Inappropriate conduct, lack of cooperation and insufficient availability are sufficient grounds for a health institution's to refuse to renew a physician's practice privileges

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On May 31, 2017, the Superior Court of Québec[1] (the "Court") dismissed a urologist's application for judicial review of a decision of the Administrative Tribunal of Québec[2] (the "ATQ") upholding a decision made by the Board of Directors of a health institution (the "Board") not to renew the urologist's practice privileges, particularly due to recurring behavioural problems.

Facts

After a few years of practice, the urologist was questioning his professional life. He decided to reduce his workload and informed the institution's Professional Services Department of his plans. However, given that the needs in the region did not warrant the hiring of a fourth urologist, the institution was unable to create a new position in urology, which would have been necessary in order to accommodate the decrease in the urologist's workload. The latter reacted strongly when he was informed of this refusal and nonetheless decided to impose his own restricted availability on the institution. In so doing, he breached the regional urology agreement and defied the institution's medical and administrative authorities.

The Board decided not to renew the urologist's status and practice privileges principally because his chronic lack of cooperation and availability affected the accessibility and continuity of care of the urology department's services. The Board concluded that the urologist's reported conduct was incompatible with the obligations associated with a physician's practice privileges. In addition, the Board found that the urologist was incapable of accepting inherent constraints of his medical practice, displayed a severe lack of self-criticism, and was insubordinate and disloyal to his

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employer.

Challenge before the ATQ

The urologist's challenge of the Board's decision before the ATQ resulted in a lengthy inquiry, requiring 12 days of hearings. Based on the evidence submitted before the ATQ, the conclusions and findings were the same as those of the Board and as a result, the ATQ upheld the Board's decision and dismissed the urologist's recourse.

The ATQ noted that a Board of Directors can decide not to renew the privileges of a physician who demonstrates behavioural problems:

> [Translation] Indeed, the renewal of the appointment, status and privileges of a physician working in a hospital is not automatic. This requires a broad analysis where, in particular, the credentials committee and executive committee of the Council of Physicians, Dentists and Pharmacists make recommendations to the Board of Directors regarding the physician's behaviour and recurring conduct and attitudes, as contemplated in the ARHSSS.[3]

The ATQ also pointed out that collaboration is an essential component of the proper organization of the care services provided in a hospital:

> [Translation] Over the years, his contentious attitude and particularly his intransigence in the positions he has taken, notably with respect to "the scope of his obligations", have completely undermined the confidence his colleagues and the employees at the hospital have in him, whereas collaboration, support and teamwork are essential in a hospital context to ensure the provision of quality care services to the patients.[4]

Finally, the ATQ stated that the urologist's observed conduct fell short of the conduct expected from a physician practising in a health institution:

> [Translation] (…) the applicant remains insensitive to the expectations in his workplace, as well as the signals from his colleagues, the nursing and hospital staff, and the administrators. His behaviour does not change and it has proven impossible to adapt the applicant's practice to the institution's operations.
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> In fact, the applicant's behaviour is not in keeping with the values in this field and one of the missions of the CSSS, namely, to promote the effective and efficient provision of health and social services in a manner that respects the rights of the users of these services.[5]

Application for judicial review in the Superior Court of Québec

Following the ATQ's decision, the urologist brought an application for judicial review before the Superior Court on the grounds that the ATQ did not provide sufficient reasons for its decision. The urologist also claimed that the ATQ improperly assessed the criteria applicable to the refusal to renew his privileges and that this constituted a disproportionate sanction in light of the evidence submitted at the hearing.

After reviewing the file, the Court found that there was sufficient relevant evidence of the physician's inappropriate conduct to justify the non-renewal of his privileges. The Court also found that the ATQ's decision intelligibly identified the complaints on which its refusal to renew was based. Indeed,

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the physician's conduct was extremely welldocumented. The evidence as a whole also demonstrated the various attempts that had been made to resolve the recurring problems caused by the urologist's inappropriate conduct.

Finally, the Court noted that the refusal to renew practice privileges based on a physician's conduct is a measure that is specifically contemplated in the *Act respecting health services and social services:*[6]

> [Translation] In this case, based on the criteria applicable to a refusal to renew the appointment of a physician, the Court is of the view that the ATQ reasonably concluded that the applicant's claim seeking the reinstatement of his rights and privileges as a specialist in urology should be dismissed.
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> Section 238 ARHSSS stipulates as follows:
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> […]
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> An application for the renewal of an appointment may be refused by the Board of Directors only on the basis of criteria of qualifications, scientific competence or conduct of the physician or dentist, having regard to the specific requirements of the institution, and fulfilment of the obligations attached to the enjoyment of the privileges granted.
>
> […]
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> This is in fact what the ATQ analyzed, i.e. the physician's conduct in light of the third party's specific requirements. The Court should not substitute its own judgment for the judgment of the ATQ on this point. It should only assess whether the ATQ's decision, in the context of the facts and evidence submitted before it, was reasonable in light of the legal framework applicable to the refusal to renew, as cited above.[7]

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1. T.T. c. *Tribunal administratif du Québec,* 2017 QCCS 2394 (hereinafter "T.T. v. TAQ")..
2. T.T. c. CSSS A, 2014 QCTAQ 07132.
3. *Ibid,* para. 208.
4. *Ibid,* para. 213.
5. *Ibid,* paras. 255 and 256.
6. CQLR, c. S-4.2.
7. T.T. v. TAQ, préc., note 1, paras. 46 to 48.

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