

Regulation	Guidelines <i>These guidelines have been prepared to assist members in their review and understanding of the updated Professional Misconduct Regulation, including Conflict of Interest.</i>
<p style="text-align: center;">ONTARIO REGULATION</p> <p style="text-align: center;">made under the</p> <p style="text-align: center;">OPTOMETRY ACT, 1991</p> <p style="text-align: center;">Amending O. Reg. 119/94</p> <p style="text-align: center;">(GENERAL)</p> <p>1. Ontario Regulation 119/94 is amended by adding the following Parts:</p> <p style="text-align: center;">PART I</p> <p style="text-align: center;">PROFESSIONAL MISCONDUCT</p> <p>1. The following are acts of professional misconduct for the purposes of clause 51 (1) (c) of the Health Professions Procedural Code:</p>	<p>BASIS FOR PROHIBITION ON CONFLICT OF INTEREST</p> <p>The principle behind the prohibition on conflict of interest is that in professional relationships, optometrists have the obligation to always act in the best interest of their patients. That is to say, patients expect that optometrists will be objective and independent when recommending or providing professional services or ophthalmic appliances. Accordingly, optometrists must respect and protect the fiduciary relationship that exists between themselves and their patients. Failing to do so will result in a loss of trust.</p> <p>INTERPRETATION OF THE COI PROVISIONS IN THE REGULATION</p> <p>The College believes that a conflict of interest exists when an optometrist’s personal interest is connected with their professional duty such that a reasonable person would conclude that the personal interest might influence their professional duty.</p> <p>For a conflict of interest to exist it is not necessary for an optometrist’s judgment to actually be compromised. It is sufficient that a reasonable person would conclude that the optometrist’s professional judgment might be influenced. Furthermore, professional judgment might be influenced directly (i.e., the optometrist receiving a benefit) or indirectly (i.e., a member of the optometrist’s family receiving a benefit).</p> <p>Benefit is broadly defined to include any rebate, credit or gift. Benefit does not include reasonable discounts for volume or prompt payment, nor does it include any incentive that, in the circumstances, would be considered nominal.</p>

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<p>THE PRACTICE OF THE PROFESSION AND THE CARE OF, AND RELATIONSHIP WITH, PATIENTS</p> <ol style="list-style-type: none"> 1. Contravening a term, condition or limitation to which the member's certificate of registration is subject. 2. Exceeding the scope of practice of the profession. 3. Doing anything to a patient for a therapeutic, preventative, palliative, diagnostic, cosmetic or other health-related purpose in a situation in which a consent is required by law, without such a consent. 4. Abusing a patient verbally or physically. 5. Practising the profession while the member's ability to do so is impaired by any substance. 6. Discontinuing professional services that are needed unless, <ol style="list-style-type: none"> i. the patient requests the discontinuation, ii. the member arranges alternative services, iii. the patient is given a reasonable opportunity to arrange alternative services, or iv. the patient has failed to make payment within a reasonable time for services received, and the services that are needed are not of an emergency nature. 	

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<ul style="list-style-type: none"> 7. Engaging in the practice of the profession while in a conflict of interest as described in Part II. 8. Failing to reveal the exact nature of a secret remedy or treatment used by the member following a patient's request to do so. 9. Making a misrepresentation with respect to a remedy, treatment or device. 10. Treating or attempting to treat an eye or vision system condition which the member recognizes or should recognize as being beyond his or her experience or competence. 11. Failing to refer a patient to another professional whose profession is regulated under the Health Professions Procedural Code when the member recognizes or should recognize a condition of the eye or vision system that appears to require such referral. 12. Failing, without reasonable cause, to provide a patient with a written, signed and dated prescription for subnormal vision devices, contact lenses or eye glasses after the patient's eyes have been assessed by the member and where such a prescription is clinically indicated. 	<p>The Conflict of Interest rules are now part of the Regulations made under the Optometry Act, following the Professional Misconduct Regulation in Part II.</p> <p>The purpose of this regulation (12.), is to ensure patients freedom of choice of regulated dispensing professional.</p> <p>A 'prescription for subnormal vision devices, contact lenses or eye glasses' includes the information to enable a regulated dispensing professional to prepare spectacles, contact lenses, or subnormal vision devices. This prescription must be provided without request from the patient.</p> <p>There are circumstances where members are not required to provide patients with their prescription. As examples: an outstanding account for services, or an unstable refractive error.</p> <p>A prescription will include sphere, cylinder, axis, reading addition and other information when applicable.</p> <p>Dispensing information, or the specifications and parameters of an ophthalmic appliance (e.g. contact lenses), must be released to a patient upon request, and only after the optometrist has completed the services necessary to determine the appropriateness of the appliance. This is a requirement in the Records Regulation.</p> <p>For more information about prescriptions for 'subnormal vision devices, contact lenses or eye glasses', please refer to OPR 5.2 The Prescription.</p>

