

Analysis of changes and impact of the Health Professions and Occupations Act (HPOA)

Table of Contents

Introduction:..... 2

Changes we see value in:..... 2

 Indigenous Cultural Safety 2

 Anti-discrimination 3

 Increase efficiency 3

Changes we have concerns with: 4

 Elimination of elected College Board..... 4

 Complaints investigation and discipline 5

 Disclosure of minor disciplinary actions 5

 Lack of statutory right to appeal decisions under HPOA 6

 Increased costs for physicians 7

Supplementary Analysis: Detailed comparison of HPOA and HPA Legislation 8

 Changes we see value in: 8

 Changes we have concerns with:..... 10

Introduction:

On November 24, 2022, the BC government passed the Health Professions and Occupations Act (HPOA), previously known as Bill 36, which aims to create a modernized regulatory framework for health colleges to better serve the public interest. When fully in force, the HPOA will replace the current Health Professions Act (HPA).

Doctors of BC and others have criticized the legislative process for lacking meaningful engagement and consultation with physicians and other health care providers. While we support the HPOA's intentions to modernize the legislation and enhance cultural safety, we are concerned about several aspects of the legislative framework, such as government-appointed boards, changes to disciplinary processes, disclosure of minor disciplinary actions, and removal of appeal rights. Collectively, these changes will contribute to increased fear of complaints and decreased trust in investigation and discipline processes among physicians. This may foster a culture of “defensive medicine”¹ that will create a more costly, time-consuming, and less accessible healthcare system in BC.

Doctors of BC continues to advocate for a pause in the implementation of the legislation so meaningful engagement can occur and the implications can be properly considered.

Changes we see value in:

Indigenous Cultural Safety	
Summary of Changes	Key Considerations
<ul style="list-style-type: none">The HPOA includes:<ul style="list-style-type: none">Provisions related to reconciliation, UNDRIP, and Indigenous-specific racism.Requirements for consultation with Indigenous peoples on regulations that would impact them.Protection for licensees² who engage in Indigenous cultural practices as part of their practice.	<ul style="list-style-type: none">Inclusion of provisions related to Indigenous Cultural Safety and Indigenous-specific anti-racism aligns with Doctors of BC’s current and past commitments:<ul style="list-style-type: none">Doctors of BC recognizes the negative impact that colonialism has and continues to have on Indigenous communities, and how unsafe health care spaces have left many Indigenous patients fearful to seek medical assistance.We are committed to advancing Truth and Reconciliation across the profession.

¹ Refers to when a health care provider departs from normal medical practice to avoid complaints or litigation. This can take the form of performing additional testing or treatments (out of an abundance of caution) which may not benefit patients and cost the system unnecessarily.

² As per the HPOA, registrants are now referred to as licensees.

<ul style="list-style-type: none">○ Inclusion of Indigenous restorative practices as a possible outcome of a disciplinary order.	<ul style="list-style-type: none">○ The 2022 Physician Master Agreement (PMA) includes a joint declaration by Doctors of BC and the Ministry of Health acknowledging the pervasive and ongoing harms faced by Indigenous Peoples with a commitment to work together to support Indigenous Specific Anti Racism (ISAR) and Cultural Safety initiatives.
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Anti-discrimination	
Summary of Changes	Key Considerations
<ul style="list-style-type: none">• The HPOA includes new provisions and requirements for the College and licensees related to addressing discrimination and promoting anti-discrimination.• There are new requirements for the College to establish support programs for complainants who request them and are making complaints related to sexual misconduct, sexual abuse, and discrimination.	<ul style="list-style-type: none">• In general, Doctors of BC supports efforts to address discrimination in the health care system.• The HPOA doesn't cover what anti-discrimination measures are expected of physicians, this is the responsibility of the College to provide detail on via bylaws.• Support programs are a positive step for complainants making complaints related to sexual misconduct, sexual abuse, and discrimination to minimize additional trauma and ensure complainants are supported.

