

Our File: 230085

March 27, 2023

Law Amendments Committee
Nova Scotia Legislature
Province House
1726 Hollis Street
Halifax, Nova Scotia B3J 2Y3

Dear Members of the Law Amendments Committee:

RE: Bill 256 – *Patient Access to Care Act*

Introduction

I am a Partner with McInnes Cooper in Halifax. My law practice is focused on health law and the regulation of health professions in Nova Scotia.

I represent the Nova Scotia Regulated Health Professions Network (the "**Network**"). Jennifer Hemeon, the Executive Director of the Network, will be addressing the Law Amendments Committee separately.

Enclosed is a copy of the Network's written submissions to the Department of Health and Wellness regarding Bill 256 – *Patient Access to Care Act*.

Overview

Bill 256 represents a unique opportunity to improve Nova Scotians' access to healthcare services by reducing registration and licensing barriers for professionals licensed in other jurisdictions to relocate to our Province.

Further, the proposed legislation contains mechanisms that will hopefully allow for regulators to expand the scopes of practice of their professions in an efficient, timely, and cost-effective manner.

These are worthy aims.

Regrettably, however, neither the Network nor the professional health regulators in Nova Scotia were consulted regarding the content of Bill 256. Regulators appreciate that advance consultation regarding legislation is not always possible. However, regulators' expertise lies in

many of the areas canvassed in Bill 256. Regulators have first-hand experience, unique insights, and valuable suggestions to improve the effectiveness of such legislation, while still preserving their public interest mandate.

Introducing such far-reaching legislation in the absence of consultation erodes trust between the Government and the regulators responsible for safeguarding Nova Scotians in the delivery of healthcare services.

Issues

The Network's written submission to the Department of Health and Wellness sets out several concerns with the content and language of Bill 256. I encourage all members to carefully review and consider those submissions.

In the interest of time, I will address 2 of the main issues with Bill 256:

1. the requirement to waive all registration and licensing requirements for an applicant who is registered or licensed, in good standing, in any jurisdiction prescribed by the regulations; and
2. expanded scope of practice.

1. Waiving of registration and licensing requirements

Certainly, the intent of Bill 256 is to reduce barriers for competent and ethical professionals to move to and practise in Nova Scotia. We all appreciate the pronounced and immediate need for more healthcare professionals in this province. However, the goal cannot be more bodies at any cost.

At all times, Nova Scotians are entitled to receive care from competent and ethical professionals. As currently drafted, however, Bill 256 will require regulators to fully license professionals in "good standing" from prescribed jurisdictions, even when those professionals:

- have been convicted of criminal offences;
- are uninsured to provide healthcare services;
- are not competent to provide healthcare services;
- are incapacitated;
- have no knowledge of local healthcare practices;
- are unable to communicate proficiently with patients in English or French; and
- lack good character.

Further, regulators will be required to license such applicants without the ability to impose any licensing conditions or restrictions designed to ensure patient safety.

We are certain that it is not the Government's intent to expose Nova Scotians to such unnecessary risk in receiving healthcare. Unquestionably, Nova Scotians deserve increased access to care; however, surely we must ensure that such care is provided by competent and ethical professionals.

It is inappropriate and contrary to public safety to require regulators to automatically license professionals from other jurisdictions without first exercising some due diligence to ensure they possess the necessary competence and character to provide care to Nova Scotians.

The problem with Bill 256 as drafted is that it does not define "good standing". Rather, section 5(2) of the proposed legislation relies on the definition of "good standing", if any, in the applicant's home jurisdiction. Good standing is not a term that is consistently applied across professions and jurisdictions. Even within Nova Scotia, there is significant variance in the meaning of "good standing".

The manner in which good standing is used in Bill 256 may result in regulators being required to license applicants that are incompetent, incapacitated, lack character, or have engaged in misconduct. This is not consistent with regulators' duty to ensure that Nova Scotians are protected in the delivery of healthcare services.

Ultimately, the unintended consequences of this provision, without amendment, may cause the public to lose confidence in professional regulation. If this provision is to remain in Bill 256, the concept of "good standing" must either be reconsidered or defined. The Network's written submission proposes recommendations in this regard.

