



### ***Backgrounder & Timeline***

## **Health concerns with the use of sight-testing machines without an eye exam**

**1997** – “Sight testing” is the euphemistic term for refraction, coined by Dr. Alan Dyer, a Calgary ophthalmologist and inventor of the Eyelogic system, which is first marketed in Canada in 1997. It consists of a software system that links data from:

- an automated lensometer reading of a client’s glasses
- an automated refraction
- a limited, subjective refraction by the optician, who is led by a script in the computer software.

It is marketed for use by opticians who fax the resultant prescription with accompanying data to an eye doctor who signs the prescription, ostensibly authorizing it, then faxes it back to the optical store for a fee.

**1998** – Clearbrook Optical in Abbotsford begins using the Eyelogic system to generate prescriptions for glasses to be bought in their store. They use a local ophthalmologist to sign the prescriptions by fax machine. The B.C. Association of Optometrists seeks an injunction to stop this activity. The court concludes that the Association does not have standing to obtain an injunction. The Court of Appeal upholds that decision in 2000.

**May 2000 and July 2000** – The College of Opticians of BC informs its members that current regulations under the provincial government’s *Health Professions Act* do not allow its members to use auto refractors and related systems, such as the Eyelogic system.

**2000** – The College of Opticians takes legal action against Clearbrook Optical for breaching its regulations, which specify refracting as being outside the scope of practice of opticians. The B.C. Association of Optometrists applies to intervene to ensure that information regarding refractions, eye exams and risk to the public is before the court. The application is denied and the action proceeds without the participation of the College of Physicians & Surgeons of British Columbia or representation from optometry.

**March 2001** – Justice Wally Oppal ruled that, in his opinion on the evidence before him, opticians “sight testing” using the Eyelogic system are not conducting eye examinations or refractions but that the operator of the system is gathering data and the physician is responsible for the refraction and the prescription. The judge, however, in his ruling states that, if it is in the best interests of the public that opticians not use this technology, then the College of Opticians has both a mandate and an obligation to seek legislative change so as to clearly prohibit its use by opticians. This ruling is made prior to the College of Physicians & Surgeons of British Columbia policy determination in July 2001.

**April 2001** – Minister of Health Corky Evans calls a meeting inviting the professional regulatory bodies and associations representing physicians, optometrists and opticians to discuss the use of sight-testing equipment by opticians and its regulation. Provincial election follows and there is a change in government.



**August 2001** – The College of Opticians files an appeal of the court ruling but later withdraws it as pressure mounts from sight-testing opticians within the college. Active campaigning among opticians results in the election of directors who will promote sight testing.

**July 10, 2001** – The College of Physicians & Surgeons of BC rules on the propriety of their members prescribing lenses for patients whose refraction has been measure by an automatic device at a remote location, that prescribing physician having no other interaction with the patient and specifically not providing the remainder of a complete ocular examination. They conclude that:

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- Refraction is a reserved medical act (to ophthalmologists, other physicians so certified by the College of Physicians and Surgeons of British Columbia, and optometrists.)
- Provision of a prescription for a refraction by an expert in that field, geographically remote from the site where the data is gathered, is unacceptable. This practice represents an inappropriate fragmentation of the ocular examination, since it may result in the failure to detect significant ocular pathology, to the potential detriment of the patient.
- Remote prescription for refraction would be acceptable only with the certification from an ophthalmologist, from another physician, or from an optometrist, of the contemporaneous ocular examination.

**November 2001** – Despite the College of Physicians & Surgeons policy against remote refraction, the College of Opticians issues to its members *Guidelines for the Use of Autorefractors*, which requires the refractive prescription be authorized by a physician. Since they cannot get B.C. ophthalmologists to authorize their prescriptions, Eyelogic Corporation provides an Alberta ophthalmologist, Dr. Kirk, to sign them by fax. Filling a prescription that is signed by an out-of-province doctor, however, is contrary to their regulations. Complaints are filed to the College of Opticians. The College begins to reprimand some of its members for transgressing this rule.

**November 2001** – B.C.'s Minister of Health Services announces that "routine" eye exams for patients 19 to 64 years old will no longer be covered under the Medical Services Plan. Seizing upon this marketing opportunity, Eyelogic Corporation increases its promotion and sales to opticians eager to capitalize on this development to promote their "free sight tests with purchase of eye glasses." Over the next two years, there is a large increase in the number of optical stores doing refractions (approximately 100 at present), with or without the approval of a remotely located physician. Only one or two ophthalmologists participate in signing in light of the College of Physicians & Surgeons of BC policy.

