



BERMUDA

OPTOMETRISTS AND OPTICIANS ACT 2008

2008 : 48

TABLE OF CONTENTS

PART 1
PRELIMINARY

- 1 Citation
- 2 Interpretation

PART 2
OPTOMETRISTS AND OPTICIANS COUNCIL

- 3 Optometrists and Opticians Council
- 3A Protection from personal liability
- 4 Functions of the Council

PART 3
REGISTER AND REGISTRATION

- 4A Registrar of Optometrists and Opticians
- 4B Delegation by Registrar
- 5 Registration of Optometrists and Opticians
- 6 Application for registration
- 6A Period of validity of registration
- 7 Registration of additional qualification
- 8 Re-registration
- 9 Proof of registration
- 10 Ability to prescribe drugs
- 11 Continuing professional education
- 12 Locum tenens

PART 4
INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS

OPTOMETRISTS AND OPTICIANS ACT 2008

- 13 Code of conduct
- 14 Optometrists and Opticians Complaints Committee
- 15 Investigation of complaints by Committee
- 16 Inquiry into complaint by Council
- 17 Power of Council to obtain information
- 18 Striking off
- 19 Voluntary removal
- 20 Suspension
- 21 Removal of name from register
- 22 Restoration of name
- 23 Additional disciplinary powers of Council

PART 5 MISCELLANEOUS

- 24 Appeals
- 25 Use of titles
- 26 False representations
- 27 Unlawful practice
- 28 Annual Report
- 28A Fees
- 28B Amendment of Fourth Schedule
- 29 Regulations and rules
- 30 Repeal
- 31 Transitional provisions
- 32 Consequential amendments
- 33 Commencement

FIRST SCHEDULE

SECOND SCHEDULE

THIRD SCHEDULE

FOURTH SCHEDULE

WHEREAS it is necessary to uphold the standards of practice in the professions of optometrist and optician;

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:

PART 1 PRELIMINARY

Citation

- 1 This Act may be cited as the Optometrists and Opticians Act 2008.

OPTOMETRISTS AND OPTICIANS ACT 2008

Interpretation

- 2 In this Act unless the context otherwise requires—
- “appropriate fee” means the fee referred to in section 28A;
- “Bermuda Health Council” means the Bermuda Health Council as established under section 3 of the Bermuda Health Council Act 2004;
- “Code” means the code of conduct referred to in section 13;
- “continuing professional education” has the meaning given in section 11(4);
- “Council” means the Optometrists and Opticians Council established under section 3;
- “Minister” means the Minister responsible for Health;
- “optometrist” means a person skilled in—
- (a) the examination, diagnosis, treatment, management and prevention of disease and disorders of the visual system, the eye and associated structures;
 - (b) the fitting, prescribing, manufacturing and dispensing of contact lenses, spectacles and other aids designed for the relief, prevention or correction of ocular anomalies of the eye; and
 - (c) the diagnosis and treatment of ocular manifestations of systemic conditions;
- “optician” means a person skilled in the fitting of spectacles and other aids to improve sight and in advising on types of lenses or frames to be used, or in the manufacture of lenses or frames, according to prescription;
- “Permanent Secretary” *[Repealed by 2020 : 47 s. 75]*
- “prescribed” means prescribed by regulations made under this Act;
- “professional misconduct” includes—
- (a) incompetence or negligence in practice as an optometrist or optician;
 - (b) improper or unethical conduct in relation to professional practice; and
 - (c) a contravention of or failure to comply with—
 - (i) a provision of this Act; or
 - (ii) an applicable statement of conduct issued under section 13;
- “the register” means the register of optometrists and opticians maintained by the Registrar under section 5;
- “registered person” means a person registered as an optometrist, an optometrist authorised to prescribe therapeutic pharmaceutical agents, a registered optician or a locum tenens referred to in section 12;

OPTOMETRISTS AND OPTICIANS ACT 2008

“Registrar” means the person for whose appointment section 4A provides;

“regulations” means the regulations made under section 29;

“rules” means the rules made under section 29;

“therapeutic pharmaceutical agents” means topical ocular pharmaceutical drugs used for the investigation, diagnosis or prevention of disease, injury or other abnormal condition of the eye.

[Section 2 definition "Permanent Secretary" amended by 2011 : 1 s. 2 effective 1 October 2011; Section 2 definition "Permanent Secretary" repealed, definition "the register" amended, and definitions "appropriate fee", "Code", "continuing professional education" and "Registrar" inserted by 2020 : 47 s. 75 effective 11 December 2020]

PART 2

OPTOMETRISTS AND OPTICIANS COUNCIL

Optometrists and Opticians Council

3 (1) There shall continue to be a body of persons known as the Optometrists and Opticians Council established under section 3 of the Optometrists and Opticians Act 1973 who shall have the powers and perform the duties conferred or imposed upon them by or under this Act.

(1A) The general function of the Council shall be to protect the public by ensuring high standards of professional competence and conduct in the practice of optometry in Bermuda.

(1B) *[Repealed by 2020 : 47 s. 77]*

(2) The Council shall consist of the following members—

- (a) a Chairperson who is a registered optometrist and appointed by the Minister;
- (b) three persons who are registered optometrists and appointed by the Minister after consultation with the Council;
- (c) one person who is a registered optician and appointed by the Minister after consultation with the Council; and
- (d) one shall be a person, not being a registered optometrist or optician, appointed by the Minister as a person appearing to him to be qualified by his training or experience or both to assist the Council in matters of a legal or ethical nature.

(3) The provisions of the First Schedule have effect with respect to the Council.

