

TO: Council

FROM: Executive Committee

DATE: December 4, 2018

SUBJECT: 4.0 RHPA Amendments – By-Law Changes

BRIEFING NOTE

Purpose: To seek Council's approval to circulate proposed by-law changes following amendments to the *Regulated Health Professions Act*, regarding information posted on the College's public register.

Background:

In May of 2018, the *Regulated Health Professions Act* (RHPA) was amended to require all health colleges to post certain additional information about members to the public register. This includes information about criminal charges, criminal findings of guilt, and bail conditions. The RHPA also requires that SCERPs and cautions be posted on the public register and remain there indefinitely.

When these changes came into effect, the COO already had many similar by-laws in place. However, in some cases the COO by-laws are broader than the RHPA (requiring more information to be posted than the RHPA does) and in other cases they are narrower than what the RHPA requires (requiring less information to be posted than the RHPA does).

To the extent that COO's by-laws are narrower than the RHPA, the RHPA overrides the by-laws. However, to the extent that the COO by-laws are broader, the by-laws are still in effect and require the College to publish more than the RHPA requires. Here is a summary of the key issues that arise (set out in more detail in the chart provided):

- **CHARGES, FINDINGS OF GUILT, AND BAIL CONDITIONS:** The RHPA now requires COO to publish all Canadian criminal and drug charges and findings of guilt, as well as bail conditions relating to Canadian criminal and drug charges and findings. However, per COO by-laws, the COO also publishes non-Canadian charges, findings and bail conditions that COO is aware of where they are relevant to the member's suitability to practise opticianry (see by-law sections 15.6(xxiii), (xxiv), and (xxv)).

The RHPA also has different requirements regarding what details are posted about charges, findings of guilt and bail conditions. Finally, the RHPA specifies that disclosure

of any of the above does not authorize disclosure of identifying information about non-members.

- **SCERPS AND CAUTIONS:** COO is already publishing SCERPs and cautions, which is now required under the RHPA. However, the current COO by-laws that allow a member to apply to remove them after two years are likely no longer in effect because the RHPA does not appear to permit this. The only way SCERPs and cautions can now be removed is if they are deemed “obsolete and no longer relevant”.

The other difference is that the RHPA states that only cautions “received” by a member are posted, whereas COO requires that all cautions required by the ICRC are posted. COO’s by-laws are also broader in terms of what is posted (see by-laws sections 15.6(xxvii), (xxviii), and (xxx)).

- **UNDERTAKINGS:** The RHPA requires all undertakings that are currently in effect and that result from ICRC or discipline to be posted on the register, including a notation and synopsis of the undertaking. COO requires all ICRC undertakings to be posted as well as all undertakings to resign, but requires only a notation and not a synopsis. However, in practice, undertakings typically include a requirement and acknowledgement that the undertaking will be posted on the public register.

As well, COO by-laws require undertakings relating to ICRC matters to remain on the public register even if the requirements of the undertaking have been fulfilled and the undertaking is no longer in effect (see by-law sections 15.6(ix) and (xxxi)).

- **OTHER DISCIPLINARY FINDINGS:** Both the RHPA and COO by-laws require information about disciplinary findings in other jurisdictions to be noted on the public register. COO’s by-laws go further than the RHPA in that they require more details about those findings to be posted (see by-law section 15.6(xv)).
- **OTHER LICENCES:** Both the RHPA and COO by-laws require licences in other jurisdictions to be noted on the public register. However, COO by-laws go further than the RHPA by requiring that past licences be noted, not just current ones (see by-law section 15.6(xxvi)).

For Consideration:**CHARGES, FINDINGS OF GUILT, AND BAIL CONDITIONS:**

- Executive Committee recommends that these by-laws be revoked because the RHPA posting requirements for these matters are sufficient and less open to critique regarding “relevance”.
- Council should consider whether members should continue to be required to report non-Canadian bail conditions, charges and guilty findings to COO.

SCERPS AND CAUTIONS:

- COO’s by-laws regarding removal of SCERPs and cautions should be revoked since it is (likely) no longer in effect.
- Executive Committee recommends retaining COO’s by-laws regarding SCERPs and cautions, since the details required are broader than what the RHPA requires and these details provide useful information about the nature of the SCERPs and cautions.

UNDERTAKINGS:

- Executive Committee recommends that COO revoke its by-laws regarding undertakings on the basis that the RHPA’s requirements for posting undertakings are adequate and there is no compelling need for undertakings to remain on the public register if they are no longer in effect.

OTHER DISCIPLINARY FINDINGS:

- Executive Committee recommends that COO revoke its by-laws regarding other disciplinary findings, on the basis that the RHPA’s requirements to post basic information about such findings are sufficient, and there is no compelling need to post details of the findings.

