



By-Law Amendments – Stakeholder Feedback Request

Background:

Over the past few years, health regulatory colleges have come under growing pressure to provide the public with more information about their members.

In October 2014, Minister Hoskins reached out to all regulatory health colleges, urging them to take concrete measures to continuously increase transparency – including expanding the information they make available to the public.¹

Parallel to the Minister's directive, AGRE² began developing a multi-stage policy recommendation initiative aimed at strengthening public confidence in self-regulation.

At its December 2014 meeting, Council adopted AGRE's [eight transparency principles](#) as a guide to future decision-making about what information to make public. One of the key transparency principles is that there must be consistency between the colleges about the information that they share about their members.

AGRE initiatives for information to be added to the public register

AGRE has developed a two-phase approach to providing more information on the public registers of health colleges:

Phase I

- Date of referral to discipline Committee
- Discipline Committee status
- Full notice of hearing
- Relevant criminal findings of guilt
- Relevant bail conditions
- Non-members practicing illegally

Phase II

- Names of former members (fact & date of death, if known)
- Health facility privileges
- Relevant criminal charges
- Known licenses in other jurisdictions
- Known discipline findings in other jurisdictions
- Discipline Committee – no findings

¹ Click to link to the [Minister's 2014 letter](#) and the COO's [response](#) to the Minister.

² Advisory Group of Regulatory Excellence, comprised of the colleges of dentistry, medicine, nursing, optometry, pharmacy and physiotherapy.

- Undertakings
- Oral Cautions
- Specified continuing education or remediation programs (SCERPs)

Phase I Implementation by other health regulatory colleges

The vast majority of colleges have at least by-law approval for the Phase I initiatives, with most being “fully implemented”.

Phase I Implementation by the COO

To date, Council has approved by-laws for all of the initiatives in Phase I.³ In addition, Council approved a by-law amendment that requires the names of former members and their date of death (if known) to be listed in the register (listed in Phase II).⁴

Phase II Implementation by other health regulatory colleges

Again, most of the other health colleges have approved by-laws for the Phase II initiatives, and many initiatives have been implemented.

Phase II Implementation by the COO

In order to be consistent with the other health regulatory colleges, the Registration Committee and the Inquiries, Complaints and Reports Committee (ICRC) met separately to review and consider draft by-law amendments that will require the remaining Phase II items be posted to the College of Opticians of Ontario’s (COO) register⁵.

At its May 2 meeting, the Registration Committee moved to recommend proposed by-law amendments to Council that will require the following information to be recorded in the register:

1. Outstanding criminal charges (relevant to practice)
2. Known licenses in other jurisdictions

³ In May and September 2015. See by-law 15.6(x)(b) and (c), 15.6(xxiii), and 15.6(xxiv). The by-laws were not amended to require non-members practicing illegally be posted, as those decisions are already listed on the website.

⁴ By-law 15.6(vi)

⁵ With the exception of the “Names of former members (fact & date of death, if known)” and “Known discipline findings in other jurisdictions”, as they have already been adopted. Note that it is our suggestion that the COO not proceed with amending its by-laws to address “Discipline Committee – no findings”, as the majority of colleges have not done so due to the prevalent interpretation that it is not currently permitted by the RHPA.

At its May 16 meeting, the ICRC moved to recommend proposed by-law amendments to Council that will require the following information to be recorded in the register:

3. Oral cautions
4. SCERPS⁶
5. Undertakings

Summary

1. Criminal Charges (relevant to practice)⁷

Our Registration Regulation requires members to report the fact of criminal convictions to the COO⁸, and our by-laws require that we post criminal findings of guilt to the Register.⁹ The AGRE colleges have recommended that it is important for transparency that colleges also post information about outstanding criminal charges.

The Registration Committee determined that criminal charges relevant to a member's suitability to practice ought to be posted to the Register. Only those charges that are commenced on or after the date the by-law takes effect will be listed. Further, once the charge is no longer "existing" (because: i) the charge has been withdrawn, ii) the member has been acquitted, or iii) a criminal conviction has been made), the summary will be removed.

2. Known Licenses in other Jurisdictions¹⁰

Our by-laws already permit us to request information about a member's "registration with any other body that governs a profession, whether inside or outside Ontario"¹¹, but this information is not currently posted to the Register.

We have already enacted a by-law that requires us to post on the Register if a member has a finding of professional misconduct or incompetence made by "a body that governs a profession" in Ontario or another jurisdiction.¹² By adding a Member's known licenses in other jurisdictions, we will provide the public with a more complete picture of the Member's regulatory history.

