Regulated Health Professions Act, 1991
The new benchmark for future health care legislation

On November 25, 1991 a new era in the governance and administration of health care dawned in Ontario. The new R.H.P.A. legislation which that day received Royal Assent culminated a decade of revamping and redefining how, by whom and in who's interest the provision of health care services should be structured in this province. As a result of this exhaustive exercise involving over 200 interest groups, a comprehensive package was forged which I believe will form the template from which many future legislative efforts in health care will evolve.

The stated aim of the review process was to make structural changes rather than simply modify existing content, with the basic guiding premise being "the public good" and acknowledgement of the growing health care awareness of consumers. From the standpoint of a Health provider practicing in this province the new legislation frees up the delivery of health care services, enables more providers to serve their patients directly and thereby increases freedom of choice and the efficiency of the system.

Prior to the advent of RHPA, health care in Ontario was governed by eight acts affecting eighteen health professions. This fact alone made any attempt at comprehensive change within the existing system extremely difficult. The new act regulates 24 professions including seven previously not captured by legislation. (Refer to Figure 1) The old process granted exclusive licences with broad scopes of practice to certain professions. This partisan approach impeded some professionals from performing to the full extent of their capabilities and competence. The previous legislation failed to recognize vocational autonomy and subjected too many professions to the dominance of other groups. A basic desire of the new process is to open up health care and reduce the role of the physician as "gate keeper". A major hallmark of the new legislation which separates it from existing statutes governing health provision is that it allows health professionals to work in a system that is equitable, where their autonomy is respected and their contributions recognized.

Alan Swartz a prominent Toronto lawyer was one of the primary architects of the review process which led to the new legislation. When appearing before the standing committee on health care he stated: "The fundamental principle of the new law is to advance and protect the public interest in providing legislation which will not enhance professional status, increase earning power, create a pecking order or grant monopolies, but rather provide protection from harm, provide a mechanism for quality assurance, allow greater freedom of choice and provide a scope for the evolution of individual health professions."[1]

Perhaps the most difficult tasks for the coordinators of the review process to deal with were the issues of which professions would be recognized by the legislation, mechanisms for defining scope of practice, the avoidance of monopoly and the maintenance of professional autonomy. In short, the government wished a system that would maximize public accessibility, maintain professional distinction and be open ended to allow for continued growth of professional services. All this, while continuing to ensure public protection, to say the least was an ambitious undertaking but one that was I feel for the most part crafted masterfully.

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The most revolutionary and important facet of the new legislation is the RHPA's treatment of the scope of practice issue. Like previous New Zealand and Australian models there is no detailed definition of scope of practice and one can only effectively understand the nature of scope when all of the 24 regulated professions are examined together. Important features are:

1. Only five of the 24 regulated professions have the term "diagnosis" within their scopes. (Chiropractic, Medicine, Optometry, Dentistry and Psychology).
2. The title "doctor" is limited to these same five professions.
3. Most others, including for example midwives, nurses and physiotherapists, may see the patient direct but can only "assess" the problem. They are not allowed to say they can diagnose.

FIGURE 1
PROFESSIONS REGULATED UNDER RHPA

AUDIOLOGY*
CHIROPODY
CHIROPRACTIC
DENTAL HYGIENE
DENTAL TECHNOLOGY
DENTISTRY
DENTURISM
DIETETICS*
MASSAGE THERAPY
MEDICAL LABORATORY TECHNOLOGY*
MEDICAL RADIATION TECHNOLOGY
MEDICINE
MIDWIFERY*
NURSING
OCCUPATIONAL THERAPY*
OPTICIANRY
OPTOMETRY
OSTEOPATHY[1]
PHARMACY
PHYSIOTHERAPY
PODIATRISTS[2]
PSYCHOLOGY
RESPIRATORY THERAPY*
SPEECH PATHOLOGY*[3]

* Newly regulated
[1] Regulated under Medicine Act
[2] Regulated under Chiropody Act
[3] Regulated under Audiology and Speech Pathology Act
Naturopathy remains under Drugless Practitioners Act

4 There are no definitions of the terms "assess" or "diagnose" in the legislation.
5 Any health professional can give any health service except for certain 'controlled acts' that have significant risk of harm. (These appear in Figure 2.)

The interpretations of diagnosis and assessment are now left to the courts to determine. Professions are not defined by scope. Now there is no licence, turf or property. Anyone can practice health care except for the controlled acts. These potentially dangerous or hazardous procedures are restricted to regulated health professionals with everything else common to the public domain. This is better for consumers, the system and a broader spectrum of the providers. This novel approach to scope of practice again demonstrates the government's core desire to "open up" health care and reduce the role of the physician as gate keeper. The process recognizes, for example, that often what can be done by a physician can be done or is being done by a nurse and much of what a dentist does can be done by a hygienist. So, the review wisely decided not to licence professions in their scope of practice per se, but rather authorize various procedures (authorized acts), deemed potentially dangerous. As such, the process goes far beyond the traditional interpretation and places more responsibility upon the authorized practitioner.

It appears that now, a diagnosis effectively represents a definitive differential diagnosis and is the foundation of a practitioner's right and ability to certify not only the nature of the complaint but also the appropriate management and disability. An assessment is a preliminary or working diagnosis only. It is a basis for certification of cause of complaint and disability. This is of real importance to Chiropractic, one of only five professions with the right to diagnose, because it solidifies our position as a primary provider in the system.

All regulated health professions are to be governed on a uniform basis. Each profession will be governed by a council with standard provisions for direction. Councils have certain mandatory committees to deal with concerns such as registration, disciplinary proceedings and quality assurance programs. For the first time, every regulated profession will have an effective system to assess the competence of their members.

