

Professional Reporting Obligations

Briefing Note

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Note: This Briefing Note is intended to assist registrants in understanding their professional reporting obligations as defined by the Regulated Health Professiona Act (RHPA) and other legal requirements.

Introduction

There are a number of situations in which physiotherapists have a legal obligation to make a mandatory report. In some cases the report will be related to a patient and in other cases the need to report will arise when an employment or business arrangement involving physiotherapists comes to an end. In cases where physiotherapists are employers of other regulated healthcare providers, additional reporting obligations apply in certain circumstances.

Mandatory reports are required as per a relevant piece of legislation or law. As such, they are different to formal complaints that are sent to the College. There are no legal requirements 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. 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 Service Act or 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 registrants of a regulatory health College, physiotherapists 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 a physiotherapist or another regulated health care provider
- Where as an employer or representative of an employer, a physiotherapist 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 receives the resignation of 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 has ended because of reasons of professional misconduct, incompetence or incapacity

In addition, in June 2009 there will be new mandatory reporting obligations for registrants and we take this opportunity to introduce them to you. Additional information regarding the amendments to the RHPA will be published closer to June 2009.

Physiotherapists 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 registrants usually contact the College to discuss. Registrants 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 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. Where additional information is required, registrants are encouraged to contact the College's Practice Advisor, refer to the source legislation or contact the organization which would be the recipient of the report.

SECTION ONE

Mandatory Report Requirement Under 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 registrant and the patient,
- (b) touching, of a sexual nature, of the patient by the registrant, or
- (c) behaviour or remarks of a sexual nature by the registrant 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 registrant must make a mandatory report to the College if he or she has "reasonable grounds", obtained while practising physiotherapy to believe that a registrant of the same or 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

registrant has not spoken with a direct participant to the incident.

Does a registrant still have to make a report if he or she does not know the name of the person who is allegedly committing the abuse?

No. A registrant is not required to file a mandatory report if he or she does not know the name of the registrant / member who would be the subject of the report.

Does a registrant need to tell the patient that he or she is going to file the report?

The individual 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 their name appearing in a report to the College, the reporter 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 or she has reasonable grounds to believe that a member / registrant who practises at the facility has sexually abused a patient.

Does the employer still have to file the report if he or she does not know the name of the member / registrant?

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

Where should a mandatory report be sent?

The report should be addressed 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 registrant 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 registrant 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 ensures 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 professional, 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 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 Obligations - Sexual Abuse](#)

Registrants who are the subject of a mandatory report can find additional information on the College's website: [Mandatory Reports: The College has received a mandatory report about me](#)

Changes to Employer/Employee or Business Relationships

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

- Termination of employment for reasons of professional misconduct, incompetence or incapacity
- Resignation of an individual 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 for reasons of professional misconduct, incompetence or incapacity

Termination of employment of a Registrant

A person who terminates the employment or who dissolves a partnership, a health profession corporation or association with a registrant for reasons of professional misconduct, incompetence or incapacity must file a mandatory report with the Registrar of the College of which the individual is a registrant within thirty days after the termination or dissolution.

If the registrant resigns while facing termination, a mandatory report is also required. This scenario usually applies when a registrant 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 registrant, an overview of the concerns that led to the end of the professional relationship, and contact information for the name of the person filing the report.

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considered professional misconduct. In addition, the RHPA also includes specific provisions whereby failure to make such a report where required may result court proceedings being initiated.

Proposed Legislation Changes Scheduled to Come into Effect in June 2009

In August 2007, the government of Ontario approved new legislation entitled the Health Systems Improvement Act (HSIA). Schedule M of the Act speaks to proposed changes to the Regulated Health Professions Act. These proposed changes are scheduled to come into effect in June 2009.

While we take this opportunity to advise you of the pending changes, official amendments to this briefing note will be made after June 4, 2009.

Effective June 4, 2009 a registrant who operates a facility where one or more registrants or members of other regulated health professions practice will be required to file a mandatory report with a regulatory College if he or she believes that a member / registrant of that College has sexually abused a patient, is incompetent or incapacitated. These reports will have to be filed with the regulatory College within 30 days and the reports will have to include information to support the concerns of sexually abuse, incompetence or incapacity.

It is important to know that the Health Professions Procedural Code which is Schedule 2 of the Regulated Health Professions Act includes an immunity provision which provides that no action or other proceeding can be initiated against a person for filing a report in good faith.

