

14. Section 3.08.08 is revoked.

15. The following paragraph is added at the end of section 3.09.01:

“No dispensing optician may allow a partnership or joint-stock company within which he carries on his professional activities to engage in, by any means whatsoever, advertising that is false, misleading, incomplete or likely to mislead the public.”

16. The following paragraphs are added at the end of section 4.02.01:

“(n) to fail to promptly notify the secretary of the Order where, pursuant to the Bankruptcy and Insolvency Act (R.S.C. 1985, c. B-3), a dispensing optician or the partnership or company within which he carries on professional activities has made an assignment of property for the benefit of his creditors, is the subject of a receiving order, or has made a proposal that has been rejected by his creditors or dismissed or annulled by the court;

(o) to carry on professional activities within, or to have an interest in, a partnership or joint-stock company whose name compromises the dignity of the profession of dispensing optician or with a person who, to the optician’s knowledge, acts in a manner that compromises the dignity of the profession of dispensing optician;

(p) to carry on professional activities within, or to have an interest in, a partnership or company, where a partner, shareholder, director, manager, officer or employee of the partnership or company, has been struck off the roll for more than 3 months or has had his professional permit revoked, unless the partner, shareholder, director, manager, officer or employee

i. ceases to hold a position of director, officer or manager within the company within 15 days of the date on which the mandatory striking off or revocation of permit has become effective;

ii. ceases, if applicable, to attend any shareholder meeting and to exercise his right to vote within 15 days of the date on which the mandatory striking off or revocation of permit has become effective; or

iii. disposes of his voting shares or turns them over to a trustee within 15 days of the date on which the mandatory striking off or revocation of permit has become effective;

(q) to fail to take reasonable measures to put an end to, or prevent the repeated performance of, an act derogatory to the dignity of the profession performed by another person carrying on professional activities within the partnership or company, and that was brought to the dispensing optician’s attention more than 30 days earlier; and

(r) to intimidate a person or to take reprisals or threaten to take reprisals against a person who

i. has reported derogatory conduct or behaviour or intends to do so; or

ii. has taken part or cooperated in an inquiry into derogatory conduct or behaviour or intends to do so.”

17. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.

9501

Gouvernement du Québec

O.C. 1104-2009, 21 October 2009

Professional Code
(R.S.Q., c. C-26)

**Dispensing optician
— Practice of the profession within a partnership
or a joint-stock company**

Regulation respecting the practice of the profession of dispensing optician within a partnership or a joint-stock company

WHEREAS, under paragraph *p* of section 94 of the Professional Code (R.S.Q., c. C-26), the board of directors of a professional order may make a regulation respecting the practice of a profession within a partnership or a joint-stock company;

WHEREAS, under paragraphs *g* and *h* of section 93 of the Professional Code, amended by section 61 of chapter 11 of the Statutes of 2008, the board of directors must then, by regulation, impose on its members who carry on their professional activities within a partnership or joint-stock company the obligation to furnish and maintain coverage, on behalf of the partnership or company, against liabilities of the partnership or company arising from fault in the practice of their profession and fix the conditions and procedure applicable to a declaration made to the order;

WHEREAS the board of directors of the Ordre professionnel des opticiens d'ordonnances du Québec made the Regulation respecting the practice of the profession of dispensing optician within a partnership or a joint-stock company;

WHEREAS, under section 95.3 of the Professional Code, a draft of the Regulation was sent to every member of the Order at least 30 days before being made by the board of directors;

WHEREAS, pursuant to section 95 of the Code, amended by sections 1 and 63 of chapter 11 of the Statutes of 2008 and by section 4 of chapter 16 of the Statutes of 2009, and subject to sections 95.0.1 and 95.2 of the Code, the latter section having been amended by sections 1 and 65 of chapter 11 of the Statutes of 2008, every regulation made by the board of directors of a professional order under the Code or an Act constituting a professional order must be transmitted to the Office des professions du Québec for examination and be submitted, with the recommendation of the Office, to the Government which may approve it with or without amendment;

