

# Professional Reporting Obligations

*Briefing Note*

# Briefing Note Professional Reporting Obligations

## Contents

Introduction	3
Mandatory Reporting as per the Regulated Health Professions Act (RHPA)	6
Sexual Abuse of a Patient	6
Changes to Employer/Employee or Business Relationship	8
Incompetence/Incapacity	10
Self-Reporting to the College – Offences, Findings of Malpractice or Negligence	12
Reporting Obligations as Per the Professional Misconduct Regulation	14
Individuals Holding Him/Herself Out as a Physiotherapist/Physical Therapist	14
Mandatory Reporting Obligations to Other External Organizations	15
Child And Family Services Act	15
Long Term Care Homes Act	16
Retirement Homes Act	16
Common Law—Duty To Warn	17
Conclusion	17
Glossary	17

## Introduction

The Regulated Health Professions Act (RHPA) identifies a number of situations in which physiotherapists/physical therapists, other regulated health care providers and employers of these individuals have a legal obligation to make a mandatory report. The reporting obligations differ depending upon the role that one has when the situation arises.

This Briefing Note will provide you with an overview of your reporting obligations:

- To a regulatory College when you are working as a physiotherapist/physical therapist
- To a regulatory College when you are acting in the capacity of an employer, facility operator or a representative of an employer of regulated health care providers, including independent contractors
- To other organizations in cases where there is suspected child abuse, elder abuse or other abuse to report.

### **As a physiotherapist/physical therapist, you are required to file a mandatory report with a health regulatory College if any of the following apply:**

- You become aware that a patient has been or is being sexually abused by another physiotherapist/physical therapist or other regulated health care provider – the report goes to the College of the professional who has committed the abuse.
- You end a partnership, health profession corporation or association involving a regulated health care provider for reasons of professional misconduct, incompetence or incapacity – the report goes to the College of the professional who has committed professional misconduct, is incompetent or incapacitated.
- You have been found guilty of an offence – an offence typically relates to findings of guilt made by a court and is typically punishable by a fine or jail term. This includes all offences, including parking or speeding tickets where fines have been paid. Pleading guilty or agreeing to pay a fine as opposed to appearing in a court of law will in most cases require a report – the report is made to the College of Physiotherapists of Ontario.
- You have been found guilty of malpractice or negligence in a court of law – the report is made to the College of Physiotherapists of Ontario.
- You become aware that a person who is not registered with the College of Physiotherapists of Ontario is leading others to believe that he/she is a physiotherapist/physical therapist and/or is using the title physiotherapist/physical therapist or any abbreviation of physiotherapist/physical therapist (i.e. PT) – the report is made to the College of Physiotherapists of Ontario.

**As an employer of regulated health care providers or on behalf of an employer, you are required to file a mandatory report with a regulatory health College if any of the following apply:**

- You have terminated the employment of another regulated health care provider for reasons of professional misconduct, incompetence or incapacity.
- You receive a notice of resignation from a regulated health care provider who was facing termination of employment or involved in a progressive discipline or remediation process.
- In your role as an employer/facility operator, you believe that a regulated health care provider is incompetent or suffering from health condition(s) that are affecting his/her ability to practice the profession safely and effectively.

**Reporting Obligations to Other Organizations**

As a physiotherapist/physical therapist, you may also have mandatory reporting obligations to other organizations as they relate to suspected child abuse, elder abuse and the warning of authorities or appropriate parties when someone is in serious danger (duty to warn).

While these examples may not represent all of the situations where a mandatory report is required, they do reflect the key areas that registrants usually contact the College to discuss.

Physiotherapists/physical therapists are encouraged to be aware of all of the mandatory reporting obligations that may apply to their specific area of practice.

**What You Need to Know**

It is often difficult to evaluate when to make these reports, determine who would make the report, establish where to send the report, determine how soon after the event that the report must be made and define what information should be included in the report.

Competing obligations, legislative requirements and the nature of these difficult issues may raise many questions:

- What do I have to report?
- When do I have to report?
- How do I make a report?
- What happens if I fail to make a report?
- How do I know if a report is necessary?
- What about my responsibility to maintain patient confidentiality?

