

POSITION PAPER ON THE HPRAC REPORTS TO THE MINISTER OF HEALTH AND LONG-TERM CARE

APPRECIATION

The Board of Directors of the Ontario Association of Medical Radiation Technologists, henceforth the OAMRT in this document, appreciates the opportunity to comment on the following Health Professions Regulatory Advisory Council's (HRPAC) documents:

- ? Adjusting the Balance, A Review of the Regulated Health Professions Act
- ? Effectiveness of Colleges' Quality Assurance Programs
- ? Effectiveness of Colleges' Patient Relations Programs
- ? Effectiveness of Colleges' Complaints and Discipline Procedures for Professional Misconduct of a Sexual Nature
- ? Advice to the Minister of Health and Long-Term Care - Naturopathy
- ? Advice to the Minister of Health and Long-Term Care - Traditional Chinese Medicine and Acupuncture

Consultation opportunities are very important to the OAMRT in serving the public interests and the patients we serve. The fact that our viewpoints and those of others are received and reviewed brings a value-added component to achieving a dynamic and viable health care system. We look forward to the positive evaluation of our health care system and hope our feedback assists in this regard.

G. Richard, M.R.T.(R), RTR
Chair of the Board & President, OAMRT

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Position

**THE ONTARIO ASSOCIATION OF MEDICAL RADIATION
TECHNOLOGISTS (OAMRT)**

The OAMRT is a voluntary Association representing approximately 4,500 Members.

The OAMRT is the official voice for the Profession of Medical Radiation Technology in the Province of Ontario. As such, the Association is the advocate for Medical Radiation Technologists (MRTs) representing their needs and their views to the government and other stakeholders.

The OAMRT was founded in 1935 as an independent, non-profit organization. During this time, it has been responsible for a number of initiatives that have shaped and helped to shape health care in Ontario. The Association has been a driving force concerning the evolution of Medical Radiation Technology and Radiation Therapy in Canada and will continue to be as a key partner and stakeholder in the Ontario health care system.

The OAMRT believes in the principles of collaboration and partnership to ensure an effective, efficient and safe Health Care environment.

The OAMRT is governed by a nine Member Board of Directors including a representative from the National Association sitting on the Board. It has representation from all areas of the province through its regional or "Section" system. In this way communications flow from the grass roots up and from the decision makers down and laterally to the various volunteers and leaders of the Association.

The OAMRT is committed to building and maintaining an effective and sustainable health care system in partnership with the government and other bodies and organizations.

Although the Association's mandate is to provide leadership advocacy and education on behalf of its Members and to represent their needs, the safety and interests of the public are of primary concern to the Association in meeting its Purpose, Core Values, Vision, Mission, Beliefs and Goals.

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EXECUTIVE SUMMARY

Overview

We commend HPRAC for the work that they did in regards to the RHPA Five Year Review, the Colleges' Q.A., Patient Relations, Complaints and Discipline Procedures for Professional Misconduct of a Sexual Nature, and their evaluation of Naturopathy and TCM/Acupuncture.

We were pleased to be a part of the consultation process and would hope that the opportunities for consultations continue and increase. The more diversified the viewpoints, the better the processes and the health-care system will be.

General Observations

It is our observation that no one has put a price tag on what has been recommended or advised on. This is a major issue, in our view. Health Care Practitioners are already burdened with Regulatory College fees. Further, additional financial costs will only cause more stress and foster a movement for Professions to de-regulate.

In terms of the Associations, increased Regulatory College Registrant fees could reduce involvement with the Professional Associations. This would run counter to one of the criteria of being regulated and that there is a viable Professional Association in place.

Associations have a different, yet a value-added perspective on the Profession and the Health-Care system that should not be ignored but embraced. Some of the proposed recommendations appear to ignore the contribution Associations can provide. In reality, the Professional Associations drive the profession including practice standards and techniques. Regulatory Colleges react. Driving the advancement of the Profession is not their role nor is professional development, in our view.

HPRAC has emphasised balance and fairness. In some of their recommendations this appears to have been sacrificed and we encourage that for every recommendation considered, that the criteria be: balance, fairness and cost effectiveness.