WHEREAS, pursuant to the first paragraph of section 95.2 of the Professional Code, a regulation made by the board of directors under section 65, 88, 89, 90 or 91, paragraph *a, b, d, e, f, g* or *h* of section 93 or paragraph *a, j, n* or *o* of section 94 of the Code must be transmitted for examination to the Office, which may approve it with or without amendment, and the same applies to any regulation under paragraph *p* of section 94 of the Code if it is not the first regulation made by the board of directors under that paragraph;

WHEREAS, in accordance with sections 10 and 11 of the Regulations Act (R.S.Q., c. R-18.1), a draft of the Regulation respecting the practice of the profession of dispensing optician within a partnership or a joint-stock company was published in Part 2 of the *Gazette officielle du Québec* of 4 February 2009 with a notice that it could be submitted to the Government for approval on the expiry of 45 days following that publication;

WHEREAS, in accordance with section 95 of the Professional Code, the Office has examined the Regulation and made its recommendation;

WHEREAS the Office has approved Division II of the Regulation pertaining to the partnership's or joint-stock company's security, and section 12 pertaining to the declaration;

WHEREAS it is expedient to approve the Regulation without amendment;

IT IS ORDERED, therefore, on the recommendation of the Minister of Justice:

THAT the Regulation respecting the practice of the profession of dispensing optician within a partnership or a joint-stock company, attached to this Order in Council, be approved.

GÉRARD BIBEAU,
Clerk of the Conseil exécutif

Regulation respecting the practice of the profession of dispensing optician within a partnership or a joint-stock company

Professional Code
(R.S.Q., c. C-26, s. 93, pars. *g* and *h* and s. 94, par. *p*;
2008, c. 11, s. 1, pars. 1 and 3 and s. 61, pars. 5 and 6)

DIVISION I GENERAL

1. Dispensing opticians may, subject to the terms, conditions and restrictions established in this Regulation, carry on their professional activities within a limited liability partnership or joint-stock company within the meaning of Chapter VI.3 of the Professional Code (R.S.Q., c. C-26).

2. Dispensing opticians may carry on their professional activities within a partnership or joint-stock company that holds itself out exclusively as a partnership or joint-stock company of dispensing opticians if the following conditions are met:

(1) more than 50% of the units or shares are held

(a) by dispensing opticians;

(b) by a joint-stock company at least 90% of the voting rights attached to the units or shares are held entirely by a dispensing optician; or

(c) by a combination of persons, trusts or other enterprises referred to in subparagraphs *a* and *b*;

(2) a third person may not compel the persons, trusts or other enterprises referred to in subparagraph 1 to redeem the units or shares that it holds in the partnership or company;

(3) more than 50% of the voting rights attached to the partnership units or company shares are held by persons, trusts or other enterprises referred to in subparagraph 1, and the other voting rights, where applicable, are held

(a) by optometrists;

(b) by legal persons, trusts or any other enterprise whose voting rights attached to the units or shares are held entirely by persons referred to in subparagraph *a*; or

(c) by a combination of persons, trusts or other enterprises referred to in subparagraphs *a* and *b*; and

(4) more than 50% of the partners or directors appointed by the partners to manage the affairs of the limited liability partnership and the directors of the board of directors of the joint-stock company are dispensing opticians, and the other persons, where applicable, are optometrists.

Dispensing opticians must ensure that the conditions are listed, as the case may be, in the partnership contract, the articles, the shareholders' agreement or any other document relating to the constitution and operation of the company or partnership.

3. In cases other than those referred to in section 2, dispensing opticians are authorized to carry on professional activities within a partnership or joint-stock company if the following conditions are met:

(1) more than 50% of the units or shares are held

(a) by dispensing opticians or optometrists;

(b) by legal persons, trusts or other enterprises whose voting rights attached to the units or shares are held entirely by one or more persons referred to in subparagraph *a*; or

(c) by a combination of persons, trusts or other enterprises referred to in subparagraphs *a* and *b*;

(2) a third person may not compel the persons, trusts or other enterprises referred to in subparagraph 1 to redeem the units or shares that it holds in the partnership or company;

(3) all the voting rights attached to the partnership units or company shares are held by persons, trusts or other enterprises referred to in subparagraph 1; and

(4) all the partners or directors appointed by the partners to manage the affairs of the limited liability partnership and the directors of the board of directors of the joint-stock company are persons referred to in subparagraph *a* of subparagraph 1.

