



**Transitional Council of the
College of Homeopaths of Ontario**

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STANDARDS AND GUIDELINES

TITLE: MANDATORY REPORTING ON PATIENT CARE – STANDARD **Doc #: 12**
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Note to Readers: In the event of any inconsistency between this document and the legislation that affects homeopathic practice, the legislation governs.

College publications contain practice parameters and standards which should be considered by all Ontario homeopaths in the care of their patients and in the practice of the profession. College publications are developed in consultation with the profession and describe current professional expectations. It is important to note that these College publications may be used by the College or other bodies in determining whether appropriate standards of practice and professional responsibilities have been maintained.

POLICY

There are various situations wherein a Registrant will have a legislative duty to report verbal, physical, psychological, emotional or sexual abuse of a patient. It is expected that the Registrant will report as required.

INTENT

The intent of this standard is to advise Registrants with respect to the requirements of mandatory reporting.

PREAMBLE

Mandatory reporting refers to the obligation under the *Regulated Health Professions Act, 1991*, (RHPA) and the Health Professions Procedural Code for Registrants, regulated health care professionals, and employers to file written reports to the College in a number of circumstances. It is one of the ways the College fulfils its role to protect the public's interest and to maintain the public's trust in the homeopathic profession.

Reporting of sexual abuse, professional misconduct, incompetence and incapacity by Registrants, regulated health care professionals, and employers can be complex and sensitive. Mandatory reporting is considered an essential professional obligation because it is the best means of ensuring issues of abuse, misconduct, incompetence, professional negligence, or concerns regarding incapacity are brought to the attention of the College. It is the responsibility of the College to review or investigate any report in the context of its self-regulatory role to protect the public from harm.

As regulated health professionals, Registrants also have mandatory duties to report information to named officials or agencies under other pieces of provincial legislation. This is true for abuse of a senior citizen (elder) if the person is living in a Nursing Home, Home for the Aged or a Long-Term Care facility, or child. For example,



Section 72 of the *Child and Family Services Act* outlines the public's and professional's duty to report a child in need of protection if he or she has reasonable grounds to suspect abuse as defined under that Act. These Acts also define to whom regulated health professionals are required to report.

DESCRIPTION OF STANDARD

1. REPORTING BY REGISTRANTS¹

A. Sexual Abuse

It is mandatory under the RHPA for a Registrant to file a written report to the College if they have reasonable grounds, obtained in the course of his or her practice, to believe that a patient has been sexually abused by any Registrant of the College of Homeopaths of Ontario (the College) or by any Registrant of another health regulatory college.

It is compulsory for Registrants to file a report of sexual abuse of a patient, unless they do not know the name of the Registrant who would be the subject of the report. In fact, failure to do so when there are reasonable grounds to believe the abuse has occurred is an offence under the Health Professions Procedural Code (the Code), and can lead to severe penalties. If a Registrant is required to file a report of sexual abuse because of reasonable grounds obtained from one of his or her patient's they must use their best efforts to advise the patient of the requirement to file the report before doing so.

Key Points:

- A Registrant is not required to file a report if the Registrant does not know the name of the regulated health care professional who would be the subject of the report.
- If a Registrant is required to file a report because of reasonable grounds obtained from a patient, the registrant shall use his or her best efforts to advise the patient of the requirement to file the report before doing so.
- The report must contain the name of the Registrant, the name of the regulated health care professional who is the subject of the report, an explanation of the alleged sexual abuse, and the name of the patient who may have been sexually abused, if the patient involved has consented in writing to provide his or her name in the report.
- The report must be made to the Registrar of the College of the health professional who is the subject of the report within 30 days after the obligation to report arises, unless the Registrant has reasonable grounds to believe that the health professional will continue to sexually abuse the patient or will sexually abuse other patients. In this case, the report must be filed immediately.
- Failure to file a mandatory report is an offence, which may be punishable by a fine of up to \$25,000 and constitutes professional misconduct.
- If the perpetrator is not a regulated health care professional there is no mandatory reporting obligation.

¹ Reports must be made in a prompt and timely manner. Self-reporting on an incident of sexual abuse, finding of an offence, negligence or malpractice at some point in the Registrant's professional career is different from the self-declaration made at the time of application or within the annual renewal process.



B. Offences and Professional Negligence or Malpractice

Under sections 85.6.1 and 85.6.2 of the Health Professions Procedural Code, a Registrant must file a written report to the College if he or she have had a finding of an offence, professional negligence or malpractice made against him or her. These are findings made by a court or in a civil proceeding or lawsuit. They often result in an award of damages. The College is required to post finding of professional negligence or malpractice against the Registrant on the public register.

