



# The EXAMINER

THE COLLEGE OF OPTOMETRISTS OF BC

As per section 16 of the HPA, the duty and objects of the College at all times is to serve and protect the public and to exercise its powers and discharge its responsibilities under all enactments in the public interest

## March 2014

### VISION STATEMENT

The College of Optometrists of British Columbia is committed to serving and protecting the public interest by guiding the profession of optometry in British Columbia.

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### Ensuring Professionalism in Advertising and Marketing

Part of the College's mandate is to regulate advertising and marketing by registrants. Courts have recognized that the purpose of regulating professional advertising is to protect the public. As members of the public lack the ability to evaluate competing claims regarding the quality of professional services, they are far more vulnerable to unregulated advertising from professionals than they would be to unregulated advertising from suppliers of goods.

Registrants should familiarize themselves with Part II of the College bylaws which sets out the rules for advertising and marketing of optometric services. "Advertising" refers to the use of space or time in a public medium, or the use of a commercial publication, to communicate with the general public, or a segment of it, for the purpose of promoting optometric services or enhancing the registrant's image. "Marketing" includes advertising, and publications or communications with any patient, prospective patient or the public, in the nature of an advertisement, promotional activity or material, a listing in a directory, a public appearance or any other means by which professional services are promoted.

Section 124(1) of the College bylaws prohibits

marketing that is: (a) false; (b) inaccurate; (c) unverifiable; (d) misleading; (e) misrepresentative of the effectiveness of any procedure, instrument or ophthalmic device; (f) undignified, offensive or in bad taste; and (g) contrary to the standards of practice or the Code of the Ethics of the College.

Section 124(2) elaborates on these requirements. It prohibits marketing that:

- (a) is calculated or likely to take advantage of a weakened physical, mental or emotional state of a recipient or intended recipient;
- (b) is likely to create an unjustifiable expectation of the results the registrant can achieve;
- (c) implies that the registrant can obtain results not achievable by other registrants;
- (d) implies the registrant can obtain results by improper means, or
- (e) compares the quality of services provided by the registrant with those provided by another registrant, a person authorized to provide optometric services or another health profession.

The College has the authority under s. 124(3) to require a registrant to verify any statements made in his or her marketing. Any concerns about a registrant's advertising or marketing may be the subject of a formal complaint under Part 3 of the Health Professions Act. Registrants should therefore ensure that their advertising and marketing material for optometric services is accurate, verifiable and professional. It is not appropriate, for example, to advertise "free eye exams" or "no fee eye exams" for children and seniors as the cost of those examinations are billed to the Medical Services Plan. It is also important to ensure that advertising and marketing material does not purport to compare the quality of your optometric services with the quality of services provided by other registrants, or eye health professionals.

The Inquiry Committee of the College has determined that citing local marketing surveys for services is not acceptable as such surveys are designed primarily for the purpose of comparing the quality of services of registrants. In a recent decision from a Discipline Committee of the Ontario College of Physicians and Surgeons, it was held that using patient testimonials also constituted impermissible comparative language. The Discipline Committee held that testimonials are primarily designed as a sales promotion tool that can "influence members of the public to seek medical

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services to their physical, psychological and/or financial detriment. They focus only on the benefits and are inherently misleading”.

The advertising of retail products will generally not attract the same level of scrutiny by the College as optometric services although there may be individual cases where advertising in relation to retail products will warrant attention (e.g. where specialized products are being marketed that members of the public cannot easily assess or where advertising claims are so misleading or inaccurate as to call into question the professionalism of the registrant under s. 124 of the College bylaws).

As health professionals, optometrists are held to a higher standard of conduct in relation to the content of their advertising and marketing as part of their professional responsibility. Maintaining professionalism in advertising not only enhances your reputation as a professional, but it enhances public confidence in the reputation of the profession as a whole.

#### Online Renewal a Success

The 2015 registration renewal cycle will commence on October 1, 2014. Over 1000 transactions for registration renewal and Optometric Corporation permit renewals were completed online last year. This represented 98% of all renewal transactions – a significant improvement from the previous year and a very substantial savings of office time and resources. Thanks, from the College staff, to all who renewed their registrations online.

Unfortunately, last year there were 27 of our members who failed to fulfill their obligation to renew their registration or advise the College that they did not intend to renew their registration by the October 31 deadline. Of those, 10 did not respond by the November 30 deadline; therefore, they were deregistered on December 1. As you know, these deadlines and the consequences for failing to respond appropriately are set out in the Bylaws. The registrar has no discretion in these matters.

