

## **Questions and Answers (Qs and As)**

### **Proposed Health Profession Regulatory Reform**

**Q.1. What is self-regulation? What is the purpose of self-regulation?**

A.1. Self-regulation is a privilege conferred on a profession (e.g., physicians, lawyers, pharmacists) by the provincial government when it is in the public interest to regulate that profession. The purpose of self-regulation is to ensure the public is protected from harm caused by unethical and/or incompetent practitioners of a profession.

While government is responsible for the legislation that establishes and governs a profession (e.g., physicians), the government delegates the day-to-day responsibilities for governing the profession to a third party organization that is the regulatory body. For example, the College of Physicians and Surgeons of Saskatchewan (CPSS) is the regulatory body responsible for the day-to-day regulation of physicians in Saskatchewan. This means the CPSS is responsible for, among other things, licensing, setting practice standards, investigating, and disciplining physicians in the province.

**Q.2. What is the difference between a regulatory body and an advocacy body?**

A.2. The primary difference between a regulatory body and an advocacy body is that the former's purpose is public protection. Regulators uphold this duty by setting entry-to-practice requirements for the profession, licensing members, developing standards of practice, and investigating/disciplining members when complaints are received from the public. All of these activities are undertaken in the public interest.

On the other hand, advocacy bodies are focused on advancing the profession and the needs of members. For example, the Saskatchewan Medical Association (SMA) is the advocacy body that advocates on behalf of the medical profession, while the CPSS is the regulator responsible for governing physicians in the public interest.

**Q.3. But are there not regulatory bodies that are “dual mandate”? Are they not allowed to advocate for their members?**

A.3. There are regulatory bodies such as the Saskatchewan Association of Licensed Practical Nurses (SALPN) that have in the past considered themselves “dual mandate” organizations (i.e. both regulate and advocate for their members). However, none of the legislation governing self-regulating health professions in Saskatchewan allows regulatory bodies to engage in advocacy activities. Their legislated mandate requires regulators to act in the public interest.

As a result, many regulatory bodies such as SALPN have made the decision to declare themselves to be “single mandate” organizations (i.e. dedicated to public protection role only) to clarify that they are regulatory bodies and their duty is to protect the public, not to advocate on behalf of their members.

**Q.4. What is regulatory reform?**

A.4. Professional self-regulation in its modern form has been around for more than a century. Until recently, the general model of self-regulation has essentially remained unchanged.

However, over the last couple of decades both in Canada and around the world there have been serious issues raised as to whether the current model of professional self-regulation has allowed regulated professions to promote their own interests ahead of the public interest. There has been an increasing lack of trust in regulators by some members of the public who perceive that regulators “protect their own”. In the health care sector, concerns have also been raised about regulators’ lack of focus on patient safety.

**Q.5. What other Canadian jurisdictions are pursued (or are pursuing) regulatory reform?**

A.5. We are currently aware of regulatory reform initiatives occurring in British Columbia (BC), Alberta, and Ontario. BC has been working on regulatory reform for the last few years after several instances of concern were raised regarding both health and non-health related self-regulating professionals. These concerns resulted in a public inquiry regarding one health profession (i.e. dentists). Two other professions, notably teachers and real estate agents, lost their self-regulatory status altogether because those organizations failed to act in the public interest. BC contracted with an internationally recognized professional regulatory expert, Harry Cayton, to provide recommendations regarding regulatory reform in that province. The Cayton Report was released in December 2018. The BC government accepted the report’s recommendations and formed a steering committee to look at options for modernizing the province’s health professional framework. BC is in the process of public consultations regarding regulatory reform.

Alberta has also put forward two recent bills (Bill 30 and Bill 46) that are intended to reform the *Health Professions Act*, the umbrella statute that governs self-regulating health professions in that province as well as other health-related legislation. Among other things, Bill 30 (which was passed in the spring of 2020) requires 50% of the membership of a regulatory body’s Council, Discipline Hearing Tribunal, and Complaint Review Committee to be members of the public. 50% public representation on the boards/councils and other committees of regulatory bodies is one of the recommendations included in the Cayton Report referenced above.

