



# Requirements under the *Regulated Health Professions Act* & Other Statutes

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## NEED TO KNOW

1. The *Regulated Health Professions Act* and other legislation create obligations for dietitians that they need to learn, like mandatory reporting.
2. Dietitians have a duty to cooperate with the College of Dietitians of Ontario in investigations, inquiries and assessments.
3. The challenge for dietitians is to balance competing interests appropriately.

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## The Structure of the RHPA

Laws originate from two main sources: case law and statutes. The courts decide case law, often called "common law". For example, the case of *McInerney v. MacDonald* (1992), 93 D.L.R. (4th) 415, is a decision of the Supreme Court of Canada, which indicates that clients generally have a right to look at and obtain a copy of their chart from their health practitioner. Although not directly aimed at dietetic practice, this law also applies to clients of dietitians. This case law existed long before the *Personal Health Information Protection Act*, 2004 (PHIPA) was enacted. In many respects, PHIPA consolidates and then extends the case law.

Either the Federal or the Provincial Legislature can make a "statute", often called an "act". A number of statutes, not directly related to the regulation of the profession, affect the practice of dietetics. The *Public Hospitals Act*, for example, affects dietitians who work in public hospitals. Sometimes, the province enacts more than one statute to form a unified set of laws relating to one topic. The following legislation directly relates to how dietitians are regulated:

- The *Regulated Health Professions Act* sets out the framework for the regulation of the entire health profession sector and the role of the Minister of Health and Long-Term Care.
- The *Health Professions Procedural Code* is an attachment, or schedule, to the RHPA. It sets out the common duties and procedures for individual health Colleges, including the College of Dietitians of Ontario. For example, it specifies the responsibilities of the Council and the seven statutory committees of each College.
- The *Dietetics Act* is a distinct statute. It deals specifically with issues pertaining to the regulation of dietitians, such as the dietetic scope of practice and the protection of dietetic titles.

Many statutes authorize the making of further law through regulations or by-laws without having to go to the legislature again. Regulations appear under both the RHPA and the *Dietetics*

*Act*. Those under the RHPA are general in nature, applying to all health professions, while regulations under the *Dietetics Act* specifically address the regulation of dietitians including:

- Registration ;
- Professional misconduct;
- Quality Assurance Program;
- Notice to the public of open meetings and hearings; and
- Funding for therapy and counselling for clients who have been sexually abused.

The College also has by-laws that deal with internal administrative matters, such as elections to the Council, composition of committees, fees, the content of the register of members, and the reporting of information by members to the College.

In addition to this legislation, the College has created a number of guidelines, policies and standards. Strictly speaking, these are not laws, but tools that assist members to comply with their legal and professional obligations.

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## Duties of the College Under the RHPA and the *Dietetics Act*

Under the RHPA and the *Dietetics Act*, the College has the mandate to regulate the dietetics profession. Its duty is to serve and protect the public interest. The College does not exist to advance the interests of the dietetic profession; this is the role of professional associations. Still, there is no doubt that a well-regulated profession preserves its reputation and stature.

Further, the College has a duty to act fairly when dealing with its members. Legal "fairness" means that before the College takes any action that might harm a dietitian's rights, such as making a finding of professional misconduct, or imposing a fine or suspension, the College must notify the member of the concern, and hear and consider the member's explanation.

The RHPA requires regulated health colleges to carry out seven core functions to achieve public protection:

1. Registration
2. Public Register
3. Complaints, Reports and Investigations
4. Discipline
5. Incapacity
6. Quality Assurance
7. Patient Relations

### 1. REGISTRATION

The College has a duty to ensure that only qualified applicants are given a *Certificate of Registration* to practice as a dietitian. If the College does not accept an applicant's qualifications, it must give reasons for the decision, and provide the applicant with a right of review before the independent *Health Professions Appeal and Review Board*.<sup>1</sup>

### 2. PUBLIC REGISTER

The College is obliged to maintain a register of all members containing basic information about their registration status (e.g., category of registration, whether there are any terms, conditions or limitations), business contact information, discipline history and other information (e.g., findings of professional negligence). The register must be available on the College's website. This enables members of the public to make informed choices about using the services of a dietitian.<sup>2</sup>

