



HEALTH LAW

Law 101

The Legal Framework for the Practice of Medicine in
Canada



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The Applicable Legal Framework for Medicine in Canada

A. Statutory Sources

- Medical Act, (Other Provinces)
- Regulated Health Professions Act, (RHPA) (Ontario)
- Public Health Act
- Health Insurance Act
- Public Hospitals Act
- Health Care Consent Act
- Mental Health Act



The Applicable Legal Framework for Medicine in Canada

B.Common Law Sources

- Negligence
- Breach of Confidentiality
- Battery
- Breach of Contract

Medicine Act

Provides a common framework for the regulation of physicians.

The *Medicine Act* has several underlying objectives:

- protect the public from harm;
- promote high quality care; and
- make regulated physicians accountable to the public.



Medicine Act, cont.

Mandate:

- Dictates who will obtain a licence to practice medicine and who will retain the privilege to continue practicing
- The primary duty of the College in each province is the advancement of the public interest (i.e. protecting the public from unqualified, incompetent and unfit physicians)



Various College Committees

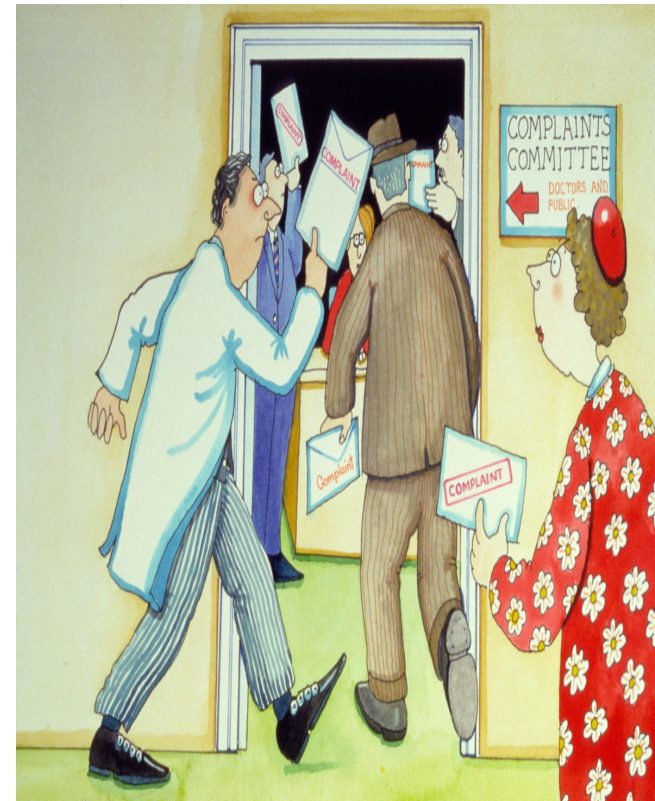
- Complaints
- Discipline
- Fitness to Practice
- Quality Assurance



Referral to Discipline Committee

Mandate:

- The Discipline Committee hears and determines allegations of professional misconduct or incompetence against physicians on the direction of the Executive Committee, the Board, or the Council
- Trial-like process including disclosure and formal hearing



Professional Misconduct

A physician may be found guilty of professional misconduct by the Discipline Committee if:

- the member has committed an act of professional misconduct **as defined in the regulations** – (after a full hearing)
- the member has been found guilty of an offence that is **relevant** to the member's **suitability to practice** - (no trial, sentencing only); or
- the governing body of a health profession in a **jurisdiction other than your own jurisdiction** has found that the member committed an act of professional misconduct (that would be considered misconduct in current jurisdiction) (no trial – sentencing only).

Examples of Professional Misconduct

- Sexual relations with a patient or former patient
- Breaching the standards of the profession
- Practicing the profession while impaired
- Falsifying a record relating to the member's practice
- Breach of confidentiality
- Disgraceful, dishonourable or unprofessional conduct (the “basket clause”)
- Conduct unbecoming a physician



Sentencing in Professional Discipline Proceedings

- Fine (for professional misconduct only)
- Reprimand
- Imposition of specified terms, conditions and limitations on the member's registration for a specified or indefinite period of time
- Suspension
- Revocation of licence



Fitness to Practice Committee

- Determines whether a member suffers from a physical or mental condition that makes it necessary or desirable (in the public interest) to remove or restrict their licence to practice
- If the Registrar believes that a member may be ***incapacitated***, the Registrar shall make inquiries that he or she considers appropriate and shall report the results to the Executive Committee
- After receiving the report of a Board of Inquiry, the Executive Committee may refer the matter to the Fitness to Practice Committee



