

**Submission to the Ministry of Health Services
on the proposed *Optometrists Regulation***

By



The College of Opticians of British Columbia

July 6, 2004

Introduction

On April 6, 2004, the Ministry released the proposed text for the new *Optometrists Regulation*, to be adopted upon the repeal of the *Optometrists Act* and the designation of the profession of optometry as a health profession under the *Health Professions Act (HPA)*, as provided under the *Health Professions Amendment Act, 2003* (Bill 62).

In accordance with section 12(3) of the *HPA*, the Ministry also invited the Colleges of the other health professions to comment on the proposed *Optometrists Regulation*.

As the professional regulatory body responsible for overseeing the practice of the profession of opticianry in British Columbia, the College of Opticians of British Columbia (COBC)

- believes it is critically important that the regulations under the *HPA* dealing with areas of overlapping scopes of practice be consistent, and
- wishes to assist the Ministry in ensuring that the *Optometrists Regulation* and the *Opticians Regulation* reflect a consistent approach to the regulation of both professions, so that members of the public will continue to be assured of high standards of service, delivered safely and competently, by all vision care practitioners and persons acting under their supervision.

In that regard, this submission addresses concerns which the COBC has identified in relation to the following matters:

- providing assurance to members of the public that non-registrants will not be permitted to prepare, fabricate, or alter appliances or devices for vision conditions except under the supervision of registrants of a qualified health profession, subject to appropriate supervision requirements established under the regulations;
- clarifying the reference to "corneal refractive therapy" in section 8 (f) of the proposed *Regulation*, to ensure that optometrists are not given the authority to perform surgical procedures for which they lack the requisite skill and training; and
- protecting patients' right of access to their prescriptions for eyeglasses and contact lenses, and ensuring consumer choice will not be improperly restricted with respect to the filling of prescriptions issued by optometrists, in accordance with the recommendations of the Health Professions Council.

1. Restriction of authority of non-registrants to prepare, fabricate, or alter appliances and devices for vision conditions

The COBC is concerned that section 8 (e) of the proposed *Optometrists Regulation*, when read together with the definitions of "prescribe" and "dispense" under section 1, could be interpreted to give unrestricted authority to optometrists to authorize persons who are not registrants of any health profession to prepare, fabricate or alter eyeglasses, contact lenses, and other appliances or devices for vision conditions, without supervision.

Section 8 (e) would authorize optometrists, in the course of practising optometry, to "prescribe an appliance or a device for a vision condition". "Prescribe" is defined (in that context) to mean "authorize a person to dispense the appliance or device for use by a named individual", and "dispense" is defined to mean "prepare, fabricate, alter or sell".

Accordingly, section 8(e) would appear to authorize an optometrist to authorize "a person" to prepare, fabricate or alter an appliance or device for a vision condition for use by a named individual. There is no requirement for that person to be a registrant of any health profession, or to be supervised by a registrant of a health profession.

The COBC is concerned this will not give sufficient protection to a patient, who ought reasonably to be able to expect that only a qualified registrant of a health profession, or (in appropriate circumstances) a person supervised by such a registrant, would be entitled to prepare, fabricate or alter an appliance or device for a vision condition for the patient's use.

Such protection exists in other provinces. For example, under the Alberta *Health Professions Act* and Schedule 7.1 of the Alberta *Government Organization Act*, the dispensing of corrective lenses (defined as the "objective verification of corrective lenses to the prescription") is a "restricted activity". Similarly, the "dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers" is a "controlled act" under the Ontario *Regulated Health Professions Act, 1991*.

The COBC is also concerned that section 8 (e) of the proposed *Optometrists Regulation* is inconsistent with the existing supervision requirements for the dispensing of eyeglasses and contact lenses under section 5 of the *Opticians Regulation*, and that those provisions need to be reconciled.

For example, section 5(2) of the *Opticians Regulation* currently provides that a non-registrant may only fill a prescription by dispensing eyeglasses, or duplicate eyeglasses without a prescription, if:

- the non-registrant is acting under the supervision of an optician or "prescriber" (i.e. an optometrist or ophthalmologist who prepares a prescription); and

Submission on the proposed Optometrists Regulation

- the measurements necessary for the manufacture of eyeglasses or eyeglasses are verified by the optician or prescriber at or before the time of final dispensing of the eyeglasses or eyeglass lenses.

