



THE  
COLLEGE  
OF  
PHYSICIANS  
AND  
SURGEONS  
OF  
ONTARIO

**Remarks on Bill 175,  
the *Ontario Labour Mobility Act* by the  
College of Physicians and Surgeons of Ontario**

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(Check against delivery)

## **Remarks on Bill 175, the *Ontario Labour Mobility Act, 2009* by the College of Physicians and Surgeons of Ontario**

- Thank you for this opportunity to appear before the committee. I am Jack Mandel, President of the College. I have practised family medicine for more than 35 years. With me today are Rocco Gerace, Registrar, Louise Verity, Director of Policy and Communications and Amy Block, Counsel.
- I wish to start by stating unequivocally that the College supports labour mobility, including national mobility for physicians. However, I want to be very clear. An immediate move to full mobility for all physicians **will put patients at risk and compromise patient safety**.
- In my presentation today I will:
  - Explain why an implementation strategy is needed for full mobility to protect patients against the risk of unnecessary harm
  - Convey the College's commitment to mobility
  - Present our recommendations to amend the Bill

### **The need for an implementation strategy:**

- As you know, Bill 175 will, generally entitle physicians with a practice licence in any Canadian province to obtain an Ontario licence.
- Currently, graduates of Canadian medical schools already have national mobility.
- Ontario has historically welcomed international graduates through competency screening. This step ensures that they are able to meet the same standards as graduates of Canadian medical schools and are able to practise safely and effectively.
- Under this system, many internationally-trained physicians have obtained their Ontario licence. In fact, about 25% of Ontario's doctors received their medical education outside of Canada, and, for the past five years, more licenses have been issued to international graduates than Ontario graduates.
- Bill 175 will remove the College's ability to screen applicants trained outside Canada if they have a full licence in another province.
- This is concerning because a few provinces in Canada have lowered their entry standards to recruit physicians.
- There is data to support our concern that some internationally trained physicians are not practice-ready.
- For example, in Saskatchewan it is possible to get a temporary licence without meeting the criteria that provincial medical regulators are proposing be the new Canadian standard. As part of the move into permanent practice, these doctors undergo a competency assessment after one year in the community.
- Results from a recent cohort of 172 physicians showed that only 8% (14) were found to be practicing at an acceptable level. The majority could be brought up to appropriate standards through further education, but 7% (12) had their licenses terminated.

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- In our competency screening program in Ontario, called Registration through Practice Assessment (RPA), we look at the practices of physicians with full licenses in other jurisdictions who wish to come to Ontario but do not meet our requirements. We found that approximately 14% of them were so substandard that no amount of training was considered sufficient to guarantee that they would practice medicine safely.
- One example was Dr. X, a physician who was practicing in New Brunswick (and who would not meet the proposed new Canadian standard). Our screening found that this physician did not listen to patients, had difficulty understanding clinical issues, kept grossly inadequate charts and failed to adequately follow up with critically ill and vulnerable patients. We declined to license this physician. Under Bill 175, we would be required to license this physician and would not be permitted to put in place any special precautions (such as supervision).

### **CPSO commitment to mobility:**

- In May 2009, the College applied to the government for a limited two-year exception to the AIT, but only for a very small number of applicants who fall below the proposed new Canadian standard.
- The exception we have requested would apply to applicants who have not successfully completed the appropriate Medical Council Exams (a requirement for all graduates of Canadian medical schools) and an approved residency program. The exception would expire once a national standard was implemented or after two years, whichever came first.
- We are still awaiting a formal response from the government to our application.
- In addition, the College supported a request of the national association for medical regulators—FMRAC—for a two year moratorium for AIT implementation for physicians to accommodate implementation a new Canadian standard.
- The College is actively participating in the FMRAC group that has now developed a proposal for a new Canadian standard.

