

# **INTERPROFESSIONAL COLLABORATION IN EYE CARE**

## **OPTOMETRY JURISDICTIONAL REVIEW: ONTARIO**

**3: CONFLICT OF INTEREST**

**4: 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	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
<p>The profession of optometry is a self-regulating profession under the College of Optometrists of Ontario. The college obtains its authority to regulate from the <i>Regulated Health Professions Act, 1991</i> (“RHPA”) and the <i>Optometry Act, 1991</i>. The <i>Health Professions Procedural Code</i>, Schedule 2 of the RHPA, is deemed by section 4 of the <i>Regulated Health Professions Act, 1991</i> to be part of each health profession Act. Section 2(1) of the <i>Optometry Act</i> deems the <i>Health Professions Procedural Code</i> to be a part of that Act.</p> <p>The <i>Health Professions Procedural Code</i> provides that:</p> <p><b>Duty of College</b></p> <p><b>2.1</b> It is the duty of the College to work in consultation with the Minister to ensure, as a matter of public interest, that the people of Ontario have access to adequate numbers of qualified, skilled and competent regulated health professionals. 2008, c. 18, s. 1.</p> <p><b>Objects of College</b></p> <p><b>3.</b> (1) The College has the following objects:</p>	<p><b>The Professional Misconduct Regulation (O.Reg. 859/93 made under the <i>Optometry Act, 1991</i>) provides that:</b></p> <p><b>1.</b> (1) The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:</p> <p>2. Exceeding the scope of practice of the profession.</p> <p>The Practice of the Profession and the Care of, and Relationship with, Patients</p> <p>8. Practising the profession while the member is in a conflict of interest.</p> <p>17. Failing to maintain the standards of practice of the profession.</p> <p>50. Contravening the Act, the <i>Regulated Health Professions Act, 1991</i> or the regulations under either of those Acts.</p> <p>52. Failing to provide to a patient who requests them the practice address and telephone number of a member who formerly practised in association or in partnership with the member when the member knows or ought to know this information.</p> <p>53. Engaging in conduct or performing an act that, having regard to all the circumstances, would reasonably be</p>	<p><b>The Professional Misconduct Regulation (O.Reg. 859/93 made under the <i>Optometry Act, 1991</i>) provides that:</b></p> <p>1.(1) The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:</p> <p>2. Exceeding the scope of practice of the profession.</p> <p>14. Failing to make available to a patient who requests one a written, signed and dated prescription for a subnormal vision device, contact lenses or eyeglasses.</p> <p>15. Dispensing to a patient a contact lens, other than for diagnostic or emergency purposes, that the member knows or should know is not new.</p> <p>24. Engaging in the practice of optometry by employment, association, partnership or otherwise in more than three locations or holding out that the member is doing so, without the approval of the Council.</p> <p>Business Practices</p> <p>32. Submitting an account for services rendered to a patient that the member knows or should know is false or misleading.</p> <p>33. Charging fees that are excessive or unreasonable in relation to the services performed.</p>	<p><i>Regulated Health Professions Act, 1991</i></p> <p><a href="http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_91r18_e.htm">http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_91r18_e.htm</a></p> <p><b>Regulation 39/02 made under the RHPA (Certificates of Authorization)</b></p> <p><a href="http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_020039_e.htm">http://www.e-laws.gov.on.ca/html/regs/english/elaws_regs_020039_e.htm</a></p> <p><b><i>Optometry Act, 1991, S.O. 1991, c. 35</i></b></p> <p><a href="http://www.canlii.org/eliisa/highlight.do?text=optometrists&amp;language=en&amp;searchTitle=Ontario&amp;path=/en/on/laws/stat/so-1991-c-35/latest/so-1991-c-35.html">http://www.canlii.org/eliisa/highlight.do?text=optometrists&amp;language=en&amp;searchTitle=Ontario&amp;path=/en/on/laws/stat/so-1991-c-35/latest/so-1991-c-35.html</a></p> <p><b>General Regulation (Reg.119/94 made under the <i>Optometry Act, 1991</i>)</b></p> <p><a href="http://www.canlii.org/en/on/laws/regu/o-reg-119-94/latest/o-reg-119-94.html">http://www.canlii.org/en/on/laws/regu/o-reg-119-94/latest/o-reg-119-94.html</a></p>

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<p>1. 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.</p> <p>2. To develop, establish and maintain standards of qualification for persons to be issued certificates of registration.</p> <p>3. To develop, establish and maintain programs and standards of practice to assure the quality of the practice of the profession.</p> <p>4. To develop, establish and maintain standards of 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</p>	<p>regarded by members as disgraceful, dishonourable, unprofessional or unethical.</p> <p><b>The College’s website, accessed Oct. 29, 2009, indicates that the Optometric Practice Reference (OPR)</b> articulates the current regulatory and professional standards of practice for optometry in Ontario. It also provides voluntary guidelines for practitioners wishing to go beyond the basic requirements.</p> <p><b>Optometric Practice Reference:</b> Conflict of Interest and Fee Issues When health professionals collaborate, a potential for various conflicts of interest will develop. These include: inappropriate referrals (for example referral to your collaborating professional when another RHP would be more appropriate); and fee sharing and/or referral fees.</p> <p>Optometrists should ensure that any potential conflicts of interest are minimized by ensuring that patients fully understand the roles, responsibilities and fees for each professional.</p> <p><b>Optometry Regulation (O. Reg. 550) under the Drug and Pharmacies Regulation Act:</b> <b>26.</b> (1) In this section, “member of his or her family” means any person connected with a member by blood relationship, marriage or adoption, and,</p>	<p>34. Charging a fee for a service that exceeds the fee set out in the schedule of fees published by the Ontario Association of Optometrists at the time the service was rendered without informing the patient, before the service is performed, of the excess amount that will be charged.</p> <p>34.1 Charging a block fee, which is a fee charged for services that are not insured services as defined in section 1 of the <i>Health Insurance Act</i> and is a set fee regardless of how many services are rendered, unless the fee is for, or related to,</p> <p>i. spectacle treatment,</p> <p>ii. binocular vision treatment,</p> <p>iii. contact lens treatment, or</p> <p>iv. subnormal vision treatment.</p> <p>34.2 Charging a fee for an undertaking not to charge for a service or class of services.</p> <p>34.3 Charging a fee for an undertaking to be available to provide services to a patient.</p> <p>35. Failing to issue a statement or receipt to a patient or to a third party responsible for the payment of the account of a patient.</p>	<p><b>Professional Misconduct Regulation (Reg. 859/93 made under the Optometry Act, 1991):</b> <a href="http://www.canlii.org/en/on/laws/regu/o-reg-859-93/latest/o-reg-859-93.html">http://www.canlii.org/en/on/laws/regu/o-reg-859-93/latest/o-reg-859-93.html</a></p> <p><b>Optometry Regulation (Reg 550 made under the Drug and Pharmacies Regulation Act)</b> <a href="http://www.e-laws.gov.on.ca/html/regs/english/e-laws_regs_900550_e.htm">http://www.e-laws.gov.on.ca/html/regs/english/e-laws_regs_900550_e.htm</a></p> <p><b>Optometric Practice Reference</b> <a href="http://www.collegeoptom.on.ca/OPR_web-2009.pdf">http://www.collegeoptom.on.ca/OPR_web-2009.pdf</a></p> <p><b>Business Corporations Act, R.S.O. 1990 c. B.16</b> <a href="http://www.canlii.org/en/on/laws/stat/rso-1990-c-b16/latest/rso-1990-c-b16.html">http://www.canlii.org/en/on/laws/stat/rso-1990-c-b16/latest/rso-1990-c-b16.html</a></p>

