1983

c 43 Health Facilities Special Orders Act, 1983

Ontario
CHAPTER 43

An Act respecting certain Health Facilities

Assented to June 21st, 1983

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. In this Act,

   (a) "ambulance service" has the same meaning as in the *Ambulance Act*;

   (b) "Board" means,

      (i) in relation to an ambulance service or a private hospital, the Health Facilities Appeal Board under the *Ambulance Act*;

      (ii) in relation to a nursing home, the Nursing Homes Review Board under the *Nursing Homes Act*;

      (iii) in relation to a laboratory or a specimen collection centre, the Laboratory Review Board under the *Public Health Act*;

   (c) "health facility" means,

      (i) an ambulance service under the *Ambulance Act*;

      (ii) a nursing home under the *Nursing Homes Act*;

      (iii) a private hospital under the *Private Hospitals Act*;

      (iv) a laboratory or a specimen collection centre under the *Public Health Act*;

   (d) "laboratory" has the same meaning as in the *Public Health Act*;
(e) "licence" means a licence,

(i) under the *Ambulance Act*, to operate an ambulance service,

(ii) under the *Nursing Homes Act*, to establish, operate or maintain a nursing home,

(iii) under the *Private Hospitals Act*, to use a house as a private hospital,

(iv) under the *Public Health Act*, to establish, operate or maintain a laboratory or a specimen collection centre;

(f) "licensee" means the holder of a licence;

(g) "Minister" means the Minister of Health;

(h) "Ministry" means the Ministry of Health;

(i) "nursing home" has the same meaning as in the *Nursing Homes Act*;

(j) "operate" means carry on the activity permitted by a licence;

(k) "private hospital" has the same meaning as in the *Private Hospitals Act*;

(l) "specimen collection centre" has the same meaning as in the *Public Health Act*.

**2.** The purposes of this Act are:

1. To enable the Minister to act expeditiously to prevent, eliminate or reduce harm to any person, an adverse effect on the health of any person or impairment of the safety of any person caused or likely to be caused by the physical state of a health facility or the manner of operation of a health facility.

2. To enable the Minister to act expeditiously where the conduct of a licensee or of an officer or director of a corporate licensee affords reasonable grounds for belief that the health facility is not being or is not likely to be operated with competence, honesty, integrity and concern for the health and safety of persons served by the health facility.
3.—(1) Where the Minister is of the opinion upon reasonable grounds.

(a) that the physical state of a health facility or the manner of operation of the health facility by the licensee is causing or is likely to cause harm to or an adverse effect on the health of any person or impairment of the safety of any person; and

(b) that it is practicable to correct the physical state or the manner of operation, as the case may be, of the health facility so that it will not cause harm to or an adverse effect on the health of any person or impairment of the safety of any person.

the Minister by a written order may suspend the licence for the health facility until the Minister is satisfied that the physical state or the manner of operation, as the case may be, of the health facility has been so corrected.

(2) An order under subsection (1) shall state the matters that must be corrected in order to obtain the removal of the suspension of the licence for the health facility.

(3) All orders under subsection (1) shall be posted within clear view at the facility and shall be available at all placement co-ordination offices.

4. Where the Minister is of the opinion upon reasonable grounds that an activity carried on, or the manner of carrying on an activity, in the course of the operation of a health facility is causing or is likely to cause harm to or an adverse effect on the health of any person or impairment of the safety of any person, the Minister by a written order may require the licensee,

(a) to suspend the carrying on of the activity until the Minister is satisfied that the carrying on of the activity, or the manner of carrying on the activity, will not cause harm to or adversely affect the health of any person or impairment of the safety of any person; or

(b) where the Minister is of the opinion that it is not practicable for the licensee or the health facility to carry on the activity without causing harm to or adversely affecting the health of any person or impairment of the safety of any person, to cease the carrying on of the activity.
5.—(1) The Minister shall not,

(a) make an order suspending the licence for a health facility;

(b) make an order requiring the suspension of an activity carried on in the course of operating a health facility;

(c) propose to revoke the licence for a health facility; or

(d) propose to make an order requiring a licensee to cease carrying on an activity carried on in the course of the operation of a health facility,

unless the Minister gives the licensee written notice of the Minister's intention, together with written reasons therefor.

(2) A notice by the Minister under subsection (1) shall inform the licensee that the Minister will consider any written explanations or representations in the matter submitted to the Minister by the licensee within fifteen days after the notice under subsection (1) is given to the licensee.

