

MANDATORY REPORTING - A MEMBER'S ETHICAL OBLIGATIONS

The accompanying article on mandatory reporting sets out a member's obligations, as outlined in legislation, to make a report about him or herself or another member of a College in specific circumstances.

What happens if a member becomes aware of the behaviour of another member, or of a health professional registered to a different College, that may cause a concern for patient safety? Does the member have a mandatory obligation to address that concern?

Ethically speaking, if a member is concerned that a health care professional may be engaging in unsafe practice or unethical conduct, he or she must use professional judgment to determine whether the situation must be reported. The circumstances surrounding the situation should be thoughtfully considered before taking any action, balancing the interests of all parties. Patient safety is, as always, the paramount concern.

Mandatory Reporting

Health professionals have the privilege of providing essential care to patients to help them when they are sick and support them when they are well. All members of the Ontario College of Pharmacists are obliged through their code of ethics to act in the best interest of the patient, and to practice in accordance with ethical principles and standards of practice. When a member doesn't meet the standards of the profession, the College must take steps to protect the public.

This article provides an overview of mandatory reporting obligations for health professionals and how the College responds when a report is received. All regulated health professionals are required to provide information to a health professional College in specific circumstances, this ensures that a College is alerted to members who may not be practising safely and permits the College to take action to protect the public. Stemming from legal, professional and

ethical requirements, mandatory reporting is triggered, for example, by the alleged sexual abuse of a patient, or when any restriction is placed on a member's practice, or when a member's employment is terminated due to the member's professional misconduct, incompetence or incapacity. Pharmacists, registered pharmacy students, interns and pharmacy technicians are all members of OCP and share these obligations.

MANDATORY REPORTING:
REGULATED HEALTH
PROFESSIONS ACT, 1991

The mandatory reporting framework is established through the *Regulated Health Professions Act* (RHPA), the *Pharmacy Act* and the *Health Professions Procedural Code* (Schedule 2 of the RHPA). *Regulation 681/93 under the Pharmacy Act* outlines what is considered to be professional misconduct, while the Code lists the circumstances in which a member is required to file a report. With respect to pharmacy, these obligations, depending on the context, fall on the member, the employer/Designated Manager of a pharmacy, or a facility operator, if relevant (facilities include, but are not limited to, acute care hospitals or long-term care homes).

It should be stated at the outset that a report does not constitute a finding of sexual abuse, professional misconduct, incompetence, or incapacity against the member who is the subject of the report. Those findings can only be made by the Discipline Committee or the Fitness to Practise Committee which make findings on the basis of the evidence submitted at a hearing.

SUSPECTED SEXUAL
ABUSE OF A PATIENT

According to the Code a member is required to file a report if he or she has reasonable grounds, obtained in the course of practice, to believe that a member of any college regulated under the RHPA has sexually abused a patient. In the Code, sexual abuse is defined as intercourse or other forms of sexual relations between the member and the patient, including touching, behaviour, or remarks of a sexual nature. The report is to be filed with the Registrar of the College of the member who is the subject of the report including the name of the person making the report, the name of the member who is the subject of the report, an explanation of the sexual abuse, and with the consent of the patient or their agent, the name of the patient who may have been sexually abused. If no consent is given, the patient can remain anonymous but the report must still be made.

TERMINATION OF EMPLOYMENT

The owner of a pharmacy, or Designated Manager, is required to report to the College the facts of terminating the employment of a member terminated for reasons of professional misconduct, incompetence or incapacity. This obligation relates strictly to professional reasons rather than

employment-related reasons. Employment-related reasons generally refer to issues such as lateness or personal incompatibility and don't compromise patient safety or violate standards of practice. The obligation to report continues even if the member who is the subject of the proposed report resigns his or her position, or voluntarily relinquishes his or her privileges.