Additional information about the reporting obligations is available in this Briefing Note, by contacting the College's Practice Advisor, referring to the source legislation, referring to the College's website or contacting the organization which would be the recipient of the report.

## Overview of Mandatory Reporting Requirements

Situation	Physiotherapists	Employer of physiotherapists or other regulated health care providers (facility operator)
Termination of a regulated health care provider – incompetence, incapacity, professional misconduct		X
Resignation by a regulated health care provider and there are concerns about incompetence, incapacity or professional misconduct		X
Breakdown of a partnership, corporation or association and there are concerns of professional misconduct, incompetence or incapacity	X	
Sexual abuse of a patient	X	X
Concerns about the health (capacity) or competence of a regulated health care provider		X
Offences	X	
Findings of negligence	X	
Findings of malpractice	X	
Individuals holding out as a physical therapist	X	

# Mandatory Reporting as per the Regulated Health Professions Act (RHPA)

## Sexual Abuse

Regulated health care providers and employers of regulated health care providers (facility operators) must send a mandatory report to a health regulatory College if they believe that a patient has been sexually abused by a regulated health care provider. The definition of sexual abuse is available in the glossary.

### **Do I have to make a report if I do not know the name of the person who is allegedly committing the abuse?**

No.

### **Do I need to tell the patient that I am going to file the report?**

You should discuss the matter with the patient, the patient's representative or his/her substitute decision maker. Where it could be helpful, these individuals should be encouraged to contact the College where the health care provider in question is a member for further information.

### **Do I need to include the name of the patient in the report?**

You must have the patient's written consent to include his/her name in the mandatory report. If you are unable to obtain consent, you must still submit a report to the College but exclude the name of the patient.

### **My employer said that they would file the report with the College on behalf of the organization, so I do not have to. Is this okay?**

No. You still must file a report even if your employer is filing one.

### **How long do I have to file the report?**

The report must be filed within 30 days after you become aware of the incident(s). If you believe that the individual will continue to sexually abuse the patient or will sexually abuse other patients, you should file the report as soon as possible.

### **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 alleged sexual abuse
- the name of the patient (with written consent of the patient having been obtained)

### **Where should the mandatory report be sent?**

The report should be sent to the Registrar of the regulatory College of which the individual in question is registered. The contact information for all regulatory Colleges can be found on the Federation of Health Colleges of Ontario website at [www.regulatedhealthprofessions.on.ca](http://www.regulatedhealthprofessions.on.ca).

Reports for the College of Physiotherapists of Ontario can be sent to the College by mail, confidential fax or by using the Submit a Mandatory Report online feature on the College's website at [www.collegept.org](http://www.collegept.org).

College of Physiotherapists of Ontario  
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### **What happens after I file a report with the College?**

A representative of the College will contact you for additional information within one week.

### **Will I find out what happens to the physiotherapist/physical therapist?**

No. The College is not in a position to share the outcome of inquiries with you. That being said, should the matter be referred to the Discipline Committee for a hearing you will be advised of the referral and you may be asked to testify at the proceedings. Summaries of the College's prior discipline hearings can be viewed on the College's website at [www.collegept.org](http://www.collegept.org).

### **I am afraid of repercussions if I file the report with the College.**

The Regulated Health Professions Act (RHPA) provides that no action or other form of legal proceeding can be made against a person for filing required reports (under the RHPA) in good faith. Provisions in the Act also prevent retaliation against people who make the required reports.

### **What happens if an individual or facility fails to make a mandatory report when it was required?**

Failure of a physiotherapist/physical therapist to file a report when obligated to do so may be considered professional misconduct. In addition, the Regulated Health Professions Act includes specific provisions whereby failure to make such a report where required may result in court proceedings being initiated at the conclusion of which individuals could be fined up to \$25,000 and corporations could be fined up to \$50,000 for a first offence.

