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A physician’s refusal to undergo refresher training is sufficient grounds for a health institution to deny the renewal of status and privileges

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On August 18, 2015, the Tribunal administratif du Québec (TAQ) confirmed the decision of a health institution to not renew the status and privileges of one of its physicians after he refused to undergo refresher training to acquire skills that were necessary to perform his new duties.[1]

The physician in question, a hematology specialist, had been hired as a researcher several years ago. At the time, he had been unable to obtain privileges in the hematology service but privileges had been granted to him in the medical genetics service.

The physician exclusively devoted his practice to his research work for many years. Although he had privileges in the medical genetics service, he did not participate in clinical practice in any way. This situation, although imperfect, was nonetheless tolerated by the institution, which considered that the physician had to have status and privileges in good standing within the institution in order to pursue his research work there.

Gradually, the physician found himself unable to renew the financing related to his research work, up until the time when his work ceased completely. He therefore decided to reorient his career toward clinical practice. Considering that he had privileges in the medical genetics service, the chief offered for him to join the medical genetics clinic to perform clinical follow-up of patients at risk of developing breast or ovarian cancer.

Since the physician lacked supporting, relevant clinical experience, the chief asked him to undergo refresher training relating to the breast and gynecological examinations that were required as part of the follow-up of these patients. His integration into the medical genetics clinic was conditional upon successfully completing the training.

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The physician refused to undergo the refresher training. The chief had the head of department and the director of professional services intervene. Despite discussions and negotiations spanning over several months, the physician persisted in refusing to undergo refresher training.

Given the stalemate and the fact that the physician no longer conducted any activities at the institution, the head of department took steps internally in order for the physician's status and privileges to not be renewed.

In its decision, the TAQ lists several elements that are essential to a good understanding of the inner workings of health institutions and the process for renewing the status and privileges of physicians, including:

> that an institution, as part of managing a medical service, may require a physician to undergo refresher training to acquire skills necessary to his or her practice;
> the fact that the professional privileges of a physician do not constitute acquired rights;
> that the process for the renewal of the status and privileges of a physician pursuant to section 238 of the ARHSSS[2] is an administrative issue that must be distinguished from the disciplinary process under section 249 of the same statute.

With respect to the review that the TAQ must conduct in the case of a contested non-renewal, the TAQ adds, in particular, that:

> it must assess whether the situation of a physician justified the board of directors to not renew his or her privileges, taking into account the specific requirements of the institution;
> it sits de novo and therefore is not limited by the facts originally presented in the decision of the board of directors of the establishment.

With respect to the de novo trial which the TAQ must conduct, in this case, the TAQ authorized the RAMQ to file the physician's billing for the preceding years, despite the physician's opposition. This request, made by counsel for the institution, aimed to conclusively demonstrate to the TAQ that the physician did not possess the necessary experience to follow the patients of the medical genetics clinic. The analysis of this new evidence by the TAQ left little doubt as to whether the refresher training was necessary in the circumstances. The non-renewal of the status and privileges of the physician was therefore confirmed by the TAQ. This decision will be final unless contested by the physician through judicial review proceedings, which have not yet been undertaken.

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1. 2015 QCTAQ 08321.
2. *An Act Respecting Health Services and Social Services, CQLR, c. S-4.2.*

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