#### Peer Circle Feedback

The Peer Circle program continues to be one of the most highly rated CE programs in the province, and is ahead of the curve in terms of competency based quality assurance programs for health care in Canada. Looking to the year ahead, the QA Committee has planned to run two Peer Circle sessions, one in conjunction with the College’s AGM, June 8, 2014 and one in conjunction with the B CAO’s Fall Symposium (2014 date to be determined). If you have not yet participated in a Peer Circle, why not consider doing so?

#### Assessments

A new round of Practitioner Assessments will soon be underway. Last year, over 100 practices and practitioners participated in this program. Please ensure that your current mailing address, as well as all your practice locations, are up to date. Should you fail to do so, you will be in contravention of the Bylaws.

Unfortunately, in the last round, we still had a few registrants who failed to update their online profile, despite being advised to do so.

The practice assessment program is evolving. Your feedback is welcome and important if we are to develop improvements for future rounds. Your cooperation has gone a long way to controlling the cost of this mandated program.

#### Flu Season – Is your Clinic Safe?

This year's flu season is nearly over. Last year, health authorities in BC put new policies in place for their employees so that the most vulnerable segment of our population would be better protected. Please consider reviewing your office policy to ensure compliance with your duty, under the Bylaws, to “keep the health and visual welfare of the patient uppermost at all times”.

#### Family Members as Patients

As you are no doubt all aware, optometric services provided to family members are not benefits under the medical services plan and cannot be billed to MSP. Furthermore, any such billing represents departure from section 29 of the Medical and Health Services Regulation of the Medicare Protection Act.

Section 29 of the Medical and Health Services Regulation states:

*29(1) Services are not benefits if they are provided by a health care practitioner to the following members of the health care practitioner's family*

- (a) a spouse,*
- (b) a son or daughter,*
- (c) a step-son or step-daughter*
- (d) a parent or step-parent,*
- (e) a parent of a spouse,*
- (f) a grandparent,*
- (g) a grandchild,*
- (h) a brother or sister, or*
- (i) a spouse of a person referred to in paragraphs (b) to (h).*

*(2) Services are not benefits if they are provided by a health care practitioner to a member of the same household as the health care practitioner.*

According to letters sent to the B CAO by the Billing Integrity Program of the Ministry of Health, the program has identified close to 215 optometrists who have submitted billings to MSP for services for their family members. These billings totaled approximately \$50,000 and have been recovered through Health Insurance British Columbia.

Closely related to this issue is the ethical question of whether a registrant's family members can also be their patients. Family members cannot be patients because of the nature of a doctor patient relationship, the power imbalances that exist in such relationships, and the need

to maintain objectivity in providing professional services. The issue of treating family members also implicates s. 19 of the College bylaws which provides that any form of physical sexual relations between a registrant and a patient constitutes "professional misconduct of "sexual nature". The Ministry directed the College to include s. 19 in its College bylaws when the regulation of optometry was moved under the Health Professions Act in March 2009. Most colleges regulated under the Health Professions Act, including the College of Physicians and Surgeons of British Columbia, the College of Dental Surgeons of British Columbia, the College of Naturopathic Physicians of British Columbia and the College of Registered Nurses of British Columbia, have similar provisions.

In 2011, one of the health profession colleges requested the Ministry to exempt spouses from this definition so that their registrants could accept spouses as patients. The Ministry denied the request in the following clear terms:

"The Ministry applies the same policy to all colleges - no member of any college should have their spouse as a patient. The Ministry does not believe that (this profession) should be treated differently from any other regulated health profession in this regard. The College of Physicians and Surgeons of BC has published informative statements that succinctly highlight the universal problems inherent in treating family members and failing to maintain sexual boundaries with patients, including the following points: 1) there is a power imbalance in the doctor-patient relationship; 2) sexualized behavior in the doctor-patient relationship is never acceptable; 3) a doctor cannot provide objective care when a sexualized relationship exists; 4) the fiduciary nature of the doctor-patient relationship makes a consensual sexual relationship between doctor and patient impossible".

"The Ministry has only taken the position that spouses must not be patients, not that professionals are prohibited from treating their spouses regardless of circumstances. It is the responsibility of the college for each profession to provide guidance for its registrants as to what constitutes the establishment of a professional-patient relationship. In this case, the Ministry understands that the college has consistently communicated to its members that it is not the case that (registrants) may never treat their spouses. Instead, the real issue is whether or not there is a professional doctor-patient relationship established. The college advises it is approaching this issue from the perspective that every encounter with the patient is expected to be professional in nature, and has commenced a dialogue within the profession about what that means. It is up to each (registrant) to decide whether he or she can meet these expectations with each person that he or she treats, including family

members".