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<p>conferred on the College.</p> <p>8. To promote and enhance relations between the 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><b>Duty</b></p> <p>(2) In carrying out its objects, the College has a duty to serve and protect the public interest.</p> <p><b>The Council of the College is created under the <i>Health Professions Procedural Code</i>:</b></p> <p>4. The College shall have a Council that shall be its board of directors and that shall manage and administer its affairs.</p> <p><b>The College Council may make regulations</b></p>	<p>(a) persons are connected by blood relationship if one is the child or other descendant of the other or one is the brother or sister of the other,</p> <p>(b) persons are connected by marriage if one is married to the other or to a person who is connected by blood relationship to the other, and</p> <p>(c) persons are connected by adoption if one has been adopted, either legally or in fact, as the child of the other or as the child of a person who is so connected by blood relationship (otherwise than as a brother or sister) to the other.</p> <p>(2) A member shall not engage in the practice of optometry where the member has a conflict of interest.</p> <p>(3) It is a conflict of interest for a member where a member or a member of his or her family,</p> <p>(a) accepts rebates or gifts from a vendor of ophthalmic appliances, materials or equipment or from a person licensed or registered under any Act regulating a health discipline;</p> <p>(b) accepts credit from a vendor of ophthalmic appliances, materials or equipment, or from a person licensed or registered under any Act regulating a health discipline except where the terms of the credit provide a reasonable time for repayment, a reasonable rate of interest on the amount outstanding at any time during the</p>	<p>36. Issuing a statement or receipt which does not,</p> <p>i. itemize the services provided and the fees charged,</p> <p>ii. describe the ophthalmic appliances utilized by the member in the performance of the services, or</p> <p>iii. set out the commercial laboratory cost incurred by the member in the provision of the services.</p> <p>37. Charging or receiving payment for contact lenses, a subnormal vision device or eyeglasses in excess of the commercial laboratory cost incurred by the member in the provision of the service.</p> <p>38. Charging or receiving more than the amount payable to an insured person under the Ontario Health Insurance Plan for the insured service.</p> <p>39. Accepting payment in respect of an insured service to an insured person before the member receives notice from the Ontario Health Insurance Plan that the patient has been reimbursed by the Plan, unless the insured person has consented to make the payment on an earlier date.</p> <p>40. Accepting payment before performing an optometric service that is not an insured service within the meaning of the <i>Health Insurance Act</i>, unless the patient is informed of his or her right to refuse to make payment before the service</p>	

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<p><b>under subsection 95(1) of the <i>Health Professions Procedural Code</i>:</b></p> <p><b>95.(1)</b> Subject to the approval of the Lieutenant Governor in Council and with prior review of the Minister, the Council may make regulations,</p> <p>...</p> <p>(g) governing or prohibiting the delegation by or to members of controlled acts set out in subsection 27 (2) of the <i>Regulated Health Professions Act, 1991</i>;</p> <p>...</p> <p>(i) prescribing what constitutes a conflict of interest in the practice of the profession and regulating or prohibiting the practice of the profession in cases in which there is a conflict of interest;</p> <p>(j) defining professional misconduct for the purposes of clause 51 (1) (c);</p> <p>...</p> <p>(n) prescribing the standards of practice of the profession and prohibiting members from acting beyond the scope of practice of the profession in the course of practising the</p>	<p>period of credit, and the credit is not related to the referral of patients to the creditor;</p> <p>(c) rents or makes available premises to a tenant who is a person licensed or registered under any Act regulating a health discipline except at a rent normal for the area in which the premises are located and the amount of the rent is not related to the volume of business carried out in the premises by the tenant; or</p> <p>(d) rents or uses any premises from a vendor of ophthalmic appliances, materials or equipment or from a person who has any association with such vendor, or from a person licensed or registered under any Act regulating a health discipline except at a rent normal for the area in which the premises are located and the amount of the rent is not related to the referral of patients to the landlord or to the referral of patients by the member or the amount of fees charged by the member.</p> <p>(4) It is a conflict of interest for a member to,</p> <p>(a) share fees with any person who has referred a patient or receive fees from any person to whom the member has referred a patient or to engage in any form of fee sharing, rebates or other indirect remuneration;</p> <p>(b) issue a statement or receipt to a patient or to a third party responsible for the payment of the</p>	<p>is performed, and the patient consents to make the payment in advance. This does not apply to the payment of a commercial laboratory fee to be incurred by a member in connection with the service.</p> <p>41. Accepting a credit card to obtain payment for an optometric service unless the provider of the credit card agrees to rely solely on the provider's agreement with the credit card holder or on the credit card sales slip, and not on the member's patient records, to enforce payment.</p> <p>42. Requesting payment for a service that is an insured service within the meaning of the <i>Health Insurance Act</i> before performing the service.</p> <p>43. Displaying or permitting the display of ophthalmic appliances that may be seen from the exterior of the premises in which a member is engaged in the practice of optometry.</p> <p>44. Contacting or communicating personally with, or causing or permitting any person to contact or communicate personally with, potential patients for the purpose of soliciting patients.</p> <p>55. Selling any debt owed to the member for professional fees or charges. This does not include the assignment of any debt owed or the use of credit cards to pay for professional fees or charges.</p> <p><b>The Professional Misconduct Regulation (O.Reg. 859/93)</b></p>	