(3) The Minister shall consider the written explanations or representations, if any, submitted by the licensee in accordance with subsection (2) before deciding whether to proceed to make an order or proposal mentioned in subsection (1).

(4) Subsections (1) to (3) do not apply where the Minister is of the opinion that it is in the best interest of the persons served by the health facility that the Minister proceed forthwith to make the order or proposal and the Minister gives notice of his opinion to the licensee.

6. The Minister may propose to revoke the licence for a health facility where,

(a) the physical state of the health facility is causing or is likely to cause harm to or an adverse effect on the health of any person or impairment of the safety of any person and it is not practicable to correct the physical state of the health facility;

(b) the manner of operation of the health facility is causing or is likely to cause harm to or an adverse effect on the health of any person or impairment of the safety of any person and it is not practicable to correct the manner of operation of the health facility; or
(c) the conduct of the licensee or, where the licensee is a corporation, of the corporation or an officer or director of the corporation affords reasonable grounds for belief that the health facility is not being or is not likely to be operated with competence, honesty, integrity and concern for the health and safety of persons served by the health facility.

7.—(1) Where the licence for a health facility is suspended under this Act and the Minister is of the opinion that the health facility should continue in operation in order to provide temporarily for the health and safety of persons in the community served by the health facility, the Minister by a written order may take control of and operate the health facility for a period not exceeding six months.

(2) Where the Minister takes control of and operates a health facility under subsection (1), the Minister has all the powers of the licensee of the health facility and the Minister may appoint one or more persons to conduct, manage, operate and administer the health facility and each person so appointed is a representative of the Minister.

(3) The Board, upon application with notice by the Minister, by order may extend the period of time during which the Minister may retain control of and operate the health facility for successive periods of not more than six months each, where the Board is satisfied that a hearing or an appeal has been commenced under this Act and the proceedings have not been finally disposed of and the Minister continues to be of the opinion that the health facility should continue in operation in order to provide temporarily for the health and safety of persons in the community served by the health facility.

(4) An order under subsection (1) or (3) takes effect immediately and is final and binding on the licensee.

(5) An order under subsection (1) or (3) continues in force,

(a) until terminated by the Minister;

(b) where the licence for the health facility has been suspended under this Act, until the suspension is removed; or

(c) where the Minister has proposed under this Act to revoke the licence for the health facility, until the time for requiring a hearing or an appeal has expired or until the proceedings have been finally disposed of and, where persons are cared for in the health facili-
ty, until every person cared for in the health facility has found alternative accommodation.

(6) The Minister may have such repairs made to a health facility that is under the control of the Minister under this section as the Minister considers necessary to prevent, eliminate or reduce harm to or an adverse effect on the health of any person or impairment of the safety of any person.

(7) The cost of repairs under subsection (6) are a debt due by the licensee to the Crown in right of Ontario and may be recovered with costs by action in a court of competent jurisdiction.

8. The licensee of a health facility is not entitled to payment for any service that is provided by the health facility while the health facility is under the control of the Minister under this Act.

9. The licensee of a health facility is entitled to reasonable compensation from the Crown for the use of property of the licensee while the health facility is under the control of the Minister under this Act.

10.—(1) Where the Minister proposes to revoke a licence or to require a licensee to cease carrying on an activity, the Minister shall deliver notice of his proposal, together with written reasons therefor, on the licensee.

(2) Where the Minister by order suspends the licence for a health facility or by order requires a licensee to suspend the carrying on of an activity in a health facility, the Minister shall deliver with the order notice that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice is served on the licensee, notice in writing to the Board and to the Minister requiring a hearing, and the licensee may so require such a hearing.

(3) A notice under subsection (1) shall inform the licensee that the licensee is entitled to a hearing by the Board if the licensee mails or delivers, within fifteen days after the notice under subsection (1) is served on the licensee, notice in writing requiring a hearing to the Minister and the Board, and the licensee may so require such a hearing.

(4) Where a licensee requires a hearing in accordance with subsection (2) or (3), the Board shall appoint a time for and hold the hearing within sixty days of receipt of the notice in writing by the Board.
(5) Where the hearing is required in accordance with subsection (2), the Board, by order, may confirm, vary or rescind the order and take such action as the Board considers the Minister ought to take in accordance with this Act and the regulations.

(6) Where the hearing is required in accordance with subsection (3), the Board, by order, may direct the Minister to carry out his proposal or refrain from carrying out his proposal and to take such action as the Board considers the Minister ought to take in accordance with this Act and the regulations.

(7) For the purposes of subsections (5) and (6), the Board may substitute its opinion for that of the Minister.