### 3. COMPLAINTS, REPORTS AND INVESTIGATIONS

The College must operate a public complaints system, and investigate every complaint received about dietitians. When a complaint is received, the dietitian must be notified of the complaint and get an opportunity to respond in writing. Both the dietitian and the complainant have a right of review before the independent *Health*

*Professions Appeal and Review Board*, unless the matter results in further action by the College. The College has published a detailed description of the complaints process in an articles in *résumé* entitled, *Investigations of Members – how they get started* (Spring 2008) and *Inquiries, Complaints and Reports Committee* (Spring 2009).<sup>3</sup>

In addition to public complaints, the College has a duty to investigate concerns about members that arise from other sources such as mandatory reports (Table 3-1, p. 33).

### 4. DISCIPLINE

If concerns from a complaint or a report are serious and are supported by sufficient evidence, the Discipline Committee will hold a formal discipline hearing. Any finding of misconduct or incompetence, and any penalty ordered, may be appealed to the courts.

### 5. INCAPACITY

If there is a concern that a member has an illness that is likely to interfere with their ability to practice or their professional judgment (e.g. certain chronic and severe mental illnesses or substance abuse), the College can inquire into the matter. Should medical evidence substantiate a concern, the College will attempt to negotiate a treatment and monitoring plan with the member. If no agreement can be reached, a formal hearing is held in private before the Fitness to Practise Committee. The committee can order, among other things, ongoing treatment and monitoring. Any decision can be appealed to the courts. The College has published two useful resources in the *résumé* newsletter:

1. "[Fitness to Practice](#)", *résumé*, Spring 2002, p. 6;
2. "[When Stress Leads to Incapacity What Can I Do](#)", *résumé*, Winter 2006, p. 2.

## 6. QUALITY ASSURANCE

The College is required to establish and operate a Quality Assurance Program for its members to encourage and assist members in being the best dietitians possible. The program is non-punitive and participation is mandatory.<sup>4</sup>

## 7. PATIENT RELATIONS

Another non-punitive program, the Patient Relations Program, tries to provide education, guidelines and tools for both dietitians and members of the public to support constructive, collaborative and non-exploitative interactions with clients. While preventing or dealing with sexual abuse of clients is a mandatory component of the Patient Relations Program, it is far from being its exclusive focus. It also provides funding for therapy and counselling for abused clients. Reports about abuse are dealt with in a respectful and timely manner.

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## Duties of Dietitians Under the RHPA and the *Dietetics Act*

This section explains the essential aspects of a dietitian's most important obligations as set out in the *Regulated Health Professions Act*, (includes the *Health Professions Procedural Code*) and the *Dietetics Act*. Here are the fundamental duties of every dietitian.

### RESPECT OF THE SYSTEM OF CONTROLLED ACTS

Controlled acts are higher risk procedures. No one, including dietitians, is permitted to perform them without legal authority. This duty is discussed in detail in Chapter 4.

### RESPECT LEGAL RESTRICTIONS FOR THE DIETITIAN TITLE

The *Dietetics Act* prohibits the use of the title "dietitian" by anyone who is not a member of the College. The prohibition includes using

variations or abbreviations of "dietitian" in any language. The College takes steps to ensure that the "dietitian" title is protected by pursuing complaints about the misuse of the title. Dietitians are encouraged to report to the College anyone suspected of misusing the title.

Dietitians are not permitted to use the title "doctor" or an abbreviation or variation of that title in the course of providing or offering to provide health care to individuals in Ontario. Even dietitians who have a doctoral degree cannot use that title in the context of their practice. Dietitians with a doctoral degree can use the title socially or in non-clinical contexts, where they would not be taken to be offering to provide health care. In addition, the professional misconduct regulations prohibit the inappropriate use of a term, title or designation in respect of a dietitian's practice. An inappropriate use would likely include:

- Using a false or misleading term such as Medical Dietitian when the person is not a physician; or
- Implying specialization or certification such as Paediatric Dietitian, since there are no recognized and certified specialties in dietetics.

It is generally acceptable, however, to indicate that a practice is restricted to a particular area, such as children. It is also acceptable to use the title Public Health Nutritionist, where appropriate, because the term implies an area of practice rather than a specialty, and is recognized under the *Health Protection and Promotion Act*.

