

INTERPROFESSIONAL COLLABORATION IN EYE CARE

OPTICIANRY JURISDICTIONAL REVIEW: ONTARIO

1: DISPENSING AND DELEGATION

2: ADVERTISING

3: BUSINESS PRACTICES

NOVEMBER, 2009

Note to Reader

Unless otherwise specified, the material in this review was accessed between September and November 2009. The material that was retrieved from websites is accurate as of the date it was accessed and cannot be guaranteed accurate when accessed at a later date.

This review includes statutory and regulatory materials that form the key regulatory frameworks for the professions of Optometry in Ontario and that are relevant for the scope of HPRAC's review. This review does not reference all legislation (and regulation) that is relevant to the practices of Optometry in Ontario.

REGULATORY FRAMEWORK	DISPENSING AND DELEGATION	ADVERTISING	BUSINESS PRACTICES	LEGISLATIVE AND RESOURCE REFERENCES
<p>A self-regulating profession under the <i>Regulated Health Professions Act, 1991</i> and the <i>Opticianry Act, 1991</i>.</p> <p>Objects of the College:</p> <ol style="list-style-type: none"> To regulate the practice of the profession and to govern the members in accordance with the health profession Act, this Code and the <i>Regulated Health Professions Act, 1991</i> and the regulations and by-laws. To develop, establish and maintain standards of qualification for persons to be issued certificates of registration. To develop, establish and maintain programs and standards of practice to assure the quality of the practice of the profession. To develop, establish and maintain standards of 	<p>The <i>Regulated Health Professions Act, 1991</i> provides that:</p> <p>Scope of practice</p> <p>3. The practice of opticianry is the provision, fitting and adjustment of subnormal vision devices, contact lenses or eye glasses. 1991, c. 34, s. 3.</p> <p>Authorized acts</p> <p>4. In the course of engaging in the practice of Opticianry, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to dispense subnormal vision devices, contact lenses or eye glasses. 1991, c. 34, s. 4.</p> <p>Additional requirements for authorized acts</p> <p>5. (1) A member shall not dispense subnormal vision devices, contact lenses or eye glasses under the authority of section 4 except upon the prescription of an optometrist or physician.</p> <p>The College's Standards of Practice provide that:</p> <p>Standard 2: Professional Conduct</p> <p>The Optician shall meet the ethical and legal requirements of professional practice.</p>	<p>ONTARIO REGULATION 828/93 MADE UNDER THE OPTICIANRY ACT, 1991 provides that:</p> <p>PROFESSIONAL MISCONDUCT</p> <p>1. The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:</p> <p>Representations about Members and their Qualifications</p> <p>17. Inappropriately using a term, title or designation in respect of the member's practice.</p> <p>18. Using a term, title or designation indicating or representing that the member has a specialization in the practice of opticianry which the member does not hold.</p> <p>19. Using a name other than the member's name, as set out in the register, in the course of providing or offering to provide services within the scope of practice of opticianry.</p> <p>20. Failing to maintain records as required</p>	<p>REGULATION 828/93 MADE UNDER THE OPTICIANRY ACT, 1991, provides that:</p> <p>BUSINESS PRACTICES</p> <p>1. The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:</p> <p>24. Submitting an account or charge for services that the member knows or ought to know is false or misleading.</p> <p>25. Failing to specify in an account the selling price of subnormal vision devices, eye glasses or contact lenses, if requested to do so by the patient, or by the person or agency who is to pay, in whole or in part, for them.</p> <p>The <i>Guide to an Application for a Certificate of Authorization for Health Profession Corporations</i> states:</p> <p>As a result of amendments to the <i>Regulated Health Professions Act (RHPA)</i> (including regulations), the <i>Health</i></p>	<p><i>Regulated Health Professions Act, 1991</i></p> <p>http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_91r18_e.htm</p> <p>CONSOLIDATED REGULATIONS, INCLUDING AMENDMENTS, UNDER THE OPTICIANRY ACT, 1991</p> <p>http://www.coptont.org/docs/Legislation/regs_06.pdf</p> <p>Professional Standards of Practice for Opticians in the Province of Ontario</p> <p>http://www.coptont.org/docs/Legislation/SOP.pdf</p> <p>College of Opticians of Ontario – Code of Ethics</p> <p>http://www.coptont.org/doc</p>

