MARIE-ANDRÉE (MAGGIE) GIRARD MD LLD FRCPC

PEDIATRIC ANESTHESIOLOGIST, CLINIQUE AGM

HEALTH LAW SCHOLAR

I HAVE NO CONFLICT OF INTEREST

THIS PRESENTATION IS MADE ON THE UNCEDED TERRITORY OF THE KANIEN'KEHA:KA (MOHAWK) NATION

THIS PRESENTATION IS AN INTRODUCTION TO THE LEGAL CONCEPTS SURROUNDING COLLABORATIVE PRACTICE…

IT IS NOT A LEGAL OPINION.

BEING LEGALLY MINDFULL… TO PROMOTE IPECP

- REVIEW OF THE CURRENT LEGAL STRUCTURE OF INTERPROFESSIONAL COLLABORATION IN THE HEALTHCARE SYSTEM IN QUEBEC
- IDENTIFICATION OF THE LEGAL LINCHPIN TO DECONSTRUCT COMMONLY FALSE IDEAS ABOUT INTERPROFESSIONAL COLLABORATION
- IDENTIFICATION THE BEST APPROACH TO TEACH THE LEGAL STRUCTURE OF INTERPROFESSIONAL COLLABORATION IN QUEBEC TO BOTH PRELICENSURE AND POSTLICENSURE HEALTHCARE LEARNERS.

IPEPC : WHY LOOK AT THE SYSTEM?

EXPRESSED KNOWLEDGE OF THE LAW

	Percentage of adequate answer	
	Nurses	Physicians
IPC impact on tort liability	52%*	**66%***
Applicable practice standard in IPC	38%&	**59%&**
Professional activity solely reserved to physicians	**52%#**	30%#

* **28% of physicians and 39% of nurses considered IPC heighten their tort liability**

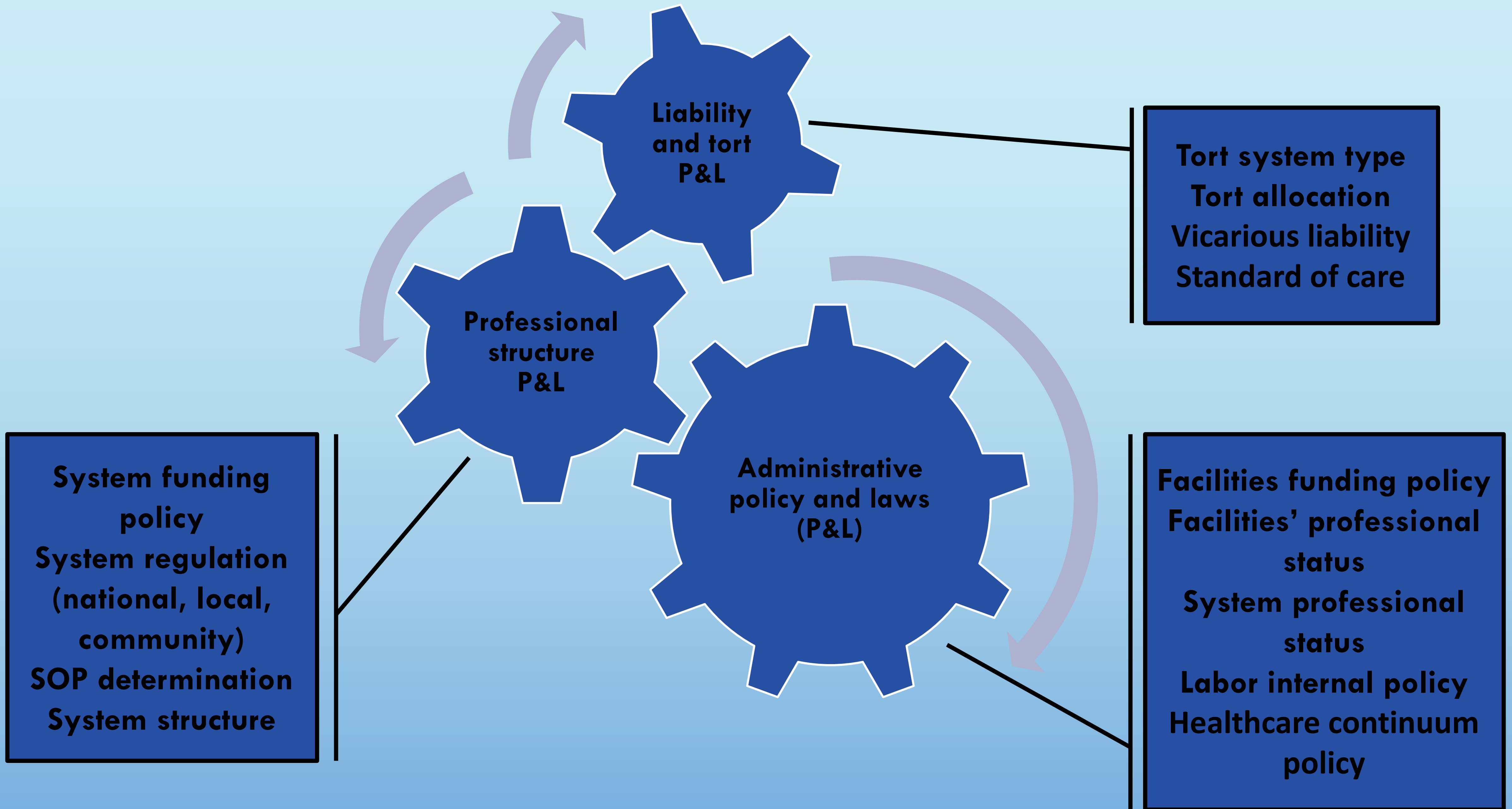
& **37% of nurses considered the applicable standard to be linked with the institution organization**

