

Policy Number:	Effective Date: June 15, 2010
Category: Program Governance	Date of Last Amendment: April 2018

SUBJECT- COMPLAINTS RESOLUTION

Policy

All complaints received by the Opticians of Manitoba (OOM), against any **member**¹ of the OOM, either from a member of the public or from another Ophthalmic dispenser, will be thoroughly researched and reviewed, utilizing a process designed to ensure that the review is fair to both the patient and the Optician and that problems are appropriately identified and addressed.

PROCESS - The OOM has established the following process in keeping with the requirements of the Province of Manitoba’s Opticians’ Act. and the bylaws of the Opticians of Manitoba,

SUBMITTING A COMPLAINT

- - Any person may make a complaint about a members conduct.
 - A complaint must be made in writing to the registrar using the Opticians of Manitoba Complaint Resolution Form (**Appendix A**).
 - A complaint may be made about a former member even if his/her registration or certificate of practice has been cancelled, suspended or not renewed, but only if the complaint is made within five years after the cancellation, suspension or non-renewal.
 - If the Registrar believes that the conduct of a member or former member may constitute conduct about which a finding could be made under the OOM Bylaw 32.(4) clause (a),(b),(c), that is the member:
 - procured his/her name on the register by means of false or fraudulent representation or declaration;
 - has contravened the Opticians Act or a regulation, by-law, standard of practice or practice direction or the code of ethics;
 - has been convicted of an indictable offence of such a nature that it imputes unprofessional conduct to him/her
 - has been guilty of infamous or unprofessional conduct rendering him/her incapable of practicing or unfit to practice ophthalmic dispensing,
 - has permitted or allowed an unqualified person to practice under license,
 - has been guilty of professional incompetence, negligence or misconduct to a degree that in the opinion of council, disqualifies the

¹ Throughout this document, the word *member* refers to a *regulated* Optician member of the Opticians of Manitoba

member from practicing ophthalmic dispensing or otherwise breached the OOM bylaws

- a member has allowed his/her name to stand as a license of record for a business or practice of ophthalmic dispensing in Manitoba without ensuring that the business or practice is being supervised by a licensed ophthalmic dispenser on a full time basis

the Registrar may treat the information as a complaint even though no complaint has been made, and may refer it to the Complaints Resolution Committee (**Terms of Reference-Appendix B**). The information is deemed to be a complaint.

- All complaints and any phone calls regarding a complaint must be documented by the registrar on the following electronic records:
 - Record of a Complaint (**Appendix C**)
 - Record of the Complaint Resolution Process (**Appendix D**)
 - Records of Phone Calls/Meetings (**Appendices E and F**)
- An initial letter, acknowledging receipt of the complaint will be sent to the Complainant (**Appendix G**)
- An initial letter, acknowledging receipt of the complaint (**Appendix H**) and a copy of the Record of a Complaint (**Appendix C**), will be sent to the member, who is required to complete the form and respond within 10 days.

Note: Any complaint made about a member of the Council of the Opticians of Manitoba or the Registrar must comply with the requirements as stated in this policy and specifically the process described herein for submitting and resolving a complaint.

METHOD OF REVIEW

The registrar may take the following actions in respect of a complaint:

- encourage the complainant and the investigated member to communicate with each other and resolve the complaint;
- refer the complaint to the Complaints Resolution Committee;
- dismiss the complaint if the registrar is satisfied that it is trivial or vexatious or that there is insufficient evidence or no evidence of conduct about which a finding could be made under the conditions under the OOM Bylaw 32. (4) clause (a), (b), (c).

DISMISSAL OF A COMPLAINT

- If the registrar dismisses a complaint, the registrar must notify the complainant of the dismissal and the right to have it reviewed by the Complaints Resolution Committee. The registrar must also notify the member.
- If the complainant wishes to apply to the registrar for a review by the Complaints Resolution Committee, they must do so in writing, stating the reason for the request and within 30 days after being notified of the dismissal,
- The registrar must refer the complainant's application for a review to the Complaints Resolution Committee.

- The Complaints Resolution Committee is not required to hold a hearing before making a decision, but must give the member and the complainant an opportunity to make written submissions.
- After reviewing a decision to dismiss the complaint, the Complaints Resolution Committee must:
 - confirm the dismissal if the committee is satisfied that the complaint is trivial or vexatious or that there is insufficient evidence or no evidence of conduct about which a finding could be made under the bylaw ; **OR**
 - reverse the dismissal **AND**
 - try to resolve the complaint informally **OR**
 - appoint an investigator.
- Within 30 days after receiving a complaint, the registrar must notify the complainant of the complaint and the action that has been taken.
- Minutes must be recorded for all meetings of the Complaints Resolution Committee and kept on file in the Registrar's office.

INFORMAL RESOLUTION OF A COMPLAINT

- Upon the referral of a complaint to the Complaints Resolution Committee, the committee or a person designated by the committee may try to resolve it informally if the committee considers informal resolution to be appropriate.

COMPLAINTS REQUIRING AN INVESTIGATION

- If a complaint is to be referred to the Complaints Resolution Committee for investigation, the registrar will send the:
 - letter of referral from the Registrar to the Complaints Resolution Committee (**Appendix H**)
 - completed Complaint Resolution Form (**Appendix A**) or initial letter of complaint,
 - completed Record of a Complaint (**Appendix C**),
 - letters or documentation received from the complainant,
 - Record of the Complaint Resolution Process (**Appendix D**),
 - Records of Phone Calls and Meetings(**Appendices E and F**),with all particulars entered to date,

to the Chair of the Complaints Resolution Committee requesting that the Committee advise the Registrar within 21 days of the course of action that the Committee plans to take.

- If a complaint cannot be resolved informally, the Complaints Resolution Committee must appoint an investigator to investigate it.
- The Complaints Resolution Committee may also appoint an investigator for any complaint whenever the committee considers it appropriate to do so.
- Any person, including a member of the Complaints Resolution Committee but not including the registrar, is eligible for appointment as an investigator.

