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A COMPLETE GUIDE TO THE REGULATED HEALTH PROFESSIONS ACT Richard Steinecke Release No. 2, October 2024

This publication provides a systematic explanation of how the law of self-regulation works, with particular focus on health practitioners in Ontario, and includes: examples, illustrations, flow charts, forms, checklists and precedents; an explanation of every aspect of the *Regulated Health Professions Act* (RHPA); complete text of the RHPA, Procedural Code and statutes such as the *Statutory Powers Procedure Act*, as well as everything needed for a hearing or meeting, and extensive case citations.

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What's New in this Update:

This release features a substantially revised Chapter 6 (Discipline Proceedings), and updates to the caselaw and commentary in Chapters 2 (Role and Structure of the Colleges), 3 (Registration), 5 (Investigations and Complaints), 6 (Discipline Proceedings), 8 (Appeals, Reinstatement and other Remedies), 9 (Quality Assurance), 10 (Sexual Abuse Provisions) and 11 (Controlled Acts and Protected Titles). Additionally, Appendices A and C have been updated.

Highlights:

- In *Spirou v. College of Physiotherapists of Ontario*, 2024 ONSC 964, 2024 CarswellOnt 1573 (Ont. Div. Ct.), members were held accountable for the actions of the corporate entity they worked for.
- A court left open the possibility that improper pressure on a member to accept a joint submission could amount to bad faith for the purposes of civil liability: *Thmbran v. The British Columbia College of Nurses and Midwives (BCCNM)*, 2024 BCSC 441, 2024 CarswellBC 734 (B.C. S.C.).
- The legal advice given by a regulator's in-house counsel is protected by solicitor and client privilege: *Fraser v. Nova Scotia Barristers' Society et al.*, 2024 NSSC 173, 2024 CarswellNS 501 (N.S. S.C.).
- Decision makers need to be able to understand key documents in another language and should not rely on a staff summary of the gist of what the document signifies: *Boua v. Office of the Independent Police Review Director*, 2024 ONSC 2172, 2024 CarswellOnt 5665, 2024 CarswellOnt 5666 (Ont. Div. Ct.).
- Disclosure obligations by regulators is of the fruit of the feet, not the fruit of the mind. Investigation planning information is not relevant and does not need to be disclosed, even on a motion for abuse of process: *Law Society of Ontario v. Mazo*, 2024 ONLSTH 59 (L.S. Tribunal).
- Discipline tribunals can enforce rules of procedure requiring parties to admit non-contentious facts and documents. For example, where a party does not respond meaningfully to a request to admit, a panel can deem the facts to be admitted and the documents to be authentic: *Khan v. Law Society of Ontario*, 2024 ONSC 3092, 2024 CarswellOnt 9260 (Ont. Div. Ct.).
- For an appeal to succeed on the basis of ineffective representation by their counsel, the member "must show: (1) that there are facts that underpin the claim; (2) that counsel's representation was incompetent; and, (3) that the incompetent repre-

sentation caused a miscarriage of justice...”: *Folkes v. College of Nurses of Ontario*, 2024 ONSC 1497, 2024 CarswellOnt 3831 (Ont. Div. Ct.).

- A caution was upheld where a member’s social media post contained sexual innuendo. The professional status of member was evident. There was a risk of harm to the public: *Chaban v. Royal College of Dental Surgeons of Ontario*, 2024 ONSC 1075, 2024 CarswellOnt 1877 (Ont. Div. Ct.).
- A suspension of a member’s registration is intended to remove the member from practice and cannot be circumvented by after hours work in the absence of patients or earning income from the work of other members: *Casella v. Ontario (College of Chiropodists)*, 2024 ONSC 899, 2024 CarswellOnt 1738 (Ont. Div. Ct.).
- There is a strong public interest in a regulator posting allegations of upcoming discipline hearings on its website: *Akinawonu v. College of Physicians and Surgeons of Alberta*, 2024 ABCA 167, 2024 CarswellAlta 1248 (Alta. C.A.).