

Updated 16 March 2010

ADVICE & GUIDELINES ON PROFESSIONAL CONDUCT

FOR DISPENSING OPTICIANS

SECTION 5 : PRACTICE MANAGEMENT

Professional Discipline

5.1 The professional activities of registered dispensing opticians are regulated in five ways: by education and training to standards set by ABDO; by ABDO as the professional body with its powers for peer review; by fitness to practise procedures at the instigation of the GOC; by criminal law; by civil law – litigation.

Use and Supply of Pupil Dilating Drug *(updated 16 March 2010)*

[This paragraph is repeated in Section 1]

5.2.1 Optometrists and Dispensing Opticians are reminded that Tropicamide and other pupil dilating drugs are prescription only medicines (POMs). As such the supply of these drugs is controlled by law and only certain classes of person, such as optometrists (and OMPs), are the only members of the practice team who are legally permitted to acquire and or supply the POMs. They are therefore responsible for any other members of the practice team who place orders with wholesalers, or those, such as retinal screeners, who wish to instil the drug into a patient's eyes. The use of pupil dilating eye drops should always, therefore, be done under the direction and supervision of an optometrist (or doctor/OMP).

5.2.2 Practices should have Standard Operating Procedures to ensure that drugs are managed in accordance with the legislation. This is particularly crucial if the practice relies on locum optometric/OMP cover.

5.2.3 Optometrists are referred to the Appendix A of the College Formulary, and College Guidance on delegation. If they are in any doubt about what to do in their particular circumstances they are advised to contact their professional and/or defence body for advice.

For further information see www.college-optometrists.org

Practice policies and government regulations

5.3. Practice owners and/or managers should be aware of policies and requirements to contract directly with the National Health Service in accordance with the GOS regulations *[see NHS Regulations in website appendix]*

Occupational Visual Standards

5.4 Some occupations have visual standard and optical appliance requirements. Information on occupational visual standards is available in Appendix F[1]

Patient's Records *[Brief details also in Section 1]*

5.5.1 It is essential in the interests of both the registered dispensing optician and the patient that full and accurate records, either hard copy or electronic, are kept and

stored in a systematic and efficient manner. The retention period for records must be greater than the statutory limitation period. These periods will cover:

1. the statutory limitation period which allows claims to be brought within: a) 6 years for contractual matters; b) 3 years for personal injury. The three year period runs from the time that someone becomes aware that they have grounds for a claim (therefore reliance cannot be made on claims being brought within 3 years of the patient being seen).
2. The NHS requires NHS patients' records to be retained for seven years.

5.5.2 Minors, that is children under 18 years old, are entitled to bring claims in respect of personal injury upon reaching their majority, i.e. on becoming 18 years old, and for three years thereafter. Therefore their records should be kept until they are 21 years old, and it is recommended that they are kept until they are 25 years old.

Note: In view of the fact that hospital records should be kept for 10 years, it is suggested that it is wise to use a blanket 10 year rule for the retention of all adult patient records. This does not conflict with the fifth data protection principle because the purpose of retaining patient data includes complying with the dispensing optician's ongoing legal and professional obligations. Before destroying any patient record, dispensing opticians should satisfy themselves that they will have no further need for that record. Disposal should be done securely.

5.5.3 The dispensing records remain the property of the practice, however the Data Protection Act 1998 confers upon living patients and, in certain circumstances, other interested persons, the right of access to records held by, amongst other medical and paramedical practitioners, registered dispensing opticians. For deceased patients similar provisions are made in the Access to Health Records 1990. Patients also have a right to an explanation of the records and a right to copies. A charge of up to £50 can be made for supplying copies (if the dispensing optician thinks it appropriate). Where records are considered to be inaccurate, the patient has a right to have those records corrected. Accordingly it is necessary that a registered dispensing optician's records are complete, intelligible, reliable and maintained in a way which would not produce difficulties or embarrassment if examined by persons unconnected with the holder's profession or practice. The Act allows 40 days for response to an application for access to records. However, under the Access to Health Records Act, the practitioner may withhold the record if, in his or her judgement, it would be harmful to the patient to release it, although such a decision must be justified in the event of a dispute. Further information can be found at www.bma.org.uk/ap.nsf/content/accesshealthrecords

5.5.4 If a registered dispensing optician is uncertain about the appropriate response, it is important that, without undue delay, legal advice or advice from ABDO is sought.