For the purposes of section 5 (2) of the *Opticians Regulation*, "supervision" is defined to mean that "a prescriber or optician supervises at reasonable intervals and provides regular inspection of the services performed by a non-registrant."

Section 5 (4) of the *Opticians Regulation* establishes similar supervision requirements for the dispensing of contact lenses by non-registrants. Although the language of that provision, and the corresponding portion of the definition of "supervision", is ambiguous, and could be improved, the COBC believes the intention of section 5 (4) of the *Opticians Regulation* is to provide that a person who is not a registrant may only dispense contact lenses if the non-registrant is acting under the supervision of a prescriber who is normally on the premises, except that:

- a student contact lens fitter may fill a prescription by fitting and dispensing contact lenses if he or she is acting under the supervision of a contact lens fitter who is immediately present at all times; and
- a person who is not a registrant may refill a prescription by dispensing contact lenses if he or she does not fit the contact lenses, and is acting under the supervision of a contact lens fitter who is normally on the premises.

The COBC recognizes that consequential changes to section 5 of the *Opticians Regulation* may be necessary when the Ministry prescribes a list of "reserved actions" for the purposes of Part 4.1 of the *HPA*, when that Part is brought into force in the Fall.

However, the COBC believes the substance of the existing requirements for supervision of non-registrants by opticians or prescribers under section 5 of the *Opticians Regulation* should be preserved when the professions of optometry and medicine are designated under the *HPA*, to ensure adequate protection for members of the public in connection with the preparation, fabrication, or alteration of appliances and devices for vision conditions by persons who are not registrants.

The COBC also believes that a person who is not a registrant should not be permitted to fit contact lenses in any circumstances, other than a student contact lens fitter, an optometric student, or a medical student who is acting under the supervision of a contact lens fitter or a prescriber who is immediately present at all times (consistent with the existing requirement for supervision of student contact lens fitters under section 5 of the *Opticians Regulation*). This requirement is critically important to ensure adequate protection for members of the public in light of the risk of physical harm involved in the fitting of contact lenses which the Health Professions Council recognized in its December 1992 *Recommendation on the Designation of Opticians*.

Submission on the proposed Optometrists Regulation

The COBC therefore suggests the following changes, to ensure consistency between the *Optometrists Regulation* and the *Opticians Regulation*, and adequate protection for members of the public in connection with the preparation, fabrication, and alteration of appliances and devices for vision conditions by persons who are not registrants:

- that a new section, and an appropriate definition of "supervision", be added to the proposed *Optometrists Regulation* (as set out below) to establish supervision requirements for non-registrants who act under the supervision of a optometrist which are consistent with the existing supervision requirements under section 5 of the *Opticians Regulation*;
- that similar provisions be included in the *Medical Practitioners Regulation* (which, presumably, will also need to be adopted under the *HPA*, when the profession of medicine is designated as a health profession under that *Act*);
- that corresponding changes be made to the *Opticians Regulation* to reflect the inclusion of supervision requirements for non-registrants who act under the supervision of prescribers under the *Optometrists Regulation* and the *Medical Practitioners Regulation*; and
- that additional changes be made to the *Opticians Regulation* to clarify the existing supervision requirements for non-registrants who act under the supervision of a contact lens fitter under section 5 (4).

The COBC suggests the following wording for the new section to be added to the *Optometrists Regulation*:

Supervision of non-registrant

- 9 (1) A registrant may only authorize a person to dispense an appliance or a device for a vision condition for use by a named individual if that person
- (a) is entitled to perform the service in question under the Act, the regulations under the Act, or another enactment, or
 - (b) acts under the supervision of a registrant.
- (2) A registrant must not delegate the performance of an action described in section 8 (f) to a person who is not a registrant, unless
- (a) that person
 - (i) is a student enrolled in an optometry program approved by the board, and
 - (ii) acts under the supervision of the registrant, and

Submission on the proposed Optometrists Regulation

- (b) the registrant is immediately present at all times while that person is performing the delegated action.

The COBC also suggests that the following definition of "supervision" be added to section 1 of the *Optometrists Regulation*:

"supervision" means, in relation to the performance of services by a non-registrant under the supervision of a registrant, that

- (a) the registrant supervises at reasonable intervals and provides regular inspection of the services performed by the non-registrant,
- (b) where applicable, the registrant verifies the measurements necessary for the manufacture of the appliance or device and the power of the lens described in the prescription at or before the time of final dispensing of the appliance or device, and
- (c) in relation to the dispensing of contact lenses, the registrant is normally on the premises, although he or she may be absent from time to time.

