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Three important rulings rendered in 2015 by the Tribunal administratif du Québec regarding attending physicians

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Over the past year, the Tribunal administratif du Québec (TAQ) has issued several rulings dealing with oversight of the medical practice of professionals working in health and social services institutions. Several of these rulings will be of interest to institutions since they set out principles that tend to confirm the existence of a form of management rights over physicians, despite the lack of the traditional relationship of subordination between such institutions and their physicians.

A physician's refusal to take a refresher course is a sufficient reason for the institution to refuse to renew his status and privileges[1]

In a decision rendered on August 18, 2015, the TAQ upheld an institution's decision not to renew the status and privileges of one of its physicians after he refused to take a refresher course to acquire the competencies necessary to his new functions. In this case, the department head had required that the physician take the refresher course so as to enable him to return to clinical practice after having previously devoted his practice exclusively to research work.

In its ruling, the TAQ set out several principles that are essential to a good understanding of the internal functioning of institutions and the process for renewing a physician's status and privileges, specifically:

> In the context of managing a medical service, the institution may require a physician to take a refresher course to acquire the competencies necessary to his practice;
> The physician's professional privileges are not vested rights;
> The process for renewing a physician's status and privileges set out in section 238 of the *Act Respecting Health Services and Social Services*[2] is an administrative matter, distinct from the disciplinary process provided for in

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section 249 of the same statute.

As for the review that the TAQ must conduct where a non-renewal is contested, the TAQ noted, in particular:

> That it must assess whether the physician's situation justified the Board of Directors' decision not to renew the physician's privileges in light of the specific requirements of the institution;
> That it sits *de novo* and is therefore not limited to the facts originally at issue in the decision of the institution's Board of Directors.

Teaching: an obligation of physicians practising in a university hospital centre[3]

In a ruling rendered on April 30, 2015, the TAQ upheld the decision by the Board of Directors of a university hospital centre which refused to renew the status and privileges of a physician who failed to fulfill the obligations associated with the enjoyment of those privileges. At the outset, it should be noted that the clinical skills of the applicant were not at issue in this case, rather, it was the applicant's behaviour towards teaching that was problematic. The TAQ found that the physician had always been properly informed of the complaints made against him in the area of teaching, but he had chosen to ignore them, deny they had any basis, and stubbornly refused to act upon the recommendations made to him, while employing an attitude of defiance and clearly seeking to place the blame on others.

Thus, despite the numerous chances afforded to the physician, he had demonstrated very little improvement or interest. Accordingly, the institution had no other option but refuse to renew his status and privileges.

The suspension of privileges imposed on a physician must be served despite the right of appeal[4]

In a ruling rendered on February 23, 2015, the TAQ refused a request made by a physician to grant a stay of the enforcement of a resolution adopted by a hospital imposing a suspension of her status and privileges for one month. The physician, a general practitioner with obstetric privileges at a health and social services centre, had a solo practice and delivered babies of the patients she followed. The TAQ found that the physician would suffer no different or greater prejudice than that inherent in the application of the sanction itself. In addition, the physician had not shown that she would suffer serious and irreparable harm given that, in the Tribunal's view, the financial prejudice she would suffer was quantifiable and not irreparable. As for the prejudice suffered by the patients, the institution would be able to remedy any harm since they would be cared for by other physicians in the department in accordance with the normal procedures in place for replacing the applicant when she was away on vacation or at a conference.

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1. *A.* c. *Centre Hospitalier A**, 2015 QCTAQ 08321 (application for internal review).
2. CQLR, c. S-4.2.
3. *R.A.* c. *Centre Hospitalier A**, 2015 QCTAQ 041038 (requête en révision, 2015-06-04 (C.S.) 500-17- 088761-153).
4. *N.F.* c. *CSSS A*, 2015 QCTAQ 02780.

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