FOUR

College of Dietitians of Ontario

Scope of Practice, Controlled Acts, Delegation and Orders

AT A GLANCE

SCENARIOS

TABLES

NEED TO KNOW

1. Controlled acts cannot be performed without proper legal authority.

2. Know each of the controlled acts as it applies to dietetics.

3. Dietitians who act outside of their scope of practice can be prosecuted for performing dangerous acts, even if they are not controlled acts.

4. Other statutes, employers and the standards of practice of the profession may impose additional limitations on a dietitian's ability to provide certain services.

Scope of Practice

Each profession under the *Regulated Health Professions Act* has a scope of practice statement that describes in broad terms the focus of the profession. For dietitians, the statement is set out in the *Dietetics Act*, Section 3, as follows:

> "The practice of dietetics is the assessment of nutrition and nutritional conditions and the treatment and prevention of nutrition related disorders by nutritional means."

There is no exclusivity to this statement. People who are not dietitians can provide these services unless they contravene a provision of the *Dietetics Act*. Specifically, they must not use the title "dietitian". Dietitians should also be aware that when they are acting outside of the scope of practice, they are not practising dietetics. They are practising something else and should not call it dietetics.

Scope of Practice and Practising Dietetics

The primary purpose of the scope of practice statement is to educate dietitians and the public about the focus of the dietetic profession. The College uses the scope of practice statement to define parameters for developing standards of practice. However, to monitor competence in dietetic practise and to help with the administration of regulations, by-laws, programs and policies, the College elaborated on the scope of practice statement with a definition of practising dietetics as follows:

> "Practising Dietetics is paid or unpaid activities for which members use food & nutrition-specific knowledge, skills and judgment while engaging in:
>
> - the assessment of nutrition related to health status and conditions for individuals and populations;
> - the management and delivery of nutrition therapy to treat disease;
> - the management of food services systems; building thee capacity of individuals and populations to promote, maintain or restore health and prevent disease through nutrition and related means;
> - and management, education or leadership that contributes to the enhancement and quality of dietetic and health services." (see Figure 4.1, next page, for more examples of practising dietetics).

The College does not consider the following activities as practising dietetics:

- Holding a position solely in non-dietetic management (e.g., Vice President or Administrator of a hospital or other organization).
- Holding a position solely in the area of human resources (HR), information technology (IT), or risk management.
- Engaging in sales or marketing of pharmaceuticals that are not related to nutrition.
- Assessing facility processes to meet accreditation standards.

Circumstances determine whether a dietitian is practising dietetics or not. For instance, a dietitian who works at a gym might provide some personal training services with no nutrition component and, in that context, would not be seen as practising dietetics. However, if the dietitian were to offer diabetes management to a client that included exercise at a gym, he or she would be practising dietetics.

Generally, the College's interest lies in regulating actions performed within the scope of practice. There are times, however, where the College can regulate aspects of a dietitian's private life that are outside the dietetic scope of practice but within its public protection mandate. This would apply where a dietitian's actions have an impact on professional ethics or public safety, such as cheating on income tax, abusing one's own child or driving while impaired. A dietitian who drinks and drives places others at risk. Would that dietitian also risk coming to work and treating patients while under the influence of alcohol? Even though the dietitian may not yet have come to work impaired, the College would have a legitimate public protection interest in regulating the behaviour.

Figure 4.1 CDO`s Definition of Practising Dietetics

"Dietetic Practise is paid or unpaid activities for which members use food & nutrition-specific knowledge, skills and judgment while engaging in:

- the assessment of nutrition related to health status and conditions for individuals and populations;
- the management and delivery of nutrition therapy to treat disease;
- the management of food services systems; building the capacity of individuals and populations to promote, maintain or restore health and prevent disease through nutrition and related means; and
- the management, education or leadership that contributes to the enhancement and quality of dietetic and health services."

For greater clarity, dietetic practice includes the following activities:

- Assessing nutrition status in clinical settings to provide meal plans, nutrition guidance or advice and/or formulating therapeutic diets to manage and/or treat diseases or nutrition-related disorders.
- Assessing, promoting, protecting and enhancing health and the prevention of nutrition-related diseases in populations using population health and health promotion approaches, as well as strategies focusing on the interactions among the determinants of health, food security and overall health.
- Managing food and management services and developing food services processes in hospitals and other health care facilities, schools, universities, and businesses.
- Conducting research, product development, product marketing, and consumer education to develop, promote and market food and nutritional products and pharmaceuticals related to nutrition disorders or nutritional health.
- Assessing compliance of long-term care homes to meet the Ministry of Health and Long-Term Care standards related to nutrition and hydration of residents.
- Developing or advocating for food and nutrition policy.
- Teaching nutrition, food chemistry or food service administration to students in dietetics, the food and hospitality industry and/or to other health care providers.
- Planning and engaging in direct food & nutrition research.
- Communicating food & nutrition information in any print, radio, television, video, Internet or multi-media format.
- Directly managing, supervising or assuring quality of front-line employees who are engaged in any of the previously-mentioned dietetic practice circumstances.

Members are not considered to be practicing dietetics when engaged in the following activities:

- Holding a position solely in non-dietetic management (e.g., Vice President or Administrator of a hospital or other organization).
- Holding a position solely in the area of human resources (HR), information technology (IT), or risk management.
- Engaging in sales or marketing of pharmaceuticals that are not related to nutrition.
- Assessing facility processes to meet accreditation standards.

