

BRIEFING NOTE

TO: Board of Directors

FROM: The Governance Committee

DATE: December 6, 2021

SUBJECT: 11.0 The Fiduciary Acknowledgment and Conflict of Interest Questionnaire

☒ For Decision ☐ For Information ☐ Monitoring Report

Purpose:

To review proposed updates to the annual fiduciary acknowledgment and undertaking and to review a proposed conflict of interest questionnaire.

Background:

Board and committee members have a duty of undivided loyalty to the regulator, its mandate and the mandate of any committee on which they sit. This fiduciary duty includes an obligation to deal appropriately with any conflicts of interest that arise, to keep all information obtained in the course of their duty confidential and private unless an exception applies, to avoid engaging in any conduct that would bring disrepute to the organization, and to perform their duties with diligence, respect and in a manner that promotes and protects the public interest.

All Board and committee members are required to sign an annual acknowledgment of their fiduciary duties and responsibilities that includes an acknowledgment and undertaking to declare any conflicts of interest. They are also requested to declare any conflicts of interest with respect to the agenda at the beginning of each meeting.

In 2020, the College Performance Measurement Framework (CPMF), a new initiative undertaken by the Ontario Ministry of Health (Ministry), was created to measure in a standardized and consistent manner how well regulatory colleges are executing their mandate.

The primary aim of the CPMF was to provide the Ministry with information that will strengthen accountability and oversight of Ontario's health regulatory colleges; and help colleges improve their performance. One of the areas the COO identified for planned improvement over the next reporting period was under the Governance Domain Standard 2.1.c, that Colleges have a conflict-of-interest questionnaire that members must complete annually and additionally:

- i. The completed questionnaires are included as an appendix to each Board meeting package;
- ii. Questionnaires include definitions of conflict of interest;

- iii. Questionnaires include questions based on areas of risk for conflict of interest identified by the Board that are specific to the profession and/or College; and
- iv. At the beginning of each Board meeting, members must declare any updates to their responses and any conflict of interest specific to the meeting agenda.

For Consideration:

Please find attached proposed updates to the annual fiduciary acknowledgment form and a proposed conflict of interest questionnaire (**Appendix A**).

The proposed updates aim to enhance the existing process to ensure that the College is meeting best practices with respect to the avoidance of conflicts of interest and other fiduciary obligations.

If approved, all board members will be required to complete the proposed questionnaire prior to every board meeting, and the completed questionnaire will be included in the public meeting package.

Public Interest Considerations:

The Governance Committee considered that the proposed updates to the annual fiduciary acknowledgment and undertaking and the new conflict of interest questionnaire improves the public perception of the College, promotes accountability and supports one of its key values, transparency which is essential to public trust.

Diversity, Equity and Inclusion Considerations:

The Governance Committee considered that the proposed updates to the annual fiduciary acknowledgment and undertaking and the new conflict of interest questionnaire ensures that it furthers the College's equity mandate by making sure that decisions are made in the public's best interests and not to bolster individual interests.

Recommendation:

That the Board approve the proposed updates to the fiduciary acknowledgment form and the proposed conflict of interest questionnaire as recommended by the Governance Committee.

ACKNOWLEDGMENT AND UNDERTAKING REGARDING FIDUCIARY DUTIES (FOR BOARD, APPOINTED NON-BOARD AND COMMITTEE MEMBERS)

I, _____, acknowledge, declare and undertake as follows:

Confidentiality

I have read, understood, and agree to follow the policies, procedures, and by-laws of the College with respect to confidentiality as well as section 36 and subsection 40(2) of the Regulated Health Professions Act and sections 83 and 83.1 of the Health Professions Procedural Code (attached). In the event that I have any doubt about my duties and obligations with respect to confidentiality, I undertake to seek clarification from the Registrar, Chair, or any other person identified for this purpose.

I acknowledge and agree that the information and documents obtained by me in the course of my duties as a Board, Appointed Non-Board and/or Committee member are confidential, and I undertake to preserve confidentiality with respect to all matters that come to my knowledge in the course of my duties. When my term as a Board, Appointed Non-Board and/or Committee member expires, I undertake to return to the College all materials, documents and other College information that I have obtained. I undertake to protect the confidentiality of electronic meetings that are not open to the public.

Diligence

I acknowledge and agree that I must exercise diligence in fulfilling my role and duties as a Board, Appointed Non-Board and/or Committee member. I have read, understood and agree to follow the College's Code of Conduct as set out in the by-laws and, in particular, I undertake to attend all meetings unless there is a compelling reason preventing me from doing so; to prepare for all meetings and to participate in discussions and decisions; and to provide reasonable notification if I am unable to attend a meeting.

