

NATIONAL REGISTRATION AND ACCREDITATION SCHEME FOR THE HEALTH PROFESSIONS

Proposed arrangements for handling complaints, and dealing with performance, health and conduct matters

Submission from Optometrists and Dispensing Opticians Board (NZ)

November 2008

Introduction

Under New Zealand legislation (the Health Practitioners Competence Assurance Act 2003 (HPCA)) the Optometrists and Dispensing Opticians Board of New Zealand (the Board) is the responsible authority in New Zealand for the registration and competence assurance of optometrists and dispensing opticians. Under section 158 of the HPCA the Trans Tasman Mutual Recognition Act 1997 (TTMR) prevails over the HPCA. In practice this means that the Board is required to register any optometrist or dispensing optician registered in Australia. The Board therefore has an interest in ensuring that the competence assurance provisions in the proposed legislation are at least equivalent to New Zealand requirements.

Our submissions follow.

Item 2 – Proposed terminology

2.1.1

The Board agrees that use of the term “notification” would be appropriate to cover the full range of issues that may need to be dealt with. A clear definition of what “notification” covers would be necessary, together with some public education.

2.1.3

If the term “notification” is adopted, then it would be appropriate for the committee making a preliminary assessment of the notification to be called the “Notifications Assessment Committee” or similar.

2.1.9

The Board agrees that the term “medical examination” has the potential to be construed as a physical or mental examination by a registered medical practitioner, and is therefore too narrow a definition for the intended purpose.

2.1.17

The Board would suggest some amendments to the proposed definition of unsatisfactory professional performance, as follows: “means professional performance in the practice of the health practitioner’s regulated health profession that demonstrates that the knowledge, skill or

judgement possessed, or care exercised by the practitioner is significantly below the standard reasonably expected of a practitioner of an equivalent level of training or experience.”

2.1.18

The Board considers that the definition of unsatisfactory professional conduct in Attachment 1 is too prescriptive which leaves room for a singular incident not accounted for in the definition to fall outside what would usually be considered unsatisfactory professional conduct, and therefore to limit the National Board’s powers to deal with the matter. A broader definition in line with the definition of unsatisfactory professional performance would be a safer option.

2.1.19

The Board’s view is that the definitions for competence and professional misconduct should not overlap. The proposed definition of professional misconduct includes “failure to reach or maintain a reasonable standard of competence.” This leaves the potential for a practitioner to be “tried twice” for the same matter if a National Board has the power to deal with the practitioner under both competence and conduct provisions. If this is not to be altered, the Board would strongly recommend specifying the rare situations where a competence matter may also be dealt with as a conduct matter.

Item 4 - Notification

4.4

The Board’s recommendation is that Option 1b is adopted, and that options 2a and 2b are merged, together with a requirement that unsatisfactory professional performance is reported. The HPCA imposes very few mandatory reporting requirements on employers (s34(3) and 45(1) and (2)), and the Board’s view is that it would be beneficial to have more mandatory reporting requirements on employers, particularly when competence and conduct issues are a concern. It may be that a certain level of concern needs to be specified before the employer is required to notify the relevant National Board.

4.5.1

The Board agrees that notifiers should be protected from civil liability where their notification has been made in good faith. By the same token, the legislation should protect all health practitioners from frivolous or vexatious notifications (refer s 36(3) HPCA).

4.6.1

The Board agrees that it is appropriate to allow a National Board powers to investigate on its own motion, where it has reason to believe there is concern about a practitioner (refer s 36(4) HPCA).

Item 5 – Preliminary assessment of notifications

5.3.1

It may be appropriate to include provision for the National Boards to advise their New Zealand counterparts of relevant issues, if appropriate (for example, where a National Board is aware the practitioner in question has registration in New Zealand).

5.5.3

In the interests of natural justice, the Board would recommend inclusion of requirements for the National Board to allow the practitioner the right to make submissions at key stages of the process. Accompanying policy should be developed to ensure that the practitioner does not prolong the process by over-exercising that right.

Item 6 – Performance matters

6.2.1, 6.2.2

As per item 5.5.3.

Item 7 – Health or impairment matters

7.1.2

The Board would support option 2.

Item 8 – Conduct matters

8.2.1, 8.3.3

As per item 5.5.3.

8.3.4

The Board would support this proposal but believes that clear policy should be developed to ensure that grounds for non-disclosure are reasonable. While the health and safety of the public must be the first consideration, the principles of natural justice must also be taken into account.

8.5.1

As per item 5.5.3

8.6.1

It may be appropriate to define “reprimand” within the legislation.

Item 9 – Ensuring accountability, transparency and procedural fairness

9.1.1

The Board would support Option Two. The Board's view is that a similar system works well in New Zealand and ensures transparency.

9.4.1

The Board would support option two, noting that in some cases, public interests may outweigh the interests of the individual practitioner, and that a decision on whether to open the proceedings to the public should be made by the panel on a case by case basis.

Item 11 – Offences and regulated conduct

11.1

The Board's view is that the following proposed offences would need adequate definition:

- unauthorised practice, for example, of a regulated health profession generally, a restricted core practice, or 'restricted practice area'
- treatment of certain conditions/diseases/pregnancy by persons who are not registered These would need adequate definition

11.4.1

The Board would propose an amendment to the proposed practice offence relating to prescribing optical appliances, as underlined: An offence for practising in a restricted practice area of prescribing optical appliances, ophthalmic appliances or ophthalmic medical devices intended for remedial or cosmetic purposes or for the correction of a defect of sight, along with related exemptions, for example to ensure the practice of other occupational groups such as orthoptists or optical dispensers is not unnecessarily restricted.

11.5.1

The Board would support this proposal.

11.6

The Board would support option 3 and notes that ethical advertising is particularly relevant in the practice of optometry, which includes a large retail component. The Board also notes the existence of large multi national companies that employ regulated health practitioners. In some cases, those companies' driving forces do not necessarily include public safety considerations.

Final comments

Thank you for the opportunity to comment on this consultation paper. Please direct any queries about the content of this submission to the Board's Registrar, Rachael Thorn, at rachael.thorn@oanddoboard.org.nz.