



February 23, 2007.

Daryl Beckett,  
Acting Director Professional Health Services  
Ministry of Health  
5-2, 1515 Blanshard Street  
Victoria BC V8W 3C8

Dear Mr. Beckett:

We write on behalf of the OBC: Opticians of British Columbia and the Opticians Association of Canada (OAC). The OBC is a grassroots opticians group in British Columbia that shares the same philosophy of service to B.C. opticians as our national counterpart, the OAC. Together the two groups provide positive and proactive advocacy and education for British Columbia opticians. The OBC and the OAC have collaborated on this submission.

The OBC and the OAC offers the following comments on the draft Reserved Actions Regulation based on our mandate to be watchful for any trend that would have potential to result in unintended risk of harm to consumers, that would erode the scope of practice of opticians, compromise their professional Standards of Practice or reduce their viability as business people. We have also attempted to estimate how the draft Reserved Actions Regulation would impact on consumers and opticians based on the way it would inform the existing Opticians Regulation.

It is difficult to do an effective analysis of the draft document since we are uncertain of the intended synergy between the Reserved Actions Regulation and the profession-specific regulations. We have some confusion also because it has been our understanding that the function of omnibus legislation is to create standard generic definitions and that any variation to those definitions or any additions of definitions that are unique to a profession would be found in profession-specific regulation. If our understanding is correct the draft definitions are in some instances too specific and in others not specific enough.

### **Alberta Regulation**

In looking for guidance we reviewed the Alberta schedule of restricted activities for Health Care professionals. This seems prudent in light of the April 2006 Trade Investment and Labour Mobility Agreement (TILMA) between British Columbia and

Alberta, the expressed intent of which is to harmonize structures and regulations between the two provinces. Presumably harmonization would mean taking the best from the legislation and regulation of each province. The two province's optician's regulatory bodies, the College of Opticians of British Columbia (COBC) and the Alberta Opticians Association (AOA) are already signatories to a Mutual Recognition Agreement (MRA) that allows labour mobility within the profession. The development of this agreement involved considerable harmonization of competencies, standards and in some cases necessitated changes in legislation and/or regulation.

In the Alberta schedule we have noted that there are only two applicable definitions: 'prescribe' and 'dispense'. As well the only restricted activity related to vision care is 'prescribing or dispensing corrective lenses'. The OBC/OAC find that a more spare style of definitions is best since it allows for profession-specific discretion in articulating how that reserved action is performed. This best serves the need for flexibility considering the rapid pace of change in professions along with emerging technology.

## **DEFINITIONS**

We are addressing the issue of verification first because it is the definition upon which we base our recommendations for changes to the other definitions.

"verify"- This definition in the draft is defined by itself i.e. to verify is to verify objectively to an authorization. Not only is this confusing but you cannot verify the appliance without seeing it on the individual for whom it was intended.

The penultimate step in the dispensing process and arguably the one that best protects the public is the assessment of the vision appliance in situ. We are aware the current B.C. Opticians Regulation does not require an optician to be present and available when the final fitting process is completed. Regulation 5 subsections 1 and 2 require only that a pair of spectacles be "verified by the optician or prescriber at or before the time of final dispensing of the eyeglasses or eyeglass lenses." The COBC Standards of Practice require only that " a prescriber or optician supervises at reasonable intervals and provides regular inspection of the services performed by a non-registrant."

With regards to spectacles, while it may be true that some prescriptions, in some spectacles frames on some individuals are less worrisome than others, we don't have a system that categorizes the degree of difficulty of each dispensing challenge and then authorizes specific classifications of individuals to service those challenges. Such a regime would create a totally unmanageable and expensive regulatory structure. Instead consumers expect an even application of standards whether or not their situation is unique.

The OBC and the OAC believe that appropriate dispensing of eyewear is more critical to a positive visual result than the lenses prescribed. The most scientifically arrived at lens powers have no affect until they are installed in a frame. Prescribing

is considered by all legislative authorities to be an activity requiring regulation. Dispensing – including the verification and fitting of the appliance – needs also to be a reserved activity.

### **National Standards Include Verification**

Nationally, dispensing, including dispensing of spectacles, contact lens, prosthetic devices and low vision aids, is a regulated activity. Legislative discussion over the last 50 years has always arrived at the conclusion that regulated standards are in the best interest of Canadian consumers. Accordingly there exist national standards regarding what constitutes best practice dispensing.

In order to fulfill the requirements of the Labour Mobility clauses in the Agreement on Internal Trade, Canadian regulators, including the College of Opticians of British Columbia have spent considerable human and financial resources over the past decade developing standards and agreements that have enabled the signing of a Mutual Recognition Agreement (MRA) amongst provincial regulatory bodies.

Nine of the ten provincial regulatory bodies have signed this document. The MRA allows regulated opticians to move from one province to another without entry-to-practice barriers. It assumes a common standard that includes what opticians are expected to learn to become regulated, and how they are regulated. If there is not a common standard: If an optician is not required or trained to perform the final verification i.e. the 'fit', in his/her home province it is impossible for the receiving province to accept at par the optician's credentials.

The National Competency document, the standard against which Canadian training programs and registry examinations, is measured, lists 11 competencies and 48 sub-competencies related to the dispensing of eyeglasses. The act of "verification" represents 7 of those sub-competencies. The final two competencies in dispensing of eyeglasses are

"Fit eyeglasses to achieve maximum comfort and vision by

- a) Using appropriate bench tools to
  - a.1) Make adjustments including to the bridge, temples, pantoscopic angle, face form and vertex distance and by
- b) Using standard distance and reading charts to
  - b.1) Affirm client's ability to see at required distances."

