

APPENDIX: F

**REPORT OF THE COLLEGE OF OPTICIANS OF ONTARIO
AND THE COLLEGE OF OPTOMETRISTS OF ONTARIO
IN RESPONSE TO RECOMMENDATIONS 97 AND 98 OF
THE RED TAPE REVIEW COMMISSION**

May 20, 1998

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Report of the College of Opticians of Ontario and the College of Optometrists of Ontario in response to Recommendations 97 and 98 of the Red Tape Review Commission

Terms of Reference

Dispensing of eyeglasses, contact lenses, or subnormal vision devices (hereinafter "dispensing") is a controlled act under the *Regulated Health Professions Act, 1991* which is authorized to members of the regulated health professions of medicine, opticianry, and optometry. The College of Opticians of Ontario, the College of Optometrists of Ontario, and the College of Physicians and Surgeons of Ontario have historically taken significantly different approaches in their regulation of dispensing by their members. For example, the College of Opticians and the College of Optometrists prohibit the delegation of dispensing, while the College of Physicians and Surgeons of Ontario does not. The Red Tape Review Commission ("RTRC") found the differences in regulatory approaches taken by the Colleges to be illogical. In its final report of January 1997, "*Cutting the Red Tape Barriers to Jobs and Better Government*", the RTRC made the following recommendations relating to dispensing.

97. The Minister of Health do what is necessary to ensure that the College of Physicians and Surgeons of Ontario, the College of Optometrists of Ontario, and the College of Opticians of Ontario work with the Ministry of Health to develop, within a specified period of time, common principles and practice standards for the dispensing of subnormal vision devices, including a consistent definition of dispensing and common rules for the delegation of dispensing functions to be used by physicians, optometrists and opticians.

98. The professional associations be involved as stakeholders in the process; public interests be central to the deliberations; and issues of safety, quality, efficiency and economics be taken into consideration.

Process

The Professional Relations Branch (PRB) of the Ministry of Health (MOH) requested a meeting of "Eye Care Provider Groups" on 18 December 1997 to develop an

approach to responding to these recommendations. The groups invited by the PRB to participate in the meeting were the:

- Association of Ontario Ophthalmologists
- College of Opticians of Ontario
- College of Optometrists of Ontario
- College of Physicians and Surgeons of Ontario
- Ontario Association of Optometrists
- Ontario College of Family Physicians
- Ontario Medical Association
- Ontario Opticians Association
- Opticians Association of Canada
- Vision Council of Canada

The PRB proposed a process in which the College of Opticians and the College of Optometrists would act as "Co-chairs". The PRB indicated a degree of flexibility in completion of this process but suggested a target date of the end of February 1998 to report on a possible solution. Subsequently, the PRB extended the target date for completion to the end of March 1998. The PRB proposed that the Co-chairs lead the process with the involvement of relevant stakeholders, including professional associations, in an attempt to reach consensus. The participants agreed to co-operate and work towards a solution.

The relevant stakeholders and others were invited to make submissions to the Co-chairs and to meet on three separate occasions (9 January 1998, 4 February 1998, 1 April 1998) to review the submissions. Subsequent to the 9 January meeting, the Ontario College of Family Physicians ceased to participate and the College of Physicians and Surgeons of Ontario formally withdrew. In its letter of withdrawal, CPSO noted that "the medical profession is otherwise capably represented and that concern for the public interest is a guiding principle for all involved parties".

At the meeting of 4 February 1998, the stakeholders agreed that the Co-chairs would "distil the results of the meeting and define what issues need to be resolved". In so doing, the Co-chairs chose to prepare a draft report for discussion. The draft report was completed on 27 March 1998 after a difficult and lengthy consideration of the highly divergent positions of the various stakeholders. The draft report was

immediately circulated to the stakeholders. The Co-chairs had been instructed that they were working with a deadline of 3 April 1998. They therefore convened a meeting on 1 April with the stakeholders to discuss the draft report. At that meeting, the stakeholders requested, and were given, an additional two weeks in which to provide written submissions on the draft report. At the request of the Co-chairs, the RTRC allowed for a further extension to 15 May 1998 for completion of the process based on the progress that was being made.