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<p>knowledge and skill and programs to promote continuing evaluation, competence and improvement among the members.</p> <p>5. To develop, establish and maintain standards of professional ethics for the members.</p> <p>6. To develop, establish and maintain programs to assist individuals to exercise their rights under this Code and the <i>Regulated Health Professions Act, 1991</i>.</p> <p>7. To administer the health profession Act, this Code and the <i>Regulated Health Professions Act, 1991</i> as it relates to the profession and to perform the other duties and exercise the other powers that are imposed or conferred on the College.</p> <p>8. To promote and enhance relations between the</p>	<p>Criteria:</p> <p>2. The Optician is responsible for the professional actions and consequences of actions of any Student or Intern that they have agreed to supervise.</p> <p>Standard 3: Fitting of Appropriate Optical Devices</p> <p>The Optician shall fit, prepare and dispense appropriate optical devices.</p> <p>Criteria:</p> <p>Optical Appliances</p> <p>1. PATIENT EVALUATION</p> <p>THE PRESCRIPTION (Rx)</p> <p>(i) Under subsection 5(1) of the <i>Opticianry Act</i>, a member shall not dispense subnormal vision devices, contact lenses or eyeglasses except on the prescription of an optometrist or physician. In order for a prescription to be valid, it must contain the following information:</p> <p>a) The name of a prescriber b) The patient's name. c) The patient's Prescription. d) The date of examination</p>	<p>by the regulations.</p> <p>21. Falsifying a record relating to the member's practice.</p> <p>22. Failing, without reasonable cause, to provide a report or certificate relating to an examination or treatment performed by the member, within a reasonable time, to the patient or his or her authorized representative, after a patient or his or her authorized representative has requested such a report or certificate.</p> <p>23. Signing or issuing, in the member's professional capacity, a document that the member knows or ought to know contains a false or misleading statement.</p> <p>29. Advertising or permitting advertising with respect to the member's practice in contravention of the regulations.</p> <p>ONTARIO REGULATION 219/94 provides that:</p> <p>PART II: ADVERTISING</p> <p>6. An advertisement with respect to a member's practice or place of practice must not contain,</p>	<p><i>Professions Procedural Code</i> and the <i>Business Corporations Act (BCA)</i>, regulated health professionals are now permitted to incorporate for the purpose of practicing a health profession, providing they obtain Certificates of Authorization from their respective health profession Colleges.</p> <p>ELIGIBILITY CONDITIONS</p> <p>The new provisions outline the conditions and requirements that must be met in order to obtain a Certificate of Authorization from the College of Opticians of Ontario (College), and include:</p> <p>1. All of the issued and outstanding shares of the corporation shall be legally and beneficially owned, directly or indirectly, by one or more members of the profession of opticianry, who hold a certificate of registration issued by the College;</p> <p>2. All officers and directors of the corporation must be shareholders of the corporation;</p> <p>3. The articles of the professional corporation must provide that the corporation cannot carry on a business</p>	<p>s/Legislation/code_of_ethics.pdf</p> <p>College of Opticians of Ontario Delegation Policy</p> <p>http://www.coptont.org/docs/Policies/Delegation%20Policy.pdf</p> <p>The College of Opticians of Ontario Guide to an Application for a Certificate of Authorization for Health Profession Corporations</p> <p>http://www.coptont.org/docs/Incorporation%20package.pdf</p> <p>Regulation 39/02 Certificates of Authorization http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_020039_e.htm</p>