Scope of Practice & the "Harm Clause"

SCENARIO 4-1
Cancer Nutritionist

You work in a community setting. A client's husband, Jorge, tells you about an experience suffered by his late wife, Michelle. A year ago, she was diagnosed with breast cancer. The prognosis had been reasonably optimistic if Michelle had surgery followed by radiation and chemotherapy. Michelle hated surgery and drugs, so she investigated alternative care options. She found a "nutritionist" who performed tests with a crystal and assured Michelle that she would be fine if she strictly followed a fruit, mushroom and nut diet, and purchased a special brand of multiplex vitamins from her.

Did the "nutritionist" do anything illegal? Does it matter whether the "nutritionist" is a dietitian?

The RHPA gives Ontario health colleges the authority to regulate health professions to ensure that the public gets competent and ethical care from qualified professions. Also in the public interest, the RHPA has a provision, the "Harm Clause", which applies to non-regulated health care practitioners and regulated health practitioners acting outside their scope of practice. The "Harm Clause" prohibits anyone from engaging in health care practices that would reasonably cause harm, unless the activity is within the scope of practice of a regulated health professional. It states:

> 30. (1) No person, **other than a member treating or advising within the scope of practice of his or her profession,** shall treat or advise a person with respect to his or her health in circumstances in which it is reasonably foreseeable that serious bodily harm may result from the treatment or advice or from an omission from them."[1] (Bold emphasis added.)

By definition, no Registered Dietitian, either a general or temporary member, acting within their scope of practice, could breach the harm clause. Dietitians causing harm while engaging in health care activities within their scope of practice are subject to College discipline for incompetence or misconduct. However, a dietitian causing harm while engaging in health care activities outside of the dietetic scope of practice, would be in breach of the harm clause, and could be prosecuted.

In the "Cancer Nutritionist" scenario above, there obviously was a reasonably foreseeable risk of serious physical harm if Michelle did not receive appropriate treatment. In this case, the nutritionist was not a dietitian and:

- could be prosecuted by the Attorney General of Ontario for breach of the "Harm Clause" under the RHPA, because she was not a regulated member of the College of Dietitians of Ontario, and it was reasonably foreseeable that serious physical harm might result from the advice she gave;
- could be prosecuted under the *Criminal Code of Canada* for criminal negligence; or
- could be subject to a civil action.

If the nutritionist had been a dietitian and the recommended treatment was within the dietetic scope of practice, she:

- would be subject to College discipline proceedings for professional misconduct and incompetence;
- could be prosecuted for criminal negligence under the *Criminal Code of Canada*; or
- could be subject to a civil action.

If the nutritionist had been a dietitian, and the recommended treatment was not within the dietetic scope of practice, she

- would be subject to College discipline proceedings for professional misconduct and incompetence;
- could be prosecuted by the Attorney General of Ontario for breach of the "Harm Clause" under the RHPA, because she was not acting within her scope of practice and it was reasonably foreseeable that serious physical harm might result from the advice she gave;

- could be prosecuted for criminal negligence under the *Criminal Code of Canada*; or
- could be subject to a civil action.

Restrictions on a Dietitian's Practice

There are a number of restrictions on a dietitian's ability to perform certain kinds of assessments or provide certain kinds of treatment. Dietitians must be sure that none apply before initiating any assessment or treatment. The restrictions are stipulated through:

A. Statutes applying to dietitians other than the RHPA or the *Dietetics Act;*

B. Controlled acts stipulated in the RHPA, which dietitians cannot perform without legal authority;

C. Employer or facility restrictions;

D. Regulations; and

E. Standards of practice.

A. Statutes Applying to Dietitians other than the RHPA or the Dietetics Act

Other statutes have restrictions on dietetic practice. The *Criminal Code of Canada* has a number of provisions that would apply to dietitians engaging in dangerous or dishonest activities. For example, criminal negligence would apply to some dangerous actions or omissions. Federal drug legislation such as the *Controlled Drugs and Substances Act* and the *Natural Health Product Regulation* made under the *Food and Drug Ac*t also apply to dietitians.

Where federal legislation is more restrictive than provincial legislation, the federal legislation takes priority. For example, under the *Food and Drug Act*, there are restrictions on the distribution of free drug samples (e.g. only physicians, dentists, veterinarians and pharmacists are allowed to distribute samples under certain conditions).

Those restrictions would take priority over the provisions in the RHPA permitting dietitians to receive delegation of the controlled act of dispensing drugs.

The *Patient Restraint Minimization Act* applies to both public and private hospitals. It prevents the use of any sort of restraint on the freedom of a client unless:

- It enhances freedom, e.g. locking doors of a unit or using a monitoring device so that a client can have greater privacy;
- It prevents harm; or
- Immediate action is necessary.

Many forms of restraint would not be controlled acts.

B. Controlled Acts

Controlled acts are health care actions that are considered potentially harmful if performed by unqualified persons. The RHPA sets out 13 (soon to be 14) acts that should only be performed by someone with the legal authority to do so (Figure 4-2, p. 41). Dietitians have been granted the legal authority under the *Dietetics Act* to perform only one controlled act, skin pricking, which falls within the controlled act of performing a procedure below the dermis. this authority for RDs to take blood samples by skin pricking for the purpose of monitoring capillary blood readings while practicing dietetics:

> **Authorized act**
>
> 3.1 In the course of engaging in the practice of dietetics, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to take blood samples by skin pricking for the purpose of monitoring capillary blood readings. 2009, c. 26, s. 7. [2]

When can dietitians perform other controlled acts?

