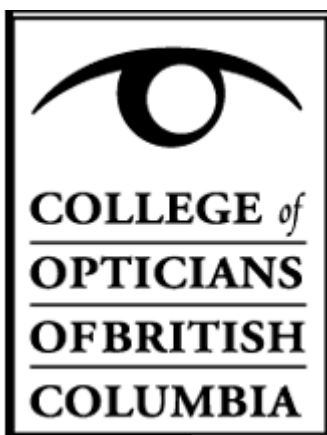


**Further Submission to the Ministry of Health  
on the Proposed *Optometrists Regulation***

**By**



The College of Opticians of British Columbia  
July 21, 2006

## **Introduction**

The College of Opticians of British Columbia (the “COBC”) has previously provided to the Ministry of Health its submission of July, 2004 to the proposed *Optometrists Regulation* dated April 1, 2004 (“*Optometrists Regulation*”). This submission is supplemental and will not repeat the submission made there, which remains the position of the Board of the COBC.

In 2004, the Ministry circulated for comment drafts of the amended *Opticians Regulation* and the *Optometrists Regulation*. It is the view of the Board that the amended *Opticians Regulation* must proceed either in advance of the *Optometrists Regulation* or concurrent with it. If the *Optometrists Regulation* passes either in advance of the amended *Opticians Regulation* or in the absence of it the following adverse consequences are predictable:

- decreased public access to corrective eyewear resulting in:
  - increased costs
  - decreased health
  - decreased public safety
- decreased safety as untrained persons perform services
- increased health costs to the Province

The definition of “dispense” in the *Optometrists Regulation* includes, “prepare, fabricate, alter or sell.” This definition, combined with the definition of “prescribe” and the language of s.33(b) of the *Optometrists Act*, has the effect of importing into the definition of “Practice of Optometry” the preparation, fabrication, alteration and the selling of eyeglasses and contact lenses. While optometrists are, under the current legislative scheme, able to alter and sell eyewear, the draft regulation codifies the preparation and fabrication as part of the practice of optometry.

### **1. Vertical integration decreases public access to corrective eyewear**

This expansion of the definition of the practice of Optometry into the laboratory and manufacturing areas invites a vertical integration of services and products relating to eye health which has the real potential for reducing access of British Columbians to products and services. Fewer choices and less competition tend inevitably to result in higher prices. To many British Columbians, higher prices will mean they will go without corrective

eyewear because they simply cannot afford it. This would adversely impact general health and productivity, and could also create unsafe conditions in the workplace and on the roads.

The invitation to create a monopoly on the provision of eyewear and the attendant increased costs to the Province is exacerbated by the absence of any requirement in the *Optometrists Regulation* or bylaws to require that optometrists provide patients access to their own prescriptions and criteria for limiting anti-competitive disclaimers on prescriptions. Although the British Columbia Health Professions Council has recommended that anti-competitive disclaimers be prohibited and prescription release mandatory, optometry has not acted on these recommendations. It is therefore incumbent upon the government to act on these recommendations in order to protect the public interest. Patients who cannot easily get a copy of their prescription have no choice but to return to the prescribing optometrist, even where optometric services are not necessary. For example, an elderly person who misplaces glasses or needs only an adjustment and does not have access to the prescription will incur the cost to the Province of an unnecessary visit to the optometrist. Mandatory prescription release should be a term of either the *Optometrists Regulation* or the draft bylaws.

## **2. Decreased safety as untrained "authorized" persons perform services.**

Pursuant to the *Optometrists Regulation* services presently provided by opticians can be provided by entirely untrained persons as long as they are “authorized,” as opposed to supervised, by an optometrist to perform those functions.

These “authorized” persons are not subject to any regulation. Unlike opticians, these “authorized” persons are not required to take any specialized training or to participate in mandatory continuing education. While they can perform all of the dispensing functions of an optician they are not subject to regulatory scrutiny. Importantly, they are not subject under the *Optometrists Regulation* to any mandatory supervision by the Optometrist. British Columbians are not well served by untrained, unregulated and unsupervised persons providing health support services.

## **3. Increased Health Costs to the Province**

British Columbians aged 19 to 64 are no longer eligible for MSP coverage for non-medical visits to an optometrist. Those with MSP coverage are frequently faced with substantial additional billing. These factors deter many British Columbians from obtaining attention in relation to corrective eyewear.

It can be predicted that if the *Optometrists Regulation* proceeds and the revised *Optician Regulation* is either delayed or abandoned, the result will be increased health care costs. Those persons covered by MSP who otherwise would go to an optician for replacement or eyewear adjustment may ultimately find that they are forced to go to an optometrist because there simply is not an optician available. This would be especially so in rural areas of the Province where optometrists' vertical integration results in monopolistic behaviour.

## **Conclusion**

The most effective way to eliminate the multiple risks to the public interest described above is for the BC Government to ensure that the *Opticians Regulation* is amended in advance of or concurrent with the *Optometrists Regulation* and that the following specific issues are added to the *Optometrists Regulation*:

- The required supervision of persons “authorized” under the definition of “prescribe”;
- Mandatory provision of prescription release to patients; and
- A prohibition on anti-competitive disclaimers on prescriptions.

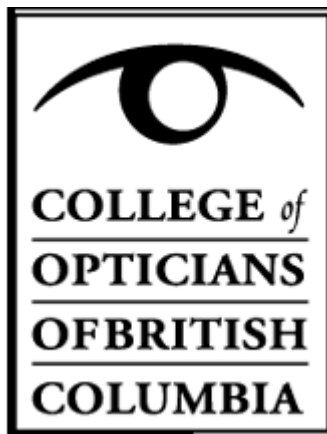
By enacting the *Opticians Regulations* and enshrining terms requiring supervision of untrained persons and mandatory provision of prescriptions, the ocular health and safety of British Columbians will be protected and increased costs to the BC Government will be avoided.

Given these multiple risks to the public interest, the COBC urges the BC Government to ensure:

- the *Optometrists Regulation* and by-laws are not passed until the *Opticians Regulation* is amended; and
- that the contents of the new *Optometrists Regulation* and by-laws take into account public health, safety, and access to services.

**Comments to the Ministry of Health  
on the Draft Bylaws of the College of Optometrists**

**By**



The College of Opticians of British Columbia  
July 21, 2006

## **Executive Summary**

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The draft bylaws of the new College of Optometrists seek to establish the regulations governing optometry as a self-regulating health profession under the *Health Professions Act*. The College of Opticians of British Columbia (COBC) provides comments on the draft bylaws, with particular regard to whether the draft bylaws follow the recommendations of the model bylaws in the “Guidelines for developing bylaws under the *Health Professions Act*” document, and whether they address pressing regulatory issues in optometry.

### **Highlights of the COBC comments:**

In **Part 1: College Board, Committees and Panels** and **Part 2: College Administration**, the draft bylaws reveal weaknesses in ensuring accountability of the College by its registrants and the public. In particular, the COBC comments on the need to respond to registrants in a timely manner and the importance of making sure that expenses are applied appropriately. The COBC prescribes that the draft bylaws should adopt the recommendations by the model bylaws.

In **Part 6: Inspections, Inquiry and Discipline**, the draft bylaws should be revised to ensure that complaints are competently investigated and to allow more flexibility in resolving complaints, particularly in regards to the process of mediation. In addition, the draft bylaws do not include a section on consent for the release of names of complainants, as recommended by the model bylaws. The COBC recognizes the importance of protecting the privacy of the public and suggests that the draft bylaws should include this safeguard.

In **Part 7: Registrants Records**, the COBC suggests that the inclusion of more detailed safeguards for the collection of personal information in the draft bylaws, as recommended by the model bylaws. More importantly, however, the COBC is concerned about the lack of safeguards for the public’s right to obtain a copy of their prescription and the lack of standards on what is, and what is not, permitted on a prescription. The COBC strongly recommends that the draft bylaws should be complementary to current opticianry legislation to uphold strong safeguards for patients.

In **Part 9: Delegation, Authorization and Supervision**, the COBC comments extensively on the difficulties of this section. It is exceedingly broad and confounds the difference between ‘delegation’ and ‘supervision.’ The COBC strongly asserts that optometric and opticianry regulations must be complementary and calls for the same levels of high standards. This section of the draft bylaws also lack most of the recommended safeguards, and the COBC urges an extensive revision of this section to ensure that measures such as educational training for non-registrants and limitations on reserved acts are upheld.

In **Part 10: Conduct, Ethics and Standards of Practice**, the draft bylaws do not fully remedy the Supreme Court of BC decision by Justice Lowry in *Costco vs. The Board of Examiners in Optometry* (1998) in regards to conflict of interest and the prohibition of association. The Board of Examiners in Optometry is urged to revisit the validity of their existing concept of conflict of interest and fee-setting.

In **Part 11: General**, the COBC has strong comments on the inappropriateness of the provision in the draft bylaws for the new College of Optometrists to collect fees on behalf of an association for optometrists. The collection of association fees by the regulatory body is a clear conflict of interest. The COBC maintains that this provision would constitute a severe breach of the college’s mandate as a self-regulatory body, as entrusted by the government.

The COBC respectfully submits their comments on these draft bylaws in hopes that legislation for the new College of Optometrists will provide the same high level of safeguards for public health, safety and access to services.