Conflicts of Interest

I acknowledge and agree that as a Board, Appointed Non-Board and/or Committee member I owe a duty of good faith to the College, which includes an obligation to act in the public interest. I undertake to perform my duties and any work undertaken on behalf of the College in a manner that promotes and protects the public interest.

I acknowledge and agree that an actual or perceived conflict of interest can undermine confidence in the College and its ability to fulfill its public interest mandate. I have read and understood the College's by-laws, including Article 7 and Appendix I of Schedule D (attached). I acknowledge and agree that I am obligated to disclose my affiliations or associations with any organization, association, vendor,

business or person that may give rise to a conflict of interest, whether real or perceived. I agree to take all reasonable steps to avoid any actual or perceived conflict of interest from arising and, if one cannot be avoided, I undertake to declare any real, perceived or potential conflict of interest and to remove myself from any consideration of the matter in issue.

Having reviewed Appendix 1 to Schedule D of the by-laws, I hereby disclose the following information:

1. **Professional Associations:** Do you hold a responsible position such as director, owner, board member or officer, or are you an employee of a professional opticianry association or any other organization by or for opticians that has as its primary mandate the promotion of the opticianry profession (e.g. OOA, OAC, etc.)? Yes No
If yes:
 - a. What is the name of the organization?
 - b. What is your position with this organization (e.g. director, board member, etc.)?
2. **Academic Institutions:** Do you hold a responsible position such as director, owner, board member or officer, or are you an employee of an academic institution that delivers instruction in the field of opticianry? Yes No
If yes:
 - a. What is the name of the academic institution?
 - b. What is your position with the academic institution?
3. **Continuing Education Providers:** Do you regularly engage in the development or delivery of continuing education materials for registered opticians? Yes No
If yes, please provide details:
4. **Other Organizations:** Do you hold a responsible position such as director, owner, board member or officer, or are you an employee of any other organization where the duties may be seen by a reasonable person as influencing your judgment in matters under consideration by the Board or Committees (e.g. a sales representative for a seller or distributor of optical supplies or equipment)? Yes No
If yes:
 - a. What is the name of the organization?
 - b. What is your position with this organization (e.g. director, board member, etc.)?
5. **Other Conflicts:** Do you have other real or potential conflicts of interest with your position as a Board member? Yes No
If yes, please provide details:

Intellectual Property

I acknowledge and agree that all materials, discoveries, improvements, inventions and other work product that I conceive of or create while acting on behalf of the College, belong to the College

unless a written agreement between myself and the College signed in advance provides otherwise.

Therefore, in order to serve as a Board, Appointed Non-Board and/or Committee member, and for other good and valuable consideration, I acknowledge and agree that I am waiving any rights, including moral rights, that I may have in such materials and work product and further acknowledge and agree that I am assigning to the College ownership, including all titles, interests and intellectual property rights, related to the materials, discoveries, improvements, inventions and other work product that I conceive of or create while acting on behalf of the College. I further acknowledge and agree that the College may undertake any action that it deems appropriate to protect its ownership, titles, interests and intellectual property rights in such materials and work product.

I understand that the purpose of waiving my moral rights is to permit the College to amend, update, alter, change etc. any materials, discoveries, improvements, inventions or other work product, conceived of or created while acting on behalf of the College, in which I have moral rights.

Enforcement

I acknowledge and agree that if I breach a term of this Acknowledgment and Undertaking, or any of my obligations described here may be grounds for removal from my position as a Board, Appointed Non-Board and/or Committee member with the College and may entitle the College to enforce its legal rights or to seek legal remedies against me.

Term

I acknowledge and agree that this Acknowledgment and Undertaking shall remain in effect until my term as a Board, Appointed Non-Board and/or Committee member expires but that my agreements and obligations with respect to confidentiality and intellectual property continue beyond that time.

I certify that the above information is true and complete to the best of my knowledge.

Dated this _____ day of _____, 2022

Name: _____

Signature: _____

DIRECTOR DECLARATION

I, _____

I have read Article 7 and Schedule D of the COO By-Laws and I understand that I am accountable as a Director to conduct myself in compliance with these by-laws.

I understand that I am obligated to disclose my affiliations or associations with any organization, association, vendor, business or person that may give rise to a conflict of interest with my responsibilities as a Director, and to declare a conflict of interest if and when one arises.

I also understand that I am obligated to report, if I become aware, instances of another Director's conflict of interest with their board responsibilities.

Having reviewed Appendix 1 to Schedule D of the By-laws (Conflict of Interest), I am declaring that I currently have no actual or potential conflicts of interest in my role as a Director, or that I have previously disclosed all known actual or potential conflicts of interest.

OR

I am declaring the following actual or potential conflicts of interest with my role as a Director:

Organization, Association, Vendor, Business, Person(s)	Description of Relationship, Role or Involvement

I certify that the above information is true and complete to the best of my knowledge.

Signature: _____

Date: _____