### COOPERATE

The issue of cooperation is raised in Scenario 3-1, *Cooperation with the College* (next page). All dietitians have an obligation to cooperate with the College in an investigation, inquiry or assessment conducted under the RHPA. Failing to cooperate with the College is in itself professional misconduct, even if the behaviour initially being investigated is blameless. Cooperation with the College is part of the accountability expected of dietitians, including:

- Responding to College communications in a timely manner;



- Providing access to facilities and records for College investigators or assessors;
- Fully cooperating with College investigators including answering questions related to the investigation;
- Not withholding, concealing or destroying documents or things relevant to an investigation or assessment;
- Attending for cautions (formal warnings) directed by the Inquiries, Complaints and Reports Committee, or reprimands ordered by the Discipline Committee;
- Complying with a summons issued by a committee or an investigator appointed by the College;
- Providing required information to the College, including changes of information contained in the public register of the College (e.g., business address and telephone number);
- Fulfilling an undertaking or promise to the College; and
- Practising within the restrictions placed on your Certificate of Registration.

### **PARTICIPATE IN THE QUALITY ASSURANCE PROGRAM**

Dietitians are required to participate in the Quality Assurance Program. This includes completing and returning, when requested, the *Jurisprudence Knowledge and Assessment Tool* and the *Self-directed Learning Tool*, which facilitate professional development. It also requires cooperating with any practice assessment directed by the Quality Assurance Committee or any remediation that might flow from an assessment.

### **AVOID SEXUAL AND OTHER ABUSE**

A major theme of the RHPA is the eradication of sexual abuse of clients by registered health practitioners. Any sexual behaviour, including making a ribald comment, constitutes sexual abuse. See Chapter 10 for more details on boundary issues.

### **SCENARIO 3-1**

#### **Cooperation with the College**

A letter arrives from the College informing you of a complaint by a client who says you were rude. The College asks you to respond to the complaint within 30 days. In fact, you believe that it was the other way around, and can barely contain your frustration at having to deal with yet another problem. You are already working 60-hour weeks, have a mother who can barely cope in her home, and as the only child in the city, are trying to persuade her to go to a retirement home.

Six weeks go by, and you receive a reminder letter from the College. On a visit to your family physician for a recurring cough, she diagnoses you with exhaustion and tells you to stop all work related activity for a month. What do you do?

### **AVOID TREATING CLIENTS WHILE INCAPACITATED**

A dietitian must not treat a client while being impaired by any substance or illness. This means avoiding situations that can lead to trouble, such as booking client visits after a Christmas luncheon or party where alcohol might be consumed, or skipping necessary medication.

Special provisions exist to deal with situations where the illness itself so impairs judgment that a dietitian may not know that they are incapacitated. Typically, this occurs with addiction to alcohol or drugs, or with some severe and chronic mental illnesses. If these conditions are confirmed upon a full inquiry – which can include an independent medical or other examination – the College will usually require the dietitian to go through treatment and monitoring to ensure client safety.

### **REPORT FINDINGS OF OFFENCES OR PROFESSIONAL NEGLIGENCE**

Dietitians must report to the Registrar of the College if they have been found guilty of any criminal code or provincial offence, or if a court has made a finding of professional negligence or malpractice. The College will then assess

whether the particular finding is relevant to the dietitian's suitability to practise. If the finding raises no apparent concerns (e.g., a traffic offence that does not involve dishonesty or impairment), the College will simply file the report. If the finding raises concerns relevant to the dietitian's suitability to practice dietetics (e.g., a criminal conviction for fraud or professional negligence involving serious breaches of standards of practice) the College will investigate the matter to determine if some regulatory action should be taken, such as, remediation or discipline). The College is required by the RHPA to place any finding of professional negligence on the public register. Offence findings are not, however, placed on the public register.

This new provision is a self-reporting obligation only. Other dietitians do not have to make a report if they become aware of a finding made against someone else (although in some circumstances a dietitian may conclude that he or she has an ethical obligation to notify the College of a serious court finding).

### CARRY LIABILITY INSURANCE

Dietitians practising dietetics as defined by the College must carry professional liability insurance as set out in the College's By-law 5, *Professional Liability Insurance Coverage Requirements for Members*, below. (See Figure 4.1: CDO's Definition of Practicing Dietetics, p. 38.)

