

The College of Midwives of Ontario Submission to the Standing Committee on Social Policy on Bill 179, *Regulated Health Professions Statute Law Amendment Act, 2009*

September 25, 2009

55 St. Clair Avenue West, Ste. 812

Toronto, Ontario M4V 2Y7

Telephone: 416.327.3932

Fax: 416. 327.8219

E-mail: policy@cmo.on.ca

Web site: www.cmo.on.ca

The College of Midwives of Ontario (CMO) is pleased to make this submission to the Standing Committee on Social Policy, for consideration during its public consultation on Bill 179, *Regulated Health Professions Statute Law Amendment Act, 2009*.

As the regulatory body for midwifery, we are committed to ensuring that the women and families of Ontario continue to have access to safe, effective maternity care; that the CMO has all of the resources it needs to regulate effectively in a constantly and rapidly evolving health care environment; and that midwives are able to contribute fully to the system as primary care providers.

For these reasons, our submission focuses on the areas of the Bill that deal specifically with the scope of practice for midwives in this province and with the areas that deal with the role of the regulatory bodies in ensuring effectiveness and accountability.

Overall, we are supportive of the proposed legislation. We believe that the changes will further support the health colleges in continuing to ensure the safety and efficacy of health professionals in this province.

We are particularly pleased that Bill 179:

- will allow for increased access to care for Ontarians;
- will support interprofessional care where it is needed;
- moves toward making the system more responsive to changes in the health care delivery and practice environments.

However, the CMO believes that there are areas of the Bill where the intent of the legislation does not go far enough and other areas where the Ministry's approach creates the potential for confusion. Therefore, we have a number of recommendations that we believe would further the Bill's potential to positively affect the regulation and provision of health services to Ontarians.

Oversight & Accountability

The addition of section 5.0.1 amends the *Regulated Health Professions Act* (RHPA) to allow the Lieutenant Governor in Council to appoint a college supervisor on the recommendation of the Minister under subsection (1).

The Minister already has significant and effective powers through section 5 of the RHPA that enable him to take steps in order to ensure that the intent of the RHPA or any of the health profession Acts are being implemented. These powers are rarely used; therefore, it is unclear why the Minister would need to expand them. The CMO is concerned that if the proposed expanded powers are put in place, there will be political and public pressure to use them, resulting in the erosion of self-regulation for health professions. Also, as it stands, there are no due process requirements before the powers can be invoked.

The CMO welcomes accountability but believes that this provision may be perceived as suggesting that the Minister does not trust the regulatory colleges. Such a perception has real potential to damage the public's confidence in the colleges and to undermine what has, for the

past 15 years, proven an effective system of self-regulation. The CMO recommends that the proposed section 5.0.1 not be added to the RHPA and that the Ministry engage the health colleges in further discussions regarding accountability.

Professional Liability

The addition of section 13.1 to Schedule 2 amends the RHPA to require colleges to provide for a professional liability insurance scheme for members of the college and to ensure that every member has whatever professional liability insurance is required under the health profession Act or any regulations or by-laws made under that Act.

The proposed addition of section 13.1 is concerning. This seems to imply that a college must ensure that liability insurance is available, rather than simply requiring that a member obtain such insurance. Many colleges, including this one, would not be in a position to provide such coverage to their members.

Currently, obtaining professional liability insurance is a non-exemptible requirement of the CMO's registration regulation. We believe that this is sufficient and that the proposed revision needs to be clarified to state that colleges must require insurance, rather than provide it.

The CMO does not believe that it is reasonable to expect members who are not practicing (i.e., professionals who are inactive) to carry liability insurance. We would ask for confirmation that "whatever professional liability insurance is required" addresses this issue.

Health Professions Regulatory Advisory Council (HPRAC)

The proposed amendment to Section 11 of the RHPA states that the Advisory Council's duties are to advise the Minister and no other person on any issues, but only if the Minister decides to refer the issue to the Advisory Council in writing, seeking its advice, and in no other circumstances.

The CMO was disappointed to see the changes proposed in relation to HPRAC. We believe that the Advisory Council serves an important function and that their work is a useful, legitimate component of the framework that exists to ensure accountability on the part of the health regulatory system.

Public Hospitals Act

The Bill proposes a number of changes intended to strengthen interprofessional care. The CMO very much supports this and believes that also warranted are changes to the *Public Hospitals Act*, 1990. As we proposed in our May 2008 submission to HPRAC regarding the scope of midwifery practice, we believe that the *Public Hospitals Act* should be revised in order to allow midwives to participate in hospital Medical Advisory Committees and other decision-making committees, as well as to provide midwives the same rights to due process that physicians receive in regard to the credentialing process.

Expert Committee

The addition of section 43.2 amends the RHPA to authorize the Lieutenant Governor in Council to make regulations:

(a) establishing one or more expert committees for the purposes of this Act, the Code and health profession Acts;

(b) specifying the functions, duties, powers and membership of an expert committee;

(c) requiring an expert committee to provide reports and information to the Minister and providing for the content of such reports and information;

(d) requiring information to be provided by a College or Council to an expert committee, and governing the content of the information and the form and manner and time within which the information is to be provided to the committee.

The language of the proposed addition in section 43.2 respecting expert committees is very broad. It suggests that it will be possible to establish expert committees to fulfill functions and duties with powers and membership as specified by the Lieutenant Governor in Council without restrictions beyond “for the purposes of the RHPA.” Our understanding from Ministry staff is that the creation of expert committees would be only to address issues related to changes to drug regulations. If this is the case, we would recommend revisions to the language of the legislation in order to be clearer. If it is not the case that the expert committees will be limited to addressing changes to drug regulations, we would recommend that further consultation with health colleges on this issue is required.