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<p>13. Recommending or providing unnecessary diagnostic or treatment services.</p> <p>14. Failing to maintain the standards of practice of the profession.</p> <p>15. Delegating a controlled act in contravention of the Act, the <i>Regulated Health Professions Act, 1991</i> or the regulations under either of those Acts.</p> <p>16. Performing a controlled act that the member is not authorized to perform.</p> <p>17. Permitting, counselling or assisting a person who is under the supervision of a member to perform an act in contravention of the Act, the <i>Regulated Health Professions Act, 1991</i> or the regulations under either of those Acts.</p> <p>18. Permitting, counselling or assisting any person who is not a member to perform a controlled act which should be performed by a member.</p>	

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<p style="text-align: center;">REPRESENTATIONS ABOUT MEMBERS AND THEIR QUALIFICATIONS</p> <p>19. Using a term, title or designation in respect of the member’s practice other than “optometrist” or “doctor of optometry”.</p> <p>20. Using, in the course of providing or offering to provide professional services, any reference to the member’s education or educational achievement other than the member’s university degree, unless the use of the reference is approved by Council.</p> <p>21. Identifying oneself to a patient as a person who is qualified to practise as a member of a health profession other than optometry, unless lawfully entitled to do so in Ontario under the legislation governing that profession.</p>	<p>In all practice communications members should represent themselves as optometrists and not as physicians. Optometrists should not say anything themselves or allow anything to be said on their behalf in advertising or elsewhere that would lead people to believe they are physicians.</p> <p>Members are allowed to use any earned university degrees, however, it must be made clear to patients that they are optometrists. All advertising, including any signage on the office is expected to communicate that members are practising optometry. Members may only refer to fellowships or other educational achievements that have been approved by Council.</p> <p>Anyone registered with the College is required to identify himself or herself as an optometrist in any medium relating to the practice of optometry.</p> <p>Members no longer require the approval of Council in order to practice at more than three locations. Members are required to register all of their practice locations with the College, and members practicing at multiple locations are reminded of their responsibility to provide and/or coordinate follow-up care for their patients.</p>

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<p>22. Publishing or using, or knowingly permitting the publication or use of an advertisement, announcement or information that promotes or relates to the provision of professional services by a member to the public, whether in a document, business card, business sign, website, or any other format, which,</p> <ul style="list-style-type: none"> i. is false or deceptive, whether by reason of inclusion of or omission of information, ii. suggests that the member is a specialist or is specially educated, trained or qualified other than where the reference is to an educational achievement and the reference has been approved by Council, iii. contains a testimonial or comparative or superlative statements, iv. contains an endorsement other than an endorsement by an individual or organization that has demonstrated, to the satisfaction of Council, that the individual or organization has expertise relevant to the subject matter of the endorsement, v. is not factual, objectively verifiable or readily comprehensible to the persons to whom it is directed, or vi. would be reasonably regarded by members as demeaning the integrity or dignity of the profession or likely to bring the profession into disrepute. 	<p>References in advertising to any particular brand, product, drug, or equipment, are no longer prohibited.</p> <p>Members are no longer prohibited from advertising with non-members. Optometrists bear the responsibility to ensure that any communication that has a relation to their practice be compliant with all current Regulations.</p>

