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# NATIONAL ASSEMBLY

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SECOND SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 37

(2006, chapter 16)

## **An Act respecting the provision of health services by medical specialists**

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**Introduced 12 June 2006**

**Passage in principle 12 June 2006**

**Passage 13 June 2006**

**Assented to 13 June 2006**

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## EXPLANATORY NOTES

*The purpose of this bill is to provide for the conditions of medical specialists' participation in the health insurance plan and other programs administered by the Régie de l'assurance maladie du Québec, within the limits imposed by the state of public finances, to ensure the continued provision of professional services by medical specialists and to improve the accessibility and the quality of health services.*

*To that end, the bill renews the Master Agreement between the Minister of Health and Social Services and the Federation of Medical Specialists of Québec until 31 March 2010. However, it contains new provisions relating to the remuneration of medical specialists for the period from 1 April 2004 to 31 March 2010.*

*As well, the bill provides for the allocation of financial resources, mainly to shorten waiting lists and increase the hours of operation of operating rooms.*

*Lastly, the bill includes provisions dealing with the continuity of health services and various administrative, civil, disciplinary and penal measures.*

## **Bill 37**

### **AN ACT RESPECTING THE PROVISION OF HEALTH SERVICES BY MEDICAL SPECIALISTS**

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

#### **DIVISION I**

##### **PURPOSE AND SCOPE**

**1.** The purpose of this Act is to provide for the conditions of medical specialists' participation in the health insurance plan and other programs administered by the Régie de l'assurance maladie du Québec (the Board), within the limits imposed by the state of public finances, to ensure continued provision of professional services by medical specialists and to improve the accessibility and the quality of health services.

**2.** For the purposes of this Act, a medical specialist is a physician who is a member of the Ordre des médecins du Québec, holds a specialist's certificate or a restrictive permit in a medical specialty, and, on 12 June 2006, is subject to the application of the Master Agreement or subsequently becomes so.

In addition,

“association” means an association or group of medical specialists, whether or not constituted as a legal person, whose purpose is defending its members' interests;

“Federation” means the Federation of Medical Specialists of Québec formed under the Professional Syndicates Act (R.S.Q., chapter S-40) or any group that succeeds it; and

“Master Agreement” means the master agreement entered into between the Minister of Health and Social Services and the Federation on 1 October 1995, and its amendments, as renewed and amended as of 1 April 2002 by the “Protocole d'accord relatif à l'application de l'Accord cadre MSSS-FMSQ pour les années 1999-2000 à 2003-2004”, and its amendments.

## **DIVISION II**

### **RENEWAL OF MASTER AGREEMENT**

**3.** The Master Agreement is renewed and binds the parties, with the necessary modifications, until 31 March 2010.

However, the provisions in the schedule relating to the remuneration of medical specialists also bind the parties until 31 March 2010.

## **DIVISION III**

### **ALLOCATION OF FINANCIAL RESOURCES**

**4.** In addition to the special resource envelope dedicated to the improvement of the quality and the accessibility of medical services that is added under subparagraph 3 of paragraph 2 of the schedule, an amount of \$50,000,000 is allocated by the Minister of Health and Social Services, on the conditions the Minister determines, mainly to shorten waiting lists and increase the hours of operation of operating rooms.

The financial resources allocated and the measures taken by the Minister under this section are not part of the Master Agreement.

## **DIVISION IV**

### **OBLIGATIONS RELATING TO THE CONTINUITY OF HEALTH SERVICES**

**5.** No medical specialist may participate in concerted action to stop, reduce, slow down or modify his or her professional activity or to become a professional who has withdrawn or a non-participating professional within the meaning of the Health Insurance Act (R.S.Q., chapter A-29).

The professional activity of a medical specialist consists of the provision of insured services within the meaning of the Health Insurance Act and the provision of any other professional service whose cost is borne by the State or a body of the State.

Any notice of withdrawal or non-participation concerning a medical specialist sent to the Board after 12 June 2006 is null unless the medical specialist proves that the notice was not sent as part of concerted action.

Similarly, any prior notice of ceasing to practise sent by a medical specialist after 12 June 2006 in accordance with section 254 of the Act respecting health services and social services (R.S.Q., chapter S-4.2) is null unless the medical specialist proves that the notice was not sent as part of concerted action.

**6.** The Federation and the associations are prohibited from undertaking or continuing concerted action that involves a contravention of the first paragraph of section 5 by medical specialists, whether or not the medical specialists are members of the Federation or the association concerned.

**7.** The Federation and the associations must take the appropriate means to induce their members to comply with the first paragraph of section 5.

**8.** No person may, by omission or otherwise, prevent or impede the provision of medical services provided by medical specialists.

**9.** No person may help or, by encouragement, advice, consent, authorization or order, induce a medical specialist, the Federation, an association or any other person to contravene any provision of this division.

