

Hospitals Not Responsible for Costs of Physician Retraining or Clinical Supervision

July 24, 2019

The Health Professions Appeal and Review Board (HPARB) has just released a significant decision in a hospital privileges case. The appellant physician challenged a **decision of the respondent hospital's Board of Directors (Board) imposing conditions and restrictions on her hospital privileges, including her privileges to practice interventional neuro-radiology (INR).** One of the conditions was that she could not practice INR at the hospital until she had completed 6-12 months of supervised practice in a program under the supervision of a clinical supervisor to be pre-approved by the Chief of Staff. The Board directed that the physician be responsible for arranging the clinical supervision and for any associated costs.

Facts and HPARB Decision

The primary issue for the HPARB was whether the hospital had met the onus of showing it was reasonable for the physician to be solely responsible for the costs associated with her retraining.

At the HPARB hearing, the physician acknowledged that a period of retraining and clinical supervision was appropriate, as she had had a lengthy absence from INR practice. She had not practiced in INR since November 2014, when at the hospital's request, she gave a voluntary undertaking not to practice in INR while the hospital investigated competency concerns, however, her position was that the Board's decision was unreasonable, as the hospital should be responsible for arranging and bearing the costs of the conditions. She sought an order that the hospital fund and facilitate an INR physician outside the hospital to retrain her. Alternatively, she asked the HPARB for an order that the hospital hire an INR physician who could provide clinical supervision at the hospital.

The hospital's position was that it is a physician's responsibility to meet the criteria in the hospital's bylaws for maintaining hospital privileges. If retraining or clinical supervision is required, the physician should bear the costs. The hospital also submitted that the HPARB had no authority to order a hospital to pay for retraining or to "hire" an INR physician.

The hospital's evidence was that none of the members of medical staff qualified to be clinical supervisors were willing to serve in that role. Even though it had no obligation to do so, it had taken steps to identify another centre where she could do her retraining, however, the physician had declined that option because she would have to forego income while retraining. The hospital's position was that it had acted fairly and in good faith towards her as its actions were in addition to its obligations under the Public Hospitals Act to ensure quality of care and patient safety.

The HPARB confirmed the decision of the Board. It found that for the purposes of the hearing, it was not necessary to make a finding regarding her competency. It found that in light of the hospital's statutory duties to ensure patient safety, it was reasonable for the hospital to have investigated the concerns. The hospital's process was fair and the conditions and restrictions were "...reasonable, designed to remediate by updating her skills and allow her to return to her INR practice with TOH".

Takeaway

This decision shows that the HPARB will uphold reasonable and fair administrative action taken for a patient safety and quality of care purpose. Significantly, it also confirms that it is reasonable for physicians to bear the costs of retraining and clinical supervision.

By

[Kirsten Crain](#)

Expertise

[Health Law, Human Resources & Labour Relations](#)

BLG | Canada's Law Firm

As the largest, truly full-service Canadian law firm, Borden Ladner Gervais LLP (BLG) delivers practical legal advice for domestic and international clients across more practices and industries than any Canadian firm. With over 725 lawyers, intellectual property agents and other professionals, BLG serves the legal needs of businesses and institutions across Canada and beyond – from M&A and capital markets, to disputes, financing, and trademark & patent registration.

blg.com

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

The information contained herein is of a general nature and is not intended to constitute legal advice, a complete statement of the law, or an opinion on any subject. No one should act upon it or refrain from acting without a thorough examination of the law after the facts of a specific situation are considered. You are urged to consult your legal adviser in cases of specific questions or concerns. BLG does not warrant or guarantee the accuracy, currency or completeness of this publication. No part of this publication may be reproduced without prior written permission of Borden Ladner Gervais LLP. If this publication was sent to you by BLG and you do not wish to receive further publications from BLG, you may ask to remove your contact information from our mailing lists by emailing unsubscribe@blg.com or manage your subscription preferences at blg.com/MyPreferences. If you feel you have received this message in error please contact communications@blg.com. BLG's privacy policy for publications may be found at blg.com/en/privacy.

© 2024 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.