Increase efficiency	
Summary of Changes	Key Considerations
<ul style="list-style-type: none">• The number of health care profession colleges have been reduced from 15 to 6.	<ul style="list-style-type: none">• Doctors of BC generally supports the intent of leveraging economies of scale through amalgamation of smaller health care profession colleges to improve their efficiency and capacity for adequate oversight and public protection.

Changes we have concerns with:

Lack of consultation	
<ul style="list-style-type: none">Physicians were not given the opportunity to provide input into the development of the HPOA. Rather, physicians were consulted on high level concepts related to the findings of the Cayton Report in 2019 and a proposed framework for “Modernizing the Provincial Health Profession Regulatory Framework” in 2020.The HPOA was passed in 2022 quickly, with no notice of its introduction, and no opportunity for input from physicians. It goes far beyond the concepts that were consulted on in previous years and is vastly more complex and far reaching than the HPA, going from 56 sections to 645.Government and the College continue work towards full implementation of the HPOA, however there has never been an opportunity for physicians to discuss or provide input into the significant implications of the HPOA or the change management required for an overhaul of BC’s health care regulatory environment at this scale.Doctors of BC has continuously advocated for the need to pause implementation of the HPOA and allow for physician (and other health care provider) input into the rollout of these major changes to the health care system.	
Elimination of elected College Board	
Summary of Changes	Key Concerns
<ul style="list-style-type: none">There are no elections for College Board members. All members are appointed by the Minister based on recommendations from the Superintendent³.Criteria and processes for appointment of Board members are created by the Superintendent.	<ul style="list-style-type: none">Physician influence in regulation of the profession is significantly limited in two ways:<ul style="list-style-type: none">Physicians will have no voice in who is able to serve on a College Board.Physicians are not required to be consulted on the development of process or criteria for appointing licensees or members of the public to the College Board.The representation of physicians on the College Board must always be equal to the number of non-Physician members of the public on the

³ The Superintendent’s office is the body created through the HPOA to oversee the regulatory colleges. The Superintendent is appointed by government. Among other responsibilities, this office makes recommendations to government on appointment of college board members. More information can be found [here](#).

This document aims to support physician understanding of the HPOA and its potential implications. This analysis is not exhaustive of all changes under the HPOA and is being edited/reviewed on an ongoing basis to support completeness and accuracy.

	College Board, which further reduces the physician perspective in key regulatory decisions.
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Complaints investigation and discipline	
Summary of Changes	Key Concerns
<ul style="list-style-type: none"> Investigation and discipline have been separated where the College conducts investigation and the Superintendent’s office oversees discipline. The Director of Discipline is appointed by government. Only one-third of Discipline Panel members are required to be licensees. Under HPA, half of the panel had to be licensees. 	<ul style="list-style-type: none"> Government directly or indirectly appoints those responsible for investigation and discipline of licensees through Board appointment, appointment of the Superintendent, and appointment of the Director of Discipline. This leads to greater opportunity for political influence and interference in investigation and discipline matters. Under HPA, at least half the Discipline Panel was required to be licensees. Under the HPOA, only one-third of the Discipline Panel are required to be licensees. This means discipline decisions may be made by those who do not practice the profession of the respondent or understand the nuances of clinical practice. This leads to concerns around fairness and accuracy and undermines trust in the process.

Disclosure of minor disciplinary actions	
Summary of Changes	Key Concerns
<ul style="list-style-type: none"> The HPOA requires publication of all disciplinary orders regardless of the seriousness of the order or the conduct being disciplined. The HPOA allows for disclosure – if requested by any person – of citations or complaints, even if they were dismissed. 	<ul style="list-style-type: none"> Disclosing minor disciplinary orders and complaints or citations that have been dismissed or not pursued offers limited value to public safety. Disclosure of this information has potential to cause unnecessary reputational harm to physicians (personally or professionally) resulting from unfounded speculation regarding the minor disciplinary order, or unpursued or dismissed complaint. Increased fear over complaints may lead physicians to engage in defensive medicine where they depart from normal medical practice to avoid a complaint. This can take the form of performing additional testing or treatments (out of an abundance of caution) which may not benefit patients and cost the system unnecessarily.

