



NEWFOUNDLAND AND LABRADOR
MEDICAL ASSOCIATION

October 16, 2022

by email

Hon. Tom Osborne
Minister of Health and Community Services
Government of Newfoundland and Labrador

Dear Minister Osborne:

I am writing in relation to Bill 1, *An Act to Amend the Medical Act*. The NLMA is providing its reaction to key items in the Bill and making a recommendation to set aside, and find a replacement for, the concept of ministerial regulations for provisional licensing.

It is unfortunate that despite requests for consultation from the NLMA the government did not engage us on a discussion of the new regulatory approach. The NLMA obtained the bill the same day it was tabled in the House of Assembly and passed through Second Reading and Committee of the Whole. Its contents in respect of ministerial regulation were a complete surprise.

The NLMA is the voice of the medical profession in Newfoundland and Labrador, and this Bill directly relates to the most sensitive aspects of professional self-regulation. This Bill will determine the types of doctors with whom we work in operating rooms, with whom we practice in teams, to whom we refer patients, and from whom we accept patient referrals. We have an enormous stake in this Bill, as do our patients. The College of Physicians and Surgeons does not represent physicians, it regulates physicians. Therefore, consultation with the College is not a substitute for consultation with the representative body of physicians of Newfoundland and Labrador. We ask that you take this into account as you consider our advice.

We support government's general objective to bring more physicians into the province by introducing new license categories and seeking to reduce barriers and delays in the licensing process. We continue to be partners with government in pursuing other programs and initiatives regarding recruitment and retention.

However, we strongly oppose the part of the Bill that establishes a new power for the Minister to make regulations regarding medical schools, jurisdictions (provinces and countries), and other qualifications and requirements, that will entitle doctors to be registered on the provisional register.

While our members share frustration about "red tape" in the licensing process, and we have long held the position that licenses from other provinces should be more readily recognized in our jurisdiction, our concern is that the new authority exceeds what is necessary to address the problem, and it brings the Minister inside the regulatory process in a way that compromises the principle of professional self-regulation in medicine.

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The model created under the Bill is essentially a substitute for the rule-making and decision-making process of the College, in respect of qualifications necessary for provisional medical licenses. Even though the College will ultimately issue provisional licenses, it will not be the body that has decided on the medical school, jurisdiction or qualifications that the applicant must meet.

We have reviewed other comparable legislation across the country, and we find no similar model of Ministerial authority. Innovation can be a good thing, of course, but other models provide better balance between Ministerial authority, on the one hand, and professional self-regulation and the independence of the College, on the other. A summary of these comparisons, as well as several other objections we have to the model in the Bill, are attached to this letter. Our conclusion is that jurisdictions like Ontario, PEI and Manitoba provide a role to the Minister but accomplish their goals by working through the College. This approach reinforces the principle of self-regulation. These jurisdictions do not create a substitute framework for making rules for medical licensure.

We understand that the CPSNL provided proposals to the government on rules that can be changed to expedite the recognition of physicians from other jurisdictions to practice in our province. We understand these proposals target many or all the same jurisdictions that the government believes should be given consideration. We suggest the government should be working with the College to evaluate and, if necessary, improve the proposals rather than create a new ministerial framework for decision-making regarding medical qualifications.

Minister, achieving better access to physician care by the patients of the province is something the NLMA has been advocating for many years and is at the centre of everything we do. But neither the government or the NLMA can allow the pursuit of access to be at the expense of quality and safety. I think we would all agree that these two values can be properly balanced, but we fear that the specific model in the Bill creates many risks.

The Medical Association asks the government to set aside this part of the Bill and consider alternative ways to pursue worthwhile objectives around recruitment of physicians. There are ways to achieve nimble and focused changes to medical licensing while also maintaining medical standards for quality and protection in the public interest without creating a substitute mechanism for developing new regulations.

We appreciate your consideration of these matters, and we seek further discussions with you in the coming days.

With Best Regards,



Kris Luscombe, MD, FRCPC
President

cc: Hon. Dr. Andrew Furey, Premier

Attachment

Comparisons with Other Jurisdictions

Many jurisdictions are like Newfoundland and Labrador, where there is no role for the Minister to direct the College in regard to licensing or registration qualifications (Nova Scotia, New Brunswick, Saskatchewan and British Columbia). Two provinces (Manitoba and PEI) have a model wherein the Minister has powers of inquiry and directive. For example, the PEI legislation states that the Minister may appoint a person to inquire into “any aspect of the administration or operation of the college” or “the exercise of a power or the performance of a duty, or the failure to exercise a power or perform a duty....” After this review the Minister may issue a directive to the College to, among other things, “require the college to exercise its powers or perform its duties under this Act, the regulations or the by-laws, including the making, amending or revoking of regulations or by-laws, to address the issues that were the subject of the inquiry.” In Ontario, the Minister’s authority is similar to Manitoba and PEI, though phrased differently. An interesting part of the Minister’s authority in Ontario is to “review a Council’s activities and require the Council to provide reports and information....” A concrete example of the use of this authority was in August 2022 when the Ontario Minister issued a letter to the College to “make every effort to register out of province and internationally educated physicians to the College as expeditiously as possible.” The College, in response, provided a range of options including a proposed regulation that requires government approval to create a temporary class of registration designed to support mobility within Canada.

Other Issues:

1. In the new Bill, the Minister and the new advisory committee are not required to adhere to section 8. Under section 8 the College of Physicians and Surgeons is required to “regulate the practice of medicine and the medical profession in the public interest.” The non-applicability of this section to advisory committee, whether intentional or an oversight, cannot stand as currently drafted. Public safety and patient interests dictate that all decision makers who have a role in setting standards for licensure have a legislative obligation to act in the public interest.
2. By creating a substitute framework for specifying licensing standards, the risk is created that the College may assess a ministerial regulation as not in the public interest. In this situation, the College would face a dilemma whether it should adhere to the section 8 public interest standard, or ministerial regulations under section 29.2. This situation can be avoided by conceiving a different legislative model than the one in the proposed Bill.
3. The structure of the advisory committee creates the possibility the advice of the College could be marginalized. The Minister must consult with the advisory committee, but the College only appoints 2 of the 5 members. Depending on the terms of reference of the committee, which is under the Minister’s discretion, it is possible the College’s advice could be outvoted by other members of the committee.
4. The other members of the committee are appointed by the Minister from the regional health authorities and by the Deputy Minister from within the Department. This structure can be perceived as compromising the independence of physician regulation as there is no requirement for all advisory committee members to be independent of the government.

5. There is concern about the capacity of the committee to do the significant amount of work to evaluate medical schools, other jurisdictions, and types of qualifications, to provide the public with assurance that equivalence and high quality is observed. The committee members will, no doubt, be highly competent individuals, but the sheer amount of work necessary to support decisions like these is one of the reasons why the College itself was created.