

Opticians Act

WHEREAS the New Brunswick Guild of Dispensing Opticians has by its petition prayed that it be continued as a Body Corporate under the name "Opticians Association of New Brunswick";

AND WHEREAS it is deemed expedient to grant the prayer in the said petition;

THEREFORE, HER MAJESTY, by and with the advice and consent of the Legislative Assembly of New Brunswick, enacts as follows:

Part I: Association

1 This Act may be cited as the *Opticians Act*.

Definitions

2 In this Act, unless the context otherwise requires,

"Association" means the Opticians Association of New Brunswick;

"certificate of special qualification" means a certificate qualifying a member to fit and dispense contact lenses;

"contact lens fitter" means a registered optician who has a certificate of special qualification to fit and dispense contact lenses;

"contact lens student" means a member registered in an approved course for a certificate of special qualification;

"Council" means the Executive Council of the Association;

"Examining Committee" means the Examining Committee established under this Act;

"member" means a registered member of the Association;

"optical appliances" means contact lenses, whether corrective or cosmetic, lenses, spectacles, eyeglasses, artificial eyes, low vision aids, or appurtenances thereto for the aid or correction of visual or ocular anomalies of the eyes;

"optician" means a registered member of the Association who is qualified and authorized to practise optical dispensing;

"optical dispensing" means the interpreting and filling of a prescription for optical appliances and includes measuring, fitting, adjusting and adapting optical appliances;

"permit" means a permit issued to a professional corporation under this Act;

"prescriber" means an optometrist or medical practitioner who prepares a prescription;

"prescription" means the written record for a particular patient, prepared by a prescriber, of the power of a lens to correct the refractive error of an eye and, when appropriate, reading add, prisms, back vertex distance and any medical contra-indications;

"previous Act" means *An Act to Incorporate The New Brunswick Guild of Dispensing Opticians*, chapter 68 of the Acts of New Brunswick, 1976;

"professional corporation" means a corporation having a permit in good standing pursuant to this Act for optical dispensing;

"registered apprentice" means a person who is registered with the Association as an apprentice;

"Registrar" means the Registrar of the Council;

"regulations" means the regulations made under this Act.

Opticians Association Of New Brunswick

3(1) The New Brunswick Guild of Dispensing Opticians, created

by section 3 of the previous Act, is hereby continued as a body corporate and politic without share capital, to be called the Opticians Association of New Brunswick.

3(2) The Association shall have 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.

4 The objects of the Association are

(a) to ensure to the public the proficiency and competence of opticians;

(b) to maintain a high standard of professional ethics among opticians;

(c) to promote the proficiency, knowledge and skill of opticians in all matters relating to their profession;

(d) to advance and protect the interest of opticians;

(e) to regulate the practice of optical dispensing and to govern its members in accordance with this Act and the regulations;

(f) to administer this Act and perform such other duties and exercise such other powers as are imposed on the Association by or under any Act; and

(g) such other objects as are in accordance with this Act,

in order that the public interest may be served and protected.

Annual Meeting

5 There shall be an annual meeting of the Association at such time and place as the Council may determine.

Council

6(1) The management of the Association shall be vested in the Executive Council which shall consist of such number of elected Councillors, not to exceed twelve, as may from time to time be fixed by the regulations of the Association, two persons appointed by the Lieutenant-Governor in Council who are not members of the Association, and the Past President.

6(2) Apart from the two persons appointed to the Council by the Lieutenant-Governor in Council, only members in good standing shall be eligible to hold office as members of the Council.

6(3) A majority of the members of the Council constitutes a quorum.

6(4) A vacancy on the Council does not affect the power of the Council to act.

6(5) The President shall be elected annually by the Council from the Council and shall hold office until his or her successor is elected.

6(6) The President shall act as presiding officer at the meetings of the Council and the Association, shall have the right to vote at such meetings, and shall have a casting vote when the votes are evenly divided.

6(7) On retirement the President shall hold office as Past President, who shall serve throughout the term or terms for which his or her immediate successor is elected, but shall not be a voting member of the Council.

6(8) The Vice-President shall be elected annually by the Council from the Council and shall have all the powers of the President during the absence of the latter.

6(9) If both the President and Vice-President are absent, some other member to be chosen from the members present shall preside at that meeting, and shall have the right to vote in subsection (6).

6(10) The Registrar, the Secretary and the Treasurer of the Association shall be appointed by the Council and the same person may be appointed to the offices of the Registrar, Secretary and

Treasurer.

6(11) The Secretary of the Association shall also be the Secretary of the Council.

6(12) The Registrar, the Secretary and the Treasurer of the Association shall hold office during the pleasure of Council, at such salary or other remuneration as Council may decide.

6(13) The Council may appoint such other officers, servants, or employees at such salary or other remuneration, and for such term of office as Council considers necessary to assist it in carrying out its duties under this Act.

6(14) The Council may appoint for such terms as it sees fit, such committees of members or non-members as Council considers necessary to assist it in carrying out its duties under this Act.

Meetings and Resolutions

7(1) A resolution in writing, or counterparts of a resolution, signed by two-thirds of all members entitled to vote thereon at meetings of the Association shall be as valid and effective as if duly passed at a meeting of the members of the Association.

7(2) A resolution in writing, or counterparts of a resolution, signed by two-thirds of all members entitled to vote thereon at a meeting of the Council, or any committee of the Council or Association, shall be as valid and effective as if duly passed at a meeting of the members of the Council, or committee, as the case may be.

7(3) A member of the Council, or of any committee of the Council or Association, may participate in any meeting of the Council or committee, as the case may be, by telephone or other communications facilities that permit all persons participating in a meeting to communicate with each other, and a member participating in a meeting by such means is deemed to be present at the meeting.

7(4) A meeting of the Council, or of any committee of the Council or Association, may be held by a conference telephone call or other communications facilities that permit all persons participating in the meeting to communicate with each other, and all members participating in the meeting by such means are deemed to have been present at the meeting.

7(5) Where a member appears at a meeting of the Council, or any committee of the Council or Association relating to his or her alleged professional misconduct, incompetence or incapacity to practise, or for reinstatement pursuant to section 82, subsections (3) and (4) apply to such meetings only if the member who is affected consents.

Elections to Council

8(1) At each annual meeting, Councillors to the number of one-half the number of elected Councillors so fixed by the regulations shall be elected for a term of two years.

8(2) Councillors appointed by the Lieutenant-Governor in Council shall be appointed for a term of two years.

8(3) Notwithstanding subsection (1) and (2), persons who at the coming into force of this Act make up the Council of the Guild of Dispensing Opticians under the previous Act shall constitute the Council until the election or appointment of Councillors under this Act.

8(4) No person is eligible to be nominated as a candidate for elected membership on the Council who is not entitled to vote at elections of members of the Council.

9(1) Members of Council shall be elected by secret ballot.

9(2) The ballots used at an election shall not be destroyed until all petitions under Section 10 in respect of the election have been decided, and shall be retained by the Registrar, together with all other papers in connection with the election.

10(1) A person may petition the Council against the election of a person to Council by filing a petition with the Registrar within seven days after the election.

10(2) The petitioner shall state in his petition, the grounds on which the election is disputed.

10(3) The petitioner shall serve a copy of the petition upon the person whose election is disputed.

10(4) Where a petition is filed with the Registrar under

subsection (1), the Council shall hold an inquiry, and

(a) if the election is found to be illegal, or

(b) if the person is found not to be eligible to be nominated as a candidate for membership on Council,

shall order that a new election be held.

11(1) In the case of:

(a) a failure in an election to elect the required number of duly qualified members of Council, or

(b) a vacancy occurring from the death or resignation of a member of Council or from any other cause,

Council, or in the case of an appointed Councillor the Lieutenant-Governor in Council, shall fill such vacancy by appointment.

