

**BY-LAWS  
OPTOMETRY ACT, 2004**

**DEFINITIONS**

**1** The following definitions apply in these by-laws.

“Act” means the *Optometry Act, 2004*. (*Loi*)

“Full-time member” means a member who practices as an optometrist in New Brunswick more than fifty (50) days (including full and partial days) in a calendar year. (*membre à temps plein*)

“National Examination” means the Canadian Standard Assessment in Optometry (CSAO) examination or the Canadian Assessment of Competence in Optometry (CACO) examination, or such other Canadian national examination approved by Council, whichever examination or part of such examination applies. (*examen national*)

“Part-time member” means a member who practices as an optometrist in New Brunswick not more than fifty (50) days (including full and partial days) in a calendar year. (*membre à temps partiel*)

**2** All other words or expressions have the same meaning as in the Act.

**ANNUAL FEES**

**3(1)** The fee for annual renewal of licence under section 18 of the Act shall be determined by Council annually, payable on or before the thirty-first day of January in each year.

**3(2)** Upon application for annual renewal of licence under section 18 of the Act, every member shall complete and file with the Registrar an annual report in Form “D” and shall pay the required fees.

**3(3)** The fee for the annual permit for a professional corporation under section 23 of the Act shall be determined by Council annually, payable on or before the thirty-first day of January in each year.

**3(4)** The Registrar shall regularly report to the Secretary-Treasurer and Council the renewals of licences received and the amount of fees collected.

**RETIRED MEMBERS**

**3.1(1)** A retired member is a person who

**(a)** held a licence to practice for 5 or more consecutive years; and

**(b)** is retired from practicing optometry.

**3.1(2)** Retired members may be members of all committees of the Association other than the Complaints Committee and the Discipline Committee.

## **MANDATORY PROFESSIONAL LIABILITY INSURANCE**

**3.2(1)** No member shall engage in the practice of optometry unless he or she is personally insured against professional liability under a professional liability insurance policy.

**3.2(2)** The professional liability insurance policy must provide:

(a) at a minimum, coverage in the amount of:

- (i) \$2,000,000 per occurrence; and
- (ii) \$5,000,000 in the aggregate per year;

(b) a deductible of not more than \$5,000.

**3.2(3)** Proof of insurance shall be provided by applicants for initial or renewal registration and licensing in the manner set out in the applicable forms required to be provided by such applicants.

**3.2(4)** A member shall at all times keep a copy of the member's professional liability insurance policy at all of the member's places of business and shall provide a copy of such policy to the Registrar upon request.

## **LATE FEES & PENALTY**

**4(1)** Annual fees not paid in full on or before the thirty-first day of January as required by subsections 3(1) and (3) shall be subject to a late payment fee of fifteen percent on the amount outstanding as of that date.

**4(2)** When a licence is revoked under subsection 19(1) of the Act, it shall not be reissued under subsection 19(2) until the full amount of outstanding fees plus any late payment fees are paid together with an additional penalty of twenty-five percent of the total amount owing, as referred to in subsection 19(2) of the Act.

**4(3)** If a member fails to provide documents required for renewal of licence or to pay all required fees, late payment fees and penalties by March 31<sup>st</sup> in any year, the Registrar shall immediately suspend the member's licence to practice optometry until all required documents are provided and all required fees, late payment fees and penalties are paid.

## **BOARD OF EXAMINERS**

**5** The Board of Examiners under subsection 14(1) of the Act (hereinafter in by-law sections 6 to 13 referred to as the "Board") shall be elected by the members at the annual general meeting as required, and may be re-elected upon the expiry of their term.

**6(1)** The Board of Examiners

(a) designates the programs of the following schools of optometry as approved training programs:

- (i) School of Optometry and Vision Science, University of Waterloo,

- (ii) École d'optométrie, Université de Montréal,
- (iii) those schools approved, at the time of the applicant's graduation, by the Accreditation Council on Optometric Education of the American Optometric Association;
- (iv) such other schools of optometry as the Board may approve by resolution.

(b) may accept an equivalent training program if such program was successfully completed by the applicant and, in the opinion of the Board, is the equivalent of the training programs designated in paragraph (a).

