Mandatory Reporting Obligations for Facility Operators - Concerns of Incapacity, Incompetence

Section 85.2(1) of the Health Professions Procedural Code which is Schedule 2 of the Regulated Health Professions Act (RHPA) requires a facility operator/employer to file a mandatory report with the College if they have reasonable grounds to believe that a member who practises at the facility is incompetent, incapacitated, or has sexually abused a patient.

This fact sheet is intended to provide information to potential reporters to assist them in understanding their professional reporting obligations as it relates to concerns of incapacity or incompetence where a physiotherapist has not been terminated from their position. Additional information can be obtained by referring to the Professional Reporting Obligations Briefing Note or by contacting the Associate, Professional Conduct at investigations@collegept.org or call 416-591-3828 ext. 227 or 1-800-583-5885 ext. 227.

What is incapacity?
It means that the physiotherapist is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the physiotherapist's practice be subject to terms, conditions or limitations, or that the physiotherapist no longer be permitted to practise.

What is incompetence?
If the physiotherapist's professional care of a patient displayed a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the physiotherapist is unfit to continue to practise or that the physiotherapist's practice should be restricted.

If I believe that a physiotherapist may be incompetent or incapacitated but the organization is supporting them and has not terminated them, am I, as a facility operator/employer still required to file a mandatory report with the College?
Yes. Facility operators/employers would still be required to file a mandatory report in these circumstances.

When and how soon do I have to report?
A person who operates a facility (employer) shall file a mandatory report within 30 days of becoming aware of the incident unless the risk to a patient or the public warrants that the report be filed earlier.

What information should the report include?
The report should include:

- the name and contact information of the person filing the report;
- the name of the regulated health care provider who is the subject of the report;
- an explanation of the concerns that have been identified
Where should I send the mandatory report?
The report should be addressed to the Registrar of the appropriate College. Reports related to physiotherapists can also be submitted online using the online mandatory reporting form.

What happens if an individual fails to make a mandatory report required by the RHPA?
Failure by a person to make such a report where required may result in prosecution and upon conviction a fine up to $25,000 for a first offence and up to $50,000 for a subsequent offence. If the individual is a regulated health care provider, their regulatory College may take further action against them.

Where a corporation fails to file a mandatory report where required to do so, the RHPA also includes specific provisions whereby failure to make such a report where required may result in prosecution and upon conviction a fine up to $50,000 for a first offence and up to $200,000 for a subsequent offence.

What happens once the College receives the report?
The Registrar will determine if additional inquiries are warranted. The results of the investigation would be considered by a panel of the Inquiries, Complaints and Reports Committee (ICRC) of the College which is comprised of representatives of the public and the profession.

How does a therapist respond to the report?
The panel will not make a final decision on a matter without the physiotherapist having the opportunity to respond to the report in writing and possibly by way of meeting with an investigator.

What information will the College share with me after I submit the mandatory report?
The physiotherapist and the College are the only parties involved in the process. As such the outcome of the process is not shared with the individual who submitted the mandatory report to the College. That being said, one can always look at the physiotherapist profile on the public register http://publicregister.collegept.org/PublicServices. In the event that the matter is referred to the Discipline or Fitness to Practise Committee for a hearing, the College may ask the reporter to participate in the hearings process as a witness.

Can the ICRC revoke a physiotherapist’s Certificate of Registration?
No. A physiotherapist’s certificate of registration may only be revoked as a result of a finding made by either the Discipline Committee or the Fitness to Practise Committee.

In rare circumstances the ICRC may direct the Registrar to suspend or impose terms, conditions or limitations on a physiotherapist’ s certificate of registration through an Interim Order. This will only be considered in cases where the matter has been referred to the Discipline Committee or the Fitness to Practice Committee for a hearing and it is the opinion of the ICRC that immediate action is required to protect the public interest.
What decisions can the ICRC make?

The decision that the ICRC can make:

- close a case taking no further action
- make recommendations and/or issue advice
- issue a caution to the physiotherapist
- require that the physiotherapist participate in initiatives to improve their practice (SCERPS or Undertaking).
- refer the matter to a Health Inquiry Panel if it is apparent that the physiotherapist may be suffering from a health condition or disorder which is affecting his or her ability to practice safely
- refer the case to the Discipline Committee of the College if serious issues of incompetence or professional misconduct are identified and a public hearing is warranted
- refer the case to the Fitness to Practise Committee if the member is unable to practice safely due to a medical condition and is unable to comply with a treatment/monitoring program

How long does the process take?

There are no timelines associated with these types of investigations as some investigations are quite detailed and extensive while others are relatively short. The College endeavours to resolve these matters within 150 days.

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