Summary of Recommendations

RECOMMENDATION 1

That all Regulated Health Care Practitioners carry personal professional liability insurance (PLI).

RECOMMENDATION 2

That the Minister of Health and Long-Term Care and the Health Professions Regulatory Advisory Council consult with Associations whose Members are Regulated Health Professionals in the same

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spirit and manner as is the Federation of Health Regulated Colleges to achieve a balance of viewpoints on issues related to Regulated Health Professions Act.

RECOMMENDATION 3

That the terms “*disease*”, “*disorder*” and “*dysfunction*” be clarified through definition.

RECOMMENDATION 4

That clarification be given to subsection 27-(2) 1. of the RHPA regarding “*Communicating a Diagnosis*”.

RECOMMENDATION 5

That the boundaries of a “*personal representative*” be defined.

RECOMMENDATION 6

That the terms “*prescribing*” and “*administering*” be clarified.

RECOMMENDATION 7

That the Fitness to Practice and Discipline Committees stay as is.

RECOMMENDATION 8

That the proposed extension concerning the deadline for Disposition of a Complaint, not be incorporated.

RECOMMENDATION 9

That full party status not be given to complainants at Discipline proceedings.

RECOMMENDATION 10

That the public access to information be consistent with privacy legislation now in effect, and proposed and also be consistent with the principle of “innocent until proven guilty”.

RECOMMENDATION 11

That the role of HPRAC stay as is.

RECOMMENDATION 12

That a fixed timetable not be established concerning the review of the Profession - Specific Acts.

RECOMMENDATION 13

That the proposed formalised Q.A. Program Continuous Quality Improvements (CQI) Group include the

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Professional Associations.

RECOMMENDATION 14

That HPRAC's Recommendation 2 under "Public Information" not be accepted.

RECOMMENDATION 15

That the proposed monitoring system includes the Professional Associations and undergraduate programs.

RECOMMENDATION 16

That the Minister of Health and Long-Term Care fund the support service program and that whatever is decided concerning the regulated sector, it is also done for the unregulated sector.

1. ADJUSTING THE BALANCE, A REVIEW OF THE REGULATED HEALTH PROFESSIONS ACT

Introduction

The OAMRT was impressed with the work that went into this document. We were pleased with the acknowledgements that were paid to many of the contributors which was evidence that consultation did occur.

The OAMRT is in agreement with much of the document but has some concerns and observations for the Minister, which will be addressed in this Section. Some areas were not addressed as they are in the submission of the Coalition of Associations of which we were a Member.

We have listed the recommendations first and then provided supporting information on the recommendations.

The following are our recommendations:

RECOMMENDATION 1

That all Regulated Health Care Practitioners carry personal professional liability insurance (PLI).

RECOMMENDATION 2

That the Minister of Health and Long-Term Care and the Health Professions Regulatory Advisory Council (HPRAC) consult the Associations whose Members are Regulated Health Professionals in the same spirit and manner as is the Federation of Health Regulated Colleges to achieve a balance of viewpoints on issues relating to the Regulated Health Professions Act (RHPA).

RECOMMENDATION 3

That the terms "*disease*" "*disorder*" and "*dysfunction*" be clarified through definition.

RECOMMENDATION 4

That clarification be given to subsection 27-(2) 1. Of the RHPA regarding "Communicating a Diagnosis".

RECOMMENDATION 5

That the boundaries of a "personal representative" be defined.

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RECOMMENDATION 6

That the terms “prescribing” and “*administering*” be clarified.

RECOMMENDATION 7

That the Fitness to Practice and Discipline Committees stay as is.

RECOMMENDATION 8

That the proposed extension concerning the deadline for Disposition of a Complaint, not be incorporated.

RECOMMENDATION 9

That full party status not be given to complainants at Discipline proceedings.

RECOMMENDATION 10

That the public access to information be consistent with privacy legislation now in effect, and proposed and also be consistent with the principle of “innocent until proven guilty”.

RECOMMENDATION 11

That the role of HPRAC stay as is.