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<p>College and its members, other health profession colleges, key stakeholders, and the public.</p> <p>9. To promote inter-professional collaboration with other health profession colleges.</p> <p>10. To develop, establish, and maintain standards and programs to promote the ability of members to respond to changes in practice environments, advances in technology and other emerging issues.</p> <p>11. Any other objects relating to human health care that the Council considers desirable.</p> <p>Source: HEALTH PROFESSIONS PROCEDURAL CODE, available at http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_91r18_e.htm#BK47, accessed on October 21, 2009.</p>	<p>(ii) Prescriptions for Eyeglasses, Contact Lenses or sub-normal vision devices do not expire, however, an Optician must inform their patients of the importance of regular eye examinations and recommend that patients have their eyes tested regularly.</p> <p>(iii) The optician will retain a copy of the prescription for a period of 6 years. The optician will make available the original or copy of the prescription, when requested to do so, provided it includes the prescriber name and date of examination.</p> <p>(iv) An optician may duplicate the eye glasses currently being worn by a patient, Duplication must be noted in the patient's file. The optician must explain to the patient that it is important to have regular eye examinations because such examinations may reveal the necessity for further correction.</p> <p>(v) An optician must communicate with the prescriber if there is any doubt whether the Prescription is valid or if the Prescription appears to be incomplete.</p> <p>PRESCRIPTION ANALYSIS</p> <p>(i) An Optician must analyse a patient's optical requirements in conjunction with a prescription issued by a prescriber.</p> <p>2. LENS DETAILS</p>	<p>(a) anything that is false or misleading;</p> <p>(b) anything that, because of its nature, cannot be verified;</p> <p>(c) a claim of specialization, if the member does not hold a Specialty Certificate issued by the College; or,</p> <p>(d) the member's name or photograph, or other likeness, in an advertisement that implies, or could be reasonably interpreted to imply, that the professional expertise of the member is relevant to the subject matter of the advertisement if, in fact, it is not.</p>	<p>other than the practice of the profession of opticianry as governed by the College but the professional corporation may carry on activities related to or ancillary to the practice of the profession including the investment of surplus funds earned by the corporation;</p> <p>4. The name of the corporation must:</p> <ul style="list-style-type: none"> ▪ meet the requirements in section 3.2 of the <i>BCA</i>, i.e. shall not have a number name and shall include the words "Professional Corporation" or "Société professionnelle"; ▪ include the surname of one or more shareholders of the corporation as set out in the College register and may also include the shareholder's given name, one or more of the shareholder's initials or a combination of both; ▪ indicate opticianry as the health profession practiced by the shareholders; ▪ not include any information other than that permitted or required by the above. <p>The Health professions procedural code provides that:</p> <p>Professional corporations</p>	

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<p>In addition to statutes, the profession is framed by standards of practice, regulations, policy statements by the College and an ethical code.</p>	<p>Opticians are required to design optical appliances, as appropriate, for each patient. Sufficient parameters must be supplied for the fabrication process.</p> <p>(i) Of particular importance are variations in design dictated by Prescription changes or differences from lenses previously worn by the patient, when appropriate. Adequate details will enable proper counselling about adaptation time and symptoms, if any.</p> <p>(ii) Opticians must advise patients of the vision restriction resulting from high-power lenses involving restricted areas (i.e., optic zone or carrier portion).</p> <p>(iii) Opticians must advise patients about the limitations of lenses, certain frame materials, etc. For example, if high index glass lenses are used to reduce edge thickness and/ or weight, the patient must be advised of their limitations with regard to impact resistance. If a patient's lifestyle precludes the use of high-index materials, opticians must recommend glasses better suited to patient needs.</p> <p>(iv) It is expected that whenever a glass lens is dispensed, it will be treated for impact resistance by chemical or thermal tempering. If it is not, the patient must be advised. Any eye glasses supplied for children, industrial environments or sports, must be impact resistant.</p>		<p>85.8 (1) Subject to the regulations made under subsection 43 (1) of the <i>Regulated Health Professions Act, 1991</i> and the by-laws, one or more members of the same health profession may establish a health profession corporation for the purposes of practising their health profession. 2005, c. 28, Sched. B, s. 2 (1).</p> <p>Same</p> <p>(2) The provisions of the <i>Business Corporations Act</i>, including the regulations made under that Act, that apply with respect to professional corporations apply with respect to a health profession corporation established under subsection (1). 2005, c. 28, Sched. B, s. 2 (1).</p> <p>Notice of change of shareholder</p> <p>85.9 A health profession corporation shall notify the Registrar within the time and in the form and manner determined under the by-laws of a change in the shareholders of the corporation who are members of the College. 2000, c. 42, Sched., s. 37; 2007, c. 10, Sched. M, s. 69.</p> <p>Application of Act, etc.</p>	

