

## CHANGE IS COMING TO BRITISH COLUMBIA'S HEALTH PROFESSIONAL REGULATORY FRAMEWORK – HERE IS WHAT IS BEING PROPOSED

Changes appear to be on the horizon for BC's health professional regulatory framework, and it could be significant.

In March of 2018, the BC Minister of Health initiated an inquiry into the College of Dental Surgeons of British Columbia as well as a review of BC's *Health Professions Act* and the model of health profession regulation in BC as a whole. In April 2019, *An Inquiry into the performance of the College of Dental Surgeons of British Columbia and the Health Professions Act* (the "Cayton Report") was released with recommendations to overhaul and improve health professional regulation in the Province. In response, the Minister of Health established the Steering Committee on Modernization of Health Professional Regulation to investigate the best approach to modernize the regulatory framework.

In November 2019, the Steering Committee released a consultation paper summarizing the proposed changes and sought input from the public and stakeholders. This phase of consultation ended January 10, 2020. A summary of the feedback is to be posted on the BC Government's website, however understandably this may be delayed given the Covid-19 public health emergency. Ultimately, the cabinet and Legislative Assembly have the authority to enact changes.

### CRITICISM OF THE CURRENT REGULATORY FRAMEWORK

Presently there are 20 regulatory colleges established under the *Health Professions Act* ("HPA") that govern 25 health professions. The Cayton Report argued that the HPA "is no longer adequate for modern regulation",<sup>1</sup> and the current framework fails to support colleges in fulfilling their mandate to protect the public.

The Cayton Report found a general lack of public trust in regulators and a lack of focus on safety of patients. The current framework was also criticised generally for:

- enabling a culture that at times promotes the interests of the profession over the public interest;
- falling behind changing health service delivery models (inter-professional team-based care);
- failing to meet changing expectations regarding transparency and accountability; and
- being inefficient.

### PROPOSED CHANGES

#### a) Improved Governance

Currently each college is governed by a Board of Directors, which are made up of both public non-registrant board members (at least one third) appointed by the Minister of Health and professional registrant board members, the majority of which are elected by the registrants of the profession.

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<sup>1</sup> Cayton report, p. 70.

The Cayton Report criticised the governance structure for a lack of independence, lack of a competency framework and lack of public accountability. There were also concerns that elections create a perception that registrant board members have a sense of loyalty to fellow registrants over the public.

In response, the Steering Committee proposed that all board members (registrant and public) be recommended for appointment through a competency-based process, which considers diversity, is independently overseen, and is based on clearly specified criteria and competencies. The Minister of Health would then appoint all board members based on the recommendations of the competency-based process.

Additionally, regulatory colleges would have smaller boards for greater efficiency, made up of equal numbers of registrant and public members. Lastly, board and committee members would be fairly and consistently compensated (within and between colleges) and move away from volunteerism.

#### **b) Reduction in Number of Regulatory Colleges**

Colleges vary in size of membership, financial resources, member fees, and resources. The Cayton Report found that these factors impact a college's efficiency and its ability to protect the public.

To promote cost-savings by pooling resources allowing for improved efficiency and effectiveness, the Steering Committee has proposed the reduction of the number of regulatory colleges from 20 to five.

The five colleges being proposed include: (a) the College of Physicians and Surgeons of BC, (b) the College of Pharmacists of BC, (c) the BC College of Nursing Professions, (d) a new oral health regulatory college (an amalgamation of the College of Dental Surgeons of BC, College of Denturists of BC, College of Dental Hygienists of BC and College of Dental Technicians of BC), and (e) a new College of Health and Care Professions of BC (an amalgamation of the remaining colleges). Sub-committees will be created within multi-profession regulatory colleges to address matters requiring profession-specific clinical expertise.

The Steering Committee suggested that a reduction in the number of colleges will support a more consistent standard across professions and is appropriate given the trend toward interdisciplinary health care teams. Having fewer colleges will also assist the public in bringing forward complaints.

#### **c) Strengthening the Oversight of Regulatory Colleges**

To promote public trust, the Steering Committee has proposed the creation of a new oversight body that would conduct routine audits of regulatory colleges based on certain performance standards. The oversight body would conduct systemic reviews and investigations into college performance with authority to make recommendations, which the Health Minister could then enforce. The oversight body would also report publicly on common performance standards and publish guidance on regulatory policy and practice and recommend health occupations that should be regulated.

