

**THE REGISTRAR
HEALTH PROFESSIONS COUNCIL OF SOUTH AFRICA
PO BOX 205,
PRETORIA
0001**

10 June 2018

ATTENTION: GENERAL MANAGER, PROFESSIONAL BOARDS, HPCSA

Dear Sir,

**RULES OF CONDUCT FOR PRACTITIONERS REGISTERED UNDER THE HEALTH PROFESSIONS ACT, 1974:
AMENDMENTS TO ANNEXURE 8**

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2. General Comment

We would like to extend our appreciation for the opportunity to comment on the Amendments to Annexure 8 relating to the Rules of Conduct for Practitioners Under the Health Professions Act, 1974, as published in the Government Gazette dated 16 March 2018.

In preparing this submission, it is to be noted that the SAOA researched international experiences and conducted its own surveys at the levels of both members and non-members of the SAOA, to assess attitudes and perceptions in response to the draft amendments to Annexure 8. Where deemed applicable, comments received have been captured within the content of this submission.

3. The SA Optometric Association (SAOA)

The SA Optometric Association is a Professional Association registered as a Non-Profit Company (NPC) representing the majority of optometrists in practice. Membership of the SAOA encompasses all forms of practice modalities in the private sector including independent practice, group practice and franchise models, as well as optometrists employed in the public sector and academic institutions.

The SAOA was established as a professional association in 1924.

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4. Observation

The SAOA wishes to bring to the attention of the Professional Board of Optometry and Dispensing Opticians an error within the opening paragraph of the Gazette Notice, which reads as follows:

*The Health Professions Council of South Africa intends, under section 49 read with section 61A (2) of Health the Professions Act, 1974 (Act No. 56 Of 1974) and **in consultation with the professional board for speech, language, and hearing**, to make the rules in the schedule.*

The paragraph should refer to consultation with the Professional Board of Optometry and Dispensing Opticians.

5. Dispensing Opticians

The SAOA recognises the worth of the Dispensing Optician as a valued member of the Eye Care team. In this regard, concerns regarding professional dispensing acts performed by non -registered persons are to be noted.

In principle, the SAOA supports the amendments as stated; however, it would be appreciated if the PBODO could comment as to why there is reference to employment within a Scope of Practice document when the issue of employment is already addressed in the generic HPCSA Rules – Rule 8.

Nevertheless, as the PBODO saw fit to include reference to employment within the amendments to Annexure 8, the SAOA wishes to record its view that business arrangements should be permitted where a dispensing partnership (between Optometrist and Dispensing Optician) can occur within an optometry practice. Such arrangements would not violate the rule pertaining to sharing of fees (as per rule 7 (4) of the Ethical Rules) but the BHF should be instructed to grant group practice numbers in this regard and allow such partnerships to provide dispensing services accordingly.

In practical terms, the concept proposed is summarised as follows:

- Two separate practices at (on the same site – Optometry and Dispensing
- The Optometry practice will be owned by the Optometrist; the Dispensing Practice will take the form of a partnership between Optometrist and Dispensing Optician
- The Dispensing will be conducted within the Optometry practice
- As per the PCNS system, both the optometrist and the Dispensing Optician will have their own practice numbers (allocated to individuals)
- The partnership model will be restricted to the Dispensing of materials
- A GROUP Practice number will need to be applied for, to accommodate the Dispensing partnership;
- Patients examined by the optometrist will be billed via the Optometrist practice number; thus, there will be no sharing of fees
- Charges for spectacles will be charged via the Group Practice number

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In essence, as stated above, the model allows for a dispensing practice within an optometric practice as sharing of rooms is permissible between HPCSA registered practitioners as per Ethical Rule 8 A.

Whilst it is understood that a Dispensing Practice, per se, in the form of a partnership between Optometrist and Dispensing Optician is permissible, the reason for the note above is due to information available which indicates that the PCNS (BHF) will not provide Group Practice numbers to Optometrist/Dispensing Optician arrangements. Such arrangements are, of course, not restricted to partnership; this could also include co-directorships in incorporated practice modalities.