11(2) Notwithstanding subsection (1), if a vacancy occurs for any reason within six months before the date of an election of members of Council, the vacancy shall be filled at the time of such election.

11(3) Where a member is appointed under subsection (1) or elected under subsection (2) to fill a vacant Council position, the term of office for the vacant Council position shall be the remainder of the unexpired term of such position.

12 A member of Council shall cease to hold office

(a) if he or she resigns by notice in writing delivered to the Registrar;

(b) if he or she ceases to reside in the Province;

(c) if as an elected member he ceases to be a member in good standing of the Association; or

(d) if he or she is absent from three consecutive meetings of Council, unless excused by Council.

Regulations

13(1) The Council shall, subject to this Act, govern, control and administer the affairs of the Association, and without limiting the generality of the foregoing, may make regulations

(a) providing for the calling and conduct of its meetings and proceedings;

(b) respecting registration of any candidate who has passed the examinations of the Examining Committee and fulfilled all requirements for admission;

(c) determining the remuneration and expenses of persons employed by the Council while engaged upon the business of the Association;

(d) respecting examinations and issuance of a certificate of special qualification to any member who has passed the examinations of the Examining Committee;

(e) providing for the appointment and remuneration of teachers, examiners, inspectors and such other persons as the Council may employ, and prescribing the duties of such persons;

(f) regarding banking and finance, and management of its property;

(g) entering into an agreement or agreements with any university, school or college for such instruction, direction and lectures as may be necessary for the purposes of this Act;

(h) prescribing fees payable by applicants and members for registration, examination, licencing, corporate returns, or such other matters within the jurisdiction of the Association;

(i) respecting the disciplining of members, the imposition of fines, and revocation or suspension of licences, where not inconsistent with this Act;

(j) prescribing the records and accounts to be kept by members, and providing for the production, inspection and examination of such records and accounts;

- (k) prescribing the seal of the Association;
- (l) providing for the execution of documents by the Association;
- (m) prescribing forms and providing for their use;
- (n) providing procedures not inconsistent with this Act for the making, amending and revoking of regulations;
- (o) providing that the licence of a member be suspended without notice or investigation upon contravention of any regulation that requires the member to pay a fee, file a document or do any other act by a specified or ascertainable date, and providing for the reinstatement of a licence so suspended;
- (p) prescribing the requirements for admission to schools of optical dispensing, the courses of instruction therein, and registration as a registered apprentice;
- (q) prescribing distance delivery courses;
- (r) providing for the holding of examinations for candidates for registration as opticians;
- (s) governing the registration of candidates for registration as opticians;
- (t) respecting the issuance, renewal, suspension, revocation, expiration and reinstatement of licences and permits;
- (u) respecting imposition of terms, conditions and limitations on licences and permits, and their removal;
- (v) defining professional misconduct for the purposes of paragraph 67(d);
- (w) governing advertising consistent with the intent of this Act;
- (x) governing the hours of operation of an optical dispensary;

(y) entering into agreements with the National Accreditation Committee of Opticians, and associations of opticians in other provinces, for mutual recognition of opticians between provinces, and national accreditation programs; and

(z) all other matters reasonably necessary for carrying out the provisions of this Act, and the objects of the Association.

13(2) The Registrar shall cause the text of any regulation enacted by the Council to be sent to all members.

13(3) No act or thing done in reliance upon, or right acquired under or pursuant to, a regulation that is subsequently repealed or amended shall be prejudicially affected by such repeal or amendment.

13(4) Notwithstanding the *Regulations Act*, the Association shall not be required to publish or file its regulations, but any regulation, amendment of a regulation or repeal of a regulation which provides for the qualifications and eligibility of a person to be registered to practise optical dispensing, or which provides for continuing education, standards of practice, or relates to conflicts of interest, shall not come into effect until approved by the Minister of Health and Wellness.

13(5) The regulations of the Association shall be available for inspection by any person free of charge, at the head office of the Association, at all reasonable times during business hours.

13(6) A certificate signed by the Registrar stating that a certain regulation or provision of a regulation of the Association was, on a specified day or during a specified period, a regulation or provision of a regulation in full force and effect, constitutes *prima facie* evidence of the facts stated in the certificate in any proceeding under this Act or the regulations, or in any court, without proof that the person who signed the certificate is the Registrar, or that it is his or her signature.

Registration

14(1) The Council shall keep a register in which shall be entered the name, address and qualifications of all persons who are entitled under this Act to be registered therein.

14(2) The name, address and qualifications of every person who, at the coming into force of this Act, is registered under the previous Act, shall be entered in the Register, but shall continue under any stipulations or limitations attached to their previous registration.

14(3) The Registrar shall make a notation in the Register to show those members who have received certificates of special qualification to fit contact lenses, and the date when such certificate of special qualification was first granted.

15(1) Any applicant for registration who

(a) has at the time of application successfully completed an approved course of study recognized by the regulations, and an approved assessment process recognized by the regulations, or

(a) qualifies for registration by virtue of an interprovincial mutual recognition agreement which has been entered into by the Association, or

(a) has in the opinion of the Council, the qualifications and experience equivalent to that set forth in subparagraph (a) or (b), and has had one year's experience in Canada, under the supervision of a duly qualified medical practitioner, optician, or Optometrist, and

has paid the prescribed fees shall be registered as a member of the Association.

15(2) Notwithstanding subsection (1), where an applicant for registration pursuant to paragraph (a) completed his or her course of study and assessment process more than one year prior to the date of his or her application for registration, he or she shall prior to registration further satisfy Council

(a) as to his or her activities since his or her completion of the course of study and assessment process for registration,

(b) that he or she has retained an appropriate level of optical dispensing skill and knowledge, and

(c) as to his or her good standing in all jurisdictions in which he or she has practised optical dispensing.

Certificate of Special Qualification

16(1) Any applicant for a certificate of special qualification to fit contact lenses who is a registered member of the Association and;

(a) has at the time of application successfully completed an approved course of contact lens study recognized by the regulations, and an assessment process for contact lens fitting recognized by the regulations, or

(a) qualifies to fit contact lenses by virtue of an interprovincial mutual recognition agreement which has been entered into by the Association, or

(a) has, in the opinion of the Council, the qualifications and experience equivalent to that set forth in subparagraph (a) or (b), and

has paid the prescribed fee may be issued a certificate of special qualification as a contact lens fitter.

16(2) Notwithstanding subsection (1), where an applicant for a certificate of special qualification pursuant to paragraph (a) completed his or her course and assessment process for contact lens fitting more than one year prior to the date of his or her application for a certificate of special qualification, he or she shall prior to issuance of the certificate further satisfy Council

(a) as to his or her activities since his or her completion of the course and assessment process for contact lens fitting,

(b) that he or she has retained an appropriate level of skill and knowledge to fit contact lenses, and

(c) as to his or her good standing in all jurisdictions in which he or she has practised contact lens fitting.

17(1) Every person who, at the coming into force of this Act, is registered under section 8 of the previous Act, shall be deemed to be registered under this Act.

17(2) Every person who, at the coming into force of this Act, held a certificate of special qualification under Section 13 of the previous Act, shall be deemed to hold a certificate of special qualification under this Act.

Licence Fees

18(1) The Registrar shall issue a licence to every person who, at the coming into force of this Act, was registered under the previous Act.

18(2) Every licence issued under subsection (1) shall be subject to any conditions or limitations attached to the registration under the previous Act.

18(3) Upon receiving a direction from Council to register a new member under the Act, the Registrar shall issue a licence to such person.

18(4) Every licence issued under subsection (3) shall be subject to any conditions or limitations attached to it.

