

February 23, 2022

Mr. Sean Court
Assistant Deputy Minister
Strategic Policy, Planning and French Language Services Division
Ministry of Health

Ms. Allison Henry
Director
Health Workforce Regulatory Oversight Branch
Strategic Policy, Planning and French Language Services Division
Ministry of Health

Via email

Subject: College Governance Changes and Modernization Consultation

Dear Mr. Court and Ms. Henry,

The Ontario Physiotherapy Association (OPA) welcomes this opportunity to provide feedback on the presented proposed changes to governance and regulatory modernization. Though in many instances, the consultation questions seem to focus on implementation, this is the first opportunity for OPA to comment so we focused on addressing the proposed changes themselves and their implications as we see them.

OPA agrees that there are elements of the professional self-regulation system that require modernization to ensure that regulators foremost uphold public safety and protection and maintain public confidence through greater agility, transparency, and accountability. Although modernization is required to strengthen our current model, we are concerned that the proposed governance changes take a one-size-fits-all approach that will not allow for needed variances to enable Colleges to calibrate and tailor to meet the requirements, needs, and circumstances for the individual profession(s) and to fulfil their mandate of public protection.

Self-regulation has value in holding professions accountable for public safety. We believe that there are many reasons that modernization should focus on strengthening and improving the existing professional self-regulation model to enable Colleges to better fulfil their mandate of protecting the public interest including:

- Regulated health professions have a specialized body of knowledge and competencies within their scope of practice. Members of professions have the expertise to understand their own professional context and how best to enhance patient care and uphold public safety. Regulation that de-emphasizes or de-values this expertise and understanding creates a substantial risk of harm to the public.



- Self-regulation of a profession means that regulation can be nimble and respond quickly and effectively to practice, environmental, and competency changes in the best interest of the public and patients. Any proposed regulatory changes should focus more on enabling Colleges to be nimbler and more responsive to their changing circumstances, rather than being slow, risk averse, and bureaucratic.
- By definition, government agencies consist of equal or greater representation of public appointees and non-public appointees. The proposed changes risk bringing the regulation of professionals under the direct aegis of the government, adding levels of bureaucracy and removing the responsibility of regulation from the professions. The public interest is best served by focussing on changes that would strengthen transparency and accountability in the current model rather than shifting towards regulation by government.

Continuous evaluation and performance measurement are required to first identify the issues and challenges that exist. This could be done by using the College Performance Measurement Framework (CPMF), which would enable changes and modernization to be based on the identification of real issues impacting individual Colleges. The examination of context-specific alternatives, and selecting the best alternative, needs to also be evidence-based. Ongoing performance measurement through the use of the CPMF will help inform the process of modernization and develop a more nuanced approach to each College based on their performance.

COMPOSITION OF COUNCILS

Professional members selected by Council – establishing a Nomination and Selection Committee – developing competencies to select members

OPA supports the proposed changes that enable Colleges to establish criteria to vet professional member candidates based on merit and competencies. However, it is important to ensure that professional members of Councils continue to be elected by College registrants. Appointing professional members would constitute a huge departure from the established professional regulation model, would also negatively effect registrants' perception of their Colleges and their regulatory legitimacy, and thereby, make regulation in the public interest more difficult.

With a competency-based vetting process, the opportunity exists to bring regional representation into the vetting process rather than through region specific elections. This would allow elections of all members on a province-wide basis, increasing engagement of the profession in elections. It would also remove the perception of 'representation' and move to a Council making decisions based on the best interest of the province as a whole.

There are risks with competency-based vetting processes. The Colleges' use of that authority will have to be carefully monitored to ensure that it is not used to stifle legitimate dissent or the expression of alternate perspectives amongst registrants. With



misuse, there is a risk that College Councils choose individuals who self-perpetuate Councils' already established perspectives, which leads to circular thinking and can carry over poor decision making and stifle progress over time.

As the role of a Selection Committee is to identify members of both Council and Committees, it is important to specifically define the competencies required for those who sit on the Selection Committee and for how long. Members must meet representation of diversity, equity, and accessibility standards, while having the knowledge and competencies to ensure decisions result in safe and quality care in the public interest. Their performance will need to be evaluated and there will need to put processes in place to address issues.

It is important to identify how competencies are established and defined and whether this will be determined based on individual College need (e.g., most frequent complaints, challenges), along with what process would be in place to inform the Selection Committee of the context specific needs of each College. For example, if a pattern of specific issues related to ensuring public safety were identified by an individual College, a process to ensure that those issues could be addressed by selecting potential members with specific competencies or from specific demographics would be useful. This also brings questions on how potential candidates will be identified. The College needs to ensure that the process to identify potential candidates is not biased. For example, a Call for Interest may skew participation from those who are already actively engaged in communications from the College. The process identified must reach as many potential candidates as possible.

Colleges should ensure and enhance diversity of representation. There needs to be a balance between ensuring that Selection Committees identify potential members who have the required competencies but also reflect the makeup of the health profession and public they serve to ensure adequate representation of diversity on Council.

Lastly, if Committee and Council members are brought in through a competency-based process, it is important to ensure that their performance is evaluated on an ongoing basis and that a process of removal is also established for a member of Council or Committees when they do not meet those competency-based standards in the performance of their duties.

Public and professional representation

It is important that elected professional members of Councils constitute a majority, even if that is a majority of only one, in order to respect and safeguard the professional self-regulation model and avoid the appearance or reality of being a government agency. This leaves the responsibility and accountability for the safe practice of the profession soundly with the profession. Professional transparency and accountability are critical to serving the public interest.



