

Jurisprudence of Pharmacy

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Agenda

- Health Professions Regulation
- Code of Ethics for Pharmacists
- Complaints Investigation Process
- Discipline Process
- Fitness to Practise Process
- Register & Protected Titles
- Sexual Abuse

Health Professions Regulation



Who is regulated?



- Regulated Health Professions Act, 1991
- Profession-specific legislation



Listing Regulated Professions

- Audiology and Speech-Language Pathology
- Chiropractic
- Chiropractic
- Dental Hygiene
- Dental Technology
- Dentistry
- Denturism
- Dietetics
- Massage Therapy
- Medical Laboratory Technology
- Medical Radiation Technology
- Medicine



More Regulated Health Professions

- Midwifery
- Nursing
- Occupational Therapy
- Opticianry
- Optometry
- Pharmacy
- Physiotherapy
- Psychology
- Respiratory Therapy



Soon To Be Self-Regulating

- Homeopathy
- Kinesiology
- Naturopathy
- Psychotherapy
- Traditional Chinese Medicine

Code of Ethics for Pharmacists





What is the Code of Ethics?

- A set of principles that form the basis of ethical conduct of pharmacists
- Provides pharmacists with guidance as to how to exercise professional judgment



Why do pharmacists need to practice ethically?

- To engender the trust of the public
- To maintain the reputation of the profession
- To deliver excellent care
- To protect the public interest
- **To retain the ability to self govern**



Principle One

The pharmacist establishes and maintains a unique relationship with each patient that is based on an ethical covenant.

- Patient trusts pharmacist to act in *patient's* interest
- shared responsibility for medication regimen
- direct contact



Principle Two

The pharmacist actively promotes the well-being of every patient in a caring, compassionate manner.



Principle Three

The pharmacist preserves the confidentiality of information about individual patients acquired in the course of his or her professional practice and does not divulge this information except where authorized by the patient or required by law



Confidentiality

- Technician leaves computer screen accessible
- Husband requests copies of wife's records
- Physician calls in to request patient's drug history
 - professional judgment in emergency situations
- Patient divulges information about child abuse
- Police ask questions about a patient's medication
- Police present a warrant for narcotic records for a patient
- College requests patient records



Personal Health Information Protection Act, 2004

- applies to the collection, use and disclosure of personal health information by health information custodians as of November 1, 2004
- contains specific rules on how health care practitioners may collect, use, retain, disclose and dispose of personal information
- See website of Information & Privacy Commissioner www.ipc.on.ca



Complaints about privacy

- *A patient receives a vial with a label partially detached. She peels back the label and finds another label that lists a different patient's name, medication and dosage.*
 - what issues does this raise for the pharmacy and pharmacist?



Principle Four

Each member respects the autonomy, individuality and dignity of each patient and provides care with respect for human rights and without discrimination. No patient shall be deprived of access to pharmaceutical services because of the personal convictions or religious beliefs of a member. Where such circumstances occur, the member refers the patient to a pharmacist who can meet the patient's needs.



March 2001 – Council position

Objecting pharmacists have a responsibility to participate in a system designed to respect a patient's right to receive pharmacy products and services.

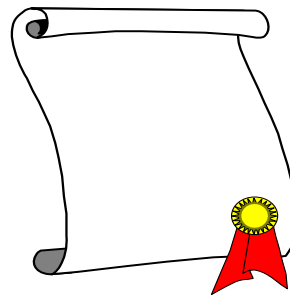
- A pharmacist is permitted to decline providing certain pharmacy products or services if it appears to conflict with the pharmacist's view of morality or religious beliefs and if the pharmacist believes that his or her conscience will be harmed by providing the product or service. Objections should be conveyed to the pharmacy manager not the patient. [emphasis added]
- The individual pharmacist must insure an alternate source, to enable the patient to obtain the service or product that they need. Any alternate means must minimize inconvenience or suffering to the patient or patient's agent.

