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June 3, 2008

Health Professions Regulatory
Advisory Council
c/o Ms. Annie Schiefer, Project Manager
55 St. Clair Avenue West
Suite 806, Box 18
Toronto, Ontario M4V 2Y7

Dear Ms. Schiefer:

**Re: Interprofessional Collaboration - Comments on Discussion Guide
Questions 1, 2, 32 and 33**

The Competition Bureau (the “Bureau”) is pleased to take this opportunity to participate in the consultation on interprofessional collaboration by responding to select questions presented in the discussion guide. Both self-regulating professions and the health care sector are priorities for the Bureau. We hope that our point of view and experience in these areas can be of assistance to HPRAC as it formulates its recommendations in response to this Ministerial referral. Our comments in response to questions 1, 2, 32 and 33 of the Discussion Guide are appended to this letter.

The Bureau contributes to the prosperity of Canadians by protecting and promoting competitive markets and enabling informed consumer choice. The Commissioner of Competition (the “Commissioner”) is responsible for the administration and enforcement of the *Competition Act* (the “Act”) which is a federal statute of general application to all sectors of the Canadian economy.

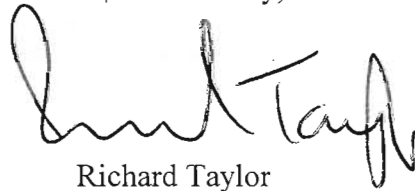
The Act defines a number of practices that are prohibited as criminal offences or that are subject to review by the Competition Tribunal under the civil provisions of the Act. It does not provide the Bureau with any authority to decide the law or to compel businesses to adopt any particular type of conduct. For more information on the Bureau, please visit our website at www.competitionbureau.gc.ca.

The Bureau promotes competition in two ways. Firstly, as a law enforcement agency, we investigate allegations of anti-competitive conduct and seek judicial and quasi-judicial remedies to stop anti-competitive behaviour. Secondly, we also act as an advocate for competition. To that end, we frequently make submissions to legislative bodies or regulators on how to implement reforms that encourage competition. By engaging in advocacy for competition, the Bureau has the opportunity to ensure that competitive factors are taken into consideration in the formulation of policies. We hope that by encouraging the consideration of the competitive dynamics and implications of proposed regulatory measures, it will not become necessary to consider them in the context of future investigations into alleged anti-competitive conduct.

The Act is based on the premise that competition is the best means of ensuring that resources are allocated efficiently, that innovation is rewarded and that consumers are offered the broadest scope of services at the most competitive prices. By facilitating interprofessional collaboration among health professionals HPRAC is pursuing similar goals, namely, efficient, effective and innovative services for Ontarians.

Please do not hesitate to contact Janet Holmes at [REDACTED] or [REDACTED] should you require anything further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Richard Taylor', written in a cursive style.

Richard Taylor
Deputy Commissioner of Competition
(Civil Matters)

***Submission by the Competition Bureau to HPRAC Regarding Interprofessional Collaboration
June 2, 2008***

Question 1

HPRAC proposes that any initiatives should be directed to finding ways to:

- *Assist health regulatory colleges and their members to work collaboratively, rather than competitively, and to learn from and about each other through a process of mutual respect and shared knowledge...*

As a starting point for discussion, the above statement raises some concerns from the Competition Bureau's perspective. The Bureau, as an advocate for competition, strongly feels that there are instances where members of health professions can and should engage in competition. As reflected in our recent report entitled *Self-Regulated Professions: Balancing Competition and Regulation* (the "2007 report")¹, competition between professions with overlapping scopes of practice can have potential benefits to consumers including lower prices, increased choice and enhanced consumer access to professional services. These are desirable goals both from a social and competition policy perspective. This position is also noted in our numerous comments on regulations regarding dental hygienists in various jurisdictions across Canada. It is with a modicum of concern then, that we note that the first point of discussion on interprofessional collaboration would seemingly exclude the notion of competition between professions.

This may simply be a question of what is meant by the term "competitively" in the context of the above statement. In some contexts, *competitively* could be interpreted to refer to a stance of "turf-protection." In that sense, the goal of any initiatives proposed should seek to avoid the use of tactics aimed at preserving a particular profession's historic monopoly on delivery of some aspects of health care. Given our competition-based perspective, we would examine such behaviour to determine if it is *anti-competitive*, that is, does it harm competition? If that is the intention behind the use of word competitively, the Bureau would agree with the sentiment but strongly cautions against the broad use of language which could be interpreted to have the exact opposite meaning.

