



## Quality Assurance Peer and Practice Assessment Access to Facilities and Patient Records

This document is intended to provide information on the College of Optician's (COO) authority to enter premises, review patient files, and the implications for ensuring confidentiality and privacy of patient information.

### Cooperation of optician and dispensary manager/owner

Both registrants and dispensary managers/operators are legally required to cooperate with peer assessors and the practice assessment process. This includes:

- providing access to records, including patient records, and information from those records (electronically, via a secure upload or in person) The patient's consent is not required for the College to obtain this access and information.
- allowing access to the practice premises/dispensary to the peer assessor.

For a registrant, the duty of cooperation also includes answering questions posed by a peer assessor to evaluate the registrant's knowledge, skill, and judgment.

### Confidentiality

The College recognizes that registrants and dispensary managers/operators have a duty to protect confidential patient information. Both the *Regulated Health Professions Act* and the *Personal Health Information Protection Act* make it clear that the College's right of access for the purpose of carrying out Peer and Practice Assessments supersedes this obligation. This means that you are not violating your confidentiality obligations by giving access to the College or a peer assessor.

The Quality Assurance Committee, College peer assessors, and College staff are bound by confidentiality rules under the legislation and will keep all information collected and reviewed as part of the peer and practice assessment confidential.

Copies of the relevant excerpts from the legislation are attached.

If an optician or dispensary manager/operator is unclear as to their duty to cooperate, we encourage them to review the attached provisions, speak with their own lawyer, or to contact Peggy Dreyer, Manager, Professional Practice & Quality Assurance, at 416-368-3616/1-800-990-9793 ext. 205.

# Quality Assurance Committee and Peer and Practice Assessments

## Relevant Legislative Excerpts

### Regulated Health Professions Act, 1991, S.O. 1991, c. 18

#### Confidentiality

**36** (1) Every person employed, retained or appointed for the purposes of the administration of this Act, a health profession Act or the *Drug and Pharmacies Regulation Act* and every member of a Council or committee of a College shall keep confidential all information that comes to his or her knowledge in the course of his or her duties and shall not communicate any information to any other person except,

(a) to the extent that the information is available to the public under this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*;

(b) in connection with the administration of this Act, a health profession Act or the *Drug and Pharmacies Regulation Act*, including, without limiting the generality of this, in connection with anything relating to the registration of members, complaints about members, allegations of members' incapacity, incompetence or acts of professional misconduct or the governing of the profession;

(c) to a body that governs a profession inside or outside of Ontario;

(c.1) to the Health and Supportive Care Providers Oversight Authority for the purposes of administering the *Health and Supportive Care Providers Oversight Authority Act, 2021*;

(d) as may be required for the administration of the *Drug Interchangeability and Dispensing Fee Act*, the *Healing Arts Radiation Protection Act*, the *Health Insurance Act*, the *Health Protection and Promotion Act*, the *Integrated Community Health Services Centres Act, 2023*, the *Laboratory and Specimen Collection Centre Licensing Act*, the *Fixing Long-Term Care Act, 2021*, the *Retirement Homes Act, 2010*, the *Ontario Drug Benefit Act*, the *Coroners Act*, the *Controlled Drugs and Substances Act (Canada)* and the *Food and Drugs Act (Canada)*;

(d.1) for a prescribed purpose, to a public hospital that employs or provides privileges to a member of a College, where the College is investigating a complaint about that member or where the information was obtained by an investigator

appointed pursuant to subsection 75 (1) or (2) of the Code, subject to the limitations, if any, provided for in regulations made under section 43;

(d.2) for a prescribed purpose, to a person other than a public hospital who belongs to a class provided for in regulations made under section 43, where a College is investigating a complaint about a member of the College or where the information was obtained by an investigator appointed pursuant to subsection 75 (1) or (2) of the Code, subject to the limitations, if any, provided for in the regulations;

(e) to a police officer to aid an investigation undertaken with a view to a law enforcement proceeding or from which a law enforcement proceeding is likely to result;

(f) to the counsel of the person who is required to keep the information confidential under this section;

(g) to confirm whether the College is investigating a member, if there is a compelling public interest in the disclosure of that information;

(h) where disclosure of the information is required by an Act of the Legislature or an Act of Parliament;

(i) if there are reasonable grounds to believe that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons;

(j) with the written consent of the person to whom the information relates; or

(k) to the Minister in order to allow the Minister to determine,

(i) whether the College is fulfilling its duties and carrying out its objects under this Act, a health profession Act, the *Drug and Pharmacies Regulation Act* or the *Drug Interchangeability and Dispensing Fee Act*, or

(ii) whether the Minister should exercise any power of the Minister under this Act, or any Act mentioned in subclause (i). 2007, c. 10, Sched. M, s. 7 (1); 2014, c. 14, Sched. 2, s. 10; 2017, c. 11, Sched. 5, s. 2 (1, 2); 2021, c. 27, Sched. 2, s. 70 (1); 2021, c. 39, Sched. 2, s. 23 (1); 2023, c. 4, Sched. 1, s. 82.

