

Professional Reporting Obligations

Briefing Note

Briefing Note—Professional Reporting Obligations

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Introduction

There are a number of situations in which physiotherapists/physical therapists have a legal obligation to make a mandatory report. In some cases the report will be related to a patient or the physiotherapist/physical therapist and in other cases the need to report will arise when an employment or business arrangement involving a physiotherapist/physical therapist or other regulated health care provider comes to an end.

In cases where physiotherapists/physical therapists are employers of other regulated health care providers, additional reporting obligations apply in certain circumstances. The requirement to file a mandatory report is required by a relevant piece of legislation, regulation or law. As such, they are different from formal complaints that are sent to the College.

There are no legal requirements as to when a member of the public must file a formal complaint with the College. Any member of the public may choose to file a complaint with the College in relation to the conduct/actions of a physiotherapist/physical therapist.

The process at the College for addressing complaints differs from the process for reviewing mandatory reports. Additional information regarding the complaints process can be found on the College's website.

The need to submit a mandatory report is defined in the Regulated Health Professions Act (RHPA), other pieces of legislation such as the Child and Family Services Act, the Long Term Care Homes Act, the College's Professional Misconduct Regulation and even case law which is law based on judicial opinions, including decisions that interpret statutes, rather than law based on statutes and other sources.

As members of a health regulatory college, physiotherapists/physical therapists are required to make a mandatory report to a regulatory college in certain situations:

- Where they learn that a patient has been or is being sexually abused by another physiotherapist/physical therapist or regulated health care provider
- Where as an employer or representative of an employer, a physiotherapist/physical therapist has terminated the employment of another regulated health care provider for reasons of professional misconduct, incompetence or incapacity
- Where as an employer or representative of an employer, a physiotherapist/physical therapist receives notice of resignation from a regulated health care provider who was facing termination of employment or involved in a progressive discipline or remediation process
- Where a partnership, health profession corporation or association involving a physiotherapist/physical therapist or other regulated health care provider has ended because of reasons of professional misconduct, incompetence or incapacity
- Where a physiotherapist/physical therapist as a facility operator believes that a regulated health care provider is incompetent or incapacitated

In addition, physiotherapists/physical therapists must now self-report to the College:

- If they have been found guilty of an offence—An offence typically relates to findings of guilt made by a court and are typically punishable by a fine or jail term. Pleading guilty or agreeing to pay a fine as opposed to appearing in a court of law may also constitute an offence.
- If they have been found to have engaged in malpractice or negligence

Lastly a physiotherapist/physical therapist must file a report with the College if he/she becomes aware that a person who is not registered with the College is leading others to believe that he/she is a physiotherapist/physical therapist and/or he/she is using the title physiotherapist/physical therapist or any abbreviation of physiotherapist/physical therapist (i.e. PT).

Physiotherapists/physical therapists may also have mandatory reporting obligations to other organizations as they pertain 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 physiotherapists/physical therapists usually contact the College to discuss. Physiotherapists/physical therapists are encouraged to be aware of all of the mandatory reporting obligations that may be applicable to their specific area of practice.

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 very 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?

This Briefing Note will provide an overview of the various reporting obligations for physiotherapists/physical therapists. Where additional information is required, physiotherapists/physical therapists are encouraged to contact the College's Practice Advisor, refer to the source legislation, refer to the College's website or contact the organization which would be the recipient of the report.

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

Sexual Abuse

As per section 85.1(1) of the Health Professions Procedural Code, Schedule 2 of the Regulated Health Professions Act (RHPA), every regulated health care professional in Ontario is required to report sexual abuse of a patient by another regulated health professional of the same or different profession to the appropriate regulatory college.

Sexual Abuse of a patient is defined as:

- a. sexual intercourse or other forms of physical sexual relations between the physiotherapist/physical therapist and the patient,
- b. touching, of a sexual nature, of the patient by the physiotherapist/physical therapist, or
- c. behaviour or remarks of a sexual nature by the physiotherapist/physical therapist towards the patient.

It does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided.

When do I have to make a report?

A physiotherapist/physical therapist must send a mandatory report to the College if he/she has “reasonable grounds”, obtained while practising physiotherapy to believe that a registrant of this College or a member of a different college has sexually abused a patient.

What are reasonable 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 even if the physiotherapist/physical therapist has not spoken with a direct participant to the incident. A more formal test would be where the information available would suggest that there is a reasonable probability that the abuse has occurred.

Does a physiotherapist/physical therapist still have to make a report if he/she does not know the name of the person who is allegedly committing the abuse?

No. A physiotherapist/physical therapist is not required to file a mandatory report if he/she does not know the name of the regulated health care provider who would be the subject of the report.