OTHER LICENCES:

- Executive Committee recommends revoking the COO’s by-laws regarding licenses in other jurisdictions and/or other professions, on the basis that the RHPA by-law is adequate, and there is no compelling need for the public to know about a member’s past licenses.

OTHER MATTERS:

- COO’s by-law 15.6(vii) requiring a notation that a member has died is now duplicated in the RHPA and so should be revoked. While COO’s by-law specifies that only month and date of death are included, the RHPA simply says “date of death”, which is likely broader and includes the exact day of death, if known.

- COO's by-law 15.6(x) requires a notation of certain details regarding ICRC referrals. It is for the most part duplicated by new RHPA provisions. However, the RHPA does not expressly require notices of hearing to be posted, but instead requires that the COO post a "copy of the specified allegations" (which forms part of the notice of hearing). It would be more practical for the College to post the full "notice of hearing" since it gives more context to the allegations. The COO by-laws also expressly require hearing dates to be posted, which is useful information for the public.

Recommendations: That Council consider approving, for public circulation, by-law amendments regarding information included on the public register, in accordance with the attached chart.

RECOMMENDED BY-LAW AMENDMENTS

Subject	What by-law article 15.6 requires COO to post	What the RHPA (<i>Health Professions Procedural Code</i> and O. Reg 261/18) requires COO to post	Recommendations for COO by-laws
	<p>15.6 Other Information in the Register</p> <p>In addition to the information set out in subsection 23(2) of the Code, the register shall contain the following information with respect to each Member:</p>		
DATE OF DEATH, WHERE KNOWN	(vii) If a former Member has died, an indication that the former Member has died and the month and year of death, where that information is known to the College;	<i>Code</i> , s. 23(2)2. Where a member is deceased, the name of the deceased member and the date upon which the member died, if known to the Registrar.	Revoke COO by-law , as it is almost identical to the RHPA provision, and is superseded to the extent that it requires only the month and year of death.
ICRC REFERRALS	(x) For every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 of the Code and has not been finally resolved, until the matter has been resolved, (a) a notation of that fact, including the date of the referral; (b) the notice of hearing;	<i>Code</i> , s. 23(2)8. A notation of every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and that has not been finally resolved, including the date of the referral and the status of the hearing before a panel of the Discipline Committee,	Revoke the COO by-law and replace it with the following: (x) For every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 of the Code and has not been finally resolved, until the matter has been resolved, <u>in addition to the information required by the <i>Health Professions</i></u>

	(c) a summary of each specified allegation; and (d) the status of the hearing including any hearing dates.	until the matter has been resolved. <i>Code</i> , s. 23(2)9. A copy of the specified allegations against a member for every matter that has been referred by the Inquiries, Complaints and Reports Committee to the Discipline Committee under section 26 and that has not been finally resolved.	<u>Procedural Code, the notice of hearing and any hearing dates.</u>
BAIL CONDITIONS	(xxiii) Any existing restriction imposed on a Member <u>by a court or lawful authority in Canada or the United States</u> and of which the College is aware that, in the reasonable discretion of the Registrar, may restrict or is relevant to the Member's suitability to practise.	O. Reg. 261/18, s. 1(1)2 Any currently existing conditions of release following a charge for an offence in Canada under the <i>Criminal Code</i> or <i>Controlled Drugs and Substances Act</i> or subsequent to a finding of guilt and pending appeal or any variations to those conditions.	Revoke the COO by-law. This means COO will no longer post relevant "non-criminal" bail conditions within Canada, and no longer post relevant bail conditions in the United States. Executive Committee is of the view that it may be cumbersome for the Registrar to have to determine "relevancy" and that consistency with the RHPA is best.
FINDINGS OF GUILT	(xxiv) A summary of any finding of guilt of which the College is aware made by a court or other lawful authority on or after January 1, 2016 against a Member, in respect of any offence, in any jurisdiction, of which the College	O. Reg. 261/18, s. 1(1)1 All findings of guilt under the <i>Criminal Code</i> or <i>Controlled Drugs and Substances Act</i> . This includes: i. a brief summary of the finding,	Revoke the COO by-law. This means COO will no longer post relevant non-criminal findings of guilt within Canada, and no longer post relevant findings outside of Canada. Executive Committee is of the view

