions for entry and maintenance of members' names in the categories and on the registers of the College, including education requirements for registration and conditions for continuing education or professional development;
- (d) establish the process for setting the criteria required for the issuing of a practising licence endorsed with a contact lens certification;
- (e) establish the criteria for the issuing of a practising licence, including conditions for continuing education or professional development;
- (f) establish the process for the adoption of a code of ethics and standards of practice;
- (g) establish procedures related to the professional conduct process, including the powers of the Registrar, investigators, the Professional Conduct Committee and the Complaints Committee and the ability to award solicitor-client costs or other forms of costs;
- (h) establish the role and duties of a sponsor for student opticians and specialty student opticians;
- (i) establish procedures related to the writing of registration examinations, and the number of times authorized for the writing of such registration examinations;
- (j) prescribe the registers to be maintained by the Registrar;

(k) prescribe processes respecting the revocation or suspension of licences issued pursuant to this Act and the re-instatement of such licences and allow for conditions, limitations or restrictions to be attached to a re-instated licence and allow for an award of costs on a solicitor-client or other basis;

(l) prescribe processes respecting the development and approval of settlement proposals;

(m) provide that the licence of a member may be suspended without notice or investigation upon contravention of any regulation that requires the member to pay a fee, to file a document or to do any other act by a specified or ascertainable date and provide for the re-instatement of a licence that was suspended upon payment of such fee as determined by the Board;

(n) define any word or expression used but not defined in this Act;

(o) further define any word or expression defined in this Act;

(p) govern such other matters as the Board considers necessary or advisable for the effective discharge of its functions or the exercise of its powers.

(2) The exercise by the Board of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*, 2005, c. 39, s. 6.

By-laws

7 The Board may make by-laws not inconsistent with this Act to

(a) fix the method of setting the amounts of fees payable by applicants and members and provide for the collection of those fees;

(b) fix and regulate the time, place and conduct of annual and special meetings of the College;

(c) establish fees and expenses payable to persons sitting on the Board and other committees established for the purpose of attending to the business of the College;

(d) govern the acquisition, management and disposal of the property and affairs of the College;

(e) provide for the appointment and remuneration of consultants, persons hired by contract or employees of the College;

(f) establish the terms of office of the Board members, the timing and manner in which elections are to be held or appointments are to be made and the manner in which vacancies may be filled;

(g) establish committees as are necessary from time to time and provide for the powers and duties of such committees, and the holding and conduct of meetings of such committees;

(h) establish other powers and obligations of the Board deemed necessary by the Board to govern the affairs of the College;

(i) do all other things necessary for the administration of the affairs of the College. 2005, c. 39, s. 7.

REGISTRATION

Registrar

8 (1) The Board shall appoint a Registrar who meets the criteria for the position as determined by the Board.

(2) The Registrar is responsible for maintaining the registers prescribed pursuant to the regulations, and for ensuring that the persons whose names appear on the registers and who hold practising licences satisfy the criteria for registration and licensing according to this Act and the regulations. 2005, c. 39, s. 8.

Register

9 (1) The Board shall cause to be kept a register in which shall be entered the name, registration number, date of entry in the register, address and the category of membership of every person who qualifies for registration according to this Act and the regulations.

(2) The name of every person who, on the coming into force of this Act, is registered pursuant to the former Act, shall be entered in the register, but shall continue under any conditions or limitations attached to the person's previous registration.

(3) When the Registrar is satisfied that an applicant for registration as a dispensing optician is entitled to be registered, the Registrar shall enter the name of the applicant in the register and shall issue a certificate of registration to the applicant. 2005, c. 39, s. 9.

Appeal of refusal

10 (1) The Registrar shall give to an applicant who is refused registration or a licence written reasons for the refusal and the applicant may, by written notice, appeal that decision to a registration committee to be appointed by the Board and composed of such members as determined by the Board.