Other Principles

- respect for autonomy, individuality and cultural diversity
- continuous competence improvement
- collaboration with the multidisciplinary health team
- enable other pharmacists to practice in accordance with high standards of professional practice

Mandate of OCP

- *“To serve and protect the public interest...”*





Implementation of Mandate

- Setting entrance to practice requirements
- Developing standards of practice
- Assuring continuing quality in the practice of pharmacists and pharmacies
- Enforcement of the standards through investigation and discipline of members



Screening Committees

- Complaints Committee
 - Receives and reviews official complaints
- Executive Committee
 - Receives and reviews other information

(soon to be one large screening committee)

Complaints Investigation Process

Complaint Investigations

- What do people complain about?
 - dispensing errors
 - rudeness
 - unmet needs and concern for public welfare
 - dispensing without authority
 - labeling errors
 - unauthorized reduction in quantity
 - insurance fraud
- Must be about pharmacy practice

....Complaints

- How does the College investigate a complaint?
 - Shares copy of complaint and documentation with the pharmacist or designated manager if no pharmacist specified
 - Gathers all relevant information
 - Gives the pharmacist the right to respond to the complaint within 30 days
 - Shares copy of pharmacist's response with complainant
 - Investigates within 120 day



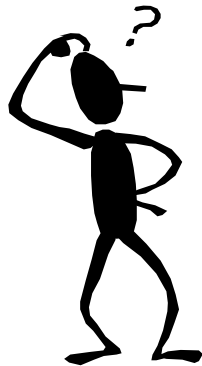
....Complaints

#1 question asked by pharmacists when they are notified that they have been complained about?



...Complaints

Is my name going to be published in
the next edition of Pharmacy
Connection?



...Complaints

#2 question asked by pharmacists when they
are notified that they have been complained
about?



...Complaints

Do I need a lawyer?



...Complaints

- the Complaints Committee
 - is a 5 member panel
 - consists of 3 pharmacists & 2 public members
 - conducts a paper review of results of investigation
 - may direct further investigation
 - decides on appropriate disposition



...Complaints

- What can the Complaints Committee do?
 - take no action
 - issue advice, reminders, or written caution
 - require attendance for an oral caution
 - refer to:
 - Discipline Committee with specified allegations of professional misconduct
 - Executive Committee for possible incapacity proceedings
- Right of review to an independent board

Executive Committee Investigation Process





Executive Committee Matters

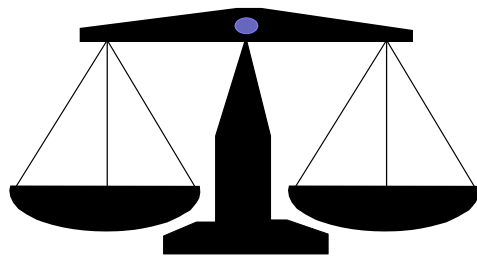
- What do people inform the College about?
 - e.g. termination or suspension of a member because of misconduct
 - e.g. criminal charges against a member
- What does the Executive Committee do?
 - Appoints an investigator if reasonable and probable grounds exist to think that the member has committed professional misconduct



...Executive Committee

- What can the Executive Committee do?
 - take no action
 - invite member to enter into an undertaking
 - take other action it deems appropriate
 - refer to Discipline Committee with specified allegations of professional misconduct

Discipline Proceedings



Discipline Committee

- The Discipline Committee
 - Approximately 20 members
 - panel usually consists of 3 pharmacists and 2 public members
 - hears matters from Complaints, Executive and Accreditation Committees (about pharmacies)
 - hears evidence and decides:
 - What happened? (facts)
 - Is that professional misconduct? (law)
 - If it's professional misconduct, what is appropriate penalty?



Professional Misconduct

- Four types in the RHPA:
 - guilty of an offence relevant to suitability to practice
 - theft, fraud, forgery, other
 - guilty of professional misconduct in another jurisdiction or by another College
 - guilty of sexually abusing a patient
 - guilty of professional misconduct (as defined by Regulation 681/93 to the *Pharmacy Act*)



Professional Misconduct: Examples

- Contravening a term, condition or limitation
- Failing to maintain a standard of practice
- Abusing a patient
- Practicing while impaired
- Failing to keep records, or falsifying records
- Charging an excessive fee
- Contravening the DPRA or other law
- Soliciting business from potential patients
- Restricting patients' choice of pharmacist
- Influencing patient to change his/her will
- Allowing pharmacy to be used for unlawful purpose
- Refusing entry to inspector
- Offering gifts or inducements
- Engaging in conduct that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional



Incompetence

If a member's professional care of a patient displayed a lack of knowledge, skill or judgment for the welfare for he patient of a nature or to an extent that demonstrates that the member is unfit to continue to practice or that the member's practice should be restricted



Discipline Hearings

- who is a party?
- panel has no prior knowledge or involvement
- open (most) vs. closed
- uncontested (most) vs. contested
- costs



