MANDATORY AND PERMISSIVE REPORTING

Guideline G-010
Patient Relations Committee
Approved by Council: February 11, 2014
Minor Amendments Approved by Council: September 14, 2019 (came into effect November 28, 2019), November 28, 2024 (came into effect February 21, 2025)

Note to readers: In the event of any inconsistency between this document and the legislation that affects chiropractic practice, the legislation governs.

INTENT

To explain CCO's expectations of members regarding and permissive reporting of patient information.

DESCRIPTION OF GUIDELINE

Members have a legal and professional obligation to maintain the confidentiality of patient personal health information. There are circumstances, however, where members are either required or permitted to report particular events to the appropriate government or regulatory agency. This guideline clarifies the circumstances under which a member's reporting duties are mandatory or permissive.

A member is expected to:

- protect patient trust by maintaining confidentiality and privacy of patient personal health information, except where required or permitted to report the information by law;
- communicate effectively and openly by informing patients of the member's reporting obligations when appropriate and when required by legislation.

I. MANDATORY REPORTING UNDER THE *RHPA*

A. Mandatory Reporting of Sexual Abuse

Under section 85.1 of the *Health Professions Procedural Code,* Schedule 2 of the *Regulated Health Professions Act, 1991* (*the Code),* when a member has reasonable grounds, obtained in the course of practising the profession, to believe that a regulated health professional has sexually abused a patient, in accordance with s. 1(3) of the *Code*, the member must file a report in writing to the Registrar of the college to which the alleged abuser belongs.

A member is not required to file a report if the member does not know the name of the regulated health professional who would be the subject of the action.

Where information regarding sexual abuse is obtained from a patient, a member must exercise their best effort to advise the patient of the requirement to file the report before doing so

B. Mandatory Reporting by Facilities of Incompetence, Incapacity and Sexual Abuse

Under section 85.2 of the *Code*, a member who operates a facility where one or more regulated health professionals' practise have specific reporting obligations. When a member has reasonable grounds to believe that a regulated health professional who practises at the facility is incompetent, incapacitated or has sexually abused a patient, the member shall file a report in writing to the Registrar of the college to which the alleged member belongs.

A member is not required to file a report if the member does not know the name of the regulated health professional who would be the subject of the action.

C. Mandatory Reporting by Employers

Under section 85.5 of the *Code*, a member who:

- terminates or intends to terminate the employment of a regulated health professional,
- revoke, suspend or restrict the privileges of a regulated health professional, or
- dissolves a partnership, health profession corporation or association with a regulated health professional

for reasons of professional misconduct, incompetence or incapacity must report the events and reasons of the event or intended event to the Registrar of the appropriate college within 30 days.

D. Content and Timing of Report

A mandatory report must be filed within 30 days after the obligation to report arises, consistent with section 85 of the *Code*. If the member has reasonable grounds to believe that the regulated health professional subject of the report will continue to sexually abuse the patient or other patients, or that the incompetence or incapacity will likely expose a patient to harm or injury, the report must be filed forthwith.

No action or other proceeding shall be instituted against a member for filing a report in good faith under section 85.1, 85.2 or 85.5 of the *RHPA*.

The report must contain:

- The name of the member who is filing the report
- The name of the regulated health professional who is the subject of the report
- An explanation of the alleged sexual abuse, incompetence, incapacity and/or act of professional misconduct
- The name of the patient, if the grounds of the member filing the report are related to a patient of the regulated health professional who is the subject of the report, unless the matter is sexual abuse. The name of the patient who may have been sexually abused must not be included in a report unless the patient, or if the patient is incapable, the patient's representative, consents in writing to the inclusion of the patient's name.

Please see section 85 of *the Code* https://www.ontario.ca/laws/statute/91r18 for further information regarding this reporting obligation.

II. MANDATORY REPORTING UNDER THE CHILD YOUTH AND FAMILY SERVICES ACT, 2017 (CYFSA)

Under section 74 and 125 of the *CYFSA*, a member who has reasonable grounds to suspect a child is or may be in need of protection must immediately report the suspicion, and the information upon which it is based, directly to a Children's Aid Society (CAS)[1]. A "child in need of protection" includes a child who has suffered, or is at risk of suffering, physical abuse, sexual abuse, emotional abuse or neglect.

Section 125 of the *CYFSA* includes circumstances where a member must make a report directly to a CAS. Members who have reasonable grounds to suspect a child is in need of protection must not rely on any other person to report on their behalf. Since the duty to report is ongoing, members must make a further report to a CAS if there are additional reasonable grounds to suspect that the child is or may be in need of protection.

This reporting requirement applies although information reported may be confidential or privileged, and no action for making the report shall be instituted against a member who acts in accordance with this section unless the member acts maliciously or without reasonable grounds for suspicion. However, a member who fails to report a suspicion of child abuse in the course of their professional duties may be punishable by fine.

Please see sections 74 and 125 of the *CYFSA* https://www.ontario.ca/laws/statute/17c14 for further details on these requirements.

III. MANDATORY REPORTING UNDER THE LONG-TERM CARE HOMES ACT, 2007

Under section 24 the *Long-Term Care Homes Act, 2007* where a member has reasonable grounds to suspect that a resident of a nursing home or retirement home has suffered harm, is at risk of harm due to:

- improper or incompetent treatment or care,
- unlawful conduct, abuse or neglect, or
- misuse or misappropriation of a resident's money or funding,

the member must immediately report their suspicion and the information upon which it is based to the Registrar of the Retirement Homes Regulatory Authority, or long-term care home direction.