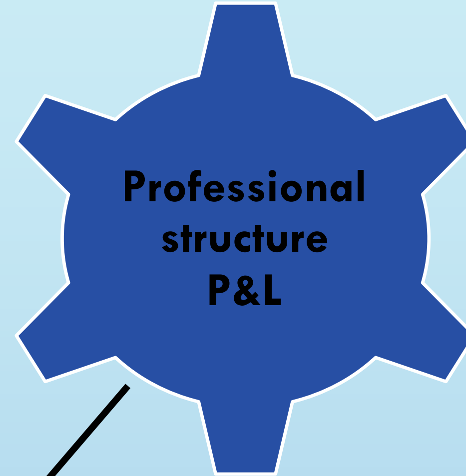
\# **48% of nurses did not recognize their own scope of practice while 70% of physicians increase their exclusive scope of practice**

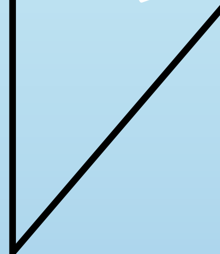
Girard, M. A., Régis, C., & Denis, J. L. (2022). Interprofessional collaboration and health policy: results from a Quebec mixed method legal research. *Journal of Interprofessional Care*, *36*(1), 44-51.

HOW THE LAW CAN INFLUENCE SPECIFICALLY IPE

- STRUCTURE
  - INTERNAL DETERMINATION OF PROGRAM LEVEL (WHERE AN OCCUPATION BEING TAUGHT, IN WHICH FACULTY, STAND ALONE OR MIX WITH ANOTHER OCCUPATION)
- COURSE VALIDITY
  - IS THE TEACHING RECOGNIZED BY THE AUTHORITIES? BY THE HEALTHCARE SYSTEM?
- IPE-PC CONTINUUM INTEGRATION
  - EXPECTED BEHAVIOUR CONCORDANCE BETWEEN IPE AND PROFESSIONAL PRACTICE.