**Draft Bylaws for the College of Optometrists:  
Comments by the College of Opticians of BC**

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Definitions:

1. In these bylaws:

"Act" means the Health Professions Act;

"appointed board member" means a person appointed to the board under section 17 (3) (b) of the Act;

"board" means the board of the College;

"board member" means an appointed board member or an elected board member;

"chair" means the chair of the board elected under bylaw 14;

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the Health Professions Act (HPA),” sections within the bylaw should be referred to as ‘section’ and not ‘bylaw’: ‘bylaw 14’ should read as ‘section 14’.**

"Code of Ethics" means the Code of Ethics set out in the Schedule of day;

"college" means the College of Optometrists of British Columbia established by the regulation;

"C.S.A.O." means the Canadian Standard Assessment in Optometry, the national examinations in Optometry in Canada;

"deliver", with reference to a notice or other document, includes mail to or leave with a person, or deposit in a person's mailbox or receptacle at the person's residence or place of business;

"elected board member" means a person elected to the board under section 17(3)(a) of the Act;

"examination" means a theoretical examination, given orally or in writing, or a practical examination, or any combination of these, and includes a supplemental examination;

"N.B.E.O." means the National Board Examinations in Optometry, the national examinations in Optometry in the United States of America;

"personal information" means "personal information" as defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*;

"Policies of the College of Optometrists" means the publications of the board containing the pronouncements of professional standards, codes of conduct, policies and guidelines for practice made by the board under the authority of the Act and these Bylaws;

"public representative" means a person who is not a registrant or former registrant or who has no close family or business relationship with a registrant or former registrant and includes an appointed board member;

"record" means a "record" as defined in Schedule 1 of the *Freedom of Information and Protection of Privacy Act*;

"regulation" means the Optometrists Regulation deposited under B.C. Reg. \*\*\*\*\*/06;

"respondent" means a registrant or a health professions corporation named in a citation under section 37 of the Health Professions Act;

"special resolution" is a resolution which requires a three quarters vote of those persons present and eligible to vote at a meeting;

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” the definition of ‘Standards of Practice’ should be included:**

**“Standards of Practice” means the Standards of Practice as set out in Schedule “X”;**

"therapeutic pharmaceutical agents" means the therapeutic pharmaceutical agents defined in the Optometrists Regulation;

"T.M.O.D." means the treatment and management of ocular disease; and

"vice-chair" means the vice-chair of the board elected under bylaw 14.

## **PART 1: COLLEGE BOARD, COMMITTEES AND PANELS**

1.1 (1) Despite section 1, for the purposes of Part one of these bylaws,

(a) "appointed board member" includes a person appointed under section 17(2)(a) of the Act, to represent the public on the first board, and

(b) "elected board member" includes a person appointed under section 17(2)(a) of the Act, to represent the health profession on the first board.

(2) This section is repealed 90 days following the first election referred to in section 17(2)(a) of the Act.

2 The board shall consist of six elected board members, from Registrant Categories 1 or 2, and the appointed board members.

**COBC Comment: Section 2 should specify the number of public members.**

3 Only registrants in Registrant Categories 1 and 2 are eligible to vote, or to be elected to the board, in an election under section 17(3)(a) of the Act.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” these draft bylaws should include:**

- 1) The definition of electoral districts,**
- 2) The number of board members elected per district, and**
- 3) The definition of classes of registrants who are eligible to vote.**

4 The Registrar must give notice of an election to every registrant entitled to vote by delivering notice containing information about the nomination procedure and the election procedure not less than 60 days prior to the expiry of the term of office.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” section 4 should read “not less than 120 days prior to the expiry of the term of office.”**

- 5 (1) Any registrant may nominate for office a maximum of two registrants eligible for election in good standing for each vacant position by delivering such nomination in writing to the Registrar, endorsed by two additional registrants entitled to vote in the election, together with a letter of consent from the person nominated, at least 45 days prior to the expiry of the term of office.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” section 5(1) should read “at least 90 days prior to the expiry of the term of office.”**

(2) A person nominated under subsection (1) in the letter of consent must to declare in writing that he or she will observe the provisions of the Act, the regulations and these bylaws and the other procedures related to the election and the conduct of the election.

- 6 The election of elected board members shall take place at the Annual General Meeting of the College and shall be supervised and administered by the Registrar who may establish procedures, consistent with these bylaws, for that purpose.

- 7 Where the number of registrants nominated for election under section 5 is less than or equal to the number of positions to be elected at the close of nominations, the Registrar shall declare the nominees to be elected by acclamation.

- 8 The Registrar shall use the prescribed Form to certify newly elected members of the board pursuant to section 17.1(1) of the Act.

9. (1) The term of office for an elected board member is three years.

(2) An elected board member may resign at any time by delivering a notice in writing to the Registrar and at the resignation is effective upon receipt by the Registrar.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” the bylaws should include the maximum number of terms for board members.**

(3) An elected board member shall cease to hold office if he or she ceases to be an eligible registrant in good standing with the College.

(4) An elected member of the board may be removed by special resolution of the board or of the College at a general meeting.

**COBC Comment: The COBC agrees with the comments by the Vision Council of Canada (VCC), that the bylaws should address the grounds for such removal should be specified, such as misconduct.**

- 10 (1) The first election of elected board members will be held at the first Annual General Meeting of the College following the designation of the College under the Act.

(2) Despite bylaw 9, the first term of office of the first elected board members shall be:

**COBC Comment: Sections within the bylaw should be referred to as ‘section’ and not ‘bylaw’: ‘bylaw 9’ should read as ‘section 9’.**

- (a) one year for 2 designated positions,
- (b) two years for 2 designated positions, and
- (c) three years for 2 designated positions.

(3) This bylaw is repealed 4 years after the coming into force of this section.

- 11 Any vacancy of an elected board position may be filled by an eligible registrant appointed by the board for the remainder of the term for that position by special resolution.
- 12 Annually, at the Annual General Meeting of the College prior to the election of elected board members by ordinary resolution the College shall fix the honorarium to be paid to each member of the board, elected or appointed, until the following Annual General Meeting.
- 13 Each board member shall be reimbursed by the College for reasonable expenses necessarily incurred in connection with the business of the College.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” section 13 should read ‘Each board member is entitled to be reimbursed...’**

- 14 (1) The members of the board shall elect a chair and a vice-chair by a majority vote for a term of one year at the first meeting of the board after the Annual General Meeting of the College.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” section 14(1) should read ‘The members of the board must elect a chair and a vice-chair...’**

(2) The chair must:

- (a) preside at all meetings of the College and board and is an *ex officio* member of all committees,
- (b) sign all certificates, diplomas and other instruments executed on behalf of the College as required,
- (c) sign the minutes of each meeting of the board after they are approved by the board, and
- (d) act generally in accordance with the requirements of his or her office or the proper carrying out of the duties of the board.

(3) The vice-chair shall perform the duties of the chair in the absence of the chair.

(4) In the absence of both the chair and the vice-chair, an acting chair for a board meeting must be elected by a majority vote of the board members present.

- 15 (1) The board must meet at least four times in each fiscal year and must provide reasonable notice of the meetings to the board members. In the case of necessity to conduct urgent business, the Registrar or the chair may call a meeting of the board on short notice.

**COBC Comment: The bylaws should include the provision of reasonable notice of the meeting to the registrants and the public.**

(2) Meetings of the board must be called by the Registrar at the request of either the chair or any three board members.

(3) The Registrar must provide to members of the public on request:

- (a) details of the time and place of a board meeting,
- (b) a copy of the agenda for the meeting, and
- (c) a copy of the minutes of any preceding meeting.

**COBC Comment: The bylaws should specify that the details of the time and place of a board meeting are to be posted publicly, since members of the public should not be required to call in and contact the College to find out meeting times and place.**

(4) Subject to subparagraph (5), meetings of the board must be open to registrants and to the public.

**COBC Comment: Subsections within the bylaw should be referred to as ‘subsection’ and not ‘subparagraph’: ‘subparagraph (5)’ should read as ‘subsection (5)’.**

**COBC Comment: The COBC agrees with the comments by the VCC, that the bylaws should address the manner in which notice should be given and the time period that is deemed reasonable.**

(5) The board may exclude any person from any part of a meeting and conduct such part of the meeting in camera if it is satisfied that:

- (a) financial or personal or other matters may be disclosed of such a nature that the desirability of avoiding public disclosure of them in the interest of any person affected or in the public interest outweighs the desirability of adhering to the principle that meetings be open to the public,
- (b) a person involved in a criminal proceeding or civil suit or proceeding may be prejudiced,
- (c) personnel matters or property acquisitions will be discussed,
- (d) the contents of examinations will be discussed,
- (e) communications with the Office of the Ombudsman may be discussed, or
- (f) instructions will be given to or opinions received from legal counsel for the College, the board, or committees.

(6) If the board excludes any person from a part of the meeting or conducts a part of the meeting in camera, it shall record its reasons for doing so in the minutes of the meeting.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” section 15(6) should read ‘it must record its reasons for doing so in the minutes of the meeting.’**

**COBC Comment: The bylaws should include the necessity of recording minutes for the *in camera* parts of the meeting.**

(7) The Registrar must ensure that minutes are taken at each meeting of the board and the retained on file.

(8) A majority of the board constitutes a quorum.

(9) No resolution proposed at a board meeting need to be seconded and the chair of the meeting may move or propose a resolution.

(10) In the case of an equality of votes the chair shall not have a casting or second vote in addition to the vote to which he or she is entitled as a board member and the proposed resolution shall not pass.

(11) The board may meet and conduct business using video-conference or teleconference connections when some or all board members are unable to meet in person, or by any other procedure by which all members of the board in attendance are able to hear and communicate with each and all of the others in attendance.

(12) The board, in lieu of holding a formal meeting, may pass resolutions in writing, provided such resolutions are signed and consented to by all members of the board, which resolutions shall take effect upon delivery of the resolution to the Registrar after execution by all members of the board. The Registrar shall retain such written resolutions with the minutes of meetings of the board

16 (1) The Registration Committee is established consisting of three persons appointed by the board.

(2) The Registration Committee must include at least one appointed board member.

17 (1) The Inquiry Committee is established consisting of three persons appointed by the board.

(2) The Inquiry Committee must include at least one appointed board member.

18 (1) The Discipline Committee is established consisting of three persons appointed by the board.

(2) The Discipline Committee must include at least one appointed board member.

19 (1) The Quality Assurance Committee is established consisting of three persons appointed by the board.

(2) The Quality Assurance Committee must include at least one appointed board member.

(3) The Quality Assurance Committee is responsible for:

(a) reviewing the standards of practice to enhance the quality of practice and to reduce incompetent, impaired or unethical practice among registrants,

(b) establishing and maintaining a quality assurance programme to promote high standards of practice among registrants,

(c) establishing mandatory continuing optometric education,

(d) conducting assessment of the practices of registrants,

(e) assessing the valuation of the clinical ability of registrants,

(f) establishing remedial procedures to assist registrants in correctly identifying deficiencies in practice or clinical abilities,

(g) giving assistance to the Registrar in assessing matters of clinical or practice suitability of applicants for registration, and

(h) collecting information from registrants.