Bill 46 was introduced into the Alberta Legislature in the fall of 2020 and came into force upon Royal Assent on December 9, 2020. The bill makes several amendments focused on regulatory reform. One of the key changes is that, once the legislation is in force, there will be a separation between regulatory colleges and associations/unions to ensure these regulators always put patients and the public interest first.

Ontario recently developed the College Performance Measurement Framework (CPMF). Each health professional regulatory body in Ontario is required to report on their work using the CPMF Reporting Tool in the following areas:

- Performance as a regulatory organization;
- Registration of applicants;
- Measuring practice improvement of regulated health professionals;
- Processing complaints against their respective members; and
- Working with external partners to improve public protection.

The CPMF also shares raw data about regulated health professionals and their participation in practice improvement. The Ontario Ministry of Health in conjunction with the province's health regulatory colleges, subject matter experts, and the public developed this tool. The CPMF is intended to help the public understand how well regulators are performing and to improve their accountability, transparency and oversight.

**Q.6. Why is regulatory reform needed in Saskatchewan?**

A.6. Currently, there are 22 separate pieces of legislation that govern regulated health professionals and social workers in Saskatchewan. Most regulated health professions are governed by "template" legislation. That means the legislation follows a specific format with the intent to establish consistent standards in how regulated health professionals are governed. The government developed template legislation over three decades ago and has modified the original template since that time. As a result, inconsistencies have arisen over the last three decades. The legislation has also not kept up with evolutions in professional self-regulation.

Some health professions are governed by legislation that falls outside the traditional template model. For example, *The Medical Profession Act, 1981*, which governs physicians in Saskatchewan, pre-dates template legislation. This creates even more inconsistency among regulators.

Over the last several years, regulatory bodies have identified concerns with the current legislative framework, noting that despite attempts to create consistency through the development of template legislation that inconsistencies still exist. Further, the legislative framework is outdated and constrains regulators from being able to effectively fulfill their public protection mandate.

For example, some (but not all) template legislation requires the regulator's investigation committee to suspend its investigation if it concludes that the member may have committed a criminal offence. This is inappropriate because typically the most serious professional misconduct is of a criminal nature (e.g., sexual assault) and so is most in need of investigation/discipline. Further, a regulator can often handle the matter more quickly than the justice system. Moreover, the continuation of an administrative process does not impede the justice system's ability to prosecute an accused or affect the rights of the accused.

**Q.7. Is this proposal really being put forward by regulatory bodies or is this an initiative of the Ministry of Health?**

A.7. This proposal was put forward by the 27 regulated health-related professional bodies (including the Saskatchewan Association of Social Workers) through the Network of Interprofessional Regulatory Organizations (NIRO). NIRO is an informal network (i.e. not incorporated) consisting of all 27 health related professional bodies. NIRO provides a forum for its members to share information regarding best practices with respect to regulatory excellence so they can better fulfill their public protection mandate. NIRO receives no government funding and the Ministry of Health is not a member of the organization although Ministry officials may attend meetings as guests at the invitation of NIRO. For more information about NIRO please visit their website:

<http://www.nirosask.ca/>

**Q.8. Are all regulatory bodies in favour of the proposal?**

A.8. When the Ministry received the proposal from the 27 regulatory bodies through NIRO, Ministry officials conducted a survey of each regulator to confirm their support. The Ministry received 26 responses to the survey all of which confirmed their agreement with the regulatory reform proposal.

**Q.9. Is this proposal intended to amalgamate regulatory bodies like what is happening in British Columbia?**

A.9. No. There is no intent to amalgamate regulatory bodies in this proposal. The intent is to make changes to the current legislative framework to provide health-related regulatory bodies with the authority they need to fulfill their public protection mandate.

**Q.10. How will this proposal prevent the board/council of a regulatory body from going “rogue” (i.e. not act in good faith) in its decision-making?**

A.10. The Ministry is not aware of any instances of councils/boards going “rogue” and making decisions in bad faith. However, membership and/or advocacy body can pressure councils to advocate for their interests even if those interests conflicted with the best interests of the public. This is particularly an issue for regulators who are required to have their members ratify their bylaws at annual general meetings (AGMs). It is not uncommon for a subset of the membership to attend AGMs and vote down bylaws that are in the public interest but members may disagree with for self-interested reasons (e.g., continuing competency requirements).

