

September 17, 2010

Hon. Deb Matthews  
Minister of Health & Long-Term Care  
**Attn: HPRAC Consultations**  
Ministry of Health and Long-Term Care  
56 Wellesley Street West, 12th Floor  
Toronto ON M5S 2S3



## **College of Opticians of Ontario – Response to HPRAC’s Report on Interprofessional Collaboration Among Eye Care Health Professionals**

Dear Minister Matthews:

The College of Opticians of Ontario (COO) is pleased to comment on the Health Professions Regulatory Advisory Council’s (HPRAC) review of the major challenges and issues that have historically and are currently affecting the eye care sector. The detailed review of why vision care matters is very useful and timely and, hopefully, will be instructive for all health care professionals, policy makers, third-party insurers and the general public.

Many of the challenges and issues the HPRAC report addresses have been present for a considerable period of time, including interprofessional collaboration and patient-centered care. Both are primary concerns for the COO within its overall public protection mandate. Accordingly, the College is at least as interested in and committed as any other stakeholder to addressing those challenges and issues in the public interest in whatever way is ultimately determined by the Minister.

Over the past decade, there has been a virtual avalanche of reports, correspondence, submissions and other communications pertaining to the issues and challenges that have been raised. Now is the time for action and the COO sincerely hopes that this latest HPRAC report will provide the catalyst for quick and effective resolution. With that in mind, the COO has decided to keep its response to the HPRAC report as brief and concise as possible. As always, the COO welcomes continued dialogue with the Ministry and with other stakeholders on these and other public interest/public policy matters. In this regard, the College has already reached out to the College of Optometrists to begin, continue or resuscitate discussions on issues of mutual interest and concern, including Internet dispensing, refraction, Great Glasses and free association between Opticians and Optometrists.

### **UNAUTHORIZED PRACTICE**

The College commends HPRAC for shining the spotlight on unauthorized practice. The "Great Glasses" disciplinary and court proceedings have identified serious enforcement gaps in the *Regulated Health Professions Act (RHPA)*. The matter has proven difficult, frustrating and has been an expensive challenge for the College of Opticians and the College of Optometrists.



The College of Opticians used all of the authorities available to it under the RHPA, including an Executive Interim Suspension Order and ultimately revocation of the registration of the "controlling mind" behind Great Glasses and (with the College of Optometrists) obtained a series of Court orders to stop illegal dispensing that had no effect or were ignored. Notwithstanding, the chain continued to operate profitably and perversely grew. In fact, there is evidence in line with Barnum and Bailey's dictum that the media attention around our collective actions to stop illegal dispensing by Great Glasses was used as a marketing tool by Great Glasses and actually generated additional business for the chain. There is evidence that even today some outlets within the chain continue to operate illegally.

Those enforcement gaps may tempt others to engage in unauthorized practice in the eye care and other sectors, particularly in the current economic environment. Swift remedial action is, therefore, suggested.

Based on the "Great Glasses" experience, the College believes that the RHPA needs to be amended in order to enhance the enforceability powers of all Colleges against unauthorized practice. In this regard, the College calls the Ministry's attention to the *Real Estate and Business Brokers Act, 2002* and, in particular, subsection 25.1 (1) that provides the authority to issue "freeze orders" to non-registrants. We also offer the experience we have accumulated with Great Glasses over the past decade to the Ministry and to the other Colleges towards designing effective remedies to unauthorized practice.

## **OPTICIANS' REFRACTING**

The College takes issue with some of HPRAC's recitation or interpretation of the history of this matter and, in particular, the College's motivations. The College wishes to assure HPRAC and the Ministry that at all times it endeavored to act in good faith and in the public interest in trying to break the stalemate that had been created by Minister Witmer's request to the College in February, 2001 to prohibit Opticians from performing the public domain act of refracting pending development of a Standard of Practice by the College of Opticians that was acceptable to the College of Optometrists and to the College of Physicians and Surgeons of Ontario. In particular, the thematic intent of the Standard of Practice for refraction promulgated by the College of Opticians is to ensure that refraction occurs only in collaboration with an authorized prescriber, namely an Optometrist or Physician/Ophthalmologist, and moreover, occurs with public safety and interprofessional care and collaboration as its foundation.

