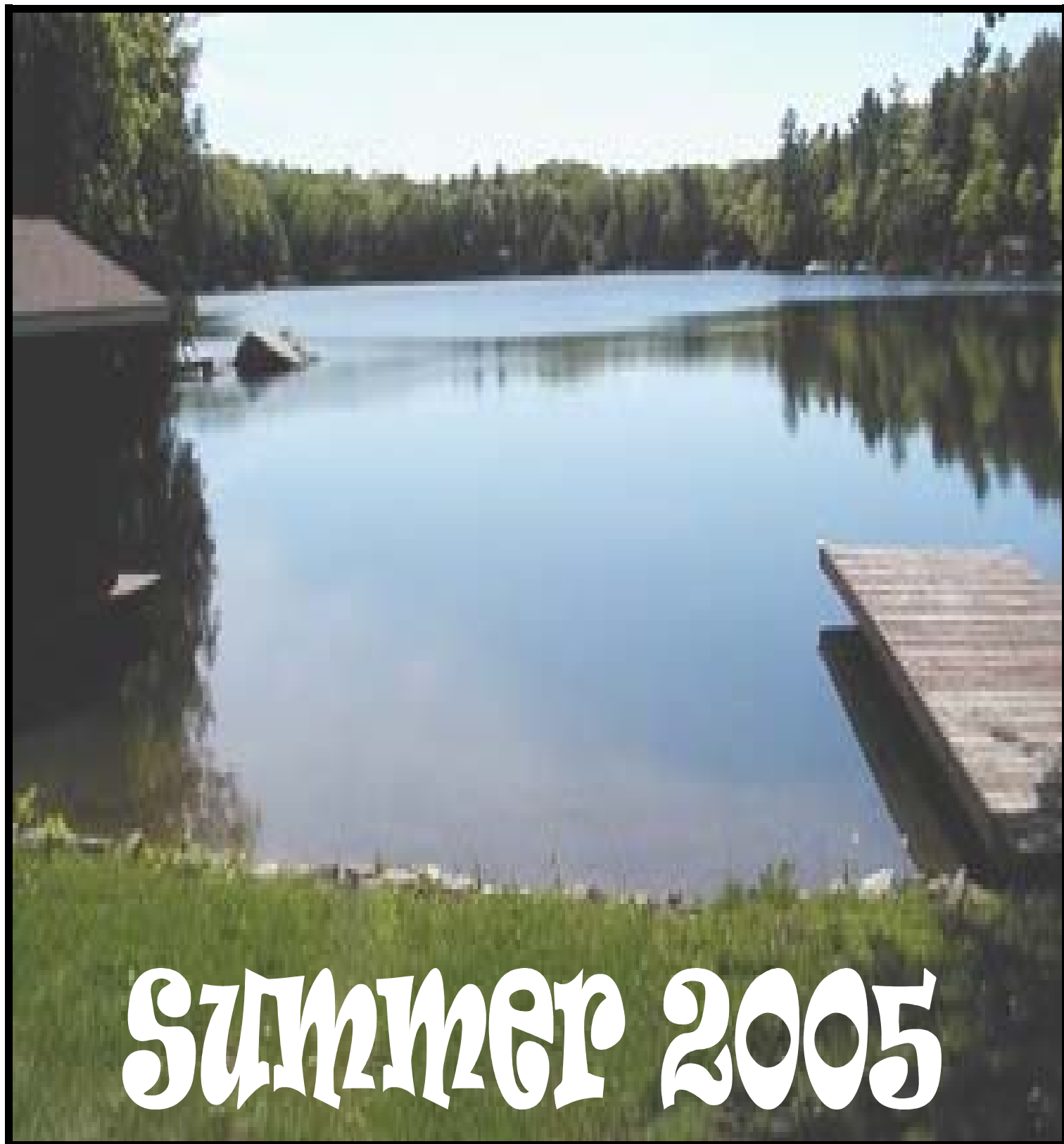




The College Viewpoint

The College of Opticians regulates and improves the practice of Opticians in the public interest

Newsletter, Issue 2, June 2005



The College Viewpoint

College of Opticians of Ontario

The College of Opticians regulates and improves the practice of Opticians in the public interest

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What health professionals are asking about Ontario's new health privacy legislation

By Ann Cavoukian, Ph.D.

