

ONTARIO BAR ASSOCIATION

HEALTH LAW SECTION

THE REGULATION OF DENTAL ASSISTANTS UNDER THE RHPA

February 11, 2014

Dr. Gary SrebroLOW

Regulation of Dental Assistants under the *RHPA*

Dental Assistants in Ontario at the present can become “certified”, but they are not a regulated profession under the *Regulated Health Professions Act, 1991* (“*RHPA*”).^[1] In 2013, however, the Ministry of Health and Long-Term Care (“MOHLTC”) considered and ultimately rejected the notion of self-regulation for Dental Assistants. The purpose of this article is to discuss the process followed by the MOHLTC in determining if a health profession should be regulated and to review the decision with regard to Dental Assistants.

Motivation for Self-Regulation

The Ontario Dental Assistants Association (“ODAA”) is the certifying body and membership association for dental assistants in Ontario. However, at the present time, the certification of Dental Assistants is voluntary. In any event, on their website, the ODAA states that the benefits of certification are that it is beneficial for a Dental Assistant’s career and beneficial for the profession as a whole.^[2]

The ODAA, however, wants more for its membership and it is a proponent of self-regulation for Dental Assistants. Their reasons include that all provinces in Canada, except for Ontario and Quebec, already regulate dental assisting. The ODAA also maintains that regulation will ensure patient safety and better serves the public interest.^[3]

Self-Regulation of Dental Professionals

The *RHPA* lists the health professionals which are presently regulated in Ontario.^[4] Regarding the “dental team”, this already includes Dentists, Dental Hygienists, Dental (Lab) Technologists and Denture Therapists. Only Dental Assistants are not on this list.

The manner in which health professionals are regulated is by limiting what controlled acts they are permitted to perform. The *RHPA* lists what all of the controlled acts are in Ontario.^[5] Each regulated health profession is authorized, via its own legislation (i.e. *Dentistry Act, 1991*), what controlled acts it can perform. While a health professional may be authorized to perform certain controlled acts, they may also be permitted to delegate some of these acts to others. The *RHPA* provides that the delegation of a controlled act by a member must be in accordance with any applicable regulations under the health profession Act governing the member’s profession.^[6] Regarding Dentists, their regulatory College, the Royal College of Dental Surgeons of Ontario (“RCDSO”) issues guidelines to clarify what duties it deems are appropriate for Dentists to delegate to staff, notably, to Dental Assistants.

Dental Assistant Self-Regulation Process

The organization which conducts the “self-regulation” review on behalf of the Province is the Health Professions Regulatory Advisory Council (“HPRAC”). HPRAC is established under the *RHPA* and has a statutory duty to advise the Minister on regulatory matters, including whether or not an unregulated health profession should be regulated.^[7] In August of 2011 the Minister asked HPRAC for advice on the regulation of Dental Assistants. In turn, HPRAC requested submissions from key stakeholders, such as the ODAA and the Ontario Dental Association (“ODA”).

ODAA Submission to HPRAC

The ODAA’s submission to HPRAC is dated November 11, 2011^[8] and it focuses on the procedures performed by Dental Assistants and how these may pose a risk of harm to the public if Dental Assistants are not regulated. For example, infection control and sterilization are procedures which Dental Assistants routinely perform and which the ODAA maintains can have serious implications for patients and the public if they are not performed by educated and regulated professionals.^[9] Also, Dental Assistants take intra-oral radiographs and the ODAA maintains that patients have the right to expect that radiographs are exposed by formally educated and qualified (regulated) professionals.^[10] Finally, the ODAA maintains that many intra-oral duties performed by Dental Assistants can cause injury to patients if they are not performed properly and Dentists often delegate these duties to staff that may not be formally educated (and are unregulated) and this poses a risk of harm.^[11]

ODA Submission to HPRAC

The ODA made their own submission to HPRAC in February 2012^[12] and it reflects that they are opposed to self-regulation of Dental Assistants. Essentially, the ODA’s position is that there is no risk of harm and concern with public safety justifying the self-regulation of Dental Assistants in Ontario.^[13]

While the ODA acknowledges that Dental Assistants play a key role in infection control, they maintain that it is ultimately Dentists, who are regulated by the RCDSO, who have the ultimate responsibility to ensure that their staff are properly trained and properly perform infection control procedures.^[14] Also, the same responsibilities for infection control also rest with Dental Hygienists.^[15] Accordingly, the ODA maintains that as there is already oversight in place in terms of infection control, there is no risk of harm to the public.^[16]

