



The College of Respiratory Therapists of Ontario
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Mandatory Reporting of Sexual Abuse Fact Sheet

Reporting Obligations under the Regulated Health Professions Act

Introduction

The *Regulated Health Professions Act* (RHPA), the umbrella legislation for all regulated health care professions in Ontario, requires the mandatory reporting of information about regulated health professionals under certain circumstances. The purpose of this Fact Sheet is to answer questions related to those responsibilities. Additional information can be obtained by speaking to a member of the College staff directly.

What are my obligations to report?

Under the RHPA there are two circumstances under which you must submit a report to the College:

1. Termination, suspension and other disciplinary action of a member

Whenever you, for reasons of professional misconduct, incompetence or incapacity:

- § terminate the employment of a member;
- § revoke, suspend or impose restrictions on the privileges of a member;
- § dissolve a partnership or association with a member; or
- § intended to terminate the member's employment but the member resigned prior to his or her employment being terminated.

2. Sexual abuse of a patient/client by a member

As a regulated health care professional you must submit a report to the CRTO whenever you have reasonable grounds, obtained during the course of practising your profession, to believe a member of the CRTO has sexually abused a patient/client.

As a regulated health care professional you must also submit a report to the appropriate health regulatory College whenever you have reasonable grounds, obtained during the course of practising your profession, to believe a member of another regulated health profession (i.e., nurse, physician, physiotherapist, etc.) has sexually abused a patient/client.

Also, operators of facilities who employ registered health practitioners must submit a report where they have reasonable grounds to believe a member sexually abused a patient/client.

Because members, employers, managers, facility operators and partners have a legal obligation to report these circumstances they are known as "mandatory" reports.

This Fact Sheet focuses on mandatory reports concerning **sexual abuse** of patients /clients by members. For reports concerning the termination of employment of a member for reasons other than sexual abuse, please see CRTO publication, *Mandatory Reporting of Termination Fact Sheet*. A copy can be obtained directly from the College or from the CRTO web site at www.crto.on.ca. For information concerning reporting of **child abuse** please see *Child Abuse - Reporting Obligations under the Child and Family Services Act*, at the end of this document.

Commonly asked questions concerning reporting requirements

opposed to rumour.

What type of behaviour constitutes sexual abuse?

Sexual abuse is defined in the legislation as follows:

"sexual abuse" of a patient/client by a member means,

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

Sexual abuse does not include touching, behaviour or remarks of a clinical nature appropriate to the service provided, so that appropriate clinical procedures (e.g., those involving touching of the genitals, taking a sexual history), are permitted.

When must I report sexual abuse?

You must report sexual abuse in the following circumstances:

1. *When you know the name of the alleged abuser (member).*
You are not required to file a report if you do not know the name of the alleged abuser.
2. *Where the alleged abuser is registered with one of the health regulatory Colleges.*
If you are not sure, you can check with the College that regulates his or her profession.
3. *Where the person being abused was a patient/client.*
There is no obligation to report sexual abuse of non-patients (for example, co-workers or students). However, you may wish to submit a complaint or report regarding such conduct and you can contact someone at the College to discuss this.
4. *If the conduct involved sexual abuse as defined by the RHPA.*
See the definition of "sexual abuse" above.
5. *Where you have "reasonable grounds" to believe sexual abuse occurred.*
For example, concrete information from a reliable source or a patient/client, as

6. *Where you obtained the information concerning sexual abuse during the course of practising the profession.*

The reporting requirement is not intended to capture a member's conduct or behaviour outside the patient care/employment setting.

How soon should the report be filed?

You must file a report to the appropriate College within 30 days of learning that the sexual abuse took place. However, if you believe that the practitioner is likely to continue abusing patients/clients, then the report should be made immediately.

Where do I send the report?

Send your written report to the College, addressed to the Registrar.

Does the person who submits the report have to be a regulated health professional?

No. The obligation also applies to facility operators (operators of institutions where health services are provided), even if the operator is not a member of a regulated health profession.

Do I have to report sexual abuse of patients/client by other health care professionals such as doctors and nurses?

Yes, you are required to report sexual abuse of a patient by a regulated health care professional to any of the 21 health regulatory Colleges.

What information should I include in the report?

The report must be in writing and include:

- § your name, address, and a phone number where you can be reached;
- § the name of the alleged abuser (regulated health care professional);
- § details/description of the alleged abuse;
- § the name of the patient/client **only if** the patient consents to their name being used.
- § names of witnesses or any other persons who might have information about the alleged abuse is also helpful.

What do I need to do to obtain the consent of the patient who was abused?

First, you must use your best efforts to advise the patient/client of your obligation to report the sexual abuse prior to submitting the report to the College. You must also inform the patient/client that you require their written consent for their name to be included and that they have the choice of remaining anonymous. You may also wish to give the patient/client some information about what happens to the report once it is submitted, and a consent form has been attached to this document to assist you (see Appendix 1). If the patient is incapable then the patient's representative must sign the consent form.

What should I do if the patient won't consent to their name being included in the report?

You must still submit the report but **do not** include the patient/client's name. You should include the fact that you have tried to obtain consent, and that it was refused, in the report.

If my report contains documents to support the concerns (such as patient records), how do I deal with patient confidentiality?

If the report includes patient/client information to support the concerns then you should seek patient consent for the disclosure of the information. If consent cannot be readily obtained or is refused, your report should make this clear. The College will then decide whether to initiate a formal investigation in order to obtain the information. Alternatively, you may choose to include the information with all identifiers removed.