[1] See section 34 – 39 of the *CYFSA* for details on requirements of a CAS, which may include an Indigenous Child and Family Well-Being Agency that provides services to First Nations, Inuit or Metis children and families. See the following link: https://www.oacas.org/childrens-aid-child-protection/locate-a-childrens-aid-society/ for a list of CAS's in Ontario.

A member who provides health care services to a resident of a long-term care home is guilty of an offence if they fail to make a report or makes a report that the member knows to be false. No action or other proceeding shall be commenced against a member for filing a report in good faith unless the member acted maliciously or in bad faith.

Please see section 24 of the *Long-Term Care Homes Act, 2007* https://www.ontario.ca/laws/statute/07l08 for further information regarding this reporting obligation.

IV. Mandatory Reporting of Designated Diseases under the Health Protection and Promotion Act, 1990

Please see Standard of Practice S-004: Reporting of Diseases for information on reporting of designated diseases.

V. Mandatory Reporting under the Occupational Health and Safety Act, 1990

The *Occupational Health and Safety Act, 1990* and its regulations specify a number of reporting obligations for members who conduct examinations on individuals in relation to employment conditions or hazards. A member who conducts such examinations should consult the legislation and its regulations. Please see: https://www.ontario.ca/laws/statute/90o01.

VI. Mandatory Reporting of Privacy Breaches

In this section "health information custodian" means a person or organization who has custody or control of personal health information as a result of or in connection with performing the person's or organization's power or duties.

"Privacy breach" is used to refer to any unauthorized collection, use, disclosure, retention or disposal of personal health information. The *Personal Health Information Protection Act, 2004 (PHIPA)* requires reporting of privacy breaches in a number of instances, as outlined below:

A. Reporting to Affected Individuals

A member acting as a health information custodian is required to notify individuals where their personal health information is stolen, lost or used or disclosed without authority. Notification must be made at the first reasonable opportunity and must include both the fact of the privacy breach and a statement that the individual is entitled to make a complaint to the Information and Privacy Commissioner (IPC).

The IPC's Privacy Breach Protocol advised that the following information be disclosed to affected individuals:

- details of the breach, including the extent of the breach and what personal health information was involved;

- the steps the member has taken to address the breach, including if the breach has been reported to the IPC; and

- contact information for someone within the organization who can provide additional information, assistance and answer questions.

The IPC advises that when determining the most appropriate form of notification (i.e., by telephone, in writing, or in person at the next appointment), a member considers factors such as the sensitivity of the personal health information.

For more information about reporting obligations in the event of a privacy breach, please contact the IPC directly and/or refer to the IPC's guideline Responding to a Health Privacy Breach.

B. Reporting to Regulatory Colleges

A member acting as a health information custodian, who employs or is otherwise affiliated with other regulated health professionals, is required to notify to the relevant regulatory body, if any of the following events occur, in accordance with section 17 of *PHIPA*:

- The regulated professional's employment is terminated or suspended, or the regulated professional is subject to disciplinary action, as a result of a privacy breach by the regulated professional;

- The regulated professional resigns, and the member has reasonable grounds to believe that the resignation is related to an investigation or other action by the member with respect to an alleged privacy breach by the regulated professional;

- The regulated professional's affiliation with the member is revoked, suspended or restricted as a result of a privacy breach by the regulated professional;

- The regulated professional relinquishes or voluntarily restricts their privileges or affiliation with the member, and the member has reasonable grounds to believe that the relinquishment or restriction is related to an investigation or other action by the member with respect to an alleged privacy breach by the regulated professional.

Members acting as health information custodians must give written notice of any of the events described above to the appropriate college within 30 days of the event occurring.

C. Reporting to Information and Privacy Commissioner

A member is required to notify the IPC in certain circumstances if an individual personal health information is stolen, lost or used or disclosed without authority. Please see section 6.3 under Regulation 329/04 of *PHIPA* for the situations involving this reporting obligation.

VII. Permissive Reporting of Disclosure to Prevent Harm Under the *RHPA*

Under section 40 of the *Personal Health Information Protection Act, 2004* (*PHIPA*), a member may disclose personal health information to prevent harm where the following criteria are present:

- 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

A member is permitted to disclose personal health information in the above circumstances where disclosure is necessary to eliminate or reduce significant risk of serious bodily harm to a person or group of persons.

No action or other proceeding for damages may be instituted against a member for:

- anything done, reported or said, both in good faith and reasonably in the circumstances, in the exercise or intended exercise of any of their powers or duties under *PHIPA*; or
- any alleged neglect or default that was reasonable in the circumstances in the exercise in good faith of any of their powers or duties under *PHIPA*.

Please see section 40 of *PHIPA* https://www.ontario.ca/laws/statute/04p03 for further information.

Legislative Context

Please see the indicated legislation and regulations for further information about specific reporting obligations.

Note to Members

Guideline G-010: Mandatory and Permissive Reporting should be read in conjunction with:

- The sexual abuse provisions of the *RHPA*
- Standard of Practice S-002: Record Keeping
- Standard of Practice S-014: Prevention of Sexual Abuse of Patients
- Policy P-003: Principle of Zero Tolerance
- Guideline G-001: Communication with Patients
- Relevant legislation and regulations