**COBC Comment: Section 19(3)(h) needs clarification. The Quality Assurance Committee may not be the most appropriate body for the collection of information from registrants.**

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” the bylaws should include provisions for:**

- 1) Assessing the professional performance of registrants, and
- 2) Recommending courses to the board for approval under section X.

- 20
- (1) The Patient Relations Committee is established consisting of three persons appointed by the board.
  - (2) The Patient Relations Committee must include at least one appointed board member.
  - (3) The Patient Relations Committee shall:
    - (a) establish and maintain procedures by which the College deals with complaints of professional misconduct of a sexual nature,
    - (b) monitor and periodically evaluate the operation of procedures established under subparagraph (a),
    - (c) in concert with the Quality Assurance Committee, develop and coordinate for the College educational programs on professional misconduct of a sexual nature for registrants and the public as required,
    - (d) establish a patient relations program to prevent professional misconduct, including professional misconduct of a sexual nature,
    - (e) develop guidelines for the conduct of registrants with their patients,
    - (f) provide information to the public regarding the College's complaint and disciplinary process, and
    - (g) establish and conduct assessment and rehabilitation procedures with respect to inappropriate sexual conduct of registrants with patients,

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” the bylaws should include the definition of ‘Professional misconduct of a sexual nature’.**

- 21
- (1) Each person appointed to a committee established under the use of bylaws shall serve a term of one year and is eligible for re-appointment.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” the bylaws should include the maximum number of terms for committee members.**

- (2) A committee member may be removed by a resolution of the board.
- (3) The chair of the board shall designate a chair of each committee from among the members of the committee.

(4) Each committee must annually submit a report of its activities to the board prior to the Annual General Meeting of the College.

(5) The Registrar is an *ex officio* member of every committee.

22 (1) The Discipline Committee, the Inquiry Committee, and the Registration Committee may appoint a panel of three persons to conduct the business of the Committee, of which at least one person shall be a public representative and at least one person shall be a board member of the Committee.

(2) The chair of a Committee referred to in sub-paragraph (1) shall appoint the members of a panel and shall designate from them a chair of the panel.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” section 22(2) should read ‘The chair of a Committee referred to in subsection (1) must appoint the members of a panel and must designate from them a chair of the panel’.**

(3) A panel of a Committee referred to in sub-paragraph (1) may exercise any power, duty, or function of that committee.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” section 22(3) should read ‘subsection (1)’.**

23 (1) A majority of the Committee constitutes a quorum of the Committee.

(2) All members of a panel constitute a quorum of the panel.

(3) The provisions of bylaws 14 and 15 *mutatis mutandis* apply to a Committee or a panel as if it were the board.

24 (1) From time to time the board shall establish the honorarium to be paid to all Committee members or panel members.

(2) Each committee member or panel member shall be reimbursed by the College for reasonable expenses necessarily incurred in connection with the business of the College.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” section 24(2) should read ‘Each committee member or panel member is entitled to be reimbursed...’**

25 Except as expressly provided for in these bylaws, meetings of the board, Committees or panels shall be governed by and conducted in accordance with the most recently published edition of Robert’s Rules of Order.

## **PART 2: COLLEGE ADMINISTRATION**

26 (1) A seal for the College must be approved by the board.

(2) The seal of College must be affixed, by those persons designated by the board, to certificates of registration and such other documents as the board may direct by resolution.

27 (1) The board may appoint a person to act as a deputy registrar.

(2) The deputy registrar must perform any duties assigned by the Registrar and, in the absence or inability to act for any reason of the Registrar, may exercise the powers and perform the duties of the Registrar.

(3) When he or she is acting on behalf of the Registrar, the deputy registrar has the same authority as the Registrar.

28 The fiscal year of the College commences on January 1st and ends on December 31st of each year.

29 The board must establish and maintain such accounts with a chartered bank, trust company or credit union as the board determines necessary from time to time.

30 (1) The Registrar may approve payments and commitments for the purchase of goods and services reasonably necessary for the business of the College up to \$5,000.00, or such other level as the board may direct by resolution.

(2) All payments and commitments by the College in excess of the amount established under subparagraph (1) must be approved by the Registrar and one board member designated by the board.

**COBC Comment: Section 30(2) merely requires the authorization by the Registrar and one board member to approve expenditures of amounts up to \$250,000. The COBC suggests more stringent measures to safeguard financial accountability for the College of Optometrists.**

(3) Notwithstanding the foregoing, the board must not purchase personal or real property or enter into contracts for services in excess of an aggregate amount of \$250,000.00 without a special resolution approved at general meeting of the College.

**COBC Comment: Following the COBC's previous comments for section 30(2), section 30(3) should be strengthened to ensure financial accountability. The "Guidelines for developing bylaws under the HPA" recommends that a special resolution is required for expenditures in excess of \$100,000.**

31 (1) The board may raise money, or guarantee or secure the payment of money in the name of the College, in any manner determined by the board, in order to carry out the purposes of the College.

(2) The College, by special resolution at a general meeting of the College, may restrict the borrowing powers of the board.

32 The board may invest funds of the College in any investments authorized under section 15 of the Trustee Act in the name of the College and may change those investments.

33 (1) The board must appoint a chartered accountant or a certified general accountant to be the auditor.

(2) The Registrar must submit the financial statement to the auditor as soon as practical after the end of the fiscal year.

(3) A copy of the auditor's report must be included in the annual report.

34 The board may retain legal counsel for the purpose of assisting the board, a Committee or panel in carrying out any power or duty under the Act, the regulations or these bylaws.

- 35 (1) General meetings of the College must ordinarily be held in British Columbia at such times and locations as may be determined by the board; provided that the board may designate a location for a general meeting outside of the province by special resolution.

**COBC Comment: Section 35(1) should be revised because it permits meetings that ultimately amount to a paid vacation for registrants and the board at the taxpayers' expense. Holding meetings outside of B.C. is highly inappropriate for a B.C. regulatory agency.**

(2) The first Annual General Meeting of the College must be held not more than 15 months after the date the bylaws are approved by the Lieutenant Governor in Counsel and thereafter, and Annual General Meeting shall be held at least once in each calendar year and not more than 15 months after the holding of the last preceding Annual General Meeting.

(3) At each Annual General Meeting the following matters must be considered:

- (a) the financial statements of the College,
- (b) the report of the board, and
- (c) the report of the auditor.

(4) Every general meeting, other than an Annual General Meeting, is an extraordinary general meeting.

(5) The board may convene an extraordinary general meeting by resolution of the board.

(6) Within four months of the receipt of a requisition in writing signed by not less than 20% of the registrants in Registrant Categories 1 and 2, the board shall convene an extraordinary general meeting to conduct the business identified in the requisition.

**COBC Comment: Section 35(6) should be revised because the allowance of four months to call an extraordinary general meeting is excessive. If registrants request an extraordinary general meeting, one can assume that the issue is of utmost importance and that registrants need to meet as soon as possible. The COBC prescribes a time period of 60 days and a petition of no less than 10% of registrants to remain consistent with "Guidelines for developing bylaws under the HPA".**

- 36 (1) The Registrar shall deliver not less than 45 days notice of an Annual or an extraordinary general meeting to every registrant in Registrant Categories 1, 2, 3 and 5 in good standing and entitled to attend at such meeting and to all board members. Notice shall be given by regular post to the last recorded address of each such registrant on file with the Registrar; and shall be conclusively deemed to have been delivered on the third business day following the date upon which the notice is delivered to the postal authorities.

(2) Notice of a general meeting of the College must include:

- (a) the place, day and time of the meeting,
- (b) the general nature of the business to be considered at the meeting,
- (c) any resolutions proposed by the board, and

(d) any resolutions proposed by registrants under bylaw 37 and delivered to the Registrar prior to the mailing of the notice.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” the words ‘bylaw 37’ in section 36(2)(d) should read ‘section 37’.**

(3) The accidental omission to deliver notice of a meeting to, or the nonreceipt of a notice by, any registrant or board member entitled to receive notice does not invalidate proceedings at that meeting.

37 (1) Any 10 registrants entitled to vote at a general meeting of the College may deliver a written notice to the Registrar at least 30 days prior to the date of an annual or an extraordinary general meeting requesting the introduction of a resolution at the meeting.

(2) On receipt of a notice specified in sub-paragraph (1) and at least 14 days prior to the date of that meeting, the Registrar must deliver a notice and copy of the resolution to each registrant entitled to receive notice of the meeting and to each board member.

(3) Subject to the rules of procedure governing the conduct of a general meeting, a registrant entitled to vote at a general meeting may propose a resolution from the floor during the meeting. Any such resolution shall be noted by the chair of the meeting and placed at the end of the agenda, to be debated if time permits.

38 (1) A quorum for a general meeting of the College is 10% of the registrants entitled to attend and vote at the meeting, plus 1 such registrant.

(2) In the event that a quorum is not present, no business, other than the adjournment or termination of the meeting, may be conducted at a general meeting. If at any time during a general meeting there ceases to be a quorum present, business then in progress shall be suspended until there is a quorum present.

(3) If within 30 minutes from the time appointed for the commencement of a general meeting or from any time during a general meeting when a quorum is not present, the meeting must be adjourned.

(4) In the absence of both the chair and the vice-chair of the board, an acting chair for a meeting must be elected to by a majority vote of the registrants present entitled to vote.

(5) A general meeting may be adjourned from time to time and from place to place, but no business may be transacted at an adjourned meeting other than the business left unfinished at the time of the adjournment. In the event the adjournment shall be for more than 30 days, notice of the resumption of the meeting must be delivered as in the case of the original notice for the meeting.

(6) At a general meeting the Chair may propose a motion.

(7) At a general meeting, only registrants in Registrant Categories 1 and 2 in good standing shall be entitled to vote, and each shall be entitled to one vote. The chair, if a registrant, shall be entitled to one vote.

(8) At a general meeting, in the event of a tie vote, the chair shall not have an additional deciding vote, and the resolution shall not pass.