(2) The registration committee, upon receipt of an appeal pursuant to subsection (1), shall

(a) set a date for the hearing of the appeal, which is not later than sixty days following receipt of the written notice of appeal;

- (b) serve written notice of the date, time and place for the hearing of the appeal upon the applicant and the Registrar; and
- (c) advise the appellant of the right to
 - (i) be represented by legal counsel at the expense of the appellant,
 - (ii) disclosure of any information provided to the registration committee, and
 - (iii) a reasonable opportunity to present a response and make submissions.
- (3) Evidence is not admissible before the registration committee unless, at least ten days before the appeal, the opposing party has been given
 - (a) in the case of written or documentary evidence, an opportunity to examine the evidence;
 - (b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; and
 - (c) in the case of evidence of any other witness, the identity of the witness.
- (4) Notwithstanding subsection (3), the registration committee may, in its discretion, allow the introduction of evidence that is otherwise inadmissible under subsection (3) and make directions it considers necessary to ensure that a party is not prejudiced.
- (5) The registration committee shall set the procedure for the hearing of the appeal, which procedure must not be in conflict with this Act.
- (6) The registration committee, in accordance with the information it receives, when hearing an appeal, may make any determination that, in its opinion, ought to have been made by the Registrar.
- (7) The registration committee shall give its decision in writing and shall send to the applicant a copy of the written decision by registered mail or personal service.
- (8) The decision of the registration committee is final. 2005, c. 39, s. 10.

Licences

- 11** (1) The Registrar shall issue a practising licence to every person who, at the coming into force of this Act, is licensed pursuant to the former Act.
- (2) Every license issued pursuant to subsection (1) is subject to any conditions or limitations attached to the licence pursuant to the former Act.

(3) The Registrar shall issue a practising licence to a member who meets the criteria for such licence as set out in the regulations.

(4) The Registrar shall endorse the practising licence to indicate that the holder of the licence is qualified to fit contact lenses if the holder of a licence is registered on the specialty register and meets the criteria for the issuing of a practising licence endorsed with a contact lens certification according to this Act and the regulations. 2005, c. 39, s. 11.

Right to practise

12 A person registered in any register may practise optical dispensing in the manner and subject to the conditions and limitations prescribed by the regulations. 2005, c. 39, s. 12.

Provisional permits

13 (1) The Registrar shall issue a provisional permit to those persons who meet the criteria for the issuing of a provisional permit pursuant to the regulations.

(2) A person who holds a provisional permit may practice optical dispensing in the manner and subject to the conditions and limitations prescribed by the regulations. 2005, c. 39, s. 13.

Consequences of conviction for offences

14 (1) Notwithstanding anything contained in this Act, where a person has been convicted or found to be guilty, by a court in or out of Canada, of any offence that is inconsistent with the proper professional behaviour of a dispensing optician, including a conviction under the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada), for which a pardon has not been granted, and such person applies for registration or a licence, the Registrar may refuse to register or license the person, as the case may be, but the registration committee may, at any time, permit such person to be registered or licensed or to remain registered or licensed upon such terms and conditions as the committee may direct following an appeal to the committee.

(2) Upon application for registration or a licence, an applicant shall advise the Registrar in writing of any convictions referred to in subsection (1).

(3) A person holding a provisional permit or a person whose name is entered on any register, who is convicted of an offence referred to in subsection (1), shall advise the Registrar in writing of the conviction within thirty days of the conviction being entered. 2005, c. 39, s. 14.

Use of titles

15 (1) Except as otherwise provided in this Act, no person other than a dispensing optician who holds a practising licence shall assume or use the title

“Optician” or “Dispensing Optician”, or use the abbreviations DO or D.O. to imply that the person is a dispensing optician.

(2) No person other than an optician whose name appears on the specialty register and who holds a practising licence endorsed with a contact lens certification shall assume or use the title “Certified Contact Lens Fitter”, or use the abbreviations CCLF or C.C.L.F. to imply that the person is a certified contact lens fitter. 2005, c. 39, s. 15.

Prohibitions

16 (1) Except as otherwise provided in this Act or the regulations, no person other than a dispensing optician who holds a practising license, a person whose name is entered on the student optician register or the specialty student optician register or a person who holds a provisional permit shall

- (a) practise optical dispensing;
- (b) dispense prescriptions of qualified medical practitioners or optometrists for optical appliances; or
- (c) dispense optical appliances.

(2) No dispensing optician shall supply or dispense an optical appliance except upon receipt of a prescription from a qualified medical practitioner or an optometrist.