**6(2)** The Board may, with respect to an applicant who is a graduate of any school designated under paragraph 1(a), or who has successfully completed a program accepted by the Board as an equivalent under paragraph 1(b),

- (a) determine the subject and content of examinations, including both academic and clinical, to be taken by the applicant;
- (b) conduct the examinations and assess the applicant's performance; and
- (c) advise Council and the applicant of the final results.

**6(3)** The jurisprudence examinations shall be held at a date, time and place determined by the Board.

**6(4)** The Board may consider successful completion of the National Examination as sufficient evidence of qualification for licensure.

**6(5)** Canadian-trained Optometrists graduating after January 1, 2003, and all foreign-trained Optometrists must successfully complete the National Examination as a requirement of licensure.

**6(6)** Optometrists who are in practice in Canada as of January 1, 2003, and are members in good standing of the provincial regulatory body under which they practise will be accepted at the same level of licensure that they hold in that province.

**7(1)** An applicant for registration as a member shall first apply to the Board for a license.

**7(2)** An application for a license shall be completed on the appropriate application form and solemnly declared before a commissioner of oaths or notary. The application shall be accompanied by the following:

- (a) official academic transcripts from all universities attended by the applicant;
- (b) proof of successful completion of the National Examination;
- (c) a recent photograph;
- (d) three references as to character;

- (e) application fee in an amount determined by Council;
- (f) a current criminal record check authorization and report (CRC) in form and substance acceptable to the Registrar; and
- (g) such further information and documents as the Board may require from time to time.

**7(3)** If the requirements of subsection (2) are met to the satisfaction of the Board, and the applicant is invited to take any examinations approved by the Board, the applicable fees shall be paid by the applicant.

**7(4)** Every person intending to take the examinations shall submit an application, in form and content approved by the Board from time to time, not later than the deadline determined by the Board.

**7(5)** An application to the Board shall show

- (a) if the applicant has ever been removed from a school of optometry, and if so, the reason;
- (b) whether the applicant has been refused admission to any association or regulatory body of optometrists and, if so, the reason;
- (c) whether the name of the applicant has been removed from the register or membership list of an association or regulatory body of optometrists and, if so, the reason;
- (d) whether there are any findings against the applicant in any jurisdiction relating to professional misconduct or incompetence in the practice of optometry;
- (e) whether there are any current or pending proceedings against the applicant relating to professional misconduct or incompetence in the practice of optometry;
- (f) whether the applicant has ever been convicted of a criminal offence, and whether any charges of a criminal nature are current or pending, and the nature of such convictions or charges;
- (g) in the case of an applicant, who is not a graduate of a school designated under paragraph 6(1)(a), the applicant's general education, training, and experience; and
- (h) such further information as the Board may require from time to time.

**7(6)** In the case of applicants for registration from another province or territory of Canada, such applicants may be granted a licence to practise optometry in New Brunswick, if the applicant

- (a) is a member in good standing of an optometry regulatory body in another province or territory of Canada and provides proof of current registration by such regulatory body;
- (b) provides evidence of good character including the following:

- (i) a current criminal record check authorization and report (CRC) in form and substance acceptable to the Registrar;
  - (ii) disclosure of any disciplinary issues;
  - (iii) disclosure of the applicant's regulatory history, including all formal proceedings and any past or ongoing disciplinary proceeding respecting the applicant;
  - (iv) three written references as to the applicant's character;
- (c) provides proof of professional liability insurance;
- (d) provides a recent photograph;
- (e) has completed the appropriate application form, solemnly declared before a commissioner of oaths or notary;
- (f) has paid the application fee in an amount determined by Council;
- (g) provide such confirmation as may be specified by the Board to confirm the applicant's knowledge of the New Brunswick *Optometry Act, 2004* and the Association's By-laws, if required by the Board; and
- (h) provides such further information as the Board may require from time to time. [December 2016]

**8** All applicants for licensure may also qualify for licensure as a certified therapeutic optometrist under the provisions of the Pharmaceutical Certification Board by-laws.

**9** The Board shall consider each application and shall satisfy itself that

- (a) the statements in the application are true; and
- (b) the applicant is of good moral character.