**June 2002** - The Ministry of Health Planning concludes that the current use of sight-testing equipment by unauthorized individuals poses a danger to the public in B.C. The government therefore proposes changes to the opticians' regulations to insure that:

- “1. Prior to the use of an autorefractor, a patient must have had a complete ocular examination by a prescriber and the prescriber agrees that it would be appropriate that the test be done.
2. The results of an auto-refraction must be reviewed and approved by a prescriber who has a prescriber/patient relationship with the patient.”

\* prescriber is defined as an ophthalmologist or optometrist



In the cover letter to the draft regulations provided by the Ministry, Alan Moyes, Executive Director, Legislation and Professional Regulation states, “I believe there is no dispute that the use of autorefractors by opticians cannot occur, under any circumstances, without the involvement of an ophthalmologist or an optometrist. This is critical because members of the latter two professional groups are the persons trained to examine the ocular health of a patient and to write a prescription for a refraction where necessary.”

The government posts this proposal requesting feedback by end of August 2002.

**August 2002** – The B.C. Association of Optometrists provides a submission to the government generally supporting the government’s position against stand-alone autorefractions and the need for the regulatory bodies representing physicians, optometrists and opticians to agree on the guidelines for use.

The sight-testing opticians actively lobby the government that they need to do sight testing to increase their business profitability. They dissuade the government from enforcing the proposed regulations. Directors of the College of Opticians are themselves actively refracting in their stores.

**May 2003** – The Ombudsman, in his May 2003 Special Report, No.24 to the Legislature: *Acting in the Public Interest? Self-Governance in the Health Professions* singles out the College of Opticians in comments regarding the role of self-regulating professions and professions who do not appear to have fully accepted or understood what it means to act in the public interest and to elections fought on the basis that the colleges gave too much weight to the public interest and too little to the interests of the members.

**September 2003** – The B.C. Association of Optometrists makes a further submission to the Minister of Health Planning on the need for regulations restricting sight testing by opticians.

**January 2004** – The Minister of Health Planning, Sindi Hawkins, becomes ill with leukemia. By February her portfolio is transferred to the Ministry of Health Services under Minister Colin Hansen.

**March 30, 2004** – The government issues a news release stating that they are going to allow opticians to do refractions independent of an eye doctor’s involvement. The government quotes an individual doctor’s view that this is a safe practice. That person is a semi-retired ophthalmologist with no leadership in the medical profession. The leadership in the medical profession has unequivocally concluded that this is not a safe practice.

**April 6, 2004** – The government posts for a 90-day review period proposed regulation changes for opticians to allow them to do “autorefractions” independent from an eye doctor performing an eye examination. That same day, the B.C. Association of Optometrists meets with Minister Hansen to voice its shock at this complete turnaround in policymaking from Minister Hawkins’ 2002 proposal. Minister Hansen claims his staff has done research that proves it is safe for opticians to do refractions in isolation. Two weeks later, the B.C. Association of Optometrists is given a copy of this “research” by Minister Hansen’s staff. It consists of one article written by the president of Eyelogic Corporation, Dr. Dyer, and his partner Dr. Kirk, in 2000. The article does not look at the safety of allowing opticians to refract independently; rather, it looks at the accuracy of the glasses prescription resulting from the Eyelogic system.



The B.C. Association of Optometrists urges the government to reject this radical new policy that offers little benefit yet significant potential risk to the eyesight and general health of British Columbians. In an optometric or medical setting, the optical prescription is handed to the patient only when the evaluation for serious health problems such as cataracts, glaucoma, detached retinas, and corneal disease has been completed. It is, therefore, an end-product not an entity in itself. Sight-testing equipment used by opticians cannot detect any health problems. Opticians have no university training in medical conditions or ocular health. Because many serious eye diseases have no symptoms, a refraction, as a stand-alone procedure, is a threat to the level of eye care enjoyed for decades by British Columbians.

**April 19, 2004** – Letter from the College of Physicians and Surgeons to the Ministry of Health Services and Minister Colin Hansen responds to proposed changes to the Opticians regulation stating it "...would introduce a significant element of risk to patient, so that the Minister may wish to reconsider enactment." The College "...considers that autorefracton, without concurrent assessment of other aspects of ocular health by an eye doctor (ophthalmologist, refracting physician or optometrist) adds significant risk to the ocular health of British Columbians and, therefore, represents sub-standard care."

**April 30, 2004** – Letter from the American Optometric Association to Minister of Health Services, Colin Hansen, states "...the eye health, vision, and general health of all patients residing in North America could be seriously affected by such a dramatic and ultimately dangerous shift in public health policy in British Columbia."

**May – June, 2004** – BCAA launches a media campaign to alert the public to the grave dangers inherent in the proposed opticians' legislation. Many members of the public and allied health professions write or phone their MLA's, Minister Hansen as well as Premier Campbell, to express their opposition to the proposed legislation.