**10.** The Conseil des services essentiels (the Council) may, on its own initiative or at the request of the Minister of Health and Social Services, a health and social services agency or an institution within the meaning of the Act respecting health services and social services, inquire into concerted action, apprehended or in progress, involving the Federation, an association or medical specialists, that affects the provision of medical services.

**11.** The Council may, if it considers that the concerted action is or is likely to be prejudicial to the medical services to which every person is entitled, exercise its powers under sections 111.17 to 111.20 of the Labour Code (R.S.Q., chapter C-27).

**12.** If the Government considers that the Council does not include enough members to adequately perform the duties assigned to the Council by sections 10 and 11, it may appoint one or more additional members for the period it determines.

Only a person having at least 10 years' experience in the provision of medical services, the teaching of medicine or the field of health or social services may be so appointed.

The second paragraph of section 111.0.3 of the Labour Code does not apply to the appointment of such a person, and the first, second and fourth paragraphs of section 111.0.4 do not apply in respect of a member so appointed.

For the purposes of sections 10 and 11, a division of the Council consists of three members, and the presence of the president or the vice-president is not necessary to form a quorum.

## **DIVISION V**

### **ADMINISTRATIVE AND CIVIL MEASURES**

#### **§1. — *Deductions***

**13.** As soon as the Minister of Health and Social Services informs the Board in writing that the Federation or an association has engaged in an act referred to in section 6 or 9 or has failed to take the means referred to in section 7, the Board must cease to deduct, for a period of one year, every union assessment, special assessment or other amount in lieu thereof required to be withheld by the Board under the Master Agreement on behalf of the Federation or the association concerned, as the case may be.

**14.** Despite any stipulation to the contrary, a medical specialist represented by an association is not required to pay an assessment, contributions or an amount in lieu thereof to the association or to a third party for the benefit of the association for the duration of the cessation referred to in section 13.

#### **§2. — *Reduction of remuneration***

**15.** As soon as the Minister of Health and Social Services or a health and social services agency informs the Board in writing that a medical specialist has contravened the first paragraph of section 5, the Board may not remunerate that medical specialist for the medical services he or she provided during the day the contravention occurred.

If a payment is made despite the first paragraph, the Board recovers the amount by set-off or otherwise.

In addition, the remuneration normally applicable for medical services provided by the medical specialist is reduced, for each day or part of a day during which the medical specialist contravened the first paragraph of section 5, by an amount equal to twice the average daily remuneration of medical specialists in that same specialty.

**16.** To establish the average daily remuneration referred to in the third paragraph of section 15, the Board must use the billing data of medical specialists in the same specialty over the three-month period preceding the month in which the contravention occurred.

**17.** The Board must withhold the amounts resulting from the application of the second and third paragraphs of section 15 and inform each medical specialist concerned of the amounts withheld. Amounts are withheld up to 20% of the remuneration payable to the medical specialist per billing period.

**18.** The Board must remit the sums referred to in the third paragraph of section 15 to a registered charity within the meaning of the Taxation Act (R.S.Q., chapter I-3), designated by the Government.

**19.** Any disagreement as to the application of section 15 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 15, a medical specialist is entitled to the reimbursement of the amount withheld only if the medical specialist proves that he or she complied with the first paragraph of section 5 or was prevented from complying with that paragraph despite having taken all reasonable means to do so and that the non-compliance with that paragraph was not part of a concerted action.

### §3. — *Civil liability*

**20.** The Federation and the associations are liable for any damage caused during a contravention of the first paragraph of section 5 by their members, unless they prove that the damage is not a result of the contravention, that the contravention is not part of concerted action or that the appropriate means were taken by the Federation or association concerned to prevent the contravention.

Any person who suffers damage by reason of an act performed in contravention of the first paragraph of section 5 may apply to the competent court to obtain compensation.

Any additional cost assumed by the State because a medical treatment had to be provided either outside Québec or in a region other than the region in which it should normally have been provided, among other things, constitutes damage suffered by the State or a body of the State.

**21.** Despite article 1003 of the Code of Civil Procedure (R.S.Q., chapter C-25), if a person who suffered damage by reason of an act performed in contravention of the first paragraph of section 5 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 authorizes 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 VI**

### **DISCIPLINARY MEASURES**

**22.** A medical specialist who participates in concerted action to stop, reduce, slow down or otherwise modify his or her professional activity commits an act derogatory to the dignity of the profession covered by section 59.2 of the Professional Code (R.S.Q., chapter C-26).

**23.** The executive director of an institution, the president and director general of a health and social services agency or the Minister of Health and Social Services informs the syndic of the Ordre des médecins du Québec in writing upon noting that a medical specialist is participating or has participated in concerted action. The syndic must then lodge with due dispatch any complaint that appears to be justified.