AND

"Train and advise client on use and maintenance of eyewear by:

- a) Using a variety of demonstration techniques to
  - a.1) Explain the uses and limitations of the new lenses
  - a.2) Prevent misuse and unnecessary abuse of eyewear
  - a.3) Explain the general care and cleaning protocols including any unique instructions for specialty lenses and/or coatings."

The OBC and OAC support the inclusion of fitting and dispensing as contemplated in other Canadian provinces, as a means of ensuring that the needs and expectations of the public are met and that the trust the consumer places in their optician is well placed. The OBC and OAC believe that current opticians regulation falls short of this expectation because it does not require that a regulated person be present and available during the final verification or fit of a pair of spectacles.

The OBC and the OAC believe that the public of British Columbia relies on the protection accorded by defining dispensing as a reserved action in the standard used by all other Canadian opticians regulation and legislation.

“dispense” – In the draft regulation there is a difference in the way “dispense” is treated amongst the professions. In (a) it includes ‘sell’ or ‘offer to sell’. The act of selling is not included in the definition with respect to vision appliances and dental appliances. Part of the selling function in an eyeglass dispensary is educating consumers about the choices they have based upon their individual prescriptive, anatomical and budgetary constraints. As such opticians balance their retail role with that of providing public protection and informed guidance. In the act of dispensing the selling role cannot be divorced from the dispensing role. The OBC and the OAC could support the draft wording if the term ‘sell’ is restricted to the act of collecting money and providing receipts, reserving the cognitive aspects of the act of dispensing for regulated professionals.

The definition of dispense indicates (b) in respect of a vision appliance, to design, supply, prepare, adjust or verify. Following from our comments on the definition of “verify” we believe that the appropriate connecting word in that definition should be “and” verify.

“fit” – Spectacles, and low vision aids are absent from the clauses in this definition yet fitting is the definitive step in the dispensing process regardless of the format of the appliance. If the appliance doesn’t fit properly the person’s vision and potentially their safety will be compromised.

“Vision appliance” – The draft wording includes contact lenses and low vision aids but does not include spectacles. This may be an oversight but spectacles nonetheless need to be included. The definition must also include plano-powered contact lenses. A lobby group consisting of the national opticians group, the national optometry group and the national ophthalmology group have spent several years trying to eliminate the sale of plano powered contact lenses by unregulated personnel including personnel in tattoo parlours, jewelry stores and convenience stores. There is no difference in the risk of harm between a contact lens with a plus/minus prescription or with a zero-powered prescription. The American congress has recently passed legislation prohibiting the sale of this type of lens by any person other than a regulated professional who is trained to do so. Canadian legislation continues to have loopholes taken advantage of by manufacturers of these lenses. As provincial regulation and legislation is being re-written, optical professionals are united in asking government to close this loophole.

Related to the issue with Plano powered contact lenses, we believe the wording “designed or offered for a vision condition” enables the exclusion of these lenses from regulation. The preferred wording that would include Plano powered lenses is a device that “alters the visual system” since with or without power, a contact lens does have the effect of altering the visual system.

The OAC and the OBC believe that if there is to be a definition of a vision appliance the definition should read:

“vision appliance”

(a) an appliance, or

(b) a device,

that alters the visual system, including spectacles, contact lenses including plano powered contact lenses and low vision aids, and excluding complete ready-to-wear corrective eyeglasses not fabricated for use by a named individual.

“Prescribe” – In the draft regulation ‘prescribe’ is defined as being “to issue an authorization to dispense for use by a named individual”. The issue of prescribing is of primary focus for opticians, since the discussion over optician-performed automated refracting remains unresolved. The best definition of “prescribe” would be one that includes the ability of a physician to simply indicate to an optician that a named individual needs refractive correction thus allowing the optician to develop the specifics of that correction.

In previous submissions to the Ministry we have described the restrictive trade practices engaged in by optometrists who are abusing the conflict of interest that is inherent in their ability to both prescribe and dispense for vision correction. Other stakeholder groups, including the Vision Council of Canada and even the Health Professions Council, have commented on these practices and on the motivation of self-interest that drives the legislative and political agendas of optometry.

Their restrictive strategies have been ramped up in recent months with optometrists placing designations on their prescription forms that are calculated to constrain their clients from choosing to have their eyewear dispensed by an optician. Many are also assessing an additional \$50 charge for clients who insist on receiving a copy of their prescription with the aim of taking it elsewhere to be filled. Optometrists have created impediments for optician-performed automated refracting by being complicit in having Health Canada instruct Eyelogic Inc. (the main source of automated refracting units in British Columbia) temporarily discontinue sale of the product until it could be re-classified.

Absent pro-active government action on the opticians regulation that would enable optician-performed automated refracting it is important that the definition of “prescribe” be enabling rather than limiting. If the aim of the government is to control cost of Eyecare to the public, optometrists through their actions and business policies have demonstrated that the current legislative authority they

enjoy does not accomplish that aim. Optometric billings to the government peaked just prior to de-insurance of eye examinations, then hit a trough but has since returned to the level of billing prior to de-insurance. Consequently not only has government not saved but consumers are paying more.

#### Reserved Actions

(s) to prescribe a vision appliance

(t) to verify a vision appliance

(u) to fit a contact lens

As per our comments on the "Definitions" section of the draft document, we believe that the reserved action regarding vision appliances should simply be "to dispense vision appliances".

In its current state of development the draft regulation on reserved actions would appear to trigger changes to the profession-specific documents that are informed by the document. The OBC and the OAC look forward to submitting further commentary as the draft regulation and related documents are re-shaped.

Yours truly,



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