



Bill 87: changes around complaints against health professionals

February 8, 2018 – Physicians and other health professionals need to be aware that the rules have changed around complaints and other regulator inquiries into their clinical practice, says Toronto health lawyer Tracey Tremayne-Lloyd.

“These complaints can still be resolved informally without any prosecution for misconduct or failure to maintain standards, but the outcome is now generally made public,” she tells AdvocateDaily.com.

“It’s on their record indefinitely — unless it’s removed.”

Tremayne-Lloyd, principal of TTL Health Law, comments on Bill 87, the Protecting Patients Act 2017, which requires that College actions in disposing of investigations of complaints against physicians and other health professionals must be on the public record.

Specifically, it requires colleges to include decisions of their Inquiries, Complaints and Reports Committee of Specified Continuing Education or Remediation Programs (“SCERP”) and cautions-in-person on the public register.

“It means that even when the college disposes of the complaint by education it has to be posted on the register and, once it’s there, it’s widely available on the internet,” she says.

“It’s a permanent blemish on their record, even though there was no serious breach of the member's conduct or ethical requirements. It was just a situation where the member needed advice and direction, and is told to take an education course, or get a coach, if they weren’t communicating properly, for example.”



In the past, those types of college dispositions — because they're not intended to be punitive and are used to upgrade and assist in the knowledge of the health professional — remained private and not included on the register, says Tremayne-Lloyd, who represents physicians on regulatory matters.

"It didn't affect their reputation because they were done in the interest of education to maintain the standards of the profession," she says.

Before Bill 87, these types of dispositions saw the college cautioning the professional and telling them, "it's really important that you follow this plan and here's why we came to that conclusion," Tremayne-Lloyd says.

"The college would also tell them that, 'if you don't do this, there could be further repercussions, more serious ones,' she says. "They are done in the interest of remediation to make sure that the professional does better and the public is protected by that."

With all of that information now public and available online, Tremayne-Lloyd says it begs the question of how a health professional who has completed the remediation plan can rehabilitate their record.

The colleges have to address that, she says.

It's a reasonable request that the information be removed from the public register after all of the conditions have been met in the remediation plan, Tremayne-Lloyd says.

"If all a health professional is told to do is some education, why do they have to receive a permanent black mark on their record? How do they expunge that from their record?" she says. "Some automatic expiry date would be more balanced, given the nature and intent of the disposition made by the College of the complaint or the inquiry.