Dietitians can perform a controlled act if they have a delegation, which means they have

FIGURE 4-2

The Fourteen Controlled Acts under the *Regulated Health Professions Act.* [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 a 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 the 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 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. 1991, c. 18, s. 27 (2); 2007, c. 10, Sched. L, s. 32.

Note: On a day to be named by proclamation of the Lieutenant Governor, subsection (2) is amended by the Statutes of Ontario, 2007, chapter 10, Schedule R, subsection 19 (1) by adding the following paragraph:

14. Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgement, insight, behaviour, communication or social functioning.

obtained the authority to do so from someone who is authorized to perform the act by their profession-specific act, such as a physician, or if one of the established exceptions applies. If a procedure is not a controlled act, it is said to be in the public domain, meaning that anyone can do it. However, it would be subject to the "Harm Clause" under the RHPA or criminal negligence under the *Criminal Code of Canada.* Below is a review of seven controlled acts faced by dietitians in their practice.

1. COMMUNICATING A DIAGNOSIS

The first controlled act, communicating a diagnosis, does not stop dietitians from formulating a diagnosis, but prevents them from communicating it to clients in certain circumstances. Nor does it prevent a dietitian from communicating the results of an assessment, so long as this does not amount to communicating a formal diagnosis.

The scope of practice statement for dietitians makes clear that they can assess and treat clients. Indeed, given their obligation to obtain an informed consent from clients, dietitians must be able to assess and clearly inform their clients about assessment results — so long as they do not communicate a formal diagnosis. Communicating a formal diagnosis has a number of characteristics:

- It is a communication to a client or a client's representative.
- It is a formal, medical label of a disease, disorder or dysfunction. Describing or giving proper names to symptoms, e.g. weight loss, is not a diagnosis.
- The medical label is a conclusion. A list of possible conditions under consideration is not usually considered a diagnosis.
- The medical label is not one previously given to the client. Repeating or expanding on the nature and implications of a previously given diagnosis is permissible.
- There must be a reasonable expectation that the client will rely on the communication to make health decisions.

Communicating a diagnosis is telling a client that he or she has anorexia nervosa and should see a psychiatrist. Conversely, it is not communicating a diagnosis to tell a client that your assessment indicates a number of potentially dangerous eating and behavioural habits, and advising them to see a physician to rule out a serious condition such as anorexia nervosa.

Laboratory results are not usually the same as a diagnosis. Discussing a blood glucose level with a client is not communicating a diagnosis. Invariably, questions are asked about the meaning of the result, which a dietitian often cannot answer without giving a diagnosis. It is wise, therefore, to be cautious about releasing test results to clients who are not already aware of their condition. In addition, some laboratory tests are almost diagnostic in themselves (e.g. observation of cancer cells from some biopsies) and should not be communicated to clients who have not previously been advised of their diagnosis.

Often, the best strategy for dietitians is to set up a first meeting only after clients have been advised of their diagnosis. Confirm at the beginning of the meeting that they have already received it. Once clients have been given their diagnosis, it is acceptable to discuss it and their dietetic treatment options with them. For example, retinal screening at a diabetes education centre would not appear to be an invasive procedure. In and of itself, it is not a controlled act unless it is combined with other acts, such as issuing a prescription for a vision device. However, if you were to perform the test, you would want to ensure that you had the skill to do so in accordance with acceptable standards, and that you did not communicate a diagnosis when giving the client the results of the test. If in doubt, advise the client to speak about the test results with the centre's physician or optometrist.

2. PROCEDURE BELOW THE DERMIS

The second controlled act, performing a procedure below the dermis includes skin pricking. Scenario 4-2, *Skin-Prick Testing*, on the next page, raises the issue of whether a dietitian

SCENARIO 4-2
Skin-Prick Testing

You are working in long-term care and providing meal planning services for Harvey, a resident who has diabetes. You wish to perform capillary blood glucose monitoring on Harvey to assist in meal planning. This involves pricking his fingers and drawing a small amount of blood. Your colleague, Susan, sees you performing the test and tells you that you have just broken the law. Is Susan right?

would be allowed to perform the skin-prick test. Until 2009 the answer was no. Up until then, you would have required a delegation from a practitioner authorized to perform skin pricking, like a physician. However, amendments to the *Dietitians Act* and the *Laboratory and Specimen Collection Centre Licensing Act* now authorize dietitians to perform the controlled act of taking blood samples by skin-pricking for the purpose of monitoring capillary in the course of their practice. Section 3.1 of the *Dietetics Acts* reads as follows:

> **Authorized act**
>
> 3.1 In the course of engaging in the practice of dietetics, a member is authorized, subject to the terms, conditions and limitations imposed on his or her certificate of registration, to take blood samples by skin pricking for the purpose of monitoring capillary blood readings. 2009, c. 26, s. 7.

This amendment was part of a broader initiative to facilitate interprofessional collaboration and enhance the efficiency of the health care system.

However, being authorized to perform a controlled act is not the end of the story. RDs still have a professional obligation to ensure that they are competent to perform the procedure in accordance with the principle of client-centred care and that they perform the procedure in a safe manner (e.g., with proper infection control procedures, waste management disposal guidelines).