A dietitian can rely on their employer's professional liability insurance coverage only where the dietitian is an "added insured", i.e., the insurer agrees to defend the dietitian even if the employer is not sued. The College may ask dietitians to provide proof of this liability insurance coverage.

### OTHER DUTIES

Numerous other duties are set out in the legislation, particularly in the *Professional Misconduct Regulation*. They include:

- competence (Chapter 1);
- honesty (Chapter 1);
- appropriate assignment of tasks and supervision (Chapter 4);
- privacy obligations (Chapter 5)
- respecting client confidentiality (Chapter 6);
- obtaining informed client consent (Chapter 7);
- record keeping (Chapter 8);
- appropriately managing conflicts of interest (Chapter 9);
- maintaining proper boundaries (Chapter 10);
- effective communication (Chapter 2);
- mandatory reporting (next page).

FIGURE 3-1  
CDO BY-LAW 5

#### Professional Liability Insurance Coverage Requirements for Members

- 1.01 A member engaging in the practice of dietetics shall maintain professional liability insurance coverage with the following characteristics:
- a. The minimum coverage shall be no less than \$2,000,000 per occurrence.
  - b. The aggregate coverage shall be no less than \$5,000,000.
  - c. The deductible shall be no more than \$1,000.

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## Mandatory Reporting for Dietitians

A special duty under the RHPA, and indeed other statutes, is to make mandatory reports to the proper authority when certain events occur, such as sexual abuse of a client, child abuse, abuse of an elderly person in a long-term care or nursing home, or unprofessional behaviour of another dietitian. If it appears that one of these situations exists, a dietitian should obtain specific legal advice. Figure 3-2, *Mandatory Reporting Requirements for Dietitians* (p. 33), identifies the reporting requirements, what must be reported, and to which authority.

Generally, failing to make a mandatory report is professional misconduct, and carries significant consequences. In some cases, dietitians can be prosecuted and fined up to \$50,000 in Provincial Offences Court. A dietitian could also be sued for any harm that results. Some years ago, a physician was successfully sued for more than half a million dollars for failing to report a client who was a danger to others, and who then harmed someone in a motor vehicle accident.

A mandatory report is not a breach of confidentiality, even where a client does not want a report to be made. A dietitian's duty of confidentiality is subject to other requirements or authority of law.

### REASONABLE GROUNDS

Many of the mandatory reporting criteria refer to "reasonable grounds to believe". That phrase has two components:

1. **Reasonable grounds refer to objective information, not personal belief.** If the facts are present, a report must be made even though you might not believe the facts to be true. A dietitian does not have to make a detailed evaluation of whether the person providing the information is credible -- so long as there is some objective basis for making the report.
2. **Reasonable grounds describe the type of information needed to make a report.** Mere

rumour or gossip does not constitute reasonable grounds; for example, a nurse saying over coffee that everyone knows that a certain doctor in the hospital sleeps with his patients. However, hard evidence or clear proof is not needed either. Information from someone who did not personally observe the event is fine, so long as it contains some specifics.

For a report under the *Child and Family Services Act*, only reasonable grounds to "suspect", not "believe", is needed. This means that the degree of information suggesting that a child is in need of protection can be quite low.

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## Mandatory Report of Sexual Abuse

### SCENARIO 3-2 Sexual Abuse

You have been working with your client, Maria, for some time and have developed a fairly cordial professional relationship. On one visit, Maria seems quite subdued. After your attempts to engage her don't work, you ask her what is wrong. Maria bursts into tears. After regaining her composure, she tells you that her family physician conducted an improper breast examination. She describes what occurred, which certainly sounds like an unusual breast examining technique. You know the identity of the physician from her file. What are your legal obligations?

When dealing with revelations of sexual abuse, it is important for dietitians to manage them sensitively and not cause further harm. In addition, dietitians need to be aware of their professional legal obligations. Scenario 3-2, *Sexual Abuse*, raises the issue of mandatory reporting obligations and when they apply. According to law:

- A report of sexual abuse under the RHPA must be made if a dietitian has reasonable grounds, obtained in the course of practising dietetics, to believe that a regulated health professional has sexually abused a patient.