The Co-chairs subsequently offered to meet with representatives of all stakeholder groups. Most stakeholder groups agreed to meet with the Co-chairs. Written submissions were received from most stakeholders by the deadline of 15 April. The submissions and the comments from the meetings were taken into consideration by the Co-chairs in preparing a revised draft which was circulated to stakeholders on 27 April 1998. The stakeholders were asked to submit any further comments on the revised draft by 8 May 1998. A number of further comments were received. They were considered by the Co-chairs in preparing this report.

The Co-chairs have diligently attempted to follow the process which was agreed to by the stakeholders in December 1997, and to meet the schedule for reporting. The Co-chairs are grateful for the participation of all the stakeholders, recognizing that the contents of this report will not completely satisfy everyone.

As a result of this process, the College of Optometrists of Ontario and, particularly, the College of Opticians of Ontario have substantially changed their positions on the regulation of dispensing. They have agreed on a common definition of dispensing and on common principles and essential standards of practice relevant to the practice of dispensing. Most notably, they have set out proposed common rules for delegation of dispensing; this represents a dramatic change from their current prohibition against delegation.

In the view of the Co-chairs, this document is a description of the appropriate regulatory framework for dispensing which respects the public interest, maintains protection for the public against the level of potential harm inherent in dispensing, and reduces "red tape".

Attached to this report is an appendix containing all written responses from the stakeholders, along with both previous drafts of the report.

Common Principles

Introduction

The Co-chairs agree that the regulation of dispensing should follow principles common to the different professions that dispense. In this process, consideration was given to the issue of the risk of harm in dispensing. The Co-chairs note that the Health Professions Legislation Review (HPLR) (often referred to as the Schwartz Commission), spent six years exploring which acts posed a risk of harm to human health and concluded, after a full consultative process with input from the public and stakeholder groups, that dispensing does pose a risk of harm. Accordingly, the legislature included dispensing as a controlled act within the RHPA without regard to the age of the patient or the nature of the device being dispensed.

The Co-chairs agree that there is a risk of harm in dispensing without regard to the age of the patient or the nature of the device being dispensed. They recognize that this position is at odds with the views of some of the stakeholders participating in this process. The Co-chairs are of the view that the risk of harm in dispensing derives primarily from the performance of the core cognitive functions and behaviours of dispensing, which are identified herein. The Co-chairs also recognize that the procedures of dispensing other than the core cognitive functions and behaviours present varying risks of harm. Accordingly, in most cases, such procedures could be safely delegated. This is elaborated on in the section entitled "delegation".

A Note About the Medical Profession

The Co-chairs hoped to achieve an agreement of the stakeholders on the common principles, a common definition, common standards of practice, and rules for delegation that would be applicable to the professions that dispense. However, the representatives of medicine who participated in this process made it clear that the existing delegation practices of physicians should not be altered. **The Co-chairs were unable to achieve an agreement with medicine, and therefore nothing in this document should be construed as applying to existing delegation practices in**

medicine. The Co-chairs understand that the MOH is currently addressing the issue of delegation as it applies to all regulated health professions.

Principles

The Co-chairs have agreed on the following matters of principle about dispensing:

1. **Dispensing presents a risk of harm to the public, as confirmed by its inclusion in the RHPA as a controlled act.**
2. **Varying degrees of risk are present in dispensing.**
3. **Protection of the public from the harm inherent in dispensing is afforded by regulation of all health professionals who are authorized to dispense, accountability of health professionals to their College in maintaining the standards of practice of the profession, and enforcement of the prohibition against unauthorized practice.**
4. **All health professionals who dispense should be under the regulatory control of, and accountable to, a health profession College in order to ensure an appropriate level of public protection from the risk of harm in dispensing.**
5. **Physicians and surgeons, opticians, and optometrists are authorized to perform the controlled act of dispensing.**
6. **The public should have access to safe choices in dispensing as presently provided by three different health care professions.**
7. **The public should be able to expect equitable care in dispensing from any regulated health professional who dispenses.**
8. **The public should be able to anticipate quality dispensing care from any regulated health professional who dispenses.**

The Co-chairs also believe that it is desirable, in the public interest, that there be appropriate statutory and regulatory controls on the place in which members practise, as well as on members who dispense, in much the same way as pharmacies

are subject to statutory and regulatory controls apart from and in addition to pharmacists.