3. INJECTION OR INHALATION

The fifth controlled act, administrating a substance by injection or inhalation, would include adding a substance to a saline solution line that has already been established.

4. ENTERING OPENINGS INTO THE BODY

The sixth controlled act relates to entering openings into the body, an internal act.[3] An attempt has been made to give anatomical precision to the provision. Introducing a feeding tube into a client is a controlled act.

5. PRESCRIBED FORM OF ENERGY

The seventh controlled act, applying a prescribed form of energy, refers to electricity, electromagnetic energy, or sound waves. Electrical impedance testing, while electrical in nature, is not prohibited in the regulations made by the Minster of Health and Long-Term Care. Moreover, this controlled act does not apply to the energy level of diets, enteral nutrition or TPN. Food energy is also not part of this controlled act.

6. PRESCRIBING, DISPENSING, SELLING OR COMPOUNDING A DRUG

The eighth controlled act, prescribing, dispensing, selling or compounding a drug, covers many over-the-counter or publicly available substances. Dietitians must ask themselves two questions before acting in this area:

1. Is it a drug?
2. Am I prescribing, dispensing, selling or compounding?

The word "drug" is given a broad meaning under the *Drug and Pharmacies Regulation Act*.[4] It is not restricted to prescription drugs but is defined as meaning;

> "any substance or preparation containing any substance,
>
> (a) manufactured, sold or represented for use in,
>
> (i) the diagnosis, treatment, mitigation or

prevention of a disease, disorder, abnormal physical or mental state or the symptoms thereof, in humans, animals or fowl, or

(ii) restoring, correcting or modifying functions in humans, animals or fowl,

(b) referred to in Schedule I, II or III,

(c) listed in a publication named by the regulations, or

(d) named in the regulations, but does not include,

(e) any substance or preparation referred to in clause (a), (b), (c) or (d) manufactured, offered for sale or sold as, or as part of, a food, drink or cosmetic,

(f) any "natural health product" as defined from time to time by the *Natural Health Products Regulations* under the *Food and Drugs Act* (Canada), unless the product is a substance that is identified in the regulations as being a drug for the purposes of this Act despite this clause, either specifically or by its membership in a class or its listing or identification in a publication,

(g) a substance or preparation named in Schedule U,

(h) a substance or preparation listed in a publication named by the regulations...

It is important to know what is meant by "Schedule I, II or III" in the definition of a drug. "Schedule I,II, or III" are categories of drugs under the *National Association of Pharmacy Regulatory Authorities* (NAPRA) national drug scheduling model, which specifies the condition of sale for the different categories of drugs. Schedule I drugs require a prescription for sale and are provided to the public by the pharmacist following the diagnosis and professional intervention of a practitioner.

Schedule II drugs require professional intervention from the pharmacist at the point of sale and possibly referral to a practitioner. While a prescription is not required, the drugs are available only from the pharmacist and must be retained within an area of the pharmacy where there is no public access and no opportunity for patient self-selection (behind the counter).

Schedule III are available without a prescription and are to be sold from the self-selection area of the pharmacy which is operated under the direct supervision of the pharmacist (over the counter).

Unscheduled drugs can be sold (or given out in the form of samples) without professional supervision, because adequate information is available for the client to make a safe and effective choice.

The *Natural Health Products Regulations*, under the federal *Food and Drugs Act,* were developed to regulate the manufacture, clinical trials, labeling, packaging, and reporting with respect to natural health products. The products under these regulations include vitamins, minerals, herbal remedies, homeopathic medicines, probiotics, amino acids and essential fatty acids. As noted above, the definition of drug in the *Drug and Pharmacies Regulation Act* specifically excludes natural health products. This means that the controlled act related to prescribing, dispensing, selling or compounding a drug would not apply to any of these products, unless they appeared on one of the NAPRA schedules.

Some vitamins and minerals are only considered scheduled drugs above a certain dose. For example iron is considered a Schedule II drug in doses over 30 mg (as a result many prenatal vitamins now contain only 27 mg of iron allowing dietitians to provide samples of them to clients).

To determine whether a particular product is listed under one of the national drug schedules, consult the NAPRA website at: http://www.napra.org/pages/Schedules/Search.asp. The search feature allows you to search by drug name (e.g., Iron) or by the name of the product (e.g., "Materna"). The NAPRA schedules are updated regularly. For the most current information regarding any product, it is best to consult the NAPRA website rather than relying on print articles or resources which may be out of date. For example, Materna was listed as a Schedule II drug. It is now unscheduled. [5]

Even if the substance is a drug, there is a difference between recommending and prescribing it. If a substance is a drug, dietitians can still recommend it but cannot prescribe it. Recommending is advising a client about a drug that they can obtain on their own and explaining how it might be of assistance. Prescribing means authorizing the dispensing of a drug, usually with specific doses and frequency, to a client who would not normally be able to obtain it on their own. For instance, recommending that a pregnant client purchase a nonprescription prenatal multivitamin and mineral supplement is acceptable. Giving a document addressed to a pharmacist with instructions to dispense the specific supplement, with itemized directions for its use, is prescribing.[6]

7. PSYCHOTHERAPY

A fourteenth controlled act relating to psychotherapy will likely be proclaimed into force sometime in the future . It will read as follows:

> Treating, by means of psychotherapy technique, delivered through a therapeutic relationship, an individual's serious disorder of thought, cognition, mood, emotional regulation, perception or memory that may seriously impair the individual's judgment, insight, behaviour, communication or social functioning.