Information and Privacy Commissioner/Ontario

Since the *Personal Health Information Protection Act (PHIPA)*, came into effect on November 1, 2004, my office has received more than 3,000 calls and e-mails from professionals in the health sector with questions regarding the implications and implementation of *PHIPA*.

One of the most common questions over the past few months has been: “**Why is PHIPA necessary when we already have the federal Personal Information Protection and Electronic Documents Act (PIPEDA)?**”

While the federal *Act* was designed to regulate the collection, use and disclosure of personal information within the commercial sector, *PHIPA* establishes a comprehensive set of rules about the manner in which personal health information may be collected, used, or disclosed across Ontario's health care system. *PIPEDA* was never designed to address the intricacies of personal health information.

In the near future, I anticipate seeing a final exemption order recognizing the substantial similarity of Ontario's *PHIPA* to the federal *PIPEDA*, so that health information custodians covered by *PHIPA* will **not** also be subject to *PIPEDA*.

We have received queries that cover a wide range of scenarios under *PHIPA* – issues that range from the extent of patient information being shared between *health information custodians* to whether a parent can obtain information about what prescriptions his daughter is obtaining from a pharmacy. Here is a short sampling of the questions we have received since *PHIPA* came into effect.

One caller was a physiotherapist who works at a health club and who shares patient information with non-regulated health professionals. He wanted to know if staff, such as personal trainers and fitness instructors, would be considered health information custodians and if he would need to get written consent from patients to share their information with such staff members.

Our response was that, generally, the non-medical staff of a health club would not be considered to be *health information custodians*. The *Act* requires that consent to the disclosure of personal information by a *health information custodian* to a *non-custodian* must be express, and not implied. The physiotherapist would need express consent to pass on personal health information to staff such as personal trainers and fitness instructors. (As well, a *non-custodian* who receives personal health information from a *custodian* may, in general, only use that information for the purpose for which the *custodian* was authorized to disclose the information.) Obtaining consent at the beginning of the process would enable the physiotherapist to share information as needed, with his co-workers.

The manager of a long-term health care facility wrote us to ask if physicians who have admission privileges and are contracted for medical services – but who are not staff – should be asked to sign confidentiality agreements the same as staff, volunteers and other agents.

While *PHIPA* does not contain any provisions that relate specifically to a requirement to sign confidentiality agreements, it does state that *health information custodians* are required to take steps that are reasonable to protect the personal health information in their custody. Additionally, *PHIPA* also states that a *custodian* is required to handle records in a secure manner, so having confidentiality agreements in place is just one of the steps that *custodians* could take to help protect the information in their custody.

In this specific instance, the physicians that are contracted to provide services in the facility would likely be considered agents of the facility. Under *PHIPA*, the *custodian's* contact person is required to ensure that all agents of the *custodian* are appropriately informed of their duties under the law, which may include the signing of confidentiality forms.

One of the more challenging questions was from a pharmacist who wanted to know what his responsibilities were in a case where the cardholder of a prescription drug plan wanted to know the details of drug usage by a family member covered under the drug plan. Would the family member need to give permission or sign a consent form?

This would be a case of disclosure of personal health information by a *health information custodian* to a *non-health information custodian*, which, generally, can only be done on the basis of express consent. Accordingly, a best practice would be to seek consent from the other family member or members who are covered under the cardholder's health plan. This is definitely the case if the information to be disclosed is that of an adult, such as a spouse, or children 16 or older. In the case of children under 16, information may be released without consent to the custodial parent, with *certain exceptions*. For example if the child is capable and disagrees, then the child's decision prevails.

If you, or your office, have a question regarding the *Personal Health Information Protection Act, 2004*, please do not hesitate to contact us at info@ipc.on.ca. You can also find many useful publications about *PHIPA* on our website, www.ipc.on.ca.

Enhanced Contact Lens Mentor Policy – Your Comments Welcome!

The Registration Committee has reviewed the Contact Lens Mentor Policy in an effort to continue to encourage and acknowledge our Members who are interested or already involved in this program. Contact Lens Mentors may supervise Registered Student / Intern Opticians for the purpose of mentoring them in soft and / or rigid contact lens fitting and signing of their logbooks. Supervising a Student or Intern Optician is a recognized continuing education activity and Contact Lens Mentors can earn credits this way. We believe this program continually enhances the training and education of Student and Intern Opticians. We recognize that this would not be possible without your support.