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<p>23. Where a member uses, in the course of providing or offering to provide professional services, a name other than the name of the member as it is published on the register of the College, failing to,</p> <ul style="list-style-type: none"> i. post a list, in a location where patients will likely see it, of the name of every member who practises at that location, ii. notify the Registrar in writing of the name of every member who practises at that location, and iii. notify the Registrar in writing of any change in the members who practise at that location no less than 30 days from the date that the change occurred. <p style="text-align: center;">RECORD KEEPING AND REPORTS</p> <p>24. Failing to make or maintain records in accordance with Part IV.</p> <p>25. Falsifying a record relating to a member’s practice.</p> <p>26. Signing or issuing, in the member’s professional capacity, a certificate, report or similar document that contains a statement the member knows or ought to know is false, misleading or otherwise improper, or omits statements or information that the member knows or ought to know should be included.</p>	<p>Restrictions and conditions relating to how members may name their practice are altered by this Regulation. Nonetheless, where members use a name other than their own in the course of providing optometric services (i.e. “North Pole Optometric Clinic”), they must comply with those conditions in section 22. and must notify the Registrar of the name and any changes to it.</p>

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<p>27. If a member closes his or her office or retires from practice, failing to make reasonable efforts to make arrangements with a patient or his or her authorized representative to transfer the patient's records to,</p> <ul style="list-style-type: none"> i. the patient or his or her authorized representative, ii. another member, if the patient or his or her authorized representative so requests, or iii. another member, with notice to the patient that his or her records have been transferred to that other member. <p style="text-align: center;">BUSINESS PRACTICES</p> <p>28. Submitting or allowing to be submitted an account for professional services that the member knows or ought to know is false or misleading.</p> <p>29. Charging or allowing a fee to be charged that is excessive or unreasonable in relation to the professional services provided.</p>	<p>This change is to prevent a member from being excused from this requirement by saying that someone else, such as an employee, submitted the account or charged the fee.</p> <p>In determining whether fees might be excessive or unreasonable, the OAO's schedule of fees could still be used as a reference.</p> <p>Regulations related to block fees have been removed.</p> <p>Optometrists are required to issue a statement or a receipt that lists the fee for all services provided.</p>

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<p>30. Failing to issue a statement or receipt that itemizes an account for professional goods or services to the patient or a third party who is to pay, in whole or in part, for the goods or services provided to the patient.</p> <p>31. Charging or receiving more than the amount payable under the Ontario Health Insurance Plan for performing an insured service to an insured person.</p> <p>32. Accepting payment in respect of an insured service to an insured person before the member receives notice from the Ontario Health Insurance Plan that the patient has been reimbursed by the Plan, unless the insured person has consented to make the payment on an earlier date.</p> <p>33. Charging or accepting a fee, in whole or in part, before providing professional services to a patient unless,</p> <ul style="list-style-type: none"> i. the fee relates to the cost of professional goods to be used in the course of performing the services, or, ii. the member informs the patient, before he or she pays the fee, of the patient's right to choose not to pay the fee before the professional services are performed. 	<p>For example, where members charge additionally for ancillary testing (contact lens assessment, retinal imaging, OCT, etc.), those fees should be itemized separately.</p> <p>Diagnostic and treatment fees should be itemized separately (for example, examination fees should be separate from fees for eyewear).</p> <p>Members have a choice as to which mode of pricing they employ at their practice. Members may employ retail pricing, the traditional cost-of-materials plus dispensing fee model, or a combination of both. Members are no longer required to specify their incurred laboratory cost for ophthalmic materials. Regardless of the type of pricing used, members are still required to itemize the charge for appliances and services.</p>

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<p style="text-align: center;">MISCELLANEOUS MATTERS</p> <p>34. Failing to comply with an order of the Inquiries, Complaints and Reports Committee requiring the member to appear before a panel of the committee to be cautioned.</p> <p>35. Failing to abide by a written undertaking given by the member to the College or a Committee, or to carry out an agreement entered into with the College or a Committee.</p> <p>36. Contravening, by act or omission, the Act, the <i>Regulated Health Professions Act, 1991</i> or the regulations under either of those Acts.</p> <p>37. Failing to co-operate with a representative of another College on production of an appointment under section 75 of the Health Professions Procedural Code or to provide access to or copies of a record, document or thing that may be reasonably required for the purposes of an investigation.</p> <p>38. Failing to provide a patient or a patient's authorized representative, when requested, with the practice address and telephone number of a member who previously practised with the member when the member knows or ought to know this information.</p> <p>39. Engaging in conduct or performing an act that, having regard to all the circumstances, would reasonably be regarded by members as disgraceful, dishonourable, unprofessional or unethical.</p>	<p>A conflict of interest erodes the trust necessary for an effective patient-practitioner relationship. One</p>