- A report of sexual abuse under the RHPA cannot include the identity of the client unless the client gives written consent to including his or her name.
- A report of sexual abuse under the RHPA must be made within 30 days unless there are reasonable grounds to believe that additional abuse may occur, in which case the report must be made immediately.

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## Mandatory Report of Child Abuse

Any person who has a reasonable suspicion that a child is in need of protection needs to report that suspicion to the local *Children's Aid Society*. While everyone has this duty, it is an offence for a dietitian not to make a report when the information is obtained in the course of practising dietetics.

The definition of a child in need of protection, under the *Child and Family Services Act*, is quite lengthy and complex. For example, one part of the definition states: "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." Obviously, there can be some debate as to the precise meaning of that definition. If in doubt, get advice.

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## Duty to Warn

The duty to warn is the professional obligation for dietitians to notify appropriate third parties and/or authorities when a clear threat of harm or death is made by a client to another identifiable individual or group. The duty to warn may also apply when a client is at significant risk of seriously harming themselves. The duty to warn created by case law is not defined very clearly and permits some variation in interpretation.

The *Personal Health Information Protection Act* provides legislative support for making a report

without client consent in order to protect a third party from a significant risk of serious bodily harm or a client from serious self-inflicted harm (see Chapter 6).

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## Mandatory Reports about the Conduct of Another Registered Health Practitioner

One of the more frequent mandatory reports is for terminating an employee or an association with another registered health practitioner, including other dietitians, for professional misconduct, incompetence or incapacity. A dietitian might make a report to the Registrar of a college, for example, when ending a group practice because they could no longer tolerate a practitioner's drinking or repetitive rudeness to clients.

Another reporting obligation for dietitians who operate a facility, such as a long-term care home, is where they have reasonable grounds to believe that another registered health practitioner is incompetent or incapacitated. Incompetence refers to a significant demonstration of a lack of knowledge, skill or judgment towards a patient. Incapacity generally refers to a mental or substance abuse illness that impairs the practitioner's judgment. This reporting obligation is in addition to "termination" reports. The two work together as follows:

- If the association (e.g., employment) with a registered health practitioner is terminated, the facility and/or the Registered Dietitian must report the matter in all cases, including professional misconduct, incompetence or incapacity.
- If the association with a registered health practitioner is not terminated, the facility and/or the Registered Dietitian must report incidents of unsafe practice or unethical conduct, incompetence and incapacity.

Employers and facility operators generally have a sense as to what incompetence or incapacity are, but may not always appreciate what constitutes professional misconduct for a



dietitian. The starting point is to read the definition of professional misconduct found at the beginning of this book. Generally, misconduct involves any breach of honesty or trust. In addition failure to comply with any fundamental standards of practice (e.g., confidentiality, informed consent, etc.) would also qualify. Where in doubt the employer or the facility operator can contact the College.

Scenario 3-3 illustrates the issue of when a

### SCENARIO 3-3

#### Breach of Employer Rules

George has been fired for repeated personal use of facility phones during work hours and for failing to re-assess residents of the facility every three months. Should the employer report the matter to the College?

breach of employment rules is reportable. Even though George was fired, a report is only necessary if the conduct constitutes professional misconduct. Not all breach of employer rules constitute professional misconduct. One has to look at whether the breach compromised safety, created a risk to clients or jeopardized patient care or amounted to a serious departure from the honesty or trust that the public can expect from dietitians. Further guidance is provided by the 34th definition of professional misconduct with reads as follows:

- “34. Contravening a federal, provincial or territorial law, a municipal by-law or a by-law or rule of a facility where a member practices if,
- i. the purpose of the law, by-law or rule is to protect the public health, or
  - ii. the contravention is relevant to the member’s suitability to practise.”

In Scenario 3-3, the personal use of facility phones during business hours is more of an employment management issue than one of professional misconduct. While it is true that there may have been some brief absences from client care when making the calls, those absences likely were not material to client care. The failure to re-assess residents may be another matter, particularly if it occurred over several months, not just a few days, and the clients were

high risk. Depending on the circumstances a mandatory report may well be required for that matter.