Definition of Offence

An offence is a finding by a court (administrative tribunal findings do not count) of a breach of something labelled as an offence in a statute. Typically an offence is punishable by a fine or jail; however, the report must be made even if the court imposes a conditional or an absolute discharge. The obvious offences are criminal in nature and include breaches of the Criminal Code of Canada or of federal drug legislation. However, there are a number of provincial offences as well (e.g., failing to report a child in need of protection contrary to the Child and Family Services Act).

Definition of Finding of Negligence or Malpractice

These findings occur in civil proceedings or law suits. For example, a finding of professional negligence by a court that a Registrant fell below the accepted standard of practice of the profession and thereby harmed a patient has to be reported. The College will inquire into these findings where appropriate. The initiation of a law suit or settlements that are resolved outside a court are not subject to this reporting obligation.

Key Points:

A Registrant must send the report to the College as soon as possible after they receive notice of the finding. The report must be sent to the Registrar of the College.

The report must include the:

- name of the Registrant filing the report;
- nature of, and a description of the finding or offence;
- date that the finding was made against the Registrant;
- name and location of the court that made the finding against the Registrant; and
- status of any appeal initiated respecting the finding made against the Registrant.

Additional reports are required if there is a change in status of the finding as a result of an appeal.

The initial report and any additional reports must not include any information that violates a publication ban. Where a publication ban is in effect, the Registrant may contact the College for guidance.

C. Reporting of Suspected Child Abuse or Neglect

In accordance with s. 72(1) of the *Child and Family Services Act*, RSO 1990, Chapter C.11 (CFSA) any person who performs professional or official duties with respect to children, and who has reasonable



grounds to suspect one of the following listed below, is required to report a suspicion and the information on which it is based forthwith to a child protection society.

"A child is in need of protection where:

1. *The child has suffered physical harm, inflicted by the person having charge of the child or caused by or resulting from that person's,
i. failure to adequately care for, provide for, supervise or protect the child, or
ii. pattern of neglect in caring for, providing for, supervising or protecting the child.*
2. *There is a risk that the child is likely to suffer physical harm inflicted by the person having charge of the child or caused by or resulting from that person's,
i. failure to adequately care for, provide for, supervise or protect the child, or
ii. pattern of neglect in caring for, providing for, supervising or protecting the child.*
3. *The child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child.*
4. *There is a risk that the child is likely to be sexually molested or sexually exploited as described in paragraph 3.*
5. *The child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment.*
6. *The child has suffered emotional harm, demonstrated by serious,
i. anxiety,
ii. depression,
iii. withdrawal,
iv. self-destructive or aggressive behaviour, or
v. delayed development, and there are reasonable grounds to believe that the emotional harm suffered by the child results from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.*
7. *The child has suffered emotional harm of the kind described in subparagraph i, ii, iii, iv, or v of paragraph 6 and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm.*



8. *There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph i, ii, iii, iv, or v of paragraph 6 resulting from the actions, failure to act or pattern of neglect on the part of the child's parent or the person having charge of the child.*
9. *There is a risk that the child is likely to suffer emotional harm of the kind described in subparagraph i, ii, iii, iv, or v of paragraph 6 and the child's parent or the person having charge of the child does not provide or refuses or is unavailable or unable to consent to services or treatment to prevent the harm.*
10. *The child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to treatment to remedy or alleviate the condition.*
11. *The child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody.*
12. *The child is less than 12 years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to those services or treatment.*
13. *The child is less than 12 years old and has on more than one occasion injured another person or caused loss or damage to another person's property with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately."*

Key Points:

- It is the position of the College that a Registrant would be considered to be a person who performs professional duties so Registrants should be aware of this legal duty.
- Provisions of the CFSA, require the Registrant to make the report directly to the local Children's Aid Society (CAS). Reporting responsibilities cannot be delegated.
- The CFSA establishes an on-going duty to report, such that, if a person has made a previous report about a child, and has additional reasonable grounds to suspect that a child is or may be in need of protection, that person must make a further report to the local CAS. That report must be made immediately to the local CAS.

Penalty for Failing to Report

The CFSA also recognizes that professionals and officials working closely with children have a special awareness of the signs of child abuse and neglect, and a particular responsibility to report their suspicions, and so makes it an offence, punishable by conviction or fine, to fail to report.



D. Reporting of Suspected Abuse of a Senior Citizen or Elder

Under the *Long Term Care Homes Act, 2007*, S.O. 2007, Chapter 8 and the *Retirement Homes Act, 2010*, S.O. 2010, Chapter 11, s. 24(1) and s. 75(1), respectively), if a person 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 , abuse or neglect, he or she shall immediately report the suspicion and the information upon which it was based to the Director or Registrar.