It is also important to note that Contact Lens Mentorship status is awarded to Opticians based on experience. No additional training is required. You might already qualify to be a part of this program!

Please review the enclosed enhanced Contact Lens Mentor Policy (the changes are highlighted below– we would welcome any comments you may have within 30 days. Please send your comments to Mina Vidakovic, by fax or to mvidakovic@coptont.org.

Regulation

In the “Consolidated Regulations, Including Amendments, Under the *Opticianry Act, 1991*, as of February 19, 2000”, under the exemptible requirements for certification of registration as a Registered Optician, Section 5, paragraph (2), sub-paragraph 3 it states:

“The applicant must have completed, and must present evidence of, at least twenty contact lens fittings, including at least five rigid gas permeable (RGP) contact lens fittings, under the supervision or direction of an optician who is certified in the fitting of contact lenses or an optometrist or an ophthalmologist”.

Policy – Signing of Logbooks by a Certified Contact Lens Fitter or Contact Lens Mentor

The Registration Committee hereby sets the following criteria which must be met in order for a Registered Optician to sign Student/ Intern Optician’s logbook for Contact Lens Fittings.

The Registered Optician must hold the designation of *Certified Contact Lens Fitter* with the College of Opticians of Ontario **or** meet the following criteria pertinent to the class of *Contact Lens Mentor* the Registered Optician is applying for:

1. Be a Member in good standing with the College of Opticians of Ontario and:
2. Apply to the Registration Committee of the College of Opticians using an undertaking or a form supplied by the College stating that they:
 - a. Have been a Registered Optician for a minimum of five (5) years.
 - b. Have been actively and currently fitting contact lenses for a minimum of three (3) consecutive years.
 - c. Work in a practice which includes dispensing contact lenses as part of the services offered to the public.
 - d. Have fitted a minimum of 50 soft contact lenses (**including 40 spherical and 10 non-spherical [toric or multifocal]**) in the previous three (3) years to be eligible to sign for Students’/Interns’ soft contact lens fittings.
 - e. Have fitted a minimum of **15** rigid contact lenses (including spherical and complex designs) in the previous three (3) years to be eligible to sign for Students’/Interns’ rigid contact lens fittings.
 - f. Agree to be added to an official registry of Contact Lens Mentors for the purpose of supervising Student/Intern Opticians who wish to obtain contact lens fittings.
3. Included in the undertaking, are the stipulations that the Registered Optician will:
 - a. Give permission to the College of Opticians to inspect contact lens files for verification of required fittings.
 - b. Not charge a fee to sign logbooks or supervise Student/Intern Opticians.

The College of Opticians will supply the Registered Optician with a letter of proof that he or she has been accepted by the Registration Committee as a Mentor for the purpose of signing logbooks for Student and Intern Opticians. Students/Interns may request to see this letter to verify that the Registered Optician may sign logbooks, even though the Optician may not be registered as a certified contact lens fitter.

The College of Opticians will also keep a registry of Mentors, and will provide information to anyone who contacts the College of Opticians, as to whether the Optician has been granted the status of Contact Lens Mentor or not.

If the Registration Committee deems that a Registered Optician has met the above criteria, the Optician may supervise the Student/ Intern Optician for the purpose of mentoring the Student/Intern in contact lens fitting and signing their logbooks. This approval will be in effect for the three years. The Registered optician will have to re-apply after three years if they wish to continue signing student logbooks.

Once a Registered Optician has received confirmation of their Mentor status in writing, they may begin signing logbooks for three years. Registered Opticians may claim one (1) Professional Activity Quality Assurance credit for each **10 fittings** they oversee.

BRIEFING NOTE

TO

BARBARA SULLIVAN
CHAIR AND CEO

HPRAC
(HEALTH PROFESSIONS REGULATORY ADVISORY COUNCIL)

FROM

COLLEGE OF OPTICIANS OF ONTARIO

APRIL 20, 2005

INTRODUCTION

The College of Opticians of Ontario (COO) appreciates the invitation from the HPRAC to provide a briefing note to HPRAC regarding the current healthcare environment. This document will address changes that have occurred since the 2001 HPRAC report "Adjusting the Balance", Optician-specific issues and will provide a general overview of the profession and the College. The College will be submitting a detailed submission to HPRAC within the specified timeline of April 29, 2005. This submission should be considered to be an overview only.