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## Writing a Mandatory Report

A report should either be made or confirmed in writing. Here are some key elements for writing a report:

- Provide a summary of the concern. Be clear about the concern. Do not make the reader guess, particularly if the matter is technical or clinical.
- Provide details. This will assist the recipient to respond appropriately. It may also reduce your subsequent involvement in answering obvious questions. It is usually acceptable to attach pertinent documents.
- Include a list of witnesses the authority may wish to contact. Remember, for reports of sexual abuse under the RHPA, the identity of the client cannot be included unless he or she consents in writing.
- Include any response or explanation from the subject of the report. Fairness would suggest that it be mentioned in the report. This demonstrates good faith. In addition, including the response helps everyone understand the complete situation. You are not taking sides by making a report, but providing important information to an authority.
- Outline any action that has been taken to date on the allegation. It is important for the authority to know, for example, that the person has been placed on workplace suspension.

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## The Formal Investigation

Once the mandatory report is made, the authority will first consider if there is enough information to conduct a formal investigation. If there is any doubt, the reporting dietitian will probably be contacted again. If a formal investigation is initiated, the investigator will focus on locating and interviewing firsthand

witnesses of the actual events, and obtaining documents that might bear on the allegations. Most authorities try not to reveal the name of the person making a mandatory report. However, it sometimes is necessary to disclose the name in order to properly investigate or prosecute the matter.

Should dietitians conduct their own investigation if a mandatory report is going to be or has been made? There is no clear answer to this question. Some worry that this could interfere with or even jeopardize the official investigation. Nonetheless, proceed with great caution and consider these factors:

- In every case, try not to disturb the evidence. Make sure that documents are not altered by your inquiries. Ensure that the recollection of witnesses is not affected by asking leading questions, or interviewing them in the presence of other witnesses or people who may, by their mere presence, influence the answers.
- Only make inquiries if there is an important reason for doing so, for example, to ensure that sufficient facts have been collected in order to make the report, establish whether anyone is at immediate risk or take necessary internal disciplinary action.
- If it is reasonably possible, wait until the authorities have completed their investigations.

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## Protection from Retaliation

When a dietitian makes a mandatory report, there is some legal protection from retaliation. Unless acting in bad faith, the reporting dietitian cannot be successfully sued for making a mandatory report. Making a false report in order to get someone into trouble would be an illustration of bad faith.

A dietitian making a report that later turns out to be groundless would still be protected if there was information to support the report, even though that information was incorrect. Some statutes provide additional protection as well. The RHPA for example, protects people who

submit reports from retaliation in their employment or their contract to provide services.

Even where the criteria for making a mandatory report are not present, courts tend to offer similar protections for voluntary reports made to an appropriate authority in good faith. For instance, if you learned at a party about a health practitioner having sexual relations with a client, a report would not be mandatory (Table 3-1, next page). However, you might feel compelled to report the matter in order to protect the public, and could expect legal protection.

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## Conclusion

For reasons of public protection, the *Regulated Health Professions Act* and other laws specify the obligations of dietitians. For those who are unaware of their professional responsibilities, failure to comply could mean a course of remedial action by the College, legal action or potential fines. Dietitians need to learn and understand how these laws apply to their professional practice. In an effort to guide dietitians, the following chapters examine the complexities of jurisprudence issues in detail and their application to dietetic practice.

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- 1 The *Health Professions Appeal and Review Board* is appointed by the government and is made up of lay people. Depending on what the applicant requests, the Board will either conduct a paper review or conduct a full hearing with witnesses to assess whether the Registration Committee made a reasonable decision. If the Board believes that the Registration Committee made an unreasonable decision, it can make a number of orders including referring the matter back to the Registration Committee for reconsideration, or even directing that the Registration Committee register the applicant. The Board also reviews decisions made by the Inquiries, Complaints and Reports Committee of the College.
  - 2 Richard Steinecke. *Transparency and Privacy What the World Will Know About You*. *résumé*: Spring 2009, p. 4.
  - 3 Dean Benard, RN., LL.M., C.Med, "Investigations of Members — How they get started", *résumé*, Spring 2008, p. 6. And, Richard Steinecke, LLB. "Inquiries, Complaints and Reports Committee", *résumé*, Spring 2009, p. 6. Also see, *What Happens When you make a Complaint*, on the College website.
  - 4 The College's website has an entire section explaining its Quality Assurance Program: [www.collegeofdietitians.org](http://www.collegeofdietitians.org) > Members: Quality Assurance Program