[Section 3 amended by 2011 : 1 s. 3 effective 1 October 2011; Section 3 amended by 2020 : 47 s. 77 effective 11 December 2020]

OPTOMETRISTS AND OPTICIANS ACT 2008

Protection from personal liability

3A A member of the Council or any committee thereof shall not be personally liable for damages for anything done or omitted to be done in the discharge or purported discharge of the Council's functions under this Act, unless the act or omission was done or made in bad faith.

[Section 3A inserted by 2020 : 47 s. 78 effective 11 December 2020]

Functions of the Council

4 The functions of the Council are to—

- (a) *[Repealed by 2011 : 1 s. 4]*
- (b) prescribe initial and continuing qualifications for registration;
- (c) assess applications for registration and re-registration and decide if applicants qualify for registration and re-registration;
- (d) establish requirements for the continuing professional education of registered persons;
- (e) prescribe and monitor adherence to standards of practice;
- (ea) prescribe the code of conduct for registered persons;
- (eb) exercise disciplinary control over registered persons on matters referred by the Complaints Committee;
- (f) examine, and advise the Minister about, the operation of this Act and the regulations in their application to the profession; and
- (g) perform such other functions as may be given to it under this Act or any other statutory provision.

[Section 4 amended by 2011 : 1 s. 4 effective 1 October 2011]

PART 3

REGISTER AND REGISTRATION

Registrar of Optometrists and Opticians

4A (1) For the purposes of this Act, there shall be a Registrar for the Council to be known as the Registrar of Optometrists and Opticians.

(2) The Chief Executive Officer of the Bermuda Health Council shall be the Registrar of Optometrists and Opticians.

(3) The Registrar shall perform the functions conferred on him by this Act or by any other statutory provision.

[Section 4A inserted by 2020 : 47 s. 80 effective 11 December 2020]

OPTOMETRISTS AND OPTICIANS ACT 2008

Delegation by Registrar

4B (1) The Registrar may, by instrument in writing, delegate to an officer or an agent of the Registrar any function or power conferred on the Registrar.

(2) The Registrar may perform such of his functions as he thinks fit through an officer or agent of the Registrar and in the performance of those functions the officer or agent shall be subject to the directions of the Registrar.

(3) A delegation under subsection (1) may—

- (a) be made subject to such conditions, qualifications and exceptions as the Registrar may specify in the instrument of delegation;
- (b) be revoked or varied by a subsequent instrument.

(4) The Registrar may perform any function or exercise any power notwithstanding that he has delegated it to some other person.

(5) The Statutory Instruments Act 1977 shall not apply with respect to an instrument made under this section.

[Section 4B inserted by 2020 : 47 s. 80 effective 11 December 2020]

Registration of Optometrists and Opticians

5 (1) The Registrar shall maintain a register of optometrists and opticians containing the names of those optometrists and opticians entitled to be registered under this Act and such other particulars about those persons as may be prescribed.

(2) The Registrar shall cause to be published in the Gazette, as soon as may be after the 1st day of January in each year, a list of names entered in the register as of that day.

(3) The Registrar shall cause—

- (a) to be entered in the register the names of optometrists registered under this Act who are entitled to be registered to prescribe therapeutic pharmaceutical agents;
- (b) to be made in the register such alterations, additions and deletions relating to the particulars of registered persons as may be necessary to keep the register current and accurate;
- (c) to be struck off the register the name of any registered person whose name is to be struck off the register under section 18;
- (d) to be removed from the register the name of any registered person—
 - (i) who has died; or
 - (ii) who has, under section 19, applied to have their name removed from the register; and

OPTOMETRISTS AND OPTICIANS ACT 2008

- (e) to be entered in the register as may from time to time become necessary, a note of the commencement or termination of the suspension from practice of a registered person under section 20;
- (f) to be entered in the register the name of any person whose name, having been struck off or removed from the register, is to be restored to the register in pursuance of section 22; and
- (g) may, without prejudice to anything in the foregoing provisions of this section, cause such notices to be published in the Gazette as appear to be expedient in the circumstances.

[Section 5 amended by 2020 : 47 s. 81 effective 11 December 2020]

Application for registration

6 (1) Any person who applies to be registered under this Act (hereinafter referred to as an “applicant for registration”) shall apply in the prescribed form to the Registrar, and shall forward with the application—

- (a) such documents relating to professional qualifications, experience and character in support of the application as may be prescribed; and
- (b) the appropriate fee.

(1A) An applicant for registration whose first language is not English must satisfy the Council that he or she has sufficient knowledge of the English language to be able to function as a practitioner in Bermuda.

(2) The Registrar shall forward the application and accompanying documents to the Council which shall meet to consider the application.

(3) After considering the application, if the Council is satisfied that the applicant for registration is a duly eligible applicant, the Council shall instruct the Registrar to enter the applicant’s name and such other particulars as may be prescribed in the register.

(4) Where the applicant for registration does not appear to the Council to be a duly eligible applicant, the Council shall inform the Registrar and the applicant of its decision and the reasons for such decision.

(5) A person aggrieved by a decision of the Council under subsection (4) may appeal to the Supreme Court against the decision in the manner provided in section 24.

(6) In this section “duly eligible applicant” means an applicant for registration—

- (a) who has satisfactorily completed a course of study that is approved by the Council and has such practical experience as the Council consider sufficient evidence of their competence, knowledge and skill efficiently to practise the profession of optometrist or optician; and
- (b) who is of good character.