5.5.5 ABDO takes the view that it is the duty of all registered dispensing opticians to ensure that information of a personal nature entrusted to their care be treated as confidential and divulged only with the patient's consent or when disclosure is required by law. Recorded information should include:

1. Full name, address and daytime telephone number.
2. Date of birth.
3. Occupation (necessary knowledge for giving advice and guidance in dispensing spectacles).

4. Recreation (for the same reasons as occupation).
5. General practitioner's name and address.
6. The prescription.
7. Measurements, tints, coatings etc, facial measurements and centration distances.
8. Details of any other services provided – i.e. low vision aids.
9. Charges and fees.

Note: If the General Optical Council (GOC) requests information from the dispensing optician, the dispensing optician should, subject to any statutory restrictions, promptly give the GOC the information that is requested. If such information is not supplied within fourteen days the GOC may seek a court order requiring that the information be produced (unless this is prohibited by any other enactment e.g. the Data Protection Act.)

Electronic Records.

5.6 Many practices are now equipped with electronic record systems. In such cases it is necessary to register as data users under the terms of the Data Protection Act 1998. Details and application forms are available from the Data Protection Register, Information Commissioners Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF, Tel. 01625 545745. It is important that compliance with the Data Protection Act's requirements concerning patient information, including publication of information to third parties, for example other opticians, and medical practitioners, is observed. In particular, patient permission should be obtained to record data and screen privacy should be maintained to ensure such data remains confidential.

Ownership of Records

5.7.1 The owner of the practice where a sight test takes place owns all records, including the clinical records. However to avoid any dispute over ownership it is advisable to include a clause clarifying ownership in any contract of employment, including any agreement with a temporary employee or a locum.

5.7.2 The confidentiality of records means that they should, in no circumstances, be passed on in a change of ownership of the practice to other than a registered optician, registered medical practitioner or enrolled body corporate and the patient must be notified. Should patients themselves choose another registered practice it is appropriate to provide a copy of the dispensing records on request as being in the best interests of all concerned, it is advisable to obtain signed authorisation from the patient before passing on the copy of the dispensing record.

5.7.3 Registered dispensing opticians who end employment in a practice in order to set up their own practice or work for a new employer must not use the records or their knowledge of the records of their previous practice for the purpose of canvassing for potential patients for their new practice.

Disposal of a Practice

5.8 When a practice is sold or otherwise disposed of, or when a particular practice association ends, registered dispensing opticians have a duty to ensure the continuing welfare of patients. In the case of closure, arrangements should be made for the transfer of patients' records to another practice. When the practice is transferred, the public, and in particular existing patients, should be informed and the new owners identified.

Existing Employees

5.9 Employers may only carry out CRB checks if employees sanction such checks or it is a condition of their employment. If a CRB disclosure is sought where there is no entitlement to do so e.g. on existing staff, this may be an offence under The Police Act 1977. This could result in imprisonment for up to 6 months or a fine (currently between £2,500 and £5,000).

Recruitment of New Staff

5.10 Employers are entitled to have details of potential employees' spent convictions and ask for candidates to produce a basic disclosure from the CRB to assess the candidates' suitability for the role. There is no legal obligation for employers to ask this question, but if asked the candidate is required to reveal any spent convictions. If at a later date it is found that the employee gave false information then the employer may be able to dismiss them. It is recommended that employers advise the candidates of this in the contract of employment.

Work Experience Students

5.11 When employing those under 18 such as students on work experience, employers should be mindful of such issues as –

- health and safety
- confidentiality of data
- insurance

Criminal Records' Disclosure

5.12.1 With the implementation of new legislation in Part V of the Police Act 1997, many organisations will now be able to access criminal record information, as part of their recruitment process, through a new service called Disclosure.

5.12.2 The CRB Disclosure service is used to help assess the suitability of applicants for positions of trust and has been set up to facilitate safer recruitment of staff by making more information available from police and other records. The CRB provides a service to check on criminal records of candidates for jobs. The object of this checking procedure is to vet potential candidates and thereby reduce the risk of harm to children and vulnerable adults.

