



December 18, 2015

Ontario Clinic Regulation Working Group
112 Elizabeth Street
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Toronto, ON
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Submitted via email: feedback@ontarioclinicregulation.com

Dear Sir/Madam:

The Ontario Physiotherapy Association (OPA) represents over 6000 member physiotherapists, physiotherapist assistants and students as the Ontario Branch of the Canadian Physiotherapy Association. The OPA thanks the Ontario Clinic Regulation Working Group (the Working Group) for initiating this discussion and the opportunity to provide a response to the proposal to regulate clinics in Ontario.

The OPA believes that the delivery of ethical and quality health care by regulated health professions is in the best interest of the public and the professions. We also believe that a strong professional self-regulation regime is the best way to ensure public protection by holding individual professionals accountable and responsible for all aspects of their care, including ethical business practices, regardless of the setting, organizational or ownership structure in which that care is provided. This is even more important as new health care delivery settings, remuneration and governance models emerge as the health system and health care markets evolve.

The Regulatory Colleges participating in the Working Group have indicated that they are increasingly seeing cases where owners or managers of health clinics are directing actions or creating environments that impede the ability of regulated health professions to meet their professional standards, including quality of care and business practices. The Working Group indicates that it believes that Colleges are limited in their ability to respond effectively to these situations and asserts that this represents a gap in public protection within the delivery of health care to Ontarians. The proposed regulatory model is the only solution offered in this consultation to address the concerns described by the Working Group.

OPA has completed a review of the information provided via the Working Group's webinar, website and town halls and engaged our members to inform our response to this consultation. We submit the following significant concerns regarding the proposed model:

1. Defining the Problem

Many respondents to the consultation and members of the OPA state that the problem originates from the scenario wherein the healthcare clinic owner/manager isn't subject to the authority of a health professional regulatory college. Others indicate that this is an over-simplification of the issue as not all unregulated owners are fraudulent and not all regulated owners are compliant with all standards. This demonstrates the lack of clarity in defining the problem to be addressed by the Working Group's proposed model.

The Working Group has provided no meaningful analysis or quantification of the issues that would be resolved through the implementation of an additional level of regulation. How widespread is the problem; does it occur in all sectors of health care or is it limited to specific areas? To what extent has public safety/interest been compromised? Have the existing laws and regulatory regimes been applied to their fullest?

This lack of clarity and detail limits stakeholders in being able to assess the need for any changes to current regulatory systems, assess the efficacy of this or any proposed model, or generate alternate solutions. The absence of clear baseline data will also confound evaluation of any changes whether this model or an alternate solution is implemented.

2. Defining 'Clinic'

Clearly defining what constitutes a 'clinic' will be critical in order to regulate what needs to be regulated and to mitigate implementation and enforcement difficulties. Such a definition will be at least challenging, if not impossible, due to the multitude of contexts of healthcare delivery. Members spoke to the many settings in which they provide care from clinic sites, to homes and workplace environments to playing-field sidelines and including both "bricks and mortar" and virtual practice settings.

In addition, the proposed existence of exceptions to the proposed regulatory model, though undefined at this time, will inevitably result in the evolution of ownership structures to evade any regulatory regime.

3. Multiple Layers of Regulation and Accountability

At this time, healthcare delivery clinics in Ontario are subject to accountability through any combination of professional regulation, FSCO licensing, and funder-specific auditing requirements. This is in addition to accountabilities associated with other federal and provincial legislation and regulation such as commercial licensing, human rights, employment, privacy, accessibility and health and safety.

In regulation of the healthcare sector in the United Kingdom it has been noted that the multiplicity of regulatory authorities is an inhibiting factor for system-wide coordination and decreases the ability of the system to respond effectively to change.ⁱ

Additional legislation and yet another regulatory authority having the right to set standards and inspect will inevitably be duplicative and that duplication can be expected to actually decrease transparency and accountability to the public by creating confusion. Furthermore, an additional layer of regulation will increase the cost of providing care, which will be downloaded to patients and third party payors. This will have a negative impact on the public's ability to access care.

4. Risk of Variance in Standards

We currently see substantial variation among some Colleges in their professional standards. If the proposed oversight body is an independent, stand-alone entity, there is a risk that it will increase this variability and it will be difficult to ensure that its activities are not in conflict or inconsistent with, or do not unnecessarily duplicate, the regulatory activities of the RHPA Colleges.

5. Risk to Self-Regulation

Members told us that practitioners are responsible for their professional conduct regardless of what their employer tells them to do. They also told us about the pressures faced by some in our profession especially by those who are the most vulnerable such as new graduates or internationally-educated physiotherapists who may be less familiar or experienced with the Ontario healthcare context.

However those pressures can exist whether the owner/employer is regulated or unregulated, subject to the proposed clinic regulation model or not. Acquiescing to the pressures of an employer to be non-compliant or choosing not to offer your professional services in those circumstances is a decision faced by all self-regulated professionals whether they work in health care, law, education or engineering.