[Section 6 subsection (1A) inserted by 2011 : 1 s. 5 effective 1 October 2011; Section 6 amended by 2020 : 47 s. 82 effective 11 December 2020]

OPTOMETRISTS AND OPTICIANS ACT 2008

Period of validity of registration

6A (1) Unless sooner cancelled and subject to subsections (2) and (3), the registration of an optometrist or optician shall have effect for a period of two years from the date of his registration or such shorter period as may be specified in the certificate of registration issued to him.

(2) Subsection (3) applies where a person is registered as an optometrist or optician on a date that falls between the start, and end, of the applicable registration cycle for optometrists or opticians.

(3) Where this subsection applies, the registration of the optometrist or optician may, if the Council so determines appropriate, have effect for such longer period than two years but not exceeding three years as may be specified in the certificate of registration issued to him.

[Section 6A inserted by 2020 : 47 s. 82 effective 11 December 2020]

Registration of additional qualification

7 In any case where a registered person has, since the date of their registration under this Act, been granted any degree, diploma or other qualification, the Registrar shall, upon application made by the registered person in the prescribed form, without charge cause the particulars of the new qualification to be entered in the register.

[Section 7 amended by 2020 : 47 s. 83 effective 11 December 2020]

Re-registration

8 (1) Every person whose name is entered in the register shall apply in the prescribed form for re-registration on the second anniversary of—

- (a) in the case of a person whose re-registration is validated by the Health Professionals (Dental and Optometric) Re-registration Waiver and Validation Act 2015, the date of such re-registration; or
- (b) in the case of a person other than a person referred to in paragraph (a), the date on which his name is first entered in the register,

and shall reapply for registration every two years after the date that they are first re-registered.

(2) The Council shall re-register a person under subsection (1) if it is satisfied that the person—

- (a) continues to meet the requirements of this Act relating to qualifications, professional conduct and experience;
- (b) has, in the two years preceding the date of application for re-registration, complied with the requirements of continuing professional education that are applicable to them;
- (c) has made the application before the expiration of the relevant two year period referred to in subsection (1); and

OPTOMETRISTS AND OPTICIANS ACT 2008

(d) has paid the appropriate fee.

(3) For the purposes of subsection (2), continuing professional education means a programme approved by the Council under section 11.

[Section 8 amended by 2011 : 1 s. 6 effective 1 October 2011; subsections (1)(a) and (b) repealed and substituted by 2015 : 49 s. 5 effective 23 December 2015; Section 8 subsection (2)(d) amended by 2020 : 47 s. 84 effective 11 December 2020]

Proof of registration

9 (1) A certificate signed by the Registrar declaring that a person named in the certificate is, or is not—

- (a) a registered optometrist;
- (b) a registered optician; or
- (c) an optometrist authorised to prescribe therapeutic pharmaceutical agents,

and specifying the date of registration shall be admissible in any proceedings as prima facie evidence of the facts stated in the certificate.

(2) A registered person shall display their certificate in a conspicuous location at their principal place of practice.

[Section 9 subsection (1) amended by 2020 : 47 s. 85 effective 11 December 2020]

Ability to prescribe drugs

10 (1) An optometrist authorised to prescribe therapeutic pharmaceutical agents may—

- (a) prescribe the drugs set out in the Second Schedule for topical application in the treatment of ocular anterior segment disorders; and
- (b) perform, in the removal of superficial foreign bodies from the eye, procedures on body tissue below the dermis or the mucous membrane or in or below the surface of the cornea.

(2) An optometrist authorised to prescribe therapeutic pharmaceutical agents may only perform the activities listed in subsection (1) if the optometrist has—

- (a) successfully completed a 100-hour course approved by the Council of which 40 hours must be in a clinical setting dealing with therapeutic pharmaceutical agents; or
- (b) graduated from an academic programme approved by the Council for this purpose.

(3) The Minister may, after consultation with the Council, amend the Second Schedule by regulation to add or remove a drug or class of drugs by notice in the Gazette.

(4) Regulations made under subsection (3) are subject to the negative resolution procedure.

OPTOMETRISTS AND OPTICIANS ACT 2008

Continuing professional education

11 (1) Every registered person shall complete the prescribed number of hours of continuing professional education during the time period required in section 8(2)(b).

(2) *[Repealed by 2011 : 1 s. 7]*

(3) Every person shall file in their application for registration a report, duly signed by the person, in a form prescribed by the Council, in respect of the person's continuing professional education activities during the previous two calendar years.

(4) For the purpose of this section "continuing professional education" means any programme of training or development of knowledge that the Council may approve for an optometrist or an optometrist who is authorised to prescribe therapeutic pharmaceutical agents or an optician.

[Section 11 amended by 2011 : 1 s. 7 effective 1 October 2011]

Locum tenens

12 (1) Notwithstanding anything in this Act, where it appears to the Council that any registered optometrist or registered optician is, or will be, absent from their practice and that it is desirable or necessary that their duties as an optometrist or optician be carried out for the period during which they are so absent, then the Council may authorise a qualified person (hereinafter referred to as a "locum tenens") to practise as an optometrist or optician in Bermuda for the purpose of discharging those duties.

(2) Subject to the terms of an authorisation, any locum tenens shall have the powers and privileges conferred by this Act upon a registered optometrist or registered optician and shall, for the purposes of this Act, while they are so acting, be deemed to be a registered person.

(3) Before granting an authorisation to practice as a locum tenens, the Council must be satisfied that—

- (a) there is a need for the authorisation; and
- (b) the professional qualifications and general suitability of the locum tenens satisfies that need.

(4) The authorisation shall—

- (a) be in the prescribed form;
- (b) be valid only for a period of three months from the date of its being granted, subject to the power of the Council to extend the period for one further three month period;
- (c) specify the nature and extent of the practice which is permitted; and
- (d) specify such other special conditions or restrictions connected with practising as an optometrist or an optician in Bermuda by the locum tenens as the Council may see fit to impose.