Definition

Several definitions of dispensing were proffered by the participants. The following definition is agreeable to the Co-chairs. This definition will be useful in identifying for members, the courts, and the public the specific nature of the controlled act. Furthermore, the definition will be useful in detailing what only a member is authorized to do within the broader scope of practice of the member's profession.

The definition of dispensing is not intended to describe the scope of practice of any of the three professions authorized to dispense, nor does it set or infer any particular standards of practice in dispensing.

The Co-chairs agree that "dispensing" is the preparation, adaptation, and delivery of eyeglasses, contact lenses, or subnormal vision devices to a person.

The Co-chairs confirm that the word "adaptation", found in the definition, does not include changing the prescription.

Standards of Practice

Standards of practice can be seen as a College's expectation for behaviour of a member in practice. Written standards of practice attempt to reflect the expectation of the College for the usual practice of its members in particular situations. Standards of practice are not formulae for clinical decision-making or care, nor do they suggest a particular clinical outcome for a particular patient. Standards of practice do assist a member in providing high quality services to the public. Each member is responsible for maintaining the standards of practice of the member's profession in dispensing.

The Co-chairs agree that standards of practice in dispensing should include the following:

In dispensing, a member shall

- 1. establish a professional relationship with a person prior to dispensing to that person¹;**
- 2. identify himself or herself to any patient to whom the member dispenses, and within the record of care made and maintained by the member about that patient;**
- 3. determine and record the specifications of the eyeglasses, contact lenses, or subnormal vision devices to be provided to a patient;**
- 4. confirm and record that the eyeglasses, contact lenses, or subnormal vision devices to be provided or delivered to the patient are appropriate; and**
- 5. provide and record the necessary advice, counselling, and associated care to the patient about the use of the eyeglasses, contact lenses, or subnormal vision devices.**

These are the common standards of practice that have been agreed to by the Co-chairs. They are not the only controls or standards of practice that apply to members in dispensing. Each College has the authority to regulate its own members in the public interest in other matters, including professional misconduct, conflict of interest, communications (including advertising), and business practice.

Some stakeholders have suggested that many of these standards could be met by "file review" by a member. The Co-chairs view such an interpretation as being at variance with the intent of the standards. The Co-chairs would not apply that interpretation to these standards for the members of the College of Optometrists of Ontario or the College of Opticians of Ontario.

¹ Once a professional relationship is established with a person, that person is referred to as a patient.

In response to concerns expressed by some stakeholders, the Co-chairs state that they have no intention of, or interest in, using their authority to circumvent the intent of the RTRC or the intentions of this report.

Delegation

Currently, the College of Opticians of Ontario and the College of Optometrists of Ontario prohibit the delegation of dispensing. The principle on which this prohibition is based is that only members are suitably qualified to dispense and are accountable. Prohibiting delegation is not for the purpose of protecting the scope of practice of any profession, in that three different professions are already authorized to dispense. Furthermore, there are no unregulated groups of persons with appropriate training or experience to dispense.

On the basis of the principles set out in this document, the Co-chairs are now of the view that certain component procedures of dispensing could be delegated and that certain persons can appropriately receive delegation of those component procedures. However, a member should not delegate if, in the member's professional judgement, it is not appropriate to do so, or if to do so would be contrary to the standards of practice of the member's profession, or would place the member in a conflict of interest. For greater clarity, the prohibition against a member delegating when in a conflict of interest means that a member should delegate only when he or she considers it appropriate to do so, and should not delegate if compelled to do so, against the member's professional judgement.