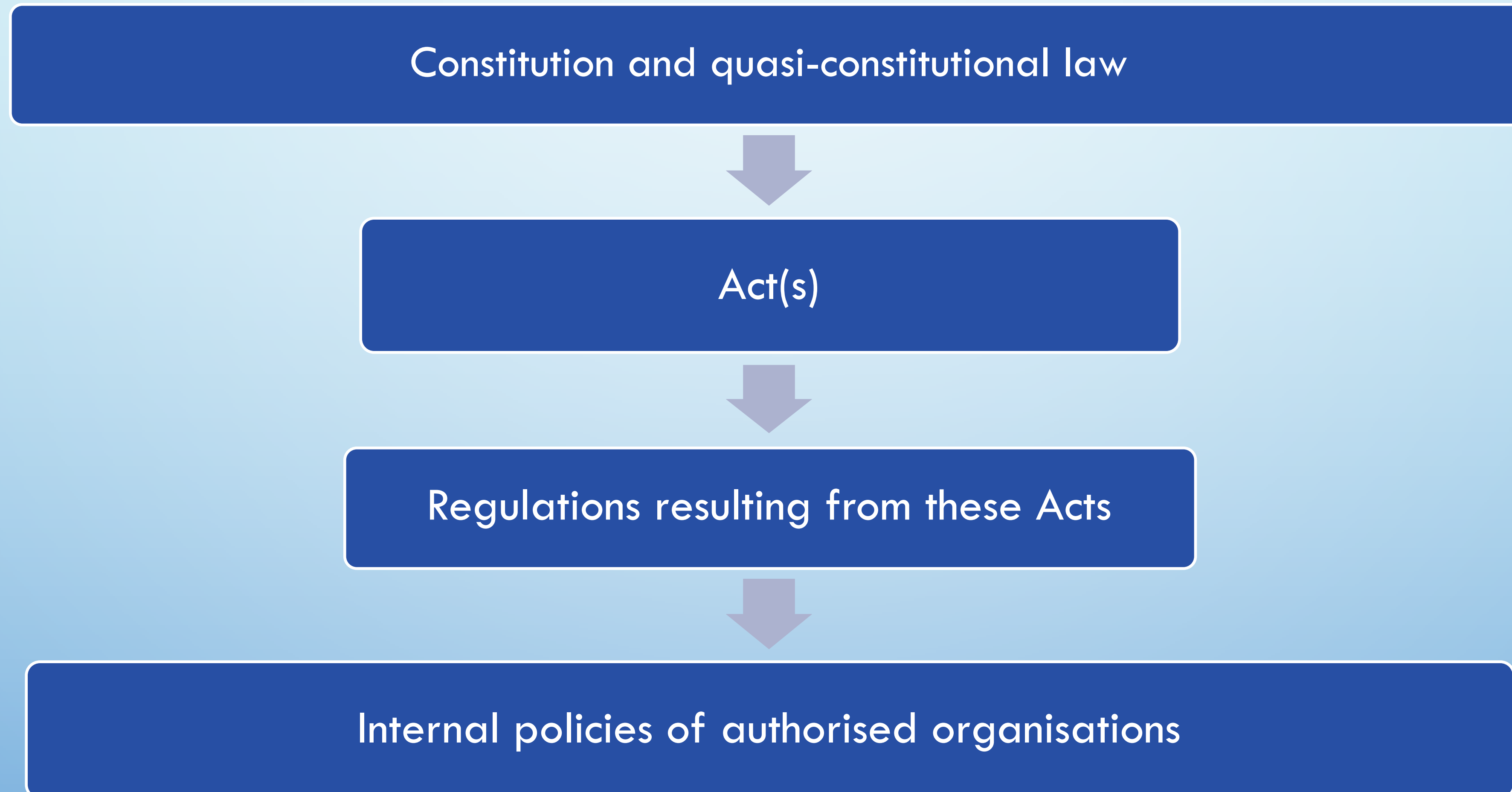

Liability and tort P&L
Professional structure P&L
Administrative policy and laws (P&L)
Tort system type
Tort allocation
Vicarious liability
Standard of care
System funding policy
System regulation (national, local, community)
SOP determination
System structure
Facilities funding policy
Facilities' professional status
System professional status
Labor internal policy
Healthcare continuum policy



