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# Key Changes to the *Regulated Health Professions Act*: A Primer for Ontario Dentists

**O**n May 1, 2018, a number of changes to the *Regulated Health Professions Act, 1991 (RHPA)* came into effect as part of the implementation of the *Protecting Patients Act, 2017*, including legislative amendments and the introduction of three new regulations.

This article will summarize these important changes to the *RHPA* so that dentists are well aware of the new regulatory landscape.

## A. Additional self-reporting requirements

As of May 1, 2018, dentists are required to file a written report with the Royal College of Dental Surgeons of Ontario (the “RCDSO”) regarding the following items (1):

### 1. Charges and Conditions of Release (2)

All outstanding charges that have been laid against them in respect of an offence, including charges under the *Criminal Code*, and any corresponding conditions of release, including bail conditions and/or other restrictions.

This includes charges laid prior to May 1, 2018, that have not yet been resolved. Charges that were resolved prior to May 1, 2018, do not have to be reported, provided that there was no guilty finding.

The report must be filed as soon as reasonably practicable after the dentist receives notice of the charge or the conditions of release.

In addition, if there is a change to the status of the charge or the conditions of release, a further report must be filed.

### 2. Other Professional Memberships (3)

Any memberships that they possess with another regulatory body that governs a profession either inside or outside of Ontario.

### 3. Findings of Professional Misconduct or Incompetence by Other Regulatory Bodies (4)

All findings of professional misconduct or incompetence that have been made against them by another dental regulatory body or any other regulatory body that governs a profession either inside or outside of Ontario.

As in the case of criminal charges, this report must be filed as soon as reasonably practicable after the dentist receives notice of the finding made against him or her.

### New RCDSO practice advisory statement regarding reporting requirements

In early May 2018, the RCDSO released a practice advisory statement (5) that summarized the reporting requirements that took effect on May 1, 2018, as well as other pre-existing reporting requirements. The statement also clarified that it is the expectation of the RCDSO that dentists *immediately* report the existence of any of the following, irrespective of whether such information was previously reported:

- all prior findings of guilt relating to any offence — during the time period that the dentist has been a member of the RCDSO; and
- all prior disciplinary findings, including findings of professional misconduct or incompetence by another regulatory or licensing authority in any jurisdiction — during the time period that the dentist has been a member of the RCDSO.

## B. Additional information to be posted on public register (6)

As of May 1, 2018, the RCDSO is *required* to post the following additional information on its public register (7):

### 1. Criminal and Other Charges

All outstanding charges under the *Criminal Code* or the *Controlled Drugs and Substances Act (CDSA)* that have been laid against a dentist, including the fact of and brief summary of the charge; and the date and place of the charge. This includes charges laid prior to May 1, 2018, that have not yet been resolved.

### 2. Findings of Guilt in Criminal and Other Matters

All findings of guilt under the *Criminal Code* or the *CDSA* that have been made against a dentist, including a brief summary of the finding; a brief summary of the sentence; and if the finding is under appeal, a notation of that fact until the appeal is resolved.

In considering this item, it is important to recognize that its application is not limited to future conduct (i.e. conduct post May 1, 2018). Rather, prior findings of guilt in respect of criminal and *CDSA* matters will also be posted, provided that the dentist was a member of the RCDSO at the time the finding was made.

In view of the above, dentists who have been found guilty of an offence under the *Criminal Code* or the *CDSA* should *strongly* consider taking steps to obtain a record suspension or a pardon, which would result in the removal of the guilty finding from the public register.

Dentists should also be aware that the RCDSO By-Laws (8) mandate the posting of all findings of guilt made by a court in respect of *any offence* (i.e. not just under the *Criminal Code* and the *CDSA*), in any jurisdiction, if the registrar believes that it would be in the public interest to post the information. Please note, however, that this additional posting requirement only applies to findings made on or after January 1, 2015.

### 3. Conditions of Release

Any currently existing bail conditions or other conditions of release flowing from a charge under the *Criminal Code* or the *CDSA*, in respect of a dentist.

Conditions of release imposed pending an appeal of a finding of guilt under the *Criminal Code* or the *CDSA* will also be posted.

### 4. Other Licences/Registrations

A listing of any licences or registrations to practise another profession in Ontario, or any profession in any other jurisdiction, that may be possessed by a dentist.

