

## British Columbia Pharmacy Association

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June 21, 2016

Mr. Bob Nakagawa  
Registrar,  
College of Pharmacists of British Columbia  
200 – 1765 West 8<sup>th</sup> Avenue  
Vancouver BC V6J 5C6

### Re: **Comments on the College Bylaw Amendments Issued for Comment April 14, 2016**

Dear Mr. Nakagawa,

The BC Pharmacy Association thanks the College of Pharmacists of BC for the opportunity to provide comments on the proposed amendments to the *Pharmacy Operations and Drug Scheduling Act* Bylaw and to the proposed Professional Practice Policy 74 *Community Pharmacy Security*. We have carefully reviewed the proposed amendments and policy and now share the following comments:

#### 1. **Definitions**

The bylaw imposes many obligations on an “owner” and a “pharmacy” and replaces the term “pharmacy assistant” to “support person”. This creates the potential for some confusion.

- a. The bylaw should be updated to account for the changes to PODSA made by Bill 6, including the repeal of the term ‘owner’ and the new definitions of pharmacy, direct and indirect owner.

**Recommendation:** Add the following definitions to the bylaw:

“owner” includes a direct owner and an indirect owner as defined in the *Pharmacy Operations and Drug Scheduling Act*

“pharmacy” is a pharmacy licensed in accordance with the requirements in the *Pharmacy Operations and Drug Scheduling Act* and includes a community pharmacy and a hospital pharmacy;

- b. The definition of “support person” in PODSA is "**support person**" means a non-pharmacist who, under the direct supervision of a pharmacist, performs technical functions related to the dispensing, distribution or sale of drugs or the operation of a pharmacy. This is broad enough to include a pharmacy technician, which is defined in the HPA Bylaw. So we recommend explicitly defining “support person” in this Bylaw and expressly excluding “pharmacy technician” from the definition.

**Recommendation:** “support person” has the same meaning as in the *Pharmacy Operations and Drug Scheduling Act* but for greater clarity does not include a pharmacy technician.

- c. The definition of “pharmacy security” includes measures related to the security of “personal information.” Since the intention is to ensure the proper protection of the personal health information of patients of the pharmacy, we suggest that this be made explicit. Otherwise the notification requirements will extend to notifying the College of incidents involving the personal information of non-patients, which is clearly not the intent. Receipt of notice of incidents involving non-patients’ information will likely result in an increased administrative burden for the College, and for the owner/managers when the duty to notify individuals and the Privacy Commissioner is enshrined in the *Personal Information Protection Act*, as is expected in the next round of amendments to that Act.

**Recommendation:** amend the definition of “pharmacy security” to clarify that it refers to measures to protect the personal information *of patients*:

(c) measures to protect against unauthorized access to, collection, use, disclosure or disposal of personal information **of patients of the pharmacy**;

**Recommendation:** also add the same words to s. 3(2)(s) as follows: “notify the registrar of any incident of loss of drugs or loss of personal information **of patients of the pharmacy**, whether electronic or physical.”

- d. When referring to the Drug Schedules Regulation, properly define it by referring to the legislation under which it is made.

**Recommendation:** define the Drug Schedules Regulation as “the Drug Schedules Regulation made pursuant to the *Pharmacy Operations and Drug Scheduling Act*”.

## 2. Subsections 3(2)(n) and 3(2)(r) are redundant

“Pharmacy security” is expressly defined to include measures to protect personal information. The continued presence of section 3(2)(n) as a distinct obligation is redundant and causes confusion because complying with the s. 3(2)(r) duty to “establish and maintain policies and procedures respecting pharmacy security” will necessarily include making “reasonable arrangements to prevent unauthorized access etc., to personal information”.

If the intention is that the “reasonable arrangements” referred to in ss. 3(2)(n) require *implementation* of security measures to protect personal information, we suggest adding the term “implement” to the general duty to create and maintain policies and procedures to protect pharmacy security.

**Recommendation:** Delete s. 3(2)(n). Keep s. 3(2)(r) “establish, **implement** and maintain policies and procedures respecting pharmacy security”

## 3. Notification issues

a. Section 3(2)(bb) obliges managers to notify the registrar of “consistent non-compliance by owners and directors with their obligations under the bylaws.” This is broader than merely complying with the security obligations, and appears to mandate notification in respect of any persistent failure to comply with any obligation. Is this the intention? In PPP-74 it is clear that reporting is limited to non-compliance with the security bylaw or PPP-74, and so it would appear that this is not intended to be a general duty.