What happens to my report once it is submitted to the College?

The Registrar will forward the report to the Executive Committee. The Committee will review the report and any supporting documentation, such as the member's response, and decide whether there are grounds to request a formal investigation, or if the Committee believes the member might be incapacitated, appoint a Board of Inquiry. Once the Executive Committee has considered all the information, including any reports of investigations or inquires, it will make a decision as to how the matter should be resolved, which may include:

- § referring allegations of professional misconduct or incompetence to the Discipline Committee;
- § referring allegations of incapacity to the Fitness to Practise Committee;
- § issuing a caution to the member;
- § providing advice to the member;
- § negotiating an undertaking/agreement with the member;
- § taking no action.

If there is a formal investigation, do I have to participate?

Yes. You have a duty to cooperate with College investigations and the law prohibits anyone from obstructing an investigator, withholding or concealing anything relevant to the investigation, or destroying anything that is relevant to the investigation.

What would an investigation involve?

The nature of an investigation will vary according to the nature of the concerns. However, at a minimum, it is likely to include interviewing witnesses to the conduct and obtaining records (health records, employment records, incident reports and other relevant material). Not only is there a duty to cooperate with College investigations but also such cooperation assists investigators in ensuring that there is as little disruption in the work place as possible. It is important to note that the role of the investigator is to gather facts and not to make any judgement about the member's conduct. Once the investigation is complete, the investigator will submit a report to the Executive Committee. It is also possible that, should the matter be referred to the Discipline Committee, any witnesses will be asked to testify at the hearing.

As a person submitting the report, will I be advised of the outcome of the Executive Committee's review?

No. All matters concerning the investigation are confidential, but some information related to Discipline and Fitness to Practise proceedings (such as a suspension or revocation that resulted from a finding of professional misconduct), is considered public information and can be obtained through the College. You may also become aware of a referral to a hearing if you are called as a witness in the proceeding.

Will the member know who submitted the report?

The name of the reporter may not be revealed initially but may be disclosed later for the purposes of investigation and/or a discipline proceeding. At a minimum the member will be made aware that a mandatory report has been submitted, the nature of the report, and the statutory provisions that apply, so that he or she can respond to the report.

I am concerned that the member may retaliate in some way if I report the misconduct.

Reporters and witnesses are given legal protection under the RHPA from any action or other proceedings for damages being taken by the member who is the subject of the report, as long as the report is made in good faith.

What happens if I do not submit a mandatory report?

Failure to make a mandatory report is an offence punishable by a fine of up to \$25,000. It also constitutes professional misconduct if you are a regulated health care professional. In addition, if the member subsequently sexually abuses other patients/clients, those patients/clients could take legal action against the member or facility operator for failing to report the member before he or she abused them.

Child Abuse - Reporting Obligations under the Child and Family Services Act

Under section 72(1) of the *Child and Family Services Act* (CFSA), if a person has reasonable grounds to suspect that a child is or may be in need of protection, the person must promptly report the suspicion and the information upon which it is based to a children's aid society. Health and other professions are considered to have a particular responsibility to report and the Act makes it an offence to fail to report.

For further information contact the Ministry of Child and Youth Services at Tel: (416) 325-5666, TTY: 1-800-387-5559 or visit the Ministry Web site at <http://www.children.gov.on.ca/CS/en/programs/ChildProtection/default.htm>, Publications – Reporting Child Abuse and Neglect.

Who do I contact for more information about mandatory reporting?

If you would like to talk to a staff person at the College please contact the Manager of Policy and Investigations at (416) 591-7800 ext 21, Toll Free: 1-800-261-0528 ext 21, or by e-mail at robinson@crto.on.ca.

Acknowledgement

Much of the information contained in this document was taken from a booklet written by Richard Steinecke, *Responsibilities of Employers, Managers and Partners Under the Regulated Health Professions Act*. Mr. Steinecke is a lawyer practising health law in Toronto and is also the author of *A Complete Guide to the Regulated Health Professions Act*.

Attachments:

Appendix 1 – Patient Consent Form

PATIENT CONSENT FORM

PLEASE READ THIS IMPORTANT MESSAGE BEFORE YOU SIGN THIS DOCUMENT

By law, every regulated health care practitioner must report sexual abuse by another practitioner. He or she has no choice.

However, you have a choice as to whether or not your name is included in the report. You can have your name included in the report or remain anonymous. If you decide not to sign this consent form your name will not be included in the report.

The following information may help you make this decision:

The report will be sent to the regulator (called the "College") of the health care practitioner who abused you.

By disclosing your name, it may be possible to take some action to prevent the practitioner from abusing other patients. For example, the College may take disciplinary action.

If you do not allow your name to be disclosed, it will be very difficult for the College to act on the report because you will not be available to give evidence.

If you consent to your name being disclosed to the College, you will likely be approached by a representative of the College, who will explain what can be done about the practitioner who abused you. He or she will also ask you if you would be willing to help the College deal with the person who abused you. This may result in your being asked to testify in legal proceedings. You can ask the representative any questions you may have.

If you have any questions before deciding whether to sign this consent form, please call: [include name and phone number of a contact person from the practitioner's College].

If you wish to give your consent for your name being included in the report, please sign below

INFORMED CONSENT

I was a patient of [insert name of practitioner being reported]. [Insert name of reporting person] has told me that he/she must report the practitioner for his or her sexual abuse of me. I consent to my name being included in the report.

date

signature of patient

signature of witness

print name

print name