It is considered a professional obligation to file a mandatory report with a College when required. Failure to submit these reports when required may could result in action being taken in the courts against the individual who should have submitted the report. Additionally, registrants could face a proceeding at their respective College as per the Professional Misconduct Regulation of that specific College.

Additional Resources:

Registrants who are the subject of a mandatory report can find additional information on the College's website: [Mandatory Reports: The College has received a mandatory report about me](#)

SECTION TWO

Mandatory Reporting Obligations to Other External Organizations

Mandatory Report Requirement 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.

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 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 or she did not act maliciously or without reasonable grounds.

As such, registrants, provided they have acted in good faith when making reports, are given legal protection against liability.

Mandatory Reporting Under The Nursing Homes Act

Nursing Homes

In Ontario, under section 25.1 of the Nursing 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 to the Director of Nursing Homes. The Director of Nursing Homes is a government official and not an employee of the nursing home.

Additional information regarding this mandatory reporting obligation can be obtained by contacting the Ministry of Health and Long Term Care or accessing the following website 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 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 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 or 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.”

SECTION THREE

Mandatory Self Reporting to the College

Mandatory Self Reporting of Offences

In August 2007, the government of Ontario approved new legislation entitled the Health Systems Improvement Act (HSIA). Schedule M of the Act speaks to proposed changes to the Regulated Health Professions Act. These proposed changes are scheduled to come into effect in June 2009.

The proposed legislation will require that registrants submit a mandatory self report to the College if they have been found guilty of an offence. The report would be filed as soon as reasonably possible and would need to contain the name of the registrant filing the report, the nature of, and a description of the offence, the date the registrant was found guilty of the offence, the name and location of the court that found the member registrant of the offence; and the status of any appeal initiated respecting the finding of guilt. Additional reports would be required where there is a change in status of the finding of guilt as the result of an appeal.

While we take this opportunity to advise you of the pending changes, official amendments to this briefing note will be made after June 4, 2009.

Mandatory Self Reporting Malpractice/Negligence

In August 2007, the government of Ontario approved new legislation entitled the Health Systems Improvement Act (HSIA). Schedule M of the Act speaks to proposed changes to the Regulated Health Professions Act. These proposed changes are scheduled to come into effect in June 2009.

The proposed legislation will require that a registrant file a mandatory report in writing with the College if there has been a finding of professional negligence or malpractice made against them. The registrant would be required to submit the report to the College as soon as reasonably possible after he or she receives notice of the finding. The report would need to include the name of the registrant filing the report, the nature of, and a description of the finding, the date that the finding was made against the registrant, the name and location of the court that made the finding against the registrant; and the status of any appeal. Additional reports would be required where there is a change in status of the finding as the result of an appeal.

While we take this opportunity to advise you of the pending changes, official amendments to this briefing note will be made after June 4, 2009.

Conclusion

This Briefing Note provides an overview of a physiotherapist's mandatory reporting obligations to the College and 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 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 may feel challenged to determine if the situation that he or she is aware of would actually satisfy the obligations to file a report. In these circumstances a physiotherapist should discuss the situation with an individual at the organization who would receive such reports or contact the practice advisor at the College.

Glossary

Confidentiality: The obligation of a registrant 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 by law.

Duty to Warn: A situation where a registrant believes that his or her patient presents a serious danger of physical harm to themselves or to another person. The registrant may take steps, such as warning the other person or others who would notify that person of the danger; to notify the police; or to take other steps necessary under the circumstances.

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

Incompetence: If the member'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 member is unfit to continue to practise or that the member's practice should be restricted. 1991, c. 18, Sched. 2, s. 52 (1).

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

Mandatory Reporting: situations where physiotherapists have a legal obligation to make a report about a patient. Some of these duties arise under the Regulated Health Professions Act (RHPA). Others come under other legislation or Judge-made case law.

Professional Misconduct

Section 51. (1) of the Code

A panel shall find that a member has committed an act of professional misconduct if,

- (a) the member has been found guilty of an offence that is relevant to the member's suitability to practise;
- (b) the governing body of a health profession in a jurisdiction other than Ontario has found that the member 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 member has failed to co-operate with the Quality Assurance Committee or any assessor appointed by that committee (pending change as of June 4, 2009)
 - (b.1) the member has sexually abused a patient; or
 - (c) the member has committed an act of professional misconduct as defined in the regulations.

Sexual Abuse

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

Exception

(4) For the purposes of subsection (3),
“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 that is not mandated by any law or statute. Generally it occurs after a situation has arisen whereby a physiotherapist 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 is obligated to act in good faith.