### 5. Disciplinary and Other Findings by Another Regulator

All disciplinary, professional misconduct or incompetence findings that have been made against a dentist by another regulatory body in any jurisdiction (including other dental regulatory bodies). The information to be posted is to include the fact of the finding; the date of the finding; the jurisdiction in which the finding was made; and the existence and status of any appeal.

This includes prior findings made during the time period that the dentist has been a member of the RCDSO.

### C. Findings of guilt re certain criminal offences will result in mandatory revocation (9)

As of May 1, 2018, if a dentist is found guilty of certain sexual offences under the *Criminal Code* (10), they will also be subject to a *mandatory* revocation of their certificate of registration.

Dentists (and their criminal counsel) need to be extremely mindful of this change, especially when negotiating a resolution of criminal charges in respect of one of the enumerated sexual offences. It would seem to go without saying that, in most cases, pleading guilty to one of these sexual offences will no longer be a viable consideration.

### D. Expanded definition of “patient” for sexual abuse provisions

The word “patient,” as it relates to the sexual abuse provisions under the *RHPA’s Health Professions Procedural Code* has been expanded. As a result, a person will *remain* a patient for *one year* from the date that the person would otherwise cease to be considered a patient of the dentist (11). As such, if a dentist and a patient were to engage in a sexual relationship during that one-year period, such conduct would be considered “sexual abuse” and would result in a mandatory revocation of the dentist’s certificate of registration.

In addition, a person will be considered a patient if there is a direct interaction between the dentist and the person and any of the following has occurred (12):

- the dentist charged or received payment from a person in respect of a health-care service;
- the dentist contributed to a health record or file for the person;

- the person consented to the health-care service recommended by the dentist; or
- the dentist prescribed a drug to the person, for which a prescription is required.

Notwithstanding the existence of any of these interactions, a person is not considered a patient if all of the following conditions are satisfied:

- they were in a pre-existing sexual relationship at the time the health services were provided;
- the health services were provided in emergency circumstances or circumstances where the service is minor in nature; and
- the dentist has taken reasonable steps to transfer the care of the person to another dentist or there is no reasonable opportunity to transfer care to another dentist.

### Conclusion

The recent changes to the *RHPA* are significant and dentists must ensure that they are well aware of them so that they can meet their legal responsibilities and be fully cognizant of the implications of various conduct.

As always, dentists are encouraged to contact experienced health law counsel if they require legal assistance regarding any RCDSO matter. 

### REFERENCES

1. This is in addition to pre-existing reporting obligations set out in the *Health Professions Procedural Code* of the *RHPA*, including findings of guilt in respect of an offence (i.e. criminal offences, provincial offences, etc.) (s.85.6.1); and findings of professional negligence or malpractice (s.85.6.2).
2. See subsection 85.6.4 of the *Health Professions Procedural Code* of the *RHPA*.
3. See subsection 85.6.3 of the *Health Professions Procedural Code* of the *RHPA*.
4. *Ibid.*
5. See “New Mandatory Reporting Requirements,” Royal College of Dental Surgeons of Ontario (May 2018)
6. See Ontario Regulation 261/18 — Information Prescribed Under Subsection 23(2) of the *Health Professions Procedural Code*, under the *RHPA*.

7. In considering the information that must be posted on the public register, it is important to recognize that dentists have a corresponding obligation to report said information to the RCDSO.
8. See “By-Laws of the RCDSO”, amended June 14, 2018, Appendix — Register Information Required by Subsection 23(2) of the Code, s.24.
9. See Regulation 262/18 — Prescribed Offences — *Health Professions Procedural Code*, under the *RHPA*.
10. As set out in Regulation 262.18, these offences include sexual interference (s.151); invitation to sexual touching (s.152); sexual exploitation (s.153); sexual exploitation of a person with a disability (s.153.1); bestiality in the presence of or by a child (s.160(3)); voyeurism (s.162); publication etc., of an intimate image without consent (s.162.1); child pornography (s.163.1); parent or guardian procuring sexual activity (s.170); making sexually explicit material available to a child (s.171.1); luring a child (s.172.1); agreement or arrangement — sexual offence against a child (s.172.2); sexual assault (s.271); sexual assault with a weapon, threats to a third party or causing bodily harm (s.272); and aggravated sexual assault (s.273).
11. This period can be extended by regulation.
12. See Regulation 260/18 — Patient Criteria Under Subsection 1(6) of the *Health Professions Procedural Code*, under the *RHPA*.

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