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<p>profession...</p> <p>95(1.1) A regulation under clause (1) (n) may adopt by reference, in whole or in part and with such changes as are considered necessary, any code, standard or guideline relating to standards of practice of the profession and require compliance with the code, standard or guideline as adopted. 1998, c. 18, Sched. G, s. 23 (1).</p> <p><b>Rolling incorporation</b>  (1.2) If a regulation under subsection (1.1) so provides, a scientific, administrative or technical document adopted by reference shall be a reference to it, as amended from time to time, and whether the amendment was made before or after the regulation was made. 2007, c. 10, Sched. M, s. 74 (2).</p> <p><b>Third party external document</b>  (1.2.1) A document adopted under subsection (1.2) must be a document created by a recognized body and must not be a document created by the College. 2007, c. 10, Sched. M, s. 74 (2).</p> <p><b>Exception</b>  (1.2.2) Despite subsection (1.2.1), the incorporation by reference of a document created by the College that was made before</p>	<p>account of a patient which does not itemize the service provided and the fees therefor or does not describe the ophthalmic appliances utilized by the member in the performance of the service or does not set out the laboratory costs incurred by the member in the provision of the service;</p> <p>(c) engage in the practice of optometry where any of the public entrances or exits of the member's premises are within the premises of a retail merchant, optical company or ophthalmic dispenser or interconnecting therewith;</p> <p>(d) charge or receive for an ophthalmic appliance payment in excess of the laboratory costs incurred by the member in the provision of the service provided by the member;</p> <p>(e) engage in the practice of optometry in association, partnership or otherwise with or while employing or under the employment of a vendor of ophthalmic appliances or an ophthalmic dispenser registered under the <i>Ophthalmic Dispensers Act</i> or with any other person or corporation other than,</p> <p>(i) with a member who is engaged in the practice of optometry,</p> <p>(ii) with a legally qualified medical practitioner who is engaged in the practice of medicine provided that such</p>	<p><b>made under the <i>Optometry Act, 1991</i>) also states:</b></p> <p>1(2) Paragraphs 34.1, 34.2 and 34.3 of subsection (1) do not apply in a case where a member charges a fee to a third party for a third party service under the <i>Health Insurance Act</i>.</p> <p><b>With respect to health profession corporations, the <i>Regulated Health Professions Act, 1991</i> states:</b></p> <p>1.(1) In this Act,</p> <p>"health profession corporation" means a corporation incorporated under the <i>Business Corporations Act</i> that holds a valid certificate of authorization issued under this Act or the Code; ("société professionnelle de la santé")</p> <p><b>34.1</b>(1) No corporation shall hold itself out as a health profession corporation unless it holds a valid certificate of authorization. 2000, c. 42, Sched., s. 30.</p> <p>Same</p> <p>(2) No person shall hold himself or herself out as a shareholder, officer, director, agent or employee of a health profession corporation unless the corporation holds a valid certificate of authorization. 2000, c. 42, Sched., s.</p>	

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<p>the coming into force of that subsection remains valid until it is revoked. 2007, c. 10, Sched. M, s. 74 (2).</p> <p><b>Copies available for inspection</b>  (1.3) A copy of every code, standard or guideline adopted by reference under subsection (1.1) shall be available for public inspection during normal business hours in the office of the College and shall be posted on the College's website or be available through a hyperlink at the College's website. 2007, c. 10, Sched. M, s. 74 (2).</p> <p>Before proposed regulations take effect, they must be circulated to the members of the college for 60 days prior to Council approval [s. 95(1.4)], reviewed by the Minister of Health and Long-Term Care and approved by the government [s.95(1)]. Colleges may apply to the Minister to abridge the circulation period or to eliminate it entirely [s.95(1.6)]. If the Minister requires a College Council to make a regulation, the requirement to circulate the regulation does not apply [s. 95(1.5)].</p> <p><b>The Minister of Health and Long-Term Care is given specific duties under section 3 of the RHPA:</b></p>	<p>practice is not inconsistent with Part V of the Act or regulations or by-laws,</p> <p>(iii) as an employee or agent of a municipal or other government, agency of a municipal or other government, a university, hospital,</p> <p>(iv) with a community health centre if the employment or any arrangement has been approved by Council, or</p> <p>(v) with a corporation for the sole purpose of providing optometrical counsel and service to the employees of the corporation; or</p> <p>(f) own or financially benefit from the operation of a company, firm or business that manufactures, fabricates, supplies or dispenses ophthalmic appliances.</p> <p>(5) Despite clauses (4) (c) and (e) a member may continue to engage in the practice of optometry in the employment of the retail merchant who operates an optical department where the member had been so employed for a continuous period of fifteen years on the 28th day of June, 1974 provided the member has filed with the Registrar a statutory declaration that the</p>	<p><b>43.</b>(1) Subject to the approval of the Lieutenant Governor in Council, the Minister may make regulations,</p> <p>(b) exempting a person or activity from subsection 27 (1) or 30 (1);</p> <p>(c) attaching conditions to an exemption in a regulation made under clause (b);</p> <p>(d) allowing the use of the title "doctor", a variation or abbreviation or an equivalent in another language;</p> <p>(e) respecting health profession corporations;</p> <p>(f) governing the issue, renewal, suspension, revocation and expiration of certificates of authorization;</p> <p>(g) governing the names of health profession corporations;</p> <p><b>The Health Professions Procedural Code provides:</b></p> <p><b>Professional corporations</b>  <b>85.8</b> (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</p>	