**Figure 3-2: Mandatory Reporting Requirements for Dietitians**

| WHAT MUST BE REPORTED   | LEGISLATION / LEGAL AUTHORITY   | TRIGGER FOR REPORT   | WHO IS RESPONSIBLE FOR THE REPORT   | REPORT TO   |
|---|---|--|---|---|
| Sexual relations, touching, behaviour or remarks of a sexual nature between a registered health practitioner and a client where you know the name of the alleged abuser.  | <i>Regulated Health Professions Act</i>                               | Reasonable grounds obtained either in:<br>1. The course of practising your profession; or<br>2. Operating a health facility.   | 1. Dietitian; or<br>2. Facility Operator (e.g., CEO, administrator, or their delegate).         | The Registrar of the College to which the person belongs.   |
| Professional misconduct, incompetence or incapacity of a registered health practitioner.  | <i>Regulated Health Professions Act</i>                               | 1. You are terminating employment;<br>2. You are revoking, suspending or imposing restrictions on privileges;<br>3. You are dissolving a partnership or association; or<br>4. You intended to terminate or revoke, and the person quits first. | Any person who meets the trigger must make the report.  | The Registrar of the College to which the person belongs.   |
| Incompetence or incapacity of a registered health practitioner.   | <i>Regulated Health Professions Act</i>                               | You operate a facility and have reasonable grounds to believe that a registered practitioner is incompetent or has an incapacity.  | Facility Operator (e.g., CEO, administrator, or their delegate).                                | The Registrar of the College to which the person belongs.   |
| Offence details, professional negligence or malpractice details in a finding by a court.  | <i>Regulated Health Professions Act</i>                               | A dietitian is the subject of a finding by a court.  | Self-report must be made by the dietitian who has been the subject of the finding by the court. | The Registrar of the College of Dietitians of Ontario.  |
| Incidents of unsafe practice or unethical conduct by another dietitian.   | <i>Professional Misconduct Regulation for Dietitians</i>              | Not stated. Probably reasonable grounds.   | Dietitian   | Any appropriate authority.  |
| That a child (under 16) is in need of protection as defined in the Child and Family Services Act (e.g., suffering abuse or neglect).  | <i>Child and Family Services Act</i>                                  | Reasonable grounds to suspect.   | Any person who meets the trigger must make the report.  | Children's Aid Society<br>The report must be personal; cannot be delegated.   |
| That a resident of a long-term care or retirement home has suffered or may suffer harm as a result of unlawful conduct, improper or incompetent treatment or care, neglect, or misuse or misappropriation of a resident's money or of funding provided, among other events. | <i>Long-Term Care Homes Act</i> , and the <i>Retirement Homes Act</i> | Reasonable grounds to suspect.   | Any person who meets the trigger must make the report, other than another resident.             | The Director at the Ministry of Health and Long-Term Care (for long-term care homes or nursing homes), and the Registrar of the <i>Retirement Home Regulatory Authority</i> (for retirement homes). |
| That an identifiable person or group is at substantial risk of serious harm or death from another person.   | Case law "duty to warn"   | Reasonable grounds to suspect.   | Dietitian   | To an appropriate authority such as the police, the Public Guardian and Trustee or, in some circumstances, the primary care physician and, possibly, the intended victim.                           |

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## Quiz

Provide the best answer to each of the following questions. Some questions may have more than one appropriate answer. Explain the reason for your choice. See *Appendix 1* for answers.

**1. In Scenario 3-1, "Cooperation with the College", what should you do?**

- Follow doctor's orders and do not respond to the complaint.
- Call or write the College explaining the situation and requesting an extension.
- Write a brief response because you must cooperate with the College.
- Call the client, apologize, explain your condition and ask her to withdraw the complaint.

**2. In Scenario 3-2, "Sexual Abuse", what do you do?**

- Report the physician to the Registrar of the College of Physicians and Surgeons of Ontario, with all the details including the client file.
- If you get the client's written consent, report the physician to the Registrar of the College of Physicians and Surgeons of Ontario.
- Report the physician to the Registrar of the College of Physicians and Surgeons of Ontario, with all the details except the client's identity (unless you have the client's written consent).
- Report the physician to the Registrar of the College of Dietitians of Ontario.