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<p style="text-align: center;">PART II CONFLICT OF INTEREST</p> <p>2. In this Part,</p> <p>“benefit” means any incentive of more than nominal value and includes a rebate, credit or gift but does not include a reasonable discount based on volume or prompt payment;</p> <p>“health centre” means a facility that provides health services funded by the Ministry of Health and Long-Term Care;</p> <p>“non-arm’s length relationship” means a relationship other than that between parties who are unrelated, with each acting in his or her own best interest in the ordinary course of business.</p> <p>3. (1) A member shall not engage in the practice of the profession while the member is in a conflict of interest.</p> <p>(2) A member is in a conflict of interest where the member,</p> <p>(a) has a personal or financial interest that influences or is likely to influence the exercise of the member’s professional expertise or judgment in respect of the treatment or referral of a patient;</p>	<p>helpful test that members can use on their own is “the sunshine test”: that is, would you be comfortable disclosing to your patients or to your peers the details of your actions.</p> <p>Please note that clause 3(2) a. is qualified by subsection 4(1). If a member discloses his or her financial interest to a patient in advance, and provides services in accordance with the standards of practice, then no conflict of interest will arise.</p> <p>There is no conflict when a third party collects reasonable fees for a service provided, or to be provided, by the optometrist, or when the optometrist collects reasonable fees for a third party that provides services to the patient. In a co-management arrangement, it would not be considered a conflict of interest for the surgeon or surgical centre to collect fees to reimburse reasonably the optometrist for services provided or to be provided.</p> <p>In order to ensure that a referral is made with the best interest of the patient in mind, an optometrist is prohibited from accepting a benefit for the referral of a patient. Similarly, an optometrist is prohibited from paying another person for the referral of a patient to them or their professional corporation.</p> <p>Accepting a benefit from any person if the benefit would reasonably be expected to influence the member’s professional judgment would be considered a conflict of interest. By definition, benefits of a nominal value would not surpass this threshold and would be allowed. A member is expected to apply ethical principles when deciding on the proper course of action. Using the “Sunshine Test,” would you be comfortable telling your patients or peers that an optical company paid for your golf trip to the Bahamas? Probably not. Application of this test in more subtle situations may make it clear to the member that a reasonable person would perceive a given situation as a conflict of interest or alternatively when a situation may be allowable. An evening seminar given by a company with dinner to introduce a new product may be acceptable as it would likely not be deemed significant enough to influence professional judgment.</p> <p>An example of a situation that would put an optometrist in a conflict of interest would be accepting equipment/inducements unrelated to the practice of optometry (e.g. golf clubs).</p>

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<p>(b) enters into an arrangement or agreement that influences or is likely to influence the member's ability to properly exercise his or her professional expertise or judgment in respect of the treatment or referral of a patient;</p> <p>(c) offers or confers a benefit to a person in connection with the referral of a patient to the member;</p> <p>(d) accepts a benefit that is related to the member referring a patient to any other person;</p> <p>(e) accepts or confers a benefit relating to any ophthalmic materials, appliances or equipment, that influences or is likely to influence the exercise of the member's professional judgment respecting the purchase or use of the materials, appliances or equipment;</p> <p>(f) enters into any arrangement or agreement respecting a lease or the use of premises or equipment used in the practice of the profession under which any amount payable is related to the amount of fees charged or the volume of business carried out by the member;</p>	<p>Since staff members are working on the optometrist's behalf and at the optometrist's direction, a benefit given to a staff member would be considered a (indirect) benefit to the optometrist. Accordingly, members should be cautious about family or staff members receiving gifts or incentives from suppliers or other persons. An example of a conflict of interest relating to staff is an optical company providing them with a bonus or prize to promote a particular product. Optometrists are advised to be vigilant about the control that staff members are given over decisions involving the practice.</p> <p>It would not be a conflict of interest for staff persons employed by a third party (for example, staff in an optical store where the member is practising as an independent contractor) to perform tasks on the member's behalf (answering the phone, collecting fees, etc.) provided the member paid for the performance of these tasks.</p> <p>Any business arrangement, including favourable lease or rental arrangement, might influence professional judgment. The payment due under a lease must not be related to the fees that optometrists charge or the volume of business they conduct. Facility costs should be appropriate and reasonable for the situation. For example, they may be calculated according to the amount of time the member is working related to the operating hours of the optical retail and the equipment provided, if any.</p> <p>In situations where members do not pay reasonable costs for shared staff, equipment use and/or space rent and maintenance, members could be considered to be in conflict of interest. Fee sharing remains prohibited in paragraph 3. (2) (h) below.</p> <p>Optometrists are limited as to the types of business relationships that they may enter into. An</p>