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	<p>(v) An optician has a responsibility to provide quality lenses which meet the technical standards in all respects, (see appendix i).</p> <p>3. TOOLS An Optician must have the appropriate tools for dispensing on all premises where the Optician dispenses, and maintain them in good working and calibrated condition. These include but are not limited to: Eyeglasses:</p> <ul style="list-style-type: none"> (i) Adjustment and bench tools; (ii) Lensometer; (iii) Lens clock; (iv) Frame heater; (v) P.D. Ruler; (vi) Pupilometer and/ or penlight, or interpupillary measuring device (vii) Frame and lens cleaning products; (viii) Thickness calipers; (ix) Vertex distometer; (x) Tolerance chart (see appendices) (xi) Visual acuity charts <p>Contact Lenses:</p> <ul style="list-style-type: none"> (i) A lensometer; (ii) A keratometer/ ophthalmometer; (iii) A slit lamp/ biomicroscope; (iv) A hand magnifier with measuring grid; (v) Visual acuity chart for distance and near; 		<p>85.10 The following things apply to a member who practises a health profession through a health profession corporation:</p> <ol style="list-style-type: none"> 1. The <i>Regulated Health Professions Act, 1991</i> and the regulations made under that Act. 2. The health profession Act governing the member's health profession and the regulations and by-laws made under that Act. 2001, c. 8, s. 220; 2007, c. 10, Sched. M, s. 65. <p>Professional, fiduciary and ethical obligations to patients</p> <p>85.11 (1) The professional, fiduciary and ethical obligations of a member to a person on whose behalf the member is practising a health profession,</p> <ul style="list-style-type: none"> (a) are not diminished by the fact that the member is practising through a health profession corporation; and (b) apply equally to the corporation and to its directors, officers, shareholders, agents and employees. 2000, c. 42, Sched., s. 37; 2001, c. 8, s. 221 (1). <p>Investigation</p> <p>(2) Subsections (3) and (4) apply if an action or the conduct of a member practising on behalf of a health profession</p>	

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	<p>(vi) A diameter gauge; where appropriate (vii) Flourescein strips (viii) Tolerance chart (see appendices) (ix) Visual acuity charts</p> <p>Low Vision Aids: The following equipment is necessary to successfully fit low vision aides:</p> <p>(i) Typoscope (ii) Adjustable reading lamp (iii) Reading cards (iv) Reading stand (v) Set of Sloan cards or equivalent (vi) Near and distant visual acuity charts</p> <p>The following are further recommended:</p> <p>(i) Low vision spectacle frames (ii) Aspheric single vision magnifier spectacles (iii) Aspheric microscopic eye glasses (iv) High-plus power prismatic lenses and frames (v) Industrial and hobby magnifiers; loupes; meters; lighted stands; magnifier bar; headband magnifier; easy view magnifier; illuminated magnifiers (vi) Hand held aspheric magnifiers (vii) Flip-up magnifiers that can be clipped to patient's eye glasses in various powers (viii) Bergon "Ary" loops (ix) Zeiss or Keeler telescopic eye glasses (x) Magna add slip-in magnifiers equivalent to a 40mm bifocal</p>		<p>corporation is the subject of one of the following:</p> <ol style="list-style-type: none"> 1. A complaint. 2. A mandatory report. 3. A specified allegation of professional misconduct or incompetence. 4. An investigation, review or hearing by the Board. 5. An investigation, inspection or assessment by an investigator or assessor appointed under the Code. 6. An inquiry by a panel of the Inquiries, Complaints and Reports Committee. 7. A referral to the Discipline Committee or the Fitness to Practise Committee. 8. A hearing by a committee of the college. 2001, c. 8, s. 221 (2); 2007, c. 10, Sched. M, s. 66. <p>Same (3) In the circumstances described in subsection (2), any power that the College may exercise in respect of the member may be exercised in respect of the health profession corporation. 2001, c. 8, s. 221 (2).</p> <p>Liability</p>	