	is aware and that in the reasonable discretion of the Registrar, relates to the Member's suitability to practise;	<p>ii. a brief summary of the sentence, and</p> <p>iii. if the finding is under appeal, a notation that it is under appeal until the appeal is finally disposed of.</p> <p>Findings are excluded/removed from the public register in any of the following cases:</p> <ol style="list-style-type: none"> 1. The record has been suspended by the Parole Board of Canada. 2. A pardon has been obtained. 3. The conviction has been overturned on appeal (O. Reg. 261/18, s. 1(2)). 	that it may be cumbersome for the Registrar to have to determine "relevancy" and that consistency with the RHPA is best.
CHARGES	(xxv) A summary of any currently existing charges against a Member, commenced on or after January 1, 2017, of which the College is aware, in respect of a federal, provincial or other offence that the Registrar believes is relevant to the Member's suitability to practise. Any such summary shall be removed if the Member is acquitted, the charge is withdrawn or the charge has been superseded by a finding.	<p>O. Reg. 261/18, s. 1(1)3 If a member has been charged with an offence under the <i>Criminal Code (Canada)</i> or the <i>Controlled Drugs and Substances Act (Canada)</i> and the charge is outstanding,</p> <p>i. the fact and content of the charge, and</p> <p>ii. the date and place of the charge.</p>	<p>Revoke the COO by-law.</p> <p>This means COO will no longer post relevant non-criminal/drug charges within Canada, and no longer post relevant charges outside of Canada.</p> <p>Executive Committee is of the view that it may be cumbersome for the Registrar to have to determine "relevancy" and that consistency with the RHPA is best.</p>
OTHER	(xv) Where the College is aware	O. Reg. 261/18, s. 1(1)4 If a	Revoke COO by-law.

DISCIPLINARY FINDINGS	<p>that a finding of professional misconduct or incompetence or similar finding has been made against the Member by a body that governs a profession, inside or outside of Ontario, and that finding has not been reversed on appeal:</p> <p>(a) a notation of the finding; (b) the name of the governing body that made the finding;</p> <p>(c) a brief summary of the facts on which the finding was based;</p> <p>(d) the penalty and any other orders made relative to the finding;</p> <p>(e) the date the finding was made; and</p> <p>(f) information regarding any appeals of the finding;</p>	<p>member has been the subject of a disciplinary finding or a finding of professional misconduct or incompetence by another regulatory or licensing authority in any jurisdiction,</p> <p>i. the fact of the finding,</p> <p>ii. the date of the finding,</p> <p>iii. the jurisdiction in which the finding was made, and</p> <p>iv. the existence and status of any appeal.</p>	<p>Executive Committee recommends that COO revoke its by-laws regarding other disciplinary findings, on the basis that the RHPA's requirements to post basic information about such findings are sufficient, and there is no compelling need to post details of the findings.</p>
CAUTIONS	<p>(xxvii) Where a decision of a panel of the Inquiries, Complaints and Reports Committee made on or after January 1, 2016 includes a requirement that the Member attend before a panel of that committee to be cautioned, a) a notation of that fact</p> <p>b) a summary of the caution;</p> <p>c) the date of the panel's decision; and d) if applicable, a notation that the panel's decision is subject to a review or appeal and therefore not yet final, which notation shall be</p>	<p><i>Code</i>, s. 23(2)7 A notation of every caution "<u>received</u> from" a panel of the ICRC.</p>	<p>Keep the COO by-law.</p> <p>The RHPA provision appears to be narrower than the COO by-law, in that the RHPA only cautions that have been "received" to be posted, whereas COO's by-laws require the fact that the ICRC decision required a caution to be posted.</p> <p>The COO by-law also requires additional information to be posted, which the Executive Committee is of the view would be useful for the public.</p>

	removed once the review is finally disposed of;		
SCERPS	(xxviii) Where a decision of a panel of the Inquiries, Complaints and Reports Committee made on or after January 1, 2016 includes a requirement that the Member complete a specified continuing education or remediation program a) a notation of that fact, b) a summary of the specified continuing education or remediation program, c) the date of the panel's decision, d) if applicable, a notation that the requirements of the specified continuing education or remediation program have been fulfilled or completed by the Member, and e) if applicable, a notation that the panel's decision is subject to review or appeal and therefore is not yet final, which notation shall be removed once the review is finally disposed of.	<i>Code</i> , s. 23(2)7 A notation of every SCERP required by the ICRC.	Keep the COO by-law. RHPA requirement is the same as the COO's, except COO requires more details to be included, which the Executive Committee is of the view would be useful for the public.
<i>Removal of SCERPs and cautions</i>	(xxx) The information placed on the register pursuant to paragraphs (xxvii) and (xxviii) may be removed from the register upon	SCERPs and cautions are now permanent (subject only to possible removal on the grounds that the information	Revoke the COO by-law , as it has now been superseded by the RHPA.