According to the CPMF, the public interest in quality care requires ensuring that care provided by individual regulated health professionals is of high quality and that the standard of care provided is maintained and/or improved. To achieve this requirement, participation of professional members with expertise from different sectors should be enabled. This would provide the opportunity to be responsive in identifying and addressing trends or issues affecting practice and thereby facilitating improvement in both regulatory performance and standards of care. This level of synthesis can also lead to innovative changes that promote accessibility and quality care.

Smaller Councils

Reducing the size of Councils to between 10 to 12 members will make it difficult for Councils to ensure adequate representation of professions with multiple practice streams, classes, and/or specialization. It is critical that the relevant perspectives, voices, and expertise are heard and involved to keep current on the profession being regulated and the environment in which the profession functions. Often, health professionals, such as physiotherapists, work in multiple sectors of the health care system, across multiple specialties, and different aspects of practice (e.g., clinical, education).

Ensuring adequate representation is a necessity for informed decision-making at the Council level. This representation becomes less likely when you further take into consideration the proposed equal representation of public and professional members.

The proposed changes do not take into consideration how to mitigate this risk to ensure different perspectives are engaged to inform decision-making by Council. Although one such way is to consult with Advisory Groups that have diverse professional expertise, this still creates an additional layer that separates individuals with the required professional expertise from informing decisions at the Council level, and places the onus on Council to ensure adequate consultation is conducted for every relevant issue. There needs to be a mechanism or requirement in place that ensures that Council adequately engages relevant groups to ensure diverse perspectives and expertise inform Council decision-making, along with full transparency of the Council's consultation process to ensure adequate engagement is achieved.

How to define quorum in a smaller council also becomes a concern and can lead to decisions being made with few professional members involved, which increases the risk that decisions are not fully informed.

EXECUTIVE COMMITTEES

Eliminating the Executive Committee can inhibit the ability of College's to respond quickly and effectively when emergency situations arise. As shown by the pandemic, it is inevitable that there will be decisions of an urgent nature that have to be made for which it will be impossible to convene a properly-constituted Council, which is why Executive Committees will still be needed. We recommend exploring possible changes that would



address the concerns of transparency and checks on the actions of Executive Committees rather than eliminating them altogether.

BIFURCATION OF COUNCIL AND COMMITTEES

The separation of Councils from Committees increases the risk of misalignment as strategic direction will be separated from regulatory decisions, which is equivalent to separating strategy from operations. This will impair the ability of Councils to perform their statutory duty of managing and administering the affairs of the College. The two need to be connected as a seamless continuum, otherwise there will be conflicts and inconsistencies between strategy and operations. In addition, for smaller professions, there will also be a challenge of populating panels and Committees with non-Council members who have the appropriate knowledge and experience.

APPOINTING PUBLIC MEMBERS

There are issues with the current public appointment process and correcting these will be critical to achieve proper College governance. The public appointment process is often too slow and frequently leaves public appointments vacant for excessive periods of time. In a number of instances, it has left Councils improperly constituted. Furthermore, the public appointment process is too detached from the exigencies of health professional regulation and the circumstances and requirements of individual Colleges. The proposed governance changes do not address existing problems with the government's public appointment process. Any proposed governance changes need to consider how to match public appointees to the skill mix required by Colleges and ensure they have an adequate understanding of their roles and responsibilities.

As noted in the proposed changes, term limits would ensure broader representation by professional members and introduce fresh perspectives and promote equity. Term limits for public members would also ensure freshness of perspectives and enable broader perspectives. In all cases, there should be an open and transparent process to address performance issues and the removal of any member of Council – professional or public – who fall short of requirements as set out in a competency-based model.

OVERSIGHT

We have concerns about bringing Colleges within the ambit of the Auditor General of Ontario and the Patient Ombudsman. There are already existing mechanisms in place that provide effective oversight including the Office of the Fairness Commissioner, Health Professions Appeal and Review Board (HPARB), and the Ministry of Health.

The HPARB specifically is an independent adjudicative agency that reviews decisions made by the Inquiries, Complaints and Reports Committees and reviews decisions and hearings of orders of the Registration Committees of the self-regulating health professions Colleges in Ontario. Proposing legislative and/or regulatory amendments to



enable the Patient Ombudsman or another body to fulfil this purpose is unnecessary duplication and could further complicate the College's complaints and disciplinary processes and the role of HPARB.

OPA supports the Ministry's launch of the CPMF and understands the need to address the growing concern regarding the performance of some regulatory Colleges in carrying out their mandate of public protection. The Ministry should wait to accumulate reliable data through the CPMF before implementing any governance changes in accountability processes, in order to calibrate any changes to the deficiencies, defects, or gaps the CPMF may identify. It is important to ensure that decisions are made by identifying real issues based on evidence.

REDUCING BARRIERS TO REGISTRATION

The physiotherapy profession in Ontario has faced significant barriers to registration during the two years of the pandemic due to the unavailability of the practical component of our national examination, which is a requirement for registration referred to explicitly in our regulation. Though solutions are available within the current regulatory framework, barriers have included timeliness in addressing the situation and a risk aversion versus risk mitigation approach by our College.

The OPA supports the implementation of time limits for registration decisions. We also believe that regulations should be enabling to maintain College capacity to register new applicants during times of emergency. In most cases, there are structures and processes already in place to mitigate risks and assess ongoing competency.

We thank you for this opportunity to provide feedback and look forward to future dialogue and engagement in the modernization of the regulatory system on behalf of all Ontarians.

Sincerely,

A handwritten signature in black ink that reads "D. Sauvé".

Dorianne Sauvé
Chief Executive Officer