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	<p>ONTARIO REGULATION 828/93 MADE UNDER THE OPTICIANRY ACT, 1991 states:</p> <p>PROFESSIONAL MISCONDUCT</p> <p>1. The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:</p> <p>4. Delegating a controlled act unless the delegation is authorized by the regulations.</p> <p>5. Permitting, counselling or assisting anyone who is not registered under the Act to perform an act which should be performed by a member.</p> <p>5.1. Permitting, counselling or assisting a registered student optician or a registered intern optician to dispense subnormal vision devices, contact lenses or eye glasses, except under the supervision or direction of a registered optician who is physically present in the place where the dispensing takes place, at the time it takes place.</p> <p>12. Dispensing a contact lens to a patient, other than for diagnostic or emergency purposes, which the member knows, or ought to know, is not a new contact lens.</p> <p>College of Opticians of Ontario Frequently Asked Questions about</p>		<p>(4) In the circumstances described in subsection (2), the health profession corporation is jointly and severally liable with the member for all fines, costs and expenses that the member is ordered to pay. 2001, c. 8, s. 221 (2).</p> <p>Conflict in duties 85.12 If there is a conflict between a member's duty to a patient, the college or the public and the member's duty to a health profession corporation as a director or officer of the corporation, the duty to the patient, the college or the public prevails. 2001, c. 8, s. 222.</p> <p>Restrictions apply to corporation's certificate 85.13 A term, condition or limitation imposed on the certificate of registration of a member practising a health profession through a health profession corporation applies to the certificate of authorization of the corporation in relation to the practice of the health profession through the member. 2000, c. 42, Sched., s. 37.</p> <p>Prohibition, professional misconduct 85.14 (1) In the course of practising a health profession, a health profession corporation shall not do, or fail to do,</p>	

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	<p>Delegation, July 2004</p> <p>The College receives many inquiries regarding the issue of delegation, more specifically the circumstances in which an unregistered person can perform tasks in dispensing under delegation from an Optician. Under the <i>Regulated Health Professions Act, 1991</i> (RHPA) the "...dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers" is a controlled act. Unregistered persons may not perform a controlled act as defined in the RHPA. To give a little history on this subject, the College of Opticians and the College of Optometrists and various other stakeholders met several times to develop a policy on delegation. The two Colleges produced a Joint Report on Delegation in 1998. A summary of the report outlining the agreed upon rules for delegation was printed in the College of Opticians- June 1998 newsletter and sent to all Members. The two Colleges agreed that "dispensing" is defined as the preparation, adaptation, and delivery of eye glasses, contact lenses or subnormal vision devices to a person- The two Colleges further agreed that all functions of dispensing may be delegated to an unregistered person with the <i>exception</i> of three core cognitive functions (printed here in bold type) and behaviours. An Optician <i>may not</i> delegate the following:</p> <p>1. The determination and recording of the specifications of the eyeglasses, contact lenses,</p>		<p>something that would constitute professional misconduct if a member of the health profession did, or failed to do, it. 2001, c. 8, s. 223.</p> <p>Prohibition, contraventions</p> <p>(2) A health profession corporation shall not contravene any provision of,</p> <p>(a) the <i>Regulated Health Professions Act, 1991</i> and the regulations made under that Act; or</p> <p>(b) the health profession Act governing the member's health profession and the regulations and by-laws made under that Act. 2001, c. 8, s. 223; 2007, c. 10, Sched. M, s. 67.</p> <p>Prohibition, corporate matters</p> <p>(3) A health profession corporation shall not practise a health profession when it does not satisfy the requirements for a professional corporation under subsection 3.2 (2) of the <i>Business Corporations Act</i> or a requirement established under subsection 3.2 (6) of that Act. 2005, c. 28, Sched. B, s. 2 (2).</p> <p>Regulation 39/02 of the <i>Regulated Health Professions Act, 1991</i> states:</p>	