(3) Notwithstanding subsection (2), a dispensing optician may supply and dispense duplications, replacements, reproductions or repetitions of any optical appliance and may convert the prescription for one optical appliance in order to supply and dispense another type of optical appliance.

(4) Except as otherwise provided in this Act or the regulations, no person shall measure, fit or adjust contact lenses unless the person

- (a) is a dispensing optician who is registered on the specialty register and who holds a practising licence endorsed with a contact lens certification;
- (b) is entered on the specialty student optician register; or
- (c) holds a contact lens provisional permit. 2005, c. 39, s. 16.

Duties of employer of dispensing optician

17 (1) In this Section and Section 19, “employer” means a person, corporation, partnership or any entity with legal capacity to sue or be sued.

(2) Every employer who employs a person as a dispensing optician shall

- (a) ensure that the person at the time of employment and each year employed thereafter, holds a current practising licence and,

where applicable, a practising licence endorsed with a contact lens certification; and

(b) where the person's employment is terminated because of professional misconduct, conduct unbecoming the profession, incompetence or incapacity, report the matter to the Registrar forthwith and provide a copy of the report to the person whose employment is terminated.

(3) Every employer who employs a person as a dispensing optician shall ensure that the practising licence of each optician or, where applicable, the practising licence with a contact lens certification is displayed in a location of the employer that is visible to customers. 2005, c. 39, s. 17.

Duty of dispensing optician

18 Every dispensing optician has a duty to display in a location visible to customers the member's practising licence or, where applicable, the member's practising licence endorsed with a contact lens certification. 2005, c. 39, s. 18.

Offences and penalties

19 (1) Every person or employer who

(a) knowingly furnishes false information in any application under this Act or in any statement required to be furnished under this Act or the regulations;

(b) engages in the practice of optical dispensing in the Province or permits an employee to engage in the practice of optical dispensing in the Province without holding a practising licence or, where applicable, a practising licence with a contact lens certification; or

(c) otherwise contravenes this Act or the regulations,

is guilty of an offence and liable on summary conviction to a fine of not more than two thousand dollars or to imprisonment for a term of not more than six months, or to both.

(2) The provisions of the *Summary Proceedings Act* apply in addition to any penalty otherwise provided for in this Act or the regulations.

(3) All fines and penalties payable under this Act or under the *Summary Proceedings Act* as a result of a prosecution by or on behalf of the College belong to the College.

(4) Any information to be laid pursuant to this Act or pursuant to the *Summary Proceedings Act* may be laid by the Registrar or any member of the College authorized by the Board.

(5) In a prosecution for an offence contrary to this Act or the regulations, the onus of proof that a person accused of an offence has the right to practise optical dispensing, or that a person comes within any of the exemptions provided by this Act, is on the person accused.

(6) Where a violation of this Act or the regulations by a person or employer continues for more than one day, the person or employer is guilty of a separate offence for each day that the violation continues.

(7) For the purpose of this Act, proof of the performance of one act in the practice of optical dispensing on one occasion is sufficient to establish that a person has engaged in the practice of optical dispensing. 2005, c. 39, s. 19.

Injunction

20 (1) In the event of a threatened or continuing violation of this Act or the regulations, the Board may apply to a judge for an injunction to restrain the person from continuing or committing the violation and the judge, where the judge deems it to be just, may grant such an injunction.

(2) A judge may, on application, grant an interim injunction pending the hearing of an application for an injunction pursuant to subsection (1) if the judge is satisfied that there is reason to believe that a person is likely to commit or is continuing to commit a violation of this Act or the regulations.

(3) A judge may make such order as to costs as the judge considers proper in any proceedings pursuant to this Section. 2005, c. 39, s. 20.