Does a physiotherapist/physical therapist need to tell the patient that he/she is going to file the report?

The physiotherapist/physical therapist who is submitting the report to the College should discuss the matter with the patient, the patient's representative or their substitute decision maker. Where it could be helpful, these individuals should be encouraged to contact a representative of the Professional Conduct team at the College. If the patient or their representative remains uncomfortable with the name of the patient appearing in a report to the College, the physiotherapist/physical therapist filing the report must still submit a report to the College but exclude the name of the patient.

Does an employer of a regulated health care professional who has sexually abused or is sexually abusing a patient have to file a mandatory report with the appropriate college?

Yes. A person who operates a facility must file a report with the appropriate regulatory College if he/she has reasonable grounds to believe that a regulated health care provider who practises at the facility has sexually abused a patient.

Does the employer still have to file the report if he/she does not know the name of the regulated health care provider?

No. A person who operates a facility is not required to file a report if he/she does not know the name of the person who would be the subject of the report.

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.

How long does the reporter have to file the report?

The report must be filed within thirty days after the obligation to report arises unless the reporter has reasonable grounds to believe that the individual will continue to sexually abuse the patient or will sexually abuse other patients, in which case the report must be filed immediately.

What information should the report include?

The report should include:

- the name 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)

How am I protected when I file a mandatory report with the College?

The 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. Further, provisions in the Act also prevent retaliation against people who make the required reports.

What happens if an individual or facility fails to make the report required by the RHPA?

Failure by a physiotherapist/physical therapist to file a 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.

Additional Resources:

Information regarding the College's process for reviewing mandatory reports related to sexual abuse can be found on the College's website:

- **Mandatory Reporting Requirements— Sexual Abuse**
Physiotherapists/physical therapists who are the subject of a mandatory report can find additional information about this process on the College's website [http://www.collegept.org/Physiotherapist/physical therapists/Professional%20Conduct/Mandatory%20Reports/ReportingSexualAbuseJune4](http://www.collegept.org/Physiotherapist/physical%20therapists/Professional%20Conduct/Mandatory%20Reports/ReportingSexualAbuseJune4)
- **Mandatory Reports: The College Has Received a Mandatory Report About Me.**
- **Reports can be sent to the College** via mail or confidential fax (416) 591-7758

Changes to Employer/Employee or Business Relationship

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

- Termination of the employment of a regulated health care provider for reasons of professional misconduct, incompetence or incapacity
- 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
- Dissolution of a partnership, health profession corporation or association involving a regulated health care provider for reasons of professional misconduct, incompetence or incapacity

Termination of employment of a Regulated Health Care Provider

A person who terminates the employment or who dissolves a partnership, a health profession corporation or association with a regulated health care provider for reasons of professional misconduct, incompetence or incapacity must file a mandatory report with the registrar of the appropriate College within thirty days after the termination, resignation or dissolution, regardless of any post employment agreements that may have been negotiated.

If the regulated health care provider resigns while facing termination, a mandatory report is also required. This scenario usually applies when an individual resigns knowing that they will be terminated, resigns during a progressive discipline process, resigns while under practice supervision or resigns after having their role changed because of reasons of professional misconduct, incompetence or incapacity.

What information should I include in the report?

The report should include the name of the regulated health care provider, an overview of the concerns that led to the end of the professional relationship, and the contact information of the name of the person filing the report.

How am I protected when I file a mandatory report with the College?

The 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. Further provisions also prevent retaliation against people who make the required reports.

What happens if an individual or facility fails to make the report required by the RHPA?

As a regulated health care provider or facility operator, failure to file a 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.

Additional Resources

Additional information regarding this mandatory reporting obligation can be found on the College's website under Mandatory Reporting Requirements—Termination/Resignation.

Physiotherapists/physical therapists who are the subject of a mandatory report can find additional information about this process on the College's website under Mandatory Reports—The College Has Received a Mandatory Report About Me.

Reports can be sent to the College via mail or confidential fax (416) 591-7758

Mandatory Reporting Obligations for Facility Operators— Incompetence/Incapacity

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 to file a mandatory report with a regulatory College if they have reasonable grounds to believe that a regulated health care provider who practises 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. It could also include situations where the individual has received a warning or suspension. The definitions of incapacity and incompetence can be found in the glossary.

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

When and how soon do I have to report?

A person who operates a facility (employer) shall file the 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 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 and action that has been taken to date

Where should I send the mandatory report?

The report should be addressed to the Registrar of the appropriate regulatory College. Reports related to physiotherapists/physical therapists can be submitted by mail or confidential fax (416) 591-7758.