As well, the public will have increased access to college registers, council meetings, disciplinary hearings and the complaints review process. Of notable importance here is the fact that patients will have access to an independent Health Professions Board if not satisified with a colleges investigation of their complaint against a member.

Two new areas not traditionally considered in the mandate of a college are the issues of Quality Assurance and Patient Relations. This again demonstrates the government's desire to find a balance between professional independence and public accountability.

Regarding the composition of the Council for each profession, public representation will increase to "just under half" which again illustrates the government's desire to ensure public participation in Health Care and make the system less biased and more accountable. The new Act preserves self governance but contains features that ensure the councils govern the colleges and their respective committees strictly in the public interest. The result is a more open and accountable system, that gives greater voice to the consumer.

From a purely Chiropractic standpoint the new legislation is good but certainly not perfect. As with all the other professionals our scope is not exclusive, allowing anyone to perform anything in the chiropractic scope of practice other than controlled acts. These appear in Figure 3. On the other side of the coin the act is not limiting. Chiropractors can also do anything contained within all other scopes except controlled acts not authorized to chiropractors. Although at first glance the new system appears broader in it's definition of who is a health care practitioner, I feel it will ultimately be much more effective in protecting the public from unqualified health care providers.

FIGURE 2

A "controlled act " is any one of the following done with respect to an individual:

1 Communicating to the individual or his or her personal representative a diagnosis identifying a disease or disorder as the cause of symptoms of the individual in circumstances in which it is reasonably foreseeable that the individual or his or her personal representative will rely on the diagnosis.

2 Performing a procedure on tissue below the dermis, below the surface of mucous membrane, in or below the surface of the cornea, or in or below the surfaces of the teeth, including the scaling of teeth.

3 Setting or casting a fracture of a bone or a dislocation of a joint.

4 Moving the joints of the spine beyond the individual's usual physiological range of motion using a fast, low amplitude thrust.

5 Administering a substance by injection or inhalation.

6 Putting an instrument, hand or finger,
- i) beyond the external ear canal,
- ii) beyond the point in the nasal passages where they normally narrow,
- iii) beyond the larynx,
- iv) beyond the opening of urethra,
- v) beyond the labia majora,
- vi) beyond the anal verge, or
- vii) into an artificial opening into the body.

7 Applying or ordering the application of a form of energy prescribed by the regulations under this Act.

8 Prescribing, dispensing, selling or compounding a drug as defined in a clause 113 (1) (d) of the *Drug and Pharmacies Regulation Act*, or supervising the part of a pharmacy where such drugs are kept.

9 Prescribing or dispensing, for vision or eye problems, subnormal vision devices, contact lenses or eye glasses other than simple magnifiers.

10 Prescribing a hearing aid for a hearing impaired person.

11 Fitting or dispensing a dental prosthesis, orthodontic or periodontal appliance or a device used inside the mouth to protect teeth from abnormal functioning.

12 Managing labour or conducting the delivery of a baby.

13 Allergy challenge testing of a kind in which a positive result of the test is a significant allergic response.

FIGURE 3

In the course of engaging in the practice of chiropractic, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to perform the following:

1 Communicating a diagnosis identifying, as the cause of a person's symptoms,
- i) a disorder arising from the structures or functions of the spine and their effects on the nervous system, or
- ii) a disorder arising from the structures or functions of the joints of the extremities.

2 Moving the joints of the spine beyond a person's usual physiological range of motion using a fast, low amplitude thrust.

3 Putting a finger beyond the anal verge for the purpose of manipulating the tailbone.

A major weakness of the legislation is in the determination of qualification for performing the controlled act of spinal manipulation. Or, more specifically, who will be able to adjust the spine using a high velocity, low amplitude thrust. The legislation continues to allow both medical doctors as well as physiotherapists to perform this act on the same plain as chiropractic. I see this as inconsistent with the government's mandate for optimum public protection. It is generally accepted that for a physiotherapist to competently perform spinal manipulation, he or she requires at least a two year full-time specialized post graduate program and for a medical practitioner a minimum requirement is a one year full-time specialist post graduate course.[2] No such training exists at any university in Canada. Therefore the right to manipulate is inappropriate. It is also a wasteful duplication of health care resources.

Another area where the legislation is less than satisfactory is in it's failure to provide chiropractors with the right to refer to medical specialists without financial penalty. This causes obvious difficulty in practice, inconvenience to the patient and unnecessary expense. In other regions such as the province of Saskatchewan direct referral from a chiropractor to a medical specialty is accepted. This should also be the case with our new legislation here in Ontario.

The fact that current policy denies chiropractors at least limited access to public laboratory facilities for their patients also weakens the legislation. It fails to recognize our academic credentials in this area as well as the recommendation of previous government committees appointed to study this matter.

Aside from these three areas of concern for our profession from a chiropractic standpoint, the new RHPA has done a superb job of redefining health care for Ontarians. It rightly approaches health issues from the perspective of the consumer with emphasis upon public protection and freedom of choice. There is ample allowance for professional autonomy but contained within the Act are the mechanisms to allow for continued professional growth and expansion of services as qualification and need dictate.

Certainly not a perfect system, but by far the most progressive and ecompassing to date and it will I feel, serve as the benchmark for future health care legislation in many jurisdictions.

References

1 Swartz A. Report to the Independent Committee on Health Care for Province of Ontario. September 16, 1991.

2 Chiropractic in New Zealand. Government Printer. Wellington. New Zealand. 1979.

3 An Act respecting the regulation of Health Professions and other matters concerning Health Professions. Bill 43. Royal Assent November 25, 1991. Queens Printer for Ontario.