



Understanding the Process in Becoming a Regulated Health Profession in Ontario

The process to becoming a regulated health profession in Ontario is not only complicated but can take many years to determine whether or not the profession in question will be granted the right to become regulated. In fact, some professions have taken over a decade to complete this process and become regulated. It is also important to note that the desire alone of a particular profession to become regulated does not mean that the application for regulation will succeed.

The following is an outline of the steps that a profession would have to achieve and hurdles it would have to overcome in order to become a regulated health profession in the Province of Ontario under *the Regulated Health Professions Act, 1991*, S.O. 1991 c. 18 (the “RHPA”):

1. A profession wishing to become regulated first has to convince the Minister of Health and Long-Term Care to refer the question of regulation to the Health Professions Regulatory Advisory Council or “HPRAC”. HPRAC exists to advise the Minister on various issues, including making recommendations on whether or not a particular profession should be regulated. HPRAC cannot initiate such a review on its own; the Minister must refer the issue to HPRAC for its consideration.
2. If the Minister refers the question of regulation of a particular profession to HPRAC, HPRAC will then undertake a review and come up with a recommendation that it presents to the Minister. Even if the recommendation is that a particular profession should be regulated, the Minister is not bound to follow that recommendation. The Minister is free to accept or reject it.
3. The following is the recommendation process which the Minister will follow:
 - a. The Minister may request that HPRAC undertake a review of a health profession seeking regulation and/or other health professions regulatory matters, and make recommendations. As per the RHPA, HPRAC undertakes reviews only on the Minister’s request.
 - b. Following receipt of the Minister’s referral, the Advisory Council may arrange a meeting with the applicant(s) to discuss the timeframe and other process management issues.
 - c. If similar or related professions are involved in consideration of a referral, responses to the proposal may be considered jointly by the Advisory Council. Applicants will be informed, to the extent possible, should HPRAC intend to combine projects where there is an overlap in issues to be considered.
 - d. HPRAC will provide the applicant(s) with: (1) a package that includes questions and guidelines to aid the development of proposal; (2) research conducted by the Advisory Council (e.g., literature, jurisdictional and jurisprudence reviews); (3) timelines; and, (4) other relevant material.

- e. These materials will also be posted on the Advisory Council's website at www.hprac.org.
- f. Upon receipt of the proposal from the applicant, HPRAC will notify stakeholders (e.g., the public, health professionals, health professional associations, health professions regulatory colleges, etc.) that the applicant's response to the questionnaire has been posted on the HPRAC website for stakeholder feedback.
- g. Following notice, stakeholders interested in the review may participate in the feedback process. Notice of opportunities for stakeholder participation in the Advisory Council's review of a matter will be communicated via the Advisory Council's website at www.hprac.org and other media. Stakeholders are encouraged to visit the HPRAC website for regular updates concerning the specific referral, or follow HPRAC on Twitter at <http://Twitter.com/HPRACOntario> to obtain updates and notifications.
- h. The purpose of the feedback process is to obtain comments on the proposal for regulating a profession and/or other regulatory matters referred to HPRAC by the Minister. HPRAC will provide questions, guidelines and timelines to aid the feedback process. Stakeholder responses may contain information, with citations and evidence where applicable, that they consider relevant to the question(s) under consideration.
- i. The stakeholder feedback can be provided via the HPRAC on-line consultation platform, e-mail, fax or mail. To ensure transparency and encourage open dialogue, the feedback HPRAC receives will be posted on the HPRAC website (please see the section on access to information for guidelines).
- j. If required, HPRAC may consult with experts as well as hold focus groups or meetings to obtain information it deems necessary to complete the review of the Minister's referral. Persons or organizations with identified expertise may be invited, at the discretion of the Advisory Council, to make presentations, reports or submissions to the Council. Summaries of these sessions may be posted on HPRAC website (please see the section on access to information for guidelines).
- k. HPRAC will conduct all its consultations in both official languages. In some cases, advance notice of the need for French language services may be required.
- l. At the conclusion of the recommendation-making process, HPRAC will submit a report containing its recommendations to the Minister for consideration. This report is confidential until released by the Minister. As per the RHPA, HPRAC recommendations are advisory only. The Minister is not bound to accept HPRAC's advice. The release of an HPRAC report and any follow-up action are at the discretion of the Minister. Should the minister choose to accept HPRAC's advice, the Ministry of Health and Long-Term Care is responsible for implementation based on the direction of the government.¹