What happens if an individual or corporation fails to make a mandatory report required by the RHPA?

Failure by an individual or corporation to make such a report where required may result in prosecution. If the specific individual who was supposed to file the report is a regulated health care provider, their regulatory College may take further action against them.

Additional Resources:

Additional information regarding this mandatory reporting obligation can be found on the College's website under Mandatory Reporting Obligations For Facility Operators

Physiotherapists/Physical therapists who are the subject of a mandatory report can find additional information about the process on the College's website: Mandatory Reports: The College Has Received a Mandatory Report About Me.

Mandatory Self Reporting to the College

The Regulated Health Professions Act (RHPA) requires a physiotherapist/physical therapist to file a report with the College if:

1. He/she has been found guilty of an offence; or
2. He/she has a finding of negligence made against them; or
3. He/she has had a finding of malpractice made against them

The legislative requirements for these types of mandatory reports can be found in section 85.6.1(1) and 85.6.2(1) of the Health Professions Procedural Code which is Schedule 2 of the Regulated Health Professions Act.

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 infractions.

What is a Finding of Negligence or Malpractice?

These findings occur in civil proceedings or law suits. For example, a finding of professional negligence by a court that a physiotherapist/physical therapist 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.

When and how soon do I have to report?

A physiotherapist/physical therapist must file the report with the College as soon as they become aware of the finding to facilitate compliance with this reporting obligation. The report may be sent via mail or confidential fax (416) 591-7758.

What information should the report include?

The report should include

- the name of the physiotherapist/physical therapist filing the report;
- the nature of, and a description of the finding or offence;
- the date that the finding was made against the physiotherapist/physical therapist;
- the name and location of the court that made the finding against the physiotherapist/physical therapist; and
- the status of any appeal initiated respecting the finding made against the physiotherapist/physical therapist.

It should be noted that additional reports are required if there is a change in status of the finding as a result of an appeal.

Further, where a publication ban is in effect, the physiotherapist/physical therapist should contact the College for guidance as to how to make the report without violating the publication ban.

Where should I send the report?

The report should be addressed to the Registrar of the College.

What happens if I fail to make a mandatory report required by the RHPA?

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 as it relates to non-compliance with the Regulated Health Professions Act.

Does any of the information submitted to the College go on the public register?

In accordance with section 23(2) of the Health Professions Procedural Code, a notation of every finding of professional negligence or malpractice, which may or may not relate to the physiotherapist/physical therapist's suitability to practise must appear on the public register, unless the finding is reversed on appeal. Municipal by-law infractions, offences under the Highway Traffic Act etc... are not posted on the public register.

Additional Resources

Additional information can be found on the College's website under:

- Mandatory Reports—Offences/Malpractice and Negligence Findings

Mandatory Reporting Obligations to Other External Organizations

Mandatory Reporting Under The 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.

The obligation to report cannot be delegated to another person; you must make the report yourself. Further, the duty to report is an ongoing obligation. This means that anyone who suspects that a child is or may be in need of protection must report directly to a Children's Aid Society, regardless of whether another individual has already made a report on similar grounds. Reports must also be made when additional suspicions are raised, even if a previous report has been filed.

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. Section 72 of the Act can be found here: http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90c11_e.htm

How do I make a report?

Additional information can be obtained from your local Children's Aid Society. Children's Aid Societies, also known in some communities as "family and children's services", are listed in the emergency pages of Ontario telephone directories or you can find your local office by going to the following website (<http://www.oacas.org>). Reports can normally be made 24 hours a day. You should note that reports required by the CFSA must be made immediately. When a report is made, the person making the report must state the suspected form of child abuse or neglect and the information upon which it is based.

What happens if I fail to make a report required by the CFSA?

As noted previously, a health professional's failure to file a report when obligated to do so may be considered professional misconduct by the College. The CFSA also provides that if the information that gives rise to the suspicion is obtained in the course of professional activities and is not reported, failure to make the required reports can result in prosecution and a fine.

What about my responsibility to maintain patient confidentiality?

Many physiotherapists/physical therapists may be concerned that the provision of information required by mandatory reports will violate patient confidentiality. The CFSA 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. The Personal Health Information Protection Act (PHIPA), 2004 reinforces the ability to disclose personal health information when legally required to do so. This means that the duty to report takes precedence over any confidentiality provisions.

What is my personal liability?

The CFSA includes liability protection provisions for those who are required to make mandatory reports. If a civil suit is brought against a person making a report, the Act provides protection to the reporter provided he/she did not act maliciously or without reasonable grounds. As such, physiotherapists/physical therapists, provided they have acted in good faith when making reports, are given legal protection against liability.