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<p>3. It is the duty of the Minister to ensure that the health professions are regulated and co-ordinated in the public interest, that appropriate standards of practice are developed and maintained and that individuals have access to services provided by the health professions of their choice and that they are treated with sensitivity and respect in their dealings with health professionals, the Colleges and the Board.</p> <p><b>Under the RHPA, the Minister has certain abilities:</b></p> <p>5(1) The Minister may,</p> <p>(a) inquire into or require a Council to inquire into the state of practice of a health profession in a locality or institution;</p> <p>(b) review a Council's activities and require the Council to provide reports and information;</p> <p>(c) require a Council to make, amend or revoke a regulation under a health profession Act or the <i>Drug and Pharmacies Regulation Act</i>;</p> <p>(d) require a Council to do anything that, in</p>		<p>the purposes of practising their health profession.</p> <p><b>Same</b></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).</p> <p><b>Notice of change of shareholder</b></p> <p><b>85.9</b> 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.</p> <p><b>85.10</b> The following things apply to a member who practises a health profession through a health profession corporation:</p> <p>1. The <i>Regulated Health Professions Act, 1991</i> and the regulations made under that Act.</p> <p>2. The health profession Act governing the member's health profession and the regulations and by-laws made under that Act.</p> <p><b>85.11</b> (1) The professional, fiduciary and ethical obligations of a member to a person on whose behalf the member is practising a health profession,</p> <p>(a) are not diminished by the fact that the member is</p>	

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<p>the opinion of the Minister, is necessary or advisable to carry out the intent of this Act, the health profession Acts or the <i>Drug and Pharmacies Regulation Act</i>.</p> <p>(2) If the Minister requires a Council to do anything under subsection (1), the Council shall, within the time and in the manner specified by the Minister, comply with the requirement and submit a report.</p> <p>(3) If the Minister requires a Council to make, amend or revoke a regulation under clause (1) (c) and the Council does not do so within sixty days, the Lieutenant Governor in Council may make, amend or revoke the regulation.</p> <p>(4) Subsection (3) does not give the Lieutenant Governor in Council authority to do anything that the Council does not have authority to do.</p> <p><b>College By-laws</b> The College Council also has authority to make by-laws about administrative and internal matters by virtue of s. 94(1) of the <i>Health Professions Procedural Code</i>. Government approval of by-laws is not required however some by-laws must be</p>		<p>practising through a health profession corporation; and</p> <p>(b) apply equally to the corporation and to its directors, officers, shareholders, agents and employees.</p> <p><b>Liability</b> (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.</p> <p><b>Conflict in duties</b> <b>85.12</b> 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.</p> <p><b>Restrictions apply to corporation's certificate</b> <b>85.13</b> 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.</p> <p><b>Prohibition, professional misconduct</b> <b>85.14</b> (1) In the course of practising a health profession, a health profession corporation shall not do, or fail to do, something that would constitute professional misconduct if a member of the health profession did, or failed to do, it.</p>	

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<p>circulated to members before they are made [s.94(2)]. Ministerial approval is only required if the college wants to abridge or eliminate the period of circulation of the proposed by-law [s.94(2.1)].</p> <p><b>With regard to controlled acts, the RHPA states:</b></p> <p>27(1) No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,</p> <p>(a) the person is a member authorized by a health profession Act to perform the controlled act; or</p> <p>(b) the performance of the controlled act has been delegated to the person by a member described in clause (a).</p> <p>(2) A "controlled act" is any one of the following done with respect to an individual:</p> <p>9. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers.</p>		<p><b>Prohibition, contraventions</b></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.</p> <p><b>Prohibition, corporate matters</b></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.</p> <p><b>O. Reg. 39/02 of the <i>Regulated Health Professions Act, 1991</i> states:</b></p> <p><b>1.</b> (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</p>	

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<p><b>The <i>Optometry Act, 1991</i> states:</b></p> <p><b>Scope of practice</b></p> <p><b>3.</b> The practice of optometry is the assessment of the eye and vision system and the diagnosis, treatment and prevention of,</p> <p>(a) disorders of refraction;</p> <p>(b) sensory and oculomotor disorders and dysfunctions of the eye and vision system; and</p> <p>(c) prescribed diseases.</p> <p><b>Authorized acts</b></p> <p><b>4.</b> In the course of engaging in the practice of optometry, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following:</p> <p>1. Communicating a diagnosis identifying, as the cause of a person’s symptoms, a disorder of refraction, a sensory or oculomotor disorder of the eye or vision system or a prescribed disease.</p> <p>2. Applying a prescribed form of energy.</p> <p>2.1 Prescribing drugs designated in the</p>		<p>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 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> <p><b>The Ontario <i>Business Corporations Act</i> also sets out provisions relevant to health profession corporations:</b></p> <p><b>3.1(1)</b> In this section and in sections 3.2, 3.3 and 3.4,</p> <p>"member" means a member of a profession governed by an Act that permits the profession to be practised through a professional corporation; ("membre")</p> <p>"professional corporation" means a corporation incorporated or continued under this Act that holds a valid certificate of authorization or other authorizing document issued under an Act governing a</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
<p>regulations.</p> <p>3. Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses.</p> <p><b>The Professional Misconduct Regulation (O. Reg. 859/93 made under the Optometry Act, 1991) states:</b></p> <p>1.(1) The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:</p> <p>2. Exceeding the scope of practice of the profession.</p> <p>14. Failing to make available to a patient who requests one a written, signed and dated prescription for a subnormal vision device, contact lenses or eyeglasses.</p> <p>15. Dispensing to a patient a contact lens, other than for diagnostic or emergency purposes, that the member knows or should know is not new.</p> <p>50. Contravening the Act, the <i>Regulated Health Professions Act, 1991</i> or the regulations under either of those Acts.</p> <p>53. Engaging in conduct or performing an act</p>		<p>profession. ("société professionnelle")</p> <p>Professions</p> <p>(2)Where the practice of a profession is governed by an Act, a professional corporation may practise the profession if,</p> <p>... (b) the profession is governed by an Act named in Schedule 1 of the <i>Regulated Health Professions Act, 1991</i>...</p> <p>...</p> <p>Application of Act to professional corporations</p> <p>3.2(1) This Act and the regulations apply with respect to a professional corporation except as otherwise set out in this section and sections 3.1, 3.3 and 3.4 and the regulations. 2000, c. 42, Sched., s. 2.</p> <p>Conditions for professional corporations</p> <p>(2) Despite any other provision of this Act but subject to subsection (6), a professional corporation shall satisfy all of the following conditions:</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 same profession.</p>	