(9) Except as expressly provided by these bylaws, general meetings of the College shall be governed by and conducted in accordance with the most recently published in edition of Robert’s Rules of Order.

### PART 3: COLLEGE RECORDS

- 39 At all times, the College shall comply with and adhere to the provisions of the *Freedom of Information and Protection of Privacy Act*.
- 40 (1) The Registrar is the "head" of the College for the purposes of the *Freedom of Information and Protection of Privacy Act*.
- (2) The Registrar may authorise a deputy registrar, a person employed by the College or a person who has contracted to perform services for the College to perform any duty or exercise any function of the Registrar that arises under the *Freedom of Information and Protection of Privacy Act*.
- (3) The board is responsible for ensuring that the Registrar fulfills his or her duties under the *Freedom of Information and Protection of Privacy Act*.
- (4) The Registrar shall report not less than annually to the board regarding the steps he or she has taken to fulfill the Registrar's duties under the Freedom of Information and Protection of Privacy Act.
- 41 The College shall make its annual report available electronically on the College web site, and it shall notify every registrant that it is available, and provide a copy to any person on request.
- 42 (1) Where an inquiry about the registration status of a person is received by the board or the Registrar, the Registrar shall disclose, in addition to the matters required by section 22 and 22.1 of the Act:
- (a) whether or not the person is a registrant or former registrant,
  - (b) whether or not the discipline committee has ever issued an order relating to the person under section 39 of the Act and the details of the order,
  - (c) whether or not the person has ever signed a consent order under section 36 of the Act, and
  - (d) the details of a consent order pertaining to a change in the person's registration status or the restriction on the practice of the profession of the registrant.

**COBC Comment: The need for consent for the release of names of complainants should be considered for the bylaws. The bylaws should include a subsection based on "Guidelines for developing bylaws under the HPA":**

**"Except with the consent of the person affected, the registrar must not release the names of complainants, patients, or their families or information which might otherwise enable a person inquiring about the status of a registrant to establish the identity of complainants, patients or their families."**

### PART 4: REGISTRATION

- 43 The following Registrant Categories are established:
- (a) Category 1 - registrants licensed and actually practicing optometry within British Columbia, having been certified by the board for use of therapeutic pharmaceutical agents;
  - (b) Category 2 - registrants licensed and actually practicing within British Columbia, not certified by the board for use of therapeutic pharmaceutical agents;

(c) Category 3 - registrants holding an annual license but not actually practicing within British Columbia;

(d) Category 4 - optometry student interns registered with the board;

(e) Category 5 - retired former registrants; and

(f) Category 6 - optometric educators employed by an optometric educational institution or faculty in British Columbia.

44 (1) For the purposes of section 20(2) of the Act, the requirements for full registration in Categories 1, 2 or 3 are evidence satisfactory to the Registrar that the applicant:

(a) has graduated from a school of optometry recognised by the Board for the purpose of registration and specified in Schedule 1;

(b) holds the degree of Doctor of Optometry from the accredited School;

(c) has passed the jurisprudence examinations set by the board;

(d) has paid the fees for registration prescribed by the board;

(e) has successfully sat and passed the C.S.A.O. within 24 months of the date of the application for registration.

(2) If the applicant has not passed the C.S.A.O. within the required time period, that requirement may be met by evidence satisfactory to the Registrar that the applicant:

(a) has passed a qualifying board examination set by a Canadian provincial optometric licensing authority;

(b) holds a current license to practice optometry in a Canadian province and is in good standing with the professional association or college in that province at the date of the application,

(c) has been engaged continuously in the practice of optometry up to and including the date of application, and

**COBC Comment: The COBC agrees with the VCC that the wording ‘and’ in subsection 44(2)(c) is a drafting error.**

(d) has satisfied all of the required continuing education and relicensure requirements of the Canadian province or provinces which the applicant has practiced optometry up to the date of the application.

(3) If the applicant is seeking registration in Category 1, the applicant shall provide evidence satisfactory to the Registrar, in addition to the foregoing, that the applicant:

(a) has graduated from a school of optometry, recognised by the Board for the purpose of registration and specified in Schedule 1, during or since 2001 and has passed the Ocular Therapeutics section of the C.S.A.O., or

(b) has graduated from a school of optometry recognised by the Board for the purpose of registration and specified in Schedule 1 during or after 1995 but before 2001 and has passed the

C.S.A.O. including having passed the Ocular Therapeutics section and has successfully taken a 20 hour refresher course approved by the board in Ocular Therapeutics, or

(c) has graduated from a school of optometry, recognised by the Board for the purpose of registration and specified in Schedule 1, during or after 1995 but before 2001 and has passed the T.M.O.D. section of the N.B.O.E. and has successfully taken a 20 hour refresher course approved by the board in Ocular Therapeutics within three years of the date of the application, or

(d) has graduated from a school of optometry, recognised by the Board for the purpose of registration and specified in Schedule 1, before 1995 and has taken a 100 hour course in Ocular Therapeutics approved by the board and has passed the qualifying examination and has successfully taken a 20 hour refresher course approved by the board in Ocular Therapeutics within three years of the date of the application, or

(e) has graduated from a school of optometry, recognised by the Board for the purpose of registration and specified in Schedule 1, before 1995 and has taken a 100 hour course in Ocular Therapeutics approved by the board and has passed the qualifying examination, both within three years of the date of the application, or

(f) has graduated from a school of optometry, recognised by the Board for the purpose of registration and specified in Schedule 1, before 1995 and has taken a 100 hour course in Ocular Therapeutics approved by the board and has passed the qualifying examination and has been in active practice of optometry (for a minimum continuous period of one year) in a jurisdiction permitting the dispensing of Ocular Therapeutic Agents within three years of the date of the application, or

(g) has graduated from a school of optometry, recognised by the Board for the purpose of registration and specified in Schedule 1, before 1995 and has passed the T.M.O.D. section of the N.B.E.O. and has successfully taken a 20 hour refresher course approved by the board in Ocular Therapeutics within three years of the date of the application, or

(h) has graduated from a school of optometry, recognised by the Board for the purpose of registration and specified in Schedule 1, since 1995 without passing the Ocular Therapeutics section of the C.S.A.O. and has since successfully taken and passed the Ocular Therapeutics section of the C.S.A.O. and has successfully taken a 20 hour refresher course approved by the board in Ocular Therapeutics within three years of the date of the application, or

(i) has graduated from a school of optometry, recognised by the Board for the purpose of registration and specified in Schedule 1, since 1995 without passing the Ocular Therapeutics section of the C.S.A.O. and has taken a 100 hour course in Ocular Therapeutics approved by the board and has passed the qualifying examination within three years of the date of the application.

(4) The Registration Committee may grant grandparented registration in Registrant Category 2 to an applicant who, otherwise complying with the requirements for registration in that Category, does not meet the requirements for registration in this bylaw upon evidence satisfactory to the Registrar that the applicant, at the effective date of this bylaw, is authorised to and is currently practicing optometry in British Columbia and has continuously done so for not less than 1 year.

(5) In addition to the requirements set forth in this bylaw, an applicant for registration shall satisfy the Registrar that the applicant is a person of good character consistent with the responsibilities of a

registrant and the standards expected of a registrant and shall provide to the Registrar a signed application for registration in the form approved by the Registration Committee, the required application fee specified by the board, proof of name, age and educational standing and a signed criminal record check authorization form.

(6) Upon the Registrar being satisfied that an applicant for registration has met the requirements therefor in this bylaw, the Registrar must issue to the applicant a Certificate of Registration in the form set out in the Schedule which shall designate and specify the limits, conditions and category that apply to the Registrant. Upon the grant of the Certificate of Registration the Registrar shall provide to the registrant an Annual License for practice in accordance with the Certificate, which shall be valid for the balance of the current calendar year.

(7) Annually, for the next ensuing calendar year, each registrant shall be granted a renewal of the registrant's Annual License, upon satisfying the Registrar that the registrant remains otherwise qualified to practice optometry in the Registrant Category, has paid the prescribed annual license fee and submitted the prescribed form for such renewal in accordance with the Schedule.

(8) Provided the Registrar is satisfied that an applicant for registration or a registrant applying for renewal of the registrant's Annual License has satisfied the requirements of the College for the use of diagnostic and therapeutic pharmaceutical agents, the Registrar shall issue to such applicant or registrant a Certificate of Qualification in the form set out in the Schedule authorizing the applicant or registrant to use diagnostic and therapeutic pharmaceutical agents as approved by the board from time to time. Each such Certificate of Qualification shall be valid for the term of the then current annual license issued to the applicant for registration or the registrant, as the case may be and may be renewed by the Registrar for each successive year that the registrant obtains an annual license to practice from the board.

(9) The required application form, proof as required by the board of compliance with Quality Assurance programmes, the prescribed fee for renewal of a registrant's Annual License and payment of all outstanding debts or financial obligations due by the Registrant to the College must be delivered to the Registrar on or before the 30th day of November in each year in respect of the next calendar year.

(10) A registrant who tenders payment of the required annual fees after the 30th day of November, as a condition of renewal of the registrant's Annual License for the next calendar year, shall pay the prescribed Late Payment fee.

(11) The Certificate of Registration and Annual License of a registrant who has not complied with all requirements including payment of all required fees to the College before the 31st day of December in respect of the next calendar year shall be suspended until payment in full of the required fees and all late payment fees and completion of the other requirements for renewal of annual license. In the event the registrant shall fail to pay all required fees to the College and complete the other requirements of registration prior to the first day of March in the next calendar year, the Certificate of Registration and Annual License of the registrant shall be cancelled and the registrant shall surrender of the Certificate of Registration to the Registrar forthwith.

(12) Each registrant must immediately notify the Registrar of any change of address, name or any other registration information previously provided to the Registrar including the address and telephone number of each location in which the registrant is practicing optometry.

(13) In the event that the Certificate of Registration or Annual License of a registrant shall have been suspended or cancelled by reason only of late or nonpayment of fees, upon application to the board and payment of the prescribed additional fees or charges for late payment or non-payment as set forth in the Schedule, the board may reinstate the Certificate of Registration or Annual License as the case may be.