Key Points:

- Information on abuse in provincially funded long term care homes should be made to the Ministry of Health and Long-Term Care.
- Information about abuse in privately-funded nursing homes should be made to the Minister responsible for Seniors or any other relevant member of the Executive Council.

E. Duty to Warn in Emergency or Urgent Care Situations

Disclosure of information, if the information relates to an emergency or urgent care situation, is not mandatory but is prudent and sometimes warranted, for the health and safety of the patient and others.

The *Personal Health Information Protection Act, 2004*, (PHIPA) allows for action if a health information custodian believes on reasonable grounds that it is necessary, in order to eliminate or reduce a significant risk of serious bodily harm to a person or group of persons to disclose personal health information without consent, the disclosure may be made. Such circumstances would even override an individual's prior express instructions not to disclose the relevant personal health information. ^{2,3}

In addition to PHIPA, the courts⁴ have set out factors for health practitioners to consider when concern for public safety may warrant the disclosure of personal health information to reduce or eliminate risk of harm. The factors to consider are:

- There is a clear risk to an identifiable person or a group of persons;
- There is a risk of serious bodily harm or death; and
- The danger is imminent.

Registrants should ensure that they disclose only the information that is necessary to prevent identified harm.

For example: A health care practitioner at a university health centre or a college academic advisor would be permitted to disclose personal health information to a patient's family or physician if there were reasonable grounds to believe it was necessary to do so to reduce the risk of suicide.⁵

² See Section 40(1) of Personal Health Information Protection Act, 2004.

³ Fact Sheet #7, July 2005. Disclosure of Information Permitted in Emergency of other Urgent Circumstances, Office of the Information and Privacy Commissioner of Ontario, page 2.

⁴ *Smith v. Jones*, [1999] S.C.J. No. 15 (S.C.C.)



2. REPORTING BY EMPLOYERS, ETC.

A. Professional Misconduct, Incompetence, Incapacity or Sexual Abuse

Under section 85.5 of the Health Professions Procedural Code, a report must be sent to the College by a person whenever an employer or a person:

- Terminates the employment of a registrant, for reasons of professional misconduct, incompetence or incapacity.
- Revokes, suspends or imposes restrictions on the privileges of a registrant, for reasons of professional misconduct, incompetence or incapacity.
- Dissolves a partnership, a health profession corporation or association with a registrant, for reasons of professional misconduct, incompetence or incapacity. This also applies to an employee of the Registrant. If the employee is not a regulated health professional the matter is to be reported to the police.
- The person also has an obligation to file a report if the registrant resigns to avoid the actions defined above.

Under section 85.2 of the Health Professions Procedural Code, a report must be sent to the College of the registrant by a person who operates a facility whenever that person:

- Has reasonable grounds to believe that a registrant who practises at the facility is incompetent, incapacitated or has sexually abused a patient.

B. Determining Professional Misconduct, Incompetence, Incapacity, or Sexual Abuse

Sometimes Registrants have difficulty determining what constitutes professional misconduct, incompetence or incapacity.

In general, professional misconduct results from a failure to do something required by the practice of the profession or doing something which violates the legislation or standards of practice governing the profession. The means for assessing whether any conduct or action constitutes professional misconduct are:

- the Legislation which governs the profession, including the professional misconduct regulations of the College;
- the College's Standards of Practice.

Both incompetence and incapacity are defined in the Health Professions Procedural Code. Incapacity occurs when a registrant "is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the registrant's certificate of registration be subject to terms, conditions or limitations or that the registrant no longer be permitted to practise."

⁵ Fact Sheet #7, July 2005. Disclosure of Information Permitted in Emergency of other Urgent Circumstances, Office of the Information and Privacy Commissioner of Ontario, page 2.



Incompetence occurs when a professional's care of a patient displays a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the Registrant is unfit to continue to practise or that the registrant's certificate of registration should be restricted.

Sexual abuse of a patient by a registrant is defined in the Health Professions Procedural Code and includes: sexual intercourse or other forms of physical sexual relations; touching of a sexual nature; behaviour or remarks of a sexual nature.

If the employee is not a regulated health professional the matter is to be reported to the police.

Key Points:

Sections 85.2 and 85.3 of the Health Professions Procedural Code outlines in detail the processes and rules for persons operating a facility who are required to submit a report of incompetence or incapacity, as well as for persons operating a facility who are required to submit a report of sexual abuse to the College Registrar.

- A report must be filed in writing with the Registrar of the College of the registrant who is the subject of the report. Written reports must be signed.
- Usually reports must be filed with the appropriate College Registrar within thirty (30) days after the obligation to report arises. However, if there are reasonable grounds to believe that sexual abuse of the same patient will continue or of other patients will occur, or that the incompetence or incapacity of the Registrant will expose a patient to harm or injury, and there is urgent need for intervention, the report must be filed immediately
- The report must contain,
 - (a) the name of the person filing the report
 - (b) the name of the Registrant who is the subject of the report
 - (c) an explanation of the alleged sexual abuse, incompetence or incapacity
 - (d) If the grounds of the person filing the report are related to a particular patient of the Registrant who is the subject of the report, the name of the patient
- The report may only contain the name of the patient who may have been sexually abused if the patient consents in writing to his or her name being included in the report.