Core cognitive functions and behaviours in dispensing may not be delegated. A member therefore may not delegate:

1. **the determination and recording of the specifications of the eyeglasses, contact lenses, or subnormal vision devices to be provided to a patient;**
2. **the confirmation and recording of the appropriateness of the eyeglasses, contact lenses, or subnormal vision devices to be provided or delivered to the patient;**

3. **the provision and recording of the necessary advice, counselling and associated care to the patient about the use of the eyeglasses, contact lenses, or subnormal vision devices .**

In the view of the Co-chairs, only physicians, optometrists and opticians have the necessary knowledge, skill, judgement, and accountability to perform the three core cognitive functions of dispensing safely and competently. These are the functions that involve clinical decision making and that result in suitable, efficacious, functional and safe dispensing to a patient.

This prohibition on delegation does not extend to procedures and components of dispensing other than those identified above.

The Co-chairs' decision to permit delegation of certain components of dispensing relies on the presence of appropriate and necessary rules for delegation. In order for the public interest to be served in the provision of safe and high quality dispensing, the Co-chairs agree that common rules for delegation of dispensing should include the following:

1. **A member must have established a professional relationship with a person prior to delegating any part of dispensing for that person (hereinafter the "patient").**

The establishment of a professional relationship between the professional and the patient is a pre-condition of any valid delegation in the health field. It is essential to know one's patient in order to be able to safely provide the core cognitive functions of dispensing. Furthermore, without a professional relationship, there can be no accountability for the dispensing which take place pursuant to delegation. The Co-chairs do not view this requirement as in any way impeding the process of delegation.

2. **A member delegating and the person receiving delegation must each be identified in the record of care made by the member about the patient.**
3. **A member must ensure that the standards of practice of the member's profession are maintained by the person receiving the delegation.**

4. **A member is responsible for any failure on the part of a person receiving delegation to maintain the standards of practice.**
5. **A member must be physically present in the same facility with the person receiving delegation at the time the member delegates tasks in dispensing to that person.**

A member's physical presence at the time of delegation and when delegated acts are being performed on patients is essential in order to protect the public from inaccessible care. Without a member's physical presence, individual members could delegate tasks to any number of unlicensed persons in any number of locations, thereby making themselves inaccessible to the public. The Co-chairs believe that this would be contrary to the public interest.

6. **A member must be physically present in the same facility and available to intervene when a delegated act of dispensing is being performed on a patient.**

A member should always be available when a delegated act is being performed on the patient. This does not mean that the delegated act needs to be supervised. Whether the member intervenes in the delegated act, and to what degree, should be at the member's discretion and judgement. It is not necessary for a member to be present when tasks in dispensing are being performed in the absence of the patient.

7. **A member must ensure that the tasks which the member delegates be patient-specific and appropriate.**

As health services are rendered individually and specifically to patients, so too tasks which the member delegates should be patient specific and appropriate. Delegation of dispensing should not occur when, in the member's professional judgement, delegation is inappropriate, for example, where a patient has a condition of the eye that requires a member's knowledge, skill, and judgement in all aspects of dispensing.

8. **A member must identify to the College, at its request, any person to whom a task of dispensing has been delegated.**

Colleges need to be able to determine whether persons other than members who are dispensing have received a valid delegation. Accordingly, members should be prepared to identify to the College, at its request, persons to whom they have delegated dispensing. This is not intended to interfere with employment relationships, nor is it for the purpose of establishing a registry of persons who receive delegation.

9. **A member must ensure that any person receiving delegation has received training appropriate to the delegated tasks to be performed.**

Members should be responsible and accountable for ensuring that a person to whom dispensing is delegated is properly trained. Neither Co-chair contemplates requiring that there be formal training programs for non-members who dispense by delegation.

Conclusion

The Co-chairs are satisfied that they have received and considered all of the views and submissions from all of the participants in this process. Many of the views and submissions of the stakeholders have been included within this report. However, given the divergent positions of some of the stakeholders, it has not been possible to achieve consensus on all aspects of the recommendations made by the RTRC. The Co-chairs regret that this has led at least one stakeholder to reject the entire process and conclusions herein. Despite this, the Co-chairs believe that this process has been successful in leading to an unprecedented dialogue amongst the stakeholders and a significant breakthrough in establishing appropriate and necessary common principles, a consistent definition of dispensing, common practice standards for dispensing, and common rules for the delegation of dispensing, as called for by the RTRC.

Wednesday, 20 May 1998