BACKGROUND

Opticians are a self-governing profession under *Regulated Health Professions Act, 1991 (RHPA)* and its component parts, the *Health Professions Procedural Code (the Code)* and the *Opticianry Act*. There are currently 2,300 members of the College of Opticians of Ontario. This includes practicing Opticians, Student Opticians who are enrolled an approved educational program, and Intern Opticians who have completed their education and are in the process of completing the required registration examinations. Opticians were governed by the Board of Ophthalmic Dispensers under the *Ophthalmic Dispensers Act* prior to the implementation of the *RHPA*. The *Ophthalmic Dispensers Act* was enacted in 1961.

The scope of practice for the profession, under the *Opticianry Act*, is "the provision, fitting and adjustment of sub normal vision devices, contact lenses or eyeglasses other than simple magnifiers." Opticians have one authorized act, namely "... dispensing sub normal vision devices, contact lenses or eyeglasses".

Under the *Opticianry Act*, an Optician may dispense sub normal vision devices, contact lenses or eyeglasses only upon the prescription of an Optometrist or Physician. Opticians who breach this requirement are guilty of professional misconduct. The only other professions statutorily authorized to dispense sub normal vision devices, contact lenses and eyeglasses are Optometry and Medicine.

The Minister of Health and Long-Term Care created the COO and we are accountable to the Minister and to the public in carrying out the statutory objects, set out in the *RHPA*, which include:

- Regulating the practice of the profession and governing the members in accordance with the specific health profession Act, the Code, the *RHPA*, the regulations and the by-laws. This includes establishing standards of professional and ethical conduct and investigating and prosecuting allegations of professional misconduct, incapacity and incompetence.
- Registering qualified people to practice Opticianry in Ontario.
- Establishing and maintaining quality of care programs to improve the practice of the profession and setting relevant standards of practice.

The COO is the only body with the statutory authority to grant and revoke certification or licensure of Opticians in Ontario. The COO can and does prosecute members for professional misconduct violations. The COO protects the public from harm resulting from an Optician's incompetence, incapacity and professional misconduct, including allegations of sexual abuse, insurance fraud, drug abuse, boundary violations and gross incompetence. In Ontario health profession Colleges are the regulators of a profession separate and distinct from a professional Association. An Association in Ontario has as its primary function protection of a profession; a College in Ontario has as its primary function the protection of the public. As such, we approach all proposed legislative changes that impact Opticians from a public protection point of view.

“ADJUSTING THE BALANCE” REPORT

The College wishes to reiterate its position stated in our letter to HPRAC of March 10, 2005. Namely, the College did provide a supplementary submission relating to HPRAC's final report (Adjusting the Balance) to the Minister of Health and Long-Term Care on February 14, 2002, a copy of which has already been provided to HPRAC. Additionally the College was a signatory to the Federation of Health Regulatory Colleges of Ontario's (FHRCO) submission dated November 5, 2001; we still support those submissions.

DISPENSING AS A CONTROLLED ACT

The Council and Administrative staff of the College was taken aback to see that the HPRAC referral questioned whether dispensing "eyewear" should continue to be a controlled act, in whole or in part. We believed this question was settled for a number of reasons, not the least of which was that the Health Professions Legislation Review concluded that there was a risk of harm in dispensing eyeglasses, contact lenses and subnormal vision devices.

Clause E. 2) of the HPRAC referral questioned whether the dispensing of "eyewear" should continue to be a controlled act, in whole or in part. The term "eyewear" is a very general one. It is important that HPRAC understand what is included in the term "eyewear". Some lay people may think of eyewear as the ready-made readers available in any drugstore. In fact these are simple magnifiers, the dispensing of which is not controlled by the RHPA. "Eyewear", as contemplated in the legislation, includes, but is not necessarily limited to, prescription eyeglasses, prescription contact lenses, cosmetic contact lenses, scleral lenses, low vision aids, complex magnifiers, including head-borne magnifiers, prosthetics, including artificial eyes, ocular assistive devices, including ptosis crutches, etc. The COO's written submission will describe all the variations of eyewear and the inherent risk of harm for each device. However, to summarize, the College believes all forms of eyewear, included in the legislation, present a risk of harm to the public and should only be dispensed by regulated health professionals.

