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A physician refusing to follow a professional training course constitutes sufficient ground for an establishment to refuse to renew the physician's status and privileges – TAQ confirms its decision

May 12, 2017

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On March 29, 2017, the Tribunal administratif du Québec issued a decision[1] (the "TAQ2 decision") reviewing one of its own judgments (the "TAQ1 judgment")[2] which had confirmed the decision of a health establishment not to renew the privileges of a physician who had refused to follow a professional training course.[3]

The application for review had been introduced by the physician on the ground that the tribunal, in the context of the TAQ1 judgment, would have entirely ignored the fact that she suffers from a disability. In this respect, the physician was maintaining that the existence of her disability had been raised at the hearing by **referring to the term "discrimination" used in the TAQ1 judgment:**

> **[TRANSLATION] [172] It is not sufficient to establish a difference of treatment to conclude that a form of discrimination or unjustified distinction exists. It is important to analyze the situation on the basis of the nature and field of the medical activities that the physician will be called upon to carry out in respect of the obligations related to the professional privileges granted.[4]**

In the context of the TAQ2 decision, the tribunal, called upon to determine whether the TAQ1 judgment was vitiated by a determining error because that it failed to deal with the issue of discrimination based on a physical disability and the resulting duty to accommodate, dismissed the physician's application, thus upholding the TAQ1 judgment.

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In the light of the evidence, the tribunal, in the TAQ2 decision, concluded that the argument involving discrimination on the basis of a physical disability had never been raised at the first hearing, quite the contrary:

> **[TRANSLATION] [36] It is noted in TAQ2 that the evidence submitted in the context of TAQ1 on the physical condition of the applicant is to the effect that her condition did not limit her in carrying out her clinical activities. The applicant never raised in TAQ1 or before the medical bodies that she refused to complete the required training because of her physical limitations.**
>
> **[37] The fact that the word "discrimination" was used in paragraph 172 of the decision is not sufficient to conclude that the issue of discrimination based on the physical disability of the applicant has been raised and argued.**
>
> **[38] Replaced in its context, one understands that the word "discrimination" is used in response to the applicant's arguments to the effect that the training she was required to undergo was not required of another physician of the clinic of genic medicine taking into account his specializ**
>
> **[39] This panel cannot allow the applicant to introduce new arguments at the stage of the application for review.**[5]

In the TAQ2 decision, the tribunal therefore concluded that it is normal for the TAQ1 judgment not to have dealt with the issue of discrimination since it was only raised at the stage of the application for review, not in the first instance. In the final analysis, the decision made in the TAQ1 judgment confirming the non-renewal of the privileges of the physician who had refused to undergo training was "sufficiently justified, clear and logic".[6]

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1. *Balicki c. Centre hospitalier de l'Université de Montréal,* 2017 QCTAQ 03466 (hereinafter the "TAQ2 decision").
2. *Balicki c. Centre hospitalier de l'Université de Montréal,* 2015 QCTAQ 08321 (hereinafter the "TAQ1 judgment").
3. Thibeault, Charles Olivier, "A physician's refusal to undergo refresher training is sufficient grounds for a health institution to deny the renewal of status and privileges", *Lavery Health Law,* newsletter No. 5, September 2015.
4. *TAQ1,* prec., note 2, para. 172.
5. *TAQ2,* prec, note 1, para. 36 to 39.
6. *Id.,* para. 42.

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