The acts that constitute professional misconduct for members of the Ontario College of Pharmacists are listed in *Regulation 681/93 under the Pharmacy Act* including, for example, contravening a term, condition or limitation imposed on the member's certificate of registration or failing to maintain a standard of practice of the profession. The standards of practice for pharmacists outline the expected standards of expertise in medications and medication use, collaboration, safety and quality, and professionalism and ethics that pharmacists, registered pharmacy students and interns are expected to meet. Similar standards of practice for pharmacy technicians are also in place. In addition to an allegation of failing to meet the standards of practice, professional misconduct may also include dispensing without authorization, insurance or other fraud, working while impaired, abusive conduct, or otherwise engaging in conduct that would reasonably be regarded by members as disgraceful, dishonourable or unprofessional.

The obligation to report is also triggered when a member is terminated from employment due to incompetence or incapacity. Allegations of incompetence may relate to a member who, in his or her practice, displays a general lack of knowledge, skill or judgment, or a disregard for the welfare of his or her patients. Termination on the



grounds that a member is incapacitated may be precipitated by the impact of a member's physical or mental health disorder on his or her ability to practise safely. Incapacity may also stem from untreated or uncontrolled emotional or psychiatric disorders or substance abuse. Reporting is also required when the privileges of a member are revoked, suspended or restricted, or a partnership of a member with a health profession corporation is dissolved for the reasons stated above.

GUILTY OF AN OFFENCE, PROFESSIONAL MISCONDUCT, OR MALPRACTICE

A member is required to self-report a finding of guilt of an offence relevant to the member's suitability to practise, or a finding of professional negligence or malpractice. This obligation stands whether the finding is made in the member's current profession and jurisdiction, or in another regulated health profession in which a member holds a certificate, or a jurisdiction other than Ontario. While a report of an offence cannot contain any information that violates a publication ban, if any, the report must contain the name of the member filing the report, the nature of, and a description of the offence, the date the member was found guilty, the name and location of the court, and the status of any appeal initiated with respect to the finding of guilt. The member is also required to file a report if there is a change in status of the finding of guilt as a result of an appeal. All reports must be made as soon as is reasonable after the finding.

OTHER MANDATORY REPORTING OBLIGATIONS: CHILD AND FAMILY SERVICES ACT

All members of the public, including any health professional providing services to a child, must promptly report to a children's aid society any suspicions that a child is, or may be in need of protection. In the context of the Act, the duty to report includes physical, sexual, and emotional abuse, neglect, and risk of harm.¹ The person making a report does not need to have evidence or proof of the need for protection, he or she may rely on reasonable grounds, the information that an average person would rely on, to decide to make a report. In this circumstance a report is required even when the information is otherwise confidential or privileged. The person making the report cannot rely on someone else to do so as it is an offence if he or she does not report a suspicion that was obtained in the course of his or her professional practice.

All mandatory reports must be made in writing and addressed to the Registrar of the College of the member who is the subject of the report. In the case of sexual abuse, the report must be made within 30 days; however, if there is concern that the member will continue to sexually abuse the patient, or other patients, the report must be made immediately. This stipulation on the timing of the report is the same in the case of suspected incompetence or incapacity which may expose a patient to harm or injury, where there is a need for intervention. In all other scenarios, a member is required to report as soon as is reasonably practical in the circumstances. A summary

of reporting obligations and the timing of reports is provided in the Appendix at right.

THE COLLEGE RESPONSE

Once a report is received, the information will be reviewed by the Registrar to determine the next steps, including appointing an investigator and initiating a formal investigation. If determined as necessary, the investigator appointment would be placed before a panel of the Inquiries, Complaints and Reports Committee (ICRC) for a approval of the investigator appointment. The investigator will notify the member of his or her appointment, conduct an investigation and a report of the investigation will be reviewed by the ICRC for review and disposition. Dispositions can range from "take no action" to, in the most serious circumstances, a referral of allegations of professional misconduct and or incompetence by the member to the Discipline Committee. In these instances, a hearing into the allegations is held before a panel of the Discipline Committee and a decision is rendered by the panel.

