



Ontario Association of Optometrists
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**SUBMISSION TO
The Health Professions Regulatory
Advisory Council**

regarding

**INTERPROFESSIONAL COLLABORATION
IN THE EYE CARE SECTOR**

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by

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Ontario Association of Optometrists Responses to HPRAC Questionnaire on Eye Care Sector Issues

The Ontario Association of Optometrists (OAO) is pleased to respond to the HPRAC Questionnaire on Eye Care Sector Issues. The answers to the questions are grouped together under common themes ending with a summary of comments on the key issues.

Key issues facing the eye care sector Questions 1, 2

Ontarians are fortunate to enjoy timely access to high quality and affordable eye care from physicians, optometrists and opticians. OAO is concerned by recent developments in the eye care field that place the health and vision of the public at risk.

Issue	Description	Resolution
1. Outdated optometric Conflict of Interest regulations restricting interprofessional collaboration	Current conflict of interest regulations prevent optometrists and opticians from effectively working together	Discussed below in the answers to the remaining questions
2. Unauthorized sight testing, prescribing and dispensing of ophthalmic devices	The case of Bruce Bergez and Great Glasses is one example of illegally prescribing and dispensing.	The Ministry of Health and Long-Term Care (MOHLTC) should proactively prosecute unregulated individuals performing any controlled acts within the RHPA
3. Illegal Internet dispensing	Online retail companies dispensing spectacles and contact lenses without patient contact or making any significant efforts to obtain or verify prescriptions	Same as issue 2. Regulations become meaningless unless there are appropriate prosecutory mechanisms in place
4. Threat of substandard care from inadequately trained practitioners entering practice through inter-provincial trade agreements	Although educational and training requirements for optometrists are analogous between the University of Waterloo and the University of Montreal, there is no such equivalency for training of opticians from province to province. In Ontario, opticians train for 2 years before getting their College diploma, while the less rigorous programs in British Columbia graduate opticians within 6 months	Ensure the Colleges have taken appropriate measures required to bring out of province professionals to the same level of standards required by their Ontario counterparts

**Regulation of Business Practices and Conflict of Interest:
Questions 3, 4, 5, 6, 7**

With regards to defining and regulating appropriate business practice and professional association, the role of the health Colleges should be to put only those restrictions necessary to assure public protection. These restrictions should allow for maximum collaboration between professionals, the development of modernized business models while still allowing for professional autonomy and independent and uninfluenced clinical judgment. The public is best served by an eye care system that assures that they will receive the highest level of professional care while maintaining freedom of choice.

Business Practices

The conflict of interest and professional misconduct regulations for optometrists are more than 35 years old and need to be modernized. We were encouraged by the changes recommended and approved at the College of Optometrists' Council meeting on June 4, 2009 to the previously circulated draft which will permit some forms of advertising and allow optometrists to change their fee structure in the area of optical products. These amendments will serve the public interest by allowing patients to more readily understand the services and products offered by an optometrist and the charges for these services, by allowing them to compare them with those of other providers. It is our hope that HPRAC will endorse the following changes made by Council.

The changes approved by Council include:

- *delete paragraph 1 (1) 25 vii of the proposed Professional Misconduct Regulation prohibiting members from advertising using brand names of optometric drugs, products or equipment*
- *remove every reference to "dispensing fee" from regulation and change the language of the regulation such that members may choose either a fee-for-service model or a retail mark-up model when dispensing subnormal vision devices, contact lenses or eyeglasses.*

Association

Under section 95 (1) (i) of *the Health Professions Procedural Code (Code)*, which is schedule 2 of the RHPA, health regulatory college councils have the authority to make regulations that prescribe what constitutes a conflict of interest and regulate or prohibit the practice of the profession where there is a conflict of interest.

The regulation of business practices either through a health College or through other regulation is the best means to protect the public from inappropriate associations between health professionals and between health professionals and non-professionals.

Inappropriate associations occur when a situation is created that could pressure a health care provider to place the interests of a third party above the interests of the

patient. Optometrists and other health care providers enjoy a special relationship of trust between themselves and their patients where the rule of caveat emptor does not apply.

While many business associations are acceptable, an employer/employee relationship introduces a third party into the fiduciary relationship between the optometrist and the patient and has the potential to influence the care and services provided to the patient. This influence, often invisible to the patient, can extend to include pressure to provide unnecessary services and product recommendations; compromise the type of care delivered and restricts timely access to care. Further, as an employee, the optometrist has a contractual obligation to the employer and the patient's interests become secondary. This hierarchy of duty is acknowledged in employment law. By definition, an employment relationship means that an employer maintains the right to direct and control when and how work is to be performed.

