

# Order of change

**Professor Nizar Hirji** and **Roderick Clarkson** explain the implications of the recent Opticians Act amendment for eye care practitioners

**T**he Opticians Act (Amendment) Order 2005 (SI 2005/848) can be seen as the result, certainly in part, of the recommendations to the government made by the Bristol Royal Infirmary Inquiry,<sup>1</sup> the Alder Hey Inquiry<sup>2</sup> and the Shipman Inquiry.<sup>3</sup>

The failings in these scandals, according to the reports, lay not just with individuals but also, with the processes, information flows and the regulatory frameworks. This coupled with the government's drive to 'modernise' the NHS,<sup>4</sup> has dramatically reshaped the legislative and regulatory framework for all healthcare professions as well as those allied to medicine.<sup>5</sup>

The Kennedy Report,<sup>1</sup> also provided for additional legislation to create an 'overarching body' for the regulators of the healthcare professions. The NHS Reform and Health Care Professions Act 2002<sup>6</sup> established the Council for the Regulation of Healthcare Professions (CRHP), which has since been renamed the Council for Healthcare Regulatory Excellence (CHRE). It oversees the regulatory bodies of the healthcare professions, such as the General Optical Council.

The government's intervention in healthcare regulation is not completed by any means, and one can assume that further Section 60 orders are more likely than not, to enact more fully, the recommendations of these and other reports<sup>7</sup> amending existing legislation, or even introducing primary legislation.

The Opticians Act 1989 (Amendment) Order 2005, made under Section 60 of the Health Act, 1999,<sup>8</sup> amended the Opticians Act 1989 and came into effect on July 1, 2005. This was one of a series of orders aimed at modernising the healthcare

**The amended act redefines the role of the GOC as overseer of 'professional education, conduct and performance among registrants'**



professions and the first which significantly affected the provision of optometric and optical care and the framework within which the optical professions practise and operate.

The thrust of the amendments, as Lord Warner stated in the House of Lords,<sup>9</sup> is about patients. 'Patients are at the heart of our changes to the regulation of opticians and other health professions.'

The amended act significantly improves the way in which the GOC can protect the public by introducing changes to registration, recognition of specialities, professional indemnity insurance, CET, registrants' fitness to practise and contact lens supply. It redefines the role of the GOC as the overseer of 'professional education, conduct and performance among registrants'.

While students are training, it is important that the patients they

examine should receive the same protection as they would if they were seeing a registered qualified practitioner. The amended act obliges the GOC to create and maintain an entirely new register of students undergoing training in optometry or ophthalmic dispensing, whether full-time, part-time, or by distance learning; whether in college, university, or as pre-registration graduates. Students must now register with the GOC before commencing their training, meaning the training they receive and their patient contact during this period falls directly under the control of the GOC. They will in addition be subject to the same requirements as all other registrants – except for the requirement of professional indemnity cover – and will face the same sanctions should their conduct fall below that expected by the GOC.

A single register of business registrants supersedes the separate registers of corporate optometrists and of corporate dispensing opticians. It will include all corporate bodies which operate in the UK using the titles or descriptions listed in Section 28 of the Opticians Act ('optometrist', 'dispensing optician', 'optician' and so on), including limited companies, limited partnerships, limited liability partnerships and partnerships in Scotland.

The GOC may now register one of two specialities for optometrists relating to prescription only medicines (POMs) and, for dispensing opticians, a contact lens speciality.

The optometrist specialities will be:

- Optometrists appropriately qualified to write signed orders and administer POMs from the additional supply formulary (for optometrists)
- Optometrists appropriately qualified to write signed orders

and administer POMs from the supplementary formulary (for optometrists).

This extension recognises and allows suitably qualified optometrists to intervene therapeutically and provide the public with a wider range of clinical care in a practice setting.

Professional indemnity cover is now compulsory for all registrants, except students whose clinical supervisors will carry the clinical responsibility and therefore provide the indemnity cover for the student through themselves. This provides the public with added protection should things go wrong. Prior to the amendment, such insurance was simply a GOC recommendation.

The government has formally recognised that CET in the optical professions is vital. Although both the College of Optometrists and the Association of British Dispensing Opticians have run a voluntary scheme for some time, the amended act gives power to the GOC to make CET a compulsory requirement for continued registration. The days when practitioners could join the GOC register and never undertake further education or training are gone forever.