Typically, the College will deal with all the information received in a confidential manner and information is only shared with the public if it results in disciplinary proceedings. Complainants are protected from any action or other proceeding when a complaint is made and/or a report is filed in good faith. **PC**

¹ Ontario. Reporting Child Abuse and Neglect: It's Your Duty. Your responsibilities under the Child and Family Services Act. Retrieved at: <http://www.children.gov.on.ca/htdocs/english/documents/topics/childremsaid/Reportingchildabuseandneglect.pdf>

What Behaviour or Action Triggers a Mandatory Report?	Legal Authority	Threshold of Proof	Report Author/ Report Recipient
Suspected Sexual Abuse of a Patient Sexual relations, touching, behaviour or remarks of a sexual nature between a regulated health professional and a patient/client (name of health professional must be known).	<i>RHPA</i> <i>The Code*:</i> <i>s1(3)(a)-(c).</i>	Reasonable grounds obtained: • In the course of practice; or • In the operation of a facility	Member or Facility Operator
			Registrar of the College of the member who is the subject of the report.
Timing of the Report • Filed in writing within 30 days after the obligation to report arises. • If there are reasonable grounds to believe that the member will continually to abuse the patient, or other patients, and there is an urgent need for intervention, the report must be filed immediately.			
Reporting by Employers, etc. Termination of employment, revocation or restriction of a member's privileges, or dissolution of a partnership, health profession corporation, or association with a member for reasons of professional misconduct, incompetence or incapacity.	<i>RHPA</i> <i>The Code:</i> <i>s 85.5(1) and (2)</i>	Termination of the member's employment or privileges.	Employer, Designated Manager or any person, who employs or offers privileges to the member or associated in a partnership or otherwise for the purpose of offering health services
			Registrar
Timing of the Report • Filed in writing with the Registrar within 30 days after the termination, revocation, suspension, imposition or dissolution. • In the case of alleged incompetence or incapacity, if there are reasonable grounds to believe that the member will expose a patient to harm or injury, and there is an urgent need for intervention, the report must be filed immediately.			
Reporting by Members re: Offences A finding of guilt of an offence OR an additional report if there is a change in status of the finding of guilt as a result of an appeal.	<i>RHPA</i> <i>The Code:</i> <i>s 85.6.1(1)</i>	Finding of guilt	Member
			Registrar
Timing of the Report • Filed in writing with the Registrar as soon as is practicable after the member receives notice of the finding of guilt or a notice of a change in the status of the finding of guilt made against the member as the result of an appeal.			
Reporting by Members re: Professional Negligence and Malpractice A finding of professional negligence or malpractice OR an additional report if there is a change in status of the finding as a result of an appeal	<i>RHPA</i> <i>The Code:</i> <i>s 85.6.2(1)</i>	Finding of negligence or malpractice	Member
			Registrar
Timing of the Report • Filed in writing with the Registrar as soon as is practicable after the member receives notice of the finding of professional negligence or malpractice or a notice of a change in the status of the finding as the result of an appeal.			
Contents of a Report: Depending on the Subject of the Report All Reports: The name of the person filing the report; the name of the member who is the subject of the report Sexual Abuse: An explanation of the alleged sexual abuse; the name of the patient (with consent) Incompetence or Incapacity: An explanation of the incompetence or incapacity. An Offense: The nature of, and a description of the offence; the date the member was found guilty; the name and location of the court that found the member guilty of the offence; and, the status of any appeal. Professional Negligence and Malpractice: The nature of, and a description of the finding; the date of the finding made against the member; the name and location of the court that made the finding; and, the status of any appeal.			
Reporting Child Abuse and Neglect Any suspicions that a child is or may be in need of protection as a result of physical, sexual and emotional abuse, neglect, and risk of harm	<i>Child and Family Services Act s.72</i>	Reasonable grounds to suspect that a child under 16 is or may be in need of protection	Any person, including a person performing professional or official duties with respect to children
			Directly to a Children's Aid Society
Timing and Contents of a Report • A report is made promptly, including the information on which the suspicion is based (i.e. physical harm, risk of physical harm, sexual molestation or exploitation, etc.). Any professional who fails to make a report is liable, on conviction, to a fine of up to \$1,000.			

* Regulated Health Professions Act, 1991: The Health Professions Procedural Code – "The Code"