Penalties

- What kinds of penalties can the Discipline Committee order?
- For pharmacists:
 - reprimand
 - suspension
 - terms, conditions or limitations on Certificate of Registration
 - fine up to \$35,000
 - revocation of Certificate of Registration
 - for sexual abuse, repayment of the victims fund



Penalties

- For Pharmacies:
 - Revocation of Certificate of Accreditation
 - Suspension
 - fine up to \$100,000

Fitness to Practise Proceedings

Health Inquiries

- *Incapacity* means:
 - suffering from a physical or mental health problem so that a restriction of practice is appropriate
 - e.g. substance use
 - e.g. mental illness
- Issue may be raised by:
 - Mandatory report, self-report, other



Process of Inquiries

- If Registrar has *reasonable grounds to believe* that member is incapacitated
 - obtain health history and information
 - Executive Committee may order inquiries by a Board of Inquiry
 - Board may order an assessment of member by an independent medical examiner
 - Board reports back to Executive Committee



Fitness to Practise Committee

- The Executive Committee may refer the matter to the Fitness to Practise Committee for a hearing
- Hearing is confidential, closed, not punitive
- Fitness to Practise Committee decides whether member is incapacitated, and if so what appropriate restrictions to impose on member's practice



Professionals Health Program

- On behalf of College, carries out monitoring of restrictions imposed by Fitness to Practise Committee
- Also available directly and anonymously to pharmacists, their co-workers and families
- Early intervention for stress and other difficulties which could lead to incapacities



The Register and Protected Titles



The Register

- Legislation and by-laws mandate what information the College **must** keep about members, and what it is **allowed** to tell the public about members
 - Current terms & conditions
 - Findings of hearings stay on the public register indefinitely
 - Finding of sexual abuse stays on the public register forever
- Trend now is toward “transparency”: information is public unless there is a good reason for it NOT to be (e.g. residence phone numbers)



Protected Titles

- pharmacist
- pharmaceutical chemist
- apothecary (the person; this is not a protected title for a store)
- druggist

Sexual Abuse



Patient Relations Program



- RHPA requires each College to design measures to prevent and/or deal with sexual abuse of patients, including:
 - (a) Educational requirements for members
 - (b) Guidelines for the conduct of members with their patients
 - (c) Training for College staff
 - (d) The provision of information to the public



RHPA: Definition of Sexual Abuse

- “Sexual abuse” of a patient by a member means
 - (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) Behavior or remarks of a sexual nature by the member towards the patientException: “sexual nature” does not include touching, behavior or remarks of a clinical nature appropriate to the service being provided. This exception is not very relevant to pharmacy practice.



Scenario

You dispense medication from time to time to a pharmacy technician you work with. You start dating this technician.

What to do?



Mandatory Report of “Sexual Abuse” of a Patient

- A member shall file a report to the College...
- if the member has reasonable grounds to believe...
- obtained in the course of practicing the profession...
- that another member of the same profession or a different College...
- has sexually abused a patient.
- Good faith “reporter” is protected against lawsuits
- **Fine for failing to report:** up to \$25,000 for a first offence; up to \$50,000 for a second or subsequent offence



How to report Sexual Abuse

- In writing within 30 days (unless imminent risk to victim)
- To the Registrar of the College
- Giving your name, name of member being reported on, and explanation of the alleged sexual abuse
- Give the name of the patient only if he/she has consented



Mandatory Penalties for finding of professional misconduct for sexual abuse of a patient

- Reprimand
- Revoke if category (a) or (b) of definition of sexual abuse (i.e., sexual intercourse or touching)
 - Cannot apply for reinstatement for five years
- May order that funding be provided to the patient/victim for therapy and counseling



Sexual abuse vs. *harassment*

- Conduct towards a co-worker not “sexual abuse” per RHPA
 - Could still result in complaint of professional misconduct (College), sexual discrimination (Human Rights Tribunal), lawsuit (court), etc.
- February 1995: “The Ontario College of Pharmacists regards any act of abuse or harassment of a patient, customer, **staff person and/or colleague**, as unacceptable and such actions may constitute professional misconduct and/or criminal offence. Furthermore, ignoring harassment or abuse is equal to condoning the abuser's actions and further harming the victim.” [emphasis added]



Conclusion: Jurisprudence

- The ethical application of the law
- Members must recognize that laws govern their **practice**, including:
 - *Pharmacy Act*
 - *Regulated Health Professions Act*
 - *Personal Health Information Protection Act*
- For more information: www.ocpinfo.com