

BRIEFING NOTE

TO: Board of Directors

FROM: Patient Relations Committee

DATE: May 17, 2021

SUBJECT: 20.0 Spousal Exemption Regulation

For Decision

For Information

Monitoring Report

Purpose:

To consider approving a proposed regulatory amendment for circulation for stakeholder feedback. The proposed amendment would create an exemption for spouses from the sexual abuse provisions of the Regulated Health Professions Act.

Background:

General prohibition on treating spouses

Ontario law prohibits regulated health professionals from treating their spouses. It is considered sexual abuse for a health professional to engage in any form of relationship, contact, behaviour or remarks of a sexual nature with a person that meets the definition of “patient” under the Regulated Health Professions Act, 1991 (RHPA).

In 2013, however, the RHPA was amended to permit colleges to make a regulation permitting their registrants to treat spouses, as long as no sexual conduct, behaviour or remarks occur during the treatment. “Spouse” is defined to include both married spouses and common law spouses, but the exemption would not apply to persons who are in other forms of intimate or committed relationships.

Proposed regulations are being approved/considered

In 2014, a number of health regulatory colleges submitted proposed regulations that would grant an exemption for their registrants to treat their spouses. In December 2014, the COO Council approved, in principle, a proposed regulation that would permit opticians to treat their spouses.

In 2020, the Ontario Government approved spousal exemption regulations for three additional colleges, including the College of Optometrists of Ontario. A further three proposed regulations were circulated for public feedback in December 2020 and are now being considered for approval. The COO has now been advised that the Ministry will consider further new submissions for spousal exemption regulations.

On February 22, 2021, the Board approved the submitting of a proposed spousal exemption regulation for government approval and assigned this issue to the Patient Relations Committee for their review. The Patient Relations Committee considered this question at their April 15, 2021 meeting.

For Consideration:

A proposed amendment to the General Regulation (O. Reg. 219/94) under the *Opticianry Act, 1991* is attached as **Appendix A**. The proposed amendment would have the effect of exempting spouses from the sexual abuse provisions of the RHPA.

If the Board determines to approve the proposed amendment in principle, it will be circulated to stakeholders for feedback. The feedback will then be reviewed by the Patient Relations Committee, which will recommend next steps to the Board.

Following consultations, if the Board determines to move forward with the proposed amendment, it will be submitted to the Ministry of Health for review and consideration, and eventual approval by the Lieutenant Governor in Council.

Public Interest Considerations:

It is recommended that the Committee articulate its public interest rationale for its decision on whether or not to explore the option of submitting a proposed spousal exemption regulation. The Patient Relations Committee notes that there is an inherent power imbalance that exists between a health care practitioner and a patient, which is why it is crucial that there be strong legislative protections against any form of sexual abuse. Treating spouses, however, gives risk to unique considerations that may be better addressed outside the scope of the existing sexual abuse provisions of the RHPA. A spousal exemption regulation does not mean that opticians should routinely treat their spouses (or other family members). Standards and/or guidelines would need to be developed to set parameters around when it would be appropriate for an optician to treat their spouse.

In addition, as noted above, a regulatory amendment was recently approved that permits registrants of the College of Optometrists of Ontario to treat their spouses. In light of the overlapping scope of practice between opticians and optometrists, and the fact they often work in shared and collaborative practice environments, there may be significant benefit in regulatory consistency between the two professions.

Diversity, Equity and Inclusion Considerations:

It is recommended that the Board articulate what diversity, equity and inclusion considerations it might have for its decision on whether or not to explore the option of submitting a spousal exemption.

The Patient Relations Committee notes that permitting opticians to treat their spouses in appropriate circumstances may increase accessibility to opticianry care, in particular in remote locations.

Recommendation:

The Patient Relations Committee recommends that the Board approve the proposed regulatory amendment for circulation for stakeholder feedback.

APPENDIX A

Proposed Amendment to O. Reg. 219/94 (General) under the *Opticianry Act, 1991*:

Addition of the following section:

PART V MISCELLANEOUS

24. The spousal exemption in subsection 1 (5) of the Health Professions Procedural Code applies in respect of the College.