

## BRIEFING NOTE

**TO:** Board of Directors

**FROM:** Amy Stein, Acting Deputy Registrar

**DATE:** February 22, 2021

**SUBJECT:** 9.0 Spousal Exemption Regulation

☒ For Decision

☐ For Information

☐ Monitoring Report

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**Purpose:**

To consider whether to propose a regulation that would exempt opticians from the prohibition against health professionals treating their spouses.

**Background:**

*General prohibition on treating spouses*

Ontario law prohibits regulated health professionals from treating their spouses. It is considered sexual abuse for a health professional to engage in any form of relationship, contact, behaviour or remarks of a sexual nature with a person that meets the definition of “patient” under the *Regulated Health Professions Act, 1991 (RHPA)*. The *RHPA* provides that a person remains a patient for at least one year after the practitioner-patient relationship ends.

*Colleges permitted to make regulations that permit registrant to treat spouses*

In 2013, however, the *RHPA* was amended to permit colleges to make a regulation permitting their registrants to treat spouses, as long as no sexual conduct, behaviour or remarks occur during the treatment. “Spouse” is defined to include both married spouses and common law spouses, but the exemption would not apply to persons who are in other forms of intimate or committed relationships.

*Proposed regulations put on hold pending a Sexual Abuse Prevention Task Force*

In 2014, a number of health regulatory colleges submitted proposed regulations that would grant an exemption for their registrants to treat their spouses. In December 2014, the COO Council approved, in principle, a proposed regulation that would permit opticians to treat their spouses.

Also in 2014, the Minister of Health and Long-Term Care appointed a task force for the prevention of patient sexual abuse. The task force’s mandate was to review the effectiveness of the *RHPA* in protecting the patients of health care professionals from sexual abuse.

In light of the newly appointed task force, the Ministry considered that it was not the appropriate time to consider spousal exemption regulations. One regulation had already been approved, which applied to registrants of the Royal College of Dental Surgeons of Ontario, but all other regulations that had been submitted for approval were placed on hold. The COO was advised by a Ministry representative that it was unlikely to enact its proposed regulation in the foreseeable future. Accordingly, the Council determined not to proceed with circulating the proposed regulation or submitting it for approval.

*Proposed regulations are now being approved/considered*

The Sexual Abuse Task Force issued its report in 2016 and since that time, a number of important amendments were made to the *RHPA* that were aimed at strengthening legislative protections against patient sexual abuse.

In 2019, the issue of whether it should be considered sexual abuse for a health professional to treat their spouse began to receive greater attention by the media and courts. In 2020, the Ontario Government approved spousal exemption regulations for three additional colleges, including the College of Optometrists of Ontario. A further three proposed regulations were circulated for public feedback in December 2020 and are now being considered for approval. The COO has now been advised that Ministry will consider further new submissions for spousal exemption regulations.

#### **For Consideration:**

The Board is asked to decide whether it would like to consider submitting a proposed spousal exemption regulation for government approval. The Board may wish to assign this issue to the Patient Relations Committee and/or the Clinical Practice Committee for their review.

As noted above, a regulation was recently approved that permits registrants of the College of Optometrists of Ontario to treat their spouses. In light of the overlapping scope of practice between opticians and optometrists, and the fact they often work in shared and collaborative practice environments, there may be significant benefit in regulatory consistency between the two professions.

There is an inherent power imbalance that exists between a health care practitioner and a patient, which is why it is crucial that there be strong legislative protections against any form of sexual abuse. Treating spouses, however, gives rise to unique considerations that may be better addressed outside the scope of the existing sexual abuse provisions of the *RHPA*. A spousal exemption regulation does not mean that opticians should routinely treat their spouses (or other family members). Standards and/or guidelines would need to be developed to set parameters around when it would be appropriate for an optician to treat their spouse.

#### **Public Interest Considerations:**

It is recommended that the Board articulate its public interest rationale for its decision on whether or not to explore the option of submitting a proposed spousal exemption regulation.

**Diversity, Equity and Inclusion Considerations:**

It is recommended that the Board articulate what diversity, equity and inclusion considerations it might have for its decision on whether or not to explore the option of submitting a proposed spousal exemption regulation.

**Action Required:**

The Board is asked to decide whether to consider submitting a proposed spousal exemption regulation for government approval. The Board may wish to assign this issue to the Patient Relations Committee and/or the Clinical Practice Committee for their review.