Proposed Changes To The Regulated Health Professions Act Furthering Patient Protection And Accountability

December 15, 2016

On December 8, 2016, Bill 87: *Protecting Patients Act, 2016* was tabled for first reading at Queens Park. Bill 87 proposes numerous amendments to the *Regulated Health Professions Act, 1991* (RHPA) in particular, to the *Health Professions Procedural Code* (Schedule 2 to the RHPA). These amendments aim at greater transparency and accountability in the administrative processes of health regulatory colleges. Bill 87 also introduces amendments that strengthen regulatory oversight and support to patients with respect to alleged sexual abuse by regulated health professionals.

The regulatory changes contained in Bill 87 mirror many of the recommendations made last December by a government-appointed task force in its report entitled *To Zero : Independent Report of the Minister's Task Force on the Prevention of Sexual Abuse of Patients and the Regulated Health Professions Act, 1991*.

A highlight of some of the proposed regulatory changes affecting the administrative processes of health regulatory colleges include:

- Health regulatory colleges will be required to post information on their websites regarding upcoming meetings of council, including the dates of those meetings and matters to be discussed at those meetings. While the public can still be excluded from such meetings, the basis for exclusion must be noted in the website post.
- The Minister of Health and Long-Term Care will be empowered to make regulations that govern the composition of a health regulatory college's committees, as well as the qualification, selection, appointment and terms of office of committee members.
- For regulatory bodies with administrative decision-making roles, such as the Registration Committee, the Inquiries, Complaints and Reports Committee ("ICRC"), the Discipline Committee, and the Fitness to Practise Committee, quorum and composition of panels will be determined by way of regulations to be promulgated at a later date. It is unclear whether the new regulations will change the current uniform requirements, where panels are to be composed of a minimum of three persons, at least one of whom is someone appointed to council by the Lieutenant Governor in Council.

- The public register for members of health regulatory colleges will include more information, including: any specified continuing education or remedial programs required by a panel of the ICRC; the status of every matter referred by the ICRC to the Discipline Committee, with a copy of the notice of specified allegations; and a notation and synopsis of a regulated health professional's acknowledgements or undertakings in relation to professional misconduct and incompetence.
- If the ICRC is of the opinion that a regulated health professional is likely to expose his or her patients to harm or injury, it will be permitted, at any time following the receipt of a complaint or report, to make an interim order for suspension or for licensing terms, conditions or limitations. Unless extraordinary circumstances require urgent intervention, a regulated health professional will be given notice and an opportunity to make written submissions before such an interim order is made. Currently, the ICRC can only make such an interim order if an allegation is referred to the Discipline Committee.

Bill 87 also includes amendments to strengthen, uphold and further reinforce a zero-tolerance policy on patient sexual abuse by any regulated health professional. With respect to sexual abuse, proposed amendments to the *Health Professions Procedural Code* will:

- Establish a minimum period of one-year after the end of a patient-provider relationship, during which sexual relations are prohibited. However, this time period may very well be longer, as Bill 87 specifies that in defining "patient", it is not restricting the ordinary meaning of the word.
- Expand the list of sexual abusive acts that will result in the mandatory revocation of a regulated health professional's license to include "touching of the patient's genitals, anus, breasts or buttocks". The amendments will also permit the panel to order license suspensions in circumstances where the sexual abuse does not consist of one of the acts enumerated in the statute for which mandatory license revocation is required and where revocation has not been otherwise ordered.
- Broaden self-reporting obligations to include disclosure of: (1) findings of professional misconduct or incompetence made against the regulated health professional by another governing body inside or outside of Ontario, and, (2) if a regulated health professional is charged with an offence, information about every bail condition imposed as a result of the charge.
- Facilitate earlier access to funding for patient therapy and counselling when a complaint of patient sexual abuse is made. If the amendments are passed, an individual will be eligible for funding for therapy and counselling services if it is alleged, in a complaint or report, that he or she has been sexually abused by a regulated health professional while being a patient. To ensure procedural fairness of ongoing investigative and disciplinary proceedings, the determination of eligibility for funding will not constitute an adverse finding, and will not be considered in any dealings with the regulated health professional.
- Increase fines for health professionals and organizations who fail to report an allegation of patient sexual abuse to a regulatory college. For an individual, a maximum fine of $50,000 could be imposed; for a corporation, a maximum fine of $200,000 could be imposed.

These regulatory changes will have significant impact to practice and procedure before health regulatory colleges, and to how complaints and allegations of sexual abuse are

handled by healthcare institutions and regulated health professionals. We will be keeping an eye on Bill 87 as it works its way through the legislature, and will provide further bulletins on new developments.

By

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