Provisional Operational Advice for Employers
(Updated 3 September 2009)

Following the GOC v Boots Fitness to Practise Findings, 30 June 2009

Background

1. This advice has been prepared by FODO following the findings of the Boots fitness to practise case on 30 June 2009.

2. The full judgement can be accessed at:


3. The case involved two types of supervision

   a. that involved in the teaching or training of a student or pre-registration trainee (which involves a contractual obligation between a registered training institution and the practice / practitioner)

   b. that involved in the provision of regulated activities by unregistered persons (whether trainees or not).

4. Although the Fitness to Practise Panel recommended that all stages of dispensing to a child or visually impaired person should be subject to supervision in the latter sense, the Panel was careful to limit its sanctions to areas where the legal requirements for sale and supply had been breached.

Legal Requirements

- Section 27 of the Opticians Act 1989 provides that, unless specifically exempted, “A person shall not sell…any optical appliance or zero powered contact lens…unless the sale is effected by or under the supervision of the registered medical practitioner, a registered optometrist or a registered dispensing optician”. The seller is defined as “Any person who supplies” the optical appliance or the contact lens. Thus, the need for supervision applies to the sale and supply of the optical appliance or contact lens.

- Specific exemptions from the “by or under supervision of” requirement are granted for the sale of spectacles by the Sale of Optical Appliances Order of Council 1984 for patients aged 16 and over and who are not blind of partially sighted.
For the testing of sight by a student or pre-registration optometrist, Rule 3 of The Testing of Sight by Persons Training as Optometrists Rules 1993 requires the testing of sight to be “under the continuous personal supervision of the registered optometrist or a registered medical practitioner”.

Meaning of Supervision

5. The meaning of the term “supervision” has been established in case law and College of Optometrists and ABDO guidance.

6. It means that

- in the case of an activity which must be carried out under supervision (i.e. the testing of sight by a student or pre-registration optometrist, the fitting of contact lenses by a dispensing optician training to be a contact lens optician or making a sale or supply of spectacles or contact lenses to a child under 16 or a blind or visually impaired person)

- an optometrist, registered medical practitioner, contact lens optician or dispensing optician must be physically present on the premises, aware that the activity is taking place and able to intervene and exercise their clinical judgement if required.

7. In the Boots judgement the FTPP also recommend that, in order to provide such supervision effectively, registrants

- should be made aware (and should take steps to ensure they are aware) that they have supervisory responsibilities in respect of the non-registrants concerned (and whether these supervisory responsibilities include training)

- if not immediately present, should be easily contactable within the premises.

Sale and Supply

8. Supervision should take place at all times when a trainee or non-registrant is engaged in a regulated activity with a patient as at 3b and 6 above. The nature of supervision required will vary depending on the skill, training and competence of the non-registrant being supervised and the registrant’s knowledge of these.

9. In the case of supervised sale and supply of spectacles as at 3b and 6 above supervision must take place on collection. This is the final opportunity the provider has to ensure that the sale and supply has been supervised and checks would include that:

- the spectacles or contact lenses correspond to the written prescription / specification
- they are properly assembled in line with the dispensing instructions
• they fit the patient well and
• they deliver the intended visual correction.

10. It is essential that these safeguards are clearly specified in standard operating procedures, manuals and support materials.

11. If these safeguards are not carried out by a registered optometrist, medical practitioner, contact lens optician or dispensing optician

• at least one of the above must be on the premises,
• aware that a regulated sale and supply is taking place
• and be able to intervene and exercise their clinical judgement if required.

Clarity about Responsibilities

12. It is essential that both registered professionals in a supervising capacity and those being supervised are aware of their roles and duties and particularly what functions cannot be carried out without the supervisor being present on the premises and in a position to intervene.

13. Companies / practice managers should take particular care when the supervising practitioner is self-employed to ensure that the supervising optician’s acceptance of these responsibilities has been documented, e.g. by written acceptance signed by the supervisor in order to avoid any misunderstanding that might arise at a later date.

14. In the light of the Boots judgement, case law and best practice, steps to improve clarity and understanding might include that

• documentation in the form of standard operating procedures should be available in the practice and these should be specifically drawn to the attention of both supervisors and staff and understood by them
• each particular registrant’s supervising duties should be spelt out in contracts (or weekly work plans, or written instructions on the day in the case of locums)
• these should be signed and dated to say that the registrant has read them and understood*
• staff subject to supervision should similarly read the standard operating instructions and, again, sign and date to say they have read and understood them*
• induction should be provided for both registrants and staff (including locums) when new to a post, setting out their roles, responsibilities and what the law requires should be supervised activity
• all staff (including practitioners, trainees and non-registrants) could wear name badges that clearly specify their qualification and role or function, in order that the public are better informed,

* This may be in electronic format provided passwords are unique
Training

15. The supervision and training of pre-registration optometrists, trainees and other staff is an investment in the future (and a serious responsibility).

16. The detailed requirements for supervision are usually set out in contracts between the registered training institution, the nominated supervisor, the student / trainee and the practice.

17. When registrants are supervising a registered student in training the FTPP recommends that the training institution should ensure that

- training supervisors fully understand their roles, duties and what is expected of them
- supervisors on the premises (if, exceptionally, it has been agreed by the training institution that these are not the same as the training supervisor) fully understand their roles, duties and what is expected of them
- the employer fully understands the roles, duties and responsibilities expected of them and
- the student fully understands the roles, responsibilities and duties expected of them.
- the provider also should ensure that these safeguards are in place preferably in the form of written instructions signed and dated to prove that they have been read and understood.

18. It is essential that training institutions and practice owners be very clear about supervising responsibilities and in particular how these are covered by professional indemnity insurance.

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