



College of
Massage
Therapists of
Ontario

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College of Massage Therapists of Ontario

Mandatory Reporting Guidelines

Introduction

Mandatory reporting refers to the obligation under the *Regulated Health Professions Act (RHPA)* and the Health Professions Procedural Code for Registered Massage Therapists (RMT), employers and facility operators 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 massage therapy profession.

Mandatory reporting is considered an essential professional obligation because it is the best means of ensuring that instances of professional misconduct, incompetence, professional negligence, sexual abuse 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, RMTs also have mandatory duties to report information to named officials or agencies under other pieces of provincial legislation. For example, Section 72 of the *Child and Family Services Act* outlines the public 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 health professionals are required to report.

Reporting by RMTs

1. Sexual Abuse

It is mandatory under the RHPA for a RMT 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 member of the College of Massage Therapists of Ontario (the College) or by any member of another health regulatory college.

It is compulsory for RMTs to file a report of sexual abuse of a patient, unless they do not know the name of the member 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 RMT is required to file a report of sexual abuse because of reasonable grounds obtained from one of his or her clients they must use his or her best efforts to advise the patient of the requirement to file the report before doing so.

Key Points Regarding the Report:

- A massage therapist is not required to file a report if the massage therapist does not know the name of the health professional who would be the subject of the report.
- If a massage therapist is required to file a report because of reasonable grounds obtained from a client, the therapist shall use his or her best efforts to advise the client of the requirement to file the report before doing so.
- The report must contain the name of the person filing the report, the name of the health professional who is the subject of the report, an explanation of the alleged sexual abuse, and the name of the client who may have been sexually abused, **if the client 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 therapist has reasonable grounds to believe that the health professional will continue to sexually abuse the client 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.

A Checklist for Reporting Sexual Abuse and a Client Consent Form for Mandatory Reporting of Sexual Abuse can be downloaded from the Mandatory Reporting section of the College's website.

For more information please review the College's bulletin called, " Preventing Sexual Abuse" which can be downloaded from the Standards and Regulations section of the College's website.

2. Offences and Professional Negligence or Malpractice (New – effective June 4, 2009)

Under sections 85.6.1 and 85.6.2 of the Health Professions Procedural Code, a RMT must file a written report to the College if they 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 the court's finding of the offence, professional negligence or malpractice against the RMT 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 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). This provision would also include speeding tickets and municipal infractions.

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 massage therapist 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 Regarding the Report:

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

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 massage therapist may contact the College for guidance.

Form to Report an Offence or a Finding of Negligence or Malpractice

To assist with the reporting process, a Reporting Form can be downloaded from the Mandatory Reporting section of the College's website.

3. Reporting of Suspected Child Abuse or Neglect

The Child and Family Services Act (CFSA) requires any person who performs professional or official duties with respect to children, who has reasonable grounds to suspect one of the following, to report a suspicion and the information on which it is based:

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 Regarding the Report

Provisions of the Act, require the reporting individual make the report **themselves** directly to the local Children's Aid Society (CAS). Reporting responsibilities **cannot be delegated**.

Furthermore, the Act 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. The report must be made immediately to the local Children's Aid Society.

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.

4. Reporting of Suspected Elder Abuse

Under the *Nursing Homes Act*, 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 care or neglect shall immediately report the suspicion and the information upon which it was based to the Director of Nursing Homes.

Key Points Regarding the Report

Information on abuse in provincially funded nursing homes should be made to the Ministry of Health and Long-Term Care, while information about abuse in privately-funded nursing homes should be made to the Ministry of Consumer and Commercial Relations, Companies Branch.

Reporting by Employers and Facilities

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 practitioner, *for reasons of professional misconduct, incompetence or incapacity*
- Revokes, suspends or imposes restrictions on the privileges of a practitioner, *for reasons of professional misconduct, incompetence or incapacity*
- Dissolves a partnership, a health profession corporation or association with a practitioner, *for reasons of professional misconduct, incompetence or incapacity*
- The person also has an obligation to file a report if the practitioner 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 practitioner by a person who operates a facility whenever that person:

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

Determining Professional Misconduct, Incompetence, Incapacity, or Sexual Abuse

Sometimes RMTs 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 professional "is suffering from a physical or mental condition or disorder that makes it desirable in the interest of the public that the member's practice be subject to terms, conditions or limitations or that the member no longer be permitted to practise."

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 member is unfit to continue to practise or that the member's practice should be restricted."

Sexual abuse of a patient by a member 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. For more detailed information please refer to the Preventing Sexual Abuse bulletin at http://www.cmta.com/pdfs/Bulletin_02.pdf.

Key Points Regarding the Report

Section 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 member who is the subject of the report. (Written reports should not be submitted by email since they must be signed).
- Usually reports must be filed with the appropriate College Registrar within thirty 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 member 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 member who is the subject of the report
 - (c) an explanation of the alleged sexual abuse, incompetence or incapacity
- The report may only contain the name of the client 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 practitioner's privileges or dissolution of a partnership, health profession corporation or association with a member, 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 member who is the subject of the report. (Written reports should not be submitted by email since they must be signed), within 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:
 - 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 the policies of the facility (or partner) that apply to the conduct
 - The response of the practitioner to the concern

- The action taken by the facility or employer

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.

Failure to make a report required by the Regulated Health Professions Act, 1991

If the College becomes aware of a situation where a report should have been filed with the College and the report was not filed, the College will investigate this matter as it is considered non-compliance with the RHPA.

Review and Investigation Process

The College will determine if additional inquiries are required. The RMT may be asked to provide further information. If no further investigation is required, the RMT will receive a notification to this effect.

The Registrar will refer the matter to the Inquiries, Complaints and Reports Committee (ICRC), if additional investigation is warranted. The ICRC will not make a decision in a matter without the massage therapist having the opportunity to respond to the investigation report in writing or by way of meeting with an investigator. . At the conclusion of the investigation, the RMT will receive the written decision and reasons of ICRC. There are no timelines associated with these types of investigations and depending on the level of complexity and cooperation some investigations may take longer than others to complete.

Possible ICRC Decisions

The panel may:

- Refer the matter to the Discipline Committee for a hearing
- Issue a verbal caution
- Invite or order the massage therapist to enter an agreement with the College to remediate certain aspects of their practice
- Refer the matter to another panel of the ICRC for incapacity proceedings

In addition, the panel could:

- Take no further action
- Issue guidance, advice and/or recommendations to the massage therapist
- Issue a written caution

An RMT's Certificate of Registration may only be revoked as a result of a finding made by either the Discipline Committee or the Fitness to Practice Committee.

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 RMT's suitability to practice must appear on the public register, unless the finding is reversed on appeal before June 4, 2009.

Importance of Facility Policies Regarding Mandatory Reporting

Reporting of sexual abuse, professional misconduct, incompetence and incapacity by RMTs, employers and facility operators can be complex and sensitive. Facility owners and employers are encouraged to

develop policies that help guide individual RMTs in how they are to handle these situations. In particular, the policies should define who is responsible within the organization for preparing the report for filing with the College Registrar.

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