



The College of Naturopaths of Ontario

Guidelines

Mandatory Reporting for Employers, Facility Operators and Naturopathic Doctors

Introduction

This Guideline applies to all Naturopathic Doctors (NDs) as well as any individual who employs or operates a facility where a Naturopathic Doctor practises.

As regulated health professionals under the *Regulated Health Professions Act, 1991* (RHPA), NDs, and those who employ or work with NDs, have obligations to report certain information to the College of Naturopaths of Ontario (the College).

Mandatory Reporting is one of the ways in which the College's mandate of protecting the public interest is achieved. It ensures that the College becomes aware of and can investigate incidents of possible professional misconduct, incompetence or incapacity on the part of its members.

By making reporting mandatory under certain circumstances, the RHPA and the accompanying *Health Professions Procedural Code* (HPPC) clarifies the duties of employers, facility operators and members, and ensures that the College receives all pertinent information about members who may not be practicing safely. The College's aim is to investigate appropriate matters and ultimately protect the welfare and safety of the public. When reporting information as per the reporting obligations under the RHPA, an employer, facility operator or ND should not be concerned about getting a member into trouble; rather, they are providing information that the College will act on accordingly in the public interest.

Who is required to report

There are three groups of individuals that the HPPC specifies are required to make mandatory reports in certain situations. These are: (1) facility operators, (2) employers and (3) member of the College (Naturopathic Doctors). The HPPC imposes different reporting obligations on each of these three groups.

1. Facility Operators

Facility operators must report if they have reasonable and probable grounds to believe that the member is incompetent, incapacitated or has sexually abused a patient (these terms are discussed below).

Often, facility operators and employers are the same individual or group of individuals. However, defining them separately ensures that members practicing in all settings are included in the reporting obligations. The most

common circumstance in which a facility operator is different from an employer is in an agency, consulting or self-employment setting. A member might be employed by an agency and work in several different facilities. The facility operator is responsible for reporting because they have direct knowledge and/or observation of the member's practice. Often a facility operator will report issues to the employer. However, this does not satisfy the mandatory reporting obligation under the HPPC. The facility operator should report to the College even if the employer has made the same intention known, as the content of the report from the facility operator may be different and may provide more direct information about the member's practice than the employer's report.

2. Employers

Employers must report if they terminate the member's employment or revoke, suspend or limit the member's practice for reasons of professional misconduct, sexual abuse, incompetence or incapacity. An employer does not need to report terminations that are not based on cause, such as restructuring or downsizing due to external factors not related to the member's practice. If a member resigns or retires to avoid the above-mentioned actions on the part of the employer, the employer must still file a report with the College outlining the issues with the member's practice.

While an employer might take appropriate action by terminating an employee for professional misconduct or incompetence, this only limits the member's conduct at that facility and the member may obtain employment elsewhere. The College requires all necessary information from employers or other members to ensure that it can fulfill its mandate of public protection.

The obligation to report also applies to persons who dissolve a partnership, health profession corporation or association with a member due to the member's professional misconduct, incompetence or incapacity. Note that this could include an employee of a member quitting as a result of the member's professional misconduct, incompetence or incapacity as this would involve dissolving of an association.

3. Members

Members must report if they have reasonable and probable grounds to believe that another member or a member of another health care profession is incompetent, incapacitated or has sexually abused a patient.

Conduct of Others

Individual members have a duty to file a report if the member has reasonable grounds, obtained in the course of practicing the profession, to believe that another member of the College, or a member of any other regulated health profession, has sexually abused a patient. The stipulation "in the course of practicing the profession" implies that discovering an incident of sexual abuse in a social situation or with respect to an individual who is not the member's patient does not require a mandatory report. However, a member may want to consider his/her ethical obligations to make a report and/or contact the police.

Members are also required to promptly report incidents of unsafe practice by other members and member of other health regulatory Colleges and a failure to do so constitutes professional misconduct, as set out in the regulations made under the *Naturopathy Act, 2007*.