RECOMMENDATION 12

That a fixed timetable not be established concerning the review of the Profession - Specific Acts.

General Comments

As we noted in the introduction, HRPAC has many excellent recommendations of the total of sixty-seven put forward. We offer some brief comments on some of them on the subsequent paragraphs under this heading.

The addition of adding the element of psychological harm is strongly supported and we agree with the arguments HPRAC presented.

It is our experience that the issue of “delegation” is still not well understood by Health-Care Providers and the public. More education on what it means, what it is and isn't, should be addressed. Certainly when Regulated and Non-Regulated Health-Care Practitioners are in a mixed environment, the issue of delegation is a foggy one for most.

We share HPRAC's concerns about the use of the term “college”. In our environment, there is the “College of Physicists in Medicine”, as an example, who have no regulatory authority. The term also gets mixed up with Community Colleges and can be confusing both for practitioners and the public.

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Like HPRAC, we support Professional Self-Regulation/Self-Governance and support any initiatives and actions that ensures its continuance.

We strongly endorse any action that can be taken whereby public appointees to the Regulatory Colleges receive an intensive orientation prior to their appointment taking effect. In fact, all those who are involved in governing, managing and staffing the Regulatory Colleges would be well served by a strong tailored orientation program.

We support any common sense steps that may be taken in terms of ensuring the cost efficiency and cost effectiveness of the Regulatory Colleges and HPRAC while still maintaining a balance concerning the public interest and that of the "College" Registrants.

We support the role of the Ministry concerning the enforcement of the provisions of the RHPA as long as there are similar like enforcement provisions for the unregulated sector.

We wonder what the cost of implementing the proposed recommendations will be on the public and the Registrants.

We have concerns that the Association Membership bases could be eroded because of costs to the Members, which could compromise the RHPA itself.

Supporting Arguments

RECOMMENDATION 1

That all Regulated Health-Care Practitioners carry personal professional liability insurance (PLI).

To us this is a public protection issue and one, which has been raised, and agreed upon, in a previous Deputy Minister of Health's conference. The recommendation is also consistent with the College of Physician and Surgeons of Ontario (CPSO) guidelines to Physicians regarding delegation where they advise Physicians to consider this as a criteria before delegating a medical activity.

The coverage for professional liability varies from facility to facility and in the case of the Independent Health Facilities (IHF) sector we are aware that some facilities have no coverage for the Health-Care Professionals working for them.

The requirement for all Regulated Health-Care Professionals to carry personal PLI would be in the best interests of the public, in our view.

RECOMMENDATION 2

That the MoHLTC and HPRAC consult the Associations whose Members are Regulated Health Professionals in the same spirit and manner as the Federation of Health Regulated Colleges to achieve a balance of viewpoints on issues relating to the Regulated Health Professions Act.

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The OAMRT wishes to be clear that it has no objection or concern regarding the Federation of Health Regulatory Colleges existence or that it is used as a consultation group for the Ministry and HPRAC. In fact, we support this organisation's purpose and the consultation process.

Our issue is with the fact that we, and we know our other Association colleagues share a similar belief, are not consulted in like manner. HPRAC has focussed on providing a balance. In terms of the consultation process, it is in imbalance and we would like to see that corrected. We, and other Associations can provide a different and often unique perspective that is not forthcoming from the Regulatory Colleges because of their mandate and focus. It is important to have all viewpoints in the areas to affect successful decision making.

RECOMMENDATION 3

That the terms "disease" "disorder" and "dysfunction" be clarified through definition.

We are aware that there was a conscious decision not to define these terms in the drafting of the RHPA. We believe this was a mistake.

The multi-disciplinary environment that we have moved into and which continues to evolve makes the situation of not having these terms defined as problematic. There is confusion.

Subsection 26-(2) 1. of the RHPA also complicates the matter as it allows a Health-Care Practitioner to communicate a diagnosis concerning "dysfunction". This is not the case with respect to a "disease" or "disorder".

The suggestion by HPRAC to have the Regulatory Colleges define them as they relate to the Profession(s) they govern is potentially problematic and makes future interpretation by Practitioners, employers and the courts even more problematic.