If the foregoing changes are made to the proposed *Optometrists Regulation*, the COBC would suggest that an identical definition of "supervision" be included in the *Opticians Regulation* (in place of the existing definition contained in section 1 of that *Regulation*), and that the following changes be made to section 5 of the *Opticians Regulation* (including the change to section 5 (1) requested in the COBC's submission of June 11, 2004 on the proposed amendments to the *Opticians Regulation*):

Reserved acts

- 5 (1) Subject to section 14 of the Act, no person other than an optician may
 - (a) fill a prescription by dispensing eyeglasses, ~~or~~
 - (a.1) dispense eyeglasses based on an assessment from an auto-refraction, or
 - (b) duplicate eyeglass lenses without a prescription.
- (2) Subsection (1) does not apply to a person acting under the supervision of ~~an optician or a prescriber provided that the measurement necessary for the manufacture of the eyeglasses or eyeglass lenses and the power described in the prescription are verified by the optician or prescriber at or before the time of final dispensing of the eyeglasses or eyeglass lenses.~~
 - (a) a prescriber, in accordance with the *Medical Practitioners Regulation* or the *Optometrists Regulation*, or
 - (b) an optician.
- (3) Subject to section 14 of the Act, no person other than a contact lens fitter may fill a prescription by fitting and dispensing contact lenses.

Submission on the proposed Optometrists Regulation

- (4) Subsection (3) does not apply to a person
- ~~(a) filling a prescription by fitting and dispensing contact lenses under supervision;~~
 - ~~(b) filling a prescription by fitting and dispensing contact lenses under supervision provided that
 - ~~(i) the person is registered in accordance with the bylaws as a student contact lens fitter, and~~
 - ~~(ii) the contact lens fitter is immediately present at all times, or~~~~
 - (a) acting under the supervision of a prescriber, in accordance with the *Medical Practitioners Regulation* or the *Optometrists Regulation*,
 - (b) registered in accordance with the bylaws as a student contact lens fitter, and acting under the supervision of a contact lens fitter, provided that the contact lens fitter is immediately present at all times while that person is fitting the contact lenses, or
 - (c) refilling a prescription by dispensing contact lenses under the supervision of a contact lens fitter ~~or a prescriber~~ provided that person does not fit the contact lenses.

The COBC has suggested the foregoing changes based on the assumption that the "reserved action" list to be prescribed in the Fall will not have a significant impact on the substance of the existing requirements for supervision of non-registrants by opticians or prescribers under the *Opticians Regulation*. If that assumption is incorrect, the COBC will likely make further submissions on this issue in the Fall.

2. Clarification of scope of practice over "corneal refractive therapy"

The COBC is concerned that the reference to "corneal refractive therapy" in section 8 (f) of the proposed *Optometrists Regulation* could be broadly interpreted, to give optometrists the authority to perform surgical procedures for which they lack the requisite skill and training.

The term "corneal refractive therapy" has been used to describe a non-surgical method for the temporary reduction of myopia, which has recently been developed by Paragon Vision Sciences, Inc., in the United States, and is currently being provided to customers in British Columbia by both optometrists and contact lens fitters. It involves the customer wearing a contact lens-like device overnight, which has the effect of temporarily reshaping the customer's cornea and thereby providing improved daytime vision unaided by eyeglasses or contact lenses.

Submission on the proposed Optometrists Regulation

This technique is a new version of "orthokeratology", a term which refers generally to the temporary non-surgical reshaping of the cornea using a lens or mold to reduce refractive error.

The COBC believes it is appropriate that the fitting of a lens or mold for the purposes of orthokeratology, including non-surgical corneal refractive therapy, be included within the scope of practice of both optometrists and contact lens fitters.

However, the COBC is concerned that "corneal refractive therapy" is a novel term which could be interpreted generically to include other treatments for the reshaping of the cornea, including surgical procedures such as radial keratotomy, photorefractive keratotomy, or LASIK eye surgery. Optometrists do not have the skill or training to perform such surgical procedures, which should only be carried out by a qualified ophthalmologist.

