

**Criteria for Regulation of a New Health Profession under the
*Regulated Health Professions Act (RHPA), 1991***

**Completed
Questionnaire**

Health Professions Regulatory Advisory Council
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1. Overall, are the updated criteria outlined in section 3 of the guide appropriate and relevant? If not, why?

The OOA and OAC support the development and publication of such criteria. They are necessary to support the integrity of the review process, particularly the openness and transparency that we believe are essential to such reviews, where both applicants and stakeholders are fully aware of the tests, the analysis and other considerations that will be brought to bear. Although Opticianry has never been subject to an HPRAC review for the purposes of regulation, it has been the subject of several HPRAC reviews. How HPRAC came to some of the conclusions, determinations and recommendations it did in those reviews has been far from clear and appeared to fly in the face of the evidence presented. The absence of articulated, understood and accepted rules of engagement and a clear framework for these reviews have been of great concern to the OOA and OAC.

We trust that whatever criteria are put in place as a consequence of this exercise will be continuously modified and updated in response to changing circumstances and requirements. We further trust that the criteria will not be excessively confining or limiting and professions seeking regulation will be able to depart from the criteria when legitimately necessary, in order to present their best case. We also believe that HPRAC shouldn't be prohibited from taking an "activist" role in a review in order to further investigate what appears to be a strong prima facie case for regulation that is not being effectively advanced due to considerations such as the lack of resources, or lack of sophistication by the applicant.

It appears to us that aside from some structural changes and streamlining, the substance of the criteria is not dramatically changed from the previous version, suggesting that HPRAC's jurisdictional review and other research did not indicate a need for major changes. It would be both instructive and informative to know what HPRAC discovered during its research that led it to this conclusion.

Quite often during the course of our examination of the criteria, we were prompted to ask: "Why is HPRAC asking that question?", "What is HPRAC aiming at or hopes to achieve by asking that question?", or "What is the philosophy, principle or assumption that underlies that question?". Answers to such questions are necessary for reasonable assessment of the criteria. More importantly, answers to such questions are necessary if applicants and stakeholders are going to respond effectively to them.

Some of the thematic principles, philosophies or assumptions that are implicit in the criteria include:

- There is resistance to the creation of new colleges. New professions have a better chance at regulation under the RHPA if they join an existing college.
- RHPA-regulation is almost the last regulatory resort. A compelling case must be presented that other (but unspecified) types of professional regulation are inadequate in protecting the public interest to justify RHPA regulation.
- Professions must be supported by an Ontario-based education program or education programs.
- Professional regulation, at least pursuant to the RHPA, may have negative economic, professional mobility and other implications.

For several reasons, including the fact that Opticianry is a relatively small College itself, the OOA and OAC have serious reservations with respect to these assumptions. Nevertheless, if such fundamental assumptions exist, they should be made explicit rather than implicit. Furthermore, HPRAC should disclose the information on which such assumptions are based on how the implications could be mitigated.

We also believe that each applicant for regulation should be required to provide extensive introductory background on the profession in a consolidated fashion, such as the number of practitioners, how long the profession has existed in Ontario, practice

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venues, delivery and funding models through which the services of the profession can be accessed, location and history of educational programs and the like. It is a regrettable fact of health care delivery that members of one profession rarely have an accurate or complete grasp of what members of other professions do, their competencies, training, practice venues and funding models. Such a description, therefore, is necessary to provide that kind of information, both for purposes of stakeholders' evaluation of the application for regulation and subsequently to support interprofessional collaboration, regardless of whether the profession actually achieves RHPA regulation.

2. Should a profession seeking regulation under the RHPA be required to meet the 'risk of harm threshold' (the primary criterion) in order to establish that the profession poses a risk of harm to the public?

Establishing an essential risk of harm filter that all must "pass" appears to be the major structural change the HPRAC has made. The OOA and OAC agree with this approach.

Nevertheless, we encountered difficulties with some of the terminology used in the criteria. Reference is made to "physical, emotional or mental harm" as components of the risk of harm calculation. The inclusion of emotional or mental harm appears to go beyond the current RHPA standard of "serious bodily harm" in subsection 30 (1) of the RHPA as currently written. The use of terms such as "well-being" also appear to expand the current standard materially — and subjectively.

Bullet point 1 speaks to the "potential" for physical, emotional or mental harm to patients. Bullet point 2 speaks to decision-making and judgments that "can" have a significant impact on patients. Bullet point 3 refers to the "likelihood" of the risk of harm. It is at least difficult and at worst impossible to quantify or at least objectively quantify activities under such subjective wording.

Questions 5 through 10 of the Primary Criteria call for documentation or data to support the risk of harm argument. It is possible to cite instances where harm has occurred or disciplinary or other legal action has been taken, but this is not always possible in the case of professions that have recently emerged due to new technologies or other factors, or otherwise haven't been sufficiently organized to accumulate and analyze such data. Data collected under these circumstances may not stand up to the rigorous data models available to professions that have existed for decades, if not centuries.