### **Additional Questions?**

Contact the College:  
1-800-583-5885/416-591-3828  
Practice Advisor at [practiceadvice@collegept.org](mailto:practiceadvice@collegept.org)  
Director, Professional Conduct at [investigations@collegept.org](mailto:investigations@collegept.org)  
[www.collegept.org](http://www.collegept.org)

### **Legislative Reference:**

Sections 85 and 93 of the Health Professions Procedural Code, Section 2 of the Regulated Health Professions Act

## Changes to an Employer/Employee or Business Relationship Involving a Regulated Health Care Provider (Includes Termination/Resignation)

The information included in this section refers to the following scenarios:

- You, on your own accord or on behalf of your organization terminate the employment of a regulated health care provider for reasons of professional misconduct, incompetence or incapacity.
- You receive the resignation of a regulated health care provider who was facing a progressive discipline process, remediation process or termination due to reasons of professional misconduct, incompetence or incapacity.
- You dissolve a partnership, health profession corporation or association involving a regulated health care provider for reasons of professional misconduct, incompetence or incapacity.

### **How long do I have to file the report?**

The report must be filed within 30 days after the incident, regardless of any post employment agreements related to the termination that may have been negotiated.

### **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 has been terminated or who has resigned
- an explanation of what led to the ending of the professional relationship

### **Where should the mandatory report be sent?**

The report should be sent to the Registrar of the regulatory College of which the individual in question is registered. The contact information for all regulatory Colleges can be found on the Federation of Health Colleges of Ontario website at [www.regulatedhealthprofessions.on.ca](http://www.regulatedhealthprofessions.on.ca).

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### **What happens after I file a report with the College?**

A representative of the College will contact you for additional information within two to three weeks.

### **Will I find out what happens to the physiotherapist/physical therapist?**

No. The College is not in a position to share the outcome of the inquiries with you. That being said, should the matter be referred to the Discipline Committee for a hearing you will be advised of the referral and you may be asked to testify at the proceedings. Summaries of the College's prior discipline hearings can be seen on the College's website.

### **I am scared of repercussions if I file a mandatory report with the College**

The Regulated Health Professions Act (RHPA) provides that no action or other form of legal proceeding can be made against a person for filing required reports (under the RHPA) in good faith. Provisions in the Act also prevent retaliation against people who make the required reports.

### **What happens if an individual or facility fails to make a mandatory report when it was required?**

Failure of a physiotherapist/physical therapist to file a mandatory report when one is obligated to do so may be considered professional misconduct. In addition, the RHPA also includes specific provisions whereby failure to make such a report where required may result in court proceedings being initiated at the conclusion of which individuals could be fined up to \$25,000 and corporations could be fined up to \$50 000 for a first offence.

### **Additional Questions?**

Contact the College:

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Practice Advisor at [practiceadvice@collegept.org](mailto:practiceadvice@collegept.org)

Director, Professional Conduct at [investigations@collegept.org](mailto:investigations@collegept.org)

[www.collegept.org](http://www.collegept.org)

### **Legislative Reference:**

Sections 85.5 and 93 of the Health Professions Procedural Code, Section 2 of the Regulated Health Professions Act

## Mandatory Reporting Obligations for Employers/Facility Operators – Incompetence/Incapacity

A facility operator is required to file a mandatory report with a regulatory College if s/he has reasonable grounds (it is more likely than not) to believe that a regulated health care provider who practices at the facility is incompetent, incapacitated, or has sexually abused a patient. These reports must be filed even if the organization has no intention of terminating the regulated health care provider. The definitions of incapacity and incompetence can be found in the glossary.

*\* Facility is defined as any place where regulated health professionals practice.*

### **How long do I have to file the report?**

A person who operates a facility (employer) shall file a mandatory report with the appropriate regulatory college within 30 days of becoming aware of the concern(s) unless the risk to a patient or the public warrants that the report be filed sooner.

### **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 may be incompetent or incapacitated
- an explanation of concerns that have been identified

### **Where should the mandatory report be sent?**

The report should be sent to the Registrar of the regulatory College of which the individual in question is registered. The contact information for all regulatory Colleges can be found on the Federation of Health Colleges of Ontario website at [www.regulatedhealthprofessions.on.ca](http://www.regulatedhealthprofessions.on.ca).

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### **What happens after I file a report with the College?**

A representative of the College will contact you for additional information within two to three weeks.