It needs to be stressed that partnerships referred to above, pertains specifically to the dispensing of spectacles but could include sale of accessories, sunglasses, etc.

6. Orthoptists

The SAOA has no objections in response to the draft amendments pertaining to Orthoptists.

7. On Line Sale of Spectacles

The SAOA takes cognisance of both local and international trends relating to technological advancements which give rise to consumer conveniences such as the on-line purchase of goods and services in general. Healthcare products are not exempt which includes the increase in on-line purchase of both contact lenses and spectacles.

For the purposes of this submission, the SAOA wishes to draw to the attention of the PBODO a study conducted by the American Optometric Association (AOA) in 2017 regarding on-line sale of spectacles. The study, which involved the Optical Laboratories Association and The Vision Council, gave rise to a significant incidence of problems encountered with prescription compliance and impact resistance. In essence, almost half (44.8%) of the spectacles dispensed had incorrect prescriptions or safety issues (refer attached)

Nevertheless, the embracing of technology with improved accessibility to (e.g.) eye care and convenience to members of the public, in principle, is supported. With specific reference to the draft amendments to the Scope of Practice for Optometrists and Dispensing Opticians, the SAOA supports the concept of on-line sale of spectacles but with modifications to address the concerns and cautions as stated below, all of which relate to **the visual welfare of the patient**.

7.1. Contact Lenses

The draft amendments are silent regarding the on-line sale of contact lenses. It is the opinion of the SAOA that the online sale of contact lenses at this point in time is more prevalent and poses greater risk to the vision and eye health of the consumer if not governed responsibly.

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7.2. Valid Prescription

The spectacles that will be sold on-line would require the patient to produce a prescription in order for the spectacles to be made up. The prescription is to be obtained following a comprehensive eye examination by an optometrist, who does not merely refract the patient but also evaluates the binocular status and ocular health of the patient.

The intended amendments do not mention the prescription of the product to be provided. It is the opinion of the SAOA that the amendments should refer to a valid prescription, for both the on-line sale of spectacles and contact lenses. In this regard, the following concerns are to be considered.

- 7.2.1. There are differing opinions amongst optometrists about what constitutes a valid prescription. Some are of the view that the prescription is not just merely a set of numbers pertaining to sphere, cylinder and axis and should include lens materials, lens design as well as coating recommendations for optimal visual comfort. It is their opinion that should the dispensed product not be according to those recommendations they cannot be held responsible for the visual outcomes of the product. Clarity is thus required, by definition, of what is considered a valid prescription.
- 7.2.2. Another aspect of the “valid prescription” to be considered is the period of validity of such a prescription. It is the opinion of the SAOA that a prescription can and should be valid for a limited time period from the date of last eye examination. It is thus recommended that the prescription is only valid for a period of 12 months from date of the last eye examination.
- 7.2.3. The SAOA would also like to suggest that clear limitations are set as to what prescriptions are considered to be dispensed. The probability of harm to patients’ visual system being caused increases significantly the higher the prescription becomes. Improperly fitted spectacles, especially with the higher prescriptions, can cause headaches, dizziness and nausea.
- 7.2.4. It is our opinion that the online sale of spectacles should be limited to the stock ranges of prescriptions, i.e. up to +/-4.00 sphere and -2.00 cylinders.
- 7.2.5. Furthermore, as the SAOA, we would like the PBODO to consider that the on-line store should validate the prescription with the issuing practitioner for patient safety.

7.3. Dispensing of spectacles

The act of dispensing of spectacles is not merely limited to the hand- over of the product. Dispensing is an art and begins with the frame selection, frame measurement, monocular PD measurement as well as the Nose Bridge fit and alignment including head and facial (a)symmetry. It also involved selecting the correct lens for a specific purpose and occupation and hobbies, relevant coatings, lens designs, lens material and coatings.