Lack of statutory right to appeal decisions under HPOA	
Summary of Changes	Key Considerations
<ul style="list-style-type: none">• The HPA contains a statutory right to appeal to the Supreme Court on decisions made under the HPA. This has been eliminated under the HPOA.• The ability to appeal discipline and licensing decisions made under the HPOA has been limited in most circumstances to internal review by the Registrar, Investigation Committee, Discipline Panel, Director of Discipline, and/or the Health Professions Review Board, all of which are government appointed.• Those subject to a decision under the HPOA may seek external review via a Judicial Review only on the grounds of there being an issue with the process of the decision, but this won't allow for reconsideration of the decision itself.• The standard for Judicial Review is higher and more difficult to meet than the standard that exists under the statutory right to appeal within the HPA.• Health profession corporations⁴ (HPCs) have no right or avenue to appeal adverse permitting decisions.	<ul style="list-style-type: none">• Elimination of the right for physicians to appeal to the Supreme Court decisions made against them by bodies under the HPOA raises significant concerns for basic principles of fairness.• Limiting the right to appeal to internal review by the same bodies that made the original orders or decisions undermines trust in the fairness and objectivity of the review process.• Because government directly or indirectly appoints all decision-making bodies in the HPOA, and physicians have no statutory right to appeal to the court for decisions made under the HPOA, physicians essentially have no recourse to an independent body separate from the legislative branch.• HPCs and/or those making an application for a permit to operate as an HPC have no right to appeal adverse permitting decisions to any external or internal body. In other words, permitting decisions for HPCs are final.

⁴ Professional medical corporations are now referred to as health profession corporations under the HPOA.

Increased costs for physicians	
Summary of Changes	Key Concerns
<ul style="list-style-type: none">There will be new costs for the College to fund the work of the Superintendent’s Office.	<ul style="list-style-type: none">The new costs associated with funding the work of the Superintendent’s Office will likely fall to physicians as licensees of the College.

Supplementary Analysis: Detailed comparison of HPOA and HPA Legislation

Changes we see value in:

Indigenous Cultural Safety	
HPOA	HPA
<ul style="list-style-type: none">• According to government, inclusion of measures in the HPOA to address discrimination, promote anti-discrimination, and address Indigenous Cultural Safety came out of recommendations from the “In Plain Sight” report on Indigenous-specific racism in the healthcare system.• Under section 14, reconciliation with Indigenous peoples, UNDRIP, and addressing racism specific to Indigenous peoples are included as guiding principles for those exercising powers and performing duties under the HPOA.• Sections 19, 384, and 467 speak to the obligation of the Superintendent’s office and College to collaborate and/or consult with Indigenous peoples on regulations pertaining to Indigenous matters such as Indigenous restorative practices, Indigenous-specific anti-discrimination measures, Indigenous health care practices, and Indigenous support services for complainants.• Under section 135 2(b), a respondent to a complaint doesn’t lack competence and has not engaged in misconduct if the conduct was engaging in Indigenous cultural practices that may fall outside the norm for standard of care.• Under section 268 a), Indigenous restorative practices can be part of a disciplinary order.	<ul style="list-style-type: none">• The HPA does not include mention of Indigenous Cultural Safety, or any provisions related to it.• Discrimination specific to Indigenous Peoples could be considered professional misconduct under section 26.• The College currently has a “Indigenous Cultural Safety, Cultural Humility and Anti-Racism” practice standard in place.

Anti-discrimination	
HPOA	HPA
<ul style="list-style-type: none">• Section 9 defines discrimination as conduct prohibited under the Human Rights Code.	<ul style="list-style-type: none">• The HPA does not mention discrimination or anti-discrimination, however discrimination could be considered professional misconduct under section 26.

