

New Expanded Duty to Notify the College of Physicians and Surgeons of Ontario

August 31, 2016

On August 1, 2016, the legislature significantly expanded a hospital's duty to report to the College of Physicians and Surgeons of Ontario ("CPSO") where there are concerns about a physician's competence, negligence or conduct. The new mandatory reporting obligations in the *Public Hospitals Act* provide:

Notice to college of disciplinary action against physician

33. Where,

1. the application of a physician for appointment or reappointment to a medical staff of a hospital is rejected by reason of his or her incompetence, negligence or misconduct;
2. the privileges of a member of a medical staff of a hospital are restricted or cancelled by reason of his or her incompetence, negligence or misconduct;
3. a physician resigns from a medical staff of a hospital or restricts his or her practice within a hospital and the administrator of the hospital has reasonable grounds to believe that the resignation or restriction, as the case may be, is related to the competence, negligence or conduct of the physician; or
4. a physician resigns from a medical staff of a hospital or restricts his or her practice within a hospital during the course of, or as a result of, an investigation into his or her competence, negligence or conduct,

the administrator of such hospital shall prepare and forward a detailed report to The College of Physicians and Surgeons of Ontario.

This amendment is in-line with the legislative evolution in Ontario towards enhanced patient safety and transparency.

The effect of this amendment will be to decrease the scope for discretion on the part of hospital administrators when considering whether or not to report a physician to the CPSO. Historically, there was no express statutory obligation to report to the CPSO, where, for example, a physician voluntarily restricted his/or her practice while a mid-term or other review was unfolding in hospital.

With this new amendment, whenever there is a resignation from staff or a voluntary restriction in practice (even without formal alteration of a physician's privileges) related to issues of competence, negligence or conduct, a report is mandatory.

Notably, a report is now mandatory where a physician voluntarily restricts his or her hospital practice pending the results of a review. In order to avoid any unfairness to the physician under investigation, we recommend that reports to the CPSO include enough detail to distinguish between cases where the hospital has insufficient information to come to any conclusion (for example where cases of concern are being investigated but the conclusion remains uncertain) and cases where there is compelling evidence of incompetency, negligence or misconduct.

Although not required by the legislation, we recommend that whenever possible, a physician be given advance notice of any CPSO report, and be copied on the report. There may be circumstances where the administrator may wish to invite the physician's comments on the draft report before it is finalized. In the event that a voluntary restriction is being considered, being afforded this opportunity may have a positive influence on the physician's decision.

There is statutory immunity under the *Public Hospitals Act* for certain individuals (including a member of a committee of the medical staff) in respect of good faith reports to the CPSO.

The *Public Hospitals Act* is only one source of a hospital's reporting obligations. There are also new parallel reporting obligations in the *Regulated Health Professions Act* for facilities and employers in respect of a member of any regulated health profession.

For more advice about reporting duties relating to physician competency or capacity, please contact:

By

[Kate Crawford, Daniel Girlando](#)

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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