(8) Where the licensee does not require a hearing in accordance with subsection (3), the Minister may carry out the proposal stated in the Minister's notice under subsection (1).

(9) The Board may extend the time for the giving of notice requiring a hearing by a licensee under this section either before or after expiration of such time where it is satisfied that there are prima facie grounds for granting relief to the licensee following upon a hearing and that there are reasonable grounds for applying for the extension and the Board may give such directions as it considers proper consequent upon the extension.

11.—(1) The Minister, the licensee who has required the hearing and such other persons as the Board may specify are parties to proceedings before the Board under this Act.

(2) Notice of a hearing under this Act shall afford the licensee a reasonable opportunity to show or to achieve compliance before the hearing with all lawful requirements for the retention of the licence.

(3) A party to proceedings under subsection (1) shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

(4) Members of the Board holding a hearing shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or his representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and in such case the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.
(5) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies or a transcript thereof shall be furnished upon the same terms as in the Supreme Court.

(6) No member of the Board shall participate in a decision of the Board following upon a hearing unless he was present throughout the hearing and heard the evidence and argument of the parties and, except with the consent of the parties, no decision of the Board shall be given unless all members so present participate in the decision.

(7) Documents and things put in evidence at the hearing shall, upon the request of the person who produced them, be released to the person by the Board within a reasonable time after the matter in issue has been finally determined.

12.—(1) Any party to the proceedings before the Board may appeal from its decision or order to the Divisional Court in accordance with the rules of court.

(2) Where any party appeals from a decision or order of the Board, the Board shall forthwith file in the Supreme Court the record of the proceedings before it in which the decision was made, which, together with the transcript of evidence if it is not part of the Board’s record, shall constitute the record in the appeal.

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Board and may exercise all powers of the Board to direct the Minister to take any action which the Board may direct the Minister to take and as the court considers proper and for such purposes the court may substitute its opinion for that of the Minister or of the Board, or the court may refer the matter back to the Board for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

13.—(1) Notwithstanding that a hearing is required in respect of an order under this Act by the Minister suspending the licence for a health facility or requiring the suspension of an activity carried on in the course of operating a health facility or that an appeal is taken from a decision of a Board in respect of the order, the order comes into force when it is delivered to the person to whom it is directed, is effective until varied or rescinded on appeal and is not stayed by the hearing or appeal.
(2) Where the Minister delivers to the licensee of a health facility notice of proposal to revoke the licence for the health facility, the licence is suspended at and from the time of delivery until the expiry of the time for requiring a hearing or, where a hearing is required, the final disposition of the hearing and appeal, if any, in the matter.

(3) Where the Minister delivers to the licensee of a health facility notice of proposal to require the cessation of an activity in the course of the operation of the health facility, the right to carry on the activity is suspended at and from the time of delivery of the notice until the expiry of the time for requiring a hearing or, where a hearing is required, the final disposition of the hearing and appeal, if any, in the matter.

14.—(1) An order, notice or document that is required or authorized to be given or delivered to a person under this Act or the regulations is sufficiently given or delivered if delivered personally or mailed to the person at his or her last address appearing in the records of the Ministry.

(2) Delivery of an order, notice or document mentioned in subsection (1) shall not be carried out by mail until all reasonable efforts have been made to give or deliver the order, notice or document personally.

15.—(1) Every person who knowingly fails to comply with an order under this Act, and every director or officer of a corporation who knowingly conspires in such failure, is guilty of an offence and on conviction is liable to a fine of not more than $25,000.

(2) Where a corporation is convicted of an offence under subsection (1), the maximum penalty that may be imposed on the corporation is $100,000.

(3) No proceeding in relation to an offence under this Act shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Minister.

16. Notwithstanding any other remedy or any penalty, the contravention by any person of an order made under this Act may be restrained by order of a judge of the Supreme Court or a local judge of the High Court upon application without notice by the Minister.

17. The Lieutenant Governor in Council may make regulations authorizing all such acts or things not specifically provided for in this Act as, in the opinion of the Lieutenant Governor, are necessary or expedient for the proper execution of this Act.
Governor in Council, are necessary or advisable to carry out effectively the purposes of this Act.

18. The provisions of this Act are in addition to the provisions of the Ambulance Act, the Nursing Homes Act, the Private Hospitals Act and the Public Health Act, and in the event of a conflict between a provision of one of those Acts and a provision of this Act, the provision of this Act shall prevail.

19. This Act comes into force on the day it receives Royal Assent.

20. The short title of this Act is the Health Facilities Special Orders Act, 1983.