18(5) Every member shall pay to the Registrar

(a) at the time that he or she is registered; and

(b) on or before the first day of August in each year thereafter,

the prescribed annual licence fee.

18(6) The licence of any member who fails to pay the prescribed annual fee shall be suspended in accordance with the procedure prescribed by the regulations.

18(7) The Registrar shall forthwith notify in writing any person whose licence has been suspended under this section.

18(8) Where a person in subsection (7) satisfies the Registrar

(a) of his or her intention to practise optical dispensing in the Province,

(b) as to his or her activities since the date of the suspension or expiry or lapsing of his licence,

(c) that he or she has retained an appropriate level of optical dispensing skill and knowledge,

(d) as to his or her good standing in all jurisdictions in which he or she has practised optical dispensing since the date of the suspension or expiry or lapsing of his or her licence, and

(e) that he or she has paid all fees or any other amounts owing to the Association and such penalty as may be prescribed,

the Registrar may issue a licence to such person.

18(9) Where the Registrar is not satisfied with the evidence presented pursuant to subsection (8), the Registrar may refer the matter to the Council, and shall refer it if the applicant requests in writing.

Professional Corporations

19(1) The Registrar shall issue to a professional corporation a permit authorizing the corporation to engage in optical dispensing upon the Registrar being satisfied that:

(a) the corporation is in good standing under the *Business Corporations Act* or the *Companies Act*,

(b) the articles of incorporation contain no restrictions which prevent the corporation from carrying on the practice of optical dispensing,

(c) the name of the corporation contains the words "Professional Corporation", "Prof. Corp." or "P.C.", and

is in accordance with the regulations,

(d) the corporation has paid the fees prescribed by the regulations,

(e) the legal and beneficial ownership of all the issued voting shares, and all rights incidental to the ownership of the voting shares, of the professional corporation are vested exclusively

(i) in one or more members of the Association, or

(ii) in corporations where the legal and beneficial ownership of all the issued voting shares, and all rights incidental to the ownership of the voting shares, of the corporations are vested in one or more members of the Association,

and that no less than two-thirds of the directors of the professional corporation and all of the corporations holding voting shares in the professional corporation are at all times members of the Association, and

(f) the persons who will be engaged in optical dispensing on behalf of the corporation are registered and licensed members under this Act.

19(2) A permit issued under subsection (1) expires on December 31 of the year for which it is issued.

19(3) A corporation to which a permit is issued under this section may practise optical dispensing, subject to any conditions or limitations specified by Council.

19(4) A permit may be revoked or its renewal withheld when any of the conditions set out in subsection (1) are no longer met.

19(5) On issuing a permit, the Registrar shall enter the name of the corporation and its address in a Register.

19(6) When any of the conditions set out in subsection (1) are no longer met, the Registrar shall endorse the Register accordingly, and mail out notice of the revocation or refusal to renew the permit to the last known address of the corporation, with notice of revocation being effective on the fourteenth day

after the mailing of the notice.

19(7) A corporation whose permit has been revoked shall immediately return the permit to the Registrar.

19(8) For the purposes of paragraph (1)(f), the practice of optical dispensing shall not be deemed to be carried on by clerks, secretaries, and other assistants employed by the professional corporation to perform services that are not services that may be performed only by an optician.

19(9) Notwithstanding anything to the contrary in the *Business Corporations Act*, every person who is a shareholder of a professional corporation while it is the holder of a permit is liable to the same extent and in the same manner as if the shareholders were, during that time, carrying on the business of the corporation as a partnership or, if there is only one shareholder, as an individual carrying on the practice of optical dispensing for anything done contrary to this Act or the regulations.

19(10) The liability and obligations of a person under this Act are not affected by the fact that the practice of optical dispensing is carried on by the person as an employee and on behalf of a professional corporation.

19(11) No shareholder of a professional corporation shall enter into a voting trust agreement, proxy or any other type of agreement vesting in another person who is not an optician registered and licensed under this Act the authority to exercise the voting rights attached to any or all of his shares.

19(12) The Council may make regulations consistent with this section for the governance of professional corporations under this Act.

Prohibitions

20(1) No person other than an optician shall assume or use the title "optician", or any derivation of the word which would lead the public reasonably to believe that the person is registered under this Act.

20(2) Where a member uses the designation referred to in this section, he or she shall use the full designation and not an

abbreviation of it.

21 (1) Except as otherwise provided in this Act and the regulations, no person other than an optician shall practise optical dispensing.

21 (2) Where in the course of his employment a person is found to have practised optical dispensing, or contact lens fitting, when he or she was not authorized by law to do so, any sole proprietorship, partnership or corporation which rendered a fee or charge for such unauthorized service, and every principal, partner, director or officer thereof having knowledge of the activity, or member who is an employee thereof and who participates in the activity, is guilty of an offence.

21 (3) In the proceedings under subsection (2), it shall not be a defence to the sole proprietorship, partnership or corporation to show it was unaware of its employee's unauthorized status.

22 (1) No optician shall supply or dispense an optical appliance except upon receipt of and in accordance with a prescription of a duly qualified medical practitioner or optometrist but an optician may supply and dispense duplications, replacements, reproductions or repetitions of any optical appliance except contact lenses.

22 (2) Nothing in subsection (1) prevents a registered contact lens fitter from supplying replacements, duplications, reproductions or repetitions of contact lenses.

22 (3) Except as otherwise provided in this Act, no one except a registered contact lens fitter or a contact lens student under the direct personal supervision and responsibility of a contact lens fitter shall fit contact lenses or take ocular measurements preparatory to fitting contact lenses.

22 (4) Nothing in this section prohibits opticians, clerks, secretaries or other assistants from the physical act of delivering replacement contact lenses to purchasers or their agents, where the replacement lenses being delivered have been approved for dispensing by a registered contact lens fitter or a prescriber.

22 (5) Nothing in this section prevents clerks, secretaries, and other assistants from performing services that are not services which may be performed only by an optician or contact lens fitter.

23 No person is entitled to receive a fee, reward or remuneration for optical dispensing unless registered and licensed at the time the services were provided, or optical appliances were dispensed.

24 A person who knowingly furnishes false information in any application under this Act, or in any statement or return required to be furnished under this Act or the regulations, commits an offence.

25(1) No prosecution for an offence under this Act or the regulations shall be commenced after two years from the date when the offence is alleged to have been committed.

25(2) Subsection (1) does not apply to any disciplinary proceeding pursuant to this Act.

25(3) In any prosecution for an offence under this Act or the regulations, the onus of proof that a person accused of an offence has or had the right to practise optical dispensing, or contact lens fitting, or that he or she comes within any of the exemptions provided by this Act, is on the person accused.

25(4) Where a violation of any provision of this Act or the regulations continues for more than one day, the offender is guilty of a separate offence for each day that the violation continues.

25(5) For the purposes of this Act, proof of the performance of one act in the practice of optical dispensing or contact lens fitting on one occasion is sufficient to establish that a person has engaged in the practice of optical dispensing or contact lens fitting, as the case may be.

26(1) A person who violates

(a) any provision of this Act, or

(b) any provision of a regulation enacted under this Act

commits an offence and is liable on summary conviction to a fine not exceeding ten thousand dollars, or to imprisonment for a term not exceeding six months, or to both.

26(2) All fees, fines and penalties payable under this Act belong to the Association.

26(3) Any Information for an alleged offence pursuant to this Act or the regulations may be laid by the Registrar of the Association, or by any member of the Association duly authorized by Council.

Examining Committee

27(1) The Examining Committee shall consist of

(a) three opticians appointed by the Council, one of whom shall be appointed by the Council to be Chairperson; and

(b) a minimum of one and a maximum of two persons who are not and have never been members of the Association.