The COBC therefore suggests that the wording of section 8(f) of the proposed *Optometrists Regulation* be clarified, so that it will not be interpreted to give optometrists the authority to perform surgical procedures. That result could be achieved simply by adding the word "non-surgical" before "corneal refractive therapy".

3. Patients' right of access to prescriptions

The COBC is concerned that the proposed *Optometrists Regulation* does not protect patients' right of access to their prescriptions for eyeglasses or contact lenses.

That right is currently protected under section 6(5) of the *Opticians Regulation*, which requires a registrant of the COBC to "offer to the client, without charge, a copy of a prescription."

With respect to prescriptions in the hands of optometrists, the Health Professions Council recommended in its December 1992 *Recommendation on the Designation of Opticianry* that "[i]t should be mandatory for optometrists and ophthalmologists to deliver prescriptions for both eyeglasses and contact lenses to their patients" (Recommendation 7). The Council also commented as follows:

"The Council is firmly of the opinion that prescriptions should be released to patients without charge. It is in the professions' interest and not in the public interest for any vision care practitioner to withhold a prescription. The release of prescriptions maximizes consumer choice and contributes to a competitive delivery of services and thus lower costs for the consumer.

Other jurisdictions have dealt with this issue, most recently Alberta. The problem invariably involves the reluctance of optometrists to provide prescriptions. When legislative sanctions prove necessary to resolve the matter, they mandate the delivery of all prescriptions to patients. In Alberta, as a result of negotiations initiated by the Ministry of Health staff a compromise was reached whereby the release and delivery

Submission on the proposed Optometrists Regulation

of prescriptions was included in governing legislation. A newspaper report (Edmonton Journal, July 18, 1992) credits the successful negotiations to the participation of consumer advocates who focussed the discussions on the public interest."

The requirement in Alberta, referred to by the Health Professions Council, for optometrists to release and deliver prescriptions for eyeglasses or contact lenses to patients, is currently contained in section 5 of Schedule 17 (Profession of Optometrists) of the Alberta *Health Professions Act*, which provides as follows:

Written prescription and specifications

- 5 (1) In this section, "optical prescription" means a written record of the refractive error of the eye, including, if appropriate, reading add, prisms and back vertex distance.
- (2) A regulated member who prescribes an ophthalmic appliance or other visual aid must offer the patient a written copy of the optical prescription.
- (3) After completing all the services required to dispense contact lenses, the regulated member must offer the patient a written copy of the specifications of the contact lenses.

The Health Professions Council also made the following recommendations, to protect the public interest by ensuring that consumer choice would not be improperly restricted with respect to the filling of prescriptions issued by optometrists:

- "Prescriptions issued by an optometrist or ophthalmologist should not indicate in any way that only a person qualified to issue a prescription is qualified to fill it." (Recommendation 8)
- "Unless a specific contra-indication is included in a prescription, it should not contain any reference or prohibition against mathematically converting it from a prescription for eyeglasses to a prescription for contact lenses." (Recommendation 9)

The foregoing recommendations were also included in the "Executive Summary – Professions" contained in Part I, Volume 1 of the Health Professions Council's *Safe Choices* report ("Other recommendations" under the headings "J. Optometrists" and "M. Physicians and Surgeons").

The COBC therefore suggests that the following subsections should be added to section 6 of the proposed *Optometrists Regulation*, to give effect to the recommendations of the Health Professions Council by requiring optometrists to provide patients with copies of their prescriptions for eyeglasses and contact lenses, and prohibiting optometrists from improperly restricting consumer choice with respect to the filling of prescriptions issued by them:

Submission on the proposed Optometrists Regulation

- 6 (4) A registrant who prescribes an appliance or a device for a vision condition
- (a) must offer the patient a written copy of the patient's prescription,
 - (b) must not indicate in any way, in the prescription or otherwise, that the prescription may only be filled by a person qualified to prescribe an appliance or a device for a vision condition, and
 - (c) unless a specific contra-indication is included in the prescription, must not include any reference or prohibition in the prescription against mathematically converting it from a prescription for eyeglasses to a prescription for contact lenses.
- (5) In subsection (4), "**prescription**" means the written record, prepared by the registrant, of
- (a) the power of a lens to correct the refractive error of the patient's eye, and
 - (b) reading add, prisms, back vertex distance and contraindications.