RECOMMENDATION 4

That clarification be given to 27.2 1. of the RHPA regarding "Communicating a Diagnosis".

This is an issue for our Profession as we move to advance practice protocols as has happened in the UK, Australia and parts of the USA where Medical Radiation Technologists (MRTs) are doing procedures once performed by Radiologists including interpretation of images. It will be further complicated by the inclusion of Medical Sonography into the College of Medical Radiation Technologists as many Sonographers have communicated their assessment of the images they have produced through scanning.

It is important that the term "Communicating a Diagnosis" be clarified.

Despite what HPRAC stated and what has come from the Ministry's legal counsel there are problems. What is presented is still open to misinterpretation. If one provides all the information about a disease or disorder but doesn't name it; is that a Controlled Act or an assessment? As HPRAC noted, an assessment can be communicated. What is the criterion between assessment and diagnosis? If there is any, we are not aware of it. HPRAC uses the word "labelling" and if a Regulated Health Practitioner doesn't "label" the disease, disorder or dysfunction, then that is inferred as assessment.

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Is this, in fact, accurate or should “labelling” be defined?

RECOMMENDATION 5

That the boundaries of a “personal representative” be defined.

We would suggest that what HPRAC suggests is unclear to us. We are concerned about the situation where third-party insurers require from the Health-Care Professional, a diagnosis in order to approve a particular treatment plan for the treatment or issues around payment for that treatment.

RECOMMENDATION 6

That the terms “prescribing” and “administering” be clarified.

We are aware that the terms “prescribing” and “administering” are interpreted differently. In fact, this is the case within our own Profession which is comprised of four (4) Disciplines or in the language of the RHPA, are “Specialties”.

As an example, a Radiological Technologist prescribes ionizing radiation under the H.A.R.P. Act.

The document infers that these terms are well understood. We would submit that this is not the case.

We believe that the terms need to be defined in clear terms so there is no confusion.

RECOMMENDATION 7

That the Fitness to Practice and Discipline Committees stay as is.

We believe that HPRAC itself may not be clear on the roles of these two Committees, which is why the recommendation reads as it does.

Fitness to Practice deals with the Registrant’s capacity or competence to practice. The situation the Practitioner may find themselves in could be temporary or as a result of disease and therefore beyond their control. We agree that it could affect the Professional’s ability to practice according to their Standards of Practice. We do not agree it is a Discipline issue if one considers fairness and balance.

The proceedings should not be seen or perceived to be punitive. The proposal has the potential to cause harm to the Practitioner.

The discipline Committee deals with wilful Professional misconduct, which, if proven, results in punitive action and placement in the public domain of all to see.

Our concern is that merging the two committees would convert Fitness to Practice issues into a

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punitive process. This would discourage reporting and thus the best interests of the public are not served.

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RECOMMENDATION 8

That the proposed extension concerning the Deadline for Disposition of a Complaint not be incorporated.

We see a conflict with HPRAC's recommendation 25. This recommendation notes that "when statutory time-frames cannot be met, Colleges (must) give notice to complainants and respondents advising them of the reasons for the delay and revise time-frames for disposition of the complaint". It is interesting that a finding was stated as "for complainants, respondents and college, the lack of timely response to complainants is a major area of dissatisfaction. Members of the public, in particular, expressed dismay at the time it takes for a complaint to be resolved".

We see the 150 days becoming the "norm". We believe that a longer period builds in the potential for unacceptable delays. This would be particularly stressful to the Practitioner as the spectre of suspicion and certainty looms, which can create even more medical errors.

We see the 150-days, as well, as not in the public interest. The delay erodes confidence in the system in terms of the Regulatory Colleges serving the public and regulating effectively its Registrants.

RECOMMENDATION 9

That full party status not be given to complainants at Discipline procedures.

We support continuation of the status quo.

We believe that Regulatory College proceedings should mirror criminal processes. To explain, in criminal proceedings, the Crown is the complainant and carries the prosecution; not the victim. We believe the Regulatory College should be the complainant. This, we believe, would prevent the Regulatory College from being in the middle or caught between competing parties. The principles of fairness and balance could be compromised if this recommendation is accepted.