OPTOMETRISTS AND OPTICIANS ACT 2008

(5) An authorization granted under this section shall be revocable by the Council at any time and upon its revocation the authorization shall cease to have any effect.

(6) Any person aggrieved by a refusal of the Council to grant an authorisation under this section or by the revocation by the Council of any such authorization and any locum tenens aggrieved by any term contained in any such authorisation may appeal against such refusal, revocation or term to the Supreme Court in the manner provided in section 24.

(7) Nothing in this section shall derogate or abridge any provision of the Bermuda Immigration and Protection Act 1956.

PART 4

INVESTIGATIONS AND DISCIPLINARY PROCEEDINGS

Code of conduct

13 (1) The Council may prescribe a code of conduct for registered persons which may include what the Council considers proper conduct or professional conduct and the Council shall send a copy of the code of conduct, as amended from time to time, to each registered person at their address on the register.

(2) The Code may contain guides to ethical conduct, standards of practice or scopes of practice.

(3) In exercise of their powers under section 16, the Council shall, subject to subsection (4), be guided by any relevant provision of the Code.

(4) Where an inquiry has been conducted by the Council under section 16, the Council may make a finding of negligence, incompetence or other improper conduct with respect to a person, notwithstanding that the conduct in question is not prohibited by the Code, but they shall not make a finding of improper conduct with respect to the person if that conduct is authorized by the Code.

[Section 13 repealed and replaced by 2011 : 1 s. 8 effective 1 October 2011; Section 13 amended by 2020 : 47 s. 87 effective 11 December 2020]

Optometrists and Opticians Complaints Committee

14 (1) There shall be established, in accordance with the Third Schedule, a committee to be known as the "Optometrists and Opticians Complaints Committee".

(2) The functions of the Committee are—

- (a) to receive and investigate, or cause to be investigated, complaints against any registered person, including any allegation that—
 - (i) the person's registration was improperly obtained;
 - (ii) the person is guilty of professional misconduct;
 - (iii) the person is unfit to be registered;

- (iv) the person is unfit to practise by reason of a conviction of an indictable offence, adverse physical or mental health, or being drug or alcohol impaired in the course of performing professional functions;
 - (b) to investigate, or cause to be inquired into, under section 15, such complaints; and
 - (c) to perform such other functions as may be prescribed.
- (3) The Committee may investigate any complaint based on matters alleged to have occurred—
 - (a) inside or outside Bermuda; or
 - (b) at any time, whether or not the person was a registered person at the time.
- (4) A complaint—
 - (a) shall be in writing;
 - (b) shall be made—
 - (i) by the complainant;
 - (ii) if the complainant is a child or is physically or mentally unable to make the complaint, by a parent, guardian, friend or person acting on behalf of the complainant; or
 - (iii) if the conduct complained of relates to a person who is dead, by their executor or personal representative;
 - (c) shall be addressed to the Committee;
 - (d) shall set out the matters alleged to constitute grounds for disciplinary action to be taken against the registered person who is the subject of the complaint; and
 - (e) may be required by the Committee to be in a form approved by the Committee.
- (5) The Third Schedule has effect as to the appointment and proceedings of the Committee and other matters relating to the Committee.

[Section 14 subsection (2)(b) amended by 2020 : 47 s. 88 effective 11 December 2020]

Investigation of complaints by Committee

- 15 (1) Where a complaint is made under section 14(4), the Committee shall investigate it and determine whether, in their opinion, the complaint—
- (a) is frivolous or vexatious, is made in bad faith, is an abuse of process, or for any other reason ought not to be considered by the Council; or
 - (b) ought to be placed before the Council for its determination.
- (2) If the Committee determines that a complaint ought to be placed before the Council, the Committee—

- (a) shall notify the registered person that a complaint has been made against them and of the matters alleged therein;
- (b) shall forward a copy of the complaint and any accompanying documents or information to the registered person;
- (c) shall request that the registered person show cause in writing, within a specified time after the notice is given, why the matter should not be placed before the Council for determination; and
- (d) may take evidence from any witness on oath or affirmation administered by the Chairperson of the Committee.

(3) If the Committee is satisfied that a complaint arose from a misapprehension on the part of the complainant or a misunderstanding between the parties, the Committee may, before proceeding further with the investigation of the complaint, require the parties to appear before it in order to discuss the matter with a view to clarifying the misapprehension or misunderstanding.

(4) If the Committee concludes that the complaint is frivolous or vexatious, is made in bad faith, is an abuse of process or otherwise ought not to be considered by the Committee, the Committee shall dismiss the complaint and, in the case of a complaint, notify the complainant, together with reasons for such dismissal.

(5) If the Committee concludes that the allegations or evidence against the registered person are sufficiently serious or that for some other reason it is appropriate to refer the matter to the Council the Committee shall, as soon as practicable, place the matter before the Council for determination.

Inquiry into complaint by Council

16 (1) If, pursuant to an investigation under section 15, the Committee places the matter before the Council for determination, the Council shall inquire into the matter.

(2) The Council may take evidence on oath, and for that purpose the Chairperson of the Council may administer an oath.

(3) The Council shall afford the registered person and the Committee every facility—

- (a) to appear before the Council at all stages of the inquiry;
- (b) to be represented by counsel;
- (c) to call or cross-examine witnesses; and
- (d) generally to make a full defence or explanation in the matter.

(4) The Council shall inform the Registrar, of its findings and the Registrar shall inform the registered person.

(5) The registered person shall be entitled to appeal against any such finding to the Supreme Court in the manner provided in section 24.