2. Expanded scope of practice

Bill 256 includes provisions that will enable the Governor-in-Council to make regulations allowing healthcare professionals to practise in expanded scope of practice areas.

The ability to expand scopes of practice for the health professions in Nova Scotia will help ensure patients have enhanced access to safe, quality healthcare. For many regulators in Nova Scotia, the current legislative process for expanding the scope of practice of their respective profession requires amending their governing Act, which is a burdensome, lengthy, and resource intensive endeavour. Accordingly, the opportunity to amend scopes of practice through regulation, which is more efficient and timelier, is a welcome development.

Again, however, the language of Bill 256 creates unacceptable risk to Nova Scotians. When read in conjunction with section 7, the definition of "expanded scope of practice area" suggests that an expanded scope of practice area for an individual practitioner can include services that are outside the scope of the profession – as long as that practitioner believes they are competent to perform those services.

This means that if the Regulations permit it, an individual health professional may decide for themselves what is within their own professional competence, even if that goes outside the bounds of the scope of practice for the profession. This will create significant risk to patient

safety as the professional's regulator has no jurisdiction to regulate services that are outside of the scope of practice of its profession – effectively resulting in unregulated services. Regulators cannot create standards of practice, adopt ethical principles, investigate complaints, or perform other important regulatory functions with respect to services that its registrants perform outside of the scope of practice of its profession.

The Network's written submission contains recommendations and language proposed to address these concerns.

Conclusion

Overall, we fully support the intent of reducing licensing barriers for competent healthcare professionals. We are also optimistic that Bill 256 will allow for scopes of practice to be expanded in a more efficient and timely manner.

However, Bill 256, as currently drafted, creates unacceptable risks in the provision of healthcare. Nova Scotians are rightfully entitled to expect that Government will amend Bill 256 to mitigate against these risks.

Thank you for the opportunity to speak to Bill 256.

Yours very truly,



Ryan Baxter

Enclosure

Ryan Baxter

**JOINT SUBMISSION TO
DEPARTMENT OF HEALTH AND WELLNESS**

BILL 256 - PATIENT ACCESS TO CARE ACT

**Submitted by Marjorie Hickey, Ryan Baxter and
Raylene Langor, on behalf of the Nova Scotia Regulated
Health Professions Network**

March 26, 2023

**MCINNES
COOPER**

I. INTRODUCTION

On March 21, 2023, the Minister of Health and Wellness introduced Bill 256 - *Patient Access to Care Act* – for First Reading in the House of Assembly.

Neither the Regulated Health Professions Network (the “**Network**”) nor the professional health regulators in Nova Scotia were consulted regarding the content of Bill 256. Regulators appreciate that advance consultation regarding legislation is not always possible. However, regulators’ expertise lies in many of the topics canvassed in Bill 256. Regulators often have first-hand experience, unique insights, and valuable suggestions to improve the effectiveness of such legislation, while still preserving their public interest mandate.

The Network supports the Act’s purpose in principle. We support Government’s priority of ensuring that health professionals in Nova Scotia are empowered to work within their full individual scope of practice, safely, competently, and ethically.

The Network further supports establishing mechanisms to make it easier for competent fully licensed health professionals who are registered in other provincial jurisdictions to work in Nova Scotia. However, the Network believes that Bill 256 could benefit from increased clarity, and revised definitions to better reflect the terms used in existing regulatory statutes.

The Executive of the Network met on an emergency basis on March 22 and 23, 2023 to review and discuss the content of Bill 256. Following its preliminary review of Bill 256, the Executive identified several significant areas of concern regarding the purpose, clarity, and language of the proposed legislation.

Based on communications between Mark Lucas and the Network’s legal counsel, the Network understands that the Department is open to hearing from the regulators prior to Bill 256 coming before the Law Amendments Committee. The Network further understands that Government itself can make amendments at the Law Amendments Committee.

As Second Reading occurred quickly after Bill 256’s introduction, the Network deemed it necessary to provide its comments without delay with the hope that Government will address the Network’s concerns at the Law Amendments Committee, presently scheduled to take place on Monday, March 27, 2023.