**10(1)** A minimum performance level, predetermined by the examining body and approved by the Board is required to pass the approved examinations.

**10(2)** An applicant who fails one or more parts of the approved examinations may make application for re-examination on the parts failed at the next available administration of such examinations.

**10(3)** An applicant who fails to apply under subsection (2) or fails any part of the re-examination twice shall be deemed to have failed the whole examination and may reapply to again take the whole of the examinations on the next available administration of such examinations. Applicants may only take the whole examination three times. An applicant who fails the whole examination three times may not apply for or receive a licence.

- 11** When the Board is satisfied that the applicant has
- (a) passed the examinations required by the Board;
  - (b) met the applicable requirements of sections 7, 8 and 9; and
  - (c) paid the required fee,

it shall direct that a license be issued to the applicant.

**12(1)** A person who has not practised optometry for three years as provided in subsection 15(2) of the Act shall not resume practice until the Board is satisfied that the person

- (a) has satisfactorily completed all of the continuing education requirements or any other courses that the Board considers necessary,
- (b) has paid all of the required registration fees, and
- (c) is otherwise considered competent to resume practice.

**12(2)** For the purpose of subsection (1) seven hundred and fifty hours is deemed to be the equivalent of three years of practice.

**13** The Board may refer any question with respect to the competence of an applicant, member, or former member to the Peer Review Committee for consideration before making a decision to approve a licence to practise optometry.

### **CONFLICT OF INTEREST**

**14** A member shall not do anything that

- (a) is a conflict of interest, or
- (b) may encourage or result in a conflict of interest.

**15** It is a conflict of interest for a member to

- (a) accept rebates, gifts or any form of remuneration from any person, business, corporation or other legal entity if the rebate, gift or remuneration is a reward for the referral of patients to or by the member,
- (b) accept credit from a vendor of ophthalmic appliances, materials or equipment or from any person, business, corporation or other legal entity if the credit is related to the referral of patients to or by the member,
- (c) rent to or from any person, business, corporation or other legal entity engaged in the business of selling or dispensing ophthalmic appliances, materials or equipment, either retail or wholesale, if the rent

is in any way related to the referral of patients to or by the member, or related to the volume of business carried out in the premises by the tenant or land-lord,

(d) receive fees from a person to whom the member has referred a patient or to receive rebates or other indirect remuneration,

(e) share patient records with any person, business, corporation or other legal entity engaged in the business of selling or dispensing ophthalmic appliances, materials or equipment, either retail or wholesale, or with any other person without the consent of the patient, and without taking measures to safeguard patient confidentiality, or

(f) enter into any form of arrangement with any person, business, corporation or other legal entity that could unduly influence the judgment of the member in providing ophthalmic services to a patient.

**16** It is also a conflict of interest of a member if any person, business, corporation or other legal entity on behalf of, or for the benefit of the member, does anything that would be a conflict of interest if done by the member contrary to section 15.

### **PROFESSIONAL MISCONDUCT**

**17** For the purposes of the Act, "professional misconduct" includes

(a) failure by a member to abide by the terms, conditions or limitations of the member's licence;

(b) failure to maintain the standard of practice of the profession;

(c) failure to maintain the records that are required to be kept in respect of a member's patients or practice;

(d) exceeding the lawful scope of practice;

(e) having a conflict of interest;

(f) using terms, titles or designations other than those authorized by the Act, or using terms, titles or designations that are prohibited by this By-law;

(g) treating or attempting to treat an eye problem which is beyond the experience or competence of the Optometrist;

(h) permitting, counselling or assisting any person who is not licensed under the Act to engage in the practice of optometry except as provided in the Act or By-Laws, and except in respect of optometry student interns carrying out tasks and functions constituting a part of the student's course of study at a designated optometry program, under the supervision of an optometrist;

(i) using in any way with respect to the member's office the name of another member whose practice the member has acquired after a period of three years from the date of the acquisition;