These aspects of dispensing are vital for the clear, single and comfortable vision of the patient and it is also the reason why, as the, SAOA we value dispensing opticians and their expertise at all levels and not just at the point of collection.

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It is assumed that the party responsible for the actual dispensing will be either a registered optometrist or Dispensing Optician and not a lay person employed by the registered optometrist. In this regard, Rule 7 (5) of the HPCSA Ethical Rule has relevance:

“A practitioner shall not charge or receive fees for services not personally rendered, except for services rendered by another practitioner in his or her employment or with whom he or she is associated as a partner, shareholder or locum tenens “.

We also wish to draw your attention to the following extract from the HEALTH PROFESSIONS ACT 56 OF 1974 (former title: Medical, Dental and Supplementary Health Service Professions Act):

“Para 39. Prohibition of performance of certain acts by unregistered persons deemed to pertain to health professions registrable in terms of this Act

(1) No person shall perform any act deemed to be an act pertaining to any health profession as may be prescribed under this Act unless he or she

a) is registered in terms of this Act in respect of such profession;

b)i) is registered in terms of this Act in respect of any other profession referred to in section 33 to which such act is also deemed to pertain; or

(ii) practises a health profession in respect of which the registrar in terms of this Act keeps a register and such act is deemed to be an act which also pertains to such profession;

(2) A person who contravenes subsection (1) shall be guilty of an offence and on conviction liable to a fine or to imprisonment for a period not exceeding 12 months,

or to both a fine and such imprisonment “.

7.4. The practice sites

The draft amendments state that the practitioner is required to possess a physical practice where dispensing can take place. Clarity is needed with regards to whether the dispensing needs to be done at the practice of the on-line site owner, a registered practitioner, or can arrangements be made for the dispensing to be done at another practitioner’s practice which is more convenient for the patient?

7.5. Enforcement

It is the view of the SAOA that the amendment of Annexure 8 to include the online sale of spectacles, even just for single vision spectacles, opens up the possibility of abuse by unscrupulous entities. In light of the abuse currently taking place by unregistered and registered entities selling contact lenses online, it is recommended that a clear enforcement protocol be put in place.

7.6. Permit

It is suggested that the PBODO consider that on-line optometry stores apply for a permit, on a similar basis to the regulations pertaining to mobile practices. Checks and balances should be put in place to prevent harm to members of the public and to protect their visual health.

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7.7. Returns

In the event that the dispensing takes place at a site not affiliated to the on-line store (that of another practitioner) and the patient does not experience single, clear and comfortable vision with the dispensed spectacles, where does the responsibility for the patient's visual health lie? Would the online store who dispensed the spectacles be held accountable or rather the practitioner who issued the script?

7.8. Consumer Protection Act (CPA)

It is noted that the Consumer Protection Act has relevance in circumstances relating to the on-line purchase of goods and services, including healthcare-related. Nevertheless, within the context of the amendments to Annexure 8 as drafted by the Professional Board for Optometry and Dispensing Opticians, it is the view of the SAOA that roles and risks be clearly defined.

8. Discussion and Conclusion

The SAOA wishes to commend the PBODO for their initiatives in an attempt to address advances being made in the delivery of eye care with particular reference to the on-line sale of spectacles within an ethical context.

In our engagement with members, it is apparent that, in principle. An ethical framework is acknowledged as important to address improper or unethical conduct but with the proviso that the rules are effectively enforced on an equitable basis.

As stated above, the amendments to Annexure 8 as proposed, are not without risk, from clinical and ethical perspectives. The SAOA, once again, extends our thanks to the Professional Board of Optometry and Dispensing opticians for the opportunity to comment, but would appreciate another opportunity to engage further on on-line delivery of eye care, in general.

Thanking You,

Yours Faithfully

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SAOA PRESIDENT

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