Generally, OAO supports the intent of the proposed draft regulations on business practices and conflict of interest submitted by the College of Optometrists of Ontario (COO) to the MOHLTC for approval. The proposed regulations are consistent with guidelines developed by the Ministry of Health and Long-Term Care. Principle # 4 of the guidelines relates to association and states:

In addition to a requirement for consultation with other Colleges, the guidelines state: *In determining the specific types of associations that may be prohibited, Colleges should consider relationships that have the potential to:*

- *impair the member's professional judgment,*
- *increase the risk of patients being exploited or harmed, or*
- *Permit and/or promote undue influence over patients.*

COO has clearly identified in the proposed regulations, the principles of association for optometrists that are consistent with the above guideline. Optometrists must avoid arrangements where control, either real or implied, can be exerted by a third party over practice situations including:

- the professional services provided,
- who the optometrist may accept as a patient,
- the ability to provide a patient with a copy of their prescription,
- the establishment of fees for optometry services, and
- the maintenance and custodianship of patient records.

OAO favours the concept that there should be no outright prohibition on associations between optometrists and either regulated health professionals or non-professional corporations. While the proposed regulations permit free association between optometrists, opticians and corporations, some specific employment relationships are prohibited.

Additionally, the cultures that exist within the professions of optometry and opticianry are not conducive to joint ethical codes. Optometry within Ontario follows an ethical code based on the medical model established by the American Medical Association (AMA). Current culture within opticianry, as evident in regulations governing the profession across multiple jurisdictions, suggests that the profession is not yet prepared to adopt a code of ethics based on the medical model which holds patient need as the utmost responsibility of the practitioner. In fact, many jurisdictions do not view persons visiting optical outlets as patients; they are referred to as clients (i.e. in British Columbia and Tennessee regulations), customers (i.e. in Arizona and California regulations) or as a customer/patient (i.e. Manitoba).

The model of “independent contractor” proposed by COO is an appropriate method to permit free association and collaboration between optometrists and others yet ensure that optometrists are not pressured to place the interests of an employer above the interests of the patient. While new to optometry, the concept of “independent contractor” has precedence in the regulation of dentists in Ontario.

The AMA also recognizes in their *The Corporate Practice of Medicine Doctrine*, that; only licensed professionals deliver medical care and that lay persons and entities not influence treatment decisions.

OAO has attached a recent legal opinion from a health law specialist that supports the position of OAO on professional association. The opinion confirms that “the Proposed Regulation as drafted adequately protects the public by preventing situations in which optometrists will have to choose between the duty owed to their patients and profession and the duty owed to their employers.” Further, the opinion concluded that if optometrists were employed by unregulated individuals or entities or by opticians, they may not be completely free to exercise their professional judgment or discharge their professional obligations without interference or influence. (Appendix A)

Optometrists must continue to have complete and uncompromised autonomy over their practice, including the control of services, fees and records. Without this autonomy, optometrists will encounter pressure by the employer to modify their practice to satisfy the interests of the employer rather than the interests of the patient.

Under present conflict of interest regulations, optometrists are prohibited from practicing within an optical retail store or associating with an optician. OAO agrees that these prohibitions have created obstacles to collaboration between optometrists and opticians and would like to see them removed.

OAO is confident that the changes to conflict of interest regulations, proposed by COO and confirmed in their June 2009 Council meeting, will permit opticians and optometrists freedom of association and will allow multidisciplinary arrangements between optometrists, opticians and optical corporations. A prohibition on the direct

employment of optometrists should in no way impede these arrangements. No reasonable position has been advanced that demonstrates that opticians and optometrists cannot participate in collaborative business arrangements, professional teams and within corporate stores under the independent contractor concept.

Furthermore, “common” regulations and ethical considerations between opticians and optometrists are not necessary to improve collaboration. Optometry and opticianry are unique professions with different training, practice standards and mode of practice. There is no evidence that identical regulations would offer either enhanced collaboration or better public protection.

Ontario patients are best served by healthcare practitioners practicing to the fullest extent of their scope of practice and training. Where there are overlapping scopes, each practitioner can play a distinct role in ensuring the best possible patient outcome.

Despite present regulatory restrictions, many optometrist and opticians enjoy satisfactory collaborative relationships under separate regulation. In fact, many optometrists and opticians are eagerly awaiting the basic change in the optometry regulation to permit open mutual practice relations. OAO expects that once the regulation is changed, optometry/opticianry practice will be the norm rather than the exception.