Other legislation exists in Ontario that obligates certain professionals to report abuse. As a regulated health professional who may be providing professional services to children or the elderly, members may be required to report child abuse to a children's aid society under the *Child and Family Services Act* and elder abuse to the Retirement Homes Regulatory Authority under the *Retirement Homes Act, 1990*. Members should be aware of other legislation relevant to their practice, depending on the practice setting or the patient base.

Self-Reporting

Guilty of an offence

A member has a duty to report to the College if he or she has been found guilty of an offence under the *Criminal Code*, the *Food and Drugs Act* and the *Controlled Drugs and Substances Act*, as well as any offences under provincial law.

If a member has been pardoned, or received an absolute or conditional discharge instead of a conviction, the member must still self-report to the College.

Finding of professional negligence or malpractice

A member must report to the College if he or she has been sued and a civil court has found the member to be liable for professional negligence or malpractice.

Finding or proceeding in another jurisdiction

A member must report to the College if another health regulatory body has made a finding of professional misconduct, incompetence or incapacity against the member. This may be a finding by a body governing Naturopathic Doctors outside of Ontario or a different health regulatory college within Ontario.

For all the above-mentioned reports, the member is obligated to file an additional report if an appeal changes the status of a finding.

While it is not specifically stated in the HPPC, facility operators and employers should be well acquainted with the self-reporting obligations of the regulated health professionals that they employ. If it comes to their attention that a member has had a finding made against them, the facility operator or employer should remind the member of his/her duties to report.

If the finding is related to the member's professional misconduct, incompetence or incapacity and causes the employer to terminate or otherwise limit the member's employment, the employer would be required to report that action and the reasons for it to the College.

What must be reported

Sexual Abuse

- Sexual abuse is defined in section 1(3) of the HPPC as:
- Sexual intercourse or other forms of physical relations between the member and the patient;
- Touching of a sexual nature of the patient by the member;
- Behaviour or remarks of a sexual nature by the member towards the patient.

Exception:

For the purposes of subsection (3), "Sexual nature" does not include touching, behavior or remarks of a clinical nature appropriate to the services being provided.

Any sexual relationship with a patient during the clinical relationship, even if the patient consents, is considered sexual abuse because of the position of power the healthcare professional holds. A more detailed review of what constitutes sexual abuse can be found in the Guideline for the Prevention of Sexual Abuse.

The reporter must make his/her best efforts to inform the patient of his/her reporting obligations and attempt to gain consent to use the patient's name in the report. This consent should be obtained in writing and kept on file. If the patient does not consent, the member or facility operator must still make the report to the College, but should omit the patient's name. In many sexual abuse cases, the patient is reluctant to provide consent immediately. However, it can be sought after the report is made. Lack of consent should not stop a regulated health professional from making the report. A report does not need to be made if the member does not know the name of the alleged abuser, however best efforts should be made to obtain the abuser's identity.

The aim of the provisions in the RHPA related to sexual abuse and the College's mandate is to strive towards the elimination of sexual abuse in the healthcare context. Facility operators, employers and members need to take this reporting obligation seriously as the College relies on this information to fulfill its mandate. It is important to

understand what sexual abuse is and to be able to identify when it may be happening, keeping in mind that sexual abuse often does not start with overt actions on the part of the abuser.

If a person has any doubt about his/her reporting obligation, or about whether or not abuse has occurred, they should contact the College for assistance.

If a facility operator or employer is conducting his/her own investigation into an allegation of sexual abuse, the facility operator or employer should not await the outcome of the investigation before reporting it to the College. The outcome of such an investigation can be provided to the College, and the College will consider the findings in its own processes.