The "risk of harm" filter also begs the question as to whether risk of harm equates with the performance of one or more RHPA controlled acts. Put another way, can a profession demonstrate risk of harm without performing all or part of at least one controlled act? In the case of Opticianry, Opticians have the authorized account of "dispensing" eyewear and subnormal vision devices. In addition, however, contact lenses and solutions that Opticians regularly deal with are categorized as Class II and Class III medical devices under the (federal) Food and Drugs Act administered by the Therapeutic Products Division of Health Canada. They are categorized as such because of their potential of causing harm if used inappropriately. We presume that such considerations would apply to the risk of harm case.

The Risk of Harm criteria speaks to "areas of practice, treatment modalities and services performed exclusively" by members of the profession. Once again, this appears to be something of a departure from the RHPA's current approach of overlapping scopes of practice and shared controlled acts.

3. Should a profession meet every criterion outlined in the secondary criteria?

All questions relating to the public interest should be mandatory. Beyond that, it's impractical to expect every profession to answer every single criterion and forcing them to do so wastes everyone's time and resources and creates artificiality. Non-mandatory criteria should be ranked so professions understand the implications of not responding to a particular criterion. There should also always be the safety valve of allowing professions to provide additional information to support or augment their case that is not directly germane to any particular criterion.

4. How would you rank the secondary criteria (criterion 1 to 7, see pp 7 – 12 of the guide) by order of importance to regulation under the RHPA? 1 = Most Important Criterion; 7 = Least Important Criterion (if possible please explain the rationale for your ranking).

We suggest the following logic for ranking the secondary criteria:

Reinforce the public interest case in addition to the risk of harm (i.e. protecting and safeguarding the public interest, access to care, health system implications).

Identify the "spinoff" implications of professional regulation under the RHPA (e.g. economic impacts, implications for professional mobility) to support a cost/benefit evaluation.

Demonstrate that other models or mechanisms of regulation have not adequately protected, or cannot adequately protect, the public interest.

Demonstrate that RHPA regulation of the profession is reasonably feasible and viable (e.g. identifiable body of knowledge and scope of practice, educational requirements and support).

Demonstrate that the profession understands the implications of, is ready for and is willing and able to support RHPA regulation.

5. Do the proposed criteria provide sufficient guidance on what factors will be taken into account in establishing whether it is in 'the public interest' to regulate a profession?

No. As indicated above, we believe the criteria need a general introductory piece that explains HPRAC's overall approach to evaluating applications for regulation, the principles, objectives and assumptions that are applied, trade-offs in terms of cost/benefit that are made and how the Secondary Criteria are ranked in terms of relative importance.

6. Do the criteria outlined in section 3 of the guide provide an adequate level of clarity to applicants? If not, which criteria need further clarity?

See above.

7. Are there any other criteria you think should be added to section 3 of the guide?

There should be a group of criteria relating to advances in technology or practice methodologies that support independent self-governance under the RHPA.

8. Do you have any comments about the recommendation-making process outlined in section 4 of the guide?

The OOA and OAC have two important suggestions in this regard:

1) The review process must be completely open and transparent. Information and advice provided by any participant in the review process must be made available to all and in a timely fashion so that incorrect, incomplete or misleading information can be corrected. There should be no off-the-record or confidential meetings with any (non-government) individuals or organizations relevant to the review process.

2) All participants in the review process should be treated equally.

As HPRAC knows, interprofessional turf battles regrettably persist in health care delivery. Statutory regulation, particularly regulation under the RHPA, carries with it a significant competitive advantage. As a consequence, regulated professions are prone to resist bringing unregulated professions into the RHPA umbrella. "Senior" regulated professions are prone to resist the regulation of newer professions that compete with them, or to limit their scope of practice and authorized acts to whatever extent is possible. These considerations have nothing to do with the public interest and the HPRAC process should be immunized to the extent possible from their influence. Transparency and openness is the best way to do so.

9. Should any other information be added to guide applicants?

10. Do you have any other general comments?

The Opticianry Profession in Ontario

Opticians, part of the vision health care team, play a vital role delivering eye care in Ontario and in protecting the public. Opticians have passed rigorous national examinations that reflect measurable international standards. Accuracy of eyewear depends on strict tolerances. Standards of practice and continuing competence programs help ensure that Opticians are fully qualified to perform as authorized for their profession. Opticians work to exacting standards and precision.

Opticians serve as educators on eye care issues including disease prevention and detection. Opticians dispense ophthalmic eye wear to the public based on a prescription from an optometrist or physician, in some provinces, based on a sight test. Ophthalmic eyewear includes eyeglasses, contact lenses and subnormal vision devices. In addition to dispensing, Opticians refer people with complex eye conditions to other health care professionals, such as physicians. Opticians provide patient-specific advice. Opticians help patients identify the most appropriate type of eyewear based on a prescription from an optometrist or physician, taking into account individual circumstances such as a person's occupation or activities of daily living.

Opticians are frequently the first point of contact for those seeking vision help. Opticians don't just measure and design eyeglasses and contact lenses, they also ensure optimal vision. As providers of care to an aging and diverse population, Opticians working collaboratively can help relieve health human resource pressures in the vision care system. Opticians are licensed, registered with the College of Opticians of Ontario (COO). The College of Opticians of Ontario is responsible for maintaining the practice standards and skill proficiencies of Ontario's opticians through quality of care and education programs. Opticians are technically astute and highly skilled.

There are approximately 2,400 Licensed Opticians in Ontario and the Ontario Opticians Association is the voluntary association that represents the profession.