

College of Optometrists of Ontario  
L'Ordre des optométristes de l'Ontario

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Brian O'Riordan, Executive Co-ordinator  
Health Professions Regulatory Advisory Council  
55 St. Clair Avenue West  
Toronto, ON M4W 2Y7

Dear Mr. O'Riordan

On behalf of the College of Optometrists of Ontario, I'd like to thank HPRAC for the opportunity to provide further input on certain issues in the eye care sector. We have now had an opportunity to review the submissions posted on the HPRAC website. This review has led us to identify four very general themes on which we would like to provide further comments.

**1. Safe, effective and accessible care**

The College was not surprised that all stakeholders articulated that the health care system should be structured to promote the provision of safe, effective and accessible care. There was also general recognition that there are changes that would move this expectation further forward.

The expansion of the scope of practice was mentioned by many stakeholders with respect to the provision of safe, effective and accessible care. Certainly, accessibility is increased when more providers are available. However, the College believes that patient safety and efficacy trump accessibility. That is to say, arguing for an expanded scope of practice based on accessibility alone is insufficient. Changing a profession's legislated scope of practice should occur only following demonstration that the profession can provide safe and effective care within the expanded scope of practice. Usually, this would require the majority of members of the profession to be trained and willing to provide services within the expanded scope.

In the stakeholder submissions, there was acknowledgement that health care decisions need to be made in the best interests of the patient. Not surprisingly however, there was disparity over how far regulations should extend to ensure that this occurs. As noted in our original submission, there are more similarities between optometry and medicine than between optometry and opticianry. This is evident from the position taken by the College of Physicians and Surgeons when they state that "business considerations may interfere with the provision of good care for the patient." Implicit in this statement is that there should be sufficient controls to ensure that business considerations do not adversely affect patient care.

With respect to control over the premises where a profession is practised, there was again understandable variation in approach. Corporate interests, as characterized by the Vision

Council's submission, do not support regulation of the optical premises. This position is articulated in spite of their statement that regulated health professionals have a duty to put their patients' interest "before his or her financial or self-interest *or that of an employer or associate.*" If the Vision Council truly believes this, then they should be prepared to accept accountability in the form of regulation of premises.

The College believes that the public will be better protected if reasonable constraints are placed on business practices and Colleges are given jurisdiction over the premises in which their members practise.

One message was clear: The regulations should be fair and fairly applied. The Minister and the Ministry, through leadership and oversight, has the responsibility to ensure that regulations are fair. It is then the responsibility of the College(s) to ensure that the regulations are fairly applied. The College believes that the independent contractor provisions that we proposed meet the first objective by ensuring a level playing field regardless of practice setting. Once in place, it will then be up to the College to apply those regulations in a fair and consistent manner.

## **2. Enhanced interprofessional collaboration**

The majority of stakeholders embraced the concept of interprofessional collaboration and the improvements to patient care that can result. Many identified the current restrictions on who optometrists can practise in association with as being an impediment to interprofessional collaboration, and recommended changes to those regulations. The College could not agree more. As HPRAC knows, the College of Optometrists has been working for more than 15 years to have these regulations amended.

Having carefully considered the varied approaches that stakeholders put forward, the College remains convinced that the proposal to permit optometrists to enter into business arrangements as independent contractors with any other person remains most protective of the public while facilitating interprofessional collaboration. No stakeholder brought forward convincing arguments that allowing optometrists to be employed broadly would be significantly better for the public than the College's independent contractor model.

Some stakeholders asserted that there is a lack of data to prove that employment is inherently evil. The College strongly disagrees with this statement both in principle and in fact. On a principled basis, employment is all about the power and control relationship between employer and employee. This is evidenced by the birth and development of the union movement as a means to protect employees because of the nature of the employment relationship. On a factual basis the College has previously brought to HPRAC's attention legal decisions dealing with employment of regulated health professionals including cases from Tennessee, California and the Cox case in Ontario where restrictions on association were enforced because it was determined that those restrictions were in the public interest.

The College would like to point out that there are restrictions in place in other professions that relate to business relationships and independence of professional judgement. For instance, there are provisions in place that physicians working in pharmacies will have a separate entrance so

that patients can have access to the physician outside normal pharmacy hours. There are also guidelines that have been developed relating to the involvement of pharmaceutical manufacturers in continuing medical education designed to minimize the influence of the pharmaceutical industry on the physician's professional judgement – a relationship far distant from an employee-employer relationship. The College agrees with these restrictions and has incorporated many of them into our own Continuing Education Policy. Restrictions in place in the pharmacy arena also ensure that pharmacists are not compromised by the pharmacy owner.

### **3. Development of a discussion forum**

The development of a discussion forum involving different players in the eye care sector was generally felt to be beneficial and would improve communication and aid interprofessional collaboration. Again, stakeholders varied on who the players at the table should be. Some felt that wide consultation was necessary, others were more limiting, and others were vague.

The purpose of professional regulation is public protection. Accordingly, if a discussion forum is developed the involvement of the regulatory colleges is necessary to ensure that protection of the public interest remains at the forefront of all discussions. Certainly, wide consultation is necessary to ensure that all perspectives are considered; however, consultation does not equate to decision-making. As the College pointed out in its original submission, the current model whereby any interested organization – whether representing regulated and unregulated persons or groups – has equal representation has not served the public well in the past. A smaller and more cohesive group should be given a clear mandate to develop a system that does serve the public interest.

### **4. Responsive Legislation**

Many stakeholders were critical of the process and the delays in getting legislation passed. Several noted stimuli for legislative change that exist within the professions, that are related to technological development or result from societal change. Although the RHPA was touted as being able to respond to such triggers, significant delays have been encountered in the past. The College believes that the Ministry has to be appropriately resourced to deal in a timely manner with the policy and legal issues that arise.

Again, we would like to thank HPRAC for this opportunity to provide the College's perspective through the public interest lens. Should there be any follow-up questions that arise either from this submission or more generally, we'd be pleased to address them with HPRAC.

Best regards,



Murray J. Turnour, O.D., M.Sc.  
Registrar