

**TO:** COO MEMBERS, STAKEHOLDERS, AND MEMBERS OF THE PUBLIC

**FROM:** COLLEGE OF OPTICIANS OF ONTARIO

**DATE:** February 19, 2019

**SUBJECT:** CHANGES TO PUBLIC REGISTER (INFORMATION ABOUT)

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The College is proposing changes to its by-laws regarding information about opticians, interns and students posted on the College's public register. This follows changes to the *Regulated Health Professions Act* (RHPA) and its regulations that require all health regulatory bodies on Ontario to publish certain additional information about health practitioners.

The proposed by-law changes are intended to make the College's by-laws simpler and more consistent with the RHPA.

At the end of this document is a chart showing all of the proposed changes.

#### **SUMMARY OF PROPOSED CHANGES:**

- **CHARGES, FINDINGS OF GUILT, AND BAIL CONDITIONS:** The RHPA now requires the College to publish all Canadian criminal and drug charges and findings of guilt, as well as bail conditions relating to Canadian criminal and drug charges and findings. Prior to this, the College required publication only of charges, findings and bail conditions that are relevant to the member's suitability to practise. Under the College's current by-laws, the College must also publish non-Canadian charges, findings and bail conditions if they are relevant to the member's suitability to practise.

The RHPA also requires the College to publish different details about charges, findings of guilt and bail conditions.

**The College proposes to revoke by-laws 15.6(xxiii), (xxiv), and (xxv) regarding charges, findings of guilt, and bail conditions and to rely on the new, similar provisions in the RHPA on these matters.**

**The College also proposes to revoke by-laws 15.7(xvii) and 15.8(vi) regarding reporting information to the College about bail conditions and to rely on the new, similar provisions in the RHPA on this matter.**

- **SCERPS AND CAUTIONS:** Both the RHPA and the College by-laws require the College to publish information about certain outcomes from complaints and reports about opticians to the College's Inquiries, Complaints and Reports Committee (ICRC). This includes all specified continuing education and remediation programs (SCERPs) and cautions. The College by-laws require the College to publish more details about SCERPs and cautions than the RHPA does, and no change is proposed to this.

However, the current College by-laws allow a member to apply to remove them after two years whereas the RHPA does not provide for removal of SCERPs and cautions from the public register in this manner.

**The College proposes to revoke by-law 15.6(xxx) which provides for removal of SCERPs and cautions from the public register after two years.**

- **UNDERTAKINGS:** The RHPA requires all current undertakings that result from ICRC or discipline proceedings to be published, including a notation and synopsis of the undertaking. The College requires a synopsis of all ICRC undertakings to be published, as well as all undertakings to resign.

As well, the College by-laws require undertakings relating to ICRC matters to remain on the public register even if the requirements of the undertaking have been fulfilled and the undertaking is no longer in effect.

**The College proposes to revoke COO by-laws 15.6(ix) and (xxxi) regarding undertakings and to rely on the similar provision in the RHPA on these matters.**

- **OTHER DISCIPLINARY FINDINGS:** Both the RHPA and the College by-laws require the College to publish information about disciplinary findings outside of Ontario and/or relating to other professions. The College's by-laws require more details about those findings to be posted (where known). However, such additional information may not be consistently available.

**The College proposes to revoke COO by-laws 15.6(xv) regarding information about other disciplinary findings and rely on the similar provision in the RHPA on this matter.**

- **OTHER LICENCES:** Both the RHPA and the College by-laws require the College to publish the fact that an optician practises opticianry outside of Ontario, or any other profession in or outside of Ontario. The College's by-laws also require publication of licences, not just current ones.

**The College proposes to revoke COO by-law 15.6(xxvi) regarding information about licenses in other jurisdictions and rely on the similar provision in the RHPA on this matter.**

- **NOTATION OF DEATH OF MEMBER:** By-law 15.6(vii) requiring a notation that a member has died is now duplicated in the RHPA. The College's by-law specifies that only month and date of death are included, but the RHPA simply says "date of death." As a result, the College now posts the day of the member's death, if known.

**The College proposes to revoke by-law 15.6(vii) regarding a notation of the date of death of a member and rely on the similar provision in the RHPA on this matter.**

- **DETAILS ABOUT REFERRALS TO DISCIPLINE:** College by-law 15.6(x) requires publication of certain details about referrals to the College's Discipline Committee. It is for the most part the same as the new RHPA provisions. However, the RHPA does not specifically require the "notice of hearing" and hearing dates to be posted, whereas the College by-laws do require this. The College proposes to continue publishing this information.