PROFESSIONAL CONDUCT PROCESS

Interpretation of Sections 21 to 41

21 In this Section and Sections 22 to 41,

(a) “complaint” means a notification in writing to the College from any person indicating potential professional misconduct, conduct unbecoming the profession, incompetence or incapacity by a member;

(b) “incapacity” means the status whereby a respondent is suffering from a physical, mental or emotional condition, disorder or addiction that may endanger the health or safety of customers;

(c) “incompetence” means the display of lack of knowledge, skill or judgment in the respondent’s delivery of optical dispensing services that, having regard to all of the circumstances, renders the respondent unsafe to practise or unsafe to practise without remedial assistance;

(d) “investigator” means a person or persons designated by the Registrar to conduct an investigation into a complaint, and may include members of the Complaints Committee;

(e) “party” means the College or the respondent, as the context requires;

(f) “professional conduct process” means the processes and procedures set out in this Part and in the regulations that deal with professional conduct issues;

(g) “professional misconduct” includes such conduct or acts relevant to the practice of optical dispensing that, having regard to all of the circumstances, would reasonably be regarded as disgraceful, dishonourable or unprofessional which, without limiting the generality of the foregoing, may include

- (i) failing to maintain standards of practice,
 - (ii) failing to uphold any code of ethics adopted by the College,
 - (iii) violating this Act, the regulations or the by-laws,
 - (iv) abusing a person verbally, physically, emotionally or sexually,
 - (v) misappropriating personal property or other property belonging to a customer or an employer,
 - (vi) allowing a person who is not licensed by the College to practise optical dispensing, unless the person is a student optician or a specialty student optician or is otherwise authorized to practise optical dispensing pursuant to this Act,
 - (vii) the committing of an indictable offence,
 - (viii) falsifying records,
 - (ix) publishing, or causing to be published, any advertisement that is false, fraudulent, deceptive or misleading,
 - (x) engaging or assisting in fraud, misrepresentation, deception or concealment of a material fact when applying for or securing registration or a licence, or the taking of any examinations provided for in this Act or the regulations, including using fraudulently procured credentials;
- (h) “respondent” means the person who is the subject of a complaint;
- (i) “settlement proposal” means a proposal for the settlement of a complaint as prescribed in the regulations. 2005, c. 39, s. 21.

Objects of process

22 The objects of the professional conduct process are the protection of the public and the preservation of the integrity of the optical dispensing profession. 2005, c. 39, s. 22.

Jurisdiction continues

23 Where a member of the College ceases to be registered or licensed for any reason, such person remains subject to the jurisdiction of the College in respect of any professional conduct matter arising out of the person's conduct while registered or licensed. 2005, c. 39, s. 23.

Complaints Committee

24 (1) The Board shall appoint a Complaints Committee comprised of such number of members and non-members as determined by the Board.

(2) The Board shall appoint a Chair and a Vice-chair of the Complaints Committee.

(3) The Vice-chair shall act as Chair in the absence of the Chair.

(4) Whenever for any reason the Chair or the Vice-chair are unavailable for a meeting, the Board may, for the purpose of such meeting, appoint a member of the Complaints Committee as Chair of the Complaints Committee. 2005, c. 39, s. 24.

Panel

25 (1) The Chair of the Complaints Committee shall appoint a panel of three persons from the Complaints Committee, one of whom shall be a non-member, to act as the Complaints Committee for purposes of the professional conduct process.

(2) The Chair of the Complaints Committee may sit on the panel and, in such case, shall act as the chair of the panel.

(3) Where the Chair of the Complaints Committee is not appointed to the panel, the Chair of the Complaints Committee shall appoint a chair for the panel.

(4) Any two persons from the panel appointed pursuant to subsection (1), regardless of whether such persons are members or non-member, constitute a quorum of the Complaints Committee.

(5) Failure of one or more Complaints Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes the members from waiving notice of a meeting.

(6) All Complaints Committee decisions require the vote of a majority of the panel of the Complaints Committee appointed pursuant to subsection (1).

(7) Where a proceeding is commenced before the Complaints Committee, and the term of office of any person sitting on the Complaints Commit-

tee expires, that person may remain part of the Complaints Committee until the proceeding is concluded. 2005, c. 39, s. 25.

Complaint

- 26** A complaint may be initiated by
- (a) any body corporate or association;
 - (b) the Registrar; or
 - (c) any other person. 2005, c. 39, s. 26.

Investigation

27 (1) Upon receipt of a complaint, the Registrar and the investigator shall take such steps as are required by the regulations.

(1A) The Registrar and the investigator have all of the powers, privileges and immunities of a commissioner appointed pursuant to the *Public Inquiries Act*, with the exception of the powers of contempt, arrest and imprisonment.