In any event, regulatory bodies are creatures of legislation. Under the legislative framework, all regulatory bylaws are required to be submitted to the Ministry for review and approval by the Minister of Health. Public representatives are also appointed to the councils of regulatory bodies to provide for greater transparency and accountability. Ultimately, if the Ministry becomes aware of serious issues that indicate a regulator is unable or unwilling to fulfill their legislative mandate that government can also step in and make any necessary legislative changes to address those concerns.

**Q.11. One of the proposals included in the consultation package proposes to amend legislation so that bylaws (administrative and regulatory) would be approved by council and not ratified by the membership. What about the members' right to be heard when bylaws impact them?**

A.11. As noted above, regulatory bodies are not advocacy bodies. They are created to protect the interests of the public not the membership. That does not mean that the interests of the public and membership cannot be aligned but when those interests are not, the regulator's duty is to the public.

The proposed requirement to have bylaws approved by Council would also include an expectation by the Ministry that regulators engage with their members as stakeholders like other stakeholders (e.g., employers, other regulators, Ministry of Health) when considering possible bylaw amendments.

There are already health professional regulators in Saskatchewan that do not require membership ratification of bylaws. For example, the CPSS does not require membership ratification but works collaboratively on bylaw development with the SMA as the advocacy body for physicians. The CPSS will also engage directly with members (e.g., surveys, on-line consultation) as appropriate.

Further, as required in all health professional legislation, any regulatory bylaws that are approved by the regulator still have to be submitted to the Ministry for Ministerial approval before the amendments come into effect. The Ministry conducts its own review of the submitted bylaws before making a recommendation for Ministerial approval.

This proposal aligns with other Canadian jurisdictions, which typically require the councils of regulated health professional bodies to approve bylaws, not the members.

**Q.12. Why did some NIRO members, specifically the College of Physicians and Surgeons of Saskatchewan, the Saskatchewan Registered Nurses Association, the Registered Psychiatric Nurses Association of Saskatchewan, and the Saskatchewan Association of Speech-Language Pathologists and Audiologists submit individual requests? Did they not participate in the process to develop the main NIRO proposal?**

A.12. Each of these regulatory bodies participated in the process to develop the NIRO proposal and support each of the nine proposals. However, all four regulators also had individual requests that were specific to their own organizations and legislation. All of these requests align with, and build on, the main NIRO proposal.

The CPSS is governed by *The Medical Profession Act, 1981*, which is a unique statute that pre-dates the development of template legislation. *The Medical Profession Act, 1981* contains certain provisions that template legislation does not. Therefore, the CPSS submitted its own proposal to address specific regulatory deficiencies within *The Medical Profession Act, 1981*. The amendments proposed for both *The Medical Profession Act, 1981* and other health profession regulatory legislation will help to

better align the separate pieces of legislation and create a more consistent regulatory framework.

With respect to the Registered Psychiatric Nurses Association of Saskatchewan (RPNAS), most legislation allows government to appoint up to three public representatives to the councils of regulated health professional bodies. However, under *The Registered Psychiatric Nurses Act*, the RPNAS only has one public member. Therefore, the RPNAS has requested an amendment specific to its own governing legislation to allow government to appoint up to three public representatives, similar to many other NIRO members. Additional public representatives ensures there is a strong public voice on the RPNAS Council, increasing the accountability and transparency of the RPNAS as a regulatory organization.

The Saskatchewan Registered Nurses Association's (SRNA) request is intended to clarify the organization's legal duty as a regulator, not an advocacy body. Members of some regulators equate the term "association" with advocacy (e.g., SMA) and expect the regulator to advocate on their behalf. Therefore, the SRNA is proposing an organizational name change to include the term "college" to clarify for its members and the general public that it is a regulatory body.

The Saskatchewan Association of Speech-Language Pathologists and Audiologists is making a request to change the name of the regulatory body to the Saskatchewan College of Speech-Language Pathologists and Audiologists for the same reasons as the SRNA's request for its own organization.

**Q.13. What are the next steps regarding this proposal?**

A.13. The Ministry will use the results of the consultation to help determine recommendations regarding next steps for the regulatory reform proposal. No dates have been set at this time.