New developments in mental health diagnostics: what employers need to know

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Employers are regularly faced with complex mental health situations, particularly when their employees are absent due to illness or injury, or when accommodation measures need to be considered. In such cases, they usually request supporting documentation specifying the diagnosis in question.

Diagnosing a mental disorder used to be an act reserved exclusively for doctors,[1] although the *Code of ethics of psychologists* does mention "psychological diagnosis."[2]

The *Act to amend the Professional Code for the modernization of the professional system and to broaden certain professional practices in the field of health and social services*,[3] also known as Bill 67, which received assent on November 7, recognizes that certain health professionals other than physicians are qualified to make mental health diagnoses.

These legislative changes are in keeping with the goal of making professional care and services more accessible to the public, and are in line with the position the Collège des médecins du Québec has taken in recent years.[4]

The professionals involved and the new authority granted in terms of diagnosis[5]

Psychologists (including neuropsychologists):
- Mental disorders
- Neuropsychological disorders, if a training certificate has been issued to the professional

Guidance counsellors:
- Mental disorders, if a training certificate has been issued to the professional
- Intellectual disability

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Speech therapists and audiologists:
Language disorders and learning disorders related to language

Sexologists:
Sexual disorders, if a training certificate has been issued to the professional

Nurses:
Mental disorders, with the exception of intellectual disability, if the nurse has university training and clinical experience in psychiatric nursing

It should be pointed out, however, that this legislative change is not intended to create a new activity reserved for these professionals. Rather, its aim is to recognize that some mental health assessments, and the clinical conclusions arising from them, are really diagnoses.[6]

Impact on employers

When a diagnosis of a mental disorder is made, it is possible that the professional concerned, such as a psychologist or neuropsychologist, might recommend the appropriate treatment, including stopping or returning to work.[7] These legislative changes[8] could make it more complicated for employers and insurers to refuse to implement this recommendation solely because the healthcare professional is not a physician.

We believe it is also possible that these changes will lead to new requests for reasonable accommodation with regard to several increasingly frequent mental issues (e.g. attention deficit disorder with or without hyperactivity, autism spectrum disorder, intellectual giftedness, major depressive disorder, etc.), without a physician necessarily being involved at the diagnosis stage.

The expansion of professional practices to promote access to care and services for employees could therefore have the effect of increasing the number of requests submitted to employers in connection with mental disorders.

It will be important to monitor how employers and others position themselves and adapt their policies in relation to diagnoses established by the professionals concerned. By way of illustration, it's possible that some employers may decide to require that an employee with a mental health issue undergo more frequent medical examinations, insofar as circumstances allow.

Entry into force

The changes introduced by Bill 67 came into force on November 7, 2024.[9] Professionals who already met the regulatory requirements on that date are deemed to be qualified to make diagnoses.[10]

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1. Medical Act, CQLR, c. M-9, s. 31; Professional Code, CQLR, c. C-26, s. 31 to 34; Bernard Cliche, Éric Latulippe, François Bouchard, Paule Veilleux and Isabelle Royer, Le harcèlement et les lésions psychologiques, 2nd ed., Cowansville, Éditions Yvon Blais, 2012, p. 329 and 330: [translation:] "The diagnosis of a mental disorder is reserved exclusively to physicians." See also the arbitration case law, including Gatineau (Ville de) et Association des pompiers et pompières de Gatineau, 2016 QCTA 236.
2. Code of ethics of psychologists, CQLR, c. C-26, r. 212, s. 38.
3. SQ, 2024, c. 31.
4. Collège des médecins du Québec, Projet de loi no 67 et élargissement des pratiques : notre position (Bill 67 and the expansion of practices: our position), September 18, 2024 [online: Projet de loi no 67 et élargissement des pratiques : notre position | Collège des médecins du Québec].
5. Bill 67, s. 4 and 45.
6. Remarks by the sponsor of Bill 67, Ms. Sonia Lebel, during the bill's committee stage, October 10, 2024.
7. In the case of psychologists, for example, section 37(e) of the *Professional Code* already stipulated that they could "determine, recommend and carry out interventions or treatments with a view to fostering the psychological health and restoring the mental health of a person".
8. Before Bill 67 came into force, an arbitration award established a link between a professional's ability to make a diagnosis and their ability to recommend a work stoppage: *Aliments Cargill ltée* et *T.U.A.C., section locale 500*,

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D.T.E. 2010T-817 (Arbitration Tribunal), par. 98 to 103.

9. Bill 67, s. 87.
10. Bill 67, s. 85.

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