From January 1, 2007, a minimum of 36 CET general points will be required in the ensuing three-year period. One point is equivalent to one hour of an accredited lecture, although there are agreed variations for other formats including distance learning, practical workshops, posters, and more. To retain speciality registration, optometrists and dispensing opticians who are appropriately qualified, must earn a minimum of 18 CET points in their speciality, in addition to the general CET points. As a result, the public can now have the confidence and reassurance that any GOC-registered practitioner is likely to be up to date with their knowledge and skills.

The greatest area of change relates to how the Council deals with allegations about impaired fitness to practise of registrants. The GOC council members no longer sit on any disciplinary hearings and the old disciplinary committee has been superseded by the new fitness to practise committee, which will hear all disciplinary cases. A registration appeals committee has also been created to hear appeals against decisions to refuse registration, and to take over the hearing of applications for restoration. Forty individuals – optometrists, dispensing opticians and lay people – have been appointed as the hearings panel (a pool of potential



**Registered optometrists and dispensing opticians are required to maintain adequate patient records**

committee members) to sit on the two new committees as appropriate. The mix of the background of individual panel members is determined by the profession of the registrant in question.

The concept of serious professional misconduct has been abandoned and replaced with the broader concept of impairment of fitness to practise, which is determined on a case by case basis. Decisions will be based upon findings of misconduct, deficient professional performance, ill health or the findings of other judicial or regulatory bodies. The measures available to deal with impairment include increased powers to regulate the registrants, placing conditions on registration for a specified period, as well as the existing options of suspension and erasure. A financial penalty order of up to £50,000 may be imposed.

All contact lens fitting remains entirely the domain of registered practitioners, including the fitting of zero-powered contact lenses (plano cosmetic lenses) and when the fitting is completed the practitioner is obliged to provide a specification of the contact lenses prescribed. This closes the loophole that existed for non-registrants to fit and supply zero-powered (cosmetic) contact lenses prior to this order.

The GOC Contact Lens (Specification) Rules Order of Council 1989 – SI 1989/791 as amended (and, for medical practitioners, The Contact Lens (Specification) and Miscellaneous Amendments Regulations 2005 SI 2005/1481) require the specification to include the following information:

- The name and address of the patient
- The date of birth of the patient if they are under 16 years old

- The name of the practitioner and their GOC registration number
- The address from which the practitioner practises
- The name of the practice on whose premises the fitting was done
- The date the fitting was completed
- Sufficient details of any lens fitted to enable a person who fits or supplies a contact lens to replicate the lens
- The date the specification expires
- Such information of a clinical nature as that prescribing practitioner considers to be necessary in the particular case.

Contact lenses can now be purchased from unregistered suppliers, in person, via mail order or through internet-enabled enterprises, except where the contact lens wearer is under the age of 16.

There are, however, conditions imposed, requiring that:

- The transaction is the result of a valid original (or verified) contact lens specification issued by a registered practitioner) submitted either in writing or electronically
- The seller is reasonably satisfied that the contact lenses are for the use of the person named in the specification
- The expiry date mentioned in the specification has not passed
- The supply is under the general direction of a registered optometrist, dispensing optician or medical practitioner.

General direction in this context means that a registered practitioner is employed in the management chain of the supplier's business and accountable for what occurs between the supplier and the purchaser – ultimately answerable to the GOC, therefore providing a measure of protection to the public.

The seller, whether registered or unregistered, must also make reasonable arrangements for the person purchasing the contact lenses to receive aftercare. The supply of zero-powered cosmetic contact lenses is also covered by bringing this area under the auspices of the GOC.

The supply of contact lenses by suppliers, manufacturers and the like to registrants and others, and not directly to patients would not, however, be subject to such requirements.

It should also be noted that it remains a defence to any prosecution under the relevant section to demonstrate that the lenses were sold as an antique (except where the seller

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had reason to believe that the lenses would be used to correct, remedy or relieve a defect of sight).

The amended Opticians Act now empowers the GOC to provide guidance on the standards of conduct to be expected from registrants. The following Code of Conduct for Individuals was adopted by the General Optical Council on June 30, 2005.