**3. You have reasonable grounds to suspect that a 17-year-old mentally challenged potential client needs an assessment for possible Type 1 diabetes. The person is clearly incapable of consenting. You have discussed the situation with the parents. The parents won't act because of their personal beliefs and have told you to drop the matter. What should you do?**

- Report the matter to the *Children's Aid Society* under the *Child and Family Services Act*.

- Contact the family physician anyway because you have implied consent to discuss the case with the client's health care team.
- Report the matter to the *Public Guardian and Trustee's* office (who looks after the affairs of incapable persons where there is no one else) under the common law (case law) duty of care.
- Search for another substitute decision-maker.

**4. You have reasonable grounds to believe that a health care aide is physically abusing a resident of a long-term care or nursing home. The resident is mentally capable but fearfully denies any suggestion that someone might be hurting her. You understand that you must make a mandatory report under the *Long-Term Care Homes Act (2007)*. Should you advise the resident that you are making the report?**

- While not required to do so, it is a good idea.
- Yes, the *Long-Term Care Homes Act* requires it.
- No, the *Long-Term Care Homes Act* prohibits it.
- No, it might interfere with the investigation.

**5. On the facts raised by question 4, should you tell the administration *Long-Term Care Homes Act* of the home that you are making the report?**

- Yes, before you make the report, so that the administration can conduct its own investigation.
- Yes, after you make the report, so that the administration does not try to talk you out of it.
- No, it might interfere with the investigation.
- Yes, as soon as possible, so that the administration can take steps to protect this and other residents.



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## Resources

### COLLEGE OF DIETITIANS OF ONTARIO

#### *résumé*

- ["Fitness to Practise", Summer 2002, 6-7.](#)
- ["When Stress Leads to Incapacity What Can I Do", Winter 2006, 2-4.](#)
- ["Coping with Stress at Work", Fall 2005, 1-4.](#)
- ["Liability Issues & Collaborative Practice: Part 1 - Negligence & Seven Principles of Team-Based Care, Summer 2007, p. 4-7.](#)
- ["Liability Issues & Collaborative Practice: Part 2 - Professional Liability Insurance - What you should know. Fall 2007, p. 5-8.](#)
- ["Liability Issues & Collaborative Practice: Part 3 - Understanding legal actions against healthcare teams. Winter 2008, p. 5-8.](#)
- ["Investigations of Members – how they get started", Spring 2008, 6-8.](#)
- ["Inquiries, Complaints and Reports Committee", Spring 2009, 6-7.](#)
- ["Transparency and Privacy: What the world will know about you", Spring 2009, 4-5.](#)
- ["Mandatory Reports – New Requirements", Summer 2009, 9-10.](#)
- ["RD Responsibilities for Mandatory Reporting in a Facility." Fall 2009, 4-5.](#)
- ["RD Liability Insurance FAQs", Spring 2011, p. 10.](#)

*Guidelines at [www.collegeofdietitians.org](http://www.collegeofdietitians.org) >*

- *Making a Complaint*
- *Responsibilities of Employers*

## PUBLICATIONS

**Richard Steinecke**, « Mandatory reporting Obligations », Grey Areas, January 2006, [www.smlaw.com/publications/newsletters-detail.asp?DocID=5472](http://www.smlaw.com/publications/newsletters-detail.asp?DocID=5472).

**McInerney v. MacDonald (1992)**, 93 D.L.R. (4e) 415.

**Federation of Health Regulatory Colleges of Ontario.** *An Interprofessional Guide on the Use of Orders, Directives and Delegation for Regulated Health Professionals in Ontario* (2007). Online guide at: [www.regulatedhealthprofessions.on.ca/EVENTSRESOURCES/medical.asp](http://www.regulatedhealthprofessions.on.ca/EVENTSRESOURCES/medical.asp)

## LEGISLATION

**Dietetics Act, 1991**, "Professional Misconduct", Ontario Regulation 680/93. Amended to O.Reg. 302/01.

**Dietetics Act, 1991**, "Quality Assurance", Ontario Regulation 593/94. Amended to O. Reg. 301/01, Part III.2.

**Regulated Health Professional Act, 1991**, S.O. 1991, Chapter 18, Prohibitions 27 (2).

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