**June 29, 2004** – Minister Hansen meets with the Canadian Association President and several optometrists in his constituency to hear their concerns over the proposal.

**July 13, 2004** – Minister Hansen sends a letter to the associations and regulatory bodies for Optometry, Ophthalmology and Opticians, advising them that representatives from each group will be invited to participate in a structured forum to review the proposed sight testing regulations for opticians. We are hopeful that the Minister has finally responded to our request for a more open and thorough analysis of this proposal. We are being informed that no action on the proposed optician regulations will occur before the government facilitated meeting with the three professions takes place.

**August 12, 2004** – Representatives from the three groups come to a meeting facilitated by Robin Junger who is contracted by the Ministry. Unfortunately, the Assistant Deputy Minister, representing Minister Hansen, begins the meeting by informing the participants that they will not be allowed to discuss the fundamental merits of the proposal. He tells them that they are only allowed to set conditions thus filling in the blanks left in the draft. The representatives for Medicine, Ophthalmology and Optometry protest that they were under the impression that an open discussion of the proposal was to be allowed. Hearing that this was not the case, they stated that they could not participate as they were ethically opposed to the draft regulations as they represented substandard health care. The meeting is adjourned after a review of the proposal by the College of Opticians is permitted.



**Fall 2004** – No action on the proposed regulations for opticians is taken. Inquiries to the ministry indicate that the government is studying the submissions made to date.

**November 2, 2004** – BC Medical Association writes a letter to Minister Hansen expressing opposition to the proposal to allow opticians to independently sight test.

**December 13, 2004** – At the Minister's request, the BCAO President, Vice President and CEO attend a meeting with Minister Hansen. He begins the meeting by stating that the draft regulations for opticians had evolved prior to him inheriting the file and that, in hindsight, he might have done things differently. He states that he wants to hear whether the BCAO thinks there is anyway in which refraction by opticians could be implemented safely. The BCAO then outlines a delegation model that would keep refraction a medical/optometric act, to be done under delegation by an ophthalmologist or optometrist thus ensuring continuity of care for the patient with integration of the data into the file by the eye doctor who had an established doctor patient relationship. This eye doctor would be responsible for ensuring that an ocular health assessment had taken place and for interpreting the refractive data to derive the final spectacle prescription.

**December 14, 2004** – Finance Minister Gary Collins resigns to return to private life. Hansen moves into the Finance portfolio. Shirley Bond is appointed as the new Minister of Health. BCAO, in their letter of congratulation, requests a meeting at her earliest convenience.

**February 3, 2005** – BCAO provides written submission to Minister Shirley Bond in response to the ministry's proposal and the FOI materials we received in response to our FOI request.

Draft regulations were never approved by cabinet.

**July 24, 2006** – The College of Opticians of British Columbia deposits bylaw amendments with the Ministry of Health. Bylaw amendments cover automated refraction by opticians including requirements for certification. The Standards of Practice also include reference to automated refraction and the forms that must be used by registrants. Automated refraction is to be performed under the authority of a prescriber (physician or optometrist). Some opticians perform 'sight testing' although the involvement of a prescriber is questionable. The lack of legal adherence has been an ongoing concern.

BCAO and Board of Examiners in Optometry raised concerns with the Ministry of Health to oppose the amendments to the bylaws and the standards of practice by deposit only without consultation.

**Fall 2006** – Meetings were held with the BCAO, Board of Examiners in Optometry and the Dispensing Opticians Association of BC to discuss models for sight testing. The College of Opticians declined to participate. The Board of Examiners provided a report to the Minister of Health George Abbott.

**March 2007** – BCAO provided a report to the Deputy Minister of Health at a meeting held in March 2007.

It was determined that any further discussion/resolution to this issue must include both regulatory bodies. No further meetings were held.



**April 2009** – The government repeals the *Optometry Act*, and moves the profession under the *Health Professions Act*, creating the College of Optometrists of BC as the regulatory body, protecting the public interest. Under the HPA, the College now has the power to bring legal action against non-optometrists who may be performing restricted acts, such as refractions.

**March 19, 2010** – The government issues a news release announcing “B.C. MODERNIZES REGULATIONS FOR SALE OF EYEWEAR” with major changes to regulations for optometrists and opticians under the Health Professions Act – changes that for the most part, significantly and adversely impact the practice of optometry in British Columbia and deregulates the sale of contact lenses and prescription eyeglasses.

The government provides a six-week notice that effective May 1, 2010, changes will be made to the regulations for opticians and optometrists and posts the proposed amendments to the regulations.