(2) When an investigation is conducted pursuant to the regulations, the investigator, upon concluding the investigation, shall prepare a written report of the investigation and forward it to the Complaints Committee.

(3) Upon receipt of the results of an investigation from an investigator, the Complaints Committee shall dispose of the matter in accordance with the regulations.

(4) The Complaints Committee shall give its decision in writing and shall send a copy of the written decision, by registered mail or personal service, to the respondent, the complainant and such other persons as the Committee determines. 2005, c. 39, s. 27; 2012, c. 48, s. 31.

Rights of member

28 In a proceeding before the Complaints Committee, a member has the right to

- (a) be represented by legal counsel or another representative;
- (b) disclosure of the complaint, any written reports of the investigator provided to the Complaints Committee and any other document produced or received by the Complaints Committee; and
- (c) a reasonable opportunity to present a response and make submissions. 2005, c. 39, s. 28.

Suspension of member

29 A Complaints Committee, acting in good faith and in the public interest, may, at its discretion, direct the Registrar to suspend a member from the practice

of optical dispensing pending or following the completion of the investigation until the suspension is lifted, superseded or annulled by the Complaints Committee or the Professional Conduct Committee, as the case may be. 2005, c. 39, s. 29.

Professional Conduct Committee

30 (1) The Board shall appoint a Professional Conduct Committee comprised of such number of members and non-members as determined by the Board.

(2) The Board shall appoint a Chair and a Vice-chair of the Professional Conduct Committee.

(3) The Vice-chair shall act as Chair in the absence of the Chair.

(4) Whenever for any reason the Chair or the Vice-chair are unavailable for a meeting or a hearing, the Board may, for the purpose of the meeting or hearing, appoint a member of the Professional Conduct Committee as Chair of the Professional Conduct Committee. 2005, c. 39, s. 30.

Panel

31 (1) The Chair of the Professional Conduct Committee shall appoint a panel of five persons from the Professional Conduct Committee, at least one of whom must be a non-member, to act as the Professional Conduct Committee for purposes of the professional conduct process.

(2) The Chair of the Professional Conduct Committee may sit on the panel and, in such case, shall act as the chair of the panel.

(3) Where the Chair of the Professional Conduct Committee is not appointed to the panel, the Chair of the Professional Conduct Committee shall appoint a chair for the panel.

(4) Any three persons from the panel appointed pursuant to subsection (1), regardless of whether such persons are members or non-members, constitute a quorum of the Professional Conduct Committee.

(5) No person on the Professional Conduct Committee may concurrently serve on the Complaints Committee.

(6) Failure of one or more Professional Conduct Committee members to receive any notice of a meeting does not invalidate the proceedings at the meeting, and nothing precludes committee members from waiving notice of a meeting.

(7) All Professional Conduct Committee decisions require the vote of a majority of the panel of the Professional Conduct Committee appointed pursuant to subsection (1) or the quorum of the panel in the event the full panel is not sitting.

(8) Where a proceeding is commenced before the Professional Conduct Committee, and the term of office of any person sitting on the Professional Conduct Committee expires, that person may remain part of the Professional Conduct Committee until the proceeding is concluded. 2005, c. 39, s. 31.

Date and notice of hearing

32 (1) Where a Complaints Committee refers a matter to the Professional Conduct Committee, the Professional Conduct Committee shall, within thirty days from the date of the referral, fix a date, time and place for holding the hearing, which must commence not later than ninety days from the date of the referral by the Complaints Committee, or such later date as the respondent and the Professional Conduct Committee agree.

(2) A notice of hearing, containing such information as required by the regulations, must be forwarded to the respondent and the complainant at least thirty days prior to the hearing. 2005, c. 39, s. 32.

Settlement

33 Where a Complaints Committee refers a matter to the Professional Conduct Committee, the Complaints Committee, prior to the commencement of a hearing by the Professional Conduct Committee, may enter into a settlement proposal with the respondent, which proposal shall be dealt with in accordance with the regulations. 2005, c. 39, s. 33.

Powers and privileges

34 (1) Each person on the Professional Conduct Committee has all the rights, powers and privileges of a commissioner appointed pursuant to the *Public Inquiries Act*.

(2) Each person on the Complaints Committee has the same power to subpoena documents as a commissioner appointed pursuant to the *Public Inquiries Act*. 2005, c. 39, s. 34.