"The Ministry believes this approach is consistent with BC's health profession legislation, Ministry policy and college bylaws. The Ministry has no plans to change or allow exceptions to its current policy, which provides the college with limited but adequate discretion to give guidance to (registrants) about the circumstances in which registrants may treat their spouses. Similarly, the Ministry has no plans to interfere with the process the college is following to develop and promulgate modern standard for defining the doctor-patient relationship within the profession".

Members of our profession should be aware of the Ministry position and the prohibition contained in s. 19 of the College bylaws on treating one's spouse as a patient, and the prohibition under the Medical and Health Services Regulation on billing treatments provided to family members. Defining the proper limits of a doctor-patient relationship provides an important foundation for developing appropriate standards and policy for members of our profession.

#### **Bylaw Requirements with respect to Patient Records**

The College often receives inquiries from members of the public and health care professionals who have been unable to access patient records from registrants because they have moved to different practice locations or left practice without taking proper steps to transfer or dispose of their patient files. This raises serious concerns with respect to the privacy and security of patient personal information and safety concerns in terms of continuity of care. As such, these inquiries have led to Inquiry Committee investigations and action in every case. Registrants are therefore reminded to familiarize themselves with the requirements for collecting, using and disclosing personal information and for storage, disposal and transfer of patient records under Part 7 of the College bylaws. Registrants are required to ensure that all records pertaining to their practice that contain "personal information" (which is defined as "recorded information about an identifiable individual" other than business contact information) are safely and securely stored. Those records must only be accessible to the registrant, his or her staff, and persons who have signed a confidentiality agreement with the registrant. This issue often surfaces in the context of embedded practices where registrants provide optometric services in optical stores or other business settings. It is critical to ensure that any person who is not employed by the registrant has signed a confidentiality agreement before being permitted access to the patient's personal information. Registrants must ensure that they comply with the bylaw requirements and the requirements of the *Personal Information Protection Act* before disclosing

personal information to third parties - even those with whom they have a business association.

The bylaws also govern the disposal or transfer of records containing personal information. If a registrant moves to a different practice location or ceases to practice, he or she must ensure that records are transferred to the patient or, with the consent of the patient, to another registrant, a BC optometric corporation, an ophthalmologist registered with the College of Physicians and Surgeons of British Columbia, a hospital or the Armed Forces of Canada. The records cannot be transferred to any other third person, organization or business. If the patient records are not transferred, and the mandatory storage period of seven years (or seven years after a minor patient reaches the age of 19) has expired, the records may be destroyed by way of a shredder or burning.<sup>1</sup> Personal information stored by electronic means must be erased in a manner that ensures that the information cannot be reconstructed.

A registrant who receives patient records from another registrant must notify the patient of the transfer. A registrant who ceases to practice must not only dispose of records in accordance with the requirements of Part 7 but must also notify the College, and provide the College with a written summary of the steps taken to dispose or transfer patient records. Registrants are also required to make appropriate arrangements to ensure that, in the event of death or incapacity, the patient records will be safely and securely transferred to another registrant, BC optometric corporation, ophthalmologist, hospital or the Armed Forces. In such circumstances, the registrant receiving patient records must also notify the patient concerned of the transfer. Finally, a registrant is required to provide immediate written notification to the College Registrar if records are moved from the registrant's place of practice or other storage location to a new location. The bottom line is that patient records must always be in the safe custody of a registrant, a BC optometric corporation, an ophthalmologist, a hospital or the Armed Forces. Patients must always be notified of and consent to transfer of their records to such third parties. That notification must be provided by the registrant seeking to transfer the records and by the registrant who receives the records. A registrant who intends to move his or her practice location or stop practicing must

<sup>1</sup> Registrants should be aware that the province amended the *Limitations Act* effective June 1, 2013 to increase the limitation period from six to 15 years for individuals to file civil claims. Under that Act, registrants should keep their records for 16 years from the date of the last entry or from the age of majority of the patient whichever is later. Registrants will want to ensure that they retain patient records for a sufficient period of time to be available in the event of a legal action.

provide written notification to the College of the steps taken to dispose or transfer patient records in accordance with the requirements of Part 7. When the College receives inquiries from members of the public or other health care professionals looking for the location of records, it must be in a position to advise the patient or health care professional where those records are located. If it cannot do so, the matter will be referred to the Inquiry Committee for investigation and regulatory action.

