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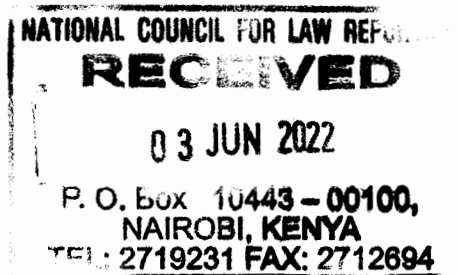
KENYA GAZETTE SUPPLEMENT

NATIONAL ASSEMBLY BILLS, 2022

NAIROBI, 5th April, 2022

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THE OPTICIANS BILL, 2022

A Bill for

AN ACT of Parliament to make provision for the training, registration and licensing of optometrists and dispensing opticians and facilities offering optical services, to regulate their practice, to provide for the establishment, powers and functions of the Opticians Council of Kenya; and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Optometrists and Opticians Act, 2022, and shall come into force on the fourteenth day after publication in the *Gazette*.

Short title and commencement.

2. In this Act, except where the context otherwise requires—

Interpretation.

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to health;

“Council” means the Kenya Opticians Council established by section 3;

“Chairperson” means the Chairperson of the Council;

“dispensing optician” means a person engaged in the fitting and supply of optical devices;

“optical devices” means any optical systems which is used in conjunction with the eye and shall include and not be limited to spectacles or frames, contact lenses, prescription ophthalmic lenses, prosthetic ocular shells, low vision aids to correct sight and or anomalies of binocular vision and also telescopes or microscopes to magnify and object;

“optician” means a person who is a holder of a valid certificate under this Act, and is entitled to practice as a dispensing optician;

“optometrist and ophthalmic opticians” mean a registered healthcare professional and primary provider of vision care, which includes refraction and dispensing,

detection and management of disease in the eye and the rehabilitation of conditions of the visual system based on their scope of studies;

“register” means the register of dispensing opticians and optometrists;

“Registrar” means the Registrar appointed under section 10.

PART II—ESTABLISHMENT OF THE OPTICIANS COUNCIL OF KENYA

3. (1) There is established a Council to be known as the Opticians Council of Kenya.

Establishment of the Council.

(2) The Council shall be a body corporate with perpetual succession and a seal and shall in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of both movable and immovable property;
- (c) borrowing and lending money;
- (d) entering into accounts;
- (e) doing or performing all such other acts necessary for the proper performance of its functions under this Act, which may be lawfully done or performed by a body corporate.

4. (1) The object and purpose for which the Council is established is to exercise supervision and control over the training and practice of optometry and the practice of dispensing opticians in Kenya and to advise the Government in relation to all aspects thereof.

Functions of the Council.

(2) Without prejudice to the generality of subsection (1) the Council shall—

- (a) prescribe the minimum educational requirements for persons wishing to be registered as optometrists or a dispensing opticians under this Act;
- (b) consider and approve the qualifications of optometrists or dispensing opticians for the purposes of registration under this Act;

- (c) cause to be maintained a register of all persons registered as optometrists or dispensing opticians in accordance with this Act;
- (d) prescribe and conduct examinations for purposes of registration under this Act;
- (e) license the private practice of optometrists or dispensing opticians;
- (f) establish and maintain a professional code of conduct for all persons registered under this Act;
- (g) regulate the professional conduct of registered optometrists or opticians and take such disciplinary measures as may be appropriate to maintain proper professional standards;
- (h) establish, approve and accredit programs for continuing professional educational programs;
- (i) cause to be published in the *Kenya Gazette* every calendar year such or such other period as may be prescribed, the names of all registered optometrists and opticians; and
- (j) perform such other function as may be provided for in this Act or any other written law.

5. (1) The Council shall have all powers necessary for the proper performance of its functions under this Act.

Powers of the Council.

(2) Without prejudice to the generality of subsection (1), the Board shall have power to—

- (a) control, supervise and administer its assets in such manner and for such purpose as best promotes the purpose for which the Board is established;
- (b) determine the provisions to be made for its capital and recurrent expenditure and for its reserves;
- (c) receive any grants, gifts, donations or endowments and make legitimate disbursements there from;
- (d) enter into association with other bodies or organizations within or outside Kenya as may be desirable or appropriate in furtherance of the purpose for which the Council is established;

- (e) open a banking account or banking accounts for the funds of the Council; and
- (f) invest any of its funds not immediately required for its purposes in the manner provided in section 33.

