

DOCTORS NOT HELD TO SAME STANDARD IN EACH PROVINCE

A Woman's View GINETTE PETITPAS-TAYLOR

Residents of Newfoundland and New Brunswick recently had cause to ask themselves why a doctor who has been prevented from practicing in one province for unprofessional conduct should be allowed to continue practicing in another. All Canadians should take notice because the situation could easily happen again.

Following a complaint filed with the Newfoundland and Labrador College of Physicians and Surgeons in 2005 against psychiatrist Dr. James Hanley by a former patient alleging the two had had sexual relations while she was in his care, Dr. Hanley was prevented from practicing in Newfoundland and Labrador pending a final hearing and entered an undertaking not to practice in New Brunswick and any other jurisdictions in which he is licensed.

Fast-forward to 2007, and we find that Dr. Hanley has been treating patients in New Brunswick for 15 months.

How could a doctor prevented from practicing because of a violation of his professional code of ethics – he took advantage of his position of influence and trust - be free to just move on to another province?

Is it that Newfoundlanders hold their health practitioners to a higher standard than New Brunswickers? Is there something in New Brunswick that makes it less likely that patients here will be victimized by doctors?

As a columnist in a national newspaper wrote last week, while admitting the comparison is frivolous, "When a driver's licence is suspended in Newfoundland, the person cannot drive in New Brunswick. And so it should be with the practice of medicine."

The Hanley case illustrates the desperate need for Canada's provincial Colleges of Physicians and Surgeons to establish open communication and trust – and protocols to plug loopholes like the one that made the Hanley case possible. There are inadequate protocols for information sharing between provinces when it comes to doctors' suspensions or restrictions. Even if information is shared, there is no assurance that action will follow.

When in 2005, the Newfoundland and Labrador College notified its counterpart in New Brunswick of Hanley's suspension and undertaking, the New Brunswick College allowed Hanley to continue to work here. Only in March 2007, when the Newfoundland College took away his license to practice in that province, did the New Brunswick College suspend him on an interim basis and, in November 2007, strip him of his license to practice here.

The provincial Colleges are individually responsible for monitoring and holding to account healthcare practitioners within their respective jurisdictions. Each College is guided in its activities by its province's health legislation and codes of conduct, allowing not only for disparities in how complaints against medical professionals are handled, but also in whether or not information concerning complaints may be communicated across provincial borders. There is no national database of doctors holding licences. The College in one province would not know whether a doctor held a licence to practice in another jurisdiction.

In the interest of transparency and public protection, most Colleges across Canada, although not New Brunswick's, make information regarding disciplinary actions and complaints available on their websites.

However there is no pan-Canadian requirement that a College, when investigating a complaint, suspending or taking disciplinary action against a doctor, must share its information and findings with other Colleges in whose jurisdiction the accused doctor may be a licensed practitioner. Even if they were to do so, there is no common requirement that other jurisdictions take similar action against the doctor in question.

The mixed message that is being sent is that Canadians must trust in the provincial governing agency and must put our health in the hands of their professionals, but governing agencies in other parts of the country may not respect at face value the decisions of those agencies.

Is harm not harm from Victoria to St. John's? Does any province condone sexual relations between doctors and their patients?

In this case, the misconduct involved sexual relations with a patient. Other cases might involve children, the abuse of drugs, falsification of records, failure to obtain consent or any of about 50 types of professional misconduct according to our provincial law. Disciplinary action against physicians is never taken for frivolous reasons.

Provincial Colleges may not be united, but the country's Advisory Councils on the Status of Women chose solidarity.

The Councils of Newfoundland and Labrador and New Brunswick, on behalf of the Coalition of Advisory Councils across Canada, have contacted the Royal College of Physicians and Surgeons of Canada and the Federation of Medical Regulatory Authorities of Canada as well as all Ministers of Health, Ministers responsible for the Status of Women and Colleges of Physicians and Surgeons across Canada.

The Advisory Councils have called for laws requiring Colleges to report their own disciplinary actions and adopt any sanctions meted out in other jurisdictions, including suspensions pending final decisions, but also for regulations requiring physicians to immediately disclose to the Colleges of all provinces in which they hold a license any complaints or sanctions levied against them.

The privilege of self-regulation that is given to some professions in Canada comes with such responsibilities.

This is a straightforward issue of the right of everyone, regardless of location, to security and protection from identified threats.

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