- The chair of the Complaints Resolution Committee or the registrar may perform the committee's responsibilities above.
- If an investigation is to be conducted, the registrar must:
 - inform the complainant that an investigator has been appointed
AND
 - unless it would significantly harm the investigation, give the member the name of the investigator and reasonable particulars of the complaint to be investigated.
- If the investigated member is not given the information referred to above when an investigation is to be conducted, the registrar must give the information:
 - when there would be no significant harm to the investigation;
OR
 - before the investigation is completed,

whichever is earlier.

- The Complaints Resolution Committee must continue to document all activities related to the resolution of the complaints on the Record of the Complaints Resolution Process (**Appendix D**) and the Records of Phone Calls and Meetings(**Appendices E and F**), as the complaint resolution process continues.

RESPONSIBILITIES OF THE INVESTIGATOR

- An investigator must investigate a complaint referred to him/her by the Complaints Resolution Committee.
- In the course of an investigation, an investigator may investigate any other matter related to the professional conduct or the skill in practice of the investigated member that arises in the course of the investigation.
- Council may engage legal counsel and employ any other experts that the council considers necessary to assist the investigator.
- An investigator may, at any reasonable time and where reasonably required for the purposes of an investigation:
 - (a) enter and inspect any premises or place where the investigated member practices or has practiced Opticianry,
 - (b) inspect, observe or audit the investigated member's practice,
 - (c) examine any equipment, materials or any other thing used by the investigated member,
 - (d) require the investigated member to respond to the complaint in writing,
 - (e) require any person to answer any questions, or provide any information, that the investigator considers relevant to the investigation, **AND**
 - (f) require any person to give the investigator any record, substance or thing that the investigator considers relevant to the investigation and in the person's possession or under his or her control.

- An investigator may exercise the powers referred to in clauses (a) to (c) above, only on the direction of the Complaints Resolution Committee.
- An investigator must, upon request, present an identification card issued by the council.
- If an investigator requires a person to answer questions or provide information or give him or her any record, substance or thing, the person must comply with the request.
- For the purposes of an investigation, an investigator may
 - use any computer system used in connection with the investigated member's practice in order to produce a record in readable form,
 - photograph or create images of the premises or place, **OR**
 - use any copying equipment at the premises or place to make copies of any record related to the investigated member's practice.
- An investigator may remove any record, substance or thing for the purpose of making copies, producing records, or for testing or further inspection, but the copying, production, testing or further inspection must be carried out within a reasonable time and the items must be returned without delay to the person from whom they were taken.
- A copy of a record made and certified to be a true copy by the investigator is, in the absence of evidence to the contrary, admissible in evidence in any proceeding or prosecution as proof of the original record and its contents.

FAILURE TO COOPERATE WITH AN INVESTIGATION

Court Order

- If a person fails to produce any document, substance or thing or fails to answer any question or provide any information, the OOM may apply to the court for an order directing one or both of the following:
 - directing any person to produce to the investigator any record, substance or thing that the investigator considers to be relevant to the investigation and in the person's possession or under his or her control;
 - directing any person to attend before the investigator to provide information to the investigator, or answer any question that the investigator may have, relating to the investigation.

Professional Misconduct

- Any of the following actions done by an investigated member or any other member or former member is professional misconduct:
 - failing to produce to an investigator any record, substance or thing in his or her possession or under his or her control;
 - failing to give an investigator access to any premises or place under his or her control;
 - failing to provide any information to an investigator or answer any questions that the investigator may have relating to the investigation;

- obstructing an investigator;
- withholding or concealing from an investigator any record, substance or thing relevant to an investigation;
- destroying any record, substance or thing relevant to an investigation.

Warrant to Enter and Investigate

A justice, upon being satisfied by information on oath that:

- an investigator has been refused entry to any premises or place to carry out an investigation **OR**
- there are reasonable grounds to believe that:
 - an investigator will be refused entry to any premises or place to carry out an investigation under the Act **OR**
 - if an investigator were to be refused entry to any premises or place to carry out an investigation under the Act, delaying the investigation in order to obtain a warrant on the basis of the refusal could be detrimental to the investigation;

may at any time issue a warrant authorizing the investigator and any other person named in the warrant to enter the premises or place and carry out an investigation under the bylaw.

- An order or warrant under this section may be issued upon application without notice.

Offences by a Member in the Investigation Process

- No person shall:
 - obstruct an investigator;
 - withhold or conceal from an investigator any record, substance or thing relevant to an investigation;
 - destroy any record, substance or thing relevant to an investigation.

INVESTIGATOR'S REPORTING REQUIREMENTS

- After completing an investigation, the investigator must report his or her findings to the Complaints Resolution Committee.

NOTICE TO INVESTIGATED MEMBER

- The Complaints Resolution Committee must give a copy of the report to the investigated member and advise the investigated member of the right to make written submissions about the findings in the report.
- If the report reveals information about a member or former member who is not the investigated member and the Complaints Resolution Committee believes that the matter should be investigated further, the committee must refer the matter to the registrar for consideration under the actions which the registrar may take in respect of a complaint, that is to :
 - encourage the complainant and the investigated member to communicate with each other and resolve the complaint;

- refer the complaint to the Complaints Resolution Committee;
- dismiss the complaint if the registrar is satisfied that it is trivial or vexatious or that there is insufficient evidence or no evidence of conduct about which a finding could be made under the Bylaw 32. (4) clause (a), (b), (c).

DECISIONS WHICH CAN BE MADE BY THE COMPLAINTS RESOLUTION COMMITTEE

- After reviewing the investigator's report, the Complaints Resolution Committee may do one or more of the following:
 - refer the complaint, in whole or in part, to the Inquiry Committee (**Terms of Reference - Appendix J**),
 - direct that no further action be taken,
 - refer the complaint to mediation, if the committee decides that it is of concern only to the complainant and the investigated member, both of whom agree to mediation;
 - censure the investigated member **IF**:
 - at least one committee member has met with the investigated member and the investigated member agrees to accept the censure, **AND**
 - the committee has decided that no action is to be taken against the investigated member other than censure;
 - accept the voluntary surrender of the investigated member's registration or certificate of practice;
 - accept an undertaking from the investigated member that provides for one or more of the following:
 - assessment of the investigated member's capacity or fitness to practice Opticianry,
 - counselling or treatment of the investigated member,
 - monitoring or supervision of the investigated member's practice,
 - completion by the investigated member of a specified course of studies by way of remedial training,
 - placing conditions on the investigated member's right to practice the Opticianry, which may include the conditions relating to reinstatement, set out in the OOM regulations/bylaws,
 - take any other action it considers appropriate that is not inconsistent with or contrary to the regulations or by-laws.
- Before making any decision the investigated member must be given the opportunity to make a submission. The Complaints Resolution Committee may allow the submission to be made orally or in writing; at the very least they must allow a submission in writing but the committee is not required to hold a hearing.