6. (1) The Council shall consist of—

Composition of
the Council.

- (a) a Chairperson appointed by the Cabinet Secretary from amongst the persons nominated under paragraph (e);
- (b) the Principal Secretary responsible for health or a designated representative not below the level of Chief Optometrist or Optician;
- (c) the Director-General for health or a designated representative or a designated representative not below the level of a Deputy Director;
- (d) two persons appointed by the Cabinet Secretary as follows—
 - (i) director of optometry services or a registered optician or optometrist of not less than five years' experience;
 - (ii) one person who shall be a representative of universities or training institutions in Kenya which are registered to train opticians and optometrists.
 - (iii) a representative of the governing organ of the Society of Optometrists in Kenya.
- (e) One person nominated by the optometrists Association of Kenya;
- (f) One person nominated by the Kenya Association of Opticians;
- (g) the Registrar who shall be the Secretary to the Council.

(2) No person shall be appointed as Chairperson of the Board unless such person is—

- (a) registered under this Act as an Optometrists or a dispensing optician; and

- (b) an optometrist or dispensing optician of not less than ten years standing.

7. (1) The conduct and regulation of the business and affairs of the Council shall be as provided in the Schedule.

Conduct of business and affairs of the Council.

(2) Except as provided in the Schedule, the Council may regulate its own procedure.

8. The Council may, by resolution generally or in any particular case, delegate to any committee of the Council the exercise of any of the powers or the performance of any of the functions or duties of the Council under this Act.

Delegation by the Council.

9. The Council shall pay its members such allowances for expenses as may be determined by the Cabinet Secretary upon the advice of the Salaries and Remuneration Commission.

Remuneration of Council members.

10. (1) There shall be Registrar who shall be appointed by the Council and whose terms and conditions of service shall be determined by the Council upon the advice of the Salaries and Remuneration Commission.

The Registrar.

(2) No person shall be appointed under this section unless such person has—

- (a) a university degree from a recognized university;
- (b) at least five year's management qualifications working experience.

(3) The Registrar shall—

- (a) be an ex-officio member of the Council and shall have no voting rights at any meeting of the Council;
- (b) hold office for a period of five years on such terms and conditions of employment as the Council may determine and shall be eligible for re-appointment for one further term;
- (c) subject to the directions of the Council, be responsible for the day to day management of the affairs and staff of the Council;
- (d) perform such other functions as may be provided for under this Act;

11. The Council may—

Staff of the Council.

- (a) establish a secretariat headed by the registrar;
- (b) appoint such officers and other staff as may be necessary for the proper discharge of its functions under this Act, upon such terms and conditions of service as the Council may determine upon the advice of the Salaries and Remuneration Commission;
- (c) engage experts and resource persons whenever necessary.

12. (1) No matter or thing done by a member of the Council or agent of the Council shall, if the matter or thing is done *bona fide* for executing the functions, powers and duties of the Council under this Act, render the member or agent or any person acting on their directions personally liable to any action, claim or demand whatsoever.

Protection from liability.

(2) The provisions of subsection (1) shall not relieve the Council of the liability, to pay compensation or damages to any person for any injury to him, his property or any of his interest caused by the exercise of any power conferred by this Act, or by the failure, whether wholly or partially, of any works.

**PART III—TRAINING AND REGISTRATION OF
OPTOMETRISTS AND DISPENSING OPTICIANS**

13. (1) No person being in charge of a training institution in Kenya shall—

Approved training institutions.

- (a) admit persons for training with a view to qualifying for registration under this Act;
- (b) conduct a course of training or administer the examination prescribed for the purposes of registration under this Act; or
- (c) issue any document or statement implying that the holder has undergone a course of training or passed the examinations prescribed by the Council for purposes of registration,

unless such institution is established or accredited under the Universities Act, 2012 or the Technical and Vocational Education Act, 2013 or is approved and

No. 42 of 2012.
No. 29 of 2013.

accredited by the Council for that purposes in accordance with this Act.

(2) A person who contravenes any of the provisions of subsection (1) commits an offence and shall, on conviction, be liable to a fine not exceeding five million shillings, or to imprisonment for a term of not less than two years or to both.

(3) The Council shall prescribe the procedure for approving training institutions other than those established or accredited under the Universities Act, 2012 for the purposes of this section.