In the same vein, the use of the word *collaboratively* also raises issues. The Bureau promotes the opportunity for professions to participate in the market and to compete for the business of serving consumers where their scopes of practice overlap. Our 2007 report spoke to the issue of restrictions on business structures which may be common in health professions. Such restrictions can act as a barrier to new and innovative interprofessional business models that can help complementary professions achieve a degree of efficiency, to offer greater choice for

¹ available on the Bureau's Web site at
<http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/02523e.html>

consumers and to compete effectively. Another way of interpreting professions working collaboratively is at the extreme end of the spectrum of collaboration where you have reached a stage of not collaboration, but rather collusion. From our perspective, some professions are competitors with others. If they work so collaboratively that they are fixing prices or otherwise engaging in an anti-competitive conspiracy then the benefits of collaboration for consumers are lost. The *Competition Act* contains criminal provisions prohibiting collusion. Again we would caution HPRAC to ensure that what is intended in seeking to foster collaboration is clearly stated and understood and that such recommendations would not in fact foster collusion or otherwise deprive Ontarians of the benefits of competition.

Question 2

Are there barriers in the RHPA, the health profession acts or their regulations that restrict or prevent collaboration among the Colleges? If so, what are they? Should they be eliminated? If so, how? (for example, do existing scopes of practice restrict or prevent collaboration among health professionals?)

Two of the five professions that were featured in the Bureau's 2007 report on self-regulating professions were health professions, namely optometrists and pharmacists. We would refer HPRAC to the analysis of restrictions contained in that report.²

One of the types of restrictions that are highlighted therein are those regarding business structures. The *Regulated Health Professions Act* restricts ownership of a health profession corporation to members of the same health profession.³ Our report notes a number of potentially anti-competitive outcomes that may flow from such a restriction including reduced entry into the market and higher prices for the consumers. The presence of such restrictions on business structures may block the development of efficient business models and future innovation and certainly have a direct impact on interprofessional collaboration, particularly if the goal of such collaboration is to better serve Ontarians. Since the recent legislative amendments in Ontario which permit dental hygienists to self-initiate, there has been innovative business models developing which may permit greater access to care. The restriction on interdisciplinary ownership limits some of these choices. For instance, consider a hypothetical hygienist and dentist who may wish to form a corporation to offer on-site care in a long term care facility. They would be faced with the impediment of not being able to co-own their corporation. This avenue of interprofessional collaboration is closed to them, and this potentially efficient business model would not emerge in the market.

² see in particular, the discussion regarding business structure and optometrists, starting on page 95. Although this discussion takes place in the context of optometry, there are similar arguments to be made regarding other professionals who may wish to develop an interprofessional business structure.

³ S.O. 1991, c. 18, s. 85.8

Question 32

Should minimum guidelines, standards and policies concerning matters such as conflict of interest, advertising, record keeping and the consent process be consistent across all Colleges? If yes, what guidelines, standards and policies could effectively be applied to all regulated health professions? If not, why not?

As reflected in our 2007 Report, restrictions on advertising should be limited to only those that prohibit false and misleading advertising. Any such restrictions should be clearly linked to a reduction in consumer harm.⁴

Question 33

What kinds of structures and processes could facilitate collaboration among Colleges to address issues related to standards of practice and professional practice guidelines for those professions that deal with closely related activities (e.g. dental hygiene, dental technology, dentistry and denturism; opticianry, optometry and ophthalmology)? (For example, joint colleges, collaborative Councils or independent bodies such as the Council for Healthcare Regulatory Excellence in the UK.)

The Bureau would caution against joint colleges for professions that deal with closely related activities. These are the professionals who have the greatest potential to be competitors in the market, and with that potential comes an underlying economic incentive to exclude a competitor. In the case of a joint College, such exclusion could be incidental to the definition of a scope of practice or a code of conduct that would raise a barrier for one profession trying to compete effectively. Consider the example of a College which oversees two professions and defines a scope of practice for one that limits its ability to encroach on the traditional territory of the incumbent profession. While that limitation may arguably be in the interests of patient safety, joint Colleges makes it necessary to consider whether the exercise of the regulatory power of oversight is in fact being used in response to an underlying economic self-interest that impedes competition.

⁴ see 2007 Report

The Bureau has advocated for self-regulation in the instance of dental hygienists in those jurisdictions where the profession is still regulated by dentistry⁵ and the Bureau would urge HPRAC to consider the points made in this regard when considering this larger question of finding mechanisms to facilitate interprofessional collaboration. In addition, this point is addressed directly in the 2007 Report in the context of the regulation of paralegals by law societies where it was observed that this gives rise to an obvious conflict of interest, namely the regulation of one competitor by another.⁶

⁵ see for example, letters from the Commissioner of Competition regarding legislative proposals for self-regulation in Nova Scotia (2005), Alberta (2006) (both since enacted) and New Brunswick (2006) (proposal still outstanding), available at <http://www.competitionbureau.gc.ca/epic/site/cb-bc.nsf/en/00783e.html>

⁶ 2007 Report at pp. 68-69.