President’s Column

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Legal Action against OBA in August 2014

On 19 December 2013, Justice Douglas of the Supreme Court of Queensland delivered his decision that the Australian Society of Ophthalmologists (ASO) and RANZCO had clear standing to proceed with legal action against the Optometry Board of Australia (OBA).

As Justice Douglas said: "The evidence establishes to my satisfaction that the applicants' roles in setting and advocating standards of patient care for the treatment of glaucoma by ophthalmologists over many years gives them standing to challenge the validity of instruments which, although directed to the conduct of optometrists, have the effect of removing ophthalmologists from their previous role in the process."

It's important to note that within the body of the judgment, references were made to the ASO's articles of association and objectives, the oath that Fellows must swear or affirm that patients are their first concern and multiple references to RANZCO's Code of Conduct. The primacy of patient care is why we have a code of conduct. As medical doctors (and I deliberately use the word “medical” because almost anyone can call themselves a doctor now), we understand that near enough care is not good enough care. We understand the standards necessary to deliver care.

I received this early Christmas present while working in my Mildura practice in country Victoria. Some of you know that my practice shares a location within a large optometry practice, and I have practised collaborative care within an integrated eye team for 10 years. I know what works, what doesn't and I certainly know the importance of diseases such as glaucoma being managed and monitored by medical doctors. It is the collaborative care model which facilitates delivery of appropriate patient care – the model recognises the important contribution of both optometrists and ophthalmologists to patient care, and its rigours provide the protection necessary to ensure that medical conditions are treated by medical doctors.

Despite our litigation against the Optometry Board, I continue to have the support of many optometrists. The large majority recognise the advantages and need for shared care. It is only a small group that is driving the attempt to reduce the standard of patient care and protection to Australian citizens. Our dispute is with the OBA and Australian Health Practitioner Regulation Agency, not optometrists as such. We sincerely wish to continue to enjoy a supportive and productive relationship with our allied health practitioners, and hope that optometrists will continue to work within the confines of the shared care framework for the collective good of our patients.

It is indeed extremely unfortunate that the OBA and Australian Health Practitioner Regulation Agency challenged our standing in this matter. As his Honour held, our standing was clear and his Honour ordered that the OBA pay our costs for the challenge. The standing challenge had the obvious and unfortunate effect of delaying the efficient and timely conduct of the litigation in this matter. Court dates set by his Honour Justice Douglas on 19 December 2013 for May/June 2014 were met with extraordinary resistance by OBA, resulting in a need to return to Court for further orders and the pushing out of the trial date until 4 August 2014.

I am very pleased that the Australian Medical Association has so strongly supported our position on this issue. This court action has implications across the whole of the medical profession. A core allegation in the litigation by ASO/RANZCO is that the OBA are purporting to extend the scope of practise of optometrists to that properly, and solely, within the province of medically trained specialists, and that it has attempted to do so without proper regard to the overwhelming body of informed opinion that the safety and health of patients requires the involvement of ophthalmologists in the diagnosis and management of diseases of the eye such as glaucoma.

I am also happy to report that we have been making substantial progress in our efforts to win Australian Competition and Consumer Commission approval for common fee-setting within ophthalmic practices. We were disappointed the Commission did not see fit to approve our initial application across the board but are now finalising supporting testimony that can be implemented by practices on a case-by-case basis.

I expect the first solo application to be lodged in the near future and believe it should have a good chance for success. This initiative is a good demonstration of how ASO works to assist members in practice management and associated issues.

Dr Arthur Karagiannis
ASO President