The discipline committee before which the complaint is brought must impose a penalty on the medical specialist concerned, unless that person can prove that the stoppage, reduction, slow-down or other modification of his or her professional activity was not part of any concerted action.

## **DIVISION VII**

### **PENAL MEASURES**

**24.** A person or organization that contravenes the first paragraph of section 5 or sections 6 to 9 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 person other than a person referred to in paragraphs 2 to 4;

(2) \$1,000 to \$5,000 in the case of a medical specialist;

(3) \$7,000 to \$35,000 in the case of an executive, employee or representative of the Federation or of an association; and

(4) \$25,000 to \$125,000 in the case of the Federation or an association.

**25.** In penal proceedings under this Act, the status of member of the Ordre des médecins du Québec may be proved by the filing of a copy of the roll of the Order or of an extract from it, certified true by the secretary of the Order or by another person it designates for that purpose.

The status of medical specialist may be proved by the filing of a copy of the specialist's certificate or restrictive permit, as the case may be, of the medical specialist, certified true in the same manner.

The status of physician receiving remuneration from the Board may be proved by the filing of the medical specialist's registration card kept by the Board and certified true by the secretary of the Board or by another person designated for that purpose by the president of the Board.



## **DIVISION VIII**

### **MISCELLANEOUS AND FINAL PROVISIONS**

**26.** The Board may communicate to the Attorney General any information obtained for the carrying out of the Health Insurance Act or the Act respecting the Régie de l'assurance maladie du Québec (R.S.Q., chapter R-5) if the information is required for the purposes of penal proceedings under this Act.

The Board may also disclose such information to the syndic of the Ordre des médecins du Québec for the purposes of a complaint referred to in Division VI.

**27.** The application of Letter of Agreement no. 146 dated 1 April 2003 and any proceedings concerning the application of its provisions in progress on 13 June 2006 are suspended until 31 March 2010, unless otherwise agreed between the parties.

**28.** The provisions of this Act with regard to the Master Agreement are deemed to be part of that agreement. In the event of a conflict, they prevail over any other provisions of the Master Agreement.

**29.** Division IV and section 22 cease to have effect on 31 March 2010 or on an earlier date set by the Government.

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

**31.** This Act comes into force on 13 June 2006.

SCHEDULE  
(Section 3)

**Provisions relating to the remuneration of medical specialists**

**1.** The overall resource envelope for each of the following periods of application, determined on an annual basis in accordance with paragraph 2, is as follows:

- (1) for the period from 1 April 2004 to 31 March 2005: \$1,887,400,000;
- (2) for the period from 1 April 2005 to 31 March 2006: \$1,915,700,000;
- (3) for the period from 1 April 2006 to 31 March 2007: \$1,991,900,000;
- (4) for the period from 1 April 2007 to 31 March 2008: \$2,118,500,000;
- (5) for the period from 1 April 2008 to 31 March 2009: \$2,218,600,000; and
- (6) for the period from 1 April 2009 to 31 March 2010: \$2,328,000,000.

**2.** The overall resource envelope provided for in paragraph 1 is arrived at by increasing the resource envelope of \$1,859,500,000, determined as at 31 March 2004, through

- (1) the application of the following monetary parameters:
  - (a) 2% for the period between 1 April 2006 and 31 March 2007;
  - (b) 2% for the period between 1 April 2007 and 31 March 2008;
  - (c) 2% for the period between 1 April 2008 and 31 March 2009; and
  - (d) 2% for the period between 1 April 2009 and 31 March 2010;
- (2) an adjustment of 1.5% applied, on 1 April of each year of the renewal period of the Master Agreement, to reflect changes in medical practice, in particular the effects of the growth and aging of the population and the net addition of medical staff; and
- (3) the addition of a special resource envelope, not exceeding \$119,500,000 as at 31 March 2010, dedicated to the improvement of the quality and accessibility of medical services and the addition of new services.

**3.** The mechanics and the dates of coming into force of the measures described in subparagraph 3 of paragraph 2 are to be determined by the Minister of Health and Social Services.

As an indication, the measures may, for instance, pertain to remuneration for on-call duty, remuneration for activities in hospital centres designated as university hospital centres, the revision of rules governing the capping of activities and practice earnings, the remuneration of medical specialists in psychiatry for professional activities relating to the development of supply in second- and third-line mental health services, remuneration for certain professional activities on behalf of a health and social services agency, a regional panel of heads of departments of specialized medicine or the Québec-wide integrated university health network coordination panel, remuneration for medical services provided through a means of telecommunication or telecommunications technology, the preservation of accessibility to medical services for institutions insufficiently served by health professionals, a revision of the manner of calculating increased remuneration in the regions, the establishment of conditions to facilitate the implementation of a government framework program regarding infection control in institutions, the improvement of the performance of Québec's breast cancer screening program and the Government's contribution toward payment of medical specialists' professional liability insurance premiums.