<b>Regulatory Framework</b>	<b>Conflict of Interest</b>	<b>Business Practices</b>	<b>Legislation, Regulation and Board References</b>
<p>that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical.</p>		<p>2. All officers and directors of the corporation shall be shareholders of the corporation.</p> <p>3. The name of the corporation shall include the words "Professional Corporation" or "Société professionnelle" and shall comply with the rules respecting the names of professional corporations set out in the regulations and with the rules respecting names set out in the regulations or by-laws made under the Act governing the profession.</p> <p>4. The corporation shall not have a number name.</p> <p>5. The articles of incorporation of a professional corporation shall provide that the corporation may not carry on a business other than the practice of the profession but this paragraph shall not be construed to prevent the corporation from carrying on activities related to or ancillary to the practice of the profession, including the investment of surplus funds earned by the corporation. 2000, c. 42, Sched., s. 2; 2002, c. 22, s. 8; 2005, c. 28, Sched. B, s. 1 (1).</p> <p>Deemed compliance</p> <p>(2.1) A professional corporation that has a name that includes the words "société professionnelle" shall be deemed to have complied with the requirements of subsection 10 (1). 2004, c. 19, s. 3 (1).</p> <p>Corporate acts not invalid</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>(3) No act done by or on behalf of a professional corporation is invalid merely because it contravenes this Act. 2000, c. 42, Sched., s. 2.</p> <p>Voting agreements void</p> <p>(4) An agreement or proxy that vests in a person other than a shareholder of a professional corporation the right to vote the rights attached to a share of the corporation is void. 2000, c. 42, Sched., s. 2.</p> <p>Unanimous shareholder agreements void</p> <p>(5) Subject to subsection (6), a unanimous shareholder agreement in respect of a professional corporation is void unless each shareholder of the corporation is a member of the professional corporation. 2000, c. 42, Sched., s. 2; 2005, c. 28, Sched. B, s. 1 (2).</p> <p>Special rules, health profession corporations</p> <p>(6) The Lieutenant Governor in Council may make regulations,</p> <p>(a) exempting classes of health profession corporations, as defined in section 1 (1) of the <i>Regulated Health Professions Act, 1991</i>, from the application of subsections (1) and (5) and such other provisions of this Act and the regulations as may be specified and prescribing terms and conditions that apply with respect to the health profession corporations in</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>lieu of the provisions from which they are exempted;</p> <p>(b) exempting classes of the shareholders of those health profession corporations from the application of subsections 3.4 (2), (4) and (6) and such other provisions of this Act and the regulations as may be specified and prescribing rules that apply with respect to the shareholders in lieu of the provisions from which they are exempted;</p> <p>(c) exempting directors and officers of those health profession corporations from the application of such provisions of this Act and the regulations as may be specified and prescribing rules that apply with respect to the directors and officers in lieu of the provisions from which they are exempted. 2005, c. 28, Sched. B, s. 1 (3).</p> <p>Consequences of occurrence of certain events</p> <p><b>3.3</b> (1) Despite any other Act, a professional corporation's certificate of authorization or other authorizing document remains valid and the corporation does not cease to be a professional corporation despite,</p> <p>(a) the death of a shareholder;</p> <p>(b) the divorce of a shareholder;</p> <p>(c) the bankruptcy or insolvency of the corporation;</p> <p>(d) the suspension of the corporation's certificate of</p>	