3. Oral Cautions delivered by the ICRC¹³

⁶ Specified Continuing Education or Remediation Programs

⁷ 15 other FHRCO Colleges have already implemented this recommendation.

⁸ Registration Regulation, s. 4(2)1(i)

⁹ By-laws, art. 15.6 (xxiv) (adopted as part of the Phase I initiative)

¹⁰ 19 other FHRCO Colleges have already implemented this recommendation.

¹¹ By-laws, art. 15.7 (vii)

¹² By-laws, art. 15.6 (xv)

¹³ Of the 20 colleges that require oral cautions be noted on the Register, two of them also require any info regarding a **written** caution to be published on the Register. As written cautions were ranked by AGRE in its grid

An oral caution is educational in nature – it is meant to be remedial, by warning the member about borderline conduct that is short of professional misconduct but which puts the public and the member at risk. Oral cautions have never been made public. However, the public can interpret this as an attempt to “cover-up” misconduct or to “protect our own”.

Accordingly, AGRE has recommended that, if an ICRC panel determines that an oral caution is warranted, the public ought to be made aware of it. From the public’s perspective, there is value in knowing about any level of regulatory intervention, even a caution, as it makes them better informed when making decisions about their health care providers.

There are risks in posting this information. Given that cautions are meant to be educational, rather than punitive, by making them public it may suggest that the member’s behaviour was more significant than it was; it may make cautions appear more sanction-like.

The ICRC determined that this information ought to be included in the register and that this risk can be mitigated by establishing a timeframe after which the caution is removed from the register. The notation in the register should also note that the ICRC’s decision is subject to review or appeal and is not final. If the decision is reversed, the notation about the caution should be immediately removed.

4. SCERPS ordered by the ICRC¹⁴

Another option available to a panel of the ICRC is to require a Member to complete a specified educational or remediation program, or SCERP. Ordering a SCERP allows the College to address minor practice concerns through non-disciplinary means and is consistent with the COO’s public interest mandate.

Like oral cautions, SCERPs have not previously been made public. However, for the same reasons as noted for oral cautions, there is a public interest in making this information public. Similar risks and risk mitigation strategies also apply.

The ICRC determined that this information ought to be included in the register and that any risk can be mitigated by establishing a timeframe after which the SCERP is removed from the register. The notation in the register should also note that the ICRC’s decision is subject to review or appeal and is not final. If the decision is reversed, the notation about the caution should be immediately removed.

for assessing risk as being “low risk” and thus not requiring publishing, our recommendation is that we do not include written cautions on the register.

¹⁴ 19 other FHRCO Colleges have already implemented this recommendation.

5. Removal of notations about oral cautions and SCERPS

As noted above, one way to mitigate the risks associated with making oral cautions and SCERPs known to the public is to ensure the removal of the information after a particular time period.

The majority of the Colleges that have already implemented this transparency recommendation allow for the information to be removed from the register 2 or 3 years after the caution was delivered or the SCERP completed. Some colleges allow for the removal of this information in both shorter and longer time periods. The ICRC determined that an appropriate time period is 2 years after the decision is made, provided the Member attends for the caution and/or successfully completes the SCERP.

The ICRC also determined that in the event that a Member appears before the ICRC in the 2 years after the initial caution or SCERP are listed on the register, and another oral caution or SCERP is ordered, the initial caution or SCERP will not be removed from the register until 2 years after the subsequent oral caution and/or SCERP have been noted on the register.

6. ICRC Undertakings¹⁵

Currently, our by-laws require that we note in the register if a member has undertaken not to practise the profession.¹⁶ However, a member may also sign an undertaking as a result of a decision of the ICRC which would not require the Member to refrain from practising; it would be an undertaking to do or refrain from doing something.

While these undertakings are not common, it has been recommended that if a Member has signed an undertaking with the College, it ought to be publically known. One reason for doing so is to ensure that we do not fall into the practice of by-passing transparency by having Members agree to undertakings rather than appear for cautions or complete SCERPs.

The ICRC agreed that undertakings ought to be published on the register. Like oral cautions and SCERPs, information about undertakings shall be removed 2 years after the undertaking is completed, unless the ICRC panel specified a different timeframe for its removal.

¹⁵ 11 other FHRCO Colleges have already implemented this recommendation.

¹⁶ Art. 15.6(ix)