The contours of this new controlled act are still uncertain, and it is hoped that some practical guidance will be issued before then. However, the provision is not intended to cover the usual types of advice and counselling generally provided by dietitians in day-to-day practice. Those developing a significant therapeutic relationship to help change dangerous behaviours, such as significant eating disorders, might wish to consider advocating for a medical directive to support their activities.

EXCEPTIONS TO THE CONTROLLED ACTS

There are a number of exceptions to the rules, permitting controlled acts to be performed in certain circumstances:

- Any controlled act can be performed during an emergency. This would include applying a defibrillator where someone appears to be having a heart attack or administering a glucagon injection when someone is suffering from a severe hypoglycemic reaction rendering them unconscious.
- Assisting a person with "routine activities of living" may involve administering a substance by injection or inhalation or performing an internal act. For example, a dietitian on a home visit could, if they were competent to do so, assist clients with their regular insulin injection.
- Treating a member of your own household can properly involve communicating a diagnosis, administering a substance by injection or inhalation or performing an internal act.
- Students training for a profession that has controlled acts can do them under the supervision of a registered member of the profession. This would apply to dietitians training students on techniques for skin pricking.
- Spiritual or religious healing can involve the performance of a controlled act if it is a tenet of the religion.
- Aboriginal healers can provide traditional healing services.

AUTHORITY MECHANISMS FOR DIETITIANS PERFORMING CONTROLLED ACTS

Dietitians can perform controlled acts delegated to them by the registered members of the professions authorized to perform them. For example, a physician may authorize a dietitian to dispense a drug such as a multivitamin. The delegation can be either specific or general. For instance, it can be made specifically for a client whose treatment has been discussed with the physician. Conversely, a medical directive is a form of direction that is not restricted to a specific client and usually sets criteria as to when it can be relied upon. An example would be that all expectant mothers at a particular

clinic serving low income clients, and meeting certain criteria, should be given a multivitamin and mineral supplement by a dietitian.

There is significant confusion about the differences between delegations, orders, medical directives, and Assignments. Table 4-2, on the next page, *Comparing Delegations, Orders and Assignments*, illustrates the differences between them.

Delegations

Accordingly, it is reasonable for the delegating practitioner to set certain criteria for the performance of the controlled act and to monitor its performance. Authorizers are responsible for ensuring that:

- they are capable of performing the procedure correctly, themselves;
- the person to whom the procedure is assigned (the implementer) has the competence to perform it
- they provide any order or documentation required to substantiate that the delegation has been given.

The person receiving the delegation, the implementer, is responsible for its performance. Implementers are responsible for:

- demonstrating that they are competent and having this documented where required;
- assessing appropriateness to initiate the procedure even if an order exists;
- ensuring legal responsibilities are met, e.g. if an order is required, to obtain it.

Orders

Another act restricting the practice of dietitians is the *Public Hospitals Act*. It requires orders in hospitals for controlled acts and many otherwise public domain acts. For example, prescribing a therapeutic diet is not a controlled act. However, most public hospitals would expect a dietitian to obtain an order from a physician and to ensure it was recorded in the chart before issuing a therapeutic diet. This onus of responsibility is the major distinction between a delegation and an order. If an order is given, the ordering practitioner is not generally responsible for its actual performance, unless the person

FIGURE 4.3 Comparing Delegation, Order and Assignment

TERM	APPLIES TO	AUTHORIZER CO-RESPONSIBLE FOR PERFORMANCE?	EXAMPLE
Delegation	Controlled acts	Yes	Physician delegates to a dietitian the prescribing (including adjusting the dose) of *Oral Hypoglycemic Agents* within a predetermined limit for clients with poor glycemic control.
Order	1. Controlled acts where recipient is authorized to perform only with an order 2. Public domain acts where other legislation or facility rules require an order.	No, unless person giving order is employer of person performing procedure.	1. Physician orders nurse to insert IV line. 2. In hospital, physician orders a therapeutic diet.
Assignment	Public domain acts that are part of the authorizer's practice.	Yes, as the act is a part of the authorizer's practice.	Dietitian asks the dietetic assistant to teach a diabetic diet.

giving the order is the employer of the person receiving the order.

A verbal order can be relied upon as long as the hospital has an approved protocol setting out how this is to be done. The section requiring orders under the *Public Hospitals Act* reads as follows:

> 24. (1) Every order for treatment or for a diagnostic procedure of a patient shall, except as provided in subsection (2), be in writing and shall be dated and authenticated by the physician, dentist, midwife or registered nurse in the extended class giving the order. O. Reg. 64/03, s. 10.
>
> (2) A physician, dentist, midwife or registered nurse in the extended class may dictate an order for treatment or for a diagnostic procedure by telephone to a person designated by the administrator to take such orders. O. Reg. 64/03, s. 10.
>
> (3) Where an order for treatment or for a diagnostic procedure has been dictated by telephone:
>
> (a) the person to whom the order was dictated shall transcribe the order, the name of the physician, dentist, midwife or registered nurse in the extended class who dictated the order, the date and the time of receiving the order and shall authenticate the transcription; and
>
> (b) the physician, dentist, midwife or registered nurse in the extended class who dictated the order shall authenticate the order on the first visit to the hospital after dictating the order. O. Reg. 761/93, s. 11; O. Reg. 45/98, s. 3.