**The College proposes that by-law 15.6(x) be amended to clarify that in addition to the information required by the RHPA, the College will post the full "notice of hearing" as well as hearing dates on the public register.**

### RECOMMENDED BY-LAW AMENDMENTS

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

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

	<p>jurisdiction, of which the College is aware and that in the reasonable discretion of the Registrar, relates to the Member's suitability to practise;</p>	<p>finding, ii. a brief summary of the sentence, and iii. if the finding is under appeal, a notation that it is under appeal until the appeal is finally disposed of.</p> <p>Findings are excluded/removed from the public register in any of the following cases: 1. The record has been suspended by the Parole Board of Canada. 2. A pardon has been obtained. 3. The conviction has been overturned on appeal (O. Reg. 261/18, s. 1(2)).</p>	<p>The rationale is that it may be cumbersome for the Registrar to have to determine "relevancy" for only certain findings of guilt, and that consistency with the RHPA is preferable.</p>
<p><b>CHARGES</b></p>	<p>(xxv) A summary of any currently existing charges against a Member, commenced on or after January 1, 2017, of which the College is aware, in respect of a federal, provincial or other offence that the Registrar believes is relevant to the Member's suitability to practise. Any such summary shall be removed if the Member is acquitted, the charge is withdrawn or the charge has been superseded by a finding.</p>	<p>O. Reg. 261/18, s. 1(1)3 If a member has been charged with an offence under the <i>Criminal Code (Canada)</i> or the <i>Controlled Drugs and Substances Act (Canada)</i> and the charge is outstanding,  i. the fact and content of the charge, and ii. the date and place of the charge.</p>	<p><b>Revoke the COO by-law.</b></p> <p>This means COO will no longer post relevant non-criminal/drug charges within Canada, and no longer post relevant charges outside of Canada.</p> <p>The rationale is that it may be cumbersome for the Registrar to have to determine "relevancy" for only certain charges, and that consistency with the RHPA is preferable.</p>

<p><b>OTHER DISCIPLINARY FINDINGS</b></p>	<p>(xv) Where the College is aware that a finding of professional misconduct or incompetence or similar finding has been made against the Member by a body that governs a profession, inside or outside of Ontario, and that finding has not been reversed on appeal: (a) a notation of the finding; (b) the name of the governing body that made the finding; (c) a brief summary of the facts on which the finding was based; (d) the penalty and any other orders made relative to the finding; (e) the date the finding was made; and (f) information regarding any appeals of the finding;</p>	<p>O. Reg. 261/18, s. 1(1)4 If a member has been the subject of a disciplinary finding or a finding of professional misconduct or incompetence by another regulatory or licensing authority in any jurisdiction, i. the fact of the finding, ii. the date of the finding, iii. the jurisdiction in which the finding was made, and iv. the existence and status of any appeal.</p>	<p><b>Revoke COO by-law</b>, and rely on the RHPA’s requirements to post basic information about non-COO disciplinary findings. The rationale is that the RHPA requirements may be sufficient to satisfy the public interest in accessing this information.</p>
<p><b>Removal of SCERPs and cautions</b></p>	<p>(xxx) The information placed on the register pursuant to paragraphs (xxvii) and (xxviii) may be removed from the register upon the written request of the Member on the later of the following two dates: (a) Two (2) years from the date of the Inquiries, Complaints and Reports Committee panel’s decision if the Registrar is satisfied that the Member has attended before a panel to be cautioned</p>	<p>The RHPA provides no specific provisions for removal of SCERPs and cautions from the public register. The only basis to remove information from the public register is the information is “obsolete and no longer relevant to the member’s suitability to practise” (see section 23(7) of the <i>Health Professions Procedural Code</i>).</p>	<p><b>Revoke the COO by-law</b> as the RHPA addresses how information can be removed from the public register.</p>