27(2) The quorum of the Examining Committee shall be three committee members, one of whom must not be an optician.

27(3) The Examining Committee shall

(a) make recommendations to Council regarding standards of practice and mutual recognition arrangements with other jurisdictions, and

(b) be responsible for administration of written and practical examinations for applicants for registration and applicants for certificates of special qualification.

28(1) The Council shall examine all degrees, diplomas, certificates and other credentials presented or submitted for the purpose of obtaining registration or a certificate of special qualification and may require the holder of such degree, diploma, certificate or other credential to submit evidence, either **viva voce** or by affidavit, in support of his or her application.

28(2) Nothing in subsection (1) shall be construed so as to impose additional obligations on applicants who qualify for registration pursuant to mutual recognition agreements with other jurisdictions.

29(1) It shall be the duty of the Registrar to enter in the Register the name of each person entitled to practise as an optician, and to make a notation in the Register when a person receives a certificate of special qualification.

29(2) The Registrar shall keep the Register in accordance with the provisions of this Act and regulations of the Council.

29(3) The certificate of the Registrar under the seal of the Association shall be *prima facie* evidence of registration, or non-registration, and *prima facie* evidence as to whether a person has or does not have a certificate of special qualification, as of the date or dates specified therein.

30(1) The Registrar shall issue a certificate of registration to all opticians registered under this Act, upon direction from Council, and upon payment of prescribed fees.

30(2) Such certificate shall be signed by the President and by the Registrar and bear the seal of the Association.

31 The Registrar shall issue a certificate of special qualification, upon direction from the Council.

Exemptions

32(1) Nothing in this Act prevents a duly registered apprentice from performing all duties which are properly part of his or her apprenticeship.

32(2) Nothing in this Act prevents a contact lens student from performing all duties which are properly part of his or her training.

33 Nothing in this Act shall be construed to prevent a person:

(a) from practising medicine under the *Medical Act*,

(b) from practising optometry under the *Optometry Act, 1978*,

(b.1) from assisting a supervising optometrist in the practice of optometry in accordance with the *Optometry Act, 1978*, so long as such person is either an employee of the supervising optometrist, or is employed by the same corporation as the supervising optometrist.

(c) from carrying on any occupation, calling or profession authorized by an Act of the Province,

or require the person to become registered under this Act to perform such functions.

34 Nothing in this Act prevents the sale of plano protective glasses for industrial purposes, coloured glasses not embodying any ophthalmic corrective lens or lenses, goggles and magnifiers not sold or devised for the relief or correction of any visual or muscular error or defect of the eye.

35 Nothing in this Act authorizes the Council to regulate or otherwise control or interfere with the prices that may be charged for optical appliances or the terms upon which the charges or fees may be paid.

Part II: Complaint and Discipline Proceedings

Definitions

36 In this Part:

"committee" means a Discipline and Fitness to Practise Committee appointed under section 46;

"health professional" means a person who provides a service related to

(a) the preservation or improvement of the health of individuals, or

(b) the diagnosis, treatment or care of individuals who are injured, sick, disabled or infirm, and who is regulated under a private Act of the Legislature with respect to the provision of the service and includes a social worker registered under the *New Brunswick Association of Social Workers Act, 1988*;

"hearing" means a hearing conducted by a committee;

"incapacitated" means, in relation to a member, that the member is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the member no longer be permitted to practise or that the member's practice be restricted, and "incapacity" has a corresponding meaning;

"incompetence" means, in relation to a member, that the member's professional care of a patient displays a lack of knowledge, skill or judgement or disregard for the welfare

of the patient of a nature or to an extent that demonstrates that the member is unfit to continue to practise or that the member's practice should be restricted;

"member" means a person who is a member of the Association.

Continuing jurisdiction of Association

37 A person whose registration is revoked, or whose licence is revoked, suspended or expired or who resigns as a member continues to be subject to the jurisdiction of the Association for professional misconduct, incompetence and incapacity referable to the time when the person was a member or to the period of suspension.

Complaints may be made to Registrar

38(1) A person may make a complaint to the Registrar regarding the conduct or actions of a member.

38(2) A complaint shall be in writing and shall include the complainant's name and mailing address.

38(3) Where a complaint is filed with the Registrar, the Registrar shall refer the complaint to the Council if the conduct or actions complained of may constitute professional misconduct, incompetence or incapacity.

Request by Registrar for investigation

39 Where the Registrar has reason to believe that the conduct or actions of a member may constitute professional misconduct, incompetence or incapacity, the Registrar may request the Council to investigate the member in the absence of a complaint.

Council to investigate

40 Upon receiving a complaint referred by the Registrar or a request from the Registrar under section 39, the Council shall investigate the matter raised by the complaint or in the request.

Council may investigate

41 The Council, if it has reason to believe that the conduct or actions of a member may constitute professional misconduct, incompetence or incapacity, may on its own motion investigate the member.

Notification to member

42 Where the Council investigates the conduct or actions of a member, the Council shall notify the member of the investigation, giving reasonable particulars of the matter to be investigated and shall advise the member that the member may make a written submission to the Council with respect to the matter within thirty days after receiving the notice.

Examination of member

43(1) Where the Council has reasonable grounds to believe that a member who is the subject of an investigation is incapacitated, the Council may require the member to submit to physical or mental examinations or both by one or more qualified persons selected by the Council and, subject to subsection (3), may make an order directing the Registrar to suspend the member's licence or certificate of special qualification, or both until the member submits to the examinations.

43(2) Where the Council has reasonable grounds to believe that a member who is the subject of an investigation is incompetent, the Council may require the member to submit to such examinations as the Council may require in order to determine whether the member has adequate skill and knowledge to practise in the profession and, subject to subsection (3), may make an order directing the Registrar to suspend the member's licence or certificate of special qualification, or both, until the member submits to the examinations.

43(3) No order shall be made by the Council under subsection (1) or (2) with respect to a member unless the member has been given:

(a) notice of the intention of the Council to make the order, and

(b) at least ten days to make a written submission to the Council after receiving the notice.

43(4) Any person who conducts an examination under this section shall prepare and sign an examination report containing his or her findings and the facts on which they are based and shall deliver the report to the Council.

43(5) The Council shall forthwith deliver a copy of the

examination report to the member who is the subject of the investigation.

43(6) A report prepared and signed by a person referred to in subsection (4) is admissible as evidence at a hearing without proof of its making or of the person's signature if the party introducing the report gives the other party a copy of the report at least ten days before the hearing.

43(7) The Council, at any time after requiring a member to submit to examinations under this section, may refer the matter of the member's alleged incapacity or incompetence to a Discipline and Fitness to Practise Committee.

43(8) A member who fails to submit to an examination under subsection (1) or (2) commits an act of professional misconduct.

Action by Council

44(1) After the completion of an investigation of a member and after considering the submission of the member and considering or making a reasonable attempt to consider all documents and information it considers relevant to the matter, the Council may:

(a) direct that no further action be taken if, in the opinion of the Council, the complaint is frivolous or vexatious or there is insufficient evidence of professional misconduct, incompetence or incapacity,

(b) refer allegations of professional misconduct, incompetence or incapacity to a Discipline and Fitness to Practise Committee,

(c) caution the member, or

(d) take such other action as it considers appropriate in the circumstances that is not inconsistent with this Act or the regulations.

44(2) The Council shall prepare a summary of its findings and its decision in writing and shall send a copy to the member and the complainant, if any, by registered or certified mail.

44(3) Nothing in this section requires that examinations ordered under section 43 be carried out before the Council acts under subsection (1).