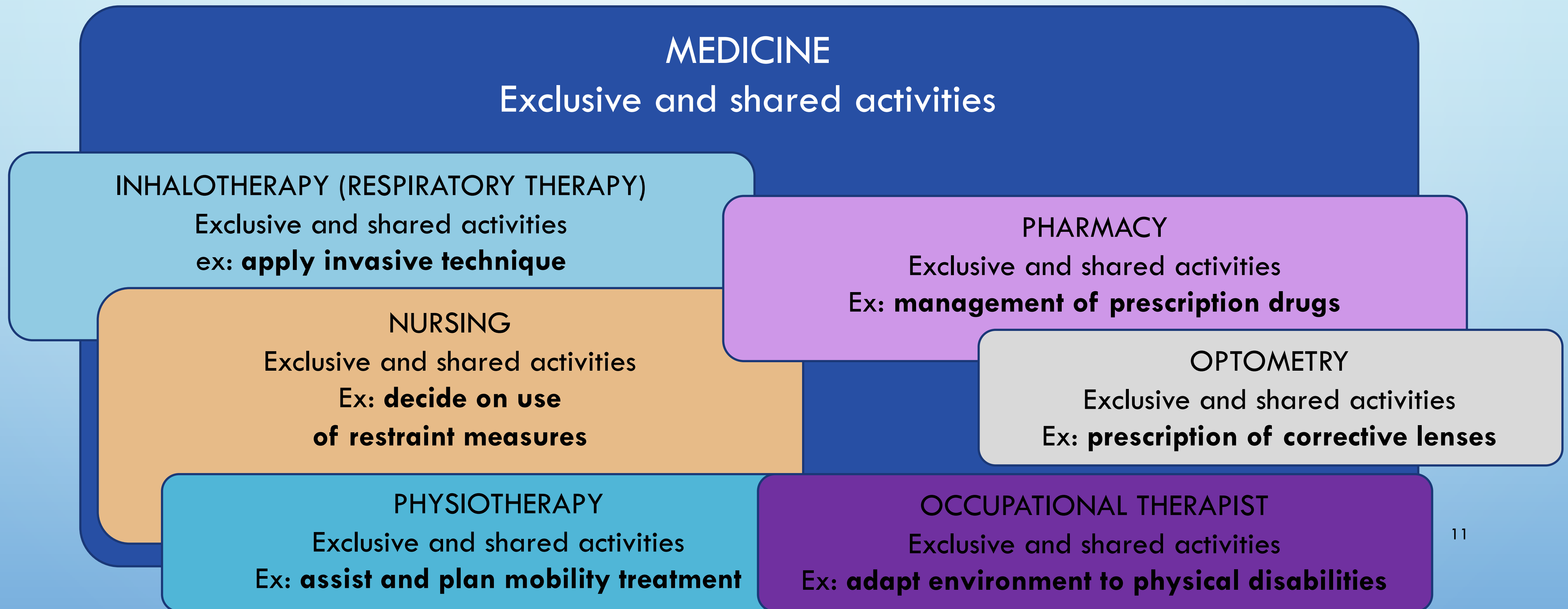


PROFESSIONNAL STRUCTURE LAW AND REGULATION

PROFESSIONAL LAWS AND REGULATIONS VS INTERNAL POLICIES…



THE LAWS - THE PRINCIPLE OF DESCRIPTIVE SCOPE OF PRACTICE WITH RESERVED ACTIVITIES



LEGAL SCOPE OF PRACTICE VS CLINICAL

- LEGAL = DESCRIPTIVE FIELD WITH RESERVED ACTIVITIES DETERMINED BY LEGISLATION OR REGULATIONS
  - OFTEN HISTORICALLY DETERMINED
  - APPLIES TO ALL PROFESSIONNALS BUT ONLY PROFESSIONALS
  - DEVELOPMENTS LIMITED BY THE « SAFETY PRINCIPLE »

- CLINICAL = INDIVIDUAL AREA OF COMPETENCE AND EXPERTISE
  - DETERMINATION BY THE NATURE OF EACH INDIVIDUAL’S PRACTICE
  - APPLIES TO A GIVEN INDIVIDUAL IN A GIVEN SITUATION

THE INTERACTION BETWEEN NON-PROFESSIONAL AND PROFESSIONALS

- NON-PROFESSIONAL ACTORS HAVE THEIR OWN CLINICAL COMPETENCE
  - DETERMINED BY THE ADMINISTRATIVE STRUCTURE RATHER THAN PROFESSIONAL STRUCTURE