(14) Upon application in the prescribed form, proof of compliance with the continuing education requirements of the Quality Assurance programme and payment of the prescribed fee, the Registration Committee may re-instate the Certificate of Registration of a former registrant and grant an Annual License to the former registrant who has been out of the practice in British Columbia for a period not exceeding three years; provided that the former registrant was in good standing at the termination of the prior Annual License and Certificate of Registration.

(15) In the event that an applicant for registration under bylaw 44(1) or 44(3) in all other respects is qualified for registration but has not graduated from an accredited school of optometry and does not hold the degree of Doctor of Optometry from an accredited school of optometry, upon proof satisfactory to the board that the applicant has acquired an equivalent education and qualification, the board may grant registration under the said bylaws.

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” section 44(15) should read ‘section 44(1) or 44(3)’.**

## **PART FIVE: QUALITY ASSURANCE**

45 Each registrant must fulfill the requirements of the quality assurance program established by the board and supervised by the Quality Assurance Committee. Compliance with the requirements of the program is a condition of renewal of the Registrant’s Annual License.

**COBC Comment: Section 45 lacks the specificity that is recommended by the “Guidelines for developing bylaws under the HPA.” Section 45 should include the detailed requirements of the quality assurance program, such as completing x hours of continuing education per year and other specific requirements.**

46 (1) From time to time, the Quality Assurance Committee or an assessor appointed by the Committee may assess the professional performance of a registrant.

(2) The Committee or the assessor must not observe a registrant while the registrant is providing a service to a patient except where the consent of the patient being treated has been obtained in advance, or the service is being provided in a public setting.

(3) Where the Quality Assurance Committee is required to notify the Inquiry Committee pursuant to section 26.2 (3) of the Act, it must deliver such notice in writing to the Registrar.

**COBC Comment: There is a dubious reference to the *Health Professions Act*. The HPA does not include a section 26.2(3).**

## **PART SIX: INSPECTIONS, INQUIRIES AND DISCIPLINE**

47 An inspector must not observe a registrant while the registrant is providing a service to a patient except where the consent of the patient being treated has been obtained in advance, or the service is being provided in a public setting.

48 (1) The Inquiry Committee must notify a registrant who is the subject of an investigation and any complainant of the disposition of the investigation and any action taken under section 33 (4) of the Act.

**COBC Comment: There is a dubious reference to the *Health Professions Act*. The COBC suggests that the reference should be section 33(6).**

(2) Before agreeing to accept an undertaking or consent under section 36 of the Act, the Inquiry Committee may review all previous complaints and disciplinary matters involving the registrant to be satisfied that the proposed undertaking or consent is appropriate in the circumstances.

- 49 Where it is necessary in order to ensure fair and impartial conduct of the business of the Inquiry Committee or of the Disciplinary Committee, the board by resolution may designate another committee of the College to make a determination and exercise all the powers, duties and functions of the inquiry committee under sections 33 and 39 of the Act.

**COBC Comment: Section 49 should include considerations for the appropriateness of having a committee conducting the business of another committee. Competence and specific expertise are necessary attributes for the conducting duties of the Inquiry Committee. To avoid compromising the business of Inquiry or the Discipline Committee, the COBC prescribes that the bylaws should require working knowledge of these committees, should the College of Optometrists want to allow the designation.**

- 50 (1) In this bylaw "consent order" means the record of an undertaking or a consent given under section 30 7.1 of the Act for the purpose of resolving a complaint.

**COBC Comment: There is a dubious reference to the *Health Professions Act*. The COBC suggests that the reference should be section 36(1).**

(2) A consent order must:

(a) include any consent to a reprimand or to any other action made by the registrant under section 37.1 of the Act,

**COBC Comment: There is a dubious reference to the *Health Professions Act*. The COBC suggests that the reference should be section 36(1).**

(b) include any undertaking made by the registrant under section 30 7.1 of the Act,

**COBC Comment: There is a dubious reference to the *Health Professions Act*. The COBC suggests that the reference should be section 36(1).**

(c) specify the length of time that an undertaking set forth in subparagraph (b) is binding on the registrant,

(d) specified a procedure that the registrant may follow to be released from an undertaking specified in subparagraph (b), and

**COBC Comment: To remain consistent with “Guidelines for developing bylaws under the HPA,” section 50(2)(d) should read ‘subsection (b)’.**

(e) specified which terms of the consent order may be disclosed to the public.

- 51 (1) The Inquiry Committee may recommend under section 33(6)(b) of the Act that a complaint be mediated where the Inquiry Committee determines that the issuance of a citation under section 37 of the Act is not warranted and the complainant and the registrant agree to mediation.

(2) Following a recommendation under subparagraph (1), the Inquiry Committee shall appoint a mediator who is acceptable to the complainant and the registrant.

(3) The mediator must conduct the mediation in accordance with the terms of a written mediation contract executed by the complainant and the registrant.

**COBC Comment:** The process of mediation as laid out in Section 51(1)(2)(3) obligates the College of Optometrists to seek formal mediation and does not allow the flexibility it needs. The type of mediation depends on the severity of the complaint. Many complaints are matters of customer satisfaction, and not of professional competence. Such matters may be resolved through informal mediation processes by the College Registrar at the direction of the Inquiry Committee, such as educating the public on customer expectations or providing a professional opinion. The specifications in sections 51(2) and (3) effectively ‘tie the hands’ of the regulatory body.

The COBC is also concerned about the implications of specifying mediation as formal mediation. There are substantial costs in time and resources in appointing a mediator and approving a mediation contract that are acceptable to both the complainant and the registrant. The practicality of sections 51(2) and (3) suggests that the College of Optometrists would only deal with severe complaints that warrant a formal mediation and not respond to complaints of lesser severity, but that are still relevant to the complainant.

**Section 51 would benefit if it granted authority to the Registrar to informally mediate complaints of lesser severity.**

(4) Where an agreement between the complainant and the registrant is reached through mediation, the terms of the agreement may be approved by the Inquiry Committee.

(5) Where the term of an agreement between the complainant of the registrant reached through mediation requires the registrant to undertake or consent to an action referred to in section 36 of the Act, the Inquiry Committee may request the registrant to make such an undertaking or consent where the Inquiry Committee considers the undertaking or consent to be appropriate in the circumstances.

(6) Where an agreement is approved by the Inquiry Committee under subparagraph (5), the Inquiry Committee must report the resolution of the matter to the board and retain a copy of the agreement on file.

(7) Where an agreement is not reached through mediation, the mediator must refer the matter back to the Inquiry Committee and may recommend that the Inquiry Committee take one or more actions under section 35 of the Act.

52 (1) On the direction of a panel of the Discipline Committee, the Registrar may join one or more complaints or other matters which are to be the subject of a discipline hearing in one citation as appropriate in the circumstances.

(2) On the direction of a panel of the Discipline Committee, the Registrar may sever one or more complaints or other matters which are to be the subject of a discipline hearing as appropriate in the circumstances.

(3) On the direction of a panel of the Discipline Committee, the Registrar may amend a citation issued under section 37 of the Act.

(4) Where a citation is amended under subparagraph (3) prior to a discipline hearing, the amended citation must be delivered to the respondent by personal service or sent by regular mail to the respondent at the last known address for the respondent recorded as required in or pursuant to section 21 (2) of the Act not fewer than 10 days before the date of the hearing.

- (5) Where a citation is amended under subparagraph (3) prior to a discipline hearing, and the amended citation changes the date, time or place of the hearing, the Registrar must notify any complainant of the amendment not fewer than 10 days before the date of the hearing.
- 53 (1) No person may sit on the Discipline Committee or a panel of the Committee while he or she is a member of the Inquiry Committee.
- (2) No member of the Discipline Committee may sit on a panel of the Committee hearing a matter in which he or she was involved as a member of the inquiry committee or in respect of which he or she has had any prior involvement.
- (3) Information about the date, time and subject matter of the hearing must be provided to any person on request.
- (4) The Discipline Committee must provide notice by registered mail or by personal service to a person who is required to attend a hearing under section 38(6) of the Act in the form set out in the Schedule.
- (5) All discipline hearings shall be recorded and any person may obtain, and his or her expense, a transcript of any part of the hearing which he or she was entitled to attend. No proceedings before the Discipline Committee or a panel of the Committee shall be invalidated nor any decision be set aside by reason only of a failure to fully record the hearing or provide a transcript thereof under this subparagraph.
- (6) In determining the penalty to be imposed on a registrant under section 39(2) of the Act the Discipline Committee after making a determination on the facts must consider any previous relevant disciplinary decision regarding the registrant or any undertaking or consent to a reprimand given by the registrant under section 36(1) of the Act.
- 54 At the conclusion of a disciplinary proceeding, the board within a reasonable time must advise the registrants in the College of the facts of the case, the reasons for the decision of the Discipline Committee and the disposition, including the nature of any limitation or suspension, and the date it is in effect. The board may determine whether or not to advise the registrants in the College of the name of the respondent to such proceeding, except that where the disposition results in the limitation or suspension of a registrant's practice, the registrant shall be identified to the other registrants in the College.
- 55 Where disciplinary proceedings result in the limitation or suspension of a registrant's practice, the Registrar must notify the College or associations responsible for the regulation of the profession of optometry in every other Canadian jurisdiction and, on request, to any other college or association in a jurisdiction inside or outside Canada.
- 56 Records of the Inquiry Committee and of the Discipline Committee must be retained for not less than 10 years following the conclusion of an investigation or the date a decision is rendered, as the case may be.
- 57 (1) During any period of suspension from practice, registrants shall:
- (a) not engage in the practice of the profession or hold himself or herself out as being a registrant,
  - (b) not hold office in the College,
  - (c) not make appointments for patients or prospect of patients,

**COBC Comment:** There appears to be a drafting error, where section 57(1)(c) should read “not make appointments for patients or prospective patients”.

(d) not contract or communicate with patients or prospect of patients, except for the purpose of an advising patients or prospect of patience of the fact and duration of the suspension and to advise a patient or prospect of patient of the identity of another registrant who will continue to operate in the place of the suspended registrant or to provide a reference to another registrant in good standing,

**COBC Comment:** There appears to be a drafting error, where section 57(1)(d) should read “except for the purpose of advising patients or prospective patients of the fact and duration of the suspension...”

