
A COMMENTARY ON LEGAL ISSUES AFFECTING PROFESSIONAL REGULATION

Interprofessional Collaboration

Professions can be competitive. We all know stories of disputes between professions that have had to be refereed by government. Sometimes they have even gone to court.

Some disputes are at the practitioner level. Because of differences in philosophy, gender, education or status, the practitioners rarely work together unless forced to do so. Interestingly, in those situations, the regulators of the two professions often have an excellent working relationship.

In other cases, the practitioners work together fine in the real world but the regulatory bodies have a challenge dealing with one another other productively.

Policy makers recognize that these relationship failures are often not in the public interest. But how do you legislate collaboration? This month saw the release of a number of reports by the Health Professions Regulatory Advisory Council (HPRAC) that examined that very issue. HPRAC is an arm's-length advisory body to the Minister of Health and Long-Term Care. No health practitioners or representatives of regulatory Colleges sit on the Council.

In an earlier report, HPRAC had recommended that it be a statutory object for each health regulator in Ontario that they promote interprofessional collaboration both at the practitioner level and at the regulatory level. That recommendation was accepted and will come into force on June 4, 2009.

In the reports released this month, however, HPRAC went one step further. It recommended that professions having scopes of practice that overlapped significantly with other professions should establish a Standards Committee. The Standards Committee would include members of other professions appointed by the regulators for those other professions. For example, the Nurse Practitioner Standards Committee would have physicians and pharmacists on it.

The representatives from other professions would be a minority on the Standards Committee and thus would not have a veto power. Indeed, while the recommendation is not entirely clear on the point, it appears that the Standards Committee will only make recommendations to the governing Council of the regulator.

The rationale for this proposal was twofold. First, it would force meaningful and extensive consultation with representatives

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from other professions. Second, the representatives could provide expert assistance in the development of such standards of practice.

Of course, this raises the issue of whether the member from the other profession would act as a representative of the other profession that appointed him or her, or whether the other regulator's role is just to assist in the selection process. HPRAC landed firmly on the former option. For example, as currently proposed, the people from the other professions would be bound by the confidentiality provisions on that Committee and would not be able to disclose confidential information.

Another issue is the composition and quorum requirement. Are the representatives of the other professions required for the Standards Committee to be properly composed and are they necessary for quorum? While not entirely clear, HPARB appears to have said yes to the former and no to the latter. In other words, if no person is appointed from the other profession, the Committee is not properly constituted. But once appointed, the Committee can apparently function even if the person does not attend the meetings.

It will be interesting to see if the more "senior" regulators will have Standards Committees with members from other professions on it. For example, will the College of Physicians and Surgeons of Ontario have nurses on their Standards Committee? Doing so might enhance the acceptance of the proposal by the affected professions.

HPRAC concluded as follows in respect of the Nurse Practitioner Standards Committee:

HPRAC acknowledges that legislating interprofessional collaboration presents inherent difficulties. Successful collaboration depends on a constructive give-and-take that is hard to mandate.

Nevertheless, HPRAC contends that the proposed model strikes a reasonable balance that requires the CNO to develop standards, limitations and conditions with ongoing input from individuals with relevant expertise, while at the same time not giving any one participant veto power over the process. The self-regulatory role of the CNO is respected by placing final responsibility for making appointments to the Nurse Practitioners Standards Committee with the college.

There are some precedents in other professions that are similar to this proposal. For example, the professional engineers and architects of Ontario have a Joint Practice Board, having three representatives from each Association, whose mandate includes the following:

Where a dispute arises between an architect and a professional engineer or a holder of a certificate of authorization as to jurisdiction in respect of professional services, the Registrar may refer the matter to the Joint Practice Board and the Joint Practice Board shall consider the matter and assist the architect and the professional engineer or the holder of the certificate of authorization to resolve the dispute

Nevertheless, the proposal remains innovative and will be worth monitoring.

To review these reports, which dealt with numerous other issues, see: www.hprac.org.