



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SIXTH LEGISLATURE

Bill 186
(2001, chapter 1)

An Act to provide for the maintenance of pharmaceutical services in Québec

Introduced 22 February 2001
Passage in principle 22 February 2001
Passage 22 February 2001
Assented to 22 February 2001

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EXPLANATORY NOTES

This bill orders pharmacists to furnish pharmaceutical services and prescription medications, in accordance with the Health Insurance Act, the Act respecting prescription drug insurance and the applicable instruments thereunder, to persons eligible under the basic prescription drug insurance plan or under a program administered by the Régie de l'assurance maladie du Québec, without reducing, slowing down or modifying their usual professional activities. The bill prohibits pharmacists from participating in concerted action consisting in the pharmacists' becoming non-participating professionals, and renders certain notices of non-participation transmitted to the Board absolutely null.

The bill specifies the obligations incumbent upon the Association québécoise des pharmaciens propriétaires to ensure that normal pharmaceutical services are maintained.

The bill grants the Government the power to determine by order what will stand in lieu of an agreement between the Minister of Health and Social Services and the Association québécoise des pharmaciens propriétaires until 31 March 2002.

The bill also enacts various measures of an administrative, civil or penal nature for the purposes of the application of the Act.

Bill 186

AN ACT TO PROVIDE FOR THE MAINTENANCE OF PHARMACEUTICAL SERVICES IN QUÉBEC

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS :

DIVISION I

INTERPRETATION

1. In this Act,

“Association” means the Association québécoise des pharmaciens propriétaires constituted under the Professional Syndicates Act (R.S.Q., chapter S-40);

“Board” means the Régie de l’assurance maladie du Québec.

DIVISION II

MAINTENANCE OF SERVICES

2. As of 00:01 on 23 February 2001, every pharmacist shall, in accordance with the provisions of the Health Insurance Act (R.S.Q., chapter A-29), the Act respecting prescription drug insurance (R.S.Q., chapter A-29.01) and the applicable instruments thereunder, furnish to persons eligible under the basic prescription drug insurance plan established by the Act respecting prescription drug insurance or under a program administered by the Board under the Act respecting the Régie de l’assurance maladie du Québec (R.S.Q., chapter R-5), pharmaceutical services and medications prescribed by a physician, a resident in medicine, a dentist or a midwife, without reducing, slowing down or modifying his or her usual professional activity.

This section does not apply to pharmacists referred to in section 432 of the Act respecting health services and social services (R.S.Q., chapter S-4.2) working for an institution to which that Act applies.

3. No pharmacist may participate in concerted action consisting in the pharmacist’s becoming a non-participating professional within the meaning of the Health Insurance Act.

Every notice of non-participation concerning a pharmacist transmitted to the Board between 25 January 2001 and 22 February 2001 is absolutely null.

4. The Association is prohibited from undertaking or continuing concerted action that involves a contravention of the first paragraph of section 2 or of section 3 by pharmacists, whether or not the pharmacists are members of the Association.

5. The Association must take the appropriate measures to induce its members to comply with the first paragraph of section 2 and of section 3.

6. No person may, by omission or otherwise, prevent or impede the furnishing of pharmaceutical services or medications.

7. No person may prohibit or hinder a person's access to a place to which that person has a right of access to furnish or receive pharmaceutical services or medications.

8. No person may help or, by encouragement, advice, consent, authorization or order, induce a pharmacist, the Association or any other person to contravene any provision of this division.

DIVISION III

POWER OF THE GOVERNMENT

9. Notwithstanding any inconsistent provision of an Act, regulation or agreement, the Government may determine by order what will stand in lieu of an agreement within the meaning of section 19 of the Health Insurance Act between the Minister of Health and Social Services and the Association.

The provisions of the order may have effect from 1 April 1998 to 31 March 2002.

DIVISION IV

ADMINISTRATIVE AND CIVIL MEASURES

§1. — Deductions

10. From the time the Minister of Health and Social Services informs the Board in writing that the Minister has ascertained that the Association has engaged in an act referred to in section 4 or has failed to take the measures referred to in section 5, no union assessment, special assessment or other amount in lieu thereof required to be withheld by the Board pursuant to an agreement to which the Association is a party and that binds the Board under section 19 of the Health Insurance Act may be deducted by the Board during the year 2001.

§2. — *Reduction of remuneration*

11. Notwithstanding any inconsistent provision of an Act, regulation or agreement, where the Board or an inspector referred to in section 18 ascertains that a pharmacist has contravened the first paragraph of section 2, no remuneration, other than the cost of medications, may be paid by the Board to the pharmacist who is bound by an agreement under section 19 of the Health Insurance Act for pharmaceutical services furnished in the pharmacy where the contravention took place, for the period of the ascertained contravention.

If a payment has been made to a pharmacist despite the provisions of the first paragraph, the Board shall recover the amount of the payment from the pharmacist by set-off or otherwise.

12. The remuneration payable to a pharmacist bound by an agreement under section 19 of the Health Insurance Act for pharmaceutical services furnished by the pharmacist after a period of contravention referred to in section 11, other than the cost of medications, shall be the remuneration normally payable, reduced for each day or part of a day during which the contravention continued, by an amount equal to the quotient obtained by dividing the amount of the remuneration, other than the cost of medications, paid by the Board pursuant to the agreement during the period beginning on 23 January 2001 and ending on 21 February 2001 in respect of the pharmaceutical services furnished in the pharmacy where the contravention took place, by the number of days of operation of that pharmacy during that period.