Dispensing opticians must ensure that the conditions are listed, as the case may be, in the partnership contract, the articles, the shareholders' agreement or any other document relating to the constitution and operation of the company or partnership.

4. Dispensing opticians must at all times ensure that the partnership or joint-stock company allows them to comply with the Professional Code, the Dispensing Opticians Act (R.S.Q., c. O-6) and the regulations made under that Code or that Act.

5. If a dispensing optician becomes aware that a condition set out in this Regulation or in Chapter VI.3 of the Professional Code is no longer met, the dispensing optician must, within 15 days, take the necessary measures to comply, failing which the dispensing optician is no longer authorized to carry on professional activities within the partnership or joint-stock company.

6. The name of the partnership or joint-stock company must not be a number name.

7. Where a dispensing optician carries on professional activities within a joint-stock company, the income resulting from the professional services rendered within and on behalf of the company belongs to the company, unless agreed otherwise.

DIVISION II

SECURITY AGAINST THE PROFESSIONAL FAULT OF PARTNERSHIP OR JOINT-STOCK COMPANY MEMBERS

8. To be authorized to carry on professional activities in accordance with this Regulation, a dispensing optician carrying on professional activities within a partnership or joint-stock company must furnish and maintain security, on behalf of the partnership or company, by means of an insurance or suretyship contract or by joining a group plan contract, against the professional liability of the partnership or company arising from fault on the part of the dispensing optician in carrying on professional activities within the partnership or joint-stock company.

9. The security must include

(1) an undertaking by the insurer or surety to pay in lieu of the partnership or joint-stock company, over and above the amount of the security to be furnished by the dispensing optician pursuant to the Règlement sur l'assurance-responsabilité professionnelle des membres de l'Ordre des opticiens d'ordonnances du Québec, made by Decision dated 9 February 1983, up to the amount of

the security, any sum that the partnership or joint-stock company may be legally bound to pay to third persons on a claim filed during the coverage period and arising from fault on the part of the dispensing optician in the carrying on of professional activities within the partnership or joint-stock company;

(2) an undertaking by the insurer or surety to take up the cause of the partnership or joint-stock company and defend it in any action against it and to pay, in addition to the amounts covered by the security, all legal costs of actions against the partnership or joint-stock company, including the costs of the inquiry and defence and interest on the amount of the security;

(3) an undertaking that the security is not less than \$1,000,000 per claim and \$2,000,000 per year for all claims filed against the partnership or joint-stock company within a 12-month coverage period;

(4) an undertaking by the insurer or surety to give the secretary of the Order a 30-day prior notice before terminating or modifying the insurance or suretyship contract when the modification affects a condition set out in this Regulation; and

(5) an undertaking by the insurer or surety to immediately notify the secretary of the Order when the insurance or suretyship contract is not renewed.

The suretyship contract referred to in section 8 must be with a bank, savings and credit union, trust or insurance company and provide that the surety will provide the coverage in accordance with the conditions of this Regulation and will pay, by waiving the benefit of division and discussion, in lieu of the partnership or joint-stock company up to the amount of the suretyship.

DIVISION III **COMMUNICATION OF INFORMATION**

10. Within 15 days of the continuance of a general partnership as a limited liability partnership or of the activities continued within a joint-stock company, dispensing opticians carrying on professional activities within a general partnership or joint-stock company must publish, in a newspaper distributed in the locality in which the partnership has its place of business, a notice informing its clients, in general terms, of the nature, scope and effects of the change of status of the partnership or joint-stock company, in particular with respect to the dispensing optician's professional liability and that of the partnership or joint-stock company.