No. 42 of 2012.

(4) The Council shall publish a list of the training institutions approved under this Act.

14. (1) Subject to the provisions of this section, a person shall be eligible for registration under this Act as an optometrist or dispensing optician if the person—

Persons eligible to be registered.

- (a) is the holder of a qualification which is recognized by the Council;
- (b) after obtaining that qualification, has engaged in training employment under the supervision of a registered optometrist or dispensing optician for such period, being not less than one year, as the Council may approve;
- (c) satisfies the Council that while engaged in training employment as specified in paragraph (b), has acquired sufficient knowledge of, and experience in the practice of optometry or that of dispensing opticians.

(2) A person who is the holder of a qualification from an accredited institution outside Kenya shall be eligible for registration under this Act as an optometrist or a dispensing optician if the person—

- (a) is the holder of a qualification obtained from an institution that is accredited and recognized by the regulating authority responsible for the registration of optometrists and opticians in the country of study;
- (b) has engaged in optometry and dispensing

opticians practice under the supervision of an optometrist or dispensing opticians registered by the Council for such period, being not less than twelve months, as the board may approve; and

- (c) meets the requirements for a course leading to a qualification in optometry and dispensing opticians as may be determined by the Council from time to time pursuant to section 4(2)(a).

(3) Where the Council finds that a person has not completed all courses prescribed pursuant to section 4 (2) (a), the Council shall require that person to—

- (a) attend such interview as may be appropriate;
- (b) undergo an oral or written examination or both; and
- (c) take the courses required in an institution recognized and approved by the Board prior to engaging in supervised practice.

(4) Despite subsection (3), all qualifications issued by a university or institution accredited under the Universities Act, 2012 or the Technical and Vocational Education Training Act, 2013 shall be recognized by the Council.

No. 42 of 2012.
No. 29 of 2013

(5) The Council may, after assessing the suitability for registration of a person under subsection (1) and (2), direct that before registration, the person shall undergo such further period of training or pass such examination in an institution accredited under the Universities Act, 2012 or Technical and Vocational Education and Training Act, 2013.

No. 42 of 2012.
No. 29 of 2013

(6) The Council shall not authorize the registration of a person unless it is satisfied—

- (a) that the requirements of subsection (1) or (2) have been fulfilled; or
- (b) in the case of a person referred to in subsection (3) that the requirements of subsection (5) have been fulfilled and that the person has undergone any further period of training or passed any examination specified by the Council.

(7) The Council may, where it considers it expedient, delegate the assessment of suitability for registration under subsection (2) to a committee of the Council which shall, after making the assessment, make recommendations to the Council.

15. (1) A person trained in an approved institution in Kenya wishing to be registered under this Act shall apply for registration to the Council.

Registration.

(2) An applicant for registration who is a graduate of a foreign school of optometry or dispensing opticians shall, furnish evidence satisfactory to the Council that the applicant—

- (a) has completed a course of study in optometry and dispensing opticians which is substantially equivalent to that provided in an accredited program approved by the Council;
- (b) is a graduate of an institution, college or university recognized by the Council.
- (c) is registered or is eligible for registration in the county of study;
- (d) has engaged in optometry or dispensing opticians practice under the supervision of a radiographer registered by the Council for such period, being not less than twelve months, as the Council may approve; and
- (e) has successfully completed a written examination approved by the Council.

(3) An application for registration under this section shall be in the prescribed form and shall be accompanied by the prescribed fee.

(4) The Council shall register every qualified person by such particulars as the Council may prescribe, in the appropriate register kept for that purpose pursuant to section

(5) Every person issued registered under subsection (4) shall be issued with a certificate or registration.

16. (1) The Registrar shall maintain a register for persons registered under this Act.

Register.

(3) The Registrar shall—

- (a) not later than the thirty first of March in every year, publish in the Gazette the—
 - (i) names and addresses;
 - (ii) qualifications; and
 - (iii) categories of all registered optometrists and dispensing opticians;
- (b) subject to the directions of the Council, cause to be published any amendments or deletion from the registers.

(4) Every registered optometrist or dispensing optician shall notify the Registrar of any change in the registered address.

(5) The Registrar may, with the consent of the person concerned remove from the register, the name of a person who has ceased to practice.

(6) A name removed from the register under subsection (5) may, at the request of person concerned, on the approval of the Council and on payment of the prescribed fee, be reinstated on the register by the Registrar.