- THE MAIN DIFFERENCE IS LINK TO SCOPE OF PRACTICE EVALUATION
  - NON-PROFESSIONAL CAN BE PROSECUTED FOR ILLEGAL PRACTICE

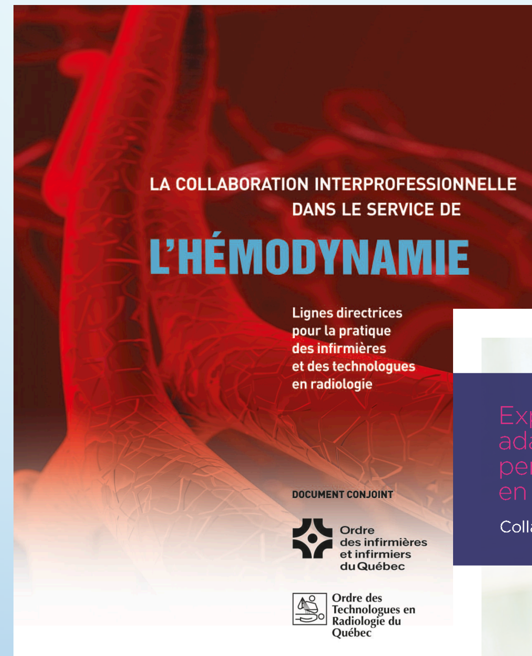
DICTATING EXPECTED BEHAVIOR – REGULATIONS AND CODE OF ETHICS

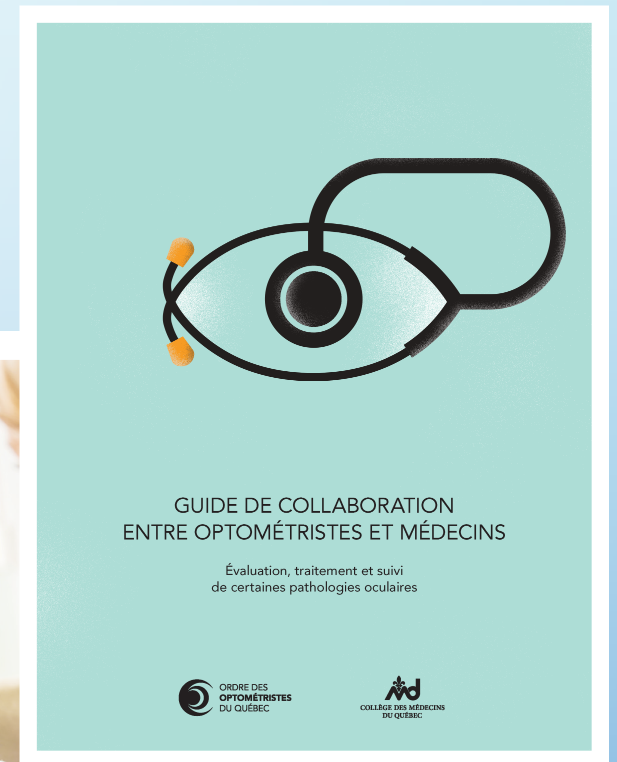
- CENTRAL ON BEHAVIORS = CODE OF ETHICS
  - IT IS A PENAL REGULATION
  - FOCUS ON BEHAVIORS IN RELATIONSHIP / INTEGRITY / DIGNITY / CONFIDENTIALITY
  - EG: A PROFESSIONAL MUST COLLABORATE WITH OTHER HEALTHCARE PROVIDER AND THE PATIENT DURING THE CARE EPISODE
- ADMINISTRATION OF THE PROFESSION OR ADMINISTRATION OF THE PRACTICE
  - SOME PENAL REGULATION, SOME STRUCTURAL
  - FOCUS ON SCIENTIFIC OR FACTUAL ASPECTS
  - EG: REGULATION ON PATIENT FILING (CONTENT, TIME KEPT BEFORE DESTRUCTION…)
  - WILL VARY FROM PROFESSION TO PROFESSION

GUIDING AND MANAGING BEHAVIORS –PRACTICE GUIDELINES

- NOT ENFORCEABLE BY PENAL REGULATION
- EXPLANATORY TO REGULATIONS

  (EXPLAINS WHAT IS THE SCIENCE AT THE MOMENT OF REDACTION)
- HELPS HAVING A COMMON GROUND OR COMMON PROCEDURE FOR COLLABORATIVE CARE





