

# KEEPING CURRENT

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## Discipline Decisions Leading to Health Provider De-Listings by Insurance Companies

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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Over the past year, I have witnessed a growing trend of insurance companies de-listing regulated health professionals (i.e. chiropractors, physiotherapists, etc.) because they have been the subject of a college disciplinary finding involving billing practices.

The twist, however, is that the insurance company is not the complainant in the college matter, nor are they conducting their own investigation into the billing practices of the regulated health professional.

Rather, the decision to de-list is being made strictly on the mere existence of the discipline decision, which is posted on the website of each regulatory college. The reality is that insurance companies are proactively conducting searches of college websites looking for billing-related discipline cases involving regulated health professionals.

I feel that this is a dangerous precedent, as the existence of a single discipline decision can now end up destroying the career of a regulated health professional, especially if it results in de-listings from multiple insurance companies.

The situation becomes even worse if the insurance company in question represents a significant portion of the regulated health professional's patients (i.e. if their clinic is located near a large factory or warehouse).

It is important to keep in mind that there are often unique circumstances that can result in a discipline finding against a regulated health professional, including working for a health clinic operator who is covertly engaging in fraudulent practices. Unfortunately, by the time many regulated health professionals ascertain the existence of such fraud, it is often already too late, as they may already be the subject of a college complaint.

Ultimately, the reality is that insurance companies possess the right to de-list regulated health professionals for virtually any reason. I do not expect the current practice of de-listing based strictly on the existence of a discipline decision to change. If anything, the practice may intensify.

In my view, the keys takeaways for regulated health professionals are as follows:

- Be mindful of your billing and record keeping practices, and ensure that they are in compliance with college standards;
- If you are considering working at a health clinic that is operated by a third-party operator, you should perform some due diligence about the operator, especially if the operator is not a regulated health professional. This should include an internet search; how long they have operated a health clinic; and some rudimentary questions to ensure that they are aware of proper billing practices (i.e. collecting co-payments, issuance and content of receipts, etc.);
- Upon joining a clinic, it would be prudent to conduct a mini-audit of billings submitted on your behalf (for the first few months) to ensure that everything is in order. After that, you should still review billings from time to time to ensure accuracy; and
- If you become the subject of a complaint, take all steps necessary to avoid a discipline referral, including preparing a comprehensive and reflective response and proactively completing remedial steps (i.e. education/resource review and practice changes). In my experience, a “caution” is a monumentally better result than a discipline finding (keeping in mind that cautions are only posted on your personal college profile, whereas discipline findings are posted on the main college website and are much easier to locate).

#### **About the Author**

*Lad Kucis is certified by the Law Society of Ontario as a specialist in health law. As part of his practice, he provides advice and representation to regulated health professionals regarding the full spectrum of college matters, including complaints, investigations, discipline and appeals/reviews.*

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