



ONTARIO HEALTH LAW

WHAT ABOUT THE PHYSICIAN? - BILL 171: PROMOTING GREATER PUBLIC PROTECTION



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On December 12, 2006, the Ontario Government introduced Bill 171: *The Health System Improvements Act, 2006*, which will amend a number of pieces of legislation, including the *Regulated Health Professions Act (RHPA)*, which governs physicians and other health professionals. The Ministry of Health and Long Term Care has stated that the purpose of the amendments to the RHPA is to “simplify and improve the health regulatory colleges’ complaints process, increase public access to information from the health colleges, and provide greater protection to patients seeking out treatments from health care providers not regulated under the act.” Note that this mandate makes no reference to any procedural, professional or legal benefit to the health professions which this legislation governs.

As such, while these legislative amendments may prove to be beneficial for the public, physicians should be aware of the potential impact some these changes may make on their own professional lives.

What’s Private is Public

Bill 171 is aimed at improving the public’s access to information about its treating health professionals. In this regard, the College of Physicians and Surgeons of Ontario (the “College”) must ensure that the public register is included on its website. While the College previously did place significant information on its site, the information it is required to publish will be dramatically expanded.

The public register will now not only include the result of every disciplinary and incapacity hearing, but also a synopsis of those decisions. Further, the public register must also include notations of every reprimand that have been issued to a physician.

In addition to resolved decisions, those decisions which have been referred to the Discipline Committee for a hearing must be included. While the College currently does include this information on the register, it will now be an actual legal requirement that it do so.



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Finally, the register will also include information about any member who has resigned or agreed never to practice again in Ontario as a result of a complaint or a report made to the College.

Goodbye Complaints Committee, Hello “Inquiries, Complaints and Reports Committee”

Pursuant to the new legislation, the College will see its Complaints Committee replaced by the Inquiries, Complaints and Reports (ICR) Committee. The stated goal for the new ICR Committee is efficiency. Moreover, this new ICR Committee will have a broader jurisdiction than its predecessor including the assumption of some of the duties that formerly belonged to the Executive Committee, Fitness to Practice Committee and the Quality Assurance Committee. For instance, previously if a complaint dealt with issues of standards, the Complaints Committee could refer the matter to the Quality Assurance Committee for some form of assessment or remediation. The new legislation will see this referral power eliminated but the ICR Committee vested with the same powers as the Quality Assurance Committee.

What is potentially most distressing for physicians is that this ICR Committee has the power to make an interim order suspending a physician’s certificate of registration, **without notice to the physician**. This would occur if the ICR Committee is of the opinion, on reasonable and probable grounds, that the conduct of the physician exposes, or is likely to expose, his or her patients to harm or injury and urgent intervention is needed. Previously, the College could not exercise its “emergency powers” without giving the member an opportunity to comment. Under the new regime, it is only **after a suspension is in place** that a physician is able to make submissions to the ICR Committee as to why the suspension is not warranted.

The Past May Haunt You

The changes to the RHPA will also include a requirement that the ICR consider all prior decisions about a physician, including those decisions of the former Complaints Committee, the Discipline Committee, the Fitness to Practice Committee and the Executive Committee. This provision may prove to be problematic as there could foreseeably be considerable prejudice caused to a physician if the ICR is to automatically review his or her prior history which could include matters completely unrelated to the current complaint before the ICR Committee.

Alternative Resolutions with No Teeth?

Bill 171 formalizes the College’s Alternative Dispute Resolution (ADR) process. Specifically, the amendments will provide the College’s Registrar with the ability to refer a matter to ADR, if the matter has not been referred to the Discipline Committee and the matter does not involve an allegation of sexual abuse. This can only occur with the consent of both the complainant and the physician. However, this process may be of little benefit to physicians



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since the legislation provides that even if a complainant and a physician agree to resolve a complaint, the ICR Committee is not required to accept the resolution and may elect to proceed with its investigation.

No Stay for the Stay

Presently, many orders of the Discipline Committee (for instance, a suspension) do not take effect until the physician has had the ability to exercise his or her right of appeal and the matter has been determined by Divisional Court. However, Bill 171 may have the impact of doing away with this right as it permits the College to apply to a judge to have the decision of the Discipline Committee commence immediately notwithstanding the physician's commencement of an appeal.

A Quality Matter

While the College currently has a comprehensive Quality Assurance (QA) Program, the new legislation adds additional requirements such as a system to address changes in practice environments and a mechanism for the College to monitor members' participation in and compliance with the QA Program. In addition, the QA Committee will be granted the power to refer members to the ICR Committee for a failure to co-operate with it or with one of its assessors.

Better Tell...

Under the current RHPA, a person who operates a facility is required to make a report to the College if the person has reasonable grounds to believe that a member who practices at the facility has sexually abused a patient. Bill 171 will expand this obligation to include the requirement to report any belief that a member is "incompetent" or "incapacitated". This may be a challenge for such individuals who may be hard-pressed to know when someone is incompetent or incapacitated.

In addition, the report must be filed within 30 days unless there is an urgent need for intervention, in which case the report must be filed immediately.

What's Next?

The Health Law Group at Gardiner Roberts will continue to analyze and review the legislation as it proceeds through the government process and any regulations created thereunder as they are released. We will provide further updates and analysis including recommendations for your protection and successful defence in the event that you find yourself before the College in the future. If you have any questions about how these amendments to the RHPA will impact you, and what you can do from a risk management perspective, please contact a member of our health law group.



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