Nevertheless, rather than dwelling on history, the College would like to move forward and HPRAC's recommendations provide a helpful roadmap for doing so, with the following caveats:

- The College accepts HPRAC's proposed amendments to paragraph 13 of subsection 1 of our Professional Misconduct regulation, with the following exception: HPRAC recommends that the regulation allow Opticians to make alterations to prescriptions in the course of fitting contact lenses to ensure that each lens will provide refractive values equivalent to the eyeglass lens prescription. Exactly the same provision must apply to eyeglasses, because the refractive values generated by eyeglasses will vary depending upon the Optician's fitting of the eyewear in order to accommodate each patient's individual needs.
- HPRAC recommends that the College of Opticians amend its bylaws to identify in its public register those of its registrants who have been granted refraction

designation. The College accepts this recommendation and will amend its bylaws and make this information available on the public register as soon as technically possible.

- HPRAC recommends that the College of Opticians develop a new standard of practice with respect to Opticians' refracting in "collaboration" with the College of Optometrists of Ontario and the College of Physicians and Surgeons of Ontario. That Standard of Practice would require that Opticians who refract may only do so in collaboration with an Optometrist or a Physician for the purpose of informing a comprehensive oculo-visual assessment. The stalemate created by the Witmer letter was due to the requirement in that letter that any Standard of Practice relating to refraction developed by the College of Opticians had to be approved by the other two Colleges. This College always had a philosophical and practical problem with a Standard of Practice being subject to the effective veto of another College, which was the case in this situation. That problem is evidently shared by some of the other Colleges and stakeholders who have made submissions to HPRAC on this issue during the current review, or in the context of past reviews. In the event and notwithstanding an agreement reached between the Registrars of the College of Opticians and the College of Optometrists, approval from the Council of the College of Optometrists proved to be impossible unless the College of Opticians agreed that the public domain act of refraction could be performed only under the "supervision" of a registered Optometrist. The College of Opticians remains completely willing to collaborate with the CPSO and the College of Optometrists of Ontario in the development of a Standard of Practice pertaining to refraction that is true to HPRAC's recommended approach. In fact, since the HPRAC report was issued, representatives of the College of Opticians have met or otherwise communicated with representatives of the CPSO and the College of Optometrists to this end.
- As part of its recommendation with respect to the above-mentioned Standard of Practice, HPRAC suggests that the Standard of Practice should "come into effect immediately upon the changes to the Optometry regulation concerning conflict of interest". With greatest respect, we don't understand why one should be dependent on the other and see serious pitfalls if they are in fact twined in the way HPRAC has recommended. In practical terms, the College of Opticians is concerned that the regulation-making/amending process is more protracted than that for Standards of Practice and, therefore, promulgation of a revised Standard of Practice for refraction could be unnecessarily held up. We urge that both processes proceed as expeditiously as possible, but at their own pace and that implementation of one not be held up pending implementation of the other.
- The College of Opticians very much supports HPRAC's recommendation that the Minister revoke the Witmer letter and asks that the Minister do so as soon as practicable.

During the course of any refraction discussion, it is necessary to consider scopes of practice as set out in the profession-specific Acts. At their most basic, "scopes of practice" generally describe what a profession does and the range of activities that a qualified registrant may

perform. The Canadian Medical Association, Canadian Nurses Association and Canadian Pharmacists Association outlined the following principles and criteria for the determination of scopes of practice:

- High quality care
- A flexible approach that allows providers to practice to the full extent of their registrants' education, training, skills, knowledge, experience, competence, and judgment
- Collaboration, cooperation, and good communication among providers
- Coordination
- Patient choice