Action by Council to protect public

45 (1) Where the Council refers an allegation to a Discipline and Fitness to Practise Committee and where the Council considers the action necessary to protect the public pending the conduct and completion of proceedings before the committee in respect of a member, the Council may, subject to subsection (2), make an interim order:

(a) directing the Registrar to impose specified terms, conditions or limitations upon the member's licence or certificate of special qualification, or

(b) directing the Registrar to suspend the member's licence or certificate of special qualification.

45 (2) No order shall be made by the Council under subsection(1) unless the member has been given:

(a) notice of the Council's intention to make the order, and

(b) at least ten days to make representation to the Council in respect of the matter after receiving the notice.

45 (3) Where the Council takes action under subsection (1), the Council shall notify the member of its decision and the reasons for the decision in writing.

45 (4) An order under subsection (1) continues in force until the matter is disposed of by a Discipline and Fitness to Practise Committee, unless the order is stayed pursuant to an application under subsection (5).

45 (5) A member against whom action is taken under subsection (1) may apply to The Court of Queen's Bench of New Brunswick for an order staying the action of the Council.

45 (6) If an order is made under subsection (1) by the Council in relation to a matter referred to a Discipline and Fitness to Practise Committee, the Association and the committee shall act expeditiously in relation to the matter.

Appointment of Discipline and Fitness to Practise Committee

46 Where the Council decides to refer allegations of professional misconduct, incompetence or incapacity of a member to a Discipline and Fitness to Practise Committee, the Council shall appoint the committee within thirty days after the decision.

Composition of committee

47(1) A Discipline and Fitness to Practise Committee shall be composed of:

- (a) two persons who are practising opticians, whether in this or any other jurisdiction, one of whom shall be appointed the chairperson by the Council, and
- (b) one person who has never been an optician.

47(2) No person shall be selected as a member of a Discipline and Fitness to Practise Committee who has taken part in the investigation of what is to be the subject matter of the committee's hearing.

47(3) Two members of the committee, one of whom has never been an optician, constitute a quorum.

Continuity of membership of committee

48 Where the licence of a member of the committee who is an optician expires or is not renewed after the hearing of a matter commences, the member shall be deemed to remain a member of the committee for the purpose of disposing of that matter.

Committee to hold hearing

49(1) A Discipline and Fitness to Practise committee shall hold a hearing respecting the allegations of professional misconduct, incompetence or incapacity of a member that have been referred to it by the Council.

49(2) A committee shall commence a hearing not later than sixty days after the date on which the last member of the committee is appointed by the Council, unless the parties otherwise agree.

49(3) A committee shall, not less than thirty days before the

date set for the hearing, serve a notice of the date, time and place of the hearing on the Association, the member against whom the allegations have been made and the complainant, if any.

49(4) The notice to the member against whom the allegations have been made shall describe the subject matter of the hearing and advise the member that the committee may proceed with the hearing in his or her absence.

49(5) A committee may at any time permit a notice of hearing of allegations against a member to be amended to correct errors or omissions of a minor or clerical nature if it is of the opinion that it is just and equitable to do so and it may make any order it considers necessary to prevent prejudice to the member.

Parties to hearing

50 The Association and the member against whom allegations have been made are parties to a hearing.

Parties may appear with counsel

51 The parties to a hearing may appear with counsel at the hearing.

Complainant may attend hearing

52(1) The complainant, if any, may attend the hearing in its entirety with or without counsel, and may make a written or oral submission to the committee before the calling of evidence and after the completion of evidence.

52(2) Notwithstanding subsection (1), at the request of a witness whose testimony is in relation to allegations of a member's misconduct of a sexual nature involving the witness, a committee may exclude a complainant from the portion of the hearing that receives the testimony of the witness.

52(3) In subsection (2), "allegations of a member's misconduct of a sexual nature" means allegations that the member sexually abused the witness when the witness was a patient of the member.

Attendance of witnesses and production of records

53(1) The chairperson of a committee or the Registrar may order a person to attend a hearing before the committee to give evidence and to produce records, documents and other things in the possession of or under the control of the person.

53(2) The chairperson of a committee or the Registrar shall order a person referred to in subsection (1) by issuing a notice requiring the person's attendance, stating the date and time of such attendance and requiring the production of the records, documents or other things in the person's possession or under the person's control.

53(3) The chairperson of a committee or the Registrar, upon the written request of a party or the party's counsel, shall provide the party or party's counsel with any notices that the party requires to secure the attendance of witnesses at the hearing, without charge to the party.

53(4) A person, other than the member whose conduct is the subject of the hearing, who is served with a notice under this section shall be tendered the same fees as are payable to a witness in an action in The Court of Queen's Bench of New Brunswick at the time the notice is served.

Failure to comply with order

54(1) On application by the chairperson of a committee to The Court of Queen's Bench of New Brunswick, a person who fails to attend or to produce records, documents or other things as required by an order of the chairperson or Registrar, or who refuses to be sworn or affirmed as a witness or to answer any question the committee directs that person to answer, may be found liable for contempt as if the person were in breach of an order or judgment of The Court of Queen's Bench of New Brunswick.

54(2) If the person referred to in subsection (1) is a member, the failure or refusal may be held by a committee to be professional misconduct.

Committee may proceed in absence of investigated member

55 A committee, on proof of service of the notice of hearing on the member against whom allegations are made, may:

(a) proceed with the hearing in the absence of the member, and

(b) without further notice to the member, take any action that is authorized to be taken under this Act or the regulations.

Committee may hear other matters

56 If any other matter concerning the member against whom allegations have been made arises during the course of the hearing, a committee may hear the matter, but it shall notify the parties of its intention to do so and shall ensure that the member is given a reasonable opportunity to respond to the matter.

Examination of evidence before hearing

57(1) The Association shall give the member against whom allegations have been made 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, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence, and

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

57(2) The member against whom allegations have been made shall give the Association at least ten days before the hearing, in the case of evidence of an expert, the identity of the expert and a copy of the expert's written report or, if there is no written report, a written summary of the evidence.

57(3) A committee may, in its discretion, allow the introduction of evidence that has not been disclosed under subsection (1) or (2) and may make such directions it considers necessary to ensure that the member or the Association is not prejudiced, as the case may be.

Legal advice

58 A committee may obtain legal advice with respect to the hearing from an adviser independent from the parties.

Oral evidence to be recorded

59(1) A committee shall ensure that the oral evidence is recorded and copies of the transcript of the hearing are available to a party on the party's request and at that party's expense.

59(2) The provisions of the *Evidence Act*, where not inconsistent with this Act, shall apply to the recording, storage and transcription of oral evidence as well as the use and effect of transcripts of oral evidence heard by the committee.

Testimony of witnesses

60(1) At a hearing, the testimony of witnesses shall be taken under oath or solemn affirmation, which may be administered by any member of the committee.

60(2) For the purposes of a hearing, the members of a committee are conferred with the powers of a commissioner of oaths under the *Commissioners For Taking Affidavits Act*.

Right to cross-examine

61 Each party to the hearing has the right to cross-examine witnesses and call evidence.

No communication by committee members

62 No member of a committee shall communicate outside the hearing, in relation to the subject matter of the hearing, with a party or the party's representative unless the other party has been given notice of the subject matter of the communication and an opportunity to be present during the communication.

Committee to determine its procedure

63 Subject to this Part, a committee may determine its rules of procedure.

Committee not bound by rules of evidence

64 A committee is not bound by the rules of evidence which apply to judicial proceedings.

Committee may adjourn hearing

65 A committee may adjourn the hearing from time to time.

Members of committee who participate in decision

66 Only the members of a committee who were present throughout the hearing shall participate in the committee's decision.

