

# Mandatory reporting of sexual abuse of patients

## What is sexual abuse?

The Regulated Health Professions Act, 1991 (RHPA) defines sexual abuse of patients by health care practitioners as:

- sexual intercourse or other forms of physical sexual relations between the health care practitioner and the patient
- touching, of a sexual nature, of the patient by the health care practitioner
- behaviour or remarks of a sexual nature by the health care practitioner towards the patient



In the legislation, all forms of sexual contact between a health care practitioner and a patient is prohibited. Dentists have a legal and ethical responsibility to report such conduct to the appropriate regulatory body.

It is important to remember that sexual intercourse with a patient is not the only form of physical sexual relations. Other forms include genital to genital, genital to anal, oral to genital, or oral to anal contact, masturbation of the health care practitioner by, or in the presence of, the patient, masturbation of the patient by the health care practitioner, or encouragement of the patient by the health care practitioner to masturbate in the presence of the health care practitioner.

In addition, other forms of sexual contact, such as kissing and fondling or comments/remarks of a sexual nature, all constitute conduct which triggers the mandatory reporting requirements.

All of the above conduct between a health care practitioner and a patient constitutes sexual abuse of a patient. Under Ontario law, patients are unable to consent to sexual conduct with their health care practitioner, even if the patient initiates the conduct.

#### **Who has to file a report?**

In addition to dentists, all regulated health care practitioners have a legal, professional and ethical obligation to report cases of suspected sexual abuse of patients. This includes chiropractors, dental hygienists, physicians, nurses and pharmacists.

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### **When do I have to file a report?**

Under the RHPA, if a dentist has reasonable grounds, based on information received while practising dentistry, to believe that another dentist or a member of another health care regulatory college has sexually abused a patient, the dentist must submit a report to the registrar of the college of the health care provider who is the subject of the report.

Credible information may come to the dentist's attention directly from the patient, parent or other family member, or may come from the patient's friend, guardian or custodian.

Dentists should be aware that they do not have to personally speak with a patient in order to have reasonable grounds to believe that a patient has been sexually abused. For example, if your patient tells you about sexual abuse of their child by a medical doctor, you are obligated to file a report with the College of Physicians and Surgeons of Ontario even though the information did not come directly from the patient.

It is important to remember that it is not up to you to investigate the validity of the allegation; that is the regulator's job.

For dentists who operate facilities, if they have reasonable grounds to believe that a regulated health professional operating in their facility has sexually abused a patient, they are obligated to file a report with the appropriate regulatory body.

The College advises that it is better to err on the side of public interest protection and file a report when allegations of sexual abuse come to light, rather than do nothing about information that comes to your attention. As a regulated health professional, your duty is to protect the public, not to worry about the reputation of a colleague in the face of such allegations.

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### **What if I receive information from someone outside the dental office?**

While your obligation to report does not extend to information you receive when you are not practising dentistry, such as when you are at a social function, the College's advice is that you seriously consider it an ethical duty to provide such information to the appropriate regulatory body and/or local police in the interest of public protection.

### **How do I make a report?**

The report should be made in writing to the registrar of the college to which the regulated health professional belongs.

### **Do I have to tell the patient before I file a report?**

The College recommends that you make best efforts to advise the patient of your mandatory reporting obligations prior to filing the report.

### **Do I have to disclose the names of the patient and the health care practitioner?**

The report must contain the name of the health care practitioner involved. If the name is unknown, there is no obligation to report.

As to the patient name, the dentist must obtain the patient's consent in order to include the patient's name in the report. Even without such consent, the report must still be filed, albeit without the patient's name.

### **How soon does the report have to be filed?**

The College expects that dentists will file a report as soon as possible. While the Act states that dentists must file a report within 30 days of receiving the information, the College expects that dentists will not delay filing a report in order to protect the public.

That being said, if the dentist is concerned that the health care practitioner will continue to sexually

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abuse the patient or will abuse other patients, the report must be filed immediately.

### What should I put in my report?

As an overriding principle, the College expects that the report will be fulsome and at a minimum must contain the following:

- the name of the person filing the report and their contact information;
- the name of the health care practitioner who is the subject of the report;
- the name of the patient, only if the patient has provided written consent to the dentist to include their name in the report;
- an outline of the alleged sexual abuse: what occurred, when it occurred, where it occurred and any other relevant information.

Reports cannot be anonymous and should contain as much detail as is known.

### What are the consequences for not filing a report?

The College takes dentists' mandatory reporting obligations very seriously. For dentists who fail to file a mandatory report, fail to file it within 30 days or fail to provide a fulsome report as outlined above, the College may conduct an investigation which may result in a finding of professional misconduct against the non-reporter by the Discipline Committee.

In addition to a College investigation, the Act also includes a fine for not reporting: not more than \$25,000 for the first offence and not more than \$50,000 for a second or subsequent offence.

### What about staff members?

Dentists are advised that if a staff member is treated in the office, the staff member is considered a patient. Therefore, the relevant legislated provisions to protect patients from sexual abuse by health care providers apply. This would include mandatory reporting obligations to report sexual abuse by a dentist of a staff member who is also a patient. 📌



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