<ul style="list-style-type: none">• Under section 11(c), discrimination is listed as an act of misconduct or actionable conduct.• Under section 70, the College must make bylaws on anti-discrimination measures that licensees are expected to adhere to.• Under section 72, licensees are required not to engage in discrimination and must go further and ensure they are adopting anti-discrimination measures in their practice.• Under section 86, licensees have a duty to report other licensees they believe to be engaging in discrimination.• Under section 87, under certain circumstances, non-licensees (mainly employers or business partners) also have a duty to report licensees they believe to be engaging in discrimination.• Under section 276-306, the College must establish support programs to provide support – typically in the form of counselling – to complainants that apply for support services and who have made a complaint related to sexual misconduct, sexual abuse or discrimination.• Section 284 specifies that a decision to provide support services to a complainant does not constitute a finding against the licensee subject to the complaint.	<ul style="list-style-type: none">• The College currently has a “Access to Medical Care Without Discrimination” practice standard.• The HPA does not require colleges to have support programs.
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Increase efficiency	
HPOA	HPA
<ul style="list-style-type: none">• As part of implementing the HPOA, 11 smaller health care profession colleges have been amalgamated into two larger colleges. The intent is to improve capacity and efficiency for oversight and public protection for these professions.• The College of Physicians and Surgeons of BC remains the same.	<ul style="list-style-type: none">• Previously, there were 15 health care profession colleges.

Changes we have concerns with:

Elimination of elected College Board	
HPOA	HPA
<ul style="list-style-type: none">• Under Section 345-346, the Minister appoints Board members based on the recommendation of the Superintendent:<ul style="list-style-type: none">◦ Minimum of 8 members and maximum of 12.◦ Equal number of licensees and members of the public.• The Minister can reject the Superintendent’s recommendation for Board appointees and request a new recommendation if the Minister is of the opinion that doing so is necessary to ensure that:<ul style="list-style-type: none">◦ collectively the Board has the desired education, training, and experience to carry out their duties◦ there is sufficient representation of members of the public◦ and to meet the objectives of Section 452(1) which lays out the Superintendent’s role in Board appointments.• Under Section 452, the Superintendent is responsible for policies and guidance on the criteria for Board members and development of processes or best practices for selecting people to be appointed as Board members.• They must ensure that appointment processes are based on the principle of merit.• Under section 453, the Superintended must consult with regulatory colleges on processes for appointing board members, however consultation with the public – including licensees – on processes for board appointments, is optional.	<ul style="list-style-type: none">• Under Section 17, a College Board consists of a combination of elected and appointed members:<ul style="list-style-type: none">◦ A minimum of 3 Board members are elected registrants.◦ Elected non-registrants◦ Non-registrants appointed by the Board.◦ A minimum of 2 persons appointed by government.

Complaints investigation and discipline	
HPOA	HPA
<ul style="list-style-type: none">• Sections 118-124 describe the process for investigations and delegates investigation to the College. The College develops bylaws on composition and direction for the Investigation Committee.	<ul style="list-style-type: none">• Under Section 1, the College establishes the Inquiry and Discipline committees through their bylaws.

