"The Competent Optometrist"

Opening Address to the
75th Annual Conference of the New Zealand Association of Optometrists
Dunedin, 22 September 2005

"The competent optometrist" is a topical theme for this year's NZAO conference. The Optometrists and Dispensing Opticians Board established under the Health Practitioners Competence Assurance Act 2003 (the HPCA Act) has a clear mandate to ensure that optometrists are competent and fit to practise. The legislation recognises the public protective function of health professional registration bodies. Competence is a broad concept, and comprises not only clinical competence but also cultural and ethical competence.

Prior to the enactment of the HPCA Act, there was a great deal of debate about the role of regulations (and regulators) in health care. A number of medical commendations were strongly opposed to the new legislation. Ross Blair, a surgeon from Hamilton, stated:

> "We as surgeons are in danger of becoming more indentured labourers – where control is shifted into the hands of those with limited knowledge of surgery … We progressively see a situation where those outside the profession are regulating the profession and we are in danger of creating an environment of defensive medicine … The best safeguard for patient care is the professional contract between doctor and patient." (9 May 2003, *Marlborough Express*.)

David Galler, the President of the Association of Salaried Medical Specialists, claimed:

> "Proposed legislation ostensibly aimed to assure the public that health practitioners are competent to practise, risks further eroding medical professionalism in New Zealand by imposing more external controls on the profession as opposed to promoting rigorous internal regulation."

In fact, internal regulation focused on competence is a necessary complement to internal regulation (the rules that a profession sets for itself). Both are consistent with professionalism in a modern health system. The essence of professionalism is:

(a) acquiring (through education and training) a unique set of skills and competencies;

(b) maintaining that set of skills and competencies; and

(c) altruism – putting patients first.

We need to remind ourselves of the harms that prompted external regulation in New Zealand – 160 women at National Women's Hospital inadequately treated for carcinoma in situ, and 40 women who developed invasive cancer – women who suffered avoidable harm in placing themselves in a system that relied only on professional ethics and internal rules. We should remember the parents of the 30 children whose deaths after open heart surgery at Bristol Royal Infirmary would not have been expected in light of the mortality rates at other paediatric surgery units in Britain.

These tragedies led to Commissions of Inquiry and prompted new external controls – in New Zealand's case, a Code of Patients' Rights, patient advocates, a Health and Disability Commissioner and a statutory complaints system, and research ethics committees; – in Britain, a dizzy array of

external regulators, reform of professional regulation, and requirements for publication of comparative hospital data.

Charlotte Paul (medical advisor to the Cartwright Inquiry) has observed that "external controls are blunt instruments in particular cases that require a functioning internal morality to integrate them" (*BMJ*, 2000). I do not understand Paul to be arguing that we should place all our faith in "internal morality" and professional ethics – rather that we need to regulate sensibly and sensitively.

The HPCAA strikes a sensible balance. Complaints are appropriately left to the independent Health and Disability Commissioner to handle, and discipline is left to the Health Practitioners Disciplinary Tribunal. The Boards' role is to specify scopes of practice and required competencies, and to ensure that continuing professional development has been completed before issuing an annual practising certificate.

I endorse the following statement by Annette Keleher of NZAO (in the Board's June 2005 Newsletter):

> "As health professionals it is the optometrist's responsibility to maintain the levels of competence required to provide high quality eye care. Continuing professional development is a chance for optometrists to broaden their knowledge, improve clinical skills and continue to be informed of new knowledge. In doing this, the quality of service provided is increased and optometrists can ensure they are involved in a profession that remains challenging and interesting."

As Health and Disability Commissioner, it is my job to "promote and protect the rights of consumers" and "facilitate the fair, simple, speedy, and efficient resolution of complaints". The best place for a complaint to be made is to the optometrist himself or herself. However, not all patients feel comfortable making a complaint to the health professional who cared for them, and for this reason the law allows patients to make a complaint to a local advocate (part of the Nationwide Health and Disability Consumer Advocacy Service) or to the Health and Disability Commissioner.

Complaints about optometrists comprise a tiny portion of the Commissioner's in-tray; 1 complaint in 2004/05 and 2 complaints in each of 2002/03 and 2003/04. This suggests either that patients do not know about this right to complain to HDC, or that complaints were being sorted out at a lower level (or perhaps that patients have few complaints about optometrists!).

Optometrists, like all other health practitioners, will benefit from recent amendments to the HDC Act – changes that are designed to facilitate resolution of complaints at the lowest and most appropriate level, and to avoid duplication of complaints resolution processes. The changes allow the Commissioner more flexibility in deciding what to do with a complaint. Options include taking no action, if action is "unnecessary or inappropriate", referral to an advocate for low-level resolution, as well as the new options of referring the matter to a provider for resolution, or calling a mediation conference, without the need for formal investigation. It is anticipated that investigation will be reserved for the most serious matters, and duplication of inquiries will be avoided.

Under the new legislation, the Commissioner may also refer a complaint to other parties, such as ACC or the relevant registration authority. Registration authorities have a distinct and important role in the setting of professional standards for the protection of the public They are the appropriate agencies to receive referrals of concerns about a practitioner's competence and fitness to practise, and are enabled by law to conduct confidential competence reviews. The legislative provisions for referrals are accompanied by requirements for reporting-back mechanisms.

There remains a valuable role for low-level resolution of complaints by NZAO. Similar models exist in the New Zealand College of Midwives and the New Zealand Dental Association. It is obviously important that NZAO is alert to any public safety risks when handling a complaint about an individual optometrist, and promptly notifies the Optometrists Board in such a case.

The HPCA Act clarifies that complaints made directly to registration authorities must be referred to the Commissioner only if they involve patient care. Issues that typically do not involve patient care, for example criminal activity (such as ACC fraud) and professional conduct issues (such as misleading advertising), are now dealt with by Professional Conduct Committees.

My research reveals few investigations of optometrists by HDC. One interesting case (00HDC09842, 24 September 2002 – see www.hdc.org.nz under Opinions/2002) concerned an optometrist's failure to use dilatation drops when examining a patient's eye, and an alleged failure to discuss the symptoms of retinal detachment and offer a referral for a second opinion. On the basis of expert advice from an independent optometrist, the optometrist was found not to have breached the Code of Health and Disability Services Consumers' Rights.

Patients rightly expect good quality care and communication from optometrists. New Zealand's co-regulatory model – with professional bodies ensuring competence and an independent Commissioner handling patient complaints – is well placed to protect patients *and* support clinicians in their work.

I thank NZAO for the opportunity to open the 75th Annual Conference in Dunedin and wish you a very successful conference.

Ron Paterson
Health and Disability Commissioner