(7) Any person may inspect the register and any documents relating to any entry therein, and may obtain from the Registrar, a copy of, or an extract from the registers on payment of the prescribed fee.

17. (1) The Registrar shall remove from the register—

- (a) the names of all deceased persons;
- (b) the name of any person removed from the register under the Act;
- (c) any entries fraudulently or erroneously entered in the register.

Removal of names from the register.

(2) The Registrar shall, as soon as reasonably practicable, cause the name and address of every person whose name is removed from the Register under this section, to be published in the *Gazette*.

PART IV—PROVISIONS RELATING TO PRIVATE PRACTICE

18. (1) Subject to this Act, no person shall engage in private practice as an optometrist or a dispensing optician unless the person holds a valid practicing certificate issued under this Act.

Qualifications for Private Practice.

(2) For the purposes of this Act, a person shall be deemed to engage in private practice if the person practices as an optometrist or a dispensing optician—

- (a)** on the person's own account and is entitled to receive the entire amount of all fees and charges earned for the person's own financial benefit;
- (b)** in partnership with others and is entitled to receive a share of the profits earned by such partnership and is liable to bear a share of any losses incurred by such partnership, but no person shall be deemed to engage in private practice where he is employed—
 - (i)** by the Government or any other public body;
 - (ii)** by a state corporation as defined by the State Corporations Act;
 - (iii)** by any person or partnership engaged in his profession where all fees and charges earned by him are to the benefit of his employer, notwithstanding that he is engaged in his professional capacity as an optometrist or a dispensing optician.

Cap 446.

(3) A person who engages in private practice as an optometrist or a dispensing optician contrary to the provisions of this section commits an offence and shall, on conviction, be liable to a fine of or not exceeding more than one million shillings, or to imprisonment for a term of not less than one year, or to both.

19. (1) An application for a practicing certificate shall be made to the Registrar in such form as may be prescribed.

Application for practicing certificate.

(2) Every application under this section shall be accompanied by—

- (a) the prescribed fee;
- (b) evidence that the applicant has complied with the prescribed continuous professional development programmes.

(3) The Council shall, where—

- (a) the applicant satisfies the requirements of subsection (2);
- (b) is duly registered under this Act; and
- (c) is not for the time being suspended from practice,

Within sixty days of receipt by the Council of the application, issue to the applicant a practicing certificate in the prescribed form.

(4) The Registrar shall keep one copy of every application delivered to him under this section.

20. (1) Every practicing certificate shall—

Validity of practicing certificate.

- (a) bear the date on which it is issued and shall have effect from that day;

(2) A practicing certificate issued under this section shall be valid from the date it is issued and shall expire on the thirty first of December of the year it is issued.

(4) Where the name of the optometrist or the dispensing optician is removed or struck off the register, the practicing certificate, if any, shall expire forthwith.

21. (1) An optometrist or a dispensing optician issued with a practicing certificate may apply for renewal of the certificate in the prescribed form at least thirty days before the date of expiry thereof.

Renewal of practicing certificate.

PART V—DISCIPLINARY PROVISIONS

22. (1) There is established a Disciplinary Committee of the Council which shall consist of—

Disciplinary Committee.

- (a) the Chairperson of the Optometrist Association of Kenya who shall be Chairperson of the Committee;

- (b) the Principal Secretary in the Ministry responsible for health or his designated representative;
- (c) one optometrist and one dispensing optician not being members of the Council competitively and transparently appointed by the Cabinet Secretary of whom—
 - (i) one shall be in the public service;
 - (ii) one shall be from the private practice;
- (d) the Attorney-General or a designated representative; and
- (e) the Registrar who shall be an *ex-officio* member and the secretary of the Committee.

(2) The quorum of the Committee shall be three members.

(3) A member of the Disciplinary Committee shall hold office for three years and shall be eligible for re-appointment for one further term of office.

(4) The Council shall provide the Disciplinary Committee with such facilities and resources as are necessary to enable it to competently discharge its functions.

(5) The Council shall pay to its members such remuneration, fees or allowances for expenses as it may determine, in consultation with the Cabinet Secretary.

23. The Council may refer a matter to the Disciplinary Committee if it has reason to believe that a person registered under this Act has been, either before or after he was registered—

Reference of matters to the Disciplinary Committee.