Professional misconduct

67 A member has committed an act of professional misconduct if:

(a) the member has pleaded guilty to or been found guilty of an offence that, in the opinion of the committee, is relevant to the member's suitability to practise,

(b) the governing body of a health profession in a jurisdiction other than New Brunswick has found that the member committed an act of professional misconduct that would, in the opinion of the committee, constitute professional misconduct under this Act or the regulations,

(c) the member has digressed from established or recognized professional standards or rules of practice of the profession,

(d) the member has committed an act of professional misconduct as defined in the regulations,

(e) the member has violated or failed to comply with this Act or the regulations,

(f) the member has violated or failed to comply with a term, condition or limitation imposed on the member's registration, licence, or certificate of special qualification,

(g) the member has failed to submit to an examination ordered by the Council under section 43,

(h) the member has solicited from house to house or place to place,

(i) the member has advertised the member's practice or business premises by means prohibited by regulation,

(j) the member has allowed a person who is not licensed by the Council to practise optical dispensing with the member in the member's name or under the member's patronage or under any style in the member's business premises with the exception of a registered apprentice,

(k) the member has sexually abused a patient, or

(l) the member has failed to file a report pursuant to section 69.

Sexual abuse of patient

68(1) Sexual abuse of a patient by a member means:

(a) sexual intercourse or other forms of physical sexual relations between the member and the patient,

(b) touching, of a sexual nature, of the patient by the member, or

(c) behaviour or remarks of a sexual nature by the member toward the patient.

68(2) For the purposes of subsection (1), "sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

Failure of member to report sexual abuse

69(1) A member who, in the course of practising the profession, has reasonable grounds to believe that another health professional has sexually abused a patient or client and who fails to file a report in writing in accordance with subsection (4) with the governing body of the health professional within twenty-one days after the circumstances occur that give rise to the reasonable grounds for the belief commits an act of professional misconduct.

69(2) A member is not required to file a report pursuant to subsection (1) if the member does not know the name of the health

professional who would be the subject of the report.

69(3) If the reasonable grounds for filing a report pursuant to subsection (1) have been obtained from one of the member's patients, the member shall use his or her best efforts to advise the patient that the member is filing the report before doing so.

69(4) A report referred to in subsection (1) shall contain the following information:

(a) the name of the member filing the report;

(b) the name of the health professional who is the subject of the report;

(c) the information the member has of the alleged sexual abuse; and

(d) subject to subsection (5), if the grounds of the member filing the report are related to a particular patient or client of the health professional who is the subject of the report, the name of the patient or client.

69(5) The name of the patient or client who may have been sexually abused shall not be included in a report unless the patient or client or, if the patient or client is incapable, the patient's or client's representative, consents in writing to the inclusion of the patient's or client's name.

69(6) Section 68 applies with the necessary modifications to sexual abuse of a patient or client by another health professional.

69(7) No action or other proceeding shall be instituted against a member for filing a report in good faith pursuant to subsection (1).

Action by Committee

70(1) On the completion of a hearing, a committee may:

(a) dismiss the matter, or

(b) find that the member has committed an act of professional misconduct, is incompetent or incapacitated or any combination of them.

70 (2) If a committee finds that the member has committed an act of professional misconduct, the committee may, by order, do one or more of the following:

(a) reprimand the member;

(b) require the member to waive, reduce or repay a fee for services provided by the member that, in the opinion of the committee, were not provided or were improperly provided;

(c) impose a fine to a maximum of five thousand dollars to be paid by the member to the Association;

(d) direct the Registrar to impose specified terms, conditions and limitations on the member's registration, licence, or certificate of special qualification for a specified or indefinite period of time or until specified criteria are satisfied, or both;

(e) direct the Registrar to suspend the member's licence or certificate of special qualification for a specified period of time or until specified criteria are satisfied, or both;

(f) direct the Registrar to revoke the member's registration; or

(g) make such other order as the committee considers appropriate.

70 (3) If a committee finds that a member is incompetent or incapacitated, the committee shall, by order, do one or more of the following:

(a) direct the Registrar to impose specified terms, conditions and limitations on the member's registration, licence, or certificate of special qualification for a specified or indefinite period of time or until specified criteria are satisfied, or both;

(b) direct the Registrar to suspend the member's licence or certificate of special qualification until specified criteria are satisfied;

(c) direct the Registrar to revoke the member's

registration; or

(d) make such other order as the committee considers appropriate.

70 (4) Where a committee makes an order under subsection(2) or (3), the committee may, by order, do one or more of the following:

(a) direct the Registrar to give public notice of any order by the committee that the Registrar is not otherwise required to give under this Act; or

(b) direct the Registrar to enter the result of the proceeding before the committee in the records of the Association and to make the result available to the public.

70 (5) Where a committee makes an order under paragraph (2) (f) or (3) (c), the committee may specify a period of time before which the person whose registration is revoked may not apply for re-registration.

70 (6) Where a committee finds that a member has committed an act of professional misconduct or is incompetent or incapacitated, the parties to the hearing and the complainant or the complainant's counsel may, before the penalty is determined, make submissions to the committee as to the penalty and the parties may, subject to the discretion of the committee, call further evidence in respect of the penalty.

Costs

71 (1) A committee may make an order requiring a member whom the committee finds has committed an act of professional misconduct or finds to be incompetent or incapacitated, to pay all or part of the following costs and expenses:

(a) the Association's legal costs and expenses;

(b) the Association's costs and expenses incurred in investigating the matter; and

(c) the Association's costs and expenses in conducting the hearing.

71 (2) The costs and expenses payable under subsection (1) may be agreed upon by consent or taxed by the Registrar of The Court of

Queen's Bench of New Brunswick as between solicitor and client on filing with the Registrar the order of the committee and on payment of the fees prescribed by the *Rules of Court*, and judgment may be entered for such taxed costs in Form 1, with such modifications as are necessary.

Decision to be in writing

72 A committee shall give its decision, the reasons for its decision and the penalty imposed in writing and shall serve a copy of it on the parties and to the complainant, if any, along with a statement of the rights of the parties to appeal the decision to The Court of Appeal of New Brunswick.

Suspension of licence until fine and cost paid

73 Where a member fails to pay a fine or costs imposed under this Part within the time ordered, the Registrar may, without notice to the member, suspend the licence of the member until the fine or costs are paid and shall serve the member with notice of the suspension.

Council may suspend licence

74(1) The Council, if it is satisfied that a member has violated or failed to comply with an order of a committee, may without notice to the member, revoke or suspend the member's licence.

74(2) The Registrar shall send the member a written notice of the revocation or suspension.

Committee to deliver decision and record to Registrar

75 A committee shall forward to the Registrar:

- (a) the written decision of the committee, and
- (b) the record of the hearing and all the documents and other things put into evidence.

Record of hearing may be examined

76 The parties or the complainant, if any, may upon request and at their expense, examine the record of the hearing or any part of the record and the documents and other things put into evidence.

Release of evidence by Registrar

77 The Registrar shall release documents and other things put into evidence at a hearing to the person who produced them, on request, within a reasonable time after the matter in issue has been finally determined.

Member to return documentation

78 A member whose registration has been revoked, or whose licence or certificate of special qualification has been suspended or revoked shall immediately return said document to the Registrar.

No stay of order

79 An order of a committee under section 70 takes effect immediately or at such other time as the committee may direct, notwithstanding that an appeal has been taken from the decision or order of the committee.

Application for stay

80(1) A member who appeals the decision of a committee may apply to The Court of Appeal of New Brunswick for a stay of the committee's order pending the disposition of the appeal, and the court may make any order it considers appropriate.

80(2) A member shall give the Association at least one week's notice of an application to The Court of Appeal of New Brunswick to stay an order of the committee.