Conduct of hearing

35 (1) A hearing held by the Professional Conduct Committee shall be conducted in accordance with the regulations.

(2) In a proceeding before the Professional Conduct Committee, the parties have the right to

- (a) be represented by legal counsel or another representative;
- (b) the opportunity to present evidence and make submissions, including the right to cross-examine witnesses; and
- (c) receive written reasons for a decision within a reasonable time.

(3) Evidence is not admissible before the Professional Conduct Committee unless the opposing party has been given, at least ten days before the hearing,

(a) in the case of written or documentary evidence, an opportunity to examine the evidence;

(b) in the case of evidence of an expert, a copy of the expert's written report or, where there is no written report, a written summary of the evidence; or

(c) in the case of evidence of a witness, the identity of the witnesses.

(4) Notwithstanding subsection (3), the Professional Conduct Committee may, in its discretion, allow the introduction of evidence that would be otherwise inadmissible under subsection (3) and may make directions it considers necessary to ensure that a party is not prejudiced. 2005, c. 39, s. 35.

Disposal of matter

36 Where the Professional Conduct Committee finds professional misconduct, conduct unbecoming the profession, incompetence or incapacity, the Committee shall dispose of the matter or matters in accordance with the regulations. 2005, c. 39, s. 36.

Inadmissibility of evidence in legal proceeding

36A (1) In this Section,

(a) "civil proceeding" means any proceeding of a civil nature other than an arbitration proceeding or a proceeding before an adjudicative tribunal, board or commission or inquiry; and

(b) "legal proceeding" means any civil proceeding, discovery, inquiry, proceeding before a tribunal, board or commission or arbitration, in which evidence may be given, and includes an action or proceeding for the imposition of punishment by fine, penalty or imprisonment for the violation of a Provincial enactment, but does not include any proceeding or hearing conducted pursuant to this Act or the regulations.

(2) A witness in any legal proceeding, whether a party to the proceeding or not, is excused from answering any question as to any proceedings of the Complaints Committee or the Professional Conduct Committee, and is excused from producing any report, statement, memorandum, recommendation, document or information prepared for the purpose of the investigative, disciplinary and hearing processes of the College, including any information gathered in the course of an investigation or produced for the Complaints Committee, the Professional Conduct Committee or staff members of the College.

(3) Subsection (2) does not apply to documents or records that have been made available to the public by the College.

(4) Unless otherwise determined by a court of competent jurisdiction, a decision of the Complaints Committee or the Professional Conduct Committee is not admissible in a civil proceeding other than in an appeal or a review pursuant to this Act. 2008, c. 3, s. 5.

Application for re-instatement

37 (1) Any member whose registration has been revoked by the Professional Conduct Committee may apply to the Board, in writing, at any time following two years from the date of the revocation for re-instatement and the burden of proof is on the respondent to prove to the satisfaction of the Board that the objects of the professional conduct process will be served by terminating the order of revocation.

(2) In considering an application for re-instatement, the Board may impose such restrictions or conditions for such re-instatement as the Board considers necessary or desirable in accordance with the objects of the professional conduct process and in accordance with the objects of the College. 2005, c. 39, s. 37.

Restoration of licence

38 (1) Where a licence has not expired and where the period of suspension of a respondent has ended, or the conditions imposed on the respondent have been satisfied, the Registrar shall restore the licence to the respondent in the form in which it existed prior to the imposition of a Professional Conduct Committee's restrictions.

(2) Where a licence has expired, the respondent shall pay the prescribed fee for renewal and must meet the criteria for renewal prior to the licence being issued. 2005, c. 39, s. 38.

Procedures after decision

39 (1) Where the registration of a respondent is revoked or a licence is suspended, restricted or re-instated,

(a) the Registrar shall make the appropriate entries in the register, the specialty register, the student optician register or the specialty student optician register, as the case may be;

(b) the respondent's name, address, provision of this Act or the regulations under which the disciplinary finding has been made, the date of the decision and the decision or summary of the decision shall be published in an official publication as determined by the Professional Conduct Committee;

(c) the Registrar shall notify registering bodies in other Canadian optical dispensing jurisdictions, as well as the original

jurisdiction and other known jurisdictions where the respondent has worked, if a suspension, revocation or re-instatement is ordered;

(d) the Registrar shall notify the current employer of the respondent if deemed necessary by the Professional Conduct Committee; and

(e) the Professional Conduct Committee, in its discretion, may inform or direct the Registrar to inform other persons of its decision, or any part of its decision.