- (a) convicted of an offence punishable by imprisonment for more than six months, the commission of which in the opinion of the Council, has dishonoured him in the public estimation; or
- (b) guilty of negligence or professional misconduct in respect of his or her profession; or

- (c) guilty of impropriety or misconduct in respect of his or her profession.

24. The functions of the Committee shall be to inquire into any matter referred to it by the Council and to make its recommendations thereon to the Council.

Functions of the Committee.

25. (1) Upon an inquiry by the Committee, the optometrist or optician subject to the inquiry shall be afforded an opportunity to be heard either in person or through an advocate.

Procedure of the Committee.

(2) For the purpose of proceedings at any inquiry by the Committee, the Committee may administer oaths or affirmations and may, subject to any rules made under section 39, enforce the attendance of persons as witnesses and the production of any books or other documents relevant to the inquiry.

(3) The Committee shall, subject to any rules made under this Act, have power to regulate its own procedure in any disciplinary proceedings.

26. (1) Where on the recommendations of the Committee the Council is satisfied that an optometrist and a dispensing optician is in breach of any of the terms or conditions prescribed by the Council under section 25, the Council may—

Disciplinary measures.

- (a) impose a fine which the Council deems appropriate in the circumstances;
- (b) issue the optometrist or the dispensing optician with a letter of admonishment;
- (c) suspend the registration certificate of the optometrist or the dispensing opticians for a specified period not less than three months but not exceeding twelve months;
- (d) withdraw or cancel the practicing certificate of the optometrist or the dispensing optician for a period not less than twelve months but not exceeding three years; or
- (e) remove the name of the optometrist or that of the dispensing optician from the register.

(2) The Council may order an optometrist or the dispensing optician to reimburse costs and expenses incurred in connection with a disciplinary hearing and such costs shall be a civil debt recoverable by the Council.

(3) Where, after the hearing in disciplinary proceedings under this Act the Committee recommends to the Council that an optometrist or a dispensing optician is unfit to practice as a result of ill-health, the Council may, if satisfied with the Committee's recommendations, withdraw the certificate of registration or practising certificate of the optometrist or the certificate of the dispensing optician until such time as the Council is satisfied that the optometrist or the dispensing optician is fully recovered to resume his duties.

(4) An optometrist or a dispensing optician who has been suspended from practice or whose license to practice has been withdrawn or cancelled shall, from the date of the suspension, withdrawal or cancellation, surrender his registration and practicing certificates and annual license to the Registrar.

(5) An optometrist or a dispensing optician who refuses or fails to surrender his practising licence or certificates to the Registrar on request shall be guilty of professional misconduct and liable to a fine of not less than twenty thousand shillings by the Council.

(6) An optometrist or a dispensing optician who is aggrieved by the decision of the Council in the exercise of its powers under this section may, within sixty days from the date of the decision of the Council, appeal to the High Court.

27. (1) An optometrist or a dispensing optician who has been suspended from practicing may appeal to the Council for the lifting of the suspension any time before the expiry thereof.

Lifting
suspension.

(2) Where the Council is satisfied that the suspension of the optometrist or a dispensing optician should be lifted, the Council shall, upon the receipt of the prescribed fee, lift the suspension and restore to the optometrist or the dispensing optician, his registration and practicing certificates and his annual license.

28. (1) An optometrist or a dispensing optician whose name has been removed from the register may, after the expiry of a period of three years from the date of such removal, appeal to the Council for restoration of his name in the register.

Restoration of the name in register.

(2) The Council may, after considering the appeal made under subsection (1), cause the name of the applicant to be restored in the appropriate register, upon payment of the prescribed fee.

PART VI—FINANCIAL PROVISIONS

29. (1) The funds of the Council shall comprise of—

Funds of the Council.

- (a) grants, gifts or donations that the Council may receive as a result of public and private appeal from local and international donor agencies for the purposes of carrying out its functions;
- (b) such fees, monies or assets as may accrue to or vest in the Council in the course of the exercise of its powers or the performance of its functions under this Act or under any written law; and
- (c) all monies from any other lawful source provided for or donated or lent to the Council.

(2) The funds of the Council referred to in subsection (1) and its balances at the close of each financial year shall not be paid into the Consolidated Fund but shall be retained by the Council for the purposes for which the Council is established.

(3) Despite this section, the Council shall not draw funding from the consolidated fund.