Appeals to court

81(1) A party to the proceedings before a committee may appeal from the decision or order of the committee to The Court of Appeal of New Brunswick.

81(2) An appeal under this section shall be commenced within thirty days after the date of the decision or order.

81(3) An appeal under this section shall be conducted in accordance with the *Rules of Court*, where not inconsistent with this Act.

81(4) On the request of a party to an appeal under this section

and on payment by the party of any reasonable expenses related to the request, the Registrar shall provide the party with copies of part or all, as requested, of the record of the proceedings before the committee.

81(5) An appeal under subsection (1) shall be founded upon the record of the proceedings before the committee and upon the committee's decision.

81(6) On the hearing of an appeal under this section, The Court of Appeal of New Brunswick may:

(a) affirm or reverse the decision or order of the committee,

(b) refer the matter back to the committee, with or without directions, or

(c) substitute its decision or order for that of the committee.

81(7) The Court of Appeal of New Brunswick may make any order respecting the costs of an appeal that it considers appropriate.

Reinstatement

82(1) A person who has had terms, conditions and limitations imposed on his or her registration, licence or certificate of special qualification or whose registration, licence, or certificate of special qualification has been suspended or revoked as a result of proceedings before a committee may apply to the Registrar in writing to have the terms, conditions and limitations removed or the suspension removed or to be re-registered.

82(2) Where registration has been revoked, a person shall not make an application under subsection (1) earlier than one year after the revocation if the committee has not specified a period of time under subsection 70(5).

82(3) Subsequent applications to the Registrar after an initial application for the removal of terms, conditions and limitations imposed on a member's registration, licence or certificate of special qualification, or for the removal of a suspension or re-registration shall not be made earlier than six months after any previous application under this section.

83(1) Subject to subsection (2), where the Registrar receives an application under section 82, the Registrar shall refer the application to the Council.

83(2) Where terms, conditions and limitations have been imposed on the registration, licence, or certificate of special qualification for a specified period of time and no specified criteria have been imposed or where registration, licence, or certificate of special qualification has been suspended for a specified period of time and no specified criteria have been imposed, the Registrar may remove the terms, conditions and limitations or the suspension if the specified period of time has elapsed.

83(3) A person who makes an application under section 82 shall provide the Council with such information as the Council may require in relation to the application.

83(4) The Council may, with or without a hearing, with respect to a person whose application has been referred to the Council, make an order doing one or more of the following:

- (a) directing the Registrar to remove some or all of the terms, conditions and limitations imposed;
- (b) directing the Registrar to remove the suspension;
- (c) directing the Registrar to re-register or issue a new licence or certificate of special qualification to the person; or
- (d) directing the Registrar to impose specified terms, conditions and limitations on the person's registration, licence, or certificate of special qualification if a direction has been given under paragraph (b) or (c).

Investigations

84 The Registrar may appoint one or more investigators to investigate whether a member has committed an act of professional misconduct or is incompetent or incapacitated if:

- (a) the Council received a complaint about the member and has requested the Registrar to appoint an investigator, or
- (b) the Council is investigating the member at the request

of the Registrar or the Council has requested the Registrar to appoint an investigator.

85(1) An investigator appointed by the Registrar may at any reasonable time, and upon producing proof of his or her appointment, enter and inspect the business premises of a member and examine anything found there that the investigator has reason to believe will provide evidence in respect of the matter being investigated.

85(2) Subsection (1) applies notwithstanding any provision in any Act relating to the confidentiality of health records.

85(3) No person shall, without reasonable excuse, obstruct or cause to be obstructed an investigator while the investigator is performing his or her duties under this Part.

85(4) No person shall withhold, conceal or destroy, or cause to be withheld, concealed or destroyed, anything that is relevant to an investigation under this Part.

86(1) Upon the *ex parte* application of an investigator, a judge of The Court of Queen's Bench of New Brunswick who is satisfied on information by oath or solemn affirmation that the investigator has been properly appointed and that there are reasonable grounds for believing that:

(a) the member being investigated has committed an act of professional misconduct, is incompetent or incapacitated, and

(b) there is in a building, receptacle or place anything that will provide evidence in respect of the matter being investigated

may issue a warrant authorizing the investigator to enter the building, receptacle or place and search for and examine or remove anything described in the warrant.

86(2) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) may be assisted by other persons and may enter a place by force.

86(3) An investigator entering and searching a place under the authority of a warrant issued under subsection (1) shall produce his or her identification and a copy of the warrant, upon request,

to any person at that place.

86(4) A person conducting an entry or search under the authority of a warrant issued under subsection (1) who finds anything not described in the warrant that the person believes on reasonable grounds will provide evidence in respect of the matter being investigated, may seize and remove that thing.

87(1) An investigator may copy, at the expense of the Association, a document that the investigator may examine under subsection 85(1) or under the authority of a warrant issued under subsection 86(1).

87(2) An investigator may remove a document referred to in subsection (1) if it is not practicable to copy it in the place where it is examined or a copy is not sufficient for the purposes of the investigation and shall provide the person in whose possession it was with a receipt for the document or object.

87(3) An investigator, where a copy can be made, shall return a document removed under subsection (2) as soon as possible after the copy has been made.

87(4) A copy of a document certified by an investigator to be a true copy shall be received in evidence in any proceeding to the same extent and shall have the same evidentiary value as the document itself.

87(5) In this section, "document" means a record of information in any form and includes any part of it.

88(1) An investigator shall report the results of an investigation to the Registrar in writing.

88(2) The Registrar shall report the results of an investigation to the Council.

Transitional

89 Any proceeding respecting the conduct or actions of a member that was commenced before May 1, 1997 shall be dealt with and concluded as though this Part had not been enacted.

Part III: General**Registrar to give notice**

90 The Registrar shall give public notice of the imposition of the suspension or revocation of a member's registration, licence or certificate of special qualification as a result of proceedings before a Discipline and Fitness to Practise Committee.

Records to be made available to public

91(1) The Registrar shall forthwith enter into the records of the Association:

(a) the result of every proceeding before a Discipline and Fitness to Practise Committee that:

(i) resulted in the suspension or revocation of a registration, licence, or certificate of special qualification, or

(ii) resulted in a direction under paragraph 70(4)(b), and,

(b) where the findings or order of a Discipline and Fitness to Practise Committee that resulted in the suspension or revocation of a registration, licence or certificate of special qualification or the direction are appealed, a notation that they are under appeal.

91(2) Where an appeal of the findings or order of a Discipline and Fitness to Practise Committee is finally disposed of, the notation referred to in paragraph (1)(b) shall be removed and the records adjusted accordingly.

91(3) For the purpose of paragraph (1)(a), "result", when used in reference to a proceeding before a Discipline and Fitness to Practise Committee, means the committee's findings and the penalty imposed and in the case of a finding of professional misconduct, a brief description of the nature of the professional misconduct.

91(4) The Registrar shall provide the information contained in the records referred to in subsection (1) to any person who inquires about a member or former member:

(a) for an indefinite period if the member or former

member was to have sexually abused a patient, and

(b) for a period of five years following the conclusion of the proceedings referred to in subsection (1) in all other cases.

91(5) The Registrar, upon payment of a reasonable fee, shall provide a copy of the information contained in the records referred to in subsection (1) that pertain to a member or former member to a person who requests a copy.

91(6) Notwithstanding subsection (5), the Registrar may provide, at the Association's expense, a written statement of the information contained in the records in place of a copy.

Annual report by Registrar respecting complaints

92 The Registrar shall submit a written report annually to the Council containing a summary of the complaints received during the preceding year by source and type of complaint and the disposition of such complaints.

Association to take measures to prevent sexual abuse of patients

93(1) The Association shall undertake measures for prevention of the sexual abuse of patients by its members.