- The Complaints Resolution Committee must give the investigated member and the complainant a copy of any decision it makes, with reasons for the decision.
- If a complaint has been referred for mediation but cannot be resolved, the matter must be referred back to the Complaints Resolution Committee, which may make any other decision, under the Act that it considers appropriate.

CENSURE

- When an investigated member is censured, the Complaints Resolution Committee may require him or her to appear in person before the committee, to be censured.
- The Complaints Resolution Committee may publish the fact that an investigated member has been censured. The publication may include the investigated member's name and a description of the circumstances that led to the censure.
- The Complaints Resolution Committee may order an investigated member who is censured, to pay all or part of the costs of the investigation.

VOLUNTARY SURRENDER OF REGISTRATION

- If the Complaints Resolution Committee accepts the voluntary surrender of an investigated member's registration or certificate of practice, it may direct the investigated member to do one or more of the following, to the satisfaction of a specified person or committee, before the registration or certificate of practice may be reinstated:
 - take counselling or receive treatment;
 - complete a specified course of studies;
 - obtain supervised experience under a restricted certificate of practice issued for that purpose.
- The Complaints Resolution Committee may order the investigated member to pay all or part of any costs:
 - incurred by the college in monitoring compliance with a direction given **AND**
 - of the investigation up to the time that the voluntary surrender takes effect.

PUBLICATION OF VOLUNTARY SURRENDER

- The Complaints Resolution Committee may publish the fact that the investigated member has voluntarily surrendered his or her registration or certificate of practice. The publication may include the investigated member's name and a description of the circumstances that led to the voluntary surrender.

REINSTATEMENT AFTER VOLUNTARY SURRENDER

- A voluntary surrender remains in effect until the Complaints Resolution Committee is satisfied that the conduct or complaint under investigation has been resolved. At that time, the committee may impose conditions on the investigated member's right to practice Opticianry, including requirements that he or she do one or more of the following:
 - limit his or her practice;
 - practice under supervision;
 - not engage in sole practice;
 - permit periodic inspections or audits of his or her practice, including inspections or audits of practice records;
 - report to the committee or the registrar on specific matters;

- comply with any other conditions the committee considers appropriate in the circumstances;
 - pay all or part of the costs incurred by the college in monitoring compliance with the conditions.
- If the Complaints Resolution Committee accepts an undertaking from an investigated member that provides for conditions on the investigated member's right to practice, the committee may order the member to pay all or part of the costs:
 - of the investigation; **AND**
 - the costs incurred by the OOM in monitoring compliance with the conditions.

APPEALS

- The complainant may appeal to the council any decision made by the Complaints Resolution Committee
- To make an appeal, the complainant must give the registrar a written notice of appeal, including reasons for the appeal, within 30 days after receiving notice of the committee's decision.
- Upon receiving notice of an appeal from the registrar, the chair of the council must appoint:
 - an appeal panel consisting of not less than three members of the council, at least 1/3 of whom must be public representatives; and
 - a member of the panel as chair.
- The chair of Council may appoint one or more members of the OOM who are not members of the council to an appeal panel, if there are an insufficient number of council members without a conflict of interest, or potential conflict of interest, in the case under appeal. This does not negate the requirement that 1/3 of the panelists must be public representatives.
- No person may be appointed to the appeal panel who has taken part in the review or investigation of the matter that is the subject of the appeal.
- A decision or action of an appeal panel is a decision or action of the council.
- On an appeal, the panel must:
 - dismiss the appeal;
 - make any decision that in its opinion ought to have been made by the Complaints Resolution Committee; **OR**
 - refer the matter back to the Complaints Resolution Committee for further investigation or consideration in accordance with any direction that the panel may give.
- The council must give the investigated member and the complainant written notice of the appeal panel's decision and the reasons for it.
- Before making a decision regarding the need for a hearing, the appeal panel must allow both the investigated member and the complainant an opportunity to make a written submission, but the appeal panel is not required to hold a hearing.

SUSPENSION OR CONDITIONS PENDING DECISION REGARDING AN APPEAL

- Despite any other provision of this policy, the Complaints Resolution Committee or the chair of the committee may direct the registrar to suspend or place conditions on the investigated member's registration or certificate of practice pending the outcome of proceedings, but only if the committee or the chair, as the case may be, considers it necessary to protect the public from exposure to serious risk.
- Upon receiving direction from the Complaints Resolution Committee to suspend or place conditions on the investigated members registration or certificate of practice, the registrar must give written notice of the suspension or conditions and the committee or chair's reasons for the suspension or conditions to the investigated member and, where applicable, to the member's employer or another person specified in the bylaws.
- An investigated member whose registration or certificate of practice is suspended or has conditions placed on it may, by giving notice in writing to the registrar, appeal the suspension or imposition of conditions to council.
- Council must hold a hearing as soon as reasonably possible but no later than 30 days after receiving the notice of appeal from the registrar.
- The OOM and the investigated member may appear and be represented by counsel at a hearing before the council, and the council may have counsel to assist it.
- On an appeal, the council must decide whether the suspension or conditions are to be quashed, varied or confirmed, and may make an order as to any costs that may arise from its decision.
- The investigated member may apply to the court for an order staying a decision of the council to vary or confirm the suspension or conditions pending the outcome of proceedings.
- The application must be served on the registrar.
- If the investigated member fails to comply with an undertaking or a condition of an undertaking, the Complaints Resolution Committee may refer the conduct or complaint that was the subject of the investigation to the inquiry committee.

DISCLOSURE OF INFORMATION TO LAW ENFORCEMENT

- If, in the course of an investigation, the Complaints Resolution Committee obtains information that leads to a reasonable belief that a member or former member has been engaged or is engaging in possible criminal activity, the committee may disclose the information to a law enforcement agency.