Collaborative care teams should clearly outline the responsibilities of each team member, while ensuring that any allocated duties are within the scope of practice of that respective profession. Each of the regulated health professions within the eye care field is self-governed and is permitted to work independently within its own scope of practice. Most of the current scope of practice statements were drafted in the late 1980s, confirmed in legislation tabled in 1991 and promulgated in 1993. Scope of practice statements under the RHPA were supposed to be generally descriptive and were not intended to legally circumscribe what a profession is permitted or qualified to do. While every effort was made at the time to establish statements that reflected current practice realities, we believe some updating may be required to ensure their currency. When the *RHPA* was conceived, its intention was to be flexible legislation that would adapt to the natural evolution of professions, patient expectations, technological advances and the health care delivery system itself. Unfortunately, the *RHPA* has been more rigid than most expected.

The COO believes that the present system unduly impairs the delivery of quality care by the full range of professionals with the appropriate knowledge, skill and judgment to deliver patient care.

## **COLLEGE OF OPTOMETRISTS' CONFLICT OF INTEREST & MISCONDUCT REGULATIONS**

The College of Optometrists' Conflict of Interest (COI) regulation has been an issue for the College of Opticians and the College of Optometrists and between the professions they regulate for a considerable period of time and has been the major obstacle to collaboration between Opticians and Optometrists in the best interests of the patients they serve. As HPRAC notes, enforcement of the regulation has also been problematic.

The College supports HPRAC's proposals with respect to professional association between Optometrists and Opticians and other regulated professionals. The College does point out, however, that allowing members of other regulated professions to practise in association as shareholders, directors or officers of a professional corporation would require amendments to Regulation 665/05 under the (*Ontario*) *Business Corporations Act* that currently prohibit such interprofessional associations. The College of Opticians would very much support such amendments, as they would be broadly in the interest of interprofessional practice and interprofessional collaboration in health care delivery.

The College further supports recommendations of the federal Competition Bureau in its December 2007 report "Self-regulated Professions: Balancing Competition and Regulation".

The Competition Bureau notes on page 96 that

*"Given the complementarities between the activities of Optometrists and Opticians, it would be natural for members of both professions to work under the same roof. Such multidisciplinary arrangements would likely result in efficiencies that are not available to professionals working separately. Thus, by not allowing these relationships, the Optometry profession is blocking the potential development of more efficient business models and future innovation."*

Followed by their recommendation on page 97 that

*"Colleges of Optometry should remove restrictions that prohibit or discourage Optometrists from working in multidisciplinary arrangements with Opticians." and further notes that "Canada's aging population and heightened future demand for eye care, coupled with the various factors restricting supply in the Optometry profession and overlapping service providers, speak loudly to the need for regulators to review restrictions in this area and ensure that competition is not being hampered unnecessarily."*

The College urges the Ministry to proceed with expeditious implementation of new Conflict of Interest and Misconduct regulations as articulated in HPRAC's recommendations, as well as the collateral amendments that are necessary to the *(Ontario) Business Corporations Act*.

## **ILLEGAL INTERNET DISPENSING**

The COO continues to receive an increasing number of complaints from our registrants relating to patients who present at our registrants' dispensaries with contact lenses or other forms of prescription eyewear that have been purchased over the Internet, or by mail order from providers based outside of Canada. The patients are dissatisfied with the eyewear because it has not been fitted properly, or for any number of other factors that are a predictable result of distance dispensing. Because they were not involved in dispensing the product in the first place, there is little or nothing that our registrants can do to help except to dispense proper eyewear as per each patient's prescription; which, of course, becomes an expensive proposition for the patient. Accordingly, the College has been presented with a substantial and growing consumer protection issue.

In addition, this College takes the position that the sale of prescription eyewear through the Internet or by mail order by foreign operators is in breach of Ontario law. More specifically;

*"Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eyeglasses other than simple magnifiers."*

is a controlled act pursuant to subsection 27.(2) 9 of the RHPA. Only Opticians, Optometrists and Ophthalmologists who are registered to practise in Ontario may legally dispense subnormal vision devices, contact lenses or eyeglasses to residents of Ontario. Dispensing prescription eyewear by unqualified practitioners constitutes a significant risk of harm for patients.