RECOMMENDATION 10

That the public access to information be consistent with privacy legislation now in effect, and proposed and also be consistent with the principle of "innocent until proven guilty".

It is not clear to us whether HPRAC cross-referenced its recommendation of public access to information noted in Chapter 7 to the existing and proposed privacy legislation. We believe this should be done.

It appears to us that recommendation 48 is inconsistent with other recommendations HPRAC has made and this should be reviewed.

What HPRAC proposes is in effect a premature presumption of guilt. The recommendation of placing ADR settlements on the public record violate, in our view, the presumption of innocence, philosophy and should not be accepted. We can foresee that should Recommendation 48 and 49 be accepted,

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it will impact on the reporting process in that reports will not be forthcoming. Clearly, this is not in the public interest. Further, if ADR settlements are made public, the Practitioner will avoid using ADR and will opt to go straight to the discipline process.

RECOMMENDATION 11

That the role of HPRAC not be expanded.

HPRAC has an excellent role now. We believe that with better consultation with Associations, that there is no need to expand its role.

An expanded role infers more control and direction and we believe that is the role of the Ministry.

We do believe that HPRAC needs the tools and resources to do their job.

RECOMMENDATION 12

That a fixed timetable not be established concerning the review of the Profession - Specific Acts.

We agree that the RHPA should be reviewed every five (5) years.

We would submit that the recommendation, although well intended, is problematic. If accepted, it could mean that Regulatory Colleges with legitimate and even urgent changes will have to wait until their turn comes up.

We would argue that the present system of being able to request the Minister to entertain a change when the matter arises is a good process. Some of the red tape may still be a problem but the general process is a good one.

We wonder if HRPAC has considered the workload they may have brought on themselves if this recommendation is accepted. Would the basic role requirements of HPRAC come to a halt, possibly?

2. EFFECTIVENESS OF COLLEGES' QUALITY ASSURANCE PROGRAMS

General Comment

The HPRAC was an excellent document and serves as viable reference for discussions and future evolution of the Regulatory Colleges' Q.A. programs.

Response Structure

The OAMRT response focuses strictly on the recommendations HPRAC has made and our response to those recommendations are provided in the subsequent paragraphs.

HPRAC Recommendations

HPRAC Recommendation 1

We support for the forming of an umbrella organisation to provide advice on quality assurance (QA) and evaluation. We are concerned that there is no indication of Association inclusion. We believe that Association input would benefit the process and provide the checks and balances to ensure the programs truly reflect what the practice in the profession actually is. We note that the original College of Medical Radiation Technologists of Ontario (CMRTO) was developed with input from this Association.

Recommendation 13 - that the proposed formalised QA Program's Continuous Quality Improvement (CQI) Group include the Professional Associations.

HPRAC Recommendation 2

We support this recommendation.

HPRAC Recommendation 3

We support this recommendation with the caveat that excluding the Professional Associations would reduce the effectiveness, which would not be in the public's interest.

HPRAC Recommendation 4

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We support the recommendation.

HPRAC Recommendation 5

We support the recommendation. We believe that data concerning practice error is important to collect, as long as it is not done for punitive reasons but to improve the practice and reduce the risk of harm to the public.

HPRAC Recommendation 6

We support this recommendation.

HPRAC Recommendation 7

We support this recommendation.

HPRAC Recommendation 8

We support this recommendation, as it is a best practice in business and other areas.

HPRAC Recommendation 9

We support this recommendation.

HPRAC Recommendation 10

We support this recommendation. We wonder who will pay for all of this, however.

HPRAC Recommendation 11

We support this recommendation.

HPRAC Recommendation 12

We support this recommendation. Presently, in our case, defining what is acceptable or not concerning self-directed learning, has been very loose.

HPRAC Recommendation 13

We support this recommendation.

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Observations

It has been our experience that the Q.A. Program our Members have to comply with is problematic and in the view of our grassroots leaders not as effective as it could be in assuring competence. Any efforts to insure that a Q.A. Program does indeed measure competence is a positive step.