WITHOUT PREJUDICE COMMUNICATIONS

- The following are confidential and are deemed to have been made without prejudice to the parties if they are used in any further proceedings in respect of the complaint:
 - any communications made during mediation;
 - the records of a facilitator or mediator made in respect of meetings held for the purpose of mediation.

APPENDIX A

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2706-83 Garry Street
 Winnipeg, MB R3C 4J9
 Tel: 204-982-6060 * 1.800.847-3155
 Fax: 204.947-2519

COMPLAINT RESOLUTION FORM

You may wish to speak with staff at the Opticians of Manitoba before lodging a formal complaint. To initiate a complaint against a member of the Opticians of Manitoba, please complete this form to the best of your ability and mail/fax it to the address above along with a brief outline of your concerns/complaint (see section D)

Name:		
Address:		
City:	Province:	
Postal Code:	Email:	
Phone:	Mobile:	Bus:
<i>If you are not the patient, please describe your relationship to the patient and provide details about the patient below (parent, guardian, spouse, child, relative, lawyer, friend)</i>		

SECTION A- NAME OF COMPLAINANT

SECTION B- NAME OF PATIENT (if different than above)

Patient's Name:		
Address:		
City:	Province:	
Postal Code:	Email:	
Phone:	Mobile:	Bus:
<i>If you are making a complaint on behalf of, or regarding a patient, consent from the patient or the patient's legal representative to release medical and/or confidential information will be requested.</i>		

SECTION C – MEMBER OF THE OPTICIANS OF MANITOBA

Optician	Contact Lens Fitter	Student
Member Name:		
Business Name:		
Business Address:		
City:		Province:
Postal Code:		Phone:

SECTION D – DETAILS OF THE COMPLAINT

On a separate sheet, please provide a concise letter to describe your complaint. Please remember to include the following information:

- Dates of Service
- Location of Service
- The reason(s) you are concerned about the member's quality of care or behavior
- A description of any efforts you have already made to resolve this matter
- Supporting documentation with explanations of how each document relates to your complaint.

SECTION E - HOW DID YOU HEAR ABOUT THE OPTICIANS OF MANITOBA?

Please check all that apply:

Another Health Professional (please specify e.g. optician, doctor, optometrist)

Online

From the Optician of whom the complaint is against

Through another organization (please specify e.g. Better Business Bureau)

Other (Please specify)

Thank you for bringing this to our attention.

Print your name

Signature

Date

Should you require more information about the Complaints Resolution process, please contact the Opticians of Manitoba or visit our website at <http://www.opticiansofmanitoba.ca>- How to File a Complaint
Phone 204.982-6060 or 1.800. 847-3155
Email: cellerbeck@opticians.ca

Please note that the Opticians of Manitoba regulates only Opticians and student opticians, not optical stores, dispensaries, corporations or their non-optician owners or managers. Please also note that the Opticians of Manitoba does not have the legal authority to deal with issues that are solely of a monetary nature, such as prices, warranty or refunds.

APPENDIX B

OPTICIANS OF MANITOBA COMPLAINTS RESOLUTION COMMITTEE

Terms of Reference

Mandate:

In keeping with the OOM bylaw, Council must appoint a Complaints Resolution Committee which is responsible for overseeing the investigation of all complaints, in accordance with the established process and, when the committee considers it appropriate, attempting to resolve complaints informally.

Specific Activities:

The complaints Resolution Committee will thoroughly research and review all complaints received by the Opticians of Manitoba either from a member of the public or from another Ophthalmic Dispenser, utilizing a process designed to ensure that the review is fair to both the patient and the Optician and that problems are appropriately identified and addressed.

Reporting Relationships:

The Committee reports directly to the Council of the Opticians of Manitoba

Membership:

The Complaints Resolution Committee consists of:

- a member of the Opticians of Manitoba Association who is appointed as chair;
- one or more other members of the Association;
- one or more public representatives, who must make up at least 1/3 of the committee's membership.

Meetings:

Meetings are held at the call of the chair.

Panels:

The Complaints Resolution Committee may sit in panels of three or more committee members.

Public representatives:

At least 1/3 of the members of a panel must be public representatives.

Selection of panel members:

When a complaint is referred to the Complaints Resolution Committee, the chair may select a panel from among the members of the committee to deal with it, and appoint a member of the panel as the panel's chair.

Quorum:

A quorum for a panel is three members, one of whom must be a public representative.

Decision of panel:

A decision or action of a panel is a decision or action of the Complaints Resolution Committee.

Evaluation:

The Complaints Resolution Committee shall establish a process for regular review and evaluation of its operations, and 7/8/2010 provide feedback to the Opticians of Manitoba Council on overall Complaints Resolution operations.

Review of Terms of Reference:

These terms of reference shall be reviewed annually by the Complaints Resolution Committee and the Council. Any proposed revisions must be approved by Council before being finalized and incorporated.

7/13/2010



APPENDIX C

OPTICIANS OF MANITOBA

RECORD OF A COMPLAINT
(to be completed by optician member)

DATE:
CUSTOMER NAME:
CUSTOMER ADDRESS:
CUSTOMER PHONE:
NATURE OF COMPLAINT:

OBSERVATION BY OPTICIAN:

OPTICAL STORE:
DISPENSER:
LICENSE#:
SIGNATURE:
CC. COMPLAINTS RESOLUTION COMMITTEE

7/14/2010



APPENDIX D

OPTICIANS OF MANITOBA

RECORD OF THE COMPLAINT RESOLUTION PROCESS

File Number:		Allegation:	
Name of Registrant:		Registration #	
Name & Address of Dispensary:			
Name & Address of Complainant:			
DATE	PDF #	DESCRIPTION	PAGE # S

**OPTICIANS OF MANITOBA
RECORD OF PHONE CALLS
COMPLAINT RESOLUTION PROCESS**

PHONE CALL NOTES

File Number:	Date:
Name of Caller	Reason for Contact:
Call Notes:	
Action:	



**APPENDIX F
OPTICIANS OF MANITOBA**

**RECORD OF MEETINGS
COMPLAINT RESOLUTION PROCESS**

PHONE CALL NOTES

File Number:	Date:
Name of Attendees:	Reason for Meeting:
Meeting Notes:	
Action:	

**APPENDIX G
OPTICIANS OF MANITOBA
INITIAL LETTER TO COMPLAINANT**

Date

Address

Dear

The Opticians of Manitoba are in receipt of your written complaint of (date). Your complaint will be thoroughly reviewed and we will respond to you within 30 days, and once this initial process has been completed.

