

# KEEPING CURRENT

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## Key Changes to the *RHPA* – A Primer For Regulated Health Professionals

By Lad Kucis

On 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 regulated health professionals (“health professionals”) are well aware of the new regulatory landscape.

### A. Additional Self-Reporting Requirements

As of May 1, 2018, all health professionals are required to file a written report with their regulatory college (“College”) in respect of the following<sup>1</sup>:

#### 1. Charges and Conditions of Release<sup>2</sup>

All outstanding charges that have been laid against them, 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 health professional 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<sup>3</sup>

Any memberships 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<sup>4</sup>

All findings of professional

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misconduct or incompetence that have been made against them by another 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 health professional receives notice of the finding.

**B. Additional Information to Be Posted on Public Register<sup>5</sup>**

As of May 1, 2018, all Colleges must post the following additional information on their public register in respect of members of their profession:

*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 member, 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 member, 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.

Health professionals 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.

*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 member.

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 practice another profession in Ontario, or any profession in any other jurisdiction, that may be possessed by a member.

*5. Disciplinary and Other Findings by Another Regulator*

All disciplinary, professional misconduct or incompetence findings that have been made against a member by another regulatory body in any jurisdiction. 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.

**C. Criminal Findings of Guilt that Will Result in Mandatory Revocation<sup>6</sup>**

As of May 1, 2018, if a health professional is found guilty of certain sexual offences under the *Criminal Code*<sup>7</sup>, they will also be subject to a mandatory revocation of their certificate of registration.

Health professionals (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 goes without saying that in most cases, pleading guilty to one of the enumerated sexual offences will no longer be a viable consideration.

**D. Expanded Definition of “Patient” for Sexual Abuse Provisions**

The word “patient” has been expanded such that 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 health professional.<sup>8</sup> As such, if a health professional were to engage in a



frank sexual act with a patient during that one year period, such conduct would be considered “sexual abuse” and would result in a mandatory revocation of the health professional’s certificate of registration.

In addition, a person will be considered to be a patient if there is a direct interaction between the health professional and the person and any of the following have occurred:<sup>9</sup>

- the health professional charged or received payment from a person in respect of a health care service;
- the health professional contributed to a health record or file for the person;
- the person consented to the health care service recommended by the health professional; or
- the health professional prescribed a drug for which a prescription is required to the person.

However, notwithstanding the existence of any of these interactions, a person is not considered a patient of a health professional 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 health professional has taken reasonable steps to transfer the care of the person to another health professional or there is no reasonable opportunity to transfer care to another health professional.

### Conclusion

The recent changes to the *RHPA* are significant and health professionals 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, health professionals are encouraged to contact experienced health law counsel if they require legal assistance regarding any College matter.

### About the Author

Lad is certified by the Law Society of Ontario as a Specialist in Health Law and is recognized by Best Lawyers in Canada (Health Care Law). As part of his health law practice, he provides advice and representation to health professionals regarding the full spectrum of matters falling under the governance of their regulatory colleges, including registration, fitness to practice, complaints, investigations, discipline, etc.

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*(Please note that this article has been prepared for information purposes only and is not intended to be construed as legal advice.)*

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1 this is in addition to self-reports that were already required under the Health Professions Procedural Code under the *RHPA*, including findings of guilt in respect of an offence (s.85.6.1); findings of professional negligence or malpractice (s.85.6.2); and other reports that be required by each respective College.

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 Ontario Regulation 261/18 – Information Prescribed Under Subsection 23(2) of the Health Professions Procedural Code, under the *RHPA*

6 see Regulation 262/18 – Prescribed Offences – Health Professions Procedural Code, under the *RHPA*.

7 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).

8 this period can be extended by regulation. In addition, in certain circumstances, it would be inappropriate for a health professional to enter into a sexual relationship with a former patient at any point.

9 see Regulation 260/18 – Patient Criteria Under Subsection 1(6) of the Health Professions Procedural Code, under the *RHPA*.