Appeals from Discipline and Fitness to Practice Decisions

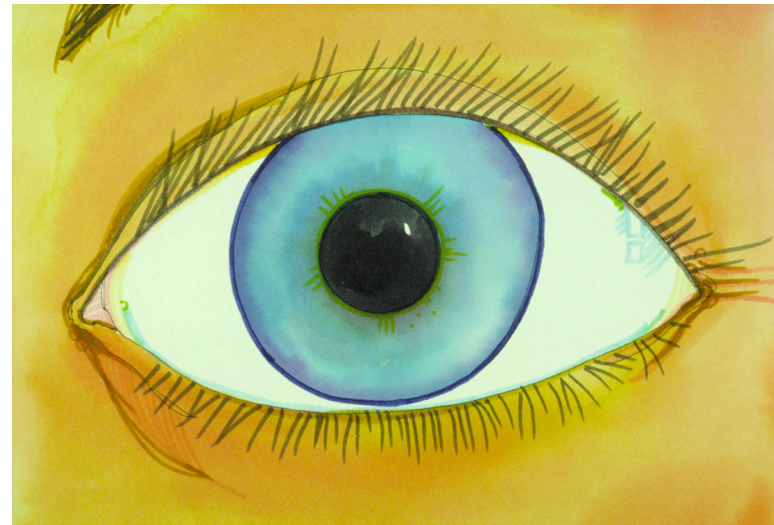
- 1) Appeal Court of First Instance
- 2) Appellate Court of Province
- 3) With leave, to the Supreme Court of Canada



Health Insurance Act

Mandate:

- To provide an accounting mechanism to protect the public purse from potential fiscal abuse from the medical profession
- A separate legal accountability for physicians



Health Insurance Act: Penalties for Contravention

- Fine
- Re-imbusement
- Compensation and/or Restitution
- Publication of Name, and Description of Situation
- Imprisonment
- Revocation of Licence to Practice Medicine



Health Insurance Act:
Violations of Health Insurance Act, Criminal Charges

- *(Re) Carvalho and College of Physicians and Surgeons of British Columbia [2012].* - Licence suspended, Fine, Reimbursement to Medical Services Commission for fraudulent billing.
- *(Re) Bogart and College of Physicians and Surgeons of Ontario [2001]* O.C.P.S.D. No. 9 (C.P.S.O. Discipline Committee) - Licence suspended, conditions placed on licence; criminal sentence of 18 months for fraudulently billing OHIP almost one million dollars while on vacations with companion
- *(Re) Scott and College of Physicians and Surgeons of Ontario [2002]* O.C.P.S.D. No. 4 (C.P.S.O. Discipline Committee) - Licence revoked for fraudulently billing OHIP over half a million dollars

Public Hospitals Act

Mandate:

- Provides a legal framework for the obtaining, suspension, revocation, and renewal of hospital privileges
- Establishes the position of public hospitals in the Province and ensures that their operation and governance is in the public interest



Privileges

- There are two ways that a physician's privileges can be put at risk:
 - in response to a physician's care for a specified patient(s)
 - in the ordinary course of applying for re-appointment to the medical staff
- Physicians have 7 days to request written reasons following receipt of a hospital decision re privileges
- Physicians have 7 days following receipt of written reasons to commence an appeal to the Health Professions Appeal and Review Board
- Full rules of natural justice apply before the Board
- Further right of appeal to Divisional Court, and with leave to the Ontario Court of Appeal and Supreme Court of Canada



Mental Health Act

Mandate:

- An Act designed to protect patients and the public as a whole by giving qualified medical practitioners the power to interfere with the liberty of individuals who (on reasonable grounds) are believed to pose a threat to themselves and/or others



Mental Health Act

- Guidelines for admitting a person to a psychiatric facility as a voluntary or involuntary patient
- The rights of patients in psychiatric facilities
- Guidelines for issuing, renewing or terminating community treatment orders (a CTO may be issued by a certified physician to provide a person with community-based treatment or care and supervision that is less restrictive to the person than being detained in a hospital environment)



Issues for Another Day

Other Key Statutes:

- ***Coroners Act***
 - ***Extra billing Ban***
 - ***Mandatory Gunshot Wounds Reporting Act***
 - ***Personal Health Information Protection Act***
- * due to time constraints, these statutes are not likely to be covered.

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"I purchased this for my daughter. After reading about the effect of the healthcare law on the practice of medicine, I want to return it."



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