(e) immediately surrender to the Registrar his or her Certificate of Registration and Annual License,

(f) pay any fee or special assessment required by the College when due in order to remain a member,

(g) not be entitled to a refund of the annual fee for the portion of the suspension or of any special assessment that the registrant has paid.

(2) During the period of suspension, a suspended registrant may permit another registrant in good standing to practice within the suspended in registrant's office, provided that the suspended registrant complies with the provisions of subparagraph (1).

**COBC Comment:** Section 57 does not specify the types of communication in subsection 57(1)(d) as recommended by the “Guidelines for developing bylaws under the HPA.” Section 57 should include a subsection that reads:

**“Any communication under subsection (1)(d) may be made in writing in a form approved in advance by the registrar, or by employing office staff, an answering service or other telephonic device specifically for this purpose.”**

58 The maximum amount of a fine that may be ordered by the Discipline Committee under section 39 of the Act is \$50,000.00.

59 (1) Following a hearing under section 38 of the Act, the Discipline Committee may pursuant to the provisions of section 39 of the Act award costs to the registrant or to the College, as the case may be, provided that such costs may only be awarded in respect of matters covered by the Tariff of Costs set out in the Schedule and the costs awarded must not exceed the amount set out for such expense in the Schedule.

(2) If a proposal given to the Inquiry Committee pursuant to section 37.1 of the Act is accepted by the Inquiry Committee, the registrant must pay to the College costs incurred by the investigating committee under the terms of the consent given pursuant to section 37.1 of the Act, provided that such costs may only be awarded in respect of matters covered by the Tariff of Costs set out in the Schedule and the costs awarded must not exceed the amount set out for that expense in the Schedule.

**COBC Comment:** There is a possible confusion of references to the *Health Professions Act*. The COBC suggests that subsection 59(2) should read:

**“If a proposal given to the Inquiry Committee pursuant to section 32.2 of the Act is accepted by the Inquiry Committee, the registrant must pay to the College costs incurred by the investigating committee under the terms of the consent given pursuant to section 36 of the Act, provided that such costs may only be awarded in respect of matters covered by the Tariff of Costs set out in the Schedule and the costs awarded must not exceed the amount set out for that expense in the Schedule.”**

- 60 (1) Sections 20.2 and 20.3 of the Act apply to the College.
- (2) Applications under section 20.2 of the Act must be provided to the Registrar.
- (3) Where an applicant requests the board to consider additional evidence beyond the record, the applicant must provide or specify the evidence in the application and provide written submissions as to why the applicant believes there are special circumstances that warrant consideration of additional evidence by the board.
- (4) The Registrar shall present the request to the board at the next meeting of the board or, if the application is received less than five days before the next scheduled board meeting, at the board meeting following thereafter.
- (5) If the board decides that special circumstances exist that require it to consider evidence that is not on the record, the board must direct the Registrar to make arrangements for the receipt of such evidence.
- (6) In any case where oral testimony may be required, the board must make appropriate arrangements for consideration of the matter to be deferred until the applicant is provided with a reasonable opportunity to present such oral testimony to the board.
- (7) The board must provide to the applicant and the Discipline Committee written reasons for its decision on an application made pursuant to section 20.2 of the Act.

## **PART 7: REGISTRANTS RECORDS**

- 61 Every registrant shall familiarize himself or herself with, observe and comply with the provisions of the *Personal Information Privacy Act* in connection with the collection of personal information regarding the registrant's patients.

**COBC Comment: This Part 7 on Registrants Records does not include the level of detail for the source of personal information and the collection of personal information as recommended by the “Guidelines for developing bylaws under the HPA.” In particular, the bylaws should specify that:**

- 1) **A registrant must collect personal information about a patient directly from the patient, and**
  - 2) **A registrant must take steps to reasonably ensure that the patient is aware of the purpose and right of access to personal information that is being collected.**
- 62 The collection of a family or genetic history of a person, collected directly from that person, shall not be deemed to be the collection of personal information about another person without authority under the provisions of the *Personal Information Privacy Act*.
- 63 Personal information must not be collected by a registrant by unlawful means or by means that in the circumstances are unnecessarily intrusive into the personal affairs of the patient.

- 64 A registrant must ensure that all records pertaining to his or her practice and those containing personal information about any persons are safely and securely stored. Personal information must be retained for a period of 7 years.
- 65 A registrant may only dispose of records by transferring the records to another registrant or, with the consent of the patient, to another healthcare agency or healthcare practitioner, by effectively destroying the record by utilizing a shredder or complete burning, or by erasing information recorded or stored by electronic methods on tapes, disks or cassettes in a manner that ensures that the information cannot be reconstructed, or by transferring the record to the patient.
- 66 Upon ceasing to practice, for any reason, a registrant must dispose of the personal information records under his or her control in accordance with the provisions of the Personal Information Privacy Act and these bylaws and shall notify the Registrar of the College in writing of the steps taken to dispose of the records and shall notify each patient of the transfer of that patient's records.
- 67 In the event that a custodian of a registrant's records is appointed by order of the board or by a Committee of the College, the custodian shall adhere to these bylaws and to the provisions of the Personal Information Privacy Act as if the registrant, subject only to any further direction of the board or the Committee.
- 68 Subject only to the rights of patients to access to personal information in health care records, such health care records shall be the property of the registrant with whom the patient establishes the registrant-patient relationship during and for which the health care records are created; provided that in the event the registrant is employed by another person or corporation authorized to practice optometry under the Act, the health care records shall be the property of the person or corporation employing the registrant. In such event, both the registrant and the person or corporation employing the registrant shall at all times comply with the provisions of the Personal Information Privacy Act and these bylaws.
- 69 A registrant must ensure that any contract for services of a person who may have access to personal information in health care records maintained by the registrant requires the person to adhere to these bylaws and to the provisions of the Personal Information Privacy Act in respect of such personal information and, notwithstanding any other terms of the contract, in respect of the access to and use of the personal information the person shall be under the direct disciplinary control of the registrant.

**COBC Comment: The critical safeguard to the patient's right to obtain a copy of their prescription at no charge is not found in the proposed bylaws. The Health Professions Council has repeatedly affirmed its recommendation for the mandatory release of prescriptions to patients in 1992 and again in 2001. These proposed bylaws for the College of Optometrists reinforce the discrepancy in patient rights between the legislation for optometrists and that of opticians.**

**In addition, these proposed bylaws do not specify what should be on a prescription. The *Opticians' Regulation* prohibits any disclaimers other than specific contra-indicatives for the particular needs of a patient. The Health Professions Council has also recommended against disclaimers that restrict consumer rights and the opticians' capacity to dispense. The COBC strongly recommends that the bylaws for the optometrists should be complementary to current opticianry legislation to uphold strong safeguards for patients.**

## **PART 8: OPTOMETRIC CORPORATIONS**

- 70 (1) A corporation incorporated under the Business Corporations Act, if complying with the provisions of Part 4 of the Act, may apply to the board for a permit to carry on the business of providing the services of optometry to the public, in the form designated by the board and providing the certificate of

incorporation of the corporation and such other corporate information as the board may require together with the specified permit fee.

(2) The president of a corporation granted a permit to provide the services of optometry to the public by the board or his or her authorized designate must promptly advise the board in writing of any change to the information contained in the permit application.

(3) A permit granted by the board to such corporation is valid from the issue date until the end of the calendar year.

(4) A permit granted by the board to such corporation may be renewed annually, upon compliance with the requirements of the board for renewal including completion of the permit renewal application designated by the board for such purpose and payment of the permit renewal fee.

(5) The powers and duties of the board set out in section 44 of the Act are delegated to the Discipline Committee.

(6) A permit revocation hearing may be consolidated with a hearing conducted under section 38 of the Act where there is a sufficient similarity of subject matter between the two hearings in the discretion of the Discipline Committee.

(7) The Discipline Committee may conduct an oral hearing or hearing by written submission to determine whether or not a health profession corporation permit should be revoked.

(8) The Discipline Committee may conduct a permit revocation hearing on the receipt of a written complaint or on its own motion.

(9) Notice of a permit revocation hearing shall be provided by the Registrar by personal service or by registered mail to the registered office of the health profession corporation not less than 30 days before the date of the hearing.

(10) Notice of a permit revocation hearing must name the health profession corporation as respondent, specify the matter that is to be the subject of the hearing including particulars of any evidence in support of the matter and specify the time, date and place of the hearing. Such notice shall advise of the respondent health profession corporation whether or not the hearing will be oral or in written submissions.

(11) At an oral permit revocation hearing by the Discipline Committee, the testimony of witnesses shall be taken on oath which may be administered by any member of the Discipline Committee, with a full right of cross-examination of witnesses and to call evidence in defense and reply.

(12) Where the respondent does not attend, the Discipline Committee may proceed in the absence of the respondent on proof of receipt of the Notice of the hearing.

(13) The Discipline Committee may order any person to attend an oral permit revocation hearing to give evidence and to produce records in the possession of or under the control of that person. Such order must be given in writing by registered mail or by personal service in the form set out in the Schedule.

**COBC Comment: The COBC reiterates the VCC's comments on the jurisdiction limits of the College of Optometrists over non-registrants. The College has authority over registrants who have consented to its jurisdiction and it does not have any jurisdiction over the general public. Subsection 70(13) does not have the authority to grant the Discipline Committee the power to 'order any person to attend an oral permit revocation**

hearing?. This section should be redrafted to correctly reflect the jurisdiction of the regulatory body.

(14) The Discipline Committee must provide written reasons for its decision.

(15) Where the Discipline Committee decides to revoke a permit, the board must publish a notice containing the name of the respondent health profession corporation, the reasons for the decision and the date of the revocation of the permit.

## **PART 9: DELEGATION, AUTHORIZATION AND SUPERVISION**

71 Subject to the Act and the Regulations and these bylaws, a registrant may delegate to a non-registrant any aspect of the practice of optometry that does not require the exercise of the professional judgment of an optometrist, or is the making of a diagnosis of the patient's visual health or is a prescription of therapy for the patient's visual health or constitutes a reserved action in the *Optometrists Regulation*, provided that such delegated aspects of the practice are only performed by the non-registrant under the direct supervision of the registrant. For the purposes of this bylaw, "direct supervision of the registrant" shall mean that the non-registrant is employed by or contracted with the registrant and is conducting the designated aspects of the practice of optometry in the same location in which the registrant ordinarily conducts his practice with the patient.