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		<p>authorization or other authorizing document; or</p> <p>(e) the occurrence of such other event or the existence of such other circumstance as may be prescribed.</p> <p>Invalidity of certificate</p> <p>(2) Subject to the regulations, a certificate of authorization or other authorizing document becomes invalid and the corporation ceases to be a professional corporation on the revocation of the certificate.</p> <p>Regulations</p> <p><a href="#">(3)</a> For the purposes of subsection (1), the Lieutenant Governor in Council may make regulations,</p> <p>(a) prescribing events and circumstances for the purposes of clause (1) (e);</p> <p>(a.1) providing that, despite clause (1) (a), (b), (c), (d) or (e), whichever applies, a professional corporation's certificate of authorization or other authorizing document ceases to be valid and the corporation ceases to be a professional corporation because of a failure to meet the terms and conditions described in the regulation;</p> <p>(a.2) prescribing terms and conditions that apply with respect to the events and circumstances referred to in</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>clauses (1) (a), (b), (c), (d) and (e);</p> <p>(a.3) prescribing exceptions to the events and circumstances referred to in clauses (1) (a), (b), (c), (d) and (e);</p> <p>(b) prescribing the manner in which shares of a shareholder are to be dealt with on the occurrence of any event mentioned in clauses (1) (a) to (e), the time within which they are to be dealt with and any other matter related to dealing with the shares.</p> <p>Name change</p> <p>(4)A corporation that ceases to be a professional corporation shall change its name to remove from it the word "professional" or "professionnelle".</p> <p>No limit on professional liability</p> <p>3.4(1) Subsection 92 (1) shall not be construed as limiting the professional liability of a shareholder of a professional corporation under an Act governing the profession for acts of the shareholder or acts of employees or agents of the corporation.</p> <p>Deemed acts</p> <p>(2) For the purposes of professional liability, the acts of a professional corporation shall be deemed to be the acts of the shareholders, employees or agents of the corporation, as</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>the case may be.</p> <p>Professional liability</p> <p>(3) The liability of a member for a professional liability claim is not affected by the fact that the member is practising the profession through a professional corporation.</p> <p>Joint and several liability</p> <p>(4) A person is jointly and severally liable with a professional corporation for all professional liability claims made against the corporation in respect of errors and omissions that were made or occurred while the person was a shareholder of the corporation.</p> <p>Same</p> <p>(5) The liability of a member under subsection (4) cannot be greater than his or her liability would be in the circumstances if he or she were not practising through the professional corporation.</p> <p>Same, partnerships and limited liability partnerships</p> <p>(6) If a professional corporation is a partner in a partnership or limited liability partnership, the shareholders of the corporation have the same liability in respect of the partnership or limited liability partnership as they would</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>have if the shareholders themselves were the partners.</p> <p><b>Regarding Delegation the RHPA provides:</b></p> <p><b>28(1)</b> The delegation of a controlled act by a member must be in accordance with any applicable regulations under the health profession Act governing the member's profession.</p> <p>(2) The delegation of a controlled act to a member must be in accordance with any applicable regulations under the health profession Act governing the member's profession.</p> <p><b>29. (1)</b> An act by a person is not a contravention of subsection 27 (1) if it is done in the course of,</p> <p>... (b) fulfilling the requirements to become a member of a health profession and the act is within the scope of practice of the profession and is done under the supervision or direction of a member of the profession;</p> <p><b>30. (1)</b> No person, other than a member treating or advising within the scope of practice of his or her profession, shall treat or advise a person with respect to his or her health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from an omission from them.</p> <p><b>(2)</b> Subsection (1) does not apply with respect to treatment by a person who is acting under the direction of or in collaboration with a member if the treatment is within the</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>scope of practice of the member's profession.</p> <p><a href="#">(3)</a> Subsection (1) does not apply with respect to an act by a person if the act is a controlled act that was delegated under section 28 to the person by a member authorized by a health profession Act to do the controlled act.</p> <p><b>The Professional Misconduct Regulation (O. Reg. 859/93 under the <i>Optometry Act, 1991</i>) provides:</b></p> <p>1 (1) The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:</p> <p>The Practice of the Profession and the Care of, and Relationship with, Patients</p> <p>14. Failing to make available to a patient who requests one a written, signed and dated prescription for a subnormal vision device, contact lenses or eyeglasses.</p> <p>17. Failing to maintain the standards of practice of the profession.</p> <p>18. Delegating a controlled act in contravention of the Act, the <i>Regulated Health Professions Act, 1991</i> or the</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>regulations under either of those Acts.</p> <p>19. Performing a controlled act which has not been delegated to the member in accordance with the regulations.</p> <p>20. Ordering a person who is under the supervision of a member to perform an act, or supervising an act, in the practice of optometry that is not consistent with the regulations.</p> <p>21. Permitting, counselling or assisting any person who is not a member to perform an act which should be performed by a member.</p> <p><b>The College’s website, accessed Oct. 29, 2009, indicates that the Optometric Practice Reference (OPR) articulates the current regulatory and professional standards of practice for optometry in Ontario. It also provides voluntary guidelines for practitioners wishing to go beyond the basic requirements.</b></p> <p><b>The Optometric Practice Reference states:</b>  4.3 Delegation and Assignment Policy  Introduction  The Province of Ontario utilizes the concept of “controlled acts” to control who may perform healthcare procedures and responsibilities that have a high risk of harm associated with their performance. The controlled acts are listed in the</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p><i>Regulated Health Professions Act, 1991 (RHPA)</i>. Each profession-specific act, such as the <i>Optometry Act, 1991</i>, specifies any controlled acts that the members of the profession are authorized to perform (the profession’s “authorized acts”). Each regulated profession has a defined scope of practice and some have corresponding authorized acts set out in the profession-specific Act.</p> <p>There are also numerous non-controlled procedures, some of which are limited to objective data collection and others which carry a potential risk of harm to the patient. Although these procedures are in the public domain (i.e. they are NOT controlled acts), they may require specific training and skills.</p> <p>The term <i>delegation</i> refers to the process whereby a regulated health professional (RHP), who has a controlled act within his/her scope of practice, orders another person who would not otherwise be authorized to do so to perform this act.</p> <p>The term <i>assignment</i> refers to the process of an RHP assigning the performance of a non-controlled procedure to another person. Both delegation and assignment of optometric procedures in appropriate circumstances may allow a more timely and efficient delivery of optometric care, making optimal use of time and personnel. In every instance of delegation and assignment, the primary consideration should be the best interests of the patient. It is a general expectation that optometrists will be responsible for, and appropriately supervise, all delegated</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>and assigned activities within their practices.