Facilities funding policy
Facilities' professional status
System professional status
Labor internal policy
Healthcare continuum policy

ADMINISTRATIVE LAW AND POLICIES

WHO DICTATES MUSIC: HSSA

- LAW DETERMINING THE STATUS OF PROFESSIONALS AND THE ORGANISATION OF INSTITUTIONS
  - WHO IS ON STAFF
  - WHO CONTROLS WHAT
  - WHO IS ACCOUNTABLE TO WHOM

- ASPECTS THAT AFFECT TEAM PRACTICE (“NORMAL” ADMINISTRATION)
  - ORGANIZATION PLAN (S.183 ET SEQ.)
  - PROFESSIONAL ADVICE (S.213 ET SEQ.)
  - **DOCTORS, DENTISTS AND MIDWIVES ARE NOT ON STAFF (S.236)**

TO WHOM DO I SEND THE INVOICE? HIA

- LEGISLATION THAT DETERMINES WHO CAN BE PAID DIRECTLY UNDER THE QUEBEC HEALTH INSURANCE PROGRAM

SO

ONLY MD, DMD, OD OR PHARMD ARE HIA RECOGNIZED PROFESSIONS

THE ONLY OTHER STATUTES OF OTHER PROFESSIONALS ARE THEREFORE:

- CARE FACILITY EMPLOYEE
- PRIVATE SELF-EMPLOYED PAID BY PATIENT/FACILITY/COMPANY

THE INTRA-HOSPITAL CONTINUUM OF CARE (S.5-R.5)

- TREATING MD PRINCIPLE (DENTIST) THAT MUST
  - SIGN THE ADMISSION
  - SIGN THE LEAVE

- FREQUENT CONFLICT BETWEEN HOSPITAL POLICIES AND THE PRINCIPLE OF MEDICAL LEAVE
  - POLICIES AND SERVICES DETERMINE BEHAVIOUR, NOT DECISION
  - LEAVE AND OFFER OF SERVICE ARE MIXED ACTS: HOSPITAL AND MEDICAL

HEALTH ORGANIZATION AND ADMINISTRATION REGULATIONS UNDER THE HEALTH AND SOCIAL SERVICES FOR CREE ACT (S.5 R.5)

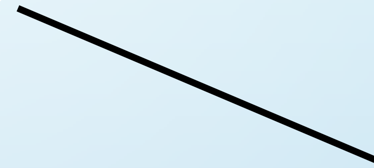
CILINGER C. QUEBEC CASE;

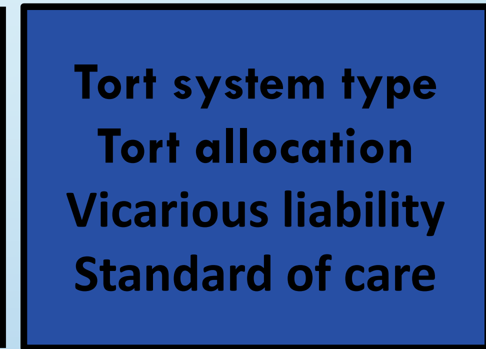
SAINT-JOHN REGIONAL HOSPITAL V. COMEAU CASE

BUT… WHAT ABOUT BILL PROJECT #15

- IT IS HOSPITALO-CENTRIC AND ADMINISTRATIVELY FOCUSED
- IT MOSTLY CENTRALIZE THE MANAGEMENT OF EMPLOYEES AND PRIVATE CONTRACTORS
- DOES NOT SEEMS TO INFLUENCE THE REST OF THE ADMINISTRATIVE STRUCTURE (HOW PROFESSIONS ARE RECOGNIZED, THE STATUS OF THE PROFESSIONS, ETC)…

SO WE'LL SEE!

