

FORWARD TOGETHER



MILLER THOMSON
AVOCATS | LAWYERS

WELCOME

VANCOUVER CALGARY EDMONTON SASKATOON REGINA LONDON KITCHENER-WATERLOO GUELPH TORONTO VAUGHAN MARKHAM MONTRÉAL



MILLER THOMSON
AVOCATS | LAWYERS

FORWARD TOGETHER

Coffee Talk

A Health Industry Seminar Series



VANCOUVER CALGARY EDMONTON SASKATOON REGINA LONDON KITCHENER-WATERLOO GUELPH TORONTO VAUGHAN MARKHAM MONTRÉAL



MILLER THOMSON
AVOCATS | LAWYERS

FORWARD TOGETHER

What to Do When There is a College Complaint

Lisa Spiegel

lspiegel@millerthomson.com

416.596.2122

March 22, 2017



Overview...

- What are the goals of College investigations?
- What triggers a College investigation?
- What are the powers of investigators?
- What information can the ICRC consider when making a disposition?
- Can the College interfere with a member's practice during an investigation?



...Overview

- What can the College do after an investigation is completed?
- Are the results of an investigation public?
- Can a disposition be reviewed by the Courts?
- Institutional Perspectives



What are the goals of College Investigations?

- **Duty of the College**
 - to serve and protect the public interest
- **Objects of the College**
 - to regulate the practice of the profession and govern the members
 - to maintain standards of qualification for persons to be issued certificates of registration
 - to maintain standards of practice to assure the quality of the practice of the profession



What are the goals of College Investigations?

- Investigations are undertaken to determine whether a member has committed an act of professional misconduct or is incompetent
 - professional misconduct
 - incompetence
 - Incapacity inquiries



What triggers a College Investigation?

- Health Professions Procedural Code, Schedule 2 to the *Regulated Health Professions Act, 1991* (the Code) provides three routes for the Registrar to appoint investigators:
 - **Registrar's Investigations:** Registrar believes on reasonable and probable grounds that the member has committed an act of professional misconduct or is incompetent and the Inquiries Complaints and Reports Committee (ICRC) approves of the appointment;
 - ICRC receives information (name and allegations) from the **Quality Assurance Committee**; and
 - ICRC receives a written **complaint**.



Does the College have discretion not to investigate a complaint?

- Currently, no. This could change if Bill 87, *Protecting Patients Act*, 2016, is passed.



What are the Powers of Investigators

- An investigator may:
 - inquire into and examine the practice of the member to be investigated
 - summons statements and documents from any person
 - make reasonable inquiries of any person, including the member who is subject of the investigation, on matters relevant to the investigation
 - enter at any reasonable time, the place of practice of the member and examine anything found that is relevant to the investigation.
 - enter and search a place and examine any documents or things specified in a warrant
 - copy or remove a document or object that it examines



Implications of Obstructing an Investigation

- A member is required by statute and common law to cooperate with an investigation
- Section 76(3) of the Code provides that no person shall obstruct an investigator or withhold or conceal from him or her or destroy anything that is relevant to the investigation



What information can the ICRC consider when making a disposition?



Can the College Interfere with a Member's Practice During an Investigation?

- Agreements/undertakings between the College and members
- Interim orders impacting a member's certificate of registration can only be made by the ICRC in specific circumstances after an investigation is complete and the member is referred to discipline
- Bill 87, *Protecting Patients Act*, 2016



What can the College do after an Investigation is complete?

- Dispositions
- Interim Orders



Are the Results of the Investigation Public?

- Requirement to post specific information on the College's Registrar
- Bill 87, *Protecting Patients Act*, 2016



Can an Investigation result be reviewed by the Courts?

Health Professions Procedural Review Board and Divisional Court reviews



Institutional Perspectives

- What impact does a College investigation have on whether the health care institution ought to conduct its own investigation?



Institutional Perspectives

- Will the institution receive warning as to any interim or final action being taken against a regulated health professional?
- Supporting a regulated health professional during an investigation



CONCLUSION



Questions?

Lisa Spiegel

lspiegel@millerthomson.com

416.596.2122

FORWARD TOGETHER



MILLER THOMSON
AVOCATS | LAWYERS

MILLERTHOMSON.COM



© 2016 Miller Thomson LLP. All Rights Reserved. All Intellectual Property Rights including copyright in this presentation are owned by Miller Thomson LLP. This presentation may be reproduced and distributed in its entirety provided no alterations are made to the form or content. Any other form of reproduction or distribution requires the prior written consent of Miller Thomson LLP which may be requested from the presenter(s).

This presentation is provided as an information service and is a summary of current legal issues. This information is not meant as legal opinion and viewers are cautioned not to act on information provided in this publication without seeking specific legal advice with respect to their unique circumstances.

VANCOUVER CALGARY EDMONTON SASKATOON REGINA LONDON KITCHENER-WATERLOO GUELPH TORONTO VAUGHAN MARKHAM MONTRÉAL