Medical Directives

Medical directives have become a useful method of making the health system function at a time when limited resources are requiring physicians to focus on diagnosing and treating serious conditions. The College has gathered and published information about how dietitians have successfully obtained and used medical directives to provide competent, effective and prompt care to clients, while protecting client safety and ensuring that appropriate practitioners (e.g. physicians) are brought in to deal with complicated cases.[7] Medical directives are also consistent with the trend to collaborative care.

A growing number of hospitals have adopted policies or medical directives that authorize dietitians to order therapeutic diets and/or implement them without obtaining a physician signature on each occasion. In some hospitals (although not supported by policy or medical directive), dietitians do write orders for therapeutic diets and have them implemented before a physician or person authorized to do so cosigns the order. However, it is best to have this practice supported by a hospital policy or a directive.

Some medical directives permit the implementation of a dietitian's order before the order is co-signed. In this case, the medical directive as signed by a physician is itself the order. It fulfills the requirements for a physician order. As such, the implementation of the order by another person does not require a further cosignature, unless the facility chooses to require it as a matter of policy. Typical medical directives deal with matters such as dispensing certain drugs directly related to dietetic practice (e.g., certain prenatal supplements) and performing related tests or procedures (e.g., venipuncture). They most commonly apply to a single organization (e.g. a public health unit) or setting.

Following an appropriate process is the key to success in obtaining a medical directive. Research by the College suggests the following tips:

- Start with a specific dietetic problem. Don't go for too much at once. Try to choose an issue that only involves two or three professions (e.g. dietitians and physicians).
- Word the directive so that it is clear as to when it applies, what can be done by whom, and what safeguards are needed to ensure that the client's care is not compromised.
- Communicate the medical directive clearly

to everyone who will be affected.

- Ensure there are enough dietitians with the necessary training and qualifications to implement the medical directive.
- Recruit an appropriate manager(s) (e.g. Professional Practice Leader, Clinical Manager) to help navigate the organization's approval process.
- Solicit support from other professions and stakeholders.
- Have an existing organizational process for developing medical directives.

A medical directive can be either an order or a delegation depending on the context. The distinctive feature of a medical directive is that it applies to any client who meets the criteria, not just one client. The *Federation of Health Regulatory Colleges of Ontario* has developed a useful guide to assist all professions in developing appropriate medical directives, *An Interprofessional Guide on the Use of Orders, Directives and Delegation for Regulated Health Professionals in Ontario.* [8]

Assignments

An assignment is a direction by a health practitioner to another person to perform a public domain procedure, i.e. procedures that are not controlled acts, such as teaching a diet. Dietitians are still responsible for ensuring that they assign activities within their scope of practice appropriately, even if they are not controlled acts. Not doing so is an act of misconduct according to Paragraph 17 of the *Professional Misconduct Regulation*:

> 17. Assigning members, dietetic interns, food service supervisors, dietetic technicians or other health care providers to perform dietetic functions for which they are not adequately trained or that they are not competent to perform.

Health practitioners operating an office or facility may set some rules or criteria for the performance of public domain procedures in their capacity as a manager. Managers can set these rules or criteria even though the assignees could perform the procedure without restriction outside of the office or facility.

C. Employer or Facility Restrictions

Employment contracts may contain some restrictions in the practice of a dietitian. For example, an office may confine itself to paediatric or geriatric care. Similarly, an employer may choose to refer certain types of cases (e.g. anorexia nervosa) out of the office even though a dietitian might wish to treat them. Even if the dietitian were authorized to perform the acts, the contract would generally apply.

Similarly, facilities have the right to impose limitations on what their staff does. Although the *Long-Term Care Act* has no such requirement, a long-term care or nursing home could, for example, require an order from a physician for implementing individual therapeutic diets through an organizational policy. As long as a dietitian is associated with that facility, appropriate restrictions should be honoured, unless there are concerns about a breach of professional standards. Employer or facility rules are not a justification for failing to maintain dietetic standards or professionalism.

Legislation covering long term care facilities does not require physicians to give orders for dietetic care. In fact, many such facilities have protocols permitting dietitians to give orders without co-signatures by physicians. In such cases, limitations are imposed by facility policy, not statute. Failure to comply with a valid contractual term or facility rule can constitute grounds for termination without notice or compensation.

D. College Regulations

The College has the authority to develop regulations that pose restrictions on a dietitian's practice. The *Professional Misconduct Regulation*

specifies acts of professional misconduct, for example, "Treating or attempting to treat a condition that the member knew or ought to have known was beyond his or her expertise or competence."

E. Standards of Practice

Being legally authorized to perform a procedure covers the legal aspect of an activity. A dietitian must still act ethically and competently, always ensuring that professional standards are met. If the standard of practice dictates certain actions in a particular circumstance, then disregarding the standard can result in disciplinary action and civil liability to pay for resulting damages.

Standards of practice refer to the shared understanding of what is proper within a profession. These standards need not be in writing, however, general principles usually are. You may want to consult the College's Practice Advisory Service, respected textbooks and periodical literature for current information about standards of practice. If in doubt about your actions in any situation, ask yourself: Would the vast majority of right thinking members of the profession think that this action was appropriate? If the answer is no, then do not do it.