- (j) charging fees that are excessive in relation to the services performed;
- (k) publishing, displaying, distributing or using or permitting, directly or indirectly, any advertisement related to the practice of optometry by a member which does not comply with section 18;
- (l) associating with or being employed by any person who publishes, displays, distributes or uses any advertisement related to the practice of optometry which does not comply with section 18;
- (m) signing or issuing a certificate, report or similar document that contains a statement the member knows or ought to know is false, misleading or otherwise improper;
- (n) signing or issuing a certificate, report or similar document that withholds statements or information the member knows or ought to know should be disclosed to the person to whom the member knows or ought to know the document will be delivered or to whom its contents will be made known;
- (o) giving information concerning a patient's vision to any person other than the patient without the consent of the patient unless required to do so by law;
- (p) knowingly submitting a false or misleading account or false or misleading charges for services rendered to a patient;
- (q) falsifying a record in respect of observation or treatment of a patient;
- (r) failing to carry out the terms of an agreement with a patient;
- (s) failing to continue to provide professional services to a patient until the services are no longer required unless arrangements are made for another member to provide service or the patient receives thirty days notice that services will be discontinued and emergency services only are available in that time period;
- (t) refusing to allow an authorized representative of Council or the Peer Review Committee to enter at a reasonable time the office in which the member is engaged in the practice of Optometry for the purpose of inspecting the member's professional records and equipment;
- (u) conviction of an offense that affects the fitness of a member to engage in the practice of optometry;
- (v) engaging in the practice of optometry while under the influence of alcohol or drugs;
- (w) failing to make available to a patient a written prescription for an ophthalmic appliance for the patient containing all necessary and relevant clinical and ophthalmic specifications, provided that the patient has paid the applicable examination and fitting fees;
- (x) conduct relevant to the practice of optometry that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonorable or unprofessional;

(y) failure by 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, to file a report in writing pursuant to subsection 44(4) of the Optometry Act 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;

(z) a finding of professional misconduct against a member in a jurisdiction other than New Brunswick that would, in the opinion of the Discipline Committee, also constitute professional misconduct if the act had been committed in New Brunswick; or

(aa) failing to comply with the Act or By-laws.

## **ADVERTISING**

**18** A member may advertise through a medium of communication that is equally available to all members any factual and verifiable information that a reasonable person would consider relevant in choosing of an optometrist that

(a) is not false, misleading or deceptive by the inclusion or omission of any information;

(b) is readily comprehensible, dignified and in good taste;

(c) contains no testimonial, comparative or superlative statements;

(d) by reason of its size, content, method or frequency of dissemination would not be regarded as unprofessional;

(e) is not likely to create unjustified expectations or appeal to the public's fears;

(f) does not make reference to free or discounted examinations or professional services; or

(g) does not tend to undermine the professionalism, ethics, integrity or dignity of the optometry profession or otherwise bring the optometry profession in disrepute.

## **CONTINUING EDUCATION**

**19(1)** Each member of the Association shall complete not less than forty-five (45) hours of approved continuing education in optometry as set out in the Association's Continuing Education Policy approved by Council by resolution from time to time, in each three year period, provided that Council, in its discretion, may relieve a member from completing such continuing education in any three year period for good reason shown by the member.

**19(2)** The number of hours of continuing education required may be increased at the discretion of Council from time to time by resolution.

**20** Certified Therapeutic Optometrists shall complete not less than fifty-five (55) hours of approved continuing education in optometry as set out in the Association's Continuing Education Policy approved by

Council by resolution from time to time, in each three year period, provided that Council, in its discretion, may relieve a member from completing such continuing education in any three year period for good reason shown by the member.

**21** Repealed.

**22** Repealed.

**23** Any member who completes the required number of hours of continuing education in optometry in three years shall furnish to the Registrar on the completion of each such course, lecture or seminar, proof of actual attendance for the requisite number of hours. The onus of proving that such is approved continuing education and attendance is on the member. The Registrar shall maintain a concise and accurate record of the attendance of any member at any such course, lecture or seminar.

**24** Repealed.

**25** The Registrar shall on or before the thirty-first day of January in each year report to Council the names of all members who failed to comply with section 19 during the preceding calendar year and who are not entitled to exemption pursuant to that section.

**26** If a member fails to complete the number of hours of approved continuing education required in the Continuing Education Policy, the member's licence to practice optometry shall be immediately suspended by the Registrar until such condition has been fulfilled.