(2) Where a reprimand has been issued and the time for filing of an appeal has expired or the appeal has been disposed of, the Professional Conduct Committee, in its discretion, may inform, or direct the Registrar to inform, other persons of the respondent's name and the reasons for the reprimand. 2005, c. 39, s. 39.

Power to retain assistance

40 For the purpose of the execution of duties under the Act, the College and the Complaints Committee or the Professional Conduct Committee may retain such legal or other assistance as the College or the Committee may think necessary or proper, and the costs of such legal or other assistance may be included, in whole or in part, in an award of costs by the Professional Conduct Committee. 2005, c. 39, s. 40.

Appeal on point of law

41 (1) A party may appeal to the Nova Scotia Court of Appeal on any point of law from the findings of the Professional Conduct Committee.

(2) The notice of appeal must be filed with the Nova Scotia Court of Appeal and served on the respondent not later than thirty days after receipt of the decision of the Professional Conduct Committee.

(3) The record on appeal from the findings of the Professional Conduct Committee consist of a copy of the transcript of the proceedings, the decision of the Committee and the evidence before the Committee certified by the Chair of the Committee.

(4) The *Civil Procedure Rules* governing appeals from the Supreme Court of Nova Scotia to the Nova Scotia Court of Appeal apply *mutatis mutandis* to appeals to the Court of Appeal pursuant to this Section.

(5) Where a matter is appealed to the Nova Scotia Court of Appeal pursuant to this Section, the decision of the Professional Conduct Committee takes effect immediately unless the Court of Appeal grants a stay of any order made pursuant to this Act where, in its discretion, it deems fit. 2005, c. 39, s. 41.

GENERAL

Act does not prevent

- 42** Nothing in this Act prevents
- (a) a physician from practising medicine under the *Medical Act*;
 - (b) an optometrist from practising optometry under the *Optometry Act*; or
 - (c) an employee of an optometrist engaging in acts of optometry, where such acts of optometry are authorized to be performed in regulations made pursuant to the *Optometry Act*. 2005, c. 39, s. 42.

No action lies

- 43** (1) No action for damages lies against the College, the Board, members of the Board, committees or subcommittees of the College or Board, members of the committees or subcommittees or officers, agents or employees of the College for
- (a) any act or failure to act, or any proceeding initiated or taken, in good faith under this Act, or in carrying out the duties or obligations under this Act; or
 - (b) any decision, order or resolution made or enforced in good faith under this Act.
- (2) No action lies against any person for the disclosure of any information or any document or anything contained in a document pursuant to this Act unless the disclosure is made with malice.
- (3) No member of the College or any officer, agent or employee of the College, is personally liable for any of the debts or liabilities of the College unless the person expressly agrees to be liable. 2005, c. 39, s. 43.

Transition

- 44** (1) A complaint made pursuant to the former Act shall continue to be proceeded with in accordance with this Act as nearly as circumstances permit.
- (2) Upon the coming into force of this Act, any matter pending before the Board as a complaint, if not set down for hearing to commence within sixty days of the coming into force of this Act, must be transferred to the Professional Conduct Committee appointed pursuant to this Act for hearing and determination, but otherwise heard and determined by the Board in accordance with the former Act.
- (3) Notwithstanding subsection (2), the parties may agree that a matter pending may be transferred to the Professional Conduct Committee established pursuant to this Act.

(4) The Board established pursuant to the former Act shall continue in existence for purposes of concluding any matters pursuant to subsection (2) until such matters pending before it at the coming into force of this Act, and not transferred to the Professional Conduct Committee appointed pursuant to this Act, have been finally decided. 2005, c. 39, s. 44.

Former Act repealed

45 The former Act is repealed. 2005, c. 39, s. 45.

Proclamation

46 This Act comes into force on such day as the Governor in Council orders and declares by proclamation. 2005, c. 39, s. 46.

Proclaimed - August 17, 2007
In force - August 17, 2007