Yours truly,

Name of Registrar,
For (name of Chair)
Chair,
Opticians of Manitoba
Complaints Resolution Committee

7/13/2010



APPENDIX H

OPTICIANS OF MANITOBA

INITIAL LETTER RE COMPLAINT TO OPTICIAN MEMBER

Date:

Address

Dear

A letter of complaint has been submitted to the Opticians of Manitoba (OOM) by..... with regards to For your information a copy of this complaint is enclosed.

Please submit a detailing of the transaction regarding this complaint using the enclosed form (**APPENDIX C**), as well as any other relevant information.

According to the OOM Complaints Resolution Process, you must reply to us in writing within ten (10) days of receipt of this letter. We also invite any comments you might have regarding this matter.

Yours truly,

Name of Registrar
For (Name of Chair)
Chair
Opticians of Manitoba Complaints Resolution Committee

7/13/2010



APPENDIX I

OPTICIANS OF MANITOBA

INITIAL LETTER OF REFERRAL FROM THE REGISTRAR TO THE COMPLAINTS RESOLUTION COMMITTEE

Date:

To: Chair
Complaints Resolution Committee

From: Registrar

Re: Complaint –(name of optician) – (date)

Attached you will find the following documents with respect to the above complaint:

- Complaint Resolution Form (**Appendix A**)/initial letter from the complainant
- Record of a Complaint (**Appendix C**)
- Record of the Complaint Resolution Process (**Appendix D**)
- Record of Phone Calls/Meetings (**Appendix E.F**)

Please advise within 21 days, of the course of action that the Complaints Investigation Committee plans to undertake.

7/13/2010



APPENDIX J
OPTICIANS OF MANITOBA
INQUIRY COMMITTEE
Terms of Reference

Purpose: In keeping with the OOM Bylaws, Council must appoint an inquiry committee that is to sit in panels and is responsible for holding hearings (**Appendix J - Conducting a Hearing**), on matters referred to it by the Complaints Investigation Committee and making disciplinary decisions about the conduct of investigated members (**Appendix K - Outcomes of a Hearing and Decisions of a Panel**).

Membership

The inquiry committee is to consist of:

- a member of the college who is appointed as chair;
- one or more other members of the college or former members of the college, one of whom is appointed as vice-chair; and
- one or more public representatives, who must make up at least 1/3 of the committee's membership.

Panel

When a matter is referred to the inquiry committee, the chair or vice-chair must select a panel from among the members of the inquiry committee to hold a hearing, and appoint a member of the panel as the chair.

Members of the panel

A panel is to consist of three or more committee members, at least 1/3 of whom must be public representatives.

Who cannot sit on panel?

A person who has taken part in the review or investigation of what is to be the subject matter of the hearing must not be selected for the panel.

If member unable to continue

If a member of a panel is unable to continue to sit after a hearing begins, the panel may complete the hearing if at least three members remain and one of them is a public representative.

Decision of panel

A decision or action of a panel is a decision or action of the inquiry committee, and a reference to the inquiry committee includes a panel of the committee.

7/13/2010



APPENDIX K

OPTICIANS OF MANITOBA

PROCEDURE FOR CONDUCTING A HEARING

Hearing

When a panel is selected, it must hold a hearing.

Date of hearing

The hearing must begin within 120 days after the complaint is referred to the Inquiry committee, unless the investigated member consents in writing to a later date.

Notifying complainant

The registrar must notify the complainant in writing if the hearing will not begin within the required 120 day time period.

Notice of hearing

At least 30 days before the hearing begins, the registrar must give written notice to the investigated member and the complainant stating the date, time and place of the hearing, and identifying in general terms the complaint or matter about which the hearing will be held.

Public notice of hearing

The registrar may issue a public notice of the hearing in any manner he or she considers appropriate, but the notice must not include the investigated member's name.

Procedure

Subject to any procedural rules established for the inquiry committee in the OOM by-laws², the inquiry committee may determine its own practice and procedure.

Rules of evidence do not apply

A panel is not bound by the rules of evidence that apply to judicial proceedings.

Right to appear and be represented

The college and the investigated member may appear and be represented by counsel at the hearing, and the panel may have counsel to assist it.

Adjournments

The chair of the panel may adjourn the hearing from time to time.

Hearing in the absence of the investigated member

If it has been proved that the investigated member has received notice of the hearing, the panel may:

- proceed with the hearing in the absence of the investigated member; and
- act or decide or report on the matter being heard in the same way as if the member were in attendance.

Witnesses

Any person who, in the panel's opinion, has knowledge of the subject matter of the hearing is a compellable witness in a proceeding before the panel.

Oral and affidavit evidence

Evidence may be given at a proceeding before a panel by oral testimony or affidavit or both, but an investigated member's registration or certificate of practice cannot be suspended or cancelled on affidavit evidence alone.

Oral evidence

The oral evidence of a witness at a hearing must be recorded and taken on oath, and the parties have the right to cross-examine witnesses and call evidence in defense and reply.

Oaths

The registrar and any member of the panel may administer oaths for the purpose of a hearing under this Part.

Notice to attend and produce records

The registrar may issue a notice requiring a witness to attend and give evidence at a hearing and to produce records. Such a notice may be issued at the request of the OOM or the investigated member.

Witness fees

Except for the investigated member, a witness who has been served with a notice to attend or produce records is entitled to be paid the same fees in the same way as a witness in an action in court.

Failure to attend or give evidence

Proceedings for civil contempt of court may be brought against a witness:

- who fails to attend at a hearing as required by a notice to attend;
- who fails to produce any records as required by a notice to produce them; or
- who refuses to be sworn or to affirm, or to answer any question he or she is directed to answer by the panel.

Evidence taken outside Manitoba

The registrar may apply to the court for an order for the examination of a witness outside Manitoba. The Queen's Bench Rules apply to the obtaining of such an order.