</p> <p>The level of supervision varies with the risk associated with the delegated or assigned procedure. <i>Direct supervision</i> refers to situations in which the optometrist is physically present in the same clinical location. This allows the optometrist to intervene immediately when necessary. Direct supervision is expected for ALL delegation (controlled acts), and for any assigned activities which require interpretation in the performance of the procedure and/or may present a risk of harm to the patient. <i>Remote supervision</i> refers to situations in which the presence of the optometrist is not necessarily required since there is no potential risk of harm to the patient. This would be appropriate for certain clinical procedures and objective data collection.</p> <p>The responsibility for all aspects of any delegated acts or assigned procedures always remains with the optometrist. Optometrists may also <i>receive delegation</i> of a controlled act not authorized to optometry.</p> <p>Collaboration with other health professionals  Collaboration with other health professionals is a common occurrence in clinical practice. When an optometrist collaborates with another health professional, the College standards and guidelines on collaboration (OPR 4.8) will apply.</p> <p>Regulatory Standards  Controlled Acts</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>The <i>Regulated Health Professions Act</i> identifies 13 controlled acts that may only be performed by members of certain regulated health professions. Optometrists are authorized by the <i>Optometry Act</i> to perform 4 of the 13 controlled acts, as follows:</p> <ul style="list-style-type: none"> <li>i. communicating a diagnosis identifying, as the cause of a person’s symptoms, a disorder of refraction, a sensory or oculomotor disorder of the eye or vision system, or a prescribed disease;</li> <li>ii. applying a prescribed form of energy;</li> <li>iii. prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses; and</li> <li>iv. prescribing a drug designated in the regulations.</li> </ul> <p>The <i>RHPA</i> also discusses delegation of controlled acts:</p> <p>27. (1) No person shall perform a controlled act set out in subsection (2) in the course of providing health care services to an individual unless,</p> <ul style="list-style-type: none"> <li>a. the person is a member authorized by a health profession Act to perform the controlled act; or</li> <li>b. the performance of the controlled act has been delegated to the person by a member described in clause (a). 1991, c. 18, s. 27 (1); 1998, c. 18, Sched. G, s. 6. <p>28. (1) The delegation of a controlled act by a member must be in accordance with any applicable regulations under the health profession Act governing the member’s profession.</p> <p><i>Exceptions</i></p> <p>29. (1) An act by a person is not a contravention of subsection 27 (1) if it is done in the course of, fulfilling the requirements to become a member of a health profession and the act is within the scope of practice of the</p> </li></ul>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>profession and is done under the supervision or direction of a member of the profession.</p> <p>The <i>Optometry Act, 1991</i> includes the following Professional Misconduct regulations:</p> <p>17. Failing to maintain the standard of practice of the profession.</p> <p>18. Delegating a controlled act in contravention of the Act, the <i>Regulated Health Professions Act, 1991</i> or the regulations under either of those Acts.</p> <p>19. Performing a controlled act which has not been delegated to the member in accordance with the regulations.</p> <p>20. Ordering a person who is under the supervision of a member to perform an act, or supervising an act, in the practice of optometry that is not consistent with the regulations.</p> <p>21. Permitting, counselling or assisting any person who is not a member to perform an act which should be performed by a member.</p> <p>Professional Standard Delegation Optometrist-Patient Relationship Delegation will only occur after the optometrist has established a formal relationship with the patient, which normally will include an interview, an assessment, recommendations if appropriate, and informed consent about any clinical investigations and proposed therapy. In some cases where an established patient/practitioner relationship exists, delegation may take place before the optometrist sees the patient.</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>Presence of the Optometrist Delegation of an authorized act must only take place when the optometrist is present in the same clinical location as the patient and is available to intervene when required.</p> <p>Process for Delegation The optometrist must establish a process for delegation that includes:  <ul style="list-style-type: none"> <li>education and assessment ensuring the currency of the delegate's knowledge, skills and judgement;</li> <li>documentation/references for performance of procedures;</li> </ul> and  ensuring the delegate has been delegated only those acts that form part of the optometrist's regular practice.</p> <p>Informed Consent Delegation occurs with the informed consent of the patient. Whether the consent is implicit or explicit will depend on the particular activity being proposed to be delegated.</p> <p>Supervision The optometrist directly supervises the delegated procedure by direct supervision.</p> <p>Quality Assurance The optometrist is expected to ensure there is an ongoing quality assurance mechanism.</p> <p>Assignment Optometrist-Patient Relationship</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>Assignment of certain procedures that are not controlled acts may occur as part of the optometric examination and may occur prior to the optometrist assessing the patient. For example, pre-testing using automated instruments may occur prior to the optometrist seeing the patient.</p> <p>Presence of the Optometrist Procedures that are completely objective, present no inherent risk of harm and require no interpretation by the person performing the procedure may be performed without the presence of the optometrist and are considered to be <i>remotely supervised</i>. This could include automated procedures such as objective auto-refraction, auto-perimetry and non-mydriatic retinal photography. However, the optometrist is expected to review the results of these remotely supervised procedures and communicate appropriately with the patient.</p> <p>Direct supervision <i>must</i> occur whenever clinical interpretation is necessary during the procedure (i.e. subjective refraction), or when the procedure poses a potential risk of harm (i.e. applanation tonometry).</p> <p>Process for assignment As with delegation, it is expected that assignment will only occur with certain processes in place, including:  <ul style="list-style-type: none"> <li>education and assessment ensuring the currency of the assignee’s knowledge, skills and judgement;</li> <li>documentation/references for performance of procedures;</li> </ul> and  ensuring only those procedures that form part of the</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>optometrist's regular practice are assigned.</p> <p>Professional Standard for Receiving Delegation of Controlled Acts</p> <p>In the public interest, there are situations when an optometrist could receive delegation from another regulated health professional (RHP) to perform a controlled act not authorized to optometry. Other RHP's have delegation regulations and established protocols for delegation of which the member should be aware. In order for an optometrist to receive delegation from another RHP, all of the following criteria must be met:</p> <ul style="list-style-type: none"> <li>i. a process for receiving delegation is in place;</li> <li>ii. the member will have a reasonable belief that the RHP delegating the act is authorized to delegate the act, has the ability to perform the act competently, and is delegating in accordance with relevant regulations governing his or her profession;</li> <li>iii. the optometrist should be competent to perform the act safely, effectively, and ethically;</li> <li>iv. appropriate resources, such as equipment and supplies, are available and serviceable;</li> <li>v. the delegated act is clearly defined;</li> <li>vi. the delegated act is within the assessment of the eye and vision system and the diagnosis, treatment and prevention of disorders of refraction, prescribed diseases, and sensory and oculomotor disorders and dysfunctions of the eye and vision system;</li> <li>vii. the duration of the delegation will be clearly defined and relate to a specific patient;</li> <li>viii. the optometrist ensures that patient consent to having</li> </ul>	