Finally, it's our understanding that anyone manufacturing contact lenses for sale in Canada must hold a current establishment licence. Anecdotal evidence indicates that at least some of the Internet providers do not have an establishment licence. We note, in this regard, that Health Canada prohibited the sale of the Eyelogic automated refraction system in Canada until the

manufacturer obtained an establishment licence. We believe the same should be done for any prescription eyewear that does not have a valid Canadian establishment licence.

Over the past several years, the College has initiated discussions with the Medical Devices Bureau of Health Canada and the Canadian Border Services Agency. It has also had discussions with the Competition Bureau to address any concerns that action against Internet dispensing could be anticompetitive. These discussions have not resulted in any strategy or plan of action, but have acquainted the College with the complexities of enforcing domestic law on Internet dispensing

This College has also written to as many of the Internet and mail-order providers for whom a mailing address could be identified. Those letters expressed the College's concerns as indicated above and asked them to comply with Ontario and Canadian law, or alternatively to cease and desist dispensing eyewear to residents of Ontario. In numerical terms, the response rate was very poor. In substantive terms, not a single operator appeared to take our letter seriously. Accordingly, the COO will be meeting with the College of Optometrists and the College of Physicians and Surgeons in the coming months to discuss options and we will most likely request the assistance of the Ministry of Health and Long-Term care on this issue.

## **"EYE HEALTH" COUNCIL**

HPRAC endorses an "Eye Health Council" in Ontario. In terms of membership on the proposed Council, HPRAC recommends "initial and equal representation from the professions of Optometry and Ophthalmology, including clinical and academic members and representation from the health Colleges". HPRAC also recommends that a senior official of the Ministry attend Eye Health Council meetings as an observer.

Given HPRAC's commitment to interprofessional collaboration, the College of Opticians cannot fathom why, if such a Council is to exist, Opticianry should not be a member from the very beginning. (One might also consider the value and need for industry representation at some point). Experience elsewhere, such as in Nova Scotia, strongly suggests that if one of the vision care professions isn't involved from the beginning, it may never be involved, with obvious adverse long-term consequences for real collaboration within the sector. The exclusion of Opticianry from the Council seems to be in direct opposition to the philosophy and direction of the rest of the HPRAC report.

We are unconvinced as to the need for another vision care sector working group and are concerned about long-term sustainability after the initial two year start-up funding. We would rather focus efforts to bring together existing stakeholders, with agreement on both short term and long term goals to be achieved.

## **CONCLUSIONS**

The College of Opticians of Ontario functions first and foremost in the public interest. The dynamic and rapidly changing environment of health care in Ontario demands that health care professionals be highly skilled and technologically savvy with strong communication skills. Opticians are routinely required to adapt prescriptions to suit specific occupational and vocational requirements such as eyewear for computers. This adaptation does not alter the original prescription but allows changing the written numbers to compensate for specific working distances. Dispensing of contact lenses and eyewear is an integral part of the eye care delivery system. In a model that relies on coordination and collaboration of health care providers,

Opticians are well-placed to ensure maximum visual acuity, comfort and functionality for their patients.

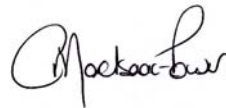
The College's expectations for its membership are high. The College of Opticians of Ontario demands that its members are knowledgeable, skilled, patient-focused professionals who have earned and continue to justify the privilege of self-governance. Through this self-governance, the College achieves, ensures and maintains this very high standard of care which contributes to excellence in vision care for the citizens of Ontario. Self-governance ensures that the principles of transparency, accountability, access to care and public protection are maintained during the provision of health care services.

Should you have any comments or questions, the College would be happy to discuss this report and other issues with the Ministry at your earliest convenience.

Kind Regards,



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President



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