

Ontario Proposes Regulations to Further Protect Patients from Sexual Abuse

Thursday, March 15, 2018

Back on May 30, 2017, the Ontario government passed the *Protecting Patients Act, 2017* (“Bill 87”), making a variety of changes to the regulation of health professions in the province, primarily in respect of protecting patients from sexual abuse. At that time, BLG [released a bulletin](#) explaining the changes and noting that several additional changes were expected in the future by way of regulation.

The government has now proposed three changes by way of regulation:

1. **Definition of “Patient”** — Under the *Regulated Health Professions Act, 1991* (the “RHPA”), any sexual interactions with a patient are considered sexual abuse. As part of Bill 87, the government introduced a definition for “patient” wherein individuals continue to be considered patients of their health-care provider up until one year after they cease to be a patient. The draft regulation proposes to define what circumstances create a patient-provider relationship, including:
 1. charging the individual for a health-care service;
 2. contributing to a health record for the individual;
 3. recommending a health-care service that the individual consents to; or
 4. prescribing the individual a drug for which a prescription is needed.

The government has proposed a narrow exception where the care is provided to an individual in an emergency situation by a provider with whom he/she is in a sexual relationship, and reasonable steps are taken to transfer care, if possible. Of note, the definition of “patient” from Bill 87 has not yet come into force, but we expect it will alongside the proposed regulation.

2. **Expansion of College Register** — Bill 87 added to the kind of information that a College must include on its public register about a member. The proposed regulation will further expand that list to include:
 1. all criminal findings of guilt in Canada;
 2. all criminal charges in Canada (and corresponding bail conditions); and
 3. licence and registrations held in any other jurisdictions (including disciplinary findings by any professional regulatory authority).
3. **Mandatory Revocation of Licence** — Bill 87 expanded the list of actions constituting sexual abuse that would result in the mandatory revocation of a member’s certificate of registration. The proposed regulation expands these circumstances to include instances when the member is found guilty of one or more of 15 offences under the *Criminal Code*, including sexual exploitation, publication of an intimate image without consent, child pornography, and sexual assault.

The government has invited comments from the public and health-care community up until March 22, 2018. The draft regulations and link to provide your comments can be found on [Ontario’s Regulatory Registry](#).

While the proposed regulations do not change a hospital's reporting obligations under the RHPA, they provide further context for consideration by hospitals to ensure compliance. As a brief reminder, pursuant to section 85.2 of Schedule 2 of the RHPA, if a hospital has reasonable grounds to believe that a member has sexually abused a patient, it must report this to the registrar of the regulated health professional's College. Bill 87 instituted a fine of up to \$200,000 on a hospital for failure to report patient sexual abuse.

AUTHORS

Wendy Whelan

T 416.367.6493

WWhelan@blg.com

John McIntyre

T 416.367.6529

JMcIntyre@blg.com

BLG OFFICES

Calgary

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

T +1.403.232.9500
F +1.403.266.1395

Montréal

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

T +1.514.954.2555
F +1.514.879.9015

Ottawa

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

T +1.613.237.5160
F +1.613.230.8842

Toronto

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

T 416.367.6000
F 416.367.6749

Vancouver

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

T 604.687.5744
F 604.687.1415

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.

© 2018 Borden Ladner Gervais LLP. Borden Ladner Gervais LLP is an Ontario Limited Liability Partnership.