Patient Records:

Question 8

Present patient health information regulation under the *Personal Health Information Protection Act, 2004* (PHIPA) protects patient health information through requirements for secure storage and restricted disclosure. OAO is confident that patient confidentiality is protected and that regulations permit free sharing of relevant information provided that patient information remains under the control of a regulated health professional. Unrestricted access to patient information for shared patient care between health professionals is assured through profession specific legislation.

Optical Premises Regulation:

Question 9

The regulation of optical stores similar to pharmacies would provide a very limited degree of public protection in addition to the regulation of the health professional. Premises regulation alone cannot ensure that optometrists would be free from influence by their employer as it would be difficult, if not impossible, to uncover these latent pressures by physical premise inspection. To ensure public protection, The Drug and Pharmacies Regulation Act goes beyond Premises Regulation by restricting ownership and control of the corporation employing the pharmacists. It requires that the majority of both shareholders and directors be pharmacists.

Jurisdictional Review:

OAO noted with interest that as part of the Opticianry Jurisdictional Review from Australia, orthoptist regulations were included in lieu of opticianry regulations. OAO would like to clarify that the orthoptic profession is in no way equivalent to the profession of opticianry. An orthoptist undergoes four years of university training in neurosciences, pathology and anatomy. Furthermore, orthoptists practice primarily within ophthalmology practices and hospitals.

Although Ontario opticians have among the most rigorous educational requirements in Canada, including two years of community college, the training is more focused on dispensing skills and less on the anatomy of vision. Further, with the growing Federal emphasis on interprovincial labour mobility, as evident in the Agreement on Internal Trade, there would be no distinction between Ontario opticians with the full two years of college training and those who received only six months of training in British Columbia.

**Formal organization between eye care stakeholders/successful collaboration:
Questions 10, 11, 12**

Several years ago, the Ontario Ministry of Health organized an eye care review in an attempt to resolve the same problems associated with collaboration in eye care that have been identified by HPRAC today. Most of the stakeholders in eye care, including the professional associations, colleges and retail corporation representatives were invited to participate. The eye care group met frequently for more than a year. The goal of the exercise was to resolve outstanding issues that were perceived as obstacles to collaboration. The meetings were formalized with a specific agenda and facilities provided by the Ministry. Several Ministry persons were assigned to provide resources, assist with the process and chair the meetings.

While the Ministry's intentions were laudable, relations between all of the groups ended worse than at the outset. The result of the extended exercise was the recommendation that nothing should change. This forum failed for a variety of reasons, not the least of which was the competing interests of the participants. Each group brought their own interests to the forum rather than concentrating on one specific goal; improved patient care.

This fateful experience has revealed that a multi group formal organization between various eye care stakeholders is doomed to failure. A much better option, with a record of success is less formal meetings between groups with identical specific goals.

A recent example of successful collaboration was the production and acceptance of guidelines for the collaborative management of persons with diabetes by eye care professionals. These guidelines were developed through meetings between representatives of OAO, the OMA section of Ophthalmology and Family Medicine.

The common goal was improved patient care and the outcome was a historic document that represents successful collaboration. (Appendix B) The group will continue to meet for the development of similar collaborative guidelines for the treatment and management of macular degeneration and glaucoma.

In addition, individual optometrists across Ontario are working with medical and nursing schools to provide students with the opportunity to complete a rotation within an optometric clinic and learn first hand about the delivery of primary eye care services in Ontario. These efforts represent not only a move towards increasing clinical and academic collaboration, as students graduate with a greater understanding of the role of optometry in patient care, but also an opportunity to foster future interprofessional relations for patient care.

Unsuccessful Inter- professional Collaboration:

Over the past 10 years, the College of Opticians of Ontario has demonstrated a lack of deference to its mandate of public protection and has failed to discipline opticians who operate in contravention of the Opticianry Act, despite several complaints and appeals to HPARB by OAO. The College purposely overlooked multiple violations of scope of practice that placed the eye health and vision of the public at risk leading to the proliferation of an unregulated optical chain.

Further, in September 2007 the College of Opticians unilaterally published standards of practice for refraction without formal collaboration with, other optometric or medical groups, and in contradiction of the Opticianry Act. The College ignored directives from the Minister of Health and Long-Term Care, which to date has not lifted the ban on optician performed sight tests, and began to issue Refraction Status to qualifying registrants.