A registered optometrist or dispensing optician must:

- Make the care of the patient his or her first and continuing concern
- Treat every patient politely and considerately
- Respect patients' dignity and privacy
- Listen to patients and respect their views
- Give patients information in a way they can understand and make them aware of the options available
- Maintain adequate patient records
- Respect the rights of patients to be fully involved in decisions about their care
- Keep professional knowledge and skills up to date
- Recognise the limits of his or her professional competence
- Be honest and trustworthy
- Ensure that financial and commercial dealings do not compromise the interests of the patient
- Respect and protect confidential information
- Make sure that personal beliefs do not prejudice patient care
- Act quickly to protect patients from risk where there is good reason to believe that he or she, or a colleague, may not be fit to practise
- Avoid abusing his or her position

**All contact lens fitting remains entirely the domain of registered practitioners, including the fitting of plano lenses**



as an optometrist or dispensing optician

- Work with colleagues in the ways that best serve patients' interests
- Register with and maintain registration with the GOC.

Finally the Opticians Act now:

- Makes it possible for the GOC to use electronic methods for the administration of the registration process
- Clarifies the appeals process regarding decisions of the fitness to practise committee
- Provides for appeals against decisions of registration from a practitioner or body corporate on grounds of fraud or error
- Clarifies the issues regarding the rights of European Community nationals to practise in the UK, and

the right to test competency, and or English, from non-UK nationals who want to practise in the UK

- Enables the GOC to require an applicant for registration to supply information about any convictions, cautions or judgements by any healthcare or social regulatory body inside or outside the UK regarding impairment of fitness to practise, and, in the same vein, to make a health declaration and supply a photograph. ●

## References

- 1 The Bristol Royal Infirmary Inquiry (2001) [www.bristol-inquiry.org.uk](http://www.bristol-inquiry.org.uk).
- 2 The Report of The Royal Liverpool Children's Inquiry (2001) [www.rlcinquiry.org.uk](http://www.rlcinquiry.org.uk).
- 3 The Shipman Inquiry (2002-2005), [www.the-shipman-inquiry.org.uk](http://www.the-shipman-inquiry.org.uk).
- 4 The NHS Plan: A Plan for Investment. A Plan for Reform (2000), [www.nhs.uk/nhsplan](http://www.nhs.uk/nhsplan).
- 5 The Health Professions Order (2001), Statutory Instrument 2002 No. 254.
- 6 The National Health Service Reform and Health Care Professions Act 2002, [www.opsi.gov.uk/acts/en2002/2002en17.htm](http://www.opsi.gov.uk/acts/en2002/2002en17.htm)
- 7 The Bichard Inquiry <http://www.bichardinquiry.org.uk>.
- 8 The Health Act 1999, [www.opsi.gov.uk/acts/acts1999/19990008.htm](http://www.opsi.gov.uk/acts/acts1999/19990008.htm)
- 9 Lords Hansard, March 8, 2005.

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## LATEST INTERPRETATION FROM THE GOC

On October 30, 2006, the GOC met with representatives of the optical professions and representative bodies to clarify how it would interpret the law on the sale and supply of spectacles and contact lenses. It subsequently released a statement<sup>1</sup> setting out the GOC's view that, while the sale of prescription (sight-correcting) contact lenses may be supplied under the 'general direction' of a GOC registrant or a medical practitioner, a 'supervised sale' is a requirement for the sale of plano (zero-powered) contact lenses. The statement also affirms the GOC position that a supervisor (a registered optometrist, dispensing optician or medical practitioner) must be able to exercise their professional skill and judgement as a clinician. In the absence of any statutory definition of 'supervision', however, the GOC will consider the issue of whether a sale was made under 'supervision' on a case by case basis, involving expert clinical opinion as appropriate. Also, the GOC has asked professional optical bodies to provide a detailed guideline on their interpretation of the meaning of 'supervision'. This is currently awaited. Finally, in the press release of the same date, the GOC states that only in the supply of corrective lenses will the purchaser be required to provide a valid 'specification' for the supply to be legal.<sup>2</sup>

- [www.optical.org/index\\_files/news\\_room/documents/2006-10-30statementonsaleandsupply.pdf](http://www.optical.org/index_files/news_room/documents/2006-10-30statementonsaleandsupply.pdf)
- [www.optical.org/index\\_files/news\\_room/documents/2006-10-30saleandsupplyofopticalappliances.pdf](http://www.optical.org/index_files/news_room/documents/2006-10-30saleandsupplyofopticalappliances.pdf)