#### **NAME**

**27(1)** An optometrist may practise optometry only in a name that is not misleading or contrary to the principles set out in by-law 18.

**27(2)** An optometrist may practise optometry in partnership with one or more other optometrists in which case the name of the partnership shall not be misleading or contrary to the principles set out in by-law 18.

#### **TITLES**

**28** Members may only use terms, titles, or designations allowed by section 22 of the Act or earned at recognized Universities or Colleges or through the Canadian Association of Optometrists (CAO), the American Optometric Association (AOA), the American Academy of Optometry (AAO), the Canadian College of Specialties in Optometry (CCSO) or any others as approved by Council. [2020]

#### **PROFESSIONAL CORPORATIONS**

**29(1)** The Registrar shall maintain a Professional Corporations Register containing the following information with respect to each professional corporation holding a permit under the Act:

- (a) the name and head office, or registered office, of each professional corporation;

- (b) the registration number given to the corporation;
- (c) the date of issuance of the permit; and
- (d) the respective dates of the renewal of the permit.

**29(2)** The Registrar shall prepare such other records with respect to the professional corporation as may be directed by Council.

**30(1)** An applicant for a permit under section 23 of the Act shall furnish to the Registrar:

- (a) a completed application in Form "A";
- (b) a copy of the corporation's certificate of incorporation, including articles of incorporation;
- (c) a current certificate of status for the corporation under the Business Corporations Act; and
- (d) payment of the application fee.

**30(2)** Every professional corporation shall inform the Registrar of any change in the particulars set forth in the application furnished pursuant to subsection (1) by providing to the Registrar a Statement of Particulars in Form "B" within fifteen days of any such change. The Statement of Particulars shall be accompanied by a filing fee in the prescribed amount.

**31** When the Registrar is satisfied that the Applicant has complied with section 23 of the Act and by-laws, the Registrar shall issue a permit in Form "C".

**32(1)** The Registrar shall, on or before the first day of December each year, mail to each professional corporation holding a permit a written notice respecting the renewal of its permit.

**32(2)** Every professional corporation that wishes to have its permit renewed for the following calendar year shall furnish to the Registrar on or before the thirty-first day of January in each year:

- (a) a Statement of Particulars in Form "B"; and
- (b) payment of the annual renewal fee fixed by Council under section 3.

**32(3)** The Registrar shall issue an annual permit to a professional corporation in Form "C", upon being satisfied that the corporation has complied with subsection (2) and is otherwise in compliance with subsection 23(1) of the Act and the By-Laws.

**33(1)** When the permit of a professional corporation has been suspended or revoked, the Registrar shall, upon compliance with subsection 27 (2) of the Act, notify each professional corporation, each licensed optometrist, and all other parties deemed necessary by Council, of the fact that the permit of such professional corporation has been suspended or revoked.

**33(2)** Where Council has ordered that the permit of a professional corporation be suspended, the permit shall be reinstated after the period of suspension if the Registrar is satisfied that the professional corporation has:

- (a) paid such fine or costs, if any, as the Discipline Committee or Council has ordered it to pay within the time fixed for payment;
- (b) paid the annual permit fee for the year in which the permit is to be reinstated;
- (c) complied with all conditions set by the Discipline Committee or Council for such reinstatement; and
- (d) otherwise complied with section 23 of the Act and the By-Laws.

**33(3)** The Registrar shall not remove from the register any memorandum made under subsection 27(2) of the Act for a period of five years or until after the period stipulated by the Discipline Committee or Council.

**34(1)** A professional corporation may carry on the practice of optometry under its full corporate name.

**34(2)** A professional corporation may carry on the practice of optometry under a name which does not contain its full corporate name, provided that the other name complies with the by-laws and rules and the full corporate name is shown on the letterhead and invoices issued by the professional corporation.

**35(1)** Every professional corporation shall be liable for payment of the annual fee provided for under the Act or By-laws in respect of each member of the Association who is a shareholder in the corporation.

**35(2)** Except as provided in subsection (3), a member of the Association who is a shareholder in a professional corporation shall not be liable to pay the annual fee for that member.