30. The financial year of the Council shall be the period of twelve months ending on the thirtieth June in each year.

Financial year.

31. (1) At least three months before the commencement of each financial year, the Council shall cause to be prepared estimates of revenue and expenditure of the Council for the financial year.

Annual estimates.

(2) The annual estimates shall make provisions for all the estimated expenditure of the Council for the financial year concerned and in particular shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Council;
- (b) the payments of allowances and any other emoluments to the members of the Council;
- (c) the payment of pensions, gratuities and other charges in respect of retirement benefits of the staff of the Council;
- (d) the proper maintenance of buildings, other equipment and other property and grounds of the Council;
- (e) the acquisition, maintenance, repair and replacement of the equipment and other movable or immovable property of the Council; and
- (f) the creation of such reserve funds to meet future or contingent liabilities in respect of retirement benefits, where applicable, insurance or replacement of buildings or equipment, or in respect of such other matter as the Council may deem appropriate.

(3) The annual estimates shall be approved by the Council before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and after the approval, the Council shall not increase the annual estimates without the consent of the Cabinet Secretary.

32. (1) The Council shall cause to be kept all proper books and records of accounts relating to the income, expenditure, assets and liabilities of the Council.

Accounts and
Audit.

(2) Within a period of four months the end of a financial year, the Council shall submit to the Auditor-General or to an auditor appointed under this section, the accounts of the Council together with—

- (a) a statement of income and expenditure of the Council during that year; and
- (b) a balance sheet of the Council on the last day of that year.

(3) The accounts of the Council shall be audited and reported upon in accordance with the Public Audit Act, 2003.

No. 12 of 2003.

33. The Council may invest any funds of the Council in securities, in which for the time being trustees may by law invest trust funds, or any other securities or banks which Treasury may, from time to time, approve for that purpose.

Investment of funds.

34. (1) The Council shall, within three months after the end of each financial year, prepare and submit to the Cabinet Secretary an annual report of the operations of the Council for the immediate preceding year.

Report of the Council.

(2) The Cabinet Secretary shall cause the annual report to be laid before the National Assembly within three months of the date the National Assembly next sits.

PART VII—MISCELLANEOUS PROVISIONS

35. (1) A certificate under the seal of the Council to the effect that a person is or was at any date registered under this Act shall be conclusive evidence of the facts so stated.

Certificates.

(2) All certificates under the seal of the Council shall remain the property of the Council.

(3) A person whose name is removed from the register under Section 26 or in the case of a deceased person, the legal representative shall, within thirty days of the publication of such removal, surrender the certificate of registration of that person to the Council.

(4) A person who—

- (a) destroys or defaces a certificate of registration;
- (b) without reasonable excuse, is in possession of a certificate or registration not issued to the person; or
- (c) fails to surrender a certificate of registration under subsection (3),

commits an offence and shall, on conviction, be liable to a fine of not less than thirty thousand shillings, or to imprisonment for a term not exceeding three months, or to both,

(5) A person who is in possession of a certificate of registration not issued to him, or fails to surrender such certificate under subsection (4) commits an offence and

shall, on conviction, be liable to a fine not less than thirty thousand shillings, or to imprisonment for a term not exceeding three months, or to both.

36. (1) any act or omission which is an offence under this Act or any rules made hereunder shall, if done by a body corporate, be deemed to be an offence committed by every director, secretary or manager of the body corporate unless it is proved that the offence was committed without their consent or connivance and that he exercised all such diligence to prevent the commission of the offence as they ought to have exercised having regard to the nature of their functions and the circumstances of the case.

Offences by partnership or bodies corporate.

(2) If an offence under this Act or any rule made hereunder is committed by a partner in a firm, every person who, at the time of the commission of the offence, was a partner in that firm, or was purporting to act in that office shall be deemed to have committed the offence unless there is proof that the offence was committed without the consent or connivance of the that he exercised all such diligence to prevent the commission of the offence as he ought to have exercised having regard to the nature of the persons functions and the circumstances of the case

37. (1) No person shall practice as an optometrist or a dispensing optician in any institution or in any other place in Kenya unless that person is registered under this Act.

Offences relating to registration.

(2) A person who contravenes the provisions of subsection (1) commits an offence and shall, on conviction, be liable to a fine not more than five hundred thousand shillings, or to imprisonment for a term not less than twelve months, or to both.