### **Proposed amendments:**

- I would now like to outline amendments to Bill 175 sought by the College and explain our rationale for requesting these changes.
- First, we recommend that the Bill be amended by adding a new provision that would permit the Lieutenant Governor in Council to make a regulation exempting a regulatory college if the college and its counterparts in other provinces have agreed to develop common certification requirements. This regulation would be automatically repealed after two years.
- The amendment would allow the government to pass a regulation exempting this or any other college for a short period of time. It represents a transitional step to protect public safety, ensure immediate mobility for the vast majority of physicians and extend mobility to all remaining physicians who are registered in any Canadian province within two years.
- Physicians who would not qualify for mobility could still obtain an Ontario medical licence during this period though the existing assessment process.

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- Second, we seek amendments to s. 21(1) to clarify that the Ontario government's right to recover any penalties it has to pay for non-compliance with the AIT from a regulatory college is limited only to cases where the college has acted in bad faith.
- The amendment reflects what the government has already advised the colleges its policy would be on recouping penalties from regulators. This merely sets it out in the legislation.
- Third, we recommend additional wording under s. 22.18(5) to clarify in the Act that the College is not precluded from continuing its current practice of requesting a certificate of good standing from the regulatory authority in every jurisdiction where the applicant has previously practiced or trained (not just the jurisdiction in which the applicant currently holds a license).
- To help ensure public protection, the College needs to obtain information about an applicant's past and present competency and conduct.
- Finally, we recommend additional wording under s. 22.18(7) to clarify in the Act that the College may refuse to issue a certificate or may impose limitations on a certificate based on any non-exemptible registration requirements and any information that comes to the College's attention.
- The specific wording and reasoning behind the amendments we are recommending are set out in the Appendix of our material. Our materials also include the College's application for exception dated May 26, 2009, follow-up correspondence on our application dated December 3<sup>rd</sup> and our most recent registration statistics.
- Thank you very much for this opportunity to make this submission to the committee.
- We would be pleased to answer questions that you may have.

## APPENDIX

### SUMMARY OF CPSO's PROPOSED AMENDMENTS TO BILL 175

- 1) **Transitional step to full mobility where national standard is being developed** - Adding a provision that would permit the Minister to make a regulation exempting a regulatory college if the college and its counterparts in other provinces have agreed to attempt to develop common certification requirements. This regulation would be repealed after two years.

*Proposed Amendment* - Add the following provision to section 43(1) of the *Regulated Health Professions Act, 1991*:

exempting a College from the application of sections 22.15 to 22.23 of the Code and sections 21 to 24 of the *Ontario Labour Mobility Act* for a period of two years, if the College and representatives of the regulatory authorities of the provinces and territories in Canada are engaged in good faith efforts to arrive at common certification requirements for the health profession which that College regulates.

#### *Rationale*

- transitional step designed to protect public safety – we need to recognize and mitigate potential unsafe acts by inadequately trained physicians before patient harm occurs
- vast majority of doctors (including graduates of Canadian medical schools and many graduates of international medical schools) will have national mobility when Bill 175 goes into effect
- full national mobility for all doctors registered in any province within two years (when a national standard is adopted to by all the provincial regulators)
- broadly worded amendment could apply to any health college that is working toward national standards

#### *Background*

Medical regulators across Canada have agreed to implement a single national standard that will eliminate patient safety concerns arising from lower registration standards in some provinces. It will take time to make the necessary legislative and other changes across the country. The College is actively working and helping to lead this process at the national level through the Federation of Medical Regulatory Authorities of Canada (FMRAC).

- 2) **Clarifying Government's right to recover penalties from colleges** - Amendments to s. 21(1) to clarify that the Ontario government's right to recover any penalties it has to pay for non-compliance with the AIT from a regulatory college is limited only to cases where the college has acted in bad faith (e.g. for improper purposes). The College's liability in this regard would be limited to the extent of its non-compliance.