The oversight body, would monitor the systemic progress on timeliness of the complaint process while the Health Professions Review Board would continue to review registration and complaint investigation decisions, but as an arm of the new oversight body.

The oversight body would also be responsible for identifying core elements of shared standards of ethics and conduct across professions. Each profession would maintain profession-specific standards, however, there would be a basic level of shared standards. The oversight body would also have the ability to require regulatory colleges to create or update standards to increase consistency across professions. The oversight body would also oversee the appointment process of board members and discipline panel members, administer a single central register of all regulated health professionals and collect fees.

#### **d) Improving Complaints and Adjudication Procedure**

The complaints and adjudication process was criticised for its lack of effectiveness, transparency and fairness. Thus the Steering Committee proposed establishing a new process that would separate the investigation stage of complaints (undertaken by regulatory colleges) from the disciplinary stage. Regulatory colleges would continue to investigate complaints through Inquiry Committees, however, disciplinary decisions would now be made by separate independent discipline panels which would make decisions regarding regulated health professionals.

The Steering Committee suggests that colleges would have to utilize fair and open processes to appoint Inquiry Committee members, considering competence, merit and diversity. Inquiry Committee members would not be related to health professional associations and would be required to undertake regular training and appraisal.

The Inquiry Committee would continue to have the authority to dismiss vexatious complaints, send caution and advice letters and resolve matters by entering into consent agreements with registrants, but with wider discretion to dispose of complaints.

It is proposed that if the matter is not disposed of at the Inquiry Committee stage, the matter would be referred to the new separate and independent discipline panel. The Minister of Health would appoint an executive panel lead who would select a panel from a pool of approved discipline panel members for each discipline hearing. Regulatory board members and senior level professional association staff would not be eligible for panel membership. The panel would include at least one health professional in the same health profession and at least one public member. The Steering Committee further proposes to remove the ability of professionals to negotiate agreements late in the process.

Currently, not all complaint dispositions are subject to public notification. The Steering Committee has proposed that in order to increase transparency, all action resulting from founded complaints be made public.

Additionally, if a complaint becomes known to the public, it is proposed that colleges would be permitted to make public comment about a complaint (existence, subject matter, status and any interim undertakings). Furthermore, the Steering Committee would make it mandatory that all complaint and discipline decisions take into consideration the professional's past history. Currently the HPA allows each College the discretion to consider past history.

Lastly, instead of the current statutory time limit for the length of time that the investigations must be completed in (currently 255 days), it is proposed that time limits be set for stages of the investigation process. For instance, a limit on the number of days for a registrant to respond to a complaint; number of days regulators must respond to and update the complainant; time limits for negotiations with the Inquiry Committee or proposals once a citation has been issued for a disciplinary panel hearing. The Health Professions Review Board would continue to review delayed investigations, while the new oversight body would review systemic progress on meeting time limits and encourage improvement.

The Steering Committee has also requested feedback about how colleges should handle sexual abuse and sexual misconduct. Currently, colleges have discretion for such matters, whereas other provinces have taken the approach of mandating specific outcomes (ex. cancellation of registration).

We note that mandatory outcomes are not without controversy and if considered in BC, such provisions should be crafted with caution.

In Ontario, mandatory provisions have led to license revocation where health professionals have treated their spouses. The broad definition of sexual abuse under the *Regulated Health Professions Act* in Ontario includes sexual intercourse with a patient therefore capturing consensual sex within spousal relationships. Certain Colleges are enacting spousal exemptions (Dentists, for example), however, most have not and this highlights the need to carefully craft any mandatory provision if it is to be considered in BC.

#### **e) Information Sharing to Improve Patient Safety and Public Trust**

In light of the trend toward inter-professional health care teams, the Steering Committee has proposed that health professional regulatory colleges be enabled to share information amongst each other and with other agencies. It has also been suggested that Regulatory Colleges co-ordinate team based care complaints, so that patients only have to connect with one regulator.

#### **PARTING THOUGHTS**

It is still early days on the road to modernizing health professional regulation in BC. Whether all of the proposed changes will ultimately be enacted is not yet known.

Certainly the purpose of health professional regulation is to ensure that health care is administered by qualified and competent professionals for the safety of the public.

Time will tell if the measures being proposed are going to be executed in a manner that not only increases public trust and safety but also ensures procedural fairness is afforded to health professionals dealing with regulatory bodies.

For now, we await the published summary of the feedback received, which will be posted on the BC government's website.

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