4. In considering whether or not to recommend regulation of a new profession, HPRAC conducts a lengthy and detailed two-part assessment:

- a. Primary Criterion
 - i. In the first part of the assessment (primary criterion), HPRAC will determine whether the applicant meets the 'risk of harm threshold' to be considered for

¹ Diagnostic Sonography: Recommendations for Regulation under the Regulated Health Professions Act, 1991, HPRAC, p. 13.

regulation under the RHPA. This part is designed to ensure that the assessment retains a focus on ‘risk of harm’.²

- ii. The primary criterion assesses whether the health profession seeking regulation under the RHPA poses a risk of harm to the health and safety of the public, and it is otherwise in the public interest that the particular profession be regulated under the RHPA. The applicant must demonstrate with evidence that there is a risk of harm to the public. As such, applicants from new professions seeking regulation under the RHPA must meet the risk of harm threshold. In order to meet the risk of harm threshold, the applicants must meet all three conditions below and demonstrate with relevant, verifiable evidence that:
 - I. the profession is involved in duties, procedures, interventions and/or activities with the significant potential for physical or mental harm to patients/clients, including instances where the profession delivers services under direct or indirect supervision by another regulated or unregulated health professional;
 - II. the profession is engaged in making decisions or judgment that can have a significant impact on patients’/clients’ physical or mental health, including instances where the profession delivers services under direct or indirect supervision by another regulated or unregulated health professional; and,
 - III. there is a significant potential of risk of harm occurring within the professional duties and activities. Applicants that meet the primary criterion with relevant, verifiable evidence will then be assessed on the extent to which they meet the secondary criterion.³

- b. In the second part (secondary criteria), HPRAC will determine whether it should recommend regulating a profession that it has determined to be posing a risk of harm to the public. The secondary criteria:
 - i. have equal weight;
 - ii. focus on the profession specific factors and assess whether regulation under the RHPA is, in fact, the most appropriate and effective means to protect the public.

²Ibid., p. 1.

³Supra, p. 2.

- iii. provide applicants with an understanding of where the requirements for statutory regulation lie, and in doing so, give an indication of the issues with which HPRAC is concerned;
- iv. are intended to identify other salient factors that need to be addressed to ascertain whether regulation under the RHPA is in the public interest; and,
- v. are not intended to provide a barrier for a profession that meets the primary criteria to prevent regulation under the RHPA.

HPRAC may not necessarily decide to recommend against regulation of a profession if its application does not satisfy all the secondary criteria. However, HPRAC strongly recommends that applicants make every effort to provide all relevant evidence to support their applications.⁴

- c. In determining whether the primary and secondary criteria have been met, HPRAC relies on relevant, verifiable evidence from applicants.⁵
- 5. If HPRAC does recommend that a profession become regulated and the Minister accepts the recommendation, it takes years before a profession will actually become regulated. This is because the legislation and regulations which will govern the new profession need to be drafted and circulated to all of the stakeholders. This requires regular consultation with stakeholders and there are often difficulties in defining the scope of practice and the nature of the controlled acts the new profession can perform, if any. Once all of this is resolved, the legislation has to pass three readings in the legislature and the regulations must be filed. By way of example, with respect to timing of the actual regulation of a new profession, the *Homeopathy Act* was passed in 2007 but homeopathy was not actually regulated until 2015. It took eight years to actually regulate the profession after the legislation was passed and many years before that to achieve the Minister's approval to regulate the profession.
- 6. Generally, the new profession will have a transitional Council in place after the legislation has been passed but before the regulations filed. The transitional Council has the authority to draft regulations.

⁴ *Supra*, pp.1-2.

⁵ *Ibid.*