

MILLER THOMSON LLP

Barristers & Solicitors, Patent & Trade Mark Agents

Communiqué

*for Health Industry Clients
on the Legal Retainer Program*

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AFFILIATION AGREEMENTS

Introduction

Many Ontario public hospitals enter into so-called Affiliation Agreements with colleges or universities to offer clinical placements and practical experience to students in a variety of health care fields.

While Affiliation Agreements can clearly offer important potential benefits for public hospitals for future staff recruiting and for raising hospital profiles in communities, they also raise important dual issues of accountability and liability.

Affiliation Agreements

Affiliation Agreements run from relatively straightforward arrangements right through to very sophisticated and complex agreements between teaching hospitals and universities.

Regardless of the relative breadth of the Affiliation Agreement, care must be taken in drafting the Agreement, particularly with respect to clearly delineating the respective roles and responsibilities of the organizations. This will help, among other things, to minimize the risk of conflict as between the hospital and the college or university.

One of the most important elements of Affiliation Agreements is a general recognition of the statutory roles and responsibilities of the hospital under the *Public Hospitals Act*. Accordingly we recommend that Affiliation Agreements are always made subject to a general recognition of the status and responsibility of the hospital under the *Public Hospitals Act*.

In addition, issues of risk management and liability insurance, access to and use of hospital resources, student compliance with the Hospital's own rules, regulations, procedures and guidelines should all be clearly specified in the Affiliation Agreement. It is also in the interest of both the hospital and the educational institution to ensure that there are clear lines of liaison and reporting for planning purposes as between the two institutions.

Where cross-appointments as between medical staff and university faculty are concerned, it is essential that clear linkages and relationships are established. Although there is not a great deal of Canadian caselaw dealing with Affiliation Agreements, Affiliation Agreements have on occasion proved to be quite important in determining rights and responsibilities of individuals.

For example, in the 2001 case, *Strofolino v. Helmstadter*, the Hospital and the University had an Affiliation Agreement that provided for the joint appointment of staff. A dispute arose as between a group of physicians who were cross-appointed to both the Hospital and the University, which resulted in the filing of a grievance under an entirely separate document, being a Memorandum of Agreement between the University Faculty Association and the University. The Grievance Review Panel issued summonses to the President and Vice-President of the Hospital under section 29 of the *Arbitration Act*. The President and Vice-President of the Hospital claimed that the procedure and summonses were without legal authority. The Court rejected this argument holding that the procedure established by the Memorandum of Agreement constituted an "arbitration" and held that the Panel had the authority to issue the summonses under section 29. The University Faculty Association cited a relatively innocuous clause in the Affiliation Agreement to bolster their arguments.

Given the role that students may play within a hospital, it may also be necessary for hospitals to review their patient consent forms to ensure that the role of the students in patient care is identified. This could ordinarily be accomplished by referencing the role of students in, for example, patient admission forms.

Conclusion

While students can be an invaluable source of future staffing for public hospitals and a great benefit to hospital staff, we

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Note: This communiqué is provided as an information service to our clients and is a summary of current legal issues of concern to Health Industry Clients. Communiqués are not meant as legal opinions and readers are cautioned not to act on information provided in this communiqué without seeking specific legal advice with respect to their unique circumstances. Your comments and suggestions are most welcome and should be directed to Kathryn Frelick, Coordinator, Legal Retainer Program.

recommend that hospitals carefully consider their Affiliation Agreements before signing them. Miller Thomson LLP has had significant experience preparing Affiliation Agreements that range from short-term placements of students in College disciplines through to comprehensive Affiliation Agreements between universities and teaching hospitals.

Alan Belaiche at Miller Thomson LLP would be very pleased to provide you with assistance in connection all aspects of Affiliation Agreement for your institution.

About the author:

Alan Belaiche is a lawyer at Miller Thomson LLP specializing in corporate and commercial law for clients in the health sector. He would be pleased to assist you in connection with all aspects of Affiliation Agreements.

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