<ul style="list-style-type: none">• Under current draft College bylaws, the proposed composition of the Investigation Committee is six persons appointed by the Board:<ul style="list-style-type: none">○ At least two licensees○ At least two public representatives○ At least one-third of the committee must be public representatives.• Under Section 443(1), the Discipline Tribunal is part of the Superintendent’s office.• Under Section 443(2), the Discipline Tribunal consists of the Director of Discipline and Discipline Panel members.• Under Section 444, the Director of Discipline may be appointed by the Minister and is responsible for management of the Discipline Tribunal.• Under Section 448-49, the Director of Discipline appoints members of the Discipline Panel, one or more of whom must be a licensee from each of the designated health professions.• Under section 169, the Director of Discipline appoints a Discipline Panel composed of members from the Discipline Tribunal. The Discipline Panel must consist of three members including:<ul style="list-style-type: none">○ One licensee who practices the same health profession as the respondent○ One representative of the public.	<ul style="list-style-type: none">• Under section 1-16 of the current College bylaws, the Inquiry Committee investigates complaints.• The Inquiry Committee is composed of 9 people appointed by the Board:<ul style="list-style-type: none">○ One-third are members of the public○ Board President, Vice President, and two appointed board members○ The remaining positions are filled with members chosen by the Board.• Under section 1-17 of the current College bylaws, the Discipline Committee hears complaints and takes action either by dismissal or by making an order to discipline the respondent.• The Discipline Committee consists of at least 15 people appointed by the Board, one-third of which must be public representatives.• The Discipline Panel is appointed from members of the Discipline Committee and consists of four people:<ul style="list-style-type: none">○ Two registrants○ One public representative○ A member in good standing with the Law Society of BC
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Disclosure of minor disciplinary actions	
HPOA	HPA
<ul style="list-style-type: none">• Section 268-269 describes disciplinary orders that are restorative processes or orders not affecting practice authority. These may be considered minor disciplinary actions such as a warning or advice, commitment by the respondent not to repeat misconduct, a reprimand, engaging in meditation, engaging in Indigenous practices and principles of restoration, etc.	<ul style="list-style-type: none">• The College Registrar must publish disciplinary orders relating to:<ul style="list-style-type: none">○ Limits or conditions on a registrant’s practice○ Suspension of the registration of the registrant○ Criminal record checks and risk of physical, sexual, and financial abuse to children and vulnerable adults.○ Reprimand or remedial actions that relate to a serious matter.○ Consent orders

<ul style="list-style-type: none">• Under section 256, a copy of each summary protection order, disciplinary order, request for citation, and reasons for the order or request must be published. This means minor disciplinary actions covered in Section 268-269 must be published. This can include additional information that the Investigation Committee or Director of Discipline direct to be published, including protected information if it is the opinion of the College Registrar that the information is necessary to protect the public.• Section 255(1) and 255(3) permits disclosure of information – if requested – pertaining to regulatory complaints or citations even if they were dismissed or not pursued.	<ul style="list-style-type: none">○ Orders related to non-compliance with the HPA, regulation, or bylaw, misconduct or unprofessional conduct, incompetent practice, or ailments, disturbances, or addictions that would impair ability to practice.○ Prohibitions against carrying on corporate business.
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Lack of statutory right to appeal decisions under HPOA	
Health Professions and Occupations Act (HPOA)	Health Professions Act (HPA)
<ul style="list-style-type: none">• Contains no statutory right to appeal summary protection orders, disciplinary decisions, or licensing decisions to the Supreme Court.• Under sections 45 and 46, an applicant for a license to practice can only seek reconsideration of an adverse licensing decision from the Registrar. They are not entitled to any other path for review.• Under section 512(3), decisions made by the Director of Discipline, a Discipline Panel, and the Health Professions Review Board are “final and conclusive and not open to question or review in any court.”.• Under section 261, those subject to a summary protection order can apply for reconsideration of that order by the Investigation Committee.• Under section 194, Those subject to an order from the Discipline Panel can apply for review of that decision by the Director of Discipline.• Under section 65, a health profession corporation has no right to appeal an adverse application decision to the Health Profession Review Board or any other body or person.	<ul style="list-style-type: none">• Under section 4.1 (d), applicants for registration with the College can appeal an adverse registration decision to the Supreme Court.• Under Section 35(5) and 40, a registrant has the right to appeal actions taken by the Inquiry Committee (referred to as Section 35 orders) or orders of the discipline committee to the Supreme Court.• Section 40(10) allows for appeal of a Supreme Court decision to the Court of Appeal if leave to appeal is granted by a justice of the Court of Appeal.• Under, Section 20 (4.1), applicants for registration with a college have a right to appeal decisions by the registration committee to refuse or limit registration to the Supreme Court.• Under section 44(3), a health profession corporation or registrant may appeal an adverse permitting decision made by the College Board to the Supreme Court.

Increased costs for physicians	
HPOA	HPA
<ul style="list-style-type: none">Under Section 439 and 440, the College may be required to pay general administration fees to the Superintendent’s office to fund its duties of oversight of regulatory performance.	<ul style="list-style-type: none">The Superintendent’s Office doesn’t exist under the HPA