

President's Letter

March 14, 2017



**Christopher Cox,
MD, FRCSC, FACS
President**

New *Patient Safety Act* clarifies protections for quality assurance information

Dear Colleagues,

On March 7, the provincial government introduced *Bill 70 An Act Respecting Patient Safety and Quality Assurance in the Province* in the House of Assembly. Once passed, the new *Patient Safety Act* will provide a legal framework through which all quality assurance activities will be conducted in the health care system. While each regional health authority (RHA) already has its own policies and processes for conducting quality assurance activities, the new *Act* will ensure there is standardization and consistency throughout the province.

The *Patient Safety Act* focuses on four main themes of quality assurance and patient safety, including reporting, investigation and release of information; establishing quality assurance committees and patient safety plans within RHAs; the creation of a provincial patient safety and quality advisory committee; and patient disclosure guidelines.

The NLMA supports the principles outlined in the *Patient Safety Act* and applauds the government for developing legislation that combines the elements of patient safety, quality assurance, reporting and disclosure into a single, cohesive statute. There are, however, new procedures governing the protection of quality assurance information that physicians need to understand.

Highlights:

- **The new *Patient Safety Act* creates a standardized legal framework for all quality assurance activities undertaken by the regional health authorities and the Department of Health and Community Services.**
- **The legislation ensures that information provided to and generated from quality assurance activities (e.g. peer reviews, morbidity and mortality rounds, quality reviews, etc.) is protected from being disclosed during a legal proceeding or a disciplinary proceeding, with the exception of a commission of inquiry.**
- **A commission of inquiry, which is created in response to a significant event, will have unfettered access to any quality assurance information provided to or generated from a quality assurance activity or committee.**
- **For the first time, patients and their families who have been impacted by an adverse health event will now have a statutory right to recommendations generated from a quality assurance activity or committee.**
- **If a quality assurance activity or committee determines that the actions of a health care provider does not meet the standard of care, issues of skill, knowledge or competency is referred to a separate investigation and/or disciplinary process either through an RHA and/or a regulatory body. This information is not considered quality assurance information and is not protected under the *Patient Safety Act*.**

For a more detailed analysis please refer to the attached background.

Regards,



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Backgrounder

Following the Commission of Inquiry on Hormone Receptor Testing (CIHRT) in 2008 and the preceding court case in which Eastern Health sought to protect two external reviews from disclosure to the CIHRT, there has been widespread uncertainty among health care providers about whether information they voluntarily disclose during quality assurance activities like peer review could be used in a legal proceeding. To encourage participation among physicians and other providers in these processes, the government introduced the *Patient Safety Act* and passed amendments to the province's *Evidence Act* and *Public Inquiries Act*, to ensure there is legal certainty around the definition of quality assurance information and when it is protected.

The *Patient Safety Act* defines quality assurance information as information in any form that is provided to or generated for a quality assurance committee or for the purpose of carrying out a quality assurance activity, producing patient safety indicators, as well as information contained in a report of a close call or a notice of an adverse health event that arises during the provision of a health service. Quality assurance activities are those activities carried out for the purpose of which is to study, review, investigate, assess or evaluate the provision of health services, either ongoing or case specific, in order to make recommendations to improve medical or hospital care, the provision of health service, medical research or programs related to health services. These activities include morbidity and mortality rounds, peer reviews, quality reviews and reviews of health services.

Under the new legislation, a report, statement, evaluation, recommendation, memorandum, document or information, of, or made by, for or to, a quality assurance committee or quality assurance activity committee, shall not be disclosed in or in connection with a legal proceeding. A legal proceeding includes any civil proceeding, inquiry, arbitration, judicial inquiry or proceeding in which evidence is or may be given before a court, tribunal, board or commission, person or committee. This includes RHA disciplinary committees mandated to review clinical competency, disciplinary committees of a governing body of a regulated health profession, as well as any action or proceeding for the imposition of punishment.

The one exception is a commission of inquiry, for example an inquiry similar to the Commission of Inquiry on Hormone Receptor Testing. Any commission of inquiry ordered under either the *Fatalities Investigation Act*, the *Provincial Offences Act* or the *Public Inquiries Act, 2006*, will have full, unrestricted access to any quality assurance information provided to or generated from a quality assurance activity or committee.

It is the government's hope that granting a commission of inquiry unrestricted access to quality assurance information will not produce a barrier to health care providers' participation in the quality assurance process. Dr. John Haggie, Minister for Health and Community Services, acknowledged in the House of Assembly that there has been a reduction in quality assurance activity in the province following the Cameron Inquiry. He also acknowledged there is a risk perceived by health care providers in permitting commissions of inquiry to have unrestricted access to quality assurance information. He explained that a commission of inquiry is created in response to a significant event and the Government believes it is important, in light of current societal views, that a public inquiry has access to the information it needs to fulfil its mandate. It is the Government's hope that by providing clarity around the protection of quality assurance information it will help re-establish quality assurance activities and promote open and candid discussion within those protected areas.

Information not protected under the *Patient Safety Act*

Information contained in a record, such as a hospital chart or a medical record, which is maintained for the purpose of documenting health services provided to a patient, is not considered protected from a legal proceeding. If a quality assurance activity or committee determines there is new information that should be documented in a patient's record or if it determines there was harm or potential harm to a patient, this information must be disclosed and is not considered protected.

For the first time, patients and their families who have been impacted by an adverse event will also have a statutory right to recommendations that are derived from a quality assurance activity or committee.

If a quality assurance activity or committee determines that the actions of a health care provider does not meet the standard of care, issues of skill, knowledge or competency is referred to a separate investigation and/or disciplinary process (e.g. a competency review) either through an RHA and/or a regulatory body. This information is not considered quality assurance information and is not protected under the *Patient Safety Act*.

Bill 70 An Act Respecting Patient Safety and Quality Assurance in the Province is available [here](#). If you have any questions, please email Jonathan Carpenter, Director of Communications and Public Affairs at jcarpenter@nlma.nl.ca.