



COLLEGE OF  
**PHYSIOTHERAPISTS**  
of ONTARIO

ORDRE DES  
**PHYSIOTHÉRAPEUTES**  
de l'ONTARIO

**Comments to the Standing Committee on the Legislative Assembly on Bill 70, An Act to Amend the Regulated Health Professions Act, 1991**

**College of Physiotherapists of Ontario**

**October 2, 2013**

The College is the self-regulating body 7,500 physiotherapists in Ontario. The College is established by the Regulated Health Professions Act and the Physiotherapy Act to register physiotherapists to practice in Ontario and regulate their conduct in the public interest.

The College would like to offer the following comments on Bill 70, An Act to Amend the Regulated Health Professions Act, 1991.

The Bill's purpose

In simple terms the College understands that the Bill is intended to give health regulatory colleges the option to decide whether they will develop regulations that, when approved, will exempt their members from the Regulated Health Professions Act's mandatory sexual abuse provisions. This exemption would only apply in very limited circumstances and would have the effect that the members of colleges that chose to enact this regulation would be permitted to treat their spouses under specific conditions as defined in the bill.

Qualified support for the Bill

With this understanding of the Bill in mind, the College would like to offer its qualified support for the Bill. The College believes that an absolute prohibition on the treatment of spouses, which is what the current interpretation of the sexual abuse provisions in the RHPA indicates, is overly restrictive because it does not give professions any discretion to determine the appropriateness of their members' conduct in relation to the treatment of a spouse.

As such, the College supports amendments to the RHPA that will give colleges the discretion to determine whether their members are permitted to treat their spouses. In the view of the College, each profession should come to its own determination as to whether its members are allowed to treat their spouses. Therefore a legislative model that allows discretion for professions to choose

whether or not to exempt their members from the current sexual abuse provisions is the only feasible approach to the issue.

### Some concerns about the Bill

Despite the fact that the College does offer support for the Bill, in its current form, the Bill does have the potential to cause some problems. In particular, the use of certain terms in the Bill has the potential to limit its utility and undermine the effectiveness of colleges in their regulatory role.

One of the most troublesome terms used in the Bill is the word “spouse”. While the Bill does include a definition of spouse that helps to clarify the meaning of this term, the College strongly supports the position of the College of Physicians and Surgeons of Ontario who are very concerned that any definition of spouse will undoubtedly lead to challenges for college discipline panels. These panels will be expected to determine whether a spousal relationship was present in each case and whether there was actually a conjugal relationship. This issue has the potential to sidetrack college discipline panels from the real issues and hinder the ability of colleges to meet their public interest mandate.

In terms of suggestions to manage this issue, the College believes that further clarity on the definition of spouse, which might include recent jurisprudence, may go some way to address this concern.

Another concern about the current drafting of the Bill is that the sexual abuse exemption provisions can only apply when certain conditions are met. The first such condition is that patient must be the member’s spouse. We have noted above our concerns with the use of the term “spouse”.

The second such condition is that the member is not engaged in the practice of the profession at the time the conduct, behaviour or remark occurs. The College is concerned that this kind of provision is likely to be very difficult for colleges to interpret and enforce. For example, if a spouse, who is also patient, attends for care, and engages in typical conjugal spousal behaviour during that visit, it will be very difficult for a panel to determine if the spousal exemption should apply because it will be nearly impossible to determine when the health professional began and ceased engaging in the practice of the profession.

The likely result will be that once again college discipline panels will be sidetracked by the need to make determinations as to whether members were practicing the profession during the incident under consideration instead of concerning themselves with more important questions as to whether the conduct occurred and whether the patient suffered as a result.

In terms of suggestions to manage this issue, the College suggests that the Bill might benefit through the addition of a definition that would provide colleges and their members with some clear idea of what engaging in the practice of the profession actually means and when this activity starts and stops.

Thank you very much for the opportunity to address the Committee.

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