Section 85.5 of the *Health Professions Procedural Code* provides the following rules for submitting a report regarding termination of employment, revocation, suspension or imposition of restrictions on a registrant's privileges or dissolution of a partnership, health profession corporation or association with a registrant, in each case, for reasons of professional misconduct, incompetence or incapacity:

- A report must be filed in writing with the Registrar of the College of the registrant who is the subject of the report. Written reports must be signed, and shall be submitted within thirty (30) days after the termination of employment, revocation, suspension or imposition of restrictions on privileges or dissolution of the partnership, health profession corporation or association
- While not specified by legislation, the report should also contain full details of the concern including, if applicable:
 - A summary of the nature of the concern



- A description of the details of the conduct in issue
- A list of the individuals who witnessed the conduct
- A copy of any policies that apply to the conduct
- The response of the practitioner to the concern
- The action taken by the facility or employer or employee

A person filing a report in good faith under these provisions of the *Health Professions Procedural Code* is given legal protection from an action or other proceeding against him or her for doing so.

3. FAILURE TO MAKE A REPORT REQUIRED BY THE REGULATED HEALTH PROFESSIONS ACT, 1991

If the College becomes aware that a report should have been filed with the College and was not, the registrant could be subject to disciplinary proceedings.

C. Notification on the Public Register

In accordance with section 23(2) of the Health Professions Procedural Code, a notation of every finding of professional negligence or malpractice, which may or may not relate to the Registrant's suitability to practice must appear on the public register.

DEFINITIONS

For the purpose of this standard the following definitions apply:

Finding of Negligence or Malpractice include findings which occur in civil proceedings or law suits.

Homeopath

"Homeopath" means a registrant of the College of Homeopaths of Ontario.

Incapacity

Occurs when a Registrant is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the registrant's certificate of practice be subject to terms, conditions or limitations or that the registrant no longer be permitted to practise.

Incompetence

Incompetence occurs when a Registrant's care of a patient displays a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates that the Registrant is unfit to continue to practise or that the Registrant's certificate of registration should be restricted.

Mandatory Report

Mandatory reporting refers to the obligation under the *Regulated Health Professions Act, 1991*, (RHPA) and the Health Professions Procedural Code for Registrants, regulated health care professionals, and employers to file written reports to the College in a number of circumstances. This many include but is not limited to a regulated health professional who, in the course of practising his/ her profession, acquires information leading to reasonable grounds to believe that another regulated health professional abused a patient.



Offence

An "Offence" is a finding by a court (administrative tribunal findings do not count) of a breach of something labelled as an offence in a statute. Typically an offence is punishable by a fine or jail; however, the report must be made even if the court imposes a conditional or an absolute discharge. The obvious offences are breaches of the Criminal Code of Canada or of federal drug legislation. However, there are a number of provincial offences as well. This provision would also include speeding tickets and municipal infractions.

Registrant

A Registrant is a member of the College of Homeopaths of Ontario.

Sexual Abuse

Sexual Abuse of a patient by a Registrant is defined in the *Regulated Health Professions Act, 1991*, as:

- sexual intercourse or other forms of physical sexual relations between the Registrant and the patient;
- touching, of a sexual nature, of the patient by the Registrant; or
- behaviour or remarks of a sexual nature by the Registrant towards the patient.

Sexual nature does not include touching, behaviour or remarks of a clinical nature appropriate to the services provided.

LEGISLATIVE CONTEXT

Child and Family Services Act, 1990

Regulated Health Professions Act, 1991, c. 18, Sched. 22, s. 84(1) to 85.7(13) Patient relations program.

Long Term Care Homes Act, 2007, S.O. 2007, Chapter 8

Retirement Homes Act, 2010, S.O. 2010, Chapter 11

Homeopathy Act, 2007, Ontario Regulation 315/12 Professional Misconduct (Note: This regulation is not yet in force. It comes into force on the day named by proclamation of the Lieutenant Governor.):

2. Abusing a patient or a patient's representative verbally, physically, psychologically or emotionally.
36. Failing to promptly report to the College an incident of unsafe practice by another member.

RELATED STANDARDS

#16 Standard of Practice on Therapeutic Relationships and Professional Boundaries

SOURCE

College of Massage Therapists of Ontario

College of Physiotherapists of Ontario

College of Medical Radiation Technologists of Ontario