93(2) Such measures referred to in subsection (1) shall include:

- (a) education of members about sexual abuse,
- (b) guidelines for the conduct of members with patients,
- (c) providing information to the public respecting such guidelines, and
- (d) informing the public as to the complaint procedures under this Act.

93(3) Measures referred to in subsection (2) may, where appropriate, be taken jointly with other organizations or associations of health professionals.

Association to report to Minister

94(1) The Association shall report to the Minister of Health and Wellness within two years after the commencement of this section, and within thirty days at any time thereafter on the request of the Minister, respecting the measures it is taking and has taken to prevent and deal with the sexual abuse of patients by members of the Association.

94(2) The Association shall report annually to the Minister of Health and Wellness respecting any complaints received concerning sexual abuse of patients by members or former members of the Association.

94(3) A report under subsection (2) shall be made within two months after the end of each calendar year and shall contain the following information:

(a) the number of complaints received during the calendar year for which the report is made and the date each complaint was received;

(b) with respect to each complaint received during the calendar year for which the report is made

(i) a description of the complaint in general non-identifying terms,

(ii) the decision of the Council with respect to the complaint and the date of the decision,

(iii) if allegations are referred to the Discipline and Fitness to Practise Committee, the findings and decision of the committee, including any penalty imposed, and the date of the decision, and

(iv) whether an appeal was made from the findings and decision of the Discipline and Fitness to Practise Committee and the date and outcome of the appeal; and

(c) with respect to each complaint reported in a previous calendar year, a report on the status of the complaint in accordance with paragraph (b) if the proceedings initiated as a result of the complaint were not finally determined in the calendar year in which the complaint was first received.

Action done in good faith

95 No person shall commence any action or other proceeding for damages against the Association, the Council, or against a member, officer, employee, agent or appointee of the Association or a member of a Discipline and Fitness to Practise Committee for an act done in good faith in the performance of a duty or the exercise of a power under this Act or a regulation made under this Act or for the neglect or default in the performance or exercise in good faith of the duty or power.

Council may apply for injunction

96(1) The Council may apply to The Court of Queen's Bench of New Brunswick for an interim or permanent injunction to restrain a person from contravening any provision of this Act or the regulations made under this Act.

96(2) A contravention may be restrained under subsection (1) whether or not a penalty or other remedy has been provided by this Act or the regulations made under this Act.

Service of documents

97(1) Any notice or other document which is to be given to, filed with or served on the Association shall be sufficiently given, filed or served if it is delivered personally or sent by prepaid registered or certified mail to the Registrar.

97(2) Any notice or other document which is to be given to, sent or served upon any other person shall be sufficiently given, sent or served if it is delivered personally or if it is sent by prepaid registered or certified mail to:

(a) the last address of that person as reported to the Registrar, or

(b) the address for service endorsed upon the notice of intention to appeal.

Evidence of Registrar

98(1) A statement purporting to be certified by the Registrar under the seal of the Association as a statement of information from the records kept by the Registrar in the course of the Registrar's duties is admissible in court or in any hearing under this Act as proof, in the absence of evidence to the contrary, of the information in it without proof of the Registrar's appointment or signature or the seal of the Association.

98(2) A copy of any regulation, any resolution of the Council or the Association or any official act of the Registrar pursuant to the Act and the regulations, if the copy purports to be certified by the Registrar and under the Seal of the Association, shall be accepted in any court as evidence of the regulation, resolution or act without proof of the official character or handwriting of the Registrar or of the Seal.

Limitation Of Actions

99 No action against a member of the Association for negligence or malpractice in the practice of optical dispensing shall be commenced but within two years from the day of the discovery of the cause of action, or when such cause of action should have been discovered.

100 Where in any Act, other than this Act, or in any regulation, rule, order, by-law, agreement or other instrument or document, reference is made to the "New Brunswick Guild of Dispensing Opticians" or any such abbreviation thereof, it shall be read as a reference to the "Opticians Association of New Brunswick".

101 *An Act to Incorporate The New Brunswick Guild of Dispensing Opticians*, Chapter 68 of the Acts of New Brunswick, 1976, is repealed.

102 This Act or any provision hereof comes into force on a day to be fixed by proclamation.

FORM 1
IN THE COURT OF QUEEN'S BENCH OF NEW BRUNSWICK
JUDGMENT

The Discipline and Fitness to Practise Committee of the Opticians Association of New Brunswick having on the ____ day of _____, A.D. 20__ ordered that _____ pay the costs of _____ on an inquiry into the conduct or fitness to practise of _____ or that _____ pay the costs of _____ on an inquiry into the conduct or fitness to practise of _____;

AND the costs of _____ having been agreed upon or taxed by the Registrar of the Court of Queen's Bench of New Brunswick on the ____ day of _____, A.D. 20__;

IT IS THIS DAY ADJUDGED that _____ recover from _____ the sum of \$ _____,

DATED this ____ day of _____, A.D. 20__.

Registrar,
Court Of Queen's Bench
Of New Brunswick

Index - Page 1

Chapter Outline

SECTION

SECTION

Part I: Association

- Title 1
- Definitions 2
- Opticians Association of New Brunswick 3
- Objects 4
- Annual Meeting 5
- Council 6
- Meetings and Resolutions 7
- Elections and Appointments to Council 8-12
- Regulations 13
- Registration 14,15
- Certificate of Special Qualification 16,17
- Licence Fees 18
- Professional Corporations 19
- Prohibitions 20-26
- Examining Committee 27-31
- Exemptions 32-35

Part II: Complaint and Discipline Proceedings

- Definitions 36
- Continuing jurisdiction of Association 37
- Complaints may be made to Registrar 38
- Request by Registrar for investigation 39
- Council to investigate 40
- Council may investigate 41
- Notification to member 42
- Examination of member 43
- Action by Council 44
- Action by Council to protect public 45

Index - Page 2

	<u>SECTION</u>
- Appointment of Discipline and Fitness to Practise Committee	46
- Composition of committee	47
- Continuity of membership of committee	48
- Committee to hold hearing	49
- Parties to hearing	50
- Parties may appear with counsel	51
- Complainant may attend hearing	52
- Attendance of witnesses and production of records	53
- Failure to comply with order	54
- Committee may proceed in absence of investigated member	55
- Committee may hear other matters	56
- Examination of evidence before hearing	57
- Legal advice	58
- Oral evidence to be recorded	59
- Testimony of witnesses	60
- Right to cross-examine	61
- No communication by committee members	62
- Committee to determine its procedure	63
- Committee not bound by rules of evidence	64
- Committee may adjourn hearing	65
- Members of committee who participate in decision	66
- Professional misconduct	67
- Sexual abuse of patient	68
- Failure of member to report sexual abuse	69
- Action by Committee	70
- Costs	71
- Decision to be in writing	72
- Suspension of licence until fine and cost paid	73
- Council may suspend licence	74
- Committee to deliver decision and record to Registrar	75
- Record of hearing may be examined	76
- Release of evidence by Registrar	77
- Member to return documentation	78
- No stay of order	79
- Application for stay	80
- Appeals to court	81
- Reinstatement	82,83
- Investigations	84-88
- Transitional	89
Part III: General	
- Registrar to give notice	90
- Records to be made available to public	91
- Annual report by Registrar respecting complaints	92
- Association to take measures to prevent sexual	

Index - Page 3

	<u>SECTION</u>
abuse of patients	93
- Association to report to Minister	94
- Action done in good faith	95
- Council may apply for injunction	96
- Service of documents	97
- Evidence of Registrar	98
- Limitation of Actions	99
- Amendment and Repeal of Other Acts	100-102
- FORM 1 - Judgment	