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Recent decisions confirm reasonableness of hospital mandatory COVID-19 vaccination policies

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The recent decisions of the Divisional Court (the Court) in *Rogelstad v. Middlesex Health Alliance*[1] and the Health Professions Appeal and Review Board (the HPARB) in *DePass v. Chatham-Kent Health Alliance*[2] confirm the reasonableness of hospitals' mandatory COVID-19 vaccination policies during the pandemic. In *Rogelstad*, the Court also affirmed that the assessment of whether a hospital policy is reasonable is based on the information available at the time the policy was implemented and acted upon, and not on hindsight.

Background

During the COVID-19 pandemic, the vast majority of hospitals across Ontario (and many across Canada) implemented policies mandating that all hospital staff (including physicians) become vaccinated against COVID-19. These policies were implemented further to a directive from Ontario's Chief Medical Officer of Health [PDF] which required all public hospitals to establish and implement a COVID-19 vaccination policy (Directive #6). In response, most Ontario hospitals implemented policies requiring mandatory COVID-19 vaccination for hospital staff, with significant consequences for non-compliance, including either temporary or permanent loss of employment (for employees) or privileges (for professional staff).

Since 2021, hospitals' implementation of mandatory COVID-19 vaccination policies has been litigated in various tribunals and courts.

On January 15, 2025, the Divisional Court of the Ontario Superior Court of Justice released its decision in *Rogelstad. Rogelstad* was the only appeal to the Court by a physician whose hospital privileges were revoked due to refusal to comply with mandatory COVID-19 vaccination. Both Dr. Rogelstad and Dr. Ian DePass (addressed below) appealed to the HPARB, which denied their appeals and found the revocations of hospital privileges and the related mandatory COVID-19 vaccination policies reasonable.

The DePass appeal

On November 26, 2024, the HPARB released its decision dismissing the appeal by Dr. DePass regarding the decision of the Chatham-Kent Health Alliance to revoke his hospital privileges

because he refused to become vaccinated against COVID-19, as required by the hospital's policy (the CKHA Policy).[3] In finding that the CKHA Policy was justified, the HPARB considered that the policy was implemented to maintain consistency with the other hospitals in the same region and to align with the approach taken across Ontario to "bend the curve" to avoid COVID-19 cases completely overwhelming hospital capacity.

In its decision, the HPARB agreed with the opinion of the CKHA's expert witness, Dr. Dick Zoutman, on three key points (1) the fact that 120 or more of Ontario's 140 public hospitals implemented a mandatory vaccination policy is a "huge vote of confidence in that approach"; (2) where there is reasonable evidence of an impending threat of public harm, it is inappropriate to wait for scientific proof of causation before taking reasonable steps to avert the threat; and (3) the CKHA Policy was appropriate and consistent with provincial and national guidance.

The Rogelstad appeal

In *Rogelstad,* the Court affirmed the 2024 decision of HPARB upholding the reasonableness of the Middlesex Hospital Alliance Board of Directors revocation of Dr. Rogelstad's hospital privileges due to his refusal to comply with the hospital's COVID-19 vaccination policy (the MHA Policy).

In its decision, the Court endorsed the HPARB's application of the "Matangi test"[4] to assess the reasonableness of the MHA Policy, where the dominant consideration was the public interest of a hospital remaining open in a pandemic. The Court found that the HPARB had clearly explained that the MHA Policy was reasonable because it was administered with fairness; applied equally to all workers; consistent with its rationale to protect patients; compatible with its responsibility under Directive #6; and unencumbered with irrelevant considerations.

The Court held that it was reasonable for the hospital to rely on public health guidance it had around the time the MHA Policy was brought into effect (which unanimously supported health care professionals becoming vaccinated) and that vaccination was the most effective measure to reduce the risk of COVID-19 in individuals and the community. It was also reasonable for the hospital to rely on public health guidance to assess the risk of unvaccinated workers in the hospital. Further, it was reasonable for the MHA — an alliance of two small rural hospitals — to consider and be guided by measures taken by larger hospitals in Ontario and public health recommendations at the time.

In considering what evidence was relevant when assessing the reasonableness of the MHA policy and the revocation of Rogelstad's privileges, the Court referenced HPARB's preliminary decision in *DePass*. The Court noted that in its hearing decision in *DePass*, The HPARB reversed itself and adopted the approach that hindsight is not the standard for assessing reasonableness of hospital board decisions. Rather, in assessing reasonableness of hospital policy or decision-making, the HPARB ought to only consider evidence available at the time the hospital board made its decision.

Conclusion

The recent decisions of the HPARB and the Ontario Divisional Court in *DePass* and *Rogelstad* provide important guidance to public hospitals regarding policy implementation and decision-making.

These decisions provide assurance to hospitals regarding the reasonableness of their

decision-making in the context of a public health crisis, and affirmation of hospitals' reasonable reliance on public health guidance and the precautionary measure of mandatory COVID-19 vaccination.

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[1] *Rogelstad v. Middlesex Health Alliance*, 2025 ONSC 263. The correct name of the respondent hospital is Middlesex Hospital Alliance.

[2] *Dr. Ian Depass v. Chatham-Kent Health Alliance*, 2024 CanLII 137817 (ON HPARB).

[3] Osler was counsel to the CKHA in the proceedings before the CKHA Board and HPARB.

[4] In *Matangi v. Kingston General Hospital*, 1998 CanLII 18863 (ON SC), in considering the reasonableness of a hospital's policy, the Divisional Court held "*so long as staff selections are administered with fairness, geared by a rationale, compatible with Hospital responsibility, and unencumbered with irrelevant considerations, a court should not interfere*."