(3) No person shall, while in charge of any institution or any other health organization in Kenya allow a person who is not registered under this Act to practice as an optometrist or a dispensing optician in the institution.

(4) A person who contravenes the provisions of subsection (3) commits an offence and shall, on conviction, be liable to a fine not exceeding five hundred thousand shillings for a term of not less than two years or to both.

(5) Any person who, in an application for registration, wilfully makes a false or misleading statement or presents a false certificate, commits an offence and shall, on conviction be liable to a fine not exceeding five hundred thousand shillings, or to imprisonment for a term of not less than one year, or to both.

38. A person convicted of an offence under this Act for which no penalty is provided shall, on conviction, be liable to a fine not exceeding thirty thousand shillings or to imprisonment for a term not exceeding three months, or to both. General penalty.

PART VIII—PROVISIONS ON DELEGATED POWERS

39. (1) The Cabinet Secretary shall make rules, in consultation with the Council generally for the better carrying into effect of any of the provisions under this Act. Rules.

(2) Without prejudice to the foregoing, rules made under this section may provide for the—

- (a) prescribing anything required to be prescribed under this Act;
- (b) form and method of keeping the registers of the Board and other records required under this Act;
- (c) conditions under which training institutions other than those established or accredited under the Universities Act, 2012 may be approved; No. 42 of 2012.
- (d) course content and examination for optometrist or optician for purposes of registration under this Act;
- (e) the terms and conditions of professional practice of registered optometrist and opticians;
- (f) the continuous professional programmes to be undertaken by registered optometrist or optician for purposes of taking out the annual practicing certificate;
- (g) the forms and fees for the purposes of this Act;
- (h) the form and method of conducting any inspection, assessment, evaluation, examination or regulations required under this Act;

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- (i) prescribe the terms and conditions of the practice of an optometrist and optician engaged in private practice, the services to be rendered by an optometrist or opticians in private practice, and the employment of an optometrist or optician in private institutions;
 - (j) any other matter may be related to optometry practice in Kenya.

SCHEDULE (s.7(2))**PROVISIONS AS TO THE CONDUCT OF THE
BUSINESS AND AFFAIRS OF THE COUNCIL**

1. The Chairperson or a member of the Council other than ex-officio members shall, subject to the provisions of this Schedule, hold office for a period of three years, on such terms and conditions as may be specified in the instrument of appointment, but shall be eligible for re-appointment for one further term. Tenure of office.

2. (1) The Council shall meet at least once every quarter and not more than three months shall elapse between one meeting and the next meeting. Meetings.

(2) Notwithstanding subparagraph (1), the Chairperson may, and upon requisition in writing by at least five members convene a special meeting of the Council at any time for the transaction of the business of the Council.

(3) Unless three quarters of the total members of the Council otherwise agree, at least fourteen days' notice in writing of a meeting shall be given to every member of the Council.

(4) The quorum for the conduct of the business of the Council shall be half of the total members including the Chairperson or the person presiding as the case may be.

(5) In the absence of the Chairperson, the members present shall elect one of their number to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(6) Unless a unanimous decision is reached. A decision on any matter before the Council shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(7) Subject to subparagraph (6), no proceedings of the Council shall be invalid by reason only of a vacancy among the members thereof.

(8) Subject the provisions of this Schedule, the Council may determine its own procedure and the

procedure for any committee of the Council and for the attendance of other persons at its meetings any make standing orders in respect thereof.

3. (1) A member other than an ex-officio member Vacation of office. may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary;
- (b) be removed from office by the Cabinet Secretary on recommendation of the Council, if the member—
 - (i) has been absent from three consecutive meetings of the Council without its permission;
 - (ii) is convicted of a criminal offence that amounts to a felony in Kenya;
 - (iii) is incapacitated by prolonged physical or mental illness for a period exceeding six months;
 - (iv) is otherwise unable or unfit to discharge his functions.

4. (1) Subject to subparagraph (2), the quorum of the meeting shall be two thirds of the members. Quorum.

(2) The quorum of the meeting shall not be less than five members.

(3) A decision of the Council shall not be invalid by reason only of a vacancy among the members thereof.

5. (1) If a member who has a personal or fiduciary Conflict of interest. interest in any matter before the Council and is present at a meeting of the Council or any committee at which such a matter is the subject of consideration, that person shall as soon as is practicable after the commencement of the meeting, declare such interest and shall not take part in any consideration or discussion of, or vote on any question relating to the matter.