In all settings, regulated health professionals must fulfill their College professional standards or be subject to misconduct proceedings. Suggesting that a separate regulatory authority is needed to address the application of these standards in various health care settings actually diminishes confidence in professional self-regulation in the eyes of the public, payors, government and the profession.

6. Unintended Consequences of Regulation

There have been many examples of existing healthcare clinics providing 'physiotherapy' or 'physical therapy' services without employing any registered physiotherapists. With the lack of protection of professional descriptors, such as 'physiotherapy' and 'physical therapy', the public remains vulnerable to operators who operate outside of any regulatory framework.

The proposed model would require some, but not all, clinics to be licensed by a Health Clinic Authority should they employ or deliver services provided by a regulated



health professional. Simply choosing not to employ a regulated health profession will remove any requirement for licensing. This will lead to the unintended consequence of substitution of unregulated providers in the place of regulated practitioners to the detriment of the public and to the quality of healthcare delivery in Ontario.

A second consequence may be the creation of barriers to innovation in the roles of regulated health care professionals. In a health care system that is constantly evolving, health care professionals are providing care in new spaces and environments to improve access and outcomes for patients. By introducing an additional layer of regulation, with the associated costs and administrative burden for any organization employing regulated health professionals, this model represents a disincentive for organizations to explore these opportunities.

Based on the above, the OPA concludes at this time that there is insufficient rationale to support the implementation of the proposed model as outlined, or its recommendation to government. We do believe that there is a need for a fulsome, transparent analysis of the issues identified by the Working Group. As part of that process we would like to submit the following for consideration:

- The Authorities of RHPA Colleges

One of the consistent themes in the feedback the OPA has received is that our members want our College to be the first resort in addressing whatever the problem might be. Our members do not want the regulation of clinics to be by a separate, independent body that operates outside the professional self-regulation framework.

Some Colleges, such as Pharmacy and Medicine, do regulate clinics owned by and/or employing unregulated practitioners. The Working Group does not explain how the Colleges' current authorities under the RHPA are inadequate, or if inadequate why a request to expand their authorities has not been pursued. Requirements to register a business, setting a 'most responsible health professional' accountable for professional standards, increasing facility inspections as part of quality assurance and closer collaboration, communication and cooperation with investigative and enforcement authorities outside of Ontario's professional self-governance community are just some of the alternatives proposed by our members in response to our consultation.

- Enhance Coordination of Standards Among Colleges

All professions should be held to the same standards as they pertain to quality of practice, billing and business practices. Standards should be written in such a way as to prohibit many of the questionable activities described in this consultation.

The public and other stakeholders such as payors should expect that whether a service is provided by a physiotherapist or a massage therapist they can expect the same level of



practice standards and the same rigour in pursuing complaints. Demonstrating this level of coordination and willingness to investigate complaints and to discipline practitioners regardless of which regulatory College is involved would have tremendous influence on whether unscrupulous or fraudulent operators choose to set up shop, or continue to operate, in Ontario.

- Other Legal Options

In cases of deliberate fraud or unsafe activities by unregulated owners or practitioners, other (and arguably equally or more effective) options exist to address them, including provincial offences and the Criminal Code.

- Protection of Descriptors

Substantially enhanced transparency and accountability can be immediately achieved by protecting in legislation the professional descriptors of regulated health professions such as physiotherapy. It is nonsensical to pursue a regulatory regime to regulate clinics employing physiotherapists because of the risk to the public and yet allow that same clinic to offer physiotherapy and not require it to be licensed as it doesn't employ a regulated health professional. It is long past time to address this huge gap in public protection; to shut down the growing fraudulent market targeting a trusting public who assume that going to a 'physiotherapy clinic' means they are being treated by a physiotherapist.

- Supporting Professionals in Self-Regulation

We believe that there is a role for increasing education and support to help regulated healthcare professionals address issues that arise in their practice environments that are counter to their standards of practice. One member said it best when she wrote "I don't think having another tier of regulatory body is the answer to stop unethical clinics....How to stop practitioners from working with the unethical business owners should be the question."

The OPA thanks the Clinic Regulation Working Group for this opportunity to submit our response to this consultation. We also appreciated the Working Group agreeing to the request of the professional associations to meet with us to discuss the proposed model and directions. It was suggested during the meeting that associations work together to achieve consensus on an alternate model. However, with no further information available from the Working Group there would be significant limitations to achieving any success with such an exercise.

Though as noted above we do not feel that the rationale as provided is sufficient to support the model as proposed, we do believe that there is an identified need to engage in a meaningful and inclusive discussion on how we, as professions, address these issues in the public interest. We look forward to future opportunities to do so.



ONTARIO
PHYSIOTHERAPY
ASSOCIATION

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Patton'.

Stephen Patton
President

Cc: Peter Ruttan, President, College of Physiotherapists of Ontario
Shenda Tanchak, Registrar and CEO, College of Physiotherapists of Ontario

ⁱ The UK Professional Status Authority "Rethinking Regulation" (August 2015)
<http://www.professionalstandards.org.uk/docs/default-source/psa-library/rethinking-regulation.pdf?sfvrsn=2>