OPTOMETRISTS AND OPTICIANS ACT 2008

(6) Any proceedings in connection with the holding of an inquiry by the Council in pursuance of this section shall, for the purposes of the provisions of the Criminal Code relating to perjury, be deemed to be judicial proceedings.

(7) If a member of the Council has taken part in an investigation of a disciplinary matter, they shall recuse themselves from an inquiry under this section.

[Section 16 heading deleted and replaced by 2011 : 1 s. 9 effective 1 October 2011; Section 16 amended by 2020 : 47 s. 89 effective 11 December 2020]

Power of Council to obtain information

17 (1) For the purpose of an inquiry under section 16 the Council shall have power by order under the hand of the Chairperson to require any person to attend before the Council and to give evidence on oath or otherwise, and to require the production of documents, so as to elicit all such information as the Council may consider necessary.

(2) A person commits an offence if they—

- (a) fails without reasonable excuse to attend before the Council in compliance with an order under subsection (1);
- (b) when in attendance before the Council refuses to make an oath, or refuses to produce a document, or refuses to give evidence, in compliance with such an order as aforesaid:

Punishment on summary conviction: a fine of \$500.

(3) Notwithstanding subsection (2)(b) a person shall not be punished for refusing to answer any question or to produce any document which the person could not be required to answer or produce before a court of Bermuda, or for failing or refusing to answer any question or produce any document which is not relevant to the matters in issue.

[Section 17 subsection (1) amended by 2020 : 47 s. 90 effective 11 December 2020]

Striking off

18 (1) Where a registered person—

- (a) is convicted either in Bermuda or elsewhere of any offence and as a result of that conviction is sentenced to a term of imprisonment without the option of a fine; or
- (b) is ordered to have their name struck off any register of optometrists or opticians maintained and kept in any place outside Bermuda,

then in any such case—

- (i) it shall be the duty of the registered person to inform the Council of the conviction or striking off; and
- (ii) it shall be the duty of the Council, if it is satisfied as to the truth of any matter specified in paragraphs (a) or (b), and after giving the registered person every opportunity to make such explanation as they may wish to

OPTOMETRISTS AND OPTICIANS ACT 2008

make, to decide as soon as may be whether the name of the optometrist or optician should be struck off the register:

Provided that the name of a registered person shall not be struck off the register on account of their adopting or refraining from adopting the practice of any particular theory of optometry.

(2) Where the Council decides that the name of a registered person should be struck off the register it shall so inform the Registrar and the Registrar shall cause the registered person to be informed by written notice accordingly.

(3) A registered person shall be entitled to appeal against any decision of the Council to strike the person's name off the register to the Supreme Court in the manner provided in section 24.

(4) The Registrar, in any case where the Council decides that the name of a registered person should be struck off the register—

(a) shall, on the tenth day after notice has been given to the registered person in accordance with subsection (2), cause the name of the registered person to be struck off the register, subject to any directions of the Court.

(b) *[Repealed by 2020 : 47 s. 91]*

(5) In either case referred to in subsection (4)(a) or (4)(b) the Registrar—

(a) shall cause the person to be informed by written notice that their name has been struck off the register; and

(b) shall by a notice given as aforesaid require the person to return their certificate of registration within seven days after receiving the notice; and

(c) shall cause a notification of the striking off to be published in the Gazette.

(6) Any registered person who contravenes or fails to comply with subsection (1)(b)(i) or (5)(b) commits an offence against this Act:

Punishment on summary conviction: a fine of \$2,000.

[Section 18 amended by 2020 : 47 s. 91 effective 11 December 2020]

Voluntary removal

19 A registered person may apply to the Council to have their name removed from the register and upon receiving the application the Registrar shall cause their name to be removed from the register.

[Section 19 amended by 2020 : 47 s. 92 effective 11 December 2020]

Suspension

20 (1) Where it appears to the Council that a registered person—

(a) is inefficient or negligent in carrying out their professional functions;

OPTOMETRISTS AND OPTICIANS ACT 2008

- (b) has become incapable of properly carrying out their professional functions by reason of physical or mental infirmity;
- (c) is addicted to alcohol or drugs to an extent which makes them unfit to carry out their professional functions; or
- (d) has ceased for a period of more than two years to practice,

then in any of the foregoing cases the Council, after holding an inquiry into the matter, may suspend the registered person from practice for such period as it thinks fit, or, where the circumstances so require, for an indefinite period.

(2) The provisions of sections 17 and 18—

- (a) which relate to inquiries held by the Council; and
- (b) which relate to notification of the findings and decisions of the Council; and
- (c) which relate to the right of appeal against such findings or decisions of the Council,

shall apply to inquiries held by the Council under this section:

Provided that where a registered person is suspended from practice under this section their name shall not be struck off the register and the person shall not be required to return their certificate of registration.

(3) An optometrist or optician who is suspended from practice under this section shall, unless their name is restored to the register under section 22, be deemed for the purposes of any other Act not to be a registered person.

[Section 20 amended by 2020 : 47 s. 93 effective 11 December 2020]

Removal of name from register

21 (1) Where—

- (a) a registered person is convicted either in Bermuda or elsewhere of any offence which, in the opinion of the Council, renders them unfit to be registered;
- (b) a registered person is found by the Council to be guilty of professional misconduct;
- (c) a registered person fails to complete the continuing professional education requirement referred to in section 11(1);
- (ca) a registered person fails to renew their registration or whose application for renewal is refused;
- (d) the Council is satisfied that the name of a person has been fraudulently entered in the register; or
- (e) the Council is satisfied that a registered person is, by reason of mental disorder or incapacity, incapable of carrying on their profession,

OPTOMETRISTS AND OPTICIANS ACT 2008

the Council may, if it thinks fit, direct that the name of the registered person shall be removed from the register and notify the registered person accordingly.