(2) A disclosure of interest made under subparagraph (1) shall be recorded and constitute the minutes of the meeting at which it is made.

(3) A member or staff of the Council shall not engage in any business or trade with the Council.

(4) A member of the Council who contravenes subparagraph (1) commits an offence and shall be liable to a fine not exceeding two hundred thousand shillings.

6. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal may be entered into or executed on behalf of the Council by any person generally or specially authorized by the Council for that purpose.

Contracts and instruments.

7. (1) The affixing of the common seal of the Council shall be authenticated by the signature of the Chairperson and the Registrar and any document not required by law to be made under seal and all decisions of the Council may be authenticated by the signatures of the Chairperson and the Registrar.

Common seal.

(2) The Council shall, by resolution in the absence of either the Chairperson or the Registrar in any particular matter, nominate one member to authenticate the seal of the Council on behalf of either the Chairperson or the Registrar.

MEMORANDUM OF OBJECTS AND REASONS

Statement of Objects and Reasons for the Bill

The Principal object of this Bill is to regulate the practice of optometry by providing a legislative framework for the training, registration and licensing of optometrists and dispensing opticians.

Part I of the Bill provides for preliminary provisions including the title of the Bill and the interpretation of terms used in the proposed Act.

Part II of the Bill provides for the establishment of the Council of Optometrist and Opticians.

Clauses 3 to 11 of the Bill provides for the establishment, composition, functions and powers of the Council of Opticians and provides that the Council shall consist of nine members. It is further proposed that the Council shall be the regulatory body in respect of the training, licensing and control of the practice of Optometry in Kenya. This part also provides for the establishment of the office of the Registra. The Registra appointed by the Council and shall be the Secretary to the Council.

Part III of the Bill is on the training and registration of optometrists and dispensing opticians.

Clause 19 provides for approved institutions in charge of training optometrists and dispensing opticians. This part also contains provisions on set requirements of persons to be registered as optometrists. Provisions on registration of Optometrists and Opticians are also provided for under this part of the proposed legislation. The Registrar of the Council shall maintain a register for all persons registered as an Optometrist or Opticians under this Act. It proceeds to provide for the process of removal of members from the register. This Part will affect mostly institutions and courses that are foreign based as it proposes to exempt institutions and courses approved under the Universities Act, 2012 from the requirements of this Part.

Part IV of the Bill contains provisions relating to private practice.

It is proposed that optometrists or dispensing opticians wishing to offer their services directly to the public be issued with an annual practicing certificate by the Council so as to safeguard the public from unfit persons purporting to offer these services and this part sets out the qualifications for private practice. The procedures for application of a practicing certificate, validity of a practicing certificate, and renewal and cancellation and suspension of practicing certificate are also set out under this Act.

Part V of the Bill contains provisions relating to discipline of registered optometrists or dispensing opticians.

The Bill proposes to establish a Disciplinary Committee of the Council whose functions shall be to inquire into any matter referred to it by the Council where there is professional misconduct, impropriety and negligence by a practitioner.

PART VI of the Bill contains financial provisions

The funds of the Council shall comprise of grants, gifts, donations and such fees, monies and assets as may accrue to the Council. The financial year of the Council shall run for twelve months ending on the thirtieth day of June in each year. This part of the Bill also provides that accounts and audit shall be kept by the Council at all times.

Part VII of the Bill deals with miscellaneous provisions.

Clause 35 of the Bill deals with certificates and provides that the certificates shall be issued by the Council and provides that a person who destroys or defaces a certificate shall be guilty of an offence. This part provides for offences and the general penalty.

Statement of the delegation of legislative and limitation of fundamental rights and freedoms

PART VII- contains provisions on delegated powers

This Bill once enacted would confer on the Council power to make rules for the purposes of bringing into effect the provisions contained in the Bill. The Bill therefore delegates legislative powers. The Bill however does not limit fundamental rights and freedoms.

Statement on how the Bill concerns county governments

The Bill contains provisions concerning county governments in terms of Article 110 (1) (a) of the Constitution.

Statement that the Bill is a money Bill

The enactment of this Bill shall not occasion additional expenditure of public funds.

Dated the 31st March, 2022

CHRISTOPHER OMULELE,
Member of Parliament.