The intransigence of the College of Opticians to address the issue of illegal refraction and the refusal to collaborate with Optometry on the standard for refraction has contributed more than any other issue to the poor relationship between the two groups.

While OAO supports the expansion of scope for any health profession, there is a recognized process to follow before an increase in scope can be granted. Expanding a scope through standards of practice is not acceptable as it circumvents the checks and balances inherent in a public scope review.

A Role for the Ministry of Health and Long-Term Care

The Ministry of Health and Long Term-Care should support and take an active role in the prosecution of unregulated persons who perform *controlled acts* under the RHPA, particularly the unauthorized prescribing and dispensing of eye wear.

Currently in Ontario, Great Glasses is ignoring numerous court rulings to stop and is illegally performing eye tests, prescribing and dispensing eyewear without a prescription from a physician or optometrist. The College of Optometrists and the OAO have brought legal actions against Mr. Bergez and Great Glasses. The Ontario Court of Appeal upheld the lower court findings (October 2008) and in their ruling Justice J. A. Wyatt stated "He [Bergez] is an experienced business man who has reaped substantial financial rewards from his burgeoning empire of Great Glasses stores. He continues to operate his business as he sees fit, in open contravention of governing legislation and in plain defiance of a court order."

Despite the court rulings, more than 20 Great Glasses stores continue to operate across southern Ontario. (Appendix C for a November 2009 advertisement) For many years the OAO has warned the Ministry of Health and Long-Term Care about the risk to the vision and health of Ontarians posed by Great Glasses stores as customers are unwittingly duped out of essential health care services which should be provided by a trained health care professional. The OAO has received numerous complaints from the public about the services they received at Great Glasses and from optometrists who provide eye care services subsequently to former Great Glasses customers of all ages who have unaddressed vision problems and/or eye health problems.

Access

Question 13

The greatest challenge for the eye care sector is to not only sustain a high standard of delivery but also to meet the increased demand for eye care over the next two decades. As noted in the questionnaire, an aging population with an increased incidence of eye disease will most certainly stress finite health care resources. Forward planning and appropriate use of health human resources will ensure that the public continue to receive the level of eye care that they expect and deserve.

Manpower

While each of the three eye care groups will need to address human resource requirements, optometrists are strategically positioned with adequate numbers to meet the demands that changing demographics will present. Optometrist registration in Ontario has been increasing over the last 5 years with the expectation that the number of new practitioners will be more than sufficient to meet the future demand for primary eye care. Moreover, approval of pending drug regulations for optometry will result in expanded patient access to the treatment of eye disease, including glaucoma. (Appendix D)

Collaboration

Optometrists are prepared and eager to collaborate with other eye care professionals. In fact, despite the prohibition on association between optometrists and opticians, many optometrists and opticians presently have effective collaborative practice

arrangements. Further, practice relationships between optometrists and ophthalmologists are good and improving; particularly with recent changes in referral policies and consultation fees adopted by the MOHLTC. A new code was recently established for Optometrist-Requested Assessment [ORA] in the Ophthalmology OHIP Schedule of Benefits (Appendix E):

“Optometrist-Requested Assessment (ORA) is an assessment of a patient provided by an ophthalmologist upon the written request of a optometrist because of the complex, obscure or serious nature of the patient’s problem. Urgent or emergency requests may be initiated verbally but must also be documented in writing. The ORA includes the common and specific elements of a specific assessment.

A253 Optometrist-Requested Assessment (ORA) 71.30”

Summary of Resolution to Issues:

- Ensure that each of the 3 eye care providers plan appropriately for the demographic challenges expected in the future delivery of eye care in Ontario
- Encourage the Ministry to quickly approve the changes proposed to professional misconduct and conflict of interest regulations submitted by the COO. These regulations remove undue business and association restrictions while protecting the public by allowing for practitioner autonomy
- Encourage the Ministry to quickly approve the therapeutic drug regulation submitted by the COO.
- Recommend that the Minister use whatever mechanism available to require the College of Opticians to conform to the requirements of the RHPA, including requiring a prohibition on independent refractions.
- Urge The Minister of Health and Long-Term Care to proactively prosecute unregulated individuals performing any *controlled acts* under the RHPA.
- Common regulations and ethical standards are not necessary to improve collaboration between opticians, optometrists and ophthalmologists.
- Informal meetings between eye care groups with a common goal have demonstrated success in achieving cooperation on improvements to patient care.

Thank you for the opportunity to submit a response to the questions on eye care sector issues. Please feel free to contact us should you require any clarification of our answers and comments.