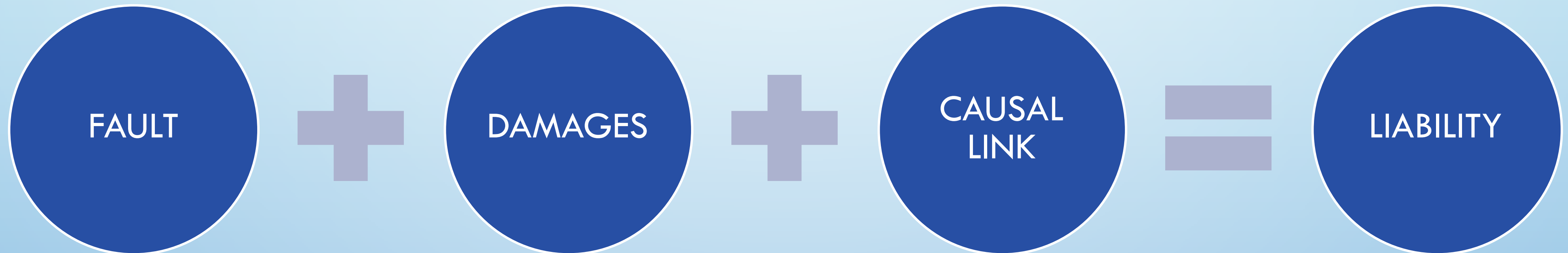




LIABILITY AND TORT

THE 3 « LIABILITIES » IN QUEBEC

THE LIABILITY EQUATION



YOU DO NOT HAVE TO PROVE DUTY TO CARE IN QUEBEC (CIVIL RESPONSABILITIES)

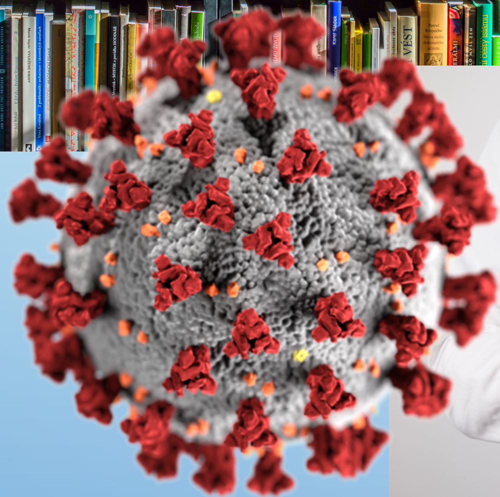
INFLUENCE OF PROFESSIONAL REGULATIONS AND ADMINISTRATIVE REGULATIONS ON LIABILITY

IT IS TRUE THAT THE MANEUVERS CARRIED OUT BY NURSE THIBAULT HAD THE EFFECT OF REDUCING THE DEPTH OF DECELERATIONS BUT **IT IS NOT UP TO THE NURSE TO MAKE A DIAGNOSIS AND CONCLUDE THAT THE EVOLUTION OF THE WORK DOES NOT RAISE CONCERNS. THIS IS THE TASK OF THE DOCTOR AND HE NEEDS ALL THE INFORMATION TO DETERMINE THE CARE REQUIRED BY THE PATIENT.»**

JUSTICE MICHAUD, **LAURENDEAU VS CENTRE HOSPITALIER DE LASALLE**

(C.S., 2015-05-05), 2015 QCCS 1923, SOQUIJ AZ-51173607, PARA 137

IN ABSTRACTO EVALUATION… CONCRETLY



Source: Adobe Stock™

VICARIOUS LIABILITY

"**DOCTORS MUST RELY ON NURSES AND RESPIRATORY THERAPY; THEY DO NOT HAVE TO DOUBLE-CHECK THEIR ACTIONS**."

JUSTICE RANCOURT, **TREMBLAY V. MARIA CHAPDELAINE HEALTH AND SOCIAL SERVICES CENTRE**, 2017 QCCS 1727

"DR. GIROUARD DOESN'T HAVE TO TAKE MORE RESPONSIBILITY BECAUSE OF HER MEDICAL STATUS . (…). **THIS LOGICAL AND REALISTIC DIVISION OF MEDICAL TASKS IMPOSES AN OBLIGATION ON NURSES TO COMMUNICATE WITH PHYSICIANS WHEN NEEDED ."**

JUSTICE MICHAUD, **LAURENDEAU V. CENTRE HOSPITALIER DE LASALLE** (C.S., 2015-05-05), 2015 QCCS 1923, SOQUIJ AZ-51173607, PARA 199

ONWARDS!

