

KEEPING CURRENT

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The Ownership and Operation of Health Clinics by Non-Health Professionals: The Case for Registration

By Lad Kucis

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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In Ontario, a person can own and operate a health clinic without being registered with any oversight body.

Although in many cases, health clinics are owned and operated by health professionals who are regulated by their respective health professions college, a significant portion of clinics are owned/operated by unregulated persons.

In my experience, there is a wide range of sophistication amongst such unregulated persons, and in certain cases, they possess very little, if any, knowledge about the legal landscape governing health care in Ontario and the extensive responsibilities of health clinic operators.

This reality is extremely problematic on a number of levels, including as it relates to the delivery of patient care, the protection of privacy interests and the integrity of the health insurance benefit system.

Recommendations

In my view, prospective health clinic owners and operators (collectively referred to hereinafter as "operators") should be registered with the Ontario Government.

By so doing, the Government can establish certain base pre-requisites for registration, such as the absence of a criminal record, the absence of any prior regulatory sanctions, etc., and maintain a database of all persons operating health clinics.

As part of this registration process, prospective operators should be required to complete a jurisprudence course focusing on health care delivery in Ontario and the responsibilities of clinic operators, including in respect:

- *Health Care Privacy*: health clinic operators are considered "health information custodians" or "agents" under the Personal Health Information Protection Act, 2004, and possess extensive obligations regarding the protection and retention of personal health information, including establishing a privacy statement, a privacy breach protocol and other privacy practices;
- *Billing*: the procedures relating to the billing of services and supplies is extremely complicated and requires knowledge regarding the issuance

of receipts, the collection of co-payments, and the rules established by insurance companies relating to the submission and payment of claims; and

- *Reporting Obligations:* health clinic operators possess a series of mandatory reporting obligations, which are set out in the Regulated Health Professions Act, 1991, and various other legislation, such as the Health Insurance Act, the Child Youth Family Services Act, etc.

In addition, new health clinic operators should be provided with various resource materials, including a checklist of steps to be completed in opening a clinic, as well as a list of operator expectations. Further, clinic operators should also be provided with a template of relevant forms and policies, many of which are already available on the websites of the Government of Ontario and the Information and Privacy Commissioner.

In closing, I believe that by implementing the above measures, Ontario can strengthen its healthcare system and better position health clinic operators to understand and comply with their legal requirements. Mandating registration, providing targeted education, and offering resource support would not only improve regulatory compliance but would also result in the better protection of personal health information, improve the functioning and integrity of the health insurance benefits system and elevate the overall quality of care provided.

About the Author

Lad Kucis is certified by the Law Society of Ontario as a specialist in health law and provides advice and representation to regulated health professionals and other service providers regarding all types of regulatory matters. This includes, among other items, complaints/investigations before health regulatory colleges and audits/investigations involving insurance companies.

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