The RHPA specifically addresses sexual abuse of patients by members. There may be other types of sexual behavior that, while not triggering a mandatory report to the College, would still be considered professional misconduct. For example, sexual harassment in the workplace is never appropriate and would be considered unprofessional; however, it does not require a mandatory report. A person who is the subject of or witness to sexual harassment by a member may voluntarily report that behavior to the College. The conduct may also be reported to the employer or facility operator, if appropriate. If the employer investigates further and deems that the member requires sanctioning, this would be reported under the mandatory obligations for employers.

Incompetence

Under section 52 of the HPPC, a member is considered to be incompetent if his/her “professional 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”. Incompetence is not necessarily demonstrated by one mistake, but by a repetition or pattern of deficiencies. The repetition or pattern has to be such that the employer deems that the member’s practice should be restricted. The extent of the repetition or pattern will vary depending on the severity of the standards breached. For example, a situation in which a member’s documentation is repeatedly sloppy and incomplete is not as serious as a member who neglects documentation altogether. The latter breach cannot be tolerated at length and may be an early sign of incompetence in record keeping. Failure to document may also indicate possible incompetence if it signifies a deficiency elsewhere in the member’s practice. For example, if a member does not document assessments adequately or at all, this may indicate that the assessments themselves are not being properly conducted.

Incapacity

Under section 1 of the HPPC, incapacity is defined as suffering from a physical or mental condition or disorder that requires that the member have his/her practice restricted or suspended in the interest of public safety.

It is important to note the two aspects of the definition: first, the existence of a recognized physical or mental condition or disorder, and second, the fact that such a condition or disorder requires restricted or suspended practice. A member would not be considered incapacitated under the HPPC if the member has a condition or disorder that he/she is successfully coping with it. Similarly, a member may recognize that his/her physical or emotional state requires time off or modified work hours and adjust his/her schedule accordingly. In such circumstances, if there is no substantial risk of harm to patients, it would not warrant a report to the College. Employers should be supportive and monitor the situation. Employers must also be mindful of their duty to accommodate members with a disability.

How and when to report

Self-reporting

For all self-reporting obligations listed above, the member must report either upon application for registration with the College or, if the individual is already a member, within 30 days of the member receiving notice of the finding. This 30 day period is stipulated in the College’s registration regulations.

The self-report must contain the following information:

- (a) the name of the member filing the report;
- (b) the nature of, and a description of, the offence or finding;

- (c) the date the member was found guilty of the offence or the date the finding was made;
- (d) the name and location of the court that found the member guilty of the offence or the governing body that made the finding; and
- (e) the status of any appeal initiated with respect to the finding.

All self-reports of this nature are subject to any publication bans.

Sexual abuse, incompetence and incapacity

Section 85.3 of the HPPC outlines the timing and content of the facility's mandatory reporting obligations of sexual abuse, incompetence or incapacity, as well as the members' mandatory reporting obligations of sexual abuse. These reports must be filed with the applicable College within 30 days of the finding, or immediately if the reporter has reasonable and probable grounds to believe that the member is an ongoing threat to patients.

The report must be addressed to the Registrar of the College and must include the following:

- (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; and
- (d) if the report is related to a particular patient of the member who is the subject of the report, the name of that patient, if the patient consents to disclosing their name.

If the facility operator or the member does not know the name of the member who is the subject of the report, they should attempt to ascertain the member's identity. However, if the person is unable to identify the member, there is no duty to report.

Under section 85.5 of the HPPC, employers' reports regarding the restriction or termination of a member's employment must be made within 30 days of the restriction or termination and must include the reasons for the action.

Failure to report

It is considered professional misconduct if a member fails to comply with any of the above applicable reporting obligations. If the College becomes aware of such a failure, the College can investigate the matter. Failure to make a mandatory report as a member, employer or facility operator is an offence as outlined in section 93 of the Health Professions Procedural Code, punishable with a fine of up to \$25,000.00 for a first offence.

Any facility operator, employer or member who makes a report in good faith under the requirements of the HPPC will have immunity against any action or proceeding, even if the report is subsequently deemed to be unfounded.