**COBC Comment: Section 71 is exceedingly broad and would allow optometry to delegate the entire function of opticianry to staff who are neither adequately trained nor registrants of the COBC. The COBC strongly believes that the rules governing dispensing must be the same as those of opticianry. The proposed bylaws should include the prohibition of practicing reserved acts of the *Opticians' Regulations* by any person delegated or supervised by optometrists. The COBC encourages optometry to be in constant dialogue with opticianry to maintain complementary regulations.**

**The COBC supports the VCC's comments on the need for clarity in section 71. This section severely confuses the difference between 'delegation' and 'supervision'.**

**In health professions, the term "delegation" assumes the delegation of procedures to anyone with training to complete the assigned delegation and is competent. "Supervision" signifies the direct, physical supervision of a health professional in overseeing all aspects of work. During supervision, the supervisor has higher responsibility since the one who is supervised may not have any training, and requires constant and direct supervision by the registrant to ensure public safety.**

**These proposed bylaws do not include education or training requirements for non-registrants under delegation or supervision. This clearly does not safeguard public safety. The COBC prescribes that if aspects of the delegated action are part of the reserved acts of opticianry, then those non-registrants should have the same education and training required of a registrant under the *Opticians' Regulations*.**

**The proposed optometric bylaws should also address limits and conditions of delegating or supervising aspects of the practice that contravene the reserved acts and prohibitions in the regulations and bylaws of other colleges. Optometrists, for instance, must not employ opticians and then delegate or supervise them to conduct refractions, which is an act prohibited under the *Opticians' Regulations*.**

**Section 71 also does not specify the prohibition of holding out. The COBC stresses that the proposed bylaws should follow the "Guidelines for developing bylaws under the HPA" to**

**prohibit registrants of the College of Optometrists from allowing, enabling, assisting or encouraging a person employed by a registrant to hold themselves out as registrants of any other college.**

**The COBC thus strongly recommends that the proposed bylaws adhere to Part 9 of the “Guidelines for developing bylaws under the HPA.” In particular, the College of Optometrists bylaws should include:**

- 1) Educational and training requirements for non-registrants, with a set of requirements for those under delegation, and another set for those under supervision,**
- 2) Specific details on what aspects of the practice cannot be delegated,**
- 3) Specific details on what aspects of the practice must require supervision,**
- 4) Specific details on what aspects of the practice cannot be performed other than by a registrant,**
- 5) Limits and conditions, particularly in regards to reserved acts of optometry and the prohibition for registrants of another college to perform an act that is prohibited by the regulations and bylaws of the other College,**
- 6) The prohibition of holding out**
- 7) Investigation, inquiry and discipline for such non-registrants.**

#### **PART 10: CONDUCT, ETHICS AND STANDARDS OF PRACTICE**

72 Board members and officers of the College must at all times conduct themselves in a manner that is in keeping with the protection of the public interest and the ethical standards of the profession.

73 Registrants shall, at a minimum, practice optometry in accordance with the Act, these bylaws and the Policies of the College of Optometrists. The board may vary from time to time, by resolution, the Policies of the College of Optometrists, which variation shall take effect upon publication thereof to the registrants.

**COBC Comment: The COBC agrees with the VCC that the proposed bylaws should specify the reasonable and timely notice and publication of the changes to Policies by resolution before they take effect.**

74 Each registrant shall limit his or her practice of optometry in accordance with the limits established for the Registrant Category of the registrant in accordance with the Act, these bylaws and the Policies of the College of Optometrists.

75 No registrant shall prescribe or administer therapeutic pharmaceutical agents unless the holder of a current Certificate of Qualification as a registrant in Category 1 for the use of therapeutic pharmaceutical agents.

76 Each registrant shall adhere, at all times, to the Code of Ethics established and attached to these bylaws in the Schedule.

77 Each registrant shall, in all matters pertaining to the conduct of the profession of optometry, maintain and uphold the honour, integrity and reputation of the profession, the College, its members and the registrant. The registrant shall refrain from conduct which appears to, tends to or does in fact bring the profession or any of its members, including the registrant, into disrepute.

78 The board establishes a tariff of costs for the purpose of indemnification of expenses incurred by the College for investigations conducted by it pursuant to section 33 of the Act as set forth in the Schedule.

- 79 The board establishes a tariff of costs for the purpose of indemnification of expenses incurred by parties in the preparation for and conduct of hearings, other than investigations pursuant to section 33 of the Act, conducted pursuant to section 39 of the Act as set forth in the Schedule.
- 80 No registrant shall practice optometry in a conflict of interest. In the Policies of the College of Optometrists, the board may pronounce, from time to time, definitions of conflict of interest in the practice of optometry for the purpose of providing guidance to registrants to ensure that professional decisions made by registrants are made in the best interests of their patients.

**COBC Comment: The COBC comments that optometry is currently practiced in an inherent conflict of interest, by having the authority to both prescribe and dispense eyewear. In *Costco vs. The Board of Examiners in Optometry (1998)*, Supreme Court of BC Justice Lowry stressed that optometrists are “directly compromised” by virtue of prescribing as a health professional and selling what they prescribe as a retail distributor. The College of Optometrists should re-examine their understanding of conflict of interest as it relates to optometrists associating with non-optometrists, and the inherent conflict of the current optometric practice of selling what they prescribe.**

- 81 No registrant shall advertise or otherwise hold out to the public that the registrant is a specialist in a particular aspect of the practice of optometry, but nothing in this bylaw shall prohibit a registrant from advertising that the registrant may restrict his practice to specified aspects of the practice of optometry, nor restrict a registrant from advertising the registrant's professional qualifications including any certification issued to the registrant by the board.
- 82 No registrant shall solicit patients' patronage by discount of fees.
- 83 (1) In this part:
- "advertisement" means the use of space or time in a public medium, or the use of a commercial publication such as a brochure or handbill, to communicate with the general public, or a segment thereof, for the purpose of promoting professional services or enhancing the image of the advertiser, and
- "marketing" includes an advertisement, a publication or communication in the any medium with any patient, prospective patient or the public generally 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 and contact with the prospective client initiated by or under the discretion of a registrant.
- (2) Any marketing undertaken or authorized by a registrant in respect of his or her professional services must not be:
- (a) false,
  - (b) inaccurate,
  - (c) reasonably expected to mislead the public,
  - (d) unverifiable, or
  - (e) contrary to the public interest in the practice of the profession.

- (3) Marketing violates subparagraph (2) if it:

(a) is calculated or likely to take advantage of a weakened state, either physical, mental or emotional, of the recipient or intended recipient,

(b) is likely to create in the mind of the recipient or intended recipient and unjustified expectation of the results which the registrant can achieve,

(c) implies of the registrant can obtain results not achievable by other registrants, by improperly influencing a public body or official, or any corporation, agency or person having any interest in the welfare of the recipient, by any other improper means, or

(d) compares the quality of services provided by the registrant with those provided by another registrant, a person authorized to provide health care services under another enactment or another health profession.

(4) No registrant may state publicly that he or she speaks on behalf of the College unless expressly authorized by the board to state the official position of the College.

(5) No registrant may endorse or lend himself or herself as an optometrist to the advertisement of any property, investment or service for sale to the public, unless such property, investment or service relates directly to the provision of professional services by the registrant.

(6) A registrant who, in any advertisement, includes a statement of fees for a specific service must ensure that the statement is sufficiently accurate and detailed to enable the recipient or intended recipient to understand the nature and extent of services to be provided and the cost to the patient and must not in such advertisement compare the fees of the registrant with those charged by any other registrant.

(7) A registrant must retain for one year after the date of publication or broadcast of any advertisement and must provide to the board upon request a copy of any such publication, a recording of any such broadcast made by use of any electronic media, including radio, television and microwave transmission, and a written record of when and where the publication or broadcast was made.

(8) It is the duty of a registrant, when called upon to do so by the Discipline Committee, Inquiry Committee or the board to do so, to verify the statements made in his or her marketing.

84 No registrant shall charge a fee that is exorbitant or unreasonable for materials or services supplied by him or her to or for any person in the practice of optometry, including the dispensing function.

85 No registrant shall conduct or carry on the practice optometry in an incompetent manner. For the purposes of determining whether or not a registrant is practicing or has practiced in an incompetent manner, a finding of incompetence may be made where the Discipline Committee is satisfied that the optometric care provided by the registrant to the registrant's patient's or otherwise to the public has caused or is likely to cause risk to the patient's or to the public and without restricting the generality thereof, including where there is evidence of:

(a) a consistent pattern of complaints in respect of optometric services provided by the registrant,

(b) repeated failure of the registrant to maintain the registrant's practice in accordance with the standards of the profession, or

(c) any incident that, in the opinion of the Discipline Committee, presents or has presented significant risk to the health of a patient or patient's of the registrant, or of the public.

**COBC Comment: It is essential that the Discipline Committee bases the findings of incompetence on facts and not merely according to the opinion of the Committee. Section 85(c) should read: “any incident that, as a matter of fact to the Discipline Committee, presents or has presented significant risk to the health of a patient or patient's of the registrant, or of the public.”**

86 No registrant shall conduct himself in connection with the profession, its members or the practice of optometry in a state of impairment or of substance abuse, nor with fraud or misrepresentation, whether or not otherwise constituting a specific breach of the Act or these bylaws.

87 No registrant may use, imply or assume with respect to the registrant's practice of optometry any description other than "Optometrist" or "Doctor of Optometry" or a contraction of either of them, except as the board of the College may otherwise approved in respect of the practice as a clinic name, all of which clinic names approved must include the word "Optometrist" or derivatives of it to convey to members of the public that the clinic provides professional optometric services under the provisions of the Act and these bylaws.

