

**To:** Board of Directors

**From:** Registration Committee

**Date:** May 11, 2020

**Subject:** 9.2 Implementation of a Vulnerable Sector Check for New Applicants

☒ For Decision

☐ For Information

☐ Monitoring Report

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**Purpose:**

To provide the Board of Directors with considerations for the criminal record screening process to be implemented by the College.

**Background:**

In May 2016, the Registration Committee considered an HPARB decision with respect to the College of Optometrists of Ontario. The case involved an applicant who truthfully indicated “no” to the question of whether he had ever been found guilty of a criminal offence. The applicant was required, however, as part of the application process, to produce a criminal record check, which revealed “police involvement” related to child pornography charges.

In August 5, 2016, the Committee considered whether it would be appropriate to introduce a criminal background check requirement for new applicants to the College. The Committee confirmed an interest in continuing to examine the issue but deferred making a decision pending further information on practical ramifications and processing times.

At its November 4, 2019 meeting, the Registration Committee reviewed a briefing note pertaining to criminal background checks for new applicants and directed staff to garner further information on the following:

- The types of background checks available
- The cost and processing times for the various background check options
- Considerations pertaining to seeking background checks for existing registrants

At the Committee meeting that took place on March 23, 2020, the Registration Committee reviewed the information presented along with the environmental scan of practices of other health regulators in Ontario and considered legal opinions from internal and external Counsel. The Committee subsequently motioned to recommend implementation of a Vulnerable Sector Check for new applicants to the College. The criteria were further refined at the subsequent Committee meeting on May 4, 2020.

**For Consideration:**

In their deliberations on May 4, 2020, the Registration Committee considered the following:

- The effective date of the policy, considering the current COVID-19 pandemic and its impact on the ability to conduct a Vulnerable Sector Check
- Whether the checks be required for every class of registration (i.e. students, interns and registered opticians)
- Whether the applicants be required to submit a Vulnerable Sector Check for Ontario as well as any other jurisdiction(s) where they practised the profession of opticianry and/or where they resided for a period longer than 6 months after the age of 18
- Options available to applicants who are unable to obtain a check from Canada (e.g. applicants who do not or have not yet resided in Canada).

The Committee determined that a Vulnerable Sector Check is to be implemented for applicants for a certificate of registration as a Registered Optician, effective January 1, 2021. With regard to students and interns, the College will continue with its current self-reporting practice.

The Committee further determined that applicants are to submit a Vulnerable Sector Check for Ontario only and set out options for applicants who are unable to obtain a check.

The Committee adopted the recommendation of Legal Counsel to combine the existing Policy Dealing with Convictions, Findings and Ongoing Proceedings with the new Vulnerable Sector Check Policy.

#### **Recommendations:**

- To approve the implementation of the Vulnerable Sector Check for applicants for a certificate of registration as a Registered Optician, effective January 1, 2021.
- To approve replacement of the Policy Dealing with Convictions, Findings and Ongoing Proceedings with the Policy on Vulnerable Sector Check and Applicants with Charges and Convictions.

## Policy on Vulnerable Sector Check and Applicants with Charges or Findings

### Vulnerable Sector Checks

All applicants to the College of Opticians (the “College”) for a certificate of registration must disclose details of the following as part of the application process:

1. Any outstanding charges or findings of guilt for an offence in Canada or any other jurisdiction.
2. Whether they are subject to any bail conditions or other restrictions that were imposed on them or agreed to by them in relation to a charge in Canada or any other jurisdiction.
3. Whether they are the subject of any allegations or findings of professional misconduct, incompetence or incapacity by any body that regulates a profession inside or outside Ontario.
4. Whether they are the subject of any allegations or findings of professional negligence or malpractice in any jurisdiction.

The College requires this information in order to carry out its duty to protect the public by ensuring that applicants will practice in accordance with the law, will display appropriate knowledge, skill and judgment and will provide safe and ethical care when registered as opticians.

In addition, effective January 1, 2021, applicants for a certificate of registration as a Registered Optician must also provide a Vulnerable Sector (“VS”) check as part of their application for registration with the College. A VS check verifies whether the applicant has a criminal record or any record suspension for sexual offences and searches local police records for information relevant to the VS check. The College uses the results of the VS check to verify some of the above noted information.

The VS check must meet the following requirements:

1. The VS check must be completed using all names currently used by the applicant, as well as any names the applicant has used in the past.
2. The full legal name, previous names (if applicable) and date of birth on the VS check must match the information provided to the College during the application process.
3. The VS check must have been conducted no more than six months prior to the date the application for registration is submitted to the College.
4. The original signed document obtained from the applicant’s local police service must be sent to the College by mail or courier. Faxes, scans or photographs will not be accepted.
5. The VS check must be obtained at the applicant’s own expense.

In the event that an applicant is unable to obtain a VS check, they must provide proof that the Registrar determines to be acceptable in the circumstances. The applicant will be required to undergo a criminal record screening process approved by the Registrar and to submit the results in the manner and form requested by the Registrar.

It would be considered an act of professional misconduct for an applicant to become registered with the College based on false or misleading statements or omissions in the registration application. Such misconduct may lead to a referral to the ICRC/Discipline Committee, and possible revocation of the certificate of registration.