**Health Professions Procedural Code – Sched. 2 to the *Regulated Health Professions Act, 1991***

**Assessors**

**81** The Quality Assurance Committee may appoint assessors for the purposes of a quality assurance program. 1991, c. 18, Sched. 2, s. 81.

**Co-operation with Committee and assessors**

**82 (1)** Every member shall co-operate with the Quality Assurance Committee and with any assessor it appoints and in particular every member shall,

- (a) permit the assessor to enter and inspect the premises where the member practises;
- (b) permit the assessor to inspect the member's records of the care of patients;
- (c) give the Committee or the assessor the information in respect of the care of patients or in respect of the member's records of the care of patients the Committee or assessor requests in the form the Committee or assessor specifies;
- (d) confer with the Committee or the assessor if requested to do so by either of them; and
- (e) participate in a program designed to evaluate the knowledge, skill and judgment of the member, if requested to do so by the Committee.

**Inspection of premises**

(2) Every person who controls premises where a member practises, other than a private dwelling, shall allow an assessor to enter and inspect the premises.

**Inspection of records**

(3) Every person who controls records relating to a member's care of patients shall allow an assessor to inspect the records.

**Exception**

(4) Subsection (3) does not require a patient or his or her representative to allow an assessor to inspect records relating to the patient's care.

**Conflict**

(5) This section applies despite any provision in any Act relating to the confidentiality of health records. 1991, c. 18, Sched. 2, s. 82.

### **Confidentiality of information**

**83** (1) Except as provided in section 80.2 and in this section, the Quality Assurance Committee and any assessor appointed by it shall not disclose, to any other committee, information that,

(a) was given by the member; or

(b) relates to the member and was obtained under section 82. 1991, c. 18, Sched. 2, s. 83 (1); 2007, c. 10, Sched. M, s. 59 (1).

### **Exception if member gave false information**

(2) Where relevant to a proceeding before a committee, information described in subsection (1) may be disclosed to that committee for the purpose of showing that the member knowingly gave false information to the Quality Assurance Committee or an assessor. 2007, c. 10, Sched. M, s. 59 (2).

(3) Repealed: 2007, c. 10, Sched. M, s. 59 (3).

### **Use in other Committees**

(4) Information that was disclosed contrary to subsection (1) shall not be used against the member to whom it relates in a proceeding before the Discipline or Fitness to Practise Committees. 1991, c. 18, Sched. 2, s. 83 (4).

(5) Repealed: 2004, c. 3, Sched. B, s. 11 (1).

Section Amendments with date in force (d/m/y)

### **Quality assurance and other information**

**83.1** (1) In this section,

“disclose” means, with respect to quality assurance information, to provide or make the information available to a person who is not,

(a) a member of the Quality Assurance Committee,

(b) an assessor appointed by the Committee, a person engaged on its behalf such as a mentor or a person conducting an assessment program on its behalf, or

(c) a person providing administrative support to the Committee or the Registrar or the Committee’s legal counsel,

and “disclosure” has a corresponding meaning; (“divulguer”, “divulgation”)

“proceeding” includes a proceeding that is within the jurisdiction of the Legislature and that is held in, before or under the rules of a court, a tribunal, a commission, a justice of the peace, a coroner, a committee of a College under the *Regulated Health Professions Act, 1991*, a committee of the Board under the *Drugless Practitioners Act*, a committee of the College under the *Social Work and Social Service Work Act, 1998*, an arbitrator or a mediator, but does not include any activities carried on by the Quality Assurance Committee; (“instance”)

“quality assurance information” means information that,

(a) is collected by or prepared for the Quality Assurance Committee for the sole or primary purpose of assisting the Committee in carrying out its functions,

(b) relates solely or primarily to any activity that the Quality Assurance Committee carries on as part of its functions,

(c) is prepared by a member or on behalf of a member solely or primarily for the purpose of complying with the requirements of the prescribed quality assurance program, or