Conclusion

Several statutes define the scope of practice and set limits to dietetic practice. Dietitians must be aware of these statutes and understand how they affect their practice. The system of controlled acts, for example, is fundamental to the health regulatory system and the ideals of public protection in Ontario health care. The statutes, limiting the practice of controlled acts to authorized regulated professionals only, applies to everyone including laypersons. All are forbidden to practice controlled acts without being authorized to do so by law. Every dietitian must be aware of the complex issues involving the interpretation of controlled acts in relation to dietetics. This understanding is critical, because dietitians would not want to violate the law, and yet would not want to unnecessarily limit their health care activities ~~and efficient de~~livery of client-centred health care. The College has published several excellent articles about scope of practice, controlled acts and dietetic practice.

1 Section 30 of the *Regulated Health Professions Act.*.

2 Regulated Health Professions Act, 1991, S.O. 1991, Chapter 18, Prohibitions 27 (2).

3 i.e., 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 the urethra;
v. beyond the labia majora;
vi. beyond the anal verge; or
vii. into an artificial opening into the body.

4 Drug and Pharmacies Regulation Act, R.S.O. 1990, Chapter H.4, Part IV, Pharmacy, Interpretation, Part VI: Section 117.

5 For more information see: "Vitamins & Minerals & the RD Scope of Practice." *résumé*: Summer 2008, p. 8.

6 Dr. Len Piché, "Natural Health Products and Your Practice", *résumé*, Summer 2002, p. 6. This article identifies resources for dietitians relating to natural health products. See also: "Vitamins and Minerals - Prescribing or Recommending? Scheduled? DIN or NPN?", *résumé*, Summer 2004, 4-6.

7 "A Primer for Developing Medical Directives", *résumé*, Winter 2004, 5-6.

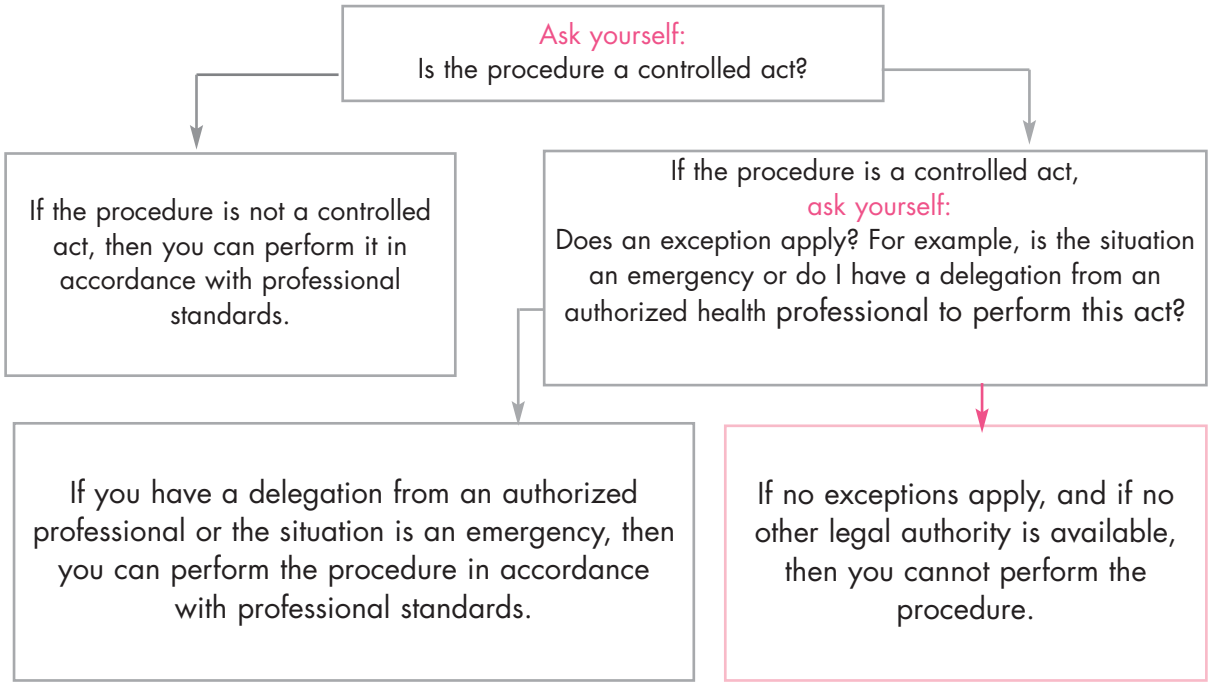
"Therapeutic Diet Orders and Medical Directives", résumé, Summer 2003, 6-7.

"Insulin Adjustments", *résumé*, Fall 2002, p. 5;

Also, see Deborah Ellen (Boyko) Wildish, BHEc, MA, RD, "Medical Directive: Authorizing Dietitians to Write Diet and Tube Feeding Orders", Canadian Journal of Dietetic Practice and Research, Vol. 62, No. 4, Winter 2001, 204-206.

8 Federation of Health Regulatory Colleges, A Guide to Medical Directives and Delegation, http://www.regulatedhealthprofessions.on.ca/EVENTSRESOURCES/medical.asp

FIGURE 4-4 CAN I PERFORM THIS PROCEDURE?



Quiz

Provide the best answer to each of the following questions. Some questions may have more than one appropriate answer. Explain the reason for your choice. See *Appendix 1* for answers.

1. **In Scenario 4-1, "Cancer Nutritionist", assuming that the nutritionist is not a Registered Dietitian, what law has the nutritionist probably broken?**
   a. The "Harm Clause" under the *Regulated Health Professions Act*.
   b. The criminal negligence portion of the *Criminal Code of Canada*.
   c. Dispensing and selling a drug, which is a controlled act under the *Regulated Health Professions Act.*
   d. All of the above.