(2) A direction shall not be given under subsection (1) save after an inquiry in accordance with the regulations.

(3) The Council shall be guided by any relevant statement prepared under section 13 to determine if the name of a registered person should be removed from the register for professional misconduct, but it may hold a person guilty of professional misconduct even if such conduct is not prohibited by the statement.

(4) The Council shall not hold a person guilty of professional misconduct if the Council has stated that it is proper in the statement prepared under section 13.

(5) Any person aggrieved by a direction of the Council under subsection (1) may, at any time within twenty-eight days from the date of receiving notice of the direction, appeal to the Supreme Court in the manner provided in section 24.

(6) The Registrar, in any case where the Council direct that the name of a registered person should be removed from the register, shall on the tenth day after the Registrar has given notice to the registered person of the Council's decision, and subject to any directions of the Court, remove the name of the registered person from the register.

[Section 21 subsection (1)(ca) inserted by 2011 : 1 s. 10 effective 1 October 2011; Section 21 amended by 2020 : 47 s. 94 effective 11 December 2020]

Restoration of name

22 (1) Where the name of a person has been removed from the register under section 19 or 21 the person may, at any time after the expiry of three months from the date of removal, apply to the Council for their name to be restored to the register.

(2) Upon receipt of any application the Council may decide that the person's name be restored to the register having regard to—

- (a) the character of the person;
- (b) their conduct subsequent to their name being removed;
- (c) other circumstances of the case,

(3) The Council may declare it to be a condition of the restoration of the name of a person to the register, that the person apply for registration as though they were a new applicant for registration.

(4) The Council shall inform the Registrar of its decision under subsection (2) and the Registrar shall take such steps as may be necessary to give effect to such decision including—

- (a) informing the registered person accordingly;
- (b) making such entries, deletions or otherwise in the register; and
- (c) forwarding a new certificate of registration to the registered person.

OPTOMETRISTS AND OPTICIANS ACT 2008

(5) Where the Council decides that the name of a person should not be restored to the register, the person may appeal to the Supreme Court in the manner provided in section 24.

[Section 22 subsection (4) amended by 2020 : 47 s. 95 effective 11 December 2020]

Additional disciplinary powers of Council

23 In addition to the powers conferred by sections 18 and 20, after holding an inquiry, the Council may, depending on the nature and seriousness of the offence,—

- (a) impose one or more of the following conditions on the person's registration—
 - (i) a condition restricting the places and times at which the person may provide treatment;
 - (ii) a condition limiting the kind of treatment that the person may provide;
 - (iii) a condition requiring that the person is supervised in the provision of treatment, by a particular person or by another person of a particular class;
 - (iv) any other conditions that the Council thinks fit;
- (b) admonish, warn or censure the person;
- (c) suspend the person's registration;
- (d) disqualify the person from being registered;
- (e) stipulate that any condition, suspension, disqualification or prohibition imposed under this Act is to apply—
 - (i) permanently;
 - (ii) for a specified period;
 - (iii) until the fulfilment of specified conditions; or
 - (iv) until a further determination is made by the Council; or
- (f) stipulate that a determination relating to a person is to have effect at a specified future time and impose conditions as to the conduct of the person or the person's business until that time.

[Section 23 amended by 2020 : 47 s. 96 effective 11 December 2020]

PART 5 MISCELLANEOUS

Appeals

24 (1) Where a person is aggrieved by any decision of the Council in respect of which an appeal is allowed under this Act, they may, within 28 days of receiving any notice

OPTOMETRISTS AND OPTICIANS ACT 2008

communicating that decision to them, appeal to the Supreme Court and the court shall determine any such appeal and may make such order as appears to the court just.

(2) On an appeal under this section, the Supreme Court may make such order in the matter as it thinks proper, including an order as to the costs of the appeal.

(3) An order of the Supreme Court under subsection (2) is final.

(4) The practice and procedure to be followed in relation to an appeal under this section are as prescribed by rules of court.

(5) The Council may appear as respondent on such appeal and, whether they appear at the hearing of the appeal or not, they shall be deemed to be a party to the appeal for the purpose of enabling directions to be given as to the costs or expenses of the appeal.

[Section 24 amended by 2011 : 1 s. 11 effective 1 October 2011; Section 24 amended by 2020 : 47 s. 98 effective 11 December 2020]

Use of titles

25 (1) A registered person shall be entitled to use the respective title of "Registered Optometrist" or "Registered Optician" as the case may be.

(2) Any person who—

(a) takes or uses, whether alone or in conjunction with any other words, the title of registered optometrist or optician when their name is not on the register in respect of these professions; or

(b) takes or uses any name, title, addition or description falsely implying, or otherwise pretends, that their name is on the register,

commits an offence:

and is liable on summary conviction to a fine of \$10,000 or imprisonment for 6 months or to both for a first offence, and a fine of \$20,000 or imprisonment for 1 year or to both for a second or subsequent offence.

[Section 25 amended by 2020 : 47 s. 99 effective 11 December 2020]

False representations

26 Any person who, in connection with any application or other matter falling to be performed under this Act—

(a) makes a statement knowing or having reason to believe it to be false in a material particular; or

(b) produces any certificate, diploma or other document knowing or having reason to believe the same to be false,

commits an offence:

Punishment on summary conviction: a fine of \$5,000.