**35(3)** If any professional corporation fails to pay the annual fee within the time prescribed by the Act or By-laws then, in such event, every member of the Association who is a shareholder in such professional corporation, and in respect of whom the corporation is primarily liable to make any such payment, shall be liable for payment notwithstanding subsection (2).

**35(4)** Payment of the annual fee is not required from any member of the Association who ceases to be a shareholder in a professional corporation and in respect of whom payment has already been made by the corporation, nor from any professional corporation in respect of the member who becomes a shareholder in such corporation and by whom payment has already been made.

## **ELECTION OF COUNCIL**

**36(1)** All members of Council shall be elected at the annual general meeting of the Association and shall hold office until replaced or elected at the next annual general meeting.

**36(2)** The lay person of Council appointed by the Minister shall be appointed for a term of two years, with a maximum of three terms, provided that if the term of the lay person expires and a successor has not yet been

appointed, the lay person shall for a period of up to one year, continue to hold office as the lay person until a successor is appointed. [December 2016]

### **SPECIAL MEETINGS OF COUNCIL**

**37(1)** A special meeting of Council shall be held at the petition signed by not less than three members of Council and delivered to the Secretary-Treasurer.

**37(2)** A special meeting under subsection (1) shall be held within seven days of the date of receipt of the petition by the Secretary-Treasurer.

### **ANNUAL GENERAL MEETING**

**38(1)** Council shall decide on the time and place for the annual general meeting required under subsection 12(1) of the Act.

**38(2)** Notice of the time, place and agenda for the annual general meeting shall be given in writing to all members not less than sixty days before the meeting.

### **MEETINGS BY TELEPHONE OR OTHER COMMUNICATION**

**38.1** Council and any committee of Council or the Association may conduct meetings by telephone or other communication facilities provided that a notice of meeting by telephone or other communication facilities has been given not less than three days before the date of such meeting or such notice has been waived. The minutes of any action, decision, order or determination taken or made by a meeting held by telephone or other communication facilities shall be made part of the minutes of Council or committee, as the case may be.

**38.2** A resolution, report, recommendation, decision, finding or order of Council or any committee of Council or of the Association in writing signed by all members of Council or persons entitled to vote on such resolution, report, recommendation, decision, finding or order, or signed counterparts thereof, is as valid as if passed, enacted, determined or made at a meeting of Council or such committee.

### **RECORDS**

**39(1)** A member shall make and keep clinical and financial records of patients and the record for each patient shall contain not less than,

- (a) the patient's history,
- (b) the examination procedures used,
- (c) the clinical findings obtained,
- (d) the treatment prescribed and provided, and
- (e) the member's fees and charges.

**39(2)** A member shall retain all records of patients for at least seven years.

### **Patient Records**

**39(3)** Patient records include the records referred to in 39(1) and patient charts, prescriptions, test results, photographs, written referral forms, correspondence with specialists or insurance companies and generally any information relating to the health and treatment of a patient.

**39(4)** Patient records are “personal health information” under the *Personal Health Information Privacy and Access Act*, SNB 2009, C P-7.05 (“PHIPAA”). While an optometrist or registered Professional Corporation as the owner of an optometry practice (hereinafter the “**member**”) owns the patient records of that practice, patients are entitled access to their records, subject only to limited exceptions.

### **Optometrists Are Custodians under PHIPAA**

**39(5)** An optometrist, like other health professionals possessing patient personal health information and documents, is a “custodian” under PHIPAA and must comply with the provisions of PHIPAA respecting access, disclosure, providing copies, transfer and security measures respecting personal health information of patients.

## **SALE/TRANSFER OF PATIENT RECORDS**

### **General Obligations Respecting Sale and Transfer of Patient Records**

**39(6)** A member may not sell and transfer patient records as part of a sale to a person who is not an optometrist bound by the ethical obligations of a member.

**39(7)** A member may sell an optometry practice and transfer patient records as part of a sale to a person who is an optometrist bound by the ethical obligations of a member, without the consent of the patients.

### **Disclosure for the Purpose of Evaluating a Practice**

**39(8)** Members are permitted to disclose patient records to a prospective optometry purchaser without the consent of the patients where a potential optometry purchaser is a member, or a licensed optometrist in another jurisdiction if:

- (a) the disclosure of patient records is for the purpose of allowing the potential optometry purchaser to assess or evaluate the practice of the selling member; and
- (b) the potential optometry purchaser first enters into an agreement with the selling member to keep the patient records confidential and secure and not to retain the patient records any longer than is necessary for the purpose of the assessment or evaluation.

