

## UK Health Regulation Reform

by Julie Maciura

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Even as many Canadian jurisdictions consider fundamental reforms to the regulation of health professions that are heavily influenced by the model in the United Kingdom, the UK is considering further changes.

On March 24, 2021, the UK Department of Health and Social Care published a detailed consultation paper containing numerous proposals for the reform of the regulation of the health and social work professions. The consultation is open until June 15, 2021, with the goal to have new legislation in place within a year.

The proposals focus primarily on the regulators themselves. They barely touch on the role of the oversight body, the Professional Standards Authority, which will likely be largely unchanged. The major themes of the proposals are threefold:

1. Making the authority and regulatory framework of the various regulators fairly uniform;
2. Ensuring flexibility by leaving the making of rules and establishing of procedures to the regulators themselves rather than setting most of them out in legislation itself; and
3. Facilitating the early disposition of less significant concerns of both registration and complaints/discipline matters so that they can be addressed through a less adversarial process.

The proposals are set out in four broad categories.

### Governance

The proposals maintain the existing regulatory objectives of promoting public health and safety, maintaining public confidence and setting proper professional standards. However, those objective will be supplemented with emphasis on three new duties:

1. Cooperation with other participants in the health care system;
2. Transparency of board meetings and disciplinary hearings, including public consultation on any changes to regulatory rules; and
3. Proportionality - by explicitly assessing the impact (including cost) of changes to rules and processes before they are introduced.

Currently regulatory boards are selected by a merit-based process that generally do not involve election by the profession. The proposals continue this approach and call for the board of directors to have a maximum of twelve persons selected on the basis of merit (although the Chair will be appointed by the government) with a maximum of 50% (and no minimum) being members of the profession. Board members can serve for a maximum of eight years in any 20-year period.

Regulators will all be able to set annual fees without government approval. However, consultation with those affected must occur first. Regulators will also be able to set additional fees on a cost-recovery basis for specific functions (e.g., processing registration applications). However, no fees can be charged for complaints and discipline functions.

Regulators will not require any set committees and can determine which ones they wish to have.

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The proposals would also permit a regulator to delegate to another regulator certain functions such as:

- Accreditation of educational programs;
- Setting educational standards;
- Operating the public register;
- Providing practice advice; and
- Administering the complaints and discipline process.

The proposals would also permit the sharing of information by and to regulators for regulatory purposes with:

- Other regulators;
- Educational institutions;
- Professional bodies;
- Employers;
- Law enforcement agencies and
- Government.

### **Education and Training**

In Ontario there is a tension between the role of the regulators in setting the educational requirements for registration and the role of government in setting the standards for post-secondary educational institutions. Sometimes there is overlap where regulators or their proxies accredit educational programs whose graduates are eligible for registration.

In the UK it appears that regulators have a more extensive role in setting standards for educational programs that lead to registration. The proposals appear to make those powers more consistent and to expand them. The proposals will allow regulators to set:

- standards for the outcomes of education and training for individual learners (i.e., entry-to-practise competencies);
- standards for providers of courses or programmes of training which lead to registration (i.e., similar to accreditation standards in Ontario);
- standards for specific courses or programmes of training which lead to registration;
- additional standards for providers who deliver post-registration courses for added competencies; and
- additional standards for specific courses or programmes for added competencies.

The proposals also include ensuring that all regulators have the power to set examinations or other assessments for registration. This is already common in Ontario.

The proposals also call for all regulators to be able to set the requirements for continuing professional development and revalidation by themselves without the need for specifying the programs in legislation.

### **Registration**

All regulators would be given the authority to register categories of practitioners (e.g., those who retired in the past six years) in cases of emergency. This would codify temporary legislation enacted during the pandemic.

Many of the other registration proposals would not be surprising to Ontario regulators. One that may be innovative for some is that regulators would be able to administratively remove a practitioner's registration where it was obtained through "fraud"

rather than having to go through the discipline process. A similar process is also under consideration for incapacity concerns or lack of language fluency without having a full incapacity hearing.

The proposal continues to contemplate that each regulator maintain separate public registers. However, regulators overseeing multiple professions would have only one register divided into parts for each profession. Certain basic information would be common to all registers including disciplinary measures taken. However, regulators would also have the authority to collect and post additional information on the register.

## **Complaints and Discipline**

A number of proposals are made to promote the consistent consideration of conduct and competence concerns by all regulators.

For example, practitioners found guilty of listed serious offences could be automatically removed from the profession without a discipline hearing.

The five-year limitation period for dealing with most concerns by some regulators would be removed.

The proposals call for a three-stage consideration of concerns:

- Initial assessment, which would include investigative procedures;
- Screening by a case examiner; and
- Discipline hearings.

While not dissimilar to the approach taken by most Ontario regulators, the proposal appears to contemplate a more vigorous use of the first two

stages. Only concerns relating to misconduct or lack of competence would proceed to the second stage. In addition, the second stage will involve scrutiny of the matter by a case examiner who can propose findings and serious outcomes including significant, public, sanctions such as terms and conditions, suspension and removal. Serious sanctions can only be imposed with the consent of the practitioner. However, an agreed resolution can be reviewed by the Registrar of the regulator who has the authority to refer the matter to discipline where the proposed resolution does not protect the public interest.

Where the practitioner does not accept the proposed outcome, the matter will then proceed to a discipline hearing. At that stage the proposal made by the case examiner is no longer available to the practitioner. A decision by the discipline tribunal is appealable by the practitioner or by the Professional Standards Authority, but not by the regulator.

The proposal also suggests that regulators would be able to create their own complaints and discipline process within this framework, right down to establishing the committees they deem appropriate. Detailed legislative provisions would no longer be present. The rules would have to be fair to the practitioner and would have to keep those raising the concerns (e.g., a complainant) informed of developments.

The UK consultation proposals contain a number of unique ideas that will be of interest to Canadian policy makers.

The consultation document can be found at: <https://www.gov.uk/government/consultations/regulating-healthcare-professionals-protecting-the-public>.