

Ontario Government Passes Legislation to Protect Patients from Sexual Abuse and Improve the Regulation of Health Professionals

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On September 15, 2016, [BLG released a bulletin](#) regarding the Ontario government's intent to propose legislation that would uphold and reinforce a zero tolerance policy on the sexual abuse of patients by regulated health professionals. This legislation — now titled the *Protecting Patients Act, 2017* (the "Act") — was proposed on December 8, 2016. It passed and received Royal Assent on May 30, 2017 ([see the Press Release from the Ontario Government](#)).

The amendments are extensive and go beyond the protection of patients from sexual abuse. They are geared towards protecting patients by improving transparency, oversight, and disciplinary processes in the regulation of health professionals. An outline of the pertinent amendments are below.

While most of the amendments are now in force, some will only come into force upon proclamation (specifically noted below). We expect this to occur in the near future, although the government has not yet announced when.

Zero Tolerance Regarding Sexual Abuse of Patients

Amendments have been made to *the Regulated Health Professions Act* (the "RHPA") targeting the protection of patients from sexual abuse, including:

Mandatory Interim Suspension — If an Inquiries, Complaints and Reports Committee of a College finds that a member has committed an act of professional misconduct by (1) sexually abusing a patient; (2) having sexually abused a patient while acting as a regulated health professional under a different regulatory body within or outside of Ontario; or (3) being criminally convicted of an offence designated in the regulation, the panel shall immediately make an interim order suspending the member's licence.

Mandatory Revocation — The amendments expand the list of actions constituting sexual abuse that will result in mandatory revocation of a practitioner's licence. This includes any touching of a sexual nature.

Appeals of Findings of Sexual Abuse — If a member appeals an order of the ICRC with respect to sexual abuse, there is no stay of the ICRC's order pending the appeal.

Funding for Therapy — Funding for therapy and counselling is now available for anyone alleging sexual abuse. While eligibility for funding does not constitute a finding against the member and will not be considered by the ICRC, the College is entitled to recover from the member any monies paid to someone alleging sexual abuse. (Not yet in force)

Fines for Non-Reporting — Fines for non-reporting of sexual abuse of a patient are now up to \$50,000 for an individual and up to \$200,000 for a corporation, whether or not it is the first offence.

Changes to the Regulation of Health Professionals

Amendments have been made to the RHPA addressing transparency, oversight and disciplinary processes for regulated health professionals including:

Ministerial Powers — The amendments provide additional powers to the Minister of Health to oversee the regulation of health professionals in the province. The Minister can now establish regulations in several new areas, including prescribing conduct of a sexual nature that would result in mandatory revocation of a licence. Additionally, the Minister is entitled to collect information from Colleges and their members to ensure Colleges are fulfilling their duties and for the purpose of research

Information in a College's Public Register — The amendments expand the kind of information a College must include on its public Register, including:

- A notation of every caution that a member has received from an ICRC under section 26(1)(3) and any specified continuing education or remedial programs required.
- A copy of the specified allegations against a member for every matter that has been referred to the Discipline Committee that has not been finally resolved.
- Every result of a disciplinary or incapacity proceeding. If the ICRC makes no finding, the result only needs to be posted for 90 days, subject to a request to extend by the practitioner.
- A notation and synopsis of any acknowledgements and undertakings in relation to matters of professional misconduct or incompetence before the ICRC or Discipline Committee that a member has entered into with the College that are in effect.
- Where the College has an inspection program established under clause 95(1)(h) or (h.1), the outcomes of the inspections conducted by the College.

Additional Reporting Obligations — Regulated health professionals now have to report to the College if they are a member of another regulatory body governing a profession inside or outside of Ontario. Further, they have to report if there has been a finding of misconduct or incompetence against them by one of these other regulatory bodies. Finally, with respect to criminal charges, it used to be that members only had to report if they were *convicted* of a criminal offence. Now, a member has to report if they are *charged* with an offence, along with any bail conditions that are imposed. (Not yet in force)

Interim Suspension or Restriction of a Licence — Up until now, the College could only suspend or restrict a member's licence on an interim basis if the matter had been referred to the Discipline Committee. Going forward, this can be conducted at any time after a complaint is made or an investigator is appointed, if the ICRC is of the view that the conduct of the member exposes or is likely to expose the member's patients to harm or injury. Additionally, no future restrictions on a licence can include gender-based terms.

Withdrawal of Complaints — A complaint can now be withdrawn before any action is taken by a panel of the ICRC at the request of the complainant if the Registrar believes that the withdrawal is in the public interest.

Publication of College Meeting Information — Colleges are now required to post information online regarding upcoming meetings of the Council, including dates of those meetings, matters to be discussed and documentation that will be provided to Council members for the purpose of those meetings.

Conclusion

If you have any questions about the amendments, require further information, or wish to understand how it impacts you or your organization, please do not hesitate to contact us.

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