The Network Council, representing all of Nova Scotia’s health professions regulators, met on an emergency basis on March 23 and 24, 2023 to further review and discuss the content of Bill 256 following Second Reading. The Network is particularly supportive of acting in partnership with Government to improve access to healthcare and patient safety in the Province, as alluded to in Minister Thompson’s comments during Second Reading.

Ultimately, we are the regulators tasked with upholding the public interest. Ensuring that Nova Scotians receive timely access to healthcare is certainly part of our mandate. However, we must also ensure that the care received by Nova Scotians is provided by properly qualified and competent professionals. We hope that our comments and suggestions reflect our intent to provide valuable feedback to Government on how the legislation can be crafted in a way that both increases access to care, and appropriately reduces unnecessary risk, in order to maintain public safety and confidence.

The comments below reflect the submissions of the Network's Council; the combined voice of the regulators of Nova Scotia's health professions. This submission does not preclude a particular regulator from departing from this joint submission or adding supplementary profession-specific comments.

II. PRIMARY CONCERNS

Based on its preliminary review and interpretation of Bill 256, the Network has identified the following main concerns:

1. Reference to training in the purpose section of the legislation.

Since the "Purpose" section of an Act provides a key interpretive tool when considering the meaning of all other sections of the Act and its regulations, it is critical that the purpose is clearly expressed and clearly understood. As presently written, the Network believes that the purpose of the Bill, however beneficial to the public, remains unclear.

The proposed language states that the purpose, among other things, is to ensure "all health professionals can work to the full extent of their training...". The term "health professionals" is not defined, and indeed throughout the legislation other terminology is used instead.

The vaguest portion of this section however is the use of the word "training". Being trained does not mean a health professional is competent. Health professionals are not necessarily competent to engage in all practices for which they have received training. Training is only one of the many elements of competence. Competence generally refers to the ability to integrate the knowledge, skills and judgement required to practise safely and ethically.

Accordingly, practising to one's full extent of their training is inconsistent with professional self-regulation, wherein registrants are authorized to practise to the full extent of their competence – which is generally recognized as their "individual scope of practice".

The statutes establishing the health profession regulators in this Province use the language of "competencies", "competent", "individual scope of practice" and "scope of practice of the profession" when addressing the extent to which registrants may engage in the provision of a particular service. In Schedule "B" to Bill 256, the terms "individual scope of practice" and "scope of practice of the profession" are defined for purposes of the *Act Respecting Medical Certificates for Employee Absences Due to Sickness or Injury*. The same definitions should be included in the *Patient Access to Care Act*.

Statutes such as the *Nursing Act* include the concept of "expanded scope of practice" and through clause 45(1)(f) of that Act, there is a clear statement indicating registrants must practice only within their individual scope of practice and any expanded scope of practice authorized by the legislation.

To the extent Bill 256 introduces the concept of an expanded scope of practice, the language from the *Nursing Act* offers a useful template.

This Bill should use language that is understood and adopted by the regulated health professions in this Province and should not introduce undefined terms like "training".

To be clear, the Network is supportive of registrants practising to their full individual scope of practice. The language of the Bill should reflect that.

RECOMMENDATION:

Revise wording of section 2 of Bill 256 as follows:

Existing wording	Proposed wording
<p>The purpose of this Act is to improve patient access to care by further opening the Province to out-of-province health professionals, ensuring all health professionals can work to the full extent of their training and continuing the reduction of administrative burdens in health care, including incenting companies to reduce their administrative demands on health professionals.</p>	<p>The purpose of this Act is to improve patient access to care <u>and promote public safety</u> by further opening the Province to out-of-province health professionals, ensuring all health professionals can work to the full extent of their <u>individual scope of practice</u> and continuing the reduction of administrative burdens in health care, including incenting companies to reduce their administrative demands on health professionals.</p> <p>Add definition:</p> <p>"Individual scope of practice" means the services for which a <u>registrant</u> of a regulated health profession is educated, authorized and competent to perform; [Adopted from Schedule B to Bill 256]</p>

2. The concept of "expanded scope of practice area"

In principle, the Network supports the Government's efforts in reducing barriers to health professions practising to the full extent of their individual scope of practice and agrees with the Government's intent.