The current legislation does not define dispensing as it relates to eyewear. This may be by design or by accidental omission. Regardless, in the absence of legislative clarification, the Ontario Court of Justice (General Division) has defined dispensing. The College has developed and approved a policy regarding the definition of dispensing based on decisions and reasons published by the Courts. Additionally in other decisions, the courts have upheld this policy and the position that there is a risk of harm in dispensing. The COO will provide copies of all the relevant court decisions in its written submission to HPRAC. Nonetheless, these legal decisions appear to concretely confirm the conclusions of the Health Professions Legislation Review.

Furthermore, Ministry officials have not raised this issue with the College of Opticians since the time of the Health Professions Legislation Review. Therefore it is perplexing to the College as to why this issue is once again on the table.

In light of all of these factors we question why the Minister's referral seeks to reopen the conclusions of the Health Professions Legislation Review in this matter. Nonetheless, this College believes that dispensing constitutes a risk of harm and we will set this out in our full submission to HPRAC.

Refractometry

Refractometry is known under many names. Some jurisdictions or stakeholders call it refraction, some call it sight-testing, some say refractometry. They all mean the same thing and are inter-changeable; for simplicity's sake in this document the COO will call it refraction. Refraction, sight-testing, or refractometry, is the process to measure the refractive error of the eye. It can be performed manually, but is now routinely conducted using automated equipment (i.e. auto-refraction). Refraction is not a controlled

act as per section 27 of the *RHPA* because it was determined as having no risk of harm to patients. All three eye care providers in Ontario (Opticians, Ophthalmologists and Optometrists) are on record stating it is not a controlled act. In Ontario it is currently performed by Ophthalmologists and Optometrists as part of a full ocular visual examination; and is also performed by unregulated personnel in Ophthalmologists' and Optometrists' offices. Opticians perform it in some other jurisdictions within Canada.

Prior to 2001, Opticians in Ontario performed refractions in order to adjust eyeglasses to the particular circumstances and requirements of the wearer. Many Opticians had a relationship with an Optometrist or Physician by which the Optometrist or Physician issued a prescription based on an Optician's refraction. The communication of the refraction data from the Optician to the Physician and the communication of the prescription from the Physician to the Optician was usually by facsimile, which became known as "remote" or "distance prescribing".

On May 9, 2000 in response to intense pressure from optometry, then-Minister of Health, Elizabeth Witmer asked HPRAC to investigate whether "refraction" or sight-testing is within the scope of practice of Opticianry and, given that sight-testing is a public domain act under the *RHPA*, whether the *RHPA* colleges may regulate their members' public domain activities. On September 27, 2000, HPRAC responded, concluding that

- 1 Sight-testing, is not within the statutory scope of practice of opticianry; and
- 2 Colleges have the authority to regulate the public domain activities of their members.

HPRAC specifically did not comment on whether the public interest would be served by having refraction included within the scope of practice of opticianry.

Based on the HPRAC conclusions, on February 7, 2001, Ms. Elizabeth Witmer, the Progressive Conservative Minister of Health at the time, wrote to the College of Opticians directing the College to prohibit its members from performing refractions, pending the development of a Standard of Practice relating to refraction acceptable to the College of Physicians and Surgeons of Ontario and the College of Optometrists of Ontario. Accordingly, the Council of the COO enacted a Standard of Practice on March 9, 2001 that prohibits its members from performing refractions until Standards of Practice agreed upon by all three Colleges are in place. To date, despite several joint meetings and a Ministry-organized mediation, the CPSO and the College of Optometrists have not agreed upon draft standards of practice including the draft standards prepared and approved, in principle, by the Council of the College of Opticians.

Because the ban remains until the two colleges agree with whatever this College develops and proposes, the College of Opticians has been placed at a severe disadvantage. The College has a duty and responsibility to regulate its members, while providing increased access to healthcare to the public. The COO has a significant concern around one College requiring the approval of another College or Colleges before it can enact a standard of practice that protects the public and only affects its own members. While we agree with broad-based consultation, in the end Opticianry has been an independent, self-governing profession in Ontario since 1961 and should not require the approval of any other College before it can approve and enact Standards of Practice for its own members.