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	<p>or subnormal vision devices to be provided to a patient. This means that an Optician must personally review the order as well as the patient's prescription. The Optician must determine whether the appliance that has been ordered is suitable for the patient, meets the patient's needs and will best achieve the visual correction that the patient requires. The Optician must also decide on the final parameters, and technical specifications of the appliance that is to be ordered. The Optician must sign the order and record the specifications of the appliance on the patient health record.</p> <p>2. The confirmation and recording of the appropriateness of the eye glasses, contact lenses or subnormal vision devices to be provided or delivered to the patient.</p> <p>This means that the Optician must confirm the visual appliance after it has been fabricated according to his or her specifications, such that it is in conformance with the prescription, is suitable for the patient, and best achieves the visual correction that the patient requires. Also, part of this core cognitive function is any testing of the patient's visual acuity after the appliance has been fit to the patient's face- The Optician must record these determinations on the patient health record.</p> <p>3. The provision and recording of the necessary advice, counseling, and associated care to the patient about the use of the eye glasses, contact lenses or</p>		<p>1. (1) A corporation is eligible to hold a certificate of authorization issued by a College if all the following conditions are met:</p> <p>1. The articles of the corporation provide that the corporation cannot carry on a business other than the practice of the profession governed by the College and activities related to or ancillary to the practice of that profession.</p> <p>3. The name of the corporation meets the standards described in subsections (2) to (5).</p> <p>(2) The name of the corporation must meet the requirements in section 3.2 of the <i>Business Corporations Act</i> and must not violate the provisions of any other Act.</p> <p>(3) The name of the corporation must include the surname of one or more shareholders of the corporation who are members of the College, as the surname is set out in the College register, and may also include the shareholder's given name, one or more of the shareholder's initials or a combination of his or her given name and initials.</p> <p>(4) The name of the corporation must</p>	

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	<p>subnormal vision devices.</p> <p>This means that the Optician must personally instruct the patient in the use and care of the particular visual appliance as well as advice about when to come back for a check-up or <i>I</i> realignment. This advice must be recorded on the patient health record.</p> <p>The two Colleges also agreed on common rules for delegation as follows:</p> <p>A member must have established a professional relationship with a person prior to delegating any part of dispensing for that person (hereinafter the "patient").</p> <p>A member delegating and the person receiving delegation must each be identified in the record of care made by the member about the patient.</p> <p>A member must ensure that the standards of practice of the member's profession are maintained by the person receiving the delegation.</p> <p>A member is responsible for any failure on the part of a person receiving delegation to maintain the standards of practice.</p> <p>A member must be physically present in the same facility with the person receiving delegation at the time the member delegates tasks in dispensing to that person-</p> <p>A member must be physically present in the same</p>		<p>indicate the health profession to be practised by members of the College through the corporation.</p> <p>(5) The name of the corporation must not include any information other than the information permitted or required by subsections (2), (3) and (4). O. Reg. 39/02, s. 1 (5).</p>	

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	<p>facility and available to intervene when a delegated act of dispensing is being performed on a patient. A member must ensure that the tasks which the member delegates be patient-specific and appropriate-</p> <p>A member must identify to the College, at its request, any person to whom a task of dispensing has been delegated.</p> <p>A member must ensure that any person receiving delegation has received training appropriate to the delegated tasks to be performed-</p> <p>It is clear from the rules that an Optician must be on the premises both at the time of the delegation and at the time that the delegated act is being performed. The College of Opticians will not accept that any tasks in dispensing be performed by an unregistered person without the Optician being physically present. Members should be very aware that the decision of whether or not to delegate tasks in dispensing to unregistered personnel lies solely with the Optician and is at all times at his or her discretion. A member should not delegate if, in the member's professional judgment, it is not appropriate to do so, would be contrary to the standards of practice, or would place the member in a conflict of interest-</p>			