If it is intended to be a general duty, this is of real concern to us. As we stated in our letter of January 12, 2016, (copy attached) the College is treading into complex territory when it seeks to intrude into the employment relationship and impose the specific duty to report. Especially if the duty to report extends to all the bylaws. We raised our concerns about this last January – what if the manager has a reasonable belief that the policy or act is compliant, and the College ultimately determines otherwise? Will the manager be subject to discipline for the failure to report something he or she believed didn’t require reporting?

Furthermore, there is a real risk that these new duties will create an adversarial relationship between employee and employer, because employers will know that the employees have the power, and the duty, to trigger investigations against them. And employees have competing duties of loyalty, good faith and confidentiality to their employers;

Moreover, mandating a whistleblower duty without the ability to provide whistleblower protection is, we would suggest, inherently unfair. As we've stated, the reporting duty puts the member between a rock and hard place – potentially having to choose between avoiding discipline by the College or avoiding discipline by the employer.

b. The notification requirement in PPP-74 imposes a duty on pharmacy managers to “ensure” that appropriate action is taken to resolve any issue of non-compliance. We suggest that the word “ensure” be deleted and the sentence be amended as follows:

**Recommendation:** Amend the sentence in PPP-74: “The pharmacy manager should ~~ensure that~~ take appropriate action ~~is taken~~ to resolve the issue(s).”

#### 4. Section 11.1 – Community Pharmacy Security:

There is some confusion around the difference between “accessible to non-registrants” and “Operation without a full pharmacist” and “open to the public” in section 12. We understand that the intention of s. 11.1(2) is to address situations when a pharmacy that is located in a larger premises (such as a retail establishment) is closed while the rest of the store is open. Accordingly we suggest that the following amendment be made:

**Recommendation:** amend s. 11.1(2) as follows:

(2) when no full pharmacist is present ~~and the premise~~ **and the community pharmacy is not operating but is** accessible to non-registrants,

We also note that section 12(2)(c) appears to directly contradict the rest of the section by prohibiting the pharmacy from being open to the public, although ss. 12(1) provides that a pharmacy can be open to the public if the requirements of ss. 12(2) are met.

We think the intention of s. 12 is to distinguish between “operating” the pharmacy and being “open to the public,” in order to enable pharmacies to carry out ordinary operational tasks (ie., “operate”) other than dispensing to the public.

If this is the intention, we suggest the following amendment:

**Recommendation:** ss. 12(2)(c) a pharmacy technician is present and ensures that the ~~pharmacy~~ **dispensary** is not open to the public;

#### 5. Comments on PPP-74

We continue to have concern about the requirement for physical barriers and the inclusion of the protection of personal information as a component of the concept of “pharmacy security.”

First, as we stated on our letter of January 12, 2016 (copy attached), there is still a lack of evidence to support the mandate to install barriers across all community pharmacies in the province. Permitting a range of possible barriers that would be acceptable (locked gates, cabinets, rooms, shelves etc.) does not address the central problem. The fact is, Schedule III drugs are sold on shelves that are typically up to 25 feet from the dispensary desk. Accordingly, the suggestion that the barrier requirement could be satisfied by anything less than a renovation of most community pharmacy sites in BC is disingenuous. We regret that there has been little movement on this issue by the College, especially in light of the substantial efforts, and excellent work, completed by the Working Group. It is very disappointing that those efforts at collaboration, undertaken in good faith in the interests of the profession, are ignored and these requirements are being imposed despite the complete absence of assessment, analysis or evidence in support.

Further, physical barriers is still undefined in the Bylaw. This creates an unfair degree of vagueness in the bylaw. As we stated in our letter of January 12, 2016, unless the term is defined in the bylaw itself to include the range of examples provided in the policy, there is too much scope for arbitrary decisions as to registrants' compliance. Accordingly, we suggest, again, that a definition of physical barriers be added to the bylaw, as follows:

**Recommendation:** add a definition of "physical barriers" as "means an impediment to access and includes a lockable gate, cabinet, case, door, or screen, or grillwork or panel or other similar things."

Second, the addition of personal information protection to the purpose of the bylaw and to the definition of "pharmacy security" came long after the conclusion of the work done by the Robbery Prevention Working Group. Privacy issues were not part of the Terms of Reference for the Working Group, and no analysis was done of the risks, the legal duties or potential harms arising in relation to personal information or the differences from drug thefts. Protection of personal information is already highly regulated; community pharmacies are subject to oversight by the Information and Privacy Commissioner for BC and the law in that area is very quickly evolving. The Bylaw and PPP-74 are still too prescriptive and do not enable community pharmacies to have the flexibility that may be required to properly respond to compliance requirements under evolving privacy law.

Yours Sincerely,



Geraldine Vance  
CEO, BC Pharmacy Association