5.12.3 Standard Disclosure is the level recommended by the CRB for persons working with children, or who have regular contact with vulnerable adults on a one to one basis. These include optometrists and dispensing opticians. This disclosure will include:

- spent and unspent convictions, cautions, reprimands and warnings held on the Police National Computer
- information from the Department of Health and Department of Education and Skills lists for childcare positions.

Criminal Offences.

5.13.1 Under Section 28 of the Opticians Act it is a criminal offence for a person who is not appropriately registered to use any of the titles dispensing optician, registered optician, enrolled optician or optician. However in the case of the use of 'optician' without a qualifying adjective the user will have a defence against a charge if it can

be proved that in the circumstances of the title's use it would be unreasonable for people to believe that the user was registered.

5.13.2 Under section 24 of the Opticians Act 1989 it is a criminal offence for a registered dispensing optician to test the sight of another person with intent to prescribe an optical appliance. However, when contact lenses are fitted by registered dispensing opticians in accordance with the advice in Section 3 of these guidelines, when a refraction by a registered dispensing optician forms part of an LVA examination, or when certain types of low vision aids are supplied, the use of techniques to check their performance does not constitute the testing of sight within the meaning of the Opticians Act.

5.13.3 By Section 25 of the 1989 Act it is a criminal act for any person (other than in the excepted cases) who is not a registered medical practitioner or an optometrist or a registered dispensing optician with the appropriate qualifications, to fit contact lenses. The excepted cases are medical students and, by the Rules on the Fitting of Contact Lenses 1985, students training as opticians (optometrists or dispensing opticians); those engaged on approved basic training and pre-registration students. Such optical trainees, however, may fit contact lenses only when the fitting is done in the course of obtaining practical experience under supervision of a registered medical practitioner, optometrist or contact lens optician. It should be noted that contact lens fitting under the above circumstances may not continue if four unsuccessful attempts of any of the contact lens theory or practical examinations have occurred.

5.13.4 By Section 27 of the Act it is a criminal offence for optical appliances designed to correct a defect of sight to be sold (with some exceptions which include sales for the wholesale trade, for export and antiques) unless the sale is:

1. Effected by or under the supervision of a registered medical practitioner, optometrist or registered dispensing optician.
2. An excluded sale, that is a sale for a person not under the age of 16, of spectacles which have two single vision lenses of the same positive spherical power not exceeding four dioptres, where the sale is wholly for the purpose of correcting, remedying or relieving the condition known as presbyopia.
3. Exempt by reason of the Sale of Optical Appliances Order 1984, that is, where the appliance is not a contact lens or low vision aid, where the sale is not for a person under 16, or who is registered severely sight impaired [blind] or sight impaired [partially sighted], and where the purchaser produces a prescription not more than two years old signed by a registered medical practitioner or registered optometrist.

5.13.5 These sections, for the most part, do not penalise registered opticians. It is important to note, however, that if a dispensing optician's registration is revoked or suspended (for example, because of non-payment of GOC fees or the effect of a fitness to practise order) he/she will be liable to prosecution if he/she continues to practise as though registered during the period of revocation or suspension.

5.13.6 It is also a serious criminal offence to defraud the National Health Service (NHS) of money through submitting false claims. Registered dispensing opticians, as trustees of NHS money, have a professional duty to handle payments appropriately, effectively and honestly. Abuse of NHS procedures is considered a serious breach of trust and may incur prosecution and GOC investigation, with possible consequential penalties imposed by ABDO.

5.13.7 It should also be noted that it is a serious and criminal offence to steal from an employer.

Counter Fraud Charter

5.14 ABDO and the Department of Health have agreed a Counter Fraud Charter to which they are both signatories. The Charter spells out the need to fight fraud and commits both the Government and the Association to do all in their power to educate, encourage and inform both professionals and patients about this vital issue. As well as reducing fraud and corruption to an absolute minimum the aims of the Charter are to free-up resources for the best possible patient care and to maximise the confidence that the public has in the NHS professions.