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Transparency and Privacy: What the World Will Know About You

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“Where secrecy or mystery begins, vice or roguery is not far off” Samuel Johnson

One of the major features of the upcoming amendments to the *Regulated Health Professions Act* is the increased information about Opticians that will be available in the College of Opticians of Ontario public register. In making these amendments, the government expressed the desire that the public have access to more information about health care practitioners so that the public could make informed choices. Obviously, Samuel Johnson’s observation, above, is being taken to heart.

While there is an increased emphasis on transparency and accountability of practitioners, there still remain some privacy protections. For example, the fact that a complaint has been made against a member (or even that a lot of complaints have been made against a member) will not be posted on the public register.

The College of Opticians of Ontario register is the public record of information about individual Opticians. As of June 4, 2009, the entire register will be publicly available. The legislation requires that the information be easily accessible. All of the register information will be on the College’s website. In addition, it will be available at the College’s offices during regular business hours. A hard copy of the information will be provided upon request. When people inquire about a specific Optician, the College is required to advise the inquirer of all of the categories of information recorded on the register; the inquirer does not have to “know what to ask for”.

The list of publicly available information is too long to set out in this article.¹ However, the more significant items are as follows:

1. A member’s name.
2. A member’s business contact information.
3. Any terms, conditions and limitations on a member’s certificate of registration.
4. Any suspensions or revocations of a member’s certificate of registration including for non-payment of fees.
5. Information about discipline and incapacity proceedings against a member.
6. Any finding of professional negligence or malpractice made by a court against a member.

The rules about discipline proceedings are complex. Once allegations have been referred to discipline for a hearing, they will be shown on the register along with information

¹ For a complete list see section 23 of the *Health Professions Procedural Code* found under the heading “*Regulated Health Professions Act*” at www.e-laws.gov.on.ca.

about the time and location of the discipline hearing. If a finding is made against the member, a synopsis of the finding will be put on the register. This synopsis is different from the more detailed summary of the reasons for decision that is normally posted on the discipline portion of the College's website. The two pages will probably be linked to each other. In most cases, the penalty ordered by the Discipline Committee will also be shown. The Discipline Committee can also direct that additional information be placed on the register if it feels that the information is important for the public to know (e.g., the member's location or type of practice). If the decision of the Discipline Committee is appealed, the fact of the appeal will be entered, but the rest of the information will remain on the register during the appeal. Obviously, if the court quashes the decision of the Discipline Committee on the appeal, then all of the information will come off the register.

Under the new rules, discipline information will generally remain on the register permanently. Where the finding was relatively minor (e.g., only a fine or a reprimand was imposed and it does not involve sexual abuse) a member can ask for the information to be removed after six years. However, the member must then satisfy the Discipline Committee that the information is no longer relevant to the member's suitability to practise the profession and that there is no overbalancing public interest for keeping the information on the register.

The Register will also contain information about former members for at least two years after the termination of registration. Any information related to discipline proceedings in Ontario against such member will remain on the register for a period of fifty years after the termination of registration.

So, what are the safeguards for protecting the privacy of members? As mentioned above, one consideration is the information that is not recorded in the register. Generally, information about registration matters, complaints and quality assurance concerns are not posted on the register. Neither is the member's home contact information (unless the member provides no business contact information, because the public has the right to know where to contact a member for clarification of past services or to address concerns). Similarly, even though members have to report to the College when they have been found guilty of an offence, that information is not placed on the register unless discipline proceedings result out of the conviction.

A key safeguard is for members whose personal safety is at risk. In such cases, the Registrar has the ability to withhold all contact information to protect the member. However, the Registrar has to be advised of the safety risk. Any member feeling at risk for their personal safety if contact information is made publicly available should write to the Registrar with the request. The request should contain particulars of the safety risk and documentation confirming it (e.g., terms of release or restraining orders; witness attestations, etc.).

Another safeguard is that personal health information about members will only be posted on the register if it is reasonably necessary to do so. Generally this will occur only where the member has an illness that affects his or her ability to practise safely (e.g., an

addiction or certain severe and chronic mental illnesses). Even then, only the minimum amount of information necessary to protect the public and ensure accountability to the College will be posted. For example, in the case of an incapacity finding by the Fitness to Practise Committee, the register might indicate that the member has a term, condition and limitation on his or her certificate of registration that he or she is incapacitated and must continue to participate in medical treatment for it.

Public access to certain professional information about members is part of the price of being a self-regulated professional. Members should be aware of the types of information that are available about them, what information will not be found on the register and the safeguards they can employ, particularly where their personal safety is at risk.