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<p>(g) subject to subsection 4 (5), engages in the practice of the profession in a working arrangement with another person except,</p> <ul style="list-style-type: none"> (i) with a member who is engaged in the practice of the profession, (ii) with a member of the College of Physicians and Surgeons of Ontario who is engaged in the practice of medicine, (iii) as an employee or agent of a government or government agency, health centre, university or hospital, (iv) as an employee of a corporation, other than one referred to in subclause (iii) for the purpose of providing services solely to the employees of that corporation, or (v) under an arrangement approved by Council; <p>(h) shares fees related to the practice of the profession with any person other than,</p> <ul style="list-style-type: none"> (i) another member, or (ii) a member of the College of Physicians and Surgeons of Ontario engaged in the practice of medicine. 	<p>optometrist can only practice in a working relationship with another optometrist; physician; and with governments or government agencies including community health centres, universities or hospitals. A corporation may also employ an optometrist for the sole purpose of providing professional services to the employees of the corporation. There is also provision for the Council of the College to approve other business arrangements on the application of the member. As well, an optometrist may enter into a business relationship that would not otherwise be permitted if the optometrist is acting as an independent contractor as defined in paragraph 4.(5). below.</p> <p>Sharing fees can give rise to (the perception of) conflict of interest. An optometrist is prohibited from sharing fees with anyone except another optometrist or physician.</p>

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<p>4. (1) Despite clause 3 (2) (a), a member is not in a conflict of interest if the member discloses to the patient the nature of the member’s personal or financial interest to the patient before providing professional services.</p> <p>(2) A member is not in a conflict of interest in connection with making a recommendation about the referral of a patient that has the potential to benefit a person who is in a non-arm’s length relationship with the member, if the member receives no benefit for the referral and if, before making the recommendation, the member discloses the nature of the relationship between the member and the person who is in a non-arm’s length relationship with the member.</p> <p>(3) A member is not in a conflict of interest in connection with the member receiving a patient referred from a person who is in a non-arm’s length relationship with the member if the member receives no benefit in relation to the referral and if, before providing professional services, the member discloses the nature of the relationship between the member and the person who is in a non-arm’s length relationship with the member.</p> <p>(4) A member is not required to disclose his or her financial interest in an optometry professional corporation in which he or she is a shareholder in order to obtain the benefit of subsection (1), (2) or (3) if the fact that the member engages in the practice of optometry in an optometry professional corporation was made known to the patient.</p>	<p>When an optometrist has a personal financial interest such that it may be perceived that his/her professional judgment may be influenced, he/she may extricate him/herself from the conflict by disclosing the financial interest to the patient. Such disclosure allows the patient the opportunity to make an informed choice. As always, it is expected that the services provided by the optometrist will meet or exceed the standards of practice. For example, an optometrist may own an optical dispensary located outside the optometrist’s office. The member must disclose to the patient the ownership interest in the dispensary and that the patient has the option to fill their prescription at any dispensary of their choosing.</p> <p>The method of disclosure would be at the member’s discretion but would be expected to be appropriate to the circumstance. For example, the College would expect a verbal recommendation of a retail optical store owned by a member to be followed by verbal disclosure to the patient of the member’s interest in that optical. A sign in the office disclosing a member’s interest may be more appropriate in a circumstance where the member has not made a verbal recommendation but the patient may choose to use the services of the related company.</p> <p>Despite the general prohibition that optometrists not benefit from the referral of patients, a member may refer a patient to a related person or corporation if the member does not receive any direct benefit from the related person or corporation and discloses his/her relationship with the related person or corporation to the patient. For example, an optometrist may refer a patient to an ophthalmologist who is a relative, provided that the optometrist discloses the relationship and does not receive any direct benefit for the referral. Similarly, an optometrist may receive a referral from a related person or corporation providing the same two requirements are met.</p> <p>Optometrists may enter into business relationships with:</p>