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*Proposed Amendment* – Amend section 21(1) to read as follows (changes underlined):

If the Crown in right of Ontario is ordered to pay a penalty or tariff costs under a final order made by a presiding body established or convened under the Agreement on Internal Trade, and the order is wholly or partially the result of non-compliance with the Labour Mobility Code by a non-governmental or municipal governmental regulatory authority acting in bad faith, or non-compliance with sections 22.15 to 22.23 of Schedule 2 to the *Regulated Health Professions Act, 1991* by a College, as defined in that Act, acting in bad faith, the Crown has the right to recover from the regulatory authority or the College, as the case may be, the proportion of the amount paid by the Crown under the presiding body's final order that is attributable to the regulatory authority or College's bad-faith non-compliance.

*Rationale*

- Colleges should only be held liable for breaching the AIT if they do so intentionally and in bad faith (e.g. for improper purposes).
- Government has advised that it would only seek to recover penalties from a college if it did not act in good faith. This would amend the Bill to reflect the government's stated intention.

- 3) **Clarifying that regulators may seek certification of good standing with any previous regulator** – Adding additional wording to s. 22.18(5)2 to clarify the legislative intention that the College may continue its current practice of requesting a certificate of good standing from the regulatory authority in every jurisdiction where the applicant has previously practiced or trained (not just the jurisdiction in which the applicant currently holds a license).

*Proposed Amendment* – Amend section 22.18(5)2 to read as follows:

2. If the condition set out in paragraph 2 of subsection (6) is met,
  - i. provide a certificate, letter or other evidence from the body or individual that granted the out-of-province certificate, confirming that it is in good standing, and
  - ii. provide a certificate, letter or other evidence from any body or individual in any jurisdiction in which the applicant trained for or practised the profession, confirming that the applicant is or was in good standing in that jurisdiction.

*Rationale*

As the government has recognized, to protect the public, the College needs to obtain information about an applicant's past and present conduct. This includes obtaining a certificate of good standing from regulatory authorities in any jurisdiction where the applicant has practiced or trained. Experience has shown that limiting the College to one regulatory authority could result in missing deficits in knowledge, skill, professional judgment or behaviour in the applicant's history and jeopardize public safety.

- 4) **Clarifying the College’s right to refuse or place limitations on a certificate based on any non-exemptible registration requirements and information that comes to the College’s attention not limited to complaints, or other proceedings** - Adding additional wording to s. 22.18(7)1 (and re-number the balance) to clarify that the College may refuse to issue a certificate or may impose terms, conditions or limitations on the certificate not only on the basis that there are “complaints, or criminal, disciplinary or other *proceedings* against the applicant” in another jurisdiction, but on the basis of any information that comes to its attention relating to the applicant’s competency, conduct or character. In addition, clarifying the legislative intention that prescribed non-exemptible requirements remain applicable to this class of applicants.

*Proposed Amendment* – Amend section 22.18(7)1 (and re-number the balance) to read as follows:

1. Refusing to issue a certificate of registration to the applicant on the basis of any registration requirement that is prescribed as a non-exemptible requirement under clause 95 (1) (d).
2. Imposing terms, conditions or limitations on the applicant’s certificate of registration if, in the opinion of the Registration Committee, such action is necessary to protect the public interest as a result of,
  - i. complaints, or criminal, disciplinary or other proceedings, against the applicant in any jurisdiction whether in or outside Canada, relating to the applicant’s competency, conduct or character, or
  - ii. any other information that comes to the attention of the Registration Committee relating to the applicant’s competency, conduct or character.

*Rationale*

- Clarifies the intent of the legislation that the College continues to have discretion to:
  - refuse registration where applicant does not meet the non-exemptible requirements of Registration Regulation (e.g., to practice with decency, integrity and honesty or in accordance with the law)
  - impose terms, conditions and limitations based on any information that comes to the Registration Committee’s attention, not just information regarding “proceedings” (e.g., a quality assessment review may not be viewed as a “proceeding” but can provide relevant information about an applicant)