



transparency

the public register



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Changes to the Public Register

This issue of the CHO Practice Management Program is part 4 of a 4-part series.

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Immediate Changes under RHPA effective May 30, 2017

Bill 87, which was passed in May 2017, is an important piece of legislation for Ontario's patients and for all health regulatory colleges who regulate Ontario's health professions in the public interest.

Bill 87, the *Protecting Patients Act* strengthens the sexual abuse and transparency provisions in the *Regulated Health Professions Act (RHPA)*, and changes how the Colleges move forward in the complaints, investigation and discipline processes.

Increased Transparency

Changes to *Code s. 23, 94(1)(1.2)* increase the amount of information available about registrants on the College's public register. This will include details about certain types of outcomes from the Inquiries, Complaints and Reports Committee (ICRC), and the outcome of a discipline hearing, even if no finding¹ is made against a registrant. This type of information provides the public with a transparent means of determining if their health-care provider has any allegations² of complaints, reports, incompetency, or incapacity, and will provide the public with open access to information about the status of complaints, investigations and referrals to the Discipline Committee until the matter has been resolved.

The mandatory, universal content of the Colleges' public register has been expanded to include:

- The date a former member died;
- Oral (but not written) cautions³ (reprimands);
- Specified Continuing Education or Remediation Program⁴;
- The date and status of referrals to discipline;
- A copy of the specified allegations;
- Acknowledgements⁵ and undertakings⁶ as long as they remain in effect; and

¹ What is a finding? A finding of misconduct means "a determination, based on a preponderance of the evidence, that misconduct has occurred." www.uslegal.com

² What is an allegation or specified allegation? Allegation is the act of alleging something, a positive assertion especially of misconduct, or it may be an assertion unsupported and by implication regarded as unsupportable. (Merriam-Webster Dictionary) In the case of a regulatory health environment, a specified allegation must specify the aspects of the complaint being referred to the Discipline Committee for review. Specified allegations refer to the matter in principle and cite sections of the Act or a profession's professional misconduct regulation.

³ What is an oral or written caution? A caution is educational in nature; it is not a sanction. It is advisory in nature and intended to be remedial. (R. Steinecke, *A Complete Guide to RHPA*, 5-55)

⁴ What is a Specified Continuing Education or Remediation Program or SCERP? A SCERP has the potential to address minor practice concerns through non-disciplinary means and is consistent with the College's public interest mandate. ...the word "specified" suggests that the direction should set out the substantive elements of the program. Also the upgrading should relate to the concerns identified by the Inquiries Complaints and Reports Committee (R. Steinecke, *A Complete Guide to RHPA*, 5-57, 5.58)

- The result of disciplinary decisions/findings, including a synopsis of the finding (even where no finding was made) and of the content of the reprimand. Where the discipline panel finds the allegations against a member have not been proven, the reasons must be posted on the public register for 90 days unless the member asks for it to be kept on longer.

In fitness-to-practice cases, the public register must show any finding of incapacity and the order made (subject to the limitations on publishing personal health information about members found in s. 23(8) of the *Code*).

The “pardon” provision has been amended to prevent the removal from the public register of any findings of sexual abuse (i.e., including behaviour, remarks and touching). As such these items become a permanent part of the registrant’s public record. (Code 23(11)).

Also, the Minister will be able to make a regulation requiring additional information to be placed on the public register (RHPA section 43(1)t).

The College has an explicit duty to post all information promptly. The Registrar has a duty to correct information about professional negligence or malpractice findings where the registrant demonstrates to the Registrar that the information is incomplete or inaccurate.

Future RHPA Changes - Transparency

New Mandatory Self-Reporting Obligations for Registrants upon proclamation of changes to Code s. 85.6.3 and 85.6.4

Two new self-reporting obligations have been created:

- a) The first requires registrants to report in writing all other regulatory bodies with which they are registered and any findings of professional misconduct or incompetence (but not incapacity) made by those bodies. (This will work in conjunction with section 5 of the CHO Registration Regulation 18/14.)
- b) The second requires registrants to report in writing all charges for an offence and any resulting bail conditions or other similar restrictions. RHPA does not distinguish between minor (e.g., speeding) and serious offences. It is the role of the College to review the materials provided and determine if the charges impact the registrant’s ability or suitability to practice the profession safely and competently. (This will work in conjunction with CHO Bylaw 21.11.)

Upon proclamation of these changes, RHPA will require registrants to report the following to the College:

- any registration in other professions or regulatory body
- any findings of professional misconduct against them with any other body
- information about offences, and
- information about bail conditions.

⁵ What is an acknowledgement? Conceptually, acknowledgement is closely related to confession, admission, avowal, and recognition. <http://restorativejustice.org/> original source: What Is Acknowledgement and Why Is It Important? Source: (2003) In Carol A.L. Prager and Trudy Govier, *Dilemmas of Reconciliation: Cases and Concepts*. Waterloo, ON: Wilfrid Laurier University Press. Pp. 65-89.

⁶ What is an undertaking? ICRC may negotiate an undertaking from the member as to his or her future conduct. (R. Steinecke, *A Complete Guide to RHPA*, 5-59) It may set out expectations and a commitment from the registrant to follow through on the commitment.

In addition to requirements related to reporting information about themselves, every registrant must also adhere to mandatory reporting requirements as they relate to other professionals and to patient care. These reporting obligations include sexual abuse, offences and professional negligence or malpractice, and professional misconduct, incompetence and incapacity by a registrant of this or any other regulated health-care profession. Additionally, every registrant has the obligation to report any case of suspected child abuse or neglect or suspected abuse of a senior citizen or elder. Refer to CHO Practice Management Program part 3 on Mandatory Reporting, as well as the full CHO Professional Practice Standard 12 Mandatory Reporting on Patient Care for full details of your obligations.



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