

Changes Under the Health Professions Act

The following article by Blair Maxston, Legal Counsel for the ACMLT, recently appeared in the April/May 2003 issue of *Law Now*, and is reprinted with permission.

Despite constant media coverage of the national debate over healthcare funding and reform, there has been very little mention in Alberta about a new piece of legislation that is dramatically affecting the way healthcare treatment is provided in this province. Specifically, the *Health Professions Act* of Alberta ("HPA") has recently come into force and will eventually regulate all of the approximately 30 healthcare professions in Alberta. This article will review some of the more significant aspects of the HPA and how the extensive changes it contains will affect not only the individuals who provide healthcare services in Alberta but also the consumers of those same services.

What is the HPA?

Historically, most healthcare professions in Alberta have been created by individual Acts of the provincial legislature. Each Act also gives its profession the ability to govern itself by establishing a regulatory body (the *Medical Profession Act* and the College of Physicians and Surgeons of Alberta that it creates are a good example of this).

The HPA is omnibus legislation that is intended to eventually replace all free-standing health profession acts in Alberta. The HPA is also intended to standardize the processes, committee structures, administration, and terminology used for all healthcare regulatory bodies. For example, all of those entities will have to use the term "College" as part of their name and are required to identify practicing members of their profession as "regulated members".

In addition, and consistent with all legislation creating self-regulating professions, the HPA's primary purpose is public protection. Implicit throughout the HPA is the principle that Albertans should be protected from incompetent practice in the healthcare field. That principle is achieved by Colleges establishing minimum entrance requirements and minimum clinical and ethical standards that are applicable to their members. Furthermore, the HPA creates numerous ways for Colleges to maintain and enforce those standards including continuing competency programs, practice visits and, in appropriate circumstances, professional discipline hearings.

How will the unique aspects of each profession be preserved under the HPA?

Even though it standardizes certain aspects of regulating health professions, the HPA also reflects the fact that each profession has unique clinical and administrative aspects. As a result, each profession will have its own Regulation under the HPA. In fact, when a profession's Regulation comes into force under the HPA the previous legislation governing that profession is automatically repealed. That has already occurred for the dental, medical laboratory technology, dietician, speech language/audiology, hearing aid, and denturist professions in Alberta, and the Government intends to have Regulations enacted for all healthcare professions within approximately the next 3 to 5 years.

Will the HPA affect the "scope of practice" for healthcare professionals in Alberta?

As a starting point, the HPA attempts to recognize that the activities which healthcare professionals perform often overlap. The HPA eliminates the concept of exclusive scopes of practice for each healthcare profession and replaces it with the concept of Restricted Activities. More specifically, the HPA (through the *Government Organization Act*) creates a list of Restricted Activities which, generally speaking, are intended to represent the most serious and/or invasive types of healthcare acts that can only be performed by competent and qualified providers. For reference purposes, the list of Restricted Activities is reproduced at the end of this article.

For the most part, only properly trained and licensed individuals who are also expressly authorized by a Regulation under the HPA will be able to perform Restricted Activities and those persons may well come from a variety of professions. It must be noted that implicit in the concept of Restricted Activities is the principle that anything which is not a Restricted Activity can be performed by any healthcare professional or, just as significantly, any member of the public.

Finally, the HPA also attempts to create as much consumer choice as possible in terms of selecting healthcare providers by eliminating "practice barriers". In many ways, the Act also attempts to accommodate new and evolving practice areas, technologies and healthcare providers.

Will everyone who wants to practice as a member of a healthcare profession in Alberta have to be registered with a College?

Yes. Under the HPA, a person must apply for registration with the appropriate College if he or she is qualified to practice in a profession and intends to provide healthcare services to the public. As well, only a regulated member of a College

can use the restricted titles set out in the profession-specific Regulations under the HPA. In fact, the HPA allows a College to obtain a court injunction prohibiting a member of the public from using a protected title.

What are the ways a person can be registered with a College and is there anything that a person has to do to maintain his registration?

Consistent with the HPA, each profession's Regulation will set out three ways that an individual can become a regulated member of a College. Briefly, those are the following:

- **General Registration.** An applicant must have obtained education from a program approved by a College Council (and, if applicable, have successfully completed a post-diploma internship) and must have passed any theoretical and/or practical examinations approved by the Council.
- **Recognized Jurisdiction.** An applicant can be registered if she is also currently registered and as a member of the profession in another jurisdiction which is recognized by the College Council as having licensing requirements that are substantially equivalent to those of Alberta.
- **Substantially Equivalent Qualifications.** An applicant can be registered if his qualifications and experience have been determined by the College's Registration Committee to be substantially equivalent to the above mentioned entrance requirements.

Additionally, the HPA establishes that regulated members of a College will have to pay for and obtain an Annual Practice Permit each year from their College and will also have to satisfy their College's "continuing competency" requirements (formerly and more commonly known as "continuing education").