### **Will I find out what happens to the physiotherapist?**

No. The College is not in a position to share the outcome of the inquiries with you. That being said should the matter be referred to the Discipline Committee for a hearing you will be advised of the referral and you may be asked to testify at the proceedings. Summaries of the College's prior discipline hearings can be seen on the College's website at [www.collegept.org](http://www.collegept.org).

### **I am afraid of repercussions if I file a mandatory report with the College.**

The Regulated Health Professions Act (RHPA) provides that no action or other form of legal proceeding can be made against a person for filing required reports (under the RHPA) in good faith. Provisions in the Act also prevent retaliation against people who make the required reports.

### **What happens if an individual or facility fails to make a mandatory report when it was required?**

Failure of a physiotherapist/physical therapist to file a report when one is obligated to do so may be considered professional misconduct. In addition, the Regulated Health Professions Act also includes specific provisions whereby failure to make such a report where required may result in court proceedings being initiated at the conclusion of which individuals could be fined up to \$25,000 and corporations could be fined up to \$50,000 for a first offence.

### **Additional Questions?**

Contact the College:

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Practice Advisor at [practiceadvice@collegept.org](mailto:practiceadvice@collegept.org)

Director, Professional Conduct at [investigations@collegept.org](mailto:investigations@collegept.org)

[www.collegept.org](http://www.collegept.org)

### **Legislative References:**

Sections 85(2) and Section 93 of the Health Professions Procedural Code – Section 2 of the Regulated Health Professions Act

## Self Reporting to the College

The Regulated Health Professions Act (RHPA) requires that you file a report with the College if:

1. You have been found guilty of an offence
2. You have had a finding of negligence made against you
3. You have had a finding of malpractice made against you

### What is an Offence?

An offence is defined in statute (law). Typically, being found guilty of an offence is punishable by a fine or jail; however, a report must be made even if the court imposes a conditional or an absolute discharge; meaning that the individual was found guilty but no further action was taken.

The best known offences are breaches of the Criminal Code of Canada or of federal drug legislation. However, there are a number of provincial offences as well (e.g., failing to report a child in need of protection contrary to the Child and Family Services Act). This provision would also include speeding tickets and municipal infractions such as parking tickets. The College may inquire into these findings where appropriate.

### What is a Finding of Negligence or Malpractice?

These findings occur in civil proceedings or as a result of lawsuits. For example, a finding of professional negligence by a court that you fell below the accepted standard of practice of the profession and thereby harmed a patient has to be reported. The College may inquire into these findings where appropriate. The initiation of a law suit or settlements that are resolved outside a court are not subject to this reporting obligation.

### How long do I have to report?

You must file the report with the College as soon as you become aware of the finding.

### What information should the report include?

The report should include

- your name
- the nature and description of the finding or offence
- the date that the finding was made against you
- the name and location of the court that made the finding against you
- the status of any appeal initiated respecting the finding made against you

Additional reports are required if there is a change in status of the finding as a result of an appeal. Where a publication ban is in effect, you should contact the College for guidance as to how to make the report without violating the publication ban.

### **Where should I send the report?**

Reports for the College of Physiotherapists of Ontario can be sent to the College by mail, confidential fax or by using the Submit a Mandatory Report online feature on the College's website at [www.collegept.org](http://www.collegept.org).

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### **What happens if I fail to report offences, or findings of malpractice or professional misconduct?**

Failing to make a mandatory report when required is an act of professional misconduct. If the College becomes aware of a situation where a report should have been filed with the College and the report was not filed, the College may investigate this matter.

### **Does any of the information submitted to the College go on the Public Register?**

It depends. Findings of negligence or malpractice made in a court of law are posted on the Public Register. Offences are not.

### **Additional Questions?**

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Practice Advisor at [practiceadvice@collegept.org](mailto:practiceadvice@collegept.org)  
Director, Professional Conduct at [investigations@collegept.org](mailto:investigations@collegept.org)  
[www.collegept.org](http://www.collegept.org)

### **Legislative References:**

Section 85.6.1 and 85.6.2 of the Health Professions Procedural Code – Section 2 of the Regulated Health Professions Act

Professional Misconduct Regulation

## Reporting Obligation – Holding Out

Section 23 of the College’s Professional Misconduct Regulation requires physiotherapists/physical therapists to file a report with the College if he/she becomes aware that an individual not registered with the College is holding himself/herself out as a physiotherapist/physical therapist.