13. The Board shall withhold the amounts recovered pursuant to the second paragraph of section 11 or deducted pursuant to section 12. It shall inform each pharmacist concerned of the amounts withheld. Amounts are withheld up to 10% of the remuneration payable to the pharmacist per billing period.

Where such amounts cannot be withheld because of a change in the ownership of the pharmacy, the Board shall recover from the pharmacist concerned the amounts owing with accrued interest, if any, by set-off or otherwise.

14. The Board shall remit the sums referred to in section 12 to a registered charity within the meaning of the Taxation Act (R.S.Q., chapter I-3) designated by order of the Government.

15. Any disagreement as to the application of section 11 or section 12 must be referred to arbitration as if it were a dispute resulting from the application of an agreement within the meaning of section 54 of the Health Insurance Act.

In the case of a disagreement as to the application of the first paragraph of section 11, a pharmacist bound by an agreement under section 19 of the Health Insurance Act is entitled to the reimbursement of the amount withheld only if the pharmacist establishes that the pharmacist who allegedly contravened the first paragraph of section 2 complied with that paragraph or was prevented

from complying therewith despite having taken all reasonable measures to do so and that the non-compliance with that paragraph was not part of concerted action.

The person to whom a disagreement referred to in the second paragraph is referred for arbitration may only confirm or set aside the decision of the Board on the basis of that paragraph alone.

§3. — *Civil liability*

16. The Association is liable for any damage caused during a contravention of the first paragraph of section 2 or of section 3 by its members, unless it establishes that the damage is not a result of the contravention or that the contravention is not part of concerted action.

17. Any person who suffers damage by reason of an act performed in contravention of the first paragraph of section 2 or of section 3 may apply to the competent court to obtain compensation.

Notwithstanding article 1003 of the Code of Civil Procedure (R.S.Q., chapter C-25), where a person referred to in the first paragraph brings a class action under Book IX of that Code by way of a motion in accordance with the second paragraph of article 1002 of that Code, the court shall authorize the bringing of the class action if it is of the opinion that the person to whom the court intends to ascribe the status of representative is in a position to adequately represent the members of the group described in the motion.

DIVISION V

INSPECTIONS

18. For the purposes of this Act, a person designated as an inspector by the president or secretary of the Board may

(1) require any relevant information relating to the activities carried on in the pharmacy;

(2) examine and make copies of any bill or other relevant document relating to such activities.

19. Every person is prohibited from hindering the activities of an inspector referred to in section 18 in the exercise of the inspector's duties, from misleading the inspector by concealment or false declarations, from refusing to furnish information or a document the inspector is entitled to require or examine under this Act, or to conceal or destroy such a document.

20. An inspector referred to in section 18 must, on demand, present a certificate signed by the president or secretary of the Board attesting to the inspector's capacity.

DIVISION VI

PENAL PROVISIONS

21. Every person who contravenes any provision of Division II or of section 19 is guilty of an offence and is liable, for each day or part of a day during which the offence continues, to a fine of

(1) \$100 to \$500 in the case of a natural person other than a person referred to in paragraph 2, 3 or 4;

(2) \$500 to \$1,000 in the case of a pharmacist;

(3) \$2,000 to \$5,000 in the case of a pharmacist bound by an agreement under section 19 of the Health Insurance Act;

(4) \$7,000 to \$35,000 in the case of an executive, employee or representative of the Association; and

(5) \$25,000 to \$125,000 in the case of the Association.

22. In penal proceedings under this Act, the status of pharmacist may be proved by the deposit of a copy, certified true by the secretary of the Order or by any other person designated for that purpose by the Order, of the roll of the Ordre des pharmaciens du Québec or of an extract therefrom. In addition, the status of pharmacist bound by an agreement under section 19 of the Health Insurance Act may be proved by the deposit of a copy of the pharmacist's registration card kept by the Board, certified true by the secretary of the Board or by any other person designated for that purpose by the president of the Board.

In such proceedings, the number and nature of the professional services furnished by a pharmacist within the scope of an agreement under section 19 of the Health Insurance Act in a particular period may be proved by the deposit of a copy, certified true by the secretary of the Board or by any other person designated for that purpose by the president of the Board, of an extract from a register maintained by the Board indicating the number and nature of the professional services furnished by the pharmacist during that period.

23. In penal proceedings under this Act, proof that a contravention of a provision of Division II was committed by a pharmacist in a pharmacy is proof, in the absence of any evidence to the contrary, that the contravention took place with the consent or authorization or on the order of the pharmacist or of each of the members of the partnership of pharmacists who or that is the owner of the pharmacy, of the pharmacist who manages the pharmacy or of the pharmacist who supervises the pharmacy pursuant to section 28, 29 or 30 of the Pharmacy Act (R.S.Q., chapter P-10).

24. The Board may disclose to the Attorney General any information obtained for the enforcement of the Health Insurance Act, the Act respecting

prescription drug insurance or the Act respecting the Régie de l'assurance maladie du Québec if such information is required for the purposes of penal proceedings under this Act.

DIVISION VII

FINAL PROVISIONS

25. This Act prevails over any inconsistent provision of the Health Insurance Act, the Act respecting prescription drug insurance or the applicable instruments thereunder.

26. The Minister of Health and Social Services is responsible for the administration of this Act.

27. Division II of this Act ceases to have effect on the date determined by order of the Government.

28. The provisions of this Act come into force on 22 February 2001.