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		<p>the act performed under delegation to the optometrist is obtained and recorded in the patient’s health record;  ix. a mechanism exists to contact the RHP who delegated the act if there is an adverse or unexpected outcome; and  x. the identity of the RHP delegating the controlled act and of the member performing the controlled act will be recorded in the patient health record.</p> <p>Guideline for Delegation by an Optometrist  The optometrist remains responsible for all activity within his/her office, including delegated and assigned procedures. It is always prudent to ensure that any activities being delegated or assigned are appropriately supervised and performed in a safe, effective and accurate manner. Good communication skills for the optometrist and staff members are essential for effective delivery of patient care, particularly when procedures are delegated or assigned. Formal courses in procedures and communication are very helpful to complement appropriate staff training. Regular staff training, assessment and an effective office policy and procedure manual are also helpful resources to promote competence.</p> <p>It is also wise to ensure that the person performing the delegated or assigned procedure is clearly indicated within the patient health record. This is essential for both quality assurance and medico-legal reasons.</p> <p>4.8 Collaboration and Shared Care Description  The term “collaboration” has arisen to describe sharing of care between professionals. Such shared care is usually</p>	

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		<p>complementary. It has become apparent that professionals who provide complementary healthcare services to patients often will find ways to work together to co-manage/share care of patients. This is often beneficial to patients as it may allow better accessibility to the health care system, lower costs to the system and patients and allow more specialized practitioners to devote more time to their area of expertise. Optometrists collaborate with many healthcare professionals including other optometrists, ophthalmologists, family physicians, other medical practitioners, nurse practitioners and opticians. This document describes the characteristics and conditions of collaboration as they apply to the profession of optometry. History Optometrists have the regulatory obligation to refer patients to an appropriate regulated health professional (RHP) when the patient’s condition and/or treatment is beyond the scope of practice of the optometrist. This has usually resulted in referral to family physicians or ophthalmologists to institute medical and/or surgical care. Various shared care relationships have developed in this regard including glaucoma management (OPR 7.2), cataract surgery (OPR 7.3) and refractive surgery (OPR 7.8). Although these relationships are common, formal arrangements are usually not developed.</p> <p>The Health Professions Regulatory Advisory Counsel (HPRAC) made recommendations in its New Directions report (2006) that optometrists and physicians develop formal collaborative relationships with opticians regarding the latter professional group providing refractive data to assist in the development of a prescription (OPR 6.3) for</p>	

Regulatory Framework	Conflict of Interest	Business Practices	Legislation, Regulation and Board References
		<p>vision correction. HPRAC also recommended that optometrists and ophthalmologists develop collaborative relationships with regards to the management of glaucoma patients. (OPR 7.2)</p> <p>Regulatory Standards Controlled Acts The <i>Regulated Health Professions Act</i> (RPHA) identifies 13 controlled acts that may only be performed by members of certain regulated health professions. Optometrists are authorized by the <i>Optometry Act</i> to perform 4 of the 13 controlled acts, as follows:</p> <ul style="list-style-type: none"> <li>communicating a diagnosis identifying as the cause of a person’s symptoms, a disorder of refraction, a sensory or oculomotor disorder of the eye or vision system, or a prescribed disease; applying a prescribed form of energy;</li> <li>prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses; and</li> <li>prescribing a drug designated in the regulation.</li> </ul> <p>The <i>Optometry Act</i>, 1991 includes the following Professional Misconduct regulations:</p> <ul style="list-style-type: none"> <li>2. Exceeding the scope of practice of the profession.</li> <li>3. Doing anything to a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which a consent is required by law, without such a consent.</li> <li>8. Practicing the profession while the member is in a conflict of interest.</li> <li>12. Treating or attempting to treat an eye or vision system condition which the member recognizes or should recognize</li> </ul>	

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		<p>as being beyond his or her experience or competence.</p> <p>13. Failing to refer a patient to a regulated health professional when the member recognizes or should recognize a condition of the eye or vision system that appears to require such referral and examination.</p> <p>16. Recommending or providing unnecessary diagnostic or treatment services.</p> <p>17. Failing to maintain the standards of practice of the profession.</p> <p>18. Delegating a controlled act in contravention of the Act, the Regulated Health Professions Act, 1991 or the regulations under either of those Acts.</p> <p>19. Performing a controlled act which has not been delegated to the member in accordance with the regulations.</p> <p>20. Ordering a person who is under the supervision of a member to perform an act, or supervising an act, in the practice of optometry that is not consistent with the regulations.</p> <p>21. Permitting, counselling or assisting any person who is not a member to perform an act which should be performed by a member</p> <p>Professional Standard When an optometrist establishes a collaborative relationship with another RHP, that relationship must be in the best interests of the patient. A formal collaborative relationship will:</p> <ul style="list-style-type: none"> <li>have a verifiable agreement between collaborating professionals which outlines the various responsibilities, accountabilities and exchange of appropriate information for each person;</li> </ul>	

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		<p>ensure that patients fully understand the roles and responsibilities of the professionals involved and any associated fees; ensure that patients understand their options for care;</p> <p>have a mechanism for conflict resolution amongst all parties; and</p> <p>ensure the collaborating professionals adhere to any applicable standards of practice and conflict of interest regulations for each profession.</p> <p><b>Clinical Guideline</b>  Although all health professionals are required to maintain the standards of practice set by their own profession, optometrists entering into formal collaborative relationships should take all necessary steps to ensure that the other professionals involved are competent to perform the necessary procedures and services. This could include:</p> <ul style="list-style-type: none"> <li>ensuring that formal qualifications and provincial licensure exist;</li> <li>jointly participating in training/education activities;</li> <li>developing a joint quality assurance process; and</li> <li>regularly reviewing and revising the collaborative agreement.</li> </ul> <p><b>Conflict of Interest and Fee Issues</b>  When health professionals collaborate, a potential for various conflicts of interest will develop. These include:</p> <ul style="list-style-type: none"> <li>inappropriate referrals (for example referral to your collaborating professional when another RHP would be more appropriate); and</li> <li>fee sharing and/or referral fees.</li> </ul>	

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		<p>Optometrists should ensure that any potential conflicts of interest are minimized by ensuring that patients fully understand the roles, responsibilities and fees for each professional.</p> <p>Responsibility In a collaborative relationship, the professionals providing care share joint responsibility for the assessments and care provided. The formal collaborative agreement will outline this, but members should ensure that all parties involved have a complete understanding. Although the collaborative agreement would not necessarily be in writing, it should be verifiable to a third party if the question arose. It is expected that collaborating professionals will agree on a process for resolving patient problems. If any inconsistency or irregularity in clinical findings and/or care arise, it is the responsibility of all the professionals involved to ensure that appropriate clinical investigations and treatments are performed, however the prescribing professional should take the leading role in these steps.</p> <p>Collaboration with another Regulated Health Professional (RHP): The results of a refractive examination obtained from another RHP may also be considered when formulating an appropriate prescription for vision correction. All collaboration with another RHP must comply with policies outlined in the College documents on <i>delegation and assignment</i> (OPR 4.3) and <i>collaboration</i> (OPR 4.8). As the optometrist maintains the ultimate responsibility for supervised procedures and the final <i>prescription</i> (OPR 5.2)</p>	

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		<p>for vision correction, it is imperative that persons performing these tasks be appropriately trained. In all cases, the responsibility for the performance of the procedures and the efficacy of the prescription remains with the optometrist.</p> <p><b>Optometry Regulation (Reg 550 under the <i>Drug and Pharmacies Regulation Act</i>):</b></p> <p>27. (1) For the purposes of Part V of the Act,</p> <p>“professional misconduct” means:</p> <p>20. Associating with or being employed by any person who published, displays, distributes or uses any advertisement related to the practice of optometry by the member other than that which is provided for by paragraph 19.</p>	