Prior notice of evidence

Evidence is admissible at a hearing only if the party intending to introduce it gives the other party, at least 14 days before the hearing:

- in the case of documentary evidence, an opportunity to inspect the document;
- in the case of expert testimony:
 - the name and qualifications of the expert,
 - a copy of any written report the expert has prepared about the matter, **AND**
 - if the expert did not prepare a written report, a written summary of the evidence the expert will present at the hearing; **AND**
- in the case of testimony of a witness who is not an expert, the name of the witness and an outline of his or her anticipated evidence.

Introducing evidence without proper notice

Even if the requirements above re Prior notice of evidence have not been met, the panel may allow evidence to be introduced if it is satisfied that doing so is necessary to ensure that the legitimate interests of a party will not be unduly prejudiced.

Evidence of other matters

The panel may receive evidence on, and hear, any other matter concerning the conduct of the investigated member that arises during its proceedings, but only after:

- declaring its intent to do so; **AND**
- giving the investigated member a reasonable opportunity to prepare a response.

Hearing open to public

A hearing must be open to the public unless the panel orders otherwise under this section.

Request for an order that a hearing be private or that a person be identified only by initials

The investigated member or the OOM may request the panel to make an order requiring that the:

- hearing or any part of it be held in private; or
- investigated member, complainant or any witness be identified only by initials.

When an order for a private hearing or the identification of a person by initials only may be made

The panel may make an order on the request of the investigated member or the college, or on the panel's own initiative, but only if the panel is satisfied that:

- matters involving public security may be disclosed;
- financial, personal or other matters may be disclosed that are of such a nature that the desirability of avoiding public disclosure of those matters outweighs the desirability of adhering to the principle that meetings be open to the public;
- a person involved in a civil or criminal proceeding may be prejudiced; or
- a person's safety may be jeopardized.

Reasons for the order to be available

The panel must ensure that an order made and the reasons for it are either given orally at the hearing or made available to the public in writing.

No publication other than initials

No person, whether or not a member of the news media, shall publish anything else that identifies or may identify a person who, by virtue of an order can only be identified by initials.

No publication of identifying information

No person, whether or not a member of the news media, shall publish anything that identifies, or may identify:

- the investigated member; **OR**
- the business name or location of the investigated member's practice;

unless and until a panel has made a finding about the investigated member under the OOM Bylaw 32.(4) clause (a),(b),(c).

Exception

Despite the above, the registrar may, upon receiving direction from the Chair of the Complaints Resolution Committee, if the committee or the Chair considers it necessary to protect the public from exposure to serious risk, give written notice of a suspension or imposition of conditions pending the outcome of the hearing proceedings to: a person who engages the member to provide Opticianry on a full-time or part-time basis including

- an employer,
 - a person who engages the member as a contractor,
 - a person who engages the member as a consultant, and
 - a person who engages the member as volunteer, if known to the OOM;
- a hospital, if the member is a member of the hospital's professional staff;
- a hospital or regional health authority that has granted privileges to the member;
- any minister who, or an organization specified in the regulations that, administers the payment of fees for the services that the member provides; and
- the external regulatory bodies in other provinces or territories.

7/13/2010



APPENDIX L
OPTICIANS OF MANITOBA
OUTCOMES OF A HEARING AND THE DECISIONS OF THE PANEL

At the conclusion of a hearing, the panel may decide that no further action is to be taken against the investigated member, or if, at the conclusion of a hearing, the panel finds that the investigated member:

- procured his/her name on the register by means of false or fraudulent representation or declaration;
- has contravened the Opticians Act or a regulation, by-law, standard of practice or practice direction or the code of ethics;
- has been convicted of an indictable offence of such a nature that it imputes unprofessional conduct to him/her
- has been guilty of infamous or unprofessional conduct rendering him/her incapable of practicing or unfit to practice ophthalmic dispensing,
- has permitted or allowed an unqualified person to practice under license,
- has been guilty of professional incompetence, negligence or misconduct to a degree that in the opinion of council, disqualifies the member from practicing ophthalmic dispensing or otherwise breached the OOM bylaws
- a member has allowed his/her name to stand as a license of record for a business or practice of ophthalmic dispensing in Manitoba without ensuring that the business or practice is being supervised by a licensed ophthalmic dispenser on a full time basis

the panel may make an order against the investigated member.

The Panel deems there has been professional misconduct

A member is deemed to have been found guilty of professional misconduct by a panel if the member:

- is convicted of an indictable offence; or
- has had his or her registration, certificate of practice, license or other authorization to practice Opticianry suspended, restricted or revoked by an external regulatory body as a result of a disciplinary proceeding.

A Member may make a submission before an order is made

Before making an order against a member deemed guilty of professional misconduct because the member:

- is convicted of an indictable offence; **OR**
- has had his or her registration, certificate of practice, license or other authorization to practice Opticianry suspended, restricted or revoked by an external regulatory body as a result of a disciplinary proceeding,

the panel must give the member an opportunity to make submissions to it about any aspect of the matter.

Form of submissions

A submission may be written or oral and may be made by counsel acting on behalf of the member.

Orders of panel

If the panel makes a finding that the member:

- procured his/her name on the register by means of false or fraudulent representation or declaration;
- has contravened the Opticians Act or a regulation, by-law, standard of practice or practice direction or the code of ethics;

- has been convicted of an indictable offence of such a nature that it imputes unprofessional conduct to him/her
- has been guilty of infamous or unprofessional conduct rendering him/her incapable of practicing or unfit to practice ophthalmic dispensing,
- has permitted or allowed an unqualified person to practice under license,
- has been guilty of professional incompetence, negligence or misconduct to a degree that in the opinion of council, disqualifies the member from practicing ophthalmic dispensing or otherwise breached the OOM bylaws
- a member has allowed his/her name to stand as a license of record for a business or practice of ophthalmic dispensing in Manitoba without ensuring that the business or practice is being supervised by a licensed ophthalmic dispenser on a full time basis

deems a member has been found guilty of professional misconduct because the member:

- is convicted of an indictable offence; **OR**
- has had his or her registration, certificate of practice, license or other authorization to practice Opticianry suspended, restricted or revoked by an external regulatory body as a result of a disciplinary proceeding,

it may make an order doing one or more of the following:

- reprimanding the investigated member;
- suspending the investigated member's registration or certificate of practice for a stated period;
- suspending or restricting the investigated member's registration or certificate of practice until he or she:
 - has completed a specified course of studies,
 - has completed supervised practical experience under a restricted certificate of practice issued for that purpose, or
 - has complied with the requirements of both of the above, to the satisfaction of a person or committee specified by the panel;
- suspending the investigated member's registration or certificate of practice until he or she satisfies a person or committee specified by the panel that the ailment, emotional disturbance or addiction no longer impairs his or her ability to practice Opticianry;
- accepting, in place of a suspension under clause (a), (b) or (c), the investigated member's undertaking to limit his or her practice;
- imposing conditions on the investigated member's right to practice Opticianry, including conditions that he or she:
 - limit his or her practice,
 - practice under supervision,
 - permit periodic inspections or audits of his or her practice, including inspections or audits of practice records,
 - report on specified matters to a person or committee specified by the panel,
 - not engage in sole practice;
- requiring the investigated member to take counselling or receive treatment;

- directing the investigated member to repay money that was paid to him or her where payment was, in the panel's opinion, unjustified for any reason;
- cancelling the investigated member's registration or certificate of practice.

Previous censures and orders

To assist it in making an order, the panel may consider any censure or order previously issued to the investigated member and the circumstances under which it was issued.

Ancillary orders

The panel may make any ancillary order that is appropriate or required in connection with an order made because the member:

- procured his/her name on the register by means of false or fraudulent representation or declaration;
- has contravened the Opticians Act or a regulation, by-law, standard of practice or practice direction or the code of ethics;
- has been convicted of an indictable offence of such a nature that it imputes unprofessional conduct to him/her
- has been guilty of infamous or unprofessional conduct rendering him/her incapable of practicing or unfit to practice ophthalmic dispensing,
- has permitted or allowed an unqualified person to practice under license,
- has been guilty of professional incompetence, negligence or misconduct to a degree that in the opinion of council, disqualifies the member from practicing ophthalmic dispensing or otherwise breached the OOM bylaws
- a member has allowed his/her name to stand as a license of record for a business or practice of ophthalmic dispensing in Manitoba without ensuring that the business or practice is being supervised by a licensed ophthalmic dispenser on a full time basis

was deemed to have been found guilty of professional misconduct because the member:

- is convicted of an indictable offence; **OR**
- has had his or her registration, certificate of practice, license or other authorization to practice Opticianry suspended, restricted or revoked by an external regulatory body as a result of a disciplinary proceeding, **OR**

may make any other order that it considers appropriate in the circumstances, including an order that:

- a further or new investigation be held into any matter; **OR**
- a panel be convened to hear any matter without an investigation.

Suspension or cancellation of registration or certificate of practice

If an investigated member's registration or certificate of practice is suspended or cancelled by an order, the investigated member must not practice Opticianry or do anything else authorized by the registration or certificate of practice.

Costs related to an undertaking or conditions

If the panel accepts an undertaking from the investigated member to limit his or her practice or imposes conditions on the investigated member's right to practice, the panel may order the member to pay all or part of the costs incurred by the college in monitoring compliance with the undertaking or conditions.

Contravention of an order by the member

If the council is satisfied that an investigated member has contravened an order, it may cancel or suspend the investigated member's registration or certificate of practice without a further hearing.

Costs and fines

In addition to or instead of dealing with the investigated member's conduct through an order, the panel may order the member to pay the following costs and fines to the college, within the time period set in the order:

- all or part of the costs of the investigation, hearing and appeal;
- a fine not exceeding;
 - the amount that is set out in the table of professional misconduct fines in Schedule 1 (attached) that is specified for the OOM, for each finding of professional misconduct, **OR**
 - the aggregate amount set out in Schedule 2 for all of the findings arising out of the hearing; **OR**
 - both the costs and the fine.

Nature of costs

The costs may include, but are not limited to:

- all disbursements incurred by the OOM, including:
 - fees and reasonable expenses for experts, investigators and auditors, whose reports or attendance were reasonably necessary for the investigation or hearing,
 - fees, travel costs and reasonable expenses of witnesses required to appear at the hearing,
- fees for retaining a reporter and preparing transcripts of the proceedings, **AND**
- costs for serving documents, long distance telephone and facsimile charges, courier delivery charges and similar miscellaneous expenses;
- payment of remuneration and reasonable expenses to members of the panel or the Complaints Resolution Committee; **AND**
- costs incurred by the college in providing counsel for the college and the panel, whether or not counsel is employed by the OOM.

Failure to pay costs and fines by time ordered

If an investigated member fails to pay:

- a fine or costs ordered by the panel, **OR**
- costs related to an undertaking from the investigated member to limit his/her practice or conditions imposed on the investigated member's right to practice, which results in costs to the college in monitoring compliance with the undertaking or conditions,

within the required time, the registrar may suspend the member's registration or certificate of practice, or both, until payment is made.

Filing of order

The OOM may file an order to pay a fine and/or costs in the court, and the order may be enforced in the same manner as a judgment of the court.

DECISIONS OF THE PANEL

Written decision

Within 90 days after a hearing is concluded, the panel must make a written decision on the matter, consisting of its findings, any order made by it and the reasons for the decision.

Decision forwarded to registrar

The panel must promptly forward the decision, the record of the proceedings and all exhibits and documents to the registrar.

Decision given to investigated member and complainant

Upon receiving the decision, the registrar must give a copy of it to the investigated member and to the complainant.

Transcripts

The investigated member may examine the record of proceedings before the panel and is entitled to receive, on payment of the cost of providing it, a transcript of the oral evidence given before the panel.