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<p>(5) No conflict of interest arises under clause 3 (2) (g) where the member engages in the practice of the profession as an independent contractor with another person in accordance with a written agreement that states that the member,</p> <p>(a) shall control the professional services provided to a patient;</p> <p>(b) shall control who he or she may accept as a patient;</p> <p>(c) shall provide every patient or his or her authorized representative with a copy of his or her prescription;</p> <p>(d) shall set the fee charged or collected in respect of any professional service;</p> <p>(e) shall control the maintenance, custody and access to the records required to be kept in respect of the practice of the profession;</p>	<ul style="list-style-type: none"> • optometrists; • physicians; and • governments or government agencies including community health centres, universities or hospitals. <p>If an optometrist wishes to enter into a business relationship with a person or organization not captured above, they may do so only if the relationship is such that the optometrist is an “independent contractor”.</p> <p>This provision requires a written agreement that complies with this section. A member practicing as an independent contractor could be asked to produce this written agreement to the College at any time.</p> <p>Factors in determining if an optometrist is an independent contractor include:</p> <ul style="list-style-type: none"> • whether the optometrist is or could be controlled regarding what services he/she provides and the fees charged or collected for those services; • who decides who may be accepted as a patient; • whether the optometrist’s ability to release a prescription to the patient is limited in any way; • who has custodianship of the clinical and financial records made by the optometrist; • whether the optometrist is limited in their access to the practice; • whether the optometrist controls their hours of operation, and • whether advertising related to the optometrist’s practice is compliant with optometric regulation. <p>If someone other than the optometrist is exercising control, or could be exercising control over the optometrist in respect of one or more of these factors, then it is likely that the optometrist would not be considered to be an independent contractor.</p> <p>When an optometrist enters into a business relationship with another person, the College believes that he/she must maintain independence with respect to his or her practice. Accordingly, there can be no terms in the business agreement, either expressed or implied, that would impede the optometrist from either exercising his/her professional judgment or maintaining the standards of practice. He/she must be, and be seen to be, independent and free from the authority, control or influence of others.</p> <p>The term “could be controlled” means that members have the obligation to make all professional</p>

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<p>(f) shall have access, along with his or her staff, to the premises where the member practises and to the books and records related to his or her practice, at any time of the day or night; and</p> <p>(g) shall ensure that any advertising relating to the professional services provided by the member meets the requirements set out in regulations made under the Act.</p> <p>(6) For the purpose of subsection (5),</p> <p>“independent contractor” means a person who practises the profession under an agreement with another, but who is independent and not controlled by the other or subject to the other’s right to control respecting the member’s conduct in the practice of the profession.</p>	<p>decisions and are responsible for their decisions/actions. Although not an exhaustive list, these are the essential components that define independent practice.</p> <p>The professional services provided are everything that a member does in the context of practice, i.e. the range of optometric services an optometrist makes available to patients. A third party cannot restrict or inflate these services. Additionally, members are expected to control patient scheduling and hours of operation.</p> <p>A corporation or entity cannot place restrictions on who optometrists may see as patients (e.g. an optometrist cannot be restricted to only seeing patients who have purchased a membership to a particular retail entity).</p> <p>Optometrists must not allow a third party to control their responsibility to provide patients with a copy of their prescription.</p> <p>Members have the obligation to set and collect their own fees, but can assign the collection of the fees to a third party. A third party cannot dictate the professional fees charged by optometrists. An optometrist is prohibited from sharing fees with anyone except another optometrist or a physician.</p> <p>Optometrists will have access to, and control of, optometric records. Where more than one optometrist practices in a location, the group will determine custodianship of the records, for purposes of information sharing and determination of record custodianship upon departure of a member of the group from the practice. A third party cannot dictate what happens to the records upon the departure of an optometrist from the practice. In a location shared with a retail optical, the College would expect that the optometric clinical records would be separate and not integrated with the records of the retail optical.</p> <p>Members practicing with other members are strongly recommended to have written agreements outlining the ultimate custodianship of optometric records upon dissolution of working relationships.</p>