### **Electronic Clinical Records – Ownership**

As you know, the College bylaws require that clinical records must be owned by (under the custody and control of) a registrant of our College, a BC hospital, the Armed Forces of Canada or an ophthalmologist. Any information collected from a patient for the purposes of providing optometric services forms part of a clinical record. Ownership of electronic clinical records presents additional challenges. The Inquiry Committee of the College has determined that ownership of an electronic clinical record must extend to ownership of the computer hardware and software that is used to store that information. A registrant does not have control and custody of an electronic clinical record if either the computer hardware or software (or both) are owned by a third party, particularly one who is not authorized to optometric clinical records.

Registrants who have practices embedded within commercial establishments (optical stores, supermarkets, drugstores etc.) that maintain electronic clinical records must ensure they have ownership and custody of their clinical records and that those records are secure against unauthorized access by third parties. Please refer to Part 7 of the Bylaws.

### **BC Health Regulators Public Awareness Campaign**

The BC Health regulators (22 BC Health Profession Colleges and the BC College of Social Workers) have collaborated on the development of a public awareness campaign. The purpose of the campaign is to deliver a common message about the role of professional self-regulation, inform the public that health professional's work under legislation and professional standards and ethics, and why and how the public can contact a regulator. The campaign launched on September 16, 2013 and the first phase will run for 12 months. The target audience is the public. The campaign will be delivered in English, French, Spanish, Cantonese/Mandarin, Punjabi, Korean, Vietnamese, Tagalog, and Farsi. Campaign materials include print, television, speaking engagements, a 6-12 week advertising plan in bus shelters (90 in total: 72 Vancouver, Chilliwack, Abbotsford; 5 Kelowna; 5 Prince George; 9 Victoria; 5 Nanaimo), community/ethnic newspaper ads, cinema

slides, BCTV close captioning sponsorship, the launch of a new website ([www.bchealthregulators.ca](http://www.bchealthregulators.ca)), news print articles and posters (attached) which will be distributed to health authorities, community service providers and locations, MLA offices, etc.

### Sale of Scheduled Drugs Prohibited

The College has been advised that some registrants may be engaged in the sale of Polysporin Antibiotic eye/ear drops to patients. Registrants should be aware that Polysporin Antibiotic eye/ear drops are a scheduled drug. Scheduled drugs may only be sold in licensed pharmacies. For further information, please see <http://library.bcpharmacists.org/D-Legislation-Standards/D-4-Drug-Distribution/5012-Drug-Schedules-Regulation.pdf>. This regulation does not prohibit the dispensing of free samples of scheduled drugs.

### BC Services card

Beginning February 15, 2013, the provincial government introduced the BC Services Card, which will be phased in over a five-year period. The new card replaces the CareCard, can be combined with the driver's license and also serves as government-issued identification. All BC Services Cards will have an expiry date, enhanced security features and most will have a photograph, which will help to improve patient safety and reduce card misuse.

The Medical Services Plan (MSP) will be the first program available through the new card. With this change, and beginning February 15, 2013, there will be a new requirement for most adult BC residents to renew their enrolment in MSP by 2018.

New regulations will also come into effect for health care providers, including the duty to verify patients' enrolment in MSP and the duty to report MSP misuse. For information on these requirements and more, please visit: <http://www.health.gov.bc.ca/insurance/pros.html> where you will find the following resources:

- BC Services Card ID fact sheet;
- Questions and answers;
- eLearning tool; and,
- Technical readiness information.

In January 2013, a public communications campaign was launched to inform BC residents about the BC Services Card and the changes to MSP. Kits with posters, brochures and other communications materials will be delivered to health providers and other locations in communities across the province. Your office should have received one of these kits along with an order form for additional materials, which will be available at no charge. If you would like more general information, please visit: [BCServicesCard.ca](http://BCServicesCard.ca) or by telephone 1-800-663-7867 (604-660-2421 in Metro Vancouver and 250-387-6121 in Victoria).

### Notice Board

The following has been requested to be published to our registrants from University of Waterloo School of Optometry and Vision Science

### Diploma/ MSc in Clinical Optometry Survey

The School of Optometry and Vision Science is developing an advanced professional program that would allow successful candidates to obtain a diploma or MSc in Clinical Optometry. It will be part-time and on-line enabling optometrists in practice to gain additional training in chosen areas of optometry. Optometrists would complete individual modules, which may be undertaken singly or several at a time. The modules may be taken over a number of years and would count towards either a diploma or MSc qualification. In order to determine the level of interest in this type of a program and what topics would be of interest, the School has created an online survey. Please complete the survey by March 31<sup>st</sup> 2014 to provide feedback. More information about the potential program and the link to the survey can be found at <https://uwaterloo.ca/optometry-vision-science/news/diploma-msc-clinical-optometry-survey>.