### **Transfer of Patient Records on the Sale of a Practice**

**39(9)** Members are permitted to sell and transfer patient records to an optometry purchaser without the consent of patients where the optometry purchaser is a member or a licensed optometrist in another jurisdiction provided the selling member:

- (a) transfers the patient records as a result of ceasing to engage in the practice of optometry within the geographic area in which the optometry purchaser provides such health care services; and
- (b) makes reasonable efforts to give notice to the patients to whom the patient records relate before the transfer or, if this is not possible, as soon as possible after the transfer, that the selling member has ceased to be a custodian of the patient records, identifies the purchasing successor and where the patient records are located.

### **Patient Records on Ceasing to Engage in the Practice of Optometry**

**39(10)** Members do not cease to be a custodian of patient records until complete custody and control of patient records passes to another person who is legally authorized to hold the patient records, such as another optometrist.

**39(11)** Where a member ceases to operate as a custodian of patient records, the member or the successor member must:

- (a) notify the patients about the patient records held by the member or the successor optometrist;
- (b) indicate where the patients may make a written request for access to the patient records; and
- (c) indicate the period the patient records will be retained.

### **Death of a Custodian Member**

**39(12)** If a member dies, the duties and powers of a custodian under this by-law and PHIPAA are to be performed by the personal representative of the deceased as defined in the *Devolution of Estates Act* until custody and control of the patient records is transferred to another person who is legally authorized to hold the patient records, such as another optometrist.

### **No Conflict of Interest or Professional Misconduct**

**39(13)** If the conditions set out above in this by-law are complied with then the transfer and disclosure of patient records from a member to a successor member without the consent of the patients shall not constitute a conflict of interest within the meaning of by-law 15(e) or professional misconduct within the meaning of by-law 17(e) and (o). [September 16, 2017]

## **SECRETARY-TREASURER**

**40** The Secretary-Treasurer shall receive in addition to regular Council meeting fees and other necessary expenses, a sum decided by Council annually, payable quarterly.

**41** The Secretary-Treasurer shall conduct the correspondence of Council, keep a true account of all meetings of Council, on the advice of the President notify all members of Council of all meetings at least three days in advance, and shall keep a record of all business transactions of Council.

## **REGISTRAR**

**42(1)** Pursuant to subsection 10(1) of the Act, Council may appoint any person it considers qualified, including a member, to act as Registrar and may decide the terms and conditions of such appointment.

**42(2)** The functions of the Registrar as determined by Council pursuant to subsection 10(2) of the Act include

- (a)** maintaining a register of all persons licenced to practice optometry, together with their addresses and qualifications, and of all professional corporations granted permits,
- (b)** administering all complaints, discipline and regulatory procedures,
- (c)** administer the issuance and renewal of licences and receive all fees payable to the Association on behalf of the Secretary-Treasurer and the Association,
- (d)** carry out the functions of the Secretary-Treasurer except those set out in by-law section 41 and such other functions as may be delegated by Council from time to time.

**42(3)** The Registrar may be required to attend and participate in Council meetings as permitted by Council from time to time.

**42(4)** The Registrar shall receive, in addition to regular Council meeting fees and other necessary expenses, a sum decided by Council annually, payable quarterly

## **PRESIDENT**

**42.1** The President shall receive, in addition to regular Council meetings fees and other necessary expenses, a sum decided by Council annually, payable quarterly.

## **CRITERIA FOR DIAGNOSTIC DRUG LICENCE**

**43(1)** Optometrists who have graduated before 1980 from a Canadian School of Optometry and who do not presently hold a diagnostic drug licence, will follow a course of theoretical and clinical instruction in the diagnostic use of drugs and pass theoretical and clinical examinations which are set and conducted by the School of Optometry and Vision Science of the University of Waterloo or École d'optométrie, Université de Montréal and satisfactory to the Board of Examiners of the New Brunswick Association of Optometrists.