Regarding the performance of radiographs, the ODA maintains that while Dental Assistants perform radiographs, this is not a controlled act under the *RHPA*.^[17] In fact, the requirements for the performance of radiographs are set out under the *Healing Arts Radiation Protection Act*^[18] (“HARP”) and with the HARP Commission, which is responsible for approving radiographic programs in educational facilities. According to the ODA, notwithstanding that they may not be certified or regulated, Dental Assistants who have completed an approved radiation safety course can still be HARP certified and able to take radiographs in a dental office provided they have been ordered by a Dentist.^[19] Accordingly, the ODA maintains that there is already a legislative scheme in place regarding radiation safety and further, Dentists are ultimately responsible and accountable for radiation safety in their dental office.^[20]

Regarding the performance of intraoral duties, the ODA maintains that there are already RCDSO guidelines in place which address what Dental Assistants are permitted to do and therefore, there is no risk of harm if Dental Assistants remain unregulated.^[21]

HPRAC Recommendation

In April of 2013, HPRAC submitted their recommendation to the MOHLTC^[22] which was that Dental Assistants should not be regulated. The basis for this recommendation was that there was insufficient evidence to meet the criteria of posing a risk of harm.^[23] HPRAC’s report added that changes to existing policies could be made to ensure that intraoral duties are assigned to qualified Dental Assistants and that supervision could be maintained under the existing system.^[24]

MOHLTC Decision

Not surprisingly, in July of 2013, the MOHLTC accepted HPRAC's recommendation that Dental Assistants should not be regulated.

Other Professions Presently Considered for Self-Regulation

At this time, Diagnostic Sonographers, Paramedics/Emergency Medical Attendants and Chiroprody/Podiatry are being considered for self-regulation and are presently before HPRAC.^[25]

Summary

The example to be learned from the attempt by Dental Assistants to become regulated is that the MOHLTC may not be inclined to provide approval if there is an existing regulatory scheme in place already regulating the profession in question, directly or indirectly.

About the Author

Dr. Gary Srebrolow is a Partner at Blaney McMurtry LLP and Chair of the Health Law Group. Prior to his legal career, Gary was a practising dentist for several years. Gary's health law practice includes defending health professionals in professional regulation matters, defending health professionals and health care clinics in professional liability (malpractice) claims and representing health professionals in College certification applications. Gary can be reached at (416) 597-4875 or at gsrebrolow@blaney.com.

[1] *Regulated Health Professions Act, 1991*, S.O. 1991, c. 18 (“RHPA”)

[2] “Why is Certification Important?” at ODAA website at <http://www.oodaa.org/Document.aspx?ID=5>

[3] “Submission for Regulation under The Regulated Health Professions Act”, ODAA, November 11, 2011, at ODAA website at <http://www.oodaa.org/Docs/HPRACSubmission.pdf>, at page 50

[4] *Supra* note 1, Schedule 1

[5] *Supra* note 1, section 27(2)

[6] *Supra* note 1, section 28

[7] HPRAC website at <http://www.hprac.org/en/index.asp>

[8] *Supra* note 3

[9] *Supra* note 3 at page 7

[10] *Supra* note 3 at page 11

[11] *Ibid*

[12] “ODA Submission – Regulation of Dental Assistants Under the Regulated Health Professions Act, 1991” February 2012, at ODAA website at <http://www.oodaa.org/Docs/ODASubmissiononRegulationofDentalAssistants.pdf>

[13] *Supra* note 12 at page 11

[14] *Supra* note 12 at page 6

[15] *Ibid*

[16] *Ibid*

[17] *Supra* note 12 at pages 9-10

[18] *Healing Arts Radiation Protection Act*, R.S.O. 1990, c. H.2 (“*HARP*”)

[19] *Supra* note 12 at pages 9-10

[20] *Supra* note 18, section 9

[21] *Supra* note 12 at page 10

[22] “The Health Profession Assistant: Consideration of the Dental Assistant Application for Regulation, Report by the Health Professions Regulatory Advisory Council”, April 2013, at HPRAC website at http://www.hprac.org/en/reports/resources/DAFINAL_AccPDF_HPRAC_Vol1_ENG.pdf

[23] *Supra* note 22 at page 8

[24] *Ibid*

[25] *Supra* note 7