When individuals who are not registered with the College hold themselves out as physiotherapists/physical therapists, not only is this misleading, the public may be put at risk.

As such, the College relies on members of the public and registrants to assist us in addressing these situations when they arise. Failure to make a report when required may be considered an act of professional misconduct.

### **Additional Resources:**

- College website ([www.collegept.org](http://www.collegept.org)) – Inappropriate Use of Title and Holding Out
- Information Bulletin: Non Physiotherapist/Physical therapist’s Use of Restricted Titles

### **Additional Questions?**

Contact the College:

1-800-583-5885/416-591-3828

Practice Advisor at [practiceadvice@collegept.org](mailto:practiceadvice@collegept.org)

Director, Professional Conduct at [investigations@collegept.org](mailto:investigations@collegept.org)

[www.collegept.org](http://www.collegept.org)

### **Legislative References:**

Section 8 of the Physiotherapy Act

Professional Misconduct Regulation

# Mandatory Reporting Obligations to Other External Organizations

## Child and Family Services Act (CFSA) – Child Abuse

This category of professional obligations relates to the child abuse reporting requirements contained in the Child and Family Services Act (CFSA). These reporting obligations are very broad and require any person, including all regulated health professionals, to make a mandatory report if they have reasonable grounds to suspect that a child is or may be in need of protection.

### **What are the grounds for suspecting a child is in need of protection?**

Section 72 of the Child and Family Services Act (CFSA) includes more than 13 grounds for finding a child in need of protection. These grounds include concerns about physical, sexual or emotional abuse, as well as neglect to the child's physical safety or emotional well being.

### **How do I make a report?**

Additional information can be obtained from your local Children's Aid Society. Children's Aid Societies are also known in some communities as Family and Children's Services.

### **What happens if I fail to make a report required by the Child and Family Services Act?**

If you fail to file a report when one is needed it may be considered professional misconduct by the College. There are also provisions in the Child and Family Services Act allow for prosecution.

### **What about my responsibility to maintain patient confidentiality?**

The Child and Family Services Act clearly states that a professional's duty to report overrides any other provincial law that would normally prohibit the disclosure of information needed to make a report. In other words, the duty to report takes precedence over any confidentiality provisions.

### **What happens if someone tries to sue me or take other action because I filed the report?**

The Child and Family Services Act (CFSA) provides that no action or other form of legal proceeding can be made against a person for filing required reports (under the CFSA) in good faith. Provisions in the Act also prevent retaliation against people who make the required reports.

## Long-Term Care Homes Act

The Long-Term Care Homes Act, 2007 (LTCHA) came into force in Ontario on July 1, 2010. This legislation replaced the Charitable Homes Act, the Homes for the Aged and Rest Homes Act and the Nursing Homes Act.

An individual must file a report with the Director appointed by the Minister of Health and Long-term Care where any of the following resulted in either harm or a risk of harm to a resident – improper or incompetent treatment or care, abuse of a resident by anyone or neglect of a resident by a staff or licensee, unlawful conduct, misuse or misappropriation of a resident’s money, and misuse or misappropriation of funding. These obligations apply even if the report is based on information made to you that would otherwise be confidential and privileged.

Whistle-blowing protections have been included in the legislation to protect anyone from retaliation as a result of disclosing information to an inspector, making a report to the Ministry or providing evidence in a legal proceeding.

**Legislative Reference:**

Section 24 of the Long-Term Care Homes Act

## Retirement Homes Act

The Retirement Homes Act became law in 2010. The new rules require that mandatory reports be filed immediately with the Registrar of the Retirement Homes Regulatory Authority if you suspect harm or risk of harm to a resident resulting from improper or incompetent treatment or care, abuse of a resident by anyone or neglect of a resident by staff of the retirement home, unlawful conduct or misuse or misappropriation of a resident’s money.

You can contact the hotline for additional information or to make a report seven days a week from 8:00 am – 8:00 pm. The Complaints Response and Information Service number is 1-800-361-7254.