**43(2)** The theoretical examination must be passed before clinical training can be undertaken. The examination for clinical competence in the diagnostic use of drugs will follow the clinical training program.

**43(3)** Graduates from an accredited Canadian School of Optometry in 1980 and after will be eligible for a diagnostic drug licence without further examination.

**43(4)** Foreign graduates will attend an approved course and sit approved examinations at an accredited Canadian School of Optometry as required by the Board of Examiners in order to qualify for a diagnostic drug license and/or therapeutic drug licence.

**LIST OF DRUGS AS DETERMINED  
BY THE MINISTER OF HEALTH  
MAY 2, 1979**

**44** A member may use in the practice of Optometry the following designated generic drugs applied topically on the eye for diagnostic purposes:

- (a) **Mydriatic**
  - Phenylephrine not over 2.5%
  - Tropicamide not over 1.0%
  
- (b) **Cycloplegics**
  - Tropicamide not over 1.0%
  - Cyclopentolate Hydrochloride not over 1.0%
  
- (c) **Topical Anaesthetics**
  - Propracaine Hydrochloride not over 0.5%
  - Benoxinate Hydrochloride not over 0.4%
  - Tetracaine Hydrochloride not over 0.5%

**STANDARDS OF PRACTICE**

**45** A Standards of Practice Committee shall be established with the power to set standards of practice and to review guidelines pertaining to clinical practice.

**PEER REVIEW**

**46(1)** Council shall appoint a Peer Review Committee consisting of three practising members, one to be appointed by Council as chairperson.

**46(2)** Members of the Peer Review Committee shall be appointed for three years and may be reappointed.

**47(1)** Issues relating to the competency to practise optometry may be referred to the Peer Review committee by the Registrar, the Complaints Committee, the Discipline Committee, or Council.

**47(2)** When investigating an issue referred to it under subsection (1), the Peer Review Committee is not required to conduct a hearing, but may interview the relevant parties to obtain the necessary information and explanations in order to make its recommendations.

**48** Upon referral of an issue under subsection 47(1), the Peer Review Committee shall

- (a) consider the issue and make recommendations to the referring body for compliance with the standards of practice of the Association;
- (b) refer the matter to the Registrar for further investigation and action;
- (c) if, in the opinion of the Committee, the member involved is incompetent to such a degree as to be a threat to the public interest, recommend to the Discipline Committee that it suspend the member or cancel the member's right to practise; or
- (d) take such other action, consistent with its responsibilities, as the Committee in its discretion considers necessary in the public interest.

**49** When the Peer Review Committee concludes that a member has been incompetent in the practice of optometry, it may include one or a combination of the following in its recommendations:

- (a) that the member not engage in specific areas of practice and that conditions and limitations on the right to practise be imposed;
- (b) that the member undertake and pass courses of study in a continuing education program or courses designated by the Committee;
- (c) the imposition of specific restrictions on the right to practise, including requiring the member
  - (i) to engage in practice only under the personal supervision and direction of another member,
  - (ii) not to engage in practice alone,
  - (iii) to accept periodic inspections by the Committee or by its delegate of the member's records and work relating to the member's practice, or
  - (iv) to report to the Registrar or to the Committee on such matters relating to the member's practice, during such period, at such times and in such form as the Committee may specify.

**50** In addition to the actions that may be taken under sections 48 and 49, the Peer Review Committee may conclude that a member is incompetent if, in its opinion, the member is suffering from a physical or mental disability, including dependence on alcohol or drugs, of such a nature or extent as to render the member unfit to engage in the practice of optometry, and in reaching its opinion the Committee may rely on expert medical evidence.

**50.1** The Discipline committee shall be composed of:

- (a) four members in good standing appointed by Council; and
- (b) one lay person appointed by the Minister who shall be appointed for a term of two years, with a maximum of three terms, provided that if the term of the lay person expires and a successor has not yet

been appointed, the lay person shall for a period of up to one year, continue to act as the lay person.  
[December 2016]

**REPEAL**

**51** The Council may from time to time amend or replace all forms referred to in these by-laws and approve such additional forms as it deems necessary, by ordinary resolution of Council.

**52** The By-Laws for "The Optometry Act - 1978" as amended are hereby repealed.