POLICY SUBMISSION

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By email: Jasmine.Dadachanji@gov.bc.ca CC: JGreschner@bcombudsperson.ca

Dear Jasmine,

Thank you for allowing us the opportunity to provide input on the definition of physicians as you develop the legislative framework to expand the *Public Interest Disclosure Act* ("PIDA") to health authorities. Further to our discussion, we have had conversations with physicians in an effort to understand their various connections to health authorities as it relates to this change. The points below aim to support your development of a definition that will afford the legislative protections from reprisal under PIDA to those physicians who work in, or have attachment to, health authorities.

In expanding the application of PIDA to health authorities, our understanding is that government intends to ensure the definition of who qualifies as an employee under PIDA captures physicians and other health care workers who may not fit the traditional definition of an employee, but who would benefit from the protection of PIDA as it relates to reprisal from complaints. This is not intended to impact the places/situations where claims may arise. If that understanding is incorrect, please let us know as our comments below would need to be reconsidered.

DEFINITION LIMITED TO PIDA

As discussed on our telephone call, we understand that capturing physicians under the definition of employee within PIDA will *only* be for the purposes of PIDA and would in no way affect physicians' status under any other legislation or regulations. For example, being defined as an employee under PIDA would not change in any respect how physicians are defined by WorkSafeBC, the Canadian Revenue Agency, or in any other tax or business legislation or regulations. As you explained during our call, this is similar to what has been done for members

of government tribunals[1] who have been included as employees exclusively for the purpose of PIDA.

INCLUSION OF PHYSICIANS, RESIDENTS AND MEDICAL STUDENTS

Our goal, in providing input into the definition of employees under PIDA, is to have every physician who could conceivably witness wrongdoing in a health authority be covered by the protection of PIDA when making a report. We want to avoid the challenges that arose in Alberta when similar whistleblower legislation was expanded to healthcare workers, and some physician groups were missed in the definition of who qualified to make whistleblower reports and therefore receive protection.

As you know, most physicians are not considered health authority employees. They may be compensated through a variety of different payment modalities (some with one or more health authorities) and so it is hard to capture them through a definition based on payment modality or employment status alone (i.e., fee for service, service contract, sessional, employee, mixed payments). Additionally, including physicians under the definition of employees based on where they physically work, or their hospital privileges, would not fully include physicians who would be in a position to make a report under PIDA. For example, physicians do not always work in physical health authority sites but may be contracted with health authorities to provide virtual care to specific populations and communities. They may also move between different virtual and physical sites. In this case, the physician might only interact with the health authority and patients virtually but could still be witness to wrongdoing through those virtual spaces, and require the protection of PIDA when making a complaint. Finally, physicians working in health authority-operated sites or networks, like urgent primary care centres and primary care networks, will not be captured by only looking at who has hospital privileges.

To address the complex ways that physicians are connected to health authorities, and to ensure physicians who may be the subject of a complaint under PIDA are also offered the protections of PIDA when making a complaint or participating in a complaints process, we propose that the definition of employee – for the purposes of PIDA – be broadened to include **any physician working in or providing services through any physical or virtual health authority-run site.**

We believe that this interpretation of the definition would capture any physicians who might reasonably be in a position to witness wrongdoing in the health authority, who would have reasonable grounds to fear reprisal if they made a complaint, and who would therefore benefit from the ability to make reports under and – be protected by – PIDA. We also consulted with Resident Doctors of BC and medical students, and recommend they be captured by the definition of employees under PIDA.

Exclusively for the purposes of PIDA, we propose that the definition of who qualifies as an employee should include the following:

a) Physicians working in, or providing services through, any physical or virtual health authority-run site, regardless of the nature of their working relationship with the health

[1]Government Body Designation (Public Interest Disclosure) Regulation: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/58_2022

authority, and regardless of their hospital privileges (i.e., It does not matter if they are employees, sessional, on a service contract, fee-for-service, or if they are privileged at a hospital, as long as they provide services through the health authority).

b) Residents training, working, or providing services through, any physical or virtual health authority-run site.
c) Medical students on clinical rotations in any physical or virtual health authority-run site.

ADDITIONAL CONSIDERATIONS

During our engagement with physicians on this issue, additional questions/concerns arose that we would like to pass on. Those points are noted below:

- Expansion of PIDA to healthcare adds a new layer to the pre-existing ways that physicians can report concerns, or be subject to a report (e.g., respectful workplace policies, occupational health and safety policies, College complaints, etc.). The addition of PIDA could cause confusion as to where and when concerns should be reported and investigated through this process, as opposed to others. To prevent confusion, Doctors of BC, health authorities, and government should work together to ensure there is clarity about how PIDA fits within existing policies and reporting structures. We are happy to collaborate with the Attorney General's office and the Ombudsperson's office to clearly communicate these changes to physicians.

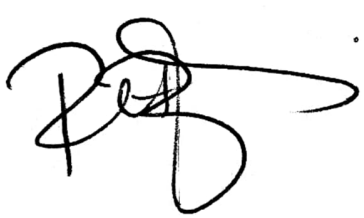
- Concerns were raised with respect to PIDA's ability to protect a complainant's identity in situations where they work in a small community, or with a small team (e.g., a highly specialized team in a larger site). In these situations, the person subject to the complaint could identify the complainant through a process of elimination or could guess who the complainant is based on details of the complaint. Because physicians do not have a typical employment relationship with health authorities, and may not have the same protections as unionized employees, they could face reprisal through more subtle actions such as non-renewal of a contract, loss of hospital privileges, increased scrutiny of the physician's work and decisions, or through social forms of reprisal (e.g., being excluded in team events or gatherings, being shunned, or being excluded from important professional opportunities like conferences, research projects, and leadership roles). This situation could apply to any workers in health authorities who have precarious or non-traditional employment with the health authority and could prevent these people from making complaints when they witness wrongdoing.

- Physicians also questioned the applicability of PIDA in situations where private facilities are temporarily taken over by a health authority. For example, during the COVID-19 pandemic, the operation of some private long-term care facilities was taken over by a health authority to address concerns over quality of care. The physicians and other healthcare workers, while still employees of the private operator, were then reporting to the health authority. The question arose as to whether (and how) PIDA would apply in this context.

Thank you again for the opportunity to provide input on the development of this expanded legislation. Please let us know if you would like to discuss any of the included points, or other aspects of the eventual communication of the legislation.

We look forward to continuing to collaborate with you and the Office of the Ombudsperson as the regulations are brought into force.

Sincerely,



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