(d) is provided to the Quality Assurance Committee under subsection (3),

but does not include,

(e) the name of a member and allegations that the member may have committed an act of professional misconduct, or may be incompetent or incapacitated,

(f) information that was referred to the Quality Assurance Committee from another committee of the College or the Board, or

(g) information that a regulation made under this Code specifies is not quality assurance information and that the Quality Assurance Committee receives after the day on which that regulation is made; (“renseignements sur l’assurance de la qualité”)

“witness” means a person, whether or not a party to a proceeding, who, in the course of the proceeding,

(a) is examined or cross-examined for discovery, either orally or in writing,

(b) makes an affidavit, or

(c) is competent or compellable to be examined or cross-examined or to produce a document, whether under oath or not. (“témoin”) 2004, c. 3, Sched. B, s. 11 (2).

### **Conflict**

(2) In the event of a conflict between this section and a provision under any other Act, this section prevails unless it specifically provides otherwise. 2004, c. 3, Sched. B, s. 11 (2).

### **Disclosure to Quality Assurance Committee**

(3) Despite the *Personal Health Information Protection Act, 2004*, a person may disclose any information to the Quality Assurance Committee for the purposes of the committee. 2004, c. 3, Sched. B, s. 11 (2).

### **Quality assurance information**

(4) Despite the *Personal Health Information Protection Act, 2004*, no person shall disclose quality assurance information except as permitted by the *Regulated Health Professions Act, 1991*, including this Code or an Act named in Schedule 1 to that Act or regulations or by-laws made under the *Regulated Health Professions Act, 1991* or under an Act named in Schedule 1 to that Act. 2004, c. 3, Sched. B, s. 11 (2).

### **Non-disclosure in proceeding**

(5) No person shall ask a witness and no court or other body conducting a proceeding shall permit or require a witness in the proceeding to disclose quality assurance information except as permitted or required by the provisions relating to the quality assurance program. 2004, c. 3, Sched. B, s. 11 (2).

### **Non-admissibility of evidence**

(6) Quality assurance information is not admissible in evidence in a proceeding. 2004, c. 3, Sched. B, s. 11 (2).

### **Non-retaliation**

(7) No one shall dismiss, suspend, demote, discipline, harass or otherwise disadvantage a person by reason that the person has disclosed information to the Quality Assurance Committee under subsection (3), but a person may be disciplined for disclosing false information to the Committee. 2004, c. 3, Sched. B, s. 11 (2).

### **Immunity**

(8) No action or other proceeding may be instituted against a person who in good faith discloses information to a Quality Assurance Committee at the request of the Committee

or for the purposes of assisting the Committee in carrying out its functions. 2004, c. 3, Sched. B, s. 11 (2).

## Ontario Regulation 219/94 (“General”), Part III – Quality Assurance

11. (1) The peer and practice assessment shall include an assessment of the member’s knowledge, skills and judgment. O. Reg. 377/12, s. 1.

(2) The purpose of a peer and practice assessment of a member’s knowledge, skills and judgment is to ensure that the member continues to practice competently and adheres to the standards of practice of the profession. O. Reg. 377/12, s. 1.

(3) Each year the Committee shall select at random, including by stratified random sampling, the names of members required to undergo a peer and practice assessment. O. Reg. 377/12, s. 1.

(4) A member shall undergo a peer and practice assessment of his or her knowledge, skills and judgment if,

(a) his or her name is selected under subsection (3);

(b) a request is made to review the records of a member’s self-assessment, continuing education or professional development activities under section 10 and the records, in the opinion of the Committee, are not complete or fail to demonstrate that the member has engaged in adequate self-assessment, continuing education or professional development activities; or

(c) the member is selected on the basis of other criteria specified by the Committee and published on the College’s website at least three months before the member is selected on the basis of that criteria. O. Reg. 377/12, s. 1.

(5) An assessor may conduct an assessment in stages and may conduct the assessment with the assistance of others. O. Reg. 377/12, s. 1.

*Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A*

**Non-application of Act**

**Other rights and Acts**

9(2) Nothing in this Act shall be construed to interfere with,

(e) the regulatory activities of a College under the *Regulated Health Professions Act, 1991*, the College under the *Social Work and Social Service Work Act, 1998*, the Board under the *Drugless Practitioners Act* or the Health and Supportive Care Providers Oversight Authority under the *Health and Supportive Care Providers Oversight Authority Act, 2021*; or