**COBC Comment: The bylaws for the College of Optometrists need to specify that a practice of optometry must include the word “Optometrist” or “Doctor of Optometry” in full and not as any contraction or derivative. The bylaws should ensure that optometrists do not use, imply or assume the use of the word “Doctor” or “Dr.” by itself, which is a reserved title under the *Medical Practitioner Act* for physicians and surgeons. This would mislead the public into confusing optometrists (non-medical practitioners) with ophthalmologists (medical practitioners).**

88 Where a publication or communication made by any party contains the name, address, telephone number, place a practice or other identification of a registrant, in the absence of evidence to the contrary, the registrant shall be presumed to have authorized and participated in the making of such publication or communication.

89 Each registrant shall have and maintain a definite place of practice or places of practice. Each such place a practice shall be a separate and discrete office, sufficiently and appropriately equipped to provide professional optometric services to the registrant’s patients.

**COBC Comment: The COBC agrees with and reiterate the VCC’s comments that this proposed section specifies that the optometrist’s office may not be within an optical retailer. However, the restriction of entrances to optometric offices is not supported by any rationale promoting the interest of the public. In addition, the Supreme Court of BC decision by Justice Lowry in *Costco vs. The Board of Examiners in Optometry (1998)* clearly struck down this prohibition of association as invalid. Section 89 needs to be re-examined to ensure that it respects the Supreme Court decision.**

90 Each practice location of a registrant shall be accessible to the registrant and the registrant’s staff and patients by independent and direct telephone services to the optometric practice and shall have a discrete and secure mail delivery service.

**COBC Comment: The COBC reiterates its comment on section 89 and suggests that section 90 needs also to be re-examined to ensure that it respects the Supreme Court decision.**

91 Each such practice location shall have a secure facility contained within it for the private and confidential storage of patient records containing financial or other personal information of patients, as

- well as the health care records of the registrant. The facility shall provide confidentiality of such records, which shall be accessible only to the registrant or the registrant's staff.
- 92 Each such practice location shall have a safe and secure facility for the maintenance and containing of pharmaceutical agents, accessible only to the registrant or the registrant's staff.
- 93 Each such practice location shall in all times be under the control and supervision of an optometrist or Optometric Corporation holding a valid permit from the board.
- 94 No registrant shall publish the registrant's name as practicing at a practice location, unless the registrant actually and personally provides optometric services to the registrant's patients at such location.
- 95 No registrant shall have more than four practice locations within the province, except as otherwise permitted by the College under these bylaws.
- 96 Where, by reason of the rural nature of a registrant's intended practice, the board determines that it is reasonable to exempt the registrant from any of the provisions in these bylaws in respect of the registrant's practice locations, upon written application to the board, the board may exempt the registrant and set such special terms for the registrant's practice location requirements that the board determines in the circumstances to be reasonably consistent with the spirit and intention of the Act and these bylaws to secure confidential, private and professional optometric services to the public.
- 97 Every registrant shall conduct and perform the necessary procedures and make the necessary record of the findings that effectively appraise the oculo-visual status of the registrant's patients. Such examinations shall be conducted in accordance with and meet the minimum standards as promulgated by the board in the Policies of the College of Optometrists from time to time.
- 98 In addition to any health care records, patient financial records or other records maintained by a registrant, each registrant shall retain records of the registrant's commercial dealings with respect to the registrant's practice of optometry at all times during the continuance of such commercial dealings for which the records are created and for a period of not less than seven years after the termination of such commercial dealings or relationships. Such records shall be kept and maintained at one of the designated practice locations or offices identified to the board by the registrant for such purpose. The records shall be available to any inspector appointed by the College under the Act for inspection in accordance with the Act.
- 99 Upon ceasing to practice in British Columbia, for any reason other than a temporary suspension of not more than six months, a registrant shall make arrangements for the delivery of the health care records of the registrant to another registrant or to an ophthalmologist registered in British Columbia, failing which the registrant shall be deemed in breach of these bylaws and in respect of which health care records the board may appoint a custodian. The board may assess the defaulting registrant the costs incurred by the custodian in respect of the taking and maintaining custody of the said health care records and dealing with them.
- 100 No registrant shall share the fees or charges received by the registrant from the registrant's patients with any other person, except:
- (a) for the payment of lawful taxes thereon,
  - (b) with the patient, or

(c) with the registrant's employer, providing the employer is a registrant in good standing or an Optometric Corporation holding a valid current permit to practice optometry in British Columbia.

- 101 No registrant shall employ or agree to employ, paid or agreed to pay, or reward or agree to reward any person in any manner for services to secure, solicit or steer or attempt to secure, solicit or steer patients for patronage of the registrant or any other registrant, except under the terms of a plan or arrangement that has been formally approved by resolution of the College.
- 102 No registrant shall provide or offer to provide optometric services, lenses or spectacles or other therapeutic treatment to a patient at a fee less than the registrant's usual fee by reason only of the patient being associated with or employed by any particular person, association, society or company, except under the terms of a plan or arrangement that has been formally approved by resolution of the College.

**COBC Comment: The COBC is strongly concerned that section 102 is anti-competitive and does not serve the needs of B.C. consumers. This section discourages a competitive marketplace that is essential for ensuring wider access, choice and quality of services for consumers. Essentially, this section of the bylaw, together with a suggested fee schedule prescribed by the association, can lead to the professional equivalent of price fixing.**

- 103 No registrant shall practice optometry as or appearing to be an agent for or employee of any person other than:
- (a) a registrant or Optometric Corp. duly and validly licensed to practice optometry within British Columbia,
  - (b) an ophthalmologist duly and validly licensed to practice medicine within British Columbia,
  - (c) a hospital license to provide medical services to the public within British Columbia, or
  - (d) the Armed Forces of Canada.

**COBC Comment: Section 103 deliberately prohibits the free association between professions and thus prevents a collaborative and complementary approach to serving the eye care needs of the B.C. public. By preventing health professions such as opticians from employing optometrists, the proposed bylaws continue to insist upon the faulty rationale that only optometrists can employ opticians in order to avoid a conflict of interest. The Government of B.C. is encouraging collaborative health practices to increase access and choice for the B.C. public, and this section is clearly counter government policy and prevents a level playing field in eye care.**

- 104 In the event that the board has assessed a fine or costs, or both, against any person pursuant to the provisions of the Act, or these bylaws, and the person assessed shall not have paid the full amount of the fine or costs within the time specified in the Order made by the board, or the Discipline Committee, as the case may be, then the board shall be entitled to collect interest, at the same rate as pre-judgment Court Order Interest provided pursuant to the Court Order Interest Act.
- 105 From time to time, the board may by resolution establish and publish minimum requirements for professional liability insurance coverage to be obtained and maintained at all times during the practice of optometry by registrants or by Optometric Corporations as a condition of registration, licensure and permit. Where the board has established such minimum requirements of professional liability insurance coverage, each registrant shall, as a condition of continuing registration or renewal of annual license,

satisfy the Registrar of the insurance coverage obtained by the registrant and shall produce proof satisfactory to the Registrar of such insurance coverage at the request of the registrar.

**COBC Comment: Section 105 is too weak to ensure that the registrants of the College of Optometrists are covered by professional liability insurance at all times, thus putting registrants and the public at a great disadvantage. The current drafting of section 105 suggests that if the board never establishes or publishes minimum requirements for insurance, then optometric registrants would not need to submit any proof of insurance or have insurance in general. The COBC prescribes the inclusion of specific liability insurance requirements as part of the bylaws.**

## **PART 11: GENERAL**

- 106 Where, in the reasonable opinion of the board, emergency circumstances may so require, it may by special resolution establish a special Levy to be paid to the College by a registrant or Optometric Corporation in any year.
- 107 The board may remove the chair or the Registrar upon special resolution of the board.
- 108 The board may hire and may fire such staff members, agents, professional advisers or other persons as it determines necessary to carry out the duties and obligations of the board and to provide the services of the College. On behalf of the College it shall contract for the employment or services of such staff, agents, professional advisers or other persons on the terms and conditions it considers appropriate.
- 109 The board shall determine the functions, duties and remuneration of employees, agents, professional advisers and contractors to the College.
- 110 The board shall fix the terms and conditions of the employment of the Registrar.
- 111 (1) Upon written application of any patient enclosing a copy of the account, the Registrar may review a fee charged by a registrant to the patient.
- (2) Upon receipt of the application, the Registrar must investigate the matter raised by it.
- (3) The Registrar must request the registrant to provide any information regarding the account which the registrant believes is relevant to the application.
- (4) The Registrar must conduct a hearing within 30 days after the date that the application for review was received by the Registrar or within such further period of time as the Registrar considers reasonable.
- (5) The Registrar may conduct the hearing by reviewing the written submissions only or may require the parties to attend in person.
- (6) Where the fee under review is not in accordance with the customary range of fees charged at the time the services were provided and in the absence of any agreement with the patient in respect of the fees, the registrar shall fix a reasonable fee.
- (7) The Registrar must deliver his decision in writing to the patient and the registrant.
- (8) In the event that the fee fixed by the Registrar is less than the amount paid by the patient, the registrant must repay forthwith the amount of such excess to the patient.

- 112 The board is authorized to enter into agreements on behalf of the College with the governing bodies of health professions in the province or in other jurisdictions, which agreements are binding upon the registrants.
- 113 Except where it may be required to act only by bylaw, and subject to the Regulations and the Act, from time to time, by resolution the board may make rules or otherwise provide for the general administration and operation of the College and shall publish such resolutions to the registrants, which it may include in the Policies of the College of Optometrists.
- 114 The board prescribes and adopts the Forms in Schedule 2 for the purposes of these bylaws and the *Health Professions Act*.
- 115 Upon resolution passed by the registrants at a General Meeting, the College, at the time of collecting its fees from registrants, may collect fees in an amount approved by the resolution as fees for the British Columbia Association of Optometrists or a successor organization and may authorise the Registrar to remit such fees as are collected under this bylaw to the Association or successor organization.

**COBC Comment: The COBC is in complete and fierce agreement with VCC's position that section 115 is highly inappropriate for optometry's regulatory authority. The college is a regulatory body whose purpose is to ensure the safety of the public. An association is an organization that is member-centered and member-led. The collection of association fees by the regulatory body is a clear conflict of interest; in effect, this would constitute a severe breach of the college's mandate as a self-regulatory body, as entrusted by the government.**