Laboratory and Specimen Collection Centre Licensing Act

The Bill amends the *Laboratory and Specimen Collection Centre Licensing Act* to state that the definition of “specimen collection centre” in section 5 of the Act excludes from the definition a place where a member of the College of Dietitians of Ontario is engaged in the practice of dietetics.

We would recommend that the legislation include the same exemption for midwives who provide in-home or in-clinic services (e.g., fernalg, finger pricking, bilirubin counts, etc.). This point of care access is an essential component of midwifery care for which there is currently no clear legislative authority.

Drug and Pharmacies Regulation Act

The Bill amends the *Drug and Pharmacies Regulation Act*.

The provision would be changed from its current wording:

118.(3) Nothing in this Act prevents any person from selling, to a member of the College of Chiropractors of Ontario, the College of Dental Hygienists of Ontario, the College of Midwives of Ontario or the College of Optometrists of Ontario, a drug that the member may use in the course of engaging in the practice of his or her profession.

to the following wording:

118.(3) Nothing in this Act prevents any person from selling a drug to a person to use in the course of engaging in the practice of his or her profession, where that person is authorized to use that drug under a health profession Act as defined in the Regulated Health Professions Act, 1991.

We understand that the intent of the amendment was to provide access to drugs to members of all colleges who use them, not just the four named in the provision. Typically, this would apply to the use of topical preparations, as access to drugs administered by injection or inhalation requires special authority.

The concern is that in making this amendment the language has inadvertently required that the profession-specific statute allow express authority to use the drugs instead of the implicit authority now permitted. We understand that there was no intention to limit access to drugs in this amendment.

We would suggest that the easiest solution is to use the existing phrase “that the member may use in the course of engaging in the practice of his or her profession” in the last part of the amended provision.

Midwifery Drug Regulation, O. Reg. 884/93

The current legislated authority for midwives to prescribe and administer drugs is outdated and does not accurately reflect the day-to-day activities, functions, role and responsibilities of midwives as primary maternity care providers practicing to meet the current standard of care. Limiting midwives to a specified list of drugs poses potential risks to women and their infants, creates inefficiencies in the system, and is out of step with more progressive midwifery regulation elsewhere in Canada.

The proposed changes to the *Midwifery Act* regulation related to the authority to prescribe and administer drugs is a step in the right direction; however, it does not go far enough to ensure appropriate access to safe, effective care.

We recommend that the legislation be amended and policy be created to provide midwives with the authority to prescribe and administer from categories of drugs according to indications (see the CMO’s submission to HPRAC on non-physician prescribing), as opposed to individually listed pharmaceuticals. This will enable midwives to provide routine primary maternity care within their scope of practice. In doing so, it will allow for the “right care provider” at the “right time”, freeing up physicians to consult on cases where they are truly needed and enabling midwives to work to their full scope as primary care providers for low-risk women and their infants.

We further recommend that the process for amending drug regulations (and all clinical regulations) be updated to allow for timely and appropriate responses to changes in clinical standards and best practices.

Midwifery Scope of Practice

The CMO, in its May 2008 submission to the Health Professions Regulatory Advisory Council and subsequent responses to the Minister in relation to HPRAC's recommendations, made a case for revising legislation to authorise a number of changes to the scope of midwifery practice in Ontario. The intent of the proposed changes was to:

- increase overall access to midwifery care, with a specific focus on increasing access to services closer to home in under-resourced regions of the province;
- support the more effective and efficient use of all available maternity care resources;
- allow midwives to contribute more fully to addressing the current maternity care provider shortage in Ontario;
- better equip midwives to work within interprofessional settings and teams where the interchangeability of primary maternity care providers will lead to enhanced shared care models.

The CMO based its proposed changes on clearly identified needs as described in the Ontario Maternity Care Expert Panel's report to the Ministry of Health and Long-Term Care *Maternity Care in Ontario 2006: Emerging Crisis, Emerging Solutions*, the Multidisciplinary Collaborative Primary Maternity Care Project report, Health Canada's *Family-Centred Maternity and Newborn Care National Guidelines*, and in reports prepared by the Ontario College of Family Physicians and their national counterpart. The recommendations were also in keeping with one of the key components of the HealthForceOntario strategy; namely, establishing innovative new health care professional roles in areas of high need. Furthermore, the changes would allow Ontario midwifery regulation to meet the national standard. Ontario is clearly behind other jurisdictions in the scope of practice and approach to regulation.

The CMO believes that the proposed changes to scope would be in the best interest of the women and babies who receive or would choose midwifery care if it was available. The evidence that these changes are overdue is strong. Therefore, we recommend that the Minister reconsider the requests made by the CMO in relation to this.

Our proposed changes would also provide the CMO with further regulatory mechanisms to ensure the safety of midwifery care. Specifically, changes that would acknowledge midwives as primary care providers trained to provide care in emergencies within the limits of their scope, and that would remove reliance on section 29 of the RHPA.

The CMO believes that relying on a 'good Samaritan' exception is an indirect approach to regulating primary care professionals and recommends that the Minister amend the legislation to reflect the importance of emergency skills in the provision of safe primary maternity care. Such an amendment will allow the CMO to better regulate its members and protect the public.

Summary

While we are supportive of the Bill, we have made a number of recommendations in this submission that we believe will make the proposed changes more effective and will benefit all Ontarians as users of the health care system. We also believe that our recommendations will strengthen the overall regulatory structure. On balance, we believe that Bill 179 will support the work of health colleges to ensure better protection to the public.

We would like to extend our thanks to the Standing Committee on Social Policy for the opportunity to provide recommendations. We hope that these recommendations will help us to realize the shared vision of a strong stewardship role for the Ministry, and a sustainable health care system that is better able to provide the services to which Ontarians are entitled.