2. **Assume in Scenario 4-1, "Cancer Nutritionist", that the nutritionist said, "I don't accept the diagnosis of medical doctors", and did a full assessment. Following the assessment, the nutritionist said: "You have a 'condition' that can be managed by nutritional means". Did the nutritionist perform the first controlled act relating to communicating a diagnosis?**
   a. Yes, the client relied on the communication for making treatment decisions.
   b. Yes, the nutritionist identified diet as the cause of the client's symptoms. The diagnosis was wrong, but it was still a diagnosis.
   c. No, because dietary insufficiency is not a disease or disorder.
   d. No, because the nutritionist did not identify a condition or disease as the underlying cause but simply recommended treatment.

3. **In Scenario 4-2, "Skin-Prick Testing", which of the following statements is not true?**
   a. Skin-pricking is the same as acupuncture, and acupuncture is not a controlled act.
   b. Collecting blood samples by skin-pricking for the purpose of monitoring capillary blood readings.
   c. Dietitians can now perform that controlled act on their own authority.
   d. In performing the procedure, Harvey still needs to meet all applicable professional standards.

4. **A therapeutic diet:**
   a. Is an acceptable dietetic treatment.
   b. Is a controlled act.
   c. Requires an order.
   d. Is a treatment assigned to dietitians by physicians.

5. **A dietitian could inject insulin into a client where:**
   a. The dietitian creates a religion where that is a tenet in faith healing.
   b. The dietitian is aboriginal.
   c. The client receives regular injections every day and the usual helper is unavailable.
   d. The client's registered practical nurse gives an order for it.

Resources

COLLEGE OF DIETITIANS OF ONTARIO

résumé *at www. cdo.on.ca > Resources > Practice Standards & Resources > Scope of Practice, Controlled Acts & Authority Mechanisms*

résumé *at www. cdo.on.ca > Resources > Publications > résumé.*

- "Members Share Their Experience In Developing a Policy and Procedure for Prescription of Therapeutic Diets", Winter 2000, p. 3.
- "Members Share Ideas about Diet Orders", Spring 2003, 6-7.
- "Therapeutic Diet Orders and Medical Directives", Summer 2003, 6-7.
- "Insulin Adjustments", Fall 2002, p. 5.
- "A Primer for Developing Medical Directives", Winter 2004, p. 5.
- "Vitamins and Minerals - Prescribing or Recommending? Scheduled? DIN or NPN?", Winter 2004, p. 5.
- "Test Your Knowledge - Venipuncture", Spring 2004, p. 3.
- "Swallowing Assessments & Dysphagia - Understanding Scope of Practice", Summer 2005, p. 1.
- "Communicating a Diagnosis", Summer 2006, p. 11-12.
- "Vitamins and minerals and the RD scope of practice?, Summer 2008, p. 8-10.
- "Vitamin and mineral update", Winter 2009, p. 9-10.
- "Are RDs allowed to transcribe verbal nutrition care orders in hospitals?", Spring 2009, p. 8.
- "The Dietetic Scope of Practice Enhanced", Winter 2010, 8-9.
- "Managing Changes to RD Job Responsibilities", Winter 2010, 9-10.

Workshop 2006. *Controlled Acts and Authority Mechanisms.*

PUBLICATIONS

Bohnen, Linda. *Regulated Health Professions Act: A Practical Guide*. Aurora: Canada, Law Book, 1994.

Steinecke, Richard. *A Complete Guide to the Regulated Health Professions Act*. Aurora, Canada Law Book, updated annually.

Deborah Ellen (Boyko) Wildish, BHEc, MA, RD, "Medical Directive: Authorizing Dietitians to Write Diet and Tube Feeding Orders", *Canadian Journal of Dietetic Practice and Research*, vol. 62, no 4, Winter 2001, 204-206.

Federation of Health Regulatory Colleges of Ontario, *The Interprofessional Guide on the Use of Orders, Directives and Delegation for Regulated Health Professionals in Ontario.* http://www.regulatedhealthprofessions.on.ca/EVENTSRESOURCES/medical.asp

Jacinthe Boudreau. "Controlled Acts and Delegation: An Overview of the RHPA". Conference December 2003 : *Medical Directives and the Delegation of Controlled Acts.*

Randy Zettle. "The Use of Medical Directives: Why, When & How?". Conference December 2003 : Medical Directives and the Delegation of Controlled Acts.

LEGISLATION

Drug and Pharmacies Regulation Act, R.S.O. 1990, Chapter H.4, Part IV, Pharmacy, Interpretation, Part VI: Section 117. http://www.search.e- laws.gov.on.ca/en/isysquery/5a49a3ef-654d-430e-8858-8e59b3703e16/1/frame/?search=browseStatutes&context=

Regulated Health Professions Act and other provincial statutes can be found at www.elaws.gov.on.ca. and on the CDO website under Resources.

Federal statutes:
http://laws.justice.gc.ca/en/index.html

- *Criminal Code of Canada: http://laws.justice.gc.ca/en/C-46/*
- *Controlled Drugs and Substances Act«; http://laws.justice.gc.ca/en/C-38.8/*
- *Natural Health Product Regulation, under the Food and Drug Act: http://laws.justice.gc.ca/en/F-27/SOR-2003-196/*

Back to Table of Contents