**Legislative Reference:**

Retirement Homes Act



## Common Law—Duty To Warn

Under judge-made law (called the common law or case law), registrants may, in some circumstances, have a duty to warn. A duty arises where an identifiable person or group is at substantial risk of serious harm or death from another person. Registrants should have reasonable grounds (is it more likely than not that there is potential risk) for making such a report. The report can be made to the person or group at risk and to the authorities.

For example, a patient who threatens to shoot his or her spouse and has the apparent means (e.g., the patient says he/she has a gun) and ability to do so, would prompt the duty to warn. In this case, the most appropriate action may be to call the police. This duty to warn is recognized in the Personal Health Information Protection Act. Section 40 of the Act permits disclosure without consent by custodians of personal health information who believe “on reasonable grounds that the disclosure is necessary for the purpose of eliminating or reducing a significant risk of serious bodily harm to a person or group of persons.”

## Conclusion

This Briefing Note provides an overview of a registrant’s mandatory reporting obligations to the College and/or other agencies/organizations where such reports are required.

There may be situations where the organization where one works is not aware of its obligations in this regard. In these cases, registrants are strongly encouraged to educate others who may be in a situation where such a report is required.

In some cases, a physiotherapist/physical therapist may feel challenged to determine if the situation that he/she is aware of would actually satisfy the obligations to file a report. In these circumstances, the registrant should discuss the situation with the person at the organization who receives such reports or contact the Practice Advisor at the College.

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1-800-583-5885/416-591-3828 ext. 241  
practiceadvice@collegept.org

## Glossary

**Association:** An association refers to any business relationship which could include a partnership or professional corporation.

**Confidentiality:** The obligation of a regulated health care provider not to disclose information obtained from a patient in a therapeutic relationship without the consent of the patient, or his or her authorized agent, or as required or permitted by law.

**Duty to Warn:** A situation where a regulated health care provider believes that his or her patient presents a serious danger of physical harm to themselves or to another person. The regulated health care provider may take steps, such as warning the other person or others who would notify that person

of the danger; notify the police; or to take other steps necessary under the circumstances.

**Facility:** A facility is any place where regulated health care providers practice.

**Incapacity:** The regulated health care provider is suffering from a physical or mental condition or disorder and patient care and/or safety is being compromised. The most common concerns in this area relate to alcoholism, drug addiction and/or mental health conditions that are not being managed.

**Incompetence:** The regulated health care provider's professional care of a patient displays a lack of knowledge, skill or judgment and that patient care and/or safety could be compromised.

**Judge-made, Common law or Case law:** The law established by judicial precedent rather than by statute.

**Mandatory Reporting:** Situations where an employer / regulated health care provider have a legal obligation to make a report. Some of these duties arise under the Regulated Health Professions Act (RHPA), and College regulation; while others come under other legislation or judge-made case law.

**Offence:** An offence is defined in statute (law). Typically, being found guilty of an offence is punishable by a fine or jail.

**Professional Misconduct:** All health regulatory Colleges in Ontario have a Professional Misconduct Regulation. The regulation defines the various actions that the profession has determined to be inappropriate. The Professional Misconduct Regulation for the College of Physiotherapists of Ontario can be found in the Registrant's Guide at [www.collegept.org](http://www.collegept.org).

**Reasonable and Probable Grounds:** This question involves a judgment call. Rumour or innuendo does not constitute reasonable grounds; however concrete information from a credible source would constitute reasonable grounds. A more formal test would be where the information available would suggest that there is a reasonable probability that the abuse or incident has occurred.

**Sexual Abuse:** Sexual Abuse of a patient is defined as:

- (a) sexual intercourse or other forms of physical sexual relations between the regulated health care provider and the patient,
- (b) touching, of a sexual nature, of the patient by the regulated health care provider, or
- (c) behaviour or remarks of a sexual nature by the regulated health care provider towards the patient.

**Exception:** "sexual nature" does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

**Substitute Decision-Maker:** An individual who is authorized to provide or refuse consent to a treatment on behalf of a person who is incapable of making the decision. (Health Care Consent Act, Ontario, 1996, c.2, Schedule A, s.9)