3. EFFECTIVENESS OF COLLEGES' PATIENT RELATION'S PROGRAM

Introduction

In Section 1 of this Position Paper, we responded to some of the issues. This Section will deal with some specifics in terms of the recommendations not dealt with elsewhere in this Paper.

Response

The OAMRT believes that the public should be educated in what the Professions actually do, in what distinguishes one Profession from another and how to tell the difference. The public should be educated in how and where to go to have their concerns heard and dealt with.

The problem our Members have with posting a toll-free number to "complain" is that it invites reporting including frivolous reports. What HPRAC proposes, or at least the way it proposes it, invites resistance.

We would suggest that there are other means, less antagonistic that can be used for the same purpose. Such as a publication covering all Regulated Health Professionals including the contact information and brief description of the processes available.

Recommendation 14 - that HPRAC's Recommendation 2 under "Public Information" not be accepted.

In terms of Recommendation 3 under "Public Information" we wonder how this will be monitored and enforced. Again, education of the public through other means may be more effective. This, of course, impacts on Recommendation 4. We suggest that what is recommended here is not practical.

We would suggest that for Recommendation 9 under "Monitoring and Evaluation" that again there is a viable role for the Associations here as well as the undergraduate training programs.

Recommendation 15 - that the proposed monitoring system include the Professional Associations and the undergraduate programs.

4. EFFECTIVENESS OF COLLEGES' COMPLAINTS AND DISCIPLINE PROCEDURES FOR PROFESSIONAL MISCONDUCT OF A SEXUAL NATURE

Introduction

In Section 1 of this Position Paper, some of the issues raised in this document were addressed in responding to "*Adjusting the Balance, A Review of the Regulated Health Profession's Act*".

Prevention - Primary

We believe Recommendation 2 is problematic. We believe that the process should be the same as the courts. In our view, this is a societal issue and this is where the focus should be. We do not know how a Regulatory College can prevent sexual abuse (SA) in terms of human nature.

Prevention - Deterrence

Under Recommendation 3, Mandatory reports, Section 85.3, we wonder if this is doable and in the best interests of the patient. Questions that come to our minds are: what is the impact of the patient's condition in such circumstances? When is the time to ask or not to ask? Isn't training the Practitioner and educating the public a factor here?

Treating People with Sensitivity and Respect

It appears to us that if one combines Recommendations 12, 13 and 14, we have a situation that likens to taxation without representation.

We would suggest that if the government wants to do this then you should fund it and thus not be put on the back of the Regulating College Registrants.

This raises a flag to us in that something similar should be in place for the unregulated sector.

Recommendation 16 - that the MOHLTC fund the support service program and that whatever is decided concerning the regulated sector, it is also for the unregulated sector.

Procedure Fairness

We have no recommendations concerning this section.

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Inter-Sectoral Coordination

We have no recommendations concerning this section.

Monitoring, Evaluation and Reporting

We note that the recommendations include the 150-day disposition requirement. We have commented earlier on this document regarding this timing.

5. ADVICE TO THE MINISTER OF HEALTH AND LONG-TERM CARE ON NATUROPATHY

Position

The OAMRT agrees with the arguments that HPRAC has made and supports the Regulation under the RHPA of Naturopaths.

Comments

We agree with HPRAC's recommendation concerning the qualification of using the term "Doctor". This is consistent with the intent of the RHPA and is in the best interest of the public.

We agree that the term "Physician" not be used. It is possible and probable that persons other than what we understand as Physicians could be Naturopaths.

We agree that there is a potential risk of harm to the public if Naturopaths are not regulated with what we know today regarding natural therapies. We support a Health-Care system that provides preventative and other kinds of care and that compliments other forms of medicine without putting the patient at risk.

6. ADVICE TO THE MINISTER OF HEALTH AND LONG-TERM CARE ON TRADITIONAL CHINESE MEDICINE AND ACUPUNCTURE

Position

The OAMRT supports the regulation of the Profession of Traditional Chinese Medicine (TCM) and Acupuncture.