- IPEPC LEGAL STRUCTURE IS COMPLEX AND INTERTWINED: IT IS BOTH PROFESSIONAL, ADMINISTRATIVE AND TORT

  IT SHOULD ALWAYS BE TEACHED AND APPROACHED ON ALL THESE ASPECTS

- CLINICIANS WILL DETERMINE A NARRATIVE THAT IS CONSISTENT WITH THEIR BELIEF ON IPC LEGAL FRAMEWORK IN THE ABSENCE OF STRUCTURED KNOWLEDGE

  TEACHING OF IPC LEGAL FRAMEWORK SHOULD BE PART OF A STRUCTURED IPE PROGRAM

- HEALTH LAW AND POLICIES ARE HIGHLY JURISDICTIONAL DEPENDENT AND THEIR APPLICATION, HIGHLY PROFESSIONAL DEPENDENT

  THERE IS A NEED FOR MORE SOCIO-LEGAL RESEARCH IN EACH SETTING TO TAYLOR EDUCATIONAL CONTENT

SUGGESTED READING

- BOURGEAULT IL, MULVALE G. COLLABORATIVE HEALTH CARE TEAMS IN CANADA AND THE USA: CONFRONTING THE STRUCTURAL EMBEDDEDNESS OF MEDICAL DOMINANCE. HEALTH SOCIOLOGY REVIEW. 2006 DEC;15(5):481–95.
- GIRARD, MA. INTERPROFESSIONAL COLLABORATIVE PRACTICE AND LAW: A REFLECTIVE ANALYSIS OF 14 REGULATION STRUCTURES. JOURNAL OF RESEARCH IN INTERPROFESSIONAL PRACTICE AND EDUCATION. 2019;9(2)
- MULVALE G, EMBRETT M, RAZAVI SD. 'GEARING UP' TO IMPROVE INTERPROFESSIONAL COLLABORATION IN PRIMARY CARE: A SYSTEMATIC REVIEW AND CONCEPTUAL FRAMEWORK. BMC FAMILY PRACTICE [INTERNET]. 2016 DEC [CITED 2017 MAR 18];17(1). AVAILABLE FROM: HTTP://BMCFAMPRACT.BIOMEDCENTRAL.COM/ARTICLES/10.1186/S12875-016-0492-1
- RIES NM. INNOVATION IN HEALTHCARE, INNOVATION IN LAW: DOES THE LAW SUPPORT INTERPROFESSIONAL COLLABORATION IN CANADIAN HEALTH SYSTEMS? OSGOODE HALL LAW JOURNAL. 2016;54(1):97–124.

THANK YOU FOR ATTENTION!!

MARIE-ANDREE.GIRARD.MED@SSSS.GOUV.QC.CA

TWITTER: @MAGGIEMONTREAL

ADDITIONAL SLIDES

Level	Expressed concept	Policy equivalent	Linked to/Influenced by
Macro-level	Professional autonomy	Professional System Structure Professional status in healthcare facility	Scope of practice
	Lack of budget	Healthcare facilities funding policy	Professional status in Healthcare facility
	Exclusive scope of practice	Professional system structure	
	IPP retribution	Healthcare Facilities Funding Policy Professional retribution system	Professional status in Healthcare facility
	Fee-for-service remuneration	Healthcare System Professional Status Professional retribution system	Professional system structure
	Medico-legal insecurity	Tort system	Professional status in Healthcare facilities (vicarious liability) Professional structure system

Level	Expressed lay concept	Policy equivalent	Linked to/Influenced by
Meso-level	Profession activities competition (turf war)	Professional system structure	Employee management professional status in healthcare system
	Professional availability	Professional Status in Healthcare Facility Healthcare system	Funding/reimbursement policy
	Lack of personnel	Healthcare Facilities Funding Policy Labour internal policy	Professional status in Healthcare facility
	Lack of administrative support	Healthcare Facilities Funding Policy Labour internal policy	Professional status in Healthcare facility
	Rigidity in teaching curriculum (pedagological siloes)	Professional System Structure Higher education system structure	