11. A dispensing optician who wishes to carry on professional activities within a partnership or joint-stock company must first provide the secretary of the Order with

(1) the declaration referred to in section 12, accompanied by the fees payable prescribed by the board of directors of the Order;

(2) a statement to the effect that the partnership or joint-stock company is covered by security in compliance with Division II;

(3) in the case of a joint-stock company, a copy of the incorporating instrument issued by the competent authority, certifying the existence of the joint-stock company;

(4) written confirmation that the partnership or joint-stock company is registered in Québec;

(5) an undertaking from the partnership or joint-stock company within which the dispensing optician carries on professional activities allowing a person, committee, council or tribunal referred to in section 192 of the Professional Code to require disclosure of and obtain any information listed in section 15 from a person; and

(6) where applicable, a true copy of the declaration required under the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (R.S.Q., c. P-45), stating that the general partnership has become a limited liability partnership.

12. A dispensing optician must make a declaration under professional oath on a form provided by the secretary of the Order that contains the following information:

(1) the dispensing optician's name, member number and status within the partnership or joint-stock company;

(2) the name of the partnership or joint-stock company within which the dispensing optician carries on professional activities and the registration number assigned to it by the enterprise registrar;

(3) the legal form of the partnership or joint-stock company and the fact that the partnership or joint-stock company complies with the conditions set out in section 1 and, where applicable, section 2 or 3;

(4) where a member carries on professional activities within a limited liability partnership, the address of the establishments of the partnership in Québec, specifying the address of the principal establishment, names and home addresses of all the partners, their percentage of units and an indication of their management functions, as the case may be;

(5) where the member carries on professional activities within a joint-stock company, the address of the head office of the company and of its establishments in Québec, the names and home addresses of all the shareholders, their percentage of voting shares and non-voting shares and an indication of their functions of director and officer, as the case may be; and

(6) where applicable, the date on which the general partnership became a limited liability partnership or a joint-stock company.

13. If more than one dispensing optician carries on professional activities within a partnership or joint-stock company, one representative may make a declaration for all the dispensing opticians in the partnership or company.

The representative's declaration is deemed to be each dispensing optician's declaration and each dispensing optician remains responsible for the accuracy of the information provided pursuant to section 12.

The representative must be a dispensing optician who is a partner, director, officer or shareholder of the partnership or company.

14. To retain the right to carry on professional activities within a partnership or joint-stock company, a dispensing optician or representative must

(1) update and provide, before 31 March of each year, the declaration prescribed in section 12; and

(2) promptly notify the secretary of the Order of any change in the security prescribed in Division II or in the information given in the declaration prescribed in section 12 that might violate the conditions set out in sections 2 and 3.

DIVISION IV INFORMATION ACCESSIBILITY

15. The information that may be required from a partnership or joint-stock company pursuant to paragraph 5 of section 11 are as follows:

(1) if the dispensing optician carries on professional activities within a limited liability partnership,

(a) the partnership contract and amendments;

(b) the declaration of registration of the partnership and any update;

(c) the names and home addresses of the partnership's principal officers; and

(d) an up-to-date register of the partners;

(2) if the dispensing optician carries on professional activities within a joint-stock company,

(a) an up-to-date register of the articles and by-laws;

(b) an up-to-date register of securities;

(c) an up-to-date register of the shareholders;

(d) an up-to-date register of the directors;

(e) any shareholders' agreement and voting agreement, and amendments;

(f) any agreement concerning a stock option with voting rights or concerning any other right, even if conditional, granted to a person to be issued such stock;

(g) the declaration of registration of the joint-stock company and any update; and

(h) the names and home addresses of the company's principal officers.

DIVISION V TRANSITIONAL AND FINAL

16. A dispensing optician who carries on professional activities within a joint-stock company constituted before the date of coming into force of this Regulation must comply with the requirements of this Regulation not later than one year following that date.

17. This Regulation comes into force on the fifteenth day following the date of its publication in the *Gazette officielle du Québec*.