In addition, this College believes that the ban is not in the public interest because it reduces patients' ability to choose among qualified alternate service providers. Refraction is a public domain activity that should not be restricted to just two providers when there is a third provider that has the education, skills, abilities and regulatory authority to provide the service safely. Of the three eye healthcare providers, Opticians have the greatest number of practitioners and are represented across the province.

The ban is also discriminatory against the College of Opticians and the profession of Opticianry and its performance of public domain activities. To our knowledge the Ministry has not required any other college to regulate its members' conduct of public domain activities either independently or in conjunction with another college(s).

CONCLUSION

Anyone reviewing legislation and making recommendations for amendments should be cognizant of emerging technologies and ensure that legislation allows for advancements that will provide greater access to healthcare. Any legislation that prevents the evolution and development of professions or does not recognize the need for increased access by the public does not recognize the needs of the public.

All of the points raised in this briefing note will be expanded on in the detailed submission

to HPRAC that will be made by the College of Opticians. Prior to that submission the College would be pleased to consider and address any questions the HPRAC Council may have of the College.

This submission does not include any appendices or supporting documentation. This is intentional as this submission is intended be an easy-to-read document that merely provides an overview of the changing healthcare environment and issues affecting the profession of Opticianry. The College's official written submission will detail and respond specifically to the issues raised in the Honourable Minister's referral to HPRAC and will include supporting documentation.

College News

Farewell to Brian Kavanagh, RO

On Friday March 11, 2005, Mr. Brian Kavanagh, RO stepped down from his position on the College's Council.

During his years on Council, Mr. Kavanagh was an active member (often the chair or vice-chair) of the Executive, Registration, Exams, and the Complaints Committees.

Mr. Kavanagh was Vice President of the College in 2004.

The College would like to express its gratitude to Mr. Kavanagh for all his years of service and the Council and Staff of the College wish him well in all his future endeavours.

ELECTION RESULTS

April, 2005

CONGRATULATIONS!

Robert Vezina, RO

Elected for District 2

Term effective as of April 21, 2005.

Complaints

Informing Patients About Their Rx Options

In Ontario, there are three different professionals who may prescribe for vision; they are Ophthalmologists, General Practitioners (MD's) and Optometrists. As a member of a Regulated health profession you are probably already aware of the distinctions between these three professions, but are your patients? Are your patients getting the best possible care that is available to them? One way to be sure is to talk to them about their options. Certain patients may not be aware that there are vision specific professionals who can help to restore the clarity of their vision by prescribing glasses, contact lenses or other sub-normal vision devices. They may have been relying on their annual physical check-up to get their eyes tested. While MD's have both the training and the requisite knowledge to prescribe vision specific solutions and it can be a convenience for your patients to have their eyes tested during a yearly physical, your patients deserve to know that there are options available.

Providing your patients with this information will certainly make them feel more comfortable with their prescription and it may inspire greater confidence in the knowledge and importance of their trusty neighbourhood optician. Talk to your patients about their eye care options, give them the knowledge to make an informed decision when it comes to their ocular health.

Standards of Practice

The College has been working on a new version of the Standards of Practice for the profession of Opticianry. Thanks to the help of the College's Legal counsel, the Members of the Quality Assurance Committee and the efforts of College staff, a draft of the new proposed standards will be circulated to the Membership for comment sometime in the next few months.

The purpose for this is to request feedback from College members. Specifically, the College is looking to verify with the Membership that what has been written within the Standards document is indeed an accurate reflection of the standards of the profession. The hope of this initiative is to ultimately have a Standards document that reasonably reflects the practice of Opticianry in Ontario.

When it is released, the document will remain in circulation as a draft for sixty days. Please forward any comments you may have regarding the draft to the College at any time during this period, your feedback is extremely important to those involved in this initiative.

At the end of the sixty day period Members' comments will be considered and any changes will then be made to the document. The draft will then be brought to the Council of the College of Opticians for final approval.

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PLEASE SEND US YOUR COMMENTS

Please feel free to send us any comments relating to any of the topics discussed in this issue of the College Viewpoint. Your input is appreciated.