## Policy on Vulnerable Sector Check and Applicants with Charges or Findings

Once issued a certificate of registration, a registrant has an ongoing duty under the legislation to report all information concerning charges, bail conditions, ongoing proceedings, findings of guilt, or findings of professional misconduct, incompetence, negligence or malpractice.<sup>1</sup> Failure to do so may result in a referral to the Inquiries, Complaints and Reports Committee (ICRC), Discipline Committee, and possible revocation of the certificate of registration.

### Existing Charges/Findings: Requirement to Provide Written Submission

All applicants who have existing charges, convictions, findings or ongoing proceedings are required to provide a detailed written submission pertaining to the matter that was disclosed on their application form and/or through the VS check. The written submission should address the following, where applicable:

1. The circumstances relating to the matter that was disclosed
2. An explanation of why the matter is not a hindrance to the applicant's ability to practice opticianry in the public interest
3. An explanation that would demonstrate that the applicant understands their accountability as a healthcare professional
4. Details and evidence of compliance with any court orders
5. Details and evidence of any remediation or rehabilitation undertaken by the applicant

Applicants may also be asked to provide additional information and/or documentation depending on the matter disclosed, which may include, but is not limited to:

1. Court documents/transcripts/reports/orders
2. Letters of reference
3. Decisions and reasons from other regulatory bodies

### Criteria and Process for the Evaluation of Existing Charges/Findings

The fact that an applicant may have charges, convictions, findings or ongoing proceedings does not necessarily mean that they will be refused registration. However, it does mean that the College will require the additional information referred to above before it can proceed with registering the applicant.

The Registrar will review applications where an applicant has charges, convictions, findings or ongoing proceedings. Each application will be considered individually. The Registrar may decide to:

1. Register the applicant;
2. Register the applicant with terms and conditions consented to by the applicant<sup>2</sup>, or
3. Refer the application to the Registration Committee for further consideration.

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<sup>1</sup> Health Professions Procedural Code, sections 85.6.1, 85.6.2, 85.6.5, and 85.6.4; Registration Regulation, section 4(2)1

<sup>2</sup> Any such agreement must be approved by a panel of the Registration Committee.

### **Policy on Vulnerable Sector Check and Applicants with Charges or Findings**

If the matter is referred by the Registrar to the Registration Committee, applicants will have an opportunity to make further submissions to the Registration Committee within 30 days of being notified of the referral. The Registration Committee has the authority to:

1. Direct the Registrar to register the applicant;
2. Direct the Registrar to register the applicant with terms, conditions, and limitations; or
3. Direct the Registrar to refuse to register the applicant.

In considering the application, the Registrar/Registration Committee will consider and evaluate the following factors:

1. The seriousness of the matter disclosed;
2. The date the matter occurred (i.e. period of time since the matter occurred);
3. The relevance of the matter to professional practice;
4. Whether any remedial steps have been taken by the applicant in relation to the matter and the outcome;
5. The subsequent conduct of the applicant (i.e. no further evidence of conduct issues); and
6. Any other relevant factors based on the specific circumstances of the matter.

If the Registration Committee decides to impose terms, conditions, and limitations, these may include, but are not limited to: supervision, monitoring or mentorship; counselling; additional courses or continuing education (i.e. ethics, boundaries); assessment; restrictions on practice settings, scope of practice or patient demographic.

Applicants have the right to appeal decisions of the Registration Committee to the Registration Appeals Panel (RAP) within 15 days of receipt of the written decision, in accordance with the [Registration Appeal Panel Policy](#). After an application has been disposed of by the RAP and a final order of the Committee has been issued, an applicant may appeal the order to the Health Professions Appeal and Review Board (HPARB) within 30 days of receiving the decision.

### **Public Disclosure of Information**

The College has an obligation under its [by-laws](#) as well as [Ontario Regulation 261/18](#) ("O. Reg. 261/18"), which is a regulation made under the *Regulated Health Professions Act, 1991*, to post certain information to the College's public register once an applicant becomes a registrant of the College. The information that must be posted includes the following:

1. All findings of guilt made under the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada) for which the conviction has not been overturned and there has been no pardon or record suspension (O. Reg. 261/18, sections 1(1)1 and 1(2)).
2. Any currently existing conditions of release following a charge for an offence under the *Criminal Code* (Canada) or the *Controlled Drugs and Substances Act* (Canada) or subsequent to a finding of guilt and pending appeal, and any variations to those conditions (O. Reg. 261/18, section 1(1)2).
3. All outstanding charges under the *Criminal Code* (Canada) or the *Controlled Drugs and*

**Policy on Vulnerable Sector Check and Applicants with Charges or Findings**

*Substances Act* (Canada) (O. Reg. 261/18, section 1(1)3).

4. All findings by a disciplinary body, including findings of professional misconduct or incompetence, by another regulatory or licensing authority in any jurisdiction (O. Reg. 261/18, section 1(1)4).
5. All findings of incapacity by a body that governs a profession inside or outside Ontario (by-laws, section 15.6(xvi)).

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