However, when read in conjunction with section 7, the definition of "expanded scope of practice area" suggests that an expanded scope of practice area for an individual practitioner can include services that are outside the scope of the

profession – as long as that practitioner believes they are competent to perform those services.

This means that if the Regulations permit it, an individual health professional may decide for themselves what is within their own professional competence, even if that goes outside the bounds of the scope of practice for the profession. This will create significant risk to patient safety as the professional's regulator has no jurisdiction to regulate services that are outside of the scope of practice of its profession – effectively resulting in unregulated services. Regulators cannot create standards of practice, adopt ethical principles, investigate complaints, or perform other important regulatory functions with respect to services that its registrants perform outside of the scope of practice of its profession.

Regulators must maintain the ability to regulate services provided in accordance with expanded scopes of practice. In order to ensure appropriate oversight and regulation of all health services provided by regulated professionals in Nova Scotia, a corresponding amendment to a profession's jurisdiction must accompany any expansion to the scope of the profession.

Further, regulators themselves must maintain the authority to authorize registrants to practise in expanded scope of practice areas.

RECOMMENDATION:

Revise wording of section 7 of Bill 256 as follows:

Existing wording	Proposed wording
A practitioner may practise in an expanded scope of practice area within the practitioner's profession if allowed by the regulations.	A registrant may practise in an expanded scope of practice area if allowed by the regulations and authorized by the registrant's regulator.

Revise wording of section 8(1)(a) of Bill 256 as follows:

Existing wording	Proposed wording
respecting expanded scope of practice areas, including setting out areas of practice that are to be included in an expanded scope of practice for a regulated health profession;	respecting expanded scope of practice areas, including setting out services that are to be included;

Revise wording of section 8(1)(b) of Bill 256 as follows:

Existing wording	Proposed wording
allowing practitioners to practise in expanded scope of practice areas;	allowing <u>regulators to authorize</u> registrants to practise in expanded scope of practice areas;

Revise wording of section 8(1)(c) of Bill 256 as follows:

Existing wording	Proposed wording
allowing an authority to prescribe requirements for practice in an expanded scope of practice area, including requirements for qualifications, experience or examination;	allowing regulators to prescribe requirements for practice in an expanded scope of practice area, including requirements for qualifications, experience, and/or examination;

3. Waiver of requirements for applicants in “good standing”

The Network generally agrees with the intent of reducing barriers to registration and licensing for competent health professionals. However, the Network is concerned about the potential unintended consequences of having to waive registration and licensing requirements for applicants registered or licensed in “good standing” in any jurisdiction prescribed by the regulations, pursuant to subsection 5(2) of Bill 256.

This concern emanates from the fact that “good standing” is not defined in Bill 256. Rather, this provision relies on the definition of “good standing”, if any, in the applicant’s home jurisdiction. Even when “good standing” is defined in regulatory legislation or policy, the definition varies across jurisdictions and professions.

Section 5(2) further removes regulators’ ability to require applicants to provide proof of certain criteria established to protect the public, such as criminal and/or background checks, evidence of good character, demonstration of knowledge of local jurisprudence and practice standards, language proficiency, and proof of liability insurance.

Similarly, section 5(2) removes regulators’ ability to assess whether an applicant has a disciplinary history in another jurisdiction, and to address any conditions or restrictions on the applicant’s license put in place by other jurisdictions.

Ultimately, the unintended consequences of this provision, without amendment, may cause the public to lose confidence in professional regulation.

RECOMMENDATION:

If this provision is to remain in Bill 256, the concept of "good standing" must either be reconsidered or defined. One potential is to include some of the same requirements as set out in the Atlantic Register announced by the Council of Atlantic Premiers with respect to physicians (full licensure to practise without conditions, restrictions, undertakings, or supervision).

Proposed language for sections 5(1) and (2).