### Canadian Optometry Low Vision SIG

Dear College of Optometrists of BC members,

We are reactivating the Canadian Optometry Low Vision SIG (Significant Interest Group). This was started by Dr. Graham Strong under the aegis of the CAO some years ago and Dr. Susan Leat (University of Waterloo School of Optometry and Vision Science) has offered to lead this project now. We would like to start by compiling a list of all those who provide LV services at any level or who are interested in participating in the SIG.

*The goals of the SIG are information exchange, group dialogue, to encourage interest and the practice of low vision rehabilitation and to work towards establishing a model of low vision service provision for Canada. At present, low vision services are very fragmented and the provision is very variable across the country. We need to support each other and work towards providing better and more comprehensive provision. It will also be useful to have such a list of LV providers for inter-referral.*

If you are interested please send an email to Susan Leat at [leat@uwaterloo.ca](mailto:leat@uwaterloo.ca) and include the following information; your name, location (city and province), and your current level of interest i.e. would you say that you are;

- (a) currently practicing low vision at a primary level
- (b) currently practicing low vision at a more complex, secondary level

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(c) interested in practicing low vision/interested in hearing LV news

Also add and if you are willing for your name to appear on such a list among the whole profession or only to the members of this group or not at all.

Susan J. Leat, PhD, FCOptom, FAAO, Professor, Head of Residencies, School of Optometry and Vision Science (Room Opt 377), University of Waterloo

### New Registrants of our College

The College welcomes the following 2013 registrants and wishes them a long, happy and prosperous career in optometry and encourages them all to become involved in the issues and challenges our profession faces:

Dr. Eric Lukacin	Dr. Jeffrey Thompson
Dr. Natasha Liaw	Dr. Lucia Li
Dr. Chih-Chiang Chen	Dr. Alison Leung
Dr. Judy Lee	Dr. Meghan Goddard
Dr. Charles Moss	Dr. Uyen Nguyen
Dr. Farah Naz	Dr. Amanda Mercer
Dr. Mark Cloarec	Dr. Azadeh Karbasi
Dr. Michael Petrik	Dr. Julia Addington
Dr. Henrique Reis	Dr. Wai-Sing Wu
Dr. Glenn Wicks	Dr. Paul Rollett
Dr. David Bierbrier	Dr. Lindsay Harrison
Dr. Frances Smith	Dr. Brian Sklapsky
Dr. Melody Tong	Dr. Nikulkumar Patel
Dr. Surbhi Bansal	Dr. Brittany Rollett
Dr. So Yeon Lee	Dr. Amy Thomas
Dr. Stephanie Kan	Dr. Laura Thomasen
Dr. Anthony Huynh	
Dr. Fatima Gowa	
Dr. Jessica Young	
Dr. Maximillian Goli	
Dr. Michael Rowe	
Dr. Nicole Hewitt	
Dr. Hue Hoang	
Dr. Petar Prpic	
Dr. Joelle Zagury	
Dr. Shiv Sharma	
Dr. Corey Kissner	
Dr. Kevin Dodgson	
Dr. Meghan Hildebrand	
Dr. Sydney Davidson	
Dr. Rebecca Kolbenson	
Dr. Yeseul Ahn	
Dr. Mark Paquette	
Dr. Mark Langer	
Dr. Trevor Styann	
Dr. Niloufar Mobini	
Dr. Adam Reid	
Dr. Carmen Dumalo	
Dr. Hershinder Dhanoa	
Dr. Karen Jansen van Rensburg	

## NEW COLLEGE OFFICE

**The College has moved to its new office at 938 Howe Street, directly across from the BC Supreme Court. The move affords a greatly improved environment at a substantially reduced cost. Please note the address:**

**College of Optometrists of BC  
906 – 938 Howe St.  
Vancouver, BC V6Z 1N9**

## CLINIC NAMES

**If you have not already done so, please ensure that your clinic name has been approved and is registered with the College, ASAP.**

**<http://optometrybc.com/registrants.html>**

## IMPORTANT DATES

- **Next College Board meeting will be June 9, 2014**
- **The upcoming 2014 Annual General Meeting will be June 8, 2014 at The Metropolitan Hotel, 645 Howe St. Vancouver**
- **June 15, 2014: Jurisprudence Exam and Orientation Session followed by social event for new applicants - details to follow by separate email invitation**

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