OPTOMETRISTS AND OPTICIANS ACT 2008

Unlawful practice

27 (1) No person shall—

- (a) practise as an optometrist unless they are a registered optometrist;
- (b) practise as an optician unless they are a registered optician;
- (c) examine the eyes of another person unless they are registered as an optometrist or under the direction of an optometrist;
- (d) manufacture or sell any appliance by prescription designed to remedy or relieve a defect of sight unless they are a registered optometrist or registered optician;
- (e) supply a pharmaceutical prescription designed to relieve, prevent or correct visual or ocular anomalies of the eye unless they are registered as an optometrist authorised to prescribe therapeutic pharmaceutical agents.

(2) Nothing in subsection (1) shall have effect in relation to the practice of medicine or surgery by a registered medical practitioner entitled to practice in Bermuda under the Medical Practitioners Act 1950.

(3) Any person who contravenes subsection (1) commits an offence:

Punishment on summary conviction: a fine of \$5,000 and, in respect of a second or subsequent conviction, a fine of \$10,000.

Annual Report

28 The Council shall submit to the Minister, at such time as the Minister may determine after the end of each year, an annual report concerning such activities of the Council as the Minister may prescribe.

[Section 28 amended by 2020 : 47 s. 100 effective 11 December 2020]

Fees

28A (1) The appropriate fees shall be payable to the Bermuda Health Council.

(2) A person applying to register as an optometrist or optician shall at the time of filing the application for registration in respect of that application pay to the Bermuda Health Council the appropriate fee.

(3) A person applying for re-registration shall not later than every two years after the date when the person's name is first entered in the register, or such longer period as may be applicable pursuant to section 6A(3), pay to the Bermuda Health Council the appropriate fee.

(4) In this section, "appropriate fee" means the fee set forth in the Fourth Schedule.

(5) The Fourth Schedule shall have effect as to fees that are payable under this Act.

[Section 28A inserted by 2020 : 47 s. 101 effective 11 December 2020]

OPTOMETRISTS AND OPTICIANS ACT 2008

Amendment of Fourth Schedule

28B (1) The Minister may by order amend the Fourth Schedule to vary any fee specified therein and add or revoke fees.

(2) An order made by the Minister under subsection (1) shall be subject to the affirmative resolution procedure.

[Section 28B inserted by 2020 : 47 s. 102 effective 11 December 2020]

Regulations and rules

29 (1) The Minister may make regulations implementing and giving effect to this Act, and, without prejudice to the generality of the foregoing provisions, such regulations may—

- (a) prescribe anything which, under this Act, is required or permitted to be prescribed;
- (b) prescribe the procedure to be followed by the Council in the exercise of its powers under section 21;
- (c) prescribe the manner in which any notice required by this Act or the regulations to be served on any person shall be served;
- (d) prescribe the number of hours for continuing professional education for an optometrist or an optometrist who is authorised to prescribe therapeutic pharmaceutical agents or an optician;
- (e) prescribe the manner in which the drugs listed in the Second Schedule are administered and prescribed;
- (f) regulate of the making of applications for registration and provide for the evidence to be produced in support of applications;
- (g) provide for the notification to the Council of any particulars entitling a person to registration; and
- (h) regulate the procedure of the Council including the quorum thereof.

(2) Regulations made under subsection (1) are subject to the negative resolution procedure.

Repeal

30 The Optometrists and Opticians Act 1973 is repealed.

Transitional provisions

31 (1) Any person who is a member of the Council on the coming into operation of this Act shall continue to be a member until the expiration of their term.

(2) Any person whose name appears in the register on the day that the repeal of the Optometrists and Opticians Act 1973 takes effect shall be considered a duly eligible applicant for the purposes of section 6 and shall be entitled to be registered under this Act for the purposes of section 5.

OPTOMETRISTS AND OPTICIANS ACT 2008

Consequential amendments

32 The Government Authorities (Fees) Act 1971 is amended in Part B of the First Schedule by—

- (a) repealing the entry relating to Optometrists and Opticians Council and replacing it with the following—

“Optometrists and Opticians Council- established by section 3 of the Optometrists and Opticians Act 1973 and continued by the Optometrists and Opticians Act 2008”.

- (b) inserting in the proper place in alphabetical order the following—

“Optometrists and Opticians Complaints Committee- established by section 14 of the Optometrists and Opticians Act 2008”.

Commencement

33 This Act comes into operation on such day as the Minister may appoint by notice published in the Gazette.

FIRST SCHEDULE

(section 3)

OPTOMETRISTS AND OPTICIANS COUNCIL

1 A member of the Council shall be appointed for a period of three years beginning on such day as may be determined by the Minister.

2 A member of the Council may resign his office at any time by notice in writing given to the Minister.

3 The Minister may declare the office of a member of the Council vacant if he is satisfied that the member—

- (a) is unable through mental or physical incapacity or absence from Bermuda to perform the functions of his office;
- (b) has failed, without adequate cause, to attend three successive meetings of the Council;
- (c) has been sentenced to imprisonment for the commission of a criminal offence;
- (d) has had his name removed from the register or suspended.

4 (1) A person appointed to fill the place of a member of the Council before the end of the member's term of office shall hold office so long only as the vacating member would have held office.

(2) Where the place of a member of the Council becomes vacant before the end of his term of office and the unexpired portion of his term of office is less than three months, the vacancy need not be filled.

5 A person who has held office as a member of the Council shall be eligible for re-appointment.

6 The Council may act notwithstanding any vacancy in its membership, and no act of the Council shall be deemed to be invalid only by reason of a defect in the appointment of a member thereof.

7 The Council shall meet as often as may be necessary for it to carry out its functions under this Act.

7A At any meeting of the Council three members present shall constitute a quorum, but for matters affecting opticians the member representing opticians must be present.