Existing wording	Proposed wording
<p>5 (1) Where an authority receives an application from a practitioner licensed in another province of Canada, the authority shall waive any requirement for registration, licensing or renewal of registration or licensing in accordance with the Fair Registration Practices Act, the Canadian Free Trade Agreement Implementation Act or any agreement entered into between the Government and the government of that other province of Canada.</p> <p>(2) An authority shall waive any requirement for registration, licensing or renewal of registration or licensing for any applicant who is registered or licensed and who is in good standing in any jurisdiction prescribed by the regulations.</p>	<p>5 (1) A regulator shall waive any requirement for registration, licensing or renewal of registration or licensing where:</p> <ul style="list-style-type: none">(a) it is required by law; or(b) it is in the public interest; and(c) the regulator receives a completed application which provides satisfactory proof that the applicant meets all of the following criteria:<ul style="list-style-type: none">a. the applicant holds an equivalent licence;b. the applicant is not subject to any outstanding complaints with the extra-provincial regulator; andc. there are no prohibitions, conditions, agreements or restrictions on the applicant's licence or registration with the extra-provincial regulator. <p>"equivalent licence" means an authorization issued by an extra-provincial regulator for a person to engage in a scope of practice equivalent to the scope of practice of a registrant;</p> <p>"extra-provincial regulator" means any association, college, board, committee, registrar or other person or body in another province of Canada or a jurisdiction prescribed by the regulations responsible</p>

	for making decisions respecting the registration, licensing or renewal of registration or licensing of a person with a scope of practice equivalent to the scope of practice of a profession;
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4. Processing of “completed applications”

The Network understands that the intent of subsection 5(3) of Bill 256 is to ensure that applications from applicants registered and/or licensed in other jurisdictions are processed in a timely manner once a regulator receives a completed application. The Network is supportive of achieving efficiencies in registration and licensing processes.

The Network welcomes the 5-business day processing window for completed applications and believes its members can achieve this if a completed application means all inquiries and issues have been addressed.

However, the Network considers the current wording of section 5(3) may create practical issues for a few reasons. First, Bill 256 does not define “completed application”, which leads to uncertainty. Applicants and regulators often have different views on when an application is considered complete, and in some instances the legislation itself may prescribe the requirements for a completed application, which may differ from profession to profession.

RECOMMENDATION:

A workable definition of “completed application” is necessary. The legislation must be clear to both manage regulators’ and applicants’ expectations. Applicants also need to know what a completed application is.

5. Application fees

For many regulators, the processing of applications is a resource intensive exercise and applications fees are a significant source of revenue for regulators.

The Network is not opposed in principle to regulators not charging fees respecting an application for registration and licensing, as long as the Government reimburses regulators for lost revenue arising from this provision. In his email advising the Network of Bill 256, Mark Lucas spoke of Government reimbursing regulators for lost revenue arising from this provision; however, the Bill is silent on this intention. There is no certainty that regulators will indeed be reimbursed unless reimbursement is provided for in the legislation.

Further, clarity is required as to the meaning of “application fee” in section 6 of Bill 256. Some regulators charge an application fee, in addition to registration and licensing fees. Is the intent to preclude regulators from charging any fees, or just the application fee?

RECOMMENDATION:

Include language in the legislation to reflect Government's intent to reimburse regulators for fees.

6. Regulation-making authority to prescribe jurisdictions

The Network appreciates that the intent of subsection 5(2) of Bill 256 is to further open Nova Scotia to out-of-province health professionals. The Network agrees that the recruitment and licensure of out-of-province health professionals will assist in increasing access to healthcare in Nova Scotia.

However, determining whether an international jurisdiction maintains similar education, training, entry-to-practise competence standards, and scopes of practice is an intricate and labour-intensive exercise. The proposed vetting process for prescribing jurisdictions is entirely unclear.

Moreover, a prescribed jurisdiction may maintain equivalent education, training, competency standards, and scope of practice for one profession, but not another. For example, a prescribed jurisdiction may satisfy the requirements for physicians, but not physiotherapists.

In the Network's view, the ability for the Governor in Council to prescribe a blanket requirement for the waiver of registration, licensure, and renewal criteria for a prescribed jurisdiction for all professions has potentially far-reaching consequences for public safety.