Will the discipline process for unskilled practice or unprofessional conduct be different under the HPA?

The HPA creates significant flexibility in terms of how Colleges can respond to complaints from members of the public alleging unsafe or unethical practice by one of their regulated members. Under most pre-HPA legislation, on becoming aware of potential misconduct, regulatory bodies often had little if any discretion in terms of a response. In many cases, legislation compelled regulatory bodies to either dismiss a complaint or conduct a formal investigation. Furthermore, after completing an investigation the only "remedial" step that could be taken was convening a formal hearing before a discipline committee. In many situations, this process was cumbersome, time-consuming and costly, and it was often entirely inappropriate given the type of misconduct involved (which could be very minor) and the type of resolution which was appropriate (which could sometimes be achieved without the necessity of a hearing).

In contrast, under the HPA Colleges can respond to professional misconduct in a number of ways including informal efforts to resolve the matter, Alternative Complaint Resolution (sometimes simply referred to as mediation), obtaining an expert assessment, incapacity assessments (if a complaint raises an issue about the mental competence of the treatment provider) or, if appropriate, investigations and hearings.

Which one of these options is selected will depend on the facts of each case, the severity of the alleged misconduct and the best possible way to preserve the College's public protection mandate. Having said that, the HPA encourages resolving unprofessional conduct matters through the most efficient, inexpensive, and expedient means where appropriate.

In summary, the HPA introduces sweeping changes to the way in which healthcare professions license and regulate their members. Just as importantly it attempts to increase consumer choice and accessibility to healthcare professionals while at the same time protecting the public. Only time will tell whether it can achieve both of those at times contradictory goals.

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Restricted activities

- 2(1) The following, carried out in relation to or as part of providing a health service, are restricted activities:
- (a) to cut a body tissue, to administer anything by an invasive procedure on body tissue or to perform surgical or other invasive procedures on body tissue
 - (i) below the dermis or the mucous membrane or in or below the surface of the cornea;
 - (ii) in or below the surface of teeth, including scaling of teeth;
 - (b) to insert or remove instruments, devices, fingers or hands
 - (i) beyond the cartilaginous portion of the ear canal,
 - (ii) beyond the point in the nasal passages where they normally narrow,
 - (iii) beyond the pharynx,
 - (iv) beyond the opening of the urethra,

- (v) beyond the labia majora,
- (vi) beyond the anal verge, or
- (vii) into an artificial opening into the body;
- (b.1) to insert into the ear canal
 - (i) under pressure, liquid, air or gas;
 - (ii) a substance that subsequently solidifies;
- (c) to set or reset a fracture of a bone;
- (d) to reduce a dislocation of joint except for a partial dislocation of the joints of the fingers and toes;
- (e) to use a deliberate, brief, fast thrust to move the joints of the spine beyond the normal range but within the anatomical range of motion, which generally results in an audible click or pop;
- (f) to prescribe a Schedule 1 drug within the meaning of the *Pharmaceutical Profession Act*;
- (g) to dispense, compound, provide for selling or sell a Schedule 1 drug or Schedule 2 drug within the meaning of the *Pharmaceutical Profession Act*;
- (h) to prescribe, dispense, compound or administer a vaccine or parenteral nutrition;
- (i) to prescribe, compound or administer blood or blood products;
- (j) to prescribe or administer diagnostic imaging contrast agents;
- (k) to prescribe or administer anesthetic gases, including nitrous oxide, for the purposes of anesthesia or sedation;
- (l) to prescribe or administer radiopharmaceuticals, radiolabelled substances, radioactive gases or radioaerosols;
- (m) to order or apply any form of ionizing radiation in
 - (i) medical radiography,
 - (ii) nuclear medicine, or
 - (iii) radiation therapy;
- (n) to order or apply non-ionizing radiation in
 - (i) lithotripsy,
 - (ii) magnetic resonance imaging, or
 - (iii) ultrasound imaging, including any application of ultrasound to a fetus;
- (o) to prescribe or fit
 - (i) an orthodontic or periodontal appliance,
 - (ii) a fixed or removable partial or complete denture, or
 - (iii) an implant supported prosthesis;
- (p) to perform a psychosocial intervention with an expectation of treating a substantial disorder of thought, mood, perception, orientation or memory that grossly impairs
 - (i) judgment,
 - (ii) behaviour,
 - (iii) capacity to recognize reality, or
 - (iv) ability to meet the ordinary demands of life;
- (q) to manage labor or deliver a baby;
- (r) to prescribe or dispense corrective lenses.
- (2) Despite subsection (1), the following are not restricted activities:
 - (a) activities of daily living, whether performed by the individual or by a surrogate on the individual's behalf,
 - (b) giving information and providing advice with the intent of enhancing personal development, providing emotional support or promoting spiritual growth of individuals, couples, families and groups, and
 - (c) drawing venous blood.