



**College of
Opticians
of Ontario**

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June 9, 2006

Paula Garshowitz
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Dear Paula:

Thank you for providing the College of Opticians of Ontario (COO) with a copy of the College of Optometrists' proposed amendments to the Conflict of Interest Regulation and related professional misconduct regulations dated March 29th, 2006. The COO is pleased to make comments on the amended draft regulations. This submission will focus on our position regarding principles of the draft whereas our November 2005 submission included a detailed analysis of the draft provided.

Conflict of Interest Regulation

Freedom of Association

The COO was disappointed to see that the Ethics Committee did not make any amendments to the freedom of association portions of the Conflict of Interest regulation in response to the comments submitted by the COO and several other stakeholders. We note the minor amendments to section 4(4), but feel they are not significant and do not address the issues raised in submissions from a variety of stakeholders. We will not repeat our specific concerns in this response, but refer to the detailed submission of November 30, 2005 (copy enclosed).

We still believe that the proposed regulation does not adhere to the Ministry of Health and Long-Term Care's *Policy Guidelines for Drafting Conflict of Interest Regulations* (the Guidelines) issued by the MOHLTC in July 2005. The proposed regulation makes it plain that various forms of association will be prohibited, including, the employment of optometrists by opticians and partnerships between opticians and optometrists, and it puts specific restraints on optometrists contracting to provide services to opticians.

The Guidelines state that the MOHLTC will permit a specific prohibition on association if it is satisfied that the prohibition is required to ensure the College's effective regulation of the profession, is in the public interest, and does not contravene the Canadian Charter of Rights and Freedoms. They state further that in determining the specific types of associations that may be prohibited, Colleges should consider relationships that have the potential to impair the members' professional judgment, increase the risk of patients being harmed, or permit and/or promote undue influence over patients.

In our view, the College of Optometrists has not met the MOHLTC's requirements for prohibiting forms of professional association. There is a lack of evidence to support the assumption that underlies the prohibition on employment, namely that being employed by an Optician "may" result in a conflict of interest because it "may" require the optometrist to choose between his/her fiduciary relationship to the patient and his/her loyalty to an employer. If being in an employment situation has the potential to impair an optometrist's judgment, then one would expect the College of Optometrists to prohibit its members from being employed by *anyone*, but it does not -- employment by physicians is acceptable. No rationale is given for the discrepancy, other than the fact that the employer Optician has a narrower scope of practice than the employee Optometrist, the relevance of which is not clear. As we articulated in our November 2005 submission the COO cannot understand why the College of Optometrists' concerns about control or lack of independence cannot be met by imposing standards of practice that make it clear that being an employee will not relieve Optometrists from their professional responsibilities.

It appears the College of Optometrists feels that the threat to the independence of its members will be alleviated if they are independent contractors with, rather than employees of or partners with, opticians. The background document emphasizes that in an independent contractor relationship, the optometrists "must maintain independence with respect to clinical practice and the advice or care they provide or recommend to patients". Therefore, there can be no terms in either the express or implied business agreement between the optometrist and the optician that would prevent or impede the optometrist from either exercising his or her professional judgment or maintain the standards of practice of the profession. They must provide care and advice that is in the best interests of their patients. Accordingly, they must be, and be seen to be, independent and free from the authority, control or influence of others. The five criteria listed in subsection 4(4) are meant to be hallmarks of independence – the ability of the optometrist to: provide professional services, decide whom to accept as a patient, provide a copy of the prescription to the patient, set a fee, and maintain and have custody of patient and other records of the practice, all without control by others. The College of Optometrists has offered no explanation or any evidence as to why these hallmarks of independence cannot be maintained within an employment relationship.

The COO would like to emphasize, as we did in our November 2005 submission, our concern that the broad and unclear prohibitions contained in the draft regulation would hamper efficient collaboration between health care providers and discourage interdisciplinary relationships, which clearly provide optimum patient care in other health sectors. Further, the COO believes the amended draft regulation is still unclear regarding the professional responsibilities of an 'independent contractor' as it relates to controlled acts being performed within a dispensary. Our November 2005 submission articulates our concerns in this area.

Lastly, we remain troubled with the issue of interpretation of the wording of the draft regulation. As outlined in our previous submission, the College of Optometrists has offered differing interpretations of the regulation and its practical applications. We repeat our concerns that members of the College of Optometrists will have difficulty complying with the regulation and there is a risk that the regulation will be applied unevenly as Council and Committee compositions change over time.

Professional Misconduct Regulation

Prescription Release

The proposed amendments to section 14 further clarify what information must be released to patients and the COO commends the College of Optometrists for the improvements to this section. Given the objections to this portion of the amendments that have been voiced by some members of the College of Optometrists and the history of this issue, we renew our recommendation that the College of Optometrists provide on-going education to its members to ensure compliance.

Advertising Amendments

The proposed amendments surrounding the use of titles in advertising are a step towards correcting the current confusion with members of the public regarding the difference between a doctor of optometry and a medical doctor.

Overall, the proposed amendments appear to conform to the MOHLTC's Policy Guidelines for Drafting Advertising Regulations (2004). The amendments do conflict with some portions of the College of Optometrists' currently published Advertising Guidelines. Does the College of Optometrists intend to revoke the current Advertising policy upon enactment of the Professional Misconduct Regulation?

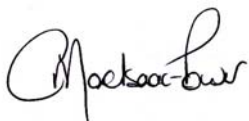
Conclusion

The Guidelines require that Colleges prohibiting specific associations consult with other Colleges whose members may be affected by the prohibition. It also states that the Ministry expects that Colleges will have resolved any outstanding issues prior to requesting the Ministry to process the regulation. The COO believes the draft regulation does not meet the requirements of the Ministry Guidelines, however, we recognize the proposed draft regulations do represent an evolution from the overly-restrictive regulations currently in place and accordingly are an improvement over the current regulatory requirements.

The COO maintains that the draft regulation is proposing to prohibit various forms of association, including the employment of optometrists by opticians and partnerships between opticians and optometrists, and is putting restraints on another, that being an optometrist contracting to provide services to opticians. While the College of Optometrists has certainly consulted with the COO, we cannot support a conflict of Interest Regulation that contains broad prohibitions of association among *RHPA* Colleges.

We renew our offer to work with the College of Optometrists to resolve the outstanding issues that exist between our two Colleges with respect to the proposed regulations.

Yours truly,



Caroline MacIsaac-Power RO
Registrar

Cc: Linda An, MOHLTC

Encl.