	<p>and/or successfully completed the specified continuing education or remediation program; or          (b) If at any time during the two years following the decision of the Inquiries, Complaints and Reports Committee panel, a subsequent panel requires the Member to attend to be cautioned or complete a specified continuing education or remediation program, information about all required appearances for a caution and/or specified continuing education or remediation programs shall remain on the register until two years after the most recent appearance for a caution or specified continuing education or remediation program were noted on the register;</p>		
<p><b>UNDERTAKINGS</b></p>	<p>(xxxii) When a decision of the Inquiries, Complaints and Reports Committee, relating to a complaint made against the member on or after January 1, 2016, includes or is contingent upon an undertaking to perform certain obligations given by the Member          a) a notation of that fact          b) a summary of that decision;          c) the date of the panel’s decision;          d) if applicable, a notation that the requirements of the undertaking</p>	<p><i>Code</i>, s. 23(2)11 A notation and synopsis acknowledgements and undertakings that are in effect re: allegations of professional misconduct or incompetence before the ICRC or Discipline Committee.</p> <p><i>Code</i>, s. 23(2)17 Where, during or as a result of a proceeding under section 25, a member has resigned and</p>	<p><b>Revoke the COO by-law</b>, as it is mostly duplicated by the RHPA provisions, and the RHPA provisions may be sufficient.</p> <p>The College proposes that undertakings that are no longer in effect do not need to remain on the public register.</p> <p>Note that any undertaking to resign can specifically require that it be posted on the public register if agreed.</p>

	<p>have been fulfilled or completed by the Member, and e) if applicable, a notation that the panel's decision is subject to review or appeal and therefore is not yet final, which notation shall be removed once the review is finally disposed of.</p> <p>(ix) If the Member has signed an undertaking not to practise the profession, a notation to that effect.</p>	<p>agreed never to practise again in Ontario, a notation of the resignation and agreement.</p>	
<p><b>OTHER LICENCES</b></p>	<p>(xxvi) Where the College is aware that a Member is <u>or was</u> registered or licensed to practise a profession inside or outside of Ontario, a notation of that fact;</p>	<p>O. Reg. 261/18, s. 1(1)5 If a member is currently licenced or registered to practice another profession in Ontario or a profession in another jurisdiction, the fact of that licensure or registration.</p>	<p><b>Revoke the COO by-law</b> and rely on the parallel RHPA provision, on the basis that the RHPA provision is sufficient to satisfy the public interest in making this information public, and there is no compelling need for the public to know about past registrations where they have not resulted in disciplinary findings (which will still be noted on the public register).</p>
	<p><b>15.7 Providing Information to the College</b></p> <p>If requested, the Member shall immediately provide the College with the following information, in the form requested by the College:</p> <p>[...]</p>	<p>Note: Members must report to the COO everything that the <i>RHPA</i> or COO by-laws require to be posted to the public register. Pursuant to the <i>RHPA</i>, this includes bail conditions relating to <i>Criminal Code</i> and <i>Controlled Drugs and</i></p>	<p><b>Revoke the COO by-law</b> since it relates to the COO by-law provision regarding posting information about bail conditions which COO also proposes to revoke.</p> <p>Under the <i>RHPA</i>, members will remain obligated to report to the COO all bail conditions relating to <i>Criminal Code</i></p>

	<p>(xvii) Information about any current restrictions, terms, orders, directions or agreements relating to the custody or release of the Member in respect of provincial, federal or other offences;</p>	<p><i>Substances Act</i> charges and findings.</p>	<p>and <i>Controlled Drugs and Substances Act</i> charges and findings.</p>
	<p><b>15.8 Notification of Changes of Information</b></p> <p>The Member shall notify the College, in writing, of any changes to the following information within 30 days of the effective date of the change:</p> <p>[...]</p> <p>(vi) information about any current restrictions, terms, orders, directions, or agreements relating to the custody or release of the Member in respect of provincial, federal or other offences, including any changes to the restrictions, terms, orders, directions or agreements.</p>	<p>Members must report to the COO everything that the <i>RHPA</i> or COO by-laws require to be posted to the public register. Pursuant to the <i>RHPA</i>, this includes changes to bail conditions relating to <i>Criminal Code</i> and <i>Controlled Drugs and Substances Act</i> charges and findings.</p>	<p><b>Revoke the COO by-law</b> since it relates to the COO by-law provision regarding posting information about bail conditions which COO also proposes to revoke.</p> <p>Under the <i>RHPA</i>, opticians still must report changes to bail conditions relating to <i>Criminal Code</i> and <i>Controlled Drugs and Substances Act</i> charges and findings.</p>