	<p>the written request of the Member on the later of the following two dates:</p> <p>(a) Two (2) years from the date of the Inquiries, Complaints and Reports Committee panel's decision if the Registrar is satisfied that the Member has attended before a panel to be cautioned and/or successfully completed the specified continuing education or remediation program; or</p> <p>(b) If at any time during the two years following the decision of the Inquiries, Complaints and Reports Committee panel, a subsequent panel requires the Member to attend to be cautioned or complete a specified continuing education or remediation program, information about all required appearances for a caution and/or specified continuing education or remediation programs shall remain on the register until two years after the most recent appearance for a caution or specified continuing education or remediation program were noted on the register;</p>	<p>is "obsolete and no longer relevant to the member's suitability to practise", in accordance with section 23(7) of the <i>Health Professions Procedural Code</i>).</p>	
UNDERTAKINGS	<p>(xxxii) When a decision of the Inquiries, Complaints and Reports Committee, relating to a complaint made against the member on or</p>	<p><i>Code</i>, s. 23(2)11 A notation and synopsis acknowledgements and undertakings that are in effect</p>	<p>Revoke the COO by-law.</p> <p>Executive Committee is of the view that the RHPA provisions duplicate</p>

	<p>after January 1, 2016, includes or is contingent upon an undertaking to perform certain obligations given by the Member</p> <ul style="list-style-type: none"> a) a notation of that fact b) a summary of that decision; c) the date of the panel's decision; d) if applicable, a notation that the requirements of the undertaking have been fulfilled or completed by the Member, and e) if applicable, a notation that the panel's decision is subject to review or appeal and therefore is not yet final, which notation shall be removed once the review is finally disposed of. <p>(ix) If the Member has signed an undertaking not to practise the profession, a notation to that effect.</p>	<p>re: allegations of professional misconduct or incompetence before the ICRC or Discipline Committee.</p> <p><i>Code, s. 23(2)17</i> Where, during or as a result of a proceeding under section 25, a member has resigned and agreed never to practise again in Ontario, a notation of the resignation and agreement.</p>	<p>them and are sufficient.</p> <p>Executive Committee is of the view that undertakings that are no longer in effect do not need to remain on the public register.</p> <p>It is noted that an undertaking to resign made outside of a section 25 proceeding can expressly require that it be posted on the public register.</p>
OTHER LICENCES	<p>(xxvi) Where the College is aware that a Member is <u>or was</u> registered or licensed to practise a profession inside or outside of Ontario, a notation of that fact;</p>	<p>O. Reg. 261/18, s. 1(1)5 If a member is currently licenced or registered to practice another profession in Ontario or a profession in another jurisdiction, the fact of that licensure or registration.</p>	<p>Revoke the COO by-law, as the RHPA provision is sufficient and there is no compelling need for the public to know about past registrations.</p>
	<p>15.7 Providing Information to the College</p> <p>If requested, the Member shall</p>	<p>Members must report to the COO everything that the <i>RHPA</i> or COO by-laws require to be posted to the</p>	<p>Consider revoking the COO by-law</p> <p>If the bail condition by-law is revoked, COO should consider revoking this</p>

	<p>immediately provide the College with the following information, in the form requested by the College:</p> <p>[...]</p> <p>(xvii) Information about any current restrictions, terms, orders, directions or agreements relating to the custody or release of the Member in respect of provincial, federal or other offences;</p>	<p>public register. Pursuant to the <i>RHPA</i>, this includes bail conditions relating to <i>Criminal Code</i> and <i>Controlled Drugs and Substances Act</i> charges and findings.</p>	<p>provision requiring members to report information about bail conditions.</p> <p>Under the <i>RHPA</i>, members will remain obligated to report to the COO all bail conditions relating to <i>Criminal Code</i> and <i>Controlled Drugs and Substances Act</i> charges and findings.</p>
	<p>15.8 Notification of Changes of Information</p> <p>The Member shall notify the College, in writing, of any changes to the following information within 30 days of the effective date of the change:</p> <p>[...]</p> <p>(vi) information about any current restrictions, terms, orders, directions, or agreements relating to the custody or release of the Member in respect of provincial, federal or other offences, including any changes to the restrictions, terms, orders, directions or agreements.</p>	<p>Members must report to the COO everything that the <i>RHPA</i> or COO by-laws require to be posted to the public register. Pursuant to the <i>RHPA</i>, this includes changes to bail conditions relating to <i>Criminal Code</i> and <i>Controlled Drugs and Substances Act</i> charges and findings.</p>	<p>Consider revoking the COO by-law</p> <p>If the bail condition by-law is revoked, COO should consider revoking this provision requiring members to report information about changes to bail conditions.</p> <p>Again, under the <i>RHPA</i>, members will remain obligated to report changes to bail conditions relating to <i>Criminal Code</i> and <i>Controlled Drugs and Substances Act</i> charges and findings.</p>

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