Decision available to the public

Subject to the following; i.e. for the purpose of protecting the privacy of the complainant or any witnesses, or both, the college may edit the decision or order — not including an edit that deletes the investigated member's name — before making it available to the public. Without limitation, edits may include using pseudonyms to describe the complainant or witnesses and deleting geographical references but, the OOM must make any finding that the member:

- procured his/her name on the register by means of false or fraudulent representation or declaration;
- has contravened the Opticians Act or a regulation, by-law, standard of practice or practice direction or the code of ethics;
- has been convicted of an indictable offence of such a nature that it imputes unprofessional conduct to him/her
- has been guilty of infamous or unprofessional conduct rendering him/her incapable of practicing or unfit to practice ophthalmic dispensing,
- has permitted or allowed an unqualified person to practice under license,
- has been guilty of professional incompetence, negligence or misconduct to a degree that in the opinion of council, disqualifies the member from practicing ophthalmic dispensing or otherwise breached the OOM bylaws
- a member has allowed his/her name to stand as a license of record for a business or practice of ophthalmic dispensing in Manitoba without ensuring that the business or practice is being supervised by a licensed ophthalmic dispenser on a full time basis

and any order it has made including:

- reprimanding the investigated member;
- suspending the investigated member's registration or certificate of practice for a stated period;
- suspending or restricting the investigated member's registration or certificate of practice until he or she:
 - has completed a specified course of studies,
 - has completed supervised practical experience under a restricted certificate of practice issued for that purpose, **OR**
 - has complied with the requirements of both of the above,

to the satisfaction of a person or committee specified by the panel;

- suspending the investigated member's registration or certificate of practice until he or she satisfies a person or committee specified by the panel that the ailment, emotional disturbance or addiction no longer impairs his or her ability to practice Opticianry;
- accepting, in place of a suspension under clause (a), (b) or (c), the investigated member's undertaking to limit his or her practice;
- imposing conditions on the investigated member's right to practice Opticianry, including conditions that he or she:
 - limit his or her practice,
 - practice under supervision,
 - permit periodic inspections or audits of his or her practice, including inspections or audits of practice records,
 - report on specified matters to a person or committee specified by the panel,
 - not engage in sole practice;
- requiring the investigated member to take counselling or receive treatment;
- directing the investigated member to repay money that was paid to him or her where payment was, in the panel's opinion, unjustified for any reason;
- cancelling the investigated member's registration or certificate of practice,

including the name of the investigated member, available to the public.

Appeal to Court of Appeal

The investigated member or the OOM may appeal the following decisions of a panel to the Court of Appeal a decision that no further action is to be taken with respect to any findings under the OOM Bylaw 32. (4) clause (a), (b), (c). **OR**

an order made:

- reprimanding the investigated member;
- suspending the investigated member's registration or certificate of practice for a stated period;
- suspending or restricting the investigated member's registration or certificate of practice until he or she:
 - has completed a specified course of studies,
 - has completed supervised practical experience under a restricted certificate of practice issued for that purpose, or
 - has complied with the requirements of both the above,

to the satisfaction of a person or committee specified by the panel;

- suspending the investigated member's registration or certificate of practice until he or she satisfies a person or committee specified by the panel that the ailment, emotional disturbance or addiction no longer impairs his or her ability to practice Opticianry;
- accepting, in place of a suspension under clause (a), (b) or (c), the investigated member's undertaking to limit his or her practice;
- imposing conditions on the investigated member's right to practice Opticianry, including conditions that he or she:
 - limit his or her practice,

- practice under supervision,
 - permit periodic inspections or audits of his or her practice, including inspections or audits of practice records,
 - report on specified matters to a person or committee specified by the panel,
 - not engage in sole practice;
 - requiring the investigated member to take counselling or receive treatment;
 - directing the investigated member to repay money that was paid to him or her where payment was, in the panel's opinion, unjustified for any reason;
 - cancelling the investigated member's registration or certificate of practice,
- OR**

an order made requiring the member to pay the following costs and fines to the OOM, within the time period set in the order,

- all or part of the costs of the investigation, hearing and appeal;
- a fine not exceeding;
 - the amount in the table of professional misconduct fines in Schedule 1 (attached) that is specified for the OOM, by regulation, for each finding of professional misconduct, **OR**
 - the aggregate amount for all of the findings arising out of the hearing in Schedule 1(attached); **OR**
 - both costs above.

How to appeal

An appeal must be commenced by filing a notice of appeal within 30 days after the decision of the panel is given to the investigated member. If the investigated member appeals the decision, he or she must promptly give a copy of the notice to the registrar.

Appeal on the record

An appeal must be based on the record of the proceedings before the panel and the decision of the panel, including the reasons for the decision.

Sealing part of the record

If part of the hearing was held in private, the OOM must seal the part of the record that relates to the private hearing.

Review of sealed record by Court

The part of the record that is sealed by the OOM may be reviewed by the Court of Appeal, which may direct that it remain sealed or that it be unsealed in whole or in part.

Powers of Court on appeal

Upon hearing the appeal, the Court of Appeal may

- dismiss the appeal;
- make any finding or order that in its opinion ought to have been made; or
- refer the matter back to a panel for further consideration in accordance with any direction of the Court.

Stay pending appeal

The decision and any order of the panel remains in effect pending an appeal unless the Court of Appeal, on application, stays them pending the appeal.

Reinstatement of an investigated member who is disciplined.

Upon application by a person whose registration or certificate of practice has been cancelled, the council may:

- direct the registrar to reinstate the person's registration or certificate of practice, subject to any conditions the council may impose; and
- order the person to pay any costs arising from those conditions.

Notice to employers and others that a member has been disciplined

If an investigated member's registration or certificate of practice is suspended or cancelled or any conditions are imposed on a member's practice after a finding has been made under Bylaw 32.(4) clause (a), (b) ,(c), the registrar must provide that information to:

a person who engages the member to provide Opticianry on a full-time or part-time basis including:

- an employer:
 - a person who engages the member as a contractor,
 - a person who engages the member as a consultant, and
 - a person who engages the member as volunteer, if known to the college;
- a hospital, if the member is a member of the hospital's professional staff;
- a hospital or regional health authority that has granted privileges to the member;
- any minister who, or an organization specified in the regulations that, administers the payment of fees for the services that the member provides; and
- the external regulatory bodies in other provinces or territories.



OPTICIANS OF MANITOBA

SCHEDULE 1

Professional Misconduct Fines

The following maximum fines apply to proceedings under Professional Conduct

Maximum fine for each finding of professional misconduct	\$5,000
Maximum fine (aggregate amount) for all findings of professional misconduct arising out of a hearing	\$25,000