8 A minute shall be made of every decision of the Council in such form as the Minister may direct.

OPTOMETRISTS AND OPTICIANS ACT 2008

9 (1) Where any matter is before the Council under section 21, a member of the Council may, with the leave of the Chairperson, withdraw on the ground that they are personally acquainted with the facts of the case or for any other reason which the Chairperson deems sufficient and the Chairperson may himself withdraw on any such ground.

(2) Where a member has so withdrawn, the Chairperson may request the Minister to appoint some person, who need not be a practitioner of the profession of optometrist or optician, to be a member of the Council for the purpose of those proceedings, and the Minister may, if he thinks fit, make such an appointment, whereupon the person so appointed shall be deemed to be a member of the Council for such purpose.

10 Every question or matter to be determined by the Council at any meeting shall be decided by a majority of the members present at the meeting but, in the event of an equality of votes, the Chairperson shall have the casting vote.

11 (1) Fees shall be paid to members of the Council in accordance with Part B of the First Schedule to the Government Authorities (Fees) Act 1971.

(2) The attendance of a member at any meeting of the Council shall be certified in such manner as the Minister of Finance may direct.

12 Subject to the foregoing provisions of this Schedule and the regulations, the Council may determine its own procedure.

13 For the purposes of this Schedule a reference to a member or the membership of the Council shall, unless the context requires otherwise, be construed as including the Chairperson.

[First Schedule Title and paragraph 7A inserted by 2011 : 1 s. 12 effective 1 October 2011]

SECOND SCHEDULE

(section 10)

PRESCRIPTION DRUGS

Drugs that may be prescribed by an authorised optometrist:

mydriatics;

cyclopegics;

miotics;

non-steroidal anti-allergy medications;

non-steroidal anti-inflammatory medication;

corticosteroids;

anti-infective medications including steroidal anti- infectives; and

anti-glaucoma medication.

[Second Schedule Title inserted by 2011 : 1 s. 13 effective 1 October 2011]

THIRD SCHEDULE

(section 14)

Optometrists and Opticians Complaints Committee

- 1 The Committee shall consist of three members, of whom—
 - (a) one shall be appointed by the Minister from a list of at least three optometrists in good standing who are nominated by the Council;
 - (b) one shall be appointed by the Minister from a list of at least three opticians in good standing who are nominated by the Council; and
 - (c) one shall be a barrister and attorney who is admitted and enrolled in Bermuda.
- 2 A person who is a member of the Council may not be appointed as a member of the Committee.
- 3 Appointment as a member under paragraph 1 shall be for a term not exceeding three years and a member is eligible for reappointment.
- 4 The Minister may appoint a second person to act as an alternate to a member appointed under paragraph 1.
- 5 An alternate to a member shall be appointed in accordance with the requirements for the appointment of the member, and the term of appointment shall, if not sooner terminated, end at the expiration of the term of the member.
- 6 There shall be a Chairperson of the Committee who shall, subject as hereinafter provided, be appointed annually by the Minister from among the members of the Committee to hold office until the thirty-first day of December of the year for which he was appointed, and who shall be eligible for re-appointment.
- 7 If at any time a person appointed to be the Chairperson ceases to be a member of the Committee, or for any other reason ceases to be the Chairperson, the Minister shall, as soon as may be, appoint from among the members of the Committee another person to be Chairperson in his stead.
- 8 *[Repealed by 2011 : 1 s. 14]*
- 9 Three members of the Committee shall form a quorum at any meeting.
- 9A (1) Where any complaint is before the Committee, a member of the Committee shall advise the Chairperson if they are personally acquainted with the facts of the case and may, with leave of the Chairperson, withdraw on that ground or for any other reason which the Chairperson deems sufficient; and the Chairperson may himself withdraw on any such ground.

OPTOMETRISTS AND OPTICIANS ACT 2008

(2) Where a member has so withdrawn, the Chairperson may request the Minister appoint a member of equal standing as the withdrawn member or some other person, who need not be a registered person, to be a member of the Committee for the purpose of those proceedings, and the Minister may make such an appointment, whereupon the person so appointed shall be deemed to be a member of the Committee for such purpose.

10 *[Repealed by 2011 : 1 s. 14]*

11 Fees shall be paid to members of the Committee in accordance with Part B of the First Schedule to the Government Authorities (Fees) Act 1971.

12 The validity of any act or proceedings of the Committee shall not be affected by any vacancy among the members of the Committee or by any defect in the appointment of a member of the Committee.

13 Subject to this Act, the Committee may regulate its own proceedings.

[Third Schedule amended by 2011 : 1 s. 14 effective 1 October 2011; Third Schedule amended by 2020 : 47 s. 103 effective 11 December 2020]

OPTOMETRISTS AND OPTICIANS ACT 2008

FOURTH SCHEDULE

(section 28A)

FEES

(1)	Applying for registration as an Optometrist or Optician under section 6	\$380
(2)	Applying for authorisation to practise as a locum tenens Optometrist or Optician under section 12	\$75
(3)	Applying for re-registration as an Optometrist or Optician under section 8	\$250
(4)	Fee for late re-registration as an Optometrist or Optician under section 8	\$100
(5)	Requesting a certificate of professional standing regarding an Optometrist or Optician	\$25
(6)	Requesting a duplicate copy of registration certificate after issuance	\$25

[Fourth Schedule inserted by 2020 : 47 s. 104 effective 11 December 2020]

[Assent Date: 23 December 2008]

[Operative Date: 01 October 2009]

[Amended by:

2011 : 1

2015 : 49

2020 : 47]