Mandatory Reporting Under Long Term Care Homes Act

Under section 25.1 of the Long Term Care Homes Act, a person who has reasonable grounds to suspect that “a resident has suffered or may suffer harm as a result of unlawful conduct, improper or incompetent treatment or care or neglect” is required to immediately report their suspicion and the information upon which it was based. Additional information regarding this mandatory reporting obligation can be obtained by contacting the Ministry of Health and Long Term Care or accessing their website at www.health.gov.on.ca.

Mandatory Reporting Under Common Law—Duty To Warn

Under judge-made law (called the “common law” or “case law”), a physiotherapist/physical therapist may, in some circumstances, have a duty to warn. Such a duty arises where an identifiable person or group is at substantial risk of serious harm or death from another person. The physiotherapist/physical therapist should have reasonable grounds 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.”

Reporting Obligation under the Professional Misconduct Regulation

Holding Out

The College's Professional Misconduct Regulation requires physiotherapists/physical therapists to make a report to the College if they become aware that a non-physiotherapist/physical therapist or individual not registered with the College is holding himself/herself out as a physiotherapist/physical therapist.

Specifically, clause 23 of the regulation reads as follows:

23. Failing to report the name of a person to the College who is not registered to practise in Ontario, while having reasonable grounds to believe that the person is holding himself/herself out as a member registered to practise in Ontario.

When non-regulated individuals 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 physiotherapists/physical therapists to assist us in addressing these situations when they arise. As this mandatory reporting requirement is defined in the Professional Misconduct Regulation, physiotherapists/physical therapists who fail to make reports in these circumstances may be considered to be in violation of this regulation.

Additional Resources:

- Information Bulletin: Non Physiotherapist/Physical therapist's Use of Restricted Titles

Conclusion

This briefing note provides an overview of a physiotherapist/physical therapist's mandatory reporting obligations to the College and/or other agencies/organizations where such reports are required. There may be situations where the organization in which one works is not aware of their obligations in this regard. In these cases, the physiotherapist/physical therapist would be strongly encouraged to educate other individuals 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 a physiotherapist/physical therapist should discuss the situation with an individual at the organization who would receive such reports or contact the practice advisor at the College.

Glossary

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

Confidentiality: The obligation of a physiotherapist/physical therapist 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 physiotherapist/physical therapist believes that his or her patient presents a serious danger of physical harm to themselves or to another person. The physiotherapist/physical therapist 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.

Incapacitated: In relation to a physiotherapist/physical therapist, that the physiotherapist/physical therapist is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the physiotherapist/physical therapist's practice be subject to terms, conditions or limitations, or that the physiotherapist/physical therapist no longer be permitted to practice

Incompetence: If the physiotherapist/physical therapist'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/physical therapist is unfit to continue to practise or that the physiotherapist/physical therapist's practice should be restricted.

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

Mandatory Reporting: Situations where physiotherapists/physical therapists have a legal obligation to make a report. Some of these duties arise under the Regulated Health Professions Act (RHPA) or College regulation; others come under other legislation or Judge-made case law.

Offences: 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 infractions.

Professional Misconduct

Section 51. (1) of the Code

A panel of the Discipline Committee shall find that a physiotherapist/physical therapist has committed an act of professional misconduct if, (a) the physiotherapist/physical therapist has been found guilty of an offence that is relevant to the physiotherapist/physical therapist's suitability to practise;

- (b) the governing body of a health profession in a jurisdiction other than Ontario has found that the physiotherapist/physical therapist committed an act of professional misconduct that would, in the opinion of the panel, be an act of professional misconduct as defined in the regulations;
- (b.0.1) the physiotherapist/physical therapist has failed to co-operate with the Quality Assurance (Management) Committee or any assessor appointed by that committee
- (b.1) the physiotherapist/physical therapist has sexually abused a patient; or
- (c) the physiotherapist/physical therapist has committed an act of professional misconduct as defined in the regulations.

Professional Reporting Obligations

Sexual Abuse

- (a) sexual intercourse or other forms of physical sexual relations between the physiotherapist/physical therapist and the patient,
- (b) touching, of a sexual nature, of the patient by the physiotherapist/physical therapist, or
- (c) behaviour or remarks of a sexual nature by the physiotherapist/physical therapist 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)

Voluntary Report: A report that is made by a physiotherapist/physical therapist that is not mandated by any law or statute. Generally it occurs after a situation has arisen whereby a physiotherapist/physical therapist feels morally and/or ethically compelled to make a report believing that it is in the best interest of the patient or the public to do so.

When making a voluntary report, a physiotherapist/physical therapist is obligated to act in good faith.